

Testimony on Senate Bill 780
Senate Committee on Veterans & Emergency Preparedness
April 14, 2015

Mr. Chairman and members of the committee, by way of introduction, I am a veteran of the U.S. Army, having served with First Armored Division artillery units during the mid-1970s. For the last 28 years, I have worked as a criminal-defense lawyer, with my last 25 years working here in Oregon.

Last summer, Robert Wilz, who is here with me today and is a decorated veteran of the Vietnam War, brought to my attention that the Department of Corrections (DOC) does not provide counseling to inmate-veterans who suffer from post-traumatic stress disorder (PTSD). Mr. Wilz further explained that the DOC provides no such counseling in its alcohol and drug treatment alternative incarceration programs (AIPs).

As the first attachment explains, AIPs run on a nine-month cycle. The first six months are served in a minimum-security prison facility, and the last three months are done in a community-based, transitional-leave program. Successful completion yields up to a two and one-half year prison sentence reduction.

The lack of PTSD counseling in the alcohol and drug treatment AIPs is the specific and limited focus of Senate Bill 780. The bill would require PTSD counseling for veteran-inmates in those particular AIPs. Psychologist Robert Stanulis, who also is here with me today, will explain both the deficiencies of not treating for PTSD when it is the root cause of an alcohol or drug problem, and the efficacy of PTSD counseling for veteran-inmates. *See also* Memorandum from Jennelle Meeks Barton (attached).

With assistance from Sen. Chip Shields (see attached email), I determined that although the DOC provides diagnostic assessment and other forms of treatment for PTSD, for stated safety reasons, the DOC provides no PTSD counseling services in any of its institutions. DOC data (see attachments) establish that as of 2013, veterans comprised 19.1% of the state's prison inmate population. By far and away, this is the nation's highest known veteran-imprisonment rate (see attached graph). SB 780's requirement of PTSD counseling for veteran-inmates in the alcohol and drug treatment AIPs should reduce recidivism rates and, therefore, the number of veterans in Oregon prisons.

We estimate that 140 inmates are in prison-based drug and alcohol treatment AIPs. If the state's 19.1% veteran-imprisonment rate applies in AIPs, 27 veterans are in prison-based drug and alcohol treatment AIPs.

Based on our own criminal-case experience, we estimate that 75% of veteran-defendants suffer from PTSD. Assuming that veterans in prison-based drug and alcohol treatment AIPs suffer from PTSD at that same rate, then at any given time, 20 veterans in prison-based drug and alcohol treatment AIPs need PTSD counseling. Because the in-prison portion of an AIP runs for six months, over the course of a biennium, the DOC would provide 80 veterans the PTSD counseling that SB 780 requires (although that is a liberal estimate; the actual number could be much lower).

Implementation of SB 780 would involve a four-step process:

1. Developing the counseling program itself.
2. Developing a method for identifying the veterans in prison-based drug and alcohol treatment AIPs.
3. Developing a method for identifying the veterans who suffer from PTSD.
4. Applying the counseling program to PTSD-afflicted veteran-inmates.

All of us who have been working on the SB 780 concept—in particular, Belle Landau who is here with me today and is the executive director of the Returning Veterans Project—would be available to assist the DOC with this implementation process.

I should next mention that over the last few years, I have worked on three bills that amended the state's criminal laws to the exclusive benefit of veterans: Senate Bill 999 (2010), House Bill 2702 (2011), and Senate Bill 124 (2013). Notwithstanding concerns voiced by others, the law **clearly** establishes that these types of bills are constitutional. *See Regan v. Taxation with Representation*, 461 US 540 (1983); *MacPherson v. Dept. of Admin. Services*, 340 Or 117 (2006).

Conversely, I should mention that not providing the counseling that SB 780 envisions **may** be unconstitutional. *Farmer v. Brennan*, 511 US 825 (1994) (deliberate indifference to inmate's serious medical needs could violate Eighth Amendment). Similarly, not providing the counseling could violate the Americans with Disabilities Act (ADA). *See Penn. Dept. of Corrections v. Yeskey*, 524 US 206 (1998). *See also United States v. Georgia*, 546 US 151 (2006) (inmate may seek monetary damages for ADA violation).

