

South Dakota's 2013 Criminal Justice Initiative

Legislation to Improve Public Safety, Hold Offenders More Accountable, and Reduce Corrections Spending

Overview

Facing continued growth of its prison system, South Dakota enacted comprehensive reforms to the state's sentencing and corrections system. A bipartisan, interbranch group of state officials, the Criminal Justice Initiative Work Group—which received intensive technical assistance from The Pew Charitable Trusts and its partners—developed the reforms. The comprehensive legislation, Senate Bill 70, refocuses prison space on violent and career criminals, improves the parole and probation system and victim services, and reduces recidivism with particular emphasis on substance-abusing offenders.

Highlights

Problem: In 1977, South Dakota had 546 prison inmates; in 2013, it has more than 3,600, and the prison population was projected to grow 25 percent through 2022. This would have necessitated two new prisons and increased operating expenses at a total cost of \$224 million. Between 2001 and 2011, South Dakota's imprisonment rate was rising faster than the national average, and its crime rate was falling much more slowly.¹ During the same period, spending on corrections outpaced increases in all other major areas except Medicaid.²

Findings: The work group's comprehensive review of South Dakota's criminal justice data, programs, practices, and policies found that nonviolent offenders made up 81 percent of prison admissions and 61 percent of the inmate population. In addition, parole violators occupied 1 in 4 prison beds, and more than 4 in 10 inmates were returning to prison within three years of release.³

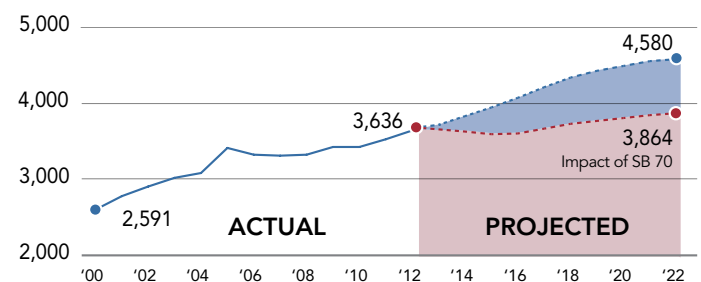
Reforms: The work group developed policy recommendations to strengthen supervision and interventions, focus prison space on violent and career criminals, and ensure the quality and sustainability of reforms. Legislation advancing

the recommendations—SB 70, the Public Safety Improvement Act—passed with overwhelming bipartisan support and was signed into law by Governor Dennis Daugaard on Feb. 6, 2013.

Impact: SB 70 is projected to reduce anticipated prison growth in South Dakota by 716 beds, avert the construction of two prisons, and save state taxpayers \$207 million in construction and operating costs through 2022.⁴ Legislation also redirects \$8 million from the current budget to programs and policies proven to reduce recidivism and improve offender accountability. An ongoing investment in these programs of \$4.9 million annually is expected.

Projected Prison Growth Averted, Millions Saved

Figure 1: South Dakota Prison Population and Projections, 2000-2022



Source: South Dakota Department of Corrections (historical data); The Pew Charitable Trusts (projections)

Background

Between 1977 and 2011, the imprisonment rate in South Dakota grew from 76 inmates per 100,000 residents to 426. The rate is the highest among the state's neighbors—Iowa, Minnesota, Montana, Nebraska, North Dakota, and Wyoming—and more than twice those of North Dakota and Minnesota.⁵

A substantial cost accompanied this growth. In fiscal 2011, the state's corrections budget was more than \$100 million, up from \$26 million in fiscal 1991.⁶

Yet, this increase in prison population and spending had not provided South Dakota taxpayers with commensurate public safety returns. From 2001 to 2011, 16 states reduced both their imprisonment rates and crime rates. South Dakota was not one of them. Nationally, the imprisonment rate rose just 2 percent during that period while crime declined 21 percent. In South Dakota, however, the imprisonment rate rose 15 percent and crime dropped just 11 percent.⁷

“

We have been putting a lot of people in prison ... but we have now recognized that we haven't changed behaviors of those prisoners. Most of them get out of prison eventually and a very high proportion goes back, because the main change that took place in prison is that they became better criminals.”

