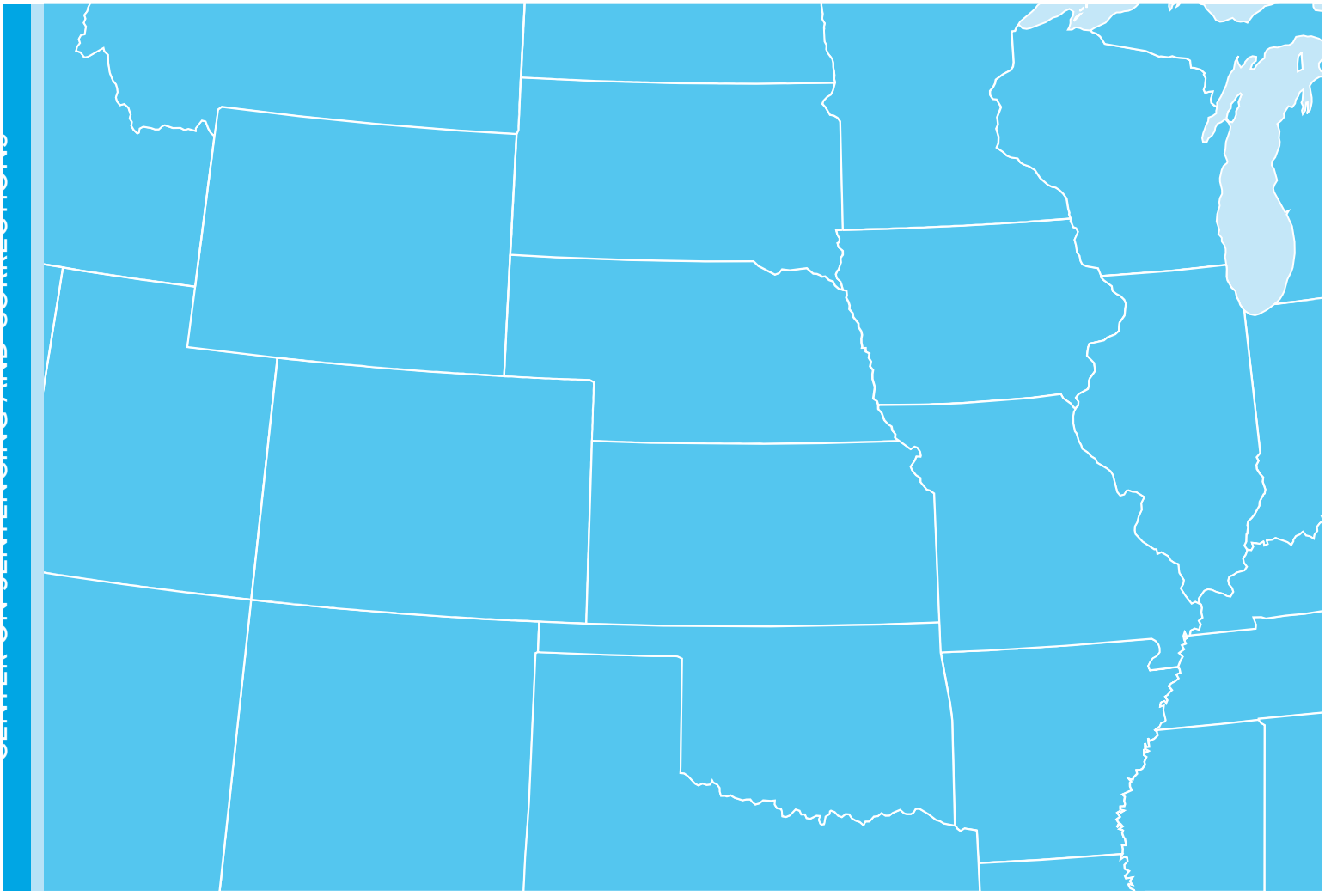
VERA INSTITUTE OF JUSTICE

Justice in Review:

New Trends in State Sentencing and Corrections 2014-2015

MAY 2016

Rebecca Silber • Ram Subramanian • Maia Spotts



SENTENCING AND CORRECTIONS

FROM THE DIRECTOR

This analysis of state-level changes in sentencing and corrections laws enacted in 2014 and 2015 reaches readers in the thick of the 2016 presidential primary season. In a year that marks the end of a two-term administration, it's not surprising that the media spotlight has thus far focused on potential changes to federal criminal justice policies.

Yet the evidence gathered by the Vera Institute of Justice's Center on Sentencing and Corrections (CSC) for this report demonstrates that the states continue to serve as laboratories of innovation in criminal justice reform. Forty-six states made 201 changes to their sentencing and corrections laws during 2014 and 2015.

Necessity and the numbers propel these state-level changes. More than 86 percent of people incarcerated throughout the United States are held in state prisons. State policymakers, still struggling with tightened resources stemming from the 2008 recession, are taking heed of a body of evidence amassed through years of research showing that mass incarceration is not effective. Neither public safety nor the long-term health of communities is served by incarcerating so many people for so long.

The state policy changes in 2014 and 2015 continue a trend that began in 2009 and flow from a reexamination of how to balance the essential priorities of public safety, fairness, and justice. They focus on three areas: creating or expanding opportunities to divert people from the criminal justice system; reducing prison populations; and supporting in-custody and community-based rehabilitation and reentry efforts designed to increase the odds of success upon return to the community.

Not all people who have landed in the criminal justice system belong behind bars. For many, earlier, targeted community-based responses to their behavior produce much more effective long-term outcomes in steering them away from trouble. Despite a national environment of stark ideological division on many issues, there is significant bipartisan agreement emerging on crime and punishment. It's manifest in the states, where ideologically driven criminal justice policies rooted in punitive views of justice system-involved people are giving way to an evidence-based approach rooted in what works to make society safer and stronger.

Fred Patrick
Director
Center on Sentencing and Corrections
Vera Institute of Justice

ABOUT THIS REPORT

In 2014 and 2015, 46 states enacted at least 201 bills, executive orders and ballot initiatives to reform at least one aspect of their sentencing and corrections systems. In conducting this review of state criminal justice reforms, the Vera Institute of Justice's Center on Sentencing and Corrections (CSC) found that most of the policy changes focused on three areas: creating or expanding opportunities to divert people away from the criminal justice system; reducing prison populations by enacting sentencing reform, expanding opportunities for early release from prison, and reducing the number of people admitted to prison for violating the terms of their community supervision; and supporting reentry into the community from prison. By providing concise summaries of representative reforms in each of these areas, this report serves as a practical guide for other state and federal policymakers looking to affect similar changes in criminal justice policy.

Contents

3 About this report

4 Introduction

10 Creating or expanding opportunities to divert people from the criminal justice system

19 Reducing prison populations

37 Supporting reentry into the community

52 Conclusion

53 Appendix A

60 Appendix B

66 Endnotes

Introduction

After a decades-long dependence on prison as the primary policy response to crime in the United States, political attitudes about public safety and criminal justice are rapidly shifting. Prompted by dissatisfaction with stubbornly high rates of return among those released from prison, and encouraged by public opinion polls that show a majority of the electorate believes that prison growth has yielded insufficient public safety gains, there is an emerging consensus across the political divide that America's over-reliance on prison has been too costly and ineffective. While state expenditures on corrections increased 427 percent between 1986 and 2012, with total state spending in 2012 at $52.4 billion, the high price tag has failed to yield greater public safety.[1] As of 2013, nearly four in 10 people released from prison were reconvicted of a new crime or violated the terms of their release and returned to prison within three years.[2]

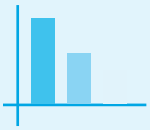
Driven by the need to find less costly and more effective solutions, policymakers over the past several years have embraced decades of research and analysis examining what works in corrections to reduce recidivism and improve public safety. In particular, policymakers are turning to a growing body of research demonstrating that:

- longer sentences have no more than a marginal effect in reducing recidivism and shorter sentence lengths do not have a significant negative impact on public safety;[3]
- many people can be safely and effectively supervised in the community rather than in custody at lower cost;[4] and
- post-punishment penalties and restrictions (the collateral consequences of criminal conviction) hinder people upon release from prison or discharge from community supervision in addressing known risk factors for reoffending—such as mental illness, substance-abuse problems, lack of vocational skills, education, and housing—with now well-understood impacts on their families and communities.[5]

Since 2009, most states have enacted legislation to reduce prison populations, expand and improve community supervision, improve reentry outcomes, and incorporate sustained data-driven analysis into policymaking.[6] Although the last major federal reform was the 2010 Fair Sentencing Act—landmark legislation that reduced the weight ratio disparity between the amount of powder cocaine compared to crack needed to trigger mandatory sentencing from 100:1 to 18:1 and eliminated the five-year mandatory minimum sentence for first-time possession of crack—further federal sentencing reform may now be in store.[7]

And recently, in a surprising show of bipartisanship, Republican and Democratic leaders alike are rejecting mass incarceration as a cure-all for crime. In a speech in support of criminal justice reform in July 2015, President Barack

USING DATA-DRIVEN RESEARCH AND ANALYSIS TO GUIDE REFORM



In 2014 and 2015, many states created special committees and task forces to oversee the review, adoption, and implementation of new evidence-based approaches to a wide range of criminal justice practices, many of which are reviewed in this report. To reach their goals, committees often begin with research into the efficacy of past and current practices, their known impact on rehabilitation and reducing recidivism, and an investigation into different strategies that research has demonstrated are effective. For example, Nebraska created and funded a number of working groups, including a research center at the University of Nebraska, to investigate a singular but comprehensive approach to reducing prison populations, improving reentry programming, and reallocating cost savings. Other states created or extended oversight bodies tasked with ensuring that recently enacted reforms achieve their goals. These groups are empowered to monitor implementation and make recommendations to the legislature for improvement where necessary.

Task forces, commissions, study or oversight committees, and advisory councils	Issue
Alabama SJR 20 (2014)	Sentencing practices and prison reform
Alabama Exec. Order 8 (2015)	Oversight
Alaska SB 64 (2014)	Sentencing and criminal justice practices
Arkansas SB 472 (2015)	Specialty courts
Colorado SB 14-021 (2014)	Mental health treatment (in-custody and upon reentry)
Idaho Exec. Order 1 (2014)	Oversight
Idaho SB 1393 (2014)	Oversight
Illinois HJR 53 (2015)	Behavioral health and criminal justice
Indiana HB 1006 (2014)	Oversight
Indiana HB 1070 (2014)	Oversight
Louisiana HR 203 (2015)	Reentry
Maryland SB 602 (2015)	Sentencing and prison reform
Mississippi HB 602 (2015)	Reentry
Missouri HB 1231 (2014)	Oversight
Nebraska LB 907 (2014)	Sentencing practices and prison reform
New Hampshire HB 1144 (2014)	Criminal records
North Dakota HB 1106 (2015)	Defendants who are veterans or currently serving in the military
Oregon HB 2838 (2015)	Incarcerated veterans
Oregon SB 969 (2015)	Reentry, Employment and Housing
South Carolina SB 900 (2014)	Expungement of criminal records
South Carolina S 237 (2015)	Expungement of criminal records
West Virginia HB 4614 (2014)	Sentencing

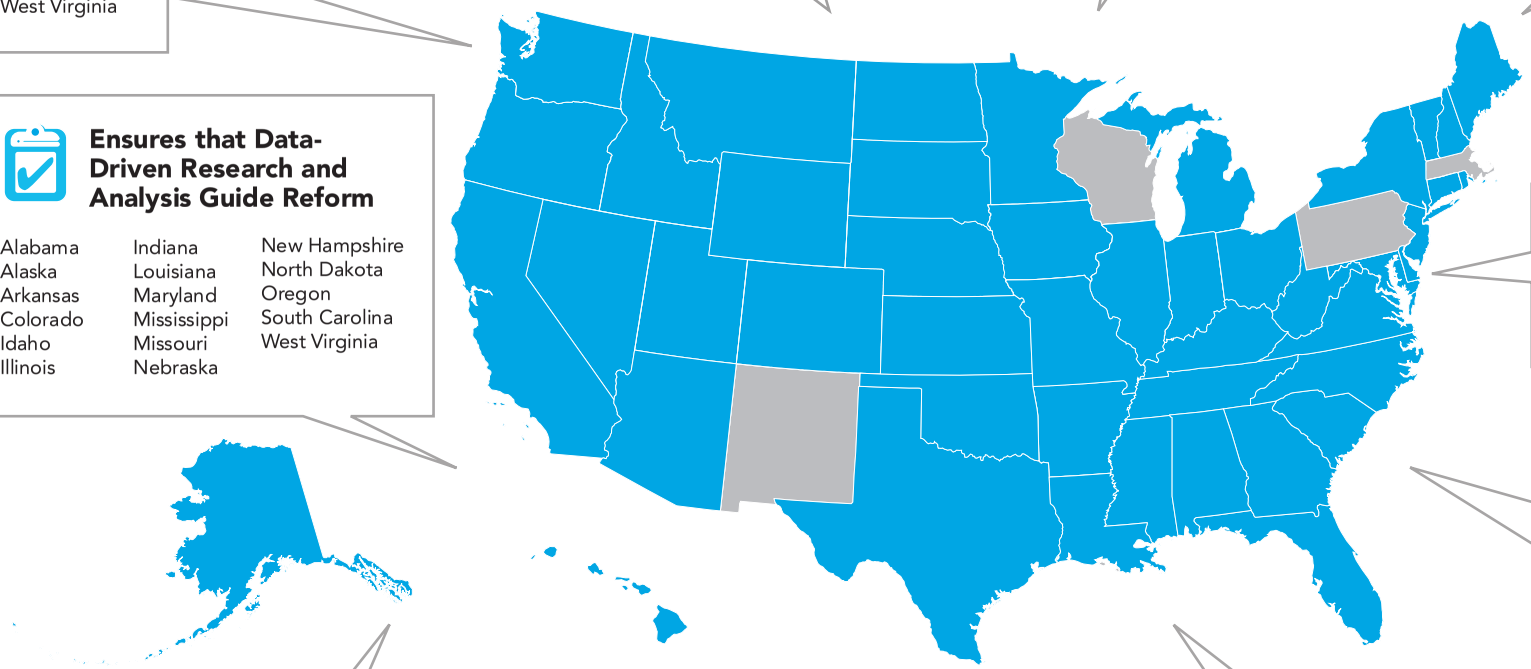
Obama declared that the overuse of incarceration "makes our country worse off," and that the punishment meted out too often is "disproportionate to the price that should be paid."[8] Using the example of the harsh treatment of low-level drug dealers and parole violators, the President endorsed wide-ranging types of reform, including curbing the use of mandatory penalties; expanding the adoption of alternatives to prison, such as drug courts and treatment and probation programs; and improving programming and conditions in prison as well as after release.[9]

Meanwhile, the Speaker of the House, Paul Ryan, a Republican, acknowledged in March 2016 that he was a "late convert to criminal-justice reform" and noted that tough-on-crime laws that imposed mandatory minimum sentences and three-strikes penalties "ended up putting people [in] for long prison terms, which ends up ruining their life and hurting their communities where we could have had alternative means of incarceration, better means of actually dealing with the problem than basically destroying a person's life."[10]

In July 2015, President Obama commuted the sentences of 46 federal inmates, most of whom were serving lengthy terms for drug offenses, and emphasized his focus on criminal justice reform with an unprecedented presidential visit to a federal prison in Oklahoma.[11] In October 2015, the Department of Justice announced that following a change in federal sentencing law for drug offenses, about 6,000 prisoners would be released over the course of a few days in late October and early November, the largest single release of federal prisoners.[12] And following the recent grant of 58 new commutations in May 2016, President Obama has granted more than 300 commutations, more than the past six presidents combined, and including more than 100 life sentences.[13]

While these recent actions by national leaders may have captured the lion's share of headlines, states have been enacting a wide variety of sentencing and corrections reform that reflects the growing desire to change and improve system responses to crime—from changing bail procedures to reduce the number of people held in jail simply because they can't afford to pay for their release, to improving outcomes for people leaving prison. Policymakers' notable willingness to reexamine and adjust the system at all stages of the criminal justice process is reflected in four major state bills—Mississippi HB 585 (2014), Alabama SB 67 (2015), Nebraska LB 605 (2015), and Utah HB 348 (2015)—sweeping pieces of legislation that reduced prison sentences for certain drug and property crimes, lessened the minimum amount of time people must serve in custody before becoming parole-eligible, incorporated the use of graduated responses in community supervision, increased opportunities to divert people away from the traditional criminal justice process, and created new programs and procedures to better support people reentering the community from prison. Some of the criminal justice reform laws enacted in 2014 and 2015 came about through the ballot box, rather than the legislative process. California's Proposition 47 (2014), for example, focused on reclassifying many drug and property crimes as misdemeanors and allocated anticipated cost savings to investments such as community-based treatment and education programs.

MAPPING SENTENCING AND CORRECTIONS TRENDS 2014–2015



Creates or Expands Opportunities to Divert People Away from the Criminal Justice System

Arkansas
California
Idaho
Illinois
Indiana
Louisiana
Michigan
Montana
New Hampshire
North Carolina
Oklahoma
South Carolina
Tennessee
Virginia
Washington
Wyoming

Bail Reform

New Jersey
Vermont
West Virginia

Expands Use of Medication-Assisted Substance Abuse Treatment

Indiana
New Jersey
New York
West Virginia

Veteran-Related Reforms

Alaska
Arizona
California
Georgia
Kansas
Louisiana
Maine
South Carolina
Tennessee
Texas
Utah

Reduce Prison Populations

Alaska
Arizona
California
Colorado
Connecticut
Delaware
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Montana
Nebraska
New Hampshire
North Dakota
Ohio
Oklahoma
Oregon
Rhode Island
Texas
Utah
Vermont
Virginia
Washington

Ensures that Data-Driven Research and Analysis Guide Reform

Alabama
Alaska
Arkansas
Colorado
Idaho
Illinois
Indiana
Louisiana
Maryland
Mississippi
Missouri
Nebraska
New Hampshire
North Dakota
Oregon
South Carolina
West Virginia

Comprehensive Criminal Justice Reform

Alabama
Mississippi
Nebraska
Utah

Solitary Confinement

Colorado
Delaware
Nebraska
New Jersey
South Dakota
Texas

Medical Amnesty

Alaska
Arkansas
Georgia
Hawaii
Illinois
Maryland
Minnesota
Montana
Nebraska
Nevada
North Carolina
New Hampshire
Virginia
West Virginia

Supports the Reentry of Individuals in the Community

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Illinois
Indiana
Iowa
Louisiana
Maine
Maryland
Michigan
Missouri
Nebraska
New Hampshire
New Jersey
New York
Ohio
Oklahoma
Oregon
Tennessee
Texas
Utah
Vermont
Virginia
Wyoming

A NOTE ABOUT THE REFORMS DISCUSSED IN THIS REPORT

The policy changes discussed in this report are exemplars of the three categories of sentencing and corrections reform that states have been pursuing in recent years. They do not provide an exhaustive listing or analysis of every state criminal justice-related bill, ballot initiative, or executive order in 2014 and 2015. The highlighted summaries are arranged by the type or area of reform. (See Appendix A for a state-by-state listing of all reforms covered in this report.) Where a particular piece of legislation makes distinct changes in multiple areas (e.g., by reducing prison populations and costs and also supporting reentry into the community), summaries of the relevant provisions may be included under the various respective reform categories. Finally, Section III, related to collateral consequences, excludes the 2014 legislation discussed in detail in the Vera Institute of Justice's 2014 report *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction 2009-2014*.[14]

In 2014 and 2015, states passed laws to:

- ***create or expand opportunities to divert people away from the criminal justice system***: States increased the use of alternative case dispositions, such as deferred adjudication programs, which allow people with first-time or low-level charges to avoid entering a guilty plea or ending up with a record of conviction if they serve a crime-free probationary period. States also expanded or strengthened the use of problem-solving courts that channel people with specific treatment needs, such as mental illness or substance abuse issues, into alternative judicial settings that provide intensive supervision in the community and treatment in lieu of prosecution or sentencing. Still other states passed laws that empower arresting officers to divert certain defendants—especially those with an identified mental health need—into treatment instead of detention;
- ***reduce prison populations***: States enacted laws to reduce or contain prison populations by 1) making certain offenses eligible for community-based sentences; 2) reducing the length and severity of custodial sentences by redefining or reclassifying crimes or repealing mandatory penalties; 3) shortening lengths of stay in prison by expanding opportunities to earn sentence credits, which shave off time in custody and advance parole eligibility; and 4) reducing the influx of people into prison for violations of community supervision by implementing evidence-based practices such as graduated responses to violations; and
- ***support people's successful reentry into the community***: To reduce recidivism, states changed their reentry systems to provide better coordination between prisons and community supervision agencies and to increase programming and treatment. In addition, states are supporting family relationships by facilitating family visitation, supporting relationships between incarcerated parents and their children, and ensuring that children of incarcerated people receive care and support. States are also helping people who are justice-involved obtain benefits, state identification, and exercise their voting rights; improving employment prospects by limiting bars on professional licenses and providing certificates of rehabilitation and employability; waiving fines and fees that often create economic obstacles to reintegration; and making it easier for people to expunge prior convictions and more difficult for private entities to disseminate criminal-records data.

