

RED STATE REDEMPTION



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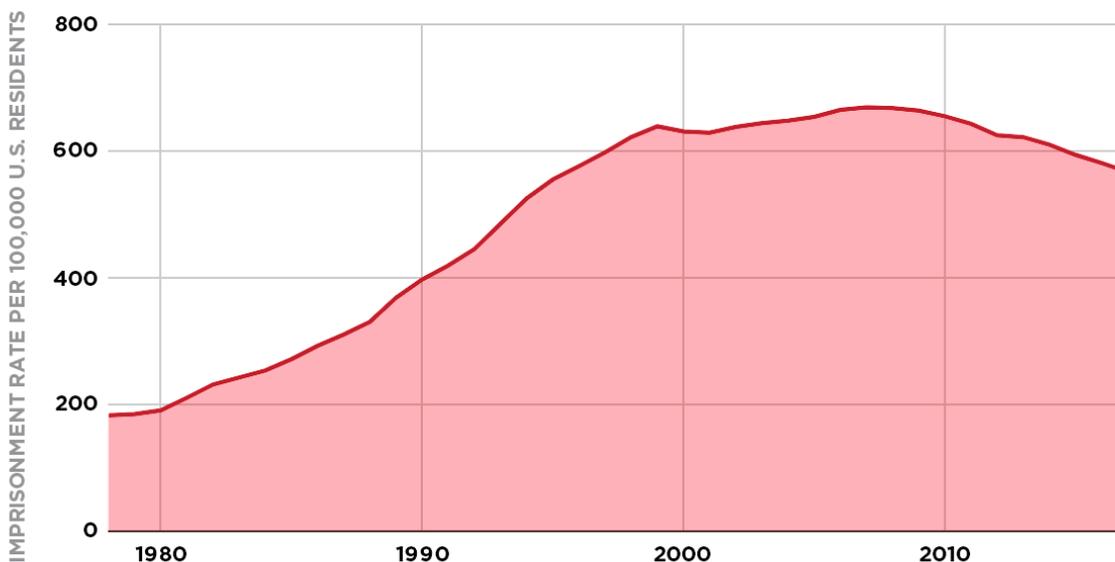
RED STATE REDEMPTION:

TEN CONSERVATIVE STATES THAT HAVE LED THE WAY IN JUSTICE REFORM

Beginning in the late 1970s, the United States turned strongly towards a “get tough” approach to crime at both the state and federal levels, both incarcerating far more people and doing so for far longer sentences. By design, this resulted in an astonishing increase in the incarcerated population nationwide: from nearly 350,000 in 1972¹ to a peak of over 2.3 million in 2008.²

This staggering number included an increasing proportion of people serving prison sentences for non-violent crimes, particularly drug crimes, as the “war on drugs” reached full tilt. States were incentivized by Congress, through the Violent Crime Control and Law Enforcement Act of 1994, also known as the “1994 crime bill,” to get tougher on crime.³ Excessively long mandatory minimum sentences, automatic stacking sentences for repeat offenders (often incorrectly applied), and “three strikes” laws in many states contributed to a dramatic increase in the number of people doing long stints of hard time in prison.

UNITED STATES IMPRISONMENT RATE FOR ADULTS, 1978-2017



SOURCE: BUREAU OF JUSTICE STATISTICS

The mid-2000s saw this trend reach a critical point, as prison populations stretched well beyond capacity at the same time that many states found themselves in a budget crunch. After all, states are where the vast majority of prisoners are incarcerated. In 1980, more than 305,000 prisoners were incarcerated in the states compared to about 24,000 in federal facilities. In 2017, 1.3 million prisoners were in state prisons compared to approximately 183,000 in federal prisons.

The overwhelming costs of corrections and prison overcrowding were particularly true in many red states that had implemented the most aggressive “tough on crime” regimes, forcing a number of Republican governors and legislatures to reevaluate the sustainability of their criminal justice policies. They were forced to think holistically about criminal justice, considering how incarceration could function to actually reduce criminal behavior instead of just making offenders disappear for a period of time.

Texas became the first of these “law and order” red states to pass a set of ambitious, comprehensive criminal justice reforms. Crucially, Texas legislators recognized the necessity of investing in rehabilitation and reentry programs to help offenders get their lives back on track. They succeeded in simultaneously reducing their prison population, saving the state hundreds of millions of dollars, and reducing recidivism, while simultaneously enjoying a faster reduction in crime rates than the national average. Their success helped embolden a series of traditionally conservative states to enact similar reforms, with overwhelmingly positive results.

