

# **Cutting Correctly in Maryland**

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## Table of Contents

<a href="#">Introduction</a>	3
<a href="#">Maryland’s Budget Dilemma</a>	7
<a href="#">Shift in Public Opinion on the Use of Prisons</a>	9
<a href="#">The Sentencing Structures in Maryland</a>	12
<a href="#">Who Goes to Prison in Maryland?</a>	16
<a href="#">Prospects for Cutting Correctly</a>	19
<a href="#">    Divert Drug Offenders to Treatment</a>	19
<a href="#">    Non Violent Property Offenders</a>	24
<a href="#">    Women Offenders</a>	27
<a href="#">    Elderly Prisoners</a>	29
<a href="#">Recommendations</a>	32

# Cutting Correctly in Maryland

## Introduction

State officials across the nation are struggling to come to terms with the largest state budget shortfall in 50 years. State budget deficits are expected to run between 13 and 18 percent of state expenditures.<sup>1</sup> Budgets for health care, education, and essential social services stand in jeopardy while the latest National Association of State Budget Officers' report estimates that corrections spending (one of the fastest-growing line items during the 1990s) now consumes one in every fourteen general fund dollars.<sup>2</sup>

To bring their budgets into balance many state policymakers are rethinking the costly sentencing and parole policies that have sent so many non-violent offenders to prison and kept them there so long. They are moving to reduce swollen prison populations by eliminating mandatory minimum laws, diverting non-violent drug offenders from prison and returning discretion to judges to decide what type of sentence would be most effective in each particular case. They are revamping parole policies and procedures to improve release decision-making, and to provide critical re-entry services that will avoid the return of parolees to prison and cut recidivism rates.<sup>3</sup>

Over the 1990s the nation experienced an historic increase in its prison population.<sup>4</sup> But by 2001 the rate of growth was sharply curtailed, and the Bureau of Justice Statistics reports that ten states experienced reductions in their prison populations over 2000.<sup>5</sup> ( See Figure 1 )

Since the state budget crisis erupted, governors in many states—Florida, Illinois, Michigan, Ohio, Utah, and Virginia—have decided to close entire prisons, while in other states such as New York, Texas, and Nevada, they have "downsized" unneeded prison space by closing prison housing units, or taking down bunks in units that

*TO BRING THEIR BUDGETS INTO BALANCE MANY STATE POLICYMAKERS ARE RETHINKING THE COSTLY SENTENCING AND PAROLE POLICIES THAT HAVE SENT SO MANY NON-VIOLENT OFFENDERS TO PRISON... THEY ARE ELIMINATING MANDATORY MINIMUM LAWS, DIVERTING NON-VIOLENT DRUG OFFENDERS FROM PRISON AND RETURNING DISCRETION TO JUDGES.*

had been previously double-celled. Wrestling with a \$34.8 billion budget deficit, California's Governor Gray Davis has temporarily closed the Northern California Women's Facility, the smallest of the state's three prisons for women, a move that will save \$11.7 million over 18 months.<sup>6</sup>

The budget crisis has derailed prison construction plans in Oregon, while Pennsylvania's corrections managers have postponed the opening of two newly-constructed prisons in their effort to shave \$15 million from the budget. A new maximum security prison built to house 2,200 prisoners remains empty because the state lacks funding to activate operations there.<sup>7</sup>

"Tough on crime" measures voted in the last two decades of the 20th century are now haunting state officials as they grapple with the need to reduce state budgets to fit within falling revenue streams. Some governors have simply ordered the early release of prisoners to reduce correctional costs. Facing a budget shortfall, Montana's

FIGURE 1: 10 STATES REDUCED PRISON POPULATIONS  
2000-2001

State	Prison Population Drop 12/31/00 – 12/31/01	Annual Per Inmate Cost of Incarceration
MA	120	\$36,131
NJ	1,642	\$28,000
NY	2,665	\$32,000
RI	45	\$36,566
IL	933	\$19,543
OH	552	\$22,045
OK	401	\$18,091
TX	4,649	\$14,837
CA	3,557	\$26,690
UT	294	\$22,000

Source: Prison population statistics from *Prisoners in 2001* (2002), Bureau of Justice Statistics, Table 3, *Prisoners Under the Jurisdiction of State and Federal Correctional Authorities*. Annual incarceration costs from individual state correctional departments.

correctional managers released more than 200 prisoners – three to five a day—over a period of five months to reduce the deficit by \$4.4 million.<sup>8</sup> Lacking funds to open some 900 newly-constructed prison beds, the Arkansas Board of Correction invoked emergency powers to grant release to 521 prisoners in November 2002 to reduce prison crowding.<sup>9</sup>

That same month Oklahoma’s tough-on-crime Republican Governor Frank Keating sent a letter to the parole board before he left office asking that more than 1,000 prisoners serving sentences for non-violent crimes receive special commutations of their sentences to save \$1.5 million in prison costs.<sup>10</sup>

In December Kentucky’s Democrat Governor Paul Patton commuted the prison terms of 567 prisoners serving the lowest class of felony sentences, releasing them to harvest an immediate budget savings of \$1.3 million of a \$6 million corrections budget deficit. Those released had an average of 80 days left to serve on convictions for drug or property offenses.<sup>11</sup>

Many other states have taken more strategic steps to rein in prison population growth, yielding significant budget savings. Sentencing guidelines and parole reforms have combined to reduce Ohio’s prison population by more than 3,400 since 1998, when new parole guidelines were introduced. In January 2002 the Ohio Department of Rehabilitation and Correction shut down the Orient Correctional Institution, wringing as much as \$40 million out of the annual corrections budget.<sup>12</sup>

In Texas, after years of spiraling growth, the prison population trend was suddenly shifted into reverse in September 2000 when new parole reforms were introduced. The parole board’s approval rate began to rise, the rate of parole revocations fell sharply, and the prison population dropped by 7,698 offenders from September 2000 to the end of December 2001. The Texas Department of Criminal Justice was able to reduce its designated prison capacity by more than 1,000 beds in 2001, and hold thousands of empty prison beds on reserve.<sup>13</sup>

In 2000, Kansas legislators mandated that probation and parole violators be sanctioned within the state's community corrections system rather than sent to prison. They reduced the length of community supervision for offenders convicted of low-level offenses, cutting supervision time by half in many cases, and broadened the target ranges for community corrections under the state's sentencing guidelines. Implementation of the legislation resulted in immediate discharge of 574 prisoners, and is saving almost 800 prison beds for occupancy by more serious offenders.

Many other state legislators have revisited the rigid mandatory sentencing measures enacted in preceding years to "get tough" on drugs and other non-violent crimes. While raising penalties in 2001 for methamphetamine to equal those for cocaine, Indiana legislators eliminated the state's mandatory 20-year prison sentences for drug offenders arrested with three grams or more of cocaine, giving judges authority to sentence drug dealers who sell drugs to support their habit to treatment instead of prison.

In North Dakota, a one-year mandatory minimum sentence for first-time drug offenders was repealed in 2001 and the legislature called for a study of other mandatory minimum laws. That same year Connecticut legislators gave judges some leeway to relax mandatory minimum sentencing laws for sale or possession of drugs, even within a "drug-free school zone." And in Mississippi the legislature amended the sweeping truth-in-sentencing law they had enacted in 1994. Nonviolent first offenders regained eligibility for parole after they serve one-quarter of their prison sentence. By the end of 2001, more than 2,000 of the state's prisoners became parole-eligible.

That same year Louisiana's legislators repealed mandatory minimum sentences for simple drug possession and many other nonviolent offenses, and cut minimum sentences for drug trafficking in half. The possibility of parole, probation, or suspension of sentence was restored for a wide range of nonviolent crimes—from prostitution to burglary of a pharmacy. The bill allowed for already-

sentenced prisoners to apply for an early release recommendation from a "risk review panel." If recommended, their case is sent to the parole board for consideration.<sup>14</sup>

In 2002, the New Mexico legislature repealed a mandatory sentence enhancement that had been required if a prosecutor charged a defendant with a previous drug conviction as an habitual offender. The drug enhancement is now discretionary, allowing judges to determine whether or not it would be appropriate in a particular case.<sup>15</sup>

Legislation was signed by Washington's Governor Gary Locke last April to divert non-violent drug offenders from prison to supervision under drug court judges, and to reduce prison sentences for drug trafficking under the state's sentencing guidelines. Endorsed by the state's leading prosecutors, the measure won bi-partisan support in the legislature after impact estimates showed it would save almost \$75 million in correctional costs and avert the need to build more than 2,000 new prison cells.<sup>16</sup>

*I INTEND TO BUILD NO NEW PRISONS. I WANT TO INVEST IN EDUCATION AND ECONOMIC DEVELOPMENT. WE MUST FIND A CORRECTIONAL POLICY THAT IS COST EFFECTIVE.*

**-New Mexico Governor Bill Richardson**

Before leaving office at the end of 2002, Michigan's Governor John Engler approved legislation sponsored by the Republican leadership that controls both houses of the state legislature. The law repealed most of the state's mandatory minimum drug statutes, long cited as amongst the toughest in the nation, replacing them with drug sentencing guidelines that give discretion back to Michigan judges.<sup>17</sup>

Sentencing commissions are now at work in many states to develop measures that could impact correctional costs in future years. Arizona has established a new sentencing commission to recommend changes in the criminal code, rules of criminal procedure, and sentencing policies and practices. Georgia's sentencing commission has just released a proposal for new felony sentencing guidelines. Alabama's sentencing commission is working on a comprehensive structural reform of the state's sentencing laws and policies.