BAIL REFORM

The presumption of innocence—a concept at the heart of the U.S. constitutional right to due process under the law—protects defendants during the time between charge and conviction, ensuring that most people are not held in custody prior to trial and that those who are detained are held in custody only to ensure their return to court for trial.[a] Until relatively recently, U.S. law conformed with this understanding, evidenced by the fact that bail—the conditions, often financial, imposed upon an accused person to ensure appearance for trial—was presumed in all non-capital cases.[b] Although statutory changes between the 1960s and 1980s also made public safety a central consideration in the pretrial release or detention decision process, the presumption that people should be released pending trial remained paramount.[c]

However, recent pretrial release practices are at odds with this presumption. As of mid-year 2013, 63 percent of the jail population had not yet been convicted—nearly 460,000 people on any given day.[d] Moreover, many of these people remained in jail simply because they could not post financial bail—the main condition for release.[e]

With research showing that people held in pretrial detention have higher rates of conviction, longer sentences, and higher recidivism rates, three states—New Jersey, Vermont, and West Virginia—overhauled their bail systems to reduce the overuse of pretrial detention.[f]

- **New Jersey SB 946 (2015)** implements **New Jersey Public Question 1 (2014)**—a statewide ballot measure approved by popular vote in November 2014 that eliminated the constitutional bail requirement for pretrial release. Previously, while all persons charged with a criminal offense were technically eligible for pretrial release, judges in practice often set very high bail, even for those charged with nonviolent offenses, rendering pretrial release available only to those who could afford it.[g] The ballot measure and subsequent legislation grant judges the discretion to determine eligibility for, and conditions of, pretrial release. Under the new law, defendants who do not pose a public safety or a flight risk may be released under non-monetary bail alternatives or conditions for release, including restrictions on travel, participating in mandatory drug or alcohol testing or mental health assessments, or securing and maintaining employment. It also orders the establishment of a Statewide Pretrial Services Program, including a Pretrial Services Program Review Commission to make recommendations regarding pretrial services, release, and detention.
- **Vermont SB 295 (2014)** requires that a risk and needs assessment be offered to all defendants charged with felonies or drug-related offenses, those unable to post bail within 24 hours of entering custody, and those not charged with, or arrested for, a criminal offense but identified by law enforcement, family, friends, treatment providers or others as having a substantial substance abuse or mental health problem. The assessment is then shared with the defendant, prosecution, and the judge in advance of filing criminal charges. The assessment occurs before the defendant's arraignment, and a judge may use it as the basis for determining appropriate pretrial release conditions. The new law also sets standards for the pretrial monitoring of defendants who are released.
- **West Virginia SB 307 (2014)** authorizes the establishment of local pretrial services programs, overseen by the Supreme Court. These programs make recommendations on pretrial release decisions to judges based on risk-assessment score and in some cases monitor and supervise people on pretrial supervision.

[a] For the constitutional right to due process, see *Estelle v. Williams*, 425 U.S. 501, 503 (1976). For the common law understanding of the presumption of innocence, see William Blackstone, *Commentaries on the Laws of England* 300 (1765).

[b] See *Stack v. Boyle*, 342 U.S. 1, 4 (1951) ("the right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty"). Also see *Judiciary Act of 1798,* 1 Stat. 73 §33.

[c] See *Bail Reform Act 1966*, 18 U.S.C. §§ 3146-3151, and *Bail Reform Act 1984*, 18 U.S.C. §§ 3141-3156. Also see *U.S. v. Salerno*, 418 U.S. 739 (1987) (government's interest in public safety may outweigh an individual's liberty interest).

[d] Todd D. Minton and Daniela Golinelli, *Jail Inmates at Midyear 2013 - Statistical Tables,* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2014), 11.

[e] Subramanian et al., *Incarceration's Front Door*, pp. 29 and 32.

[f] Christopher Lowenkamp, Marie Van Nostrand, and Alexander M. Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (New York: The Laura and John Arnold Foundation, 2013).

[g] Judges could only deny bail to persons charged with a capital offense, rendered inapplicable once the death penalty was repealed in 2007. See New Jersey S 171 (2007).

Creating or expanding opportunities to divert people from the criminal justice system

A growing body of research shows that assigning low-risk people to intensive supervision or programming, whether in custody or in the community, can increase their risk of reoffending.[15] Research also demonstrates that the wide array of post-punishment civil penalties that flow from criminal conviction can hinder people in areas such as employment, education, and housing, which are critical to reducing the risk of future criminal activity.[16]

To shield an increasing number of people from the negative impacts of criminal conviction, and to make the system more effective in responding to the unique risks, needs, and circumstances of people who run afoul of the law, states passed laws to reduce the overall flow of people into, and maintenance in, the formal criminal justice system by expanding alternatives to traditional case processing at every stage of the process, including bail at the outset (see "Bail Reform," page 9). In particular, lawmakers enacted laws that introduce, expand, or strengthen opportunities for diversion. Such programs and practices can come into play at different phases in the criminal justice process and may be used in lieu of formal arrest, prosecution, and sentencing. Often, they are designed to deliver services and treatment to, rather than incarcerate, vulnerable people, such as those who suffer from substance abuse, mental illness, and homelessness.[17]

A number of states, for example, funded Crisis Intervention Team (CIT) programs to train law enforcement personnel to diffuse confrontations fueled by mental illness or substance abuse through identification, assessment, and referral to community programs in lieu of arrest.[18] Other states expanded their problem-solving or accountability courts—specialized court divisions for a particular population of defendants, such as the mentally ill or veterans, which offer judge-led supervision and treatment instead of charging or sentencing. States also increased judicial discretion in using deferred judgment or conditional sentencing policies. These are approaches that give people an opportunity to avoid a formal custodial or community sentence in exchange for adhering to judicially set conditions, such as continuing lawful behavior with or without active supervision, sometimes with a requirement of participation in treatment or completion of community service.[19] Judges can dismiss charges against those who successfully complete their assigned conditions.

PRE-ARREST DIVERSION

As a person's first moment of contact with the criminal justice system, arrest is a critical point when certain people can be identified for noncustodial op-

tions—such as citation and release, or other means of diverting them from incarceration, including notice-to-appear tickets instead of custodial arrest to secure people's appearance at a later court date. States are also increasingly using first contact as the moment to identify those with underlying needs that have contributed to, or may increase the likelihood of, future criminal justice involvement—such as homelessness, mental illness, or substance abuse issues—and connect them with appropriate community-based treatment and services. Many states have created new training curricula relating to mental health crises; required interagency collaboration for the provision of mental health services; established or strengthened community-based mental health resources; and provided law enforcement more discretion in determining whether to make an arrest or make a mental health services or other treatment referral.

- **Idaho SB 1352 (2014),** also known as the "Behavioral Health Community Crisis Centers Act," establishes 24-hour crisis centers to address the needs of people with behavioral health issues (including mental illness and substance use) who commit minor offenses. It aims to alleviate the burden placed on jails, hospitals, and law enforcement agencies, which are currently the default providers of behavioral health crisis intervention. The crisis centers will also provide a more appropriate alternative forum for persons experiencing behavioral health crises.
- **Michigan SB 558 (2014)** requires counties to have interagency agreements and develop protocols for the delivery of needed mental health treatment to people already in the criminal justice system or those who are at risk of entering it and who are not already receiving mental health services. The legislation requires county law enforcement and community mental health services, in collaboration with courts and others, to be parties to the agreements, which must outline the program eligibility requirements. The programs must be integrated with local courts.
- **Montana HB 33 (2015)** expands mental health crisis intervention and jail diversion services to areas of the state that lack services, and increases funding opportunities for counties that want to continue or expand crisis intervention and jail diversion services.
- **Tennessee HB 1904 (2014)** creates a new training process for law enforcement to identify and respond appropriately to people with mental health issues who come into custody.
- **Virginia HB 1222 (2014)** outlines a training protocol for law enforcement, emergency department and school personnel, and other interested parties, and includes training on recognizing symptoms of mental illness, de-escalating crises, supporting people in crisis, and identifying who in the community can provide appropriate community-based treatment services.
- **Washington SB 2627 (2014)** establishes a pilot program that gives police greater discretion in deciding whether to make an arrest or refer someone to an appropriate treatment facility or emergency medical provider. In

order to participate in treatment, a person cannot be charged with a felony or with operating a vehicle under the influence. A person need not plead guilty in order to participate, and the participation agreement is not admissible in relevant subsequent court proceedings. However, participation does not grant immunity from later criminal prosecution.

PROBLEM-SOLVING COURTS

Problem-solving courts—also known as accountability courts or specialty courts—are court dockets that focus on people with distinct needs, such as substance abuse or mental illness, or on a particular population, such as veterans.[20] These special dockets focus on providing eligible defendants with safe and effective interventions, treatment, services, and supervision through an interdisciplinary team of professionals, including a treatment provider, case manager, probation officer, and law enforcement representative.[21] Guided by research that found that problem-solving courts can effectively treat underlying needs such as mental illness and substance abuse, reduce recidivism rates, and create long-term fiscal savings, many states have recently added problem-solving courts, expanded eligibility, and systemized standards for them.[22] Because some studies and cost analyses have challenged these claims, particularly when defendants are placed in longer-term or more secure treatment settings than clinically necessary, experts counsel that courts should partner with and follow the guidance of those who are trained in clinically appropriate methods to avoid ordering inadequate or misapplied treatment.[23]

- **Arkansas SB 472 (2015)** creates a Specialty Court Program Advisory Committee whose charge is to promote collaboration and provide recommendations on issues involving adult and juvenile specialty courts; and to design and complete a comprehensive evaluation of all adult and juvenile specialty court programs.[24] Evaluations must reflect nationally recognized and peer-reviewed standards for each type of specialty court program and must ensure that resources are uniformly directed to people deemed high risk and medium risk and use effective and proven practices that reduce recidivism—for example, programs targeting risk factors such as substance dependency. The new law also provides a new funding stream for expanding specialty courts.
- **Illinois HB 1 (2015)** narrows the circumstances when a prosecutor must agree to a defendant's participation in a drug court program. Previous law required prosecutors to consent under all circumstances. Now, defendants may be admitted upon agreement by the defendant and the court, without the prosecution's consent. The law also requires mandatory education seminars on substance abuse and addiction for drug court prosecutors and defenders.
- **Louisiana SB 398/HB 683 (2014)** expands eligibility for participation in a drug court probation program. Defendants who are charged with a violent crime, domestic battery, or driving under the influence, have other pending

MEDICATION-ASSISTED SUBSTANCE ABUSE TREATMENT

Addiction to opiates is a growing public health problem in the United States. An estimated 1.9 million people in 2014 had a substance use disorder involving prescription pain relievers and 586,000 people had a substance use disorder involving heroin.[a] To combat this emerging epidemic, many national and international professional bodies consider medication-assisted treatment (MAT)—with methadone, buprenorphine, or extended-release injectable naltrexone—an evidence-based best practice for treating opioid dependence. Yet, until recently, the criminal justice system has been slow to recognize and adopt MAT as an important part of effective treatment.[b] In many jurisdictions, treatment-based sentencing alternatives, such as drug courts, often prohibit the use of these medications outright.[c]

However, at least four states have recently incorporated MAT to bolster existing or new treatment approaches, both in custody and in the community, bringing treatment practices in line with medical standards.

- **Indiana HB 1304 and SB 464 (2015)** authorize the corrections department to administer a drug to inmates for medication-assisted treatment of opioid or alcohol dependence. The new law also allows addiction counseling, in-patient detoxification, case management, daily living skills, and long acting non-addictive medication to be required to treat opioid or alcohol addiction as a condition of parole, probation, community corrections, pretrial diversion, or a problem solving court. Ineligible defendants include those charged with a violent or drug dealing offense.
- **New Jersey S 2381 (2015)** permits participants of the "special probation" drug court program to successfully complete the program notwithstanding the use of MAT for substance use disorders—for example, substitution medications such as methadone and buprenorphine in the treatment of opioid use disorder. "Special probation" is a program that allows certain defendants subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility to participate in drug treatment in lieu of incarceration.[d] Previously, most of New Jersey's drug courts required participants to discontinue MAT in order to complete the program or "graduate," despite recommendations by their treatment providers. This law brings the practices of New Jersey drug courts in line with current clinical standards.
- **New York AB 6255 (2015)** amends the Criminal Procedure Law to allow people with an opioid addiction using MAT, such as methadone treatment, to participate in a judicial diversion program.
- **West Virginia HB 2880 (2015)** creates the "Addiction Treatment Pilot Program," aimed at people with drug or alcohol abuse issues in custody, on parole or work release, or currently in an adult drug court program. The pilot includes psycho-social therapy along with the use of extended release opioid-blocking drugs. The new law permits the Department of Health and Human Resources to partner with the Supreme Court of Appeals and the Division of Corrections in implementing the pilot.

[a] See Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *Behavioral health trends in the United States: Results from the 2014 National Survey on Drug Use and Health*, (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015.)

[b] See National Institute on Drug Abuse, *Principles of drug abuse treatment for criminal justice populations: A research-based guide* (Bethesda, MD: NIH, 2012) and H. L. Kraus et al., "Statement of the American Society of Addiction Medicine Consensus Panel on the use of buprenorphine in office-based treatment of opioid addiction," *Journal of Addiction Medicine*, 5, no.4 (2011): 254–263.

[c] For example, a 2010 survey of 103 drug courts found that, whereas 98 percent reported that at least some of their drug court participants were opioid-dependent, only 56 percent of the courts offered any form of MAT to participants. See Harlan Matusow et al., "Medication Assisted Treatment in U.S. Drug Courts: Results of Nationwide Survey of Availability, Barriers and Attitudes," *Journal of Substance Abuse Treatment* 44, no.5 (2013): 473-480.

[d] The special probation statute requires that a defendant's crime must have resulted from a need to procure drugs or alcohol or have been committed while under the influence. Before sentencing a defendant to special probation, the court should be satisfied that a suitable drug facility will accept the defendant and that no danger to the public will result from this disposition.

violent criminal charges, or have a prior homicide conviction are ineligible. Each drug court must issue an annual evaluation of effectiveness that details the program's impact on recidivism.

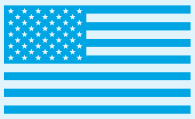
- **New Hampshire HB 1442 (2014)** creates, and establishes guidelines for, mental health courts in which eligible people are offered mental health services in the community in lieu of incarceration. After they successfully complete the program, the judge may order charges to be dismissed or withheld. Six months after completion, participants may apply for annulment of the relevant charges, arrest, conviction, and sentence.
- **Oklahoma HB 2859 (2014)** grants all district and municipal courts the right to establish a permanent rather than pilot mental health court program; participation is conditioned on the approval of the district attorney. Under the legislation, a system of graduated responses must be used to respond to those who do not comply with court-ordered program conditions, and to provide incentives to those who do. Continued noncompliance may lead to dismissal from the program and imposition of the sentence provided in the plea agreement.
- **South Carolina S 426 (2015)** allows each district attorney ("circuit solicitor") to establish a mental health court program aimed at diverting defendants with a diagnosed, or diagnosable, mental illness—including those with a co-occurring substance abuse disorder—from the criminal justice system and into appropriate treatment programs. A program may or may not require conviction for defendants to participate, and districts that accept state funding for implementation must ensure that all eligible persons are permitted to apply for admission. Excluded from participation are those charged with, or previously convicted of, a violent, harassment or stalking offense. Also excluded are persons subject to a protection or a restraining order. Reasonable attempts must be made to give victims, where applicable, notice of the decision to divert.
- **Washington SB 5107 (2015)** authorizes and encourages every trial and juvenile court to establish therapeutic courts. The aim is to provide eligible defendants further opportunities to obtain treatment services for issues that may have contributed to criminal justice involvement in exchange for resolution of the case or charges. Therapeutic courts may include drug, mental health, veterans, DUI, truancy, domestic violence, community, and homeless courts. Although judges retain the discretion to establish the processes and determine eligibility criteria uniquely suited to their community and jurisdiction, judges are encouraged to use nationally recognized evidenced-based or emerging best practices to enhance program effectiveness. Ineligible defendants include those charged or convicted of violent or sex offenses, including vehicular homicide and firearms offenses.

DEFERRED ADJUDICATION

Deferred adjudication—also known as deferred judgment, conditional discharge, or adjournment in contemplation of a dismissal—is an alternative mechanism for disposing of cases that aims to shield people from a formal conviction and sentence and usually results in the dismissal of criminal charges. Under deferred adjudication, a defendant must comply with judicially set terms and conditions in lieu of formal sentencing. If successful, he or she can avoid imposition of the sentence and a criminal record of conviction. Conditions may be lawful behavior or sobriety for a set period, but may also include participation in substance abuse or mental health treatment or vocational training, attendance at regular court hearings, or the completion of a certain amount or type of community service. Failure to comply with the conditions of deferral may result in either a return to traditional criminal proceedings or the automatic imposition of a deferred sentence. During the last two legislative sessions, five states enacted the following laws to expand deferred adjudication policies.

- **California AB 2124 (2014)** establishes the "Deferral of Sentencing Pilot Program" in Los Angeles County. Under the program, judges have discretion to defer a sentence for up to one year, during which defendants must comply with judicially set terms and conditions, including participation in already-existing programming. If the defendant follows all conditions, complies with any orders (such as a restitution or protective order), the case will be dismissed. This program is only available to those charged with misdemeanors who must plead guilty or no contest to the charge in order to participate. People are ineligible if they have a prior conviction for any misdemeanor within the past 10 years, a violent misdemeanor or a felony, a previous deferred sentence, are subject to mandatory incarceration, required to register as a sex offender, or where the victim was a minor, elderly, or dependent, or the charge involved any of a range of factors including violence against a peace officer, or a dangerous weapon.
- **California AB 2309 (2014)** expands the list of controlled substances eligible for deferred judgment to include certain prescription medications obtained without a valid prescription. In such cases, fraudulent possession no longer mandates prosecution, and the defendant may be eligible for diversion to a drug treatment program. Drug offenses already eligible for deferred judgment include violations for personal possession of a controlled substance, possession of less than one ounce of marijuana, marijuana cultivation for personal use, and possession of drug paraphernalia. Prior drug convictions, violent offenses, previous unsuccessful diversion programming, or a felony conviction less than five years old make a defendant ineligible for participation.
- **Indiana HB 1006 (2014)** makes people charged with Level 5 and Level 6 felonies (the two lowest felony levels in Indiana) eligible for diversion from

VETERANS



Veterans are a population with a high risk of being involved with the criminal justice system, comprising 10 percent of the incarcerated population, according to the most recently available data.[a] This risk may owe to the fact that returning veterans often struggle with known risk factors for criminal behavior at higher rates than others, such as mental illness, substance abuse, unemployment, or homelessness. This may be a consequence of higher rates of diagnosed Post Traumatic Stress Disorder (PTSD), as well as other forms of combat- and non-combat-related trauma, including sexual trauma, or traumatic brain injury.[b] In addition, veterans frequently face mounting medical costs and often struggle with limited access to benefits or community support that address their specific needs.[c]

Recognizing the need to better tailor justice-system responses to returning veterans, some states funded, created, and expanded specific court dockets that address the distinct and often complex needs of veterans, including offering combat-focused mental health treatment, or providing services to help veterans navigate the military benefits system. In addition to veteran-specific court divisions and diversion programming, other states added combat history to the list of mitigating factors judges may consider at sentencing. Through such laws, judges may now use the detrimental impact of combat as a rationale for imposing a non-custodial or a shorter prison sentence. To assist veterans with the reentry process, California has created volunteer veterans service advocates and added military experience as an assessment factor to help craft reentry plans for veterans upon release from prison. Other states created study committees to research, study, and draft recommendations on ways to improve system responses to veterans caught up in the criminal justice system.

Specialty courts

- **Arizona HB 2457 (2014)** expands its existing homeless court structure to include veterans courts, with eligibility for referral determined by the presiding county judge.
- **Georgia SB 320 (2014)** authorizes and provides guidance for the establishment of veterans court divisions. These courts may be used either as diversionary programs or as conditions of a sentence for nonviolent offenses committed by a current or former member of the U.S. military. Those who successfully complete the program may have their sentences dismissed or reduced.
- **Louisiana SB 532 (2014)** authorizes the statewide establishment of veterans courts and standardizes eligibility requirements. At the discretion of the prosecuting attorney and the judge, veterans charged with nonviolent offenses may be diverted from prison or traditional probation to participate in the court program. The program provides community-based or residential treatment for substance abuse and mental illness. Although the defendant must first plead guilty to the criminal charge, successful completion may result in dismissal of the criminal case and the conviction being set aside. Failure to complete the program may result in assignment to a new treatment program, or imposition of the original sentence.
- **Maine HP 1221 (2014)** provides funding for additional staff to expand current veterans treatment courts statewide.
- **South Carolina HB 3014 (2014)** funds the creation of veterans court programs to divert qualifying veterans charged with nonviolent offenses into appropriate treatment in lieu of incarceration.
- **Tennessee SB 711/HB 854 (2015)** establishes a funding mechanism to create and sustain veterans court programs. The new law allows existing courts to retain money collected from DUI fines and fees to support veterans court operations. It also requires that all veterans treatment court programs comply with the 10 key components as adopted by the National Clearinghouse for Veterans Treatment Courts and requires the Department of Mental Health and Substance Abuse Services to collect and report outcomes and other court program data, support a veterans mentor program, conduct veterans court trainings, develop standards of operation, and award and administer grants for veterans courts.

- **Texas SB 1474 (2015)** adds military sexual trauma to the list of military service-related conditions that make veterans eligible to participate in veterans treatment courts. "Military sexual trauma" is defined as any sexual assault or sexual harassment that occurs in the course of the victim's regular duties in the military. The new law also eliminates the requirement that a veteran must have served in a combat zone or similar hazardous duty area to participate, but requires that participation is likely to achieve the objective of ensuring public safety through rehabilitation.
- **Utah SB 214 (2015)** authorizes the state judicial council to create a veterans court program in any state judicial district or geographic region that demonstrates a need for such a program and has a collaborative strategy between the court, prosecutors, defense counsel, corrections, substance abuse treatment services, and the U.S. Department of Veterans Affairs, Veterans Justice Outreach Program to divert veteran offenders. The collaborative strategy must include continuous judicial supervision as well as monitoring and evaluation components to measure program effectiveness. In addition, screening criteria for participation must include a plea to, conviction of, or adjudication for a criminal offense; frequent alcohol and other drug testing, if appropriate; participation in veteran diversion outreach programs, including substance abuse treatment programs; and appropriate sanctions for program noncompliance.

