



RESEARCH AND ADVOCACY FOR REFORM



The State of Sentencing 2011

Developments in Policy and Practice

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February 2012

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The Sentencing Project is a national non-profit organization engaged in research and advocacy on criminal justice issues.

The work of The Sentencing Project is supported by many individual donors and contributions from the following:

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The Bureau of Justice Statistics recently reported the number of people in prison declined in 2010 for the first time since 1972; state and federal prison populations fell by more than 9,200 between 2009 and 2010, a decline of 0.6%. Currently, more than 7.1 million men and women are under some form of correctional supervision. The majority of persons – 4.8 million – under criminal justice supervision are in the community on probation or parole, while 2.2 million are incarcerated in prison or jail. The United States continues to maintain the highest rate of incarceration in the world at 731 per 100,000 population.

Reductions in the scale of incarceration are the result of declining crime rates and a mix of legislative and administrative policies that vary by state. Lower demand for correctional capacity resulted in at least 13 states closing prison institutions or contemplating doing so during the past year. One salient reason for prison closures is the reduction in state revenues caused by the recession. According to a report by the National Governors Association, at least 40 states made cuts to correctional expenditures between 2009 and 2010 by reducing labor costs, eliminating prison programs, and making food-service changes. Additionally, states have increasingly focused on finding ways to downscale prisons.

Prison populations declined in 25 states in 2010. The population reduction was largely driven by fewer people being sentenced to prison for either new crimes or parole violations; nearly 58% of the decline in admissions was accounted for by reductions in two states, California (39%) and Florida (19%). A number of the states experiencing declines worked to reduce their prison populations in recent years in order to contain correctional costs and manage prison capacity. Despite these successes, other states experienced prison population growth. Overall, state prison populations declined in admissions by more than 27,700 persons or 0.8 percent; the overall decline in state prison populations was 10,881.

During 2011, state legislatures in at least 29 states adopted 55 criminal justice policies that may contribute to continued population reductions and address the collateral consequences associated with felony convictions. This report provides an overview of recent policy reforms in the areas of sentencing, probation and parole, collateral consequences, and juvenile justice. Highlights include:

- Sentence modifications -- Four states -- Connecticut, Ohio, Nebraska, and North Dakota -- established sentence modification mechanisms that allow correctional officials to reduce the prison sentences of eligible prisoners;
- Drug offense reforms -- Four states -- Arkansas, Delaware, Kentucky, and Ohio -- revised mandatory and other penalties for crack cocaine and other drug offenses. The states also authorized alternatives to prison as a sentencing option in specified circumstances. In addition, Idaho and Florida expanded the eligibility criteria for drug courts in order to expand their impact;
- Death Penalty -- Illinois abolished the death penalty, becoming the sixteenth state to eliminate the sentencing option;
- Probation Revocation Reforms -- North Carolina restricted the use of prison as a sentencing option for certain persons who violate the conditions of probation; and
- Juvenile Sentencing Reforms -- Georgia authorized sentence modifications for certain juvenile defendants with felony offenses by allowing judges to depart from the statutory range when considering the youth's background.

State sentencing reforms in 2011 continue trends that The Sentencing Project has documented for several legislative cycles. Lawmakers have enacted these policy changes for various reasons, which include fiscal constraints as well as a growing recognition that large-scale incarceration has produced diminishing returns for public safety. Policymakers interested in downscaling the use of prisons are increasingly targeting sentencing policies that divert persons from correctional institutions and use balanced approaches to crime control and public safety.

