

# THE STATE OF SENTENCING 2015

## DEVELOPMENTS IN POLICY AND PRACTICE



**THE  
SENTENCING  
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM



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# INTRODUCTION

The United States has the highest rate of incarceration in the world and keeps nearly 7 million men and women under criminal justice supervision. More than 2.2 million are in prison or jail, while 4.7 million are monitored in the community on probation or parole.

A mix of crime rates and legislative and administrative policies has produced the nation's high rate of incarceration. Punitive sentencing practices like mandatory minimums, habitual offender laws, the expansion of life without parole, and restrictions on sentence reduction policies have resulted in longer prison terms.

The Bureau of Justice Statistics has reported a modest decline of one percent in the nation's federal and state prison population for 2014. Twenty-four states and the federal Bureau of Prisons experienced declines in total prison populations between yearend 2013 and 2014. Among the states, Mississippi experienced the largest decline, with 3,200 fewer persons in prison in 2014, a decrease of 15 percent. In Texas, the state with nation's largest prison population, there was a modest decline of 1 percent, or 2,200 prisoners, from 2013 to 2014.

The need to reduce corrections spending has contributed to policy change at the state level. In many instances, state lawmakers have cited the lack of available resources to maintain a high prison capacity. During 2015, lawmakers in at least 30 states adopted changes in policy and practice that may contribute to further declines in incarcerated populations and address the collateral impacts of justice involvement. The policy reforms outlined in this document highlight changes in sentencing, community supervision, collateral consequences, and juvenile justice policies.

Highlights include:

- Sentencing: At least 12 states authorized new sentencing laws or modified policy practices to address prison population growth. Nebraska lawmakers abolished the death penalty; Connecticut reduced criminal penalties for certain drug

offenses; and Oklahoma's governor directed parole officials to establish a sentence reduction policy for persons sentenced to certain mandatory penalties.

- Mandatory sentencing reform: Maryland, Oklahoma and North Dakota authorized sentencing judges to depart from mandatory minimums in certain circumstances. These reforms generally allow a departure from statutory mandatory minimums based on the nature of the crime, mitigating circumstances, defendant's character, and the defendant's chances of successful rehabilitation.
- Probation and parole: Lawmakers in at least six states – Arkansas, Connecticut, Georgia, Montana, Texas, and Utah – modified policies relating to community supervision. Included among the law changes is statutory guidance designed to reduce returns to prison for technical probation and parole violators.
- Collateral consequences: Officials in at least 14 states authorized changes in policy and practice to the collateral impacts of a conviction. Notably, officials in California restored voting rights to 60,000 people on probation supervision and Kentucky reinstated voting rights to an estimated 100,000 citizens. Also, Alabama lawmakers eliminated the federal lifetime ban on food and cash assistance for persons with felony drug convictions, while Texas officials modified the ban on food assistance. Other reforms included authorizing fair chance hiring policies – “Ban the Box” -- for persons with criminal records in at least five states.
- Juvenile justice: Lawmakers in ten states adopted juvenile justice reforms, including at least three states which authorized legislation in response to *Miller v. Alabama*, the Supreme Court decision banning mandatory life-without-parole sentences for justice involved youth. Policymakers in at least two states restricted prosecutorial discretion in automatic transfer policies for juvenile defendants.

- Drug-free zone reforms: Utah and Connecticut lawmakers narrowed the scope of drug-free zone policies that impose lengthy prison terms for drug offenses. Individuals convicted of using or selling drugs within the protected zone, and in many cases at a great distance from a school, have faced substantially higher penalties than others who engaged in the same conduct outside the zone. State reforms have focused on limiting the geographic area of the zones and placing restrictions on when and under what circumstances the enhanced penalties apply.
- Reclassifying felony offenses: Connecticut, Maine, North Dakota, and Utah reclassified certain felony offenses to misdemeanors. Lawmakers enacted these policy changes to reduce incarceration and address the collateral impact of a felony conviction, including loss of voting rights, public benefits, and access to private and public housing. These policy reforms build on the 2014 California ballot measure, Proposition 47, where voters approved reclassifying six low-level property and drug offenses from felonies to misdemeanors.

While some reforms in recent years have addressed the drivers of mass incarceration, many have been relatively modest and therefore have had only a limited impact on state prison populations.

To meaningfully address the nation's scale of incarceration stakeholders must revisit the policies observed to increase prison admissions and lengthened terms of confinement. Addressing mass incarceration will involve scaling back long prison terms even for serious crimes. It remains to be seen whether the decisions of policymakers to address sentencing laws and practices can contribute to an evolving framework that shifts away from the reliance on incarceration.

