

DRUG POLICY ALLIANCE

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STATE OF THE STATES

DRUG POLICY REFORMS: 1996-2002
A REPORT BY THE DRUG POLICY ALLIANCE

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EXECUTIVE SUMMARY

This report details over 150 notable drug policy reforms enacted by voters and legislators in 46 states between 1996 and 2002. This is the first comprehensive documentation of these important political developments, and is designed to allow ready analysis both by region and type of reform. Unlike their federal counterparts, who by and large remain paralyzed by decades of failed drug war rhetoric and inertia, state officials and the voting public are moving forward. The number and scope of these reforms provide evidence of diminishing public confidence in the reflexively “get-tough” answers of the drug war, and a growing commitment to approaches rooted in science, fiscal responsibility, public health and civil rights.*

The reforms discussed in this report were initiated, sponsored and supported by Democrats, Republicans, Libertarians, Greens and Independents. They have passed in states from Maine to Hawaii, from Michigan to Mississippi. They vary widely in language, reach and effect. Some were passed with relative ease; others required years of political advocacy and negotiation. Some have been implemented smoothly; others remain contested. Some were achieved by direct voter initiative, others by legislative action and gubernatorial approval. These measures address a broad range of issues relating to racial justice, drug treatment, property rights, HIV/AIDS and more. They allow people to grow and use marijuana for medical purposes; reduce senselessly long and costly prison sentences for nonviolent drug offenders; increase legal access to sterile syringes to reduce the spread of HIV/AIDS; restore the rights and duties of citizenship to those with a felony conviction in their past; curtail the excesses and abuses of asset forfeiture by government agencies; and so on. Each reform supplants, at least partially, a priority of punishment – zero tolerance, arrest, incarceration – with a priority of pragmatism, fairness or public health.

These reforms reflect an emerging “harm reduction” consciousness among the public and legislatures: the awareness that not just drug abuse, but also misguided drug policies, can cause grave harms to individuals and society – and that the ideal policies are those which reduce both kinds of harm as effectively and humanely as possible.

* While this report is a comprehensive overview of most state drug policy reforms from 1996 to 2002, it does not cover every reform. It examines only those drug policy reforms enacted by state legislators and voters. It does not cover reforms enacted through executive order or regulatory change, reforms enacted at the local level, or any reforms since December 31, 2002. It also documents only a few of the dozens of other drug policy reform bills in many states which passed both chambers of the legislature, only to be vetoed by the governor. This report does not cover legislation that appropriates money for drug treatment programs, unless the money was explicitly shifted away from the criminal justice system.

Many of the reforms described here, as well as the harm reduction perspective underlying them, are well established in Canada, nations of Western Europe, Australia, New Zealand and a growing number of other countries. The tragedy in the United States is that these reforms were resisted for so long, and that so much more needs to be done.

Between 1996 and 2000, voters approved seventeen of nineteen proposed statewide drug policy reform ballot initiatives – to legalize marijuana for medical purposes, reduce asset forfeiture abuses, and divert nonviolent drug possession offenders from prison to treatment. This series of victories suggests that the public is ahead of the politicians in recognizing the failures and excesses of the drug war. But the much greater number of drug policy reforms enacted by state legislators and signed by governors also suggests that the fear of being labeled “soft” on drugs or crime no longer paralyzes the political process. Importantly, voters have not punished their representatives for backing the reforms described here. Instead, they have repeatedly reelected them.

The Drug Policy Alliance and associated organizations have played an important role in initiating, drafting and advocating for many of the drug policy reforms described in this report, as well as in helping to protect and implement the new laws. Our offices in California, New Mexico, New Jersey and New York are deeply engaged in drug policy reform efforts in those states, while our national organization advises and supports reform efforts in roughly half the states nationwide. The pace of reform will only accelerate as public opinion shifts increasingly against the drug war; as budget crises force states to adopt money-saving (and more effective) alternatives to incarceration; and as public health concerns, scientific evidence and drug policy reform advocacy undo the damage caused by the drug war excesses of the past.

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TABLE OF CONTENTS

Executive Summary	i
Drug Policy Reforms: 1996-2002 – Selected Issues	1
Drug Policy Reforms: 1996-2002 – Selected States	11
Appendices:	
Appendix A: Complete State Listing	30
Appendix B: Reforms By Year	38
Appendix C: Voter-Approved Reforms	42
Appendix D: Reforms By Issue	43
References:	47

FIRST EDITION

DRUG POLICY REFORMS: 1996-2002
SELECTED ISSUES

DRUG POLICY REFORMS: 1996-2002 SELECTED ISSUES

ADVANCING ALTERNATIVES TO INCARCERATION

Diversion of certain nonviolent drug offenders from prison to drug treatment

Substance abuse is one of the few health issues in which criminal justice approaches have taken precedence over medical and public health concerns. A strong punitive emphasis has persisted for decades, despite abundant evidence that it often only exacerbates social problems – including those it is intended to address. Millions of Americans continue to struggle with drug abuse, most of them without access to effective, affordable treatment. Millions of others suffer from drug-related harms such as fatal overdose, AIDS, or incarceration, which are either generated or worsened by drug policies themselves.

Voters and legislators are looking to reduce these harms more effectively in their states. In an era of budget crisis, state governments are under strong pressure to reduce prison overcrowding and other law enforcement excesses. “Alternatives to incarceration” divert certain nonviolent drug offenders from prison to drug treatment, offering compassionate options in public policy, with obvious fiscal advantages.

Where punishment often fails, appropriate and high-quality drug treatment often works. A study conducted for the White House’s Office of National Drug Control Policy, for example, found treatment to be 15 times more cost-effective than law enforcement at reducing cocaine abuse.¹ (Imprisonment costs an average of \$30,000 per person per year, while treatment can cost as little as \$4,000.²) Another study found that every additional dollar invested in substance abuse treatment saves taxpayers more than seven dollars in societal costs.³

Treatment has broad and growing public support. A recent survey by Peter Hart Research Associates⁴ found that more than 60 percent of voters favor providing treatment rather than prison time for people convicted of drug possession or selling small amounts of drugs.⁵

State-level momentum for alternatives to incarceration has been gaining force since 1996. Voters in Arizona⁶ and California⁷ have overwhelmingly approved measures mandating that first and second time nonviolent drug possession offenders receive drug treatment instead of incarceration. Arizona’s Proposition 200, passed in 1996, remains the national model for this type of drug policy reform. According to the Arizona Supreme Court, the initiative has resulted in a system that provides for “safer communities and more substance abusing probationers in recovery.”⁸ Similarly, California’s Proposition 36, which passed with 61 percent of the vote in 2000, diverted 30,469 people into treatment between July 1, 2001 and July 1, 2002.⁹ Due in part to the success and popularity of these two initiatives, voters and legislators around the country have begun to follow suit. In 2002, the people of Washington, D.C. passed Measure 62 with 78 percent of the vote and Hawaii’s lawmakers enacted Senate Bill 1188, both modeled after Proposition 200 and Proposition 36.

It must be noted that even these reforms are handicapped to varying degrees by the continued involvement of the criminal justice system in treatment programs. Entanglement of law enforcement with treatment can come at a high price: the sacrifice of confidentiality between patient and caregiver; the diversion of funding from voluntary and community-based treatment into coerced treatment programs, often behind bars; and the *de facto* criminalization of relapse, which is recognized as a standard occurrence for most individuals struggling with substance abuse. Advocates and lawmakers concerned about this trend stress that effective drug treatment is ideally both voluntary and community-based and need not be backed by the coercive power of the state.

PROTECTING MEDICAL MARIJUANA PATIENTS AND PROVIDERS

Regulation of legal access to medical marijuana for patients with AIDS, cancer, glaucoma and other conditions for which it provides relief

No drug policy reform is more widely supported in America today than the legalization of marijuana for medical purposes. A 1999 Gallup poll found that 73 percent of Americans favor “making marijuana legally available for doctors to prescribe in order to reduce pain and suffering.”¹⁰ According to an October 2002 Time/CNN poll, 80 percent of Americans think people should be “allowed to legally use marijuana for medical purposes if their doctor prescribes it.”¹¹

Tens of thousands of American men and women of every age, race and background use marijuana as medicine. They and their physicians have found it to be beneficial in reducing the pain, nausea and other discomfort associated with AIDS, cancer, multiple sclerosis, glaucoma and other serious conditions.¹² Many patients have found relief in marijuana when all other pain relief efforts have failed.¹³ Numerous medical and scientific studies have validated such testimony. According to a report by the national Institute of Medicine (IOM), for example, “[s]cientific data indicate the potential therapeutic value of cannabinoid drugs . . . for pain relief, control of nausea and vomiting, and appetite stimulation.”¹⁴ The IOM also concluded that “there are some limited circumstances in which we recommend smoking marijuana for medical uses.”¹⁵

Between 1996 and 2002, eight states enacted laws that offer substantial protection under state law to medical marijuana patients. Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington have all removed criminal penalties for growing, possessing and using marijuana when it is recommended by a doctor. California’s 1996 medical marijuana voter initiative, Proposition 215, passed with 56 percent of the vote, thereby establishing that major drug policy reforms could be accomplished through the initiative process.¹⁶ Proposition 215 generated national debate, stimulating medical marijuana proposals in state legislatures across the country.

Even with this widespread public and state legislative support, however, medical marijuana patients find their most powerful and active foes in Washington, D.C. The federal government has repeatedly used its discretion under federal law to arrest, prosecute and incarcerate medical marijuana patients, their caregivers and those who produce marijuana for them – even those operating with the acknowledgement and support of state and local law enforcement, elected

officials and other authorities. State governments, eager to establish effective, well-regulated distribution systems, have been deterred or blocked by vigorous federal opposition, leaving patients no choice but to obtain their medicine illegally. These federal decisions have prevented states and localities from implementing their own initiatives and have created a general climate of fear and vulnerability among patients and providers.*

Nevertheless, the current federal campaign against medical marijuana cannot reverse most of the substantial benefits of state-level reform. As a practical matter, most marijuana arrests are made at the state and local level, so state-level reform affords significant legal protection to patients in most situations. States may protect patients and their caregivers against arrest and prosecution for cultivation and possession of marijuana sufficient to meet medical need. They may also establish registry systems to provide official identification for patients who have received a doctor's recommendation to use marijuana, eliminating confusion about qualified participants. As a statement of support for medical marijuana providers, patients and their loved ones, such measures help create more compassionate, safe and well-regulated communities. Though most states have yet to enact such protections,** medical marijuana bills are currently under consideration in roughly half a dozen legislatures, and there is reason to believe that state challenges to federal interference will become more frequent and diverse in coming years.

REFORMING DRUG SENTENCING

Reduction of severe prison sentences for nonviolent drug offenses, including elimination/reduction of notoriously harsh "mandatory minimums"

In the 1980s, many new American drug laws resulted from escalating efforts to "get tougher" on drugs and drug users. During the height of voter fear generated by the crack cocaine epidemic, state and federal lawmakers dramatically increased both prosecutorial power and criminal sanctions in drug cases. Common measures included: greatly lengthened prison sentences; removal of discretion from judges through mandatory minimum sentencing schemes and strict guideline systems; expansion of conspiracy laws to include people only peripherally involved in an offense; loosening of the evidentiary requirements to prove conspiracy; and "school-zone" sentencing enhancements that apply to a large percentage of all drug cases in many urban areas (although the majority of such cases do not involve minors or take place on school grounds).¹⁷

Twenty years later, these policies have had significant effects, most of them negative. The United States now incarcerates more than 450,000 people for nonviolent drug offenses – more than the entire European Union (with roughly 100 million more people) incarcerates for all criminal offenses combined. The vast majority of these offenders are in state and local jails and

*The Bush Administration is a fierce opponent of medical marijuana. Recent raids in California by the DEA of medical marijuana hospices caused national outrage. Arrests and prosecutions continue. Other administrations have chosen to take dramatically different stances. In 1978, for example, the federal government created the Investigational New Drug (IND) "compassionate access" program, which allowed some patients to receive medical marijuana from the government. Unfortunately, the IND was closed to new applicants in 1992 after it was flooded by applications from AIDS patients. Even today, however, seven surviving patients receive marijuana from the federal government and are completely immune from prosecution.

