

Winnable criminal justice reforms

A Prison Policy Initiative briefing on promising state reform issues for 2019

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Ending prison gerrymandering

Problem: The Census Bureau's practice of tabulating incarcerated people at correctional facility locations (rather than at their home addresses) leads state and local governments to draw skewed electoral districts that grant undue political clout to people who live near large prisons and dilute the representation of people everywhere else.

Solution: States can pass legislation to count incarcerated people at home for redistricting purposes, as California, Delaware, Maryland, and New York have done. Ideally, the Census Bureau would implement a national solution by agreeing to tabulate incarcerated people at home in the next Census, but time has run out for that change before the 2020 Census, so states must prepare their own fix.

Model bill: <https://www.prisonersofthecensus.org/models/example.html>

More information: Prison Gerrymandering Project website <https://www.prisonersofthecensus.org>

Lowering the cost of calls home from prison or jail

Problem: The prison and jail telephone industry offers correctional facilities hefty kickbacks in exchange for exclusive contracts. While most state prison phone systems have lowered their rates, many jails are still charging exorbitant prices for in-state calls. Families of people incarcerated in jails frequently pay over \$1.50 per minute for phone calls.

Solution: The Federal Communications Commission approved a series of historic regulations in 2013 and 2015 that would make calls home from prisons and jails more affordable, but it has now abandoned its defense of those regulations, stepping back completely from regulating in-state rates. States can easily pick up where the FCC has left off and pass legislation requiring the state prison systems and counties to negotiate for phone calls and video visitation services for people in their custody on the basis of the lowest cost to the consumer, and state Public Utilities Commissions can also regulate the industry.

Example bill: New York Corrections Law § 623 bans commissions and requires that contracts be based on the lowest possible cost to consumers. However: this New York law only applies to contracts with state prisons. The ideal solution would apply to both state prison and local jail contracts. (The strongest state regulations are by the Alabama Public Service Commission, so state regulators in other states will find Alabama's regulations helpful.)

More information: Beyond capping phone rates directly, our ideas for state legislation are explained at "What would prison telephone justice look like?" <https://www.prisonpolicy.org/blog/2015/09/29/state-reform-phones/>. In late 2018, we'll be publishing a report with a national county jail rate survey and more reform ideas. For this report and more information, see our website at <https://www.prisonpolicy.org/phones/>

Protecting in-person family visits from the video calling industry

Problem: Video calling is quietly sweeping the nation's prisons and local jails. Unfortunately, rather than providing the video technology as an additional way for families to stay connected, private companies and sheriffs are working together to replace traditional in-person family visits with expensive, grainy computer chats.

Solution: Follow the lead of Texas and California, both of which have passed legislation that requires jails to provide in-person visits rather than video calls.

Example bill: Texas' HB 549 (2015) clarifies that Texas jails must provide a minimum of two in-person visits — not video calls — per week. (Note: this Texas law allows for the Texas Commission on Jail Standards to exempt counties who incurred significant costs when they replaced in-person visits with video calls. The ideal solution would protect family visitation even further by not including a grandfather clause.)

(continued on pages two to four)

More information: *Screening Out Family Time: The for-profit video visitation industry in prisons and jails* <https://www.prisonpolicy.org/visitation/>

Stopping automatic driver's license suspensions for drug offenses unrelated to driving

Problem: 10 states have failed to repeal an outdated relic from the War on Drugs — automatic driver's license suspensions for all drug offenses, including those unrelated to driving. Our analysis shows that there are approximately 175,000 licenses suspended every year for non-driving drug convictions. These suspensions disproportionately impact low-income communities and waste government resources and time.

Solution: Alabama, Arkansas, Florida, Michigan, Mississippi, New Jersey, New York, Texas, Utah, and Virginia should formally opt out of the federal automatic suspension law. There is no financial penalty for opting-out as long as states pass a legislative resolution and the governor informs the Federal Highway Administration.

More information: Our *Driver's License Suspensions* page, <https://www.prisonpolicy.org/driving/>

Repealing or reforming ineffective and harmful sentencing enhancement zones

Problem: Most states have laws that are intended to keep children safe by creating enhanced penalties for various drug crimes committed within a certain distance of schools. These laws sound like a common sense approach, but our research has shown that these laws do not work and exacerbate harmful racial disparities in the criminal justice system.