## Key Criminal Justice Policy Reforms and Legislation Passed in 2015

State	Reform(s)
Alabama	Authorized Justice Reinvestment Initiative: established new felony class for certain offenses; expanded sentencing options; and eliminated federal lifetime public benefits bans for persons with felony drug convictions.
Arkansas	Modified parole revocation process.
California	Expanded juvenile parole policy to young adults. Broadened alternatives to prison for eligible incarcerated persons. Extended voting rights to persons with certain felony convictions.
Connecticut	Reclassified felony drug possession as a misdemeanor. Scaled back drug penalty enhancement zones. Enacted changes to parole process. Addressed collateral impacts of certain felony drug convictions. Eliminated juvenile life without parole. Raised the age for certain felony offenses for juvenile defendants.
Georgia	Authorized changes to probation and parole system. Established fair chance hiring policy for persons with criminal records.
Illinois	Eliminated juvenile life without parole. Raised the age for automatic transfer for certain offenses.
Indiana	Changed sentence modification policy. Addressed driver's license policy for persons with certain felony convictions.
Kansas	Allowed juveniles convicted as adults to serve sentences in youth detention.
Kentucky	Expanded voting rights to persons with certain felony convictions.
Maine	Reclassified certain drug possession offenses from felonies to misdemeanors.
Maryland	Scaled back certain mandatory minimums for drug offenses. Established Justice reinvestment coordinating council.
Minnesota	Expanded sentencing options for juveniles certified as adults.
Montana	Created Sentencing Commission. Modified executive clemency process.
Nebraska	Abolished the death penalty. Authorized prison population reduction measures.
Nevada	Eliminated juvenile life without parole as a sentencing option.
New York	Established fair chance hiring policy for persons with criminal records. Authorized pardon policy for persons with juvenile convictions.
North Dakota	Allowed judicial departures for certain drug mandatory minimums. Reclassified certain felony penalties to misdemeanors.
Ohio	Established fair chance hiring policy for persons with criminal records.
Oklahoma	Expanded judicial discretion for certain offenses. Modified sentence reduction policy. Scaled back life without parole for certain offenses. Reformed occupational licensing restrictions for persons with criminal records.
Oregon	Established fair chance hiring policy for persons with criminal records.
Pennsylvania	Eliminated certain automatic employment bans for persons with prior convictions.
South Carolina	Authorized automatic expungement for qualifying juvenile records.
South Dakota	Codified options to address juvenile substance abuse.
Texas	Reformed felony property thresholds. Modified parole revocation policy and sentence reductions. Relaxed federal lifetime ban on food assistance for persons with felony drug convictions. Codified changes to child support policy for incarcerated persons. Addressed ability of persons with felony convictions to rent private housing. Expanded expungement policy. Enacted truancy reform.
Utah	Enacted Justice Reinvestment Initiative: scaled back drug-free sentencing enhancement zones; eliminated weight thresholds for all marijuana offenses; and reclassified marijuana possession from a felony to misdemeanor.
Vermont	Abolished juvenile life without parole.
Virginia	Authorized fair chance hiring policy for persons with criminal records. Allowed firearm possession for certain justice-involved persons.
Washington	Mandated certain youth sentenced as adults serve time in a juvenile facility. Addressed justice-involved debt for juveniles. Modified automatic transfer policy.
West Virginia	Passed truancy reform. Expanded community-based alternatives for eligible justice involved youth.
Wyoming	Restored voting rights to persons with certain felony convictions.

# SENTENCING

During 2015, officials in at least 12 states addressed sentencing policies and practices to address the number of persons in prison and improve fairness in the criminal justice system. These policy changes may help to scale back the harsh punishments as a contributing driver of mass incarceration. Lawmakers and stakeholders interested in policy solutions to reduce state prison populations should consider laws that trigger admissions to prison and length of confinement. Reforms adopted in a range of states included abolishing the death penalty in Nebraska, at least four states reclassified felonies to misdemeanors, and at least five states scaled back mandatory minimums for certain drug offenses.



## EXPANDED PAROLE AND ALTERNATIVES TO PRISON FOR ELIGIBLE INCARCERATED PERSONS

Lawmakers authorized several policy reforms that reinforce a continuing effort to address chronic prison overcrowding. **Senate Bill 261** expands recent changes to policies governing parole for persons sentenced as juveniles. During 2013, state lawmakers authorized Senate Bill 260, a measure that required Youth Offender Parole hearings

### CALIFORNIA

for eligible incarcerated youth convicted of specified crimes prior to the age of 18. SB 261 expands that policy to persons who were 18-22 at the time of their crimes, and applies to persons sentenced to life prison terms or lengthy determinate sentences. The policy also requires that the Board consult with persons eligible for a Youth Offender Parole hearing six years prior to their parole eligibility date to discuss what will be needed to be parole ready.

**Senate Bill 219** expanded eligibility for the Alternative Custody Program to persons with a mental health or medical diagnosis. Prior to the law change, applicants with health problems like chronic medical and dental conditions were reportedly denied. Currently, the law authorizes the Secretary of the Department

of Corrections and Rehabilitation to offer a program under which certain incarcerated persons who are committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison. Existing law defines an alternative custody sentence to include confinement to a residential home, a residential drug or treatment program, or a transitional care facility that offers appropriate services. The policy authorizes eligibility for certain incarcerated persons sentenced to determinate sentences subject to specified disqualifying criteria.



## CONNECTICUT RECLASSIFIED FELONY DRUG POSSESSION AS A MISDEMEANOR; SCALED BACK DRUG PENALTY ENHANCEMENT ZONES

Lawmakers passed **House Bill 7104**, a measure championed by Governor Dannel Malloy. The law's provisions include revising the penalty structure for drug possession crimes, expanding sentencing alternatives for prison-bound defendants, reclassifying felony drug possession to a misdemeanor, and scaling back drug penalty enhancement zones for certain offenses. Specifically the provisions included: a new penalty structure that classifies possession of cocaine, heroin, marijuana or any amount of another illegal drug as a Class A misdemeanor, punishable by up to one year in prison for a first offense; expanding the sentencing alternative of home confinement to persons convicted under the new drug possession penalty structure; expanding application of the law from the previous range of possession of 0.5 – 4 ounces of marijuana or controlled substances not classified as narcotics or hallucinogens; and reclassifying penalty enhancements for possession crimes within 1,500 feet of an elementary or secondary school by someone who is not attending the school, or a licensed day care center. Previously, persons convicted of felony possession in restricted zones were sentenced to mandatory two-year prison terms running consecutively to the prison term imposed for the underlying possession crime, although a judge could depart from the mandatory under certain circumstances.



## INDIANA CHANGED SENTENCE MODIFICATION PROCESS

Lawmakers changed the state’s sentence modification process with the passage of **Senate Bill 174**. Under the previous law, persons who did not have credit-restricted sentences could petition twice for a sentence modification during the same prison sentence. If the prosecuting attorney did not approve the petition, the court had to set a hearing to consider the petition. The new legislation allows persons sentenced before July 1, 2014 to petition for sentence modification on the same terms as persons sentenced after that date. The measure also permits persons sentenced for violent offenses, including burglary, to petition for a sentence modification within 365 days of sentencing without the consent of the prosecuting attorney.



