That Was the Easy Part: The Development of Arkansas’s Public Safety Improvement Act of 2011, and Why the Biggest Obstacle to Prison Reform Remains Intact*

I. INTRODUCTION

For most, prisons are invisible fortresses tucked far away, out of sight and out of mind, noticed only by signs politely demanding that hitchhikers be left where they stand. But by 2011, Arkansas’s elected officials could no longer look past the crisis that had been building in corrections facilities for decades: the state’s prisons were chronically overcrowded and routinely over-budget. In 2010, for example, overcrowding forced the State to amend an existing law with the goal of transferring prisoners to other states1 because prison costs had exceeded the prison budget by $37.5 million.2

To combat the problem, Arkansas launched a bipartisan, multi-branch study conducted by the Pew Center on the States.3 Pew’s report found that Arkansas’s crisis stemmed largely from its own doing: the State underutilized probation, needlessly increased sentences for

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nonviolent offenders, departed substantially from voluntary-sentencing guidelines, and too often delayed the transfer of inmates to parole.\(^4\) The report suggested the following general recommendations to alleviate these issues: (1) more frequent and clear probation orders; (2) lighter penalties for nonviolent offenders; (3) better data-collection and performance measurements; (4) streamlined and efficient parole hearings; and (5) an increased role for locally based programs and community involvement.\(^5\)

Acting on Pew’s suggestions, the Arkansas General Assembly passed Act 570—the Public Safety Improvement Act—in March 2011.\(^6\) The enacted law is a politically palatable step forward, but real success ultimately depends on the support and commitment of all Arkansans. As this note argues, other states that have made progress in the face of similar challenges have not done so through novel legislation or statistical tricks; indeed, the specific provisions of states’ recently passed prison-reform measures are roughly identical.\(^7\) Instead, what matters most is the political will of respective communities to implement recommendations and see them through.\(^8\) Thus, to fully address Arkansas’s prison crisis, legislators, judges, prison officials, law-enforcement officers, community organizers, and ordinary citizens must affirm the principles of Act 570 and agree to undertake even broader reforms in the coming years.

This note begins by putting Arkansas’s crisis in context. Part II surveys years of cumulative statistics to identify areas that require government action. Next, Part III provides an overview of the General Assembly’s response—Act 570. Part IV then assembles the preliminary results of the Act’s two-year existence, pinpointing areas of potential successes and failures. Part V traces prison-

\(^4\) Id. at 1.
\(^5\) See id.
\(^7\) See infra Part V.
\(^8\) See infra Part V–VI.
reform legislation from other states, noting that facially similar legislation does not necessarily yield like results and that continuous reform efforts are required to produce even marginally effective outcomes. Finally, having noted that no state has addressed America’s prison crisis properly, Part VI argues that Act 570’s success—as well as the success of reform efforts generally—depends on the political will of all citizens to oversee and demand the Act’s full implementation and to support reform of broader and more sweeping corrections issues. This note bolsters its argument by citing academic literature addressing the success of the law-making process in general, leading to a more fully theorized—but also practical—understanding of the barriers to prison reform.

II. THE PROBLEM

When Governor Beebe signed Act 570 into law, Arkansas sent a higher percentage of its citizens to prison than the rest of the United States.\(^9\) Arkansas’s imprisonment rate in 2010 was 522 residents per 100,000; the national average was 442 residents per 100,000.\(^{10}\) Similarly, Arkansas offered probation at a lower rate than other states, pushing the prison population even higher.\(^{11}\) Arkansas granted probation to 1376 residents per 100,000 in 2010 while 1789 residents per 100,000 received probation nationally.\(^{12}\) Then, once imprisoned, offenders in Arkansas spent more time behind bars than the average out-of-state offender.\(^{13}\) The typical prisoner released in Arkansas in 2009 served 3.2 years in confinement, compared to 2.9 years for prisoners elsewhere.\(^{14}\) More significantly, individuals serving time in Arkansas for drug crimes spent an average

10. Id. at 13 n.4.
11. Id. at 4 (“Arkansas’s probation supervision rate is now 23 percent lower than the national average, while its imprisonment rate is well above the national average.”).
12. Id. at 13 n.4.
14. Id.
of 3.0 years in confinement while drug offenders nationally stayed only 2.2 years.\textsuperscript{15}

Further, Arkansas’s numbers appeared harsh not only when contrasted with national figures but also when positioned next to its own figures from just a few decades before. For example, the average time served in Arkansas grew 69% from 1990 to 2010.\textsuperscript{16} The data is even more striking for drug crimes. In 2010, a person convicted of a drug crime in Arkansas faced an average sentence length more than double what he or she would have faced in 1990.\textsuperscript{17}

Arkansas’s insistence on lengthy and frequent incarceration\textsuperscript{18} culminated not only in the rather foreseeable problem of over-packed prisons but also in a corrections spending spree. As of 2010, each prisoner cost the state $24,391 annually, or just over $60 per day.\textsuperscript{19} In total, annual corrections costs escalated nearly 700% since 1990 (from $45 million to more than $353 million).\textsuperscript{20} On top of those expenses, the State planned to hit Arkansas taxpayers with a $1.1 billion tab for new prison construction and operating expenses to prepare for a prison population projected to grow another 43% by 2020.\textsuperscript{21}

Despite the staggering increase in spending, Arkansas’s recidivism rate—i.e., the number of prisoners that re-offend after release—remained at nearly 40%, and the State’s prison population increased by 3.1%, the eighth fastest rate in the country in 2009.\textsuperscript{22} By the end of 2010, the

\begin{thebibliography}{99}
\bibitem{15} Id.
\bibitem{16} Id.
\bibitem{17} Id.
\bibitem{18} Prior to Act 570, Arkansas regularly spent nearly ten times more annually on prison costs than on probation and parole. \textsc{Public Safety Reform, supra note 3}, at 13 n.4. This figure is consistent with spending in other states. See Solomon Moore, \textit{Study Shows High Cost of Criminal Corrections}, \textsc{N.Y. Times}, Mar. 3, 2009, at A13, available at http://www.nytimes.com/2009/03/03/us/03prison.html (“A survey of 34 states found that states spend an average of $29,000 a year on prisoners, compared with $1,250 on probationers and $2,750 on parolees.”).
\bibitem{19} \textsc{Vera Inst. of Justice, supra note 2}.
\bibitem{20} \textsc{Public Safety Reform, supra note 3}, at 2.
\bibitem{21} Brosious, \textit{supra} note 6.
\bibitem{22} \textsc{Public Safety Reform, supra note 3}, at 2.
\end{thebibliography}
prison population increased by another 7%, “pushing the state prison system to full capacity.”

Something had to be done.

III. THE PROPOSED SOLUTION

After reviewing the Pew report, Arkansas legislators, with input from the executive and judicial branches, went to work, eventually producing a 164-page comprehensive reform bill, which became Act 570. First and foremost, the General Assembly designed the Act to save the State money—ideally $875 million by 2021—by lowering the prison population and keeping it low. Specifically, the Act seeks to diminish the prison population through four primary mechanisms:

1. Redefining some nonviolent felonies as misdemeanors, which will subject fewer people to prison sentences and allow the State to devote fewer resources to nonviolent crimes;

2. Making penalties for probation violations more efficient, which will make violators less likely to face prison time for technicalities and enable officers and courts to focus more attention on probationers committing new crimes;

3. Professionalizing parole hearings through new standards and better adherence to State guidelines so that more prisoners receive early release; and

4. Rewarding communities that implement local programs with an evidence-based history of

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23. Id.
26. PUBLIC SAFETY REFORM, supra note 3.
27. Act 570, 2011 Ark. Acts 1851 (“The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs.”).
reducing recidivism so that ex-prisoners are less likely to re-offend.28

The following sections analyze these mechanisms.

