



RESEARCH AND ADVOCACY FOR REFORM



# **The State of Sentencing 2010**

**Developments in Policy and Practice**

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**T**oday, 7.2 million men and women are under correctional supervision. Of this total, five million are monitored in the community on probation or parole and 2.3 million are incarcerated in prisons or jails. As a result the nation maintains the highest rate of incarceration in the world at 743 per 100,000 population.

The scale of the correctional population results from a mix of crime rates and legislative and administrative policies that vary by state. In recent years, lawmakers have struggled to find the resources to maintain state correctional systems; 46 states are facing budget deficits in the current fiscal year, a situation that is likely to continue, according to the National Governors Association. Many states are looking closely at ways to reduce correctional costs as they seek to address limited resources. States like Kansas, Michigan, New Jersey, and New York have successfully reduced their prison populations in recent years in an effort to control costs and effectively manage prison capacity. Overall, prison populations declined in 24 states during 2009, by 48,000 persons, or 0.7 percent.

During 2010, state legislatures in at least 23 states and the District of Columbia adopted 35 criminal justice policies that may contribute to reductions in the prison population and eliminate barriers to reentry while promoting effective approaches to public safety. This report provides an overview of recent policy reforms in the areas of sentencing, probation and parole, drug policy, the prison census count, collateral consequences, and juvenile justice. Highlights include:

- South Carolina equalized penalties for crack and powder cocaine offenses as part of a sentencing reform package that garnered bipartisan support.
- New Jersey modified its mandatory sentencing law that applies to convictions in “drug free school zones,” and now authorizes judges to impose sentences below the mandatory minimum in appropriate cases. Prior to the reform, more than 3,600 defendants a year were convicted under the statute, 96% of whom were African American or Latino.

- Colorado modified its parole revocation policy in order to encourage greater use of substance abuse treatment programs. The legislation also requires that a portion of the cost savings from reduced incarceration be allocated to re-entry services including employment assistance and substance abuse treatment.
- Vermont established a goal of reducing the incarceration rate that directs a coalition of criminal justice stakeholders to work cooperatively to reduce the incarceration rate to 300 persons or less per 100,000 population, from the current rate of 370 per 100,000.

State policymakers enacted policy reforms for various reasons, including controlling state budgets and managing prison capacity. However, many lawmakers are also interested in reform because of their awareness that large-scale incarceration has produced diminishing returns for public safety. As a result, legislators and other stakeholders have become increasingly interested in implementing policies that strengthen public safety by providing a more appropriate balance of approaches to crime control.