In true “laboratories of democracy” fashion, not every state’s approach has enjoyed equal levels of success in reaching the desired long-term combination of reduced prison populations and lower crime. Furthermore, every one of these states, including Texas, still has work to do to further improve outcomes in a system that still produces one of the highest incarceration rates (both as individual states and as a nation) in the world.

One major reform that remains necessary across all these states is reforming pre-trial detention. Through this process, people not yet convicted of the crime for which they have been arrested are jailed, sometimes for weeks or months, until the court system decides to process them. Most states need to improve (or even create) mechanisms to adequately assess whether these arrestees actually pose a flight risk or a danger to their community by being released until they have stood trial. The imposition of excessive cash bail amounts for even minor offenses affects poor communities particularly negatively, creating a population of people who stand to lose everything because of their time spent in jail pre-trial, even if they are eventually fully acquitted of their charges.

Another area where a majority of these states could improve is in reducing the “collateral consequences” that follow those with a criminal record after they have served their time. The most effective policy in this space is allowing certain ex-offenders to have their criminal records sealed or expunged after a period of time without committing a new offense. Other reforms gaining traction include states preventing their occupational licensure boards from imposing blanket bans on applicants with criminal backgrounds, and preventing state employers from inquiring about criminal history in the initial application process (dubbed “fair chance hiring”).

Parole and probation are other areas where states have much room to improve. Too many low-level offenders are placed under onerous supervision schedules that make it nearly impossible to return to a normal life or even to hold down a job after release from prison. Partially as a result, in many states a major contributor to new prison admission is people being sent back for minor “technical” supervision violations. Effective state reforms have included focusing most supervisory attention on the highest-risk offenders, establishing alternatives to reincarceration for technical violations and earned-time incentives for good behavior, and reducing excessive parole and probation terms.

A recurring theme in many states (Mississippi and Louisiana are stand-out examples) is difficulty in securing consistent buy-in from judges, as well as county and municipal governments, in implementing reforms. Some states have had success securing more local cooperation via financial incentives. Texas, for example, tied grant funding to counties and municipalities to demonstrated results in reducing both jail populations and recidivism rates. However, in the end, the best results are likely to be from persuasion, convincing local stakeholders of the long-term fiscal and public safety benefits of reinvesting in a more rehabilitative, rather than simply a punitive model of criminal justice.

Finally, in spite of the demonstrable success of currently enacted reforms in simultaneously reducing corrections budgets and crime rates, there have been serious attempts to repeal them in a number of states, including Louisiana and Oklahoma. Protecting the gains on criminal justice reform is a vital effort, going forward.

Editor’s Note: The ten states selected for this publication are intended to provide a broad overview of attempts to enact comprehensive criminal justice reform in traditionally conservative states; a number of other possible examples have not been included.

GLOSSARY OF TECHNICAL TERMS

Civil Asset Forfeiture:

The practice of confiscating the property of an individual who has not yet been convicted of a crime, on the premise that the property was directly tied to the commission of a crime.

Diversionary Programs:

A blanket term for several means of funneling eligible, low-level offenders out of the ordinary criminal justice pipeline and into programs designed to help with rehabilitation. Some states have implemented specialty courts for drug addicts, mental health patients, and veterans.

Expungement:

The practice of totally deleting an offender's arrest and/or conviction records. Generally offered as a possibility after a period of time has elapsed after release, upon the condition of no new offenses committed.

Fair-Chance Hiring:

A requirement that prospective employers not inquire about an applicant's criminal background until after the initial application stage. Meant to prevent the practice of automatically weeding out all applicants with any criminal record until they have had a chance to be considered on their other qualifications. FreedomWorks only supports mandating fair-chance hiring for public employment, although some states have required that private employers abide by this requirement as well. Sometimes also referred to as "Ban the Box," although "Delay the Box" would be a more accurate name.

Justice "Safety Valves":

A term of art for granting judges discretion in whether or not to impose a mandatory minimum sentence if the offender meets certain requirements. Usually reserved for non-violent, low-level, first-time offenders and is often a useful prosecutorial tool, as well.

Recidivism rate:

In this context, refers to the percentage of released prisoners who are rearrested within a given period from being granted release from prison.

Re-entry Programs:

Programs which aim to help offenders succeed after release through education and skill development.

Revocation:

The practice of reincarcerating offenders who violate the conditions of their probation or parole.

Technical Supervision Violations:

Infractions against the terms of probation or parole that do not constitute a new crime, but which can be cause for further punishment by the terms of the offender's release. Such violations can range from failing to make scheduled meetings with probation officers, failing a drug test, or even failing to make a payment due to the court system for fees, legal costs, or victim restitution.