A. Nonviolent Offenses29

The provisions of the Act surest to produce quick results are those altering classifications for nonviolent crimes. While the Act does not decriminalize any illegal activities entirely, it reduces to misdemeanors many crimes that would have been felonies prior to 2011. For example, theft of property is now a Class B felony if the value of the

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Among many things, the Act raises the criminal liability thresholds for various theft offenses; creates a comprehensive new set of drug statutes; reorganizes and streamlines the probation and parole sections in the Arkansas Code; creates new sentencing and early discharge provisions; revises current probation and parole statutes to incorporate programs designed to rehabilitate rather than incarcerate; amends the procedures and parameters for the granting of medical parole; revises provisions for home detention through electronic monitoring; revises the drug court statutes to make them more efficient and effective; creates performance incentive funding for jurisdictions designed to reduce commitments to the ADC; provides for new record-keeping measures designed to gauge the effectiveness of the act; and makes technical corrections throughout the Arkansas Code that resulted from redefining, relocating, amending, and creating certain statutes.


29. Act 570 hardly concerns itself with violent criminals. A mandated study by the Department of Community Correction on court-ordered restitution—i.e. monetary contributions collected from offenders and paid to victims—is the only part of the Act that appears to create new law that applies primarily to violent offenses (aside from the general recommendation to craft better parole and probation standards and some minor adjustments to sentences for multiple violent offenses). See Act 570, 2011 Ark. Acts 1851, 1851; Act 570 Summary, supra note 28. After receiving opposition from prosecutors, the General Assembly removed portions of the bill offering parole to violent offenders after they serve 120 days. See Ark. Prosecutors Back Prison Reform Bill, THV 11 (Mar. 4, 2011, 4:15 PM), http://origin.todaysthv.com/news/story.aspx?storyid=146687.
stolen items is $25,000 or more.\textsuperscript{30} Previously, theft of goods valued at only $2500 or more was a Class B felony.\textsuperscript{31} The bulk of the provisions lessening the likelihood of prison time relate to drug-possession offenses. For instance, under Act 570, a first-time conviction for marijuana possession becomes a felony only if the offender possesses four ounces or more.\textsuperscript{32} This penalty reduction is a significant change from prior law, which allowed prosecutors to seek prison terms of up to ten years for possession exceeding one ounce.\textsuperscript{33} Although Act 570 lessened the penalties for other drug crimes, a felony is still unavoidable for simple possession of methamphetamine or cocaine.\textsuperscript{34}

The courts may also, in their discretion, direct nonviolent offenders to drug courts or other rehabilitation programs.\textsuperscript{35} Furthermore, courts may make “[c]ommunity work project[s],” like roadside cleanup, available to individuals convicted of certain offenses—even some felonies—if the term of imprisonment will not exceed

\begin{itemize}
\item \textsuperscript{30} Act 570, 2011 Ark. Acts 1851, 1876 (codified at ARK. CODE ANN. § 5-36-103(b)(1)(A) (Supp. 2013)).
\item \textsuperscript{31} Act 570, 2011 Ark. Acts 1851, 1876 (codified at ARK. CODE ANN. § 5-36-103(b)(1)(A)).
\item \textsuperscript{32} Act 570, 2011 Ark. Acts 1851, 1912 (codified at ARK. CODE ANN. § 5-64-419(b)(5) (Supp. 2013)).
\item \textsuperscript{33} See ARK. CODE ANN. § 5-4-401 (Repl. 2006) (providing sentencing parameters for Class A misdemeanors and class D felonies); ARK. CODE ANN. § 5-64-401 (Repl. 2006) (repealed by Act 570, 2011 Ark. Acts 1851). Now classified as a Class A misdemeanor, the crime is still punishable by up to one year in jail. ARK. CODE ANN. § 5-4-401(b)(1).
\item \textsuperscript{34} See Act 570, 2011 Ark. Acts 1851, 1911 (codified at ARK. CODE ANN. § 5-64-419(b)(1)). Likewise, the Act leaves in place some of the harsher provisions for possession in particular locations. For instance, if a person possesses any controlled substance while he is an inmate in a corrections facility, the penalty is increased to the next highest classification. Act 570, 2011 Ark. Acts 1851, 1913 (codified at ARK. CODE ANN. § 5-64-419(c)). Possession that would otherwise result in a Class C felony is grounds for a 10-year enhancement if it occurs near certain places, like schools and video arcades. Act 570, 2011 Ark. Acts 1851, 1908-09 (codified at ARK. CODE ANN. § 5-64-411(a) (Supp. 2013)). Although Act 570 amended this provision to allow for concurrent sentencing, it still bars early release for those convicted under the enhancement. Act 570, 2011 Ark. Acts 1851, 1909 (codified at ARK. CODE ANN. § 5-64-411(b)-(c)).
\item \textsuperscript{35} Act 570, 2011 Ark. Acts 1851, 1869 (codified at ARK. CODE ANN. § 5-4-313 (Supp. 2013)); see also Max Deitchler, Comment, You Can’t Manage What You Don’t Measure: An Evaluation of Arkansas’s Drug Courts, 64 ARK. L. REV. 715, 718 (2011) (providing an overview of Arkansas’s drug courts and arguing that, even after Act 570, the State “should adopt a new set of data-collection measures and program-assessment strategies”).
\end{itemize}
eighteen months and if a county jail has space to house the inmate.\(^36\) This option is strangely unavailable to only one group of nonviolent offenders—those convicted of trafficking a controlled substance.\(^37\)

Further, Act 570 gives judges, in making sentencing determinations, the option to initiate a more-informed decision. The new Act provides that a court may require an investigation by a probation officer or “presentence investigation officer” to determine information relevant to sentencing.\(^38\) A court may also require additional information from the prosecution, defense attorney, or any other person with relevant information.\(^39\) This power is geared to improve a previous prison-reform attempt—Act 531.

The Arkansas General Assembly enacted Act 531—the Community Punishment Act—in 1993, which included this familiar-sounding preamble:

> The State of Arkansas hereby finds that the cost of incarcerating the ever increasing numbers of offenders in traditional penitentiaries is skyrocketing, bringing added fiscal pressures on state government; and that some inmates can be effectively punished, with little risk to the public, in a more affordable manner through the use of community punishment programs and non-traditional facilities.\(^40\)

Act 531 intended to direct nonviolent criminals away from traditional corrections facilities toward “community punishment options,” such as electronically monitored probation, rehabilitation clinics, work-release programs, and boot camps.\(^41\) Given the current state of Arkansas’s corrections system, prosecutors and judges apparently did

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\(^36\) Act 570, 2011 Ark. Acts 1851, 1871 (codified at ARK. CODE ANN. § 5-4-801 (Supp. 2013)).
\(^37\) Act 570, 2011 Ark. Acts 1851, 1872 (codified at ARK. CODE ANN. § 5-4-801(2)(J)).
\(^38\) Act 570, 2011 Ark. Acts 1851, 1867 (codified at ARK. CODE ANN. § 5-4-312(a)(1) (Supp. 2013)).
\(^39\) Act 570, 2011 Ark. Acts 1851, 1867 (codified at ARK. CODE ANN. § 5-4-312(a)(1)).
\(^41\) Act 531, 1993 Ark. Acts 1455, 1457-58 (codified at ARK. CODE ANN. § 16-93-1202(2) (Repl. 2006)).
Act 570 reinforces those long-ignored principles and offers courts resources to ensure efficient use of community programs for nonviolent offenders.