Key Criminal Justice Policy Reforms and Legislation Passed in 2011

State	Reform
Alabama	Limited Incarceration for Probation Violators
Arkansas	Revised Drug Statutes; Reformed Sentencing Practices to Reduce Recidivism; and Enacted Expungement Provision
California	Authorized County Jail Detention for Certain State Prisoners
Colorado	Codified Sentencing Standards; Established Presumption of Parole Standard; and Authorized Early Termination of Community Corrections Sentences
Connecticut	Expanded Risk Reduction Credits; Reduced Penalty for Certain Marijuana Offenses; Enacted Medical Response to Overdose Protection; and Restricted Incarceration of Certain Juveniles
Delaware	Restructured Drug Code; Authorized Use of Medical Marijuana; Opted out of Federal Food Stamp Ban for Persons with Felony Drug Convictions; and Established Expungement Policy for Specified Juvenile Offenses
Florida	Expanded Eligibility for Drug Court Participation; Eliminated Incarceration as a Sentencing Option for Certain Youth
Georgia	Permitted Sentencing Modification for Youth with Certain Felony Offenses
Idaho	Amended Alternative to Incarceration Options; and Authorized Courts to Expunge Certain Convictions
Illinois	Repealed Death Penalty; Codified Process of Prioritizing Alternatives to Incarceration into Statute
Indiana	Authorized Expungement of Certain Arrests and Low-level Offenses
Kentucky	Revised Penalties for Certain Drug Offenses; Established Alternative Sentencing Options for Certain Offenses
Louisiana	Authorized Early Release for Elderly Prisoners; Enabled Sentence Reductions through Safety Valve; and Modified Parole Policies
Maryland	Modified Parole Process for Persons Sentenced to Life in Prison; Repealed Certain Parole Revocation Provisions; and Established Pilot Program to Reduce Parole Revocations
Montana	Expanded Medical Parole Eligibility
Nebraska	Authorized Sentence Reductions for Certain Prisoners
Nevada	Repealed Juvenile Life without Parole for Non-Homicide Offenses
North Carolina	Limited Use of Prison as a Sentencing Option for Certain Probationers; and Established Certificate for Restoration of Civil Rights
North Dakota	Authorized Sentence Modification for Certain Prisoners
Ohio	Established Certificates of Achievement and Employability
Oklahoma	Streamlined Parole Process
Oregon	Expanded Expungement Policy for Persons Convicted of Certain Offenses; Restricted Mandatory Minimums for Certain Juveniles
Rhode Island	Authorized Discretion for Certain Sentencing Options; Extended Medical Parole Policy to Severely Ill
South Dakota	Established Partial Early Discharge from Parole
Texas	Created New Standard to Reduce Probation Revocations; Entitled Probationers to Exit Community Supervision Early; Clarified Election Code for Persons; Limited Misdemeanor Citations in School; and Expanded Determinate Probation
Utah	Restored Voting Rights for Persons with Certain Prior Convictions
Vermont	Allowed Alternative Sentencing Options for Certain Prisoners
Washington	Established Process to Eliminate Interest for Criminal Justice Debt
West Virginia	Increased Sentencing Reduction Terms for Program Participation

SENTENCING

Lawmakers in 18 states adopted sentencing policy measures to manage state prison populations during 2011. These legislative reforms impacted prison admissions and length of stay, policy initiatives that may contribute to reducing state prison populations and result in cost savings. During the last legislative session state policymakers enacted sentencing reforms that limited the use of incarceration for specified offenders, eliminated certain drug policy sentencing disparities, and relaxed mandatory minimum sentencing practices.

Arkansas – Revised Drug Statutes and Reformed Sentencing Practices to Reduce Recidivism

Lawmakers enacted several provisions through SB 750 to modify practices that trigger prison sentences, minimize incarceration terms for certain offenses, and reduce revocations to prison. Salient components include revised drug statutes to modify felony definitions and classifications for simple possession of controlled substances to reduce the minimum and maximum term of incarceration. Additional measures included raising the threshold for felony theft from \$500 to \$1,000 to reduce the number of felony convictions for low-level offenses and establishing a new felony to allow low-level defendants to be placed on probation and diverted from prison into programs that reduce recidivism. The measure also authorized the Department of Community Corrections to discharge individuals who have served half their community supervision term if they have successfully complied with the terms of probation.

California – Authorized County Jail Detention for Certain State Prisoners

During 2011, California was mandated to reduce its prison population as a result of a federal court order. The Supreme Court, in a 5-4 decision, upheld the *Plata* decision by a three-judge panel ordering California to release about 46,000 inmates — more than one-fourth the state prison population — over the next two years to relieve overcrowding. AB 109 authorizes persons convicted of certain low level offenses to be sentenced to county jail facilities rather than state prisons, a policy approach known as realignment. According to recent reports, the number of inmates in California prisons dropped by 8,000 since “realignment” took effect during October of 2011. The state’s prison population has declined from a record high of 173,000 in

2006 to the current population of 135,000. However, many prisons remain overcrowded with almost twice the number of inmates they were designed to hold.

The mandate to reduce the state's prison population could be realized in various ways ranging from sentencing reforms to prison and county jail expansion. To date, California has focused on realignment which challenges county officials to manage their local correctional populations more effectively. Realignment can most safely and effectively be implemented by using alternative sentencing and community-based reentry services instead of jail expansion. To date, several counties in California – San Francisco, Santa Cruz, and Santa Clara -- have targeted efforts to manage their jail populations, including custody alternatives such as community service requirements, work furlough and electronic monitoring.

Colorado – Codified Sentencing Standards including Prioritizing Prison Alternatives

HB 1180 prioritized the goal of selecting a sentence, sentence length, and level of supervision that addresses individual characteristics and provides rehabilitation so that a person's future criminal conduct will be minimized following the completion of his or her sentence. The legislation codifies into statute guidelines for pre-sentence investigations and probation reports, prioritizes sentencing options that do not include incarceration, and recommends appropriate conditions for probation.

