



RESEARCH AND ADVOCACY FOR REFORM

# **The State of Sentencing 2007**

## **Developments in Policy and Practice**

Ryan S. King

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For further information:

The Sentencing Project

514 10<sup>th</sup> St. NW

Suite 1000

Washington, D.C. 20004

(202) 628-0871

[www.sentencingproject.org](http://www.sentencingproject.org)

This report was written by Ryan S. King, Policy Analyst, of The Sentencing Project, with research assistance from Abbey Marshak.

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The Sentencing Project works for a fair and effective criminal justice system by promoting reforms in sentencing law and practice and alternatives to incarceration. To these ends, it seeks to recast the public debate on crime and punishment.

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## OVERVIEW

In recent years, “tough on crime” policies that previously dominated the criminal justice legislative agenda have ceded ground to a more balanced consideration of how states can most effectively allocate resources to maximize public safety.<sup>1</sup> Many states are facing a moment of reckoning in which the fiscal cost of past policies now threatens to affect vital state services. Thus, legislative efforts to address prison overcrowding, reform parole and probation supervision, expand drug sentencing diversion, and establish reentry assistance are playing a role in shaping the criminal justice agenda. Although legislative sessions seldom close without some penalty enhancements being added to the criminal code, the tone and focus of many state legislative bodies has demonstrably shifted and, as a result, there is increasing opportunity for reform.

This report highlights a number of important criminal justice policy developments that occurred at the state level during 2007.<sup>2</sup> These include:

- Nine states created oversight committees or task forces to address sentencing laws, prison overcrowding, indigent defense, and /or the provision of reentry services;
- Two states reformed mandatory sentencing enhancement provisions, while three states introduced substantial reform proposals to mandatory sentencing provisions for drug offenses that passed one or both houses in the legislature;
- New Jersey repealed its death penalty and replaced it with life in prison without the possibility of parole;
- Seven states amended parole policies and enhanced reentry preparation;
- Four states reformed criminal justice policies pertaining to juveniles; these include changing the age of majority for the purposes of criminal sentencing and addressing clemency practices for persons sentenced as an adult for a crime committed as a juvenile;
- Three states modified “Romeo and Juliet” provisions of sexual offense laws.

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<sup>1</sup>Ryan S. King, *Changing Direction? State Sentencing Reforms 2004-2006*, 2007, The Sentencing Project; Ryan S. King and Marc Mauer, *State Sentencing and Corrections Policy in an Era of Fiscal Restraint*, 2002, The Sentencing Project; Judith A. Greene, *Positive Trends in State-Level Sentencing and Corrections Policy*, 2003, Families Against Mandatory Minimums; Daniel F. Wilhelm and Nicholas R. Turner, *Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration?*, 2002, Vera Institute of Justice.

<sup>2</sup> This report is not intended to be an exhaustive collection of state criminal justice legislation and policy reforms implemented during 2007. Rather, it is meant to highlight selected legislative and policy developments that address critical challenges related to criminal justice.

### Key Criminal Justice Policy Reforms and Legislation Passed in 2007

STATE	REFORM
ARKANSAS	Continued use of the Emergency Powers Act of 2003 to relieve crowding
CALIFORNIA	(1) Expanded early release program in local jails; (2) implemented “earned discharge” program for certain persons on parole; (3) expanded reentry assistance; (4) restructured juvenile justice system
COLORADO	(1) Created commission to evaluate sentencing policy; (2) established Juvenile Clemency Board
CONNECTICUT	(1) Changed statutory threshold for adult status; (2) modified age limits for consensual sex between teenagers
FLORIDA	Modified age limits for consensual sex between teenagers
HAWAII	(1) Expanded reentry programs; (2) expanded rehabilitation resources in prisons
INDIANA	Modified age limits for consensual sex between teenagers
LOUISIANA	(1) Established Louisiana Public Defender Board; (2) expanded substance abuse treatment in prisons
MAINE	Established committee to study sentencing practices
MARYLAND	Reformed mandatory minimum provisions by restoring parole eligibility for certain offenses
NEVADA	(1) Created commission to evaluate sentencing policy; (2) repealed mandatory sentencing enhancements for certain offenses; (3) expanded “good time” eligibility, implemented intermediate sanctions for supervision violations; (4) reclassified jail capacity requirements
NEW JERSEY	Repealed death penalty
NEW MEXICO	Funded sentencing commission studies
OKLAHOMA	Established committees to monitor state reentry programs
PENNSYLVANIA	Directed Sentencing Commission to study effectiveness of mandatory minimum sentences
RHODE ISLAND	Changed statutory threshold for adult status (ultimately repealed)
WASHINGTON	Expanded reentry services
WISCONSIN	(1) Established task force to study racial disparity in the justice system; (2) expanded substance abuse treatment options to reduce sentence length

