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Framing the Issue

OUR EXPLODING PRISON POPULATION: What can be done to reverse the trends?

Throughout our nation and at every level, correctional facilities detain more people than ever. These dramatic increases are not a reflection of a growing population or crime rate; rather, they represent shifts in political philosophy, public policy and cultural mores. The cost of incarceration threatens the fiscal stability and capacity of governments to address other priorities. And the problem is worse in Kentucky than anywhere.

A nation tough on crime

Public officials and candidates for office understand the political value of a “tough on crime” position. In recent decades, one administration or legislature has outdone the other: reclassifying misdemeanors to felonies; instituting “three strike” provisions; punishing “persistent felons.”

Many analysts say that some of these steps were warranted and our streets have been safer. Since the 1994 federal Crime Act authorized billions of dollars for law enforcement (personnel, equipment, training, new prisons and stiffer sentences), violent crime decreased 26 percent and the murder rate fell 34 percent.

The consequence is nonetheless alarming: The U.S. currently locks up more people than any country on earth: 2.3 million, more than three times the 700,000 who were incarcerated 20 years ago.

For the first time in history, more than one in 100 of our nation’s adults are behind bars. The U.S. leads the world in the number and percentage of incarcerated residents – more than Russia, more than China, more than five times the percentage of Great Britain’s imprisoned, more than seven times the percentage in Australia. The U.S. has five percent of the world’s population, 25 percent of the world’s prison population.

Changes in priorities

The incarceration increase was not a reflection of the crime rate; rather, it was due to 30 years of policy decisions and tougher (longer and mandatory) drug sentencing. Officials estimate that 80 percent of criminal activity is connected to substance abuse.

Prosecutors were allowed to charge defendants for multiple counts of the same crime. Bail, pre-trial release and paroles were increasingly more difficult to secure. Violent crime convicts were often required to serve 85 percent of their sentences.

Nonviolent drug offenders were placed in facilities with violent offenders, and funds were shifted from drug treatment programs, mental health, family counseling, community supervision and electronic monitoring.

Statewide implications

In the past 30 years, Kentucky’s “tough on crime” style has swelled a three prison system into a 13 prison system, plus three private prisons – with 8,000 inmates held back in local jails.

In response to the escalating cost nationwide, the federal government put a cap on prison population. State legislators turned to county jails to house inmates; counties turned to states for funding.

To deal with overcrowding, Kentucky officials reduced space requirements per inmate from 60 square feet to 40 square feet (about six feet by six feet).

Since 1970, Kentucky’s

- crime rate has grown three percent
- population has grown 28 percent
- incarceration rate has grown by more than 600 percent.

Kentucky leads all other states with a prisoner growth rate of 12 percent from 2007 to 2008. There are 22,000 prisoners behind bars in Kentucky at an annual cost of \$20,000 per head. Officials predict that, without reforms, more than 30,000 will be incarcerated in the next decade.

Prisons as economic engines

In many communities, public and private prisons have become major employers and “clean” industries. Chambers of Commerce, labor unions, suppliers, vendors and other economic stakeholders expect legislators to protect and expand these facilities and jobs. We have worked ourselves into a situation where the economic vitality of these communities hinges on a robust prison population.

Kentucky Correction Trends		
	1970	2007
No. of Prisons	3	16
State Corrections Budget	\$10 million	\$454 million
Prison Population	2,838	22,000

Interrelated issues

Crime and incarceration rates closely parallel issues such as substance abuse, illiteracy, lack of job skills, poverty and mental illness. Fifty percent of inmates are drug dependent; 56 percent are mentally ill; 50 percent are illiterate; 67 percent do not have a high school diploma.

Only half take any education courses or hold work assignments while incarcerated. Only one in three report receiving help for mental health problems or drug abuse.

Racial disparities

For African American men (20 to 34 years of age), one in nine are in prison or jail. One in 355 white women (35-39) are behind bars compared with one in 100 black women in the same age group.