## KEY CRIMINAL JUSTICE POLICY REFORMS AND LEGISLATION PASSED IN 2010

State	Reform
Arizona	Enacted the Arizona Medical Marijuana Act which protects seriously ill patients from state prosecution for using limited amounts of medical marijuana.
California	Authorized medical parole for prisoners who are permanently incapacitated. Reduced the penalty for marijuana possession to a non-arrestable infraction.
Colorado	Modified penalties for certain drug possession offenses; Established revocation policy for technical parole violations; Directed the cost savings from reducing parole revocations towards reentry services; Raised the age of presumptive prosecution for certain juvenile defendants from fourteen to sixteen.
Connecticut	Enacted statewide "Ban the Box" measure which delays inquiry from public employers regarding the criminal history of job applicants until job candidates are interviewed for the position.
Delaware	Amended state code to count prisoners at their last place of residence prior to incarceration for the decennial census.
District of Columbia	Authorized possession of medical marijuana for persons with certain chronic illnesses, including glaucoma and cancer.
Illinois	Modified felony property threshold amounts to account for inflation.
Indiana	Established rehabilitation-based discharge for certain long-term prisoners.
Kansas	Allowed medical parole for certain terminally ill prisoners.
Louisiana	Exempts expungement fees in certain cases.
Maryland	Modified census policy regarding the inclusion of incarcerated persons; Enacted medication protocol for mentally ill persons released from local facilities.
Massachusetts	Authorized parole eligibility for certain prisoners incarcerated at the county level; Adopted "Ban the Box" measure which eliminates criminal history questions on an initial public employment application.
Michigan	Revised conditions for parole eligibility by establishing legislative intent to improve access to rehabilitative programs.
New Hampshire	Enacted presumptive parole for prisoners whose length of stay exceeds the minimum sentence.
New Jersey	Relaxed mandatory minimums by authorizing court to waive or reduce parole ineligibility or grant probation for certain drug offenses; Strengthened reentry policy, including opting out of the federal lifetime ban on food stamps for persons with felony drug offenses; Allowed possession of medical marijuana for chronically ill patients.
New Mexico	Established statewide "Ban the Box" policy which removes questions regarding criminal history from public employment applications.
New York	Modified policy regarding how incarcerated persons are counted for the decennial census; Adopted policy requiring the notification of voting rights.
Pennsylvania	Authorized the parole board to divert certain technical parole violators from prison to parole violation centers for treatment.
Rhode Island	Reformed probation revocation policy by authorizing release for probationers acquitted of new criminal charges.
South Carolina	Modified sentencing structure for certain criminal offenses; Eliminated crack-powder sentencing disparity.
Tennessee	Authorized sentencing alternatives for nonviolent property offenses.
Vermont	Codified policy to reduce the rate of incarceration; Authorized early discharge from unlimited supervision for certain probationers.
Virginia	Established alternatives to detention policy for juveniles tried as adults.
Wyoming	Directed law enforcement officers to use risk assessment when detaining juvenile defendants.

## SENTENCING

During 2010, lawmakers in five states adopted reforms that impacted prison admissions and length of stay in prison. In recent years, this approach has contributed to controlling prison populations in a number of states and resulted in cost savings by minimizing the need for prison capacity. For example, from 1999 through 2009 both New York and New Jersey developed alternatives for “prison bound” people that contributed to declines of up to 20% in their prison population. In 2010 state policymakers adopted sentencing policies that include establishing an upper limit on the incarceration rate, eliminating drug policy sentencing disparities, and modifying mandatory minimum sentencing structures.

### **Illinois – Increased Financial Threshold for Property Crime**

Lawmakers authorized **SB 3797**, a measure that changes the value level of felony theft from \$300 to \$500 and for felony retail theft from \$150 to \$300. Increasing the dollar amount required to trigger a felony theft offense reflects that retail values have changed over time as a result of inflation.

### **New Jersey – Modified Mandatory Minimums in Drug-Free School Zone Cases**

**A 2762** modifies mandatory minimum policies triggered in drug-free school zones and authorizes the court to waive or reduce the minimum term of parole ineligibility or place on probation a person convicted of distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance while on or within a 1,000 feet of school property or a school bus.

According to the New Jersey Administrative Office of the Courts, over 3,600 defendants were convicted of distribution of a controlled substance within 1,000 feet of school property or a school bus during 2008; an earlier report detailed that 96% of the convictions were of African-Americans or Latinos. Modifying the law authorizes

additional sentencing options of parole and probation which are estimated at an annual cost of \$10,000 per participant in comparison to \$39,000 per year for incarceration.

### **South Carolina – Eliminated the Crack-Powder Sentencing Disparity and Modified Penalties for Controlled Substances and Property Crimes**

Through **S 1154**, South Carolina lawmakers enacted a comprehensive package of sentencing reforms that garnered bipartisan support. The package includes a measure to restructure controlled substance offenses that equalizes penalties for crack and powder cocaine offenses, and authorizes probation and other alternatives to incarceration for persons convicted of a first or second non-trafficking drug offense. The measure modifies certain property crimes, including reducing the maximum penalty for non-violent, second degree burglary from 15 years to 10 years. The legislation also increases the property value threshold from \$1,000 to \$2,000 for all felony property crimes while making property crimes below \$2,000 misdemeanors. This policy reform has been undertaken by several states in recent years to account for inflation.