## RECLASSIFIED CERTAIN DRUG POSSESSION OFFENSES FROM FELONIES TO MISDEMEANORS

### MAINE

Policymakers reclassified certain drug possession offenses from a Class C felony to a Class D misdemeanor with the passage of **Legislative Document 113**. The scale of the punishment differential is substantial between a Class C felony and a Class D misdemeanor: the maximum misdemeanor sentence is 364 days in jail while a Class C felony conviction can result in a maximum five year prison sentence. However, policymakers also approved Legislative Document 1246, a measure that stiffened penalties for simple possession of cocaine and fentanyl powder. Officials have announced plans to resolve the conflict in 2016.

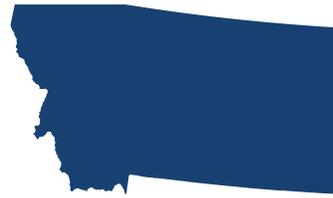


## SCALED BACK CERTAIN MANDATORY MINIMUMS FOR DRUG OFFENSES

### MARYLAND

**House Bill 121** authorized a court to depart from specified mandatory minimum sentences for certain crimes, generally involving the manufacture, sale, and distribution of illegal drugs. The law authorizes judges to depart from sentencing enhancements for defendants with prior offenses ranging in sentence length from 2 to 40 years. Departures are allowed based on considerations of the nature of the crime, mitigating circumstances, defendant’s character, and chances of successful rehabilitation. HB121 also

clarifies that a person convicted of any of the specified offenses is not prohibited from participation in a specified drug treatment program because of the length of sentence. The law change is not retroactive.



### MONTANA

## CREATED SENTENCING COMMISSION TO ADDRESS SENTENCING POLICY

Lawmakers established a Commission on Sentencing with the passage of **Senate Bill 224**. The commission is authorized to assess various issues relating to the state’s prison system including: conducting an empirical study on the impact of existing sentencing policies, identifying strategies to safely reduce the state’s prison population, and addressing racial and ethnic disparities in the criminal justice system.

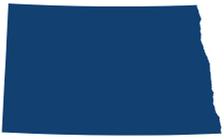


### NEBRASKA

## ABOLISHED THE DEATH PENALTY; AUTHORIZED PRISON POPULATION REDUCTION MEASURES.

A bipartisan coalition of lawmakers abolished the death penalty with the passage of **Legislative Bill 268**. The measure was vetoed by the governor, but overridden with broad legislative support. The law change aligns Nebraska with the 19 other states that have eliminated the death penalty as a sentencing option. Since 2007, six states have abolished capital punishment: Connecticut, Illinois, Maryland, New Jersey, New Mexico, and New York. In 2016, Nebraska voters will vote on a ballot measure that could reinstate the death penalty.

**Legislative Bill 605** addressed chronic prison overcrowding in the state prison system, including: raising property thresholds for several theft offenses to account for inflation and requiring that misdemeanor sentences be served in a county jail except when served concurrently with felony sentences. LB 605 revised sentencing procedures for certain low level felony offenses to authorize expanded use of probation and established options for responding to probation violations, including increments of 3-30 day jail sentences. Projections are that the law change will result in a decline of 1,000 incarcerated persons over five years and avoid correctional expenditures of \$300 million in future costs. Lastly, a provision of the measure directs expected savings towards reinvestment in supervision services for individuals monitored under post-release supervision.



## AUTHORIZED JUDICIAL DEPARTURES FOR CERTAIN DRUG MANDATORY

### NORTH DAKOTA MINIMUMS; RECLASSIFIED CERTAIN FELONY PENALTIES TO MISDEMEANORS

**House Bill 1030** allows judicial departures from certain mandatory minimums for drug offenses after considering the nature of the crime, the character of the defendant, and the defendant’s chances for successful rehabilitation. Under the new law, judges can depart from a mandatory minimum sentence if they state for the record why imposing it would be unfair and unnecessary for public safety. Sentencing judges are required to report the number of departures to the state court administrator for an annual report.

**Senate Bill 2030** reclassified penalties for personal-use drug paraphernalia from a felony to misdemeanor for certain drug offenses, including methamphetamine and cocaine. Prior law categorized possession of drug paraphernalia as a Class C felony punishable by a maximum prison term of five years. The law change expands prosecutorial discretion in charging defendants with no prior offenses; persons with previous drug paraphernalia charges still face a felony charge. Previously, the state categorized possession of marijuana paraphernalia as a Class A misdemeanor; the law reclassified that offense to a Class B misdemeanor, the same as for marijuana possession.

Lawmakers also expanded sentence modification policies through the passage of **House Bill 1548**. The bill authorizes courts to reduce sentences for individuals who successfully complete the Department of Corrections’ drug offender work camp program.

Legislators also relaxed excessive punishments for individuals with prior drug convictions. **House Bill 1574** modified the penalty for persons convicted of two or more previous felony violations of the Uniform Controlled Dangerous Substances Act from life without parole to a mandatory minimum of 20 years and a maximum of life in prison or life without parole. The law limits mandatory sentences of life without parole to defendants with two or more trafficking convictions.

Governor Mary Fallin issued a memo directing the Department of Corrections to allow prisoners sentenced for violent offenses to earn good time, resulting in sentence reductions. Eligible prisoners were those sentenced under the state’s truth-in-sentencing structure, requiring persons convicted of 22 offenses to serve a minimum of 85 percent of their time. These individuals previously could not earn good time towards a sentence reduction; the change now allows them to earn good time starting at the beginning of their sentence that will be applied when they reach their 85 percent minimum. Reports indicate that 6,000 incarcerated persons may be affected by the policy change, resulting in \$2.3 million in correctional savings. Legislators had attempted to pass a similar statutory reform, but failed to do so.



## EXPANDED JUDICIAL DISCRETION FOR CERTAIN OFFENSES; MODIFIED SENTENCE REDUCTION POLICY;

### OKLAHOMA SCALED BACK LIFE WITHOUT PAROLE SENTENCES FOR CERTAIN OFFENSES

**House Bill 1518** will allow judges to depart from mandatory minimum sentences for certain offenses, resulting in shorter prison terms. The legislation expands judicial discretion in cases where the sentencing judge determines the mandatory minimum to be unfair and if the defendant does not pose a risk to public safety.

