

Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends

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Ram Subramanian • Rebecka Moreno • Sharyn Broomhead

FROM THE CENTER DIRECTOR

This is the third in a series of reports published by the Vera Institute of Justice's Center on Sentencing and Corrections in 2014 looking at changes to criminal sentencing laws. The other two, *Playbook for Change? States Reconsider Mandatory Minimums* and *Drug War Detente? A Review of State-level Drug Law Reform, 2009-2013*, take longer and deeper looks at trends in criminal sentencing in the United States, but all three reports reflect the gathering momentum for criminal justice reform in the states. While many, if not most, of these changes are too recent to measure their direct impact on prison populations and recidivism, broadly gathered administrative data show that state prison populations are continuing to shrink from their 2010 peak.

These trends have complex political and budgetary roots, including growing public awareness of how many of those incarcerated are there for nonviolent, often drug-related, crimes, and how many are debilitated by mental illness, drug dependency, illiteracy or under-education, developmental delays, or trauma and abuse. At a time of significantly lower rates of violent crime, public awareness of the ineffectiveness of prison in ameliorating or responding to these problems has grown together with the knowledge of what can be accomplished with community-based approaches that also hold offenders accountable.

From appalling incarceration numbers, budgetary crises, and greater public knowledge, this momentum for reform has redirected the discussion on crime away from the question of how best to punish to how best to achieve long-term public safety.



Peggy McGarry
Director, Center on Sentencing and Corrections

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About this report

In 2013, 35 states passed at least 85 bills to change some aspect of how their criminal justice systems address sentencing and corrections. In reviewing this legislative activity, the Vera Institute of Justice found that policy changes have focused mainly on the following five areas: reducing prison populations and costs; expanding or strengthening community-based corrections; implementing risk and needs assessments; supporting offender reentry into the community; and making better informed criminal justice policy through data-driven research and analysis. By providing concise summaries of representative legislation in each area, this report aims to be a practical guide for policymakers in other states and the federal government looking to enact similar changes in criminal justice policy.

Introduction

From the early 1970s to the beginning of the 21st century, crime control policy in the United States was dominated by an increasing reliance on incarceration. The growth in punitive sanctioning policies—mandatory penalties, truth-in-sentencing laws, and habitual offender statutes like “three strikes” laws—resulted in many more people going to prison for longer periods of time, dramatically accelerating the U.S. incarceration rate and the cost of corrections.¹ By January 1, 2013, the number of persons confined to state prisons surpassed 1.3 million—an increase of nearly 700 percent from 1972—and total state correctional expenditures topped \$53.3 billion in fiscal year 2012.²

However, in the last several years, the tide seems to be turning. Between 2006 and 2012, 19 states reduced their prison population, including six states—New York, New Jersey, Connecticut, Hawaii, Michigan, and California—that experienced double-digit reductions; and in 2012, the total U.S. prison population marginally dropped for the third consecutive year.³ These declines may have been the result of deliberate policy choices to rein in the size and cost of prison systems. However, cause and effect has been difficult to determine, and other, more local shifts, such as a change in police or judicial practices over time may also be in play.⁴ Indeed, some states, such as New York and New Jersey, have experienced significant drops in prison population without undertaking major legislative changes to achieve this. In other states, such as Ohio, Kentucky, and New Hampshire, anticipated impacts have been stymied in part due to implementation challenges, some unforeseen, others not.⁵

Despite the variation in outcomes and a need to study how new policies are mobilized and deployed, emerging trends are clear: many states are continuing to re-examine the ways in which they respond to offenders at every stage of the criminal justice process, from arrest and punishment to reentry and rehabilitation. Although prompted by the recent economic crisis, state

policymakers' willingness to effect change has been spurred by dissatisfaction with stubbornly high recidivism rates and bolstered by public opinion polls that show a majority of the electorate believes that prison growth has yielded insufficient public safety returns.⁶ Over the last several years, many states have embarked on broad-based criminal justice reform to reduce prison populations, strengthen community corrections, balance budgets, and improve public safety. Eschewing the reflexively tough-on-crime policies of the past, the focus of policymaking has shifted to the effectiveness of correctional systems in terms of cost and outcomes.⁷ And as policymakers increasingly understand that supporting offenders' transition into the community is critical to reducing their risk of recidivism, this new focus has been coupled with a deepening concern over the challenges faced by ex-offenders after they complete their sentences.⁸

These trends continued during the 2013 legislative session. States enacted legislation consistent with the growing body of research demonstrating that carefully implemented and well-targeted community-based programs and practices can produce better outcomes at less cost than incarceration.⁹ The new laws passed in 2013 include measures to ease mandatory sentencing and boost community corrections. There was also a focus on reentry, with attention paid to alleviating the long-term collateral consequences of criminal convictions for ex-offenders, such as difficulty qualifying for housing, employment, public benefits, and other important supports. States also continued a recent trend of promoting the use of evidence-based, data-driven practices and relying on the support of external groups of experts and stakeholders—such as sentencing commissions or oversight councils—to help guide the development of sentencing and corrections policies.

In 2013, states passed legislation to:

- > **Reduce prison populations and costs.** In order to safely reduce the flow of offenders to prison and to ensure that the punishment is commensurate with the severity of, and harm caused by, the crime, states repealed or narrowed mandatory sentencing schemes, reclassified offenses, or altered sentencing presumptions. States also sought to expand access to early release mechanisms—such as good time credits—designed to accelerate sentence completion.
- > **Expand or strengthen community-based sanctions.** States adopted legislation to introduce or strengthen community corrections strategies and programs proven to reduce recidivism. Legislation was passed creating or expanding eligibility for diversion programs—a sentencing alternative to traditional criminal case processing through which charges will be dismissed or expunged if a defendant completes a community-based program or stays out of trouble for a specified period. States also expanded community-based sentencing options, including the use of problem-solving courts.
- > **Implement risk and needs assessments.** Several states focused on the use of validated risk and needs assessments as the basis for implementing individualized case plans to guide supervision, programming, and interven-

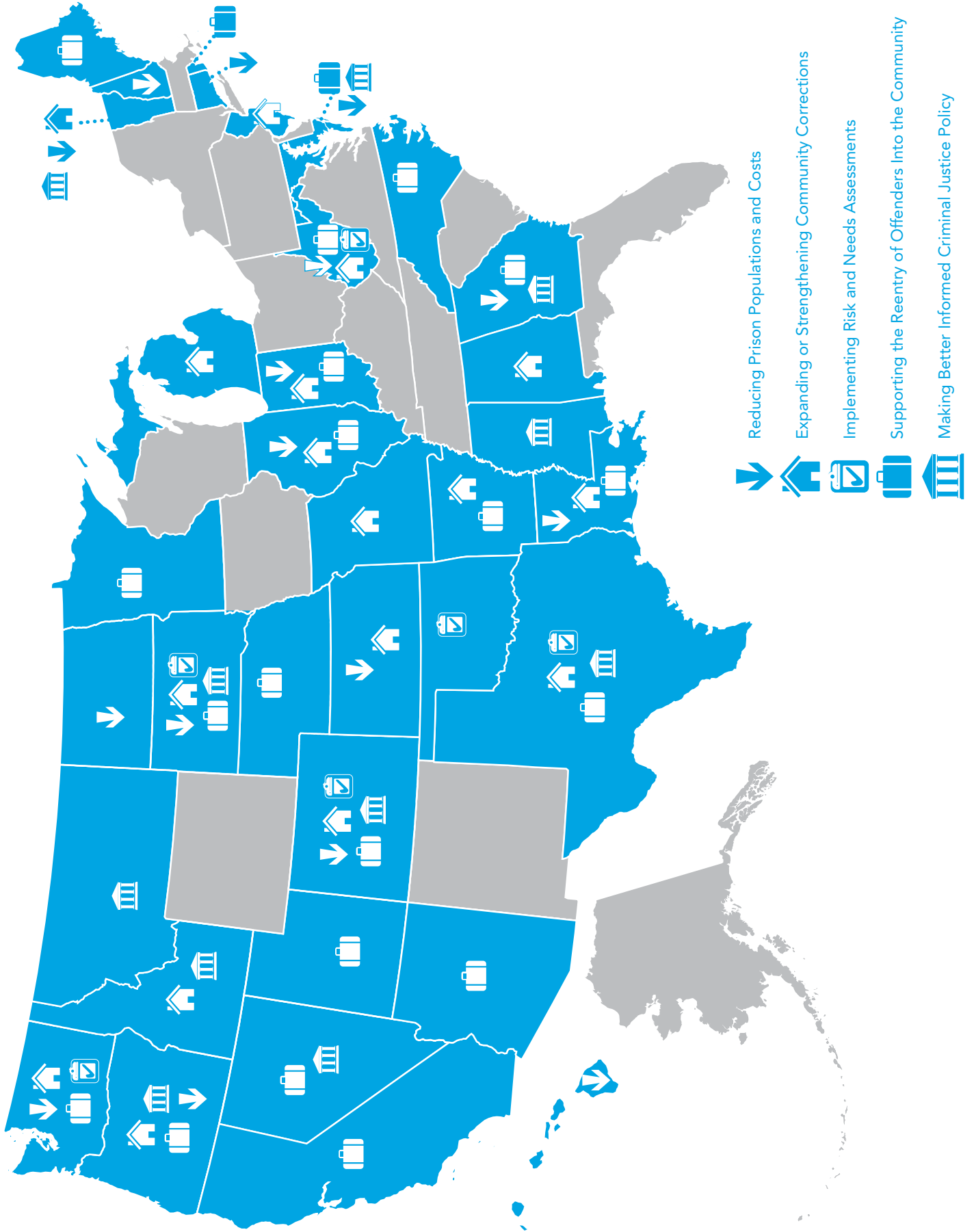
tions. These states passed laws requiring assessments of an offender’s risk of recidivism as well as his or her criminogenic needs—characteristics, such as anti-social attitudes and associates, drug addiction, or mental illness, that when addressed can reduce that risk. States incorporated these assessments at different points in the criminal justice process—at the pretrial stage, at the pre-sentencing stage, or to inform supervision and programming, whether in prison or in the community.

