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# **The State of Sentencing 2012**

**Developments in Policy and Practice**

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**T**oday, 6.98 million men and women are under correctional supervision. A total of 4.8 million individuals are monitored in the community on probation and parole and 2.2 million are incarcerated in prisons or jail. The nation continues to maintain the highest rate of incarceration in the world at 716 people in prison per 100,000 population. The scale of incarceration varies substantially by state, resulting from a mix of crime rates and legislative and administrative policies. Lawmakers continue to face challenges in funding state correctional systems.

According to the National Conference of State Legislatures, several states are likely to be reducing services, including education and health care, during the 2013 legislative session due to reduced state revenues, uncertainty at the federal level and the impact of potential cuts in federal funding. In recent years, reducing prison populations with the goal of controlling correctional costs has been a salient reason for reform in states like Kansas, New York, and New Jersey. Overall, prison populations declined by 28,582 in twenty-six states during 2011, or 1.5%.

State lawmakers in at least 24 states adopted 41 criminal justice policies that in 2012 may contribute to downscaling prison populations and eliminating barriers to reentry while promoting effective approaches to public safety. This report provides an overview of recent policy reforms in the areas of sentencing, probation and parole, collateral consequences, and juvenile justice. Highlights include:

- Relaxed mandatory minimums – Seven states – Alabama, California, Missouri, Massachusetts, Kansas, Louisiana, and Pennsylvania – revised mandatory penalties for certain offenses including crack cocaine possession and drug offense enhancements;
- Death penalty – Connecticut abolished the death penalty, becoming the 17<sup>th</sup> to eliminate death as a criminal sanction;
- Sentence modifications – Two states – Louisiana and Oklahoma – authorized or expanded mechanisms to modify sentences post-conviction. These policies allow prosecutors and judges to reduce the prison sentences of individuals who meet eligibility requirements;
- Parole and probation revocation reforms – Seven states – Colorado, Delaware, Georgia, Hawaii, Louisiana, Missouri, and Pennsylvania --

expanded the use of earned time for eligible prisoners and limited the use of incarceration for probation and parole violations; and

- Juvenile life without parole – Three states -- California, Louisiana, and Pennsylvania – authorized sentencing relief for certain individuals sentenced to juvenile life without parole.

Changes in criminal justice policy were realized for various reasons, including an interest in managing prison capacity. Lawmakers have demonstrated interest in enacting reforms that recognize that the nation's scale of incarceration has produced diminishing returns for public safety. Consequently, legislators and other stakeholders have prioritized implementing policies that provide a more balanced approach to public safety. The evolving framework is rooted in reducing returns to prison for technical violations, expanding alternatives to prison for persons convicted of low level offenses and authorizing earned release for prisoners who complete certain rehabilitation programs.

### Key Criminal Justice Policy Reforms and Legislation Passed in 2012

State	Reform(s)
Alabama	Authorized Sentencing Commission to Impose Presumptive Sentencing Standards
California	Modified Three Strikes Law and Restricted Juvenile Life without Parole
Colorado	Authorized Possession of Marijuana, Expanded Earned Time Eligibility, Established Statewide “Ban the Box,” and Limited Authority to Transfer Juvenile Cases to Adult Court
Connecticut	Eliminated the Death Penalty and Permitted Medical Marijuana
Delaware	Authorized Alternative Sanctions to Limit Incarceration and Took first step towards Voting Rights Restoration
Georgia	Modified Penalties for Certain Drug and Property Offenses, Expanded Accountability Courts, Codified Graduated Sanctions, and Allowed Sealing of Certain Criminal Offenses
Hawaii	Limited Use of Incarceration for Technical Parole Violators
Indiana	Restricted Access to Sealed Criminal Records
Kansas	Reformed Criminal Penalties for Certain Low Level Drug Offenses
Louisiana	Scaled back Certain Mandatory Minimums, Restored Parole for Certain Life Prison Terms, Shortened Time Requirements for Certain Parole Eligible Sentences, Eliminated Juvenile Life without Parole for Non-Homicide Offenses, and Expanded Expungement Relief
Maryland	Authorized Expungement Relief for Certain Juvenile Convictions
Massachusetts	Modified Mandatory Minimums in Drug-Free School Zone Cases and Authorized Medical Use of Marijuana
Michigan	Expanded Expungement Relief for Certain Juvenile Convictions
Missouri	Lowered Crack-Powder Sentencing Disparity, Authorized Earned Compliance, Allowed Swift and Certain Sanctions, Expanded Expungement Relief
North Carolina	Established Expungement Policy
Ohio	Allowed Sealing of Certain Eligible Offenses
Oklahoma	Expanded Judicial Review, Reduced Sentences for Certain Drug Offenses, Modified Parole Authority for Specified Offenses, and Required Post Incarceration Supervision
Oregon	Established Automatic Expungement Process for Juvenile Prostitution Offenses
Pennsylvania	Enacted Justice Reinvestment Provisions, Limited Juvenile Life without Parole, and Mandated Courts to Cite Reasons for Out-of-Home Placements
Rhode Island	Eliminated Criminal Penalties for Certain Marijuana Offenses
Tennessee	Authorized Expungement for Certain Offenses
Utah	Expanded Expungement Relief
Washington	Authorized Possession of Marijuana for Personal Use
Vermont	Established Expungement Process

## **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.

### **Alabama – Authorized Sentencing Commission to Impose Presumptive Sentencing Standards**

Senate Bill 386 authorizes the state's sentencing commission to set punishment standards for nonviolent crimes that judges generally would have to follow. Previously, the commission could only suggest changes to sentences for nonviolent and violent crimes, that needed to be codified into statute by the Legislature and were not binding on judges.