*“This action, taken by the General Assembly, is a perfect example of what can happen when legislators set partisanship aside, objectively review the problems facing our state and address them with comprehensive and evidence based solutions,” said Senator Gerald Malloy, lead sponsor of S. 1154.*

While South Carolina lawmakers took steps to enact certain reforms they also enhanced penalties by adding 24 crimes to the “violent crime” list, including certain drug trafficking offenses. The legislature also authorized the sentencing option of life without parole for persons convicted of a “most serious offense,” which includes drug trafficking and second degree burglary for persons with two or more prior convictions for a “serious offense.”

### **Tennessee – Enhanced Sentencing Alternatives for Nonviolent Property Offenses**

**HB 2813** authorizes judges to sentence a defendant with one prior conviction to community corrections or probation for various nonviolent property offenses that include burglary of a motor vehicle or felony theft under \$1,000. Defendants are not eligible for the alternative sentencing structure if they have multiple convictions for the offense for which they are being sentenced. An analysis projected the legislation would decrease state expenditures by over \$10 million and divert an average of 600 persons from state prisons and local jails each year.

### **Vermont – Established Mechanism to Reduce Incarceration Rate and Expand Sentencing Option of Home Confinement for Certain Offenses**

State policymakers enacted a package of reforms through **S 292** that includes establishing a goal of reducing the incarceration rate and creating a sentencing option of home confinement for eligible defendants. The measure directs a coalition of criminal justice stakeholders, including the administrative judge of the trial courts, the corrections commissioner, and the executive director of the state's attorney office, to work cooperatively to reduce, to the extent possible, the incarceration rate to 300 persons or less per 100,000 population; the rate was 370 per 100,000 in fiscal year 2009. Similarly, the legislation established an additional criminal justice stakeholder group and authorized it to reduce the number of persons entering the state prison system and minimize their length of stay by increasing restorative justice, diversion, and other county-level policies so that the need for correctional services is reduced.

Lawmakers also established a new sentencing option of home confinement for sentences of 180 days or less. Persons would be confined to a court approved residence continuously, except for authorized absences, and would be subject to appropriate supervision, including electronic monitoring, and certain conditions, including restrictions on possessing firearms.



## **PROBATION AND PAROLE**

In recent years states have implemented viable responses to managing the prison population through policies designed to reduce probation and parole revocations. States like Kentucky and Mississippi have incorporated changes to parole policies in an effort to reduce prison overcrowding during periods of fiscal austerity. In 2010 lawmakers utilized their authority to address the length of stay for prisoners and manage capacity through parole mechanisms. Several states adopted parole policy reforms that included enhancing medical parole and reducing revocations for technical parole violations.

### **Colorado and Pennsylvania –Required Parole Board to Divert Technical Parole Violators from Prison; Reinvest Cost Savings in Reentry Services**

In many states, persons who violate parole supervision comprise a large proportion of commitments to prison. In order to reduce the number of persons entering prison, some states, including Colorado and Pennsylvania in 2010, have explored ways to establish parole supervision policies that reduce technical revocations of parole in ways that do not compromise public safety. During 2010, the Pennsylvania prison system was operating at 115 percent of bed capacity and technical parole violators comprised 30 percent of prison admissions. Similarly, the Colorado prison system was operating at 114 percent of capacity and technical parole violators comprised 34 percent of new admissions in 2009.

**HB 1360** in Colorado authorized the parole board to modify conditions of parole in lieu of revocation for technical violations, including requiring parolees to participate in residential or outpatient treatment programs. If parole is revoked, the maximum term of re-incarceration is 90 days if the parolee is assessed as low risk and the underlying conviction is not for a crime of violence. Each year the General Assembly is required to appropriate a portion of the cost savings from HB 1360 for re-entry support services for parolees related to obtaining employment, substance abuse

treatment, or other services. Approximately \$4.5 million in avoided prison costs was appropriated during 2010 into treatment and reentry support services.

