

A photograph of a family of four hugging outdoors. A woman in an orange jacket is in the foreground, hugging a man and a woman. The man and woman are smiling and hugging each other. The woman has glasses and is wearing a dark jacket. The background is slightly blurred, showing other people and what appears to be an outdoor event.

Top Trends in State Criminal Justice Reform, 2019

A family is reunited after more than 400 Oklahomans were approved for expedited commutations in November 2019.
Photo Credit: Oklahomans for Criminal Justice Reform

The United States is a world leader in incarceration and keeps nearly 7 million persons under criminal justice supervision. More than 2.2 million are in prison or jail, while 4.6 million are monitored in the community on probation or parole. More punitive sentencing laws and policies, not increases in crime rates, have produced this high rate of incarceration. Ending mass incarceration will require changing sentencing policies and practices, scaling back the collateral consequences of conviction, and addressing racial disparities in the criminal justice system. In recent years most states have enacted reforms designed to reduce the scale of incarceration and the impact of the collateral consequences of a felony conviction. This briefing paper describes key reforms undertaken in 2019 prioritized by The Sentencing Project.

REDUCING PRISON POPULATIONS THROUGH SENTENCING REFORM

California lawmakers passed [Senate Bill 136](#) to repeal the one-year sentence enhancement for each prior prison or county jail felony term. The California Department of Corrections and Rehabilitation estimated that 10,000 persons currently incarcerated were serving a sentence that included a one-year enhancement.

Delaware lawmakers enacted [Senate Bill 47](#), a measure that removes geographic-based sentencing enhancements – “drug free” school zones – that disproportionately impact those living in urban areas

and are known to exacerbate racially disparate sentencing outcomes. In recent years, New Jersey, Indiana, and Utah adopted legislation to scale back drug zone sentencing enhancements.

Oklahoma policymakers enacted [House Bill 1269](#) to retroactively apply a 2016 ballot measure that reclassified low-level felony drug and property offenses to misdemeanors and increased the felony theft threshold from \$500 to \$1,000. Following adoption, the state’s Pardon and Parole Board established an accelerated commutation process to qualify persons sentenced under the old law for early release. More than 400 Oklahomans were approved for expedited commutations in 2019.

EXPANDING THE VOTE

As of 2016, more than 6 million residents were disqualified from voting because of a felony conviction. In 2019 several states expanded voting rights to justice-involved citizens.

Colorado lawmakers passed [House Bill 1266](#) and expanded voting rights to nearly 11,500 residents on parole.

Nevada lawmakers approved [Assembly Bill 431](#), a measure that automatically restores the right to vote to any Nevada resident with a felony conviction released from prison regardless of offense type or parole or probation status. An estimated 77,000 Nevada residents will be affected by the policy change.

In Kentucky, Gov. Andy Beshear issued an executive order restoring voting rights to residents who have completed their sentence for a nonviolent offense. Along with Iowa and Virginia, Kentucky is one of just three states that impose lifetime disenfranchisement on all persons with a felony conviction unless the governor takes action restoring voting rights.

New Jersey lawmakers expanded voting rights to 83,000 persons on felony probation and parole with the enactment of [Assembly Bill 5823](#).

At least seven states – Connecticut, Hawaii, Massachusetts, Nebraska, New Jersey, New Mexico, New York, Virginia – and Washington, DC considered legislation expanding voting rights to persons in prison. Currently, two states, Maine and Vermont, allow voting for such individuals.

SCALING BACK COLLATERAL CONSEQUENCES

Criminal convictions can impact justice-involved residents for life. Millions with prior criminal histories experience barriers to employment, housing, and other areas of daily life that can complicate reentry. Lawmakers in several states enacted policies this year to ease the barriers of a conviction.

Challenging the Lifetime Felony Drug Offense Ban on Public Benefits

In 1996, Congress passed the [Personal Responsibility and Work Opportunity Reconciliation Act](#). It disqualified people convicted of a state or federal drug felony from receiving benefits through the Supplemental Nutrition Assistance Program (food stamps) and Temporary Assistance for Needy Families (welfare benefits) for life, unless state legislatures opt out. Mississippi legislators enacted the Criminal Justice Reform Act to



New Jersey Gov. Phil Murphy signed legislation expanding voting rights in December 2019. *Photo Credit: Edwin J. Torres/ Governor's Office*

opt out of the federal ban on public benefits. [House Bill 2459](#) was enacted in West Virginia and expanded food assistance to state residents with most felony drug convictions; it excludes persons whose felony drug offense resulted in personal injury or death.