I appreciate the Committee's consideration of SB 780. I urge the Committee's support for the bill, and would gladly try to answer any questions the Committee may have.



Issue Brief

OREGON DEPARTMENT OF CORRECTIONS

Alternative Incarceration Programs

Overview

Alternative Incarceration Programs (AIPs) are intensive prison programs offered by the Oregon Department of Corrections (DOC) to selected inmates. In order to participate in an AIP, a judge must include AIP eligibility in the sentence imposed in court.

Oregon's first AIP began in 1994 as a boot camp. That AIP program no longer exists, and the focus now is on changing criminal thinking and behavior, and drug and alcohol treatment.

Alternative incarceration programs prevent future criminal behavior

The cognitive restructuring and the alcohol and drug treatment AIPs all have structured 14-hour days that require treatment, physical work, exercise, and service to the community. Participants live in dedicated housing units for about six months and participate in programs that stress personal responsibility and accountability. Inmates accepted into the alcohol and drug AIPs must also participate in intensive addiction treatment. The curriculum includes preparing for employment, developing healthy relationships and family skills, and recognizing and changing criminal-thinking errors. Participants also focus on developing healthy decision-making skills and habits for successful community living.

AIP has two phases. Inmates who successfully complete the 180-day residential phase move into the community. Still under the custody of the DOC, they are closely supervised by parole officers for 90 days while practicing the skills and discipline learned in prison. Those who complete this "non-prison/transitional leave" phase are eligible to have their prison sentences reduced. These time cuts average about 13 months. After non-prison/transitional leave, offenders are supervised by parole officers while completing their post-prison supervision sentences.

The results of Oregon's AIPs are carefully tracked. Outcomes of each program, as well as a control group

will be researched, evaluated, and compared to each other and to other prison programs to guide future policy decisions.

Oregon's four alternative incarceration programs

The men's cognitive restructuring AIP encourages and supports new pro-social beliefs and behaviors. It focuses on cognitive skills, alcohol and drug education, work skills and ethics. The cognitive program also teaches inmates how to build and maintain positive relationships. Inmates learn to accept responsibility for their criminal behaviors and the harm they caused others. The men's cognitive restructuring AIP graduates about 225 inmates annually.

The women's cognitive restructuring AIP stresses personal responsibility and accountability. The program extensively addresses pro-social skill development and provides opportunity to practice these skills through the use of group activities, discussion, role-plays, homework and lecture. Additionally, the use of *Interactive Journaling*® is an integral component of the program, as well as individual case management in assisting participants with transition back to the community. The women's cognitive restructuring AIP will graduate approximately 60 inmates each year.

The men's alcohol and drug treatment AIP is an intensive residential treatment program focusing on developing personal accountability and responsibility through a structured daily routine that involves physical work, exercise, and behavioral skill development. Group and individual addiction treatment includes 12-step and other recovery activities where participants learn the skills necessary to change their behavior and increase their personal accountability and responsibility. Additional interventions prepare inmates for gainful employment and teach them how to develop and maintain pro-social relationships and family skills. They also learn to identify and change criminal thinking errors and develop healthy decision-making skills and habits for successful community living. About 350 men will

participate in the alcohol and drug treatment AIP each year.

The women's alcohol and drug treatment AIP is a learning environment where women work to develop the pro-social skills needed for life outside prison. Inmates in the program participate in intensive addiction treatment and participate in individual and group counseling. Participants learn the skills necessary to change their behavior and increase their personal accountability and responsibility. They are required to develop healthy daily routines that involve physical work and exercise. A strong emphasis is placed on preparing for gainful employment and successful living in the community. Every year the women's alcohol and drug treatment AIP will serve about 100 women.

Eligibility criteria

Qualified inmates must apply to be accepted into any of the four AIPs.

Other criteria apply, but the basic qualifications are:

- A judgment order from the court that allows participation in an AIP.
- A qualifying offense (no mandatory minimum sentences or sentencing under another disqualifying law).
- Custody classification level 1 or 2.
- Enough time remaining to complete the 270-day program.
- No open detainer that would still be in effect at the time of non-prison/transitional leave.
- Ability to grasp the fundamental components of the program.

