

**New Hampshire**  
**Prison Population**  
**Post SB500**

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## **Authors**

Dennis Delay  
Economist

Steve Norton  
Executive Director

## **About this paper**

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Write to: NHCPPS, 1 Eagle Square, Suite 510, Concord NH 03301

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## Table of Contents

Executive Summary .....	1
New Hampshire corrections system prior to the justice reinvestment act .....	1
The Justice Reinvestment Act.....	3
Safety and cost-shifting.....	8
Justice Reinvestment (partially) rescinded .....	10
New Hampshire explores privatization.....	12
Conclusion .....	13
Figure 1: Annual Admissions to State Prison by Offense, 1981 to 2007 .....	2
Figure 2: Projections of New Hampshire State Prison Expenditures .....	3
Figure 3: Monthly Admissions and Releases.....	5
Figure 4: Parole Violators as a Portion of State Prison Admissions.....	5
Figure 5: State Prison Inmates by Type of Offense .....	6
Figure 6: Number of Inmates Returning to State Prison After 3 Years.....	7
Figure 7: New Hampshire State Prison Expenditures and Inmates .....	8
Figure 8: State and County Corrections Expenditures 1980 to 2011.....	9
Figure 9: State Prison Population July 2010 to August 2012 .....	11
Figure 10: State Prison Admissions and Releases .....	11
Figure 11: State Prison Releases by Type.....	12
Table 1: New Hampshire Criminal Offenses 2008 to 2011.....	8
Table 2: Town Safety Expenditures Adjusted for Population Change and Inflation .....	10

## **Executive Summary**

In 2009 the State of New Hampshire asked the Council of State Governments' Justice Center for assistance in controlling the rise in the state prison population and the cost of incarceration in New Hampshire. After the recommendations of the Justice Center were delivered to the state in early 2010, the General Court passed enabling legislation (SB500) and the resulting Justice Reinvestment Act provisions became law later that year.

The Justice Reinvestment Act can be considered a success, as the evidence suggests that the state was able to reduce the state prison population in 2011, as well as hold state prison expenditures constant for two years. More importantly, the evidence suggests that the safety of the New Hampshire population was not compromised in this time period and that municipal and county safety and correction costs did not increase as a result of the reforms of SB500.

Nevertheless, due to concerns about public safety associated with the early release of some violent offenders, the Legislature amended the Justice Reinvestment Act in 2012 to give more discretion to the state's Adult Parole Board. As a result, the number of inmates released on parole declined from 2011 to 2012. This has also resulted in a rise in the state prison population. Because the inmate population is rising once again, it is likely that prison costs will also increase, wiping out the expected savings that the Justice Reinvestment Act had hoped to achieve.

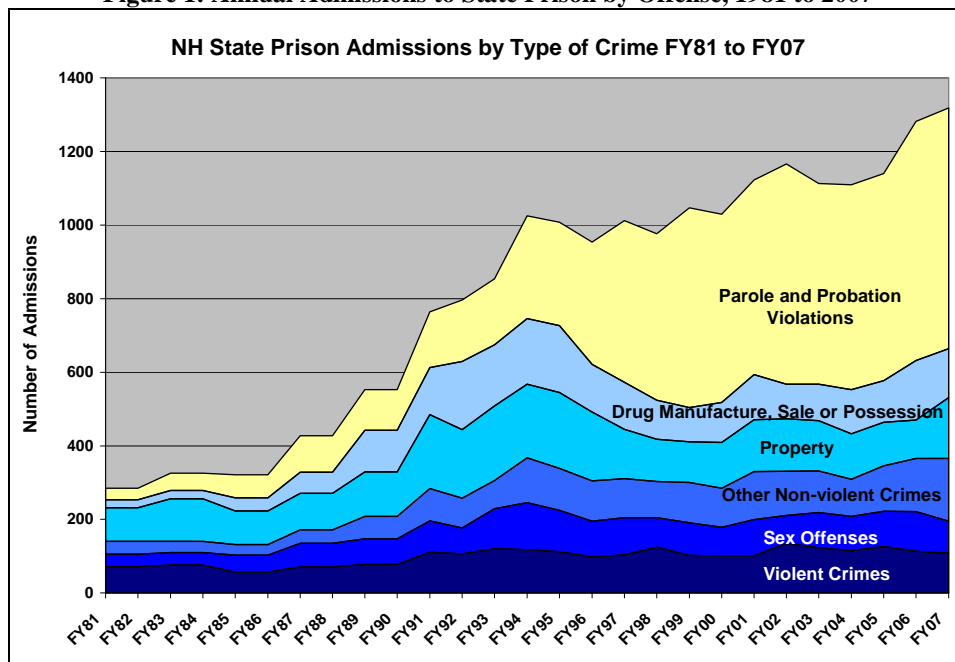
Legislators are now investigating whether privatizing corrections may be another way to solve increasing prison spending. Whether privatization is successful is an open question, but it is also clear that the Justice Reinvestment Act may have been prematurely compromised by the changes effective in 2012. In other words, the Justice Reinvestment Act was not given a fair chance to prove its worth in reducing the state prison population and controlling incarceration expenditures. State policy maker considerations of corrections privatization might have been proven unnecessary if the Justice Reinvestment Act had not been changed.

## **New Hampshire corrections system prior to the justice reinvestment act**

From the early 1980s through the middle of the past decade, the New Hampshire state prison population increased every year. From 1980 to 1994, that population grew at its most rapid rate, adding an average of 114 inmates per year – an annual average rate of growth of 14 percent. Between 1994 and 2008, the prison population growth rate slowed to an average of 53 inmates every year – an average annual growth rate of 2.3 percent. Overall, the number of New Hampshire prison inmates increased from less than 300 in 1980, to 2,000 in 1994, and to 2,900 by 2008.