Diversion and sentencing

- **Alaska SB 64 (2014)** adds combat-related post-traumatic stress disorder and traumatic brain injury to the list of factors a judge may consider during sentencing. If either is deemed to have been a contributing factor in the commission of the offense, it may be the basis for issuing a sentence below the presumptive sentence range.
- **California SB 1227 (2014)** allows judges to postpone for up to two years the prosecution of current or former members of the U.S. military who are charged with a misdemeanor. In order to be eligible, veterans must have suffered from sexual trauma, traumatic brain injury, PTSD, substance abuse, or mental health problems as a result of their service. As part of the program, a court may prescribe a certain amount of time in an appropriate treatment facility. If the defendant successfully completes the program, the charges are dismissed. If the defendant fails, the judge may resume criminal proceedings.
- **California AB 2098 (2014)** allows judges to consider past trauma and mental health issues as mitigating factors in sentencing when the defendant is a military veteran, and has been determined to suffer from sexual trauma, PTSD, traumatic brain injury, mental health, or substance abuse as a result of military service. A qualifying defendant may be ordered into a treatment program, provided that the defendant agrees to participate.
- **Kansas HB 2655 (2014)** grants judges the discretion to offer mental health treatment to defendants who served in a military combat zone and suffer from a mental illness caused or exacerbated by their service. To be eligible, the defendant must make a motion at conviction or before sentencing, and the current offense and criminal history must be eligible for a non-prison sentence.
- **Kansas HB 2154 (2015)** provides three-pronged relief to veterans caught up in the criminal justice system. First, when deciding to divert eligible defendants away from the prosecution, the new law permits prosecutors to consider whether a defendant committed a crime as a result of an injury connected to service in a combat zone, and if so, whether the defendant will benefit from military-provided treatment. Second, the new law allows judges, with the consent of the defendant, to sentence such veterans to undergo inpatient or outpatient treatment from any treatment facility or program operated by the U.S. Department of Veterans Affairs or the Kansas National Guard without requiring the defendant to have received an honorable discharge, provided that the defendant's presumptive sentence is non-custodial. Finally, the new law expands the definition of "injury," including various psychiatric conditions, which, if connected to military service in a combat zone, may be a mitigating factor for judges considering a downward departure from a presumptive custodial sentence.

Continued on next page

Continued from previous page

Support in reentry

> **California AB 2263 (2014)** authorizes volunteer veterans service advocates to help veterans in prison secure benefits and facilitate their reentry into the community. The volunteers are tasked with developing recidivism prevention plans for released veterans.

> **California AB 2357 (2014)** adds military service history as an assessment factor in selecting appropriate programs and services for veterans to aid their community reentry and reduce the likelihood of their reoffending.

[a] William B. Brown, *Another Emerging "Storm": Iraq and Afghanistan Veterans with PTSD in the Criminal Justice System*, JUST. POL. J. 5 (2008): 5-8; Margaret E. Noonan and Christopher J. Mumola, *Veterans in State and Federal Prisons, 2004* (Washington DC: Bureau of Justice Statistics, 2007), 1.

[b] The U.S. Department of Veterans Affairs studied soldiers returning from Operation Iraqi Freedom and Operation Enduring Freedom and found that, on average, 80 percent of soldiers were exposed to a traumatic event in combat, yet approximately 14 percent returned home with a formal diagnosis of PTSD. Of those, at most 50 percent are believed to seek treatment. Brett T. Litz and William E. Schlenger, "PTSD in Service Members and New Veterans of the Iraq and Afghanistan Wars," *PTSD Research Quarterly* 20, no. 1 (Winter 2009): 1-8.

[c] A 2013 report conducted by the Institute of Medicine, at the behest of Congress, found that "44% of troops returning from Iraq and Afghanistan reported difficulties. Up to one in five suffers from PTSD, while a similar number have mild traumatic brain injury (TBI)…Some have overlapping health conditions, most commonly PTSD, substance use disorder, depression and symptoms related to mild TBI…[T]he unemployment rate among veterans aged 18-24 was over 30%, compared to 16% for civilians." Karen McVeigh, "US military veterans face inadequate care after returning from war – report," *The Guardian*, March 26, 2013. The Southern California Veterans Association reported a 50-percent increase in mental health claims from returning veterans between 2007 and 2013. The Soldiers Project, "VA Struggles to Meet Demands for Mental Health Services," http://www.scpr.org/news/2014/06/27/45005/va-struggles-to-meet-demand-for-mental-health-serv

formal trial and sentencing if the prosecution moves to allow it. Participants must agree to specific terms and conditions, which may include getting and keeping a job, getting in substance abuse or mental health treatment, making restitution to victims, and participating in required follow-up questioning and updates with the prosecutor's office.

> **Indiana HB 1304 (2015)** expands eligibility for pre-conviction and post-conviction diversion programs to persons with an intellectual disability, developmental disability, or autism spectrum disorder. Previously, the law only allowed persons with mental illness or an addictive disorder an opportunity to receive community treatment and other services instead of, or in addition to, incarceration. Only those charged with certain nonviolent or non-drug-dealing crimes are allowed admission into such programs. In addition, in lieu of prosecution, those people charged with a felony (with exceptions for forcible felonies and certain categories of burglary, or prior convictions for such offenses) who need substance abuse treatment may have the charges dismissed upon successful completion of such treatment.

> **North Carolina HB 369 (2014)** allows for the conditional discharge of people who plead guilty or are found guilty of a misdemeanor or low-level felony, when they satisfy certain conditions, including that each known victim has been notified; the defendant is not currently on probation; the defendant is assessed as low risk for committing a new crime; the defendant has not been convicted of a crime involving moral turpitude; and

the defendant has not previously been placed on probation. The person is placed on probation and must conform with certain court-imposed conditions such as reporting to a probation officer, keeping a job, and undergoing electronic monitoring or supervision. Upon successful completion of all terms of the conditional discharge, the plea or guilty finding will be withdrawn and all relevant proceedings dismissed.

- **Montana SB 219 (2015)** requires courts to strike felony convictions or dismiss charges following successful completion of deferred sentences.
- **Wyoming SB 38 (2015**) expands eligibility for deferred prosecution for first-time drug offenders to include offenses related to use, or being under the influence of, a controlled substance. Previously, deferred prosecution was only available for the offense of drug possession.

Reducing prison populations

Together with the goal of keeping more people outside of the formal criminal justice system, states have been reassessing the use of costly incarceration.[25] Driven by the goal of reversing prison population growth and encouraged by research showing that long custodial sentences have only a marginal effect on reducing crime and recidivism, states are moving away from the harsh, rigid, and punitive sentencing schemes that have been in favor for the past 30 years.[26]

Recognizing that too many people are receiving prison sentences that are disproportionate to the crimes committed and that prison should be reserved for those convicted of the most serious offenses, state policymakers during the past two years enacted laws to reduce the length of custodial sentences. They accomplished this by enacting laws that affect the two factors that determine prison population—the number of people who are admitted to prison and the length of time they remain there. States have sought to reduce their admissions by making some offenses eligible for non-prison sentences or sanctions and by establishing graduated sanctions to ensure that prison is not the default response to violations of community supervision conditions. To reduce lengths of stay in prison, states passed laws to shorten sentences and expand early release by increasing the opportunity for people to accrue credits that shave off time from prison sentences.

Many of the reforms that shortened sentences or made community supervision more available apply to low-level and nonviolent property and drug offenses. Often states accomplished their goal of reducing the prison population by modifying how they define or classify property and drug offenses, either by creating more gradations of offense categories, or increasing felony thresholds—the point at which an offense becomes a felony based on property value or drug weight. Of note, five states—Alabama, California, Mississippi, Nebraska, and Utah—enacted sweeping reform, focusing broadly on drug and property sentencing reform but also on other areas covered in this report. (See boxes, pages 21 and 34).

REDUCING PENALTIES FOR PROPERTY OFFENSES

Concerned that penalties attached to certain property crimes have been too harsh, a number of state legislatures enacted laws to ensure that their sentencing schemes better match the punishment with the severity of the crime. To do this, some states raised the value of stolen or damaged property that triggers a felony charge (the "felony threshold"), many of which had not changed in years or decades, resulting in incongruous and disproportionate sentences for property offenses valued as "low" today.[27] In doing so, those states sought to revise their thresholds closer to the national average of $950.[28] Other states sought to achieve better proportionality in sentencing by establishing more gradation in punishment, either by creating more categories of felony and misdemeanor property offenses, or by revising the sentence lengths and creating new advisory sentences associated with each felony category.

- **Alaska SB 64 (2014)** raises the threshold for a theft to be considered a felony from $500 to $750. Low-level property offenses covered by the new law include concealment of merchandise, removal of identification marks, unlawful possession, fraud, vehicle theft, and criminal mischief.
- **Colorado HB 14-1266 (2014)** creates new classes of misdemeanor or felony property crimes and changes the threshold for certain classes. The law raises the felony threshold for check fraud from $500 to $750 and adds more felony classifications for criminal mischief, from two misdemeanor and two felony classifications to three misdemeanor and five felony classifications.
- **Connecticut HB 5586 (2014)** raises the felony threshold for issuing a bad check from $1,000 to $2,000.
- **Texas HB 1396 (2015)** raises the felony threshold for various property crimes (including criminal mischief) to $2,500.

REDUCING PENALTIES FOR DRUG OFFENSES

For decades, increasingly harsh penalties for drug-related crimes sent a disproportionate number of people—especially people of color—to prison for low-level, nonviolent offenses.[29] However, given growing public support for treatment and rehabilitation for drug offenders and research finding that community-based treatment approaches are more effective than incarceration in reducing recidivism, states over the past several years have begun to enact new laws that shift how the criminal justice system deals with drug offenses, and many states have reduced penalties or now provide treatment or other non-custodial alternatives for low-level drug offenders.[30]

This trend continued in 2014 and 2015, with a big focus on marijuana. Many states enacted laws that legalize, decriminalize, or lessen penalties for the possession or use of small amounts of marijuana. Alaska and Oregon, for example, joined Colorado, Washington, and the District of Columbia at the vanguard of decriminalizing recreational use. Other states expanded access to medical marijuana or increased the minimum amount of marijuana that triggers arrest.

SOLITARY CONFINEMENT

Solitary confinement is a common but increasingly criticized corrections practice designed to achieve and maintain institutional safety.[a] Jails and prisons use solitary confinement—known also as segregation, segregated housing, restrictive housing, administrative segregation, or isolation—when imprisoned people break rules or engage in violent or disruptive behavior. It is also intended to protect vulnerable people—such as those who are gay or transgender, mentally ill, or physically disabled—who may be at risk if placed in a prison's general population.[b] Whatever the circumstance, solitary confinement usually involves confinement in an isolated cell for an average of 23 hours a day, with limited social interaction and little constructive activity, in an environment that both ensures maximum control and provides little or no stimulation.[c]

Although solitary confinement is used in nearly all U.S. jails and prisons, there is mounting evidence to suggest that its overuse produces many harmful outcomes, not only for the health—particularly mental health—of those placed there, but also for safety within a correctional institution and within the communities to which people subjected to segregation eventually return.[d] As a result, states are reconsidering how and when to use it.[e] In 2014 and 2015, at least 13 states and the federal government implemented policy changes to reduce the number of adults, young adults, or juveniles held in segregated housing, improve the conditions, provide better treatment to those in segregation, or facilitate their return to the general prison population.[f] While many of these policy changes were administrative in nature, five states changed segregation practices through legislation, and one state—Delaware—sought to study its use to guide future reform.

- **Colorado SB 14-064 (2014)** removes an entire class of people—those with serious mental illnesses—from long-term segregation unless they pose a threat to themselves or others.
- **Delaware HJR 5 (2015)** is a joint house resolution authorizing the House Corrections Committee and the state Department of Corrections to commission an independent study and make findings and recommendations concerning the use of restrictive housing and solitary confinement in Delaware's correctional facilities. In particular, the study will look at whether and to what extent people have access to programs, services, and mental health treatment in restrictive housing; canvas research findings prepared by mental health and other professionals concerning the negative effects of restrictive housing on mental health and reentry; and examine how other states and jurisdictions use restrictive housing or employ alternatives. The study is important given the growing concern about the potentially deleterious effects of solitary confinement on mental health and reentry and because Delaware law is largely silent on the appropriate use of solitary confinement.
- **Nebraska LB 598 (2015)** prohibits the use of solitary confinement, defined as "confinement of an inmate in an individual cell having solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons." In addition, the use of restrictive housing—defined as "confinement that provides limited contact with other offenders, strictly controlled movement while out of cell, and out-of-cell time of less than 24 hours per week"—is forbidden unless it is done in the least restrictive manner consistent with maintaining order in the facility. The new law also requires transition plans for transferring an individual back to the general population and requires that disciplinary restrictions on privileges be imposed only if authorized by promulgated rules. It also requires that any rules or regulations for use of restrictive housing be made publicly available and tasks the corrections director to regularly report on a long-term plan to reduce the overall use of restrictive housing. A restrictive housing work group is also empanelled to advise on the proper care and treatment of people held in restrictive housing.

- **New Jersey S 2003 (2015)** eliminates the use of solitary confinement ("room restriction") as a disciplinary measure in juvenile facilities and detention centers. Solitary confinement may only be used if a juvenile poses an immediate and substantial risk of harm to others or to the security of the facility, and if all other less-restrictive options have been exhausted. If a juvenile is placed in solitary confinement, the new law places strict limits on its use and mandates that juveniles placed there must continue to receive health, mental health, and educational services. In addition, juvenile facilities must keep and make records of how they use solitary confinement publicly available.
- **South Dakota SB 77 (2014)** repeals a provision that permitted punitive segregation (legislatively defined as solitary confinement with only bread and water) for county prisoners for refusing to obey work orders.
- **Texas HB 1083 (2015)** requires the Texas Department of Criminal Justice to conduct a mental health assessment of people prior to sending them to administrative segregation. The department may not send assessed people to segregation if the examining medical or mental health professional finds that such a placement is unsuitable.

[a] Ted Conover, "From Gitmo to an American Supermax, the Horrors of Solitary Confinement," *Vanity Fair*, January 16, 2015, http://www.vanityfair.com/politics/2015/01/guantanamo-bay-solitary-confinement; Laura Dimon, "How Solitary Confinement Hurts the Teenage Brain," *The Atlantic*, June 30, 2014, http://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/; and Atul Gawande, "Hellhole," *The New Yorker*, March 30, 2009, http://www.newyorker.com/magazine/2009/03/30/hellhole.

[b] Alison Shames, Jessa Wilcox, and Ram Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (New York: Vera Institute of Justice, 2015), 4-6.

[c] Ibid., pp. 8-10. For New York, also see Leon Neyfakh, "The Hole: The Psychological Effects of Solitary Confinement, and the Evolving Fight to Eliminate It," *Slate*, January 14, 2015 at http://www.slate.com/articles/news_and_politics/crime/2015/01/solitary_confinement_new_york_is_limiting_its_use_at_rikers_island_is_that.html; for the recent federal reforms, see Sarah Wheaton and Josh Gerstein, "Prison Reform: Obama Orders Changes in Solitary Confinement," *Politico*, January 25, 2016 at http://www.politico.com/story/2016/01/obama-solitary-confinement-prison-218212; for California, see Matt Ford, "The Beginning of the End of Solitary Confinement?" *The Atlantic*, September 2, 2015.

[d] Shames, Wilcox, and Subramanian, pp. 17-21.

[e] Articles exposing the deleterious effect and harsh conditions of segregated housing now appear regularly in the press. See, for example, Laura Dimon, "How Solitary Confinement Hurts the Teenage Brain," *The Atlantic*, June 30, 2014, http://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/; and Atul Gawande, "Hellhole," *The New Yorker*, March 30, 2009, http://www.newyorker.com/magazine/2009/03/30/hellhole. The federal government also has become increasingly concerned about segregation's overuse. A subcommittee of the U.S. Senate Judiciary Committee held a series of hearings in 2012 and 2014 focused on reassessing the use of solitary confinement. See, for example, United States Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Consequences, *Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences*, February 25, 2014, http://www.judiciary.senate.gov/meetings/reassessing-solitary-confinement-ii-the-human-rights-fiscal-and-public-safety-consequences.

[f] See Eli Hager and Gerald Rich, "Shifting Away from Solitary," The Marshall Project, December 23, 2014, https://www.themarshallproject.org/2014/12/23/shifting-away-from-solitary.

In addition, some states reclassified drug offenses more generally and reduced the length of sentences, including mandatory minimum sentences that people are required to serve. Still other states, as a public health measure, passed or expanded legislation granting "medical amnesty," or legal immunity, for those reporting a medical overdose, either for themselves or a third party. (See box on Medical Amnesty on page 26.)

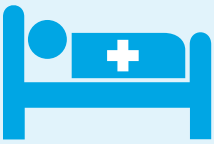
- **Alaska Ballot Measure 2 (2014)** decriminalizes transportation, purchase, and possession of up to one ounce of marijuana or six plants and legalizes the manufacture and possession of marijuana paraphernalia for those over 21. The growing and selling of marijuana by state-licensed business owners will be controlled by a regulatory board and will be subject to limitations and excise taxes on a county-by-county basis.
- **California SB 1010 (2014)**, also known as the "California Fair Sentencing Act," eliminates discrepancies in sentencing between offenses involving powder cocaine and crack cocaine.[31] Under the law, the two substances would be treated similarly. For example, under the previous provision, drug offenses involving 14.25 grams of crack or 57 grams of cocaine could not result in probation. This law also raises the threshold for probation ineligibility to persons convicted of possessing or selling more than 28.5 grams of either drug. However, judges have the discretion in rare cases to grant probation if it furthers the interests of justice.
- **California AB 2492 (2014)** eliminates the mandatory 90-day minimum custodial sentence for being under the influence of a controlled substance and allows for a term of probation up to five years. Judges may offer substance abuse treatment in lieu of incarceration for those who do not have a criminal history involving controlled substances.
- **Connecticut HB 7104 (2015)** revises penalties for drug possession and possession within a school zone. Previously a first conviction for drug possession commanded a maximum seven-year sentence or $50,000 fine. Under the new law, with the exception of possession of less than half an ounce of marijuana, drug possession is a Class A misdemeanor. However, people with more than two convictions for possession are eligible for sentencing as persistent offenders. Possession within a school zone is a Class A misdemeanor with a mandatory prison sentence plus probation with required community service.
- **Delaware HB 39 (2015)** reclassifies possession of one ounce or less of any controlled substance (and associated paraphernalia) as a civil violation penalized by a fine. Use of a personal amount of a controlled substance in a non-public place is an unclassified misdemeanor with a penalty of a maximum fine of $200 and five days in jail.
- **Indiana HB 1006 (2014)** follows sweeping changes in 2013 to felony classification of certain drug-based crimes, including possession and intention to sell. In revising the 2013 legislation, this law lowers the minimum amount of time to be served for the lowest felony class (Level 6) from 75 to 50 percent. In addition, the legislation reclassifies the possession or sale of certain drugs from a higher felony or misdemeanor class to a lower one and from a felony to a misdemeanor.[32]

- **Kentucky SB 124 (2014)** decriminalizes the possession or use of marijuana when prescribed by a physician or used in an FDA-approved clinical trial.
- **Louisiana HB 461 (2014)** repeals the crime of "drug traffic loitering," defined as remaining in a public place under circumstances that would appear to be for the purpose of selling drugs.
- **Louisiana HB 149 (2015)** reduces penalties for marijuana possession. The new penalty for a first-time conviction for possession of 14 grams or less is a maximum $300 fine and/or two weeks in jail; while a first-time conviction for possession of more than 14 grams is a maximum $500 fine and/or six months in jail. Following the completion of a sentence for either and if two years elapse without any further marijuana violations, the conviction may not be used as a reason to enhance a sentence on a future conviction. Meanwhile, second-time convictions for marijuana possession are punished by a maximum fine of $1,000 and/or six months in jail; third-time convictions, a maximum two-year sentence and/or $2,500 fine; and fourth-time and subsequent convictions, a maximum eight-year sentence and/or a $5,000 fine. More severe penalties are imposed for possession of synthetic cannabinoids. Knowing and intentional possession of more than 2.5 pounds but less than 60 pounds of marijuana or synthetic cannabinoids requires a two- to 10-year prison sentence and a $10,000-30,000 fine.
- **Maine SP 46 (2015)** reduces the felony class of a variety of drug offenses, including possession of cocaine, cocaine base, heroin, and methamphetamines in certain quantities and encourages courts to consider non-custodial sentences such as substance abuse treatment for the lowest class of drug offenses.
- **Maryland SB 364 (2014)** reclassifies possession of less than 10 grams of marijuana from a criminal offense to a civil offense, for which police are required to issue citations. The civil offense is punishable by a maximum fine of $100.
- **North Dakota HB 1394 (2015)** exempts possession of one ounce or less of marijuana from the state's school-zone sentencing enhancement.
- **North Dakota SB 2030 (2015)** reclassifies possession of controlled substances other than marijuana from a Class C felony to a Class A misdemeanor. Possession of marijuana drug paraphernalia was downgraded to a Class B misdemeanor.
- **North Dakota SB 2029 (2015)** requires a probation sentence for first-time drug possession convictions.
- **Oklahoma HB 1574 (2015)** reduces the sentence range for a third or subsequent conviction for felony drug sale, distribution, or manufacturing. Previously, such a conviction garnered a sentence of life without parole. The sentence range is now 20 years to life or life without parole. However, a sentence of life without parole is still mandated for those who have two or more previous convictions for drug trafficking.
- **Oregon Measure 91 (2014)** decriminalizes recreational use, possession, and cultivation of marijuana for adults over the age of 21. Under the new guidelines,

a person may possess no more than one ounce of marijuana in public or up to eight ounces of marijuana, four marijuana plants, and 72 ounces of the drug in liquid form in one's home for personal use. The Oregon Liquor Control Commission is granted enforcement and regulation responsibilities, which include licensing commercial marijuana producers and sellers.