- > **Support the reentry of offenders into the community.** States passed laws to mitigate the collateral consequences of criminal convictions—such as restrictions on social benefits and exclusion from employment—that hinder the successful reentry and reintegration of ex-offenders back into the community. In some states, legislators sought to clarify, expand, or create ways to seal or expunge criminal records from the public record. Others focused on helping offenders transition from prison or jail back into the community by mandating more in-prison support prior to release, including transitional leave programs, or by providing necessary resources or supports post-release.
- > **Make better informed criminal justice policy.** A number of states sought a deliberate discussion about the purpose and impact of proposed sentencing and corrections legislation and looked to external groups—such as sentencing commissions, oversight councils, or working groups comprised of key criminal justice experts and stakeholders—to debate proposals, collect and analyze data, and formulate policy recommendations. Some states even passed legislation requiring fiscal or social impact statements in order to help legislators consider the ramifications of proposed criminal justice reforms.

A NOTE ABOUT BILL SUMMARIES

This report does not aim to provide an exhaustive listing or analysis of every criminal justice-related bill passed by the states in 2013. Rather, the authors selected for inclusion here only those bills most representative of the five broad types or areas of reform in sentencing and corrections that growing numbers of states have been pursuing in recent years. The bill summaries in the report are for this reason organized by the type or area of reform rather than by state. (See Appendix A for a listing by state of all legislation covered in this report.) Finally, where a particular piece of legislation makes distinct changes in multiple areas (e.g., by reducing prison populations and costs and also expanding or strengthening community corrections), a summary of the bill’s relevant provisions are included under each corresponding reform category.

MAPPING 2013 STATE SENTENCING AND CORRECTIONS TRENDS



Reducing prison populations and costs

Lawmakers in 2013 continued to question whether incarceration and long custodial sentences are the most effective responses to criminal behavior. Fueled by a desire to achieve cost and population reductions while maintaining or even enhancing public safety, a number of state legislatures repealed or limited mandatory penalties, such as mandatory minimum sentences and automatic sentence enhancements. Elsewhere, in order to reserve the costly resource of prison for the most serious and dangerous offenders, states focused on achieving better proportionality in sentencing by recalibrating their sentencing schemes to ensure that prescribed punishments are commensurate with the nature and severity of—and harm caused by—each type of crime. Finally, other states enhanced their use of early release mechanisms.

REPEALING OR LIMITING MANDATORY PENALTIES

Mandatory penalties—which include mandatory minimum sentences, automatic sentence enhancements, and habitual offender laws—require sentencing courts to impose fixed terms of incarceration where set statutory criteria are satisfied. This is often to the exclusion of other factors that sentencing judges typically take into account, such as an individual’s character and circumstances of the crime. The triggering criteria may include the type and level of offense, the quantity and type of drugs, the number of previous felony convictions, the use of a firearm, or the proximity to a school.

Although these laws—hallmarks of the tough-on-crime era—were typically enacted on the assumption they would help control crime by “sending a message” to potential offenders, research has shown that enhancing the severity of punishment, when most offenders don’t believe they will be apprehended, adds little deterrent value.¹⁰ Moreover, a growing body of research is now casting doubt on the notion that longer sentences help to reduce recidivism.¹¹ Rather than deterring crime and reducing recidivism, mandatory penalties are, instead, one of the major contributing factors to the growth of state prison populations and costs.¹² Further, policymakers are now more aware of their human costs, such as the disproportionate impact on people of color.¹³

As legislators become more aware of the questionable benefits and the fiscal and social costs of mandatory penalties, they are increasingly willing to reconsider their use, particularly in relation to drug offenses.¹⁴ Since 2000, at least 29 states have modified or repealed mandatory sentencing policies.¹⁵ This trend continued in 2013. For example, state legislatures in Georgia and Hawaii restored some discretion to sentencing judges by creating “safety valve” provisions for certain drug and property offenses, which allow judges to depart from

mandatory minimum sentences or to suspend sentences if certain conditions are present in the case. Illinois and Indiana took steps to remove or mitigate automatic sentencing enhancements by revising the criteria that trigger the mandatory sentence.

- > **Colorado SB 250** removes the automatic repeat offender sentencing enhancement for a second drug distribution conviction. Previously, the felony class was raised by one level on a second offense.
- > **Georgia HB 349** allows judges to depart from mandatory sentences for some drug offenses if the defendant was not a ringleader, did not possess a weapon during the crime, did not cause a death or serious bodily injury to an innocent bystander, had no prior felony conviction, and if the interests of justice would be served by a departure. The offenses that are covered by the law include trafficking and manufacturing of cocaine, ecstasy, marijuana, and methamphetamine as well as the sale or cultivation of large quantities of marijuana. The judge must specify the reasons for the departure. Alternatively, a judge may sentence below the mandatory minimum if the prosecuting attorney and the defendant have both agreed to a modified sentence.
- > **Hawaii SB 68** grants judges the discretion to depart from a mandatory minimum in favor of an indeterminate sentence when the defendant is convicted of a Class B or Class C felony drug offense and the judge finds a departure “appropriate to the defendant’s particular offense and underlying circumstances.” Previously, Class B and Class C drug felonies had mandatory sentences of 10 and five years respectively. Under SB 68, judges may impose a term of between five and 10 years for a Class B felony, and between one and five years for a Class C felony. Exceptions apply for some offenses, including promoting use of a dangerous drug, drug offenses involving children, and habitual offenders.
- > **Illinois SB 1872** removes school zone and repeat offender enhancements for prostitution charges. Previously, engaging in prostitution within 1,000 feet of a school or having a previous prostitution-related conviction would elevate the offense of prostitution from a misdemeanor to a felony. Now, prostitution may only result in a misdemeanor conviction.
- > **Indiana HB 1006** reduces the size of the school zone for all drug offenses from 1,000 to 500 feet and limits the application of the enhancement to when children are reasonably expected to be present. The law also removes family housing complexes and youth program centers from the definition of sites protected under the school zone enhancement.

- > **Kansas SB 58** limits the application of a special sentencing rule for second drug manufacturing convictions by imposing it only in instances where the prior offense involved methamphetamine. Previously, the enhancement applied regardless of the substance at issue in the prior conviction. The sentencing enhancement calls for a sentence of double the maximum presumptive sentence. The judge may grant a reduction of no more than half of the increased time, meaning offenders subject to the enhancement must be sentenced to at least 75 percent of the maximum potential sentence.
- > **Oregon HB 3194** gives judges the discretion to sentence certain repeat drug offenders to probation. This law repeals a prior ballot measure that mandated a minimum sentence of incarceration for these offenders by prohibiting judges from ordering probation.¹⁶

PROPORTIONALITY IN SENTENCING: RECLASSIFYING OFFENSES OR ALTERING SENTENCING PRESUMPTIONS

The principle of proportionality in sentencing is simple: the punishment should be in proportion to the severity of the crime. This principle underlies the creation of categories of felonies (Classes A, B, C, D, etc.) and the assignment of different sentencing options to each category. In 2013, a number of states concluded that their sentencing structures did not sufficiently differentiate between minor and serious crimes or that certain penalties were too harsh. In Indiana, for example, the Criminal Code Evaluation Commission observed that Indiana's offense classifications were both inadequate and inappropriate, pointing to the fact that possession of three grams of cocaine with intent to deliver attracted a harsher sentence than rape.¹⁷ To resolve such incongruity, Indiana, along with Colorado, Connecticut, Maryland, Oregon, South Dakota, and Vermont, reclassified offenses to realign the proportionality of their sentencing schemes. These states created more felony categories per type of criminal offense, reclassified low-level crimes from felonies to misdemeanors, and introduced or increased felony thresholds for certain crimes. Meanwhile, Colorado, Maryland, Oregon, and South Dakota passed laws altering sentence presumptions; for example, by making probation the presumptive sentence for an offense that previously allowed either prison or probation, or in Maryland, by repealing the death penalty and substituting life without parole. By enhancing proportionality in this way, a sentencing structure can better ensure that only the most serious crimes attract imprisonment or long sentences.

- > **Colorado HB 1160** increases the number of theft offense classes from four to nine, which allows for greater proportionality by narrowing the monetary value thresholds that trigger each offense class. The new offense classes

include three misdemeanor and five felony classes and result in a reduction of penalties for theft of almost all property valued up to \$100,000. A petty offense class is created for theft of items worth under \$50, and the felony threshold is raised from \$1,000 to \$2,000.

- > **Colorado SB 250** removes drug crimes from the state's general felony classification and sentencing grid and creates a new stand-alone classification scheme. Each level is assigned a presumptive sentencing range, and some levels are assigned an aggravated sentencing range that applies when an aggravating factor (e.g., if the offense was committed while on probation or parole) is involved. The law classifies all felony possession as the lowest drug felony level. SB 250 also establishes a presumption that low-level felony drug offenders be sentenced to a community-based sanction. A judge may sentence convicted offenders to incarceration only after showing that community-based sanctions have been tried and failed, would fail if they were tried, or present an unacceptable risk to society. The law explicitly states that high-risk offenders can be successfully managed in the community with proper supervision and programming and should not be excluded from consideration. Using an evidence-based, validated risk assessment tool, the law also directs the probation department to assess all probationers and to place all high-risk offenders in an intensive supervision program. The court may also make residential drug treatment a condition of probation.
- > **Connecticut SB 983** creates a new offense category—a Class E felony. This category is any felony that carries a maximum prison term of more than one but less than three years. The law also repeals the one year (non-mandatory) minimum for Class D felonies.
- > **Indiana HB 1006** expands Indiana's felony classification scheme from four levels to six. Although the law increases penalties for serious crimes, such as sex crimes and violent crimes, the law decreases sentences for other crimes, including some theft and drug possession offenses. Previously, Indiana was the only state that classified all theft as a felony. This law also introduces more graduated sentencing for drug crimes. Possession of marijuana and other low-level drug offenses are now misdemeanors and possession of small amounts of more serious drugs are reduced to less serious felonies. First-time possession of less than an ounce of marijuana has been downgraded to a lower misdemeanor.
- > **Maryland HB 1396** alters sentencing provisions for extortion, malicious destruction of property, passing bad checks, credit card fraud, and identity fraud. The law raises the felony threshold to \$1,000 (from \$500) and graduates felony sentencing upwards based on property value. Punishment

ranges are given for offenses involving \$1,000 to \$10,000, \$10,000 to \$100,000, and more than \$100,000. These new ranges impose less severe punishment on someone convicted of a felony involving a relatively low property value than that person would have received under the old law. A felony involving a relatively higher property value now carries a more severe sentence than it previously would have.