## REFORMED FELONY PROPERTY THRESHOLDS



### TEXAS

**House Bill 1396** included several provisions including raising property threshold amounts that trigger felony theft offenses for a range of criminal code violations. The impact on the state’s prison system is unknown, but there may be a decline in the number of persons sentenced to felony probation or incarceration. The measure also expanded the punishment range for fraudulent transfer of a motor vehicle, which is expected to increase demands on the state’s prison system.

# JUSTICE REINVESTMENT INITIATIVES

During 2015, at least three states – Alabama, Maryland, and Utah – advanced legislation under the Justice Reinvestment Initiative, an effort to address key drivers of growth in state prison systems.

- Alabama lawmakers authorized **Senate Bill 67**, a comprehensive measure that includes: establishing a new felony class for certain low-level offenses; authorizing certain incarcerated persons to serve “split” sentences which mandate post-release supervision following a minimum prison term; mandating the Parole Board to develop and implement parole guidelines governed by a risk assessment that considers in-prison conduct and other factors in the determination of release; and requiring the governor to establish the Alabama Criminal Justice Oversight and Implementation Council to monitor the legislation’s implementation. State officials estimate the law change will reduce the prison population by 4,200, resulting in a savings of more than \$380 million in future correctional costs and provide supervision for 3,000 more people upon release from prison.
- Maryland policymakers established a Justice Reinvestment Coordinating Council with the passage of **Senate Bill 602**. The law governs a data-driven approach to develop a statewide framework for sentencing and corrections policies to reduce Maryland’s incarcerated population, reduce spending on corrections, and prioritize avoided correctional expenditures in strategies to increase public safety and reduce recidivism. The JRCC concluded its work in late 2015 and submitted recommendations to Governor Larry Hogan. Policy recommendations included sentence reductions for certain drug offenses, increased parole grant rates, and removing some of the barriers to reentry.
- Utah lawmakers passed **House Bill 348**, which included: scaling back drug-free zones from 1,000 to 100 feet and limiting enhanced sentences in the zones to times when children are most likely to be present; restricting automatic sentence increases in drug zones to activities involving the sale and distribution of drugs rather than simple possession; eliminating weight thresholds for all marijuana offenses and reclassifying marijuana possession (including conduct previously classified as a third-degree felony or a Class A misdemeanor) to a Class B misdemeanor among other changes.

# PROBATION AND PAROLE

Lawmakers in at least six states authorized policy reforms governing community supervision practices for probation and parole. Nationally, 4.7 million men and women are supervised in the community. Addressing probation and parole practices is a major consideration in the project to scale back the nation's incarceration rate. Initiatives that divert persons who violate technical conditions of probation or parole can substantially reduce admissions to prison. During 2015, community supervision reform initiatives included streamlining parole revocation proceedings, modifying clemency processes, and authorizing sentence reduction policies for probation or parole.

individual's accountability plan, including the environment to which he or she plans to return.



## AUTHORIZED CHANGES TO PROBATION AND PAROLE SYSTEM

### GEORGIA

Lawmakers authorized an overhaul of the state's probation and parole system with passage of **House Bill 310**. The bill creates a new agency, the Department of

Community Supervision, to oversee felony probation and parole. Lawmakers advanced the reform following studies that found 80 percent of Georgia's probationers are supervised by private companies that contract with local governments; the private companies have been collecting more money from probationers than required by the court. The measure authorizes judges to convert supervision fines to community service hours if individuals cannot pay off their criminal justice debt, and limits probation fees in cases that are "pay-only," where people are put on probation to pay off a fine or debt.



## MODIFIED PAROLE REVOCATION PROCESS

### ARKANSAS

**House Bill 1371** codified practices governing the state's parole revocation process for persons who commit technical violations while on parole supervision.

According to the new law, the parole officer must prepare a violation report within three days to request a hearing while the parole board must issue a warrant. The law requires that a parole revocation hearing be held within 14 days of a parolee's arrest; within 21 days of the hearing the judge must submit a hearing report to the parole board and to the parolee.



### CONNECTICUT

## ENACTED CHANGES TO PAROLE PROCESS

**House Bill 7104** included several provisions governing the parole process. The law created a procedure to allow the board to consider certain inmates for release on parole without a hearing. Eligible persons include: individuals not convicted of a crime involving a victim; persons not convicted of a violent crime or other specified crimes, including second degree burglary or criminally negligent homicide; and persons who are not prohibited from parole for any other reason. The law allows evaluation of parole eligibility without a hearing by using a risk-based evaluation and release criteria, along with a review of the



### MONTANA

## MODIFIED EXECUTIVE CLEMENCY PROCESS

**House Bill 43** allows the governor to consider executive clemency applications even if the Board of Pardons and Parole declines to hold a hearing or

recommends clemency denial. Previously, the board served in a gatekeeping capacity; the new law changes the board's role to advisory on applications for executive clemency. The previous law granted the board the authority to deny clemency, although only the governor could grant clemency. Under the old law, clemency applications would only be forwarded to the governor if the board recommended it; there was an exception for death penalty cases.



## AUTHORIZED CHANGES GOVERNING PAROLE REVOCAION POLICY AND SENTENCE REDUCTIONS

### TEXAS

**House Bill 710** expands the use of summonses for persons awaiting hearings to determine if they have violated the conditions of parole supervision. The Parole Division of the Texas Department of Criminal Justice (TDCJ) can issue warrants for persons on parole or under mandatory supervision accused of violating the terms of their release or committing a new crime. These individuals are incarcerated in a county jail until a hearing is held to decide whether to revoke them to prison or release them back to the community. Prior to the passage of HB 710, state law authorized the Parole Division to issue a summons under limited circumstances, a practice that did not result in jail detention. The new law expanded the use of summonses in two situations: first, for parolees accused of administrative violations who have been under supervision for at least one year; and second, for parolees accused of a Class C misdemeanor who have a stable job, stable home, and no history of family violence.