Pennsylvania's **SB 1161** contains several provisions, including permitting the parole board to divert technical parole violators from prison to parole violation centers. The measure requires the parole board to consider whether the parolee poses a risk to community safety, the board's capacity to deliver programs that address criminal-thinking behavior and the use of community-based alternatives to incarceration. Other provisions of SB 1161 include authorizing the use of a risk assessment to help determine the appropriate sentence within the limits established by law.

### **California and Kansas – Modified Medical Parole for Certain State Prisoners**

One mechanism to address capacity is through medical parole, a policy that enables correctional and parole officials to release prisoners who are medically incapacitated or terminally ill. Last year, both California and Kansas modified such policies.

**SB 1339** in California provides that prisoners determined to be permanently incapacitated with a medical condition that renders them unable to perform activities of basic daily living, and results in requiring 24-hour care, and when that incapacitation did not exist at the time of sentencing, shall be granted medical parole.

Additionally, the Kansas legislature authorized medical parole when it passed **HB 2412**, a measure that allows the state parole board to release prisoners diagnosed with terminal medical conditions expected to cause death within 30 days. The parole board would be permitted to revoke parole if the prisoner does not die within 30 days of release, or concludes that the offender presents a threat to public safety.

### **Indiana – Authorized Discharge of Long Term Inmates and Earned Credit**

State lawmakers adopted **SB 415**, which allows rehabilitation based discharge for long term prisoners who have served 21 years and have received four years of earned credit for participation in education, treatment, or other programs; certain sex offenders are ineligible for discharge. According to the Legislative Services Agency, ten prisoners were identified as being confined between 21 to 25 years and might have been eligible for the program. The agency estimated that the measure would result in nearly \$128,000 of avoided costs.

### **Massachusetts – Established Parole Eligibility for Prisoners at County Facilities**

**S. 2583** authorized parole for some prisoners serving mandatory terms for nonviolent drug offenses. The measure allows parole upon serving one-half of their sentences in county correctional facilities. However, the bill enhanced penalties for certain illegal gun possession charges and sex offenses.

### **Michigan – Revised Conditions for Parole Eligibility**

Section 913 of **SB 1153** established legislative intent that any prisoner required to complete an assaultive offender, sexual offender, or other program as a condition of parole be transferred to a facility where such programs are available in order to allow timely completion prior to expiration of his or her minimum sentence. Prior to reform, prisoners were often denied parole as a result of their inability to access treatment programs in a timely manner.

### **New Hampshire – Established Presumptive Parole Policy for Prisoners whose Length of Stay Exceeded the Minimum**

Policymakers worked to manage the state's prison population by passing **SB 500**, which authorizes presumptive parole for nonviolent prisoners who have served 120 percent of their minimum sentence. The measure applies to prisoners at least nine

months before their maximum sentences end so they can be supervised as they move back into their communities. Reports have estimated that the state would avoid between \$8 million and \$11 million in correctional costs over the next five years as a result of the legislation.

### **Rhode Island – Reformed Probation Revocation Policy**

**H 7347** ended the prison sentence of people incarcerated as probation violators and later acquitted of the charges. Prior to reform persons on probation accused of a new crime could be sent back to prison on a probation violation. Even if they were not found guilty of the new charge, they could remain in prison for long periods of time for the violation.

### **Vermont – Authorized Early Discharge from Probation for Persons Sentenced to Unlimited Supervision**

Modifying probation supervision is also a mechanism that state policymakers have explored to manage correctional populations. **S 292** directs the Department of Corrections to request that the court discharge persons from unlimited probation who have served a minimum of two years for a nonviolent misdemeanor and have less than six months of probation remaining for a nonviolent misdemeanor or a nonviolent felony. Probationers must also have completed all court ordered services or programming designed to reduce the risk of recidivism.