- > **Maryland SB 276** repeals the death penalty and substitutes life with no possibility of parole. In cases in which the state has already submitted a notice to seek the death penalty, the law withdraws this notice and converts it to a notice to seek life without parole.
- > **Oregon HB 3194** introduces presumptive sentences of probation for marijuana offenses and driving with a suspended license. The law also reduces the presumptive sentence for identity theft and robbery in the third degree (the lowest level of robbery, which requires the use or threat of physical force) from 24 to 18 months, when the offender has prior property crime convictions. These revised sentencing provisions sunset after 10 years.
- > **Oregon SB 40** restructures marijuana offenses. The law introduces a distinction between marijuana, defined as the leaves, stems, and flowers of the plant, and marijuana product, which includes the derivatives, resin, and compounds made from the plant. Previously, possession of marijuana was a Class B felony, but less than one ounce of stems, leaves, or flowers was a violation. Under the new law, possession of four or more ounces of marijuana is a Class C felony, one to four ounces is a Class B misdemeanor, and less than one ounce remains a violation. For marijuana product, possession of at least one-quarter ounce is a Class C felony, while less than one-quarter ounce is a Class B misdemeanor.
- > **South Dakota SB 70** adjusts the state's offense classification structure. First, it increases the number of felony grand theft classes from two to five. These changes result in a lower penalty for theft of property valued under \$5,000 and an increased penalty for theft of property valued over \$100,000. Second, SB 70 downgrades the felony level for minor drug crimes. Possession and use are both reduced from a Class 4 felony to a Class 5 or 6 felony, depending on the substance. (The impact is to reduce the maximum sentence.) At the same time, this law increases the felony level for trafficking, from Class 4 to Class 3, where the offender possesses items indicative of large-scale drug dealing. Finally, SB 70 mandates that most Class 5 and 6 felonies carry a presumptive sentence of probation. A judge may depart from this presumptive sentence only if he or she finds that aggravating circumstances are present that pose a significant risk to public safety.

- > **Vermont S 1** creates a Criminal Offense Classification Working Group to review Vermont's sentencing structure and develop a system of graduated liability and punishment. The absence of felony classifications in Vermont's current sentencing scheme provides judges little guidance regarding the relationship between the seriousness of the offense and the appropriate sanction, resulting in a lack of uniformity in sentencing. The law also creates a felony embezzlement threshold of \$100.
- > **Washington SB 5892** reduces the maximum sentencing range for certain drug offenders. Low-level drug offenders with three to five prior felonies may now be sentenced to a maximum of 12 months rather than 18. This law precludes the possibility that these offenders will serve a sentence in prison, which, as a rule, requires a sentence of more than 12 months.

MARIJUANA DECRIMINALIZATION INITIATIVES

Following the passage of 2012 ballot initiatives in Colorado and Washington to legalize marijuana possession for personal use, there was substantial legislative activity in 2013 focused on reducing or eliminating penalties for the possession of small quantities of marijuana.^a Commonly referred to as “decriminalization,” these reforms convert possession of small quantities of marijuana with no intent to distribute from a felony or misdemeanor to a civil violation that is typically punishable only by a fine. At least 19 states and the District of Columbia considered bills in 2013 that would have either decriminalized or legalized this conduct, but only one—Vermont—enacted law.^b

On a municipal level, a number of localities passed marijuana legalization measures in November 2013. Voters in three Michigan cities voted to legalize the possession of small amounts of marijuana. A ballot measure in Ferndale, Michigan passed with nearly 70 percent support while measures in Jackson and Lansing passed with approximately 60 percent support. Meanwhile, in Portland, Maine voters passed an ordinance decriminalizing possession of less than 2.5 ounces of marijuana by those ages 21 and over.^c

Additionally, twenty states proposed bills legalizing medical marijuana. However, only two—Illinois and New Hampshire—adopted these bills as law.^d

Vermont H 200 decriminalizes possession of up to one ounce of marijuana and up to five grams of hashish, treating it instead as a civil violation punishable by a fine. For those ages 21 and older, possession of under an ounce remains a civil violation no matter how many subsequent offenses are entered. The law also adds a presumption of diversion for certain first-time possession offenders in which charges will be dismissed or expunged if a defendant completes a community-based program or stays out of trouble for a specified period. Municipalities are permitted to regulate the use of marijuana in public places with fines collected used to fund diversion and drug enforcement programs. H 200 had the support of Vermont’s governor, along with a number of senior law enforcement officials.^e Governor Peter Shumlin, in particular, based his support on the lesser danger of marijuana relative to other drugs, stating that “[o]ur limited resources should be focused on reducing abuse and addiction of opiates like heroin and meth rather than cracking down on people for having very small amounts of marijuana.”^f

^a For detailed information regarding the Colorado and Washington initiatives, see Governance Studies at Brookings, *Q&A: Legal Marijuana in Colorado and Washington* (Washington, DC: Brookings Institute, May 2013), <http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington> (accessed July 8, 2014).

^b Marijuana reform bills were considered in the 2013 legislative sessions of Alabama, Hawaii, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Missouri, New Mexico, New Hampshire, New Jersey, Nevada, North Carolina, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, and the District of Columbia. See Phillip Smith, “Is Your State Trying to Reform It’s [sic] Marijuana Laws in 2013?,” *The Weed Blog*, May 4, 2013, <http://www.theweedblog.com/is-your-state-trying-to-reform-its-marijuana-laws-in-2013/> (accessed July 8, 2014); and Chris Chester, “Bill to Legalize, Tax Marijuana Introduced In D.C. Council,” *WAMU American University Radio*, Sept. 18, 2013, http://wamu.org/news/13/09/18/bill_to_legalize_tax_marijuana_introduced_in_dc_council (accessed July 8, 2014).

^c See Dan Frosch, “Measures to Legalize Marijuana Are Passed,” *NY Times*, November 6, 2013.

^d Bills were introduced in Alabama, Florida, Illinois, Iowa, Kansas, Kentucky, Maryland, Minnesota, Mississippi, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, West Virginia, and Wisconsin. See Marijuana Policy Project, *State-By-State Medical Marijuana Laws 2013: How to Remove the Threat of Arrest* (Washington, DC: Marijuana Policy Project, 2013), 13, App. L.

^e Marijuana Policy Project, “Vermont,” <http://www.mpp.org/states/vermont/> (accessed July 8, 2014).

^f Office of the Governor, “Gov. Shumlin Signs Bill Decriminalizing Possession of Limited Amounts of Marijuana,” press release (Montpelier: State of Vermont, June 6, 2013), <http://governor.vermont.gov/gov-shumlin-signs-marijuana-decriminalization> (accessed July 8, 2014).

EXPANDING ACCESS TO EARLY RELEASE MECHANISMS

The size of the prison population is a function of the number of people entering the system and how long they stay.¹⁸ In addition to enacting sentencing reform, which may reduce the number of people entering prison and the lengths of sentences, several states sought to implement mechanisms for the safe, earlier release of offenders already in custody. Supported by research demonstrating that recidivism rates are no higher among prisoners whose release is accelerated and that good time credits improve institutional safety and reentry outcomes, some states expanded the availability of good time credits in order to give prisoners opportunities to shorten their terms in custody by complying with certain conditions or participating in programs such as education and treatment.¹⁹ Other states advanced parole eligibility dates for certain nonviolent offenders or created a mechanism by which a court or facility superintendent can identify offenders whose earlier release would help advance their rehabilitation.

- > **Louisiana HB 59** increases the maximum amount of good time credit for participation in treatment and rehabilitation programs—such as basic education, job skills training, and therapeutic programs—from 250 to 360 days. This amends a decision made two years earlier that decreased the cap on good time credits from 540 to 250 days.
- > **Louisiana HB 442** creates a substance abuse conditional release program. The Department of Corrections is authorized to release a first- or second-time drug offender with no prior violent crimes before the end of his or her sentence. The offender must have served at least two years of the sentence and be within one year of scheduled release. Upon release, the offender must participate in a two-to-four-month addiction disorder treatment program.
- > **New Hampshire HB 224** authorizes a sentencing court to recommend, or the superintendent of a county correctional facility to allow, the release of any person in a local correctional institution for the purpose of working, obtaining work, performing community service, or participating in a home confinement or day reporting program, if those programs exist at the facility. If a superintendent decides that the release of a certain offender would be conducive to his or her rehabilitation and orders it, whether or not the court has recommended it, the superintendent is required to notify the court and prosecutor. At the request of the prosecutor, a hearing may be scheduled. The superintendent's decision for release will stand unless, following the hearing, the court orders otherwise.
- > **North Dakota HB 1115** makes parole review automatic for eligible inmates. Previously, inmates had to apply to the Department of Corrections and Rehabilitation in order to be considered for parole.

- > **West Virginia SB 371** provides that nonviolent offenders be released from prison six months before their calculated release dates and remain under post-release supervision for this time period subject to electronic or GPS monitoring. The court must order this early release at the time of sentencing, upon a finding that it would be in the interests of justice, rehabilitation, and public safety.²⁰
- > **West Virginia SB 423** allows offenders serving six-month jail sentences to earn sentence reductions by participating in rehabilitative programs addressing issues such as substance abuse, anger management, parenting, domestic violence, and life skills training. Each program completed reduces the sentence by five days and an individual may participate in no more than six programs, for a maximum total reduction of 30 days. These time credits were previously available only to those serving sentences exceeding six months.

Expanding or strengthening community corrections

In conjunction with efforts to reduce levels of incarceration, state policymakers in 2013 also aimed to expand or strengthen community-based responses to crime. Driven in part by research showing that such responses can be less costly and more effective than incarceration, legislators passed laws that created new types of community supervision, made existing sentencing options available to more offenders, and otherwise improved the practice of community supervision.²¹ State laws enacted in 2013 accomplished one or more of the following: (1) increased options for defendants to be diverted from the criminal justice system if they stay out of trouble for a certain period of time or successfully complete a community-based treatment or program; (2) expanded community-based sentencing options; (3) expanded the availability of problem-solving courts; (4) required graduated responses to violations of supervision conditions; or (5) increased the use of incentives in community supervision.

