

## ALTERNATIVES TO INCARCERATION IN A NUTSHELL

An “alternative to incarceration” is any kind of punishment other than time in prison or jail that can be given to a person who commits a crime.

Frequently, punishments other than prison or jail time place serious demands on offenders and provide them with intensive court and community supervision. Just because a certain punishment does not involve time in prison or jail does not mean it is “soft on crime” or a “slap on the wrist.” Alternatives to incarceration can repair harms suffered by victims, provide benefits to the community, treat the drug-addicted or mentally ill, and rehabilitate offenders. Alternatives can also reduce prison and jail costs and prevent additional crimes in the future. Before we can maximize the benefits of alternatives to incarceration, however, we must repeal mandatory minimums and give courts the power to use cost-effective, recidivism-reducing sentencing options instead.

FAMM supports the creation and use of alternatives to incarceration because:

- **They give courts more sentencing options.** Each offender and crime is unique, and prison or jail time may not always be the most effective response. If courts have options other than incarceration, they can better tailor a cost-effective sentence that fits the offender and the crime, protects the public, and provides rehabilitation.
- **They save taxpayers money.** It costs over \$28,000 to keep one person in federal prison for one year<sup>1</sup> (some states’ prison costs are much higher).<sup>2</sup> Alternatives to incarceration are cheaper, help prevent prison and jail overcrowding, and save taxpayers millions.
- **They strengthen families and communities.** Prison or jail time separates the offender from his or her spouse and children, sometimes for decades at a time. Alternatives to incarceration keep people with their families, in their neighborhoods and jobs, and allow them to earn money, pay taxes, and contribute to their communities.
- **They protect the public by reducing crime.** Over 40% of all people leaving prison will reoffend and be back in prison within three years of their release.<sup>3</sup> Alternatives to prison such as drug and mental health courts are proven to confront the underlying causes of crime (i.e., drug addiction and mental illness) and help prevent offenders from committing new crimes.
- **The public supports alternatives to incarceration.** Eight in ten (77%) adults believe that alternatives to incarceration (probation, restitution, community service, and/or rehabilitative services) are the most appropriate sentence for nonviolent, non-serious offenders and that prison or jail are appropriate only if these alternatives fail.<sup>4</sup>

Some of the most frequently used alternatives to incarceration are described here. More alternatives exist, but are too numerous to be included.

**Drug Courts** – Drug courts are a special branch of courts created within already-existing court systems. Drug courts provide court-supervised drug treatment and community supervision to offenders with substance abuse problems. All 50 states and the District of Columbia have at least a few drug court programs. There are no drug courts in the federal system. Some states have drug courts for adults and for juveniles, as well as family treatment or family dependency treatment courts that treat parents so that they might remain or reunite with their children. Drug court eligibility requirements and program components vary from one locality to another, but they typically

- Require offenders to complete random urine tests, attend drug treatment counseling or Narcotics Anonymous/Alcoholics Anonymous meetings, meet with a probation officer, and report to the court regularly on their progress;
- Give the court authority to praise and reward the offender for successes and discipline the offender for failures (including sending the offender to jail or prison);
- Are available to non-violent, substance-abusing offenders who meet specific eligibility requirements (e.g., no history of violence, few or no prior convictions);
- Are not available on demand – usually, either the prosecutor or the judge handling the case must refer the offender to drug court; sometimes, this referral can only be made after the offender pleads guilty to the offense; and
- Allow offenders who successfully complete the program to avoid pleading guilty, having a conviction placed on their record, or serving some or all of their prison or jail time; some programs also allow successful participants who have already pled guilty to have their drug conviction removed from their record.

*Average cost: Between \$1,500 and \$11,000 per participant per year<sup>5</sup>*

*Learn more at <http://www.nadcp.org>*

*<http://www.gao.gov/new.items/d05219.pdf>*

**Probation/Community Corrections** – Usually referred to as “community corrections” in the states (however, the federal Bureau of Prisons uses the term “community corrections” to refer to halfway houses (see below), a different alternative to incarceration), probation keeps the offender in the community but puts limits and obligations on his freedom. Probation can come with many conditions attached, including meeting regularly with a probation officer, staying under house arrest during certain parts of the day, taking random urine tests, remaining drug-free, working, doing community service, and participating in substance abuse or mental health treatment. If an offender does not comply with the probation conditions, more stringent supervision can be required, or, if the violation is serious, probation can be revoked and the person can be required to serve time in jail or prison. There are different varieties of probation:

- On **Intensive Supervisory Probation and Parole (ISP)**, probation officers have fewer cases, monitor offenders more closely, and meet with offenders more often.
- **Day reporting** requires offenders to report to a location similar to a probation office on a daily basis. Here, they undergo daily drug and alcohol tests and inform their supervisors of their plans for the day, including where they will work or search for employment.