ARIZONA

JUSTICE REFORM OVERVIEW

By 2008, Arizona’s prison population had grown to over 37,000 (from just 4,360 in 1980) and was projected to increase by another 17,000 in ten years, at an additional cost of \$2-3 billion.¹⁶ Although all three most recent recent governors have signed some reforms, measures to reduce prison populations in the model of Texas or Georgia have largely failed to advance or been met with vetoes.

KEY REFORMS

Created earned-time credits so that probationers who succeed in meeting their supervision requirements could shorten their probation terms.

Offered extra funding for rehabilitation programs to counties which met standards for decreases in revocation and felony crime rates.⁴

Created diversionary opportunity for first-time non-violent offenders to have charges dismissed if they plead guilty and complete a treatment or counseling program.⁵

Allowed offenders access to drug treatments, mental health, and work/reentry programs prior to release.⁶

Implemented “fair chance hiring” for state government employees.⁷

Raised the evidence standard for civil asset forfeiture to “clear and convincing” and created transparency requirements.⁸

Created a graduated intervention system for probationers with technical violations, increasing options from just revoking violators to prison.⁹

Limited ability to deny occupational licensure based solely upon criminal record,¹⁰ limited liability for employers who hire ex-offenders.¹¹

Limited courts’ ability to re-incarcerate¹² or suspend drivers’ licenses¹³ of ex-offenders who demonstrate financial hardship.

Gave judges the option to allow sentences for multiple charges to be served concurrently rather than consecutively.¹⁴

Allowed some drug offenders to earn time off their sentences for completing drug rehabilitation.¹⁵

RESULTS

Since 2008, revocations to prison dropped 31 percent, and the number of probationers convicted of new felonies dropped 17 percent, while Arizona’s overall crime rate has fallen by 27 percent.¹⁷ At around 40 percent, Arizona’s recidivism rate has remained well below the national average.¹⁸

However, the prison population has increased since 2008 by more than 12 percent, to over 42,000.¹⁹ Participation in treatment and rehabilitation remains low.²⁰

FURTHER REFORMS NEEDED

- » Funding existing incentives for counties to improve revocation and crime rates further.
- » Making rehabilitation programs available to prisoners immediately instead of toward the end of their sentence.²¹
- » Reducing extremely harsh sentencing laws and creating more incentives for prisoners to be able to reduce their sentences through good behavior and participation in treatment and reentry programs. Modest sentencing reforms passed the legislature but were vetoed by Gov. Ducey in 2019.
- » Allowing “clean slate” expungement of certain criminal records after a period of time.

<< 2016-2019 2008-2012 >>



GEORGIA

JUSTICE REFORM OVERVIEW

In 2011, Georgia's then-new governor, Nathan Deal, inherited a state where 1 in every 13 residents were either in jail, under probation, or on parole. The prison system alone cost taxpayers more than \$1 billion annually. In response, Gov. Deal and the legislature implemented one of the most effective programs of criminal justice reform in the nation.

KEY REFORMS

Prison Population and Sentencing:

"Accountability" (drug and mental health) courts and diversion programs to focus on treatment over just locking offenders away.²²

Threshold raised for several minor crimes to become a felony.²³

Safety valves for more discretion in the sentencing of non-violent drug offenders.²⁴

Certain non-violent offenders were made eligible for early parole²⁵ and judges were allowed to waive parole/probation fines and fees to prevent returning to jail for a simple inability to pay.

Recidivism Reduction and Reentry:

New Office of Transition, Support, and Reentry.²⁶

New Department of Community Supervision to oversee the probation and parole population.²⁷

Time period shortened for minor offenders to be shifted to unsupervised parole, allowing caseworkers to focus on higher risk parolees.²⁸

Post-incarceration programs to aid prisoner transitions back to society.²⁹

Chipped away at institutional barriers preventing convicts from finding jobs by increasing access to occupational licenses,³⁰ removing the suspension of driver's licenses for offenses not related to traffic safety,³¹ and implementing "Fair Chance Hiring" for Georgia government job applications.³²