The selection process

All inmates are carefully evaluated when they enter DOC custody. Each inmate receives an individual corrections plan to address criminal risk factors; among those factors is alcohol and drug abuse. Eligible inmates are prioritized based on these risk factors and admitted into the appropriate program as space permits.

Active participation required

Inmates may be removed from AIP at any time for rule infractions, lack of effort or motivation, poor program progress, or lack of positive change. Inmates who fail any phase of an AIP or who voluntarily request to be removed from the program will return to regular incarceration to serve the balance of their sentences.

Statutory authority

ORS 421.502, 421.510, 421.512, Chapter 464 (2003 Laws), effective date: January 1, 2004.

For more information, please contact:

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**The mission of the
Oregon Department of Corrections
is to promote public safety by
holding offenders accountable for their
actions and reducing the risk of
future criminal behavior.**



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70-DOC/GECO: 4/7/14

MEMORANDUM

TO: Jesse Wm. Barton
Attorney at Law

FROM: Jennelle Meeks Barton
Research Attorney

SUBJECT: PTSD Treatment for Imprisoned Veterans

DATE: April 9, 2015

The following is a survey the articles exploring Post Traumatic Stress Disorder (PTSD) and Substance Use Disorder (SUD) treatments for incarcerated veterans.

- Sigafos, C.E., *A PTSD Treatment Program for Combat (Vietnam) Veterans in Prison*, INT J OFFENDER THER COMP CRIMINOLOGY, Summer 1994, vol. 38 at 117-130.
<http://m.ijo.sagepub.com/content/38/2/117.abstract> ;
<https://www.ncjrs.gov/App/publications/Abstract.aspx?id=150454>

This article contains a description of PTSD treatment for Vietnam veterans in custody in Arizona state prison in 1994. The treatment consisted of three “dimensions.” In the first dimension, veteran-inmates participated in group therapies in six phases: “the second tour, stress management, handling symptoms of PTSD, veterans with PTSD and crime, conflict resolution, and the effects of PTSD on the family.” The second dimension involved therapeutic interventions for the individual. The third dimension focused on understanding Vietnam “from another perspective.” Participants also received SUD treatment and other supports for successful reintegration.

- Goff, A., Rose, E., Rose, S., and Purves, D., *Does PTSD Occur in Sentenced Prison Populations? A Systematic Literature Review*, CRIMINAL BEHAVIOUR AND MENTAL HEALTH, July 2007, at 152–162.
<http://onlinelibrary.wiley.com/doi/10.1002/cbm.653/abstract;jsessionid=A3483C8238CB C3E849C23A8A96178B4E.f03t03>

This article conducts a systematic review on the literature on PTSD in prisons. It concludes that PTSD is more likely to occur in prison populations and suggests PTSD should be treated in prison.

- Guliver, S.B., and Steffen, L. E., *Towards Integrated Treatments for PTSD and Substance Abuse Disorders*,” PTSD RESEARCH QUARTERLY, Spring 2012, Vol. 21, No.2.
<http://www.ptsd.va.gov/professional/newsletters/research-quarterly/V21N2.pdf>

This article surveys published studies on psychotherapy for co-occurring PTSD/SUD. It recommends PTSD/SUD treatment include exposure therapy. Due to a limited number of

studies and the prevalence of “pilot programs,” it recommends continued study to determine the most effective treatment for co-occurring PTSD/SUD.

- Kubiak, S.P, *The Effects of PTSD on Treatment Adherence, Drug Relapse, and Criminal Recidivism in a Sample of Incarcerated Men and Women*, RESEARCH ON SOCIAL WORK PRACTICE, 2004; 14; 424. http://www.antonioacasella.eu/archila/Kubiak_PTSD_2004.pdf

Individuals who co-experience substance abuse disorder (SUD) and PTSD, but are not treated in prison, are more likely to fail in treatment, relapse, and recidivate than individuals who do not exhibit PTSD symptoms, after release. As many as 50% of individuals seeking community-based SUD treatment may have or have had PTSD at some point in their lives.