- **Rhode Island HB 7610 (2014)** revises the state's medical marijuana law to include a requirement of a cultivation certificate for an individual or patient care center involved in the growing of marijuana for medical use. Individuals are limited to three mature marijuana plants and up to five ounces of usable marijuana. Primary-care givers, who may assist up to five registered medical marijuana users, may possess no more than six mature marijuana plants. Compassion centers that distribute medical marijuana are no longer limited in the number of plants or weight of marijuana on hand; instead, their inventory should reasonably reflect the projected needs of patients.
- **Utah SB 205 (2014)** amends a prior law outlining drug-related offenses and attendant sentences. The new law caps the felony grade for certain drug crimes to a second-degree felony. Previously, the most severe drug offense could be classified a first-degree felony.
- **Vermont SB 295 (2014)** expands Vermont's drug overdose medical amnesty from those who seek medical assistance to include those who are the subject of medical assistance.
- **Virginia HB 1112 (2014)** reclassifies synthetic cannabis possession from a Class 5 felony to a Class 1 misdemeanor, eliminating the potential for a jury trial and limiting a potential custodial sentence to 12 months.
- **Washington HB 2304 (2014)** adds marijuana concentrates, defined as cannabis-based products with a THC level of at least 60 percent, to the list of legal substances for production, sale, possession, and use.

MEDICAL AMNESTY



The epidemic of substance abuse in the United States has encouraged states to rethink both how and whether drug use and possession is penalized and how to protect people from overdose fatalities. In the past two years, 14 states have adopted or expanded medical amnesty laws that protect people from criminal prosecution for drug possession, or the risk of violating probation or parole, when such offenses or violations are discovered as a result of seeking medical attention for a drug or alcohol overdose, whether for oneself or another. For states that include alcohol overdoses, the protection may extend to unlawfully purchasing alcohol for a minor. Some states do not provide amnesty—they simply make seeking medical attention a defense that, if proven, a criminal defendant may invoke to disprove or mitigate the consequences of unlawful behavior (also referred to as an "affirmative defense"). First enacted by New Mexico in 2007, more than 15 states now have varying forms of medical amnesty.[a] While these laws have not undergone extensive evaluation for their effectiveness at preventing overdose deaths and depend heavily on public education to ensure people know about the legal immunity afforded to them upon seeking emergency medical assistance, they send a strong signal that states value life-saving interventions over criminal penalties in instances when the two are in conflict. Furthermore, a study done in Washington State following the passage of the state's medical amnesty laws found that 88 percent of opiate users surveyed would be more likely to call 911 once advised of the law.[b]

Medical Amnesty Laws	Distinguishing feature(s) of new law
Alaska HB 369 (2014)	A reporting person seeking help for another must remain at the scene and cooperate with law enforcement and medical personnel to be eligible for the immunity.
Arkansas SB 543 (2015)	includes immunity from community supervision violations, violations of pretrial release, and protective orders
Georgia HB 965 (2014)	includes protection from community supervision violations
Hawaii SB 982 (2015)	includes immunity from community supervision violations and protective orders
Illinois HB 1336 (2015)	applies to alcohol only
Maryland SB 654 (2015)	provides an affirmative defense and legal immunity includes immunity from violations of community supervision and pretrial release
Minnesota SF 1900 (2014)	requires that the reporter remain at the scene and cooperate with law enforcement and medical personnel makes seeking assistance a mitigating factor in a criminal prosecution where the evidence of the offense was obtained independent of the call for medical assistance
Montana HB 412 (2015)	applies only to people under 21
Nebraska LB 439 (2015)	applies only to alcohol and people under 21
Nevada SB 459 (2015)	includes immunity from community supervision violations and protective orders makes seeking medical assistance a mitigating factor for those who do not qualify for immunity
North Carolina SB 154 (2015)	expands the medical amnesty statute to cover community supervision revocations for new offenses
New Hampshire HB 270 (2015)	makes seeking medical intervention an affirmative defense and provides amnesty
Virginia HB 1500 (2015)	makes seeking medical assistance an affirmative defense, but does not grant immunity
West Virginia SB 523 (2015)	applies to drugs and alcohol

[a] Tessie Castillo, "A Second Chance: A new kind of medical amnesty is saving the lives of drug users," *Slate*, May 7, 2014, http://www.slate.com/articles/news_and_politics/jurisprudence/2014/05/tanya_smith_medical_amnesty_laws_states_are_saving_the_lives_of_drug_users.html.

[b] University of Washington Alcohol and Drug Abuse Institute, "Info Brief: Washington's 911 Good Samaritan Overdose Law: Initial Evaluation Results," November 2011, http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2011-05.pdf.

CREATING "SAFETY VALVES" FROM MANDATORY MINIMUM SENTENCES

With research casting doubt on the efficacy of mandatory penalties—particularly for nonviolent drug offenders—and evidence that longer sentences have no more than a marginal effect in reducing recidivism, states have also begun to move away from the severe mandatory minimum sentences enacted during the past 30 years.[33] Reconsideration of the utility and fairness of mandatory minimums, however, has generally not extended to repealing them. Rather, states have created "safety valves," giving judges the option to ignore a mandatory sentence set by statute if deemed appropriate or if certain factual criteria are satisfied. While some states give judges wide latitude in using this discretion, others have set a high bar for departure from mandatory sentences.[34]

- **Maryland HB 121 (2015)** makes it permissible for courts to depart from mandatory minimums for drug offenses where the mandatory minimum would result in substantial injustice and is unnecessary for public safety.
- **Nebraska LB 173 (2015)** revises sentences for certain felony classes from mandatory minimum sentences to minimum sentences. It also exempts convictions for Class III and IV felonies (the lowest-level felony classes, for offenses such as low-level property offenses and drug possession; Class IV felonies carry the presumption of a probation sentence) from the "habitual criminal" enhancement (which carries a 10-year minimum sentence). The change from a mandatory minimum to a minimum sentence means that such sentences would be eligible for good-time credits and parole consideration.
- **North Dakota HB 1030 (2015)** allows courts to depart from mandatory minimum sentences where such sentences would cause "manifest injustice"—defined as unreasonably harsh or shocking to the conscience—except where the mandatory minimum term is imposed as an enhancement for armed offenses.
- **Oklahoma HB 1518 (2015)** allows judges to depart from mandatory minimum sentences for certain nonviolent offenses if the mandatory minimum sentence is not necessary for public safety, is unjust in the particular circumstances of the case, or if the defendant is eligible, absent prior convictions, for diversion or alternative sentencing.

ENACTING GENERAL SENTENCING REFORM

States have also enacted general changes to their sentencing schemes, from reclassifying felony classes and penalties to enacting mechanisms to shorten sentences. Without changing statutory sentencing ranges or penalties, these laws give judges the power to resentence people. In some cases, resentencing is premised on good conduct in prison or jail during the beginning of a sentence.

- **California AB 1156 (2015)** grants courts the discretion to recall a sentence of imprisonment in a county jail previously ordered, and to resentence a defendant provided that the new sentence is not greater than the initial sentence of impris-

onment. Courts may do so upon the court's own motion or the recommendation of the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings. The law also requires that Judicial Council adopt rules providing criteria for the consideration of the trial judge at the time of sentencing, including the imposition of the lower, middle, or upper term for a person sentenced to county jail for a felony.

- **Indiana HB 1006 (2014) and SB 174 (2015)** revise sentencing schemes for all felonies and revise timing and eligibility for petitions for sentence modifications. The 2014 bill establishes new minimum, maximum, and advisory sentencing at each felony level. For example, under the previous guidelines, Level 3 felonies carried a fixed term of three to 20 years, with six years being advisory. The new law lowers those terms to three to 16 years, with nine years being advisory. The 2014 bill mandated that following the commencement of a sentence a court must consider reduction or suspension of the sentence for a nonviolent offense based on a behavioral report from the Department of Corrections. The 2015 bill shortened the time that needed to elapse before someone became eligible for a sentence modification. The laws also provide that people serving sentences for violent and nonviolent offenses may submit petitions for sentence modifications. Someone convicted of a nonviolent offense may file a petition for sentence modification once a year or twice per term of imprisonment without the prosecution's consent. Someone convicted of a violent offense may file a petition for sentence modification within a year of sentencing without the prosecution's consent; thereafter, the prosecution must consent to the filing of a sentence modification petition by someone convicted of a violent offense.
- **Oklahoma HB 1548 (2015)** allows judges to modify sentences to the Drug Offender Work Camp and impose another sentence in the interest of justice, if the defendant has not been convicted or incarcerated in the preceding 10 years. Judges, however, may not impose a deferred sentence.

INCREASING OPPORTUNITIES FOR EARLY RELEASE

In conjunction with sentencing reform to increase community-based sentences and decrease the length of custodial sentences, states also expanded opportunities for people already in custody to be released. States used two methods to accomplish this: They increased ways in which those in state custody can accrue good-time or earned-time credits—through participation in in-prison programming or through compliance with disciplinary rules—to shave time off their sentences; and made more people eligible for earlier parole release.[35]

- **Arizona HB 2593 (2014)** modifies the parole eligibility standards for persons who committed crimes before the age of 18. Under the new law, those imprisoned for life without parole are eligible for parole after serving a minimum term. Anyone released under this condition will remain on life-long parole.[36]
- **Georgia HB 328 (2015)** makes people sentenced to at least 12 years in prison for drug offenses or under a repeat-offender law eligible for parole release if they

have not been convicted of a violent felony or sex offense, have served at least 12 years of their sentence, are determined to be low risk by a validated risk assessment tool, have completed required criminogenic and educational programming, have no serious disciplinary infractions in prison during the preceding year, and are classified as medium security or lower by the Department of Corrections.

- **Illinois HB 3884 (2015)** increases the amount of sentence credits, from 60 to 90 days, earned for completion of a GED in custody (either in pretrial detention or during a sentence).
- **Indiana HB 1006 (2014)** shifts classification for good credit time to a system under which the rate of credit accrual is determined by class assignment to those in prison. Those in prison who are assigned to Class A (lowest risk) accrue one day of early release for every day served; Class B receives one for every three days served; and Class C receives one for every six days served. Those in Class D and other unclassified people, because of the nature of their offense, are restricted from earning any credits. The law also provides guidelines for class assignment, based on severity of crime and in-custody behavioral history, as well as reclassification based on compliance or violation. Furthermore, those in Class A and Class B can earn additional credits through rehabilitative efforts and educational achievements.
- **Kansas HB 2051 (2015)** allows good time credit accruals for people imprisoned for more severe drug offenses. Previously only lower drug-severity-level convictions were eligible. Now, severity Level 3 convictions may accrue credits equivalent to 20 percent of the attendant sentence. The law also increases time credits for completion of rehabilitative, treatment, educational, or vocational programming from 60 to 90 days and makes drug severity Level 3 convictions eligible for such time credit where they were previously excluded.
- **Louisiana HB 196 (2014)** extends eligibility for a work-release program to habitual offenders serving the final 12 months of their prison terms.
- **Louisiana SB 399 (2014)** limits automatic denial of parole eligibility for those who have committed a major disciplinary offense in the year prior to the parole hearing. Previously, the commission of any infraction resulted in automatic denial. A major offense includes escape, fighting, intoxication, theft, destruction of property, threats, and sex offenses. Additionally, parole eligibility may not be denied to those who have not completed their required substance abuse or mental health treatment when such programming was unavailable.
- **Louisiana HB 670 (2014)** expands opportunities for intensive parole supervision—early release under the strictest level of supervision—to nonviolent habitual offenders. To be eligible, a person must be assessed as low-risk for reoffending and fulfill certain criteria, including completion of pre-release programming and educational goals.
- **Montana HB 135 (2015)** gives the Board of Pardons and Parole rulemaking authority on criteria for medical parole, subject to the criteria for parole generally.

- **New Hampshire HB 649 (2014)** grants good time credits for completion of educational, vocational, mental health, and family programming in prison. Those classified at the lowest security level are eligible to receive anywhere from two to 13 months of credits, depending on their level of achievement.
- **New Hampshire HB 472 (2015)** allows the parole board to reduce parole terms by one-third based on the person's conduct while on parole, the seriousness of the offense, the amount of restitution owed, and any other information provided by the victim.
- **Ohio SB 143 (2014)** allows counties to establish community alternative sentencing centers to serve as work-release detention centers for people sentenced to 90 days for a misdemeanor. Previously, only those sentenced to 30- or 60-day sentences were eligible, and counties were only authorized to plan for the creation of the centers.
- **Texas HB 1546 (2015)** revises the awarding of time credits for participation in educational, vocational, or treatment programming for people incarcerated on state jail felonies. Under the new law, a court may make a finding at sentencing that a person sentenced for a state jail felony is presumptively entitled to earned time credit and the Department of Criminal Justice (DCJ) may then award the credit once earned. If the judgment does not find presumptive eligibility for earned credit, the DCJ may report information regarding a person's participation in eligible programming for the court's consideration, and the court may decide whether to award earned time credit.

PROPOSITION 47

For years, California's prison system suffered from a severe overcrowding problem, in part because of the stringent drug penalties and mandatory sentencing schemes enacted in the 1980s and 1990s.[a] Operating at nearly 200 percent capacity by 2006, the state's prisons were plagued by high rates of mental illness, rampant disease, non- or malfunctioning water and electrical systems, insufficient programming, and gang activity.[b]

In 2009, the U.S. Supreme Court affirmed a lower court ruling that such conditions violated the Eighth Amendment's prohibition against cruel and unusual punishment. It ordered the state to reduce its prison population by 63.5 percent and improve the system's health services.[c] In response, California implemented a prison population reduction policy known as "Realignment"—enacted through legislation in 2011—which reduced penalties downward, raised felony thresholds for nonviolent crimes, and transferred certain low-level offenders to out-of-state prisons and into county-level community supervision or to local jails.

In November 2014 voters overwhelmingly approved Proposition 47 ("Prop 47"), a voter initiative aimed at reducing the prison population. Prop 47 reclassifies a number of nonviolent felony offenses to misdemeanors, and raises felony thresholds for property crimes. Previously, prosecutors had discretion to charge offenses with an aggregate value up to $950 as either a misdemeanor or a felony. Now, these offenses may only be charged as misdemeanors, with exceptions for individuals who have been previously convicted of at least three prior serious offenses. Drug offenses too were revised, with possession for recreational use of any illegal drug—previously eligible for either a felony or misdemeanor charge—reclassified as a misdemeanor. Possession of 28.5 grams or less of marijuana was reduced from a misdemeanor to a civil violation, resulting in a $100 fine rather than jail time. However, possession of marijuana by minors on school grounds remains a misdemeanor, punishable by a fine and/or up to 10 days in juvenile custody after a second offense.

Notably, the measure allows those currently incarcerated for offenses covered by the new law to apply for reduced sentences consistent with the new sentencing scheme. Successful applicants will be able to have their convictions downgraded from felonies to misdemeanors, and to receive credit for time already served.

[a] Erin Fuchs, "How California Prisons Got To Be So Insanely Overcrowded," *Business Insider*, Aug. 3, 2013; Juan R. Ramirez and William D. Cano, "Deterrence and incapacitation: An interrupted time series analysis of California's three-strikes law," *Journal of Applied Social Psychology* 33, no. 1 (2003): 110-144.

[b] California's prison system has a capacity of approximately 83,000 people. At the end of fiscal year 2006, there were 163,000 men and women housed in state prisons, nearly double the capacity. In October 2006, the Office of the Governor proclaimed a state of emergency, with all 33 California Department of Corrections and Rehabilitation (CDCR) facilities operating at or above capacity. The governor's office determined that the "severe overcrowding" in 29 of the CDCR facilities led to increased violence, greater transmission of infectious illnesses, higher contamination of the drinking water, costly property damage, inmate unrest and misconduct, reduction in programming and mental health support, higher suicide rates, and increased recidivism. Office of the Governor, "Prison Overcrowding State of Emergency Proclamation," (Sacramento: Office of the Governor, October 4, 2006).

[c] The U.S. Supreme Court upheld the finding of a three-person appeals court panel on two prior class-action cases against the state of California. The first case, *Coleman v. Brown,* concerned incarcerated people with serious mental disorders. The second case, *Plata v. Brown*, concerned incarcerated people with serious medical conditions. Both cases stemmed from inhumane conditions and insufficient treatment programs associated with California prison overcrowding. *Brown v. Plata,* 563 U. S. 493 (2011).

REDUCING PROBATION AND PAROLE REVOCATIONS AND SHORTENING COMMUNITY SENTENCES

In recent years, many states aiming to reduce their prison population and attendant costs have enacted laws that direct a growing number of people into community supervision instead of incarceration.[37] They have also created opportunities for those in prison to move more quickly to post-release supervision.[38]

Yet, many people on community supervision—whether on probation or parole—end up having their community sentence revoked. Revocations from probation and parole comprise half of jail admissions and one-third of prison admissions.[39] A number of these revocations are for technical violations—non-compliance with the terms of supervision such as failing a drug test, missing a meeting with the probation or parole officer, violating curfew, or using alcohol. But as the trend toward community-based solutions grows, lawmakers are seeking to ensure that noncustodial interventions and supervision practices better reflect what research has shown are effective methods for increasing a person's success within the community and reducing the risk of reoffending.[40]

In particular, states have sought to reduce the number of people admitted to prison for technical violations by instituting better training for probation or parole officers, implementing evidence-based practices and policies, and using less costly and more effective ways to respond to violations when they do occur.[41] For example, many states in 2014 and 2015 adopted systems of graduated responses—a continuum of sanctions for noncompliance and rewards for compliance—which has been shown to increase compliance and improve outcomes, while decreasing a reliance on incarceration.[42] The sanctions may include reprimands, curfews, travel restrictions, increased reporting requirements, drug testing, program interventions, or short jail stays that provide supervising agencies with a wide set of responses short of revocation to prison. The array of responses can be tailored to the violation while swiftly addressing the reasons behind it. Rewards, meanwhile, may include reduced reporting requirements, earned discharge credits against supervision terms, and other privileges.

Furthermore, because the longer people remain on community supervision the greater the risk of violations and potential revocation, some states are also expanding opportunities for people who comply with the terms of their supervision and/or who participate in treatment, vocational, or educational programs to earn credits that reduce their time on supervision. By providing a way for those on supervision to shorten their supervision terms, eligible people are given an incentive to comply with conditions and are less likely to violate, thereby reducing their exposure to the risk of reincarceration. This approach also allows states to redirect resources to the people at highest risk of violating supervision or reoffending.[43] Another approach, adopted by North Dakota, is to shorten probation and parole sentences on the front end.

> **Colorado SB 124 (2015)** requires parole officers to impose intermediate sanctions for technical violations of parole. Only once the use of such remedies is exhausted can parole officers file a revocation petition in response to a violation.

- **Idaho SB 1357 (2014)** requires the Board of Correction to supervise people on parole and probation based on their risk levels. To do so, the board must use a validated risk and needs assessment tool, and develop and use a system of graduated sanctions for violations and incentives for compliance.[44]
- **Illinois SB 3267 (2014**) allows courts to grant earned compliance credits to nonviolent offenders on probation who achieve certain educational goals: a GED grants 90 days credit, an associate's degree or education certificate grants 120 days' credit, and a bachelor's degree grants 180 days' credit.
- **Indiana HB 1140 (2014)** requires the establishment of graduated incentives and sanctions for people on parole and sets new guidelines for responding to new felony offenses by those on parole supervision. If someone on parole supervision commits a new Level 1 or Level 2 felony (the most serious felonies under the state criminal code), the Parole Board is required to revoke parole. In response to any other felony offense, the board can decide whether to revoke parole.
- **Louisiana HB 1257 (2014)** outlines new procedures for modifying conditions of, or discharging offenders early from, probation. According to the new law, probation may be terminated after one year for felonies, or at any time for misdemeanors, if the state does not oppose termination. A court may impose additional conditions of probation at any time, without the approval of the state.
- **Nebraska LB 907 (2014)** empowers a parole officer to impose administrative sanctions in response to substance abuse or technical parole violations, including increased supervision, increased substance abuse testing, travel restrictions, and counseling.
- **North Dakota HB 1367 (2015)** sets a cap on probation terms. Terms now range from three to five years for felonies and one to two years for a Class A or B misdemeanor. Longer probation terms may be imposed after a violation occurs: up to 10 years for the most serious felonies and up to three years for misdemeanors. The law also allows for short-term jail sanctions to respond to community supervision violations (in lieu of a revocation).

Continued on next page

COMPREHENSIVE CRIMINAL JUSTICE REFORM LEGISLATION IN 2014 AND 2015

Four states passed sweeping criminal justice reform legislation in 2014 and 2015 as part of the Justice Reinvestment Initiative (JRI)—a national initiative, funded by the U.S. Department of Justice's Bureau of Justice Assistance, that provides technical assistance to states that pursue data-driven, multi-branch and bipartisan efforts to reduce prison populations or growth and improve safety outcomes. Four states—Alabama, Mississippi, Nebraska, and Utah—joined the nearly 25 other states that have enacted criminal justice reform under this initiative. In 2014 and 2015, these states made changes in three general areas: sentencing reform and parole release; community supervision, treatment, and evidence-based practices; and reentry.

Sentencing reform and early release

Alabama SB 67 (2015)

- adds a new lowest-level felony class, Class D, with a sentence range of one to five years, convictions for which may not be included as prior felony convictions for the purposes of a sentencing enhancement;
- downgrades the felony class for the lowest tier of property crimes from a Class C to a Class D felony;
- reduces drug possession to a Class D felony;
- speeds up parole eligibility by limiting the application of a minimum amount of time served before some become parole eligible (the lesser of one-third of the imposed sentence or 10 years) only to those people convicted of violent offenses; such a minimum used to be applicable to sentences for all offenses;
- allows the corrections commissioner (DOC) to release people on medical furlough with 30 days' notice to the district attorney and the victim or victim's representatives. Previously, the commissioner had to give the district attorney the opportunity to object to DOC consideration of medical furlough;
- creates a 90-day period between receipt of an application for medical furlough and release from custody;
- mandates the Board of Parole to adopt structured decision-making and use a validated risk-needs assessment tool. In addition, parole consideration for people convicted of nonviolent offenses with sentences of 20 years or less must occur every two years; and
- requires release on intensive supervision for all offenders from three months (for the shortest sentences) to 12 months for all those not otherwise released on parole or probation, except those convicted of certain sex offenses.