African Americans represent seven percent of the population but 24 percent of those sent to state prisons last year. Blacks face more drug charges than whites even though whites use certain drugs more frequently than blacks.

Blacks are underrepresented on juries. Comparisons of poverty rates, household income and home ownership all point to continuing racial disparities that affect crime and punishment trends.

Alternatives to incarceration

Drug courts, pre-trial diversion programs, home incarceration and work release programs are generally highly regarded and considered cost-effective alternatives to prison or jail time. Inmates can be tracked accurately through advances in global positioning system (GPS) technology.

Programs to reduce recidivism

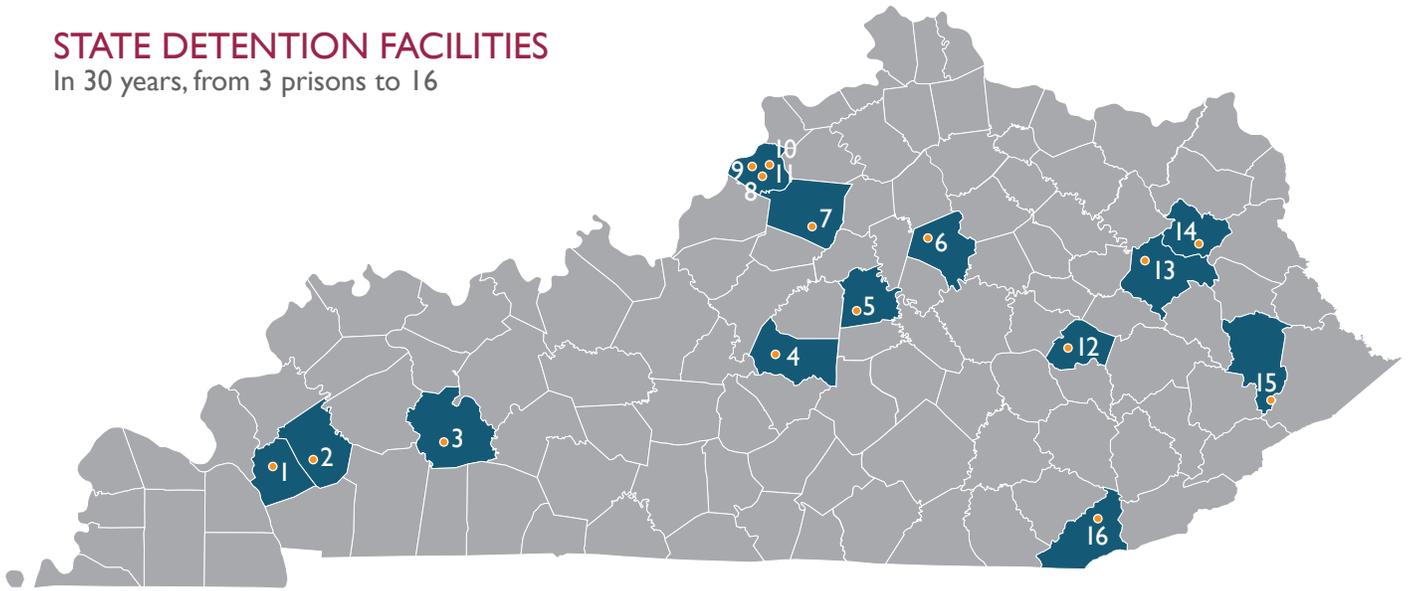
Eighty percent of inmates who undergo six to 12 months of treatment and remain under supervision stay drug-free and out of jail. Recidivism is greatly reduced if underlying drug, alcohol, emotional and family problems are addressed.

Correctional facilities are required to provide health care for inmates, but most facilities do not have the capacity to offer the kind of extensive tutoring, GED test preparation, vocational training, substance abuse counseling and mental health counseling that is needed. Once inmates are released, there is little transition assistance.