By the late 1990's most people entering prison were already known to the corrections system – recidivists returning to state prison on parole and probation violations. Parole violators comprised 20 percent of state prison admissions in 1991, but increased to 50 percent of admissions by 2000. Figure 1 shows that state prison admissions were increasingly comprised of offenders returning to prison on parole and probation violations.

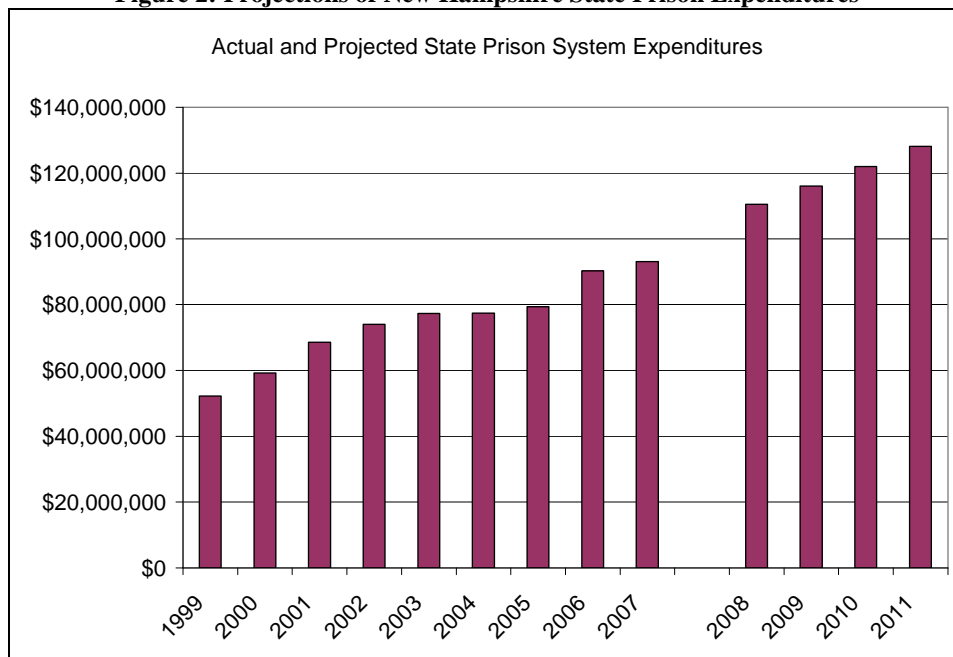
Figure 1: Annual Admissions to State Prison by Offense, 1981 to 2007



The increase in the state prison population necessitated an increase in prison capacity. By 1986, the Secure Psychiatric Unit opened and medium custody units began operating in Concord. These renovation and construction projects created a vastly expanded prison, capable of holding over 900 inmates in Concord. In the early 1990’s, the state opened a separate 100 bed women’s prison in Goffstown, and later opened the 300-bed Lakes Region Facility in Laconia. The Lakes Region Facility became a permanent facility in 1997, and its cap of 300 inmates was increased to 500 with the capability of expanding to 600 beds. Finally, in April 2000, New Hampshire opened the Northern New Hampshire Correctional Facility in Berlin, a prison initially built to house 500 medium security male inmates with the possibility of expansion to 1,000 in the future.<sup>1</sup>

In a 2008 report on prison trends, the Center noted that “without changes in the underlying policies, our baseline projection model suggests that the prison population could increase by as much as four hundred prisoners in 10 years, slightly fewer than are currently held in the Berlin prison.” Rising recidivism and admissions meant that the state prison population would continue to increase, driving up state incarceration expenses. In 2008, state prison expenditures were under \$100 million a year, but were expected to rise to more than \$120 million a year if prevailing trends continued, as shown on Figure 2.

<sup>1</sup> From “Prison Projections 2008: The Once and Future New Hampshire Corrections Population”, <http://www.nhpolicy.org/report.php?report=204>

**Figure 2: Projections of New Hampshire State Prison Expenditures**

Source: NHCPPS Forecast in 2008

## The Justice Reinvestment Act

In 2009 Governor Lynch and key legislative, judicial, law enforcement, and agency leaders requested technical assistance from the Council of State Governments' Justice Center to help develop a statewide policy to increase public safety, reduce recidivism, and slow the increase in corrections spending. The Justice Center conducted intensive analysis of data on incarceration, crime and arrests in New Hampshire, and convened roundtable discussions and interviews with stakeholders throughout the state.

The Justice Center submitted its findings to New Hampshire policy leaders in January 2010. Three key factors leading to increased corrections spending were identified: Rising recidivism rates; few community resources for people on probation and parole; and inefficiencies in the parole process. State policymakers submitted the recommendations as Senate Bill 500 in early February, which was also nicknamed the Justice Reinvestment Act. The legislation passed both chambers of the Legislature in early June and was signed into law by Governor Lynch on June 30, 2010.

The Justice Reinvestment Act had several goals:

- Reduce prison population by 646 inmates from the baseline projection by FY2015;
- Reduce revocations from parole by 40 percent and probation by 20 percent by FY2015;
- Reinvest 50 percent of savings in treatment and supervision.

A key element of SB500 was to direct probation and parole supervision to the higher risk offenders by moving low risk probationers and parolees from active to administrative supervision. Other key elements of SB500 included<sup>2</sup>:

- Use short, swift and certain sanctions, including jail time, to reduce crime and revocation rates among people sentenced to felony probation;
- Establish an intermediate sanction program and a designated parole revocation facility to respond more effectively to parole violations;
- Ensure that high-risk probationers and parolees with serious addiction and/or mental health disorders are monitored with rapid drug tests and have access to treatment programs;
- Ensure everyone leaving prison receives at least nine months of post-release, community-based supervision;
- Reinforce truth-in-sentencing by requiring nonviolent, property, and drug offenders to serve 100 to 120 percent of their minimum sentence.

