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State Advances in Criminal Justice Reform, 2016

During 2016, reforms were adopted in at least 17 states targeted at reducing prison populations and addressing collateral consequences for persons with criminal convictions. The issue of mass incarceration has gained broader attention among diverse constituencies, including lawmakers, faith leaders, and civil rights advocates, contributing to a more receptive political environment for criminal justice reform. Highlighted below are the most significant state reforms of 2016 in the areas of sentencing and rights restoration for people with criminal records.

SENTENCING

Lawmakers authorized policy reforms to tackle prison growth, recalibrate punitive sentencing policies, and address racial disparity in sentencing. Many of the adopted reforms are likely to have only a modest impact on state incarceration rates, but the continued pace of reform indicates strong interest among state officials in reconsidering sentencing policies.

Alaska: Authorized Comprehensive Sentencing Reform to Address Prison Population Growth

State lawmakers adopted a robust measure, **Senate Bill 91**, to limit prison growth and reduce recidivism. The legislation's provisions include expanding incarceration alternatives, reducing jail terms for misdemeanor offenses, reclassifying drug possession as a misdemeanor offense, reducing presumptive sentencing ranges for certain felony level offenses, expanding eligibility for discretionary parole, streamlining parole releases for persons sentenced for a first-time nonviolent offense, and capping prison stays for technical violations of probation and parole conditions.

California: Approved Ballot Measure Expanding Parole Eligibility

Voters approved **Proposition 57**, the governor's plan to further prison population reductions. Proposition 57 includes several salient provisions: requiring that juvenile defendants be charged as an adult only with a judge's approval; allowing parole for persons sentenced to incarceration for "designated violent" crimes; and creating new behavior credits that could lead to sentence reductions for state prisoners.

Delaware: Scaled back "Three Strikes" Law

Legislators limited the state's habitual offender sentencing structure, or "three strikes" law, including for persons with prior violent convictions, with the passage of **Senate Bill 163**. Specifically, the law increased the number of prior convictions for certain offenses before a defendant would be classified as a habitual offender. Prior to the law change, the criminal code required a mandatory life sentence upon a third conviction for a violent offense, and required persons with three prior non-violent felonies and then a violent felony conviction to receive the maximum allowable sentence for the violent felony. SB 163 also changed the statute by eliminating mandatory life in prison for a third criminal conviction. Importantly, the proposed legislation is retroactive and would allow for a sentencing modification for persons convicted under the old law.

Florida: Eliminated Certain Mandatory Minimum Sentences

Lawmakers passed **Senate Bill 228**, a measure that eliminates certain mandatory minimums by deleting aggravated assault from the list of crimes subject to the state's 10-20-Life mandatory minimum statute.

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Illinois: Adopted Racial Impact Statements for Proposed Sentencing Laws

Officials enacted **House Bill 1437**, a measure that establishes regular reporting requirements of racial demographics for certain criminal justice practices, including arrests that do not lead to charges and diversion from prosecution. HB 1437 requires the Illinois Criminal Justice Information Authority to assess and regularly report these data requirements.

Iowa: Reformed Mandatory Minimum Sentencing Laws for Certain Offenses

Lawmakers adopted **House File 2064**, legislation that authorizes greater discretion for mandatory minimums for second degree robbery offenses. The bill grants judges the discretion to impose five-year or six-year mandatory sentencing requirements rather than the previously required seven years. The measure also allows the Iowa Board of Parole to release persons sentenced for nonviolent drug offenses who have served half their mandatory minimum sentence. The bill contains punitive provisions including expanding prosecutorial discretion to charge third degree robbery and lengthening prison terms for certain child endangerment offenses.

Maryland: Approved Comprehensive Reforms including Repeal of Certain Mandatory Minimum Sentences

Policymakers passed **House Bill 1312**, the state's comprehensive Justice Reinvestment Initiative. The measure's provisions include repealing mandatory minimum sentences for nonviolent drug crimes, establishing graduated sanctions short of reimprisonment for parole and probation violators, allowing geriatric and medical parole at earlier ages for certain offenses, and increasing credits earned in prison toward release for completion of educational programs.

Minnesota: Modified Drug Sentencing Structure

Lawmakers recalibrated the state's drug sentencing structure by passing **Senate File 3481**. The measure's provisions include reducing the recommended prison sentence for first-degree sale and possession of heroin, cocaine and methamphetamine from seven years to slightly more than five years, and reducing the sentence for second-degree drug sale from four years in prison to four years on probation for heroin, cocaine and methamphetamine. The bill raises the minimum weight to qualify for high-level charges for methamphetamine and cocaine. For instance, a first-degree sale is redefined as 17 grams — up from the current 10 grams. Legislators also enhanced penalties for persons arrested with certain "aggravating factors," such as firearms possession, selling across state lines, and drug selling to benefit a gang.

Oklahoma: Reclassified Certain Felony Offenses to Misdemeanors

Voters authorized sentencing reform changes by passing **State Question 780**. The measure reclassifies criminal offenses such as drug possession and low level property offenses to misdemeanors instead of felonies. The initiative passed with support from 57% of voters. Oklahoma's electorate also approved **State Question 781**, an initiative that allows counties to use money saved from diverting prison bound defendants eligible under SQ 780 to fund community rehabilitation programs.

COLLATERAL CONSEQUENCES OF CONVICTIONS

Criminal convictions can impact justice involved persons long after they complete their sentence. Efforts to reform collateral consequences in 2016 ranged from addressing employment opportunities, expanding voting rights for persons with felony convictions, and addressing eligibility for certain public benefits programs that exclude persons convicted of drug offenses.

