

## Sentencing Reform

When I was in the hospital for three weeks in 1973, there was a "Geritol" commercial that I heard several times a day that said, "When you've got your health, you've got just about everything. I've come to believe that statement is mostly true, but I'm going to add to it.

"When you've got your FREEDOM, you've got just about everything."

## Arizona's tough-on-crime stance costs big bucks

Crime in Arizona has dramatically declined this decade, but the number of Arizonans in prison continues to climb and has grown by nearly 50 percent since 2002, thanks in part to the creation of new crimes and tougher sentencing guidelines. Supporters of the tough-on-crime approach say the figures show that the laws are doing what is intended: making Arizona safer by keeping dangerous criminals behind bars. But critics say that idea defies research and the state can't afford to continue the trajectory, especially in a time of fiscal crisis.

### **Six Suggestions to Improve Arizona's Criminal Justice System:**

There are many ways our criminal justice system could be improved.

The following are my suggestions.

You may have suggestions of your own. The important thing is to begin the discussion. My suggestions may have some inherent problems with them, but I am open to any suggestions. But to deny that our system needs change is to put our heads in the sand, and continue the status quo that has been in existence since the late 1970's.



### 1. Judicial Discretion:

First give judges the discretion to deviate from the mandatory sentencing laws when justice or the state's interests require a departure from the norms.



### 2. Create a "Sentencing Advisory Committee" for the legislature.



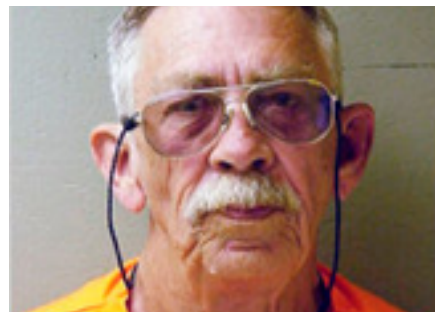
This will give the legislators who do not have time to research what is happening in other states to have an "out," and to not appear "soft on crime." Many states are making improvements in their rehabilitation and education programs for prisoners. Unless we're constantly examining how to improve our system, we cannot expect to be at the

forefront of using the most cost saving and effective rehabilitation programs.

### 3. Place the power of clemency solely with the Board of Executive Clemency.

The process has become too political. Currently, those who are being pardoned are generally those who are too old or infirm to do anything except expire. Those who may not be guilty or who have too harsh of a sentence are over-looked for political expediency.

One of the examples was William Maucumber who spent 35 years in prison for a crime to which someone else had confessed. The



perpetrator had confessed to two separate attorneys and knew things about the crime scene that only the assailant would know.

#### **4. Jury nullification.**

Allow jurors to be aware of the range of punishment a defendant will receive if convicted. Jurors do not always understand the different burdens of proof. The fact of the matter is that a juror is likely to hold



the state to a stricter standard if the defendant is facing life in prison as opposed to a few days in jail. In the latter instance, a preponderance of the evidence may be considered "beyond a reasonable doubt," whereas when someone is facing life or multiple decades in prison, the juror may require greater proof for confirmation of guilt.

#### **5. Create a "Citizens Oversight Committee" on the Department of Corrections.**

The administrators of DOC will not appreciate this suggestion. But who among us wants to have someone looking over our shoulder? The problem is that potholes and highways, taxes, pollution, university and public schools are all out in the open for all to see and examine. The prisons are a closed system. Corrections officers value their jobs, and inmates do not have the means to publicly complain. Phone calls, letters and other communications can be monitored and censored without anyone truly understanding what is taking place.