**Since 1978, thirty-five states have passed laws recognizing marijuana's medicinal value, but most of these have been essentially symbolic. For instance, fourteen states currently have laws that allow patients to legally use marijuana through state-run therapeutic research programs, though the federal government effectively blocks such programs by failing to provide the marijuana approved for research. Federal law also prevents doctors from prescribing marijuana in the seven states which allow such prescriptions.

prisons, where they now account for almost one-fourth of the total population behind bars. Additionally, tens or perhaps hundreds of thousands of non-drug offenders on probation or parole are imprisoned or re-imprisoned each year for nothing more than testing positive for drug use or an arrest for simple drug possession.

At the state level, however, the tide is rapidly turning across the country. At an average of \$30,000 per year per inmate, the mass imprisonment of nonviolent drug offenders is not a cost-effective or sensible policy. In an era of severe state budget crises, most states simply cannot afford these costly sentences any longer. State lawmakers from all parties and backgrounds are coalescing, in growing numbers, to reduce these costs and achieve better results for their constituents.

In 2001 and 2002 alone, twelve states enacted significant drug sentencing reforms – cutting the most excessive sentences, exempting nonviolent drug offenses from habitual offender laws like “three strikes,” and enacting “alternatives to incarceration” measures (see previous section), among other changes. In December 2002, for example, Michigan’s governor signed legislation eliminating mandatory minimum sentences from the state’s sentencing guidelines. A number of other states were rapidly emerging as reformers at the time this report went to print.

Mandatory Minimums

Among the state drug sentencing laws in most urgent need of reform are those commonly known as “mandatory minimums,” under which judges are required to sentence convicted drug offenders to long, preset prison terms, from five, ten or twenty years up to life. Sentence length is based strictly on the quantity of drugs involved in the offense. Crucial mitigating factors – the offender’s peripheral role in the offense, lack of criminal history, or clear need for drug treatment – cannot be considered. Mandatory minimums exist in 35 states for drug possession or sales offenses,¹⁸ and have put tens of thousands of nonviolent drug offenders behind bars. They routinely result in low-level and first-time offenders serving cruelly long and arbitrary sentences.

Conspiracy and “Snitch” Laws

Drug sentencing laws are generally subject to conspiracy provisions, under which a single individual, even one only peripherally involved, can be sentenced based on the amount involved in an entire drug-supply operation. In order to reduce their own penalty, defendants may cooperate with the prosecutor by “snitching” on other defendants in exchange for a reduced sentence. This combination has two harmful effects that undermine the reliability and legitimacy of the system. First, many drug conspiracy laws allow convictions based solely on the cooperating defendant’s testimony. No corroborating evidence is required, even though that person has a clear incentive to lie in exchange for a shorter sentence. Second, even when information provided is accurate, the people at the lowest levels of the drug trade – many of whom sell drugs only to support their own addiction – are charged with the full amount of drugs, yet have little useful information to trade. Paradoxically, they often receive sentences longer than those of their bosses, who have information about the involvement of many people.

REDUCING FATAL OVERDOSE

Improvement of emergency medical services to reduce the incidence of fatal overdose from illegal drugs, including the reduction of obstacles posed to such services by the threat of law enforcement interference

Annual heroin overdose deaths in the United States have roughly doubled since the early 1990s.¹⁹ In certain areas they have become an epidemic: for example, overdose was the leading cause of death for men aged 25 to 44 in Portland, Oregon in 2000, according to the Centers for Disease Control and Prevention.²⁰ In other major American cities, it is the number one, two or three cause of death for this age group.

Ample scientific evidence indicates that the overdose death rate could be cut substantially with modest public health measures and changes in public policy. In localities around the world, a variety of inexpensive initiatives have shown success: targeting prevention education at specific high-risk populations; coordinating efforts among ambulance, police and other first-responder services; training drug users in CPR and rescue breathing; and distributing naloxone – the antidote to heroin overdose, commonly known by the brand name Narcan – to emergency medical providers or directly to drug users.²¹

Many overdose fatalities occur in the presence of other people, and virtually all could be prevented with rapid medical attention. Yet those near the victim often do not call emergency services for fear of being arrested themselves – so help does not arrive until long after the overdose.²² To decrease the death rate in these circumstances, public health advocates and state legislators in a number of U.S. states are proposing legal amnesty for overdose witnesses who call 911.

Unfortunately, the federal government dedicates no funding at all to overdose prevention. Few states have implemented comprehensive statewide programs to respond to the growing problem. Just twenty states even have accurate information on overdose death rates dating back to 1990, making it difficult for health and safety officials to plan prevention and response strategies. In 2002, California – a frequent, influential pioneer in drug policy reform – passed historic legislation to track and reduce fatal overdose. California's new law joins state agencies, law enforcement, direct service providers and at-risk populations together in an unprecedented way to combat the epidemic.

BANNING RACIAL PROFILING

Prohibition of the unconstitutional and ineffective police practice of targeting suspects - most often drug suspects - solely on the basis of race

The drug war has had highly disproportionate and harmful effects on communities of color in the United States. A full exposition of this subject is beyond the scope of this report (other recent reports document aspects of this phenomenon²³), but the basic facts say a great deal. Drug use rates are roughly equal across racial lines; yet African Americans, who constitute just 13 percent of the total population, account for nearly two-thirds of incarcerated drug offenders.

This injustice is due in large part to discriminatory police practices. African Americans, Latinos and other people of color are no more likely than anyone else to use drugs, but they are far more

likely to be suspected, stopped, searched and caught than their white counterparts. In many communities, African American and Latino men are subject to routine, warrantless police drug frisks. Police targeting of minority drivers for traffic stops and unwarranted roadside searches for drugs is so common in some areas that the cause for suspicion has been mockingly referred to as “DWB” – “driving while black (or brown).” Racial profiling not only violates the civil rights of large numbers of innocent people and breaches the Constitution, but also skews arrest rates, thereby reinforcing those false perceptions that gave rise to profiling in the first place.

Between 1996 and 2002, 20 states banned racial profiling or mandated that police collect demographic data on motorists pulled over for traffic offenses (to determine the nature and extent of any racial profiling occurring). It should be noted that although the drug war is typically the driving force behind racial profiling, these reforms are not limited to drug law enforcement.

RESTORING BENEFITS AND VOTING RIGHTS TO FORMER OFFENDERS

Reduction of the “collateral consequences” of the war on drugs

Under various state and federal laws, many people convicted of drug offenses face punishments that last long after they have served their sentences. Former drug offenders and their families are denied access to public housing, college loans, welfare and other benefits – often for life. Among the most severe of these policies is a component of the 1996 federal welfare reform legislation which disallows anyone convicted of a drug offense from qualifying for federally-funded benefits such as TANF or food stamps, even after they have successfully completed their sentences.

Many former drug offenders also lose their right to vote due to state-level “felony disenfranchisement” laws. In twelve states, any person with a felony conviction, no matter how long ago it occurred, is permanently barred from voting; in dozens more, those convicted of a felony are denied the right to vote while they are on probation or parole.²⁴ Nonviolent drug felony convictions, which account for a large share of all felonies in most states, have become a leading cause of voter disenfranchisement in the United States.

These punishments do little if anything to deter drug use. They place unnecessary and counterproductive obstacles in the paths of people trying to rebuild their lives. In the case of denying benefits, they effectively punish children and other family members simply for their association with someone with a past drug abuse problem or offense. In many cases they do not apply to any other category of offense, including violent crime. These laws are particularly harmful to people of color, who disproportionately lack access to economic resources and are also disproportionately arrested and sentenced for drug offenses. Almost 1.4 million African American men, fourteen percent of the entire adult black male population in the U.S., are currently denied the right to vote because of a felony conviction – a rate seven times the national average. In Alabama and Florida, 31 percent of all black men are permanently disenfranchised.²⁵

Many state legislatures are taking measures to restore these rights and benefits to men and women who have served their sentences and returned to society. Twenty-nine states, for example, have enacted legislation opting out, partially or totally, of the 1996 federal ban on

welfare benefits to former drug offenders. Between 1996 and 2002, five states reformed their voting laws to allow ex-felons to vote (and two more did so early in 2003).

EXPANDING STERILE SYRINGE AVAILABILITY

Deregulation of the supply of sterile syringes, particularly through pharmacies and needle exchanges, to reduce the spread of HIV/AIDS, hepatitis and other infectious diseases among people who inject drugs and among their loved ones

Sharing of syringes among people who inject drugs is a crucial factor in the worldwide spread of HIV/AIDS, hepatitis C and other infectious diseases. It affects not only those people who inject drugs, but also their sexual partners and their children.²⁶ Needle sharing is already responsible, directly or indirectly, for more than 250,000 HIV infections – and over 50 percent of all pediatric AIDS cases – in the United States.²⁷

Fortunately, simple and inexpensive public health measures have proven to quickly and substantially reduce these trends. Policymakers need only change the laws that create artificial shortages of sterile syringes among people who inject drugs to begin preventing new infections immediately.²⁸ Every established medical, scientific and legal body to study the issue – including the National Academy of Sciences, American Medical Association, American Public Health Association, Centers for Disease Control and Prevention, and President George H.W. Bush's and President Clinton's AIDS Advisory Commissions – concurs in the efficacy of improved access to sterile syringes in reducing the spread of infectious diseases.²⁹

Depending on existing law in a particular state, optimal syringe law reform may require one or more of the following:

- *Deregulating the sale of syringes in pharmacies, so that pharmacies can sell sterile syringes to customers without a prescription. (Non-prescription pharmacy sale is standard throughout Western Europe, much of central and Eastern Europe, and increasingly in U.S. states.³⁰)*
- *Decriminalizing the possession of syringes, so that people who inject drugs can legally carry sterile syringes and properly dispose of used ones. (Since Connecticut changed its paraphernalia and prescription laws in 1992 to allow for possession and sale of up to ten syringes, needle sharing has dropped 40 percent and needle-stick injuries to police have decreased 66 percent.³¹)*
- *Removing all legal barriers to needle exchange programs and providing public support to such programs. (A worldwide survey found that HIV rates among people who inject drugs decreased 5.8 percent per year in cities with needle exchange programs, and increased 5.9 percent per year in cities without needle exchange programs.³²)*

Although the possession, distribution, and sale of syringes remain criminal offenses throughout much of the country, many states and municipalities are changing such policies to reflect public health priorities. Between 1996 and 2002, nine states passed legislation to increase the availability of syringes through needle exchange programs, pharmacy deregulation and the decriminalization of syringe possession.

PROMOTING INDUSTRIAL HEMP

Reform of laws prohibiting the cultivation of industrial hemp, a non-intoxicating cousin of the marijuana plant, which is used to make paper, fiber, food, fuel and cloth

Hemp, which has a long and distinguished history in the United States and around the world,³³ comes from the same plant species as marijuana. But hemp contains almost no trace of marijuana's psychoactive ingredient, THC, so consuming or smoking it does not induce any "high." It cannot be used as a drug.

Hemp rope and canvas sails once outfitted the world's sailing ships. Hemp seeds, rich in omega fatty acids, are used in traditional foods and are still sold as birdseed in the United States. Paper made from the strong hemp fiber is used in many of the world's currencies. Indigenous societies in the Americas have produced and used hemp products for centuries.

In the past several years, a global hemp industry has re-emerged. Hundreds of companies worldwide offer thousands of hemp products such as clothes, paper, and soap. Australia, Great Britain, France, Spain and Canada are among the dozens of countries growing, using and exporting hemp.