**House Bill 1546** strengthened the sentence reduction policy for persons convicted of state jail felonies and sentenced to prison. During 2011, the legislature authorized sentence reductions for persons sentenced to a state jail felony. The new law allows judges to determine eligibility at sentencing as opposed to post-conviction. For persons determined to be eligible, the law requires the Texas Department of Criminal Justice to credit up to one-fifth of the sentence for participation in specified programs for those sentenced to a state jail felony. For persons who are not determined eligible at sentencing, TDCJ will provide notification of program participation to sentencing judges, who may then grant credit time.



## ALLOWED EARNED REDUCTION CREDITS FOR PROBATION AND PAROLE

### UTAH

The state's JRI measure, **House Bill 348**, also included several provisions governing changes to probation and parole policies. The law authorized a policy of earning reduction credits of 30 days for each month persons monitored on probation or parole comply with supervision. The bill also directed the state's Sentencing Commission to create a matrix regulating parole and probation practices that rewards good behavior and provides graduated sanctions, including short jail stays for technical violations.

# COLLATERAL CONSEQUENCES

Officials in at least 14 states enacted policies to address the collateral impacts of a criminal conviction. Collateral consequences can exclude individuals from certain job opportunities, limit civic participation, and eliminate eligibility for certain public benefits. These policies and practices vary widely across jurisdictions and serve to isolate and marginalize justice involved persons. During 2015, political leaders expanded voting rights to certain persons with felony convictions, addressed the federal lifetime ban on public benefits for persons with felony drug convictions, and established fair chance hiring policies to improve employment outcomes for persons with criminal convictions.

## CALIFORNIA, KENTUCKY AND MARYLAND

### EXPANDED VOTING RIGHTS TO PERSONS WITH FELONY CONVICTIONS

Nationally, 5.85 million Americans are prohibited from voting due to laws that disenfranchise citizens convicted of felony offenses. Felony disenfranchisement policies vary by state, producing a wide range of impacts.

- Approximately, 60,000 individuals with prior felony convictions were granted the right to vote in California. California is one of 35 states that deny voting rights to persons on parole, but a recent change in practice expanded voting rights to persons with realignment offenses. In 2011, California lawmakers enacted a “Realignment” policy (Assembly Bill 109). One salient provision allowed that prisoners with eligible low-level offenses would be released to county probation supervision instead of to state parole supervision. California Secretary of State Alex Padilla determined the state would settle litigation over laws that had barred persons on community supervision for low-level felony convictions from voting. Under the previous administration, then-Secretary of State Debra Bowen told election officials to extend the state’s ban on felon disenfranchisement to individuals with realignment offenses,

asserting that community supervision was “functionally equivalent” to parole; civil rights groups filed a lawsuit to challenge that interpretation. Padilla’s 2015 directive resulted in new guidance to election officials regarding voting eligibility for persons under felony community supervision.

- Kentucky Governor Steve Beshear issued an executive order automatically restoring voting rights to an estimated 100,000 persons with non-violent felony convictions who have completed their sentences. Kentucky is one of only four states, along with Iowa, Florida, and Virginia, which disenfranchise all persons with felony convictions even after completion of sentence. Voting rights in these states can only be restored through action of a governor or pardons board. An estimated 243,000 Kentuckians with felony convictions have lost their right to vote, including 180,000 who have completed their sentence. In late 2015, new governor Matt Bevin reversed the executive order, stating ““While I have been a vocal supporter of the restoration of rights it is an issue that must be addressed through the legislature and by the will of the people.” The reversal is prospective, and did not remove the voting rights of the individuals impacted by Beshear’s action.
- The Maryland General Assembly passed **House Bill 980**, restoring the vote to nearly 40,000 Maryland citizens living in the community who are under felony probation or parole supervision; the governor vetoed the legislation, but the veto was overridden in early 2016.

## ALABAMA AND TEXAS

### ADDRESSED PUBLIC BENEFITS BANS FOR PERSONS WITH FELONY DRUG OFFENSES

Legislative reform to modify the federal food stamp ban was enacted in Alabama and Texas. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act imposed a lifetime denial of federal benefits for cash and food assistance to people convicted in state or federal courts of felony drug offenses; the ban is imposed for no other offenses but drug crimes. States

can opt out of the federal ban or modify it by authorizing legislative reform.

- Alabama lawmakers included a provision in **Senate Bill 67** that expands eligibility for the Temporary Assistance for Needy Families program and/or the federal Supplemental Nutrition Assistance Program to persons with felony drug convictions. Lawmakers allowed persons with felony drug convictions to access public benefits after completing their sentence or if they are satisfactorily serving a probation sentence.
- Texas lawmakers expanded food stamp eligibility to persons with felony drug convictions. The measure was included in **Senate Bill 200** — a sunset law partially consolidating the state’s health and human services system -- and authorized participation for persons with felony drug convictions in the federal Supplemental Nutrition Assistance Program. The provision allows eligible persons who complete their sentences to receive food assistance, though violating terms of parole could result in a two-year disqualification. If persons with prior felony drug convictions are convicted of a new felony drug offense, the lifetime ban is reinstated.

## GEORGIA, NEW YORK, OHIO, OREGON, AND VIRGINIA

### ESTABLISHED FAIR CHANCE HIRING POLICIES FOR PERSONS WITH CRIMINAL RECORDS

Recent reforms expanded the number of states with fair chance hiring policies to 19. The reform efforts, also known as “ban the box,” refer to questions of arrest or conviction on employment applications. Officials reformed these policies through a range of mechanisms, including gubernatorial executive orders and state legislation. States that adopted policies include: California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Vermont, and Virginia.

- Georgia Governor Nathan Deal issued an executive order banning state agencies from requiring prospective job applicants to disclose their criminal histories in the initial application stage. The directive requires employers to provide applicants an opportunity to discuss their past offenses, as well as their efforts to rehabilitate themselves, during the interview process. The legislature established a commission,

the Georgia Council on Criminal Justice Reform, which had recommended the policy change in a report submitted to Governor Deal in 2014.