## **DRUG POLICY**

Last year, several states modified drug policies. California reduced the penalty for marijuana possession from a misdemeanor to a non-arrestable infraction and Colorado relaxed penalties for certain controlled substance offenses resulting in expected cost savings. Medical marijuana provisions were enacted in the District of Columbia and the states of Arizona and New Jersey. Currently, sixteen states have medical marijuana policies.

### **California – Lowered Penalty for Marijuana Possession**

Lawmakers enacted SB 1449, which reduced penalties for marijuana possession by making it a non-arrestable offense. Prior to passage, the state of California considered possession of 28.5 grams, or an ounce of marijuana, a misdemeanor that could not result in jail time or probation and the fine could not exceed \$100. During the signing of the measure, former Governor Arnold Schwarzenegger stated,

"I am signing this measure because possession of less than an ounce of marijuana is an infraction in everything but name. The only difference is that because it is a misdemeanor, a criminal defendant is entitled to a jury trial and a defense attorney. In this time of drastic budget cuts, prosecutors, defense attorneys, law enforcement, and the courts cannot afford to expend limited resources prosecuting a crime that carries the same punishment as a traffic ticket."

### **Colorado – Modified Penalties for Certain Controlled Substance Offenses**

**HB 1352** modified the classification, scope, definitions, and other specific provisions of certain drug-related and property crimes. For example, the measure altered the penalty structure for possession of more than 4 grams of a schedule I or II controlled substance or more than 2 grams of methamphetamine designated as a class 4 felony, lowering the crime classification for a class 2, 3 or 4 felony depending on

circumstances. HB 1352 also enhances certain penalties including creating a new class 3 felony crime of distribution of a controlled substance by an adult to a minor and if the adult is more than 2 years older than the minor, by imposing a mandatory minimum prison sentence.

Projections suggest that due to HB 1352's reduction in penalties for the various offenses, fewer persons will be sentenced to Colorado prisons and those who are sentenced will have a shorter length of stay. As a result, the corrections savings are projected to total more than \$6.3 million during fiscal year 2011.

### **Arizona, New Jersey, and the District of Columbia – Authorized Use of Medical Marijuana for Seriously Ill Patients**

These states now permit possession of medical marijuana with certain conditions for seriously ill patients. Arizona voters passed **Proposition 203**, the Arizona Medical Marijuana Act, with just more than 50% of the vote. The measure enables a qualifying patient who is registered with the Arizona Department of Health Services to legally obtain an allowable amount of marijuana from a nonprofit medical marijuana dispensary and possess the marijuana to treat symptoms associated with a debilitating medical condition.

On the final day of the legislative session, New Jersey lawmakers authorized medical marijuana with the passage of **SB 119**. The bill allows patients diagnosed with severe illnesses like cancer, AIDS, and multiple sclerosis to have access to marijuana grown and distributed through state-monitored dispensaries.

The District of Columbia City Council unanimously approved **B18-0622/3** which allows people with certain chronic illnesses, including glaucoma, cancer, and HIV, to obtain medical marijuana from a handful of dispensaries regulated by the city.

## **PRISON CENSUS COUNT**

The Census Bureau counts prisoners as residents of the towns where they are incarcerated, rather than their home address, though they are barred from voting in 48 states and return to their homes after being released. The policy of counting incarcerated people at their prison location results in the transfer of valuable resources from prisoners' communities. This is because most prisons are built in rural areas while the majority of incarcerated people call urban areas home. For example, 60% of Illinois' prisoners are from Cook County (Chicago), yet 99% of them are counted outside the county.

### **Maryland, Delaware, and New York – Established New Criteria for Including Incarcerated Persons in the Decennial Census**

Last year, three states enacted measures to count prisoners in their home communities. In Delaware, bipartisan support led to the passage of the reform measure **HB 384** by an overwhelming majority. Maryland's **HB 496**, known as the No Representation without Population Act, also garnered significant support, while New York's measure was attached in the state's budget bill **A 9710**. During 2010, seven states introduced census reform measures, including Florida, Texas, Oregon, and Wisconsin.

