EXHIBIT 1
DATE 01/11/2013
HB Joint Approps SUB Judicial

National Institute of Corrections
Advisory Board Public Hearing
"Balancing Fiscal Challenges, Performance-Based Budgeting, and Public Safety"

Written Testimony of Michael Jacobson
President and Director
Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279

August 22, 2012

My thanks to the members of the National Institute of Corrections Advisory Board for the opportunity to discuss the critical matters of crime prevention and public safety during times of rising costs, shrinking budgets, and limited resources. My name is Michael Jacobson, and I serve as President and Director of the Vera Institute of Justice. I have worked in corrections and municipal management for much of my career.

My 20 years of government service began in the New York City Office of Management and Budget where, as Deputy Budget Director, I was responsible for public safety agencies. I also served as the New York City Commissioner of Probation under Mayor David Dinkins, and then as Commissioner of the Department of Correction under Mayor Rudolph Giuliani.

The Vera Institute of Justice is a national research and policy organization with offices in New York City, Washington, DC, Los Angeles, and New Orleans. Since 1961, Vera has combined expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people reply on for justice and safety. This testimony summarizes Vera's work and findings related to incarceration costs, as well as the use of cost-effective, evidence-based strategies to improve criminal justice practices and public safety outcomes.

Vera's current work reflects 50 years of innovation and expertise. In 1961, philanthropist Louis Schweitzer and Herb Sturz, a young magazine editor, quietly launched a program with a new approach to bail. Their revolutionary idea was that many low income and indigent people accused of committing a crime could be relied on to appear in court if released without money bail. Their research had demonstrated that New Yorkers too poor to afford bail but with strong ties to their communities could be released and still show up for trial. This evidence changed how judges make release decisions in criminal courts around the world and has saved hundreds of counties thousands in jail costs while minimizing disruption in the lives of defendants. What started with the Manhattan Bail Project in New York City led, ultimately, to the founding of the Vera Institute of Justice to pursue similar initiatives.

Today, Vera staff is leading more than two dozen separate projects that aim to increase the efficacy of justice systems while also working to make a difference in the lives of individuals. Born from a single innovative idea, Vera is currently active in 43 states and across the globe.

During the past 50 years, Vera's projects have raised awareness about the plight of men and women confined in unsafe and unhealthy correctional facilities, expanded opportunities to people with developmental disabilities, and protected children in foster care. Informed by our government partners' input on their needs, Vera's experts approach each project with a detailed analysis of existing data, policies, and practices. With in-depth knowledge about a jurisdiction, Vera can tailor recommendations and expert assistance to specific conditions. Vera staff foster collaboration and information sharing among all those inside and outside government with a stake in solving the problems identified, and then help our partners to establish their own data-gathering capacity to track their ongoing performance. This approach is not unique to Vera, of course; it is one that the National Institute of Corrections has championed for more than 30 years.

I. Rising Prison Costs

With 2.4 million individuals currently incarcerated and the current fiscal climate, the Advisory Board's consideration of these issues is timely.[1] While the full cost of prisons has long been hidden, Vera's recent work has made significant contributions to the field in understanding the true cost of incarceration and, going forward, in demonstrating how to calculate this cost. Vera is also building the capacity of jurisdictions to use cost-benefit analysis to ensure that limited resources are effective in achieving the intended goals of the justice system.

From my own experience, I know that operating a safe, secure, humane, and well-programmed prison is, and should be, an expensive proposition. Prisons are, as sociologists say, "total institutions" that provide everything necessary for prisoners to live and to be equipped to return to the community. This means ensuring appropriate levels of uniformed security staff, food, programming, recreational, and educational opportunities (all necessary to ensure order and reduce high recidivism rates), infrastructure, maintenance and upkeep, and physical and mental health care for a population with significant physical and mental illness. In this field, cutting facility costs can have dire consequences.