The Kansas sentencing commission is proposing changes in sentencing guidelines that will divert nonviolent offenders convicted of drug possession offenses from prison sentences to mandatory drug treatment, and end a current guidelines rule that requires enhancing the offense severity classification level for second, third, and subsequent possession convictions. The effect of these reforms would be to increase prison bed savings from about 400 beds in the first year, to more than 800 beds over ten years.<sup>18</sup>

For five years after sentencing guidelines were introduced in North Carolina in 1994, the state's incarceration rate fell as the prison population was brought under strict control that reduced the proportion of sentenced felons receiving

prison terms from 44 percent to just 29 percent. By 1999, the rate of decline reached ten percent. But the guidelines also boosted the length of prison terms for violent felons, and now the effect is being felt. The state's sentencing commission projects a need for 7,000 new prison beds over the next decade unless something is done to check population growth.<sup>19</sup>

The commission has offered state legislators a list of options to revamp the state's sentencing guidelines to reduce the length of recommended prison terms for many offenders. Taken together, the options—which include reclassification of purely "statutory" rape, restructuring the prior record point system, reducing the recommended prison sentences for some habitual offenders, and reducing the minimum sentences recommended for some offenders by three months—might avert the need to construct more than 3,200 new prison beds.<sup>20</sup>

New Mexico has no sentencing commission, but Governor Bill Richardson has simply declared a prison moratorium. "I intend to build no new prisons. I want to invest in education and economic development. We must find a correctional policy that is cost effective."<sup>21</sup>

## Maryland’s Budget Dilemma

Maryland’s prison population has tripled in the past 20 years, from 7,731 in 1980 to 23,752 at the end of 2001, unprompted by a corresponding increase in serious crime. ( See Figure 2 ) The state’s incarceration rate rose from 313 prisoners per 100,000 residents in 1985 to 422 in 2001. During the 1980s and 1990s, Maryland’s per capita state spending on corrections grew by 100%. By way of comparison, per capita state spending on corrections grew at four times the rate of increase in higher education spending.<sup>22</sup>

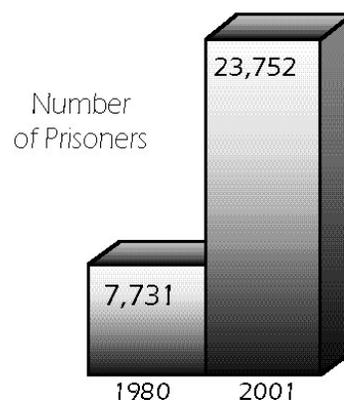
The costs associated with this prison growth are massive. While the prison population has leveled off in recent years, and policymakers might cite this fact as reason for complacency, the state’s severe budget crisis is forcing people in Maryland to carefully review every line-item to avoid cuts to popular programs. Estimates are that Maryland’s current budget deficit will reach a half-billion, and it won’t stop there. The shortfall in Maryland’s General Fund, where nearly 80 percent of state spending is for education (including higher education), health, public safety and things required by state law.<sup>23</sup> In fiscal year 2001 (the latest year for which nationally comparable data is available), Maryland’s spending on corrections as a percent of total expenditures was 20% higher than the national average.<sup>24</sup>

The \$22.8 billion state budget introduced by Governor Robert L. Ehrlich Jr. on January 17, 2003 witnessed \$400 million worth of cuts to programs, services and state staffing levels. Of 54 state agencies that use operating funds, 30 would see their budgets lowered in next year’s budget. The university system will lose \$67 million in the next year, while the budget for the Department of the Environment would shrink from \$50 million to \$42 million.<sup>25</sup> In January, the University of Maryland approved a five percent increase in tuition, in addition to the 5.5 percent increase that was passed last year, meaning this year’s undergraduates will pay 10.5 percent more this semester than they did last spring.<sup>26</sup>

*OF 54 STATE AGENCIES THAT USE OPERATING FUNDS IN MARYLAND, 30 WOULD SEE THEIR BUDGETS LOWERED IN NEXT YEAR’S BUDGET. MEANWHILE, THE CORRECTIONS BUDGET WILL INCREASE THIS YEAR, AND THE STATES’ CAPITAL BUDGET PROPOSED THE LARGEST PRISON EXPANSION IN MARYLAND IN A DECADE.*

By contrast, Governor Ehrlich’s budget contains an *increase* for Corrections this year.<sup>27</sup> Maryland’s capital budget proposed the largest prison expansion in Maryland in a decade, and includes the \$92.1 million for new correctional facilities spending.<sup>28</sup> The new capital corrections spending will fund a 256-bed expansion of a medium security facility the North Branch Correctional Institution in Western Maryland, and a 140-bed expansion of the Eastern Correctional Institution—a new minimum security prison on the lower Eastern shore.<sup>29</sup>

**FIGURE 2: MARYLAND’S PRISON SYSTEM TRIPLED IN SIZE SINCE 1980**



Source: Bureau of Justice Statistics, and Maryland Department of Corrections.

With budgets for vital and popular programs in severe jeopardy, Maryland's policymakers cannot pull back from an obligation to scour every corner of the state budget for evidence of inefficient use of resources. They will find no riper target for saving tax dollars than in the state's swollen prison budget. Thousands of non-violent drug and property offenders—most of them badly in need substance treatment to break the cycle of crime and incarceration—are being warehoused in Maryland's prison system.

*THE REALITY IS THAT THE INCREASE  
[IN TUITION]...IS NOT THE RESULT OF BAD  
TIMES, IT IS THE RESULT OF BAD CHOICES.  
WE NEED TO UNDERSTAND CLEARLY THAT  
WE HAVE BEEN SINGLED OUT FOR CUTS,  
AND THIS IS NOT THE END."*

—University of Maryland Regent and former  
Democratic legislator James C. Rosapepe.<sup>30</sup>

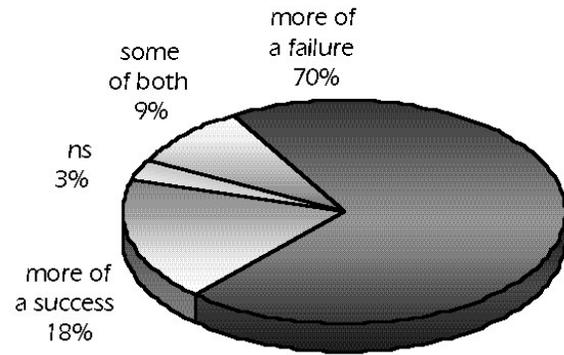
## Shifting Public Opinion on the Use of Prisons

As they wrestle with hard choices to balance the state’s budget, legislators could take some comfort in knowing that there is plenty of public support for carefully designed methods to reduce reliance on incarceration for non-violent and drug offenders. Public opinion surveys have surfaced support that is both broad and deep for drug and alcohol treatment instead of incarceration, for close, careful supervision of offenders in the community, and for non-incarcerative strategies for holding offenders accountable for their crimes.

Public support for alternatives to prison did not develop overnight. Near the end of the 1980s, amid a wave of legislative "get-tough-on-crime" measures, the Public Agenda organization fielded a ground-breaking research project, directed by John Doble, to plumb the depths of public opinion toward crime and corrections in Alabama. Doble found that the more the public knows about alternatives to incarceration such as restitution, community service, and work programs, the more strongly they support use of such options in a wide array of criminal cases—even for some offenders convicted of violent crime, provided of course they are carefully selected and screened. Over the next decade Doble went on to apply his research methods in other states—Delaware, Pennsylvania, Oklahoma, Oregon, North Carolina, Vermont—finding similar results.

In Oklahoma, he found that nine out of ten citizens favored greater use of restitution—while eight in ten *strongly* favored community service and intensive supervision. In North Carolina, large majorities favored providing drug and alcohol treatment, as well as mental health care, to all offenders in need—even if this *increased* the cost of correctional services. North Carolinians strongly supported the state’s structured sentencing guidelines system—even after they were told that under guidelines some offenders receive shorter sentences. Consensus-level majorities in both states favored substituting community penalties for non-violent offenders who were being sent to prison.

FIGURE 3: PUBLIC’S VIEW OF THE STATUS OF WAR ON DRUGS



Source: Changing Public Attitudes Toward the Criminal Justice System, Peter D. Hart Research Associates, 2002.

These findings have since been confirmed in opinion polls taken in state after state, and—as well—in a recent national poll commissioned by the Open Society Institute, conducted by Peter D. Hart Research Associates. The Hart poll findings released last year show that the American public now favors addressing the *causes* of crime over strict sentencing by a margin of two-to-one, 65 to 32 percent. They choose prevention as the number one goal of the criminal justice system, and as the function most sorely lacking. More than three-quarters believe that expanding after-school programs and other crime-prevention activities would save money by reducing the need for prisons.

*MORE THAN TWO-THIRDS OF REPUBLICANS FAVORED TREATMENT AND PROBATION FOR NON-VIOLENT OFFENSES, AND A MAJORITY OF REPUBLICANS FAVORED "TOUGHER APPROACHES TO THE CAUSES OF CRIME," OVER THE POLICIES OF THE PAST.*

By the same margin of two to one, Americans judge that drug abuse is a medical problem, best handled through a treatment approach (63 percent) rather than through the courts and prison system (31 percent). Four times more Americans say the war on drugs has failed than say it is a success. Fifty-six percent now favor elimination of "three-strikes" and other mandatory minimum sentencing laws in favor of giving judges back the discretion to decide the right sentence in each individual case. Given the choice of six budget areas that might be cut to balance their state's budget, those polled placed prisons at the top of their list.