Connecticut – Enacted Protections against Prosecution for Overdose Prevention; Expanded Earned Risk Reduction Credits; and Reduced Penalty for Certain Marijuana Offenses

Legislators enacted protections through HB 6554 for persons seeking medical assistance for a drug overdose. The act prohibits the prosecution of persons possessing drugs or drug paraphernalia based solely on discovery of evidence found during a medical intervention. The measure does not bar prosecution for possession with intent to sell or distribute.

HB 6650 expanded eligibility of earned risk reduction credit for persons sentenced for certain violations in an amount not to exceed five days per month. Eligibility is at the discretion of the Commissioner of Corrections and prisoners must participate

in designated rehabilitation programs or earn their General Education Diploma (GED).

State officials also reduced the penalty for possessing less than one-half ounce of marijuana through the enactment of SB 1014. Prior to reform, defendants convicted of the offense were subject to a possible prison term and fine. Under the measure, the penalty for marijuana possession is reduced to a non-criminal infraction subject to a fine and no jail time or criminal record.

Delaware – Restructured Drug Code; and Authorized use of Medical Marijuana

Policymakers restructured the drug code by authorizing HB 19 and bringing the drug sentencing structure into line with the Delaware code. Consistent with the criminal code, only drug offenses, including aggravated possession, which are Class B Felonies will carry a mandatory minimum sentence. Additionally, certain drug crimes which were previously felonies have been reduced to misdemeanors. A salient provision of the bill increases the drug quantity amounts that trigger a mandatory minimum drug sentence. For example, 10 grams of cocaine previously triggered a two year mandatory minimum sentence; the new scheme requires 25 grams of cocaine to trigger the same sentence. The measure also requires parolees to participate in substance abuse treatment as a condition of parole.

Lawmakers also authorized the use of medical marijuana through SB 17 that establishes an exception to the state's criminal laws to permit recommended medical use of marijuana for patients with serious medical conditions. Persons are protected from arrest if their physician certifies, in writing, that the patient has a specified debilitating medical condition.

Florida – Expanded Eligibility for Drug Court Participation

SB 400 expands eligibility for post-adjudicatory drug court programs as a sentencing option. The measure increased the total number of sentencing points a person may have accumulated and still qualify for drug court participation. Florida's sentencing practices for non-capital felony offenses are framed by a guidelines system that designates points for specified offenses in order to determine criminal penalties. The

legislation also does not restrict eligibility to persons who violate community supervision for any reason.

Idaho – Expanded Alternative to Incarceration Options

HB 225 expands drug court eligibility to persons charged with violent felony offenses with the consent of the prosecuting attorney. Prior to reform, the Idaho Drug Court and Mental Health Court Act denied participation in drug courts for defendants with violent felony charges or prior violent felony convictions. The prohibition on persons with violent offenses was originally included to maintain eligibility for federal funds, which, by law, may only be given to drug court programs that exclude certain offenders. According to the Idaho Administrative Director of Courts, the state's drug courts are not currently receiving, and do not plan to seek, federal funds. Persons charged with sex offenses or with prior sex offense convictions continue to be excluded.

Illinois – Repealed the Death Penalty

Lawmakers repealed the death penalty as a sentencing option through the enactment of SB 3539. Governor Quinn signed the reform following a five-year moratorium. "I have concluded that our system of imposing the death penalty is inherently flawed," said Governor Quinn in a statement issued after the signing. Illinois became the sixteenth state to eliminate capital punishment.

Kentucky – Revised Penalties for Certain Drug Offenses and Authorized Alternative Sentencing Options for Certain Offenses

HB 463 included several measures to address the state's growing prison population. The measure revises penalties for simple possession of certain drugs by reducing the penalty for possession of controlled substances to a three-year maximum term rather than the previous five-year maximum. HB 463 allowed the courts to sentence defendants charged with minor offenders to deferred prosecution or presumptive probation for first- and second-time possession offenders. Provisions include alternative sentencing options for persons convicted of non violent offenses and strengthening supervision for high risk parolees. The legislation also included provisions for early release from parole for low risk persons.

Louisiana - Authorized Sentencing Reductions

HB 305 authorizes a reduction in sentences for defendants who provide “substantial assistance” to authorities. This policy authorizes the sentencing court to reduce the sentence to a time period which is less than the minimum sentence provided by law with the consent of the district attorney.

Nebraska – Authorized Sentence Reductions for Certain Prisoners

LB 191 provides an addition to the current sentence reduction authorized by law, which provides a six month reduction for each year of a person’s sentence. This measure allows an additional three days per month after the individual has been incarcerated for one year and has not received certain correctional penalties during the qualifying time frame. As a result, persons may have their sentenced reduced by six months and an additional 36 days.