Additionally, Act 570 requires the Arkansas Sentencing Commission to help courts utilize prison alternatives. The Commission is now required to: (1) “[p]roduce annual reports regarding compliance with sentencing guidelines, including the application of voluntary presumptive standards and departures from those standards”;42 (2) “[p]repare and conduct annual continuing legal education seminars regarding the sentencing guidelines to be presented to [courtroom practitioners]”;43 and (3) “collaborate with the Administrative Office of the Courts to develop and implement an integrated sentencing commitment and departure form.”44 The Sentencing Commission is still required to “periodically review” voluntary-sentencing guidelines.45

In sum, Act 570 allows the criminal-justice system to keep most nonviolent offenders (particularly first-time offenders) away from prisons—if officials in the system so choose. Adjustments to statutory penalties can only accomplish so much; prosecutors, probation officers, and judges must be mindful of the prison alternatives provided by Act 570 and the clear intent of the General Assembly to foster increased use of those alternatives.

### B. Probation and Parole

Act 570 focuses not only on the time period leading up to sentencing but also on monitoring convicted offenders during probation and parole. Mostly, the Act strives to make terms of probation and parole more certain and

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efficient in order to reduce recidivism and ease the fiscal burdens associated with incarceration.

For example, the Act requires the Director of the Department of Community Correction, in collaboration with the Board of Corrections, to “establish written policies and procedures governing the supervision of probationers designed to . . . assist probationers in integrating into society.” The supervision of probationers must focus “on evidence-based practices including a validated risk-needs assessment” and “target the probationer’s criminal risk factors with appropriate supervision and treatment.”

Such appropriate treatment may include a rehabilitation program and electronic monitoring.

Through competitive grants, the Act creates a county-based probation pilot program, which prioritizes frequent contact with probationers and certain, swift sanctions for violators. In addition to counties receiving grants, probationers can receive “rewards,” such as less-frequent drug testing, by complying with the rules.

Similarly, the Act requires parole boards to provide monthly reports detailing “the reason for each denial of parole, the results of each risk-needs assessment, and the course of action that accompanies each denial.” To encourage compliance with these evidence-based reports, the Act creates new requirements for membership on the parole board. Each of the seven members “must have at

50. Act 570, 2011 Ark. Acts 1851, 2043 (codified at ARK. CODE ANN. § 16-93-1701(1) (Supp. 2013)); see also infra Part IV (providing the preliminary results from this program).
least a bachelor’s degree” and “should have no less than five (5) years’ professional experience” in parole supervision, probation supervision, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology, social work, or another related field.\footnote{Act 570, 2011 Ark. Acts 1851, 1960-61 (codified at ARK. CODE ANN. § 16-93-201(a)(4)(A)). Somewhat confusingly, and perhaps to avoid a shortage of members, an individual without a degree may serve so long as he or she has seven years of experience in one of those fields. Act 570, 2011 Ark. Acts 1851, 1961 (codified at ARK. CODE ANN. § 16-93-201(a)(4)(B)).} New members must also attend designated training courses, and all members must complete annual training that emphasizes data-driven decision-making, evidence-based practices that reduce recidivism, and “[s]takeholder collaboration.”\footnote{Act 570, 2011 Ark. Acts 1851, 1961 (codified at ARK. CODE ANN. § 16-93-201(a)(5)(A)-(C)).} Although one could speculate that additional oversight will lead to some increase in enforcement costs, overall corrections spending should shrink with fewer citizens behind bars.

C. Community Programs

Additionally, Act 570 establishes recommendations for people outside the traditional corrections system. For instance, the Act incorporates the Performance Incentive Act of 2011, which rewards any state or local agency that implements criminal-justice practices resulting in reduced commitments to the Department of Correction.\footnote{Act 570, 2011 Ark. Acts 1851, 2053 (codified at ARK. CODE ANN. § 16-99-101(a) (Supp. 2013)).} The act-within-an-act provides that any state agency, county, or judicial district that implements a proven risk-reduction strategy reducing “the number of offenders returning to the Department of Correction with no resultant increase in crime rate . . . ‘should receive’ a monetary reward to continue those practices.”\footnote{Act 570, 2011 Ark. Acts 1851, 2053-54 (codified at ARK. CODE ANN. § 16-99-101(b)).} The Department itself can receive additional funding for limiting probation professionals are more likely than other members of the general public to follow guidelines or to have sympathy for convicted criminals (or both).
revocations resulting from a “technical violation or a new crime.”

The State will presumably pay these rewards through savings from reduced prison costs, but the Act is mostly silent on specific allocations and mechanisms for disbursement, leaving it to the Board of Corrections and the Department of Community Correction to determine the details. For example, the Act charges the Board of Corrections with administering the program and authorizing funding—which will be competitive and performance-based except for first-time grants and one grant to a rural community. The Act tasks the Department of Community Correction with data collection and reporting. The “Best Practices Fund” extends similar, supplemental funding to both state and private programs, but it receives financing primarily through probation and parole fees.

Perhaps most critically, Act 570 fails to suggest what types of community programs may produce the most productive results. Instead, the Act demands a proactive response from individual communities to investigate, craft, and oversee these programs. The legal language is written. The opportunity for funding, growth, and success is in place. Local citizens must now analyze the extensive

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incentive-based-programs sections of Act 570 and work with elected officials to ensure compliance on both ends.

In total, by meeting the goals in each of the areas mentioned above, the Act purports to reduce Arkansas’s expected corrections costs by $875 million in the decade following its enactment. 65

IV. IS IT WORKING?

State officials have had more than two years to implement the provisions of Act 570 and to collect data to monitor the Act’s successes and failures. Likewise, taxpayers have had two years to demand that the State properly implement Act 570’s recommendations and to see whether the State has made funding available for prison alternatives and whether it has distributed this funding appropriately. Disappointingly, reports on the Act—either from state officials or private journalists—took a backseat to more controversial election-year issues in 2012, as most news concerning the Act’s effects disappeared entirely (if the news ever appeared at all) from both newspapers and websites.66 Although Arkansas is admittedly early in the results stage, the General Assembly’s recommendation that the State keep a close eye on developing data and available funding is in danger of being ignored.67

Even so, some useful data has slowly emerged, such as a report from two Arkansas counties—Columbia and Union—that served as test cases for Act 570’s probation

65. See PUBLIC SAFETY REFORM, supra note 3.

66. This problem is not unique to Arkansas. See Beth Schwartzapfel, Inside Stories, COLUM. JOURNALISM REV. (Mar. 1, 2013, 12:00 AM), http://www.cjr.org/cover_story/inside_stories.php (“Compared to other areas that siphon significant public resources, such as healthcare, prisons get vanishingly little media attention.”).