The legislation required that the commission's recommended sentencing changes for nonviolent offenses take effect unless the Legislature rejects the recommendations by statute. Those changes would be binding on judges as "presumptive sentencing standards," with some exceptions. Judges could impose sentences more or less severe than those called for by the new punishment standards if they publicly cited aggravating or mitigating factors as defined by the commission.

### **California – Modified Three Strikes Law**

Voters in California endorsed efforts to reform the state's harsh three strikes provision. Proposition 36 revised the three strikes law and was adopted by a wide margin with 68% support. The ballot initiative changed the state's sentencing policy so that life sentences will be imposed only when a third felony conviction is serious or violent. The measure also authorized re-sentencing for individuals currently serving life sentences if a third strike conviction was not serious or violent and the sentencing judge determines they do not pose an unreasonable risk to public safety. Current estimates project that nearly 3,000 individuals are eligible for sentencing relief under the new law. The provision continues to authorize a life sentence for a

non-serious, non-violent sex or drug offense if the individual's prior convictions were for rape, murder or child molestation.

### **Colorado – Authorized Possession of Marijuana for Personal Use**

Voters ended marijuana prohibition with the passage of Amendment 64. The ballot measure allows adults 21 and older to purchase up to one ounce of marijuana from marijuana dispensaries and grow up to six marijuana plants in their homes.

Possession is limited to up to an ounce for personal use, but selling marijuana without a license, purchasing marijuana from a party who is not licensed, as well as public use of marijuana, will remain illegal.

### **Connecticut – Eliminated the Death Penalty and Permitted Medical Marijuana**

Senate Bill 280 eliminated the death penalty as a sentencing option for capital felony offenses. The measure renamed capital felony offenses as murder with special circumstances and instituted life without parole as a sanction for such offenses. Today, seventeen states and the District of Columbia have abolished the death penalty. In recent years, Illinois, New Mexico and New Jersey all voted to abolish the death penalty and New York's death penalty law was declared unconstitutional in 2004. Connecticut's reform, only applies to future sentences and at the time of passage, 11 men had been sentenced to death and faced execution. However, some legal experts assert that defense attorneys could use the repeal measure to win life sentences for those inmates.

Connecticut lawmakers also authorized the use of medical marijuana with the passage of House Bill 5389. The legislation permits the limited use and distribution of marijuana as medicine for qualifying medical conditions including cancer, HIV/AIDS, and multiple sclerosis while excluding "chronic pain." The statute does prohibit patients from growing their own marijuana.

### **Kansas – Reformed Criminal Penalties for Certain Low Level Drug Offenses**

House Bill 2318 amended several statutes of the criminal code, including drug offenses. Prior to the bill's passage drug offenses were sanctioned according to a sentencing grid and convictions for drug possession and small-scale dealing offenses triggered presumptive prison sentences. Consequently, judges had to state specific

findings if they wanted to depart downward from the grid. HB 2318 created a “border box” on the sentencing grid that authorized judges to institute a lesser sentence or drug treatment without having to justify their decision. The measure also created harsher penalties for persons convicted of large quantity manufacturing and selling offenses.

### **Louisiana – Allowed Probation or Parole for Certain Mandatory Minimums**

Under House Bill 1068 persons convicted of offenses subject to mandatory minimums are eligible for probation or parole if agreed to in a negotiated plea deal or as part of post-conviction agreement for persons convicted in trial. Misdemeanor and felony offenses are eligible for sentence relief under the new statute.

### **Massachusetts – Modified Mandatory Minimums in Drug-Free School Zone Cases and Authorized Use of Medical Marijuana**

A provision of House Bill 3818 decreased the distance from a school zone that carries additional penalties for nonviolent drug offenses from 1,000 to 300 feet, scaling back sentencing enhancements. However, the momentum in support of the measure was based in the legislation’s provisions that enhanced penalties and eliminated parole eligibility for persons with prior offenses. The bill minimized judicial discretion for certain defendants convicted of a third violent felony offense and required the imposition of a mandatory minimum sentence without the possibility of parole. For those convicted of a third nonviolent felony, parole eligibility would be delayed.