### Key Criminal Justice Legislation Introduced in 2007

STATE	REFORM
CALIFORNIA	Senate voted to establish a state sentencing commission
DELAWARE	House voted to repeal mandatory minimums for certain drug offenses
ILLINOIS	House voted to create a task force to study impact of drug free zones on racial disparity
KANSAS	Senate voted to establish a committee to study sentencing practices
MARYLAND	House and Senate voted to restore parole for certain drug offenses
RHODE ISLAND	House and Senate voted to repeal or reduce mandatory minimum sentences for certain drug offenses

## OVERSIGHT COMMITTEES

The most common developments in 2007 were efforts to establish oversight mechanisms for the criminal justice system through legislation, resolutions, and executive orders. The committees established by these policies are charged with examining the conditions of crime and punishment within a state, conducting analysis, and making recommendations for improvement.

### **Colorado – Created Commission to Evaluate Sentencing Policy**

HB 1358 established a criminal justice oversight committee, the Colorado Commission on Criminal and Juvenile Justice, to review sentencing guidelines and annually present recommendations to the three branches of state government. The legislature concluded,

“[i]t is in the best interest of the public to engage in a comprehensive evidence-based analysis of the circumstances and characteristics of the offenders being sentenced to the Department of Corrections, the alternatives to incarceration, the effectiveness of prevention programs, and the effectiveness of the criminal code and sentencing laws in securing public safety.”

The Commission, comprised of 26 appointed experts ranging from public defenders to Department of Corrections representatives, is charged with conducting an analysis of current sentencing practices and investigating alternatives to incarceration with the dual mission of reducing recidivism and ensuring that criminal justice resources are allocated effectively.

**Nevada – Created Commission to Evaluate Sentencing Policy**

With the passage of **AB 508**, Nevada established an Advisory Commission on the Administration of Justice to evaluate the effectiveness of sentencing policy. More specifically, the committee will examine the consequences of mandatory minimum sentences for illegal substances, the effectiveness of these sentences in meeting intended goals, the operations of the Department of Corrections and State Board of Parole Officers, and the conditions of new specialty court models. It will also analyze the juvenile justice system, with the ultimate goal of identifying strategies to reduce recidivism. The commission is comprised of representatives from throughout the criminal justice community. These include a representative of the Supreme Court of Nevada, an advocate for incarcerated people, and a member of the State Board of Parole Commissioners. The commission will meet at least once every three months and submit its recommendations to the legislature at least every two years.

**Other oversight committees were created in response to high recidivism rates. While their findings sometimes parallel the sentencing policy commissions, their mission and approach to research differs.**

**Oklahoma – Established Committees to Monitor State Reentry Programs**

With the passage of **HB 2101**, Oklahoma sought to address the challenges of reentry and recidivism in the state. The bill established two committees, the Reentry Policy Council to ensure that reentry initiatives achieve the intended goal of easing transition back into the community; and the Transformational Justice Interagency Task Force, to identify best practices in reentry and to coordinate and encourage faith-based and community-based programs. The Reentry Policy Council will review corrections policies related to release, identify gaps in the provision of reentry services, and recommend necessary reforms. The Transformational Justice Interagency Task Force is charged with establishing benchmarks to reduce the recidivism rate, coordinate the different agencies involved in reentry programming, link pre- and post-release services, and encourage the use of family-based treatment centers.

Additionally, two permanent funds were established with the act. The first, the Reintegration of Inmates Revolving Fund will support faith-based reentry programs through government grants. This part of the bill has been contentious and one state legislator has asked the state attorney general to investigate whether a provision earmarking funds for faith-based organizations can pass constitutional muster. The second fund, the Transformational Justice Revolving Fund, awards bonuses to correctional officers who have demonstrated improved recidivism rates.

**Finally, some oversight committees were created to evaluate specific problems within states' criminal justice systems. Examples included:**

**Louisiana – Established Louisiana Public Defender Board**

In the wake of Hurricane Katrina, increased attention was paid to fundamental failings in the Louisiana criminal court system. One of the most noteworthy was an overworked, underfunded, and largely ineffective public defender system. As an initial step intended to address long-standing problems in the public provision of counsel, **HB 436** creates the Louisiana Public Defender Board, which supersedes the Louisiana Indigent Defense Assistance Board in exercising regulatory and supervisory authority over the state public defender system. The Board will create 11 public defender service regions that will coordinate assistance delivery to their constituency. Each region will be managed by a district public defender. The legislation improves the statewide organization of the public defender system that had been lacking in the prior system.