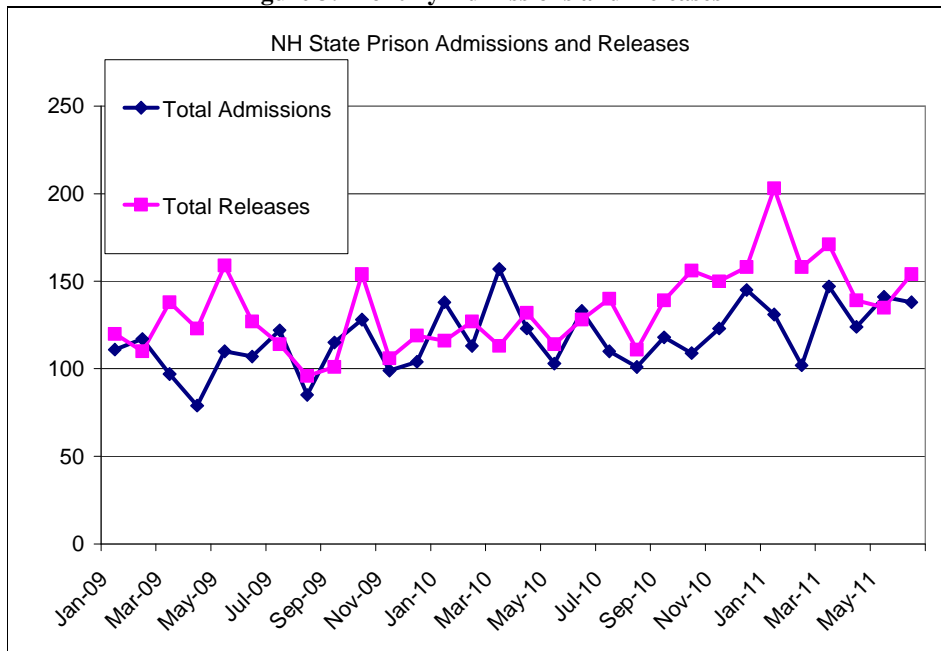
Under the Justice Reinvestment Act, the New Hampshire Department of Corrections established a Division of Community Corrections (DCC), which completed its first year of existence in 2011. The DCC engaged in developing a completely new and science-based approach to assessment, case management and re-entry planning for offenders, including developing and operating the Parole Violator services at the Berlin prison. The DCC now oversees transitional housing units, community based services for parolees at the department district offices, assisting inmates to maintain as close a relationship as possible to their children and families, substance use and prevention education for offenders, counseling and educational attainment services. On the need for educational improvement within the inmate population, it is important to note that approximately 29 percent of the inmate population enters the facilities without either a GED or high school diploma; 42 percent of those who enter have a GED, and 29 percent have high school diplomas.

As the provisions of the Justice Reinvestment Act went into effect in late 2010 and early 2011, releases from state prison spiked upward. Meanwhile, admissions to state prison remained at the same level after SB500 went into effect, as shown on Figure 3.

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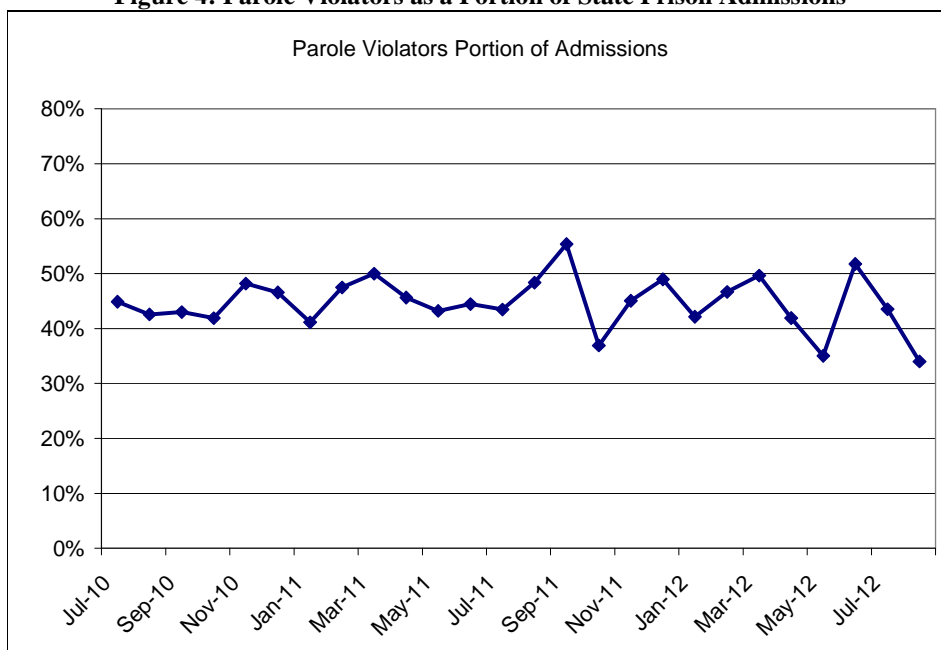
<sup>2</sup> Source: New Hampshire Department of Corrections

**Figure 3: Monthly Admissions and Releases**



Although releases to parole increased with the enactment of the provisions of the Justice Reinvestment Act, there was no commensurate increase in parole violations. If parole supervision were not effective, one would have expected to see more returns to prison from parole violators. As shown on Figure 4, parole violators as a portion of admissions have been steady since the Justice Reinvestment Act reforms were in effect.