These findings cut across geographic and party lines—more than two-thirds of Republicans favored treatment and probation for non-violent offenses, and a majority of Republicans favored "tougher approaches to the causes of crime," over the policies of the past.<sup>31</sup> A poll conducted last month by the University of Houston found that nearly 70 percent of Texans favored cutting the prison budget.<sup>32</sup>

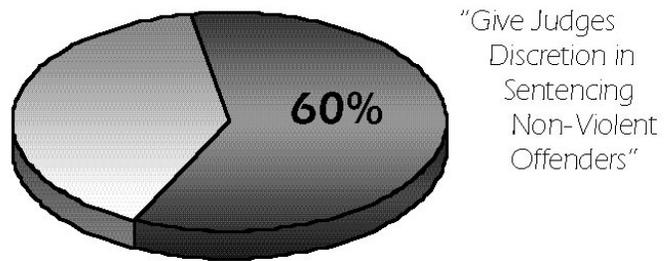
Support for returning discretion to judges and for use of well-structured correctional options as an alternative to prison has also surfaced in public opinion research in Maryland. Public opinion research undertaken in 1998 at the University of Maryland's survey research center found that while a majority of citizens favored limiting judicial discretion in sentencing violent offenders, nearly 60 percent endorsed giving judges discretion in sentencing *non-violent* offenders.<sup>33</sup> ( See Figure 4 )

When they established Maryland's permanent sentencing commission in 1999, legislators said they intended that judges would utilize correctional options programs—community-based rehabilitation and supervision programs—for appropriate offenders. To further that goal, the commission staff convened a "deliberative focus group" to explore public attitudes toward correctional options, their costs, and certain problems entailed in their implementation. The experiment was fielded in Howard County, a middle- and upper-middle class suburban area of the state.<sup>34</sup>

**A PUBLIC OPINION POLL IN MARYLAND SHOWED NEARLY 60 PERCENT ENDORSED GIVING JUDGES DISCRETION IN SENTENCING NON-VIOLENT OFFENDERS.**

Focus group participants were drawn from lists of citizens provided by the local elected Republican prosecutor, who also represents the State's Attorneys Association on the sentencing commission. Each participant was sent a survey to gather their initial perceptions about correctional options programs. Once they had returned the surveys, they were sent a packet of materials—government publications, magazine and newspaper articles—that gave even-handed information about the programs, their implementation, and their problems. The participants were then convened in a meeting by the Howard County states attorney, where they were given further information by sentencing commission staff about program costs and different options for service provision. After a series of small group discussions among themselves, the participants were asked to complete the initial survey a second time.

**FIGURE 4: MARYLAND CITIZENS WANT JUDGES TO HAVE MORE DISCRETION TO SENTENCE NON-VIOLENT OFFENDERS**

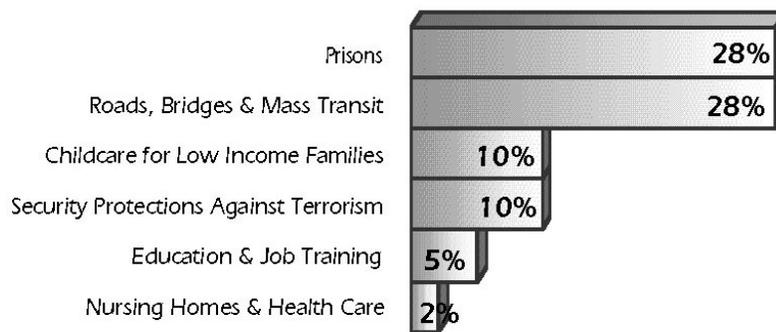


Source: Maryland Commission on Criminal Sentencing Policy, 1998.

Results of the deliberative process showed that participants strongly supported the use of correctional options both before and after a process of education and discussion, but after deliberation they saw a broader role for community-based treatment and supervision programs. While few were willing to see the programs used for violent offenders before the deliberative process, afterward a majority were willing to see eligibility extended to include "minor" offenders in this category. After deliberation, participants were also more inclined to think that supervision agents should be given more direct authority, under court supervision, to move offenders up

or down "a ladder of graduated sanctions" in response to their behavior. Participants expected that correctional options programs should demonstrate their worth by reducing recidivism rates as compared with the traditional sanctions of probation or prison. They advised that when inevitable program failures occur, program managers should be honest with the public, responsibly answering questions, and stressing the overall success of the programs compared to the alternatives. They recommended that Maryland's criminal justice officials work harder to educate the public about correctional options through the media and public forums.<sup>35</sup>

**FIGURE 5: BEST PLACES TO REDUCE STATE SPENDING**



Source: Changing Public Attitudes Toward the Criminal Justice System, Peter D. Hart Research Associates, 2002.

## The Sentencing Structure in Maryland

Maryland’s sentencing guideline system is entirely voluntary. Judges are free to ignore the guideline recommendations and they have been doing so in more than half of the cases they’ve sentenced since 1999. Although most offenders sentenced to prison are eligible for parole, legislators increased the minimum parole eligibility standard from 25 to 50 percent for violent offenses.<sup>36</sup>

The Maryland code contains mandatory minimum sentences for certain handgun and drug distribution offenses. The state’s mandatory minimum sentencing requirements are tilted toward repeat offenders for the most part, and judges can impose a lesser sentence provided the prosecutor has agreed.

Under Maryland’s controlled dangerous substances laws, possession of drugs is a misdemeanor offense. But unlike many states where a misdemeanor cannot be sentenced to more than a year in jail, in Maryland an offender convicted of possession can be sentenced to a prison sentence of up to four years (up to one year for possession of marijuana).

*UNLIKE MANY STATES WHERE A MISDEMEANANT CANNOT BE SENTENCED TO MORE THAN A YEAR IN JAIL, IN MARYLAND AN OFFENDER CONVICTED OF POSSESSION CAN BE SENTENCED TO A PRISON SENTENCE OF UP TO FOUR YEARS.*

Distribution, possession with intent to distribute, or manufacture of drugs is a felony, exposing the offender to up to five years in prison. A repeat offender in this category faces a mandatory minimum of two years. For some specific drugs (heroin, cocaine, LSD and PCP) the maximum prison cap is raised to 20 years. A second such offense carries a mandatory minimum of 10 years; a third offense carries a minimum of 25 years, and a fourth or subsequent offense, 40 years.

A drug dealer apprehended within 1,000 feet of an elementary or secondary school or in a school vehicle, and who has a prior conviction for the same offense, must receive a five-year mandatory prison sentence enhancement tacked on to any other sentence imposed for the offense.

Maryland’s drug laws also provide a five-year mandatory minimum sentence for offenders that distribute drugs in amounts that qualify them as a "volume dealer." The trigger thresholds for different drugs are as follows:

Marijuana	50 pounds
Cocaine	448 grams
"Crack" cocaine	50 grams
Morphine or opium	28 grams
LSD	1,000 dosages
PCP	16 ounces
Methamphetamine	448 grams

The nine-to-one weight difference between powdered cocaine and crack cocaine has given rise to complaints that the law discriminates against African Americans.

An offender who possesses a firearm while engaging in drug trafficking is subject to a mandatory five-year sentence enhancement on a first offense, and a ten-year enhancement for a subsequent offense.

A "drug kingpin" charged with organizing, supervising, financing, or managing a conspiracy to manufacture, distribute, or import dangerous drugs faces a stiff 20-year mandatory minimum sentence, even for a first conviction.

The Maryland Court of Appeals has ruled that plea bargains that stipulate a sentence that falls below a mandatory minimum for repeat offenses are acceptable. In a split decision the majority held that prosecutors should be free to decide whether or not to seek the mandatory minimum for a repeat offender.

### Reconsideration of Sentences

Under Maryland Rule 4-345, prisoners may seek judicial reconsideration of their sentence. They must apply for reconsideration within 90 days of sentencing, but there is no time limit for the exercise of judicial discretion once the application is filed. Since 1999, Maryland's criminal procedure code has also permitted prisoners sent to prison for more than two years to apply for reconsideration of their sentence by a three-judge panel from the same circuit in which they were sentenced. If a prisoner is serving a mandatory-minimum sentence, it cannot be decreased unless the vote of the panel is unanimous. Chances of obtaining relief from a sentence-review panel are very slim. In fiscal year 2001, just five sentences were decreased, while 97 remained unchanged. One prisoner's sentence was increased after review.

### Sentencing Guidelines

Maryland was one of the first states in the nation to experiment with structured sentencing as a means to reduce sentencing disparity. Voluntary sentencing guidelines were first adopted by Maryland's circuit court in 1979.<sup>37</sup> In 1996 the state legislature created an advisory sentencing commission to evaluate the sentencing and correctional laws and policies and to make recommendations for improvements and modifications. That process led to establishment in 1999 of a permanent sentencing commission, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP).