Massachusetts voters approved a measure to legalize medical marijuana with the passage of ballot Question 3. The measure was proposed by petition, and authorized patients to possess up to a 60 day supply of marijuana for personal medical use; the amount that constitutes a 60 day supply will be determined by the Department of Public Health’s regulations. To qualify, patients would need to be diagnosed with a debilitating medical condition such as cancer, glaucoma, and HIV/ AIDS, and obtain written certification from a doctor "with whom the patient has a bona fide physician-patient relationship." Patients would also need to register with the health department. Under the law, non-profit medical marijuana treatment centers would be able to grow and provide marijuana to patients or designated personal caregivers. Patients would only be able to cultivate their own 60 day supply of marijuana if they

have limited access to treatment centers, such as through financial hardships or physical inability. Fraudulent use of medical marijuana registration could be punished by up to six months in jail or a fine of up to \$500.

### **Missouri – Lowered Crack-Powder Sentencing Disparity**

State lawmakers reduced the highest sentencing disparity in the nation with the passage of House Bill 1256. The provision was amended into a broader criminal justice measure that received bipartisan support and minimized the sentencing quantity ratio of 75-to-1 to 18-to-1 mirroring changes in the 2010 federal Fair Sentencing Act. Under previous law, a person who sold 450 grams of powder cocaine faced the same penalty as someone who sold six grams of crack cocaine. Both crimes were considered Class A felonies with mandatory minimum sentences of 10 years. The bill lessened the ratio, by raising the quantity for Class A crack felonies to 24 grams resulting in a new quantity ratio.

### **Rhode Island - Eliminated Criminal Penalties for Certain Marijuana Offenses**

Lawmakers eliminated certain criminal penalties for marijuana with the passage of Senate Bill 2253. The measure changes possession of one ounce or less of marijuana from a criminal penalty to a civil offense subject to financial penalty. The legislation replaced the previous criminal charge for simple possession – up to a year in jail and/or up to a \$500 fine – with a \$150 civil offense. Persons under the age of 18 would be subject to the same civil violation and would also be required to attend a drug education course as well as perform community service. A third marijuana possession offense within 18 months could result in a misdemeanor conviction punishable by up to 30 days in jail and/or a fine of up to \$500.

### **Georgia, Hawaii, Kansas, Missouri, Oklahoma, and Pennsylvania – Justice Reinvestment**

These states enacted measures under the framework of justice reinvestment, a concept that currently prioritizes advancing alternatives to incarceration for persons convicted of eligible nonviolent offenses, standardizing the use of risk assessments in pretrial detention, and authorizing early release mechanisms for prisoners who meet eligibility requirements. The general approach for these measures included efforts to scale back certain sentencing provisions and reduce returns to prison for probation and parole violators. Some of the legislative measures also included statutory

mechanisms for reinvesting savings achieved through reducing prison populations into other aspects of the criminal justice system, including in-prison treatment and local law enforcement.

*Georgia – Modified Penalties for Certain Drug Offenses, Expanded Accountability Courts, Established Graduated Sentencing Structure for Burglary and Forgery Offenses; Modified Threshold Amounts for Felony Property Offenses*

Lawmakers in Georgia unanimously supported House Bill 1176, a measure that modified several sentencing provisions for burglary, forgery and possession of controlled substances. Penalties for certain drug offenses were reduced including the lowering of minimum penalties for an initial Schedule I (controlled substance) or Schedule II (narcotics) from two years to one year and eliminating statutory language that mandated a 5-year minimum sentence for a subsequent conviction. The legislation also expanded the system of “accountability courts” statewide to strengthen treatment as a sanction for persons convicted of eligible drug offenses.

For burglary and forgery, HB 1176 established a penalty structure triggered by the seriousness of the offense. The bill created a graduated scale of penalties so that burglary of a residence is punished more severely than burglary of a non-residence and sentences vary depending on the type of forgery. Under the new law, a third first degree burglary offense carries a mandatory minimum sentence of five years in prison.

The bill also increased the dollar amount that triggers a felony theft offense, reflecting that inflation has lowered the value of previously established monetary thresholds. HB 1176 increased the felony threshold for shoplifting from \$300 to \$500 and for most other theft crimes to \$1,500 and instituted sentence ranges that correspond to the value of the theft. The measure applied to several statutes including theft by taking, by deception, receiving stolen property, and copper theft. In recent years, other states – Maryland, Oregon, Montana, South Carolina, and California -- have also modified felony theft thresholds.

*Hawaii -- Expanded Use of Alternative Sanctions for Felony Drug Offenses*

State lawmakers worked to establish alternatives for felony drug offenses, modify the terms of probation, and change felony theft penalties with the passage of House Bill

2515. The legislation expanded eligibility for alternative sanctions for persons convicted of a second drug offense; previously only first time offenders were eligible. The legislation also reduced probation sentences for certain class B or C felony offenses to five years from four years upon conviction.

*Kansas and Missouri -- Established Justice Reinvestment Working Groups*

Officials in Kansas and Missouri took steps towards managing state prison populations by establishing justice reinvestment working groups. Kansas lawmakers passed House Bill 2684, legislation that required the Secretary of Corrections to establish a Justice Reinvestment Working Group composed of 17 members appointed by various officials in each branch of state government. The working group is charged with studying data-driven, fiscally-responsible policies and practices that can increase public safety, and reduce recidivism and spending on corrections in Kansas. The working group was required to submit a report of its activities and recommendations to the Legislature by early 2013.