- New York Governor Andrew Cuomo used his authority to implement 12 recommendations by the Council on Community Re-Entry and Reintegration to address barriers faced by persons with criminal convictions. One recommendation resulted in the adoption of a fair chance hiring policy whereby job applicants for positions in New York state agencies will not be required to discuss or disclose information about prior convictions until and unless the agency has interviewed the candidate and is considering employment. Other recommendations provided anti-discrimination guidance for housing in New York-financed public housing and established a presumption towards granting an occupational license for persons with criminal records.
- Ohio officials and lawmakers authorized a “ban the box” policy to govern civil service applications. **House Bill 56** prohibits public employers, including state and required local jurisdictions, from including questions on job applications about past felony convictions. Prior to the statutory change, state officials adopted an administrative change that provided guidance on state employment applications regarding questions on prior felony convictions. The administrative policy directed that employment should not be denied solely on the basis of a prior conviction unless consideration of criminal involvement is authorized by federal or state law.
- Oregon lawmakers passed **House Bill 3052**, a measure that prohibits employers from including questions about applicants’ criminal history on job applications. The legislation does not prohibit employers from notifying applicants that they will later be required to disclose convictions or that a criminal background check will be conducted later in the hiring process. The measure specifically states that it does not exclude an employer from considering convictions when making hiring decisions. The bill allows applicants to file an administrative charge with the Oregon Bureau of Labor and Industries if initial job applications contain questions about criminal history.
- Virginia Governor Terry McAuliffe issued an executive order banning the state from asking about prospective employees’ criminal histories at the initial application stage in an effort to improve employment opportunities for persons with criminal records. The policy change eliminated

questions about criminal histories from most state jobs, with the exception of “sensitive” jobs or jobs where the applicant’s conviction relates specifically to the job. The order only allows criminal background checks after an applicant’s qualifications are determined and the person signs a waiver allowing the release of his or her criminal history. The state Senate advanced a similar legislative remedy with Senate Bill 1017, but given the failure of the House of Delegates to do so, the governor issued the executive order.

is determined to be a risk to public safety. Occupational licenses governed by the law change include interior design, landscape architecture, cosmetology/barbering and other areas requiring special board licensing.

Oklahoma policy makers passed **House Bill 2179**, legislation that improves the process for justice involved persons to obtain a commercial driver’s license once they have been released from prison. Prior to the law change, formerly incarcerated persons were required to pay off all fees and fines before getting a suspended license reinstated. They could do so by paying monthly toward their fines; HB 2179 extends the practice to those seeking a commercial driver’s license.



## CONNECTICUT

### ADDRESSED COLLATERAL IMPACTS OF FELONY CONVICTION FOR CERTAIN DRUG OFFENSES

The state’s criminal justice reform vehicle, **House Bill 7104**, addressed certain collateral impacts of a felony conviction. The measure’s provision that reclassified felony drug possession to a misdemeanor also resulted in removing certain consequences of a conviction including loss of voting rights for those sentenced to prison or on parole, disqualifications from jury duty; and denial or a revoking of certain state-professional licenses.



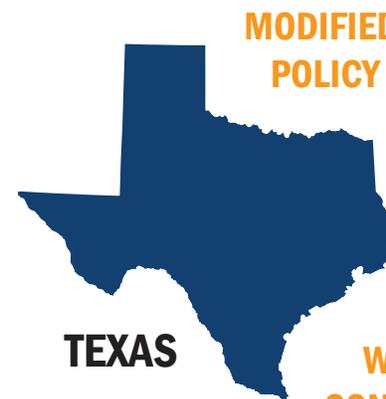
### CHALLENGED AUTOMATIC EMPLOYMENT BANS FOR CERTAIN JOBS

**PENNSYLVANIA** The Commonwealth Court in Pennsylvania unanimously ruled that a state law that restricted persons with criminal convictions from full-time employment in nursing homes or long-term-care facilities was unconstitutional. The court found, by a 7-0 vote, that the law violated the due process rights of otherwise law-abiding people who may have had prior justice system involvement but no longer pose a risk to public safety.



### AUTHORIZED CHANGES TO EXPUNGEMENT POLICY

**INDIANA** **House Bill 1302** expanded criminal records eligible for expungement to include arrests for certain charges and juvenile delinquency allegations that did not result in conviction. The measure specifies that a person may file for expungement of an arrest charge or juvenile delinquency adjudication that did not result in a conviction.



### MODIFIED CHILD SUPPORT POLICY FOR INCARCERATED PARENTS; REFORMED POLICY GOVERNING RENTAL MARKET FOR PERSONS WITH FELONY CONVICTIONS; EXPANDED EXPUNGEMENT POLICY

State lawmakers reformed several policies to address the collateral consequences of a conviction. Reforms included eliminating the minimum wage presumption for certain incarcerated persons to determine child support orders, addressing policies that prevent landlords from renting to persons with criminal records, and expanding the expungement policy to include certain offenses.



### ADDRESSED OCCUPATIONAL LICENSE RESTRICTIONS AND DRIVER’S LICENSES

**House Bill 2168** addressed occupational license restrictions. Prior to the law change, any felony conviction might affect licensure, registration or certification. The measure limits license denials or revocations to instances of persons convicted of a felony offense within the previous five years *and* where the conviction substantially relates to the occupation or the individual

**House Bill 943** amended the Texas family code to eliminate the minimum wage presumption for noncustodial parents who are in a state prison or jail for longer than 90 days for the purpose of establishing child support orders.

**House Bill 1510** amended the state's property code to establish that a cause of action does not accrue against a landlord or a landlord's manager or agent solely for leasing a dwelling to a tenant with a criminal record. The bill does not preclude a cause of action for negligence in leasing if the tenant was convicted of a more serious offense or is subject to sex offender registration and the landlord, manager, or agent knew or should have known of the conviction or adjudication.