The measure also authorizes the Parole Board to reduce a person’s parole term by 10 days for each month for good conduct and compliance with parole conditions. Previously, persons were eligible to receive a two-day per month reduction.

North Dakota – Authorized Sentence Modification for Certain Prisoners

SB 2141 provides for sentence reductions for persons with certain offenses. The measure authorizes judges in the judicial district where a correctional facility is located to modify sentences based on performance criteria established by the prison administrator. Incarcerated persons may earn no more than a one day sentence reduction for every six days served. Prisoners sentenced under the state’s habitual offender statute are excluded.

Oklahoma – Streamlined Parole Process

HB 2131 includes a provision granting parole if the governor does not act within 30 days on favorable parole recommendations made by the Pardon and Parole Board for applicants with low-level offenses. Prior to the reform, state law required the governor to sign off on every parole decision, which frequently resulted in long periods of review.

Ohio – Restructured Sentencing Policies and Eliminated Specified Sentencing Disparities

Lawmakers enacted several provisions through HB 86 to contain prison growth and reduce reliance on incarceration. One provision eliminates the distinction between criminal penalties for drug offenses involving crack and powder cocaine by establishing the same penalties for the two types of cocaine that fall between the previous penalties. For some offenses involving "possession of cocaine," the measure stipulates in statute the rules to use in determining whether to impose a prison term.

HB 86 also establishes a mechanism for "risk reduction sentencing." Judges may modify an offender's sentence under specified circumstances, including the completion of substance abuse treatment. These offenders may be eligible for supervised release after serving 80% of their prison term.

The measure increased from \$500 to \$1,000 the initial threshold amount that is used in determining increased penalties, generally from a misdemeanor to a felony, for theft-related offenses and for certain non-theft-related offenses. The provision recognizes that inflation over time has reduced the value of thefts that qualify as felonies.

Oregon – Authorized Sentence Reductions for Alternative Sentencing Facilities

HB 3160 authorizes sentence reductions of any offense for persons confined to alternative sentencing facilities if the county governing body allows sentence reductions. This measure was requested by the Commissioner of the Department of Corrections.

Rhode Island – Provided Additional Discretion in Authorizing Certain Sentencing Options

H 5408 allows discretion in authorizing community service as a sentencing option from a required 100 hours to up to 100 hours for certain non-violent drug offenses.

Vermont – Allowed Alternative Sentencing Options for Certain Misdemeanant Prisoners

Lawmakers continued their commitment to managing the state's correctional population through enacting S 108. The measure authorizes correctional officials to divert prisoners convicted of certain misdemeanor offenses into alternative sentencing options without court approval. The agency incarcerates sentenced prisoners serving a year or longer and also detains the state's jail population. S 108 expands prison diversion programs to persons with misdemeanor offenses; alternatives to incarceration include reintegration furlough, treatment furlough, and home confinement. At the time of sentencing, the court may issue written findings that such release is not appropriate and prevent the department from taking such action.

West Virginia – Increased Sentence Reduction Terms for Program Participation

HB 3205 increases the time permitted for a sentence reduction to up to five days for participation in eligible rehabilitation or treatment programs. Lawmakers also increased the total time permitted by sentence reduction to thirty days. The legislation imposes a program enrollment fee to be paid by persons incarcerated in regional jail facilities.

PROBATION AND PAROLE

Lawmakers in nine states enacted policies designed to expand parole eligibility, streamline processes for parole review, and reduce probation and parole revocations. Policymakers interested in addressing prison overcrowding can examine policies related to parole review in an effort to ease current capacity issues. Further, officials interested in effectively lowering the number of persons admitted to prison have looked at policies relating to probation and parole revocations. In recent years, limiting the use of incarceration as an option for some technical violators on probation or parole has contributed to lowering the rate of incarceration in certain states.

Alabama – Limited Incarceration for Probation Violators

Lawmakers broadened the range of administrative penalties through SB 267 for probation violations. The policy was changed to reduce the use of incarceration for persons who violate the conditions of probation. The measure authorized sentencing options including short term confinement in county jail facilities and eliminated incarceration in state prison facilities in specified circumstances.

Colorado – Established Presumption of Parole for Certain Sentences; and Authorized Early Termination of Community Corrections Sentences

HB 1064 establishes a presumption in favor of granting parole to inmates who have reached their parole eligibility date and whose controlling sentence is felony drug possession or a use offense. The measure mandates the Parole Board to impose substance abuse treatment as a condition of parole for persons released under this statute.

Lawmakers authorized early termination for community correction sentences through enacting SB 254. Release is permitted for persons who successfully comply with residential treatment and have paid their costs in full. Persons eligible for this policy include those supervised on nonresidential status at either a minimum or administrative level.