Missouri established a similar entity with the enactment of House Bill 1525, a measure that established a 13-member Sentencing and Corrections Oversight Commission. The bill specified the composition of Commission members, including, judges, public defenders, prosecutors, and victim's advocates. The Commission is charged with monitoring statutory provisions focused on reducing recidivism and determining ways to reinvest any cost savings to support evidence-based practices.

*Oklahoma -- Expanded Judicial Review and Reduced Sentences for Certain Drug Offenses*

Lawmakers attempted to address prison overcrowding with the passage of House Bill 3052, the state's version of justice reinvestment. The bill included several provisions, most notably expanding the time period for judicial review from 12 months to 24 months with the approval of the district attorney. Under this provision, persons within the last ten years of a prison sentence for a felony conviction or probation revocation are ineligible to apply for a sentence modification. HB 3052 also reduced sentences for a second drug conviction in some circumstances, including penalties for a second conviction involving any Schedule III, IV, or V substance or marijuana that is not during probation or within ten years of a previous conviction. The new criminal penalties range from a one to

five year prison sentence, rather than the previous two to ten years. The Justice Reinvestment grant program created by HB 3052 established a mechanism to distribute anticipated cost savings to local law enforcement agencies to address violent crime.

*Pennsylvania – Expanded Sentencing Options for Certain Drug Offenses and Authorized Presumptive Parole for Eligible Defendants*

Senate Bill 100 includes several sentencing provisions targeted to address the state's criminal justice system. The measure authorizes sentencing to County Intermediate Punishment (CIP) facilities for persons convicted of lower quantity drug felonies and sentenced under the first tier of the drug trafficking mandatories. The measure also expands sentencing to State Intermediate Punishment (SIP) facilities for a list of statutorily specified offenses. The bill excludes sentencing to SIPs for persons convicted within the last ten years of murder, voluntary manslaughter, robbery, robbery of motor vehicle, and drug trafficking, among other offenses. SB 100 also expands the eligibility age for persons sentenced to boot camp from 35 years to 40 years.

The bill also expanded authority under the 2008 Recidivism Risk Reduction Incentive (RRRI) initiative by enabling judges to sentence eligible individuals to sentences with presumptive parole triggers. Persons eligible for RRRI are prisoners in the custody of the Department of Corrections with no history of violence or convictions for specified offenses including assault, robbery, or arson. If the person completes required programming and meets other conditions, he or she will be presumptively paroled at the minimum eligibility date. SB 100 authorizes eligible defendants to receive an RRRI minimum sentence even if a mandatory sentence is authorized by law.

To complete the justice reinvestment initiative, a separate piece of legislation was needed to allocate the savings into policing, supervision, county corrections and community corrections. Lawmakers passed House Bill 135, a measure that established a formula by which savings realized through SB 100 will be returned to local governments to carry out determined directives. The legislative formula outlined in HB 135 includes 43% for local police grants; 26% allocated to local grants for county probation; 21% to implement contracts with counties for diversion

of low-level offenders; 6% to the Board of Probation and Parole for costs related to streamlining the parole process; and 4% to coordinate and implement improved reentry programs.

### **Washington – Authorized Possession of Marijuana for Personal Use**

Voters authorized marijuana legalization with the passage of ballot Initiative 502. The ballot initiative eliminates criminal penalties and regulates the production, possession and distribution of marijuana for persons age 21 and older. The Washington referendum imposes a 25% tax rate on marijuana at three points: when the grower sells it to the processor, when the processor sells it to the retailer, and when the retailer sells it to the customer. It's not clear exactly how much tax revenue legalization will bring in, although estimates for the measure run as high as \$500 million.

## **PROBATION AND PAROLE POLICY**

Many states that aim to manage prison populations have prioritized reducing returns to prison for persons supervised on probation and parole. In 2012, at least eight states enacted efforts to address supervision policies that may contribute to state prison admissions. There is little evidence that expanding capacity reduces overcrowding and current fiscal pressures make prison expansion an unlikely option. In many jurisdictions, state lawmakers have the authority to address the length of stay and ease capacity issues through sentencing and parole reforms. During 2012, several states enacted legislative measures to reduce prison time served as an incentive for good behavior and successful participation in rehabilitation programs that include vocational training, education, and substance abuse treatment.

### **Colorado – Expands Earned Time Eligibility for Certain Persons**

State lawmakers enacted House Bill 1223, a measure that extends eligibility for earned time to persons re-incarcerated under a parole revocation and to individuals convicted of felony offenses after July 1, 1993. Prior to passage of HB 1223, persons sentenced for parole violations could not accrue earned time and benefit from early release policies. The bill also created a new category of earned time called “achievement earned time (AET)” and authorized up to 60 days of achievement earned time, not to exceed a total of 120 days, at the discretion of the executive director of the Department of Corrections. AET is awarded for specified milestones of achievement including successful completion of eligible education or rehabilitation or demonstration of exceptional conduct as defined by statute.