Consequently, approximately two in three will be rearrested.

STATE DETENTION FACILITIES

In 30 years, from 3 prisons to 16



1. Kentucky State Penitentiary
2. Western Kentucky Correctional Complex
3. Green River Correctional Complex
4. Marion Adjustment Center (private)
5. Northpoint Training Center
6. Blackburn Correctional Complex
7. Frankfort Career Development Center
8. Kentucky State Reformatory
9. Luther Luckett Correctional Complex
10. Roederer Correctional Complex
11. Kentucky Correctional Institution for Women
12. Lee Adjustment Center (private)
13. Eastern Kentucky Correctional Complex

14. Little Sandy Correctional Complex
15. Otter Creek Correctional Center (private)
16. Bell County Forestry Camp

In addition:

- A federal prison is located in Lexington.
- Dismas Charities operates eight Halfway House facilities in Kentucky, including a facility in Owensboro.
- There are 40 juvenile facilities in Kentucky for day treatment, group homes and residential services (including one in Owensboro).

LOCAL FACILITIES AND PROGRAMS

A resource for other jails

The Daviess County Detention facility faces significant challenges, but because of its unusually large size and specifications, our local facility attracts inmates from overcrowded federal, state and other Kentucky county facilities. This produces additional revenue through per diem fees of \$31 per day (\$35 per day for Prisoner Transfer Service) and allows the local facility to offer programs that are beyond the reach of most county jails with limited capacity.

Capacity

The Daviess County Detention Center was built in 2001 on the eastern edge of Owensboro. The facility has the capacity to house 691 inmates. This was increased by 100 beds when the state reduced the square

footage requirement from 60 square feet per inmate to 40 square feet.

In March 2008, the facility held 690 inmates: 225 from Daviess County; 455 were state and federal transfers; 10 were inmates transferred throughout the country by a private firm.

**The Daviess County
Detention Center supports
its operation by housing
state and federal inmates.**

The average stay is 18 months, and inmates generally serve out their term in the local facility. Many are housed in the facility as they await trial; in the most serious cases (i.e., murder) the accused may serve up to two years before the trial occurs.

Profile of demographics and charges

A disproportionate percentage of men and African Americans are serving time at the Daviess

County Detention Center. And a vast majority of inmates are relatively young and in trouble (again) for non-violent misdemeanor drug charges.

Of the 690 inmates housed at the Daviess County jail in March 2008, only 225 were from Daviess County.



**DAVIESS COUNTY DETENTION CENTER
Totals for 2007**

Total inmates: 8,852 housed in 2007 (60 percent or more were from outside of Daviess County)

Ongoing capacity: 691 inmates

75 percent of the inmate population was male, 27 percent higher than the population breakdown

17 percent of the inmate population was black, 12 percent more than the local population

The average inmate age was 33 and they served an average of 186 days.

Four in five charges or convictions were drug-related.

Two-thirds were charged with a misdemeanor; one-third with a felony.

Approximately two percent were charged with a violent crime. (assuming the state prisoners housed here reflect the state average)

More than two in three had been in jail before.

For their current incarceration, only 16 percent had been convicted; 84 percent awaited sentencing.

LOCAL PROGRAMS & SERVICES

Recreation/Visitation

Inmates are allowed one hour of visitation or recreation three times per week. This includes time for exercise, although there is very little room for physical activity in the local facility. Basketball was eliminated because it frequently led to violence. There is no exercise equipment or organized fitness activities.

Health Care

Health care is provided under contract with a Tennessee firm and is available 24 hours per day. Assessments are conducted upon detention. Owensboro Medical Health System and the Green River District Health Department are not involved in providing health care services at the jail.

Substance Abuse

Through an \$80,000 state grant, a Substance Abuse Program (SAP) has been established at the Daviess County facility that has been adopted as a model by other county and state facilities. An in-house director currently coordinates the program for 55 male inmates. In three years, there have been 140 graduates of the program. Approximately 20 women are completing a complementary Recovery Dynamics program for women.