67. One might say that a particular issue enters and stays in the public spotlight for one of two reasons: (1) elected officials (or their challengers) talk about the issue regularly, indicating to voters that the issue is of some importance; or (2) voters themselves demand that elected officials address the issue. Regarding Act 570, the interest of both state officials and the people they serve appears to have waned. This outcome is bad news for the future success of Act 570. See infra Part VI (explaining that the success of Act 570 depends on the political will of Arkansas’s citizens).
pilot program during 2011 and 2012. 68 On February 10, 2012, Thirteenth Judicial District Prosecutor Robin Carroll presented state officials with almost-unbelievable preliminary results.69 After implementing the program, the two counties experienced a 40% reduction in prison placements and a 54% reduction in the number of probationers.70 Additionally, the counties saw a 23% increase in adult-education degrees, work-force certificates, and career-readiness certificates.71 Employment among participants also increased by 28%.72 Although 98% of participants tested positive for illegal substances at the outset of the program, within two months of graduation, the participants had zero positive drug tests, and the overall compliance rate for drug and alcohol tests stood at 93.4%.73

The counties, at their discretion, withdrew the pleas and expunged the records of participants who completed the program.74 In total, the pilot program saved Arkansas an estimated $4.2 million in 2011.75 The cost of Union County’s sentencing program, by comparison, was only $118,000 in fiscal year 2010 and merely $59,000 in fiscal year 2011.76

Statewide, the results are less clear. On September 25, 2012, a member of the JFA Institute, which had previously consulted the State on prison overcrowding, told Arkansas lawmakers that parole revocations dropped nearly 30% in 2011 while the number of probation revocations declined 15%.77 The American Civil Liberties Union published an

69. See id.
70. Id. at 3A.
71. Id.
72. Davis, supra note 68, at 3A.
73. Id.
74. Id.
75. Id. at 1A.
76. Id. at 3A.
unsourced statistic in October 2012, asserting that Arkansas had seen a 7% decline in its prison population and that “parole and probation revocations decline[d] substantially” since the enactment of Act 570. But only four days later, the Department of Community Correction reported that case loads related to probation and parole were “heavier than [it had] hope[d] for.”

In any case, which provisions of Act 570, if any, contributed to the decline is mostly unclear. Surely one cannot already measure reductions in parole and probation revocations based on community programs, most of which are (presumably) still under development or awaiting funding. As Little Rock’s NBC affiliate noted, no one “is actually yet taking a close look at whether Act 570 is working.” Despite, or perhaps due to, this lack of information, the Act faces some political opposition. Representative David Sanders, for instance, contends that the Act will result only in more violent crime. He notes that “[a] lot of crimes have been committed by individuals who are on drugs” and worries that less prison time for nonviolent offenders merely provides those offenders more opportunities to transition to violent crime. Senator Jason Rapert expresses additional concern as to what extent law enforcement actually monitors and enforces the suggestions in Act 570, stating: “[T]here needs to be a real strong look taken at (whether) we have enough probation officers in the field and if they are truly able to keep up with their case loads.”

80. Id.
81. See id.
82. Id.
83. See id.
Other state officials have shared Senator Rapert’s skepticism, particularly on the issue of real savings. Lawrence County Sheriff Jody Dotson asserted that, because Act 570 increased the felony threshold for theft and changed the weight amounts for felony marijuana possession, significantly more “charges [are] going through district court now instead of circuit court.” Sheriff Dotson’s forty-two bed detention center was already full prior to Act 570, and he has been worried that the Act will result in even more offenders “having to serve their jail time in the county jails.” Elsewhere, Crawford County Judge John Hall sought a special election to request sales-tax increases geared at funding a new jail. The County had until the end of November 2012 to show progress in solving chronic overcrowding; otherwise, the county would face the possibility of a review committee shutting down its completely full, eighty-four-bed jail. On November 19, 2012, Crawford County Sheriff Ron Brown presented a plan to the local quorum court, outlining a construction project totaling over $20 million.

86. Id.
88. Id. So far, updates on this situation are nearly nonexistent. Of particular interest is where the review committee would send inmates upon the jail’s closing. Already, 121 inmates were either being held in the Washington County jail, were out on bond, or had been released with electronic monitors. Id. This outcome is not all bad because Act 570 encourages increased use of electronic monitors. See Act 570, 2011 Ark. Acts 1851, 1976 (codified at ARK. CODE ANN. § 16-93-306(d)(3)(D) (Supp. 2013)). Stunningly, however, the chairman of the State Parole Board revealed that, as of August 2013, the Board has found “fewer than eight inmates” who met the criteria for the electronic-monitoring programs prescribed by Act 570.
Given the scope of Act 570, the fact that significantly more people are ending up in county jails is hardly surprising. Since the State’s prison population will remain “over its capacity” for the foreseeable future—even with the enactment of Act 570\(^90\)—and because State prisons typically send overflow prisoners to county facilities, one has little difficulty foreseeing the backlog that will occur in county jails and district courts. This shifting of costs and overcrowding does not seem to have been a primary concern for Act 570’s drafters. Indeed, most mentions of “county jails” in the Act concern the relocation of prisoners to county jails—either for community-work projects,\(^91\) because of a medical necessity,\(^92\) or as a condition of parole.\(^93\) Although the Act, addressing community projects, states that “space must be available in the county jail or regional jail as certified by the county sheriff,”\(^94\) it is not as flexible with respect to other uses of jails.

Surprisingly, however, a report released to the Governor’s office on December 13, 2012, asserts that backlogs at county jails have fallen 95%, resulting in savings of roughly $1.5 million.\(^95\) But the same report notes that nonviolent crime fell by 3000 offenses compared to the previous year while probationer-committed felonies fell by roughly 100 per month.\(^96\) Since Act 570 did not abrogate any offenses, these results suggest that the reduction in

\(^90\) Public Safety Reform, supra note 3 (projecting that Arkansas’s prison population will remain overcapacity through, at least, 2020).


\(^96\) Tyler, supra note 95.
county-jail inmates awaiting transfer to prison was due, at least in part, to a decrease in crime generally. Further, recent changes to parole standards may have undone whatever success Act 570 achieved. State Prison Director Ray Hobbs noted in August 2013 that the inmate population remained overcapacity and that “the backlog of inmates being held in county jails . . . was nearly 1,500, of which about 400 were parolees being held for revocation hearings.”97 By November 2013, the backlog totaled 2675 inmates—“a historic high.”98

Notwithstanding the fluctuating data, the key to Act 570’s success is reduced recidivism; the State can ease the burden on jails and prisons alike only by avoiding crimes entirely and utilizing alternatives to institutionalization.

V. RESULTS OF OTHER STATES’ REFORM EFFORTS

Because feedback in Arkansas is largely preliminary and conclusions on the effects of Act 570 are premature, the following sections survey similar reform efforts in other states. Three findings result: (1) nearly every piece of recent prison-reform legislation is identical on its face; (2) real results in those states, however, vary widely; and (3) regardless of relative success, no state has come close to solving its prison problem entirely.

Further, although crime rates depend on many factors—including population growth and socioeconomic standing—an overview of the country’s reform measures illustrates that success depends less on wording and recommendations and more on the willingness of citizens to ensure compliance, encourage oversight, and ultimately demand ongoing and broader reforms.


A. California

For example, in 2009, California created an incentive program similar to Arkansas’s, awarding counties that reduce the rate at which they send probationers to state prison. California’s incentive program requires county probation departments to reinvest their savings in practices that are scientifically proven to reduce recidivism, including risk and needs assessments; training probation officers; and offering increased programming to probationers, such as cognitive-behavioral therapy, substance-abuse treatment, and employment services. Early analysis showed that California successfully improved probation outcomes and reduced corrections spending; the California Department of Finance estimated that the State generated savings of $179 million after one year of the program.

