

THE STATE OF SENTENCING 2014

DEVELOPMENTS IN POLICY AND PRACTICE





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INTRODUCTION

The United States maintains its distinction as the nation with the highest rate of incarceration in the world. The total correctional population of 6.9 million consists of more than 2.2 million people in prison or jail and 4.7 million under community supervision on probation or parole. The nation's correctional population is a function of crime rates, legislative and administrative policies, and practitioner decisionmaking that vary by state and at the federal level.

After a few years of modest decline, the Bureau of Justice Statistics reported that the nation's prison population grew slightly in 2013. The state prison population numbered 1,574,700, representing an increase of 4,300 since the previous year, but below its high of 1,615,487 in 2009. During that year, the number of federal prisoners showed a modest drop for the first time in several decades. The overall stability of the population in recent years indicates that deeper changes in sentencing policy and practice are necessary if the nation's enormous prison population is to be significantly reduced.

During 2014, legislators in at least 30 states and the District of Columbia authorized a range of law changes and policies that may address the nation's scale of incarceration. The policy changes highlighted in this report represent approaches that lawmakers can consider to address state sentencing policy and collateral consequences.

Highlights include:

- **Sentencing:** At least 16 states and the District of Columbia authorized legislation to address sentencing policy, including statutory penalties that limit lengths of confinement. Notably, voters in California approved reclassifying certain low-level offenses from felonies to misdemeanors, eliminating prison as a sentencing option. Lawmakers in Mississippi scaled back the state's truth-in-sentencing provision from 85% to 50% for violent offenses.
- **Probation and parole:** Three states – Mississippi, New York, and Oklahoma – adopted changes to probation and parole policies that expand sentencing alternatives.
- **Collateral consequences:** At least 14 states and the District of Columbia enacted legislation to scale back collateral consequences associated with a criminal conviction, including employment bans and federal felony drug bans on public assistance.
- **Juvenile justice:** At least 15 states adopted reforms, including eliminating juvenile life without parole as a sentencing option in West Virginia and Hawaii. Kentucky and Hawaii also enacted comprehensive juvenile justice reform measures to reduce the use of out-of-home placement for juveniles and prioritize therapeutic interventions as a public safety strategy.

Key criminal justice policy reforms and legislation passed in 2014

State	Reform(s)
Alabama	Established task force to address prison overcrowding. Expanded expungement policy.
Alaska	Legalized possession and cultivation of marijuana for adults.
California	Authorized reclassification of felony offenses including retroactive petition to the court for downgrading of eligible offenses. Equalized sentencing disparities for certain crack and cocaine powder offenses. Codified presumption of community supervision for certain realignment offenses. Expanded public benefits to persons with certain felony drug convictions. Established intensive reentry pilot program to assist with basic needs. Scaled back licensing restrictions for certain convictions. Required individual assessments for young inmates.
Connecticut	Authorized certificates of rehabilitation.
Delaware	Authorized judges to impose concurrent sentences. Authorized job eligibility for persons with criminal records in certain state agencies. Repealed driver's license revocation policy. Limited background checks for employment under "ban the box."
District of Columbia	Eliminated criminal penalties for certain marijuana offenses. Enacted "ban the box" provision by restricting background checks for prospective employment.
Florida	Scaled back certain mandatory minimums and expanded judicial discretion for specified offenses. Waived fees for certain public records to help reentry. Authorized parole eligibility for juveniles convicted of homicide.
Georgia	Authorized certificates of rehabilitation.
Hawaii	Enacted comprehensive juvenile justice reform. Eliminated juvenile life without parole.
Idaho	Codified criminal code changes under justice reinvestment initiative.
Illinois	Extended "ban the box" provision to private employers. Modified expungement policy for adults and juveniles.
Kansas	Prioritized treatment for juveniles.
Kentucky	Approved comprehensive juvenile justice reform.
Maryland	Eliminated criminal penalties for certain marijuana offenses. Restored limited judicial discretion in certain juvenile transfer cases.
Massachusetts	Authorized parole eligibility for juveniles sentenced to life in prison for homicide.
Michigan	Raised the age for mandatory life without parole for certain juveniles.
Minnesota	Allowed medical marijuana in specified forms. Expanded expungement relief. Modified juvenile record expungement policies.
Missouri	Enacted comprehensive rewrite of criminal code including eliminating jail time for certain low-level marijuana offenses. Modified federal lifetime felony drug ban on welfare benefits.
Mississippi	Codified criminal code changes under Justice Reinvestment Initiative and expanded sentences eligible for probation.
Nebraska	Authorized criminal code changes under justice reinvestment initiative and 'ban the box' measure to address employment for persons with criminal records. Scaled back truancy status offenses. Authorized parole eligibility for juvenile homicide offenders.
New Hampshire	Expanded earned time for certain prisoners and alternative court program. Raised the age for certain juvenile defendants. Allowed retroactive parole review for juveniles convicted of homicide.
New Jersey	Extended "ban the box" provision to include private employers.
New York	Allowed medical marijuana. Authorized judicial discretion in sentences to probation terms.
Ohio	Expanded expungement policy.
Oklahoma	Required intake assessment for probationers.
Oregon	Permitted possession of marijuana in limited quantities.
South Carolina	Authorized parole consideration for juveniles with homicide convictions.
Tennessee	Approved jail sentence reductions. Established certificates of rehabilitation.
Vermont	Enacted changes to criminal code under justice reinvestment initiative. Authorized uniform collateral consequences of conviction act.
Washington	Scaled back life without parole sentencing options for certain juveniles.
West Virginia	Eliminated juvenile life without parole.