Federal law denies U.S. farmers the right to grow hemp and compete in the global marketplace. Between 1996 and 2002, however, legislatures in 12 states have passed 23 measures in support of industrial hemp, ranging from resolutions calling for its legalization to funding for farming and research.

REDUCING CIVIL ASSET FORFEITURE ABUSES

Reform of laws permitting law enforcement to seize and keep private property suspected of involvement in a crime – most often related to drugs

Under state and federal civil asset forfeiture laws, law enforcement agencies are permitted to seize money and property merely suspected of being used in connection with a crime (nearly always the drug trade).^{*} Many such laws permit the government to permanently keep the seized assets even if the owner is never convicted of a crime. In fact, one review of law-enforcement records showed that in more than 80 percent of the cases surveyed the owner was not even *charged* with a crime – yet the seized property was never returned.³⁴

In a system critics say encourages corruption, many civil forfeiture laws allow the police who seize the assets to keep the proceeds for their departmental use. Budgetary dependence can result, providing a dangerous incentive for overly aggressive police tactics, unsubstantiated accusations, unlawful searches and other abuses.

Between 1996 and 2002, ten states and the federal government enacted asset forfeiture reforms, and dozens of other legislatures are considering it. Specific reforms include requiring that an owner be convicted of a crime before property can be forfeited; enacting provisions to protect innocent co-owners; redirecting proceeds from law enforcement coffers to drug treatment or

^{*}To retrieve seized property, owners must typically prove in a court of law - at their own expense, sometimes over a period of years - that the property itself is not "guilty." Even proving one's personal innocence may not be enough: the guilty property may have been used in the commission of a crime by another party, even without the knowledge or consent of the owner.

other government programs; and changing laws to prevent local and federal law enforcement agencies from colluding to circumvent state forfeiture restrictions.

DRUG POLICY REFORMS: 1996-2002
SELECTED STATES

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ARIZONA

In 1996, Arizona became the first state to implement sweeping drug policy reform when voters approved Proposition 200. That initiative, also known as the Drug Medicalization, Prevention and Control Act, mandates that nonviolent drug offenders arrested for simple possession or use of an illegal drug receive treatment instead of jail time for their first and second offenses. It also allows doctors to prescribe marijuana and other drugs (such as heroin and MDMA, commonly known as Ecstasy) for medicinal use when it becomes legal to do so under federal law. This legal change would create a system much like that of Great Britain, where primary control of prescribing medication is left to doctors rather than government agencies.

An analysis by the Arizona Supreme Court found that Proposition 200 diverted 2,600 nonviolent offenders into drug treatment in its first year, saving Arizona taxpayers \$2.56 million.³⁵ More than three-fourths of the offenders tested drug-free after completing the program. A follow-up Supreme Court study in 2001 found that Proposition 200 saved taxpayers over \$6.7 million in prisons costs in its second year.³⁶ The Court concluded that “The Drug Medicalization, Prevention and Control Act of 1996 has allowed the judicial branch to build an effective probation model to treat and supervise substance abusing offenders.... All of these factors are resulting in safer communities and more substance abusing probationers in recovery.”³⁷

Norman Helber, adult probation chief for Maricopa County (which accounts for over half of all drug arrests in Arizona), noted that treatment instead of incarceration “has been fantastic from the field perspective.”³⁸ And Arizona Appellate Court Judge Rudy Gerber reported that the initiative “is doing more to reduce drug use and crime than any other state program and saving taxpayer dollars at the same time.”³⁹

In Arizona more than in any other state, voters and lawmakers have been at odds over drug policy reform. Following the passage of Proposition 200, the Arizona legislature passed bills limiting both the medical marijuana and the prescription provisions of the initiative. In turn, however, voters passed two further initiatives which overturned these legislative amendments, restoring Proposition 200 to its original form. Although Arizona voters have not backed every change unequivocally – in 2002, they passed an initiative altering Proposition 200 to allow the incarceration of drug offenders who “fail” treatment, and rejected a broader medical marijuana initiative – they have demonstrated to the legislature that their commitment to drug policy reform is abiding.

Arizona

Mandated Treatment Instead of Incarceration (Proposition 200, 1996)

Required drug treatment instead of jail time for first- and second-time drug possession offenders; made those already incarcerated for possession offenses eligible for parole; established the Drug Treatment and Education Fund and supported it with monies from a percentage of the luxury tax on alcohol, cigarettes and other tobacco products.

Changed State Law to Allow Doctors to Prescribe Marijuana and Other Drugs (Proposition 200, 1996)

Allowed medical doctors to prescribe a controlled substance such as marijuana to treat a disease or to relieve the pain and suffering of a seriously or terminally ill patient. The doctor must be able to document that scientific research supports the use of the controlled substance and must obtain a written opinion from a second doctor that prescribing the controlled substance is appropriate. A patient who receives, possesses or uses a controlled substance as prescribed by a doctor would not be subject to criminal penalties. (Note: for practical purposes, this provision has not yet gone into effect because, under federal law, doctors cannot “prescribe” marijuana. Other states have avoided this conflict with federal law by protecting patients that use marijuana when “recommended” – as opposed to “prescribed” – by a doctor.)

Overtaken Legislation Repealing Medical Marijuana Provisions (Proposition 300, 1998)

After two-thirds of Arizona’s voters approved Proposition 200, the legislature passed HB 2518 which would have barred doctors from prescribing marijuana or other drugs without FDA or Congressional approval. Voters defeated HB 2518 at the ballot box.

Overtaken Legislation Repealing Treatment Instead of Incarceration Provisions (Proposition 301, 1998)

After voters approved Proposition 200, the legislature passed SB 1373 which would have amended Proposition 200 to restrict which offenders would be eligible for treatment. Voters defeated SB 1373 at the ballot box.

CALIFORNIA

Californians and their state legislators have been national leaders in drug policy reform, passing landmark initiatives and bills on medical marijuana, alternatives to incarceration, fatal overdose prevention and a range of other issues.

In 1996 California voters passed Proposition 215, legalizing marijuana for medicinal purposes. Proposition 215’s success demonstrated to the nation that major, state-level drug policy reform could be achieved through the political process. Proposition 215 also launched the ongoing struggle by medical marijuana advocates to implement the initiative effectively in the context of aggressive federal opposition. Despite significant obstacles, Proposition 215 has successfully provided many medical marijuana patients and providers with a significant measure of legal

protection in California. The initiative has also been a model for reformers – medical marijuana supporters, treatment advocates and others – throughout the country.

In November of 2000, California voters passed Proposition 36, the single most significant drug policy reform victory in terms of the number of nonviolent people it has kept out of jail and prison. Proposition 36 diverts low-level, nonviolent drug offenders convicted solely of possession for personal use into community-based treatment instead of incarceration.

Between 1980 and 2000, California's overall prison population rose nearly seven-fold. During the same period, the number of people incarcerated for drug offenses increased more than twenty-fold, from under 2,000 to roughly 45,000.⁴⁰ Under Proposition 36,⁴¹ which went into effect in July 2001, tens of thousands of drug offenders have been placed in community-based treatment instead of incarceration. California's Legislative Analyst's Office estimated that the measure would divert approximately 36,000 people to treatment per year and save \$1.5 billion (net) over the next five years, while preventing the need for a new prison slated for construction.⁴² One subsequent analysis found that in five counties alone, between July 2001 and April 2002, 12,594 individuals were referred to treatment, saving the state an estimated \$228 million.⁴³

The decline in incarceration of female nonviolent drug offenders has been so significant that California has closed one of its four women's prisons to help shrink its state budget deficit, and is considering closing a second facility. Margot Bach, a spokeswoman for the California Department of Corrections noted, "There are a lot of reasons the population is down – crime rates have fallen, parole programs are working – but we think the biggest factor with the women's numbers is Proposition 36."⁴⁴

Along with voters, California lawmakers have also played a large and active role in drug policy reform. Two historic examples: in 2001, the state legislature became the first in the nation to pass legislation barring the revocation of probation or parole solely for testing positive for drug use. In such circumstances, drug testing may now be used only as a treatment tool, not a mechanism for criminal punishment. In 2002, lawmakers passed a bill to address the state's growing crisis of fatal drug overdose. (Estimates from the Centers for Disease Control suggest that 1,400 to 2,000 Californians have died from drug overdoses each year since 1998. Many of these deaths could have been prevented with the antidote, naloxone.) The new law provides a level of focus, coordination and training that is unprecedented in any state.

Unfortunately, while California voters and state legislators continue to support reforms, Governor Gray Davis (D) has vetoed more drug policy reform legislation than any other governor in history. He is responsible for vetoing legislation on medical marijuana, overdose prevention, restoration of benefits to former offenders, asset forfeiture and racial profiling. His refusal to support reform has made ballot initiatives, which are veto-proof, all the more crucial in California.

California

Legalized Medical Marijuana (Proposition 215, 1996)

Voters approved initiative exempting patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from state criminal laws, which otherwise prohibit possession or cultivation of marijuana.

Approved Resolution in Support of Industrial Hemp (HR 32, 1999)

Legislators passed resolution declaring that industrial hemp has many uses in many products; that it will contribute to the state economy; that the legislature should revise the legal status of industrial hemp; and that the University of California and other agencies should prepare studies in conjunction with private industry on the cultivation, processing and marketing of industrial hemp.

Mandated Traffic-Stop Data Collection (SB 78, 1999) – Vetoed by Governor Davis

Would have mandated that police collect traffic-stop data on whomever they pull over, in an effort to detect and curb racial profiling.

Reformed Civil Asset Forfeiture Laws (SB 1866, 2000) – Vetoed by Governor Davis

Would have required law enforcement agencies to get a court order to transfer money and property they seize to a federal agency. Would have redirected about one-quarter of all forfeiture proceeds to drug prevention and treatment services.

Banned Racial Profiling (SB 1102, 2000)

Legislators banned racial profiling and mandated that local and state law enforcement officers participate in racial profiling training.

Mandated Treatment Instead of Incarceration (Proposition 36, 2000)

Voters approved initiative allowing first- and second-time nonviolent, drug possession offenders the opportunity to receive substance abuse treatment instead of incarceration. Allocated \$120 million annually for five-and-a-half years to pay for treatment services.

Implemented Medical Marijuana Patients Registry (SB 187, 2001) – Passed both Chambers, died on file

Would have required the State Department of Health Services to establish and maintain a voluntary program for the issue of ID cards to qualified patients, and established procedures under which a patient with an ID can use marijuana for medical purposes.

Established New Protections for Probationers and Parolees (SB 223, 2001)

Legislators provided new protections for probationers and parolees; mandated that drug testing be used only as a treatment tool; and prevented anyone for whom drug testing is a condition of probation or parole from being remanded to custody solely upon the basis of a positive drug test.

Passed Drug Overdose Prevention Legislation (SB 1134, 2001) – Vetoed by Governor Davis

Would have established a program to coordinate data collection, reporting, draft curricula and materials, and administer a small grants program to give local programs resources to undertake

overdose prevention efforts. Also would have given regional and county emergency medical directors the authority to train first responders (including certain EMT's, volunteer and ambulance teams) to administer the antidote to opiate overdose – naloxone hydrochloride.

Restored Benefits Eligibility to Ex-Drug Offenders (AB 767, 2001) – Vetoed by Governor Davis; (AB 1947, 2002) – Vetoed by Governor Davis

Would have allowed persons convicted of drug related felonies to be eligible (under certain circumstances) for food stamps and other public benefits. Only drug felonies permanently disqualify California citizens from ever receiving health and social benefits that they would otherwise qualify for. Governor Davis vetoed similar bills in both 2001 and 2002.

Passed Legislation to Track and Reduce Fatal Overdose (SB 1695, 2002)

Legislature unanimously passed bill (which was signed into law) authorizing administration of the opiate overdose antidote naloxone by emergency medical technicians, and directing the state Health and Human Services Agency to publish overdose trend data, along with recommendations for controlling overdose, on its web site.