Mississippi HB 585 (2014)

- raises the felony property crime threshold from $500 to $1,000;
- institutes presumptive probation for non-felony property crimes;
- reduces penalties for possession of Schedule I and II drugs from a weight-based range of one to 30 years to a range of zero to 20 years, with a minimum of no prison time for the lowest weight tiers, where previously those tiers had minimums of two to four years;
- creates a tiered weight structure for sentences for drug sale; and
- sets minimum percentages of time served until someone is parole-eligible: 25 percent of a sentence for a nonviolent offense and 50 percent for a violent offense.

Nebraska LB 605 (2015)

- revises the state's felony class structure and associated penalties by adding additional felony classes with reduced penalty ranges;
- increases the felony threshold for property crimes to $1,500 (for a variety of offenses, including arson, public benefits fraud, forgery, criminal mischief, and others);
- requires that sentences to incarceration of less than a year be served in county jails;

- institutes presumptive probation for Class IV felonies (the lowest grade), except where the person sentenced is classified as a "habitual criminal" or cannot be safely or effectively supervised in the community;
- creates greater transparency in sentencing for indeterminate sentences by requiring that judges (1) advise people of their minimum sentence before parole eligibility and their maximum, assuming time credits are not forfeited, and (2) make a record when sentencing someone for multiple convictions about whether the sentences are to run concurrently or consecutively; and
- allows judges contemplating a prison sentence, but wanting more information about the person, to request that the Department of Correction hold someone for up to 180 days for an evaluation.

Utah HB 348 (2015)

- reclassifies possession of a Schedule I or II drug from a third-degree felony to a Class A misdemeanor, with a possible sentence of up to one year in jail (not prison);
- reclassifies possession of marijuana or a non-Schedule I or II drug to a Class B misdemeanor, with third convictions classified as Class A misdemeanors and fourth and subsequent convictions classified as third-degree felonies, thus revising maximum penalties from five years in prison to one year in jail;
- reduces the size of a school zone from 1,000 feet to 100 feet for the purposes of enhancing sentences and classifications for drug offenses and creates a period (6 a.m. to 10 p.m.) during which the enhancement is in effect; and
- downgrades the use of false license numbers or otherwise impersonating someone with authority to write a prescription in order to obtain prescription drugs from a felony to a misdemeanor.

Changes to community supervision and treatment

Alabama SB 67 (2015)

- requires the implementation of statewide uniform evidence-based practices for community corrections, probation and parole supervision, including training, risk-based supervision (with resources targeted to high-risk people on supervision), the use of a validated risk and needs assessment tool and a graduated response matrix (including intermediate sanctions, such as referrals to behavioral health or substance abuse treatment or GPS monitoring). Treatment programs, both in the community and in prison, must be evidence-based;
- establishes a performance-based reimbursement funding plan for local community corrections programs, which prioritizes funding for programs that include behavioral health and substance abuse treatment;
- authorizes probation and parole officers to use short-term jail sanctions of two to three days at a time for up to six days per month and 18 days total to punish supervision violations;
- limits revocations for Class D felonies to the lesser of two years or one-third of a sentence. A 20-day time limit is imposed for people held in custody pending a parole violation hearing, absent new pending charges;
- limits prison sentences for technical violations for people on probation or parole (except those with violent Class A felony convictions) to 45 days of confinement, after which supervision is continued. Three periods of 45-day confinement are required before a revocation;
- limits probation and parole officer caseloads to no more than 20 high-risk cases at a time and creates administrative supervision for those who qualify for limited supervision; and
- requires courts to reconsider eligibility for discharge from probation every two years for those who are compliant with all terms (including financial ones) of probation.

Continued on next page

Continued from previous page

Mississippi HB 585 (2014)

- empowers circuit court judges to establish Veterans Treatment Court programs with eligibility determined by prior military service, substance abuse or mental health needs, criminal history (including the current offense and past violent and/or sex crime convictions), and any recommendations made by the prosecutor;
- requires the Department of Parole to develop and use a system of graduated responses for violations, such as verbal warnings, increased drug testing or mandatory substance-abuse treatment, loss of previously awarded earned-compliance credits, and short periods of detention in jail or prison. Incentives for successful adherence to supervision conditions may include reduced reporting requirements or awarded earned compliance credits to use toward early discharge from supervision; and
- requires the Department of Corrections to create Technical Violations Centers (TVCs)—secure facilities that specifically house those who violate probation and parole terms. Confinement periods in TVCs are capped at 90 days for the first violation and 120 days for the second. For third violations, the penalty is confinement in a TVC for up to 180 days or revocation to prison to complete the sentence. TVCs provide substance abuse treatment, behavioral health support, education, and job training.

Nebraska LB 605 (2015)

- requires the use of graduated responses (both rewards and sanctions) for compliance and violations of community supervision, such as short-term jail sanctions;
- requires training for probation and parole officers in evidence-based practices such as the use of a risk-needs assessment, risk-based supervision, and a graduated response matrix;
- requires the evaluation of programming and treatment by the Department of Corrections to ensure that both are evidence-based; and
- caps jail sanctions for violations of parole at two 30-day periods of confinement, after which violations must be met with revocation or a non-jail sanction.

Utah HB 348 (2015)

- requires Division of Substance Abuse and Mental Health programming to address criminal risk factors, conduct an evidence-based assessment, have a treatment continuum and provide community-based mental health and substance abuse services for people involved in the criminal justice system, and devise minimum evidence-based standards for substance abuse and mental health treatment for those required to participate in treatment in prison or while on community supervision. The development of minimum standards for treatment in county jails is also required;
- requires the Department of Corrections to establish individual case plans for people on community supervision and to use a graduated response matrix to incentivize compliance and to penalize violations. Such incentives include earned time credits for compliance that may reduce probation and parole terms; and
- revises eligibility standards for drug courts to be based on the results of a validated risk-needs assessment, rather than the pending offense.

Reentry

Alabama SB 67 (2015)

> limits driver's license suspensions to convictions for drug trafficking, rather than all drug offenses;

> restores food stamp and welfare benefits eligibility to people following completion of their sentences or while on probation;

> provides for a limited hardship driver's license for people following release from prison and those on work release or in community corrections programming; and

> creates a program to train and fund people to establish small businesses for those leaving prison.

Mississippi HB 585 (2014)

> requires parole officers to use a reentry case plan—a coordinated and comprehensive strategy for addressing reentry needs. Reentry planning must begin 90 days before the earliest potential discharge date; and

> creates transitional reentry centers (of up to 100 beds) as a housing option for recently released people unable to secure safe, affordable housing on release.

Nebraska LB 605 (2015)

> requires the parole board to reduce the number of people whose prison sentences are expired in prison (people who "max out") so that people are released on supervision and that such post-release supervision terms are lengthy enough for effective reentry planning and transition.

Utah HB 348 (2015)

> places limits on driver's license suspensions. The suspension of driver's licenses for convictions for non-motor vehicle offenses and drug offenses is not allowed if the person convicted of an eligible offense is participating or has successfully completed substance abuse treatment or community supervision.

Supporting reentry into the community

The path to social reintegration after incarceration is fraught with significant obstacles. Adjusting to life outside of prison can be a profound challenge, particularly after a long sentence. Those released from prison often have no home and may, as a result, end up homeless or need to reconnect with long-estranged family members.[45] Many formerly incarcerated people also lack the practical social tools and skills to find employment or housing—including official identification, education, and financial resources.[46]

People released from prison or discharged from community supervision find that they must also comply with a vast array of rules and regulations that flow from having a criminal record. Many of these strictures limit their integration into mainstream society, excluding them from gaining access to adequate

housing, education, employment, voting, and public benefits.[47] In so doing, these collateral consequences of criminal conviction set up many justice-system-involved people for failure. Because they lack access to public benefits or supports—such as food stamps, veterans benefits, or public housing—and are often unable to get secure employment, they are vulnerable to such proven risk factors for reoffending as homelessness, unemployment, or unaddressed mental illness or substance abuse issues.[48]

To counteract the negative effects such regulations and strictures on formerly incarcerated people have for public safety, states have shown increasing interest in improving the long-term outcomes for people with criminal convictions. In 2014 and 2015, state policymakers built on reforms enacted in previous years, strengthening and expanding in-custody reentry support programs. They include programs that provide education, vocational training, behavioral-health support, drug treatment, family-reunification assistance, or aid in getting identification documents and social benefits in preparation for release from prison. Other reforms focused on supporting people after release to expand access to public benefits, education, employment, and business licensing. Some states also sought to limit public access to formerly imprisoned people's criminal histories by expanding opportunities to expunge and seal certain criminal records, as well as limiting the availability and distribution of criminal history information by private companies.

CREATING OR SUPPORTING REENTRY PROGRAMMING AND SERVICES

For many people reentering the community from prison, disproportionate levels of poverty, mental illness, substance abuse, and insufficient education compound the difficulties they face.[49] The first several months following release from prison are often the most critical, because the risk of reoffending is at its highest.[50] Knowing this, many states have expanded pre-release planning in prison and have moved toward better coordinating programming and services between prison and the community. States have also sought to act upon evidence that effective reentry programming must address both transitional needs, such as housing and employment, and long-term needs, such as substance-abuse issues or mental illness.[51]

In 2014 and 2015, a number of states moved to ease the transition from prison to the community, including mandating in-custody and community-based programming, and establishing an infrastructure for post-release support aimed at recidivism reduction through education, employment, health, and community support. Other states changed their post-discharge supervision practices to be better coordinated and more responsive to the needs and vulnerabilities of those released from prison.

> **Alaska SB 64 (2014)** institutes a recidivism reduction program to aid in successful re-entry through case management, support for sober living, employment training, education, and residential placement.

- **Arkansas SB 472 (2015)** requires a pre-release assessment and reentry plan be completed and an identification card or driver's license be issued to eligible inmates within 120 days from release. The new law also requires that all people leaving custody or released from community supervision are screened for Medicaid eligibility. It also allows those who are eligible and leaving custody to apply 45 days before release. For those who are already enrolled but are in the custody of the Department of Correction, the Department of Community Correction, or detained in a county or city jail or a Division of Youth Services facility, Medicaid benefits are suspended, instead of terminated, for the period of incarceration up to 12 months.
- **California AB 2060 (2014)** creates a Supervised Population Workforce Training Grant Program to provide grants to counties implementing workforce development programs for residents on parole or probation. The programs may include vocational training and post-secondary education.
- **Colorado HB 14-1355 (2014)** provides funding for in-prison and post-release transition programs whose primary goal is to reduce recidivism. Pre-release specialists must offer individualized case-management and targeted in-custody programming aimed at preparing people for release; community-based mental health consultants should be engaged to help ease the transition of people with mental illness from incarceration to community; and grant money should also be used to shore up and support community-based organizations serving those recently released from incarceration.
- **Georgia SB 365 (2014)** directs the Board of Corrections and the Department of Corrections to develop and implement reentry programs for incarcerated adults. Programs may provide educational, vocational, social, and behavioral programming, substance abuse counseling, financial planning or housing assistance, or aid in securing public benefits.
- **Hawaii HB 2363 (2014)** establishes a two-year pilot reentry program for low-risk people convicted of drug offenses who have been diverted from the Oahu Community Correctional Center and who are eligible for early release. The Department of Public Safety will oversee the pilot program and conduct bi-annual reviews of recidivism, employment, substance abuse, and housing outcomes.
- **Illinois SB 3522 (2014)** appropriates funds for psychiatric treatment and education programs in the community to aid in reentry.[52]
- **Indiana HB 1268 (2014)** provides reentry support through both in-custody and post-release programming. For currently incarcerated people, the law establishes wrap-around support services—individual programs targeted to address vocational, housing, transportation, mental health, and substance abuse needs—that are funded through public and private revenue streams. The law also extends access to certain social-welfare benefits, such as food stamps, upon reentry.
- **Indiana SB 173 (2015)** allows the Department of Correction to establish a spe-

cialized vocational program aimed at training qualified minimum-security inmates in trades—such as construction, truck driving, manufacturing, plumbing, heating, diesel technology, and ventilation and air conditioning—that are likely to provide a sustainable wage. Eligible individuals may include those with less than 24 months before their expected release date, or those who have completed specified programs, such as drug and alcohol treatment, parenting, or employment skills programs. Ineligible individuals are those who have been disciplined for misconduct within the previous year or those who are currently deemed to present a security risk.

> **Louisiana HB 781 (2014)** expands an already-existing reentry program—the "Offender Reentry Support Pilot Program"—in the Pointe Coupee Detention Center. The law authorizes the Pointe Coupee Sheriff to find funding, create an advisory board, and implement the program, which must include individually tailored programs providing behavioral health treatment, education, and job-skills training. The program will connect people leaving prison with community stakeholders and assist them in obtaining housing, necessary documentation, health insurance, and child care upon release.

> **Michigan SB 581 (2014)** grants day parole to people serving sentences in county jails. Day parole can be granted for the purpose of seeking employment, working, going to school, caring for family or property, or seeking medical treatment, substance abuse treatment, or mental health counseling. People convicted of certain violent and sex offenses are ineligible for day parole except to seek medical or mental-health treatment.

> **Nebraska LB 907 (2014)** creates the Vocational and Life Skills Program to provide both in-prison and post-release job and life-skills training and provides for a reentry program administrator to oversee its implementation. The law also requires parole officers to provide transitional support in obtaining housing, job training, employment, education, healthcare coverage, and medical assistance to those currently incarcerated and recently released people who specifically request such assistance. Finally, the legislation also includes a "ban the box" provision with exceptions for law enforcement and government agencies.

> **New York A858 (2015)** requires the Corrections Department to provide assistance to an inmate in contacting a transitional services provider or program prior to release. The department must maintain an up-to-date list of services, including housing programs for people with specific needs.

> **Texas SB 578 (2015)** requires the State Department of Criminal Justice to create a county-specific resource guide detailing organizations that provide reentry and reintegration assistance. The resource guide will be publicly available to all inmates and the public.

SUPPORTING FAMILY RELATIONSHIPS

Strengthening ties between incarcerated people and their families is an important aspect of rehabilitation. Research demonstrates that maintaining contact—whether through phone calls, letters, or in-person visits—can not only improve institutional safety by reducing the likelihood of behavioral infractions while incarcerated, but also reduce the risk of recidivism.[53] Prison visitation policies that facilitate family contact can help establish a continuum of important social support from prison to the community, given that most people who leave prison rely on family members for housing, financial, and other assistance as they reenter the community.[54] Maintaining strong relationships also has a positive impact on family members of incarcerated people, particularly children, who are more vulnerable to poverty and future criminal justice involvement than children without a parent in prison or jail.[55]

To help maintain and strengthen family relationships, three states in 2014 enacted laws that facilitate family visitation, support relationships between incarcerated parents and their children, and ensure that children of incarcerated people receive care and support.

- **Hawaii SB 2308 (2014)** appropriates $250,000 for programs and services for children of incarcerated parents, specifically programs that facilitate family reunification.
- **Louisiana SB 248 (2014)** establishes guidelines for judges when authorizing child visitation with an incarcerated parent. Judges can consider the child's preference, the quality and length of the relationship between the child and parent prior to the parent's incarceration, the willingness and ability of the current caretaker to bear the cost of transportation, the mental and physical health of both child and parent, and any damaging effects visitation to a jail or prison may cause the child.
- **Vermont HB 325 (2014)** tasks the Commissioner of Corrections and the Commissioner for Children and Families with overseeing, analyzing, and restructuring services available to support children with incarcerated parents, both for the health and welfare of the child and for the benefit of the parent-child relationship.

FACILITATING ACCESS TO IDENTIFICATION, PUBLIC BENEFITS, HOUSING, AND VOTING

Historically, corrections departments commonly released people from custody with nothing more than a bus ticket and a small amount of cash. But this laissez-faire practice is rapidly changing. Policymakers now know that housing, employment, education, and family reunification often pose formidable challenges for people leaving prison.[56] In response, many states have expanded their case management and pre-release planning practices, including providing help to previously incarcerated people seeking the documentation necessary to receive public benefits or get a job. Other states enacted legislation

that expands the categories of formerly incarcerated people who are entitled to certain benefits programs. California, for example, now helps to expedite the application process to receive such benefits as health insurance for people reentering the community. Four states—California, Maryland, New York, and Wyoming—passed new laws to encourage civic participation by making voting rights information, or voting itself, more accessible to those in the criminal justice system. Finally, Texas sought to help people with criminal records gain access to housing by passing a law to shield landlords from liability claims based solely on a tenant's criminal record.

- **California AB 2243 (2014)** mandates Department of Corrections and County Probation offices to disseminate information about the state's voting rights guide and make it available to currently and formerly incarcerated people. This information must be posted on the agencies' websites, and the web address must be displayed in offices.
- **California AB 2308 (2014)** requires the California Department of Corrections and Rehabilitation (CDCR) and the Department of Motor Vehicles (DMV) to ensure that eligible people receive a state-issued identification card upon release from prison. In order to qualify, a person previously must have held a California identification card, have a photo on file with the DMV that is no more than 10 years old, have no outstanding DMV fees, and provide accurate and complete identification information.
- **California AB 2570 (2014)** requires the California Rehabilitation Oversight Board—a body that regulates mental health, educational, and employment programs for those under the jurisdiction of the CDCR—to support CDCR's efforts to assist people in prison and on parole in obtaining health insurance upon release.
- **Florida HB 53 (2014)** waives all fees for people applying for replacement birth certificates, identification cards, and driver's licenses before release from prison.
- **Maryland HB 980 (2015)** restores the right to vote to people serving community-based sentences on probation or parole.
- **Missouri SB 680 (2014)** extends food stamp eligibility to certain persons with a drug possession conviction. They must participate in substance abuse treatment, or have completed it; if necessary, submit to regular drug testing, and comply with any conditions imposed by the court, the departments of parole and probation, or the division of drug and alcohol abuse.
- **New Jersey AB 2295 (2014)** allows drug treatment programs located in correctional facilities that meet eligibility requirements to be licensed as certified residential drug treatment programs. The certification would allow those who complete the programs in prison to be eligible for public assistance upon release.
- **New York SB 3553 (2014)** expands access to absentee ballots to people who are held in pre-trial jail or prison detention, or those in custody for a

non-felony conviction. The individuals must be eligible to vote and already registered.

- **Texas HB 1510 (2015)** shields landlords from a civil action solely for leasing a dwelling to a tenant convicted of, or arrested or placed on deferred adjudication for, a criminal offense. However, the law does not preclude a cause of action for negligence if the tenant was convicted for certain serious offenses, such as murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, or aggravated robbery.
- **Texas SB 200 (2015)** opts out of the federal rule that makes people convicted of any felony that involves the possession, use, or distribution of a controlled substance ineligible for the federal Supplemental Nutrition Assistance Program (SNAP) and makes certain people with drug convictions eligible. However, eligible persons released on parole or placed on community supervision who violate any condition of their supervision may be disqualified for up to two years. A lifetime ban is reinstated if an individual is convicted of a new felony drug offense.
- **Wyoming HB 15 (2015)** restores voting rights to people who were disenfranchised as a result of a felony conviction. The new law requires the Department of Corrections to automatically issue certificates of restoration of voting rights to those with nonviolent felony convictions upon completion of their entire sentence, including any period spent on probation or parole. Denial of a certificate is subject to judicial review.

FACILITATING ACCESS TO EMPLOYMENT

While employment is a significant factor in reducing the risk of recidivism for previously incarcerated people, getting a job can be particularly difficult for those with a criminal history.[57] The challenges for people leaving prison or jail range from lack of work skills or experience to the prerequisites for getting a job including acceptable IDs, a home address, the means to survive while job-hunting, or access to transportation. Vocational training can be elusive, because federal educational loans are limited for those convicted of drug-related offenses—a substantial portion of the incarcerated population.[58]

But even with the right skills and training, people with a criminal history face persistent problems gaining employment and economic mobility.[59] One in three U.S. adults has a criminal record that will show up on a background check, meaning that nearly 70 million people—disproportionately people of color—could be summarily excluded from the workforce, regardless of their educational background or relevant skill set.[60]

In response to these barriers, a number of states have enacted "ban the box" policies through legislation or executive order. These policies prohibit potential employers from inquiring about criminal history at the earliest stages of hiring; and bar denial of employment solely on the basis of a criminal record when the crime is not directly relevant to the job in question. (In fields such as

law enforcement, childcare, and certain government jobs, government agencies are still required to run a criminal background check as part of the initial hiring phase.)