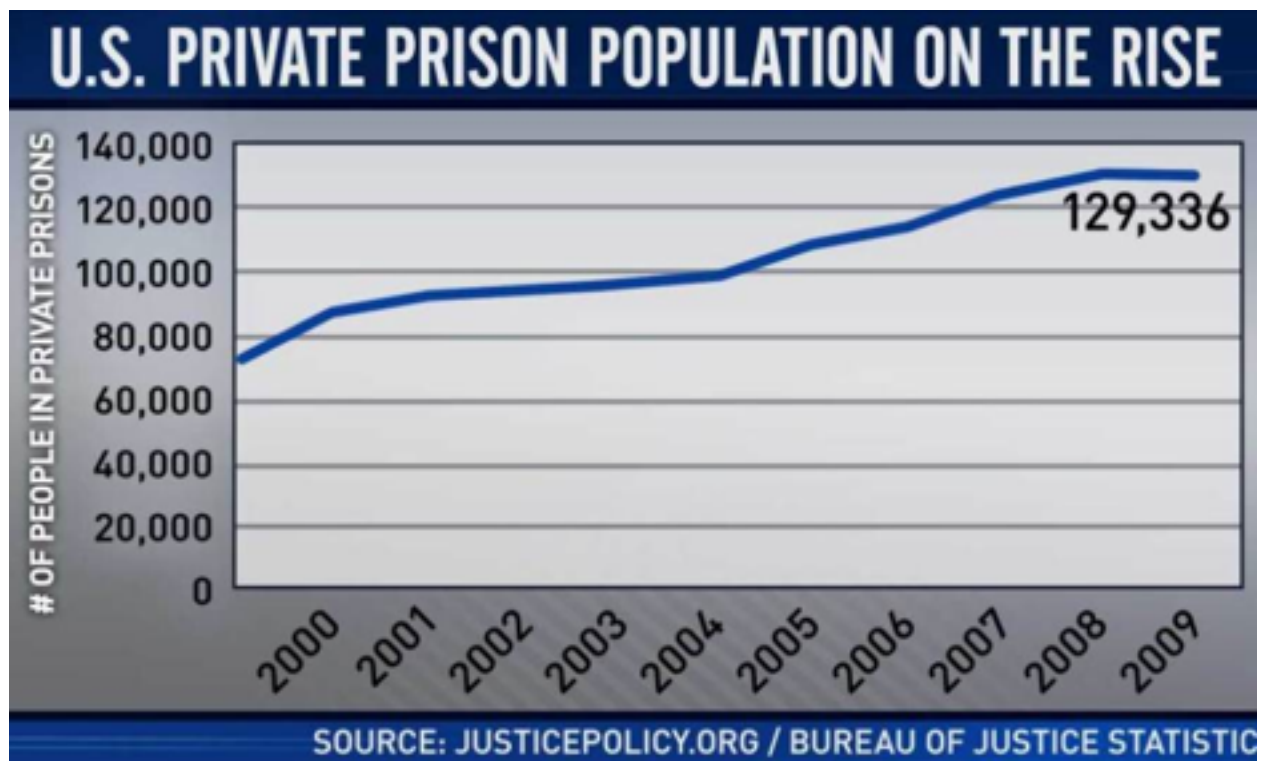


I'm not making any accusations against the current administration, but one need only watch "The Shawshank Redemption" to understand the potential for abuse. Unless this system is monitored, there always exists the possibility for

exploitation by the management or the administration. When I was a legislator, I received between a dozen and two dozens letters per month from inmates who complained about living conditions or the lack of rehabilitation programs. Since I left the legislature, I've often wondered who gets these letters now — if anyone— and what is being done about them?

## 6. Do away with private prisons.

The objectives of private prisons are antithetical to the interests of the state. When a company wants to grow its business in the private sector, two options are to increase its customer base and to reduce its expenses. Private prisons in Arizona will not benefit from a reduced



inmate population. Nor will they profit if every inmate is rehabilitated. Neither of those factors work to the benefit of the private prison industry. And neither do those factors work to the benefit of the state.

Protecting citizens by incarcerating violent offenders is a core function of government. It should not be turned over to private industry. Generally speaking, neither military, police, nor jail functions should be the responsibility of private companies.