**New Mexico – Funded Sentencing Commission Studies**

**SB 611** awarded \$50,000 each for two studies by the sentencing commission. The first examines evidence of bias-based policing throughout the state. The second study will survey parole participants and examine gender-specific parole models in order to recommend best practices for the state.

**Pennsylvania – Directed Sentencing Commission to Study Effectiveness of Mandatory Minimum Sentences**

HR 12 instructed the Pennsylvania Sentencing Commission to analyze the commonwealth's use of mandatory minimum sentences and measure its impact on recidivism, cost-efficiency, and fairness in sentencing. The Pennsylvania House noted that mandatory minimum sentences "significantly increase the cost of corrections" by expanding the prison population, yet there remains a dearth of knowledge regarding their overall effect on crime rates. The House expressed further concern that the impact of mandatory minimum sentencing alters dynamics in the courthouse by reducing judicial discretion, increasing the likelihood of plea bargains, and rendering some individuals ineligible for certain rehabilitation programs in prison. The study is expected to be completed within two years and will include recommended reforms.

**Wisconsin – Established Task Force to Study Racial Disparity in the Justice System**

African Americans in Wisconsin are incarcerated at 11 times the rate of whites, the fifth largest disparity in the country. In response to a 2007 report documenting substantial racial disparities in incarceration rates among youth, Governor Jim Doyle issued **Executive Order 189**, creating the "Commission on Reducing Racial Disparities in the Wisconsin Justice System." The commission is tasked with determining if racial discrimination exists at any stage in the criminal justice system and to recommend measures to reduce any unwarranted disparities. The Commission is set to report its recommendations in January 2008.

**The following are examples of legislative action taken in the wake of recommendations from a prior oversight commission. Both use grants as a means to fund new initiatives.**

**Maine – Established Committee to Study Sentencing Practices**

With the passage of LD 1895, the Maine legislature adopted the recommendations of the “Corrections Alternative Advisory Committee.” Included in the bill is the establishment of community-based criminal justice planning committees, which are intended to coordinate and monitor community corrections activities at the county level. The law also established the “State Sentencing and Corrections Practices Coordinating Council” to study and promote evidence-based sentencing practices that balance the need for punishment, rehabilitation, and the protection of public safety. Finally, the Community Corrections Fund was established to provide funding to create and implement community corrections programs, and the Community Corrections Incentive Fund was created to allocate grants for programs focused on reducing recidivism.

**Washington – Expanded Reentry Services**

In 2006, the Washington legislature created the “Joint Task Force on Offenders Programs, Sentencing, and Supervision” to review state sentencing and community supervision programs’ impact on rehabilitation, public safety, and recidivism, and to identify strategies for improvement. SB 6157, a comprehensive criminal justice bill passed in 2007, incorporates some of these recommendations by addressing five key areas related to reducing recidivism. First, the bill requires that each county perform an inventory of its available reentry services. It also sets up a pilot program, the Community Transition Coordination Network Program, in four counties to connect reentering people to community resources. Next, the bill requires that an individual reentry plan be developed for each incarcerated person to identify necessary areas of assistance, and that s/he be returned to their county of origin upon release. The third section of the bill mandates a review of work release programs to determine best practices, the establishment of community justice centers, equitable distribution of

programs throughout the state, a review of qualifications for early release from prison, and the creation of a legislative task force to review programs' progress. The fourth section of the bill increases educational opportunities within facilities by requiring the Department of Corrections to pay for GED and high school graduation programs and ensuring that post-secondary programs exist for incarcerated people who are able to pay. Finally, the bill addresses housing upon release from prison by limiting civil liability for landlords who rent to persons with a prior felony conviction and establishing two pilot programs to provide transitional supportive housing accompanied by other reentry services.

**The following pieces of legislation represent noteworthy bills that were not passed into law, but warrant attention as they present potential areas of future legislative activity.**

**California – Senate, House Voted to Establish State Sentencing Commission**

With the passage of the “Three-Strikes” law in 1994 and other “tough on crime” sentencing legislation, California’s incarcerated population has grown to almost double its capacity, with an expected 30% increase in the next 20 years to over 225,000. Insufficient health care and abysmal conditions have resulted in repeated reprimands of the Department of Corrections and Rehabilitation by government officials and independent observers, as well as the intervention of federal courts. Thus, this year’s legislative session was active with criminal justice legislation. In response to the state’s prison overcrowding, Governor Arnold Schwarzenegger proposed the creation of a state sentencing commission to review California’s criminal sentencing code and identify potential areas of reform. **SB 110**, as passed in the Senate, would have established a California Sentencing Commission chaired by the Chief Justice of the California Supreme Court to create sentencing recommendations for various offenses. The committee would have served as a resource center for the study and analysis of sentencing policy and would be charged with measuring the effectiveness of sentences imposed while also examining the presence of inequities and discrimination in sentencing. Meanwhile, **AB 160**, as

passed in the General Assembly, would also have created a California Sentencing Commission to serve much the same purpose as **SB 110**. The key difference between the two bills is the degree of independence and authority that the recommendations from the commission would carry. Despite substantial debate, neither bill garnered enough support from the other house of the legislature to be passed.