INCREASING DIVERSION OPTIONS

Diverting individuals away from the criminal justice system can significantly reduce the risk of recidivism and improve mental health and substance abuse outcomes.²² Generally speaking, “diversion” is an alternative to traditional criminal case processing through which charges will be dismissed (or expunged) if the defendant completes a community-based program (often involving both supervision and treatment).²³ In 2013, at least six states authorized the creation or expansion of diversion programs or strengthened the infrastructure supporting existing programs.

- > **Alabama HB 494** authorizes district attorneys to establish pretrial diversion programs in their judicial circuits. The law sets out baseline eligibility criteria, permitting participation by defendants charged with misdemeanors, traffic offenses, property crimes, most drug crimes, and other offenses within prescribed limits. Defendants must apply to the program and admission is granted at the discretion of the district attorney.²⁴

- > **Arkansas HB 1470** authorizes each judicial district to establish a pre-adjudication probation program. The structure, method, and operation of the program is to be determined by the individual districts. Expungement and dismissal are available at completion of the program upon recommendation of the prosecuting attorney and a determination by the judge that it is appropriate in light of the participant’s criminal history. Individuals charged with crimes of violence, offenses requiring sex offender registration, and crimes involving victims under age 18 or over age 64 are ineligible. Also excluded are holders of commercial driver’s licenses and learner’s permits charged with certain traffic offenses.

- > **Colorado HB 1156** standardizes both new and previously established diversion programs by (1) setting the maximum length of a program to two years; (2) detailing the factors district attorneys must consider when accepting or excluding a defendant from a diversion program; (3) mandating—and setting minimum requirements for—diversion agreements between defendants and a program; and (4) outlining procedures and consequences for both failure and successful completion.²⁵ HB 1156 seeks to revive previously underutilized diversion options.²⁶

- > **Colorado SB 250** introduces leniency into the diversion program by granting judges discretion to keep drug offenders in diversion after a violation of the program terms. Previously, judges had to revoke participation in the deferred judgment program and impose a sentence after any violation. Judges who elect to keep an offender on diversion may impose additional conditions to address the violation and enhance the likelihood of success.

- > **Illinois HB 3010** creates a new sentencing option—“Second Chance Probation”—which allows certain first-time nonviolent felony defendants to be sentenced to probation with no judgment entered upon pleading or being found guilty. The charges are dismissed after successful completion of probation, leaving the offender with no felony record. Eligible defendants are those charged with Class 3 or 4 offenses involving drugs, theft, and destruction of property. The probationary period must be at least two years.

- > **New Jersey A 3598** allows defendants charged with non-drug misdemeanors, such as trespassing and shoplifting, to participate in the state’s misde-

meanor court conditional dismissal program, which was previously available only to those charged with drug-related misdemeanor offenses. Upon successful completion of the program, charges are dismissed and individuals may apply to have their records expunged six months after dismissal.²⁷

> **Oregon HB 2627** permits those who complete a DUI diversion program to have their charges dismissed even if fees and restitution (less than \$500) are not fully paid. Any remaining fees and restitution are converted into civil judgment debt, which survives dismissal of the criminal charges but does not put the defendant at risk of conviction solely due to unpaid fees and restitution.

EXPANDING COMMUNITY-BASED SENTENCING OPTIONS

Incarceration can be reserved as a “last resort” only if effective community-based sentencing options are available. In turn, effective community-based supervision is possible only if programs and services that address the identified needs of supervisees—such as those related to housing, employment, education, substance abuse treatment, and family engagement or support—exist and have adequate capacity. Such support is critical to reducing recidivism and strengthening the communities most affected by crime and the large numbers of people returning from prison.²⁸ In 2013, some states created new community-based sentences, including the use of home detention as an alternative to incarceration, while others expanded the pool of offenders, especially among certain drug offenders, eligible for community-based sentencing.

> **Illinois SB 1854** grants county sheriffs the discretion to substitute electronic home detention (EHD) for a jail term for appropriate offenders in their custody, unless the sentencing order specifies that the sentence must be served in a county correctional facility. Some serious offenses are excluded from EHD eligibility, including murder, sexual assault, drug conspiracy, and some firearms offenses.

> **Louisiana HB 442** creates a substance abuse probation program for defendants charged with felony drug possession of, or possession with intent to distribute, less than 28 grams of a Schedule 1, 2, 3, or 4 substance, or those charged with possession with intent to distribute less than one pound of marijuana. Defendants who have prior violent convictions or who have previously participated in a drug diversion program are ineligible. A judge may suspend the sentence and impose probation if the prosecutor consents and the judge finds that the defendant has a drug addiction, is likely to respond to treatment, and does not pose a threat to the community.

- > **Oregon HB 3194** repeals the ban on probation for certain repeat drug offenders.²⁹ The repeal will sunset in 10 years.
- > **Texas SB 1173** provides an additional sentencing option for defendants convicted of state jail felonies—a class of felonies that is punishable by up to two years in state jail. Judges may now split the sentence and order a period of jail confinement followed by community supervision for the remainder of the term. The law also requires supervision officers to make recommendations in pre-sentence reports regarding conditions of supervision for those charged with state jail felonies.
- > **Vermont H 530** directs the Joint Committee on Corrections Oversight to develop a proposal to increase the use of home detention and confinement as an alternative to incarceration. The committee must consider establishing an electronic monitoring unit, determining eligibility for those charged with nonviolent misdemeanors, and revising bail and pretrial release conditions.
- > **West Virginia SB 371** creates a new drug treatment program for felony drug offenders who (1) are determined by a standardized risk and needs assessment to be at high risk to re-offend and in high need of drug treatment and (2) would otherwise be incarcerated. Participants who violate the conditions of treatment supervision are subject to up to 30 days of incarceration. Drug offenders whose felonies involved firearms, a minor victim, or violence against a person are ineligible.

EXPANDING THE AVAILABILITY OF PROBLEM-SOLVING COURTS

Over the past two and a half decades, problem-solving courts (also known as treatment or specialty courts) have become an important feature of the criminal justice system. These courts are special dockets that focus on a targeted segment of the offender population—such as those with distinct needs, including drug addiction, mental illness, or homelessness, or individuals involved in prostitution or who are veterans. There are also reentry courts that offer an alternative approach to traditional post-release supervision, and whose goal is to help facilitate successful transition of offenders back into the community.³⁰ Problem-solving courts offer defendants intensive judge-led supervision using an interdisciplinary team of professionals, which often includes a court coordinator, prosecuting attorney, defense attorney, treatment provider, case manager, probation officer, and law enforcement representative.³¹ These programs are focused on providing safe and effective interventions, treatment, services, and supervision to eligible defendants in the community—as opposed to in jail or prison—and, in particular, mental health courts acknowledge that behavioral progress occurs along a continuum.³²

Continuing a trend from previous years, state legislatures in 2013 authorized or encouraged the creation of new types of problem-solving courts or expanded existing forms in new jurisdictions; new laws also formalized the problem-solving court system by establishing rules and standards or centralized control over all problem-solving dockets. In addition to veterans treatment courts—with a number of legislative resolutions urging their creation—there was also notable interest in prostitution diversion.³³

- > **Illinois SB 1872** permits those charged with prostitution to be admitted into a mental health court program. The law directs programs to partner with advocates, survivors, and service providers.
- > **Indiana HB 1016** authorizes the use of problem-solving courts as a condition of a misdemeanor sentence. In addition, an offender may now be referred to a problem-solving court by a county sheriff or the Indiana Department of Corrections.
- > **Louisiana SB 71**, also known as the Mental Health Court Treatment Act, authorizes each district to create a specialized mental health court for defendants charged with drug- or alcohol-related crimes. Defendants who have been diagnosed with a mental illness may be admitted to a mental health court upon consent of the prosecutor and the defendant. Upon successful completion of treatment and probation, the conviction may be set aside and the charges dismissed. A defendant is ineligible if, during the previous ten years exclusive of any time spent incarcerated, he or she has committed murder, sexual assault, armed robbery, arson, stalking, or any crime of violence where a gun was fired.
- > **Michigan HB 4694** is part of a package of laws which provides a framework by which judicial circuits may establish and run mental health courts.³⁴ Specifically, this law permits circuit or district courts to establish mental health courts and defines the essential structure and characteristics to which they must adhere, including the types of services they should provide. The law allows courts to establish general eligibility requirements, including accepting individuals who have previously been placed on probation, participated in a similar program, or who have had criminal proceedings against them deferred. However, the law excludes violent offenders from admission. The law also requires as a condition for admission that an eligible individual complete a pre-admission screening and evaluation assessment.
- > **Missouri SB 118** authorizes circuit courts to establish veterans treatment courts. These courts combine judicial supervision, drug testing, and substance abuse and mental health treatment and are available for military veterans or current military personnel with a substance abuse problem

and/or mental illness. The law requires such courts to establish eligibility criteria in consultation with participating district attorneys. Upon successful completion of the treatment program, the charges, petition, or penalty against a participant may be dismissed, reduced, or modified.

- > **Oregon HB 3194** directs the Oregon Criminal Justice Commission to prepare evidence-based standards for specialty courts that will be cost-effective, reduce recidivism, and target medium- and high-risk offenders when possible. The commission will also serve as a clearinghouse and information center for best practices for specialty courts.
- > **South Dakota SB 70** establishes and directs an advisory council to design the framework and criteria for eligibility for drug courts, and it authorizes the creation of a drug court in any court with jurisdiction over criminal cases. The law also requires judges to attend training on the use of validated risk and needs and behavioral health assessments, as well as other evidence-based practices.
- > **Texas SB 462** introduces greater executive and legislative control over specialty courts. For example, a specialty court is eligible to receive state funding only if it registers with the governor's office and complies with recommended best practices.
- > **Texas SB 484** creates a diversion program for those charged with prostitution offenses. The program must provide information, counseling, and services relating to sexually transmitted diseases, mental health, substance abuse, and sex addiction. The prosecutor must consent to a defendant's participation in the program.
- > **Washington SB 5797** specifies that any jurisdiction may create a specialty court. At the time the law was enacted there were at least 74 operational specialty courts in Washington State. The new law also encourages the Washington Supreme Court to research and adopt rules that promote compliance with best practices.
- > **West Virginia SB 371** requires every judicial district to establish a drug court by July 1, 2016.