*WHILE PRISONERS MAY SEEK JUDICIAL RECONSIDERATION OF THEIR SENTENCE, THE CHANCES OF OBTAINING RELIEF FROM A SENTENCE-REVIEW PANEL ARE VERY SLIM. IN FISCAL YEAR 2001, JUST FIVE SENTENCES WERE DECREASED.*

Using data recorded on sentencing worksheets, the MSCCSP staff monitor judicial sentencing practices. They issue an annual report on the degree of judicial compliance with the guidelines' sentence recommendations. The staff also conducts research on important sentencing policy issues, and maintains a correctional population simulation model capable of forecasting the fiscal impact of new legislation and future prison bed needs.

Judges are most likely to comply with guideline recommendations when sentencing offenders convicted of property crimes, and least likely to comply with them in sentencing drug offenders. In 2001, they sentenced within the guidelines in just 42 percent of drug cases. Compliance was observed in 59 percent of cases involving a "person" crime, and in 68 percent of property crime cases.<sup>38</sup> <sup>i</sup>

Departures in drug cases are far more likely to involve sentences *below* the recommended range (55 percent of cases) than *above* the range (four percent). Downward departures in drug cases are most prevalent in the busy Eighth Judicial Circuit (Baltimore City), where in 2001, 76 percent were disposed with a sentence less than the recommended guidelines range for this type of offense.

In 1998, the advisory commission (predecessor to the MSCCSP) issued a recommendation that steps be taken to raise compliance to 70 percent. This would be done by closer monitoring of judicial sentencing practices by the administrative office of the courts, by requiring judges to

<sup>i</sup> It is not surprising that 90 percent of guidelines departures occur in cases where the sentence is imposed after a plea agreement is reached between prosecutors and defenders.

record their reasons for departures, and by judicial education and encouragement. But in modeling the "bed-space impact" of the current guidelines, they determined that compliance at that level would have required nearly 1,200 new prison beds over five years' time. A second recommendation was made to modify the guidelines *themselves* so as to conform to actual sentencing practices—winning compliance without increasing bed-space needs.<sup>39</sup>

Some modifications were introduced over time, and since 1999, judicial compliance with guidelines recommendations has steadily increased. In 2001, the commission decided to accept sentences to certain specified correctional options programs (to substance abuse treatment, for example) as compliant even when they might not fall within guidelines recommendations. This was done in recognition of the state's interest in promoting use of correctional options. They also have agreed that where a sentence outside the guidelines recommendation is imposed by a judge pursuant to a bargain struck between a prosecutor and defender, it will be deemed to be compliant. Judge Andrew Sonner, who chairs the sentencing commission, says that with these changes in place, judges are now meeting the 70 percent target set for compliance in 1998.<sup>40</sup>

### Parole Policies and Practice

Maryland's Parole Commission holds discretionary release and revocation powers over the majority of the state's prisoners, as well as supervision and revocation powers over approximately 15,000 offenders released on mandatory supervision. Prisoners serving six months or more are eligible for parole, and for accrual of "diminution credits" (good time). Most prisoners are eligible for an initial parole hearing once they have served approximately 25 percent of their total sentence, though some offenders receive their first hearing before that date.

Prisoners who have committed certain violent crimes must serve 50 percent of their term before being considered for parole.<sup>ii</sup> Prisoners sentenced to serve a life

term are eligible for parole consideration after serving 15 or 25 years, depending on the circumstances of the conviction. There are also a number of laws in effect that prohibit parole consideration for certain offenses such as the mandatory minimum sentences provided for repeat drug offenders.

Some prisoners are eligible for the Mutual Agreement Program (MAP) in which a plan is proposed for participation in specific in-prison programming. The plan is presented to the parole commission, which may then negotiate a parole contract with a prisoner that stipulates the specific conditions or actions (e.g., successful completion of a rehabilitation program) that will assure release. If approved, a guaranteed release date is conditioned upon the offenders' successful completion of the program components. A MAP contract outlines a detailed timetable. If not met, the contract is canceled and the prisoner's parole status reverts to the normal parole hearing schedule.

Most offenders are eligible to earn sentence credits for good behavior and performance of institutional assignments. These credits are subtracted from the time they must spend incarcerated. If not approved for parole, they will be released under mandatory supervision prior to the maximum expiration of sentence to continue serving the sentence in the community. Like parole, mandatory supervision release may be revoked by the parole commission.<sup>41</sup>

*THE PAROLE PROCESS IN MARYLAND OPERATES LESS EFFICIENTLY THAN IN MANY OTHER STATES. PAROLE HEARINGS ARE OFTEN DELAYED FOR A PERIOD WELL BEYOND THE PRISONER'S ELIGIBILITY DATE, CAUSING THOUSANDS OF PRISONERS TO LANGUISH, WASTING EXPENSIVE BED SPACE AND SERVING NO LEGITIMATE CORRECTIONAL PURPOSE.*

<sup>ii</sup> The specific "violent crimes" are abduction, arson, assault first degree, burglary, carjacking, child abuse, escape, housebreaking, kidnapping, maiming and mayhem, manslaughter (except involuntary manslaughter), murder, rape, robbery, sexual offense first and second degrees, use of a handgun, and attempts to commit and assaults with intent to commit certain crimes.

The seven members of the Maryland Parole Commission are appointed by the Governor for six-year terms. The commissioners are assisted in their official duties by eight hearing officers, who conduct the preliminary reviews of candidates for parole release as well as conducting preliminary hearings for parolees charged with violations. Hearing officials have limited authority to conduct parole hearings. The commissioners themselves conduct parole hearings that involve the most serious offenders ("lifers," and those convicted of homicide and manslaughter) as well as for prisoners whose parole is opposed by officials of the Division of Corrections, and for any prisoner for whom a victim requests that the hearing be open to the public. In fiscal year 2001 there were 9,848 grant hearings, and 4,017 revocation hearings.<sup>42</sup>

The parole process in Maryland operates less efficiently than in many other states. Parole hearings are often delayed for a period well beyond the prisoner's eligibility date, causing thousands of prisoners to languish, wasting expensive bed space and serving no legitimate correctional function. The Division of Correction and Division of Parole and Probation staff are responsible for preparing case files for all prisoners who are eligible for parole consideration which describe the nature of their offense, their social history, and a summary of their institutional record, which may include a recommendation from prison staff.

They also conduct a pre-parole investigation of the prisoner's proposed home placement and employment. At the initial parole hearing, the commission can grant immediate parole; grant conditional parole with a delayed release date; deny parole but set a date for rehearing, or simply deny parole.

The commission is currently using a risk assessment process patterned on a federal parole risk instrument to assist parole determinations. This instrument uses a "salient factor score" to assign prisoners to one of three risk categories—"good," "fair," or "poor" risk—that then is used to determine, within a specified range, an expected percentage of their confinement term to be served in prison. Separate ranges have been created for violent and non-violent offenses. The expected percentage of confinement is projected to equal the mid-point of the range—but this can be adjusted up or down by the commission. Commissioners may also override the assessment to increase a prisoner's risk category. A special risk assessment instrument has recently been introduced for use in cases involving specific sex offenses.<sup>43</sup>

If not granted discretionary parole release, a prisoner will be released under "mandatory parole" after serving their sentence, less "diminution credit" time.<sup>44</sup>

## Who Goes to Prison in Maryland?

In Maryland’s circuit courts, a very large portion of the criminal sentencing caseload is made up of drug cases, in which the typical defendant is an African American.<sup>45</sup> The sentencing commission reports that 54 percent of cases sentenced on single-count convictions between 1996 and 2001 involved a drug charge. Violent offenses made up another 28 percent of the caseload, while 18 percent involved property offenses. While African Americans comprise 28 percent of the state’s population, they make up 78 percent of the prison population.<sup>46</sup>

### Race/Ethnicity by Offense Type

	African American	Hispanic	White	Other
Drug	81.0%	1.3%	5.4%	1.0%
Property	45.6%	1.2%	48.7%	2.1%
Violent	62.2%	2.5%	33.5%	2.0%

Source: MSCCSP

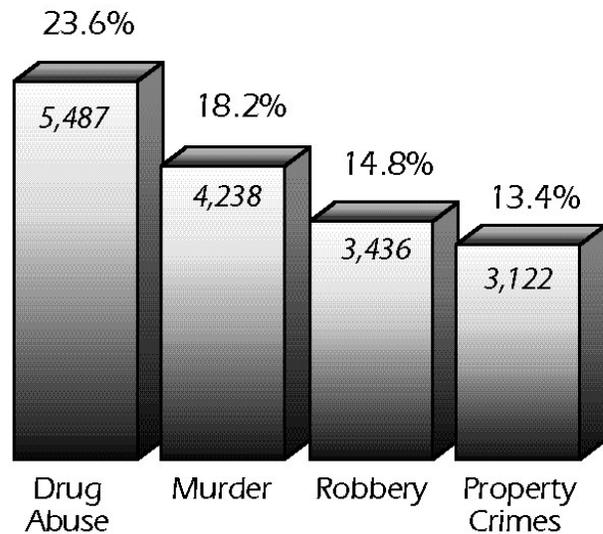
Over half (54.5 percent) of all drug offense cases that reach the circuit courts come from Baltimore City.<sup>47</sup> Fifty-eight percent of the state’s drug cases involve cocaine:

### Distribution of Drug Offenses

Cocaine Distribution	50%
Heroin Distribution	17%
Marijuana Distribution	11%
Cocaine Possession	8%
Marijuana Possession	5%
Other	9%

Source: MSCCSP

FIGURE 6: THE LARGEST SINGLE CATEGORY OF CONVICTION OFFENSE FOR PRISONERS IS “DRUG ABUSE”



Source: Maryland Department of Corrections, 2001.