In addition to ban-the-box laws, some states limited legal barriers to professional licenses, provided employers with protection from lawsuits alleging negligent hiring of a person with a criminal history, created certificates of rehabilitation (state-issued certificates to demonstrate employment readiness or rehabilitation in prison), and rolled back revocations of driver's licenses for drug offenses.[61]

- **California AB 1650 (2014)**, known as the "Fair Chance Employment Act," bans contractors on state construction projects from asking about an applicant's criminal history at the initial application stage. The law does not apply when state or federal law requires a criminal background check.
- **California AB 2396 (2014)** prohibits denying a business license to a person whose felony conviction has been dismissed. In addition, the state may not deny a business license to an applicant who has received a certificate of rehabilitation solely on the basis of a criminal conviction.
- **California AB 1156 (2015)** extends issuance of certifications of rehabilitation to people being released from county or regional jails, in addition to state prisons.
- **Connecticut SB 153 (2014)** grants the Board of Pardons and Paroles the authority to issue certificates of rehabilitation to ensure access to employment and licensing after incarceration. A certificate may be provisionally approved during a parole or probation term, and becomes permanent upon completion of the term. The law also bans denial or termination of employment solely on the basis of an arrest, criminal charges, or conviction for which the applicant or employee has received the certificate.
- **Delaware HB 167 (2014)** prohibits state agencies from inquiring into a person's criminal history during the initial phases of applying for a job, including the first interview. The criminal history of a qualified candidate may only preclude eligibility in cases where the crime is related to the job requirements.
- **Delaware SB 217 (2014)** restores driver's licenses to people who have had them revoked after conviction for drug offenses.
- **Delaware HB 264 (2014)** allows short-term employment with the state Department of Corrections (DOC) for those who have recently completed advanced DOC vocational training, and who would otherwise be ineligible on the basis of their criminal history.
- **Georgia SB 365 (2014)** gives judges authority to restore or revoke a defendant's driver's license, or issue a limited driving permit, based on the defendant's level of success in a drug or alcohol program. The law also creates the Program and Treatment Completion Certificate, which is to be used as a record of program completion for employers who hire formerly incarcerated people. The certificate also protects employers from third-party legal

claims of negligence in hiring someone with a criminal history by making it harder to prove such claims.

- **Georgia Executive Order 02.23.15 (3) (2015)** implements ban-the-box hiring policies in relation to state employment. Now, a criminal record cannot be used as an automatic bar to employment, and criminal history questions are removed from the initial stages of state job applications. Qualified applicants with a criminal record must be given a chance to discuss their criminal record, point out any inaccuracies, contest the content or relevance of a criminal record and provide evidence of rehabilitation. Exceptions to this order are for certain state jobs for which initial disclosure of a criminal record is required by law.
- **Georgia HB 328 (2015)** requires professional licensing boards to grant a probationary license to an applicant who has completed a drug court program. However, professional licensing boards may consider any criminal history information subsequent to completion of the drug court program in deciding whether such a license is appropriate.
- **Illinois HB 5701 (2014)** prohibits inquiry into a job applicant's criminal history until the applicant has been deemed otherwise qualified and has either been contacted for an interview or given an initial offer of employment. This prohibition is waived when state or federal law requires such an inquiry, or when a license or insurance required for employment would be denied based on the applicant's criminal history.
- **Illinois HB 3475 (2015)** expands eligibility for Certificates of Good Conduct for people who have completed their sentences to include those who have committed more serious felonies. Previously, all forcible felonies—such as first- and second-degree murder or aggravated sexual assault—and all Class X felonies—including home invasion or possession of a controlled substance with intent to deliver—were ineligible. The new law narrows the pool of those who are ineligible to those convicted of arson, aggravated arson, kidnapping, aggravated kidnapping, aggravated driving under the influence of alcohol or drugs, or aggravated domestic battery. Also ineligible are persons subject to registration under the Sex Offender Registration, the Arsonist Registration, or the Murderer and Violent Offender Against Youth Registration Acts.
- **Louisiana HB 505 (2014)** protects employers from liability for employee negligence based solely on a prior criminal conviction, except where the negligence is substantially related to the conviction, or the conviction was for a violent crime or a sex offense.
- **Louisiana HB 1273 (2014)** creates provisional professional licenses for people with criminal convictions, with exceptions for certain occupations and offenses.
- **New Hampshire HB 1368 (2014)** prevents denial of a business license, permit, or certificate based solely on an applicant's criminal history. However,

the license, permit, or certificate may be denied or revoked if the prior conviction is substantially related to the business or trade, or after consideration of the applicant's rehabilitation and the time passed since the conviction or release.

- **Ohio HB 56 (2015)** prohibits public employers from including questions about criminal history on state job applications.
- **Oklahoma SB 1914 (2014)** adds a provision to the criminal code mandating that juvenile criminal records (including arrests) shall not be considered an arrest or detention for the purpose of securing employment, civil rights, business licenses, or any other public or private purpose.
- **Oklahoma HB 2168 (2015)** narrows the circumstances in which a professional license can be denied, revoked, or suspended as the result of a felony conviction. A felony conviction must now have occurred within the previous five years and be substantially related to the profession at issue, or pose a reasonable threat to public safety. Professional licenses covered by the new law include architecture; landscape architecture or interior design; cosmetology; engineering or land surveying; athletic training; real estate appraisal; physical and occupational therapy; psychology; speech-language pathology or audiology; behavioral health counseling; and pawn-brokering. In the case of professions in behavioral health—such as marriage counseling—a license may be denied, revoked, or suspended if a person's conviction involved "moral turpitude," conduct that shocks the public conscience or conduct that involves significant dishonesty, such as fraud or bribery.
- **Oklahoma HB 2179 (2015)** extends driver's license reinstatement procedures to commercial driver's licenses. Now, those whose commercial license was suspended or revoked because of a criminal conviction are eligible for a provisional license after payment of all reinstatement fines and fees.
- **Oregon HB 3025 (2015)** makes it unlawful for an employer to exclude a job applicant from an initial interview solely because of a past criminal conviction. Although employers may still consider a criminal conviction when making a final hiring decision, they are specifically prohibited from requiring job applicants to disclose a criminal conviction on a job application prior to an initial interview or prior to a conditional offer of employment. The rule does not apply when a federal, state, or local law explicitly requires consideration of criminal history, such as for government jobs in law enforcement or the criminal justice system.
- **Tennessee SB 276 (2014)** creates certificates of rehabilitation for employment and licensing for two purposes. First, possession of a certificate of rehabilitation protects applicants from denial of a professional license based solely on their criminal histories. Second, the certificate protects employers from lawsuits alleging negligence in hiring by making it harder to prove such claims.

- **Utah HB 145 (2014)** excludes past criminal charges that did not result in a conviction from employment background checks.
- **Vermont HB 413 (2014)** allows a person to seek a certificate of rehabilitation to mitigate certain collateral consequences either five years after conviction or five years after completion of sentence, whichever is later. Eligibility for such a certificate requires current employment, no additional criminal convictions, and no indication of potential risk to the community.
- **Vermont Executive Order 03-15 (2015)** implements a ban-the-box hiring policy in relation to state employment applications. Under this order, job applicants will no longer be immediately screened out of state jobs because of a criminal conviction and background checks will only occur after an applicant has otherwise been found qualified for the position. State jobs in law enforcement, corrections, or other sensitive positions are exempt from this policy.
- **Virginia Executive Order 49 (2015)** implements ban-the-box hiring policies in relation to state employment applications. State employment applications will no longer have questions relating to criminal convictions, and decisions will not be based on the criminal history unless demonstrably job-related or if state or federal law specifically prohibits the hiring of individuals with certain criminal convictions for a particular position. Criminal background checks may only occur after an applicant has been found otherwise eligible for employment and is being considered for the position. The order also encourages similar hiring practices among private employers.

EASING THE HARMFUL IMPACT OF FEES AND FINES

Criminal sentences often include a financial penalty. The costs may include court-ordered fines or restitution, as well as supervision or treatment fees or other types of charges to pay for confinement, electronic monitoring, drug testing, sex-offender registry, police transport, or case filing.[62] Such penalties can be an enormous financial burden on those currently incarcerated or recently released, who often have limited resources. Worse, failure to pay fees and fines may be considered a violation of the terms of supervision or release, the consequence of which may be additional jail or prison time and increased fees.[63] To help break this vicious cycle for formerly incarcerated people, some states enacted legislation waiving certain fees, allowing payment plans for restitution, and limiting the use of jail and prison as penalties for non-payment:

- **Arizona SB 1116 (2015)** makes it permissible for courts to order the performance of community service in lieu of payment of fines, fees, or incarceration costs if a defendant is unable to pay. Community service must be equivalent to the amount of the criminal justice debt. Services performed will be credited at a rate of $10 per hour.
- **Colorado HB 14-1061 (2014)** prohibits imprisonment or probation for failure to pay a court-ordered fee or fine for those with financial hardship. Those ordered

to make payment as part of their sentence must alert the court if they are unable to pay. Imprisonment or revocation is allowed only for willful nonpayment or failure to appear for the hearing, not for nonpayment. Before revoking or imprisoning the defendant, the court is required to make findings on the record regarding the defendant's ability to pay.

- **Georgia HB 328 (2015)** prohibits a local jurisdiction from contracting with a collection agency for collection of money in the case where someone is sentenced to probation solely for the offender's inability to pay court-imposed fines or statutory surcharges.
- **Illinois SB 2650 (2014)** releases defendants from liability for court fees or costs when a conviction is reversed by a finding of factual innocence and establishes a right to a refund of fees already paid.
- **Louisiana HB 546 (2014)** allows indigent defendants to pay restitution according to a payment plan, as determined by their financial ability.
- **Maine HP 1266 (2014)** grants judges the discretion to set a rate at which people in custody for nonpayment of fines may reduce money owed through participation in public works or charity organizations. Previously, the amount was set at a $5 credit per hour of participation. This law allows for jail days to be credited against outstanding fees at the rate of $25-$100 per day.
- **Oregon HB 3168 (2015)** authorizes courts to waive the unpaid portion of a previously imposed criminal fine if the debtor demonstrates financial hardship that prevents completion of a fee-based alcohol or drug treatment program. In addition, upon a showing that such payment would interfere with completion of such a program, courts may enter a supplemental judgment that remits all or part of the amount due, or modifies the method of payment.

LIMITING PUBLIC ACCESS TO CRIMINAL HISTORY INFORMATION

The social stigma of a criminal conviction—or even involvement in the criminal justice system short of a conviction—contributes to the many challenges justice system-involved people face, particularly when trying to lead a law-abiding life.[64] As more and more states make criminal history records—from booking photographs to rap sheets—available to the public electronically, this information and all the negative consequences that may flow from it may only be a click away.[65] Online records may include arrests in which charges were never filed, or instances where the accused person was acquitted or the case was later dismissed.[66] Although some states prohibit questions about criminal history in the initial employment application process, such ban-the-box legislation does not protect people from exposure of their criminal records through Internet searches and commercial databases for other purposes (and may not prohibit criminal history inquiries in later stages of the hiring process).

Over the past two legislative sessions, several states enacted legislation aimed at limiting public access to, dissemination of, and use of criminal history information. Policymakers accomplished this in two ways: expanding eligibility for remedies that shield criminal records from public view such as expungement or sealing mechanisms, and mandating the removal of print and electronic publication of booking photographs and arrest records.

Extending eligibility for expungement or sealing

Expungement and sealing of criminal records are similar mechanisms—sometimes used interchangeably—that shield criminal records from public view. While expungement typically results in the destruction of an entire criminal record, sealing generally limits access to the record to certain government agencies, and usually only through a court order. To broaden the impact of these remedies, state lawmakers extended eligibility to additional classes of offenses or to arrests or charges that did not end in conviction and made access to remedies easier by streamlining the process.

- **Alabama SB 108 (2014)** provides expungement of certain low-level felony or misdemeanor convictions, and arrest records when the charges did not result in a conviction or were dismissed after completion of a court-ordered diversion program. The petitioner must appeal to the court for expungement and pay a $300 fee. Expunged records remain available to government offices, licensing agencies, and financial institutions, although they will be deemed destroyed for all other circumstances.
- **Colorado SB 14-206 (2014)** allows sealing of arrest records for a person who successfully completes a diversion program, or for someone who was not convicted. Charges that have been sealed do not have to be disclosed on employment applications or to educational institutions. Arrests that do not result in charges because a defendant pleaded guilty in a separate case, ar-

rests that result in a dismissal as part of a plea in a separate case, and cases where the defendant stills owes fines, fees, or restitution are ineligible.

- **Delaware HB 134 (2014)** expands the expungement category of cases resolved "in favor of the accused" (such as acquittal or a decision not to prosecute) to cases of dismissal or where a person successfully completed and is thereby discharged from probation.
- **Illinois HB 5815 (2014)** adds sanctions and convictions for municipal code violations to the list of criminal records eligible for sealing.
- **Illinois HB 3149 (2015)** makes people who earned a high school diploma, GED, associate's degree, career certificate, vocational technical certification, or bachelor's degree during their sentence (in custody or in the community) eligible to have their criminal records sealed after sentence completion. Earned qualifications cannot duplicate those earned prior to a person's conviction. Those eligible must petition the court and if the petition is denied, subsequent petitions may be entered at prescribed intervals after termination of their last sentence, depending on their criminal history.
- **Iowa SF 383 (2014)** requires the removal of any computer record relating to an adult arrest that is at least four years old and has no disposition, unless there is an outstanding arrest warrant or a law enforcement-required hold on the person.
- **Louisiana HB 55 (2014)** provides guidelines for circumstances under which a prior misdemeanor or felony conviction may be expunged. Under the new law, any charge that was dismissed by non-prosecution or acquittal is eligible for expungement, unless it was a violent crime or a sex crime. Misdemeanors and felonies that resulted in conviction are eligible after a period of five or 10 years, respectively, unless there are new pending felony charges. Expungement does not bar access to records by law enforcement agencies, state licensing departments, and the news media.
- **Missouri HB 1665 and 1335 (2014)** allow expungement of arrest records in certain instances, such as when charges are not pursued, were based on false information, or lacked probable cause.
- **Oregon SB 364 (2015)** expands eligibility for setting aside convictions for marijuana-related offenses for convictions that occurred prior to the effective date of the reclassification of such marijuana offenses.
- **Tennessee HB 1742 (2014)** permits multiple nonviolent, misdemeanor, or low-level felony convictions based on the same conduct or criminal event to be treated as a single conviction for purposes of the expungement process, streamlining the process and making it easier for people to fulfill the requirements.
- **Texas SB 1902 (2015)** expands eligibility for an order of nondisclosure of a criminal record upon successful completion of community supervision by including those with first-time, low-level convictions that are not violent, sexual, or domestic violence-related. The new law also allows the court to is-

sue an order of nondisclosure for those whose misdemeanor charges are dismissed after successfully completing deferred adjudication. Except in limited circumstances, an order of nondisclosure prohibits criminal justice agencies from disclosing to the public a person's criminal record information. It also allows those protected by the order to affirmatively deny the specifics of their criminal case when asked by a potential employer or licensing agency.

Limiting access to arrest information

In many states, booking photographs taken upon arrest are posted on law-enforcement websites, where commercial websites routinely access and republish them.[67] Despite the presumption of innocence, the social stigma from an arrest record may result in de facto discrimination or disqualification, including in employment and housing.[68] In order to avoid this negative impact, a number of states passed legislation that limits the public's access to such information, or expands the rights of individuals, often for those whose cases are resolved in their favor, to have their arrest information removed from commercial websites at no cost. Two states—California and Missouri—also provided for criminal or civil remedies for those injured by unlawful dissemination of, or refusal to remove, such information.

- **California SB 1027 (2014)** prohibits businesses that publish or disseminate arrest photographs in print or electronic form from charging fees for their removal, modification, or correction, and provides a civil remedy for those injured by violations of laws concerning their use.[69]
- **Colorado HB 14-1047 (2014)** requires anyone requesting a booking photograph to affirm that it will not be unlawfully published, and that a fee will not be required if its removal is requested.
- **Georgia HB 845 (2014)** adds arrest booking photographs connected to charges that do not result in conviction to the list of records that are not public.
- **Missouri HB 1665 and 1335 (2014)** prohibit businesses that disseminate booking photographs from charging a fee for removal and provide criminal and civil penalties for violations.
- **Wyoming SF 53 (2014)** requires websites that publish arrest photographs to remove the photograph and other personal information upon written request where the arrest does not result in conviction or the record was expunged.

Conclusion

This bi-annual review of state-level criminal justice reform confirms an accelerated level of activity that is likely to continue in the near future. Many recently created task forces and commissions—such as the one established by Maryland's SB 602—are mandated to use data-driven research and analysis in considering future sentencing law changes. Some states that have been extensively reexamining and revising their criminal codes and criminal penalties over the past several years, such as Indiana since 2013, have formed oversight committees that monitor the implementation of statutory changes and recommend revisions to further retool and perfect enacted reforms. Through the work of such bodies, policymakers and the public can glimpse the contours of proposed criminal justice reforms that may emerge in 2016.

While there is significant legislative action on criminal justice reform all over the country, ballot initiatives authorizing criminal justice reform increasingly are vehicles of change. Since 2012, Colorado, Washington, Alaska, Oregon, and Washington, DC have legalized recreational marijuana use through ballot initiatives, with Massachusetts voters poised to decide the issue in 2016.[70] In 2014, Proposition 47 in California reclassified many property and drug offenses to misdemeanors by raising the felony thresholds for property value and drug weight. (See [Prop 47 callout box].) And in an unusual move, Oklahoma has just enacted criminal justice reform legislation and is also considering taking up a ballot initiative that would go further on those reforms, reclassifying and revising penalties for drug and property crimes.[71] This comes after years of false starts on sentencing and corrections reform in the state.[72] The growth of ballot initiatives as mechanisms to effect criminal justice reform suggests that voters are eager for change in how states punish and manage drug and property crimes—and, perhaps, that policymakers are lagging behind popular will on these issues.

At this writing, it is unclear whether federal action on sentencing reform will take place in 2016, because a small but vocal minority in Congress remains opposed to any sentencing reductions, and supporters are divided on whether or not to include additional statutory reforms. If these obstacles block action this year, federal sentencing reform may gain traction in 2017, regardless of which party controls the White House or Congress.

Appendix A SENTENCING AND CORRECTIONS TRENDS 2014 AND 2015: LEGISLATION BY STATE

Alabama	2014	SB 108	limits public access to criminal history information
	2014	SJR 20	ensures that data-driven research and analysis guide reform
	2015	Exec. Order 8	ensures that data-driven research and analysis guide reform
	2015	SB 67	comprehensive criminal justice reform
Alaska	2014	Measure 2	reduces penalties for drug offenses
	2014	HB 369	expands medical amnesty
	2014	SB 64	veteran-related reforms; reduces penalties for property offenses; creates or supports reentry programming and services; ensures that data-driven research and analysis guide reform
Arizona	2014	HB 2457	veteran-related reforms
	2014	HB 2593	increases opportunities for early release
	2015	SB 1116	waives fines and fees
Arkansas	2015	SB 472	Problem-solving courts; creates or supports reentry programming and services; ensures that data-driven research and analysis guide reform
	2015	SB 543	expands medical amnesty
California	2014	AB 1650	facilitates access to employment
	2014	AB 2060	creates or supports reentry programming and services
	2014	AB 2098	veteran-related reforms
	2014	AB 2124	deferred adjudication
	2014	AB 2243	facilitates access to identification, public benefits, housing, and voting
	2014	AB 2263	veteran-related reforms
	2014	AB 2308	facilitates access to identification, public benefits, housing, and voting
	2014	AB 2309	deferred adjudication
	2014	AB 2357	veteran-related reforms
	2014	AB 2396	facilitates access to employment
	2014	AB 2492	reduces penalties for drug offenses
	2014	AB 2570	facilitates access to identification, public benefits, housing, and voting
	2014	Prop 47	reduces penalties for property offenses; reduces penalties for drug offenses
	2014	SB 1010	reduces penalties for drug offenses
	2014	SB 1027	limits public access to criminal history information
	2014	SB 1227	veteran-related reforms
	2015	AB 1156	enacts general sentencing reform; facilitates access to employment

Appendix A SENTENCING AND CORRECTIONS TRENDS 2014 AND 2015: LEGISLATION BY STATE

Colorado	2014	HB 14-1047	limits public access to criminal history information
	2014	HB 14-1061	waives fines and fees
	2014	HB 14-1266	reduces penalties for property offenses
	2014	HB 14-1355	creates or supports reentry programming and services
	2014	SB 14-021	ensures that data-driven research and analysis guide reform
	2014	SB 14-064	reforms use of segregation (solitary confinement)
	2014	SB 14-206	limits public access to criminal history information
	2015	SB 124	reduces probation/parole revocations and shortens community sentences
Connecticut	2014	HB 5586	reduces penalties for property offenses
	2014	SB 153	facilitates access to employment
	2015	HB 7104	reduces penalties for drug offenses
Delaware	2014	HB 134	limits public access to criminal history information
	2014	HB 167	facilitates access to employment
	2014	HB 264	facilitates access to employment
	2014	SB 217	facilitates access to employment
	2015	HB 39	reduces penalties for drug offenses
	2015	HJR 5	reforms use of segregation (solitary confinement)
Florida	2014	HB 53	facilitates access to identification, public benefits, housing, and voting
Georgia	2014	HB 845	limits public access to criminal history information
	2014	HB 965	expands medical amnesty
	2014	SB 320	veteran-related reforms
	2014	SB 365	creates or supports reentry programming and services; facilitates access to employment
	2015	Exec. Order 02.23.15 (3)	facilitates access to employment
	2015	HB 328	increases opportunities for early release; facilitates access to employment; waives fines and fees
Hawaii	2014	HB 2363	creates or supports reentry programming and services
	2014	SB 2308	supports family relationships
	2015	SB 982	expands medical amnesty