SENTENCING

In 2014, at least 16 states and the District of Columbia enacted measures to create new sentencing laws authorizing changes in corrections policy and practice. California voters authorized a substantial law change under Proposition 47, a measure that reclassified six property and drug offenses from felonies to misdemeanors and eliminated prison as a sentencing option. Four states – Idaho, Mississippi, Nebraska, and Vermont – authorized reforms under the Justice Reinvestment Initiative. Also in California, lawmakers equalized quantity triggers for certain crack and powder cocaine offenses, increasing the number of states that have authorized such law changes; Missouri, South Carolina, and Ohio enacted similar policies in recent years.

and will be used to support school truancy and dropout prevention, victim services, mental health and drug abuse treatment, and other programs designed to expand alternatives to incarceration. Approximately 10,000 incarcerated persons will be eligible for re-sentencing under the new law.

SB 1010, the California Fair Sentencing Act, equalized sentences and fines for intent-to-sell crack and powder cocaine convictions. Under the previous law, sentences for crack offenses ranged from three to five years, while cocaine powder offenses ranged from two to four years. Twelve other states maintain sentencing disparities between crack and powder cocaine.

Lawmakers authorized **AB 1468**, a comprehensive measure that included several provisions relating to persons sentenced to county jails for non-serious, non-violent, non-sexual felony convictions under the state's Realignment policy. A key provision requires the presumption of split sentences for persons sentenced to a county jail term under Realignment offenses and requires probationary supervision. The measure also extends the state's voluntary alternative custody program (ACP) to county jails. The ACP is a voluntary program that allows eligible inmates to serve their sentences in the community. Eligible participants may be housed in a private residence, a transitional care facility or a residential drug or other treatment program. The law change empowers a sheriff or county corrections director with the same alternative custody authority for eligible incarcerated men and women who have been committed to a county jail for a determinate term of imprisonment for a felony or misdemeanor offense.



ESTABLISHED TASK FORCE TO ADDRESS PRISON OVERCROWDING

Lawmakers authorized **SJR 20** creating the Alabama Prison Reform Task Force to study and identify causes and potential legislative solutions to address chronic overcrowding in the state's prison system.

ALABAMA



AUTHORIZED RECLASSIFICATION OF FELONY OFFENSES; EQUALIZED SENTENCING DISPARITIES FOR CERTAIN CRACK AND POWDER COCAINE CONVICTIONS; CODIFIED PRESUMPTION OF COMMUNITY SUPERVISION FOR CERTAIN REALIGNMENT SENTENCES

Voters passed **Proposition 47**, a ballot measure that reclassified six low-level property and drug offenses from felonies to misdemeanors. Offenses include shoplifting, theft, and check fraud under \$950, as well as personal use of most illegal drugs. State savings resulting from the measure are estimated to be at least \$150 million a year



DELAWARE AUTHORIZED JUDGES TO IMPOSE CONCURRENT SENTENCES

HB 312 authorized judges to impose sentences concurrently, rather than limiting sentencing to consecutive sentence imposition. The law change aligned

Delaware judicial authority with the majority of other states and the federal government.