According to Daviess County Jailer David Osborne, more than 500 inmates could benefit from such a program. Space is available, but to expand the program, more counselors would be needed. Some inmates do not yet have the resolve or temperament to enroll in the program.

Other community substance abuse initiatives that could reduce the local prison-jail population:

- The Daviess County Drug Court: Participants do not serve jail time unless they violate terms of the sentence. The state-sponsored Drug Court has graduated 150 in 10 years. The Lighthouse Recovery Drug Court has graduated 250 in six years.
- Recovery Kentucky: New facility under construction will add 33 beds for Class D felons.
- Boulware Mission expansion will expand the temporary housing from 36 to 90 clients and a 600 percent increase in space for education, therapy, substance abuse treatment, case management and more.
- Community Solutions for Substance Abuse recently received a major grant to coordinate drug and alcohol awareness and programs in our community.

Mental Illness

Inmates are triaged for mental illness upon arrival and segregated into three levels, including those who are suicidal. The Daviess County facility uses a Lexington-based suicide hotline, issues special clothing and designates cells for those with suicidal tendencies. There are two psychiatric nurses and four suicide counselors on staff, two of whom are provided by Owensboro-based RiverValley Behavioral Health. Inmates on a “suicide watch” are checked every five minutes.

Tutoring and GED

Test preparation is provided at no cost at the Daviess County Detention Center by Owensboro Community and Technical College through a grant secured by the college. Approximately 100 inmates (approximately 15 percent of the inmate population) participate at any given time. Inmates can decrease their sentence by six months if they complete the program.

Vocational Training

There is no vocational training at the Daviess County facility, even though there are facilities for some training, such as welding. Funds are not available to re-establish a vocational program

The worst thing Kentucky has done is “back away from the practice of separating major and minor offenders.”

Robert Lawson
University of Kentucky Law School

Work Release

A work release program involves five to ten inmates at any given time who, at the discretion of the judge, are allowed to leave the detention center to fulfill employment obligations.

Approximately 80 inmates participate in the pre-trial release program. Following an assessment, bond requirements are eliminated or reduced. This reduces the cost of medical care, food, clothing and supervision.

Home Incarceration

Approximately 10 nonviolent offenders participate in the home incarceration program. GPS tracking systems have increased the feasibility of this option.

Volunteers

Approximately 100 volunteers offer counseling, Bible study, family support, anger management and support groups for families of addicts.

Cost implications

The price tag for the exploding prison population is estimated at \$50 billion a year for state governments (up from \$11 billion 20 years ago) and \$5 billion for the federal budget.

Our nation’s rate of spending on incarceration is six times greater than our spending on higher education. Four states spend more on corrections than on higher education.

In the past three decades, the Kentucky corrections budget has increased from \$10 million to \$454 million. The annual cost of incarceration is approximately \$20,000 per inmate.

These costs are increasingly burdensome on state and county government budgets. County jails are overcrowded, underfunded and face a constant battle to stay in the black.

Local Costs

Because of its unusual size and capacity, the Daviess County Detention Center can collect per diem fees for housing prisoners from other areas: \$31 per day, \$35 per day through Prisoner Transportation System. This enables the local facility to operate within an annual shortfall of approximately \$200,000.

Daviess County Fiscal Court budgeted \$500,000 for the detention center in the current fiscal year. Jailer David Osborne expects approximately \$300,000 to be returned to county government.

The \$6.2 million annual budget includes approximately:

- \$500,000 for debt service
- \$4,000,000 in personnel costs (including retirement benefits and health insurance)

- \$700,000 in health care costs
- \$700,000 for inmate food

Legislative proposals

Included among the actions that were considered by the 2008 Kentucky General Assembly to address these issues:

- Expansion of a program that places social workers in Kentucky Department of Advocacy offices (\$2.3 million per year).

Funds were not appropriated.