Admissions data for fiscal year 2001 indicate that a very large number of prisoners enter prison to stay only a short time behind bars. While almost 5,000 prisoners (41 percent of admissions) were committed for a sentence of less than one year, just 898 were held on a sentence of less than a year on June 30, 2001. While most offenders admitted in fiscal year 2001 were new commitments from the courts, offenders returned to prison for violation of parole supervision made up 22 percent of admissions that year. Sixty-eight percent of the new court commitments came from the courts in Baltimore City.<sup>48</sup>

**ADMISSIONS DATA FOR FISCAL YEAR 2001 INDICATE THAT A VERY LARGE NUMBER OF PRISONERS ENTER PRISON TO STAY ONLY A SHORT TIME BEHIND BARS.**

MAJOR CONVICTION OFFENSES  
FOR PRISONERS  
HELD ON JUNE 30, 2001

<b>Violent Crimes:</b>	<b>Number</b>	<b>Percentage</b>
Arson	81	0.3%
Assault	3,068	13.2%
Kidnapping	229	1.0%
Manslaughter	234	1.0%
Murder	4,238	18.2%
Rape	1,401	6.0%
Robbery	3,436	14.8%
Sexual Offenses	550	2.4%
Weapons	668	2.9%
Subtotal	13,905	59.8%
<b>Property Crimes:</b>	<b>Number</b>	<b>Percentage</b>
Auto Theft	303	1.3%
Burglary	1,382	5.9%
Forgery	29	0.1%
Fraud	80	0.3%
Larceny	1,316	5.7%
Vandalism	12	0.1%
Subtotal	3,122	13.4%
<b>Drug Crimes:</b>	<b>Number</b>	<b>Percentage</b>
Drug Abuse	5,487	23.6%
<b>Public Order Crimes:</b>	<b>Number</b>	<b>Percentage</b>
Bribery	24	0.1%
Court Violation	263	1.1%
Disorderly Conduct	33	0.1%
Domestic Relations	195	0.8%
Escape	53	0.2%
Prostitution	22	0.1%
Traffic Violation	114	0.5%
Subtotal	704	3.0%
<b>Other Crimes:</b>	<b>Number</b>	<b>Percentage</b>
Other	21	0.1%
<b>Total</b>	<b>23,239</b>	<b>100.0%</b>

Source: DOC

According to statistics compiled by the Division of Correction, 96 percent of the prisoners incarcerated at the end of June 2001 were males, and 78 percent were African American. They had been sentenced for an average of 13 years, but their average stay behind bars was estimated to be 4.7 years. The largest single category of conviction offense is "drug abuse" according to the DOC ( See table right and Figure 6 ):

Release data for FY 2001 year indicate that the number of offenders who obtain discretionary parole release is relatively small:

**Releases from Prison in Fiscal Year 2001**

	<b>Number</b>	<b>Percentage</b>
Expiration of Term	5,207	34.4%
Mandatory Supervision	5,580	36.9%
Paroles	2,212	14.6%
Continued on Parole/ Mandatory Supervision	1,336	8.8%
Court Order	475	3.1%
Other releases	314	2.1%
<b>Total Releases</b>	<b>15,124</b>	<b>100.0%</b>

Source: DOC

The number of paroles has been reduced by approximately one-third in recent years. In fiscal year 1998—the most recent year for which data is publicly available from the parole commission—the parole commission conducted 9,826 parole hearings in which they granted parole to 3,130 prisoners (32 percent). Revocation hearings were held for 2,552 parolees, of which 1,362 were revoked (53 percent).<sup>49</sup>

### Time Served in Maryland

A study undertaken for the sentencing commission examined the proportion of time actually served in prison for offenders sentenced to more than one year and less than ten years.<sup>50 iii</sup> The type of release varied considerably across offense type. Strikingly, property offenders were significantly less likely than person or drug offenders to be granted parole. Fewer than one out of five property offenders was released from prison through parole and property offenders were four times as likely to be released via mandatory release (i.e. the expiration of their term) than through parole release. More than half of drug offenders gain parole release, while most offenders serving time on person and property offenses served their full sentence, less "diminution credits" (good time), before mandatory release:

Their findings indicate that, on average, offenders sentenced to prison for from one to ten years in Maryland serve about half of their sentence before they are released, though the proportion of time they actually serve varies considerably according to the type of release:

### Proportion of Time Served by Offense Type and Release Type

Offense Type	Person	Property	Drugs
Parole	48%	42%	40%
Mandatory Release	64%	65%	71%
Court Release <sup>iv</sup>	26%	26%	19%
Total Sample	55%	55%	50%

Source: MSCCSP

### Offense Type and Type of Release

Offense Type	Person	Property	Drugs
Parole	33%	17%	56%
Mandatory Release	58%	69%	37%
Court Release	9%	15%	7%

Source: MSCCSP

*STRIKINGLY, PROPERTY OFFENDERS WERE SIGNIFICANTLY LESS LIKELY THAN PERSON OR DRUG OFFENDERS TO BE GRANTED PAROLE.*

<sup>iii</sup> For methodological reasons, those sentenced to serve one year or less and those sentenced to ten years or more were not included in the research sample. The authors noted that those serving less than one year were likely to serve the term in a local jail, where they typically serve 70 to 75 percent of the sentence imposed, and they cited a 1996 estimate from the Department of Public Safety and Correctional Services that those sentenced for serious violent crimes are sentenced to an average of 13 years, and serve an average of 60 percent of their term.

<sup>iv</sup> "Court release" includes prisoners who are brought before the courts for reconsideration of their sentences.

## Prospects for Cutting Correctional Costs in Maryland

*CHANGES IN THE STATE'S RESPONSE TO DRUG OFFENSES AND IN THE HANDLING OF OTHER NON-VIOLENT OFFENDERS WHOSE CRIMES ARE CLEARLY DRUG-RELATED SEEM WARRANTED.*

Many of the steps now being taken in other states to pare down correctional costs as they struggle with the immediate budget crisis are ripe for consideration by Maryland's policymakers. Changes in the state's response to drug offenses and in the handling of other non-violent offenders whose crimes are clearly drug-related seem warranted. Revision of the state's parole policies are said to be underway but should be accelerated and factored into this year's budget calculation. The result of this process could bring immediate and very significant budget relief. And as the state's policymakers review correctional costs they would do well to apply thoughtful scrutiny to two particular groups in the prison system—women with dependent children and elderly prisoners—for whom incarceration is an exceptionally expensive option. Many, if not most of the offenders in these two groups could be released or diverted from prison with no risk to public safety.

*"WE MUST WORK TOGETHER TO GET NONVIOLENT DRUG OFFENDERS OUT OF JAIL AND INTO TREATMENT PROGRAMS, WHERE THEY BELONG."*

—Governor Robert L. Ehrlich Jr.,  
in his State of the State Address.

## Divert Drug Offenders to Treatment

Drug crime appears to top the law enforcement agenda in Maryland and drug offenders play a prominent role in filling Maryland's prisons. Maryland's circuit court judges impose very long sentences in drug cases, most of which result from plea bargains. According to data obtained from Maryland's sentencing commission, cases involving drug offenses comprised more than half (53 percent) of the sentences that were meted out by judges in Maryland in 2000 and 2001. In 63 percent of these cases, circuit court judges sentenced the offender to a prison term.

Even in cases involving simple possession of drugs—a misdemeanor offense—a prison term was imposed for 54 percent of the cases sentenced over the two-year period. In many of these misdemeanor cases, the length of the terms imposed were substantial. In 2001 alone, 86 offenders convicted of possession of cocaine were sentenced to prison, for an average term of two years. Another 113 offenders convicted for the same charge that year were given a sentence that required them to serve almost a year in prison before being released on probation.

When they published the results of their exhaustive examination of the drug problem in Baltimore, a research team from Drug Strategies, a respected Washington D.C.-based drug policy institute—reported that the arrest rate in Baltimore for drug crimes was nearly triple the rate for other large U.S. cities. The heroin and cocaine arrest rate in Baltimore was ten times the national average. They observed that drug enforcement was on the rise outside of Baltimore, with the drug arrest rate elsewhere in the state increasing 19 percent between 1994 and 1998.<sup>51</sup>

## Correctional Options Programs

With many non-violent drug offenders behind bars, Maryland's policymakers have time and again turned their attention to expanding use of correctional options that can provide structured supervision for offenders in the community, and help reduce recidivism through provision of substance-abuse treatment. Maryland's "Correctional Options Program" (COP) was specifically designed to prepare alcohol and drug addicted offenders for release under intensive supervision in the community. COP was introduced in 1994 with an array of "graduated sanctions" and services for low-risk, drug involved prisoners who would be diverted or released from prison. COP participants are provided with drug treatment and other services designed to help them avoid returning to prison.