- Ouimette, P.C., Ahrens, C., Moos, R. & Finney, J.W, *Posttraumatic Stress Disorder in Substance Abuse Patients: Relationship to One-Year Posttreatment Outcomes*, PSYCHOLOGY OF ADDICTIVE BEHAVIORS, 1997, 11 (1), at 34–47 (cited in Kubiak, S.P. 2004).

“In a sample of 1,630 male veterans attending substance abuse treatment, 1-year outcomes for those with co-occurring PTSD, were less favorable; those with the dual disorder were more likely to be readmitted for treatment and less likely to be employed than those in the SUD-only group.”

- Ungvarsky, J.J., Conaty, M., and Bellflower, S., *Back on Track: Life Skills Training for Veterans in the Criminal Justice System*, IDEAS AND RESEARCH YOU CAN USE: VISTAS 2012, Volume 1. http://www.counseling.org/Resources/Library/VISTAS/vistas12/Article_7.pdf

This article describes squad-modeled community-based treatment for Iraq and Afghanistan veterans in the criminal justice system used in Colorado veterans’ courts. It provides a group-therapy model for dealing with veteran PTSD issues and standards for veteran PTSD therapies. Participants in the PTSD program receive PTSD counseling in a 10-week program, with specific treatment topics for each week.

- Florida Department of Corrections, *Florida Department of Corrections Opens Five Veteran's Dormitories*, Press Release, Nov. 9, 2011. <http://www.dc.state.fl.us/secretary/press/2011/11-09VetDorms.html>

In 2011, corrections facilities in Florida opened five dormitories for military veteran-inmates to address mental-health and substance-abuse issues, including by providing treatment services. The five prisons in Florida had 400 total beds in veterans-only wards, to facilitate services for veterans’ eventual return to the community.

Jess Barton

From: Sen Shields [sen.chipshields@state.or.us]
Sent: Monday, September 08, 2014 11:34 AM
To: Jess Barton
Subject: FW: DOC and PTSD

DOC response below.

-Amanda

From: Garcia Marie D [mailto:Marie.D.Garcia@doc.state.or.us]
Sent: Friday, September 05, 2014 5:02 PM
To: Sen Shields
Cc: Peters Colette S; Bergen Jean M; Craig Elizabeth A; Brockamp Kim; Brown Nichole R; Russell Jana A; Butte Ann
Subject: RE: DOC and PTSD

Good afternoon Amanda,

This is in response to your recent email, in which you inquire about Post Traumatic Stress Disorder (PTSD) treatment offered by the Oregon Department of Corrections (DOC). The Behavioral Health Services (BHS) unit of DOC provides diagnostic assessment and treatment for PTSD. This may include medication management, case management, symptom management, and skills training, which covers mindfulness, distress tolerance, emotion regulation, and interpersonal relationships.

BHS does not engage adults in custody (AICs) in any process that would bring traumatic memories to the forefront. The loud prison environment, lack of environmental and self-control, and criminality of people housed in a prison setting would not be conducive to this type of work or healing; AICs can become too vulnerable and may be victimized or extorted by other AICs. This particular type of work is best left for continuing care upon release. BHS strives to help AICs learn about their mental illnesses, develop skills to manage their symptoms in a correctional environment, practice compassionate self-care, and become good advocates for their mental health care needs upon release.

AICs assigned to DOC Cognitive and Alcohol and Drug Treatment (A&D) programs during the last year of incarceration are coached in the use of skills and other interventions to manage their symptoms. Addictions Treatment and Cognitive Behavioral Services staff work collaboratively with BHS staff to intervene in those cases where AICs need additional assistance in the management of symptoms.

As an agency, we are working to further explore programs that may be of benefit to our veteran population, and we will gladly take any suggestions into consideration.

I hope this information is helpful. If you have further questions, please feel free to contact me.

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September 3, 2013

[REDACTED]

Dear [REDACTED]

Thank you for contacting the Oregon Department of Corrections and for clarifying your request during our telephone conversation on Thursday, July 18, 2013. As we discussed, I have provided the total number of adults in our custody that claim to be a veteran. In the numbers provided below, we considered anyone who claimed to be a veteran and were in DOC custody for at least one day in 2012. Please note that veteran status is based on self-reporting, DOC does not confirm this status.