Solution: The most comprehensive solution is for states to repeal the enhancement zones, and instead rely on the already-existing laws that give additional penalties for involving children in drug activity. Barring repeal, there are several other ways to modify the scope of the law. The simplest approach is reducing the size of the zones like Massachusetts and New Jersey did. Alternatively, do as Connecticut did in 2015 and make the enhancement penalty subject to judicial discretion rather than mandatory.

More information: "Sentencing enhancement zones fail to protect children and worsen racial disparity in incarceration" <https://www.prisonpolicy.org/zones.html>

Protecting letters from home in local jails

Problem: Sheriffs in at least 14 states — Arizona, California, Colorado, Florida, Georgia, Kentucky, Kansas, Maryland, Michigan, Missouri, Oregon, Tennessee, Utah, and Washington — have been experimenting with a harmful policy in local jails: banning letters from home.

Solution: States can send a clear message about the importance of protecting family communication by passing a bill or administrative rule requiring correctional facilities to allow personal letter correspondence.

Example rule: "Inmates shall be permitted to send as many letters of as many pages as they desire, to whomever they desire... [and] may receive correspondence in any quantity, amount, and number of pages." (Texas Commission on Jail Standards, Inmate Correspondence Plan (Rule §291.2))

More information: *Protecting Written Family Communication in Jails: A 50-State Survey* <https://www.prisonpolicy.org/postcards/>

Requiring racial impact statements for criminal justice bills

Problem: Some criminal justice bills unnecessarily and unintentionally exacerbate racial and ethnic disparities in arrest, sentencing, and incarceration rates.

Solution: Connecticut, Iowa, and Oregon have passed legislation to provide for racial impact statements that prospectively evaluate whether or not proposed criminal justice legislation is likely to have a racially or ethnically disparate impact.

Example bills: Iowa House File 2393 (2008), Connecticut Public Act 08-143 (2008), Oregon Senate Bill 463 B (2013).

More information: "Oregon passes legislation to rein in racial disparities in criminal law; which state will be next?" <https://www.prisonpolicy.org/blog/2013/07/09/or-sb463/>

Creating a Safety Valve for Mandatory Minimum Sentences

Problem: Mandatory minimum sentences have fueled the country's skyrocketing incarceration rates, harming individuals and undermining our communities and national well-being, all without significant increases to public safety.

Solution: The best course is to repeal mandatory minimum laws so that judges can craft sentences to fit the unique circumstances of each crime and individual, but where that option is not possible — either because of political or legislative realities — states should adopt sentencing “safety valve” laws, which give judges the ability to deviate from the mandatory minimum under specified circumstances.

More information, model bill language, and example bills:

Families Against Mandatory Minimums (FAMM): *Turning Off the Spigot: How Sentencing Safety Valves Can Help States Protect Public Safety and Save Money* <https://fammm.org/wp-content/uploads/State-Safety-Valve-Report-Turning-Off-the-Spigot.pdf> American Legislative Exchange Council (ALEC): “Justice Safety Valve Act” <https://www.alec.org/model-policy/justice-safety-valve-act/>

Eliminating “pay only” probation and regulating privatized probation services

Problem: At least thirteen states (Alabama, Colorado, Florida, Georgia, Idaho, Kentucky, Michigan, Mississippi, Missouri, Montana, Tennessee, Utah, and Washington) outsource misdemeanor probation services to private probation companies. Despite the 1983 Supreme Court case, *Bearden v. Georgia* — which ruled that probationers cannot be jailed simply for failing to pay a fine they cannot afford — privatized probation has led to modern-day debtor's prisons. Now, with the growth of privatized probation, people who are convicted of extremely minor offenses but cannot pay the fine are sentenced to “pay only” probation. As a result, people who do not pose a threat to public safety are being placed on probation and, when they are unable to afford probation fees, are jailed.

Solutions: Pass legislation that would eliminate or regulate the use of privatized probation consistent with the Human Rights Watch's nine recommendations for states on pages 7–8 of *Profiting from Probation: America's “Offender-Funded” Probation Industry*.

More information: Human Rights Watch, *Profiting from Probation: America's “Offender-Funded” Probation Industry* https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf

Reducing pretrial detention

Problem: Many people who face criminal charges are unnecessarily detained before trial. Often the sole criteria for release is access to money for bail. This puts more pressure on defendants to accept plea bargains, and destabilizes the life of the person who is incarcerated, which can result in the loss of an apartment, a job, and even custody of children. It also leads to jail overcrowding which drives the need for more and bigger jails, thus wasting taxpayer dollars.