COP's intermediate sanctions components include a boot camp; a "regimented offender treatment center" at the Patuxent Institute; home detention with electronic monitoring; day reporting programs; intensive and standard supervision; the Patuxent Re-entry Aftercare Center; the Baltimore Pre-Release Center for Women; and the Baltimore drug court. But—with the exception of the Baltimore drug court—offenders are assigned to the programs by the Division of Probation and Parole *after* some period of incarceration, or when they are released on parole, or as an alternative to incarceration for offenders who are failing under parole supervision, rather than as a sentencing option for those who would otherwise be sentenced to prison.<sup>52</sup>

In a 1997 report, DOC officials presented research findings about the effectiveness of COP. The National Council on Crime and Delinquency had conducted a rigorous impact evaluation, randomly assigning eligible offenders to experimental and control groups. Within a year of their release from prison, the randomly-assigned COP participants were found to be 22 percent less likely to return to prison than those assigned to the comparison group. They had 50 percent fewer returns to prison for new offenses than the control group, but they were *more* likely to be returned for purely technical violation of supervision requirements. With more than 2,000 participants enrolled in the program, COP was said to free

up more than 800 prison beds, avoiding construction costs of \$50 million and annual operating costs of almost \$13 million.<sup>53</sup>

## Break the Cycle

Maryland's experience with "Break the Cycle" provides another example of a promising approach to more effectively dealing with Maryland's drug offenders in their home communities instead of in prison. Launched with state funding in 1998, "Break the Cycle" (BTC), is a strategy for the provision of comprehensive treatment and rehabilitation services for drug-abusing offenders. Since its inception, BTC has provided treatment services for thousands of non-violent offenders. The effort is focused on providing drug testing and a system of graduated sanctions to respond to relapse, while strengthening critical interagency linkages—breaking down boundaries—between the courts, the treatment providers, corrections, and law enforcement. The program was designed to work at "either end" of the criminal justice system—accepting offenders sentenced to probation by the courts as well as parolees released from prison.

Program evaluators report that a combination of treatment, supervision and drug testing, increases program compliance significantly. Adding treatment to supervision improves compliance—with overall compliance of offenders in treatment reaching as high as 75 percent, and positive drug tests reduced by 59 percent after offenders enter treatment. Drug testing was also shown to reduce the rates of positive drug tests and "no shows." "Compliance management" is showing clear evidence of success, but serious challenges remain that are said to hamper the program's effectiveness, especially with offenders sentenced directly by the courts. It is said that Maryland's judges are very reluctant to delegate enough authority to supervision agents to allow them to flexibly sanction offenders as needed, using methods to tighten supervision beyond routine administrative sanctions. This results in unnecessary program failures. To make matters worse, when participants *do* fail, it takes more than six months on average to get them back before the authorities for a revocation hearing.

*A STUDY DONE IN CALIFORNIA FOUND THAT FOR EVERY TAX DOLLAR INVESTED IN TREATMENT, TAX-PAYERS SAVED \$7 IN FUTURE CRIME-AND HEALTH-RELATED COSTS.*

*THE ARREST RATE IN BALTIMORE FOR DRUG CRIMES WAS NEARLY TRIPLE THE RATE FOR OTHER LARGE U.S. CITIES. THE HEROIN AND COCAINE ARREST RATE IN BALTIMORE WAS TEN TIMES THE NATIONAL AVERAGE.*

Viewed from both an economic and public safety standpoint, the choice between prison and substance-abuse treatment for most non-violent offenders whose crimes are drug-related should be an easy one. An increasing body of research completed since the start of the "war on drugs" indicates that a rational cost-benefit calculation favors treatment hands-down. The landmark RAND Corporation study comparing the benefits of different law enforcement strategies to treatment for heavy users of cocaine found that treatment is three times more effective than mandatory minimum prison sentences.<sup>54</sup>

The "CALDATA" study in California found that for every tax dollar invested in treatment, tax-payers saved \$7 in future crime-and health-related costs.<sup>55</sup> A recent national evaluation of clients in publicly-funded treatment programs found that drug use dropped by 41 percent in the year after treatment—while the proportion of clients selling drugs dropped by 78 percent, the proportion arrested on any charge dropped by 64 percent.<sup>56</sup> Moreover, in recent years—as recounted above—public opinion has decidedly shifted in favor of treatment over prison for non-violent drug-abusing offenders. But drug war ideology has permeated the criminal justice system in ways that still seem to weigh the scales in the opposite direction. ( See table below )

**SENTENCES IN DRUG POSSESSION CASES  
2000 AND 2001**

Offense	Code	Year	Incarceration (months)		Incarceration/Probation (months)			Probation (months)	
			N	Mean	N	Mean - I	Mean - P	N	Mean
Marijuana	5-601	2000	27	10.1	33	3.7	25.1	131	23.8
		2001	27	9.5	51	3.3	21.5	129	19.3
Cocaine	5-601	2000	88	27.2	107	13.7	32.0	91	26.4
		2001	86	24.3	113	11.6	32.1	121	28.5
Heroin	5-601	2000	9	29.8	11	20.3	25.1	21	28.4
		2001	25	21.6	16	12.6	32.2	24	24.8
LSD	5-601	2000	2	15.0	1	43.5	60.0	0	---
		2001	0	---	1	18.0	18.0	0	---
PCP	5-601	2000	2	48.0	4	11.1	45.0	3	28.0
		2001	1	6.0	1	11.0	24.0	0	---

Source: MSCCSP

In 2000 and 2001 more than 8,000 cases involved convictions for drug distribution where a mandatory minimum prison sentence was *not* required. Sixty-four percent of the offenders in these cases were sentenced to prison anyway. Twenty-eight percent received a prison sentence, and another 36 percent got a sentence that combined both prison and probation. It is likely that the state's mandatory minimum sentencing laws for repeat drug offenders drove many of the defendants in these cases to accept a prison sentence in return for a reduced plea.

While not mandatory, the prison sentences imposed for drug distribution in these cases were nonetheless quite lengthy. In 2001 alone, the 632 offenders convicted of distribution of cocaine were sentenced to prison terms averaging more than five years. More than 300 others convicted of distribution of heroin received prison terms averaging more than four years. And more than a thousand others convicted of distribution of either cocaine or heroin were given a sentence that included an average term of more than 30 months in prison before they would be released on probation. (See Table Below )

SENTENCES IN DRUG DISTRIBUTION CASES  
WITH NO MANDATORY MINIMUM REQUIRED  
2000 AND 2001

Offense	Code	Year	Incarceration (months)		Incarceration/Probation (months)			Probation (months)	
			N	Mean	N	Mean - I	Mean - P	N	Mean
Marijuana	5-607	2000	89	20.4	203	12.9	34.7	238	31.8
		2001	122	20.1	181	11.8	34.8	339	28.6
Cocaine	5-608/9	2000	772	61.8	1053	38.9	39.5	741	35.7
		2001	632	61.5	833	31.3	37.4	770	34.6
Heroin	5-608/9	2000	318	61.3	358	37.9	37.6	343	38.4
		2001	303	55.1	208	30.4	37.1	451	35.5
LSD	5-608/9	2000	1	120.0	1	47.0	48.0	0	---
		2001	2	36.0	1	96.0	48.0	2	18.0
PCP	5-608/9	2000	3	107.3	0	---	---	0	---
		2001	5	45.8	7	35.9	37.7	3	52.0
Non-controlled substance as controlled substance	5-617	2000	27	46.7	25	14.1	30.7	28	31.5
		2001	26	19.6	24	14.7	31.0	29	28.3
Other narcotics	-----	2000	16	44.3	24	34.5	39.0	24	37.0
		2001	14	51.1	32	39.1	35.3	25	32.6

Source: MSCCSP

SENTENCES IN DRUG DISTRIBUTION CASES  
WITH MANDATORY MINIMUMS  
2000 AND 2001

Offense	Code	Year	Incarceration (months)		Incarceration/Probation (months)			Probation (months)	
			N	Mean	N	Mean - I	Mean - P	N	Mean
Marijuana	5-607	2000	3	36.0	4	19.5	36.0	8	33.0
		2001	7	28.9	7	9.7	27.4	4	27.0
Non-narcotic	5-607	2000	0	---	1	18.0	24.0	0	---
		2001	0	---	0	---	---	5	30.0
Cocaine	5-608/9	2000	44	76.6	44	61.6	35.2	43	37.3
		2001	114	83.7	74	40.5	34.2	44	37.8
Heroin	5-608/9	2000	52	58.3	60	83.8	35.7	36	40.4
		2001	55	75.6	34	30.5	36.7	31	35.2
LSD	5-608/9	2000	2	45.0	0	---	---	0	---
		2001	0	---	1	180.0	60.0	0	---
PCP	5-608/9	2000	0	---	0	---	---	1	36.0
		2001	1	30.0	0	---	---	0	---
Schedule I or II narcotics, large amounts	5-612	2000	1	36.0	0	---	---	0	---
		2001	0	---	0	---	---	0	---
Schedule I-V non-narcotics, large amounts	5-612	2000	0	---	0	---	---	0	---
		2001	0	---	0	---	---	0	---
Drug Kingpin	5-613	2000	0	---	1	240.0	60.0	0	---
		2001	1	480.0	0	---	---	0	---
Near schools or on school vehicles	5-627	2000	0	---	0	---	---	0	---
		2001	0	---	1	12.0	60.0	0	---

Source: MSCCSP

Repeat drug offenders are subject to stiff mandatory minimum prison terms in Maryland, unless the prosecutor agrees to a lesser sentence. Almost 700 offenders were convicted under a repeat-offender provision in 2000 and 2001, with judges imposing a prison sentence for three-quarters of these offenders. One hundred fourteen repeat offenders convicted of distributing cocaine in 2001 were sentenced to serve mandatory minimum terms that averaged seven years in length, and another 74 were sentenced to serve more than three years in prison before release on probation. ( See Table Above )

*REPEAT DRUG OFFENDERS ARE SUBJECT TO STIFF MANDATORY MINIMUM PRISON TERMS IN MARYLAND, UNLESS THE PROSECUTOR AGREES TO A LESSER SENTENCE.*

## Non-Violent Property Offenders

Thirteen percent of Maryland's prisoners are incarcerated for a non-violent property crime. It is likely that most of these prisoners are addicts whose offense was drug-related. According to the Drug Strategies report discussed above, 80 percent of the state's prisoners have an alcohol or drug problem. The Drug Strategies research team reported that Baltimore leads the country in the proportion of arrestees who tested positive for heroin. They described drug-related crime as a persistent plague in Baltimore, with two-thirds of men and three-quarters of women arrested in Baltimore testing positive for at least one drug, and three-quarters of non-violent property offenses in Baltimore linked to alcohol and drug abuse. They estimate that in Baltimore, each untreated drug addict is costing the city \$30,000 a year, while methadone maintenance costs just \$3,500.