**Illinois – House Voted to Create Task Force to Study Impact of Drug-Free Zones on Racial Disparity**

Passed in the Illinois House, **HR 153** would have created the Legislative Task Force on Drug Free Zones to evaluate the effectiveness of increased penalties for drug offenses in certain areas and the impact of these laws on the African American community. The task force was suggested in the wake of a recent report by the Illinois Consortium on Drug Policy, which documented the racially disparate effect of the “war on drugs” during the 1980s and 1990s. The bill cited recent research documenting the limited impact that drug-free zones have on the targeted population, with less than 1% of cases actually involving children. Additionally, urban areas where communities of color more frequently reside tend to have a greater preponderance of drug-free zones. A recent evaluation of drug-free zones in New Jersey found that 96% of persons receiving a sentence under these laws were African American or Latino.

**Kansas – Senate Voted to Establish Committee to Study State Sentencing Practices**

As passed in the Senate, **SB 391** would have established the Kansas Criminal Code Recodification Commission. The commission was expected to review the current sentencing guideline system and make recommendations to ensure proportionality of crime and punishment. In addition, the committee would have conducted an evaluation comparing Kansas’ recommendations with the sentencing provisions in other states. Upon transfer to the House, the bill did not pass out of the Appropriations Committee.

## SENTENCING REFORM

Alternative to incarceration sentencing provisions for certain non-violent offenders continue to gain popularity in the states as less expensive and more effective options than incarceration.

### **Maryland – Reformed mandatory minimum provisions by restoring parole eligibility for certain offenses**

Maryland’s **HB 1317** permits persons convicted of a burglary or daytime housebreaking offense prior to October 1, 1994 and sentenced to a mandatory minimum to have their case reviewed to determine parole eligibility.

### **Nevada – Repealed Mandatory Sentencing Enhancements for Certain Offenses**

Prior to the 2007 legislative session, Nevada law required that mandatory enhancements be applied upon conviction of certain felony offenses. For example, a person convicted of a felony committed on school property would face the statutory punishment for the charged conduct, plus a sentence enhancement equal to the statutory punishment. Other offenses that warranted such a “double sentence” enhancement include those committed with the assistance of a minor, certain domestic violence offenses, and crimes against the elderly. Nevada’s comprehensive **AB 510** grants discretion to judges to apply shortened enhancements for these crimes, generally between 1 and 20 years. There were calls for granting broader discretion to judges for the purposes of sentencing, but the legislature ultimately determined that the commission created by **AB 508** would be making recommendations in 2009 on the state of mandatory minimum sentencing and it was prudent to wait for its report.

Nationally, momentum for reform of the death penalty continued in 2007. In recent years, the U.S. Supreme Court issued two decisions outlawing the execution of persons suffering from mental retardation and those who were juveniles at the time of their crime. In 2007, one state, New Jersey, took the significant step of repealing its capital punishment law entirely.

#### **New Jersey – Repealed Death Penalty**

The passage of S171 by the New Jersey Legislature repealed that state's death penalty provision and replaced it with a sentence of life without parole. New Jersey became the first state in more than 40 years to abolish capital punishment in the legislature.

Mandatory minimum sentences have greatly contributed to increasing incarceration rates. The passage of a host of mandatory minimums for drug crimes in the 1980s has resulted in the incarceration of thousands of low-level offenders for lengthy prison terms. With costs of incarceration rising, policymakers are beginning to revisit mandatory minimums in light of their questionable impact on crime and a demonstrable link to prison overcrowding. Although none of the following bills was passed into law in 2007, they demonstrate growing support for ambitious legislation that would have repealed many mandatory minimum provisions.

#### **Delaware – House Voted to Repeal Mandatory Minimums for Certain Drug Offenses**

Delaware's HB 71, passed by a large majority in the House, would have eliminated mandatory minimum sentences for certain drug offenses. The bill, however, still would have allowed for mandatory *maximum* sentences as a check on judges and would have preserved guidelines to assist decision-making. Despite passing by a 2-1 margin in the House with bipartisan support, the bill did not pass out of the Senate Executive Committee. It is uncertain whether the bill will reemerge in the legislative session beginning in January 2008.