FLORIDA

SCALED BACK CERTAIN MANDATORY MINIMUMS AND EXPANDED JUDICIAL DISCRETION FOR CERTAIN OFFENSES

HB 89 enables judges to depart from mandatory minimum sentences for aggravated assault. Prior to the law change, aggravated assault was subject to a three-year mandatory minimum sentence if a firearm was displayed during an offense or a 20-year mandatory minimum sentence if a firearm was discharged. The bill authorizes the sentencing judge to depart from the mandatory minimum under certain circumstances outlined in the statute.

SB 360 raised the weight threshold for trafficking in prescription painkillers containing oxycodone and hydrocodone, created new weight categories for several trafficking offenses and reduced statutory penalties for specified offenses. Specifically, the measure eliminated the mandatory minimum for illegal possession or distribution of hydrocodone painkillers under 14 grams, and illegal possession or distribution of oxycodone painkillers under 7 grams. Other provisions lowered mandatory minimum sentences for certain serious drug offenses.



MISSOURI

ENACTED COMPREHENSIVE REWRITE OF CRIMINAL CODE INCLUDING ELIMINATING JAIL TIME FOR CERTAIN LOW-LEVEL MARIJUANA OFFENSES

Lawmakers revised the state's criminal code by authorizing **SB 491**. The focal point of the revision was the implementation of new felony and misdemeanor classes. Under the new, lowest level misdemeanor class, jail time is no longer a sentencing option. Previously, the code authorized sentences of 15 days to a year for misdemeanor convictions. A salient provision in the new law eliminates

jail time as a sentencing option for persons convicted of a first-time offense of possessing less than 10 grams of marijuana. Possessing up to 35 grams of the drug is currently punishable by up to a year in prison. The measure was the first comprehensive rewrite since 1979, although there have been many amendments to the criminal code over the years. The measure also stiffened penalties for a range of serious offenses including burglary and robbery.



NEW HAMPSHIRE

EXPANDED EARNED TIME FOR CERTAIN PRISONERS AND EXPANDED ALTERNATIVE COURT PROGRAM

HB 649 authorized earned time for certain incarcerated persons who participate in self-improvement programs including education and vocational programs and mental health treatment. Judges will determine at sentencing if persons sentenced to prison are eligible for this earned time provision. The law also authorizes earned time reductions for eligible inmates who were incarcerated prior to the effective date; the measure outlines a process for inmates to petition the sentencing court.

Specialty court capacity was expanded under **HB 1442**, a measure that permits superior courts to establish special mental health courts and mandate treatment rather jail time for eligible defendants who are mentally ill.



TENNESSEE

AUTHORIZED JAIL SENTENCE REDUCTIONS

HB 1429 allows jail time reductions for a second or third driving under the influence conviction for persons who complete alcohol abuse treatment.

IDAHO, MISSISSIPPI, NEBRASKA, AND VERMONT:

JUSTICE REINVESTMENT INITIATIVES

In 2014, four states – Idaho, Mississippi, Nebraska, and Vermont – authorized legislation through an effort

to analyze criminal justice data to identify key factors contributing to state prison population growth, and developed policy proposals to reduce costs and improve public safety.

- Idaho lawmakers enacted **SB 1357** authorizing several changes to criminal sentencing policy. Provisions include: 1) Incorporating risk assessments at sentencing that authorize alternatives to incarceration for low risk defendants; and 2) Authorizing parole officers to impose swift and certain sanctions like community service, curfews, or increased check-ins on violators.
- In Mississippi, **HB 585** codified several changes to the criminal code, including: 1) New weights for drug trafficking offense that trigger a 10-year mandatory minimum. 2) Expanded judicial authority to impose alternatives to incarceration such as treatment for certain drug offenses. 3) Authorized 50% truth-in-sentencing threshold for persons with certain violent offenses. Previously, offenders convicted of violent offenses were required to serve 85% of their prison sentence. 4) Established presumptive parole policy for eligible offenses. 5) Eliminated parole restrictions for certain nonviolent drug sales offenses within 1,500 feet of a school, church, park, ballpark youth center or movie theater; habitual offenders and traffickers are still excluded. 6) The measure also stiffened certain penalties including eliminating parole for residential burglary.
- Nebraska lawmakers established the Justice Reinvestment Working Group under **LB 907** to address prison overcrowding and develop a long-term strategy to address public safety and incarceration. The working group consists of members from all three branches of state government and local government representatives.
- Vermont officials enhanced its Justice Reinvestment Initiative by authorizing **SB 295**, a measure that authorizes the use of risk assessments and clinical screenings at every stage of the criminal justice system to provide alternatives to a traditional criminal justice response.