*DRUG STRATEGIES ESTIMATES THAT IN BALTIMORE, EACH UNTREATED DRUG ADDICT IS COSTING THE CITY \$30,000 A YEAR, WHILE METHADONE MAINTENANCE COSTS JUST \$3,500.*

Researchers at RAND estimate that money spent on treatment should reduce serious crimes (against both property and persons) about 15 times more effectively than incarceration.<sup>57</sup> Maryland's criminal code does not require a mandatory prison sentence for property crimes, even for repeat property offenders. Yet Maryland's circuit court judges prefer incarceration over treatment in the community for more than half of the offenders they sentence for non-violent property offenses.<sup>58</sup> Curiously, as noted above, these property offenders are also four times as likely to "max out" on their sentences than they are to be paroled, and are paroled from prison at only half the rate of violent offenders.

There is no doubt that Maryland's substance-abuse treatment delivery system would need improvements to prepare it to handle a larger share of the state's drug-abusing offenders. But the changes that are needed are well known to the state's policymakers, and the benefits would be substantial. "Wrap-around services" to address the multiple problems facing people with addictions are lacking in most community-based programs. Primary health care, mental health treatment, family counseling, education and job training, and housing services are needed along with treatment if the goal is to prevent relapse. Wrap-around services don't come cheap, but the Drug Strategies team cites evidence that they are extremely cost effective. Out-patient treatment enhanced with wrap-around services in Philadelphia delivers a cost/benefit estimate of more than six to one. For methadone maintenance the cost/benefit estimate increases to 18 to one, largely due to reduction in crime and psychiatric problems.<sup>59</sup>

To help fill the service gap, several efforts are currently under way designed to build the capacity of small but promising neighborhood-based service providers so they can better address the diverse needs of inmates, would-be inmates and their families. From substance abuse treatment, housing assistance, employment training, in-home family services, support groups and adult education programs, collaborations among local service providers have begun to form what could become a vital part of the community-based infrastructure needed to support offenders as they return to their home communities and as alternatives to prison entirely.

In 2001, a group of policy researchers at the sentencing commission concluded that better coordination, collaboration, and communication between the various agencies involved in use of correctional options was needed. They recommended that a pilot test be mounted in one county where alternative sanctions would be included in the sentencing guidelines grid and

follow-up data collected to assess the impact and effectiveness of the effort. Noting that increased public awareness of alternative sanctions led to greater acceptance, they urged recognition of the need for public education.<sup>60</sup>

### Parole Reform

James Austin, director of the Institute on Crime, Justice and Corrections at George Washington University, argues that the nation's parole boards are in a position to have a dramatic impact on both correctional budgets and public safety. Unfortunately, without adequate tools for assessing risk, parole decision-makers are likely to err on both scores, releasing high-risk prisoners too soon, while keeping low-risk prisoners behind bars unnecessarily. Inefficient release decisions and the increased number of parolees being returned to prison for technical violations are consuming scarce tax dollars that are needed to fund programs that can prevent crime in local communities.<sup>61</sup>

While the "get-tough" legislation enacted over the last three decades has boosted the average length of stay in prison from 22 months in 1990 to nearly 30 months in 2002, this 36 percent increase in prison time has done nothing to reduce recidivism. Austin says there is a large pool of low-risk offenders who can be safely released from prison. He recommends paroling them promptly at their initial eligibility date, with a short period of minimal supervision, to reduce supervision caseloads and concentrate resources on more risky parole candidates. Further, he argues, reducing the length of stay for all prisoners by just a few months would not have a noticeable impact on the rate of serious crime, while it would have a great impact on prison population levels.

Parole revocation policies eat up correctional resources unnecessarily in most states. Austin reminds us that prisons are intended for serious felony offenders, and should not be used to house parolees who have violated technical supervision requirements or committed petty misdemeanors. These types of problems can and should be addressed through treatment interventions or otherwise sanctioned with community-based penalties.

*PAROLE REVOCATION POLICIES EAT UP CORRECTIONAL RESOURCES UNNECESSARILY IN MOST STATES. PRISONS ARE INTENDED FOR SERIOUS FELONY OFFENDERS, AND SHOULD NOT BE USED TO HOUSE PAROLEES WHO HAVE VIOLATED TECHNICAL SUPERVISION REQUIREMENTS OR COMMITTED PETTY MISDEMEANORS.*

Since most state parole boards have lowered release rates in recent years, introduction of guidelines based on risk-assessment, and use of intermediate sanctions for technical violators can produce significant reductions in a state's prison population, without undue risk to public safety, as was amply demonstrated in Texas over 2001. Simply speeding up the parole decision-making process and eliminating hearings backlogs in New Jersey saved the state the costs of housing thousands of prisoners unnecessarily. Ohio's parole reforms allowed the state to close an entire prison last year, for a savings of \$40 million.

As previously noted, the parole process in Maryland is inefficient, resulting in a sizable waste of expensive bed space and tax dollars. In some cases, delay is due to unnecessary lags in the collection and preparation of critical information needed by the commission to make a release decision. If the prisoner is granted parole, their release is often set for a distant future date. Even when the release date is *not* delayed, the actual release is frequently put off while the prisoner's release plan is investigated and approved. In more efficient jurisdictions, these preparation tasks are initiated well *before* each prisoner's eligibility date, and hearings are scheduled ahead of time so that if parole is approved, the prisoner can be released promptly on their parole date.

The commission is already working with James Austin to develop and validate a new set of parole guidelines for implementation later this year. Austin is hopeful that the new guidelines will have a positive impact on the number of prisoners to be granted parole in the future.

The dynamics of inefficiency described above are unnecessarily wasting taxpayers' dollars in Maryland. Fifty-five percent of the prisoners being released from prison in Maryland are housed in prerelease or minimum custody and pose a minimal threat to public safety.<sup>62</sup> These are very types of prisoners that should be targeted for swifter movement through the system and for planned reentry to their communities. Additionally, the slow pace at which prisoners' applications for parole are heard and acted on by the parole board is a cause for unnecessary delay and expense. If low risk, nonviolent prisoners' parole applications were heard and they were granted release in closer proximity to their parole eligibility dates, Maryland could reduce the number of prison beds by more than 1,000, more than all the beds Governor

Ehrlich has proposed in his capital budget. Furthermore, if efforts underway to improve supervision and services to newly released inmates were expanded, a corresponding reduction in technical violations—and subsequent revocations—of probation and parole could be achieved, further reducing the number of low-level offenders occupying costly prison beds.

*THE PAROLE PROCESS IN MARYLAND IS  
INEFFICIENT, RESULTING IN A SIZABLE WASTE  
OF EXPENSIVE BED SPACE AND TAX DOLLARS.*

## Women Offenders

At the end of fiscal year 2001, there were 1,160 women incarcerated in Maryland's prison system. While they comprise just five percent of the state prison population, women prisoners should receive special attention from Maryland's policy makers for the following reasons:

- Women prisoners are an exceptionally fast-growing group. The rate of increase for women prisoners in the U.S. during the decade of the 1990s (110 percent) far exceeded the rate for men (77 percent).<sup>63</sup>
- Most women are incarcerated for non-violent property and drug offenses. Women prisoners are themselves frequently the *victims* of violent crime, yet just 29 percent are incarcerated for this type of offense, compared to 49 percent of male prisoners.<sup>64</sup> Victim surveys indicate that the incidence of criminal violence among women is low—just one in seven victims reports that their assailant was female.<sup>65</sup>
- Women are far less likely than men to recidivate after release from prison. In New York the Department of Correctional Services reports that their recidivism rate over three years is just 27 percent, compared to 41 percent for men.<sup>66</sup>
- Imprisonment of women too often serves to destroy their fragile families. While more than half of *all* prisoners have minor children whose lives may be affected by the incarceration of a parent, women are far more likely than men to have been living with dependent children than men when they were arrested (64 percent, compared with 44 percent). Almost all prison (90 percent) fathers report that their children reside with their other parent while they are imprisoned—but just 28 percent of mothers report this to be the case. Most of *their* children are displaced—living with extended family members or friends—while they are in prison. At least ten percent of the children of prisoners are placed in non-kin foster care.<sup>67</sup>