Repealed Methadone Dosage Caps and Billing Requirements (SB 1447, 2002)

Legislature repealed dosage limits for methadone and LAAM (a synthetic, long-acting opiate replacement therapy), allowing patients and doctors to determine appropriate dosages for opiate replacement patients. Additionally, they amended reporting and billing procedures that had previously discouraged physicians from treating Proposition 36-referred patients.

Allowed Pharmacy Sale and Possession of Up to Thirty Syringes (SB 1785, 2002) – Vetoed by Governor Davis

Would have allowed adults to purchase up to thirty syringes at a pharmacy without a prescription as part of the state's comprehensive approach to HIV/AIDS and hepatitis C prevention.

Mandated Hepatitis C Prevention Education in State Prisons (AB 2529, 2002) – Vetoed by Governor Davis

Would have mandated that all California state prisoners receive hepatitis C prevention education at time of intake, including information on safer injection. Would have improved access to testing and treatment for hepatitis C for the over 50,000 prisoners thought to be infected.

COLORADO

In 2000, Colorado voters overwhelmingly approved a medical marijuana initiative, ending a long legal battle to secure its rightful place on the ballot. (In 1998, a judge ruled at the last minute that proponents had not gathered sufficient signatures to put the initiative on the ballot. Stacks of uncounted petition sheets were discovered after the election, however, and exit polls revealed majority support for the initiative. It was ordered back on the ballot in 2000.)

In 2002, the Colorado legislature passed significant reform of the state's asset forfeiture laws. Lawmakers also approved legislation, later vetoed by Governor Bill Owens (R), which would have reduced the penalties for simple possession of illegal drugs and used the savings to fund drug treatment.⁴⁵

Colorado

Partially Opted Out of Federal Welfare Ban (SB 97-120, 1997)

Legislature passed bill partially opting out of federal legislation banning former drug offenders from ever receiving public benefits. Legislature applied lifetime ban only to those offenders who purchased drugs with food stamps benefits, and made such persons ineligible for food stamps only.

Legalized Medical Marijuana (Amendment 20, 2000)

Voters approved initiative exempting patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.

Mandated Traffic Stop Data Collection and Diversity Training (HB01-1114, 2001)

Legislature mandated collection of racial and other demographic data of individuals involved in police traffic stops, along with compulsory diversity training for police officers.

Cut Drug Sentences (SB 02-39, 2002) – Vetoed by Governor Bill Owen

Legislature passed bill that would have lowered the criminal classification for a first offense of possession of 1 gram or less of certain controlled substances from a class 3 or class 4 to a class 6 felony. The sentence for possession of less than 1 gram of heroin, for example, would have dropped from 4-12 years to 12-18 months. This bill also would have lowered the penalties for a second offense to a class 4 felony. Finally, it would have established the Drug Offender Treatment Fund and the State Drug Offender Treatment Board and used the tax savings to fund drug treatment.

Reformed Civil Asset Forfeiture Laws (HB 1404, 2002)

Legislature changed forfeiture laws to require that a criminal conviction occur in most cases before property and cash can be seized; increased the legal standard of proof used in forfeiture cases from a "preponderance of the evidence" to "clear and convincing evidence"; mandated that the property be instrumental to the offense and that the value of the property seized be proportional to the crime charges and the proceeds be traceable; and mandated that half of the proceeds be turned over to the state's alcohol and drug abuse division and the other half to the local government overseeing the law-enforcement agency involved in the seizure.

CONNECTICUT

Connecticut's prison population has more than doubled in the last ten years. At a cost to taxpayers of over \$513 million per year, prison expenses are increasingly difficult to cover.⁴⁶ Drug offenders account for a large percentage of this growth,⁴⁷ which has had a disproportionate effect on the state's African American population. While black men comprise less than three percent of Connecticut's population, they account for 47 percent of the state's inmates in prisons, jails, and halfway houses.⁴⁸

"I don't think anyone intended it to be this way, but if you were trying to design a system to incarcerate as many African American and Latino men as possible, I don't think you could have designed a better system," said Democratic Representative Michael Lawlor, chair of the House Judiciary Committee since 1996.⁴⁹

In recent years, however, Connecticut has been active on a range of reform efforts, including sentencing reform, an opt-out of the federal welfare ban, data gathering to combat racial profiling, and restoration of voting rights to ex-felons. In 2001, Republican Governor John Rowland urged the legislature to reform mandatory minimums and focus more resources on drug treatment.

Connecticut

Authorized Office-Based Methadone Maintenance Pilot Program (SB 1259, 1997)

Legislature authorized a pilot program to assess the feasibility of methadone maintenance based in physicians' offices.

Opted Out of Federal Welfare Ban (HB 8003, 1997)

Legislature wholly opted out of federal ban on welfare benefits for former drug offenders.

Allowed Possession of Up to Thirty Syringes (HB 7501, 1999)

Legislature amended paraphernalia statute to increase the number of syringes that can be handed out without a prescription by needle exchanges and pharmacies from ten to 30.

Mandated Traffic Stop Data Collection (SB 1282, 1999)

Legislature mandated collection of racial and other demographic data of individuals involved in police traffic stops.

Reformed Mandatory Minimums (SB 1160, 2001)

Legislature gave judges discretion to waive certain mandatory minimum sentences for nonviolent offenders.

Restored Voting Rights to Felons on Probation (HB 5042, 2001)

Legislature restored voting rights to felons sentenced to probation (felons who had served their sentences were already able to vote), allowing more than 35,000 Connecticut residents on probation to vote.

HAWAII

In 2000, Hawaii became the first state to legalize marijuana for medicinal purposes through the legislative process, adopting legislation similar to that approved by voters in eight other states and Washington, D.C. Similarly, in 2002, Hawaii became the first state to adopt major "treatment instead of incarceration" legislation through the legislative process. Legislators also passed four bills in support of industrial hemp between 1996 and 2002, including legislation making it legal for the first hemp test plot to grow in America since the crop was banned after World War II.

While reform has been bipartisan, much of the success can be attributed to former Governor Benjamin Cayetano (D), who was a leading advocate for reform during his term of office. Governor Cayetano introduced the medical marijuana legislation that became law and was an outspoken critic of the federal government's policy towards medical marijuana, publicly stating that "it's time that Congress finally gets around to understanding that the states should be allowed to provide this kind of relief to the people. Congress is way, way behind in their thinking."⁵⁰

Hawaii

Passed Resolution to Study Industrial Hemp (HR 71, 1996)

House requested a program through the Hawaii Agribusiness Development Corporation and the University of Hawaii to study the economic potential of growing industrial hemp as an agricultural project.

Partially Opted Out of Federal Welfare Ban (HB 480, 1997)

Legislature partially opted out of federal welfare ban for former drug offenders by allowing people to receive benefits if they receive drug treatment.

Legalized Growing of Industrial Hemp for Research Purposes (HB 32, 1999)

Legislature legalized privately funded industrial hemp research in Hawaii when state and federal agencies (DEA) issue licenses. Authorized state and federal agencies to monitor all phases of the research and required status reports.

Passed Resolution to Study Industrial Hemp (HR 110, 1999)

House requested a program through the Hawaii Department of Business, Economic Development and Tourism to examine the feasibility of growing and using industrial hemp for biomass energy production.

Passed Resolution Petitioning Federal Government on Hemp Issue (HR 109, 1999)

House requested the U.S. Department of Agriculture to recommend the use of hemp fiber soil erosion control blankets whenever feasible.

Legalized Medical Marijuana (SB 862, 2000)

Legislature exempted patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.

Mandated Treatment Instead of Incarceration (SB 1188, 2002)

Legislature mandated that first-time nonviolent drug offenders convicted of possession or use be sentenced to probation with drug treatment instead of prison.

INDIANA

Incarcerating drug offenders costs Indiana taxpayers nearly \$90 million a year.⁵¹ To create space in state prisons and save taxpayer money, legislators passed sweeping drug sentencing reform in 2001, including allowing nonviolent drug offenders to receive drug treatment, home detention or work release instead of prison.

“Many of these prisoners are drug offenders who are not dangerous to society. They are only dangerous to themselves. We put them in prisons, which are known as schools of crime, they come out hardened and two of three go back,”⁵² said Democratic Representative B. Patrick Bauer.

Indiana

Reformed “Three Strikes, You’re Out” Law (SB 358, 2001)

Legislature exempted drug offenders with no other types of convictions from “three strikes” law, as long as they do not have more than one trafficking conviction.

Expanded Treatment Instead of Incarceration (HB 1892, 2001)

Legislature allowed judges to sentence to drug treatment instead of prison those who sell drugs to support their habit.

Eliminated Mandatory Minimums (HB 1892, 2001)

Legislature eliminated mandatory minimums for certain nonviolent drug offenses and gave judges discretion to sentence offenders to home detention or work release. Made certain already incarcerated offenders eligible for early release.

Reformed “Drug-Free” Zone Law (HB 1892, 2001)

Legislature provided defendants with a defense against enhanced penalties for possessing or dealing drugs within a “drug-free” zone, if the defendant was only briefly within the drug-free zone or was lured there by police.

LOUISIANA

Louisiana’s notoriously severe drug laws are largely responsible for giving the state the dubious distinction of having the highest incarceration rate in the country.⁵³ One-third of Louisiana’s inmates are nonviolent drug offenders, many of them sentenced to harsh sentences for minor offenses.⁵⁴ More than 200 people are currently serving mandatory life sentences in Louisiana for nonviolent drug offenses⁵⁵ – including a man sentenced to life in prison without parole for a first-time drug transaction in which he made only \$50.⁵⁶ Harsh drug laws have also exacerbated racial disparities in Louisiana’s criminal justice system. While African Americans make up only one-third of the state’s population, they make up three-fourths of the state’s prison population.⁵⁷

Faced with gross racial disparities in their criminal justice system and with budget-breaking prison expenses, a coalition of civil rights leaders and fiscal conservatives in the legislature passed sweeping drug policy reform in June 2001. The legislation, sponsored by members of the Louisiana Black Caucus, is expected to save Louisiana \$60 million a year in reduced prison costs.⁵⁸

Louisiana

Opted Out of Federal Welfare Ban (SB 969, 1997)

Legislature partially opted out of federal ban on welfare benefits for former drug offenders. Offenders who are not incarcerated are ineligible for benefits for one year following conviction; incarcerated offenders are ineligible for one year following their release.

Reformed “Three Strikes, You’re Out” Law (SB 239, 2001)

Legislature eliminated application of the three strikes laws to all felonies; instead mandates life imprisonment only if the current and both prior offenses were serious drug offenses or violent crimes.

Established Risk Review Panel (SB 239, 2001)

Legislature created Louisiana Risk Review Panel to review records of inmates convicted of nonviolent offenses in order to make recommendations to the parole and pardon boards.

Reduced Drug Sentences and Reformed Mandatory Minimums (SB 239, 2001)

Legislature removed mandatory sentences for simple drug possession and other nonviolent offenses and cut sentences for many drug selling offenses in half. Eliminated Louisiana’s heroin and cocaine laws mandating life without parole for distribution of any amount of heroin (now five to 50 years) or for manufacturing cocaine (now ten to 30 years). Eliminated mandatory minimum sentences for selling drugs in a “drug-free zone.”

NEVADA

In less than three years, Nevada has essentially reversed its approach to marijuana policy. In 1998 and again in 2000, the state’s voters approved an initiative legalizing the medicinal use of marijuana (under Nevada law, initiatives have to be approved twice before they can take effect). In 2001, the state legislature followed the voters’ lead, passing legislation to implement the initiative.