ALASKA, THE DISTRICT OF COLUMBIA, MARYLAND, MINNESOTA, NEW YORK, AND OREGON:

MARIJUANA REFORM INITIATIVES

Alaska, the District of Columbia, Maryland, Minnesota, New York, and Oregon addressed marijuana offenses in various ways. In recent years, several states have reformed their marijuana laws by allowing medical marijuana, imposing fines without jail time for marijuana possession, or making marijuana legally available and regulated for adults' use.

- Alaska voters approved **Measure 2**, making it legal for adults 21 and older to possess and grow limited amounts of marijuana.
- District of Columbia Council Members authorized **BC 20-0409**; the measure replaced possible jail time with fines for possession of up to one ounce of marijuana. Voters approved **Initiative 71**, which will legalize possession and cultivation of limited amounts of marijuana for adults 21 and older. The measure will only go into effect if not overturned by Congress.
- Maryland lawmakers voted to enact **SB 364**. The new law reduced the penalty for possession of up to 10 grams of marijuana to a civil fine punishable by up to \$100 for a first offense, up to \$250 for a second offense, and up to \$500 for a subsequent offense. Those under 21 must be referred to assessment and education.
- Under **SF 2670**, Minnesota lawmakers authorized medical marijuana use in prescribed pill, oil, or vapor form.
- New York lawmakers authorized medical use of marijuana by passing **AB 6357-E** and **SB 4406-E**, the Compassionate Care Act. The measure allows doctors to prescribe marijuana in a non-smokable form to patients with serious ailments that are recognized by the state on a predefined but flexible list of conditions.
- Oregon voters authorized **Measure 91**, making it legal for adults 21 and older to possess and grow small amounts of marijuana.

PROBATION AND PAROLE

Key strategies to address state prison populations include expanding authority to sentence prison bound defendants to alternative programs. During 2014, three states – Mississippi, New York, and Oklahoma – adopted changes to probation and parole policies to broaden criminal justice options. Scaling back sentence lengths can meet the spirit of criminal justice reform without compromising public safety. New York continued its leadership in reform by authorizing flexible supervision terms for felony and misdemeanor probation sentences.

for misdemeanors at two or three years, based on the nature of the crime, the individual’s criminal history, and risk of re-offending. Previously, almost all felony cases resulted in a five-year probation term.



EXPANDED SENTENCES ELIGIBLE FOR PROBATION

MISSISSIPPI

Provisions under **HB 585**, the state’s justice reinvestment initiative act, expanded judicial discretion to impose alternative sentences such as court-ordered treatment for individuals convicted of certain drug offenses. The measure also authorizes circuit courts to target individualized treatment for veterans with certain convictions.



OKLAHOMA

REQUIRED INTAKE ASSESSMENT FOR PROBATIONERS

Lawmakers authorized **SB 1720**, a measure that requires probation agencies to provide probationers with intake and orientation, substance abuse assessment, and a treatment plan. The measure also requires the agency to conduct a criminal risk needs assessment and reasserts statutory authority to impose certain conditions of supervision.



NEW YORK

AUTHORIZED JUDICIAL DISCRETION IN SENTENCES TO PROBATION TERMS

Under **S4664A**, lawmakers expanded judicial authority. Judges can now establish probation terms for felony offenses at three, four, or five years and

COLLATERAL CONSEQUENCES

The consequences of a criminal conviction often go well beyond the period of incarceration or probation. Simply having a criminal record can bar individuals from securing employment, receiving public benefits, or voting. In 2014, at least 14 states and the District of Columbia passed legislation to minimize these consequences in law changes that addressed employment, federal felony drug bans on public assistance, and initiatives to ease the reentry process for those struggling to reintegrate into their communities.

CALIFORNIA AND MISSOURI:

MODIFIED FELONY DRUG BANS ON PUBLIC ASSISTANCE BENEFITS

- Under **AB 1468**, those convicted of drug felonies are no longer excluded from California's financial assistance program for families with children, its General Assistance program, or its SNAP (food stamp) program.
- In Missouri, **SB 680** lifted its food stamp ban for persons with a felony conviction involving possession or use of a controlled substance. For some, benefits are contingent upon participation in a substance abuse treatment program. Benefits will not be restored to those who commit another felony drug offense within the first year or those who commit more than one additional offense any time after the first date of conviction.