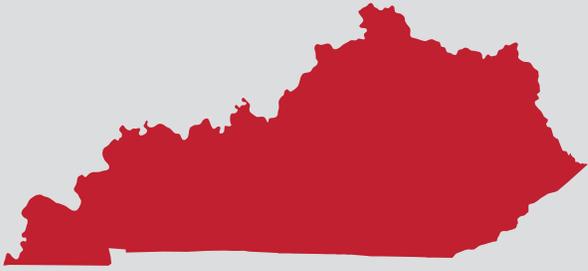
RESULTS

In 2011, Georgia's prison population alone was almost 56,000 and was projected to reach 60,000 by 2016.³³ Instead, the state prison population has dropped to about 53,000 by 2018, and "the average prison sentence length for drug possession fell 1.5 years."³⁴ Even as the rate of minor offenders given probation instead of jail has increased,³⁵ the rate of re-incarceration for parole or probation violations has gone down by 35 percent as of 2017.³⁶ Among those people who completed new reentry assistance programs, recidivism rates immediately dropped by 17 percent.³⁷ Georgia's overall crime rate has decreased by 20 percent from 2011-2018.³⁸

IN NEED OF IMPROVEMENT

While the reforms already passed should continue to ease jail and prison populations, Georgia's incarceration rate still ranks 9th highest in the U.S. and there is much room for improvement:

- » Further bail reform is needed to reduce the number of people sitting in jail pre-trial simply because of the inability to pay.
- » Mandatory minimum sentences are still excessively high for many crimes in Georgia - the Georgia Council on Criminal Justice Reform identifies³⁹ limits on automatic recidivist sentencing and allowing more judicial discretion.
- » Georgia has no procedure for expunging even non-violent felony offenses - limiting reformed felons' chances for decent jobs or housing.
- » Georgia's civil asset forfeiture laws remain some of the worst in the nation.⁴⁰



KENTUCKY

JUSTICE REFORM OVERVIEW

By 2009, Kentucky had one of the fastest-growing prison populations in the nation, and a third of new prisoners were drug offenders. The state corrections budget topped \$440 million and existing prisons were at capacity.⁴⁷ In response, Gov. Steve Beshear signed a justice reform package into law in 2011. Kentucky has revisited justice reform under Gov. Matt Bevin from 2016-2019.

KEY REFORMS

The 2011 Public Safety and Offender Accountability Act:⁴¹

Reduced sentences for minor drug offenders, removed automatic sentence enhancements for repeat drug offenses and allowed more first-time offenders to receive probation.

Tightened the radius of “drug-free school zones,” which were previously so wide that they effectively imposed enhanced sentences for drug crimes over whole cities.

Required risk assessment in determining probation and parole eligibility and duration, focused supervision on higher-risk offenders, created small early-release credits for good behavior.

Reinvested savings into rehabilitation and reentry programs.

Further bills in the past ten years have:

Expanded fast-tracking of minor drug offenders to drug rehab programs⁴² and provided diversionary programs additional support.⁴³

Expanded record expungement, even for low-level felons.⁴⁴

Prohibited imprisoning ex-offenders for merely lacking the money to pay court fees and fines and removed the prohibition on occupational licenses for felons.⁴⁵

Very slightly reduced the amount of time prisoners can be reincarcerated for technical violations of probation and parole and created a small new earned time credit for good behavior.⁴⁶

RESULTS

On their own, Kentucky’s reforms ought to have had more success in reducing prison populations, but several factors intervened. First, implementation of new sentencing and diversionary guidelines was not as widespread as it could have been. Even when prisoners did earn early release or probation, reincarceration for technical violations actually increased.⁴⁸

Second, Kentucky responded to its burgeoning opioid epidemic by greatly increasing mandatory sentences for even minor possession of heroin or fentanyl.⁴⁹

Kentucky’s Criminal Justice Policy Assessment Council concluded that the continued rise in incarceration was “driven by dramatic increases in admissions for the lowest tier of offenses,” and predicted a further 19 percent increase at a cost of \$600 million dollars.⁵⁰

FURTHER REFORMS NEEDED

Aside from better implementing existing reforms, further changes needed in Kentucky include:

- » Undoing the harsh sentencing regime for heroin/opioid offenders and focusing on treatment.
- » Raising the threshold for property crimes to become a felony and treating more drug offenses as misdemeanors.
- » Reforming the bail system to limit pre-trial detention to high risk offenders.
- » Limiting or eliminating civil asset forfeiture.



LOUISIANA

JUSTICE REFORM OVERVIEW

From 1980 to 2010, Louisiana’s prison population exploded by over 400 percent, from 8,889 to 39,444.⁶³ Its corrections budget alone stood at half a billion dollars per year. From 2010-2013, Gov. Bobby Jindal signed a package of modest reforms. A flurry of more ambitious reform bills has been signed into law from 2016-2019 by Governor Jon Bel Edwards.