Number of veterans in DOC custody in 2012

Females = 125 4.66% of self-reported veteran population

Males = 2,557 95.34% of self-reported veteran population

Total = 2,682

I hope this information is helpful and assists you with writing your publications.

Sincerely,

Anita Nelson

Public Records and Research Manager

Appendix: Prison Population Forecast Values

All forecast values are published in spreadsheet format and can be viewed and downloaded from the link below. The spreadsheet includes forecast data tables for the prison and community corrections forecasts and some additional forecast-related data such as: male and female forecasts; person, property and statutory forecasts; seasonally and non-seasonally adjusted forecasts; and new law impact estimates.

<http://oregon.gov/DAS/OEA/corrections.shtml>.

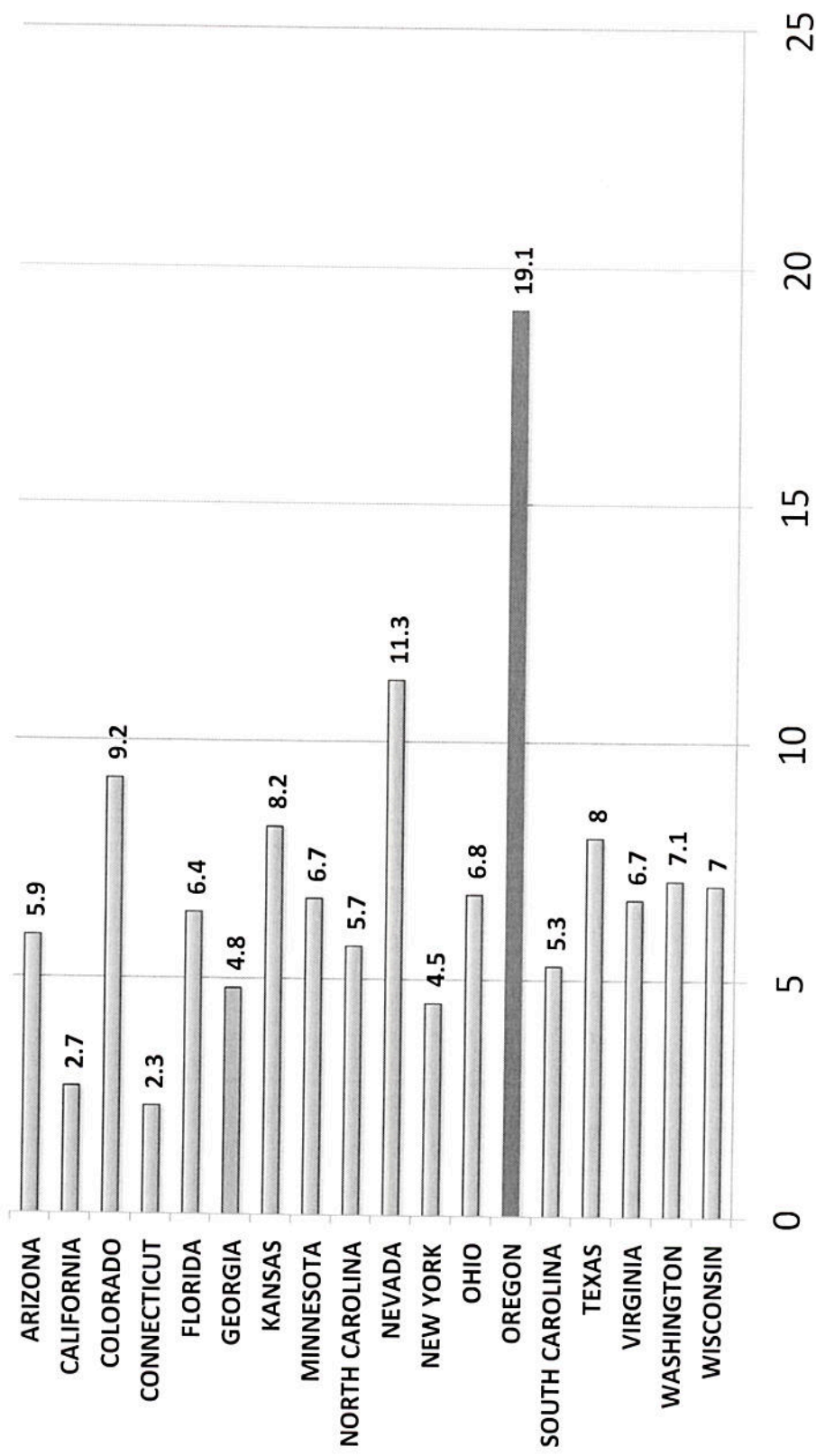
10/1/2013	14,574
11/1/2013	14,642
12/1/2013	14,579
1/1/2014	14,586
2/1/2014	14,595
3/1/2014	14,634
4/1/2014	14,621
5/1/2014	14,611
6/1/2014	14,578
7/1/2014	14,552
8/1/2014	14,534
9/1/2014	14,444
10/1/2014	14,428
11/1/2014	14,332
12/1/2014	14,255
1/1/2015	14,177
2/1/2015	14,206
3/1/2015	14,225
4/1/2015	14,265
5/1/2015	14,258
6/1/2015	14,251
7/1/2015	14,251
8/1/2015	14,255
9/1/2015	14,239
10/1/2015	14,238
11/1/2015	14,202
12/1/2015	14,148
1/1/2016	14,132
2/1/2016	14,161
3/1/2016	14,199
4/1/2016	14,268
5/1/2016	14,264
6/1/2016	14,306
7/1/2016	14,332
8/1/2016	14,327
9/1/2016	14,318
10/1/2016	14,318
11/1/2016	14,267
12/1/2016	14,252

