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As Ky. studies prison fixes, other states act

By John Cheves

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Texas and Kansas are cutting prison populations as their legislatures experiment with sentencing, addiction treatment, probation and parole, and social services targeted at high-crime neighborhoods.

The new attitude didn't come easy in a state like Texas, better known for executing prisoners than trying to rehabilitate them. But Texans balked when prisons needed 14,000 new beds at an estimated cost of more than half a billion dollars. The state already incarcerates 171,000 people.

"We had an understanding from everybody on all sides that our current model was not working, and it was time to try something new. How often does that happen?" asked Ana Yanez-Correa, executive director of the Texas Criminal Justice Coalition.

And then there's Kentucky.

The General Assembly and Gov. Steve Beshear agree that Kentucky faces the same dilemma as other states, if not worse. Its prison growth leads the nation. However, they have little to show as lawmakers enter the final days of their 2008 session.

Beshear and the Senate propose separate committees to study the justice system and suggest ways to alleviate inmate crowding. These committees would follow on the heels of similar committees whose findings were largely ignored. The Senate proposal -- awaiting House action -- originally called for a report by July 2011, but that date was bumped forward to this December because senators agreed they need to move faster.

A few bills that could ease demand for incarceration right away -- for example, diverting non-violent drug offenders into treatment -- appear stalled.

Meanwhile, the prisons budget is expected to swell from \$417 million to \$478 million by 2010. Fiscally struggling county jails, many of them brutally crammed with thousands of state inmates, will get hundreds more inmates and possibly less state funding.

Beshear campaigned last year on a pledge to "finally and permanently" resolve inmate overcrowding. Now he says he won't be rushed.

"It is a difficult issue to deal with because of the politics," Beshear said recently. "Let's face it, when you start talking about sentencing, you start talking about changing the way you're going to treat this violator or that violator, it can get political very quick. And people are concerned about looking soft on crime."

Other states experiment

Politicians in Texas and Kansas didn't want to look soft on crime. But they were fed up with shoveling people and money into prisons with no clear effect on crime rates. Kansas in 2006 faced a 22-percent increase in inmates over a decade at a cost of about \$500 million for new construction and operations.

"Building more prisons does not solve our problems," Kansas Gov. Kathleen Sebelius said at the time.

So in their 2007 legislative sessions, Texas and Kansas asked for help from experts at the U.S. Bureau of Justice Assistance and the Justice Center of the Council of State Governments. The experts and Democratic and Republican leaders crafted reform packages within months. The states shared some ideas between them and did other things differently. Among the measures, they:

- Expanded addiction treatment and vocational training for inmates prior to release, to prepare them for productive citizenship and reduce recidivism. Texas added 8,700 beds in prisons and community programs, with the latter focused on probation and parole violators who get into trouble because of drug use. Better to put a parolee in treatment rather than throwing him back in prison, Texas reasoned. Parolees are a major source of inmate crowding: More than one-third of the nation's prison admissions -- and Kentucky's -- are probation or parole violators returned to custody for violating the terms of their release.

- Gave more support to probation and parole officers monitoring criminals serving their sentences in the community. Texas also cut the maximum probation terms from 10 to five years for non-violent drug crimes and property offenses. Too many probationers are returned to prison for "technical violations," such as substance abuse or missing an appointment with counselors, which would not necessarily be a crime if they weren't on probation, officials said.
- Focused social services -- such as food, nursing assistance for mothers, housing and jobs -- and law enforcement on neighborhoods that spawn the most prison inmates. A handful of Houston neighborhoods accounted for nearly \$100 million a year in Texas prison costs, while Kansas dropped nearly \$12 million a year to lock up people from one city council district in Wichita. The states hope to reach young people before they become tomorrow's felons.

"We started turning the debate from one that says 'be tough on crime' to one that says 'be smart on crime,'" Texas state Rep. Jerry Madden, R-Plano, chairman of the Texas House Corrections Committee, recently told the Pew Center on the States.

"And I will say that my conservative Republicans are all on board with that," Madden said. "They think we should be intelligent in how we use our money and how we produce results."

The politicians concede that some ideas might not work as intended. Adjustments will be necessary. And the changes cost millions of dollars, which may offset the savings for now.

But this month, when the Pew Center announced that the nation's incarceration rate had climbed to one in every 100 Americans, Texas and Kansas stood in the small group of states with shrinking prison populations for 2007. Texas fell 0.2 percent. Kansas fell 0.7 percent.

Kentucky jumped 12 percent, to 22,402 inmates. It's expected to hit 31,000 within a decade.

Kentucky moves slowly

The only thing Kentucky is ready to do today is spend tens of millions of additional dollars on prisons, taking money from police, prosecutors, public defenders and the rest of the justice system. The medium-security prison in Elliott County soon will double in size. County jails already crowded far beyond their capacity will line up more state inmates to sleep on the floor.

"What I'm not seeing in all of this concern about money and the state budget is the human-rights element, that we have people living in our custody all over the commonwealth in such awful conditions that you or I could not even comprehend. They are going to be released in a few years, and they won't be the better for living like this," said Robert Lawson, who teaches criminal law at the University of Kentucky and tours many of the state's prisons and jails.

Kentucky's Parole Board has ramped up the parole rate, from 25 percent in 2000 to 41 percent last year. But with about 10,000 new commitments each year, parole no longer makes much of a dent in the inmate population.

Still, the problem can wait until 2009, after further study and discussion, Beshear said.

Around the Capitol, there is a general buzz about possible changes: more addiction treatment and less incarceration for drug offenders; repeal of some enhanced penalties created over the last 20 years, such as the "persistent felony offender" law that requires much longer prison terms after two felony convictions; and more felons serving time supervised at home or in halfway houses for non-violent crimes.

"Right now we've got over 1,000 people in prison for failure to pay child support," Beshear said. "Now, that's a heinous crime in my mind, but it costs us \$20,000 a year approximately to house each one of those people. We're spending \$20 million right now in the corrections system housing those folks. There may be a better way to exact the kind of punishment that they need, and at the same time, give them the opportunity to actually get out and get a job and earn enough money to pay that child support."

But few bills address the subject this year. Of those that do, few seem likely to become law. Bills to cut misdemeanor jail terms and place non-violent felony drug offenders on parole have yet to receive their first hearing. Senate Bill 72, which would divert drug offenders into a new 200-bed secured treatment facility, passed the Senate unanimously five weeks ago and awaits action in the House, where similar bills died in the past.

Rather than wait another year for legislative reforms, Kentucky immediately should review its more than 22,000 inmates to determine who is a dangerous predator in need of incarceration and who can be handled in other ways, Senate Majority Leader Dan Kelly, R-Springfield, said last week.

"I think we could do something in six months if people would put their minds to it," Kelly said.

Lawson, the UK professor and penal code expert, said he doesn't expect any major changes this year. Ultimately,

he said, Kentucky will -- like other states -- have to rethink how it deals with different kinds of criminals. It's not there yet, he said.

"I'm encouraged a little bit that at least there's interest in it," Lawson said. "It took us 30 years to get where we are now, and we're not getting out of the mess overnight."

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