CALIFORNIA

REDUCED BARRIERS TO REENTRY

A salient provision of **Proposition 47** allows for the undoing of collateral consequences for certain convictions. The measure enables people who have completed their felony sentences for specified offenses to petition the court to reclassify those convictions to a misdemeanor. This law change may eliminate barriers to employment, housing, and jury service.

AB 1468 establishes a three-year reentry pilot program that offers intensive case management to address homelessness, joblessness, mental disorders, and developmental disabilities.

AB 2396 prohibits licensing entities from denying a license solely on the basis of a dismissed criminal conviction. This brings licensing regulations in line with California's employment regulations, which do not require that applicants disclose dismissed records during the hiring process.



DELAWARE

AUTHORIZED JOB ELIGIBILITY FOR CERTAIN PUBLIC EMPLOYEE

POSITIONS FOR PERSONS WITH RECORDS AND REPEALED DRIVER'S LICENSE REVOCATION POLICY

HB 264 allows the Department of Correction to offer short-term employment to formerly incarcerated

applicants who have demonstrated their job skills through a vocational program. Previously, individuals with a criminal record could not work for the department.

SB 217 repeals the mandatory penalty of driver's license revocation for individuals convicted of a drug offense.



WAIVED FEE FOR CERTAIN PUBLIC RECORDS TO HELP REENTRY

HB 53 helps to facilitate some of the logistical challenges of reentry. The law waives certain fees for ID and driver's licenses, and copies of birth records. It also mandates that the Department of Transportation collaborate with other agencies to acquire records. It also includes statutory guidance that provides special assistance to inmates born in Florida.

ENACTED UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT

Lawmakers authorized **HB 413**, the first Uniform Collateral Consequences of Conviction Act. Established in 2009 by the Law Commission, the Act was designed to increase public and individual understanding of the consequences of conviction, which are often not explained even by judges and attorneys. The law requires state officials to develop a comprehensive list of consequences that accompany each offense in the criminal code. Defendants will be informed of the collateral sanctions that accompany a conviction and of them upon release from prison, providing assistance in seeking relief from them.

after determining the applicant meets the minimum requirements of the job. However, schools are still permitted to ask if applicants have been convicted of sexual or physical abuse.

- New Jersey extended its ban the box provision to include private employers with the passage of **A1999**, the Opportunity to Compete Act. Employers with 15 or more employees are now restricted from inquiring into a job candidate's criminal history until after the first interview, and may not consider expunged or pardoned convictions in their hiring decisions. The law also forbids employers from discouraging applications by publicizing that they will not consider applicants with past convictions.

CONNECTICUT, GEORGIA, AND TENNESSEE:

AUTHORIZED CERTIFICATES OF REHABILITATION

- **SB 153** allows the Connecticut Board of Pardons and Paroles to issue certificates of rehabilitation to potential employers or licensing entities on behalf of formerly incarcerated people. The law specifies that an applicant who holds such a certificate may not be denied employment or a license solely on the basis of a prior conviction unless the offense can be shown to conflict directly with the nature of the job.
- Under **SB 365**, Georgia inmates may now receive certificates of program and treatment completion. Recipients must fulfill the terms of their treatment plans while in prison and their reentry plans during probation or parole. In addition, the law also eliminates the automatic suspension of driver's licenses for minor drug offenses that are not directly related to the operation of a motor vehicle.
- In Tennessee, **SB 276**, the "Certificates of Employability Act," allows those with convictions to apply for certificates of employment restoration that provide immunity to employers in the event of a negligent hiring claim. The law also prohibits licensing entities from withholding licenses solely on the basis of a criminal record.