1/1/2017	14,193
2/1/2017	14,247
3/1/2017	14,318
4/1/2017	14,340
5/1/2017	14,364
6/1/2017	14,399
7/1/2017	14,398
8/1/2017	14,405
9/1/2017	14,427
10/1/2017	14,414
11/1/2017	14,396
12/1/2017	14,389
1/1/2018	14,344
2/1/2018	14,394
3/1/2018	14,452
4/1/2018	14,481
5/1/2018	14,493
6/1/2018	14,557
7/1/2018	14,549
8/1/2018	14,596
9/1/2018	14,581
10/1/2018	14,584
11/1/2018	14,576
12/1/2018	14,537
1/1/2019	14,529
2/1/2019	14,608
3/1/2019	14,659
4/1/2019	14,668
5/1/2019	14,708
6/1/2019	14,726
7/1/2019	14,748
8/1/2019	14,795
9/1/2019	14,772
10/1/2019	14,779
11/1/2019	14,778
12/1/2019	14,733
1/1/2020	14,712
2/1/2020	14,750
3/1/2020	14,829

4/1/2020	14,885
5/1/2020	14,927
6/1/2020	14,944
7/1/2020	14,966
8/1/2020	14,981
9/1/2020	14,958
10/1/2020	14,985
11/1/2020	14,963
12/1/2020	14,929
1/1/2021	14,903
2/1/2021	14,937
3/1/2021	14,993
4/1/2021	15,051
5/1/2021	15,070
6/1/2021	15,098
7/1/2021	15,136
8/1/2021	15,146
9/1/2021	15,147
10/1/2021	15,177
11/1/2021	15,122
12/1/2021	15,106
1/1/2022	15,045
2/1/2022	15,059
3/1/2022	15,126
4/1/2022	15,209
5/1/2022	15,203
6/1/2022	15,247
7/1/2022	15,279
8/1/2022	15,272
9/1/2022	15,280
10/1/2022	15,275
11/1/2022	15,246
12/1/2022	15,235
1/1/2023	15,202
2/1/2023	15,254
3/1/2023	15,317
4/1/2023	15,345
5/1/2023	15,386
6/1/2023	15,425

PERCENTAGE OF VETERANS IN STATE PRISON POPOULATIONS

Randomly Selected States – 2013 Study



Brown, W., Stanulis, R., Theis, B., Farnsworth, J. and Daniels, D. (2013). "The Perfect Storm: Veterans, culture and the criminal justice system." Justice Policy Journal, Vol. 10, Number 2 (Fall)