### **Delaware – Expanded Alternative Sanctions to Limit Use of Incarceration**

State lawmakers also passed a justice reinvestment package in 2012. Senate Bill 226 authorized the use of home confinement in lieu of incarceration to sanction technical supervision violations. The goal of this provision is to alleviate capacity pressure at prison facilities used to sanction persons who violate the conditions of supervision. SB 226 also increased the amount of good time that eligible prisoners may earn, up to 60 days for successful completion of an approved program for a total of 160 days in a given year. Previously, prisoners could only earn 100 days of good time. The measure also allowed persons under community supervision to earn credit for successful compliance with the conditions of their probation. Persons may earn up

to 30 days of credit for 30 days of compliance with conditions of supervision, not to exceed half of their probationary period.

### **Georgia – Authorized the use of Alternative Sanctions and Codified Graduated Sanctions**

As previously noted, HB 1176 also worked to address recidivism by seeking to encourage the sanction of probation in lieu of prison by allowing courts to authorize electronic monitoring for all eligible defendants. The measure codified into statute the use of graduated sanctions for probationers and required the implementation of evidence-based practices including the use of a risk assessment. The legislation contains provisions to reinvest \$11.6 million in anticipated savings into specialty courts that focus on persons convicted of drug offenses with mental illness and prioritized \$5.7 million in projected savings for new residential treatment centers focused on providing rehabilitation services to prisoners with drug and alcohol addictions.

### **Hawaii – Limited the Use of Incarceration for Technical Parole Violators**

The formerly mentioned SB 2776 also limited the use of incarceration up to six months for parole violators who have not committed new offenses or violated parole conditions applicable to persons convicted of sex offenses. The measure also credits time served in detention pending a parole revocation hearing.

### **Louisiana – Restored Parole for Certain Life Prison Terms and Shortened Time Requirements for Certain Parole Eligible Sentences**

House Bill 543 extended parole eligibility to persons sentenced to life for certain offenses after specific conditions are met. The legislation excludes persons convicted of violent or sex offenses. Previously, state law did not authorize parole consideration for prisoners sentenced to life terms unless their sentence had been commuted to a fixed term of years. HB 543 establishes new standards for parole consideration for prisoners depending on their age of conviction. Individuals sentenced to life who are 18 and under at the time of conviction must serve a minimum of 25-years before being considered for parole. Persons between the ages of 25 to 35-years must serve a minimum life sentence of 20 years before parole consideration, while individuals between the ages of 35 to 50 must serve a minimum

15 year sentence. Persons sentenced to life terms aged 50 years or older must serve a minimum of 10 years before being considered for parole.

Louisiana lawmakers also authorized House Bill 1026, legislation that allows parole eligibility for persons convicted of a second felony offense after serving one-third of the imposed sentence. Individuals excluded from the new law include persons sentenced for a sex offense, violent crime, or those sentenced under Louisiana's habitual offender statute. Previously, persons convicted of a second felony offense were only eligible for parole release after serving 50% of the imposed sentence.

### **Missouri – Authorized Earned Compliance and Swift and Certain Sanctions**

Missouri lawmakers enacted other provisions with the passage of HB 1525 targeted at reducing recidivism for persons sentenced to probation or parole supervision. Provisions include earned compliance credits for eligible individuals convicted of nonviolent offenses sentenced to probation, parole or conditional release for a class C or D felony or specified drug offenses. The measure mandated that earned compliance credits reduce the term of probation, parole, or conditional release by 30 days for each full calendar month of compliance with all terms of supervision.

The legislation also authorized a probation or parole officer to impose a county jail sentence as an alternative to revocation to prison for supervision violations. County jail sentences are limited to a specified period of time; the first period of jail detention cannot exceed 48 hours; however, subsequent periods can exceed 48 hours although the total sentence cannot exceed 360 hours in any year. However, HB 1525 also allowed courts to impose a mandatory six-month sentence to in-prison treatment programs for persons who violate the conditions of probation if continued efforts to modify or extend probation terms are determined to not be appropriate. Time served in the eligible in-prison treatment must be credited against the individual's sentence.

### **Oklahoma – Modified Parole Authority for Certain Offenses, Required Post Incarceration Supervision**

Oklahoma voters approved by a margin of 59.2%, State Question 762, an amendment to the state constitution that authorized the Pardon and Parole Board to grant parole for nonviolent offenses. The measure required the Board to report

annually on all parole releases to the Legislature. Prior to the change, Oklahoma was among three states, including Maryland and California, where the Governor has final approval for parole release decisions.

Oklahoma's HB 3052, the state's justice reinvestment measure, also included other provisions relating to probation and parole. The legislation mandated post-incarceration supervision for all persons exiting state prison, codified standards for graduated sanctions into statute, and authorized a six-month prison term for drug court participants and persons who violate the conditions of their probation.

### **Pennsylvania – Expanded Sentencing Options for Technical Parole Violators and Improved Reentry Services**

The previously mentioned SB 100 also authorized sentencing of technical violators to community corrections facilities for certain parole violations that did not result in the commission of a new crime. The measure maintained the authority of the Board of Probation and Parole to return persons who violate their parole to prison.

Additionally, SB 100 established the Safe Community Reentry Program, an effort to reduce recidivism by providing persons with a full continuum of services during incarceration and their transition into the community. The bill required the Department of Corrections to conduct research that assesses the program's impact on reducing recidivism rates.