For example, mental health care for the prison population is expensive but it is crucial—not only for the prisoners and staff but for the public's safety when incarcerated people are released. Rather than asking corrections officials to chip away at facility costs, policymakers looking to reduce prison expenditures should take steps that will reserve incarceration for those who most warrant it and develop effective, lower-cost alternatives for others. The problem of prison costs isn't just that they are rising; it is also the declining benefits of locking up ever-larger numbers of low-level offenders. The declining marginal benefits to public safety are equally noteworthy: the price of any public service must be considered in the context of its benefits and its opportunity costs.

Cost-benefit analyses in Washington State and Oregon illustrate this point. An analysis prepared by the Oregon Criminal Justice Commission for the state legislature illustrates the concept of

[1] U.S. Department of Justice, Federal Bureau of Prisons, " Weekly Population Report", (July 31, 2012) http://www.bop.gov/news/weekly_report.jsp; Matthew Cooper, William J. Sabol, Heather C. West, Prisoners in 2008, Bureau of Justice Statistics (July 31, 2012), http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763.*in 2008*, Bureau of Justice Statistics (July 31, 2012), http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763.

diminishing marginal returns in cost-benefit terms.[2] In 1995, incarcerating an additional offender in Oregon had a cost-benefit ratio of $3.31: for every dollar invested in incarceration, $3.31 in benefits was returned through avoided crime. As incarceration in Oregon increased, marginal returns began to decrease and, by 2005, this number went to $1.03: the investment just broke even. The difference is even greater when broken down by type of offender.

An analysis prepared by Washington State demonstrates the benefit when we lock up violent offenders: in 2005, each dollar invested in incarcerating violent offenders in that state yielded $4.35 in public safety benefits. The cost of incarcerating drug offenders, however, far exceeded the benefits: every dollar invested in incarcerating drug offenders yielded $0.35 in public safety benefits—the costs far outweigh the benefits.[3]

A. Vera's Analysis: *The Price of Prisons, What Incarceration Costs Taxpayers*

Decades of escalating incarceration rates and soaring corrections costs have been well documented and are a familiar story to policymakers and the public.[4] Over the past 40 years, state prison populations have grown by more than 700 percent; today, more than 1 in 104 adults nationwide are in prison or jail.[5] Rising incarceration rates have come with great costs to taxpayers. States' correctional spending—on prisons, jails, probation, and parole—has nearly quadrupled over the past two decades. Aside from Medicaid, corrections is now the fastest-growing budget item for states.[6]

Existing figures, however, often underestimate the total cost of state prisons—and in some states, these overlooked costs are substantial. To address this information gap, Vera's staff, with support from the Pew Center on the States, developed a method to measure the comprehensive taxpayer cost of prison in a consistent manner across states. Among the 40 states participating in the survey Vera staff conducted, the cost of prisons was $39 billion in fiscal year 2010, $5.4 billion more than what their correctional budgets reflected. The survey revealed that in six states, including a few with some of the largest prison systems in the country, more than 20 percent of prison costs are outside the corrections budget. Contributions for retiree health care and the underfunding of retiree health care plans are, in the aggregate, the largest taxpayer cost outside the corrections budget.

---

[2] Criminal Justice Commission, Report to the Legislature, State of Oregon, Criminal Justice Commission January 2007 www.ocjc.state.or.us/CJC/docs/cjc2007reporttolegislature.pdf (August 7, 2012)

[3] Oregon Criminal Justice Commission report, January 2007.

[4] This section is adapted from Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*. New York: Vera Institute of Justice, 2012.

[5] Pew Center on the States, Prison Count 2010: State Population Declines for the First Time in 38 Years (Washington, DC: The Pew Charitable Trusts, April 2010); Pew Center on the States, The High Cost of Corrections in America: InfoGraphic (Washington, DC: The Pew Charitable Trusts, April 2010) http://www.pewstates.org/research/data-visualizations/the-high-cost-of-corrections-in-america-infographic-85899397897.

[6] Analysis by Pew Center on the States based on National Association of State Budget Officers, "State Expenditure Report" series, http://nasbo.org/Publications/StateExpenditureReport/tabid/79/Default.aspx (accessed December 1, 2011).