— Sen. Craig Tieszen, floor testimony, Jan. 24, 2013

In addition, a 2011 study reported that the state's recidivism rate was approximately 45 percent; more than 4 in 10 exiting inmates were returning to prison within three years.⁸

Under current policies, South Dakota's prison population was projected to grow 25 percent over 10 years, reaching 4,580 inmates in 2022. The female inmate population would have reached capacity by 2015, and the male population would have exceeded 95 percent capacity by 2019. State officials estimated the increases would require the construction and operation of two new prisons at a cost to taxpayers of \$224 million.

The South Dakota Criminal Justice Initiative

Seeking to improve public safety and contain prison costs, Governor Dennis Daugaard, Chief Justice David Gilbertson, Senate Majority Leader Russell Olson, and House Majority Leader David Lust established the Criminal Justice Initiative Work Group in 2012. The 18-member, bipartisan work group included representatives from the executive, legislative, and judicial branches, as well as law enforcement, substance abuse and mental health treatment providers, prosecutors, and defense attorneys. (See page 10 for a list of members.)

In the summer of 2012, the work group began a five-month process to analyze South Dakota's sentencing and corrections data; discuss criminal justice programs, policies, and practices; examine options proven to reduce recidivism; and issue research-based, fiscally sound policy recommendations to improve public safety, hold offenders more accountable, and reduce spending.

The data-driven effort was supplemented by extensive outreach. Starting in early 2012, staff conducted more than 36 meetings reaching more than 400 stakeholders statewide. Additionally, three advisory groups were convened to inform the work group's process:

- The Council of Advisors reviewed and provided feedback on the key findings and recommendations. (See page 10 for a list of members.)
- The work group's Native American Subcommittee analyzed data and provided specific recommendations and feedback regarding Native Americans and the criminal justice system in the state.
- A victim, survivor, and advocate round table was held to provide policy ideas and key priorities from the victim perspective.

These outreach efforts brought many perspectives to major data and system findings and helped develop and inform specific policy recommendations.

The Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice, provided technical assistance to the work group in analyzing current sentencing and corrections policies and generating data-driven policy options.

Key Findings

After a comprehensive review of state data, the work group identified several critical trends and a handful of policies that were primarily responsible for the makeup and growth of South Dakota's prison population.

High proportion of inmates serving time for nonviolent crimes

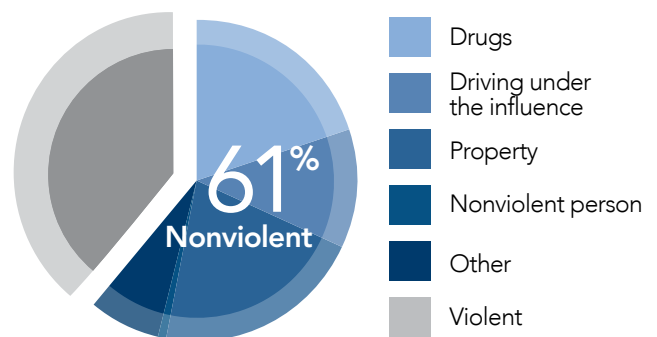
State data showed that nonviolent offenders, particularly those convicted of drug- and alcohol-related crimes, made up a large and increasing share of prison sentences. In 2012, 81 percent of newly admitted prisoners were nonviolent offenders and 53 percent were drug and alcohol offenders, up from 78 and 41 percent, respectively, in 2000.

The result was a high proportion of offenders in prison for nonviolent crimes:

- 61 percent of offenders are in prison for nonviolent offenses.
- 31 percent—28 percent of men and 55 percent of women—are in prison for drug- or alcohol-related crimes.
- Of those in prison for drug offenses, more than two-thirds (68 percent) were convicted of possession, as opposed to distribution or manufacturing.

Nonviolent Offenders Are More Than 60 Percent of Prisoners

Figure 2: South Dakota Prison Population by Offense Type, 2012



Source: South Dakota Department of Corrections; analysis by The Pew Charitable Trusts

- More South Dakota inmates were serving time for drug possession than any other offense. Nonviolent crimes accounted for six of the top 10 offenses (Figure 3).