REQUIRING GRADUATED RESPONSES TO VIOLATIONS OF SUPERVISION CONDITIONS

Revocations from community supervision account for a significant portion of prison admissions in many states.³⁵ Sending offenders back to prison for violating supervision conditions—particularly for so-called technical violations such as failing a drug test or missing appointments—can be an expensive and ineffective means of dealing with offender misconduct. Often, the incarcerated technical violator is not at high risk of re-offending and spending time in jail or prison can increase the risk of future offending, rather than decrease it.³⁶ In 2013, several states adopted laws that provide judges and supervision officers a range of options to match the severity of the penalty to the type and scope of the violation.

- > **Kansas HB 2170** codifies graduated sanctions for violations of probation by probationers convicted of a crime or participating in drug abuse treatment programs.³⁷ For example, if the original offense was a felony, the court may impose the following graduated sanctions, starting with the first and moving to the next at each subsequent violation: (1) continuation or modification of the conditions of release; (2) imprisonment in jail for no more than six days per month for three months, imposed only in two-day or three-day consecutive periods; (3) imprisonment for 120 days; (4) imprisonment for 180 days; and (5) revocation of probation and restoration of the original sentence. This law also gives probation officers the authority to use these same sanctions provided that the offender has previously waived the right to appear before a judge.
- > **South Dakota SB 70** establishes two HOPE pilot programs, one for violations of parole and the other, probation. Each HOPE pilot must be monitored and evaluated for its effect on public safety. The state’s supreme court is also directed to establish eligibility rules for those at high risk of recidivism. SB 70 requires the use of graduated sanctions—including written reprimands, additional drug testing, community service, and house arrest—when responding to parole and probation violations.
- > **West Virginia SB 371** authorizes judges, the parole board, and parole officers to impose periods of “shock” incarceration in response to technical violations of probation or parole. An offender may be sentenced to a term of incarceration of up to 60 days for a first violation of probation or parole and up to 120 days for a second violation, and probation or parole may be revoked only on the third technical violation.

HOPE PROGRAMS

In 2004, in an effort to increase the rate of success of probationers, Hawaii instituted a groundbreaking program called Hawaii's Opportunity Probation with Enforcement (HOPE).^a HOPE targets offenders who are at high risk of failure and features swift, certain, and short jail sanctions for every violation (such as failed drug tests or skipped probation meetings). The program also conducts frequent, random drug testing and imposes drug treatment if an offender tests positive or an offender requests treatment. An offender is required to appear before the court each and every time he or she violates a condition of supervision.

HOPE has reduced re-arrest rates, drug use, and probation revocations, which in turn has reduced Hawaii's overall level of incarceration.^b An evaluation of the Washington Intensive Supervision Program, which is modeled on HOPE, showed similarly promising results.^c All told, at least 18 states have started HOPE programs.^d

^a Prior to this program, the failure rate of those on probation was close to 40 percent. See Vera Institute of Justice, *More Than the Sum of Its Parts: Why Hawaii's Opportunity Probation with Enforcement (HOPE) Program Works* (New York: Vera Institute of Justice, 2010).

^b Ibid; see also Angela Hawken and Mark Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE* (Washington DC: National Institute of Justice, 2009).

^c See Angela Hawken and Mark Kleiman, *Washington Intensive Supervision Program: Evaluation Report* (Seattle, WA: Seattle City Council, 2011), http://www.seattle.gov/council/burgess/attachments/2011wisp_draft_report.pdf.

^d Tracy Wholf, "Innovative justice program spurs similar models across the U.S.," <http://www.pbs.org/newshour/rundown/innovative-justice-program-sweeping-the-usa/> (accessed on February 10, 2014).

INCREASING USE OF INCENTIVES IN COMMUNITY SUPERVISION

Research has demonstrated that positive reinforcement and the use of incentives are components of effective behavior modification.³⁸ In 2013, at least three states passed laws that offer offenders on probation or parole earned discharge or other benefits if they comply with the conditions of their supervision. By awarding credits and discharging those who have been consistently compliant, community supervision departments can focus resources on offenders who pose the greatest risk to public safety. Other states, such as Colorado and Idaho, passed bills that award compliant offenders with an offense downgrade in order to mitigate negative consequences that may flow from a felony conviction.

- > **Colorado SB 250** requires that a felony conviction for certain low-level drug offenses (particularly possession) be vacated in favor of a misdemeanor conviction if an offender successfully completes probation or another community-based sentence. The measure is designed as an incentive for offenders to remain compliant and to reduce the negative consequences of a felony conviction. The provision does not apply to offenders who have previously been convicted of two or more felony drug crimes or any crime of violence.
- > **Idaho S 1151** provides a mechanism by which a felony conviction may be downgraded to a misdemeanor after successful completion of probation. A prosecutor's consent is required if fewer than five years have passed since discharge from probation and is always required if the felony was a serious offense, such as robbery, kidnapping, and certain offenses involving assault. A petition to downgrade may be granted if the individual has no intervening felony convictions, no pending charges, and if doing so is compatible with the public interest.
- > **Kansas HB 2170** permits low-risk offenders under community supervision to seek a discharge after 12 months if they have complied with all conditions and paid all restitution. For those on probation, the application must be granted unless the judge identifies substantial and compelling reasons why it should be rejected. For those under post-release supervision, approval is not presumptive and remains at the discretion of the prisoner review board. HB 2170 also ends the previous practice of adding the amount of earned time credit that reduced a person's custodial sentence to the time spent on post-release supervision (except for sex offenders).
- > **Oregon HB 3194** creates a new earned discharge program for felony probationers whereby probationers who are serving more than six months and comply with the terms of their supervision may earn up to a 50 percent reduction in their probation period.
- > **South Dakota SB 70** creates a program of earned discharge credits for offenders (except sex offenders) on probation and parole. Any person with a felony probation term of at least six months receives a credit of at least 15 days for each month that the terms of supervision are met. Parolees may earn credits each calendar month equal to the number of days in the month.

Implementing risk and needs assessments

Research has increasingly clarified that the cornerstone of effective correctional intervention is an assessment of both an individual's risk of re-offending and the personal characteristics that must be addressed (called needs) to reduce that risk.³⁹ As such, state legislators are recognizing the importance of using validated assessment tools at various points during the criminal justice process: (1) at the pretrial stage, in order for defendants to receive treatment or programming, if needed; (2) for sentence planning, in order to ensure that the level of supervision and type of intervention are tailored to individual offenders' risk and needs; and (3) in preparation for reentry, to identify the type of transitional or reentry services offenders will need and the level of supervision required post-release.

- > **Colorado SB 250** requires Colorado's county-run probation departments to use a validated risk and needs assessment instrument to assess all individuals sentenced to probation. The law also mandates that the assessment results be used to determine placement in standard or intensive supervision. Intensive supervision is reserved for the offenders at the highest risk of recidivism.
- > **Oklahoma HB 1109** allows defendants to undergo a risk, mental health, and substance abuse assessment and receive appropriate assistance based on the results at any point after the initial appearance before a judge. Previously, this was only available to offenders after conviction but before sentencing.
- > **South Dakota SB 70** mandates the use of a validated risk and needs assessment for parole and felony probation supervision so that officers can tailor supervision and interventions to individual offenders' risk and needs and focus resources on moderate- and high-risk offenders.
- > **Texas SB 213** requires the Department of Criminal Justice (1) to perform a risk and needs assessment for each offender within the adult criminal justice system; (2) identify available transition services and the inmates eligible to participate; (3) coordinate the provision of reentry services; and (4) evaluate the outcomes of offenders who utilize them. The risk and needs assessment must later be repeated by the community supervision department when an offender is placed under community supervision.

- > **Washington SB 5034** appropriates nearly \$25 million in both 2014 and 2015 to devise and institute a comprehensive programming plan for offenders under community supervision and in prison. The plan must prioritize evidence-based programs that use a risk-needs-responsivity model and have measurable outcomes. The law also specifically appropriates money to expand a current risk-needs-responsivity model to include cognitive behavioral therapy at three facilities.
- > **West Virginia SB 371** requires probation officers to conduct risk and needs assessments of offenders under their supervision and to structure supervision in accordance with the assessment results. The law also expands the use of risk and substance abuse assessment tools for parolees.

Supporting the reentry of offenders into the community

Approximately 581,000 men and women were released from state custody into their communities in 2012.⁴⁰ Former offenders returning to their families and communities can face a range of acute challenges, such as housing, employment, family reunification, education, and behavioral health issues.⁴¹ Supporting the transition from prison or jail back into the community is critical to reducing ex-offenders' risk of recidivism and to improving public safety.⁴² Given that employment, for example, is strongly associated with a reduced likelihood of re-offending, employment services—whether in-prison programs to build occupational skills or transitional work programs that ensure employment after release—can be an effective tool for reducing recidivism.⁴³

In 2013, state legislatures signaled an increasing awareness of and willingness to support ex-offenders making this transition. First, states passed laws that mitigate the post-sentence penalties, disqualifications, or disabilities—collectively known as “collateral consequences”—which ex-offenders suffer as a result of their convictions. Second, many states focused on helping ex-offenders transition back into the community by mandating more in-prison support prior to release, developing transitional leave programs in which inmates are moved into intensive supervision in the community just prior to release, or providing services that connect ex-offenders to necessary resources such as state-issued identification or housing resources. Some states made it easier to access discharge accounts—money reserved for prisoners upon release, and typically taken from their wages or commissary accounts. Others took steps to alleviate the burden of court-imposed fines or other criminal justice debt, such as restitution payments or user fees (fees for jail stays or probation supervision) by substituting community service.⁴⁴

MITIGATING COLLATERAL CONSEQUENCES

The civil sanctions, or collateral consequences, triggered by a criminal conviction—but not part of the sentence imposed by a judge—are many and far-reaching. They include legal penalties or disadvantages that are imposed automatically upon conviction; discretionary disqualifications that an administrative agency, civil court, or official is authorized but not required to impose on a convicted person; and informal disabilities or disqualifications imposed by private actors, which stem not from the express operation of the law but from the social stigma suffered by individuals with a criminal conviction record. These sanctions include presumptive ineligibility for public housing for certain types of offenders, ineligibility for food stamps or federal cash assistance, exclusion from certain employment and occupational licenses, restrictions on voting and other forms of participation in civic life, exclusion from student loans, and restrictions affecting family life (e.g., restrictions on adoptions). The mere existence of a conviction on an individual's record and the ability of others to obtain the record are challenging issues. Employers and property owners frequently obtain background checks on prospective workers and tenants, and applications are often denied if criminal records (or even arrests that were never prosecuted) are found. More than 90 percent of employers in the United States run background checks on potential employees.⁴⁵ At a time when conviction and arrest records are readily available online or easily obtained from specialized report providers, it is even more difficult for former offenders to find the employment, housing, and other services they need to transition safely and successfully back into the community.