**Maryland – House and Senate Voted to Restore Parole for Certain Drug Offenses**

HB 992, passed in both houses, was vetoed by the governor. The bill would have reduced mandatory minimum drug sentences by restoring parole eligibility to repeat offenders who have not committed violent crimes. Governor Martin O'Malley wrote in his veto message that signing the bill was “unnecessary and contrary to the interests of public safety,” as drug activity “fuels violent crime and murder.”

**Rhode Island – House and Senate Voted to Repeal or Reduce Mandatory Minimum Sentences for Certain Drug Offenses**

Passed in both houses but vetoed by the Governor, SB 207 would have significantly reduced mandatory minimum sentences for many controlled substance charges; in some cases, altogether eliminating them and imposing a lower, mandatory maximum. The bill also eliminated mandatory minimum fines and replaced them with maximums. Governor Don Carcieri vetoed the bill, stating that the increased discretion given to judges would undermine the mandatory minimums that would still exist, and that current law adequately preserves appropriate judicial power. Despite being passed with the requisite number of votes necessary to override a gubernatorial veto, the legislature declined to put the bill on its calendar in October when it convened for a one-day special session to address other vetoed bills. A renewed effort to pass mandatory minimum reform is already planned for the 2008 legislative session.

## **OVERCROWDING**

Overcrowding has become a major challenge within American prisons as states grapple with the effects of decades of severe sentencing laws and reduced reliance on parole. Some states, such as California, have taken the approach of appropriating substantial funds for prison construction. The California legislature approved \$7.4 billion in lease-revenue bonds to construct more than 50,000 prison and jail beds in 2007. While the approach of expanding capacity to address overcrowding was the dominant strategy of the 1980s and 1990s, there is little evidence that it has been effective in reducing the level of overcrowding. Other states, whether as a result of federal court oversight or exorbitant correctional budgets, have chosen to implement innovative strategies to reduce the prison population while balancing the need to ensure public safety.

One means of achieving this end is reducing prison time on account of good behavior and successful participation in rehabilitative activities, such as vocational, educational, and substance abuse treatment programs.

### **Arkansas – Continued Use of the Emergency Powers Act of 2003 to Relieve Crowding**

Since the passage of Act 1721 in 2003, the Emergency Powers Act has been invoked every 90 days to reduce the levels of overpopulation within state facilities when the population exceeds capacity by 500 people. The act permits the early release of incarcerated class I and II non-violent offenders who have served no less than 6 months of their sentence. For example, in November 2007, the Board of Corrections voted to permit 698 persons in prison to apply for parole release to relieve overcrowding in the state prisons. At that time, the prisons were over 700 beds above capacity and more than 800 persons were in county jails awaiting transport to a state facility.

**California – Expanded Early Release Program in Local Jails**

California granted expanded authority to local jail administrators to release certain persons convicted of a misdemeanor to the community. **SB 959** allows for the early release of individuals from jail to the community by requiring persons to serve the balance of their sentence under home detention with electronic monitoring. Prior policy permitted an individual in jail to opt for the home detention alternative as a means of alleviating overcrowding. Some officials argued, however, that local jails have become so overcrowded that many people waived the home detention option in order to wait for an anticipated outright early release to no supervision. Proponents argued that the bill would permit greater supervision of individuals in the community while also addressing chronic overcrowding in many facilities.

**Nevada – Expanded “Good Time” Eligibility, Implemented Intermediate Sanctions for Supervision Violations, Reclassified Jail Capacity Requirements**

Nevada’s wide-ranging **AB510** extends the maximum number of days a sentence may be reduced for “good time” on the condition that a certain percentage of the sentence has been served. In Nevada, an individual can now earn an increased number of days to be subtracted from his or her sentence for good behavior, participating in substance abuse treatment, and/or completing vocational education and training. The bill also expands eligibility for reentry programming.

Nevada has also modified a number of conditions of community supervision. Persons on probation can have their total sentence reduced by 20 days for every month of good behavior under supervision. For both persons on probation and parole, intermediate alternatives to revocation to custody have been created. In many cases, a violation of a condition of supervision may result in assignment to a residential or community-based center for an abbreviated period. Upon passage, some state officials expressed concern about the ability of probation and parole agencies to handle the anticipated increase in caseload. By September, there were calls for a special legislative session to address concerns about a looming backlog in the processing of parole applications when the law goes into effect on October 1,

2007, and by November there were additional calls for expanded appropriations to handle the increased demand for parole applications.

Nevada also passed **SB 30**, which requires judges and local jail administrators to consider a facility's "operational capacity" rather than available bed space as a factor determining early release of certain individuals from custody to alleviate overcrowding. The new standard of "operational capacity" is defined as the "number of prisoners that may be safely housed in a jail."