## **COLLATERAL SANCTIONS**

During 2012, elected officials in at least 11 states worked to address the barriers of collateral sanctions for persons with felony convictions or arrests. As the correctional population has grown in the United States, the number of Americans with felony convictions has grown to 19.8 million adults or 8.6% of the adult population. In recent years, there has been momentum to address societal barriers, including changes in employment policy, authorizing expungement relief, and extending voting rights to persons with felony convictions.

### **Colorado – Established a Statewide “Ban the Box” Measure**

House Bill 12-1263 statutorily required state agencies to delay when they conduct criminal background checks for prospective employees until job applicants are considered finalists for the position. The measure excluded jobs that prohibit employment for those with criminal convictions, such as positions with the Department of Corrections. The legislation required that state agencies consider several factors for persons with criminal convictions, including the nature of conviction, the amount of time since the applicant’s conviction, and the applicant’s demonstrated record of rehabilitation and good conduct. Other states have passed similar “Ban the Box” legislation, including Minnesota, New Mexico, and Connecticut.

### **Delaware – First Step in Eliminating Waiting Period for Voting Rights Restoration**

House Bill 9 amended the Delaware Constitution to eliminate the five-year waiting period for persons with certain felony convictions who have fully discharged their sentences, before their voting rights are restored. The same version of HB 9 must pass in 2013 in order to be enacted as a constitutional amendment and does not have any force of law until then. Currently, Delaware disenfranchises approximately 46,600 individuals, including over 28,000 who have completed their sentence. In Delaware, African Americans constitute about 45% of those disenfranchised, an estimated 20,862 persons. Delaware is one of only 12 states in which a felony conviction can result in the loss of voting rights post-sentence.

### **Georgia – Allowed Sealing of Certain Criminal Cases**

An expungement provision was included in the previously mentioned HB 1176, Georgia's justice reinvestment act. The legislation also authorized the sealing of cases that were never referred for prosecution and certain low-level drug possession offenses after completion of probation following a waiting period. Persons sentenced as a "youthful offender" with one misdemeanor or a series of misdemeanors stemming from a single arrest may be sealed after a period of time. Additionally, the bill authorized "dead docket" cases that are older than 12 months to be sealed at the request of the subject of the record.

### **Indiana – Restricted Access to Sealed Criminal Records**

Under House Bill 1033, lawmakers limited the ability of criminal records companies to report criminal history information and prospective employers from inquiring about sealed criminal records. Individuals convicted of misdemeanors and Class D felonies are eligible to have their records sealed eight years after they have satisfied all obligations of their sentence if it did not result in injury to another person. The legislation authorized the Attorney General's office to sanction criminal records providers and employers who inquire about sealed criminal histories. Criminal history providers who do not update their records or fail to remove any information that is inaccurate, expunged, or restricted can be assessed a civil penalty of \$1,000 for a first violation and \$5,000 for any subsequent violation. Prospective employers can also be sanctioned with a Class B infraction if an employer asks whether an employee, contract employee, or applicant has a criminal record that has either been sealed or restricted. The maximum judgment for a Class B infraction is \$1,000.

### **Louisiana – Extended Expungement Relief for Certain Felony Offenses**

Senate Bill 403 authorized expungement for persons convicted of a first nonviolent felony offense for certain drug crimes, including low-level drug possession, manufacturing, and selling offenses. This bill allowed individuals with one felony conviction for possession, distribution or possession with intent to distribute 28 grams or less of cocaine, amphetamines, oxycodone or methadone to apply to have their records expunged. To qualify for expungement, the individual must also have completed a "boot camp" rehabilitation program while in prison. A process already exists for expunging misdemeanor convictions.

**Missouri – Authorized Expungement Relief for Certain Criminal Convictions**

State lawmakers enacted House Bill 1647, a comprehensive legislative measure that included a provision authorizing expungement of certain felony and misdemeanor criminal records. Individuals become eligible after a 20 year waiting period for felony convictions or a 10 year waiting period for misdemeanor convictions or municipal offenses. The statute defines years passed as calculated from the time an individual completed a sentence of imprisonment or a period of probation or parole. Additionally, the person cannot have been found guilty of any crime (excluding traffic offenses) during this time period and must have demonstrated behavior that warrants expungement. The individual must file a petition in the court in which the conviction occurred. If the petition for expungement is denied, the individual can re-file the petition after a one year waiting period.

**North Carolina – Established Expungement Policy**

House Bill 1023 allows individuals with nonviolent misdemeanors or felonies to expunge their records after 15 years. In order to expunge a record, applicants must file a petition with the court where their conviction occurred after fifteen years have passed or when any active sentence, period of probation and post-release supervision has been served (whichever occurs later). The petition process includes a fee, notice to the district attorney, with a right to file objection to the petition, and judicial authority to call upon a probation officer for investigation or verification of petitioner's conduct.