- A constitutional amendment, which if approved by Kentucky voters, would restore voting rights to convicted felons who have served their prison time.

Did not pass the House.

- Sen. Gerald Neal (D-Louisville) proposed creating a commission to study and reform the Kentucky Penal Code that hasn’t been reviewed comprehensively in more than 30 years.

Passed by both Houses and signed by the Governor.

- Sen. Dan Kelly (R-Springfield) proposed Senate Bill 72 that would divert some offenders into treatment programs instead of prison.

Passed the Senate but not the House.

- Rep. Robin Webb (D-Grayson) proposed House Bill 683 which would allow the state parole board to consider parole for Class C felons based on a record review rather than holding a hearing. (The law currently allows this only for Class D felons, the least serious offenders.)

Passed the House but did not get out of Senate Committee.

- House Bill 406 included in the budget bill:
 - Time Credit for Program Completion
 - ◆ 90 days for GED, high school diploma, two or four year certification, technical diploma, or six-month drug treatment
 - Meritorious Credit
 - ◆ Up to 14 days per month served for meritorious or exceptional service
 - Education Programs at Department of Corrections Facilities
 - ◆ By Kentucky Community and Technical College System
 - Substance Abuse Treatment Programs
 - ◆ \$4.5 million for programs for felons in county jails
 - Probation and Parole Credit
 - Home Incarceration
 - ◆ For nonviolent, nonsexual Class C or Class D felons

Does a crisis of crime await us?

Great numbers of prisoners will be released in the next five years and many will be repeat offenders. Criminal gangs have infiltrated communities of illegal immigrants. Soon there will be an infusion of young people entering years in which they are most likely to commit crimes. And the Internet has become a tool for crime and a danger for unsupervised youth.

What other states are doing?

Maryland:

- requires prisoners without a high school degree to take 120 days of classes each year
- offers a small payment
- average attendance at 95%
- has conferred 734 diplomas

Kansas, facing 25 percent increase in prison cells:

- launched vocational education and substance abuse programs in prisons
- retrains probation officers as case managers
- reduced crime among parolees by 41 percent
- stabilized the prison population and saved the state \$80 million in new prison construction

Hawaii:

- treatment rather than incarceration for nonviolent drug offenses

Michigan:

- community corrections leading to a 14 percent recidivism compared to 48 percent

Colorado:

- 11 percent going to community corrections

Discussion Questions

Was any of this information surprising to you? Troubling?

Do you think that violent offenders should be housed with non-violent offenders?

What can be done to reduce our prison population without prematurely releasing convicts that are still a criminal threat to the public?

What can be done to reduce the racial disparity in our criminal justice system?

Should more inmates be enrolled in substance abuse, mental health treatment, educational or vocational training programs? Would you be willing to pay higher taxes to expand such programs? Do you think funds should be shifted from other areas for this purpose?

Should state government reimburse county jails at a higher level? Should the state take over county jails?

“Tough on Crime” vs. “Smart on Crime” Other Questions to Consider

Why do we elect jailers? Why are there no qualifications for jailers?

Why do we imprison people who steal \$300 at a societal cost of \$20,000?

How does it help children to incarcerate their father for failing to pay child support?

Why do we incarcerate people for failing to pay a Public Defender Fee?

Why do we revoke probation for technical violations at a cost of \$20,000?

Why do we load up prisoners with costs and debt when they are released?

How long will it be before there is a federal lawsuit over the overcrowding in 53 of our 73 full-service and regional jails?

Are we willing to be a little less “tough” on crime in order to be “smart” on crime?

Are we willing to do what it takes to restore persons to the community?

Shouldn't we consider capacity and resources when deciding who to incarcerate?

Why do we starve education, health care, housing and other social needs in order to incarcerate so many people?

What do we hope to gain by housing convicted felons, nonviolent misdemeanants, mentally ill and sex offenders all together in our county jails?