KEY REFORMS

The series of reforms during this period⁵¹ allowed some prisoners slightly earlier eligibility for parole, increased diversionary programs for drug addiction, boosted reentry programming and good behavior incentives for inmates to use them. However, discretion on sentencing was largely left to prosecutors rather than judges.⁵²

Greatly reduced both maximum and mandatory minimum sentences (eliminating some minimums altogether) for a wide variety of non-violent crimes, especially drug offenses.⁵³

Reformed “habitual offender” penalties by lowering mandatory minimums for low-level repeat offenses, allowing judges discretion in whether to impose them,⁵⁴ and by making them not apply to many non-violent first offenses.⁵⁵

Increased diversion into re-entry and rehabilitation programs, and established more alternatives to reincarceration for technical violations of parole and probation.⁵⁶

Limited reincarceration of ex-offenders due to inability to pay court and prison fees,⁵⁷ or for missed child support while in prison.⁵⁸

Instituted partial fair chance hiring for state employment⁵⁹ and created certificates of employability to limit legal liability for employers hiring eligible ex-convicts.⁶⁰

Expanded record expungement to include those who have been found wrongfully convicted, and to certain violent offenders after 10 years.⁶¹

Required most state-required licenses to disregard an applicant’s prior conviction if not related to the job.⁶²

RESULTS

Though watered down through the legislative process, the 2010-2013 reforms did appear to help spur a gradual decline in the state prison population to 35,646 by 2016.⁶⁴

While the more recent reforms are still young, between a large wave of early releases and a promising sharp decrease in overall admissions, Louisiana’s prison and jail population dropped to 32,397 by the end of 2018.⁶⁵ The proportion of non-violent offenders in prison dropped by 20 percent, reincarcerations due to technical probation and parole violations dropped 7.5 percent.⁶⁶ These numbers are all well ahead of projections.

FURTHER REFORMS NEEDED

- » Louisiana has had some difficulty persuading parish-level cooperation in many of these reforms, limiting their potential benefit.
- » Although addressed somewhat in recent reforms, Louisiana’s “habitual offender” (essentially “three strikes”) laws are still unduly harsh.
- » Louisiana has one of the highest pre-trial detention rates in the nation and desperately needs bail reform.
- » Louisiana’s civil asset forfeiture laws are some of the worst in the nation and needs to be reformed or repealed.
- » State and local courts should be made to find alternatives to funding their operations via court fees and fines, which still essentially consign many individuals to “debtor’s prison”.

>> 2011-2013 << 2016-2019



MISSISSIPPI

JUSTICE REFORM OVERVIEW

In 2013, Mississippi faced a \$339 million corrections budget, up 20 percent from a decade earlier, driven by the second-highest imprisonment rate of any state.⁷⁵ Governor Phil Bryant responded by signing a bill to create the Mississippi Corrections and Criminal Justice Task Force. Since 2014, the task force's recommendations have been turned into a succession of ambitious, if incomplete, reforms.

KEY REFORMS

Sentencing:

Expanded parole eligibility for non-violent offenders, including retroactively.⁶⁷

Raised felony thresholds for certain non-violent crimes; allowed somewhat lessened sentences for certain drug crimes.⁶⁸

Created a limited "safety valve," allowing judicial discretion in enforcing mandatory minimums for certain drug offenses.⁶⁹

Prohibited jailing people for simple inability to pay prison fees and court costs.⁷⁰

Reentry/Supervision:

Created compliance credits towards early end of supervised release; capped the length of jail stays for technical probation/parole violations.⁷¹

Expanded and strengthened guidelines for special diversionary courts for drug, youth, and veteran offenders.⁷²

Allowed limited expungement for misdemeanors and even some non-violent felonies.⁷³

Forbade licensure boards to discriminate based on criminal record unless directly related to the applicant's ability to perform the job.⁷⁴

RESULTS

A Pew report in 2017 showed the new reforms in Mississippi bearing positive early results – more than a 10 percent decline in the prison population since 2014 (from 21,615 to 18,480),⁷⁶ a 17 percent lower population under post-release supervision, and a 5 percent reduction in overall crime rate.⁷⁷ President Trump even touted Mississippi's example when promoting federal justice reform legislation in 2019.

Unfortunately, not all of the reforms have succeeded, or even been implemented at all. Instead of reinvesting some of the money saved into recidivism reduction programs, diversionary courts, probation supervision, and prisoner education, support was actually significantly cut.⁷⁸ As of August 2019, the prison population has risen back to over 19,300,⁷⁹ with 45 percent of prison admissions in FY 2018 coming from parole, probation, and home arrest violations.⁸⁰

FURTHER REFORMS NEEDED

Hopefully the most recent reforms (especially HB 1352) will succeed in finally addressing treatment and rehabilitation for prisoners with mental health, drug, and alcohol issues. Other necessary reforms include:

- » Decreasing excessive mandatory minimums for non-violent offenses and creating more rehabilitation incentives to shorten sentences.
- » A higher evidentiary standard is needed for civil asset forfeitures ("preponderance of evidence" standard currently).
- » Bail reform is desperately needed.
- » Fair chance hiring for state employees, increased focus on re-entry skill development programs, and improved expungement procedures would help ex-prisoners gain employment and reduce recidivism.