Increasing number of inmates are parole violators

The work group found that many inmates were in prison because they had violated terms of their probation or parole supervision. In 2012, about 38 percent of the 2,782 offenders admitted to prison were sentenced for a new conviction; the remaining 62 percent was sentenced for a violation

of parole (768) or probation (257), or as a short-term admission, detainee, or relapser (699).

The work group found that the number of offenders coming into prison due to parole violations increased significantly between 2000 and 2012. In 2000, 270 offenders entered prison this way; overall, parole violators made up 18 percent of the population. By 2012 those figures had risen to 768 and 25 percent, respectively. Parole violators released from prison in 2012 had spent, on average, 1.4 years in prison for their violations.

Nonviolent Crimes Top Inmate Offense List

Figure 3: Top 10 South Dakota Inmate Offenses, 2012

1	Drug possession	12%
2	Grand theft	9%
3	Aggravated assault	7%
4	Driving under the influence, 3rd offense	7%
5	Sexual contact with a child	6%
6	Burglary, 3rd degree	5%
7	Driving under the influence, 4th offense	3%
8	Forgery	3%
9	Robbery, 1st degree	3%
10	Rape, 1st degree	3%

Notes: Bolded offenses are nonviolent. Percentages indicate share of standing prison population, July 1, 2012.

Source: South Dakota Department of Corrections; analysis by The Pew Charitable Trusts

The work group took a close look at readmitted parolees and parole violators because of their substantial contribution to prison growth. About two-thirds of parolees who reentered prison did so as a parole violator; the other third were convicted of new crimes. Of all offenders on parole, 42 percent had their parole revoked and were sent back to prison within three years. The average time offenders were on parole before revocation was 10 months.⁹

Work Group Report

The work group set out to craft a policy package that would help South Dakota realize more offender accountability and public safety at less taxpayer expense. It issued a report in November 2012 with policy recommendations to strengthen supervision and intervention, focus prison space on violent and career criminals, and ensure the quality and sustainability of reforms.¹⁰

The report was translated into legislation and introduced as SB 70, the Public Safety Improvement Act, by a bipartisan coalition of 70 co-sponsors from both chambers. The reforms are projected to contain prison growth and free up resources for reinvestment into evidence-based programs that reduce recidivism and decrease the need for prison expenditures.



Gov. Dennis Daugaard signs the Public Safety Improvement Act into law Feb. 6, 2013. Photo by Chad Coppess, South Dakota Department of Tourism

The Public Safety Improvement Act

The South Dakota Legislature overwhelmingly passed SB 70 by votes of 31-2 in the Senate and 63-7 in the House. Gov. Daugaard signed it into law Feb. 6, 2013.

The act is expected to avert the need for 716 prison beds, saving \$207 million in construction and operating expenses over the next 10 years. This includes avoiding the construction of two new prisons—a facility for women in 2015 and a facility for men in 2020.

“

Our state faces a clear choice. Down one path, we can continue to build prisons and allow corrections to consume an ever-increasing proportion of taxpayers' dollars. The alternative is to follow the path blazed by almost two dozen states across the country. A path that makes us safer and one that will save our state millions of dollars.”

— Gov. Dennis Daugaard, State of the State address, Jan. 8, 2013

State Makes Comprehensive Investments in Effective Public Safety Strategies

Table 1: Reinvestment in the 2013 South Dakota Public Safety Improvement Act

Time	Reinvestment	
\$8 million Year 1	\$177,000 for training and implementation of evidenced-based practices	
	\$438,000 for pilots, which are based on the Hawaii Opportunity Probation with Enforcement, or HOPE, approach	
	\$250,000 for pilot supervision programs involving the parole system and Native American tribes	
	\$250,000 for the Department of Corrections to establish a housing pilot to improve outcomes for offenders released to parole	
	\$800,000 for a statewide automated victim information and notification, or SAVIN, system	
	\$300,000 for a financial accountability system for offenders	
	\$1 million to offset potential jail costs related to probation violations	
	\$4.9 million per year Years 2-10	\$725,000 into drug and DUI courts to expand these options to areas across the state with the greatest need
		\$3.2 million in expanded substance abuse, mental health, and cognitive-based treatment services for probation and parole populations
		\$825,000 for probation and parole staff and evidenced-based practices training
\$100,000 for SAVIN system		
Total over 10 years: \$207 million saved and \$53 million reinvested		

Source: Office of the Governor of South Dakota

The Legislature reinvested \$8 million from the fiscal 2013 and 2014 budgets into programs and policies designed to reduce recidivism and hold offenders more accountable, and is expected to continue funding these initiatives at \$4.9 million annually.