## **More suggestions for an improved criminal justice system:**

**Letter to the Editor of the Arizona Republic**, dated 5-14-12

The legislative session of 2012 was memorable for many reasons. Chief among them was that this was the first time in the four years that we had the enjoyable task of dealing with a budget surplus.

To its credit, the legislature used restraint in spending and provided \$450 million into the rainy day fund. With some revisions to the tax code, additional attention to education reform and providing for additional protections for life, the Republican majority has kept its word to the constituency that elected it.

A financial crisis as we have had over the last four years requires greater scrutiny of the use of our tax dollars than is demanded in times of plenty. There remains a neglected issue deserving of more focused attention by future legislatures. **Released Arizona inmates experience an unnecessarily high rate of recidivism --42.2%. It is noteworthy that Japan has a recidivism rate of 3%.**

Greater focus is needed on rehabilitation during and following incarceration. Caution: Most inmates will be released back into society. The book, **Desert Pawns**, by Bob Kaplan and Gerald LeMoine, asks the question: "Who would you rather have released from prison? An unskilled, violent predator or a stable, educated ex-offender with a future?"

We need to break the cycle of re-incarceration. Inmates need education, counseling (in some cases therapy), job training, and more accountability and supervision. If we expect that private prisons are interested in "rehabilitating" themselves out of business, we are mistaken. Yet the legislature and the governor continue to condone their use. Private prisons are not to be faulted for striving to make a profit. The State's role is not to make a profit, but to secure the safety of its citizens. The incarceration of lawbreakers is necessary, not only to keep them off the streets, but also to presumably return them to the community as rehabilitated citizens.

Doesn't it make sense to have someone return with a high school education, trained in some vocation or some specialized skill? Opponents may argue that the cost is prohibitive. But what is the societal cost of the cycle of re-incarceration? And what of the families of the 40,000 inmates,

many of whom are on state or federal assistance, paid for by taxpayers, because their breadwinner is unavailable.

We must be more resourceful. Many retired persons would enjoy being of service in teaching as volunteers or with minimal pay. The reward of helping others change their lives is often reward enough. But the prisons have few programs to take advantage of our communities' available talent, much of it "free of charge."

Last August several other legislators and I toured the Primavera facility in Tucson. Primavera had received a federal grant to work with inmates who were being released from the Department of Corrections. Working with 850 released felons, Primavera achieved a recidivism rate of 13% after three years. Is there any reason why this project could not be duplicated elsewhere in the state? It would require a change of perspective among elected officials, but the public should demand it.

by Rep. Cecil Ash, Legislative District #18

More suggestions in a **letter to the editor of the Arizona Republic**, dated August 28, 2011.

While headlines in 13 other states read, "*State Reduces Prison Capacity*," the headline in Arizona is "*State to Award Bids to Private Prisons for 5000 New Beds*." As a conservative Republican, I support the privatization of many government services: in schools, where the consumers of the product are its purchasers; in construction, where the project is open to public scrutiny; in maintenance, where performance can be observed or measured. In each of these cases, the provider's goal of a profit is subject to the forces of the competitive marketplace.

With private prisons, however, the consumers of the product (the inmates) have no say in its quality. The free market is not in play. They cannot take their business and go elsewhere. The goal of the private prison – profit – is antithetical to the goals of the state: incarceration, rehabilitation and the reduction of recidivism. In fact, the less rehabilitation, the more recidivism, the greater numbers to be incarcerated, the better for the private prison industry's bottom line.

Inherent in the argument to use private prisons is the claim that they operate more cost-effectively than state-run institutions. Studies have not shown this to be true. (Maximus, "Ariz. Dept. of Corrections State vs. Private Prison FY2007 Cost Comparison," 2009)

Nor does the State's experience last summer in Kingman suggest that they are more secure.