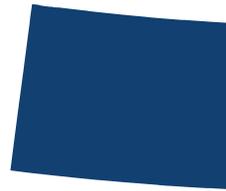
**Senate Bill 1902** expanded the state's expungement policy by authorizing orders of nondisclosure (OND) and discharge from a term of deferred adjudication community supervision to be issued for certain misdemeanor offenses. Persons can have their record expunged if they prove their eligibility to the court and pay a \$28 fee. The measure expands current eligibility for an OND to persons convicted of a first offense of non-violent or non-sexual misdemeanors, and who have completed their term of community supervision or incarceration. Depending upon the offense and type of adjudication, certain waiting periods are mandated to ensure that individuals can prove to the court that they are reformed prior to petitioning for an OND. The policy excludes assaultive offenses, disorderly conduct, and weapons charges, among other offenses.



## VIRGINIA

### ALLOWED FIREARM POSSESSION FOR CERTAIN JUSTICE-INVOLVED PERSONS

**House Bill 1666** eased the application process for possession of a firearm for eligible persons with felony convictions or a juvenile adjudication of delinquency of certain offenses. Individuals eligible to have their rights restored to possess firearms can now petition the circuit court where the felony conviction or adjudication of delinquency occurred. Under the previous law, individuals were only permitted to petition the circuit court in the jurisdiction where they resided.



## WYOMING

### RESTORED VOTING RIGHTS TO PERSONS WITH CERTAIN FELONY CONVICTIONS

**House Bill 15** required the state's Department of Corrections (DOC) to automatically issue a certificate of voting rights for persons with first-time, non-violent felony convictions who complete their sentence. Individuals who were convicted prior to 2016 and those with out-of-state and federal convictions must apply for a restoration of rights after their sentence is completed. The legislation also requires that a denial of a certificate of restoration of voting rights is subject to judicial review and the DOC must notify the Secretary of State when an individual's voting rights are restored.

# JUVENILE JUSTICE

Officials continued to scale back harsh juvenile justice policies, thus continuing a trend toward reductions in the incarcerated juvenile population and a downsizing of juvenile facilities. During 2015, lawmakers in at least ten states authorized sentencing options for justice-involved youth and required that juveniles sentenced to confinement be held in youth facilities. Several states advanced measures to eliminate juvenile life without parole in compliance with the 2012 Supreme Court decision in *Miller v. Alabama*. States also addressed “raise the age” requirements, resulting in modifying age-specific policies whereby juvenile defendants are automatically charged as adults. States also restricted law enforcement interactions for truancy violations.

## CONNECTICUT, ILLINOIS, NEVADA, AND VERMONT

### ELIMINATING JUVENILE LIFE WITHOUT PAROLE

During 2015 several states authorized legislation in response to *Miller v. Alabama*, the Supreme Court decision banning mandatory life-without-parole sentences for justice involved youth. Prior to this, Hawaii, West Virginia, Delaware, Massachusetts, Wyoming, and Texas had eliminated juvenile life without parole in recent years.

- In Connecticut, **Senate Bill 796** revised laws that govern sentencing and parole release policies for individuals under the age of 18 at the time of their criminal offense by retroactively eliminating life sentences for capital felony and arson murder, and convictions for murder with special circumstances. The bill established a parole policy that guides release decisions and authorizes parole eligibility for persons sentenced to more than ten years in prison for crimes occurring under age 18. The measure also directs criminal courts, in sentencing persons convicted of a violent felony committed between ages 14-18, to consider certain mitigating factors of youth, including lack of maturity and reduced competency to appreciate the risks and consequences of their actions. Criminal courts are also required to indicate

the maximum prison term that may apply and whether the person may be eligible for release under the bill’s alternative parole eligibility rules.

- **House Bill 2471** in Illinois eliminated mandatory life without parole for persons sentenced as juveniles and required judges to consider mitigating factors of youth prior to sentencing. The law allowed judges to not impose sentencing enhancements that extend the length of a defendant’s sentence.
- In Nevada, **Assembly Bill 267** abolished juvenile life without parole as a sentencing option. The bill requires courts to recognize that youth are different at sentencing and to consider age as a mitigating factor. Persons who were under the age of 18 and sentenced for non-homicide offenses are eligible for parole review after serving a minimum of 15 years; juveniles convicted of homicide offenses are eligible for parole review after serving a minimum of 20 years. Life without parole remains a sentencing option for juveniles convicted of homicide of more than one person.
- In Vermont, **House Bill 62** eliminated life without parole as a sentencing option for persons under age 18 at the time of their offense; the measure contained no provisions regarding minimum time served before parole eligibility. Prior to the law change, no juveniles were serving life without parole sentences despite the sentencing option.

## CONNECTICUT AND ILLINOIS

### RAISED THE AGE FOR JUVENILE DEFENDANTS

Advocacy efforts targeted at “raising the age” have been focused on ensuring that justice-involved youth younger than 18 are tried in the juvenile court system rather than the adult court system.

- In Connecticut, **House Bill 7050** eliminated automatic transfers to adult court for children ages 14-17 charged with certain class B felonies: first-degree manslaughter, first-

degree robbery without a deadly weapon, and certain first-degree burglary offenses. The measure raised the minimum age from 14 to 15 for automatic transfer for other class B felonies.

- Illinois lawmakers authorized **House Bill 3718**, a measure that amends the state's Juvenile Court Act, to expand juvenile court discretion to limit automatic transfer currently triggered by age and certain charged offenses. The prior law authorized a State's Attorney to automatically transfer a juvenile defendant to adult court simply based on age and charge.

## TEXAS AND WEST VIRGINIA

### ENACTED TRUANCY ENFORCEMENT REFORMS

Two states, Texas and West Virginia, restricted law enforcement interactions for truancy violations among students. In recent years school officials have increasingly relied on court referrals to enforce truancy rules.

