

# Winnable criminal justice reforms

*A Prison Policy Initiative briefing on promising state reform issues for 2017*

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## Ending prison gerrymandering

**Problem:** The Census Bureau's practice of tabulating incarcerated people at correctional facility locations (rather than at their home addresses) leads state and local governments to draw skewed electoral districts that grant undue political clout to people who live near large prisons and dilute the representation of people everywhere else.

**Solution:** States can pass legislation to count incarcerated people at home for redistricting purposes, as California, Delaware, Maryland, and New York have done. Ideally, the Census Bureau would implement a national solution by agreeing to tabulate incarcerated people at home in the next Census, but time is running out for that federal change so states must prepare their own fix.

**Model bill:** <https://www.prisonersofthecensus.org/models/example.html>

**More information:** Prison Gerrymandering Project website <https://www.prisonersofthecensus.org>

## Lowering the cost of calls home from prison or jail

**Problem:** The prison and jail telephone industry offers correctional facilities hefty kickbacks in exchange for exclusive contracts. Until recently, the families of incarcerated people would frequently pay up to \$17 for a single 15-minute phone call.

**Solution:** The Federal Communications Commission has begun to regulate this industry, but states such as California, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Rhode Island, and South Carolina, as well as the District of Columbia, are taking action on their own.

**Example bill:** New York Corrections Law § 623 bans commissions and requires that contracts be based on the lowest possible cost to consumers. (Note: this New York law only applies to contracts with state prisons. The ideal solution would apply to both state prison and local jail contracts.)

**More information:** Our ideas for state legislation <http://www.prisonpolicy.org/blog/2015/10/21/states-after-fcc/>, What would prison telephone justice look like? <https://www.prisonpolicy.org/blog/2015/09/29/state-reform-phones/>, and "Regulating the prison phone industry" <https://www.prisonpolicy.org/phones/>

## Protecting in-person family visits from the video visitation industry

**Problem:** Video visitation is quietly sweeping the nation's prisons and local jails. Unfortunately, rather than providing the video technology as an additional way for families to stay connected, private companies and sheriffs are working together to replace traditional in-person family visits with expensive, grainy computer chats.

**Solution:** In May 2015, Texas legislators approved HB 549, clarifying that Texas jails must provide a minimum of two *in-person* visits — not video visits — per week. (Note: HB 549 allows for the Texas Commission on Jail Standards to exempt counties who incurred significant costs when they replaced in-person visits with video visits. The ideal solution would protect family visitation even further by not including a grandfather clause.)

**More information:** *Screening Out Family Time: The for-profit video visitation industry in prisons and jails* <https://www.prisonpolicy.org/visitation/>

## Stopping automatic driver's license suspensions for drug offenses unrelated to driving

**Problem:** 12 states and the District of Columbia have failed to repeal an outdated relic from the War on Drugs — automatic driver's license suspensions for all drug offenses, including those unrelated to driving. In a forthcoming report, we shed

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light on the approximately 210,000 licenses suspended every year for non-driving drug convictions. These suspensions disproportionately impact low-income communities and waste government resources and time.

**Solution:** Alabama, Arkansas, Florida, Iowa, Michigan, Mississippi, New Jersey, New York, Pennsylvania, Texas, Utah, Virginia, the District of Columbia should formally opt out of the federal automatic suspension law. There is no financial penalty for opting-out as long as states pass a legislative resolution and the governor informs the Federal Highway Administration.

**More information:** *Suspending Common Sense in Massachusetts: Driver's license suspensions for drug offenses unrelated to driving* and our forthcoming report on the 13 jurisdictions that still retain this law <https://www.prisonpolicy.org/driving/>

## Repealing or reforming ineffective and harmful sentencing enhancement zones

**Problem:** Most states have laws that are intended to keep children safe by creating enhanced penalties for various drug crimes committed within a certain distance of schools. These laws sound like a common sense approach, but our research has shown that these laws do not work and exacerbate harmful racial disparities in the criminal justice system.

**Solution:** The most comprehensive solution is for states to repeal the enhancement zones, and instead rely on the already-existing laws that give additional penalties for involving children in drug activity. Barring repeal, there are several other ways to modify the scope of the law. The simplest approach is reducing the size of the zones like Massachusetts and New Jersey recently did. Alternatively, do as Connecticut did in 2015 and make the enhancement penalty subject to judicial discretion rather than mandatory.

**More information:** "Sentencing enhancement zones fail to protect children and worsen racial disparity in incarceration" <https://www.prisonpolicy.org/zones.html>

## Protecting letters from home in local jails

**Problem:** Sheriffs in at least 14 states — Arizona, California, Colorado, Florida, Georgia, Kentucky, Kansas, Maryland, Michigan, Missouri, Oregon, Tennessee, Utah, and Washington — have been experimenting with a harmful policy in local jails: banning letters from home.

**Solution:** States can send a clear message about the importance of protecting family communication by passing a bill or administrative rule requiring correctional facilities to allow personal letter correspondence.