Alaska and Georgia: Modified Federal Lifetime Felony Bans on Food Assistance for Persons with Drug Convictions

Lawmakers in both states modified the lifetime ban on food stamp eligibility for persons with felony drug convictions. These states opted out of a federal law that imposes restrictions on food and cash assistance for persons convicted of felony drug offenses.

Alaska officials included the reform in **SB 91**. The reform requires persons with drug felony convictions to comply with court mandated treatment and parole supervision requirements.

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Georgia lawmakers passed **Senate Bill 367** and expanded eligibility on a case-by-case basis pending parole requirements or mandatory treatment. In recent years, states that have reformed this policy include Alabama, Missouri, and Texas.

Delaware, Maryland, and Virginia: Addressed Felony Disenfranchisement

Nationally, 6.1 million persons are disenfranchised from voting due to felony convictions. The laws governing whether justice involved persons can vote vary from state to state. Since 1997, 23 states have changed laws improving enfranchisement policies for persons with felony convictions.

Delaware officials improved voting access for persons with felony convictions with the passage of **Senate Bill 242**. Under the new law, individuals no longer have to pay off their fines and fees in order to vote.

Maryland lawmakers overrode the governor's veto of **House Bill 980** and authorized voting for persons under felony probation or parole supervision, expanding the franchise to an estimated 40,000 individuals.

Virginia Governor Terry McAuliffe issued several executive orders automatically restoring voting rights to persons who had completed their sentence including probation or parole. Following a legal challenge the Virginia Supreme Court invalidated the executive orders that had automatically restored voting rights to over 200,000 citizens, ruling that the Governor could only restore rights on an individualized basis. Following that decision, Governor McAuliffe has restored voting rights to 70,000 persons using his executive authority.

Georgia and Massachusetts: Opted out of Federal Automatic Driver's License Suspensions for Drug Offenses

Since the 1990s a number of states have used their authority to opt out of policies governing automatic driver's license suspensions to maintain federal highway funding. During 2016, lawmakers in Georgia and Massachusetts reformed their laws as part of broader reentry strategies for persons with prior drug convictions.

Georgia officials included a provision in **SB 367** that allows retroactive reinstatement of driver's licenses revoked for non-vehicle related drug offenses.

Massachusetts legislators authorized a law change in **Senate Bill 2021** which repealed mandatory suspension of the driver's licenses for persons with any drug offense and waived a $500 reinstatement fee for license restoration.

Kentucky: Reformed Expungement Policy for Certain Offenses

Policymakers adopted **House Bill 40**, legislation that authorizes certain low-level felony offenses (Class D) to be sealed or expunged. The measure creates a process that permits a defendant to file a motion to have his or her conviction vacated and expunged. Records in the custody of any other agency or official, including law enforcement records, will be expunged. HB 40 also expanded voting rights to persons who have had their felony records expunged.

Louisiana, Missouri, Oklahoma, and Wisconsin: Adopted Fair Chance or "Ban the Box" Hiring Policies to Address Employment for Persons with Criminal Records

Recent reforms expanded the number of states with fair chance hiring policies to 24. The reform efforts, also known as "ban the box," refer to questions of arrest or conviction on employment applications.

Louisiana lawmakers passed **House Bill 266**, a measure that eliminates requirements for applicants for unclassified state jobs to disclose felony convictions on their employment application.

Wisconsin officials included the reform in **Assembly Bill 373**, a comprehensive measure that changed many of the state's rules on civil service.

During 2016, governors in Missouri and Oklahoma issued executive orders delaying questions of criminal history on state employment applications.

JUVENILE JUSTICE

Reforming juvenile justice policies and practices is one way to address the scope of mass incarceration. Officials in several states continued efforts to reduce interactions between youth and the criminal justice system and authorized changes in lengthy prison terms for teenage defendants.

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Colorado, South Dakota, and Utah: Addressed Juvenile Life without Parole (JLWOP) as a Sentencing Option

Nineteen states have banned life sentences without the possibility of parole for juvenile defendants.

Colorado officials adopted **Senate Bill 181**, authorizing retroactive elimination of juvenile life without parole. The measure authorizes persons sentenced to JLWOP during specified time periods to petition the court for resentencing. SB 181 allows resentencing hearings and establishes new sentencing ranges of 30 to 50 years or life in prison with parole eligibility after 40 years for felony murder cases. In 2006, officials prospectively repealed JLWOP as a sentencing option through a law change that excluded previously sentenced teenage defendants.

Utah policymakers passed **House Bill 405,** a bill that eliminated JLWOP as a sentencing option for defendants under 18 years of age convicted of capital offenses. The law authorizes an indeterminate prison term of 25 years to life and requires the court to determine the sentence length.

South Dakota legislators approved **Senate Bill 140** and banned JLWOP as a sentencing option. The law eliminates all life sentences for people who were younger than 18 at the time of their crimes.

Louisiana and South Carolina: Raised the Age for Criminal Responsibility for Teenage Defendants

Louisiana officials passed **Senate Bill 324**, and raised the age for criminal responsibility for justice involved youth from 17 to 18, prospectively allowing for 17 year old defendants to be adjudicated in the juvenile justice system. South Carolina lawmakers authorized **Senate Bill 916**, legislation that raised the age of juvenile court jurisdiction from 16 to 17. Forty-three states set the upper limit of juvenile court jurisdiction at age 17 although other mechanisms can result in the transfer of juveniles to adult court.

Vermont: Limited Prosecutorial Discretion in Charging Teenage Defendants as Adults

Lawmakers passed **House Bill 95,** eliminating direct file for all but the most serious offenses. Prosecutorial discretion or "direct file" is authorized in 14 states and the District of Columbia as a mechanism by which juvenile defendants can be adjudicated in criminal court, though age requirements differ depending on the charge.

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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.