OHIO

JUSTICE REFORM OVERVIEW

In 2011, Ohio's Criminal Sentencing Commission reported that the state's prison population had grown to over 50,500, a sixfold increase since 1974. Ohio had actually passed a bill in 1996 to reduce prison intake by reducing many mandatory minimum sentences and requiring judges to justify imposing maximum or consecutive sentences for low-level felons. However, a 2006 Supreme Court ruling struck down the sentencing guidelines for judges; this correlated with a sudden jump in sentence lengths and prison population.⁸⁶ In response, Gov. John Kasich signed a comprehensive criminal justice reform bill into law in 2011, and a handful of rehabilitation and reentry reforms more recently.

KEY REFORMS

Ohio's 2011 criminal justice bill:

Lowered some sentences for low-level drug crimes and lowered some property offenses to misdemeanors.

Created new rehabilitation program that allowed earlier release upon completion.

Allowed earlier eligibility for parole.⁸¹

Further legislation:

Required public employers to practice fair chance hiring.⁸²

Created funding incentives for localities to participate in drug treatment and reentry programs.⁸³

Expanded expungement eligibility, including for low-level, non-violent felons.

Asked judges to consider letting non-violent low-level offenders serve their sentences in local facilities or treatment centers and capped the length of time offenders can be reincarcerated for technical supervision violations.⁸⁴

Required occupational licensing boards to disclose to applicants up front whether their criminal background would disqualify them from a license.⁸⁵

RESULTS

HB 86 largely capped the growth of Ohio's prison population and further reforms have slightly reduced it to just over 49,000. This is a smaller effect than predicted, which appears to be in part due to a lack of buy-in from many localities.⁸⁷ Reincarceration due to technical parole and probation violations remained very high as of 2015, accounting for more than 20 percent of the annual prison intake.⁸⁸

On the plus side, Ohio's 3-year recidivism rate has dropped by 20 percent (although it has been increasing again as of the most recent data).⁸⁹

FURTHER REFORMS NEEDED

Like many states, Ohio's biggest remaining job is simply gaining the cooperation of judges and parole boards and other key players in actually implementing existing reforms. However, additional policy changes that would be helpful include:

- » Lowering many non-violent offenses from felonies to misdemeanors and reducing maximum sentences.
- » Reducing reincarceration for technical probation and parole violations by focusing supervision on higher-risk offenders, and by emphasizing diversionary programs.
- » Requiring risk assessment in the imposition of cash bail, to reduce pretrial detention.



PENNSYLVANIA

JUSTICE REFORM OVERVIEW

From 1980 to 2010, Pennsylvania’s prison population ballooned by more than 600 percent, from about 8,000 people to over 51,000,⁹⁹ and its correctional budget exceeded \$2 billion. Gov. Ed Rendell had signed some preliminary reforms into law in 2008, and 2012 saw Gov. Tom Wolf sign a comprehensive justice reform and reinvestment package into law.

KEY REFORMS

Increased eligibility for work release.

Allowed reduced minimum sentences for certain non-violent offenders who complete reentry programs, and granted low-risk offenders automatic parole after serving their minimum sentence.

Allowed non-violent offenders to be downgraded to minimal supervision for good behavior.⁹⁰

Established a risk-assessment system to better assess sentence durations.⁹¹

Reduced some mandatory minimum sentences for drug crimes.⁹²

Allowed diversion of low-level offenders into rehabilitation programs even if they ordinarily would be subject to a mandatory minimum.⁹³

Established a standard set of punishments for probation violators and created programs to incentivize successful completion of supervision.

Provided for revocation to community jail rather than prison for technical parole violations and allowed earned time incentives.