There is a growing awareness that collateral consequences hinder reentry, exacerbate recidivism (creating more victims), are too broadly applied (resulting in arbitrary and unnecessary restrictions), and have a disparate impact on people of color.⁴⁶ In 2013, a number of states sought to alleviate collateral consequences by (1) expanding options for sealing or expunging criminal records; (2) clarifying the effect of record sealing and expungement; and (3) limiting the consequences of a criminal record.

EXPANDING OPTIONS FOR SEALING OR EXPUNGING CRIMINAL RECORDS

By sealing or expunging a criminal record, it is effectively erased from the public record and therefore unavailable to individuals and private report providers. In 2013, several states introduced or expanded expungement or sealing remedies, continuing a trend that started in 2012.⁴⁷

> **Arkansas HB 1638** establishes the *Comprehensive Criminal Record Sealing Act of 2013*. This law repeals individual provisions concerning the sealing of criminal records and replaces them with one consolidated and simplified

record sealing remedy. In so doing, the law streamlines all terminology and simplifies record sealing procedures. Some substantive changes were made as well, including extending record sealing eligibility to Class C and D felonies and to those found guilty at trial. (Previously, only those who plead guilty or no contest could have records sealed.) Additionally, offenders with one prior felony conviction may now petition for record sealing, and arrest records may be sealed one year after arrest if no charges are brought. The law directs that misdemeanor records are to be sealed unless the court is presented with clear and convincing evidence why they should not be sealed. Conversely, felony records will only be sealed if the offender can present clear and convincing evidence that they should be sealed.

- > **Colorado HB 1082** expands the right to expunge records of juvenile delinquency. The law allows a juvenile offender, a parent, or a court-appointed guardian to initiate expungement proceedings (previously, only the court or probation/parole departments could do so). The law also removes the ban on expungement for juveniles who committed an offense that would have been a crime of violence if committed by an adult. In addition, the law makes expungement available upon completion of a diversion program or dismissal. The law also lowers the post-probation waiting period before requesting expungement from three years to one year; the maximum waiting period for repeat offenders is lowered from 10 years to five years.
- > **Colorado SB 123** extends record sealing eligibility to those convicted of petty offenses and municipal violations.
- > **Colorado SB 229** provides that records of charges that were dismissed for reasons other than a deferred prosecution or multi-case prosecution must be sealed if the petition contains facts sufficient to support a qualifying situation.
- > **Illinois HB 3061** expands eligibility for record sealing to 10 additional Class 3 and 4 felonies. Previously, the only felony offenses eligible for record sealing were Class 4 felony drug possession and Class 4 felony prostitution. In deciding whether to seal records, judges may consider specific collateral consequences the individual is facing, the person's age and employment history, and the strength of the evidence supporting the conviction.
- > **Indiana HB 1482** authorizes an expungement remedy for offenders convicted of certain misdemeanors and low-level felonies, provided the offender completes the original sentence and remains a law-abiding citizen for the entirety of a specified waiting period, ranging from five to 10 years depending on the severity of the offense. A person may file only one petition for expungement in a lifetime.

- > **Nevada SB 169** reduces the waiting period from seven years to five years before a person convicted of a gross misdemeanor may petition a court to seal his or her criminal records. The five-year period begins when the offender is released from custody or discharged from probation.
- > **Utah HB 33** adds felony drug possession to the list of offenses that may be expunged. An offender must wait five years, be free of all illegal drug use, and be successfully managing any addiction. The law also excludes drug possession charges from a person's criminal history when deciding eligibility to have other crimes expunged. The charge may not be expunged if it is the person's third felony possession conviction or fifth overall possession conviction. HB 33 also expands the impact of a pardon such that it exempts the person from punishment as well as restores any rights and privileges forfeited by or because of a criminal conviction. This law requires the Board of Pardons and Parole to issue an expungement order at the time of the pardon and makes clear that this order has the same legal effect as if issued by a court.

CLARIFYING THE EFFECT OF RECORD SEALING AND EXPUNGEMENT

In many states, it is not clear what legal effect expungement or record sealing has in terms of alleviating collateral consequences, and the process by which offenders may apply for the remedy is confusing. In 2013, several states passed laws to clarify and strengthen the legal effect of available expungement and record sealing policies.

- > **Arkansas HB 1638** acknowledges the difficulty and confusion surrounding record sealing terminology, eligibility, and procedures and attempts to provide clear information as to when and how a person may pursue record sealing. The law provides that since a sealed record means that the underlying conduct did not occur as a matter of law, an individual with a sealed record may state that the conduct never occurred and that the record does not exist. However, sealed records may still be used for a determination of offender status in the event of a future crime.
- > **Colorado SB 123** clarifies that an applicant may not be denied housing or employment based solely on a refusal to disclose sealed conviction records. SB 123 also requires probation and parole officers to give notice at the final supervision meeting with offenders convicted of certain crimes that they have the right to have their criminal record sealed and that doing so can alleviate certain collateral consequences. Officers must provide offenders with a list of eligible crimes and the associated waiting periods.

- > **Indiana HB 1482** makes it unlawful discrimination to expel, suspend, or refuse to employ or grant a license on the basis of an expunged conviction or arrest record. The law specifies that an employer may only ask if an applicant has any convictions or arrests that have not been expunged. Finally, the law makes clear that a person's full civil rights are restored after expungement, including the rights to vote, hold public office, serve as a juror, and own a firearm.
- > **North Carolina SB 91** prohibits employers and educational institutions from requiring the disclosure of expunged records of arrests, charges, or convictions. The law also states that a person with an expunged criminal history record is not required to disclose any prior arrests, charges, or convictions. Employers who violate these provisions will receive a written warning for the first incident and a civil fine of up to \$500 for each subsequent incident.
- > **Texas SB 107** mandates that a criminal record subject to a nondisclosure order may not be publicly disclosed by the court clerk.
- > **Texas SB 1289** regulates companies, including online companies, that publish mug shots or other criminal history information and charge a fee of at least \$150 to have a record modified or removed. These companies are now required to ensure that the information they publish is accurate and current. They must promptly investigate complaints and permanently erase erroneous entries at no cost. Notably, the law imposes a civil penalty on companies that publish records that have been sealed or expunged.

AMELIORATING THE CONSEQUENCES OF A CRIMINAL RECORD

Expungement or record sealing is not available to many offenders because their states do not offer a remedy, their offenses do not qualify, or they have not yet satisfied other statutory criteria (e.g., a waiting period). Although these individuals may be taking significant steps to remain law-abiding and reintegrate into society, they face major obstacles because of their criminal records.⁴⁸ Several states in 2013 passed legislation aimed at limiting or ameliorating the collateral consequences of a conviction. To help former offenders secure employment, some laws—commonly known as “ban the box” initiatives—require employers to defer any inquiry about a job applicant's past convictions until after his or her application has progressed to an advanced stage, such as the first or second interview.⁴⁹ Some laws assuage the concerns of employers by shielding them from liability in negligent hiring and inadequate supervision actions brought solely on the basis of an employee's criminal record. Other laws restore driving privileges, lift bans on adoption or occupational licensing for certain classes of offenders, or incentivize employers to hire people with criminal backgrounds.

BAN THE BOX

“Ban the box” initiatives—which take their name from the question on job applications that asks the applicant to “check this box if you have ever been convicted of a crime”—are designed to facilitate the transition into the workplace after a conviction and encourage fair hiring practices by encouraging employers to screen candidates based on job skills and qualifications before looking at past convictions. In 2013, four states passed ban the box laws, joining at least eight other states and many cities and counties in leveling the playing field for ex-offenders.

- > **California AB 218** requires all state and local agencies (except criminal justice agencies) to determine whether a job applicant meets the minimum employment qualifications for the position before asking about the applicant’s criminal history.
 - > **Maryland SB 4** prohibits state employers from asking an applicant about any criminal history until after the applicant has been given an opportunity for an interview. Some state positions are exempted, such as any position in the Department of Public Safety and Correctional Services or in any county sheriff’s office.
 - > **Minnesota SF 523/HF 690** extends the practice to private employers, who are now required to wait until after an applicant has been selected for an interview (or, if there is no interview, after a conditional offer of employment has been made) before conducting a criminal background check or asking about criminal history. Fines may be imposed on employers that fail to comply. Ban the box laws have applied to public employees in Minnesota since 2009.
 - > **Rhode Island SB 357** prohibits employers from asking job applicants if they have ever been arrested, charged with, or convicted of a crime. Applicants may be asked about their prior convictions no earlier than their first interview. Exceptions are made for law enforcement positions and positions for which state or federal law requires an absence of convictions.
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- > **Colorado SB 123** provides that a pardon from the governor waives all collateral consequences of conviction, unless otherwise noted in the pardon itself. The law also gives judges authority to issue an order of collateral relief at the time a person is sentenced to community supervision. The judge has

discretion to relieve almost any collateral consequence of conviction, such as barriers to housing and employment. The only collateral consequences the order may not relieve are those imposed by licensing requirements for the Department of Education, the judicial branch, and law enforcement. An individual is not eligible for this order if the offense was a crime of violence, led to the permanent disability of the victim, or required the offender to register as a sex offender.