Louisiana – Expanded Parole Eligibility for Certain Prisoners and Adopted Alternative Sanctions for Technical Parole Violators

HB 138 authorizes early release for elderly prisoners aged 60 or older who have served a minimum of 10 years of imprisonment and are deemed low risk if specified conditions are met including no disciplinary actions for 12 months prior to parole eligibility. The average cost of housing elderly prisoners is between two and three times that of younger prisoners. At the same time, aging is correlated with a diminishing risk of recidivism. According to the Department of Corrections, as of June 2011, 15 prisoners had a low-risk designation, a GED, and had not committed a violent crime, and were eligible under the policy.

State policymakers authorized alternative sanctions for persons with nonviolent offenses who commit “technical” parole violations through enacting HB 415. Prior

to reform, an individual whose parole or probation was revoked for a first technical violation was required to serve up to 90 days in custody or a maximum sentence of six months in a drug diversion program. HB 415 authorizes a parole or probation officer to impose administrative sanctions for a technical violation of parole or probation conditions, if the Board of Parole or court determines that the offender is eligible and when certain requirements are met including the offender waiving the right to a violation hearing. According to the Department of Corrections, in 2010 there were 4,258 individuals who violated the conditions of their probation or parole. The new measure is expected to save the state more than \$3.9 million by reducing the length of confinement for certain prisoners.

HB 416 authorizes parole after 25% of time served for prisoners sentenced to first-time, non-violent offenses. Prior to reform, such prisoners were eligible for parole after serving 33% of their sentence. The measure also requires the Department of Corrections to measure and document cost savings from implementation of the law and requires the Legislature to appropriate the savings to local corrections programs that reduce recidivism, expand treatment programs, and for probation and parole services.

Maryland – Modified Parole Process for Persons Sentenced to Life in Prison; Repealed Certain Parole Revocation Provisions; and Established Pilot Program to Reduce Parole Revocations

HB 302 improves the effectiveness of the parole policy for certain prisoners sentenced to life. The measure requires that if the Board of Review decides to grant parole to an eligible person sentenced to life in prison who has served 25 years without application of diminution credits and the Secretary approves the decision, the decision shall be forwarded to the governor. Through this legislation a person recommended for release will be granted parole unless the governor objects within 180 days. Currently, more than 2,300 people are serving parole-eligible life sentences in Maryland.

Lawmakers worked to reduce the number of persons admitted to prison for parole violations through enacting HB 919. The measure provides a system of graduated sanctions as alternatives to incarceration for persons who commit technical parole

violations. Specifically, the new policy restricts the ability of officials to send persons to prison for long periods of time for minor rule violations. The legislation requires the Department of Public Safety and Correctional Services to develop a pilot program in two counties.

HB 1174 repeals the general requirement that an inmate whose parole is revoked serve the remainder of the imposed sentence. Rather, the measure authorizes the parole commissioner who conducts the revocation hearing to require the parolee to serve any portion of the originally imposed sentence.

Montana – Expanded Medical Parole Eligibility

HB 141 expands non-medical parole eligibility to juveniles sentenced as adults but serving their sentence in a juvenile facility. The measure also expands medical parole eligibility to persons sentenced to an adult community corrections facility.

North Carolina – Limited Use of Prison as a Sentencing Option for Certain Probationers

Lawmakers enacted several provisions through HB 642 -- known as the Justice Reinvestment Act -- with the intent of reducing spending on incarceration and to redirect the savings into community-based treatment alternatives. A salient provision of the measure includes expanding the population eligible for a deferred prosecution program for first-time drug possession offenders and authorizing judges to sentence eligible defendants to probation for a period of supervision and treatment.

The measure also establishes Advanced Supervised Release (ASR) within the Department of Corrections. The program allows prisoners with specified convictions to have their sentence reduced, at the discretion of the court, by completing rehabilitative programming. Specifically, a judge would select a rehabilitative program for the offender and set the ASR release date. If the offender successfully completes the rehabilitative program, he or she will be released at the shortened sentence length.

Additionally, the bill expands the authority of probation officers to sanction persons on community supervision. The expanded authority includes requiring probationers to comply with a variety of additional conditions, including jail confinement, without returning to court for a modification. Under the jail confinement provision, the probationer is given an opportunity to waive a hearing and submit to short periods of incarceration of not more than six days per month, rather than appear before a judge and face a complete revocation.

The measure also mandates post-release supervision for all felony offenders sentenced to prison. Prior to the policy change post-release supervision was only available for prisoners with certain felony offenses, and comprised less than 50% of exits from prison. The changes in HB 642 are expected to increase post-release supervision by over 14,000 persons a year. The measure specifies that individuals who fail to comply with their conditions may be revoked for no more than three months unless they commit a new crime or abscond.