## **COLLATERAL CONSEQUENCES**

Approximately 729,000 men and women were released from state and federal prisons in 2009; and 13 million persons are estimated to have felony convictions. Public awareness around the civil sanctions that people with prior convictions face has grown in recent years and has resulted in significant reforms at the state level. The collateral consequences of conviction vary widely from state to state and have been adopted in a variety of forms that range from restricting employment opportunities to denying voting rights. Reforms include eliminating barriers to employment and opting out of the federal lifetime ban on food stamp benefits for persons with felony drug convictions.

### **Connecticut, Massachusetts, and New Mexico – Reduced Barriers to Employment for Persons with Felony Convictions**

Employment opportunities are typically limited for persons with criminal records and are perhaps one of the most troublesome collateral consequences of a conviction. The inability to obtain or maintain employment has been identified as a major factor in recidivism. According to a study by the Urban Institute, employment rates and earnings of formerly incarcerated persons are low by almost any standard—though in most cases they were already low even before these individuals were placed under criminal justice supervision.

In Connecticut, **HB 5207** delays inquiry into prior criminal history for applicants for public employment opportunities. The bill prohibits the state and its agencies from disqualifying a person from state employment or denying, suspending, or revoking a credential (such as a professional, trade, or business license) solely because of the person's prior conviction. Exceptions include law enforcement agencies and licensing mortgage lenders, correspondent lenders, and brokers. Instead, prior to making a decision based on a prior conviction, the relevant agency must consider the nature of the crime, its relation to the job, the person's rehabilitation, and the time since the conviction or release before finding someone unsuitable for the position or



credential. The measure was vetoed by Governor Jodi Rell but was overridden by votes in the House and the Senate with overwhelming bipartisan support.

Massachusetts also authorized legislation through the passage of **S 2583** to reform procedures relating to the use of criminal records information in employment decisions by delaying when questions are asked about prior convictions. The measure was promoted by Governor Deval Patrick, who stated,

“We place no limits on employers’ decision-making power -- employers are free to make their own determination that an applicant’s criminal record makes him or her unsuitable for employment. The only condition we impose is that the employer gives the applicant a chance to discuss the criminal record -- both its accuracy, and its relevance to the job in question -- before the employer makes the hiring decision.”

**SB 254** in New Mexico also enhanced employment opportunities for persons with felony convictions when the legislature approved the measure with significant support, passing 35 to 4 in the Senate and 54 to 14 in the House. As in other states, New Mexico now delays public employers inquiring about a job candidate’s criminal history until after they have been interviewed for employment.

### **Louisiana – Exempted Expungement Fees in Certain Cases**

The legislature authorized **HB 102**, which exempts certain persons from paying fees associated with the expungement process in misdemeanor and felony cases. Individuals seeking to remove arrest records from their criminal histories do not have to pay fees if they were not charged or the district attorney declined to prosecute such charges. This exemption only applies to expungement applicants who did not participate in pretrial diversion programs.

### **Maryland – Required Local Correctional Administrators to Provide Certain Released Prisoners Diagnosed with a Mental Illness with a Prescribed Amount of Medicine**

**SB 761** requires the managing official at a local correctional facility to, upon release, provide a prisoner diagnosed with a mental illness access to a 30-day supply of medication for his or her mental illness. Part of the supply may be provided by prescription if the prisoner is provided sufficient medication on release to remain medication-compliant until the prescription can be filled. The requirement only applies to a prisoner who has been incarcerated in a local correctional facility for at least 60 days, and only if a treating physician determines that the possession of medication will be in the person's best interest. The bill does not apply to persons held pretrial.