More specifically, the law is structured around three primary goals:

1 Strengthen offender supervision and accountability

The law expands the tools and options available to judges, court service officers, the parole board, and parole agents to change offender behavior and reduce recidivism. Specifically, the act:

- Requires the state Supreme Court to establish formal structures for drug and DUI courts, including creating eligibility criteria and performance measures.
- Requires judges to identify military veterans and their potential treatment needs.
- Creates two pilot probation programs based on the Hawaii Opportunity Probation with Enforcement, or HOPE, model to deter crime through frequent drug testing combined with swift and certain sanctions.¹¹
- Authorizes earned discharge from supervision of offenders who follow the conditions of probation and parole, providing an incentive for compliance and allowing probation and parole officers to focus on higher-risk offenders.
- Requires the use of evidence-based practices, including graduated sanctions, to improve probation and parole and reduce recidivism, as well as regular training for judges, parole board members, and probation and parole officers.
- Requires the court system and the departments of Corrections and Social Services to focus treatment and intervention programs for probation and parole populations on recidivism reduction and to report on outcomes.
- Authorizes the Department of Corrections, with the assistance of the Department of Tribal Relations, to create parole supervision pilot programs tailored to tribal communities.
- Provides funding for the Department of Corrections to establish a pilot transitional housing program for offenders released to parole.
- Requires the Office of the Attorney General to create a statewide automated victim information and notification, or SAVIN, system.
- Requires the South Dakota Unified Judicial System to administer a financial accountability system to improve the collection of court-ordered financial obligations by offenders who are no longer on probation or parole or have otherwise met all other conditions of their sentence.

“We have come to a fork in the road where we have to decide whether we will continue to be ‘tough on crime’ in the same manner as we have in the past with ever-increasing rates of incarceration or be fiscal conservatives. As other states have found, we cannot be both.”

— Chief Justice David Gilbertson,
State of the Judiciary address, Jan. 9, 2013

2 Focus prison space on violent and career criminals

The law reflects a consensus that serious offenders deserve long prison sentences but that many nonviolent offenders can serve shorter periods of incarceration or be effectively supervised in the community without jeopardizing public safety. This tiered approach is cost-effective and helps ensure that prison beds are focused on more serious offenders. Specifically, the act:

- Creates a tiered controlled-substance statute to differentiate between drug users and dealers; increases the available penalty for the most serious drug manufacturers, distributors, and dispensers to a Class 3 felony (15-year maximum); and reduces the punishment for drug possession to a Class 5 felony (five-year maximum). Previously, dealers and users were both subject to a Class 4 felony punishment, punishable by up to 10 years in prison.

- Creates more targeted punishments for certain property crimes, including increasing penalties for the most serious grand theft and reducing and subdividing sentences for grand theft of less than \$5,000 in value and for a third-degree burglary, burglary of an unoccupied, uninhabitable structure:

- Aggravated grand theft (of more than \$500,000 in value) increases from a Class 3 to a Class 2 felony (25-year maximum).

- Theft of \$2,500 to \$5,000 decreases to a Class 5 felony.

- Theft of \$1,000 to \$2,500 decreases to a Class 6 felony (two-year maximum).

- Third-degree burglary becomes a Class 5 felony.

- Creates an additional penalty of five years (for those convicted six to nine times) or 10 years (for those convicted 10 or more times) of additional supervision for DUI offenses. Allows prosecutors more options for punishing fourth-time offenders by increasing the amount of time they can serve in local jails.
- Creates presumptive probation for nonviolent Class 5 and 6 felonies, establishing probation supervision as the appropriate punishment unless a court finds and states on the record that aggravating circumstances pose a significant risk to the public.