In 2001, the Nevada legislature also passed legislation decriminalizing small amounts of marijuana for personal use.* The year before, a 40-member judicial commission, headed by the Nevada Supreme Court’s Chief Justice, had recommended reducing penalties for possession of small amounts of marijuana for personal use from a felony to a misdemeanor.⁵⁹ In 2002, the

*With Nevada’s action, 12 states have decriminalized marijuana: Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio and Oregon. With the exception of Nevada, these reforms all took place prior to 1996, outside the scope of this study. Additionally, numerous foreign countries, including Canada, Great Britain, Belgium, Switzerland and the Netherlands have already established decriminalization policies or are moving towards decriminalization of small amounts of marijuana for personal use.

state's voters considered a more far-reaching marijuana legalization initiative. Though the initiative did not pass, the two major reforms already in effect remain in place.

Nevada

Opted out of Federal Welfare Ban (AB 401, 1997)

Legislature partially opted out of federal ban on welfare benefits for former drug offenders. Offenders can receive benefits following completion of drug treatment.

Legalized Medical Marijuana (Question Nine, 2000)

Voters approved initiative exempting patients and caregivers who possess or cultivate physician-recommended marijuana from criminal laws which otherwise prohibit possession or cultivation of marijuana.

Implemented Voter-Initiated Medical Marijuana Measure (AB 453, 2001)

Legislature made it legal for seriously ill Nevadans to have up to seven marijuana plants for medical use. Established a state registry for patients whose doctors recommend they use marijuana for medical reasons.

Decriminalized Marijuana for Personal Use (AB 453, 2001)

Legislature made possession of an ounce or less of marijuana (for non-medical use) a misdemeanor, subject to a fine of up to \$600 for the first offense (or referral to drug treatment). A second offense would result in a higher fine.

Reformed Civil Asset Forfeiture Laws (SB 36, 2001)

Legislature raised the standard of proof for seizing property to "clear and convincing" evidence; also directed to local school districts 70 percent of all money in excess of \$100,000 collected in police agency's forfeiture account at the end of each fiscal year.

NEW MEXICO

Republican Governor Gary Johnson made national headlines in the summer of 1999 when he first told voters in New Mexico that it was time to end the war on drugs and proposed the legalization of marijuana. Over the following three years, Governor Johnson maintained these positions while also becoming a strong proponent of modest reforms based on harm reduction principles. He and the Democratically-controlled state legislature found common ground, despite a highly partisan political environment. As a result of this bipartisan cooperation and leadership, New Mexico leads the nation in the number of drug policy reforms enacted into law.

"Nothing like this has ever happened in any state before," said Governor Johnson. "Two years ago, no one wanted to talk about this issue at all. Now both Democrats and Republicans have committed to common-sense ways to reduce the harms associated both with drug abuse and with our current drug policies."⁶⁰

A statewide poll of likely voters conducted in March 2001 showed that nearly four out of five New Mexicans support making medical marijuana available to terminally ill patients; two out of three support the decriminalization of an ounce or less of marijuana; and nearly two-thirds support treatment instead of incarceration for first- and second-time “hard” drug offenders.⁶¹

New Mexico

Established Needle Exchange Program (SB 220, 1997)

Legislature established a statewide harm-reduction program administered by the Department of Health to prevent infectious disease through syringe availability.

Approved Industrial Hemp Research (HB 9, 1999)

Legislature appropriated \$50,000 to New Mexico State University to conduct a feasibility study on growing industrial hemp as a commercial crop.

Deregulated Pharmacy Syringe Sales (SB 320, 2001)

Legislature ended pharmacists’ potential criminal liability for sale of syringes in pharmacies.

Limited Liability for Administration of Anti-Opioids (HB 813, 2001)

Legislature created civil and criminal immunity for administering, dispensing, distributing, using or possessing an opioid antagonist (opioid antagonists are medications that reverse the effects of opiates such as opium and heroin, and prevent overdose and death by overdose).

Restored Voting Rights for Felons (SB 204, 2001)

Legislature restored voting rights to felons upon completion of their sentences.

Expanded Drug Treatment Programs (SB 628, 2001)

Legislature appropriated \$9.8 million to expand and coordinate substance abuse intervention, treatment and harm reduction initiatives by the Department of Health and the Department of Corrections.

Established Women’s Re-entry Drug Court (SB 200, 2001)

Legislature established program for early release of women convicted of nonviolent drug offenses; allowed for treatment in the community rather than incarceration for the last 18 months of a woman’s sentence.

Reformed Habitual Offender Laws (HB 26, 2002)

Legislature gave judges more sentencing discretion over sentencing in certain cases, including certain drug offenses.

Reformed Civil Asset Forfeiture Laws (SB 5, 2002)

Legislature reformed civil asset forfeiture laws. Required criminal conviction prior to loss of property, a court order before property seizure and proof “by clear and convincing evidence” that the property is subject to forfeiture. Directed proceeds from seizures to the general fund of the local or state entity for substance abuse education and treatment or for drug enforcement.

Opted Out of Federal Ban on Benefits (HB 11, 2002)

Legislature fully opted New Mexico out of the federal lifetime ban on welfare benefits to former drug offenders.

Corrections Population Control Act (HB 263, 2002)

Legislature established a Corrections Population Control Commission to consider the early release of state prison inmates convicted of certain drug and other nonviolent offenses, or incarcerated as a result of parole revocation related to drug use or possession.

TEXAS

Texas has long been in the national spotlight for rampant racial disparities and abuses in its criminal justice system. It has one of the largest incarceration populations in the United States (over 145,000 state inmates in jail or prison as of 2002)⁶² and the third highest per capita incarceration rate of any state.⁶³ Even modest reforms, therefore, can have a tremendous impact. A number of well-publicized injustices have forced Texas legislators to scrutinize their criminal justice system and enact reforms. The most notorious of these injustices occurred in Tulia, Texas, where dozens of African American residents were arrested, prosecuted and sentenced to years (decades and even centuries) of imprisonment for drug law violations – all on the word of one corrupt undercover agent.⁶⁴ Thanks to the tireless efforts of the defendants and their families, friends and attorneys, the agent’s false testimony came to light and all of the defendants’ convictions have been vacated. The U.S. Justice Department has launched a federal civil rights investigation into the case, and the Texas legislature passed two reforms in response.

Texas

Limited Convictions Without Corroborating Evidence (HB 2351, 2001)

Legislature outlawed drug convictions based solely on the testimony of an informant (while the House version prevented people from being convicted solely on the word of an undercover officer or an informant, the Senate watered it down to apply only to informants).

Banned Racial Profiling (SB 1074, 2001)

Legislature banned racial profiling by law-enforcement officers; mandated that police document traffic stops and searches by race and report them annually.

Reformed Asset Forfeiture Laws (SB 563, 2001)

Legislature allowed owners to reclaim confiscated property that had been used in a crime, provided they can prove no involvement in the crime.

VERMONT

In 2000, the Vermont legislature legalized the use of methadone maintenance therapy for the treatment of heroin addiction over the objection of then Governor Howard Dean (D).^{*} This reduced to seven the number of states in the U.S. which do not allow the use of methadone for addiction treatment under any conditions.

In early 2002, the Vermont House and Senate passed competing medical marijuana bills. The House version, like measures that have passed in other states, would have eliminated criminal penalties for growing, possessing and using marijuana for medicinal reasons. The Senate version only allowed seriously ill patients arrested for using marijuana to present an affirmative defense in court. The Governor appeared likely to veto these bills, so the legislators decided to establish a special committee “to investigate and assess options for legal protections that will allow seriously ill Vermonters to use medical marijuana without facing criminal prosecution under Vermont law.” That committee has since provided them with strong recommendations in favor of passing a state medical marijuana law.

In 1996, Vermont became one of the first states to pass meaningful industrial hemp legislation when it enacted a bill authorizing research into the feasibility of hemp as a commercial product. Four years later, the legislature passed a resolution urging the U.S. Drug Enforcement Administration, the U.S. Department of Agriculture and the U.S. Congress to reconsider federal policies that prohibit the cultivation and sale of industrial hemp and related products.

^{*}Methadone is the proven, most effective method of treating heroin addiction. Still, methadone remains one of the most regulated, restricted, and under-available medications in the United States. With few exceptions, methadone is distributed only at specialized methadone centers. By contrast, many other countries – including Great Britain, Australia, Switzerland and Germany – allow access to methadone and other pharmacological treatments in physicians’ offices and through local pharmacies.

Vermont

Commissioned Study on Industrial Hemp (H.0783, 1996)

Legislature requested the Commission of Agriculture, Food and Markets, and the University of Vermont to research the feasibility of industrial hemp production in Vermont.

Legalized Methadone Maintenance Therapy (S.303, 2000)

Legislature legalized the use of methadone in methadone maintenance programs for the treatment of heroin addiction.

Petitioned Federal Government on Industrial Hemp (JRS 98, 2000)

Legislature passed a resolution calling on Congress and federal agencies to reassess current federal policies restricting the cultivation and sale of industrial hemp.

Established Medical Marijuana Commission (S.193, 2002)

Legislature declared that “state law should make a distinction between the medical and non-medical use of marijuana” and established a commission to issue a recommendation on the best way to provide legal protections to patients that use marijuana.

WASHINGTON

The State of Washington rivals New Mexico in its drug policy reform pace, enacting six reforms between 1996 and 2002, ranging from permitting medical marijuana to decriminalizing the sale and possession of syringes.* In 2002, the legislature passed a law cutting sentences for various nonviolent drug offenses, and using the savings (estimated to be \$50 million over the next six years)⁶⁵ to fund drug treatment programs. The legislation also will implement a new sentencing grid in 2004 that will give judges more sentencing discretion. Supporters include Democratic Governor Gary Locke and Republican King County (Seattle) prosecutor Norm Maleng.

“For nonviolent offenders, treatment works. Investing in treatment will enable us to free up more prison cells for the violent offenders who belong in jail,” said Governor Locke when he signed the legislation into law.”

* Although this report begins with 1996, it should be noted that in 1995 the Washington legislature passed the Drug Offender Sentencing Alternative Act (DOSA) (SHB 1549, c. 268, Laws of 1995), which permits judges to reduce sentences for certain drug offenders. People sentenced under DOSA are required to participate in treatment while in prison and must comply with additional conditions when released.

Washington

Partially Opted Out of Federal Welfare Ban (HB 3901, 1997)

Legislature partially opted out of federal legislation banning drug offenders from ever receiving public benefits; allowed offenders to receive benefits if they meet certain requirements, including participation in a drug treatment program.

Permitted Medical Marijuana (Initiative 692, 1998)

Voters approved an initiative providing a legal defense against criminal charges to patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician.

Mandated Traffic Stop Data Collection (SB 6683, 2000)

Legislature required the Washington State Patrol to record certain demographic information (including race) about individuals stopped for alleged traffic violations and report that information semi-annually to the legislature.

Reformed Civil Asset Forfeiture Laws (HB 1995, 2001)

Legislature changed Washington's civil forfeiture statutes to shift the burden of proof to law enforcement agencies, requiring law enforcement to establish by a preponderance of the evidence that property is subject to forfeiture. If a claimant substantially prevails in a forfeiture proceeding, the claimant is entitled to reasonable attorney fees.

Decriminalized Sale and Possession of Syringes (HB 1759, 2002)

Legislature made it legal for individuals to possess syringes and for pharmacies to distribute them.

Cut Drug Sentences and Used Cost Savings for Treatment (HB 2338, 2002)

Legislature allowed for expanded community-based treatment and the restoration of broader sentencing discretion to judges; reduced the prison terms for low-level heroin or cocaine drug sellers from a mid-range of 24 to 18 months; invested the money that would have been spent on prison expenses (about \$8.25 million a year) in drug treatment programs; eliminated triple and double scoring for purpose of calculating an offender's sentence for many drug offenses, which had often resulted in chronically addicted, nonviolent individuals receiving substantially longer sentences than many violent offenders.

Banned Racial Profiling (SB 5852, 2002)

Legislature banned racial profiling and required local law enforcement agencies to take necessary steps to prevent future profiling.