*WHILE THEY COMPRISE JUST FIVE PERCENT OF THE STATE PRISON POPULATION, WOMEN PRISONERS SHOULD RECEIVE SPECIAL ATTENTION FROM MARYLAND'S POLICY MAKERS. WHILE THE ECONOMIC IMPACT OF HER CRIME IS TYPICALLY SMALL, THE ECONOMIC IMPACT OF THE PRISON TERM TYPICALLY METED OUT TO A WOMAN IS HUGE.*

While the economic impact of her *crime* is typically small, the economic impact of the *prison term* typically meted out to a woman is huge. Susan George, a principal researcher for a University of Chicago research project on women offenders estimates the cost of jailing and processing a women offender from her arrest to her entry to prison totals \$31,000. George calculates that another \$20–25,000 is spent to keep her in prison for a year. The amortized capital cost of the prison bed she occupies adds another \$7,500. And since one in ten of the children of women prisoners is placed in foster care (estimated to cost \$25,000 per year) another \$2,500 is averaged in, for a total estimated average annual cost of \$65,000.<sup>68</sup>

The percentage of women sentenced in Maryland's courts increased by 24 percent between 1996 and 2000, according to researchers at the Maryland sentencing commission.<sup>69</sup> By 1998, the state ranked ninth in the country in terms of the total number of incarcerated women. After reviewing the short-term impact and the long-term consequences of incarceration of women offenders—on the women themselves, on their families and their communities—the MSCCSP research team recommended that critical mitigating factors be considered in sentencing women offenders to avoid unnecessary incarceration, including circumstances where:

- Crimes were perpetrated by women to obtain funds to support their substance abuse;
- Crimes of violence were prompted by long term physical or sexual abuse of women;
- Non-violent crimes were committed by drug- or alcohol-dependant women with children who could benefit from community-based rehabilitation programs; and
- Crimes were perpetrated by homeless women.

The intergenerational cycle of crime and incarceration is a well-known phenomenon, with the children of prisoners said to be five or six times more likely to be incarcerated themselves as adults. Comprehensive programs, such as those run by the Women's Prison Association, that keep women offenders united with their children while they are provided drug treatment, job training, parenting skills development, and housing services are both cheaper and more effective than imprisonment.<sup>70</sup>

## Elderly Prisoners

*IN MARYLAND THE NUMBER OF PRISONERS OVER 50 YEARS OF AGE INCREASED BY 137 PERCENT BETWEEN 1990 AND 2000. THE ANNUAL COST OF INCARCERATING OLDER PRISONERS IS ESTIMATED TO BE THREE TIMES THE COST FOR YOUNGER PRISONERS: \$69,000 PER YEAR, COMPARED WITH \$22,000.*

In Maryland the number of prisoners over 50 years of age increased by 137 percent between 1990 and 2000, when the prisons held almost 1,300 prisoners in this age group. By 2010 their number will reach 2,500.<sup>71</sup>

Older prisoners are among the fastest growing segments of the U.S. prison population. Their number more than doubled over the decade of the 1990s.<sup>72</sup> It has been estimated that without a change in policy, by 2010 prisoners over 50 will comprise one-third of the nation's prisoners.<sup>73</sup> The annual cost of incarcerating older prisoners is estimated to be three times the cost for younger prisoners: \$69,000 per year, compared with \$22,000.<sup>74</sup>

Elderly prisoners have much lower recidivism rates than younger prisoners. They are more likely to succeed after parole release.<sup>75</sup>

State correctional managers are finding that as their prison population ages, incarceration costs rise at an increasing rate due to the expensive medical care required by prisoners in this age group, especially since for prisoners even as young as 50, the problems of aging are compounded by the ravages of chronic substance abuse, a poor diet, and a lack of health care services before they came to prison.

The difficulty of meeting the medical needs of older prisoners will likely become increasingly severe due to a growing shortage of nurses. If current trends continue, the U.S. shortage of registered nurses will reach a half million by 2020. Prison health care managers will face very stiff competition in the national market for qualified personnel given the increasing health care demands of aging baby boomers. Retention of experienced geriatric medical specialists in prison clinics will become a very tough challenge.<sup>76</sup>

Virginia legislators have recently enacted a special conditional release program for elderly prisoners.<sup>77</sup> For more than a decade, Texas prisoners over 55 who need constant nursing care or specialized medical support services have been eligible for a special-needs parole release under "medically recommended intensive supervision," along with other offenders who are mentally ill, retarded, physically handicapped, or terminally ill.<sup>78</sup>

Staff at the Texas Council on Offenders with Mental Impairments (a special unit within TDCJ, the state agency that runs the prisons and provides parole supervision) constantly monitor computerized TDCJ medical files and interview prisoners housed in the geriatric units to identify and screen prisoners that might be appropriate candidates. They develop specialized release plans and present cases to the parole board for consideration. Arrangements have been made with a Medicaid-funded dedicated nursing home to handle parolees who need round-the-clock nursing care after release from prison.<sup>79</sup> Such a program could be easily replicated in Maryland.

## Recommendations

As illustrated by the long and growing list of states that have successfully trimmed the fat from corrections budgets, there are many safe and thoughtful ways that Maryland officials could go about cutting corrections costs. While a significant portion of these savings can be realized to stave off cuts to other needed programs, some portion should be utilized to fund meaningful, high-quality rehabilitation and reentry programming to help ease the return of prisoners to the community.

Based on the examples of successful efforts in other states, mounting public opinion favoring treatment over prison for drug and non-violent offenders, and the research and data analysis detailed throughout the body of this report, Maryland law makers are in a position to shift the course of the state away from the swollen prison budget of the past, and move in the direction of more thoughtful and accountable criminal justice planning for the future. What follows are five concrete recommendations that Maryland legislators could act on this session to advance the governor's call for relying less on prison and more on treatment for non-violent drug offenders.

**1. Pass sentencing reform legislation which abolishes mandatory sentences for drug offenders, and which calls for appropriate treatment, rather than prison, to be the presumed sentence in cases of drug possession, distribution, burglary 2, 3 & 4, and all theft cases where the offender is a drug abuser. The following offenders should be excluded from the provisions of such legislation:**

- Those with violent convictions during the previous 5 years
- Those with handgun convictions or enhancements during the previous 5 years
- Those with drug kingpin convictions

Drug testing should begin immediately upon imposition of sentence and continue for a period of six months for all defendants convicted pursuant to the reformed statute(s). Testing regimens should follow the protocols established and in affect under the Maryland Division of Probation and Parole's Proactive Community Supervision (PCS) model. For those who test positive for illegal drugs during the six months interval, a treatment voucher drawn on the DOC funds that are saved by diverting drug and non-violent offenders from a prison sentence should be issued and appropriate treatment required. Vouchers should be payable on an incremental basis using DOC dollars to any licensed Maryland treatment providers who deliver appropriate levels of treatment intensity and who provide regular and meaningful progress reports on each former or would-be inmate served.

2. Using part of the savings from recommendation 1, Maryland officials should institute a system whereby inmates who are drug abusers and who are already serving sentences for drug possession, distribution, burglary 2, 3 & 4, or theft cases immediately become eligible for parole with the presumption that parole will be granted (excluding violent, gun and drug kingpin offenders, as per recommendation 1). Each inmate paroled pursuant to this reform should also be provided with a "voucher" redeemable for substance abuse services from any licensed Maryland substance abuse treatment provider, as described above. Drug testing consistent with the PCS supervision model should be instituted in each case. Drug test results will serve to inform and direct the treatment regimen.

3. Maryland's system of parole is massively inefficient. Thousands of inmates linger well past their parole eligibility dates without even a hearing. Then, if parole is granted, unnecessary delays in processing the actual release of inmates costs the state millions with no added value. Reforming the Maryland parole system should be high on the list of priorities for Maryland law makers. Among the specific areas of most immediate concern are the following:

- All inmates should have hearings completed at least three months prior to their parole eligibility dates.
- Parole eligibility should be advanced for specific types of low-risk offenders, i.e., elderly inmates, and women.
- Reorder supervision priorities to release low-risk offenders from parole supervision within a year of their release from prison and increase supervision for certain high-risk offenders.
- Contract with regional release advocates to aid in securing support services for parole eligible inmates in the geographic region of the state to which they will return.

4. Using part of the savings from the above recommendations, expand the use of the Mutual Agreement Program (MAP) and target its use to specific categories of offenders:

- Elderly inmates
- Women
- Mentally ill and mentally retarded inmates

5. Carefully study the impact of these proposed reforms and postpone any new prison construction until the legislature and governor have been able to fully review and deliberate on these recommendations:

- Use the Maryland State Commission on Criminal Sentencing Policy's sentencing population simulation software to project the fiscal/bed space impact of each legislative proposal placed for consideration before the General Assembly of Maryland so that policymakers can be fully informed about the expected impact on prison population and correctional costs.
- Establish a DOC budget-deflation timeline that stipulates specific reductions in the institutional budget with at least 25% of each reduction amount going to support the expansion of transition services and alternatives to incarceration in the communities where DOC inmates and their families live.

The data available to JPI researchers was insufficient to make precise bed and cost savings estimates at this time for the recommendations contained above. However, based on experience in other states where innovative policies are being pursued, the potential savings from adopting the recommendations outlined above could save Maryland's taxpayers tens of millions of dollars while at the same time providing a modest stream of funding for the enhanced services that are needed to treat substance abusers rather than simply warehousing them in prison.

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