- > **Georgia HB 349** gives judges in drug and mental health courts the discretion to fully restore driving privileges or issue limited driving permits. Previously, a person had to wait at least one year from the date of his conviction or plea to apply for early reinstatement, and the application was made to the Department of Driver Services, not to the court.⁵⁰
- > **Indiana HB 1482** makes expunged convictions inadmissible in actions against employers for negligent hiring.
- > **Louisiana HB 219** mandates that the mere fact of a criminal record may not disqualify someone from adopting a child. When considering whether to approve a prospective adoption placement, a court must evaluate the number and type of offenses and the length of time that has passed since the most recent offense.
- > **Nevada SB 169** decreases the maximum penalty for a gross misdemeanor from one year to 364 days in order to avoid immigration consequences for non-citizens. Previously, a gross misdemeanor could trigger deportation proceedings because it carried a potential sentence of one year and thus qualified as an aggravated felony under federal immigration statutes.
- > **North Carolina SB 33** prohibits a licensing board from automatically denying a license on the basis of an applicant's criminal history. A board may make such a denial only if specifically authorized to do so by its own governing law and if a denial is warranted after considering factors, including: the level and seriousness of the crime; the circumstances surrounding the crime; or the nexus, if any, between the criminal conduct and the prospective duties of the applicant as a licensee. A licensing board may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the state or national repositories of criminal histories.
- > **Rhode Island SB 358** empowers the parole board to grant "certificates of recovery and reentry" to offenders who have met certain specified standards. The certificates help third parties, such as prospective landlords and employers, make more informed decisions about applicants with criminal

records. An offender convicted of a violent crime or who has a prior felony conviction is not eligible to receive a certificate.

- > **Texas HB 798** amends the occupational licensing law so that those convicted of certain misdemeanors remain eligible to obtain licenses, unless the license authorizes the possession of a firearm and the misdemeanor conviction was a crime of domestic violence.
- > **Texas HB 1188** shields employers from liability in negligent hiring and inadequate supervision actions brought solely on the basis of an employee's criminal record. Now, an employer may not be sued for negligence if he or she employs a person with a criminal record who later injures another person or causes actionable harm, unless the employee had a relevant or violent conviction that the employer should have known about.
- > **Texas HB 1659** limits a previous provision that disqualified a person from holding a license if he or she had received a deferred adjudication disposition in the past. Now, a license may be withheld on the basis of a deferred adjudication disposition only if the offense required registration as a sex offender; the conviction specifically barred receipt of a license; or a previous deferred adjudication disposition was granted less than five years prior.
- > **Texas SB 369** clarifies that information regarding a sex offender's employer's name and address may not be listed publicly on the sex offender registry.

IMPROVING REENTRY OUTCOMES

In 2013, states enacted a number of laws aimed at improving the likelihood of success for those leaving prison. Laws created new reentry programs in-prison and post-release; introduced transitional leave programs to help prisoners orient themselves before full release from custody; facilitated individuals' access to state-issued identification, housing resources, and health insurance coverage; provided easier ways to access or to increase those funds (from prisoners' commissary accounts or from their wages) provided to individuals when released from custody; promoted family connections or reunification; and mitigated the burden of criminal justice debt by allowing those released to meet these obligations through community service.

- > **Arizona SB 1205** alters a provision concerning prisoners' discharge accounts that prisoners receive upon release. Previously, a percentage of a prisoner's wages, up to a total of 50 dollars, was deposited into a discharge account and turned over to the individual upon release. This law raises the total to 100 dollars for all but those who are serving life sentences. Additionally,

this law authorizes discharge account funds to be furnished with a debit or other-stored value card.

- > **Arkansas HB 1822** allows the balance of a prisoner's commissary account to be issued on a debit card upon release from custody. Previously, these funds could only be conveyed by check.
- > **California AB 720** provides that an inmate of a county jail may not be terminated from state Medicaid (Medi-Cal) solely because of incarceration. Instead, the inmate's Medi-Cal enrollment will be suspended until release. Additionally, the law allows county jails to enroll eligible inmates not previously enrolled, with the coverage taking effect upon release.
- > **Maine HP 1032** allows an offender with unpaid fines to cover the outstanding balance by performing community service work instead of returning to custody. If it is determined that default on payment is based on valid reasons, such as lack of financial resources, and not contempt of the sentencing order, the fine is to be paid off at a rate of 25 dollars for every eight hours of community service work.
- > **Nebraska LB 483** commissions a pilot, family-based reentry program for incarcerated parents, especially those with children under six years of age. The two-year pilot must be an evidence-based program covering parental education, child literacy, relationship skills development, and reentry planning involving family members of the incarcerated parent. The law explicitly refers to research that demonstrates family-based reentry planning results in both lower recidivism for offenders and greater family economic stability, as well as research that indicates children who have parents involved in their lives perform better academically and socially in school, experience fewer mental health and substance abuse issues, and are less likely to commit serious crime.
- > **Nevada SB 423** requires the director of the Department of Corrections to provide photo identification cards to inmates upon release if the inmate requests the card and is eligible to acquire a driver's license or state-issued identification card.
- > **North Carolina SB 494** allows the Post-Release and Parole Commission to impose community service on offenders who are Class F through I felons and who have failed to pay any order for restitution, reparation, or costs imposed as part of their sentence. The commission may not impose a community service alternative on offenders possessing sufficient financial resources to satisfy the order.

- > **Oregon HB 3194** strengthens the state’s transitional leave program, which allows inmates to participate in employment and educational programs prior to final discharge. The law increases the maximum amount of leave from 30 days to 90 days and mandates that the Department of Corrections proactively assist eligible inmates in securing a placement. By increasing the maximum amount of transitional leave, corrections professionals hope to better prepare offenders for successful reentry.⁵¹
- > **South Dakota SB 70** permits the Department of Corrections, with the assistance of the Department of Tribal Relations, to develop a unique pilot program which allows for the supervision of state parolees on tribal land. Previously, due to the lack of jurisdictional authority of parole agents on tribal lands, state parolees who are members of a local tribe could not return home to tribal land; if they did, they would be considered absconders. The law calls for a tribal-state liaison to administer the pilot program by employing supervision strategies tailored to tribal communities that focus on reducing recidivism. The liaison is directed to use evidence-based practices and swift, certain, and proportionate penalties.
- > **Texas HB 797 and 799** require the state to offer courses that teach relevant and marketable skills to inmates. HB 797 requires the prison school district to notify students enrolling in vocational programs of any rule that would restrict them from obtaining an occupational license, including disqualification based on criminal convictions. The district must also supply statistics on the percentage of previous students who have become licensed. HB 799 requires the district to continually assess the Texas job market and update its vocational programs accordingly.
- > **Texas SB 345** directs prison wardens to identify and encourage volunteer and faith-based organizations to provide programs in their facilities, including job and life skills training, literacy and education programs, parent training, and drug and alcohol rehabilitation. Wardens are held accountable by a requirement to submit an annual report summarizing their efforts to identify and engage these organizations and to list the programs offered in their facilities.
- > **Texas SB 1185** directs Harris County (Houston) to conduct a pilot post-release program for mentally ill jail inmates with the goal of reducing their rates of recidivism and re-incarceration. The law requires Harris County to provide access to social, clinical, housing, and welfare services during the first few months after release from jail, as this time period poses the greatest risk of re-arrest.⁵²
- > **Washington HB 1284** protects the rights of incarcerated parents by adding incarceration to the list of good cause exceptions why the state’s child pro-

tection agency does not have to file for termination of parental rights when a child has been in foster care for 15 out of 22 months, and where incarceration is a major factor in why the child is in foster care. The parent must have maintained a meaningful role in the child's life by, for example, communicating through letters, telephone calls, or visits.

> **West Virginia SB 371** authorizes the Commissioner of Corrections to appoint a director of housing and director of employment tasked to work with public and private entities to facilitate housing and employment opportunities for individuals released from custody. In addition, the director of housing will work in conjunction with the parole division and the parole board to reduce release delays due to lack of a home plan; help develop community housing resources; and provide short-term loans to released individuals for costs related to reentry into the community.

Making better informed criminal justice policy

In 2013, state legislatures increased their reliance on data-driven criminal justice policy development. First, states created independent bodies—sentencing commissions, oversight councils, or working groups comprised of experts and representatives of stakeholder groups from across the system—to inform the subjects and substance of criminal justice reform. Second, some state legislatures now require fiscal or social impact analyses of bills that change sentencing laws or corrections policies.

EMPOWERING WORKING GROUPS TO REVIEW AND MONITOR SENTENCING AND CORRECTIONS REFORM

Several states empowered sentencing commissions, created oversight councils, or convened working groups. These bodies were tasked with reviewing sentencing and corrections policies; recommending changes based on evidence, best practices, and impact analyses; and overseeing implementation of criminal justice reform. Through the use of data and research findings, these groups have helped states adopt more consistent and fair sentencing and corrections policies and better allocate criminal justice resources. Some are also charged with ongoing oversight and evaluation of enacted policies to ensure that desired results are achieved and recommend adjustments if they are not. Some of the reform laws passed in 2013 were products of such working groups.⁵³

> **Colorado HB 1129** creates a resource center within the Division of Criminal Justice to assist criminal justice agencies in expanding existing, and imple-

menting new, evidence-based practices to improve offender supervision and case management.

- > **Georgia HB 349** creates the Georgia Council on Criminal Justice Reform and tasks it with conducting periodic comprehensive reviews of all aspects of the state's criminal justice system; monitoring the implementation of reforms; and proposing further system changes to reduce recidivism, lower costs, and promote public safety.
- > **Idaho Senate Concurrent Resolution 128** creates a legislative committee to advise the legislature on reducing correctional spending and improving justice system outcomes. The law directs the new committee to design policy recommendations in consultation with experts.
- > **Maryland SB 356** requires the Department of Business and Economic Development, the Department of Labor, Licensing, and Regulation, and the Department of Public Safety and Correctional Services to jointly study and evaluate the feasibility of establishing a business development program to provide business training for ex-offenders.
- > **Mississippi HB 1231** establishes the 21-member Corrections and Criminal Justice Task Force to undertake a comprehensive review of the state's corrections and criminal justice systems and make recommendations for improvement. The task force is required to examine disparities in sentencing; drug court, intensive supervision, and other alternatives-to-incarceration programs; and the number of offenders incarcerated under mandatory minimum sentencing schemes. It is required to issue findings and make recommendations for changes in oversight, policies, practices, and laws designed to: (1) prevent, deter, and reduce crime and violence; (2) reduce recidivism; (3) improve cost-effectiveness; and (4) ensure the interests of justice at every step of the criminal justice system. In doing so, the task force must consult with state, local, and tribal government and nongovernmental leaders, including law enforcement officials, legislators, judges, court administrators, prosecutors, defense counsel, probation and parole officials, criminal justice planners, criminologists, civil rights and liberties organizations, formerly incarcerated individuals, and corrections officials.
- > **Montana HB 68** establishes a statewide reentry task force whose goal is to develop and implement reentry programs for high-risk inmates within 12 months of release from prison. It also requires the Department of Corrections to work with the task force to examine and implement programs that will: (1) help bring community resources into prisons to support inmate reentry planning and preparation; (2) develop partnerships with community-based organizations that provide needed post-release services to inmates, such

as mental health, chemical dependency, employment, housing, healthcare, parenting, and relationship services; (3) coordinate with community restorative justice programs to ensure that victim concerns and restitution, as well as other restorative justice practices, are considered during an offender's reentry; and (4) collect data, conduct program evaluations, and develop findings and any recommendations about reentry and recidivism.