Idaho	2014	Exec. Order 1	ensures that data-driven research and analysis guide reform
	2014	SB 1352	pre-arrest diversion
	2014	SB 1357	reduces parole/probation revocations and shortens community sentences
	2014	SB 1393	ensures that data-driven research and analysis guide reform
Illinois	2014	HB 5701	facilitates access to employment
	2014	HB 5815	limits public access to criminal history information
	2014	SB 2650	waives fines and fees
	2014	SB 3267	reduces probation/parole revocations and shortens community sentences
	2014	SB 3522	creates or supports reentry programming and services
	2015	HB 1	problem-solving courts
	2015	HB 1336	expands medical amnesty
	2015	HB 3149	limits public access to criminal history information
	2015	HB 3475	facilitates access to employment
	2015	HB 3884	increases opportunities for early release
	2015	HJR 53	ensures that data-driven research and analysis guide reform
Indiana	2014	HB 1006	deferred adjudication; reduces penalties for drug offenses; enacts general sentencing reform; increases opportunities for early release; ensures that data-driven research and analysis guide reform
	2014	HB 1070	ensures that data-driven research and analysis guide reform
	2014	HB 1140	reduces probation/parole revocations and shortens community sentences
	2014	HB 1268	creates or supports reentry programming and services
	2015	HB 1304	deferred adjudication; expands use of medication-assisted substance abuse treatment
	2015	SB 173	creates or supports reentry programming and services
	2015	SB 174	enacts general sentencing reform
	2015	SB 464	expands use of medication-assisted substance abuse treatment
Iowa	2014	SF 383	limits public access to criminal history information
Kansas	2014	HB 2655	veteran-related reforms
	2015	HB 2051	increases opportunities for early release
	2015	HB 2154	veteran-related reforms
Kentucky	2014	SB 124	reduces penalties for drug offenses

Louisiana	2014	HB 55	limits public access to criminal history information
	2014	HB 196	increases opportunities for early release
	2014	HB 461	reduces penalties for drug offenses
	2014	HB 505	facilitates access to employment
	2014	HB 546	waives fines and fees
	2014	HB 670	increases opportunities for early release
	2014	HB 781	creates or supports reentry programming and services
	2014	HB 1257	reduces probation/parole revocations and shortens community sentences
	2014	HB 1273	facilitates access to employment
	2014	SB 248	supports family relationships
	2014	SB 398/HB683	problem-solving courts
	2014	SB 399	increases opportunities for early release
	2014	SB 532	veteran-related reforms
	2015	HB 149	reduces penalties for drug offenses
	2015	HR 203	ensures that data-driven research and analysis guide reform
Maine	2014	HP 1221	veteran-related reforms
	2014	HP 1266	waives fines and fees
	2015	SP 46	Reduces penalties for drug offenses
Maryland	2014	SB 364	Reduces penalties for drug offenses
	2015	HB 121	Creates safety valves from mandatory minimum sentences
	2015	HB 980	facilitates access to identification, public benefits, housing, and voting
	2015	SB 602	ensures that data-driven research and analysis guide reform
	2015	SB 654	expands medical amnesty
Michigan	2014	SB 558	pre-arrest diversion
	2014	SB 581	creates or supports reentry programming and services
Minnesota	2014	SF 1900	expands medical amnesty
	2014	HB 585	comprehensive criminal justice reform
Mississippi	2014	HB 585	comprehensive criminal justice reform
	2015	HB 602	ensures that data-driven research and analysis guide reform

Missouri	2014	HB 1231	ensures that data-driven research and analysis guide reform
	2014	HB 1665 & 1335	limits public access to criminal history information
	2014	SB 680	facilitates access to identification, public benefits, housing, and voting
Montana	2015	HB 33	pre-arrest diversion
	2015	HB 135	increases opportunities for early release
	2015	HB 412	expands medical amnesty
	2015	SB 219	deferred adjudication
Nebraska	2014	LB 907	reduces probation/parole revocations and shortens community sentences; creates or supports reentry programming and services; ensures that data-driven research and analysis guide reform
	2015	LB 173	creates safety valves from mandatory minimum sentences
	2015	LB 439	expands medical amnesty
	2015	LB 598	reforms use of segregation (solitary confinement)
	2015	LB 605	comprehensive criminal justice reform
Nevada	2015	SB 459	expands medical amnesty
New Hampshire	2014	HB 649	increases opportunities for early release
	2014	HB 1144	ensures that data-driven research and analysis guide reform
	2014	HB 1368	facilities access to employment
	2014	HB 1442	problem-solving courts
	2015	HB 270	expands medical amnesty
	2015	HB 472	increases opportunities for early release
New Jersey	2014	Pub. Q. 1	bail reform
	2014	AB 2295	facilitates access to identification, public benefits, housing, and voting
	2015	S 946	bail reform
	2015	S 2003	Reforms use of segregation (solitary confinement)
	2015	S 2381	expands use of medication-assisted substance abuse treatment
New York	2014	SB 3553	facilitates access to identification, public benefits, housing, and voting
	2015	A858	Creates or supports reentry programming and services
	2015	AB 6255	expands use of medication-assisted substance abuse treatment
North Carolina	2014	HB 369	deferred adjudication
	2015	SB 154	expands medical amnesty

North Dakota	2015	HB 1030	creates safety valves from mandatory minimum sentences
	2015	HB 1106	ensures that data-driven research and analysis guide reform
	2015	HB 1367	reduces probation/parole revocations and shortens community sentences
	2015	HB 1394	reduces penalties for drug offenses
	2015	SB 2029	reduces penalties for drug offenses
	2015	SB 2030	reduces penalties for drug offenses
Ohio	2014	SB 143	Increases opportunities for early release
	2015	HB 56	facilitates access to employment
Oklahoma	2014	HB 2859	problem-solving courts
	2014	SB 1914	facilitates access to employment
	2015	HB 1518	creates safety valves from mandatory minimum sentences
	2015	HB 1548	enacts general sentencing reform
	2015	HB 1574	reduces penalties for drug offenses
	2015	HB 2168	facilitates access to employment
	2015	HB 2179	facilitates access to employment
Oregon	2014	Measure 91	reduces penalties for drug offenses
	2015	HB 2838	ensures that data-driven research and analysis guide reform
	2015	HB 3025	facilitates access to employment
	2015	HB 3168	waives fines/fees
	2015	SB 364	limits public access to criminal history information
	2015	SB 969	ensures data-driven research and analysis guides reform
Rhode Island	2014	HB 7610	reduces penalties for drug offenses
South Carolina	2014	HB 3014	veteran-related reforms
	2015	S 237	ensures that data-driven research and analysis guide reform
	2015	S 426	problem-solving courts
South Dakota	2014	SB 77	Reforms use of segregation (solitary confinement)
Tennessee	2014	HB 1742	limits public access to criminal history information
	2014	HB 1904	Pre-arrest division
	2014	SB 276	facilitates access to employment
	2015	SB 711/HB 854	veteran-related reforms

Texas	2015	HB 1083	reforms use of segregation (solitary confinement)
	2015	HB 1396	reduces penalties for property offenses
	2015	HB 1510	facilitates access to identification, public benefits, housing, and voting
	2015	HB 1546	increases opportunities for early release
	2015	SB 578	creates or supports reentry programming and services
	2015	SB 1474	veteran-related reforms
	2015	SB 1902	limits public access to criminal history information
Utah	2014	HB 145	facilities access to employment
	2014	SB 205	reduces penalties for drug offenses
	2015	HB 348	comprehensive criminal justice reform
	2015	SB 214	veteran-related reforms
Vermont	2014	HB 325	supports family relationships
	2014	HB 413	facilitates access to employment
	2014	SB 295	bail reform; reduces penalties for drug offenses
	2015	Exec. Order 3	facilitates access to employment
Virginia	2014	HB 1112	reduces penalties for drug offenses
	2014	HB 1222	pre-arrest diversion
	2015	Exec. Order 49	facilitates access to employment
	2015	HB 1500	expands medical amnesty
Washington	2014	HB 2304	reduces penalties for drug offenses
	2014	SB 2627	pre-arrest diversion
	2015	SB 5107	problem-solving courts
West Virginia	2014	HB 4614	ensures that data-driven research and analysis guide reform
	2014	SB 307	bail reform
	2015	HB 2880	expands use of medication-assisted substance abuse treatment
	2015	SB 523	expands medical amnesty
Wyoming	2014	SF 53	limits public access to criminal history information
	2015	SB 38	deferred adjudication
	2015	HB 15	facilitates access to identification, public benefits, housing, and voting

Appendix B STATE REFORMS TO SENTENCING AND CORRECTIONS BY TYPE, 2014 AND 2015

STATE	BAIL REFORM	CREATES OR EXPANDS OPPORTUNITIES TO DIVERT PEOPLE AWAY FROM THE CRIMINAL JUSTICE SYSTEM			MEDICATION-ASSISTED SUBSTANCE ABUSE TREATMENT	VETERAN-RELATED REFORMS	REDUCE PRISON POPULATIONS				
		PRE-ARREST DIVERSION	PROBLEM-SOLVING COURTS	DEFERRED ADJUDICATION			REDUCES PENALTIES FOR PROPERTY OFFENSES	REDUCES PENALTIES FOR DRUG OFFENSES	EXPANDS MEDICAL AMNESTY	CREATES SAFETY VALVES FROM MANDATORY MINIMUM SENTENCES	ENACTS GENERAL SENTENCING REFORM
Alabama											
Alaska						SB 64 (2014)	SB 64 (2014)	Measure 2 (2014)	HB 369 (2014)		
Arizona						HB 2457 (2014)					
Arkansas			SB 472 (2015)						HB 543 (2015)		
California				AB 2124 (2014) AB 2309 (2014)		SB 1227 (2014) AB 2098 (2014) AB 2263 (2014) AB 2357 (2014)	Prop. 47 (2014)	SB 1010 (2014) AB 2492 (2014) Prop. 47 (2014)			AB 1156 (2015)
Colorado							HB 14-1266 (2014)				
Connecticut							HB 5586 (2014)	HB 7104 (2015)			
Delaware								HB 39 (2015)			
Florida											
Georgia						SB 320 (2014)			HB 965 (2014)		
Hawaii									SB 982 (2015)		
Idaho		SB 1352 (2014)									
Illinois			HB 1 (2015)						HB 1336 (2015)		
Indiana				HB 1006 (2014) HB 1304 (2015)	HB 1304 (2015) SB 464 (2015)			HB 1006 (2014)			HB 1006 (2014) SB 174 (2015)
Iowa											
Kansas						HB 2655 (2014) HB 2154 (2015)					

		COMPREHENSIVE CRIMINAL JUSTICE REFORM	SOLITARY CONFINEMENT	SUPPORTS REENTRY INTO THE COMMUNITY						ENSURES THAT DATA-DRIVEN RESEARCH AND ANALYSIS TO GUIDE REFORM
INCREASES OPPORTUNITIES FOR EARLY RELEASE	REDUCES PROBATION/ PAROLE REVOCATIONS AND SHORTENS COMMUNITY SENTENCES			CREATES OR SUPPORTS REENTRY PROGRAMMING AND SERVICES	SUPPORTS FAMILY RELATIONSHIPS	FACILITATES ACCESS TO IDENTIFICATION PUBLIC BENEFITS HOUSING AND VOTING	FACILITATES ACCESS TO EMPLOYMENT	EASES THE IMPACT OF FINES AND FEES	LIMITS PUBLIC ACCESS TO CRIMINAL HISTORY INFORMATION	
		SB 67 (2015)							SB 108 (2014)	SJR 20 (2014) Exec. Order 8
				SB 64 (2014)						SB 64 (2014)
HB 2593 (2014)								SB 1116 (2015)		
				SB 472 (2015)						SB 472 (2015)
				AB 2060 (2014)		AB 2243 (2014) AB 2308 (2014), AB 2570 (2014)	AB 1650 (2014) AB 2396 (2014) AB 1156 (2015)		SB 1027 (2014)	
	SB 124 (2015)		SB 14-064 (2014)	HB 14-1355 (2014)				HB 14-1061 (2014)	HB 14-206 (2014) HB 14-1047 (2014)	SB 14-021 (2014)
							SB 153 (2014)			
			HJR 5 (2015)				HB 167 (2014) HB 264 (2014) SB 217 (2014)		HB 134 (2014)	
						HB 53 (2014)				
HB 328 (2015)				SB 365 (2014)			SB 365 (2014) HB 328 (2015) Exec. Order 02.23.15 (3) (2015)	HB 328 (2015)	HB 845 (2014)	
				HB 2363 (2014)	SB 2308 (2014)					
	SB 1357 (2014)									SB 1393 (2014) Exec.Order 2014-01
HB 3884 (2015)	SB 3267 (2014)			SB 3522 (2014)			HB 5701 (2014) HB 3475 (2015)	SB 2650 (2014)	HB 5815 (2014) HB 3149 (2015)	HJR 53 (2015)
HB 1006 (2014)	HB 1140 (2014)			HB 1268 (2014) SB 173 (2015)						HB 1006 (2014) HB 1070 (2014)
									SF 383 (2014)	
HB 2051 (2015)										

Appendix B STATE REFORMS TO SENTENCING AND CORRECTIONS BY TYPE, 2014 AND 2015

STATE	BAIL REFORM	CREATES OR EXPANDS OPPORTUNITIES TO DIVERT PEOPLE AWAY FROM THE CRIMINAL JUSTICE SYSTEM			MEDICATION-ASSISTED SUBSTANCE ABUSE TREATMENT	VETERAN-RELATED REFORMS	REDUCE PRISON POPULATIONS				
		PRE-ARREST DIVERSION	PROBLEM-SOLVING COURTS	DEFERRED ADJUDICATION			REDUCES PENALTIES FOR PROPERTY OFFENSES	REDUCES PENALTIES FOR DRUG OFFENSES	EXPANDS MEDICAL AMNESTY	CREATES SAFETY VALVES FROM MANDATORY MINIMUM SENTENCES	ENACTS GENERAL SENTENCING REFORM
Kentucky								SB 124 (2014)			
Louisiana			SB 398/HB 683 (2014)			SB 532 (2014)		HB 461 (2014) HB 149 (2015)			
Maine						HP 1221 (2014)		SP 46 (2015)			
Maryland								SB 364 (2014)	SB 654 (2015)	HB 121 (2015)	
Michigan		SB 558 (2014)									
Minnesota									SF 1900 (2014)		
Mississippi											
Missouri											
Montana		HB 33 (2015)		SB 219 (2015)					HB 412 (2015)		
Nebraska									LB 439 (2015)	LB 173 (2015)	
Nevada									SB 459 (2015)		
New Hampshire			HB 1442 (2014)						HB 270 (2015)		
New Jersey	Public Q 1 (2014) SB 946 (2015)				S 2381 (2015)						
New York					AB 6255 (2015)						
North Carolina				HB 369 (2014)					SB 154 (2015)		
North Dakota								HB 1394 (2015) SB 2030 (2015) SB 2029 (2015)		HB 1030 (2015)	

				SUPPORTS REENTRY INTO THE COMMUNITY						
INCREASES OPPORTUNITIES FOR EARLY RELEASE	REDUCES PROBATION/ PAROLE REVOCATIONS AND SHORTENS COMMUNITY SENTENCES	COMPREHENSIVE CRIMINAL JUSTICE REFORM	SOLITARY CONFINEMENT	CREATES OR SUPPORTS REENTRY PROGRAMMING AND SERVICES	SUPPORTS FAMILY RELATIONSHIPS	FACILITATES ACCESS TO IDENTIFICATION PUBLIC BENEFITS HOUSING AND VOTING	FACILITATES ACCESS TO EMPLOYMENT	EASES THE IMPACT OF FINES AND FEES	LIMITS PUBLIC ACCESS TO CRIMINAL HISTORY INFORMATION	ENSURES THAT DATA-DRIVEN RESEARCH AND ANALYSIS TO GUIDE REFORM
HB 196 (2014) SB 399 (2014) HB 670 (2014)	HB 1257 (2014)			HB 781 (2014)	SB 248 (2014)		HB 505 (2014) HB 1273 (2014)	HB 546 (2014)	HB 55 (2014)	HR 203 (2015)
								HP 1266 (2014)		
						HB 980 (2015)				SB 602 (2015)
				SB 581 (2014)						
		HB 585 (2014)								HB 602 (2015)
						SB 680 (2014)			HB 1665 (2014) HB 1335 (2014)	HB 1231 (2014)
HB 135 (2015)										
	LB 907 (2014)	LB 605 (2015)	LB 598 (2015)	LB 907 (2014)						LB 907 (2014)
HB 649 (2014) HB 472 (2015)							HB 1368 (2014)			HB 1144 (2014)
			S 2003 (2015)			AB 2295 (2014)				
				A858 (2015)		SB 3553 (2014)				
	HB 1367 (2015)									HB 1106 (2015)

Appendix B STATE REFORMS TO SENTENCING AND CORRECTIONS BY TYPE, 2014 AND 2015

STATE	BAIL REFORM	CREATES OR EXPANDS OPPORTUNITIES TO DIVERT PEOPLE AWAY FROM THE CRIMINAL JUSTICE SYSTEM			MEDICATION-ASSISTED SUBSTANCE ABUSE TREATMENT	VETERAN-RELATED REFORMS	REDUCE PRISON POPULATIONS				
		PRE-ARREST DIVERSION	PROBLEM-SOLVING COURTS	DEFERRED ADJUDICATION			REDUCES PENALTIES FOR PROPERTY OFFENSES	REDUCES PENALTIES FOR DRUG OFFENSES	EXPANDS MEDICAL AMNESTY	CREATES SAFETY VALVES FROM MANDATORY MINIMUM SENTENCES	ENACTS GENERAL SENTENCING REFORM
Ohio											
Oklahoma			HB 2859 (2014)					HB 1574 (2015)		HB 1518 (2015)	HB 1548 (2015)
Oregon								Measure 91 (2014)			
Rhode Island								HB 7610 (2014)			
South Carolina			S 426 (2015)			HB 3014 (2014)					
South Dakota											
Tennessee		HB 1904 (2014)				SB 711/HB 854 (2015)					
Texas						SB 1474 (2015)	HB 1396 (2015)				
Utah						SB 214 (2015)		SB 205 (2014)			
Vermont	SB 295 (2014)							SB 295 (2014)			
Virginia		HB 1222 (2014)						HB 1112 (2014)	HB 1500 (2015)		
Washington		SB 2627 (2014)	SB 5107 (2015)					HB 2304 (2014)			
West Virginia	SB 307 (2014)				HB 2880 (2015)				SB 523 (2015)		
Wyoming				SB 38 (2015)							

				SUPPORTS REENTRY INTO THE COMMUNITY						
INCREASES OPPORTUNITIES FOR EARLY RELEASE	REDUCES PROBATION/ PAROLE REVOCATIONS AND SHORTENS COMMUNITY SENTENCES	COMPREHENSIVE CRIMINAL JUSTICE REFORM	SOLITARY CONFINEMENT	CREATES OR SUPPORTS REENTRY PROGRAMMING AND SERVICES	SUPPORTS FAMILY RELATIONSHIPS	FACILITATES ACCESS TO IDENTIFICATION PUBLIC BENEFITS HOUSING AND VOTING	FACILITATES ACCESS TO EMPLOYMENT	EASES THE IMPACT OF FINES AND FEES	LIMITS PUBLIC ACCESS TO CRIMINAL HISTORY INFORMATION	ENSURES THAT DATA-DRIVEN RESEARCH AND ANALYSIS TO GUIDE REFORM
SB 143 (2014)							HB 56 (2015)			
							SB 1914 (2014) HB 2168 (2015) HB 2179 (2015)			
							HB 3025 (2015)	HB 3168 (2015)	SB 364 (2015)	HB 2838 (2015) SB 969 (2015)
										S 237 (2015) SB 900 (2014)
			SB 77 (2014)							
							SB 276 (2014)		HB 1742 (2014)	
HB 1546 (2015)			HB 1083 (2015)	SB 578 (2015)		SB 200 (2015) HB 1510 (2015)			SB 1902 (2015)	
		HB 348 (2015)					HB 145 (2014)			
					HB 325 (2014)		HB 413 (2014) Exec. Order 3			
							Exec. Order 49 (2015)			
										HB 4614 (2014)
						HB 15 (2015)			SF 53 (2014)	

ENDNOTES

1 For budget trends, see National Association of State Budget Officers, "State Spending for Corrections: Long-Term Trends and Recent Criminal Justice Policy Reforms" (Washington, DC: National Association of State Budget Officers, 2013), 4; for statewide recidivism figures, see Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: Pew Center on the States, 2011).

2 Ibid.

3 For research indicating that shorter sentences do not have an adverse impact on public safety, see for example *United States Sentencing Commission, Recidivism among Offenders with Sentence Modifications Made Pursuant to Retroactive Application of 2007 Crack Cocaine Amendment* (Washington, DC: United States Sentencing Commission, 2011).

4 For research about effective correctional strategies in the community, see Peggy McGarry et al., *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013). Also see National Institute of Corrections and Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (Washington, DC: Department of Justice, National Institute of Corrections, 2004), and Christopher T. Lowenkamp and Edward J. Latessa, "Understanding the Risk Principle: How and Why Correctional Interventions Harm Low-Risk Offenders" in Topics in Community Corrections (Washington, DC: National Institute of Corrections, 2004).

5 For information regarding prisoner reentry needs and challenges, see for example Jeremy Travis, Amy Solomon, and Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry* (Washington DC: The Urban Institute, 2001); for information regarding jail reentry needs and challenges, see Jim Parsons, "Addressing the Unique Challenges of Jail Reentry," in *Offender Reentry: Rethinking Criminology and Criminal Justice*, edited by Matthew Crow and John Smykla (Burlington, MA: Jones & Bartlett Learning, 2014), and Talia Sandwick, Karen Tamis, Jim Parsons, and Cesar Arauz-Cuadra, *Making the Transition: Rethinking Jail Reentry in Los Angeles County* (New York: Vera Institute of Justice, February 2013). For research that discusses specific risk factors for reoffending, see for example Matthew Makarios, Benjamin Steiner, and Lawrence F. Travis III, "Examining the Predictors of Recidivism Among Men and Women Released From Prison In Ohio," *Criminal Justice and Behavior* 37, no.12 (2010): 1377-1391. Devah Pager, *Marked: Race, Crime and Finding Work in an Era of Mass Incarceration* (Chicago, IL: University of Chicago Press, 2007), 59; and Talia Sandwick et al., 2013. Regarding mass incarceration's impact on communities, see Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (Buckingham, England: Open University Press, 2009). Regarding incarceration's impact on families, see Donald Braman, *Doing Time on the Outside: Incarceration and Family Life in Urban America* (Ann Arbor: University of Michigan Press, 2004) and Philip M. Genty, "Damage to Family Relationships as a Collateral Consequence of Parental Incarceration," *Fordham Urban Law Journal* 30 (2002): 1671-1684. For mass incarceration's impact on African American families in particular, see Dorothy E. Roberts, "The Social and Moral Cost of Mass Incarceration in African American Communities," *Stanford Law Review* 56 (2004): 1271-1305.