But two years later, California continued to experience overflow in local jails. The State grants its counties nearly $6 billion a year to pay for the increased jail population caused by prison overflow, but it does not oversee how the counties actually spend that money. Moreover, results within individual counties have varied widely, and the State has done little to track the reform’s successes and failures. Barry Krisberg, Director of Research and Policy at the Chief Justice Earl Warren Institute on Law and Social Policy, notes that this lack of oversight may very well cause “the kind of overcrowding issues” that prompted the United States Supreme Court’s order requiring California to reduce its prison population.

100. Id.
101. Id. at 4.
102. Id. at 3.
104. Id. at A7.
105. Id.
106. Id.
Certainly, California does not need to incarcerate all of these inmates. Pretrial detainees comprise almost 70% of California’s county-jail population; the vast majority of these detainees simply cannot afford to post bail and, thus, remain incarcerated at an annual cost of tens of millions of dollars.\textsuperscript{107} California plans to issue billions of dollars in state bonds for additional jail construction to hold these inmates.\textsuperscript{108} If California had more local programs to house and treat offenders, the backlog would not be as severe, and the State would require fewer prisons.\textsuperscript{109} Likewise, if more taxpayers demanded oversight and results from elected officials, a solution might come sooner rather than later, freeing tax dollars for other purposes.\textsuperscript{110} Voters began to express some interest in taking broader steps in 2012, passing Proposition 36, which offered the opportunity for rehearings to roughly 2700 prisoners serving life sentences for drug possession, theft, and other nonviolent crimes.\textsuperscript{111}

B. Oregon

Oregon, despite having legislation very similar to California’s, maintains one of the lowest recidivism rates in the United States.\textsuperscript{112} In Oregon, prison inmates “receive risk and needs assessments at intake, and targeted case management during incarceration, along with detailed transition planning that begins six months before

\begin{itemize}
  \item \textsuperscript{108} \textit{Id.}
  \item \textsuperscript{109} See \textit{id.}
  \item \textsuperscript{110} See \textit{id.}
\end{itemize}
release.”113 After release, probation officers use a “sanctioning grid” for imposing swift and certain consequences for violations, creating consistency among offenders and counties.114 “In both settings, programs are anchored in research and continually monitored and updated to optimize their effectiveness.”115 Further, a 2003 law requires “that any correctional program receiving state money be evidence-based in its design and delivery.”116

Overall, probation and parole violators are rarely re-incarcerated.117 Rather, they face a variety of graduated sanctions, including brief jail stays as necessary to hold violators accountable.118 But though Oregon may be a model for addressing recidivism, the state continues to face a growing prison population.119

In December 2012, a twelve-member commission suggested bolder steps, such as reducing or removing mandatory-minimum sentences for drug crimes and even for some violent felonies.120 Oregon’s Governor, John Kitzhaber, recently asked the Joint Committee on Public Safety to create yet another plan to save $600 million in projected corrections spending over the next decade,121 but the Governor’s recommendations did not go further than the usual suggestions to “reduce sentences” for certain common crimes, to “promote alternatives to incarceration,” and to “cap the number of inmates in Oregon’s 14 prisons.”122

113. Id.
114. Id.
115. Id.
116. Id.
117. STATE OF RECIDIVISM, supra note 112.
118. Id.
120. Id.
C. Missouri

Facing a similar prison crisis, Missouri now requires evidence-based procedures for assessing the risk of parolees.123 Violations of parole under Missouri law may lead to a mere verbal reprimand or modification of conditions, electronic monitoring, residential drug treatment, swift and brief “shock time” in jail, or—as a last resort—a return to prison.124 Although Missouri’s recidivism rate dropped following the State’s reform efforts, the overall prison population remained stagnant after five years.125

Lawmakers in Missouri did not simply shrug their shoulders at the less-than-ideal results. Instead, similar to Oregon legislators, they went back to work and enacted the Justice Reform Act in 2012.126 This Act “provid[es] incentives for offenders to comply with the rules of supervision, allow[s] probation and parole officers to impose swift and certain jail sanctions when violations do occur, [and] . . . cap[s] the amount of time that nonviolent offenders can serve for breaking the rules of probation.”127 Although these measures are sure to ease the crisis somewhat, the most important feature of the Act creates an oversight body responsible for monitoring implementation and certifying savings for reinvestment.128 This guarantee of strict oversight and compliance is promising, but without additional changes to the law, Missouri—like California and Oregon—will likely continue enduring a stagnant prison population.129

123. STATE OF RECIDIVISM, supra note 112, at 23.
124. Id.
125. Id.
127. Id.
128. Id.
D. Pennsylvania

Unsatisfactory results from prison-reform efforts have also forced Pennsylvania to go back to the drawing board. The State enacted a comprehensive prison-reform bill in 2008, only to discover that the legislation was riddled with complications.\(^{130}\) Despite provisions for rehabilitation programs, many prisoners completed their minimum sentences before they could complete drug rehab.\(^{131}\) Thus, the prisons served as de facto treatment centers.\(^{132}\) Moreover, many prisoners simply refused to enter treatment programs, particularly when serving prison sentences meant a smaller time commitment.\(^{133}\) The 2008 law also provided judges with the discretion to sentence certain offenders to prison rather than over-crowded county jails, but the failure of the aforementioned provisions—in conjunction with this discretion—only exacerbated overcrowding.\(^{134}\)

Pennsylvania tried again in 2012, passing a two-part reform act.\(^{135}\) The first part diverts technical parole violators from state prison back to community-corrections facilities.\(^{136}\) This part also expands eligibility for alternative-sentencing programs and allows for intermediate sanctions so that the State can send fewer technical parole violators to prison.\(^{137}\) Part two of the act became law in late 2012.\(^{138}\)


\(^{131}\) Id.

\(^{132}\) See id.

\(^{133}\) Id.

\(^{134}\) See id.


\(^{136}\) Ali & Mullett, supra note 135.

\(^{137}\) Id.

\(^{138}\) Gilliland, supra note 135.
quick recognition of early faults may allow Pennsylvania to correct its problems before they become too severe.\textsuperscript{139} Still, like those states, Pennsylvania continues to take only small steps forward.\textsuperscript{140} As indicated in a recent report from John Wetzel, the Secretary of the Pennsylvania Department of Corrections, a 2013 review of the state’s prison situation is most notable “not for the progress shown, but rather for the lack of change demonstrated.”\textsuperscript{141}

E. Hawaii

In the absence of truly revolutionary reforms, some states have found more success than others. Perhaps the most successful of all reforms in the United States is Hawaii’s Opportunity Probation with Enforcement (HOPE) program, enacted in 2004.\textsuperscript{142} Compared to legislation from other states, HOPE is particularly focused on constant contact with offenders and extensive oversight.\textsuperscript{143}

Through frequent and random drug tests—backed by swift, certain, and short jail stays—HOPE seeks to identify probationers at high risk of violating the conditions of their community supervision.\textsuperscript{144} A thorough, “one-year, randomized controlled trial [showed that] HOPE