Funded “reinvestment grants” for improved policing, diversionary programs, and recidivism reduction.⁹⁴

In 2015, the Pennsylvania Supreme Court struck down many of the state’s mandatory minimum sentences.⁹⁵ Pennsylvania has since:

Increased justice reinvestment funding.⁹⁶

Ceased the automatic suspension of drivers’ licenses for many minor offenses.⁹⁷

Passed the nation’s first “clean slate” bill, to automatically seal records of people not convicted of their charges or for certain offenders who remained crime-free for 10 years.⁹⁸

RESULTS

Pennsylvania’s prison population has declined to 47,370 in 2018¹⁰⁰ along with a jail population of around 37,000 as of 2017.¹⁰¹ This is a smaller reduction than predicted, although enough that the state was able to close one prison and slightly decrease correctional spending. This has overlapped with a sustained decrease in crime in the state.¹⁰²

Notably, overall recidivism rates remain very high (over 63 percent within three years) and are not falling. Pennsylvania also continues to have the highest per capita population of offenders under probation and parole supervision, with revocations accounting for over half of prison admissions as of 2016.¹⁰³

FURTHER REFORMS NEEDED

- » Pennsylvania’s most critical need is probation and parole reform. Stricter limits are needed on revocation for technical violations and supervision durations need to be reduced overall, particularly for offenders who demonstrate good behavior.
- » Risk assessment and cash bail reform are needed to reduce Pennsylvania’s high rates of unnecessary pre-trial detention.
- » Pennsylvania’s civil asset forfeiture laws are in dire need of reform or repeal.
- » State occupational licensure laws should be reformed to prevent a criminal record from affecting licensure unless the conviction is directly relevant to the job being licensed.

<< 2012-2019 PRE-2012 >>



SOUTH CAROLINA

JUSTICE REFORM OVERVIEW

In 2010, the newly formed South Carolina Sentencing Reform Commission issued a grim report. The state's prison population had tripled since 1978 to more than 25,000, reaching an annual cost of nearly \$400 million.¹⁰⁶ The state would need new prisons, and costs would continue to increase. Gov. Mark Sanford and the legislature responded decisively, passing the ambitious Omnibus Crime Reduction and Sentencing Reform Act (SB 1154) that same year.

KEY REFORMS

To reduce both the prison population and recidivism, HB 1154:

- » Restructured sentencing laws by reducing maximum sentences for many non-violent property crimes and drug offenses.
- » Removed mandatory minimum sentences for first-time drug offenders.
- » Eliminated the sentencing disparity between crack and powder cocaine.
- » Increased drug treatment programs.
- » Allowed good behavior credits towards possible early release.
- » Expanded work release eligibility.
- » Established risk assessment guidelines for parole.¹⁰⁴
- » Reduced probation supervision burdens for low-level offenders on parole.

Also, in 2018, the South Carolina legislature passed a bill (over Gov. McMaster's veto) to expand record expungement for low-level offenders who maintained a clean record after release.¹⁰⁵

RESULTS

South Carolina's state prison population has fallen from over 25,000 in 2009 to just under 19,000 in 2018.¹⁰⁷ Total admissions to state prisons dropped 36 percent by 2015, thanks in part to a 57 percent drop in readmissions for violating parole.¹⁰⁸

Instead of building new prisons, half a dozen closed.¹⁰⁹ By 2016, the reforms had saved nearly half a billion dollars relative to what would have been required if the prison population had continued to grow.¹¹⁰

Meanwhile, violent crime and property crime rates fell by 24.4 percent and 17.4 percent respectively between 2008 and 2017.¹¹¹

FURTHER REFORMS NEEDED

Although these results are encouraging, South Carolina still has a lot of work to do on criminal justice reform:

- » Further reductions of mandatory minimums, reclassification of some non-violent offenses as misdemeanors, and more judicial discretion in sentencing are all still needed. South Carolina should also loosen its "truth in sentencing" requirement that offenders must serve 85 percent of any sentence given, on top of overly harsh sentence lengths.
- » South Carolina's civil asset forfeiture laws are among the worst in the nation.
- » South Carolina currently provides no means to ever seal or expunge any felony conviction, even for non-violent offenses.
- » Other reforms still needed include addressing barriers to occupational licensure, bail bonds, and fair chance hiring for state employees.



TEXAS

JUSTICE REFORM OVERVIEW

From 1986 to 2006, Texas' prison population more than quadrupled, to over 162,000, and was projected to grow by over 17,000 within the following five years. New prisons alone to house the increased population were projected to cost more than \$700 million. In response, the state became an early adopter of comprehensive criminal justice reform policies that would set an example for many other states over the next decade and beyond. Governor Rick Perry signed the first major reform bill into law in 2007, and the state has continued adding to them at intervals ever since.