6 See for example Ram Subramanian, Rebecka Moreno, and Sharyn Broomhead, *Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends* (New York: Vera Institute of Justice, 2014). See also Lauren-Brooke Eisen and Juliene James, *Reallocating Justice Resources: A Review of 2011 State Sentencing Trends* (New York: Vera Institute of Justice, 2012); National Association of State Budget Officers, *State Spending for Corrections: Long-Term Trends and Recent Criminal Justice Policy Reforms* (Washington, DC: NASBO, 2013); and Alison Lawrence and Donna Lyons, *Principles of Effective State Sentencing and Corrections Policy* (Washington, DC: National Conference of State Legislatures, 2011).

7 Under the previous sentencing structure, for example, defendants with five grams of crack cocaine were subject to the same penalty as those with 500 grams of powder cocaine. See *Fair Sentencing Act of 2010,* Pub. L. 111-220, 124 Stat. 2372.

8 President Barack Obama, Remarks by the President at the NAACP Conference, Philadelphia, PA, July 14, 2015. (available at https://perma.cc/DL8T-Q2AE)

9 Ibid.

10 Jonathan Capehart, "Paul Ryan Got it right in his 'state of American politics' speech by admitting a mistake, *Washington Post*, Mar. 25, 2016 (https://perma.cc/A4V2-J26W).

11 Peter Baker, "Obama, in Oklahoma, Takes Reform Message to the Prison Block," *The New York Times*, July 16, 2015, p. A1.

12 "What You Need to Know About the New Federal Prisoner Release," The Marshall Project, Oct. 6, 2015 (available at https://perma.cc/CE3S-YPJY). This was a result of a decision by the United States Sentencing Commission in 2014 to reduce the sentencing guidelines range for many federal drug offenses and make the sentencing reduction retroactive—meaning that the change would shorten prison stays for thousands of inmates who are already serving time in federal facilities. Because Congress did not block the Commission's decision, the change went into effect on November 1, 2014. Of the nearly 6,000 people who were set to be released, only approximately 1,000 of these people went home directly. Many of them—about 3,500—left prison for halfway houses or home confinement. Approximately 1,700 people were transferred to the Department of Immigration and Customs Enforcement to face possible deportation hearings.

13 Michael D. Shear, "Obama Commutes Sentences of 58 Nonviolent Offenders," *The New York Times*, May 6, 2016, p. A13; Sari Horowitz, "President Obama Just Commuted the Sentences of 58 people. Here are their names," *Washington Post*, May 5, 2016 (https://perma.cc/GA56-ZVJ4).

14 Ram Subramanian, Rebecka Moreno, and Sophie Gebreselassie, *Relief in Sight?* (New York: Vera Institute of Justice, 2014).

15 See for example Christopher T. Lowenkamp and Edward J. Latessa, 2004.

16 Devah Pager, 2007; Talia Sandwick et al., 2013. Regarding mass incarceration's impact on communities, see Todd R. Clear, 2009. Regarding its impact on families, see Donald Braman, 2004, and Philip M. Genty, 2002. For mass incarceration's impact on African American families in particular, see Dorothy E. Roberts, 2004.

17 The percentage of the jail population reporting a mental illness—15 percent for men and 31 percent for women—is estimated at up to six times that of the general population—3 percent for men and 5 percent for women. Subramanian et al., *Incarceration's Front Door : The Misuse of Jails in America (New York: Vera Institute of Justice, 2015);* A 2014 report issued by the Treatment Advocacy Center found that the population of individuals with diagnosed mental illness in the criminal justice system was 10 times the population of those housed in mental health treatment facilities throughout the country. E. Fuller Torrey, et al., *The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey* (Arlington, VA: Treatment Advocacy Center, 2014), 6. Police officers properly trained to do on-site risk and needs assessment of people with mental illness are able to divert certain offenders to proper care facilities. For people with mental illness who have committed an offense requiring arrest and booking, proper risk and needs assessment in the early stages of prosecution can reduce the time spent in custody, and shift the focus toward diversion and community treatment. H. Richard Lamb, Linda E. Weinberger, and Walter J. Decuir, Jr., "The Police and Mental Health," *Psychiatric Services* 53, no. 10 (October 2002): 1266-1271.

18 Crisis Intervention Team (CIT) training is based on a system originally developed in Memphis that "provides a forum for effective problem solving regarding the interaction between the criminal justice and mental health care system and creates the context for sustainable change." Randolph Dupont, Major Sam Cochran, and Sarah Pillsbury, *Crisis Intervention Team Core Elements* (Memphis, TN: The University of Memphis School of Urban Affairs and Public Policy, 2007), 3. Through officer training and cooperation with local mental health professionals and agencies, CITs provide on-scene intervention and problem-solving to divert those with mental illness away from the criminal justice system and into appropriate community facilities. Ibid.

19 The use of deferred adjudication has been proven to reduce both the cost of incarceration and the rate of recidivism. Council of State Governments Justice Center, *Lessons from the States: Reducing Recidivism and Curbing Corrections Costs Through Justice Reinvestment* (New York, NY: Council of State Governments Justice Center, 2013), 4.

20 "Problem-solving courts each seek to address a different set of problems, from systemic concerns such as exponential increases in criminal caseloads, growing jail and prison populations, and decreasing public confidence in justice, to individual-level problems like drug addiction, domestic violence and community disorganization." Rachel Porter, Michael Rempel, and Adam Mansky, *What Makes a Court Problem-Solving?* (New York: Center for Court Innovation, 2010), 1.

21 West Huddleston and Douglas B. Marlowe, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States* (Alexandria, VA: National Drug Court Institute, 2011), 7.

22 For information on the efficacy of problem-solving courts, see C. West Huddleston III, Douglas B. Marlow, and Rachel Casebolt, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States,* Vol. 2, No. 1 (Alexandria, VA: National Drug Court Institute, 2008), 6-8. See also Shelli B. Rossman et al., *Multi-Site Adult Drug Court Evaluation (MADCE), 2003-2009* (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2012).

23 On studies challenging claims about the recidivism-reduction and cost-reduction impact of problem-solving courts, see "Drug Courts: Overview of Growth, Characteristics, and Results" (Washington, DC: U.S. General Accounting Office, 1997); on requiring mandatory longer-term and more restrictive treatment than is clinically necessary, see Jim Parsons et al., *The End of an Era? The Impact of Drug Reform in New York City* (New York: Vera Institute of Justice, 2015); on reorienting drug courts around clinically appropriate treatment methods, see "Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use" (New York: Drug Policy Alliance, 2011).

24 Specialty court programs includes: (1) A pre-adjudication program (2) An approved drug court program; (3) A Swift and Certain Accountability on Probation Pilot Program; and (4) Any other specialty court program that has been approved by the Supreme Court, including DWI courts, mental health courts, veterans courts, drug courts, "HOPE" courts, "smarter sentencing" courts, and mental health crisis intervention centers.

25 Vera Institute of Justice, *The Continuing Fiscal Crisis in Corrections: Setting a New Course* (New York: Vera Institute of Justice, 2010), 4-6.

26 On the limited impact long sentences have on crime rates, see Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, *What Caused the Crime Decline?* (New York: Brennan Center for Justice, 2015), 7-8. On the failure of long sentences in reducing recidivism, see The Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Center on the States, 2011). For research indicating that shorter sentences do not have an adverse impact on public safety, see for example United States Sentencing Commission, *Recidivism among Offenders with Sentence Modifications Made Pursuant to Retroactive Application of 2007 Crack Cocaine Amendment* (Washington, DC: United States Sentencing Commission, 2011).

27 See generally Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies* (Denver, CO: National Conference of State Legislatures, 2015), 2.

28 Based on internal 50-state-survey research done by the Vera Institute of Justice, January 2015.

29 See E. Ann Carson, *Prisoners in 2013* (Washington, DC: U.S. Department of Justice, 2014), Table 14.

30 Ram Subramanian, Rebecka Moreno, *Drug War Détente? A Review of State-level Drug Law Reform, 2009-2013* (New York: Vera Institute of Justice, 2014).

31 This law is modeled on the federal precedent, which similarly eliminated such disparities. *The Fair Sentencing Act of 2010,* Public Law 111-220, 124 STAT. 2372, amended the *Controlled Substances Act* (21 U.S.C. 841) to make federal sentencing guidelines more equitable by shifting the threshold amount of crack cocaine required that triggers prosecution and mandatory minimums. Previously, the penalties were widely disparate, resulting in a discriminatory racial impact.

32 For example, possession of marijuana becomes a Class B misdemeanor instead of Class A; dealing in marijuana becomes a Class A misdemeanor, unless the person has a prior drug conviction and the amount of drug involved is over a certain weight, which makes it a Level 5 or 6 felony offense.

33 For a review of evaluations on the crime-deterrent effect of mandatory penalties, see Michael Tonry, "The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings," 38 *Crime & Justice* (2009) 94-96. Also see Marc A. Levin and Vikrant P. Reddy, *The Verdict on Federal Prison Reform: State Successes Offer Keys to Reducing Crime & Costs* (Austin: Texas Public Policy Foundation, July 2013); Alison Lawrence and Donna Lyons, 2011; Cheryl Davidson, *Outcomes of Mandatory Minimum Sentences for Drug Traffickers* (Des Moines: Iowa State Advisory Board, Division of Criminal and Juvenile Justice Planning, Iowa Department of Human Rights, 2011); Marc Mauer, "The Impact of Mandatory Minimum Penalties in Federal Sentencing." (Nashville: *Judicature*, 2010, Volume 94, Number 1); Nicole D. Porter, *The State of Sentencing 2012* (Washington, DC: The Sentencing Project, 2012). For the impact of long sentences on recidivism, see The Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Center on the States, 2011).

34 To read more about the history and current trends in mandatory minimum sentencing, see Ram Subramanian and Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences* (New York: Vera Institute of Justice, 2014).

35 States have also allowed early discharge from community supervision through earned credits. See for example, Illinois SB 3267 and Louisiana HB 1257.

36 *Miller v. Alabama,* 567 U.S. ___ (2012). Building upon prior cases that barred capital punishment for juveniles, and life without the possibility of parole for juveniles in non-homicide cases, the Supreme Court did not summarily ban sentencing juveniles to life without the possibility of parole, but instead acknowledged that such a mandatory sentencing scheme was inappropriate and that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." Miller slip op. at 27.

37 See, for example, Ram Subramanian et al., *Recalibrating Justice,* 2014: 16-24.

38 Ibid., p.15.

39 See Cecelia Klingele, "Rethinking the Use of Community Supervision," *Journal of Criminal Law and Criminology* 103, no. 4 (2013): 1019 & n.14 (citing reports from 2005 and 2007).

40 Amy L. Solomon, et al., *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (Washington, DC: Urban Institute, Justice Policy Center, 2008)

41 Nancy LaVigne, et al., *Justice Reinvestment Initiative State Assessment Report* (Washington, DC: Urban Institute, 2014), 19-20.

42 See for example, Oregon Department of Corrections, *The Effectiveness of Community-Based Sanctions in Reducing Recidivism* (Salem, OR: Oregon Department of Corrections, 2002).

43 Ibid., p. 4.

44 A validated risk and needs assessment tool uses an algorithm based on criminal history data and personal characteristics (age, education, etc.) to assess someone's risk of reoffending and to identify the kind of treatment that could mitigate the risk of reoffending.

45 See generally *A Shared Sentence: the devastating toll of parental incarceration on kids, families and communities* (Baltimore, MD: The Annie E. Casey Foundation, 2016).

46 For information regarding prisoner reentry needs and challenges, see for example, Jeremy Travis et al., 2001. Devah Pager, 2007, 59; and Talia Sandwick et al., 2013.

47 Ram Subramanian and Rebecka Moreno, *Relief in Sight?* 2014: 4-9. Also see, Lois M. Davis, et. al., *Evaluating the Effectiveness of Correctional Education* (Washington DC: RAND Corporation, 2013), 2-4.

48 For research that discusses specific risk factors for reoffending, see for example, M. Makarios et. al., 2010: 1377-1391.

49 See generally Jeremy Travis et al., 2001. "[M]ost [returning inmates] have not completed high school, have limited employment skills, and have histories of substance abuse and health problems….Returning prisoners have served longer prison sentences than in the past, meaning they may be less attached to jobs, their families, and the communities to which they return." Ibid., p. 9.

50 Solomon et al., 2008: 14-15.

51 Nancy La Vigne, et al., *Release Planning for Successful Reentry: A Guide for Corrections, Service Providers and Community Groups* (Washington, DC: The Urban Institute, 2008).

52 The legislation also expands eligibility for certain treatment options as a condition of probation for people who have committed nonviolent methamphetamine offenses.

53 For more on the connection between family contact and reduced behavioral infractions see John D. Wooldredge, "Inmate Experiences and Psychological Well-Being," *Criminal Justice and Behavior* 26, no. 2 (1999): 235-250; see also Shanhe Jiang and L. Thomas Winfree, "Social Support, Gender, and Inmate Adjustment to Prison Life: Insights from a National Sample," *The Prison Journal* 86, no. 1 (2006): 34, 50-51. For more on the connection between family contact and recidivism, see Grant Duwe and Valerie Clark, "Blessed Be the Social Tie that Binds: The Effects of Prison Visitation on Offender Recidivism," *Criminal Justice Policy Review* 24, no. 3 (2013): 271-296; see also Williams D. Bales and Daniel P. Mears, "Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?" *The Journal of Research in Crime and Delinquency* 45, no. 3 (2008): 287-321.

54 Vera Institute of Justice, *Why Ask About Family?* (New York: Vera Institute of Justice, 2011).

55 A recent meta-analysis of extant research found that children of incarcerated parents were more than three times as likely as other children to become justice-involved. See James M. Conway and Edward T. Jones, *Seven Out of Ten? Not Even Close: A Review of Research on the Likelihood of Children with Incarcerated Parents Becoming Justice-Involved* (New Britain, CT: Central Connecticut State University, 2015), 5.

56 Nancy La Vigne, et al., 2008.

57 For research that addresses the effects of employment, housing, and educational opportunities on recidivism, see Matthew Makarios, et al., 2010: 1377-1391. See also Alfred Blumstein and Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47, no. 2 (2009): 331.

58 For information on the limited availability of future federal loan assistance for people who were convicted of drug offenses while receiving federal financial aid, see Office of National Drug Control Policy and U.S. Department of Education, *FAFSA Facts*, available at https://perma.cc/VH87-JFWN.

59 Incarceration reduces hourly wages for men by 11 percent, annual employment by nine weeks, and annual earnings by 40 percent. The Economic Mobility Project and The Public Safety Performance Project, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Washington, DC: The Pew Charitable Trusts, 2010), 4.

60 Michelle N. Rodriguez and Maurice Emsellem, *65 Million "Need Not Apply": The Case For Reforming Criminal Background Checks for Employment* (New York, NY: The National Employment Law Project, 2011). In 2010, black men between the ages of 20 and 24 were more likely to be incarcerated than employed and black men were six times as likely to be incarcerated as their white counterparts. See George Gao, Pew Research Center, "Chart of the Week: The Black-White Gap in Incarceration Rates," July 18, 2014. https://perma.cc/8TTC-Y5NF

61 According to the Society for Human Resource Management, the two most common reasons for not hiring ex-offenders are the risk of a crime being committed at work and the fear of a negligent hiring lawsuit. See Society for Human Resource Management, "Background Checking—The Use of Criminal Background Checks in Hiring Decisions," Jul. 19, 2012. Some states that provide certificates of rehabilitation protect employers from some claims of tort liability in the event an employee with a criminal history and certificate of rehabilitation commits a crime or causes harm to another person (for example, a customer, client, or another employee) while carrying out his or her work duties.

62 Subramanian, et al. *Incarceration's Front Door*, 2015: 15-16. In addition, since 2010, at least 24 states have allowed a "pay-to-stay" policy for prisons and jails, under which people who are incarcerated pay fees for their care and lodging. This number is likely a low estimate of actual practices, because many states implement fees through departmental policy and other non-legislative routes. See Lauren-Brooke Eisen, "Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause," *Loyola Journal of Public Interest Law*, 15 (Spring 2014): 322-323. Indeed, across the country, people in jails and prisons pay anywhere from $1 a day to $155 a day for room and board, with additional fees for medical costs, toiletries, and transportation. Lauren-Brooke Eisen, Brennan Center for Justice blog, "Tennessee Inmates Must 'Pay-to-Stay,'" https://perma.cc/5UNR-7TES (August 28, 2013).

63 An example of such an outcome is the story of a Georgia man, arrested for stealing a can of beer, who was offered electronic monitoring in lieu of incarceration. Since he could not afford the nearly $400-per-month fees, he was sentenced to 12 months in jail. See Joseph Shapiro, "Measures Aimed at Keeping People Out of Jail Punish the Poor," NPR News, May 24, 2014; see also Lauren-Brooke Eisen, *Charging Inmates Perpetuates Mass Incarceration* (New York, NY: Brennan Center for Justice, 2015).

64 Wayne A. Logan, "Informal Collateral Consequences," *Washington Law Review* 88 (2013) at 1104-5 and 1107-1109. Also see, Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," *UC Davis Law Review* 45 (2011): 287-88.

65 Regarding technology's impact on the accessibility of criminal history information, see James Jacobs and Tamara Crepet, "The Expanding Scope, Use, and Availability of Criminal Records," *NYU Journal of Legislation & Public Policy* 11 (2008): 177. For an overview of commercial criminal record databases, see SEARCH, The National Consortium for Justice Information and Statistics, "Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information" (Sacramento, CA: SEARCH Group, 2005).

66 Most states' websites have an online request form, where, for a nominal fee, a visitor can access statewide criminal records. The application carries a disclaimer that records cannot be guaranteed to be correct or up to date, and should not be used for employment or housing purposes. However, there are no mechanisms by which a state can monitor the purpose of a background check. For examples of state policies and background check applications, see Tennessee Open Records Information Service, https://perma.cc/W3XB-BUVB; New York State Department of Criminal Justice Services, https://perma.cc/75AY-XDKH; Ohio Bureau of Criminal Investigation, https://perma.cc/2NU4-DPWY.

67 National Conference of State Legislatures, "Mug Shots and Booking Photos," November 11, 2014.

68 For information regarding the collateral effects of arrest records, see Shawn D. Stuckey, "Collateral Effects of Arrests in Minnesota," *University of St. Thomas Law Journal* 5, no. 1 (2008): 335; H. Lane Dennard, Jr. and Patrick C.

DiCarlo, *Collateral Consequences of Arrests and Convictions: Policy and Law in Georgia* (Macon, GA: Mercer Law School, 2009); and Gary Fields and John R. Emshwiller, "As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime," *Wall Street Journal*, August 18, 2014. b Stuckey, 2008, pp. 343-344.

69 For the remainder of the bill summaries in this section, where we refer to publishing photos or information, we are referring to both print and electronic distribution.

70 Dan Adams, "Legal marijuana could be a $1.1 billion industry in Mass. by 2020," *Boston Globe*, Mar. 27, 2016.

71 Rick Green, "Oklahoma House passes criminal justice reform measures", *The Oklahoman*, Mar. 8, 2016; Graham Lee Brewer, "Coalition wants to give voters a choice on criminal justice reform in Oklahoma," *The Oklahoman*, Jan. 29, 2016.

72 Graham Lee Brewer, "Is criminal justice reform in Oklahoma on the table for the 2015 legislative session?" *The Oklahoman*, Nov. 24, 2014; Gene Perry, "Has Governor Fallin turned a corner on criminal justice reform?, Oklahoma Policy Institute , okpolicy.org, Sept. 15, 2014, https://perma.cc/7UCQ-A65H.

Acknowledgements

The authors would like to thank Fred Patrick for his insight and guidance throughout the drafting of this report. A special thank you to Patricia Connelly, Alice Chasan, and Erika Turner for their hard work in the editing and review process; Carl Ferrero for designing the report; Kristine Riley for her research assistance; and, as always, Mary Crowley for her generous assistance. Finally, we'd like to thank our former and current legal and graduate interns who contributed essential research and editing at various stages—Kathleen Culhane, Christina Domínguez, Sophie Klinger, and Khushboo Sapru.

About Citations: As researchers and readers alike rely more and more on public knowledge made available through the Internet, "link rot" has become a widely acknowledged problem with creating useful and sustainable citations. To address this issue, the Vera Institute of Justice is experimenting with the use of Perma.cc (https://perma.cc), a service that helps scholars, journals, and courts create permanent links to the online sources cited in their work.

An electronic version of this report is posted on Vera's website at www.vera.org/pubs/state-sentencing-and-corrections-trends-2014-2015.

The Vera Institute of Justice is an independent nonprofit organization that combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety. For more information, visit www.vera.org.

For more information about this report and Vera's work on sentencing and corrections policy within the criminal justice system, please contact Ram Subramanian, director of publications, Center on Sentencing and Corrections, at rsubramanian@vera.org.

Suggested Citation

Rebecca Silber, Ram Subramanian, and Maia Spotts. *Justice in Review: New Trends in State Sentencing and Corrections 2014-2015.* New York: Vera Institute of Justice, 2016.

altus GLOBAL ALLIANCE

Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Tel: (212) 334-1300

Washington DC Office
1111 14th St. NW, Suite 920
Washington, DC 20005
Tel: (202) 465-8900

New Orleans Office
546 Carondelet St.
New Orleans, LA 70130
Tel: (504) 593-0937

Los Angeles Office
707 Wilshire Blvd., Suite 3850
Los Angeles, CA 90017
Tel: (213) 223-2442

VERA INSTITUTE OF JUSTICE