#### **Wisconsin – Expanded Substance Abuse Treatment Options to Reduce Sentence Length**

Wisconsin's **SB 40** expands substance abuse programs to all state correctional facilities for currently incarcerated individuals who might qualify for early release upon completion of such programs.

## **PAROLE AND REENTRY INITIATIVES**

On average, half of all persons released from prison return to custody within three years. These high rates of recidivism can be attributed to a number of causal factors. Well-documented failures in reentry planning and parole certainly contribute to the problem. These difficulties in the provision of reentry and parole services resulted in legislation establishing programs and other rehabilitative options for the incarcerated and previously incarcerated community. Some highlights included:

### **California – Implemented “Earned Discharge” Program for Certain Persons on Parole, Expanded Reentry Assistance**

California returned 68,000 persons to prison in 2006 for violations of their terms of release after having served an average of only four months on parole. This rate translated to approximately two-thirds of persons on parole having their supervision revoked for either a technical violation or the commission of a new offense. The widespread failure of the California parole system to effectively manage its expanding population has been a significant contributor to the state’s rapidly expanding prison population. In response, the California Department of Corrections and Rehabilitation implemented an “earned discharge” program for persons currently on parole for low-level, non-violent offenses who have been deemed to pose little risk of reoffending. Persons on parole who have committed serious or violent offenses, including sex offenses, are ineligible to participate. Under the new scheme, eligible individuals who meet screening criteria can earn discharge from parole after serving six months. Research indicates that the highest risk of reoffending occurs within the initial six months of release, so the new approach permits the Department to concentrate resources on low-risk individuals during this period and then redeploy parole officers to address the needs of the higher-risk population for a longer period of time. The program is being introduced in Orange County and pending initial evaluation, is expected to be implemented statewide within 90 days of the Orange County results.

The vast majority of persons being released from prison return to the community with very little available resources to assist in their transition. **SB 718** establishes a pilot program in eight California counties, including Los Angeles, San Francisco, and San Diego, which authorizes the county sheriff to debit funds from the Inmate Welfare Fund to assist persons returning to the community. The Inmate Welfare Fund is financed by sales from the jail commissary and proceeds from telephone calls made from the jail facilities. A county sheriff is permitted to draw money from this fund for the purpose of assisting with “essential clothing and transportation expenses” as well as costs related to “work placement, counseling, obtaining proper identification, education, and housing.”

#### **Hawaii – Expanded Reentry, Rehabilitation Programs**

**SB 1174** promotes the development of special programs for incarcerated parents. After the success of the Strengthening Keiki of Incarcerated Parents Program (SKIP), the bill provides funding to facilities in order to develop and maintain programs encouraging family stability. SKIP offers parenting classes that are “aimed to increase an incarcerated parent's ability to provide a safe and nurturing environment for young children.”

Vetoed by the governor but overridden by the legislature, the passage of **SB 932** was fueled by strong support for re-structuring the prison as a rehabilitative center. SB 932 includes provisions to place educational, vocational, and mental and physical health care programs within the facilities and in communities for persons returning from prison. It also attempts to influence the placement of inmates, especially ones with children, to allow better access to family members and outside support. Additionally, the bill mandates that inmates transferred out of state be brought back to Hawaii for at least their final year of incarceration. It also establishes an interagency committee to oversee these reforms and conduct research citing improvements and recommended actions to further the goal of successful reentry into the community. The bill offers the development of reentry courts to assist previously incarcerated persons with access to treatment options.

**Louisiana – Expanded Substance Abuse Treatment in Prisons**

**HB 645** creates the Prison Substance Abuse and Rehabilitation Pilot Program requiring that every eligible person serving a sentence for a drug offense receive substance abuse treatment. The bill calls for the evaluation of the program's success, and the scope of the program is contingent upon available funding and personnel.

## JUVENILES

The treatment of juveniles, especially those nearing adulthood, is a contentious issue in many states. The decision to prosecute children as adults has lasting ramifications on their experience within the criminal justice system and their prospects for rehabilitation. There were key developments in Connecticut and Rhode Island regarding the statutory age of adulthood for the purposes of a criminal court, while Colorado expanded opportunities to reconsider sentences for juveniles convicted in adult court.

### **Connecticut – Changed Statutory Threshold for Adult Status**

A provision in SB 1500, the Connecticut state budget, changed the definition of a “child” for the purposes of criminal court classification to someone less than 18 years of age. With this new provision, 16 and 17-year olds who had been treated as adults, will be processed in juvenile court. Serious felonies committed by juveniles will still be automatically transferred into adult court and prosecutors retain the right to request a juvenile court judge to transfer a case into adult criminal court for other offenses.