ALABAMA, ILLINOIS, MINNESOTA, AND OHIO:

EXPANDED THE SEALING AND EXPUNGEMENT OF CRIMINAL RECORDS

- In Alabama, **SB 108** allows individuals to petition to have their arrest and court records sealed in the absence of a conviction.
- Under **HB 2378**, Illinois residents with misdemeanor offenses may petition to have those records sealed after a certain period of time, which varies by offense. The new rule excludes domestic battery, gun-related offenses, and sex offenses. Sealing is not guaranteed, and law enforcement may object to any petition. However, courts must consider rehabilitation efforts in making their decisions.
- Minnesota residents now have access to expanded expungement relief under **HF 2576**. The law extends eligibility to those who were convicted of petty misdemeanors and some non-violent felonies, provided they have received no additional convictions within the last five or eight years, respectively. Those who have successfully completed a diversion program or stay of adjudication will be eligible for expungement after two conviction-free years. Background check companies will be required to delete these records once they have been expunged.
- **SB 143** refines Ohio's existing expungement law, eliminating the "same offense" limitation that previously prevented the expungement of two misdemeanor convictions for the same offense. Eligibility now extends to individuals who have one felony conviction, two misdemeanor convictions, or one of each.

JUVENILE JUSTICE

With growing awareness around how justice system involvement impacts youth, states are continuing to rethink how they hold youth accountable. Some have overhauled their juvenile justice system, placing new emphasis on preventive services and community-based alternatives to detention. Others have made incremental changes to their policies on juvenile dispositions and the collateral consequences of a juvenile record. At the close of 2014, youth faced improved outcomes in at least 15 states.



REQUIRED INDIVIDUAL ASSESSMENTS FOR YOUNG INMATES

Through **AB 1276**, California lawmakers are aiming to promote the safety and rehabilitation of youth under age 22 who are sent to adult prisons. The new law will require individual assessments of young inmates to encourage their placement at lower security levels, where they will have greater access to educational and vocational programs and will be exposed to more positive peer influences to better prepare them for their eventual release.

CALIFORNIA



PRIORITIZED TREATMENT FOR JUVENILES

HB 2588 enables state courts to focus on treatment rather than punishment for low-risk youth in need of care. The law expands prosecutorial discretion to depart from established adjudication and placement processes to refer youth to child welfare services. Though youth may be placed in temporary custody of the Department for Children and Families (DCF) while a Child in Need of Care petition is filed, the DCF may no longer be listed as a child's permanent custodian.

KANSAS



RESTORED LIMITED JUDICIAL DISCRETION IN CERTAIN TRANSFER CASES

SB 515 restored judicial discretion to transfer youth from adult court to juvenile court. Prior to the law change, three categories of youth were barred from requesting a transfer hearing; this measure allows any youth who was previously charged as an adult and had a case transferred to the juvenile system the ability to request a transfer hearing to move their current adult case to the juvenile system if they are arrested again. The prior law did not allow anyone charged as an adult with previous adult charges the opportunity to request a transfer hearing.

MARYLAND



SCALED BACK TRUANCY STATUS OFFENSES

Nebraska's **LB 464** replaces a truancy law that required children to be referred to the county attorney for missing more than 20 days of school in a year, regardless of the reason. Under the new law, school officials must now work with parents and youth to resolve absenteeism and may only refer youth to court if those collaborative efforts fail. The law also establishes juvenile court as the court of origin for almost all youth cases and provides funding for home-based interventions.

NEBRASKA



RAISED THE AGE FOR CERTAIN JUVENILE DEFENDANTS

HB 1624 raises the age at which youth are sent to adult court from 17 to 18, ensuring that more youth will benefit from the services offered by the juvenile justice system and avoid some of the collateral consequences that come with an adult record.

NEW HAMPSHIRE

HAWAII AND KENTUCKY:

ENACTED COMPREHENSIVE JUVENILE JUSTICE SYSTEM REFORM TO SUBSTANTIALLY REDUCE COSTS AND IMPROVE OUTCOMES FOR YOUTH

- Hawaii lawmakers overhauled the state’s juvenile justice system with **HB 2490**, a measure that implements reforms recommended by the Hawaii Juvenile Justice Working Group to reduce the use of detention, expand community-based alternatives, and redirect resources to practices proven to reduce recidivism. These reforms are projected to reduce the population of youth in detention by 60 percent in five years.
- Kentucky’s **SB 200** will transform the state’s juvenile justice system by reducing the use of out-of-home confinement for low-risk youth, particularly those adjudicated for status offenses, and expanding opportunities for treatment to reduce recidivism. These youth will be diverted into community-based programs and connected to services before formal court involvement. The law requires evidence-based assessments to guide individual interventions, establishes a fiscal incentive program to encourage communities to build strong local services for youth, and creates an Oversight Council to oversee implementation and evaluation.