**Ohio – Allowed Sealing of Certain Criminal Records**

Senate Bill 337 included several expungement provisions to improve outcomes for persons with prior convictions. One provision modified eligibility requirements for the sealing of a criminal record. The act stipulated that persons are eligible only if convicted of specified offenses and only if they do not have more than one felony conviction, or two separate misdemeanors, or not more than one felony conviction and one misdemeanor conviction in Ohio or any other jurisdiction. Violent and sex offenses are not eligible for expungement. The law will also help persons with juvenile convictions by authorizing expungement after six months instead of two years except in cases involving murder, attempted murder, or rape. The measure expands judicial authority to seal the records of juveniles convicted of certain sex crimes.

### **Tennessee – Authorized Expungement for Certain Offenses**

House Bill 2865 authorized expungement relief for individuals convicted of certain first-time, non-violent and non-sexual misdemeanors, and Class E felonies after a five-year waiting period. At the time of application for expungement, the individual must have met all conditions of supervised or unsupervised release, including the payment of all fines and restitution.

### **Utah – Expanded Expungement Relief**

Senate Bill 201 expanded expungement relief to include specified traffic offenses. The measure authorized individuals to petition the Bureau of Criminal Identification of the Department of Public Safety for a certificate of eligibility to expunge records of arrest, investigation, and detention, subject to specified conditions.

### **Vermont – Established Process for Sealing Criminal Records**

Lawmakers worked to address the state's limited expungement policy with the passage of Senate Bill 37. The measure created a process for expunging an arrest record or conviction for many nonviolent misdemeanors. Under the new law, individuals can apply to the state's attorney in the county where they were convicted if they are clean of any crime for 10 years or more, they completed any sentence given, paid all restitution and met any other conditions, and have had no subsequent criminal convictions. The court has the discretion to expunge the applicant's record. Certain offenses, such as sexual exploitation of children, are excluded from the policy.

## JUVENILE JUSTICE

Lawmakers adopted policies in seven states during 2012 that demonstrate a commitment to reforming policies for juvenile defendants and authorizing parole options for persons sentenced in their youth. These changes in policy continue a trend that seeks to change the response to juvenile crime by adopting mechanisms to address risk, limit presumptive adult prosecution policies, and authorize expungement mechanisms for certain juvenile convictions.

Notably in 2012, the Supreme Court ruled in *Miller v. Alabama* that mandatory life-without-parole sentences for individuals 17 or younger convicted of homicide violate the Eighth Amendment. The Miller ruling builds on the 2010 Supreme Court decision in *Graham v. Florida* in which it was held that individuals convicted as juveniles cannot be sentenced to life imprisonment without parole for non-homicide offenses.

### California – Restricted Juvenile Life with Parole

Senate Bill 9 allowed certain individuals to petition for a resentencing hearing if they were minors when they committed the offense. Persons eligible for sentencing relief under SB 9 must serve at least 15 years in prison before they can apply for parole and are not eligible for release until they serve a minimum of 25 years. The measure excluded certain categories of persons, including those who had a history of violence at the time of the offense and cases where the victim was tortured or the victim was a law enforcement officer or firefighter. As of 2012, 293 individuals were sentenced to juvenile life without parole in California.

### Colorado – Limited Authority to Transfer Juvenile Cases to Adult Court

Lawmakers in Colorado enacted two measures that improved juvenile justice. HB12-1271, limited the offenses that trigger a juvenile defendant's transfer to adult court but still permits transfer certain categories including violent sex offenses or persons with of prior violent offenses. HB 1271 statutorily required the court to remand a youthful defendant's case to juvenile court if the district court does not find probable cause for a direct file eligible offense. The measure also authorized a hearing to reverse the adult transfer of juvenile defendants following a petition to the adult criminal court.

### **Louisiana – Eliminated Juvenile Life without Parole for Non-Homicide Offenses**

Senate Bill 317 brought Louisiana into constitutional compliance with *Graham* by authorizing parole for certain persons sentenced as juveniles to life without parole. Specifically, the measure allowed parole eligibility after individuals have served 30 years. SB 317 required that a three-person parole board decide whether to release eligible individuals. The bill mandated those applying for parole to participate in specified education programs, earn a low risk designation as determined by Louisiana’s Department of Public Safety and Corrections, and complete authorized reentry programs.

### **Maryland – Authorized Expungement Relief for Certain Juvenile Convictions**

House Bill 708 authorized a person to file, and “required a court to grant,” a petition for expungement of a juvenile criminal charge that was not handled exclusively in juvenile court. Prior to reform, Maryland law only authorized expungement relief for cases that were handled exclusively in juvenile court.

### **Michigan – Expanded Expungement Relief for Certain Juvenile Convictions**

House Bill 5600 authorized a person to file a petition for expungement of juvenile convictions under certain circumstances. Specifically, individuals are eligible to expunge two separate juvenile convictions or three or more juvenile convictions if they were a part of the same court disposition; felony convictions are restricted from expungement. Previously, persons could only apply to seal one juvenile conviction if they had no felony convictions.

### **Oregon – Established Automatic Expungement Process for Juvenile Prostitution Offenses**

House Bill 4146 authorized expungement for persons convicted of prostitution offenses under the age of eighteen. Expunction is required to occur without a waiting period and, if no objection is filed, without a hearing. Under Oregon law, youth cannot consent to sex and therefore lawmakers found it inconsistent to prosecute minors with the crime of consenting to sex for money. Persons seeking expungement for other eligible offenses must wait five years before submitting their court petition.