*Average cost: Probation: \$9.92 per day per participant (state average)<sup>6</sup>*

*\$10.79 per day per participant (federal)<sup>7</sup>*

*ISP: \$6,000 per participant per year<sup>8</sup>*

*Day Reporting: \$20 per day per participant<sup>9</sup>*

*Learn more at <http://centerforcommunitycorrections.org>*

*<http://www.uscourts.gov/fedprob/system/system.html>*

**Halfway Houses** – Halfway houses (also called “community correction centers” or “residential reentry centers” by the federal Bureau of Prisons) are used mostly as an intermediate housing option to help a person return from prison to the community after he has served a prison sentence. Sometimes, though, halfway houses can be used instead of prison or jail, usually when a person’s sentence is very short. For example, halfway houses may be a good choice when a person has served time in prison, been released on parole, and then violated a parole condition and been ordered to serve a few months additional time for that violation. While in halfway houses, offenders are monitored and must fulfill conditions placed on them by the court. Usually, offenders must remain inside the halfway house except when they are going to court or to a job.

*Average cost: \$58-\$112 per day per participant (federal system)<sup>10</sup>*

*Learn more at <http://www.bop.gov/locations/cc/index.jsp>*

**Home Confinement/Electronic Home Monitoring** – Home confinement (also called “house arrest”) requires offenders to stay in their homes except when they are in certain pre-approved areas (i.e., at court or work). Often, home confinement requires that the offender be placed on electronic home monitoring (EHM). EHM requires offenders to wear an electronic device, such as an ankle bracelet, that sends a signal to a transmitter and lets the authorities know where the offender is at all times. Like probation, home confinement usually comes with conditions. If the offender violates those conditions, he can be put in jail or prison. Offenders on EHM usually contact a probation officer daily and take frequent and random drug tests. In many jurisdictions, an offender cannot be placed on EHM unless the court or a jail official recommends it.

*Average cost: \$5-15 per day per participant<sup>11</sup>*

*Learn more at <http://www.uscourts.gov/fedprob/supervise/home.html>*

*<http://www.justnet.org/Pages/home.aspx>*

**Fines and Restitution** – Requiring the offender to pay supervision fees, fines, and court costs can be used as an independent punishment or in addition to other punishments. “Tariff fines” are a set amount applied to every offender when a particular crime is committed (e.g., \$500 for driving while intoxicated), regardless of the offender’s income level or ability to pay. For the wealthy, tariff fines can be too small to be a meaningful punishment. For the poor, tariff fines can be too large, resulting in jail time when the offender cannot pay. “Day fines” are one solution. They are not a flat amount, but are based on the seriousness of the crime and the offender’s daily income. Wealthier offenders pay more and pay an amount that is a meaningful loss of income, while those with lower incomes pay an amount they can afford and avoid jail. Restitution requires offenders to pay for some or all of a community or victim’s medical costs or property loss that resulted from the crime.

*Learn more at*

*<http://www.vera.org/download?file=127/How%2Bto%2Buse%2Bday%2Bfines.pdf>*

**Community Service** – Community service can be its own punishment or can act as a condition of probation or an alternative to paying restitution or a fine (each hour of service reduces the fine or restitution by a particular amount, until it is paid in full). Community service is unpaid work by an offender for a civic or nonprofit organization. In federal courts, community service is not a sentence, but a special condition of probation or supervised release.

*Learn more at <http://www.uscourts.gov/fedprob/supervise/community.html>*

**Sex Offender Treatment and Civil Commitment** – Many sex offenders are placed on probation, with requirements that they attend a sex offender treatment program, report regularly to a probation officer, do not contact their victims, do not use the internet, and do not live or work in certain areas. Sex offender treatment programs can be inpatient (residential) or outpatient (non-residential) and generally use cognitive-behavioral therapy, counseling, and other approaches to reduce the likelihood that the person will commit another sex offense. About 20 states also have “civil commitment” programs, which place sex offenders in secure hospitals or residential treatment facilities for treatment. These offenders typically receive civil commitment only *after* they have finished serving a prison term for their sex offense. Offenders can be required to stay on civil commitment indefinitely, which means the programs can cost up to four times what it costs to keep an offender in prison.

*Learn more at <http://www.csom.org>*

**Mental Health Courts** – Mental health courts, like drug courts, are specialized courts that place offenders suffering from mental illness, mental disabilities, drug dependency, or serious personality disorders in a court-supervised, community-based mental health treatment program. Court and community supervision is combined with inpatient or outpatient professional mental health treatment. Offenders receive rewards for compliance with supervision conditions and are disciplined for noncompliance. They are also linked to housing, health care, and life skills training resources that help prevent relapse and promote their recovery. Often, offenders must first plead guilty to charges before being diverted to mental health court.

*Learn more at <http://consensusproject.org/mhcp>*

**Restorative Justice** – Restorative justice is a holistic sentencing process focused on repairing harm and bringing healing to all those who are impacted by a crime, including the offender. Representatives of the justice system, victims, offenders, and community members are involved and achieve these goals through sentencing circles, victim restitution, victim-offender mediation, and formalized community service programs. Sentencing circles occur when the victim, offender, community members, and criminal justice officials meet and jointly agree on a sentence that repairs the harm the offender caused. Victim-offender mediation allows the offender and victim to meet and exchange apologies and forgiveness for the crime committed. Restorative justice practices can be used alone or as a condition of a sentence of probation.