The resulting report, *The Price of Prisons, What Incarceration Costs Taxpayers,* provides both a comprehensive view of the full cost of incarcerating a sentenced adult offender in state prison, and individual state profiles of the participating 40 states.[7]

However, smaller corrections budgets do not necessarily correlate with safer community outcomes. If a state achieves lower per-inmate costs through overcrowding, there may be negative consequences for staff and inmate safety as well as for recidivism rates, increasing long-term costs. On the other hand, enhanced treatment and programming may raise per-inmate cost but improve staff and inmate safety as well as help to lower recidivism rates, thus reducing long-term overall costs.

Some states have both decreased their prison populations and reduced violent crime. In New York and New Jersey, for example, violent crime has declined dramatically at the same time that both states have relied less on the use of incarceration. From 1999 to 2009, the incidence of violent crime declined by 30 percent in New York and 19 percent in New Jersey, while declining by only 5 percent in the rest of the country.[8] At the same time, the prison population decreased by 18 percent in both New York and New Jersey after sentencing reform and changes in policing and parole practices.[9] These examples provide evidence that crime rates may continue to decline in tandem with the implementation of sound policies that reduce reliance on incarceration.

B. Cost-Benefit Analysis: A Tool for Analysis and Planning

Few jurisdictions have a sense of the return they receive on their financial investment in criminal justice. In order to provide expertise and assistance in this area, Vera established a cost-benefit analysis unit in 2009 to examine the efficacy of justice programs.

In 2010, North Carolina's Youth Accountability Planning Task Force contracted with Vera's Cost-Benefit Analysis Unit (CBAU) to examine a proposed justice system policy change. The North Carolina group asked CBAU to assess the implications of raising the age of juvenile jurisdiction in the state—specifically, handling 16- and 17-year-olds charged with misdemeanors and low-level nonviolent felonies in juvenile courts instead of in the adult system. Although many experts believe that the juvenile justice system is more effective than the criminal justice system in responding to delinquent behavior, it can be more expensive to operate.

Vera found that the proposed shift would cost North Carolina $71 million annually but would generate $123 million in recurring benefits to youth, victims, and taxpayers over the long term. The analysis not only factors in savings that accrue from preventing future crimes and incarceration but also projects increased lifetime earnings for young people whose convictions are sealed in juvenile court and cannot become a barrier to employment. Despite the evidence, however, the state has not yet raised the age of juvenile jurisdiction.

---

[7] The full report and state-by-state analysis are available on Vera's website: http://www.vera.org/priceofprisons.
[8] Vera's calculations, using data from Uniform Crime Reporting Statistics.
[9] Vera's calculations, using National Prisoner Statistics data from Bureau of Justice Statistics.

C. Cost-Benefit Knowledge Bank for Criminal Justice

Vera created the Cost-Benefit Knowledge Bank for Criminal Justice (CBKB) with support from the U.S. Department of Justice's Bureau of Justice Assistance (BJA). CBKB aims to broaden the knowledge of practitioners and policymakers about criminal justice cost-benefit analysis by supporting the capacity of state and local governments to promote, use, and interpret cost-benefit analyses in criminal justice settings.

CBKB's website, CBKB.org, launched in 2011, serves as a clearinghouse for resources and research on cost-benefit analysis in criminal justice and as an active center for a growing community of practitioners. Vera staff has developed educational and training materials available on CBKB.org—including podcasts, videos, and a cost-benefit toolkit—so that a wide variety of national audiences can learn the principles and methods of cost-benefit analysis. Vera has also convened policymakers, practitioners, and experts in roundtable discussions of cost-benefit topics of emerging interest. Currently, Vera is providing targeted technical assistance to four jurisdictions—Allegheny County, Pennsylvania; Denver, Colorado; Kent, Washington; and York County, Pennsylvania—to help local policymakers build their capacity to use cost-benefit analysis.