The U.S. Supreme Court’s decision in *Miller v. Alabama* determined that mandatory life without parole sentences for juvenile defendants were unconstitutional. During 2014, seven states passed legislation to come into compliance with the decision. Two states abolished the sentence of life without parole for youth, and five made other changes codifying when that sentence may be imposed and defining the mitigating factors that must be considered.

HAWAII AND WEST VIRGINIA:

ELIMINATED JUVENILE LIFE WITHOUT PAROLE

- Hawaii’s **HB 2116** abolished the policy of sentencing youth under age 18 to prison for life without the possibility of parole, citing the differences between youth and adults, the tendency for youth to age out of criminal behavior, and the fact that the U.S. is the only nation that sentences youth to such terms. The

law authorized life with the possibility of parole as a sentencing option for first-degree murder and is not retroactive. Hawaii entitles inmates to a parole hearing every year once they become eligible.

- West Virginia lawmakers passed **HB 4210**, a measure that banned life imprisonment without parole for youth under 18. All youth are now eligible for parole after serving 15 years, regardless of their offense, and parole decisions must be informed by mitigating factors such as the youth’s age, role in the crime, intellectual capacity, and history of trauma. Further, the parole board must ensure that parole hearings provide a meaningful opportunity to obtain release. The measure codifies into statute that juvenile life imprisonment without parole is a human rights violation that constitutes cruel and unusual punishment.

Five states – Florida, Massachusetts, Michigan, Nebraska, and Washington – made other changes to comply with *Miller v. Alabama*. In addition to legislative changes, two state Supreme Courts – New Hampshire and South Carolina – ruled the *Miller* decision was retroactive.

FLORIDA, MASSACHUSETTS, MICHIGAN, NEBRASKA, AND WASHINGTON

CHANGED JUVENILE LIFE WITHOUT PAROLE PROVISIONS TO COMPLY WITH MILLER V. ALABAMA

- Under **HB 7035**, Florida youth convicted of murder and sentenced to life in prison will now be granted a single opportunity to have their sentence reviewed for parole, and those convicted of serious non-homicide crimes will be granted two hearings. The minimum time that youth must serve before their sentence review varies by the severity of the offense, with first- and second-degree murder convictions eligible after 25 years and felony murder convictions eligible after 15 years. The law is not retroactive.
- In Massachusetts, **HB 4307** authorized parole after 25 to 30 years for juveniles under the age of 17 sentenced to life prison terms for first-degree murder. Cases involving premeditation are not eligible for 25 years, and cases involving “extreme atrocity or cruelty” are

not eligible for 30 years. Inmates may be reconsidered for parole every five years.

- In Michigan, **HB 4808** raised the age at which individuals are subject to a mandatory penalty of life imprisonment without the possibility of parole. Persons who commit first-degree or felony murder or are repeat sexual offenders must now be 18 or older at the time of the offense, rather than 17, to receive this sentence automatically. However, these serious offenses carry a minimum sentence of 25 years, and the individuals who commit them may still receive a sentence of life without parole although it cannot be mandatory. The law is not retroactive.
- Under the provisions of **LB 44**, Nebraska youth may no longer receive mandatory life sentences without the possibility of parole. Instead, those who commit felony offenses face a minimum sentence of 40 years and a maximum of life, subject to judicial discretion. Before sentencing, the court must consider mitigating factors like the defendant's age, home environment, and mental health. Those who become eligible for parole must be reconsidered each year following a denial, and the parole board must consider factors like the inmate's maturity and rehabilitative efforts. The law is not retroactive.
- New Hampshire's Supreme Court held that the *Miller v. Alabama* decision will apply retroactively to the four New Hampshire inmates sentenced to mandatory life without the possibility of parole for offenses they committed as youth. The Court's ruling eliminated mandatory life without parole sentences for juveniles although they can still be applied on a discretionary basis.

- South Carolina's Supreme Court ruled that the *Miller v. Alabama* decision should be applied retroactively, making it the ninth state to do so. As a result, those who were sentenced as juveniles to a life sentence without the possibility of parole will now be eligible for review.
- In Washington state, **SB 5064** abolished life imprisonment without the possibility of parole for youth under the age of 16. For those under 18, it removes all mandatory sentences of life without parole, replacing these with a minimum 25-year sentence for first-degree aggravated murder. The law reserves the discretion of the judge to impose a sentence of life without the possibility of parole, but the court must consider mitigating factors in determining culpability. The law is retroactive, and youth who were sentenced prior to June 1, 2014 must be resentenced in light of these provisions.