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{139} See supra notes 119-121, 125-28 and accompanying text.
  \item \textsuperscript{140} See supra notes 112, 119 and accompanying text.
  \item \textsuperscript{143} See “Swift and Certain” Sanctions in Probation Are Highly Effective: Evaluation of the HOPE Program, NAT’L INST. JUST., http://www.nij.gov/topics/corrections/community/drug-offenders/hawaii-hope.htm (last updated Feb 3, 2012) [hereinafter Evaluation of the HOPE Program]; see also Davis, supra note 68, at 3A (explaining HOPE’s emphasis on an offender’s background and noting that the federal government has implemented the HOPE program in four test counties across the country). Arkansas is one of four states to receive federal grant money to help replicate Hawaii’s model. \textit{Id}. Saline County currently serves as Arkansas’s testing ground. \textit{Id}.
  \item \textsuperscript{144} HAWAII’S HOPE PROGRAM, supra note 142.
\end{itemize}
\end{footnotesize}
probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory officer and 53 percent less likely to have their probation revoked."\(^{145}\)

Hawaii’s program works because of constant oversight.\(^{146}\) HOPE begins with a judge giving participants in the program a formal warning that probation violations will result in immediate, but brief, jail stays.\(^{147}\) For instance, if a participant fails to appear for a scheduled drug test, a bench warrant is immediately issued and served.\(^{148}\) A probationer-in-violation typically serves a couple of days in jail, which the individual may satisfy on a weekend if he is employed.\(^{149}\) The length of the stay lies within the judge’s discretion, but nearly all sentences are no longer than a couple of days, as research shows “no correlation between the length of the jail term and subsequent violation rates.”\(^{150}\)

The primary mechanism of the HOPE program is mandatory, frequent, and truly random drug testing.\(^{151}\) When the judge announces the terms of the probation, he or she also provides the probationer with a color.\(^{152}\) Each morning, the probationer calls a hotline to hear the chosen color for that day.\(^{153}\) If the colors match, the probationer must appear by 2:00 p.m. the same day to take a drug test.\(^{154}\) All participants must be tested at least once a week during the first two months of probation.\(^{155}\) HOPE rewards participants who comply with the program by assigning

\(^{145}\) Id.
\(^{146}\) See Evaluation of the HOPE Program, supra note 143.
\(^{147}\) Id.
\(^{148}\) Id.
\(^{149}\) Id.
\(^{151}\) See Evaluation of the HOPE Program, supra note 143.
\(^{152}\) Id.
\(^{153}\) Id.
\(^{154}\) Id.
\(^{155}\) Id. at n.1.
them a new color that is statistically less likely to be chosen on a given day.\textsuperscript{156} Only participants who miss or fail a scheduled test must appear again before a judge—a practice somewhat different from other states’ drug courts.\textsuperscript{157}

What is most compelling, and in some ways counterintuitive, is that the program focuses less on drug rehabilitation and more on eliminating drug use immediately.\textsuperscript{158} HOPE mandates drug treatment only for those offenders who fail tests repeatedly or request a treatment program explicitly.\textsuperscript{159} Hawaii’s shift in focus allows the State to spend more money on intensive residential treatment for those who clearly require it, as the State provides fewer funds for general out-patient counseling.\textsuperscript{160} The rationale behind HOPE is that someone who fails a drug test three or four times (each time spending a night or two in jail) is more likely to acknowledge the necessity of drug treatment than the individual whom a court has just placed on parole for a possession charge.\textsuperscript{161} As an additional incentive for a probationer to take rehab seriously, a lack of progress at that stage is likely to result in a prison sentence.\textsuperscript{162}

Although Hawaii modeled HOPE’s features from the principles outlining every state’s reform proposals, HOPE’s features are different because they mandate specific and constant forms of attention. The success of a program like HOPE requires dedication at every level, and as one might expect, Hawaii’s outstanding results come with overwhelming support from those involved. For example, a poll of probation officers, probationers, and defense lawyers showed nearly unanimous approval for the program (almost 90%).\textsuperscript{163} Judges similarly approved the program (85%).\textsuperscript{164} Still, the poll is, perhaps, not entirely

\textsuperscript{156.} Evaluation of the HOPE Program, supra note 143, n.1.
\textsuperscript{157.} Id.
\textsuperscript{158.} Id.
\textsuperscript{159.} Id.
\textsuperscript{160.} Id.
\textsuperscript{161.} See Evaluation of the HOPE Program, supra note 143.
\textsuperscript{162.} Id.
\textsuperscript{163.} Id.
\textsuperscript{164.} Id.
positive, as nearly every respondent—especially judges and court staff—reported an increased workload because of the program. But such an increase is precisely the result that matters most. Despite the inconvenience on those tasked with implementing and overseeing the program, they march on, realizing the sweeping importance of making HOPE work.

VI. ONLY POLITICAL WILL CAN SOLVE THE PRISON PROBLEM

As the success in Hawaii demonstrates, Act 570 will succeed only if most Arkansans want it to succeed and strive to ensure this result. Mere recognition of a problem, paired with general recommendations for a solution, will not solve the problem. Instead, political enthusiasm will determine whether Act 570 becomes a hallmark for real action or a faded memory of another lackluster try.

Over the past thirty years, states’ prison populations have exploded, but not because of an explosion in crime rates. Rather, the prison population grew when the

165. Id.
national narrative insisted that it should—when politicians won elections for being “tough on crime” and for applauding public-service announcements that likened cracked eggs to a brain on drugs. More citizens became prisoners because, in response to public demand, misdemeanors became felonies and one-year sentences became ten-year sentences. No one voted for anything like Act 570 in 1985. Few demanded funding for drug rehab. Fewer felt inclined to hire people on probation. Consequently, prisons formed, filled up, and spilled over.

Relatively speaking, enacting legislation is the easy part. Act 570 is a fine starting point, but the success of Arkansas’s programs now depends on dedication and genuine interest on the part of offenders, lawyers, judges, administrative panels, community organizations, and private employers. All must echo the principles of Act 570, take advantage of the incentivized programs offered by the State, and demand continuing progress.

No one program, or group of programs, guarantees success. Although using evidence-based practices is more beneficial than relying on horror stories or the cynical general wisdom that locking up criminals for as long as

168. See ELLIOTT CURRIE, CRIME AND PUNISHMENT IN AMERICA 14 (1998), available at http://www.nytimes.com/books/first/c/currie-crime.html (“[T]he main reason for the stunning growth in prison populations was that the courts and legislatures did indeed get ‘tougher’ on offenders.”); McDonough, supra note 167 (noting that the Bureau of Justice Statistics has found “the U.S. increase in prison population can be attributed largely to get-tough policies enacted in the 1980s and 1990s”); RetroPile, This Is Your Brain on Drugs, YOUTUBE, http://www.youtube.com/watch?v=ub_a2t0ZfTs (last visited Nov. 20, 2013) (public-service announcement from the Partnership for a Drug-Free America).

169. See McDonough, supra note 167 (attributing prison overcrowding to tougher legislation).

170. See INT’L CTR. FOR PRISON STUDIES, KING’S COLLEGE LONDON, GUIDANCE NOTE 1: PENAL REFORM PROJECTS AND SUSTAINABLE CHANGE 1 (2004) [hereinafter PENAL REFORM PROJECTS], available at http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/gn1_10_0.pdf (“To be successful and sustainable prison reform projects need political will, an administration able to deliver change and champions to support it.”).