II. Restricting Budgets at the State and Federal Level

States can reduce their prison costs substantially by changing their sentencing and release policies, reserving the use of prison for offenders who pose the greatest risk and relying on community-based options for people who commit low-level, nonviolent crimes. Some states have rolled back release policies that extended the time that people spent in prison. For example, in 2008, Mississippi reduced the percentage of sentences that nonviolent offenders must serve from 85 percent to 25 percent—a policy shift that has substantially reduced prison terms for thousands of people.[10] Other states have expanded "earned time" credits for inmates who complete programs designed to reduce recidivism.[11] In a 2010 survey of state corrections departments, Vera found that at least 20 states had taken steps to moderate length of stay.[12] With the ground-breaking leadership of the National Institute of Corrections, state and local policymakers are focusing on strategies and services shown to reduce recidivism, including: effective reentry planning; the use of validated risk and needs assessments; treatment and other services targeting criminogenic needs; and certain sanctions for violations of probation or parole.

Vera has been providing assistance to state and local partners seeking to implement these strategies through its work in Los Angeles County and in New Orleans, as well as through its Justice Reinvestment Initiative work and its Segregation Reduction Project.

---

[10] JFA Institute, *Reforming Mississippi's Prison System* (Washington, DC: JFA Institute) 2. http://www.percenteronthestates.org/uploadedfiles/wwwpewcenteronthestates.org/Initiatives/PSPP/MDOCPaper.pdf ?n=8407(accessed December 13, 2011)

[11] Vera Institute of Justice, *The Continuing Fiscal Crisis in Corrections* (New York: Vera Institute of Justice, 2010), 17.

[12] Ibid.

A. Justice Reinvestment Initiative (JRI)

Justice reinvestment is a data-driven approach to corrections policy that seeks to cut spending by reducing prison and jail populations and to reinvest savings in community-based practices that have been empirically shown to improve safety. This approach was pioneered 30 years ago by NIC in its National Prison and Jail Overcrowding Project and in its Intermediate Sanctions Project, but improved data capture and analysis capacity in virtually every state and many counties has broadened its acceptance. Supported by BJA, Vera staff provides expert assistance throughout the legislative process, followed by technical and policy support to ensure effective implementation of legislative reforms. Vera is currently providing technical assistance in Arkansas, Delaware, Kentucky, Louisiana, and South Carolina and will soon begin work in Georgia and Missouri. This assistance includes data and policy analysis, policy development, support in implementing new programs and policies, translating the new policies into practice, and ensuring through improved data collection that related programs and system investments achieve projected outcomes.

In Delaware, for example, Vera staff worked closely with the Delaware Justice Reinvestment Task Force, established by Governor Jack Markell in July 2011. Vera worked with state agencies to analyze administrative data—from crime and arrest through parole and probation supervision—to determine the factors that contribute to the size of the prison population. With this analysis—in combination with a thorough qualitative analysis of community supervision practices, victims' needs, and the use of system-wide assessment—Vera assisted the task force in developing practical, evidence-based policies to reduce spending while maintaining public safety. The resulting JRI legislation, SB 226, passed both houses of Delaware's General Assembly with large margins of support. Governor Markell signed the bill on August 8, 2012, and Vera plans to continue collaborating with Delaware officials to implement the law.[13]

In Kentucky, Vera staff is providing technical assistance to support the implementation of justice reinvestment strategies after the state enacted the Public Safety and Offender Accountability Act, HB 463, in March 2011. Vera staff has worked closely with officials from the Kentucky Administrative Office of the Courts and the Kentucky Department of Corrections to create a justice reinvestment working group; develop implementation plans with agency officials; provide technical assistance to implement a validated pretrial risk assessment instrument tool; increase the state's capacity to use evidence-based strategies throughout its criminal justice system; develop performance measures to track the impact of justice reinvestment policies; facilitate the process of keeping policymakers apprised through frequent progress reports and testimony to relevant legislative committees; and facilitate Kentucky's receipt of seed funding from BJA to assist the state in jumpstarting justice reinvestment programs.