KEY REFORMS

The initial 2007 reforms:

Required judges to place first-time minor felony drug offenders under community supervision rather than in prison and gave judges discretion to do so for repeat offenders.¹¹²

Reinvested a portion of the expected savings into rehabilitation, reentry, and community supervision programs and reallocated significant bed space in prisons to accommodate participants.¹¹³

Further legislation focused heavily on reducing recidivism and revocation rates by:

Demanding a defined plan from the Texas Department of Criminal Justice to reduce recidivism by improving reentry programs and requiring prisoners to be incarcerated near their communities whenever possible.¹¹⁴

Financially incentivizing counties and localities to meet prison population and recidivism reduction goals.¹¹⁵

Creating "good time" credits for probationers¹¹⁶ and prisoners¹¹⁷ who complete rehabilitation and educational programming.

Preventing employers from being sued for employing ex-offenders, and prohibiting licensing boards from suspending denying occupational licenses to ex-offenders¹¹⁸ after several years of a clean record.¹¹⁹

Expanding the ability to seal criminal records to most non-violent misdemeanants.¹²⁰

RESULTS

Texas' prison and reentry reforms did eventually succeed in curtailing the growth of the state's prison population, which peaked in 2010 before slightly declining. Even with the money the state reinvested into recidivism reduction programming, Texas saved an estimated \$3 billion from 2007-2017 as a result of population reductions and closing several prisons.¹²¹

Meanwhile, Texas' crime rates have fallen even faster than the national average.¹²²

Nevertheless, the prison population remained at 157,584 as of 2017, with a further 66,210 Texans held in local jails, and nearly half a million people under probation or parole supervision.¹²³

FURTHER REFORMS NEEDED

- » Texas has an unusual lowest category of "state jail felonies," which many minor non-violent offenders are swept into. Many of the effective reentry and rehabilitation programs Texas aren't reaching this category of offenders, who have a much higher rate of recidivism than average released inmates.¹²⁴
- » Bail reform efforts have stalled in Texas, but are urgently needed to reduce the number of non-convicted minor offenders awaiting trial in jail.
- » Mandatory sentence enhancements for repeat minor felony offenders are incredibly long.¹²⁵
- » Expungement eligibility should be expanded to non-violent felons after a period of time.



UTAH

JUSTICE REFORM OVERVIEW

In 2014, faced with a prison population that had risen six times faster than the national average over the previous decade and an annual corrections budget of \$270 million,¹³⁰ Utah Gov. Gary Herbert tasked his state's existing Commission on Criminal and Juvenile Justice with developing reform recommendations. As a result, the Utah Legislature passed HB 358 just one year later.

KEY REFORMS

HB 358 contained a broad package of changes to Utah's justice system:¹²⁶

Reclassified 1st and 2nd offense drug possession crimes as misdemeanors instead of felonies and reduced the severity of automatic sentence increases for repeat minor offenders.

Requested a system of caps on penalties for technical probation/parole violations to be enforced instead of automatic reincarceration.

Created earned-time incentives for participation in rehabilitation programs.

Increased support for reentry programs.

Utah has since also:

Required fair chance employment for ex-offenders seeking public employment at the state level.¹²⁷

Required occupational licensing boards to notify applicants whether their criminal record would disqualify them before beginning the application process.¹²⁸

Allowed record expungement for misdemeanor offenses and arrests resulting in no conviction.¹²⁹

RESULTS

The reforms under HB 358 have shown some positive results already, as average sentence lengths for minor offenses and the proportion of non-violent offenders in state prisons decreased, while the number of drug offenders enrolling in treatment programs increased. Overall prison populations initially showed a promising 9 percent decline from 2015 (6,888) to 2017 (6,276),¹³¹ but have since climbed nearly back to initial levels (6,752 as of July 2019).¹³²

Troublingly, Utah continues to have one of the highest rates of prison readmission from parole and probation in the nation, with 52 percent of new prison admissions being for technical supervision violations (i.e. no new crimes committed).¹³³ Also, while Utah's prison population growth has slowed, its jail population has increased,¹³⁴ another indicator of people merely being shuffled around the criminal justice system rather than successfully rehabilitating.

FURTHER REFORMS NEEDED

- » Utah doesn't technically have mandatory minimums, but recommended minimums have had a similar result.¹³⁵ Allowing judges a "safety valve" could help reduce the number of unreasonably long prison stays.
- » Allowing more low-level offenders to be diverted into incarceration alternatives such as drug courts and simplifying supervision requirements for lower-risk offenders on probation and parole would help reduce recidivism.
- » Civil asset forfeiture: Utah requires "clear and convincing" evidence of a crime in order for law enforcement to seize assets, but requiring a conviction and eliminating the profit incentive for seizures would be ideal.
- » As Utah has among the nation's most onerous occupational licensure regimes, restricting automatic discrimination by license boards against people with criminal records would help rehabilitated offenders find stable work.¹³⁶

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