South Dakota – Authorized Partial Early Discharge from Parole

HB 1018 authorizes the Parole Board to grant partial early discharge from parole. This bipartisan measure is reported to allow for a better allocation of the resources used to monitor parolees in good standing by authorizing a reduction in the time they are supervised on parole.

Texas – Established New Standard to Reduce Probation Revocationers Admitted to Prison

HB 1205 entitles defendants to time credits toward the completion of their community supervision if certain conditions are met. Time credits are awarded for meeting various conditions and participation in programs including the earning of a high school diploma or equivalency certificate, payment of associated fines and fees, and successful completion of parenting classes or anger management programs. The bill requires to court to review the defendant's record and determine the time eligible for a sentence reduction.

SB 1055 requires county probation departments to submit a Community Reduction Plan which establishes a target number reduction in the number of probation

violators to the state prison system. During 2010, a small number of probation violators -- 630 individuals or 0.4% -- were admitted to Texas prisons. The measure further authorizes county probation departments to receive additional state funding appropriated from estimated savings that result from the reduction of probationers revoking to prison. This approach is consistent with the Justice Reinvestment framework that has been adopted in other states.

Rhode Island – Extended Medical Parole Policy to Severely Ill Persons

HB 5757 expands the policy of medical parole to prisoners determined to be severely ill. Prior to the statutory change only prisoners diagnosed as terminally ill were eligible for medical release. This measure defines severely ill as persons suffering from a significant and permanent or chronic physical and/or mental condition that requires extensive medical and/or psychiatric treatment with little to no possibility of recovery; and precludes significant rehabilitation from further incarceration. Persons deemed severely ill will be considered for such release when their treatment causes the state to incur exorbitant expenses as a result of continued and frequent medical treatment during incarceration, as determined by the office of financial resources of the Department of Corrections. Parole officers are required to monitor updates regarding the medical condition of persons released under this policy.

COLLATERAL CONSEQUENCES

During 2010, more than 708,000 men and women were released from state and federal prisons; in addition 13 million persons are estimated to have felony convictions. The collateral consequences associated with a prior conviction can exclude individuals from certain job opportunities and limit access to public benefits. Policies that marginalize persons with prior convictions vary widely from state to state. In recent years, lawmakers targeting these barriers have reformed employment practices, enacted policies to restore civil rights, and expanded access to public benefits.

Arkansas – Enacted Expungement Provision for Certain Misdemeanor Convictions

HB 1608 authorizes expungement for certain misdemeanor convictions; the measure excludes various misdemeanor offenses including specified sexual offenses and

driving while intoxicated. Eligible persons should petition the court of conviction to have their misdemeanor records expunged in accordance with the process outlined in the statute. The measure requires the court to expunge the records of eligible petitioners unless it finds the conviction should not be expunged.

Delaware – Opted Out of Lifetime Food Stamp Ban for Persons with Felony Drug Offenses

Lawmakers expanded access to benefits for persons with certain prior convictions. SB 12 removes the lifetime ban against persons convicted of felony drug offenses from receiving federal Supplemental Nutrition Assistance Program (SNAP), previously known as Food Stamps. The 1996 federal welfare law prohibits anyone convicted of a drug-related felony from receiving certain public benefits. States have the option of passing legislation to limit the ban or eliminate it altogether. Delaware joined 40 other states that have modified or opted out of the federal ban.

Idaho – Authorized Courts to Expunge Certain Convictions

HB 226 expands the authority of the court to expunge convictions for probationers who have complied with the terms of their community supervision, including those who graduate from a drug court or mental health court. Prior to reform, judges reported having limited authority to grant expungement relief if petitioners were reported to have minor violations. This bill grants the court greater discretion in granting expungement for eligible petitioners.

Indiana – Authorized Expungement of Certain Arrests and Low-level Offenses

Lawmakers enacted a post conviction relief for persons with certain prior convictions. HB 1211 authorizes expungement after eight years for persons convicted of certain Class D felony offenses that did not result in injury to a person; sex offenses are excluded. Eligible petitioners may request the sentencing court to restrict access to their arrest and criminal records. The measure also allows persons charged with a crime to petition a court to restrict disclosure of arrest records if the person is acquitted of all criminal charges. The legislation also limits disclosure of arrest records if the petitioner is convicted of a crime that is later vacated.

North Carolina – Established Certificate for Restoration of Civil Rights

HB 641 authorizes a certificate for restoration of rights for persons with certain prior convictions. The measure established a process for persons with no more than two low-level felonies or misdemeanors to petition the court for relief from collateral sanctions. Courts may issue certificates if the petitioner meets certain conditions including substance abuse treatment.