Solutions: States are addressing this problem with a variety of approaches, including bail reform, ending money bail, pretrial services including monitoring and curfews, drug testing and treatment, and postcard or phone reminders to appear in court.

More information: Pretrial Justice Institute: <https://www.pretrial.org>, Massachusetts Women's Justice Network: “Moving Beyond Incarceration for Women in Massachusetts: The Necessity of Bail/Pretrial Reform” http://www.wcwonline.org/images/PolicyBrief3.15.Bail.Pretrial_Reform.pdf, and Criminal Justice Policy Program at Harvard Law School: <http://cjpgp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf>

Decreasing state incarceration rates by reducing jail populations

Problem: One out of every three people behind bars is being held in a local jail. Jails are ostensibly locally controlled, but the people held there are generally accused of violating state law, and all too often state policymakers ignore jails. Spending time in jail leads to a number of collateral consequences and other financial roadblocks to successful reentry, and higher recidivism rates that lead to higher state prison populations.

Solutions: States should address *state* causes of growing local jail populations. Although local practices and federal laws also impact jail incarceration rates, there are discrete small steps that state legislatures can take that would have a big impact.

In addition to some of the other reforms listed in this briefing, further examples include:

- Encourage judges to use non-monetary sanctions, rather than fines and fees, and ensure that judges are holding indigency hearings before imposing and enforcing unaffordable fees.
- Reclassify criminal offenses and turn misdemeanor charges that don't threaten public safety into non-jailable infractions.
- Make citations, rather than arrest, the default action for certain low-level crimes.

More information: *Era of Mass Expansion: Why State Officials Should Fight Jail Growth* <https://www.prisonpolicy.org/reports/jailsovertime.html>

Curbing the exploitation of people released from custody

Problem: Correctional facilities are increasingly using fee-riddled cards to repay people they release for money in their possession when initially arrested, money earned working in the facility, or money sent by friends and relatives. Before the rise of these release cards, people were given cash or a check. Now, they are given a mandatory prepaid card instead, which comes with high fees that eat into their balance. For example, the cards charge for basic things like having an account (up to \$3.50/week), making a purchase (up to \$0.95), checking your balance (up to \$3.95), or closing the account (up to \$30.00).

Solution: States can prohibit facilities from using release cards that charge fees, and require other fee-free alternative payment methods.

Model bill: <https://www.prisonpolicy.org/releasecards/model.html>

More information: Our *Release Cards* page at <https://www.prisonpolicy.org/releasecards/>

Ending electronic monitoring for individuals on parole

Problem: Individuals on parole face an array of conditions that may result in them being returned to prison even without committing another crime. Electronic monitoring imposes unnecessary, often contradictory conditions on recently released individuals, hindering their movement, and creating serious barriers to successful reentry.

Solution: States can introduce and enforce legislation that would outlaw the imposition of electronic monitoring devices for individuals on parole. Until then, individuals forced to wear electronic monitors should not be required to pay for those devices or be fined or re-incarcerated for their inability to pay monitoring fees.

More information: Challenging E-Carceration provides details about the encroachment of electronic monitoring into community supervision: <https://www.challengingcarceration.org> and fact sheets, case studies, and possible solutions are available from the Center for Media Justice: <https://centerformediajustice.org/our-projects/challengingcarceration-electronic-monitoring/>

Shortening excessive prison sentences

Problem: Nationally, one of every six people in state prisons have been incarcerated for a decade or more. While many states have taken laudable steps to reduce the number of people serving time for low-level offenses, little has been done to bring relief to people needlessly serving decades in prison.

Solution: State legislative strategies include: enacting presumptive parole, second-look sentencing, and other common-sense reforms, such as expanding good time.

Model bill: <https://www.prisonpolicy.org/releasecards/model.html>

More information: Our report, *Eight Keys to Mercy*, presents several effective options for states looking to shorten excessive sentences, including examples of model legislation: <https://www.prisonpolicy.org/reports/longsentences.html>

For interesting reports that can help you make the case for criminal justice reform in your state, see <http://www.prisonpolicy.org/national/>