### **Pennsylvania – Limited Juvenile Life with Parole and Mandated Courts to Cite Reasons for Out-of-Home Placements**

State lawmakers moved to bring the state into compliance with *Miller* by amending Senate Bill 850 to allow for an opportunity of parole release after a specified number of years for certain prisoners. Currently, nearly 500 individuals are sentenced to juvenile life without parole in the state, more than any other state in the nation. Under SB 850, JLWOP remains a sentencing option for juveniles convicted of first degree murder. However, in cases involving youth ages 15-17, a judge can, upon consideration of a series of aggravating and mitigating factors, impose a 35 years-to-life sentence. If the youth is under the age of 15, the judge can impose a 30 years-to-life sentence. For second degree murder convictions, or “felony murder,” JLWOP is no longer a sentencing option. Rather, persons convicted of this offense ages 15-17 are sentenced to a minimum 30 years-to-life sentence, while youth under the age of 15 are sentenced to a minimum of 20 years-to-life sentence. SB 850 is not retroactive, necessitating court action for those currently eligible for sentencing relief under *Miller* or *Graham*.

Lawmakers also enacted Senate Bill 818, legislation that amended the Judicial Code relating to the disposition of a delinquent child. The measure required the court to state the reason for the juvenile’s sentence for the record in open court, together with the goals, terms, and conditions of that sentence. The bill mandated the court to state for the record several conditions if the youth is to be committed to out-of-home placement, including the name of the specific facility, type of facility, and findings or legal basis that framed the decision.

## **POLICY RECOMMENDATIONS**

Despite the reforms highlighted in this report, the United States continues to maintain the highest rate of incarceration in the world. Lawmakers concerned with the use of incarceration should prioritize addressing policies that trigger a prison sentence and lengths of stay. Particular attention should be given to reforming mandatory minimums and parole release mechanisms as policies that can work to reduce state prison populations. Recent changes in policy demonstrate that lawmakers, practitioners, and voters can adopt initiatives targeted at reducing state prison populations without compromising public safety. In recent years there have been modest declines in more than half of state prison populations. Population declines offer an opportunity to state officials to reduce prison capacity and minimize correctional costs. During 2012, at least six states closed 20 prison institutions or contemplated doing so, potentially reducing prison capacity by over 14,100 beds and resulting in an estimated \$337 million in savings.

Stakeholders exploring policy initiatives to address the scale of incarceration should consider the following options during the 2013 legislative session:

### **Reform Sentencing Statutes**

Revisiting sentencing statutes to address the policies that contributed to growth in state prison populations is essential. During 2012, Missouri modified the state's crack-powder sentencing disparity, the nation's highest. Also, voters in California approved a measure that limited the scope of the state's notorious three strikes law. Louisiana also expanded parole eligibility in 2012 by modifying several statutes. Despite these changes, most states continue to employ mandatory minimum sentences that restrict the ability of judges to sanction defendants in a fair and proportionate way. Also, Massachusetts lengthened prison stays in 2012 for certain repeat offenders despite including a provision that scaled back enhancements for drug offenders arrested near schools. Mandatory minimums do not reduce crime but result in lengthy prison terms that contribute to overcrowding. Stakeholders working to address state rates of incarceration should target the repeal of mandatory minimum statutes and assess parole release mechanisms.

### **Eliminate Juvenile Life without Parole**

Today, there are about 2,600 individuals who were sentenced to juvenile life without parole. The Supreme Court's decisions in *Miller* and *Graham* demand that state lawmakers address this unfair sentencing option. The United States is the only country in the world that sentences youth to life without parole; state lawmakers should eliminate the sentencing option completely. During 2012, at least three states – California, Louisiana, and Pennsylvania – enacted measures that expand parole eligibility under certain circumstances.

### **Limit the Use of Incarceration as a Sentencing Option**

Efforts to manage state prison populations should prioritize limiting the use of incarceration as a criminal sanction. During 2012, several states, including Delaware, Georgia, and Missouri, statutorily limited the use of prison as a sanction for technical supervision violations and encouraged alternatives to incarceration, including home confinement.

### **Restrict Collateral Sanctions for Persons with Prior Convictions**

More than 19 million persons have felony convictions, and the majority of these individuals are not incarcerated. These men, women, and children live in the community and are adversely affected by barriers that are often unnecessary for public safety goals but restrict full societal participation. The stigma of prior involvement with the criminal justice system can minimize job opportunities, deny civic participation, and limit access to housing. Lawmakers should narrow the scope of collateral consequences by establishing or expanding expungement policies, creating mechanisms that automatically restore civil rights, and eliminating barriers to employment.

**FURTHER READING AVAILABLE AT [www.sentencingproject.org](http://www.sentencingproject.org):**

On the Chopping Block: State Prison Closings 2012

State of Sentencing 2011

Sentencing Reform Amid Mass Incarcerations—Guarded Optimism



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