Ohio – Authorized Certificates of Achievement and Employability

Lawmakers authorized providing certificates of achievement and employability as a provision of HB 86. The measure insures individualized consideration from a state licensing agency when applying for an employment related license. Certificates supersede any statute/regulation that creates an automatic bar to the license. Eligible applicants must have completed accredited in-prison programs, including vocational and behavioral; community-service hours are also eligible for consideration.

Oregon - Expanded Expungement Policy for Persons Convicted of Certain Offenses and Established Job Training Programs

Lawmakers enacted several policies to relax the impact of collateral consequences on persons with prior convictions, including expanding expungement policies and creating job training programs for formerly incarcerated persons. One measure, HB 3376, allows expungement for certain nonviolent B felonies after 20 years; eligible offenses include bribery and theft.

HB 2698 makes a minor change to the state's expungement statute that may have a major impact for petitioners with prior arrest records. The law provides that a person's record be expunged as long as they have no prior arrests -- other than the current one -- in the last three years at the time of filing of the motion. Prior to adoption of this measure, previously expunged arrests counted for persons seeking to expunge a new arrest. This bill exempts prior arrests within the last three years.

Texas - Clarified Election Code for Certain Persons with Prior Criminal Justice Involvement

HB 1226 amends current law relating to the eligibility of certain persons who have received deferred adjudication to vote. Persons who have completed their prison

sentence and are no longer under community supervision or are “off paper” have the right to vote in Texas. However, prior to this policy change there was confusion as to whether a person who has received deferred adjudication had the right to vote; the Election Code described a qualified voter as a person who had not been finally convicted of a felony. The bill codified into statute that a person is not considered to have been finally convicted of an offense for which the criminal proceedings are deferred without an adjudication of guilt.

Utah - Restored Voting Rights for Persons with Certain Misdemeanor Convictions

HB 3160 authorized the restoration of voting rights for persons convicted of certain misdemeanors and allows them to hold elected office. Eligible offenses include misdemeanor violations of the election code.

Washington - Established Process to Eliminate Interest for Criminal Justice Debt

SB 5423 creates a mechanism for courts to eliminate interest accrued on non-restitution debt during incarceration at the request of the defendant. Legal financial obligations in Washington State include the fees, fines and restitution orders that are assessed by judges at the time of criminal conviction. The statute authorizes the court to keep persons assessed LFOs for offenses committed after July 1, 2000 under its jurisdiction. According to the record, it was the intent of lawmakers to improve incentives for paying legal financial obligations.

JUVENILE JUSTICE

Changes in state policy have contributed to reductions in the incarcerated juvenile population and led to a downscaling of detention facilities. In several states lawmakers limited the use of incarceration for certain juvenile defendants and sought to eliminate societal barriers that marginalize criminal justice involved youth. Policy reforms have led to a closure of juvenile facilities in 2011 in several states, including Texas, Georgia, New York, and Wisconsin.

Connecticut - Restricted Incarceration for Certain Juvenile Defendants

Lawmakers restricted incarceration through passage of HB 6634. The measure limits detention for certain juvenile defendants and codifies into statute the standard that no child shall be placed in detention unless no alternative setting is available, as long as other conditions are met. These standards include the strong probability the child will run away prior to the scheduled court hearing, risk the child will re-offend, and risk that the child's residence in his or her home poses a threat to the child or community.

Delaware - Established Expungement Policy for Specified Juvenile Offenses

HB 177 requires the court to expunge juvenile records in circumstances where a juvenile was charged with a misdemeanor or felony offense but the charges were dismissed, not prosecuted, or the child was acquitted and has no prior criminal justice involvement. The measure also authorizes expungement prior to adjudication of delinquency for any offense other than a violent felony or a sex offense when three years have passed since the adjudication was entered.

Georgia - Authorized Sentence Modification for Youth with Certain Felony Offenses

HB 373 authorizes juvenile court judges to modify the sentences of youths with certain felony offenses. Prior to reform there was no provision for judges to depart from the statutorily determined sentencing range regardless of a youth's behavior, academic achievement or rehabilitation while in custody.

Illinois - Codified Process of Prioritizing Alternatives to Incarceration into Statute

HB 83 encourages juvenile courts to explore less restrictive alternatives to confinement and to make reasonable efforts to keep youth at home. The measure directs judges to consider whether treatment in a youth's community would be a better option than sentencing the youth to incarceration in a juvenile prison. Lawmakers found it necessary to codify into statute the standard that judges look carefully at all aspects of juvenile cases and determine what sentence is best for the youth and the community. Before finding that secure confinement is necessary, judges are mandated to review the juvenile's criminal record, educational

background, and whether services in juvenile correctional facilities will meet the youth's individualized needs.

Florida - Eliminated Incarceration as a Sentencing Option for Youth with Misdemeanor Offenses

SB 2114 mandates that juvenile judges can not commit an adjudicated youth whose underlying offense is a misdemeanor to a restrictive level other than minimum-risk nonresidential placement if the youth has a misdemeanor offense or probation violation for a misdemeanor offense. Under the new standard judges can only sentence youth to more restrictive placements if the new violation is a felony offense.