Expanding Expungement Reforms for Marijuana Offenses

Illinois and New York authorized expungement for prior marijuana convictions. Illinois lawmakers enacted [House Bill 1438](#), which legalized marijuana possession for persons 21 and older and established a process to expunge marijuana convictions. Illinois' governor granted more than 11,000 pardons for low-level marijuana convictions and announced plans expunge more convictions. Individuals convicted of possession of under 30 grams of marijuana prior to legalization will have their records automatically expunged, as long as violence was not a component of their charge. Residents whose convictions were for amounts between 30 and 500 grams have to individually petition the court.

New York officials approved [Senate Bill 6579A](#), a measure which decriminalizes qualifying marijuana offenses and makes them punishable by a fine. The measure also established a process for individuals with certain marijuana convictions to have their records expunged both retroactively and for future convictions.

REFORM FOR JUSTICE-INVOLVED YOUTH

Commitment to secure juvenile facilities for youth who have been adjudicated delinquent has been steadily

declining since 1999. However, continued reforms are needed to address the many juvenile defendants transferred to the adult system, including those sent to adult prisons and jails.

Michigan legislators [adopted 18 measures](#) as part of a "Raise the Age" legislative package which increases the age of criminal responsibility to 18, so that cases involving 17-year-olds will be handled in the juvenile justice system. Wisconsin, Texas, and Georgia are the only remaining states that automatically transfer 17-year-old defendants to adult court.

Oregon lawmakers adopted [Senate Bill 1008](#), which would allow youth convicted in adult court to be considered for release from prison after serving 50% of their sentence. Persons with qualifying offenses would be evaluated by a judge and transitioned to community supervision from incarceration if approved.

Several states limited the use of youth detention in 2019. Arkansas lawmakers enacted [Act 152](#), policymakers in Louisiana authorized [House Bill 158](#), and [House Bill 1520](#) passed in North Dakota. The measures require screening tools for detention, and Arkansas law bans detention for low-risk youth. Maryland policymakers limited detention for youth under age 14 with the passage of [House Bill 659](#).

CHALLENGING RACIAL DISPARITY

Meaningful reforms to the criminal justice system cannot be accomplished without acknowledgement of racial and ethnic disparities in the prison system, and focused attention on reducing disparities. During



Michigan lawmakers hosted a press conference to "Raise the Age" in February 2019. Photo Credit: Twitter: @MISenDems

2019, Florida legislators adopted a [Senate rule](#) for racial impact statements by authorizing Florida State University to assess the “racial and ethnic” ramifications of key criminal justice bills. Racial impact statements are a tool for lawmakers to evaluate potential disparities of proposed legislation prior to adoption and implementation. Analogous to fiscal impact statements, they assist legislators in detecting unforeseen policy ramifications.

Nine states – Illinois, Kentucky, Maryland, Minnesota, Mississippi, Nebraska, New York, Oklahoma, and Vermont – introduced proposals in 2019 to require racial impact statements. Currently, six states – Iowa, Connecticut, Florida, Minnesota, New Jersey, and Oregon – implement mechanisms for the preparation and consideration of racial impact statements.

PHASING OUT PRIVATE PRISONS

Private prisons in the United States incarcerated 121,718 people in 2017, representing 8.2% of the total state and federal prison population. States show significant variation in their use of private correctional facilities; 28 states incarcerated persons in private prisons in 2017, while 22 states did not contract with private facilities.

Nevada lawmakers banned private prisons in 2019 by passing [Assembly Bill 183](#). The measure prohibits the Department of Corrections from contracting with for-profit prison companies as of 2022. Other states that ban private prisons include Iowa, Illinois, and New York.

In 2019, California lawmakers approved Assembly Bill 32, legislation that bans private immigrant detention, although the policy allows private contracting for any for-profit prison that provides educational or medical services to an incarcerated person and allows other carve outs.

CONCLUSION

During 2019, lawmakers in several states enacted legislative changes to address high levels of imprisonment. While the reforms help improve criminal justice policy, most measures will have a modest impact on the scale of incarceration. It will take more far-reaching measures to markedly reduce the nation’s rate of incarceration, which is far above that of other western nations. Given the limited impact of incarceration on crime, there is potential for significant reductions in state prison populations. Lawmakers and advocates should explore key changes that limit the use of incarceration, challenge racial disparity, address collateral consequences, and improve outcomes for justice-involved youth.