### **Colorado – Established Juvenile Clemency Board**

In August 2007, Colorado Governor Bill Ritter signed **Executive Order B-009-07** establishing a juvenile clemency board. The Juvenile Clemency Advisory Board is charged with reviewing clemency and commutation requests from juveniles who have been convicted in adult criminal court. The board can make recommendations to the governor, who retains the ultimate decision making authority. The board is charged with considering the institutional record of individuals while incarcerated, including their record of rehabilitation. Moreover, the board is granted the authority to recommend commutation to “address sentencing disparities and correct inequities within the Colorado criminal justice system.”

**Rhode Island – Changed Statutory Threshold for Adult Status (Ultimately Repealed)**

While the Connecticut legislature was narrowing the reach of the state's adult criminal court to individuals older than 18, its neighbor to the east, Rhode Island, was lowering the age limit for persons to be classified as an adult. Rhode Island's **2008 budget** included language to treat 17-year olds as adults within the criminal justice system. The impetus for changing the age threshold was economic, as legislators hoped to transfer eligible individuals out of the expensive juvenile justice system into less costly adult facilities. Because the average annual cost of incarceration in Rhode Island adult facilities is less than half of juvenile institutions, it had been estimated that diverting 17-year old residents to the adult system could save the system \$3.6 million.

However, it quickly became apparent that the anticipated cost savings were illusory. Because of their age, the Rhode Island Department of Corrections made an administrative decision to house the 46 17-year olds convicted under the new law in maximum security facilities for their protection. The average annual cost of maximum security incarceration is estimated to be \$104,000, more than the average for the state's juvenile system. The law came under heightened criticism in the months following its enactment in July 2007. By October, support had largely eroded for the legislation and in a one-day special session, the Rhode Island legislature repealed the measure. However, legislators did not make the repeal retroactive. Thus, the estimated 500 17-year olds charged between July 1, 2007 and November 8, 2007 will face far more punitive sentences in the adult system if the legislature does not act.

**California's state juvenile justice system has incurred intense criticism due to its poor conditions, so much so that some counties have taken measures to keep convicted juveniles from entering the system at all.**

### **California – Restructured Juvenile Justice System**

Passed with bipartisan support, California's **SB 81** is touted as a landmark reform to the state's juvenile justice system and is expected to reduce the population in state juvenile detention centers by half in the next three years. The legislation calls for juveniles charged with all but the most serious felonies to be adjudicated and supervised in their county of residence rather than in a state facility. The counties are better situated to provide community-based and blended supervision, whereas the state Department of Juvenile Justice has been under a consent decree since 2004 due to conditions in the state system. In order to address the juveniles that are diverted from state facilities, the bill funds the construction of county-based rehabilitative programs through a block grant. Also, the bill awards money for an average spending of \$130,000 per youth, annually. Additionally, the bill requires that relapse prevention programs for juveniles convicted of sexual offenses include accompanying analysis of their effectiveness.

## SEXUAL OFFENSE LEGISLATION

One area of sex offender policy that has been reconsidered of late addresses certain consensual sexual relations between young persons. Titled “Romeo and Juliet Laws,” these provisions generally change sex offender registration requirements for those who have no prior record and whose offense consists of consensual sexual activity with a 13 to 17-year old who is close in age. In 2007, laws of this kind were passed in Connecticut, Florida, and Indiana.

### **Connecticut – Modified Age Limits for Consensual Sex Between Teenagers**

SB 1458 increased the minimum age difference for consensual sex between teenagers from two to three years for persons 13 years of age and older.

### **Florida – Modified Age Limits for Consensual Sex Between Teenagers**

In order to comply with the requirements of the Adam Walsh Child Protection and Safety Act, Florida passed SB 1604 to expand and strengthen its registration requirements for persons convicted of a sex offense. While it expands registration requirements for persons convicted of a sex offense upon their return to the community, the bill also sets guidelines to allow certain eligible individuals to apply for the removal of the registration requirement. Persons not more than four years older than a victim who was between 14 and 17 at the time of the offense will not be required to register.

### **Indiana – Modified Age Limits for Consensual Sex Between Teenagers**

In Indiana, persons who engaged in consensual relations with someone over the age of 12 with whom they have a dating or ongoing relationship, and there was not more than four years age difference between the partners, are not required to register (HB 1386).

**Punitive sex offender legislation usually garners wide support and quick passage within state legislatures, often in response to high profile crimes.**

**National – States Modify Sex Offender Laws**

Of recent note, 39 states passed some form of “Jessica’s Law” after Jessica Lunsford’s rape and murder in Florida by an individual with a prior history of sex offenses. The law imposes mandatory minimum sentences for various sexual assault charges in addition to other related actions. A second area of legislative activity regarding sex offenses addressed new federal registration requirements mandated by the Adam Walsh Child Protection Act of 2006. The bill established federal reporting requirements for various categories of sex offenders and created a national sex offender registry. States must comply with these requirements in order to remain eligible for certain federal funds and many legislatures amended their statutes this session to bring their policies into accordance with federal law.