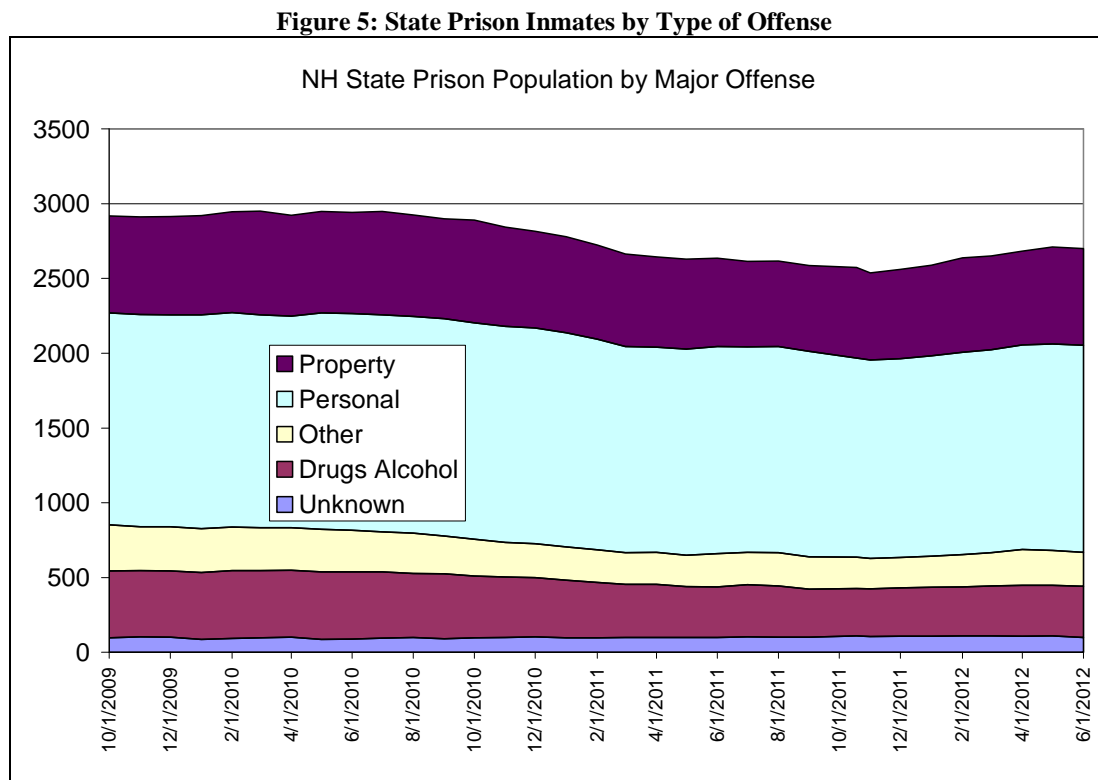
**Figure 4: Parole Violators as a Portion of State Prison Admissions**





This might be counted as one measure of success of the SB500 legislation: that releasing more inmates to parole did not increase the portion of (re)admissions due to parole violations.

Figure 5 shows the number of inmates held in state prison by major offense over the months associated with the implementation of the Justice Reinvestment Act. Inmates in the state prison system fell to 2,600, after reaching almost 3,000, across all major offense types.



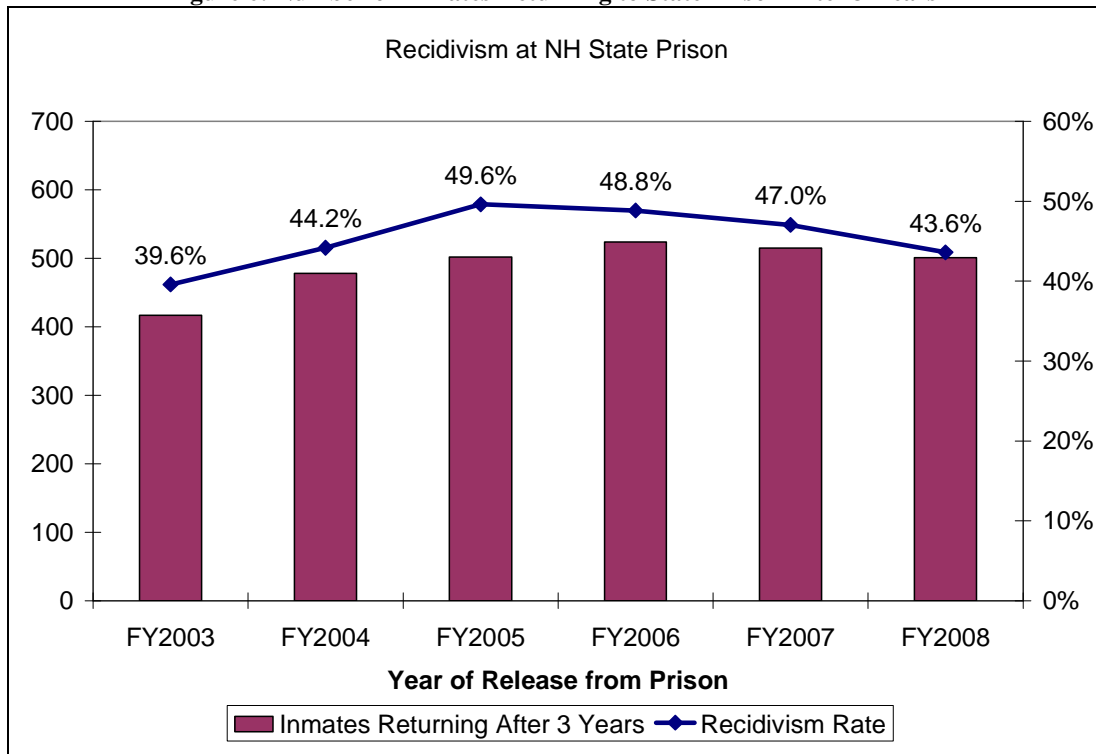
Recidivism rates also improved. According to recidivism studies produced by the New Hampshire Department of Corrections, recidivism rates among New Hampshire’s prison population have fallen over the past three cohort years to a recidivism rate of 43.6 percent. This is the lowest rate in five years, as shown on Figure 6<sup>3</sup>. By comparison, the national average recidivism rate is 43.3 percent, according to the latest research from the Pew Center on the States.<sup>4</sup>

