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Administering Justice

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Recession-driven prison closings may provide state lawmakers an opportunity to promote a more rational approach to criminal justice that still puts public safety first. Draconian sentences even for low-level offenders have long crowded penal facilities, and over the past two decades the building of new prisons has increased dramatically. In the 1960s and 70s an average of four prisons a year were under construction, but in the 1990s the average jumped to 24 a year. Correctional costs now swallow up huge portions of many state budgets. According to a March 2009 report by the Pew Center on the States, total corrections spending has reached an estimated \$68 billion, an increase of 336 percent since 1986.

For some states, this spending has produced disquieting signs of skewed spending priorities. In Michigan, for example, one of the states hit hardest by the recession because of its ties with the ailing automotive industry, the state government spends more on corrections than on higher education, despite having already closed half a dozen penal facilities.

Other states are considering early release for low-level offenders who seem to present little risk to public safety. Arizona, New Jersey and Vermont reduced the sentences of thousands of probation and parole violators who had been returned to prison for violations of various kinds. Early release, though, can work well only if strong re-entry programs are in place—initiatives that provide help with housing, jobs and substance abuse. According to Marc Mauer, executive director of the nonprofit Sentencing Project in Washington, D.C., the commitment to re-entry programs has grown over the past decade—a positive sign of a practice he hopes will continue.

Two of the most effective forms of community corrections, probation (after conviction but before incarceration) and parole (for those who have served time and are eligible for release), have long been underfunded. Yet when adequately funded, both probation and parole can be effective for limiting the overall incarcerated population and reducing recidivism. But with nearly 90 percent of corrections funds devoted to incarceration, Mauer points out, only 10 percent remains for probation and parole. In many jurisdictions, caseloads are too high to permit adequate supervision and services for those released. Cuts in those areas are being made by cash-strapped administrators—a case of being penny-wise and pound-foolish. The Pew report notes that in Sacramento County, Calif., 76 probation officer positions, or 9 percent of the total force, are on the chopping block, as are drug treatment beds.

Not all parts of the country are closing prisons. Parts of the South have been moving in the opposite direction. Florida shows no signs of closing any of its penal facilities. And Kentucky has the fastest growing prison system in the nation because of various tough-on-crime measures, like the so-called persistent felon law, similar to the “three strikes and you’re out” laws of some states, as well as such other measures as reclassifying some misdemeanors as felonies, which carry much harsher penalties. Kentucky’s prisons have become so overcrowded that it has been obliged to pay local jails to house the overflow, and many inmates sleep on the floor. As the Pew report observes, overincarceration is subject to the law of diminishing returns; the greater the number of offenders imprisoned, “the lower the payoff in terms of crime reduction.” Similarly, incarcerating more offenders can lead to “the replacement effect,” especially in regard to drug crimes: Other drug dealers quickly take over the territory left open by the person behind bars. This is especially true of young people, who are more easily drawn into criminal activity than those in their 30s and 40s. So unless society addresses the demand for drugs, the supply of potential sellers seems virtually unlimited.

Corrections officers unions and local communities whose economies depend on prisons have resisted prison closings. In some rural areas, prisons serve as large local employers, and local employment in turn supports a number of small businesses—a chain of economic dependency. Such resistance is understandable, given the paucity of employment opportunities in such regions, but it raises an important question: How many prisons exist because of the secure jobs they provide rather than for the punishment of crime and promotion of public safety? Robert Gangi, who heads the Correctional Association of New York, has noted that the “administration of justice shouldn’t be twisted into a job program for economically depressed upstate communities.”

It is time to put in place programs and policies that will depend less on funding and political issues, like those that created excessively stringent drug laws, and ensure a more rational, effective approach to public safety.