ILLINOIS AND MINNESOTA

MODIFIED JUVENILE RECORD EXPUNGEMENT POLICIES

- In Illinois, **SB 978** now requires that the arrest records of youth automatically be cleared when they reach the age of 18 if those arrests did not result in criminal charges. The new rule applies only to nonviolent cases and does not extend to those arrested for sex offenses.
- Under **HF 2576**, Minnesota youth may now have their executive branch records, such as arrest records, expunged in addition to their court records if a judge rules it is in the best interest of public safety.

POLICY RECOMMENDATIONS

During 2014, lawmakers enacted a number of legislative changes to improve criminal justice policy. While the pace has accelerated in recent years, most of these measures will have only 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 in other western nations. Given the limited impact of incarceration on crime, there is potential for significant reductions in state prison population. A recent analysis by The Sentencing Project documented prison population declines of 25% in three states -- New York, New Jersey, and California -- and found that crime declines in these states generally mirrored or exceeded national declines. Individual circumstances vary by state, but lawmakers should be guided by reforms demonstrated to substantially reduce state prison populations.

The declining prison populations of California, New York, and New Jersey were not simply the result of falling crime rates; rather, prisons were downsized through a mix of policy and practice changes designed to reduce admissions to prison and lengths of stay. Key reforms that contributed to these prison population declines included:

- California's dramatic prison population reduction was primarily driven by the state's effort to comply with a court order to deal with prison overcrowding, including enacting legislative reforms for the state's Realignment plan.
- New York's changes in policy and practice that largely affected enforcement and sentencing for drug offenses in New York City.
- New Jersey officials downsized the state's prison population through a mix of front-end reforms that lowered the number of admissions and back-end reforms that increased rates of parole and reduced parole revocations.

The reality that states have authorized law changes with the intent of lowering prison populations offers a continued opening to address the nation's scale of incarceration. Revising the policy and practice that has resulted in the largest prison population in the world offers an opportunity to broaden approaches to public safety. These include

LIMIT USE OF INCARCERATION

Mandatory sentences and truth-in-sentencing laws that limit parole have not only put more individuals in costly prison cells for longer stretches but have also reduced the discretion of officials to release them on parole. In 2014, several states changed statutory penalties for certain offenses: California reclassified six low level drug and property offenses, eliminating prison as a sentencing option; Florida lawmakers eliminated the mandatory minimum for simple possession of certain illegal prescription drug offenses, and Mississippi legislators modified truth-in-sentencing requirements for persons with violent offenses.

ADDRESS RACIAL DISPARITY

Lawmakers can use their capacity to address sentencing policies known to result in racial disparities. During 2014, California lawmakers targeted statutory penalties found to have a racially disparate impact by equalizing quantity triggers for intent-to-sell powder and crack cocaine offenses. In recent years lawmakers in Missouri, Ohio, and South Carolina have enacted similar measures. Statutory remedies to address racial disparity should also include those such as the Illinois law that repealed a 20 year old statute that required the automatic transfer of 15 and 16 year olds accused of certain drug offenses within 1,000 feet of a school or public housing. The law was found to be racially biased, unnecessary, and unfair, resulting in youth of color comprising 99% of those automatically transferred to adult court.

EXPAND ALTERNATIVES TO INCARCERATION FOR JUVENILES

Officials have worked to reduce the number of juveniles in secure detention by increasing reliance on alternatives like non-secure shelters for youth who can't safely return home, evening reporting centers, and expanded use of evidence-based treatment programs. During 2014, lawmakers in Hawaii and Kentucky enacted comprehensive juvenile justice reforms that included reducing out-of-home placements and prioritizing therapeutic interventions.

ADDRESS COLLATERAL CONSEQUENCES

In many instances persons with prior criminal records experience stigma long after their conviction. Collateral consequences of a criminal conviction include bans on voting, employment, and housing. During 2014 several states adopted policies to address these issues, including California and Missouri modifying the implementation of the federal felony drug ban. A salient collateral consequence reform was included in California's Proposition 47, a measure that allows for the retroactive reclassification of felony offenses to misdemeanors, removing the civil sanctions associated with felony convictions.

The State of Sentencing 2014: Developments in Policy and Practice

Nicole D. Porter

February 2015

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The Sentencing Project works for a fair and effective U.S. justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.