The exact amount of the expenditure for these 5000 new beds is unknown. But it will be in the millions of dollars. There is another alternative: Re-examine the provisions of our criminal code. Here are some options:

(1) Grant medical parole to prisoners whose physical condition prevents them from being a threat to public safety. For example, Arizona houses a female inmate who has become blind in prison. Is there really any reason to continue her incarceration?

(2) Restore incentives for prisoners to earn earlier release. Currently, all prisoners must serve 85% of their sentence leaving the last 15% to be served under community supervision. Is there any reason that an inmate who has a good disciplinary record and who has taken all the rehab programs available and otherwise abided by the rules should not be released at 60% of their sentence and be under community supervision for the last 40% of their sentence?

(3) Give judges discretion to deviate from mandated sentences where appropriate. (In Payson last week, the criminal code required the judge to give a 73 yr. old man a 90 yr. sentence for a non-violent, first offense. The judge felt probation was more appropriate.)

(4) Provide for more rehab and treatment programs for substance abusers, even where persons may have failed the first time. (How many people quit smoking on their first attempt?)

(5) Allow DUI defendants who agree to refrain from alcohol and wear a GPS bracelet that indicates alcohol consumption to remain on home arrest rather than serve time in prison. (Appropriate exceptions could apply where there has been serious injury, or where the person has violated the probation by consuming alcohol.)



The implementation of any or all of the above options could save the state millions of dollars, negating the need for 5000 new prison beds. I would then use these savings to restore funding to the developmentally disabled population and to perform long-delayed maintenance on existing prison facilities.

There may be problems with any one or all of the above recommendations. But the State of Texas recently avoided spending \$750 million on more beds by restructuring its criminal justice system and simultaneously saw its crime rate drop. This is happening in a number of other states. Arizona should do the same.

By Rep. Cecil Ash, Legislative District #18





The following webpages contain the latest statistics on the inmate population of the Department of Corrections:

[https://corrections.az.gov/sites/default/files/REPORTS/CAG/2015/cagoct15\\_0.pdf](https://corrections.az.gov/sites/default/files/REPORTS/CAG/2015/cagoct15_0.pdf)

The lowest inmate population in the last five years was in July 2012, found here:

<https://corrections.az.gov/sites/default/files/cagiul12.pdf>

As you will see, we really haven't made much improvement since 2009, when I entered the legislature and the population was around 40500 inmates.

### **The most egregious examples:**

Among the most flagrant miscarriages of justice in Arizona are the sentences handed down to viewers of child porn. Unquestionably, viewing child porn is a despicable and degrading practice. But the harshest sentences should be given to those who create and commercially distribute child porn — not to those who are acting out of addiction or psychological maladjustment.

Under Arizona's mandatory sentencing scheme, each picture constitutes one count. The minimum sentence per picture is 10 years, the presumptive term is 17 years, and the maximum term is 23 years. **The sentence for each count must be served consecutively.**

Consequently, judges generally give the minimum sentence, but since they must be served consecutively, the result is that the defendant will generally die in prison.

Morton Berger, a Glendale High School teacher who had been nominated for "teacher of the year" several times and for whom there was no allegation of soliciting or engaging with conduct with a minor was sentenced at age 53 to 200 years.

Robert Flibotte was 73 years old and had served in numerous citizen committees when the judge handed down a 90 year sentence. The judge said the legislature had tied his hands in the matter, or he would have given Mr. Flibotte probation.

Rex Wolf, age 60, had not seen the child porn magazines he had brought back from Europe in 1969 for six years when he was given a 100 year sentence in 2009. (Mr. Wolfe recently had his sentence commuted.)

In 2009, a 42 year old candidate for a PhD working on Anthrax research at NAU, with masters degrees in molecular biology and genetics, was given a 340 sentence for possession of child porn. His parents have spent most of their retirement funds trying to keep their son from receiving such a horrendous sentence.

This crime — possession of child pornography — is a misdemeanor in the states of Washington and Indiana. In Arizona it is a class 2 felony.



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