Excerpt from “Making full use of the sentencing court's discretion in criminal matters”

Rebecca DiLoreto

Strategic Options

There is little debate over whether or not these incarceration rates and trends warrant public action. Some say that the challenge is to move beyond “the paralyzing debate between punishment and rehabilitation” toward real solutions. What are the options? What strategy (or strategies) will be most effective?

- Option 1: Stay tough on crime.
- Option 2: Expand treatment capacity in prisons.
- Option 3: Expand post-release programs and services.
- Option 4: Reduce the length of incarceration.
- Option 5: Expand alternatives to incarceration.
- Option 6: Other

What should be done to address our exploding prison population problem?

OPTION 1: Stay tough on crime.

Hold firm to the “tough on crime” strategy, particularly as it relates to drug laws: longer and mandatory sentences, three strikes, multiple counts for the same offense, tough parole standards and more.

Likely Costs and Consequences:

If trends continue, we may incarcerate another million people in 10 years and divert many billions of dollars away from education, health care and more.

Those who support this option may say...

- Steps taken to clamp down on crime are working: lower crime and murder rates, more drug dealers off the streets.
- Incarceration is necessary to give defendants an opportunity to reflect on the direction of their lives.
- It is in the best interest of some defendants with drug problems to remain incarcerated through the acute addiction period.
- We're sending an important message about responsible behavior and the rule of law.
- The added cost of more prisons is offset by greater peace of mind from safer communities and neighborhoods.

Those who oppose this option may say...

- The system is broken; our prison population rate is a disgrace among civilized nations.
- We are wasting billions of dollars to punish rather than to rehabilitate and offer hope.
- Public resources are better spent to educate, rehabilitate, train or treat for addictions and mental illness.
- Too many inmates are scarred by the experience of prison. When released, they are broke, with no skills, no job prospects.
- We are better off being “smart on crime” than being “tough on crime.”

OPTION 2: Expand treatment capacity in prisons.

Build, adapt and designate more prison beds for intensive on-site treatment of problems that lead to crime: substance abuse, illiteracy, limited job skills, family problems, mental illness.

Likely Costs and Consequences:

Could require a significant investment for facilities and staff, although pilot projects could assess the cost-effectiveness before moving forward with a comprehensive plan.

Those who support this option may say...

- If we do not provide these services, more inmates will return to prison after they are released.
- Studies and programs from other states conclude that it is more effective to stress rehabilitation over punishment.
- Nonviolent offenders should be treated differently than those convicted of violent crime. New GPS technology enables offenders to be tracked economically and effectively.

Those who oppose this option may say...

- We should not expand costly programs when the correction system is already stretched to the limit and state government faces a large deficit.
- People need to be accountable for their actions and take responsibility for their own education, vocational training, or treatments for drug and alcohol abuse.
- Prison time should be a time of punishment. If a nonviolent offender has to serve alongside someone who committed a violent crime, there will be an added incentive to lead a law abiding life when released.

These sad facts reflect a very distorted set of national priorities.

Sen. Bernie Sanders
Independent from Vermont

OPTION 3: Expand post-release programs and services.

Once released, criminal offenders need transition assistance, literacy and education programs, job training and placement assistance. Some need long-term treatment for addictions. Incentives are needed if we expect employers to hire those with a criminal record, particularly felons. And once their debt to society is paid, we should restore their voting rights.

Likely Costs and Consequences:

Could require a significant investment for facilities and staff, but should reduce recidivism over time.

Those who support this option may say...

- If we expect to keep convicts from returning to jail or prison, they need to be free of addictions and to be able to earn a living wage. They need hope for a better life.
- Employers cannot be expected to hire high-risk workers without incentives.
- Former prisoners will gain a sense of legitimacy and meaningful participation when voting rights are restored.

Those who oppose this option may say...