171. See id.
possible is the best way to protect society, long-term success requires an adjustment in the social conscience.\footnote{172}

On this point, a study by the Urban Institute noted: “Too often, best practices . . . are literally thrown at an organization with little or no attention to the intricacies of implementation . . . . It is essential that those in positions of leadership first and foremost express a willingness to assume the daunting and often vexing challenges associated with retooling . . . .”\footnote{173} Because successful implementation of any program requires a shift in community attitudes, “leaders must engage in a meaningful, wide-ranging, and systematic examination of an agency’s culture and the policies, operational practices, and measurement of activities and outcomes that form the core of its fabric.”\footnote{174} Meghan Guevara and Enver Solomon, of the U.S. Department of Justice, write similarly: “The ‘‘best evidence’ evolves as the body of corrections research grows.”\footnote{175} Thus, “[a] commitment to continuous quality improvement is needed both to ensure that interventions are replicated with fidelity and that new evidence is incorporated as it becomes available.”\footnote{176}

\footnote{172. For instance, Faulkner County Prosecutor, Cody Hiland, a member of the Arkansas Prosecuting Attorneys Association’s legislative committee, referred to new sentencing standards for methamphetamine production as “de facto decriminalization,” even though at minimum anyone convicted of that crime is guilty of a Class C Felony or, more likely, a Class Y felony. Moritz, supra note 84, at 4A; see Act 570, 2011 Ark. Acts 1851, 1915 (codified at Ark. Code Ann. § 5-64-423(a)(2)(A)–(B)(i) (Supp. 2013)). Worse, in summer 2013, public outcry over accounts of violent crime committed by parolees pressured the Parole Board into significantly tightening the rules that Act 570 intends to relax. See Roy Ockert, Senator Points to Law as Root of Problems, COURIER ONLINE (Aug. 22, 2013, 8:58 AM), http://www.couriernews.com/view/full_story/23425555/article-Senator-points-to-law-as-root-of-problems; see also Moritz, supra note 97 (“In the past month, more than 800 parolees have been held in jail under the new mandates rather than released pending a hearing . . . .”).


174. Id. at 38.


176. Id.
But the challenge facing meaningful progress is great. As Ohio State University law professor Michelle Alexander writes:

If our nation were to return to the rates of incarceration we had in the 1970s, we would have to release 4 out of 5 people behind bars. A million people employed by the criminal justice system could lose their jobs. Private prison companies would see their profits vanish. This system is now so deeply rooted in our social, political and economic structures that it is not going to fade away without a major shift in public consciousness.177

A comprehensive 2012 study by the Pew Center on the States suggests that public opinion may indeed be shifting.178 American citizens—regardless of race, gender, political affiliation, and income level—overwhelmingly support prison reform and a decrease in prison spending.179 Still, half of those polled agreed “parole and probation are just a slap on the wrist and not a substitute for prison”;180 yet eighty-four percent of respondents thought states should increase the use of probation and parole.181 Are these results inconsistent or do they suggest that many of those polled favor a “slap on the wrist” for at least some crimes? In other words, are Americans suggesting that certain crimes should not be crimes?182 If the primary

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179. Id.

180. Id. at 7.

181. See id. at 3.

182. Recently, for example, two states—Colorado and Washington—legalized recreational marijuana use. Laura S. Bly, Colorado, Washington OK Recreational Marijuana Use, USA TODAY (Nov. 7, 2012, 6:33 PM), http://www.usatoday.com/story/dispatches/2012/11/07/colorado-washington-legalize-recreational-marijuana-tourism/1689269/. In 1989, more than a quarter of Americans thought drug abuse was the single most important issue facing the country. Drug and Crime Facts: Public Opinion About Drugs, BUREAU OF JUST. STATISTICS, http://bjs.ojp.usdoj.gov/content/dcf/psoad.cfm (last visited Nov. 21, 2013). That number has been effectively zero for several years. Id. Approximately two-thirds of Americans now consider the “War on Drugs” a failure. Americans
policy behind Act 570 is budget-consciousness, one might imagine that the State could save significantly more money through eliminating enforcement of particular crimes and reducing the court costs related to those crimes. More broadly, State investment in job training and education access might produce positive changes in the environments that give rise to crime. Once the political climate becomes open to more sweeping reform and citizens become willing to put in the requisite time and effort to ensure progress, this larger-scale approach should be Arkansas’s next step—as even under the best-case scenario, Act 570’s full implementation leaves Arkansas’s prisons “overcapacity” for the foreseeable future.183

But this shortcoming does not mean Act 570 is a dud or destined to fail. Indeed, the Act can hardly “fail” at all. Even if local communities and elected officials abandon their voluntary responsibilities altogether, the changes to codified penalties for nonviolent crime and the adjustments made to parole hearings will certainly reduce the prison population184 and, thus, reduce the State’s costs.

Most importantly, Act 570’s implementation perhaps signaled a new tone for the way elected officials in Arkansas—and, as follows, most citizens—view crime. “Tough on crime” is no longer the mantra for new legislation. Instead of building more prisons and increasing penalties, Arkansas listened to the advice of experts and followed the statistics-based approaches of states like Hawaii and Oregon—states with political sensibilities traditionally averse to Arkansas’s.185 The question now is

183. PUBLIC SAFETY REFORM, supra note 3.  
184. This prediction assumes that the Parole Board and General Assembly will work toward building upon Act 570, rather than undoing its effects. See Moritz, supra note 97.  
185. Prison reform transcends party politics. Texas, a Republican stronghold, has championed the reform efforts discussed in Part IV of this note. See Jonathan Tilove, Texas Puts More People in Treatment and Fewer People in Prison, TIMES-PICAYUNE (May 20, 2012, 5:00 AM),
the strength of this new tone’s foundation. In the next legislative session, will the Arkansas General Assembly encourage evidence-based community programs—standing strong behind the principles of Act 570—and tackle more controversial issues like mandatory sentences for violent offenders and the extreme costs associated with death-row inmates? Or will the General Assembly feel satisfied with the few steps it has taken and retreat from the path to real progress? The General Assembly cannot address the


188. In the 2013 regular session, Arkansas lawmakers largely ignored corrections reform, aside from a handful of acts. One new law sets forth the mechanisms for creating a comprehensive pre-adjudication probation program, whereby each judicial district may direct alleged nonviolent felons to prison alternatives without adjudging them guilty. See Act 1340, 2013 Ark. Acts 682 (codified at ARK. CODE ANN. § 5-4-901 to -912 (Supp. 2013)). Act 1340 builds upon the efforts of Act 570 and, thus, deserves praise for its devotion to non-institutionalized punishment, evidence-based practices, and regular and thorough data collection. See Act 1340, 2013 Ark. Acts 682 (codified at ARK. CODE ANN. § 5-4-901 to -912 (Supp. 2013)). But the law is also subject to the same criticisms directed at Act 570: it relies too heavily on voluntary cooperation between local agencies and it is disappointingly vague with respect to funding. Further, the law does little to advance the conversation of prison reform beyond the now-common reform language, which can only provide so much relief. Another set of new laws illustrates the tension between progress and old habits. One law seeks to expand repayment to county jails for housing probation or parole violators. See Act 1282, 2013 Ark. Acts 324 (codified at ARK. CODE ANN. §§ 12-27-114(a)(2)(A), 19-5-1045(c) (Supp. 2013)). But another law increases prison time for repeat drug offenders. See Act 529, 2013 Ark. Acts 794 (codified at ARK. CODE ANN. §§ 5-64-419(b)(3)-(5), 5-64-428(b)(1), 5-64-432(b)(1), 5-64-440(b), 5-64-442 (Supp. 2013)).
root of the prison problem fully and properly after the fact by lessening sentences and reducing recidivism.\textsuperscript{189} Even those states with the best recidivism rates have only stemmed the tide of prison growth, not reversed it.\textsuperscript{190} If the prison problem is largely self-inflicted—the result of redefining notions of crime and punishment—Arkansas cannot resolve it by operating within those same parameters.