APPENDICES

APPENDIX A: COMPLETE STATE LISTING

Alabama

- **1999.** Legislature passes a mandatory seat belt law containing provisions mandating the collection of statistics on people cited for violating it (HB 7).

Alaska

- **1998.** Voters legalize marijuana for medicinal use (Ballot Measure 8).

Arizona

- **1996.** Voters pass initiative allowing non-violent drug possession offenders to receive drug treatment instead of prison, saving taxpayers almost \$2.5 million in the first year. The initiative also allows doctors to prescribe marijuana and other drugs (such as ecstasy) for medicinal use, if it becomes legal under federal law (Proposition 200).
- **1998.** Legislature passes legislation restricting both provisions of the 1996 initiative. Voters call referendums on the restrictions and defeat them both at the ballot box. (Propositions 300 and 301).

Arkansas

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 1295).
- **1999.** Legislature reforms civil asset forfeiture laws (SB 555) and passes measure in support of industrial hemp (SR 13).
- **2001.** Legislature passes legislation appointing a task force to examine racial disparities in sentencing for non-violent offenders and to recommend necessary changes (HB 2615). Also passes legislation reducing the penalty for possession, use or distribution of drug paraphernalia (such as syringes) from a Class C felony to a Class A misdemeanor (HB 2313).

California

- **1996.** Voters legalize medical marijuana (Proposition 215).
- **1999.** Legislature passes measure in support of industrial hemp (HR 32). Legislature also bans racial profiling and mandates traffic-stop data collection, but Governor Gray Davis vetoes the legislation (SB 78).
- **2000.** Voters pass Proposition 36, a treatment instead of incarceration initiative. The measure is expected to divert over 30,000 drug offenders a year to treatment, saving taxpayers \$250 million in prison costs annually. Legislature bans racial profiling (SB 1102). Legislature also passes forfeiture reform legislation, but Governor Gray Davis vetoes it (SB 1866).
- **2001.** Legislature establishes new protections for probationers and parolees that fail drug tests (SB 223). Legislature also passes a bill providing for medical marijuana patient identification cards, which died on file (SB 187); and passes bills related to overdose prevention (SB1134) and restoration of benefits eligibility to ex-drug offenders (AB 767), which were both vetoed by Governor Gray Davis.
- **2002.** Legislature passes legislation to track and reduce fatal overdose (SB 1695) and to repeal methadone dosage caps (SB 1447).

Colorado

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB97-120).
- **2000.** Voters legalize marijuana for medicinal use (Amendment 20).
- **2001.** Legislature mandates traffic stop data collection and officer diversity training (HB01-1114).
- **2002.** Legislature cuts drug sentences and uses savings to fund treatment (SB02-39) and reforms drug forfeiture laws (HB02-1404). Governor Bill Owen signed HB02-1404, but vetoed SB02-39.

Connecticut

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (HB 8003) and authorizes a methadone maintenance pilot program (SB 1259).
- **1999.** Legislature amends paraphernalia statute to allow possession of up to thirty syringes (HB 7501) and mandates traffic stop data collection (SB 1282).
- **2001.** Legislature gives judges discretion to waive certain mandatory minimum sentences for nonviolent offenders (SB 1160) and restores voting rights to felons sentenced to probation (HB 5042).

Delaware

- **2000.** Legislature passes legislation restoring voting rights to felons (HB 126).

District of Columbia

- **1998.** Voters legalize medical marijuana within the District of Columbia (Measure 59). Congress overturns this initiative in order to prevent its implementation.
- **2002.** Voters provide for treatment instead of incarceration for first and second time non-violent drug offenders in the District of Columbia (Measure 62).

Florida

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 566,SB 626).
- **2001.** Legislature mandates that police develop policies to combat racial profiling, such as diversity training (SB 84).

Georgia

- No reform

Hawaii

- **1996.** Legislature passes legislation in support of industrial hemp (HR 71).
- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 480).
- **1999.** Legislature passes measures in support of industrial hemp (HB 32, HR 109, HR 110).
- **2000.** Legislature legalizes marijuana for medicinal use (SB 862).
- **2002.** Legislature implements “treatment instead of incarceration” modeled on California’s Proposition 36 (SB 1188).

Idaho

- **2000.** Legislature partially opts out of federal ban on welfare to former drug offenders (HB 575).

Illinois

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 204).
- **1999.** Legislature passes measures in support of industrial hemp (SR 49, HR 168).
- **2000.** House passes resolution in support of industrial hemp (HR 553).
- **2001.** Legislature passes two measures in support of industrial hemp, but Governor George Ryan vetoes both (SB 1397, HB 3377).

Indiana

- **2001.** Legislature reforms “three strikes, you’re out” law (SB 358), expands treatment instead of incarceration (HB 1892), eliminates mandatory minimums for certain non-violent drug offenses (HB 1892), and reforms “drug-free” zone laws (HB 1892).

Iowa

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SF 516).
- **2001.** Legislature passes legislation giving judges discretion when sentencing “Class D” felony offenders to a determinate sentence (SF 543).

Kansas

- **2000.** Legislature mandates traffic stop data collection (HB 2683).

Kentucky

- **1998.** Legislature partially opts out of the ban on federal welfare benefits (HB 864).
- **2001.** Legislature passes legislation prohibiting property owners from being “taxed” for marijuana growing on their property unless they are convicted of a crime (HB 356), banning racial profiling (SB 76), and supporting industrial hemp (HB 100).

Louisiana

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 969).
- **2001.** Legislature reforms “three strikes, you’re out” law (SB 239), establishes a risk review panel to make recommendations on non-violent offenders that should be paroled or pardoned (SB 239), and removes mandatory sentences for simple drug possession and other non-violent offenses and cut sentences for many drug selling offenses in half (SB 239).

Maine

- **1997.** Legislature amends paraphernalia laws to allow possession of up to ten syringes (LD 351).
- **1999.** Voters legalize marijuana for medicinal purposes (Question 2).
- **2002.** Legislature expands the state’s 1999 voter-approved medical marijuana law. This was the first time a state legislature expanded a voter-approved medical marijuana initiative (LD 611).

Maryland

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 499).
- **2000.** Legislature passes measure in support of industrial hemp (HB 1250).
- **2001.** Legislature bans racial profiling and mandates traffic stop data collection (HB 303). Also, establishes a task force to study repealing laws that disenfranchise felons (HB 495).
- **2002.** Legislature restores voting rights to felons upon completion of sentence for all first time offenses, and three years after completion of sentence for subsequent nonviolent offenses (HB 535).

Massachusetts

- **2000.** Legislature mandated traffic stop data collection (SB 2238).
- **2001.** Legislature totally opts out of welfare ban for former drug offenders (H 4800).

Michigan

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (SB 0169).
- **1998.** Legislature reforms “650” lifer law, which mandated life without parole for possession or distribution of 650 grams or more of heroin or cocaine (HB 4065).
- **2002.** The legislature reforms mandatory minimum drug sentences, gives judges the authority to use sentencing guidelines for most drug possession and delivery offenses, reserves consecutive sentences for top-level drug sellers, and eliminates mandatory lifetime probation for low-level drug offenders (HB 5394, HB 5395).

Minnesota

- **1997.** Legislature legalizes sale of syringes at pharmacies (SF 1908) and partially opts out of federal welfare ban for former drug offenders (SF 001)
- **1999.** Legislature passes measure in support of industrial hemp (HF 1238).
- **2001.** Legislature bans racial profiling (SF0007).

Mississippi

- **2001.** Legislature passes legislation exempting non-violent drug offenses (except sales) and other non-violent offenses from the state’s requirement that inmates serve at least 85 percent of their imposed prison sentence (SB 5).

Missouri

- **2000.** Legislature bans racial profiling and mandates that police collect traffic-stop data (SB 1053).
- **2001.** Legislature reforms civil asset forfeiture laws (SB 5).

Montana

- **1999.** Legislature passes measure in support of industrial hemp (HR 2).
- **2001.** Legislature eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 174). Eliminates provisions providing for mandatory revocation of driver's licenses for people under 21 who buy, possess, or use a legal or illegal intoxicating substance (HB 191).

Nebraska

- **2001.** Legislature bans racial profiling and mandates traffic stop data collection (LB 593).

Nevada

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (AB 401).
- **1998.** Voters support ballot initiative to legalize marijuana for medicinal use (Ballot Question 9).
- **2000.** Voters legalize marijuana for medicinal use (Ballot Question 9). (Under Nevada law, initiatives have to be approved twice before they can take effect.)
- **2001.** Legislature implements voter-initiated medical marijuana measure (AB 453), decriminalizes marijuana for personal use (AB 453), and reforms drug forfeiture laws (SB 36).

New Hampshire

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (HB 722).
- **2000.** Legislature deregulates syringes, allowing pharmacies to sell them (HB 427).

New Jersey

- **1999.** Legislature partially opts out of federal welfare ban for former drug offenders (A2316).

New Mexico

- **1997.** Legislature establishes a statewide needle exchange program (SB 220).
- **1999.** Legislature passes measure in support of industrial hemp (HB 9).
- **2001.** Legislature deregulates pharmacy syringe sales (SB 320), limits liability for administration of anti-opioids (HB 813), restores voting rights to felons (SB 204), expands substance abuse intervention, treatment and harm reduction initiatives (SB 628), and establishes a women's reentry drug court that allows treatment instead of incarceration for the last 18 months of a woman's sentence (SB 200).
- **2002.** Legislature fully opts out of federal welfare ban (HB 11), expands judicial discretion (HB 26), reforms civil asset forfeiture laws (SB 5), and establishes commission to consider early release of non-violent offenders incarcerated on drug charges or as a result of parole revocation related to drug use or possession (HB 263).

New York

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (A8678, S. 5788).
- **2000.** Legislature deregulates syringes, allowing pharmacies to sell them (A9293-A, S. 6293-A).

North Carolina

- 1997. Legislature partially opts out of federal welfare ban for former drug offenders (SB 352).
- 1999. Legislature mandates traffic stop data collection (SB 76).

North Dakota

- 1999. Legislature passes measures in support of industrial hemp (HB 1428, SB 2328, HCR 3038).
- 2001. Legislature eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 1364), passes legislation directing the Legislative Council to examine the effectiveness and impact of mandatory minimum drug sentences (SCR 4018), and passes a measure in support of industrial hemp (HCR 3033).

Ohio

- 1997. Legislature totally opts out of federal welfare ban for former drug offenders (S. 52).

Oklahoma

- 1997. Legislature totally opts out of federal welfare ban for former drug offenders (HB 2170).
- 2000. Legislature mandates traffic stop data collection (SB 1444).

Oregon

- 1997. Legislature bans racial profiling and mandates traffic stop data collection (HB 2433) and totally opts out of federal welfare ban for former drug offenders (SB 825).
- 1998. Voters legalize marijuana for medicinal use (Measure 67). Legislature passes legislation re-criminalizing marijuana (which was decriminalized in the 1970s). Voters call a referendum and defeat criminalization (Measure 57).
- 2000. Voters reform civil asset forfeiture laws (Measure 3).

Pennsylvania

- No reform

Rhode Island

- 1997. Legislature partially opts out of federal welfare ban for former drug offenders (H 6987).
- 2000. Legislature deregulates syringes, allowing pharmacies to sell them (H 7949) and mandates traffic stop data collection (HB 7164).

South Carolina

- 1997. Legislature partially opts out of federal welfare ban for former drug offenders (H 3650).

South Dakota

- No reform

Tennessee

- **2000.** Legislature mandates traffic-stop data collection (SB 2415).
- **2001.** Legislature reforms criminal asset forfeiture laws (SB 585).
- **2002.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 264).

Texas

- **2001.** Legislature bans drug convictions based solely on the testimony of an informant (HB 2351), bans racial profiling (SB 1074), and reforms drug forfeiture laws (SB 563).