B. Vera's Segregation Reduction Project

As detailed extensively in the first federal hearing on segregation—also known as solitary confinement—just weeks ago, the Senate Judiciary's Crime Subcommittee began to examine one practice that contributes significantly to prison costs. Since the 1980s, prisons in the United States have increased their reliance on segregation to manage difficult populations in their

[13] See http://news.delaware.gov/2012/08/09/governor-signs-justice-reinvestment-act/

overcrowded systems. According to the U.S. Department of Justice's Bureau of Justice Statistics (BJS), the number of people in restricted prison housing units nationwide increased from 57,591 in 1995 to 81,622 in 2005.[14] Segregation was originally developed as a method for handling highly dangerous people, but it is increasingly used to punish minor violations that are disruptive but not violent, such as talking back (insolence), being out of place, failure to report to work or school, or refusing to change housing units or cells. In some jurisdictions, according to analysis conducted by Vera, these prisoners—who do not pose a threat to staff or other prisoners—constitute a significant proportion of the population in segregated housing.

Keeping people in segregation is expensive. In 2003, Ohio reported that it cost $149 a day per person to house a prisoner in the Ohio State Penitentiary—Ohio's supermax—compared with $101 per day per person in a maximum-security facility and $63 per day for a person incarcerated in the general prison population.[15] The majority of the higher costs come from the need for additional staff to monitor segregation units. For example, the supermax required one corrections officer for every 1.7 prisoners; maximum-security housing required one officer for every 2.5 prisoners.[16]

Mississippi provides a clear example of the fiscal benefits of reducing the use of segregation. Commissioner of Corrections Christopher Epps described the changes as follows: "The Mississippi Department of Corrections administrative segregation reforms resulted in a 75.6% reduction in the administrative segregation population from over 1,300 in 2007 to 316 by June 2012. The administrative segregation population reduction has not resulted in an increase in serious incidents. The administrative segregation reduction along with the implementation of faith-based and other programs has actually led to 50% fewer violent incidents at the penitentiary. The Mississippi Department of Corrections was able to close Unit 32 [administrative segregation unit] in January 2010 due to the reduced administrative segregation population, resulting in an annual savings of approximately $5.6 million."[17]

Given the current fiscal crisis, many more jurisdictions now are looking for new and effective paths forward, away from reliance on this expensive and at times inappropriate form of incarceration.[18]

---

[14] James J. Stephan, *Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Bureau of Justice Statistics, National Prisoner Statistics Program, 2008, NCJ 222182). BJS requests information on people being held in "restricted housing units" but does not provide definitions for restricted housing units or for different types of segregation for respondents. As a result, the "restricted housing" category may include prisoners held in protective custody and death row units, as well as special needs and mental health units. BJS statistics may not accurately capture the numbers of prisoners in segregated settings. The BJS census includes both state and federal prisons, but excludes military facilities, local detention facilities, immigration and customs enforcement facilities, and facilities that only house juveniles.

[15] Daniel P. Mears "Evaluating the Effectiveness of Supermax Prisons" (Urban Institute Justice Policy Center, 2005). Available at https://www.ncjrs.gov/pdffiles1/nij/grants/211971.pdf.

[16] Ibid.

[17] *Reassessing Solitary Confinement: TheHuman Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of Christopher B. Epps, Commissioner of Corrections, State of Mississippi).

[18] Angela Browne, Alissa Cambier, and Suzanne Agha, "Prisons Within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter* 24, no. 1 (2011): 46-49.

III. Concluding Statement

Every Vera project begins with an examination of how a targeted part of the justice system really works. Often, this inspires the design of a practical experiment or the development of a rational course for reform. Whatever path our work takes, Vera's goal is to help government partners achieve measurable improvements in the quality of justice they deliver and to share what they've learned with people around the world. The time has come to address the rising costs of prisons. The question before us is not "How can we run a cheaper prison?" Instead, we need to ask, "How can we best use scarce resources to keep the public safe?"

With that in mind, I would like to thank the National Institute of Corrections' Advisory Board for holding this important public hearing on the costs of prisons. I look forward to continuing our dialogue on this serious and far-reaching issue.

Scott Crichton
Executive Director

American Civil Liberties Union of Montana
7 West 6th Avenue
Power Block, Suite 3B
PO Box 1317
Helena MT 59624

406-443-8590
406-457-5484 fax
406-670-7872
scottc@aclumontana.org
www.aclumontana.org