- The public has absorbed enough cost already through incarceration, free health care for inmates and other services that law-abiding citizens do not receive. We can't afford additional expensive programs when prisoners are released.
- Convicts are responsible for their own setbacks and don't deserve more handouts. They can enroll in school or study for the GED course. There are already job training programs in place.
- Felons sacrificed their right to vote and fully participate in our democracy when convicted of a serious crime.

OPTION 4: Reduce the length of incarceration.

Save tax dollars by reducing the length of incarceration through shock probation and early releases, particularly for non-violent offenders.

Likely Costs and Consequences:

Cost savings of approximately \$20,000 per year per prisoner. Most prisoners do not pose a public threat, but some may resume criminal behavior. This could result in public outcry, particularly if a violent crime occurs.

Those who support this option may say...

- Many inmates do not have a criminal history and do not pose a threat to public safety.
- With modern technology, prisoners can be released and monitored effectively.
- A 10 percent statewide reduction in the prison population would save \$44 million otherwise spent on lodging, food, health care and programs.

Those who oppose this option may say...

- An early release program puts more criminals on the street, endangering the public safety.
- When we release inmates before they have served their time, it sends the wrong message about the seriousness of crime.
- Such a practice is inevitably arbitrary, inconsistent and unfair: some prisoners serve the full sentence; others are released early.

“Nearly a hundred million of us – forty per cent of the adult population, including pillars of the nation’s political, financial, academic, and media elites – have smoked (and, therefore, possessed) marijuana at some point, thereby committing an offense that, with a bit of bad luck, could have resulted in humiliation, the loss of benefits such as college loans and scholarships, or worse. More than forty thousand people are in jail for marijuana offenses, and some seven hundred thousand are arrested annually merely for possession. Meanwhile, the percentage of high school seniors who have used pot has remained steady, between forty and fifty per cent...the larger disgrace of the drug war – the billions wasted, the millions harmed, the utter futility of it.”

The New Yorker

OPTION 5: Expand alternatives to incarceration.

Pre-trial release, community service, drug court, conditional release and home incarceration are among the alternatives to serving time for low-risk offenders.

Likely Costs and Consequences:

Some programs require upfront spending, but ultimately save money and offer a more productive use of the sentence.

Those who support this option may say...

- These kinds of programs are widely endorsed as effective and economical alternatives to incarceration.
- Inmate rehabilitation programs are more effective if they are held outside the prison or jail setting.
- We must invest in programs that will save money over the long-term and prepare inmates for life after incarceration.

Those who oppose this option may say...

- These are expensive programs the system cannot afford.
- It should be good enough to offer rehabilitation programs in a jail or prison setting.
- The public has no responsibility to prepare inmates for life after incarceration. Inmates can turn their lives around when they make up their mind to do so.

OPTION 6: Miscellaneous policy changes

Other recommendations for reducing the prison population:

- decriminalize certain drugs
- expand restorative justice (that involves victims in the process)
- eliminate disparities in parole decisions
- require a certificate of need for jail beds
- eliminate incentives to overcrowd county jails
- reconsider technical violations (e.g., missing curfew) that put parolees back in prison

Likely Costs and Consequences:

Decriminalizing certain drugs may have a societal cost. Administrative staff would be needed for some of these programs.

Those who support this option may say...

- Some of these options are simple policy changes that would have very little, if any, cost.
- Certain common sense policy changes would likely be supported by the public.

Those who oppose this option may say...

- There would be administrative costs associated with administering such policies.
- Some of these policies are politically impractical.

“We have the solutions. We just need the courage to follow through ...

Sometimes, the best thing for defendants, particularly those addicted to methamphetamine, is to remain incarcerated – meth-free – for at least three months ...

Incarceration for short periods has been a catalyst for defendants, particularly first time defendants, to reflect on their lives and decide on a better course ...

Pre-trial release of defendants without restrictions (other than simply return to court) and decriminalizing at least some of the drug activity now deemed illegal ... would be dangerous if enacted.”

Joe Castlen
Daviness County District Judge

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