Utah

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 269).
- **2000.** Voters reform civil asset forfeiture laws (Initiative B).
- **2002.** Legislature bans racial profiling and requires traffic stop data collection (HB 101).

Vermont

- **1996.** Legislature passes legislation in support of industrial hemp (H.0783).
- **2000.** Legislature legalizes methadone (S.303). (Vermont had been one of only eight states in the U.S. with no methadone maintenance treatment for heroin addiction.) Legislature also passes measure in support of industrial hemp (JRS 98).
- **2002.** Legislature established a commission to issue recommendations on the best way to provide legal protection to patients that use marijuana (S.193).

Virginia

- **1999.** Legislature passes measure in support of industrial hemp (HJ 94).
- **2001.** Legislature reduces the number of mandated hours of community service for first-time drug possession misdemeanors from “at least 100 hours” to “up to 24 hours” (HB 2751). Also passes a measure in support of industrial hemp (HJ 605).

Washington

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 3901).
- **1998.** Voters legalize marijuana for medicinal use (Initiative 692).
- **2000.** Legislature mandates traffic stop data collection (SB 6683).
- **2001.** Legislature reforms civil asset forfeiture laws (HB 1995).
- **2002.** Legislature cuts drug sentences and uses savings to fund treatment (HB 2338), decriminalizes possession and sales of syringes (HB 1759), and bans racial profiling (SB 5852).

West Virginia

- **2002.** Legislature passes legislation legalizing industrial hemp for licensed farmers (SB 447) and bans racial profiling (HB 4289).

Wisconsin

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (AB 100).

Wyoming

- No reform

APPENDIX B: REFORMS BY YEAR

1996

- **Industrial Hemp.** Legislatures pass legislation in support of industrial hemp in *Hawaii* (HR 71) and *Vermont* (H.0783).
- **Medical Marijuana.** *California* voters legalize medical marijuana (Proposition 215).
- **Treatment Instead of Incarceration/Medical Marijuana.** *Arizona* voters pass initiative allowing drug users to receive drug treatment instead of prison, saving taxpayers almost \$2.5 million in the first year. The initiative also allows doctors to prescribe marijuana and other drugs (such as ecstasy) for medicinal use, if it becomes legal under federal law (Proposition 200).

1997

- **Methadone, Harm Reduction, and Treatment.** *Connecticut* legislature authorizes a methadone maintenance pilot program (SB 1259).
- **Partial Federal Opt-Out.** Legislatures partially opt out of federal welfare ban for former drug offenders in *Arkansas* (HB 1295), *Colorado* (SB 97-120), *Florida* (SB 566, SB 626), *Hawaii* (HB 480), *Illinois* (HB 0204), *Iowa* (SF 516), *Louisiana* (SB 969), *Maryland* (SB 499), *Minnesota* (SF 001), *Nevada* (AB 401), *North Carolina* (SB 352), *Rhode Island* (H 6987), *South Carolina* (H 3650), *Utah* (HB 269), *Washington* (HB 3901), and *Wisconsin* (AB 100).
- **Racial Profiling.** *Oregon* legislature bans racial profiling and mandates traffic stop data collection (HB 2433).
- **Syringe Availability.** *Maine* legislature amends paraphernalia laws to allow possession of up to ten syringes (LD 351). *Minnesota* legislature legalizes sale of syringes at pharmacies (SF 1908). *New Mexico* legislature establishes a needle exchange program (SB 220).
- **Total Federal Opt-Out.** Legislatures totally opt out of federal welfare ban for former drug offenders in *Connecticut* (HB 8003), *Michigan* (SB 0169), *New Hampshire* (HB 722), *New York* (A8678, S. 5788), *Ohio* (S. 52), *Oklahoma* (HB 2170), and *Oregon* (SB 825).

1998

- **Marijuana Decriminalization.** *Oregon* legislature passes legislation re-criminalizing marijuana (which was decriminalized in the 1970s). Voters call a referendum and defeat criminalization (Measure 57).
- **Medical Marijuana.** Voters legalize medical marijuana in *Alaska* (Ballot Measure 8), *Nevada* (Ballot Question 9), *Oregon* (Measure 67), *Washington* (Initiative 692), and *Washington, D.C.* (Initiative 59). Congress overturns the D.C. initiative.
- **Partial Federal Opt-Out.** *Kentucky* legislature partially opts out of federal ban on welfare for former drug offenders (HB 864).
- **Sentencing Reform.** *Michigan* legislature reforms “650” lifer law, which mandated life without parole for possession or distribution of 650 grams or more of heroin or cocaine (HB 4065).
- **Treatment Instead of Incarceration/Medical Marijuana.** *Arizona* legislature passes legislation restricting both provisions of Arizona’s 1996 initiative. Voters call referendums on the restrictions and defeat them both at the ballot box (Proposition 300, Proposition 301).

1999

- **Forfeiture Reform.** *Arkansas* legislature reforms civil asset forfeiture laws (SB 555).
- **Industrial Hemp.** Legislatures pass measures in support of industrial hemp in *Arkansas* (SR 13), *California* (HR 32), *Hawaii* (HB 32, HR 109, HR 110), *Illinois* (SR 49, HR 168), *Minnesota* (HF 1238), *Montana* (HR 2), *New Mexico* (HB 9), *North Dakota* (HB 1428, SB 2328, HCR 3038), and *Virginia* (HJR 94).
- **Medical Marijuana.** *Maine* voters legalize medical marijuana (Question 2).
- **Partial Federal Opt-Out.** *New Jersey* legislature partially opts out of federal ban on welfare for former drug offenders (A2316).
- **Racial Profiling.** Legislatures mandate traffic-stop data collection in *Connecticut* (SB 1282) and *North Carolina* (SB 76). *Alabama* legislature passes a mandatory seat belt law containing provisions mandating the collection of statistics on people cited for violating it (HB 99-397). *California* legislature bans racial profiling and mandates traffic stop data collection, but Governor Gray Davis vetoes the legislation (SB 78).
- **Syringe Availability.** *Connecticut* legislature amends paraphernalia statute to allow possession of up to thirty syringes (HB 7501).

2000

- **Felony Disenfranchisement.** *Delaware* legislature passes legislation restoring voting rights to felons (HB 126).
- **Forfeiture Reform.** Voters reform civil asset forfeiture laws in *Oregon* (Measure 3) and *Utah* (Initiative B). *California* legislature passes forfeiture reform legislation, but Governor Gray Davis vetoes it (SB 1866).
- **Industrial Hemp.** Legislatures pass measures in support of industrial hemp in *Illinois* (HR 553), *Maryland* (HB 1250), and *Vermont* (JRS 98).
- **Medical Marijuana.** *Hawaii* legislature legalizes medical marijuana (SB 862). Voters legalize medical marijuana in *Colorado* (Amendment 20) and *Nevada* (Question 9). This is the second vote for Nevadans. (Under Nevada law, initiatives have to be approved twice before they can take effect).
- **Methadone, Harm Reduction, and Treatment.** *Vermont* legislature legalizes methadone (S.303).
- **Partial Federal Opt-Out.** *Idaho* legislature partially opts out of federal ban on welfare to former drug offenders (HB 575).
- **Racial Profiling.** Legislatures ban racial profiling and/or mandate traffic stop data collection in *California* (SB 1102), *Kansas* (HB 2683), *Massachusetts* (SB 2238), *Missouri* (SB 1053), *Oklahoma* (SB 1444), *Rhode Island* (HB 7164), *Tennessee* (SB 2415), and *Washington* (SB 6683).
- **Syringe Availability.** Legislatures deregulate syringes, allowing pharmacies to sell them, in *New Hampshire* (HB 427), *New York* (A9293-A, S.6293-A) and *Rhode Island* (H 7949).
- **Treatment Instead of Incarceration.** *California* voters pass Proposition 36, a treatment instead of incarceration initiative.

2001

- **Felony Disenfranchisement.** *Connecticut* legislature restores voting rights to felons sentenced to probation (HB 5042). *Maryland* legislature establishes a task force to study repealing laws that disenfranchise felons (HB 495). *New Mexico* legislature restores voting rights to felons (SB 204).
- **Forfeiture Reform.** Legislatures reform civil asset forfeiture laws in *Missouri* (SB 5), *Nevada* (SB 36), *Texas* (SB 563), and *Washington* (HB 1995). *Tennessee* legislature reforms criminal asset forfeiture laws (SB 585).
- **Industrial Hemp.** Legislatures pass measures in support of industrial hemp in *Kentucky* (HB 100), *Montana* (SB 261), *North Dakota* (HCR 3033), and *Virginia* (HJR 605). *Illinois* legislature passes two measures in support of industrial hemp, but the Governor vetoes both (SB 1397, HB 3377).
- **Medical Marijuana.** *Nevada* legislature implements voter-initiated medical marijuana measure (AB 453).
- **Marijuana Decriminalization.** *Nevada* decriminalizes marijuana for personal use (AB 453).

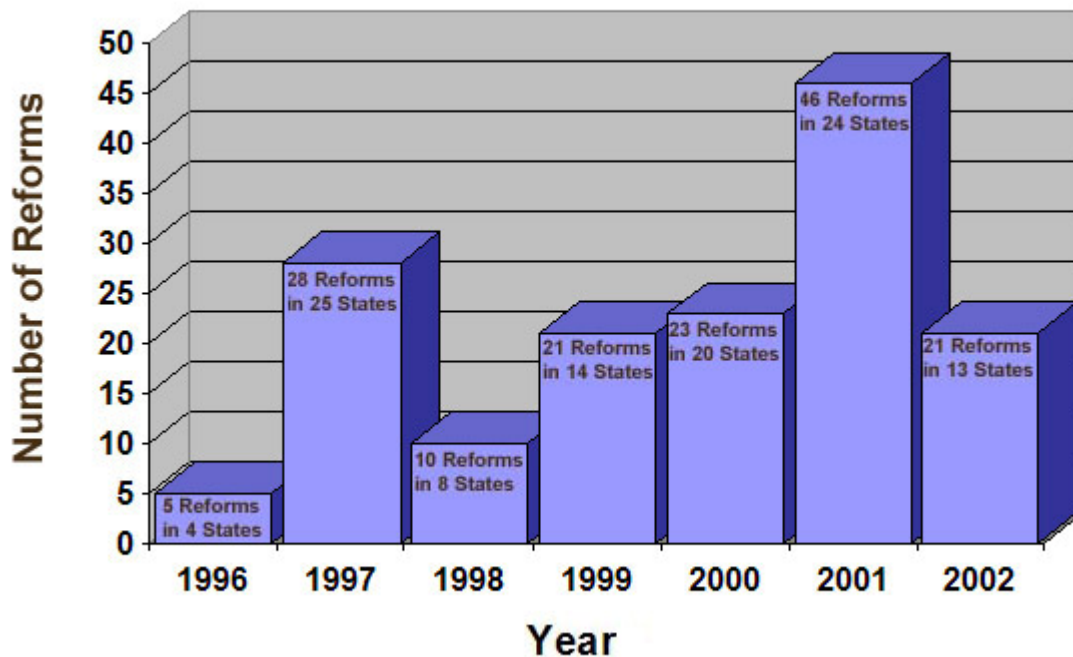
- **Marijuana Tax Reform.** *Kentucky* legislature passes legislation prohibiting property owners from being “taxed” for marijuana growing on their property unless they are convicted of a crime (HB 356).
- **Methadone, Harm Reduction, and Treatment.** *New Mexico* legislature expands state-funded drug treatment programs, incorporating harm reduction principles (SB 628).
- **Overdose Prevention.** *New Mexico* legislature limits liability for administration of anti-opioids (HB 813).
- **Racial Profiling.** *Colorado* mandates traffic-stop data collection and officer diversity training (HB01-1114). *Florida* mandates that police develop policies to combat racial profiling, such as diversity training (SB 84). *Kentucky* bans racial profiling (SB 76). *Maryland* legislature bans racial profiling and mandates traffic-stop data collection (HB 303). *Minnesota* bans racial profiling (SF0007). *Nebraska* bans racial profiling and mandates traffic-stop data collection (LB 593). *Texas* legislature bans racial profiling (SB 1074).
- **Sentencing Reform.** *Arkansas* legislature passes legislation appointing a task force to examine racial disparities in sentencing for non-violent offenders and to make recommendations on what to do about it (HB 2615). *Connecticut* legislature gives judges discretion to waive certain mandatory minimum sentences for nonviolent offenders (SB 1160). *Indiana* legislature reforms their “three strikes, you’re out” law (SB 358), expands treatment instead of incarceration (HB 1892), eliminates mandatory minimums for certain non-violent drug offenses (HB 1892), and reforms their “drug-free” zone laws (HB 1892). *Iowa* passes legislation giving judges discretion when sentencing “Class D” felony offenders to a determinate sentence (SF 543). *Louisiana* legislature reforms “three strikes, you’re out” law (SB 239), establishes a risk review panel to make recommendations on non-violent offenders that should be paroled or pardoned (SB 239), and removes mandatory sentences for simple drug possession and other non violent offenses and cut sentences for many drug selling offenses in half (SB 239). *Mississippi* passes legislation exempting non-violent drug offenses (except sales) and other non-violent offenses from the state’s requirement that inmates serve at least 85 percent of their imposed prison sentence (SB 5). *Montana* legislature eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 174) and eliminates provisions providing for mandatory revocation of driver’s licenses for people under 21 who buy, possess, or use a legal or illegal intoxicating substance (HB 191). *New Mexico* legislature establishes a women’s reentry drug court that allows early release to treatment, instead of incarceration, for the last 18 months of a woman’s prison sentence (SB 200). *North Dakota* eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 1364) and passes legislation directing the Legislative Council to examine the effectiveness and impact of mandatory minimum drug sentences (SCR 4018). *Texas* legislature bans drug convictions based solely on the testimony of an informant (HB 2351). *Virginia* legislature reduces the number of mandated hours of community service for first-time drug possession misdemeanors from “at least 100 hours” to “up to 24 hours” (HB 2751).
- **Syringe Availability.** *Arkansas* legislature passes legislation reducing the penalty for possession, use, or distribution of drug paraphernalia (such as syringes) from a Class C felony to a Class A misdemeanor (HB 2313). *New Mexico* legislature removes potential criminal liability for pharmacy syringe sales (SB 320).
- **Treatment Instead of Incarceration.** *California* legislature establishes new protections for probationers and parolees that fail drug tests (SB 223).
- **Total Federal Opt-Out.** *Massachusetts* totally opts out of federal ban on welfare for former drug offenders (H 4800).