Accordingly, Arkansas citizens must change the culture in which Act 570 developed. This will take courage and political will.\textsuperscript{191} Arkansans must first demand that the State implement Act 570 to its fullest extent—that every available dollar be requested, distributed, and spent—so that the law can reshape “punishment.” Next, citizens must insist that lawmakers reevaluate “crime,” not merely the penalties assessed therefrom. Only when citizens have demanded meaningful progress will the prison budget contract and the population shrink.

As Professor Fran Quigley writes: “United Nations leadership, Western law professors, African grassroots legal activists, economists \textit{[and others]} specifically identify \textit{[a lack of]} political will as the chief barrier” to broad social change.\textsuperscript{192} Likewise, articles concerning practically every area of reform—from economic regulation and tax policy to environmental law and health care—cite a lack of political

And a third law limits the amount of “swift and certain” or “shock time” jail stays for a particular parolee before a parole officer is required to revoke parole. Act 1415, 2013 Ark. Acts 1155 (codified at \textsc{Ark. Code Ann.} § 16-93-712(d)(3)(E) (Supp. 2013)). Both the House and Senate have also taken up the issue of health care for prisoners in an attempt to reduce costs. See \textsc{Jacob Kauffman, Capitol Access: Shell Bills, Election Daze, and Prison Health Care}, UALR PUB. RADIO (Mar. 11, 2013, 8:38 PM), http://www.ualrpublicradio.org/post/capitol-access-shell-bills-election-daze-and-prison-health-care. Of course, housing fewer prisoners is the surest way to address prisoner health care.

\textsuperscript{189}. See Kevin F. Ryan, \textit{Clinging to Failure: The Rise and Continued Life of U.S. Drug Policy}, 32 \textsc{Law & Soc’y Rev.} 221, 223 (1998) (“[I]f at heart the drug war is fatally flawed, no amount of tinkering with leadership, administrative efficiency, funding levels, or penalties can be expected to turn failure into success.”).

\textsuperscript{190}. \textit{See supra} Part V.

\textsuperscript{191}. \textit{See Penal Reform Projects, supra} note 170 (“To be successful and sustainable prison reform projects need political will, an administration able to deliver change and champions to support it.”).

will as the primary cause of inaction. 193 This lack of political will manifests itself through more than opposition or total ignorance. In many cases:

[L]ack of political will may be manifested by not following through on public declarations of promises, failing to allocate adequate resources to participatory governance initiatives, failing to implement policies or rules with regard to participatory governance, failing to enforce sanctions for noncompliance, or delaying or failing to give priority to participatory governance reforms or initiatives. 194

Notably, pleas for political will often fail to “elaborate on what precisely [political will] means or how it might be influenced.” 195 In the case of prison reform, political will means first acknowledging that a problem exists. Act 570 signals such recognition (although its scope is, again, largely limited to “punishment,” rather than “crime” and punishment).

Next, political will means following through on the Act’s recommendations. 196 Accordingly, judges, prosecutors, and probation officers must increase utilization of prison alternatives. At the same time, local communities must initiate contact with government agencies, organize projects, demand funding, implement prison alternatives, and closely monitor the results. In other words, political will means working hard after the State lays the foundation. As Linn Hammergren, a Democracy Fellow at the Center for Democracy and Governance, writes: “[P]lanning and

195. Woocher, supra note 193.
196. Oklahoma recently passed its own version of prison reform—a “justice reinvestment initiative.” See Collin Tyler, Legislators Say Prison Reform Losing Steam, KGOU (Mar. 8, 2013, 6:17 PM), http://kgou.org/post/legislators-say-prison-reform-losing-steam. Writing and enacting the law, however, was not enough. As of March 2013, “the program hasn’t been put into practice, and [in February] Gov. Mary Fallin rejected federal money for implementation training.” Id.
enactment [of reform measures] may require little participation, but implementation may require far more.”

Moreover, political will means not backing down in the face of disappointing or lackluster results. Instead, political will requires commitment to an ongoing and often challenging process. Hammergren addresses this point as follows:

[R]eform and the political will to produce it are moving targets, their objectives and definitions varying over time as initial advances are consolidated and problems emerge or are better understood. As others have noted, it is on the issue of institutional change that reforms most frequently flounder, as initially enthusiastic leaders begin to appreciate the complexities and costs, as well as the vested interests (some of them their own) to be confronted. Reform is an educational process, and a good part of that education has to do with learning to look beyond the purely legal changes and rhetorical promises to the hard task of making institutions operate differently.

Once community action reveals genuine support for the principles of Act 570, political will means responsibly undoing the damage of laws enacted during the 1980s and 1990s by thoroughly and reasonably reconsidering both crime and punishment. If elected officials are not up to

199. As one law professor at the University of Wisconsin noted:
We have spent almost an entire century looking for the “causes” for crime that have never been uncovered to everyone’s satisfaction; . . . we have spent almost an entire century theorizing about retribution and deterrence and punishment only to discover what we should have known—that these ideas partake of the dangers of “semantic ascent” . . . Perhaps we might want to consider criminal laws from a different angle. But this can only occur if we . . . look beyond the standard boundaries of the discipline, take risks, and “rethink” our assumptions about the criminal law.
the task, Arkansas’s citizens must replace these officials. Of course, accomplishing this task will not be easy for those officials. Broad reform, the type that fundamentally alters the State’s corrections system, will be met with fiercer opposition than what Act 570 faced. But if this final step is not taken, the work done to this point will have been largely in vain.

VII. CONCLUSION

Given Arkansas’s over-budget and overcapacity prison system, Act 570 was a necessary first step—although admittedly not the first “first step”—toward meaningful corrections reform. However, if Arkansas wants to ensure that its prison population decreases, rather than merely stalls, communities must put forth a genuine and sustained effort to utilize the prison alternatives offered by Act 570. Then, Arkansans must demand that elected officials commit to broader and more controversial reforms in the decades to come.

The foundation for change is in place, but seeing it through will be challenging. The prison problem festered for a generation, and Arkansas cannot repair it with a single act. Correcting the problem fully will require unusual, widespread, and enduring political will.

MASON L. BOLING


200. In 2012, Louisiana State Senator Danny Martiny acknowledged that political will accounted for his state’s recent prison-reform failures, but he noted that “it’s hard to blame legislators, who are elected by the same voters who put the district attorneys and sheriffs [who are less reform-minded] in office.” Jan Moller, Prison Sentence Reform Efforts Face Tough Opposition in the Legislature, TIMES-PICAYUNE (May 16, 2012, 5:00 AM), http://www.nola.com/crime/index.ssf/2012/05/prison_sentence_reform_efforts.html. Arkansans should demand reform support from all elected officials. See Rick Sarre, The Importance of Political Will in the Imprisonment Debate, 21 CURRENT ISSUES CRIM. JUST. 154, 160 (2009) (“We need to tell governments that they can build long term social investment into criminal justice policy-making without risking electoral backlash.”).