



Photo: RAPP Campaign Rally June 2021

Successes in Criminal Legal Reforms, 2021

The United States continues to lead the world in incarceration given that over 6.3 million persons are under correctional control. More than 2.1 million are in prison or jail, and 4.4 million are under community surveillance on probation or parole. At least 19 million persons are living with a felony conviction while an estimated 70-100 million have a criminal record. The persistence of extremely punitive sentencing laws and policies, not increases in crime rates, sustain the nation's high rate of incarceration.

Ending mass incarceration requires a transformative change to sentencing policies and practices aligned with the scaling back of collateral consequences of conviction, and challenging racial disparities in the criminal justice system. This briefing paper highlights key reforms undertaken in 2021 prioritized by The Sentencing Project.

CHALLENGING EXTREME SENTENCES

States enacted legal reforms to reduce prison admissions and recalibrated punishments to limit extreme sentencing practices. Adopted changes built upon earlier efforts to curb incarceration growth.

The California Assembly adopted several legal reforms in 2021 to address the state's sentencing policies. [Assembly Bill 333](#) restricts the use of sentence enhancements for alleged gang crimes and codifies practices defining "patterns of criminal gang activity" used to lengthen prison terms. [Senate Bill 73](#) repealed mandatory prison and jail sentences for qualifying drug offenses involving heroin, cocaine,

opioids, and other substances. SB 73 also allows a court to grant probation for offenses that were previously ineligible or presumptively ineligible for probation. [Senate Bill 81](#) will help scale back the impact of more than 150 sentencing enhancements triggered by certain factors, including prior convictions and gun possession during a crime. The measure dismisses these enhancements, including those that resulted in decades-long sentences and discriminatory racial impacts. [Senate Bill 483](#) allows the retroactive repeal of sentence enhancements for prior prison or county jail felony terms, and requires officials to identify persons in custody eligible for a "second look" sentencing review hearing.

Colorado and **Illinois** addressed felony murder statutes for cases when individuals did not directly cause the death of another person. [House Bill 124](#) in **Colorado** reclassified felony homicide offenses from first degree murder to second degree murder when a death is not caused by the defendant, no longer subjecting defendants to a mandatory life without parole sentence. **Illinois'** comprehensive criminal legal omnibus bill [House Bill 3653](#) included a provision prospectively addressing the felony murder statute. Before the change codified by HB 3653, a person could receive up to a life sentence for any death proximately caused by the forcible felony, including robbery and kidnapping, regardless of who actually caused the death.

Mississippi lawmakers adopted [Senate Bill 2795](#) known as the Mississippi Earned Parole Eligibility Act. The measure builds on [previous reform efforts](#) enacted in 2008 and 2013 which reduced time served requirements prior to parole eligibility for nonviolent and violent offenses respectively. Yet, Mississippi consistently ranks among states with the highest levels of incarceration animating continued efforts to address extreme sentencing practices. Mississippi's parole policy currently authorizes parole at 25% time served for nonviolent offenses and 50% time served for qualifying violent offenses. SB 2795 adds qualifying nonviolent and violent offenses to the previously established parole review policy. The state's Department of Corrections estimates up to 3,000 persons will be eligible for parole review over the next three to five years as a result of this statutory change.

Virginia lawmakers abolished the death penalty statute with adoption of [Senate Bill 1165](#). The proposal amends numerous statutes in the Code of Virginia to reclassify Class 1 felonies to eliminate the death penalty as a sentencing option for any crime. Persons sentenced to death before July 1, 2021, and who were not executed, received sentenced modifications to life without parole.

Washington policymakers established a "second look" resentencing policy for certain robbery offenses with [Senate Bill 5164](#). Second degree robberies were reclassified from "most serious offenses" to

class B felonies in 2019. In 1994, voters approved Initiative No. 593 which required life without parole (LWOP) sentences for persons sentenced to a third "most serious offense" felony, or "persistent felony offense," if the defendant had two prior convictions. SB 5164 requires a resentencing hearing for any person sentenced to LWOP for second degree robbery under the previous statute. The new law requires the prosecuting attorney in the county of conviction to review the case and if the prosecutor finds a second degree robbery conviction the basis for the "persistent felony offense" determination, the prosecutor must file a sentencing relief motion.

CHALLENGING RACIAL DISPARITY

The **California Assembly** adopted [House Resolution 39](#) to implement an equity impact legislation policy. The resolution encourages the Assembly to explore methods to integrate equity more formally into its daily activities, including the potential adoption of equity impact statement into bill analysis for proposed sentencing laws.

During 2021, **Maine** lawmakers authorized a racial impact statement policy via [Legislative Document 2](#) requiring the state's Legislative Council to conduct a study to determine the best method to establish and implement a racial impact statement policy for legislation. Based on its findings, the Legislative Council is directed to establish a pilot project for the use of racial impact statements to lay the groundwork for a universal racial impact statement policy.

Maryland officials [established a pilot program](#) that includes racial impact statements as part of the legislative analysis developed by the nonpartisan Department of Legislative Services. The agency partners with Bowie State and the University of Baltimore Schaefer Center to compile data regarding racial impact of major criminal justice reform legislation.

Virginia lawmakers adopted [House Bill 1990](#) to establish the state's racial impact statement policy. The law authorizes the Chair of the House Committee for Courts of Justice or the Chair of the Senate Committee on the Judiciary to request the Joint

Legislative Audit and Review Commission (JLARC) to prepare a racial and ethnic impact statement for a proposed criminal justice bill.