3 Ensure the quality and sustainability of reforms

To help policymakers and corrections officials assess and manage the overall performance of the system, the new law creates policies to ensure that the reforms achieve the impact anticipated. Specifically, the act:

“ South Dakotans expect a criminal justice system that protects the public and puts violent and career criminals in prison. But the state spends a disproportionate share of our limited funds imprisoning nonviolent offenders for minor property crimes or crimes committed as a result of alcohol or drug addictions.”

— **Mark Meierhenry**, former attorney general, and **Judith Meierhenry**, former Supreme Court justice, letter to the editor, *Argus Leader*, Dec. 6, 2012

- Creates an oversight council, which will sunset after five years, charged with monitoring and evaluating implementation of the reforms.
- Requires the Department of Corrections, Unified Judicial System, and Department of Social Services to develop performance and outcome measures and provide semiannual reports to the council.
- Requires the Bureau of Finance and Management or the Legislative Research Council to calculate a 10-year fiscal impact statement for any bill, amendment, or ballot initiative that may affect state prison or county jail populations.
- Creates a reinvestment funding structure for counties that jail additional offenders locally.
- Streamlines criminal justice proceedings by limiting preliminary hearings to felony cases.

The Justice Reinvestment Initiative is supported by The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance. Intensive technical assistance to the states is provided by Pew, the Council of State Governments Justice Center, the Vera Institute of Justice, and other partners.

Full text of legislation online at

<http://legis.state.sd.us/sessions/2013/Bill.aspx?File=SB70ENR.htm>.

Working group full report online at

http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/CJI_report_Nov_2012.pdf.

BROAD SUPPORT

Among the South Dakota groups that endorsed the legislation were:

Police Chiefs' Association

Sheriffs' Association

Association of County Commissioners

State's Attorneys Association

State Bar of South Dakota

Network Against Family Violence and Sexual Assault

Council of Substance Abuse Directors

Council of Mental Health Centers

“ Senate Bill 70 ... is an example of the type of legislation many of us thought we would be doing routinely. It's the kind of thing that enticed many of us to run for the Legislature, and that is transformational, profound change in the way something is done.”

— House Majority Leader David Lust,
floor testimony, Jan. 31, 2013

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Endnotes

¹ Crime data are from the FBI's Uniform Crime Reports (<http://ucrdatatool.gov>). Incarceration data come from the U.S. Justice Department, Bureau of Justice Statistics' Prisoner Series (<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=40>).

² Department of Justice, Bureau of Justice Statistics, Prisoner Series. National Association of State Budget Officers, or NASBO, State Expenditure Reports, 1992 and 2012.

³ Unless otherwise cited, the analyses in this report were conducted for the Criminal Justice Initiative Working Group by Pew using data provided by the South Dakota Department of Corrections.

⁴ The averted cost savings include the avoidance of a \$36 million women's facility being built in 2015 and a \$90 million men's facility being built in 2020.

⁵ Department of Justice, Bureau of Justice Statistics, Prisoner Series.

⁶ NASBO State Expenditure Reports, 1992 and 2012. Adjusted to 2011 dollars, the 1991 figure is \$43 million.

⁷ Crime data are from the FBI's Uniform Crime Reports. Incarceration data come from the Bureau of Justice Statistics' Prisoner Series. The 16 states are CA, CT, DE, HI, MA, MD, MI, MS, MT, NJ, NV, NY, OK, SC, TX, and WI.

⁸ Pew Center on the States, "State of Recidivism: The Revolving Door of America's Prisons," Washington: The Pew Charitable Trusts (April 2011).

⁹ The percentage returned to prison rises to 52 percent and the average length of time before return declines to eight months when admission as a detainee or relapser (offenders who return to prison for very short stays) is included.

¹⁰ 2012 South Dakota Criminal Justice Initiative Work Group Final Report. http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/CJI_report_Nov_2012.pdf.

¹¹ More information about HOPE can be found at <http://www.pewstates.org/research/featured-collections/hawaiiis-hope-program-85899376461> and at <http://www.hopeprobation.org>.



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