2002

- **Felony Disenfranchisement.** *Maryland* legislature restores voting rights to felons upon completion of sentence for all first-time offenses, and three years after completion of sentence for subsequent nonviolent offenses (HB 535).
- **Forfeiture Reform.** Legislatures reform asset forfeiture laws in *Colorado* (HB 1404) and *New Mexico* (SB 5).
- **Industrial Hemp.** *West Virginia* legislature passes legislation legalizing industrial hemp for licensed farmers (SB 447).
- **Medical Marijuana.** *Maine* legislature passes legislation expanding the state’s 1999 voter-approved medical marijuana law, making it the first time a state legislature has expanded a voter-approved medical marijuana initiative (LD 611). *Vermont* legislature established a commission to issue recommendations on the best way to provide legal protection to patients that use marijuana (S. 193).

- **Methadone, Harm Reduction, and Treatment.** *California* legislature passes legislation to repeal methadone dosage caps and bill requirements (SB 1447).
- **Overdose Prevention.** *California* legislature passes legislation to track and reduce fatal overdose (SB 1695).
- **Partial Federal Opt-Out.** *Tennessee* legislature partially opts out of federal welfare ban for former drug offenders (SB 264).
- **Racial Profiling.** *Utah* legislature bans racial profiling and requires traffic stop data collection (HB 101). *West Virginia* legislature bans racial profiling (HB 4289). *Washington* legislature bans racial profiling (SB 5852).
- **Sentencing Reform.** *Colorado* legislature cuts drug sentences and uses savings to fund treatment (SB 02-39), but Governor Bill Owens vetoes the bill. *Michigan* legislature reforms mandatory minimum drug sentences, gives judges the authority to use sentencing guidelines for most drug possession and delivery offenses, reserves consecutive sentences for top-level drug sellers, and eliminates mandatory lifetime probation for low-level drug offenders (HB 5394 and 5395). *New Mexico* legislature expands judicial discretion (HB 26), and establishes commission to consider early release of non-violent offenders incarcerated on drug charges or as a result of parole revocation related to drug use or possession (HB 263). *Washington* legislature cuts drug sentences and uses savings to fund treatment (HB 2338)
- **Syringe Availability.** *Washington* legislature decriminalizes possession and sale of syringes (HB 1759).
- **Total Federal Opt-Out.** *New Mexico* legislature fully opts out of federal welfare ban for former drug offenders (HB 11).
- **Treatment Instead of Incarceration.** *Hawaii* legislature implements Proposition 36-style treatment instead of incarceration (SB 1188). Voters in *Washington D.C.* provide for treatment instead of incarceration for first and second time non-violent drug offenders in the District of Columbia (Measure 62).

Number of Drug Policy Reforms by Year



APPENDIX C: VOTER-APPROVED REFORMS

Initiatives Approved by Voters:

YEAR	STATE	SUBJECT	% Yes
1996	AZ	Proposition 200 – Treatment Instead of Incarceration/Medical Marijuana	65%
1996	CA	Proposition 215 – Medical Marijuana	56%
1998	AK	Ballot Measure 8 – Medical Marijuana	59%
1998	DC	Initiative 59 – Medical Marijuana	69%
1998	NV	Ballot Question 9 – Medical Marijuana	59%
1998	OR	Measure 67 – Medical Marijuana	55%
1998	WA	Initiative 692 – Medical Marijuana	59%
1999	ME	Question 2 – Medical Marijuana	61%
2000	CA	Proposition 36 – Treatment Instead of Incarceration	61%
2000	CO	Amendment 20 – Medical Marijuana	54%
2000	NV	Question 9 – Medical Marijuana	65%
2000	OR	Measure 3 – Civil Asset Forfeiture Reform	67%
2000	UT	Initiative B – Civil Asset Forfeiture Reform	69%
2002	DC	Measure 62 – Treatment Instead of Incarceration	78%

Roll Back Legislation Rejected by Voters:

YEAR	STATE	SUBJECT	% No
1998	AZ	Proposition 300 – Overturning certain medical marijuana provisions of Proposition 200	57%
1998	AZ	Proposition 301 – Overturning certain treatment instead of incarceration provisions of Proposition 200	52%
1998	OR	Measure 57 – Criminalizing possession of an ounce or less of marijuana	66%

Treatment Instead of Incarceration (also included under Sentencing Reform):

6 reforms / 3 states and DC

States: AZ, CA, DC, HI

Sterile Syringe Availability: 10 reforms / 9 states

States: AR, CT, ME, MN, NH, NM, NY, RI, WA

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³ D.R. Gerstein et al., *Evaluation Recovery Services: The California Drug and Alcohol Treatment Assessment, General Report* (Chicago: National Opinion Research Center, 1994). Submitted to the State of California Department of Alcohol and Drug Programs.

⁴ Peter Hart and Associates, *Changing Public Attitudes toward the Criminal Justice System* (New York: Open Society Institute, February 2002). 63 percent of respondents replied that drug abuse should be handled by treatment and counseling as opposed to prison.

⁵ "Support for Crime Prevention Rises as Tough Approach Loses," *Wall Street Journal*, 13 February 2002. Also, a 2001 ABC News poll found that 69 percent of Americans support laws requiring drug treatment over jail time for first and second-time nonviolent drug offenders. See Kate Miltner, "Treatment Over Jail Time Poll: Most Favor Efforts to Combat Addiction Over Punishment," June 2001, <<http://abcnews.go.com/sections/politics/DailyNews/poll010606.html>> (March 2003).

⁶ See pages 12-13 of this report for detailed information on voter enacted legislative reforms in Arizona.

⁷ See pages 13-16 of this report for detailed information on voter enacted legislative reforms in California.

⁸ Arizona Supreme Court, Office of the Courts, *Drug Treatment and Education Fund: Legislative Report FY 1997-1998* (Arizona: Arizona Supreme Court, March 1999): 12.

⁹ D. Longshore, E. Evans, D. Urada, C. Teruya, M. Hardy, Y. Hser, M. Prendergast and S. Ettner, *Evaluation of the Substance Abuse and Crime Prevention Act 2002 Report* (Los Angeles, CA: University of California Los Angeles Integrated Substance Abuse Programs, July 2003). See also Drug Policy Alliance, *Proposition 36 One-Year Progress Report* (Sacramento, CA: Drug Policy Alliance, July 2002) <http://www.prop36.org/one_year_report.html> (1 July 2002).

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¹³ The Executive Summary of a report from the 1998 Workshop on the Medical Utility of Marijuana held by the National Institutes of Health include that "even for conditions where good therapies are available, some patients develop adverse reactions or are nonresponders. The needs of this subset of nonresponders must be considered in the deliberations on testing marijuana as a possible therapeutic agent," going into detail about specific medical uses of marijuana. See National Institutes of Health, Workshop on the Medical Utility of Marijuana, Ad Hoc Group of Experts, *Report to the Director*, 1998, <<http://www.nih.gov/news/medmarijuana/MedicalMarijuana.htm#EXECUTIVE>> (1 June 2000).

¹⁴ Janet Joy et al., eds., *Marijuana and Medicine: Assessing the Science Base* (Washington, D.C.: National Academy of Sciences Institute of Medicine, 1999): 4.

¹⁵ John Benson, prepared statement, Institute of Medicine News Conference for *Marijuana and Medicine: Assessing the Science Base* (Washington, D.C.: National Academy of Sciences Institute of Medicine, 17 March 1999). Similarly, a 1994 report of the Australian National Task Force on Cannabis stated that "THC has shown to be an effective anti-emetic (anti-nausea) agent for some patients undergoing cancer chemotherapy . . . There is reasonable evidence for the efficacy of THC in the treatment of glaucoma . . . There is suggestive evidence for the value of various cannabinoids as anti-spasmodic and anti-convulsant agents." Robert Ali and Paul Christie, eds., *Report of*

the National Task Force on Cannabis (Canberra, Australia: Australian Government Publishing Service, 30 September 1994), 17. A September 2002 report of the Canadian Senate Special Committee on Illegal Drugs likewise states, "There are clear . . . indications of the therapeutic benefits of marijuana [for] chronic pain . . . multiple sclerosis . . . epilepsy . . . chemotherapy . . . and . . . cachexi." Pierre Claude Nolin and Colin Kenny et al., *Cannabis: Our Position for a Canadian Public Policy: Report of the Senate Special Committee on Illegal Drugs* (Ottawa, Canada: Senate Special Committee on Illegal Drugs, September 2002), 206.

¹⁶ See page 13-16 of this report for detailed information on Proposition 215 and medical marijuana in California.

¹⁷ William N. Brownsberger and Susan Aromaa, *An Empirical Study of the School Zone Law in Three Cities in Massachusetts* (Boston, MA: Join Together and Boston University School of Public Health, July 2001) <http://www.jointogether.org/sa/files/pdf/school_zone.pdf> (1 August 2001).

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¹⁹ Data derived from CDC WONDER show overdose death rates at approximately 3000 in the year 1990, and close to 6000 a decade later. See Centers for Disease Control and Prevention, Centers for Disease Control and Prevention Wide-ranging OnLine Data for Epidemiologic Research, "Compressed Mortality/Population Data Request Screen," February 2003, <<http://wonder.cdc.gov/mortSQL.html>> (March 2003).

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