This drop in recidivism rates predates the reforms associated with SB500. Nevertheless, recidivism rates continued to decline for the most recent year for which data is available.

<sup>3</sup> The New Hampshire Department of Corrections conducts studies of recidivism, which track offenders released from prison each fiscal year to see how many return to prison within three years of their release. In this analysis, the values for FY2008 show the number of inmates returning by FY2011.

<sup>4</sup> “State of Recidivism, The Revolving Door of America’s Prisons”, Pew Center on the States, Public Safety Performance Project, April 2011.

Figure 6: Number of Inmates Returning to State Prison After 3 Years



Two key elements of SB500 were (a) to release non-violent offenders after they have served no more than 120 percent of their minimum sentences, and (b) to place a 90-day limit on the length of time a person will spend re-incarcerated on a parole violation. Partially due to these provisions, the state prison inmate population dropped by 300 inmates from November 2010 to November 2011.

This reduction in the inmate population allowed the Department of Corrections to close the Gym Dorm at the Northern Corrections Facility (Berlin prison) that had been created when the Lakes Region Facility was closed in 2009. Corrections expenditures were held to under \$100 million annually in 2010 and 2011 (Figure 7), rather than increasing by 20 percent as had been expected in our forecast.

**Figure 7: New Hampshire State Prison Expenditures and Inmates**

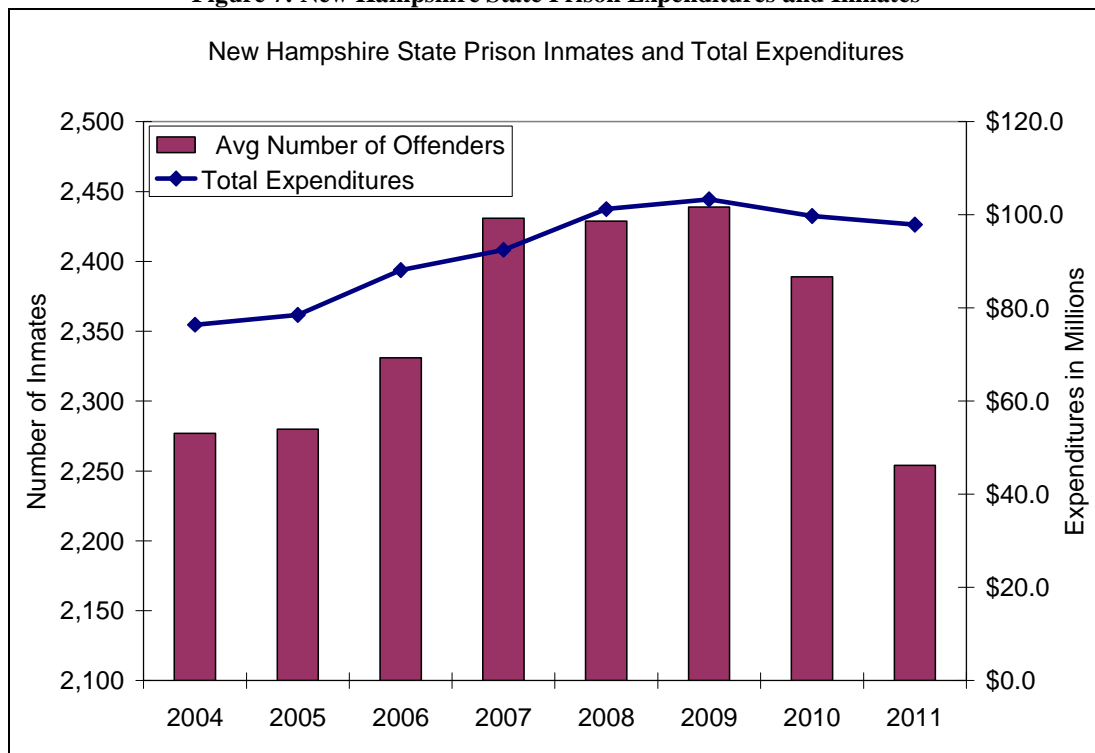


Chart does not include inmates in half-way houses, Secure Psychiatric Unit, or others not in facility

## Safety and cost-shifting

One of the public concerns about the Justice Reinvestment Act was that it would make the New Hampshire population less safe<sup>5</sup>. In particular, the provision allowing for the release of state prison inmates a month and a half before their scheduled release date raised concerns about a corresponding increase in crime. As shown on Table 1, those fears were unfounded.