*Learn more at <http://restorativejustice.org>*

**Boot Camp** – Boot camp programs involve intense daily regimens that include physical exercise, individual counseling, educational classes, and studying for a GED. Today, boot camps are no longer used in the federal prison system and are rarely used in state corrections systems. Similar to a military boot camp, offenders follow a strict disciplinary code that requires them to wear short hair and uniforms, stand at attention before their officers, and address their superiors as “sir.” Offenders who complete the program and find a job can become eligible for early release. Once released, they may be put on probation.

Learn more at <http://www.ncjrs.gov/pdffiles1/nij/197018.pdf>

**Public Shaming** – Public shaming is public humiliation. It is used rarely and usually only for low-level misdemeanors. For example, a court ordered a convicted mail thief to stand outside a post office for a total of 100 hours wearing a sign that said, “I am a mail thief. This is my punishment.” Public shaming is intended to rehabilitate the offender and discourage him from reoffending.

Learn more at [http://www.usatoday.com/news/nation/2004-08-17-shame-sentencing\\_x.htm](http://www.usatoday.com/news/nation/2004-08-17-shame-sentencing_x.htm)

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<sup>1</sup>ADMINISTRATIVE OFFICE OF THE U.S. COURTS, NEWLY AVAILABLE: COSTS OF INCARCERATION AND SUPERVISION IN FY 2010 (June 23, 2011) (“The annual cost of keeping someone imprisoned in a Federal Bureau of Prisons facility in fiscal year 2010 was \$28,284.16.”), available at [http://www.uscourts.gov/News/NewsView/11-06-23/Newly\\_Available\\_Costs\\_of\\_Incarceration\\_and\\_Supervision\\_in\\_FY\\_2010.aspx](http://www.uscourts.gov/News/NewsView/11-06-23/Newly_Available_Costs_of_Incarceration_and_Supervision_in_FY_2010.aspx).

<sup>2</sup> See, e.g., MASSACHUSETTS DEP’T OF CORR., GENERAL INFORMATION ABOUT THE DOC (updated Sept. 2010) (“For Fiscal Year 2010, the average cost per year to house an inmate in the Massachusetts DOC was \$45,917.05.”), available at

[http://www.mass.gov/?pageID=eopsmodulechunk&L=3&L0=Home&L1=Public+Safety+Agencies&L2=Massachusetts+Department+of+Correction&sid=Eeops&b=terminalcontent&f=doc\\_faq&csid=Eeops](http://www.mass.gov/?pageID=eopsmodulechunk&L=3&L0=Home&L1=Public+Safety+Agencies&L2=Massachusetts+Department+of+Correction&sid=Eeops&b=terminalcontent&f=doc_faq&csid=Eeops).

<sup>3</sup> PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA’S PRISONS, Exhibit 1, available at [http://www.pewcenteronthestates.org/uploadedFiles/Pew\\_State\\_of\\_Recidivism.pdf](http://www.pewcenteronthestates.org/uploadedFiles/Pew_State_of_Recidivism.pdf).

<sup>4</sup> NAT’L COUNCIL ON CRIME & DELINQUENCY, ATTITUDES OF US VOTERS TOWARD NONSERIOUS OFFENDERS AND ALTERNATIVES TO INCARCERATION I (June 2009), available at [http://www.nccd-crc.org/nccd/pubs/2009\\_focus\\_nonserious\\_offenders.pdf](http://www.nccd-crc.org/nccd/pubs/2009_focus_nonserious_offenders.pdf).

<sup>5</sup> C. WEST HUDDLESTON, III, ET AL., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES 6 (May 2008), available at [http://www.ndci.org/publications/PCPII1\\_web.pdf](http://www.ndci.org/publications/PCPII1_web.pdf).

<sup>6</sup> PEW CENTER ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 12 (Mar. 2009), available at [http://www.pewcenteronthestates.org/uploadedFiles/PSPP\\_1in31\\_report\\_FINAL\\_WEB\\_3-26-09.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf).

<sup>7</sup> ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *SUPRA* NOTE 1.

<sup>8</sup> CENTER FOR COMMUNITY CORRECTIONS, WHY COMMUNITY CORRECTIONS WORKS: HOW ARE THEY FUNDED?, at [http://centerforcommunitycorrections.org/?page\\_id=38](http://centerforcommunitycorrections.org/?page_id=38).

<sup>9</sup> DALE PARENT, JIM BYRNE, ET AL., NATIONAL INSTITUTE OF JUSTICE, “Day Reporting Centers,” in *Issues and Practices in Criminal Justice, Vol. 1* (1995).

<sup>10</sup>MARY SHILTON, ET AL., WHAT WORKS IN RESIDENTIAL REENTRY CENTERS 3 (Dec. 2010), available at <http://www.iccaweb.org/documents/Monograph1.pdf> (showing average per diem cost for nine federal halfway houses studied was \$82).

<sup>11</sup> NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTER, KEEPING TRACK OF ELECTRONIC HOME MONITORING, NLECTC BULLETIN, at 1 (Oct. 1999), available at <http://www.justnet.org/Lists/JUSTNET%20Resources/Attachments/859/Elec-Monit.pdf>.