### **New Jersey – Reduced Restrictions on Persons with Prior Convictions including Modifying the Ban on Food Stamps for Persons with prior Drug Convictions**

In 2010, the New Jersey legislature authorized a package of reforms designed to improve public policy for persons with prior convictions. The reforms were adopted after a multi-year effort to achieve the safe and successful reintegration of adults and juveniles returning home from incarceration by promoting policies that remove barriers to productive citizenship. The legislature authorized several measures including modifying the ban on food stamps for certain individuals with felony drug convictions, requiring persons who exit criminal justice supervision to receive notice of their voting rights and eligibility to have their criminal records expunged.

**A 4197** established the Women and Families Strengthening Act under which the state opted out of the federal lifetime ban that prohibits persons with felony drug convictions from receiving food stamps and cash assistance benefits under the Temporary Assistance for Needy Families (TANF) component of the Work First New Jersey program, and federal benefit programs. The federal ban was adopted as a part of the Personal Responsibility and Work Opportunity Reconciliation Act of

1996. The measure applies to single heads of households or married couples with dependent children; other applicants remain ineligible for benefits. The bill also institutes policies to maintain familial bonds including enhancing correctional telephone policies and developing initiatives related to the children of incarcerated parents.

**A 4201** further enhances reentry policy by requiring the corrections commissioner to provide to each exiting prisoner a copy of their criminal history, the procedural process for seeking expungement, written information on the right to vote for persons with prior felony convictions, and reentry program information.

### **New York – Notified Persons who Exit the Department of Corrections of their Voting Rights**

New York's budget measure, **S 6610**, requires criminal justice agencies to notify persons exiting supervision that they have the right to vote. Persons convicted of a felony lose the right to vote while in prison or on parole; persons on probation do not lose their voting rights in New York. The state automatically restores voting rights to individuals released from prison or discharged from parole; they only need to complete a voter registration card in order to participate in the next election.

## JUVENILE JUSTICE

Policymakers are continuing to adopt juvenile justice policies that emphasize prevention and diversion programs. These policy changes are part of a trend that seeks to change the response to juvenile crime by adopting mechanisms to address risk, presumptive adult prosecution policies, and juvenile transfers to adult courts. In addition to legislative reforms in 2010, the Supreme Court ruled in *Graham v. Florida* that juveniles who commit crimes in which no one is killed may not be sentenced to life without the possibility of parole. In a 5-4 decision, the Court determined that the Eighth Amendment's ban on cruel and unusual punishment forbids such sentences as a categorical matter.

### **Colorado – Raised the Minimum Age for Transfer of Juvenile Defendants to Adult Court**

**HB 1413** increases the minimum age of defendants eligible to be transferred to adult court from 14 to 16 years, except when the defendant is charged with first degree murder, second degree murder or a sex offense. The bill directs the district attorney to use certain criteria in determining whether or not to charge the juvenile as an adult.

### **Virginia – Required that Juveniles Tried as Adults be Detained in Juvenile Detention Centers**

Lawmakers authorized under **SB 259** that juveniles whose criminal cases have been transferred to adult court be placed in a secure juvenile facility rather than an adult prison. If the juvenile demonstrates that she or he is a threat to the security or safety of the other juveniles or staff, the court is authorized to move the juvenile to an adult facility.

### **Wyoming – Directed Law Enforcement Agents to use a Risk Assessment for Juvenile Defendants prior to Court Appearance**

**HB 12** requires a law enforcement officer taking a juvenile defendant into custody to conduct a risk assessment to determine placement of the child pending an appearance before a court. The bill also directs county sheriffs to develop a uniform risk assessment instrument to be used when taking juveniles into custody and prohibits the imprisonment of youth under the age of eleven in secure facilities.

## **POLICY RECOMMENDATIONS**

Policies enacted in 2010 to impact state correctional systems are highlighted in this report. In recent years, lawmakers have explored ways to stem growth in state prison populations by adopting sentencing reforms that include scaling back mandatory minimums and codifying efforts to reduce the number of detained persons. Trends confirm that lawmakers have been able to enact policies that control prison growth. Further, states have adopted sentencing reform measures using evidence-based approaches without compromising public safety. During the last few years, several states achieved modest declines in their prison populations. Lawmakers exploring policy initiatives that leverage this policy approach should consider the following options during the 2011 legislative session:

### **Establish a Policy Objective of Reducing the Number of Persons Detained**

Vermont lawmakers codified into statute their intention to reduce the state's incarceration rate to 300 persons or less per 100,000 population. Policymakers seeking to address overcrowded prison systems should start with establishing a policy goal that asserts their commitment to reducing incarceration.