**Table 1: New Hampshire Criminal Offenses 2008 to 2011**

<b>New Hampshire Offense Summary - State Totals</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Violent Offenses	19,276	19,372	20,026	18,786
Property Offenses	46,776	47,087	47,643	47,142
Drug Offenses	5,609	6,254	6,566	6,304
Public Order Offenses (not incl DUI, liquor law, etc.)	638	675	656	642
<b>All Offenses Total</b>	<b>72,299</b>	<b>73,388</b>	<b>74,891</b>	<b>72,874</b>

New Hampshire did not see an explosion in crime as a result of the Justice Reinvestment Act. In fact, the number of offenses actually declined in 2011, a time period including the full

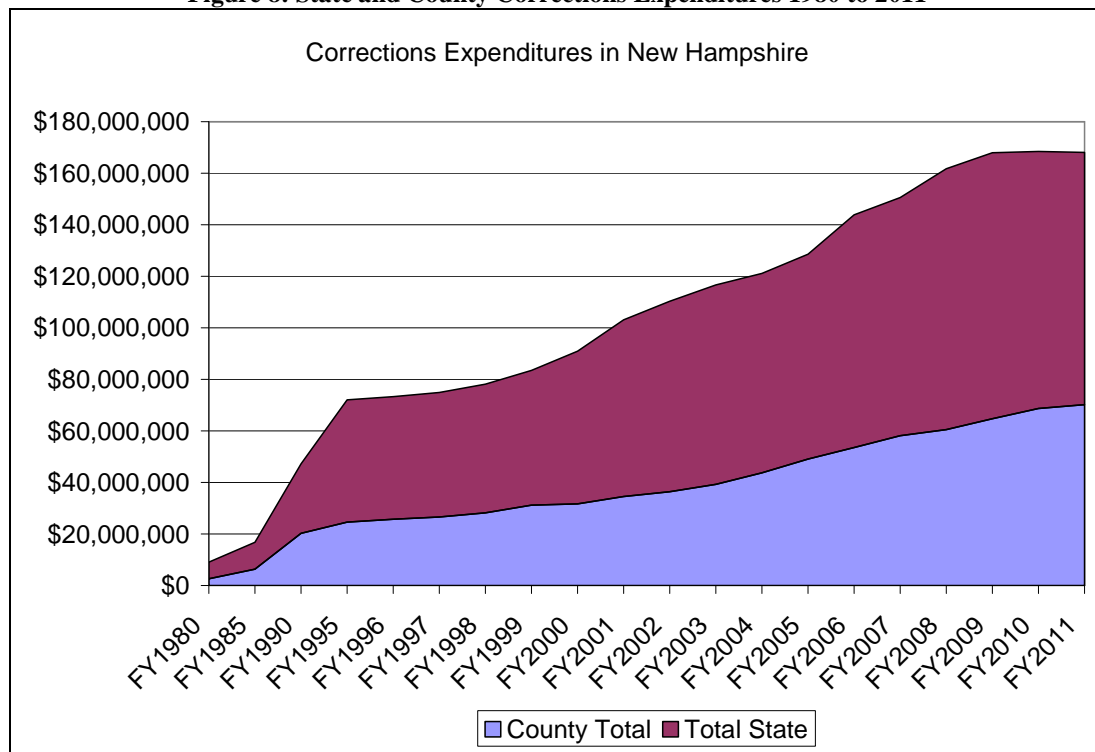
<sup>5</sup> “Lock up the bill: SB 500 compromises safety”, <http://www.unionleader.com/article.aspx?articleId=8af775c2-0755-40dc-a88e-b65cf21f496e&headline=Lock+up+the+bill%3A+SB+500+compromises+safety> and “Floyd goes free as neighbor lives in fear,” <http://www.unionleader.com/article.aspx?headline=Floyd+goes+free+as+neighbor+lives+in+fear&articleId=dae143ef-3efc-4944-9bd5-683abadc6d8b>

implementation of the Justice Reinvestment Act. Therefore, there is no empirical evidence that SB500 made people of New Hampshire less safe.

Another concern associated with reducing the state prison population through the Justice Reinvestment Act included “cost shifting” to New Hampshire counties and towns<sup>6</sup>. In other words, fewer inmates in state prison could mean greater cost to the counties because more inmates could be held in county jail.

The available data shows no evidence of increased county corrections expenditures (Figure 8: State and County Corrections Expenditures 1980 to 2011). The rate of growth of county corrections expenditures slowed, and some counties saw declines in county corrections expenditures after the Justice Reinvestment Act. Most of the moderate growth in county corrections expenditures from 2009 to 2011 came from two counties that built new corrections facilities that had been planned well before the Justice Reinvestment Act (SB500) went into practice<sup>7</sup>.

**Figure 8: State and County Corrections Expenditures 1980 to 2011**



<sup>6</sup> “County commissioner on lookout for SB 500 cost downshifts”, <http://www.infinews2.com/1002/cgi/cdsstory.pl?storyid=20101026109411002791> and “Shift in parole costs would be costly for county”, <http://www.laoniadailysun.com/pdf/2010/10/8.pdf>

<sup>7</sup> New correction facilities in Cheshire and Grafton Counties were finished in 2011 and 2012 respectively. Corrections expenditures in Cheshire County increased from \$27 million in 2008 to \$51 million in 2011, while corrections expenditures in Grafton County increased from \$34 million in 2008 to \$44 million in 2011.

There is also no evidence that the decrease in state prison population put more pressure on local law enforcement, or that it caused an increase in local government safety spending<sup>8</sup>. As shown in Table 2, city and town appropriations for police, after adjusting for population growth and inflation, grew by only 0.5 percent per year from 2007 to 2011. From 2010 to 2011 inflation adjusted per person expenditures dropped, while from 2001 to 2007 the annual growth rate was 2.6 percent per year.