**Example rule:** "Inmates shall be permitted to send as many letters of as many pages as they desire, to whomever they desire... [and] may receive correspondence in any quantity, amount, and number of pages." (Texas Commission on Jail Standards, Inmate Correspondence Plan (Rule §291.2))

**More information:** *Protecting Written Family Communication in Jails: A 50-State Survey* <https://www.prisonpolicy.org/postcards/>

## Requiring racial impact statements for criminal justice bills

**Problem:** Some criminal justice bills unnecessarily and unintentionally exacerbate racial and ethnic disparities in arrest, sentencing, and incarceration rates.

**Solution:** Connecticut, Iowa, and Oregon have passed legislation to provide for racial impact statements that prospectively evaluate whether or not proposed criminal justice legislation is likely to have a racially or ethnically disparate impact.

**Example bills:** Iowa House File 2393 (2008), Connecticut Public Act 08-143 (2008), Oregon Senate Bill 463 B (2013).

**More information:** "Oregon passes legislation to rein in racial disparities in criminal law; which state will be next?" <https://www.prisonpolicy.org/blog/2013/07/09/or-sb463/>

## Repealing "Truth in Sentencing"

**Problem:** Many states increased prison capacity in the 1990s when the federal government created a short-lived financial incentive to enact so-called "Truth in Sentencing" laws that unnecessarily increased time spent in prison. Now that the federal subsidy is over, there are many financial benefits — and no financial downsides — to repealing these changes and bringing back the full range of administrative options to manage prison populations.

**Solution:** States can choose to repeal their dramatic “Truth In Sentencing” requirements that limit management tools such as good time credits and parole. These changes would save taxpayer resources by downsizing prison populations.

## Creating a Safety Valve for Mandatory Minimum Sentences

**Problem:** Mandatory minimum sentences have fueled the country’s skyrocketing incarceration rates, harming individuals and undermining our communities and national well-being, all without significant increases to public safety.

**Solution:** The best course is to repeal mandatory minimum laws so that judges can craft sentences to fit the unique circumstances of each crime and individual, but where that option is not possible — either because of political or legislative realities — states should adopt sentencing “safety valve” laws, which give judges the ability to deviate from the mandatory minimum under specified circumstances.

### More information, model bill language, and example bills:

Families Against Mandatory Minimums (FAMM): *Turning Off the Spigot: How Sentencing Safety Valves Can Help States Protect Public Safety and Save Money* <http://famm.org/Repository/Files/Turning%20Off%20the%20Spigot%20web%20final.pdf> American Legislative Exchange Council (ALEC): “Justice Safety Valve Act” <http://famm.org/wp-content/uploads/2013/07/ALEC-Justice-Safety-Valve-Act-8-5-13.pdf>

## Immediately eliminating “pay only” probation and regulating privatized probation services

**Problem:** At least twelve states (Alabama, Colorado, Florida, Georgia, Idaho, Michigan, Mississippi, Missouri, Montana, Tennessee, Utah, and Washington) outsource misdemeanor probation services to private probation companies. Despite the 1983 Supreme Court case, *Bearden v. Georgia* — which ruled that probationers cannot be jailed simply for failing to pay a fine they cannot afford — privatized probation has led to modern-day debtor’s prisons. Now, with the growth of privatized probation, people who are convicted of extremely minor offenses but cannot pay the fine are sentenced to “pay only” probation. As a result, people who do not pose a threat to public safety are being placed on probation and, when they are unable to afford probation fees, are jailed.

**Solutions:** Pass legislation that would eliminate or regulate the use of privatized probation consistent with the Human Rights Watch’s nine recommendations for states on pages 7–8 of *Profiting from Probation: America’s “Offender-Funded” Probation Industry*.

**More information:** Human Rights Watch, *Profiting from Probation: America’s “Offender-Funded” Probation Industry* [https://www.hrw.org/sites/default/files/reports/us0214\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf)

## Reducing pretrial detention

**Problem:** Many people who face criminal charges are unnecessarily detained before trial. Often the sole criteria for release is access to money for bail. This wastes taxpayer dollars, puts more pressure on defendants to accept plea bargains, leads to jail overcrowding which drives the need for more and bigger jails, and destabilizes the life of the person who is incarcerated, which can result in the loss of an apartment, a job, and even custody of children.

**Solutions:** States are addressing this problem with a variety of approaches, including bail reform, ending money bail, pretrial services including monitoring and curfews, drug testing and treatment, and postcard or phone reminders to appear in court.

**More information:** Pretrial Justice Institute: <http://www.pretrial.org>, Pretrial Working Group: <http://www.pretrialworkinggroup.org>, Massachusetts Women’s Justice Network: “Moving Beyond Incarceration for Women in Massachusetts: The Necessity of Bail/Pretrial Reform” [http://www.wcwonline.org/images/PolicyBrief3.15.Bail.Pretrial\\_Reform.pdf](http://www.wcwonline.org/images/PolicyBrief3.15.Bail.Pretrial_Reform.pdf)

**For interesting reports that can help you make the case for criminal justice reform in your state, see <http://www.prisonpolicy.org/national/>**