Nevada - Repealed Juvenile Life without Parole for Non-Homicide Offenses

AB 134 eliminates life without parole as a sentencing option for juveniles who commit crimes other than homicide. This measure codified into statute the 2010 *Graham v. Florida* Supreme Court decision that determined it is unconstitutional to sentence juveniles to life without parole for offenses that did not result in homicide. The Court found that juveniles are fundamentally different from adults and should have an opportunity for parole review during their incarceration.

Oregon - Restricted Mandatory Minimums for Certain Juvenile Defendants

Lawmakers clarified that certain mandatory minimum sentences were not a sentencing option for juvenile defendants through authorizing SB 868. Specifically, the measure clarifies that mandatory minimums triggered by Measure 11 crimes apply to defendants who are at least 18 years of age at the time the offense was committed. Measure 11 was a citizen's initiative passed in 1994 that resulted in mandatory minimum sentences for certain offenses including arson and robbery.

Texas - Limited Misdemeanor Citations in Schools; and Expanded Determinate Probation

Lawmakers restricted the ability of school districts to issue misdemeanor citations. HB 359 limits the authority of school officials to issue Class C misdemeanor citations for violation of the Education Code. These citations are frequently given

for routine misbehavior, including profanity and chewing gum. Sometimes citations were given to students as young as age ten.

SB 1208 expands eligibility for a juvenile sentence of determinate probation from 18 years to 19 years of age. This measure garnered bipartisan support and was determined to improve rehabilitative efforts for juvenile defendants.

CONCLUSION & POLICY RECOMMENDATIONS

Lawmakers enacted a number of legislative policies in 2011 as a way to control growth in state prison populations. Adopting sentencing reforms that include limiting the use of incarceration for certain offenders will aid in managing correctional populations. Policy reforms over a number of years have demonstrated that lawmakers can adopt initiatives targeted at reducing state prison populations without compromising public safety. During the last few years several states have achieved modest declines in their prison populations and have been able to close prison facilities. Stakeholders exploring policy initiatives to address the scale of incarceration should consider the following options during the 2012 legislative session:

Limit Use of Incarceration as a Sentencing Option

One mechanism that various states employed during 2011 was restricting prison as a sentencing option for certain offenders. Limiting the option of prison included alternative sanctions for persons revoked on probation or parole in Alabama and North Carolina. Additionally, Connecticut and Florida restricted detention for certain juveniles.

Eliminate Juvenile Life without Parole

The 2010 *Graham* decision by the U.S. Supreme Court determined that it was unconstitutional to sentence juveniles to life without parole for offenses that did not result in a homicide. In 2011, Nevada codified that policy into statute. The Supreme Court will further assess limiting the policy in March of 2012 when it considers two cases for juveniles who were 14 at the time of their offense. Lawmakers should consider eliminating the policy completely; such sentences are not used anywhere in

the world except the United States. Currently, more than 2,500 individuals are serving this sentence for crimes committed as juveniles.

Modify Drug Quantity Amounts that Trigger Mandatory Minimums Sentences

In recent years, several states have explored a comprehensive review of the criminal penalties associated with drug offenses. During 2011, Arkansas and Delaware both revised drug statutes by lowering felony penalties in certain circumstances. Further, Ohio eliminated the sentencing disparity between crack and powder cocaine. These policy reforms have the potential to reduce the reliance on incarceration and to provide a more balanced approach to drug policy.

Authorize Early Release for Parole or Probation

Parole and probation populations have increased as a result of less incarceration in states such as South Carolina, North Carolina, and Kentucky that have enacted comprehensive criminal justice reforms. While community supervision can be a cost effective alternative to incarceration, increases in the supervised population can stretch limited correctional resources. Lawmakers exploring measures to effectively utilize this incarceration alternative should identify mechanisms that allow probationers or parolees who meet certain conditions to discharge early from community supervision.

Restrict Collateral Consequences for Persons with Prior Convictions

Thousands of men, women, and youth come into contact with the criminal justice system each year. The lingering impact of criminal justice involvement can restrict job opportunities and limit access to housing, thus undermining an individual's opportunity for economic self-sufficiency. State policymakers can limit the scope of collateral consequences by establishing expungement policies, authorizing mechanisms for civil rights restoration, and eliminating unnecessary barriers to employment.

FURTHER READING AVAILABLE AT www.sentencingproject.org:

[The State of Sentencing 2010: Developments in Policy and Practice](#)

[Sentencing Reforms Amid Mass Incarcerations – Guarded Optimism](#)

[On the Chopping Block: State Prison Closings](#)



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