**Table 2: Town Safety Expenditures Adjusted for Population Change and Inflation**

Year	Inflation Adjusted Spending per Person for Municipal Police		
	NH Cities	NH Towns	Total NH
2001	\$209.68	\$147.14	\$167.51
2002	\$214.77	\$154.55	\$174.03
2003	\$223.72	\$161.29	\$181.36
2004	\$231.32	\$165.12	\$186.29
2005	\$233.42	\$170.06	\$190.18
2006	\$229.92	\$172.07	\$190.35
2007	\$232.35	\$177.69	\$194.90
2008	\$231.07	\$177.75	\$194.56
2009	\$227.01	\$181.93	\$196.13
2010	\$230.58	\$185.91	\$200.02
2011	\$229.72	\$184.30	\$198.64

## Justice Reinvestment (partially) rescinded

SB52 was enacted in 2011 over concerns that SB500 limited the discretion of the adult parole board<sup>9</sup>. Specifically, violent offenders and sexual offenders were allowed to be released to parole (and community supervision) nine months before the expiration of their sentence. SB52 contained the following provisions:

- Excludes a prisoner convicted of a violent crime or a sexually violent offense from mandatory early supervised release if the parole board votes to do so;
- Provides the parole board with greater discretion to recommit a person who re-offends while on mandatory early supervised release;
- Requires that an offender placed on probation or parole for conviction of a felony offense that would require registration as a sexual offender or an offender against children shall not be placed on administrative supervision.

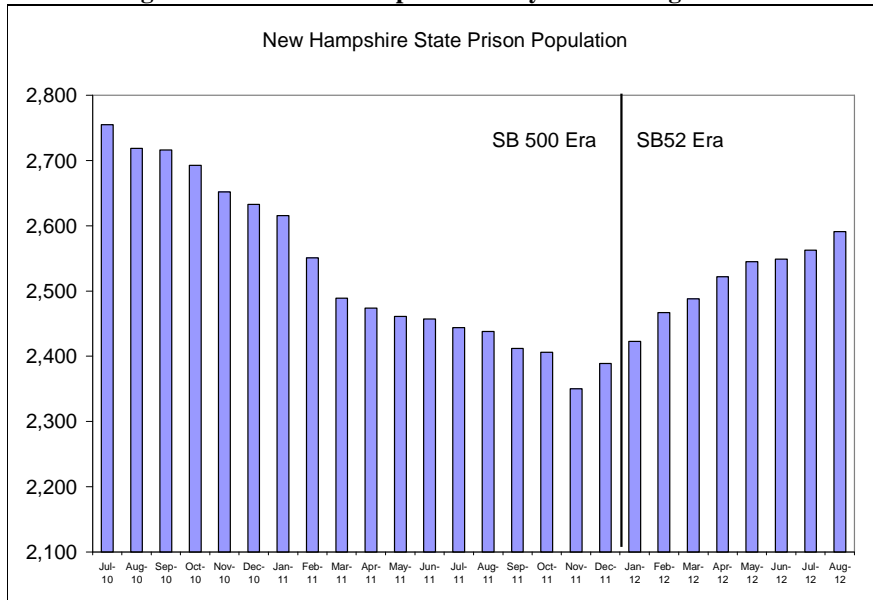
SB52 was passed and signed in June 2011, with most of the provisions of the law going into effect in late 2011. The provisions contained in SB52 have had an immediate impact on the state

<sup>8</sup> “Police Take Opposing Sides Over Inmate-Release Law”, <http://www.wmur.com/news/25198836/detail.html>

<sup>9</sup> “N.H. parole board outraged at effects of new law”, <http://www.seacoastonline.com/articles/20101005-NEWS-101009889>, and “New law ties, frustrates parole board”, <http://www.concordmonitor.com/article/217610/new-law-ties-frustrates-parole-board>, and “Predator parole: SB 500 keeps freeing them”, <http://www.unionleader.com/article/20110606/OPINION01/706069999>

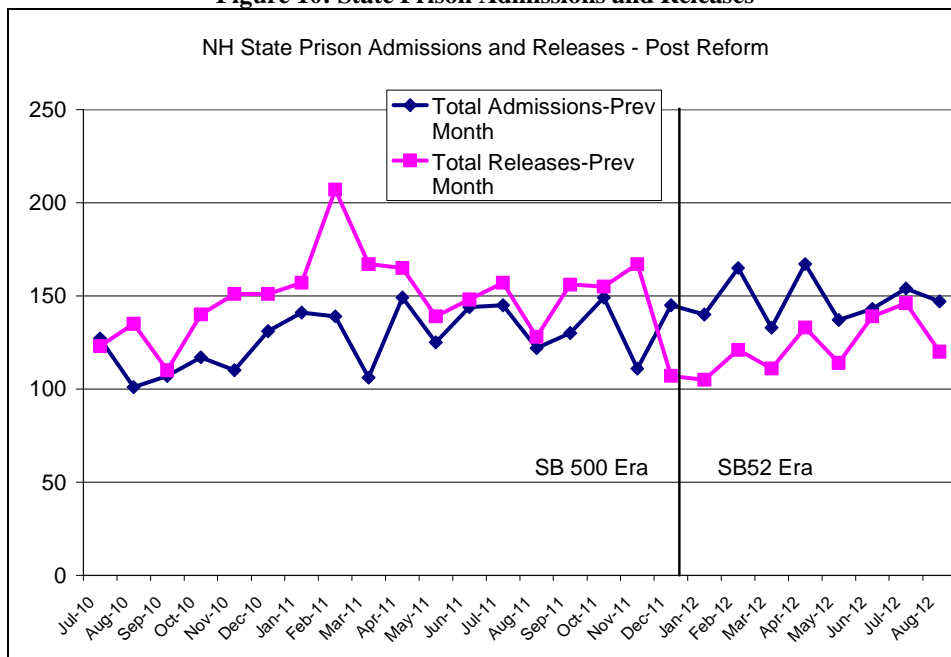
prison inmate population. Giving more discretion to the adult parole board lowered the number of inmates released on parole from about 150 per month in 2011 to about 100 per month in 2012. As shown on Figure 9, the state prison population has started to rise again, increasing by 200 inmates from December 2011 to August 2012.

