

Testimony of Congressman Adam B. Schiff
House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
May 11, 2010

Mr. Chairman, I'd like to thank you for calling this hearing today and for inviting me to testify before the Subcommittee. Under your leadership, this Subcommittee has closely examined criminal justice policy issues by focusing on the promotion of proven strategies demonstrated through the use of evidence-based research. Today's hearing will focus on two pieces of legislation I have introduced that are based on innovative and highly promising approaches to addressing criminal justice issues.

A recent PEW study shows that 1 in 31 adults is currently under correctional control, up from 1 in 77 in 1982. Over the past two decades, corrections has been the second fastest growing area of state expenditures, second only to Medicaid. State corrections costs now top \$50 billion, consuming one in every 15 discretionary dollars, a significant increase from the \$10.6 billion spent some 20 years ago.

These numbers are unsustainable, and it is clear that our approach must drastically change. Determining how to best address our criminal and juvenile justice systems is a task that policymakers have grappled with for years. New and innovative approaches often lose out to established and well-known initiatives, even where outcomes are not sufficiently positive, as Congress is generally wary of experimentation.

As policymakers we must think outside the box more often and explore new and innovative ideas to tackle criminal justice issues. This is especially important in areas that we have attempted to address for some time, but with little success.

Budget cuts and prison overcrowding are creating a crisis situation in many states. In my home state of California, prisons house over 171,000 inmates, nearly twice their operating capacity, and we spend almost 10% of total general fund expenditures on corrections. Because of unacceptable overcrowding, we are now faced with a judicial order to release about 25% of our prison population.

Data-driven "justice reinvestment" strategies can assist policymakers in CA to reduce spending on corrections while increasing public safety. Promising results have been seen in Texas, Kansas, and other jurisdictions after such strategies have been implemented, and you will hear about how these successes were accomplished in the second panel.

Based on this successful work, I have introduced the bipartisan Criminal Justice Reinvestment Act of 2009 with my colleague Rep. Dan Lungren, and Senators Sheldon Whitehouse and John Cornyn have introduced identical legislation which was recently reported out of the Senate Judiciary Committee with bipartisan support.

The legislation is designed to assist state and local governments in implementing justice reinvestment strategies. No two states are the same and the drivers of increased corrections costs and prison populations are unique in each state. The legislation

therefore devotes grant funding for intensive analysis of criminal justice data, policies, and the cost-effectiveness of current spending on corrections, in order to develop data-driven policy options that can address this. The bill then provides resources for the implementation of solutions – for example, providing training and technical assistance or support for the delivery of risk-reduction programs – and for reinvesting averted prison costs to bolster such initiatives.

Currently there are at least 14 states on a waiting list, seeking such technical assistance, and eight other states are seeking to expand such work. Congress has the opportunity to step in and answer this call for assistance.

Another area where we must look for new ideas and approaches is in our drug policy. The conservative American Enterprise Institute concluded in a study that “tough enforcement, the centerpiece of American drug policy in terms of rhetoric, budget, and substance, has little to show by way of success.”

A substantial amount of crime, and a substantial share of prison occupancy, is directly tied to illicit drug consumption. In addition, we know that a relatively small group of chronic drug users consumes the vast majority of illicit drugs in the U.S., and approximately three-quarters of this group pass through the criminal justice system at some point. So reducing drug consumption in the U.S. requires effectively addressing the drug habits of supervised offenders.

Furthermore, the failure of individuals serving terms of probation to successfully complete these terms is a major contributor to prison admission. For example, in 2007, more than 250,000 individuals on probation were admitted to prison. Effectively addressing drug use by these individuals will reduce national drug consumption, crime rates, and taxpayer burdens.

In 2004, Judge Steven Alm of Hawaii launched a pilot program to reduce probation violations by offenders at high risk of recidivism. This intensified supervision program – called Hawaii’s Opportunity Probation with Enforcement, or “HOPE” – uses graduated sanctions, beginning with the threat of short jail stays, as an incentive for compliance. Defendants are clearly warned that if they violate the rules, they go to jail. Participants receive swift and immediate sanctions for each violation, such as testing dirty for drugs or missing appointments with a probation officer.

The results of a one-year, randomized controlled trial indicate that Hawaii HOPE probationers were:

- 55 % less likely to be arrested for a new crime
- 72 % less likely to use drugs
- 61 % less likely to skip appointments with their supervisory officer; and
- 53 % less likely to have their probation revoked

An article in the Journal of American Medical Association found that if the HOPE initiative was replicated effectively in multiple jurisdictions, the program might have

broader benefits beyond assisting probationer participants at risk for heavy drug use, such as helping to shrink the market for illegal drugs and the profits of drug trafficking organizations.

I have introduced bipartisan legislation, with my colleague Rep. Ted Poe of Texas, that would promote and expand the use of this model in a number of jurisdictions across the country. The Honest Opportunity Probation with Enforcement, or “HOPE”, Initiative Act of 2009 is designed to promote the establishment of probation demonstration programs that reduce drug use, crime, and recidivism by requiring swift, predictable, and graduated sanctions for noncompliance with the conditions of probation. Stringent requirements will ensure that the pilots are designed and evaluated in an appropriate manner, and our legislation would require a determination of the amount of cost savings resulting from the program and an accounting of reinvestment of those savings for expansion of the program.

In closing, Mr. Chairman, I would like to commend you again for your leadership in this area and for focusing the Subcommittee’s attention on these two innovative and promising approaches. I urge the Subcommittee to act on these proposals so that we can address these issues this Congress.