### **Enact Sentencing Reform Measures to Control Prison Growth**

Sentencing policy changes seeking to control state prison populations were enacted in New Jersey, South Carolina, Tennessee, and Massachusetts in 2010. It has been widely documented that severe sentences resulting in lengthy prison terms have little impact on crime, but exacerbate prison overcrowding. In recent years, lawmakers have approached this issue in various ways that range from authorizing judges to sentence without regard to the minimum in appropriate cases to repealing mandatory minimum sentences.

### **Permit Early Discharge for Parole or Probation**

In some states probation or parole sentences can last for life or a substantial number of years. For example in Vermont, probationers can be sentenced to unlimited terms and in Florida, courts can sentence defendants to 25 years of probation. While

community supervision can be a much more cost effective alternative to incarceration, long probation terms can undermine effective approaches to controlling state correctional populations. Lawmakers exploring measures to enhance probation and parole practices should identify viable options that allow probationers or parolees who meet certain conditions to earn an early discharge from community supervision.

### **Reduce Probation and Parole Revocations**

Modifying policies to reduce probation and parole revocations will impact the number of people who enter prison each year. Last year, Colorado and Pennsylvania enacted policies to minimize revocations by changing the way persons are supervised. Other states can also work to reduce revocations by identifying procedures that community supervision programs can implement.

### **Address Collateral Consequences for Persons with Prior Convictions**

More than 13 million persons have felony convictions, and the majority of these people are not incarcerated. These men, women, and youth live in the community and are adversely affected by barriers to employment, receipt of welfare benefits, access to public housing, and eligibility for student loans for higher education. Such collateral penalties place substantial barriers to an individual's social and economic advancement. In recent years, many states have enacted policies that limit the scope of collateral consequences. States can opt out of federal lifetime bans that deny access to public benefits for persons with felony drug convictions. They can also adopt measures that eliminate barriers to employment by delaying the inquiry into a prospective job applicant's criminal history until the applicant receives an interview.

### **Modify Presumptive Prosecution Policies for Juveniles**

Colorado increased the age at which juveniles would be tried as adults from 14 to 16 years. Only two states, North Carolina and New York, automatically prosecute 16 and 17 year olds as adults with no exceptions. In recent years, lawmakers in other states modified their presumptive adult prosecution statutes. Connecticut and Illinois ended their policies of sending 17-year olds who are charged with

misdemeanors to the adult court system in favor of retaining youth in the juvenile system where they have access to age-appropriate treatment and counseling.

### **Repeal Juvenile Life without Parole**

The 2010 decision in *Graham v. Florida* determined that it was unconstitutional to sentence juveniles to life without parole for offenses that did not result in a homicide. The Court reasoned that juveniles are fundamentally different from adults and have a unique ability to reform their lives. Advocates continue to work for the elimination of juvenile life without parole as a sentencing option. Such sentences are not used anywhere in the world except the United States, where approximately 2,500 individuals are currently serving this sentence for crimes committed as juveniles. There is mounting support for this reform in some states. Texas repealed its juvenile life without parole law (JLWOP) in 2009 and in recent years legislation has been introduced in nine states that would eliminate or limit the use of JLWOP. Lawmakers should repeal JLWOP and enact sentencing options that allow parole review after a reasonable period of incarceration.



**FURTHER READING AVAILABLE AT [www.sentencingproject.org](http://www.sentencingproject.org):**

**[Downscaling Prisons: Lessons from Four States](#)**

**[The State of Sentencing 2009: Developments in Policy and Practice](#)**

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