**Figure 9: State Prison Population July 2010 to August 2012**



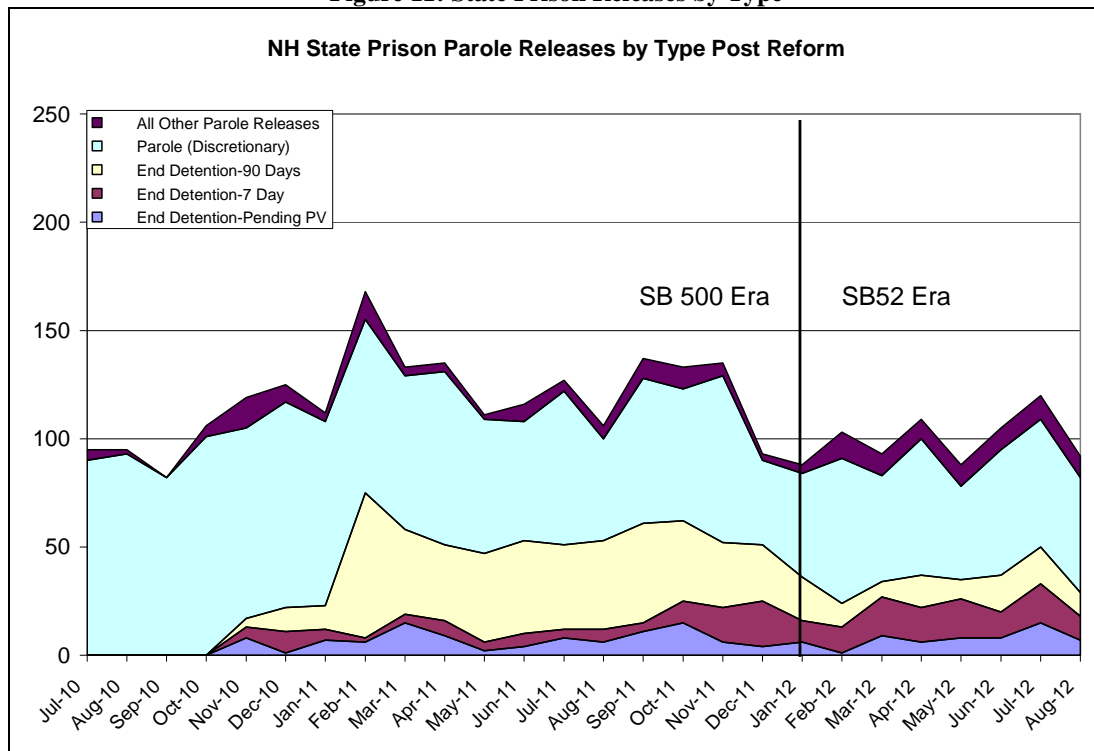
Releases exceeded admissions to state prison as SB500 was put into practice in late 2010 and into 2011. With the changes in the law brought on by SB52, admissions to state prison again exceeded releases from state prison through the year 2012.

**Figure 10: State Prison Admissions and Releases**



Releases had increased at the beginning of 2011, mostly driven by inmates being released to 90-day supervision periods (the yellow area on Figure 11, below). However when SB52 went into effect at the end of 2011, releases fell as a result. Fewer inmates are now released to 90 day supervision. Total monthly releases have declined from more than 150 per month (at the peak in February 2011) to about 100 per month (as of August 2012).

**Figure 11: State Prison Releases by Type**



The savings generated by the reduced prison population were intended to fund community-based programs to rehabilitate offenders. Now that the state prison population is increasing once again, those savings may disappear and reduce available funding for community based programs.

### **New Hampshire explores privatization**

HB2, the budget trailer bill in the 2011 session, established a legislative committee to study the idea of privatizing the state prison system. In late 2011, the Department of Administrative Services issued a request for proposals by vendors for the provision of correctional services or any other services provided by the Department of Corrections. The state issued three requests for proposals from businesses — one to build and operate a men’s prison, one for a female prison, and one for a ‘hybrid’ prison that would house male and female inmates on one campus. In April 2012, the state received four proposals each for the men’s and hybrid prisons and none for a women’s prison.

According to the Department of Corrections, one proposal identified potential prison sites in Lancaster, Northumberland and Hinsdale. Another contractor proposed building a new prison

next to the existing men's state prison in Concord, retaining and renovating some existing spaces at the current prison, while another suggested building in Manchester.

In July 2012 the Governor and Executive Council approved spending \$171,347 to hire a consultant to review the proposals to build and possibly run its prisons. The consultant report is due in September 2012.

HB2 also allowed the commissioner of the Department of Corrections to contract out pharmaceutical and nursing functions immediately. HB2 also authorized the commissioner of the Department of Corrections to enter into one or more contracts for the transfer and reception of not more than 600 inmates currently incarcerated at the state correctional facility in Concord to another facility outside the state.

Lastly, HB2 specifically forbids the department from closing the North Country facility located in Berlin as a result of meeting the requirements to privatize corrections services.

## **Conclusion**

SB500 enacted in July 2010 accomplished its goals of reducing state prison inmate population and bending the cost curve, but SB52, enacted in October 2011, caused inmate population to increase again. It is likely that less savings from reduced state prison inmate population could lead to less “justice reinvestment.”

Privatization in corrections is now being touted as the solution to rising prison costs by policy makers. But Justice Reinvestment had already slowed the increase in state corrections expenditures, with no increased danger to the public, or downshifting of safety costs to the political subdivisions.