LIMITING INCARCERATION FOR PROBATION AND PAROLE

Nationally, more than 20% of prison admissions are caused by technical violations of the more than 4 million residents on probation or parole supervision. In 2021, lawmakers restricted prison admissions for persons with probation or parole revocations. 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.

New York policymakers passed [Senate Bill 1144](#) to limit incarceration for technical parole violations and establish 30-day maximum jail terms for technical violations. Specifically, the measure codifies time limits for revocation hearings, statutorily defines a right to due process, counsel, and appeal for persons incarcerated for technical violations. SB 1144 also extends merit time to persons through the state's earned time credits framework. Residents under community supervision now have a 30-day earned time credit reduction applied to their community supervision period for each 30-day period they receive no technical violations. Persons on parole received up to 2 years retroactive earned time credit when the bill was enacted in September 2021.

Virginia lawmakers limited probation through enactment of [House Bill 2038](#). Under the legal reform, adult probation terms for misdemeanors can only be one year, while felony probation terms cannot exceed five years.

EXPANDING THE FRANCHISE

To strengthen democracy and address voter suppression within Black and Brown communities, states must pass reforms establishing universal voting for people impacted by the criminal legal system. 5.2 million people in the United States are currently denied access to the vote because of a felony conviction. This year, Connecticut, New York,

and Washington state joined more than 20 other states by limiting voting restrictions to persons in prison.

Connecticut officials expanded voting rights to 4,510 residents serving sentences on parole. The change was included in the state's 2021 budget bill, [Senate Bill 1202](#).

New York lawmakers expanded voting rights with passage of [Senate Bill 830](#). The legislation codified a 2018 executive order, issued by then-Governor Andrew Cuomo, that granted conditional pardons to every person on parole – an estimated 35,000 people – and restored their voting rights. The legislation eliminated the administrative burden of the pardon process by making rights restoration automatic. SB 830 also requires state and local correction officials to provide notice of voting rights restoration and an opportunity to register upon release.

Washington policymakers adopted [House Bill 1078](#), a measure that automatically restores voting rights to formerly incarcerated residents. The bill replaced the two-step process of provisional and permanent restoration of a person's voting rights after a felony conviction with a process where voting rights are automatically restored for a person convicted of a felony when they are not serving a sentence of total confinement in Washington's Department of Corrections. "Total confinement" is 24-hour confinement inside the physical boundaries of a facility, operated or under contract by the state or any other unit of government. Total confinement, as used in the elections code, does not include incarceration for a technical violation while on probation or parole thereby allowing those individuals to maintain their voting rights.

PROMOTING YOUTH JUSTICE

Lawmakers adopted policies that demonstrate a commitment to protecting juvenile defendants and expanding 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 depart from mandatory minimums and establish sentence review procedures.

Maryland joined 24 states and Washington DC in eliminating juvenile life without parole as a sentencing option with adoption of [Senate Bill 494](#), known as the Juvenile Restoration Act. The bill would allow anyone convicted as a minor who has served at least 20 years to petition a court for release or sentence reduction. SB 494 also authorizes a court when sentencing a youth convicted as an adult to impose a sentence less than the mandatory minimum term.

[House Bill 1091](#) in **Colorado** also allowed judges to suspend mandatory minimums for youth who are transferred to adult court. **New York** lawmakers adopted [Senate Bill 282](#) which allows a person who has served their sentence to apply for a new youthful offender status determination, and for a court to provide relief from the civil consequences of a criminal conviction.

Eight states – **Alaska, Connecticut, Indiana, Iowa, Missouri, North Dakota, Oklahoma, and Utah** – adopted legislation to remove youth charged as adults from jails and prisons to comply with the federal Juvenile Justice & Delinquency Prevention Act. These measures, like Alaska’s [House Bill 105](#), operationalize federal requirements related to juvenile defendants.

Kentucky lawmakers authorized [Senate Bill 36](#) to end the automatic transfer of youth into adult court. Kentucky joined California, Hawaii, Kansas, Missouri, Rhode Island, Tennessee and Texas that require a full judicial review before a minor defendant can be transferred to adult court.

NEXT STEPS IN CHALLENGING MASS INCARCERATION

Lawmakers advanced policy reforms to address mass incarceration, racial disparities in imprisonment, voting rights, and youth justice. Most of these measures will have a modest impact on the scale of incarceration. At the current rate of decline, it will take [nearly six decades](#) to cut the nation’s

prison population in half. To end mass incarceration transformational changes are necessary:

- **Reform Sentencing Statutes:** The Sentencing Project is part of a coalition of organizations that recommend limiting maximum prison terms to 20 years, except in unusual circumstances. Other reforms include repealing mandatory minimums, establishing sentencing review practices, and authorizing presumptive parole.
- **Advance Policy to Address Racial Disparities:** [Racial impact statements](#) offer a specific legislative solution to forecast potential impact of proposed sentencing laws on racial disparities in imprisonment; retroactive application of racial impact statements would allow lawmakers and other stakeholders to review current policies and practices. Responsible lawmaking increases when information about the consequences of harsh punishments is available. Additional policy reforms addressing racial disparity include reducing prison admissions and enacting presumptive release policies.
- **Expand Voting Rights to Justice Involved Citizens:** As of 2020, more than 5 million citizens with a felony conviction were disenfranchised from voting, most living in the community under probation or parole supervision. While voter suppression laws have proliferated in recent years across the country there have been efforts to expand the franchise to justice-involved residents. However, millions are still denied the vote. Demanding an end to felony disenfranchisement will ensure a stronger democracy for all.
- **Decarcerate Youth in Custody:** Youth justice reforms continued this year and the number of states ending juvenile life without parole increased to 25. States should continue safeguards that prevent transfers to adult court and keep youth out of adult jails.