- Under **House Bill 2398**, Texas students who miss school will no longer face fines (unless found in contempt of a court order), arrest, or jail time. Students who accumulate unexcused absences will have access to truancy prevention programs, including behavior modification plans or in-school community service. Students who are still chronically absent will be referred to truancy court by school administrators where the problem will be treated as a civil rather than criminal matter. Court remedies include requiring the student to participate in therapeutic interventions or tutoring.
- West Virginia **House Bill 2550** authorized statutory changes governing the state's truancy provisions. The new law offers guidance to schools to send a letter to parents or guardians after three unexcused absences and to host a meeting with a student's family after five absences. The measure codifies that state courts will not get involved in truancy cases unless there are ten unexcused absences. Also during this legislative session comprehensive juvenile justice reform legislation - Senate Bill 393 (described below) - authorized funding to support the hiring of truancy diversion specialists.



### KANSAS

### ALLOWED JUVENILES SENTENCED AS ADULTS TO SERVE TIME IN YOUTH DETENTION

**House Bill 2336** allows juveniles convicted as "adults" to be sentenced to juvenile facilities rather than be required to serve their term in an adult prison. The bill also requires the sentencing court to administer a risk assessment or review a risk assessment conducted within the previous six months.



### MINNESOTA

### EXPANDED SENTENCING OPTIONS UNDER AMENDMENTS TO ADULT CERTIFICATION LAW

**Senate File 944** amended the juvenile code's adult certification law and modified the juvenile jurisdiction code. The bill allows a court to not sentence a juvenile to a mandatory minimum sentence that would otherwise be required for the charged offense.



### NEW YORK

### ESTABLISHED PARDON PROGRAM FOR CERTAIN JUVENILES

Governor Andrew Cuomo established an initiative to automatically pardon thousands of people who were convicted of non-violent crimes as teenagers. Individuals convicted of a non-violent crime at the age of 16 or 17 and who have not been convicted of any crime for at least 10 years are eligible for a pardon. The initiative does not expunge the felony conviction, but rather grants qualifying individuals a certificate of rehabilitation resulting in formal recognition that they are in good standing with the state.



### SOUTH CAROLINA

### AUTHORIZED AUTOMATIC EXPUNGEMENT FOR CERTAIN JUVENILES

**Senate Bill 133** allowed automatic expungement of nonviolent convictions for qualifying juvenile records. The measure established a process where individuals can request in writing to have a nonviolent offense they committed as minors

to be permanently erased from their record. Juvenile records cannot be expunged if the petitioner has a prior conviction for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.



## ESTABLISHED OPTIONS TO ADDRESS SUBSTANCE ABUSE AMONG JUVENILES

**SOUTH DAKOTA** **Senate Bill 73** expanded access to community-based programs to assist youth with substance abuse problems. The initiative also sought to meet the needs of juveniles in need of therapeutic services and to provide wrap-around care. The measure included a provision to incentivize counties to divert justice-involved youth from the system so as to not acquire a criminal record.



## REQUIRED CERTAIN YOUTH CONVICTED AS ADULTS TO SERVE SENTENCE IN A JUVENILE FACILITY; ADDRESSED JUSTICE-INVOLVED DEBT FOR

## WASHINGTON JUVENILES; MODIFIED AUTOMATIC TRANSFER POLICY

**House Bill 1674** requires juveniles sentenced as adults and who are expected to complete their sentence prior to their 21<sup>st</sup> birthday to be transferred from the Department of Corrections (DOC) to the Department of Social and Health Services. Despite the transfer, the DOC retains authority over custody decisions and must approve any leave from the juvenile facility. The measure provides statutory guidance that recognizes that juvenile defendants are different than adults.

**Senate Bill 5564** addressed obligations for criminal court fines and restitution, as well as court sealing for certain juvenile records. The measure eliminates most non-restitution fines for justice involved youth and in certain cases would allow them to do community service instead of paying victim restitution. Courts are allowed to sentence juveniles not sentenced for serious offenses for up to seven hours of community restitution as long as the sentence is practical. When juveniles pay their restitution and meet other specified criteria, the court is authorized to seal their records. The bill prohibits cities, towns, and counties from imposing financial obligations for juvenile offenses unless specifically authorized by statute.

Lawmakers also authorized **Senate Bill 5652**, a measure changing the policy governing transfers to adult court. Prior law required certain juveniles to be tried in adult court for specified offenses. SB 5652 eliminated exclusive adult court jurisdiction for violent offenses and other practices governed by state law. For specified juvenile offenses, courts must hold a special hearing – unless waived by the courts, the parties, and their counsel – to consider individualized criteria in determining whether to transfer the juvenile defendant to adult court.



## EXPANDED COMMUNITY-BASED ALTERNATIVES FOR ELIGIBLE JUSTICE-INVOLVED YOUTH

**WEST VIRGINIA** **Senate Bill 393** authorized several policy changes to the state's juvenile justice system. Provisions included establishing a two-step diversion process that expands community-based alternatives such as restorative justice programs, substance abuse, therapeutic health programs, and family therapies prior to the filing of a juvenile petition for a status offense or misdemeanor. The measure prioritized funding to expand capacity for state programs to serve justice-involved youth in their homes rather than in out-of-home placements.

# CONCLUSION

In recent years the issue of mass incarceration has gained broader attention among diverse constituencies. Over the last decade the political environment shaping sentencing laws has evolved to being “smart on crime” to counter the “tough on crime” framework of a previous era.

Many of the reforms adopted in recent years are likely to have only a modest impact on rates of incarceration, but the continued pace of change in policy and practice suggests strong interest among state officials in reconsidering sentencing and collateral consequences. More substantial remedies will be required to significantly reduce the nation’s high rate of incarceration

Given the limited impact of incarceration on crime, many observers are hopeful that state lawmakers will advance future reforms to scale back mass incarceration by dealing with the severity of punishment. Meaningful reforms would involve eliminating or repealing mandatory minimum policies; scaling back “three strikes” laws and recidivist statutes; addressing statutory penalties mandating life without the possibility of parole for certain offenses; and reconsidering the length of prison terms in regard to the goal of public safety.

# The State of Sentencing 2015: Developments in Policy and Practice

**Nicole D. Porter**

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