## **POLICY RECOMMENDATIONS**

The collection of 2007 criminal justice policy reforms highlighted in this report reflects a continuing pattern of legislators and practitioners coming to terms with more than thirty years of uninterrupted growth in the prison population. The increased reliance on oversight committees and task forces to study the challenging issues facing criminal justice agencies and to recommend strategies for reform is an encouraging development. A common theme raised across these states was the need to rely upon evidence-based practices to govern policy directions. Whether it be expanding eligibility for parole, working to reduce revocations from community supervision, or passing wholesale sentencing reform, in order for policymakers to remain good stewards of the public trust, sound research should guide the decision making process.

Current trends suggest that the state correctional population will continue to expand in 2008, meaning that legislators and practitioners will still be facing many of the same challenges of recent years. With each passing year presenting higher numbers of persons in custody and under supervision, the need for expansive reform is more pressing in order to achieve a sustainable reduction in the prison population. It is possible that the final reports emerging from the oversight committees and task forces discussed in this report will offer new strategies for reform in the coming years, much like the experience of Washington's "Joint Task Force on Offenders Programs, Sentencing, and Supervision." In the meantime, there are other important steps that state policymakers should strongly consider in 2008. These include:

**Repeal Mandatory Minimum Sentencing Provisions**

The proposed reforms in Delaware, Maryland, and Rhode Island are encouraging and illustrate that legislators are becoming increasingly aware of the need to enact fundamental reform to mandatory minimum sentences. Mandatory minimums have not been shown to reduce criminal offending, while the impact of the disproportionately severe sentences, particularly among African Americans, has been well documented. There is no single act that a legislature can do to return balance and fairness to sentencing than to repeal mandatory minimum provisions and return discretion to judges.

**Implement Policies to Reduce Parole Revocations**

There are nearly 800,000 persons on parole in the United States, about one-third of whom are returned to prison or jail each year. The proportion of prison admissions resulting from parole revocations has doubled since the 1980s, now comprising one-third of admissions, many for technical violations of parole. States have wisely begun to investigate strategies to stem the number of parole revocations to custody, often by investing in intermediate sanctions that provide parole officers with options to keep individuals in the community. Legislators should continue to support alternatives to revocation for technical violations of parole and implement strategies that allow people to remain in their community. In addition, limiting parole length for low-risk individuals and redeploying resources to supervise the higher risk population will permit parole officers to more effectively monitor individuals and provide appropriate services. This allows for earlier identification and intervention regarding problems that might otherwise result in revocation to custody.

**Reentry Investment and Oversight**

Addressing the problem of parole revocations requires not only changing the approaches and tools available to parole officers, but also requires expanding reentry services for persons before they are released from custody. Since the early 1990s, the proportion of persons participating in prison programming (drug treatment, vocational training, educational preparation) has *declined*, while the number of persons returning to the community has increased sharply. The tragic reality of the American prison system is that more people are being incarcerated but receiving fewer services to address the underlying cause of their criminal activity. Thus, many persons are simply returned to the community with little outside support. Legislators must identify proven successful strategies for reentry that prepare individuals before release and seamlessly link to outside support upon release. A substantial amount of research has been conducted over the last decade that documents best practices in reentry planning. Addressing reentry planning by assisting with housing and employment, for example, can have a substantial impact on recidivism and public safety.

**Expand Options to Reduce Time Served in Prison**

In light of many states struggling to address prison populations that exceed capacity, there has been a reconsideration of parole as an instrument of population management. In recent years a number of states have expanded the types of offenses eligible to earn “good time” and the amount of sentence reduction individuals can earn. This is a promising strategy that assists prison administrators in easing overcrowding while also rewarding incarcerated persons who demonstrate commitment to personal change. Legislators would be wise to investigate options that offer increased opportunity to earn a reduction in sentence.

## **FURTHER READING**

**Changing Direction? State Sentencing Reforms 2004-2006**

<http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=579>

**State Sentencing and Corrections Policy in an Era of Fiscal Restraint**

<http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=328>

**Incarceration and Crime: A Complex Relationship**

<http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=513>



THE  
**SENTENCING  
PROJECT**  
RESEARCH AND  
ADVOCACY FOR REFORM

514 TENTH STREET, NW SUITE 1000

WASHINGTON, DC 20004

TEL: 202.628.0871 • FAX: 202.628.1091

[WWW.SENTENCINGPROJECT.ORG](http://WWW.SENTENCINGPROJECT.ORG)