- > **Nevada SB 395** requires the Advisory Commission on the Administration of Justice to identify and study the provisions of existing law which impose or authorize a collateral sanction or disqualification due to a criminal conviction and provisions allowing relief from those collateral consequences.
- > **South Dakota SB 70** creates an oversight council that will monitor the effect of wide-ranging evidence-based reforms included in other provisions of the law.
- > **Texas SB 1003** requires a third-party review of administrative segregation practices in both adult and juvenile facilities. The review must address topics such as admission and release from administrative segregation, average length of stay, recidivism rates, and access to mental health, health care substance abuse, and reentry services.

REQUIRING IMPACT STATEMENTS

State policymakers, concerned with making certain that a policy's impact justifies its financial and social costs, are looking to calculate the cost and benefits of specific criminal justice interventions—from incarceration to community treatment.⁵⁴ In particular, some states are mandating that such analysis be specifically conducted for proposed criminal justice legislation.⁵⁵ Other states are also requiring analyses of how proposed criminal justice reform impacts women and minorities.

- > **Colorado SB 229** requires minority and gender impact statements to be submitted with any proposed legislation that creates a new criminal offense or changes an element or the classification of an offense. The statement must include gender and minority population data for offenders and victims potentially affected by the proposed legislation.
- > **Oregon HB 3194** requires fiscal impact statements for all bills that modify sentencing or corrections policy, including laws that create a new crime or increase the length of a custodial sentence. For any such bill, the statement must set out the 10-year fiscal impact for the state and any affected local governments.

- > **Oregon SB 463** requires that, upon request from one member of each major political party, the Oregon Criminal Justice Commission must issue a racial and ethnic impact statement for proposed legislation. The impact statement must describe the racial and ethnic impact of a piece of legislation on the offender population and potential crime victims.
- > **South Dakota SB 70** requires that a 10-year fiscal impact statement be prepared for any bill, amendment, or ballot initiative that affects correctional populations. The statement must project the operational and capital costs to both the state and counties.
- > **Vermont S 1** creates a working group tasked with developing a criminal and juvenile justice cost-benefit model that will be used by policymakers to assess the cost-effectiveness and net social benefit of proposed strategies and programs. The working group is instructed to consider, among other matters, the costs incurred by victims of crime and the quality of data collection in the criminal justice system. The model will be used to estimate the costs related to the arrest, prosecution, defense, adjudication, and correction of criminal and juvenile defendants, and the victimization of citizens.

Conclusion

The legislation described in this report reflects the changing views of many Americans and their legislators about criminal behavior and the goals of sanctioning that behavior. The runaway expenditures incurred in recent years—at the local, state, and federal levels—on ever more prison and jail beds are increasingly hard to justify when recidivism rates remain high. The question then becomes: if incarceration is failing to have a positive impact on as many as 50 percent of those who are released, what else might we do in order to achieve our desired public safety aims? Some alternatives are described here: more resources for and greater emphasis on early, community-based interventions for those with mental illness and addiction; more services, interventions, and education for those on probation before they advance to prison and more serious crimes; keeping more offenders in the community to receive those services rather than sending them to prison; and providing recidivism-reduction programs for those who are incarcerated and offering incentives for participation. The collective aim of these practical solutions should help keep our eyes on the real prize: stronger communities with less crime and fewer victims.

Appendix A

SENTENCING AND CORRECTIONS LEGISLATION BY STATE, 2013

ALABAMA	HB 494	ILLINOIS	HB 3010
			HB 3061
ARIZONA	SB 1205		SB 1854
			SB 1872
ARKANSAS	HB 1470	INDIANA	HB 1006
	HB 1638		HB 1016
	HB 1822		HB 1482
CALIFORNIA	AB 218	KANSAS	HB 2170
	AB 720		SB 58
COLORADO	HB 1082	LOUISIANA	HB 59
	HB 1129		HB 219
	HB 1156		HB 442
	HB 1160		SB 71
	SB 123	MAINE	HP 1032
	SB 229		
	SB 250	MARYLAND	HB 1396
CONNECTICUT	SB 983		SB 4
			SB 276
GEORGIA	HB 349		SB 356
HAWAII	SB 68	MICHIGAN	HB 4694
IDAHO	S 1151	MINNESOTA	SF 523/HF 690
	S. Con. Res. 128	MISSISSIPPI	HB 1231

MISSOURI	SB 118
MONTANA	HB 68
NEBRASKA	LB 483
NEVADA	SB 169
	SB 395
	SB 423
NEW HAMPSHIRE	HB 224
NEW JERSEY	A 3598
NORTH CAROLINA	SB 33
	SB 91
	SB 494
NORTH DAKOTA	HB 1115
OKLAHOMA	HB 1109
OREGON	HB 2627
	HB 3194
	SB 40
	SB 463
RHODE ISLAND	SB 357
	SB 358
SOUTH DAKOTA	SB 70

TEXAS	HB 797
	HB 798
	HB 799
	HB 1188
	HB 1659
	SB 107
	SB 213
	SB 345
	SB 369
	SB 462
	SB 484
	SB 1003
	SB 1173
	SB 1185
	SB 1289
UTAH	HB 33
VERMONT	H 200
	H 530
	S 1
WASHINGTON	HB 1284
	SB 5034
	SB 5892
	SB 5797
WEST VIRGINIA	SB 371
	SB 423

Appendix B

SENTENCING AND CORRECTIONS LEGISLATION BY REFORM TYPE, 2013

STATE	REDUCING PRISON POPULATIONS AND COSTS			EXPANDING OR STRENGTHENING COMMUNITY CORRECTIONS				
	REPEALING OR LIMITING MANDATORY PENALTIES	RECLASSIFYING OFFENSES OR ALTERING SENTENCING PRESUMPTIONS	EXPANDING ACCESS TO EARLY RELEASE MECHANISMS	INCREASING DIVERSION OPTIONS	EXPANDING COMMUNITY-BASED SENTENCING OPTIONS	EXPANDING THE AVAILABILITY OF PROBLEM-SOLVING COURTS	REQUIRING GRADUATED RESPONSES TO VIOLATIONS	INCREASING USE OF INCENTIVES
ALABAMA				•				
ARIZONA								
ARKANSAS				•				
CALIFORNIA								
COLORADO	•	• •		• •				•
CONNECTICUT		•						
GEORGIA	•							
HAWAII	•							
IDAHO								•
ILLINOIS	•			•	•	•		
INDIANA	•	•				•		
KANSAS	•						•	•
LOUISIANA			• •		•	•		
MAINE								
MARYLAND		• •						
MICHIGAN						•		
MINNESOTA								
MISSISSIPPI								
MISSOURI						•		
MONTANA								
NEBRASKA								
NEVADA								
NEW HAMPSHIRE			•					
NEW JERSEY				•				
NORTH CAROLINA								
NORTH DAKOTA			•					
OKLAHOMA								
OREGON	•	• •		•	•	•		•
RHODE ISLAND								
SOUTH DAKOTA		•				•	•	•
TEXAS					•	• •		
UTAH								
VERMONT		• •			•			
WASHINGTON		•				•		
WEST VIRGINIA			• •		•	•	•	

NOTE: Each dot indicates when a particular type of reform is addressed in legislation. Since a bill may address multiple types of reform, a dot does not necessarily indicate a discrete piece of legislation.

IMPLEMENTING RISK & NEEDS ASSESSMENTS	SUPPORTING THE REENTRY OF OFFENDERS INTO THE COMMUNITY				MAKING BETTER INFORMED CRIMINAL JUSTICE POLICY	
IMPLEMENTING RISK & NEEDS ASSESSMENTS	MITIGATING COLLATERAL CONSEQUENCES			IMPROVING REENTRY OUTCOMES	EMPOWERING WORKING GROUPS TO REVIEW AND MONITOR SENTENCING & CORRECTIONS REFORM	REQUIRING IMPACT STATEMENTS
	EXPANDING OPTIONS FOR SEALING OR EXPUNGING CRIMINAL RECORDS	CLARIFYING THE EFFECT OF RECORD SEALING AND EXPUNGEMENT	AMELIORATING THE CONSEQUENCES OF A CRIMINAL RECORD			
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ENDNOTES

- 1 American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities* (New York: ACLU, 2011); Doris Layton Mackenzie, *Sentencing and Corrections in the Twenty-First Century: Setting the Stage for the Future* (College Park, MD: University of Maryland, 2001).
- 2 For information on the state prison population as of January 1, 2013, see E. Ann Carson and Daniela Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012* (Washington, DC: Bureau of Justice Statistics, 2013), 39. For information on the 1972 state prison population, see Patrick A. Langan et al., *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86* (Washington, DC: Bureau of Justice Statistics, 1998), 11. For information on state correctional expenditures, see National Association of State Budget Officers, *State Expenditure Report 2010-12* (Washington, DC: NASBO, 2012), 52. Note that Vera research has demonstrated that the true cost of corrections is even higher: real costs, such as employee benefits, capital costs, or inmate health care costs, are covered in other state agencies' budgets. The real price of prisons is 14 percent higher, on average, than what is reported in budgets. For more information on the real price of prisons, see Christian Henrichson and Ruth Delaney, *The Price of Prisons* (New York: Vera Institute of Justice, 2012), 3-6.
- 3 For information about 2006 state prison populations, see, see William J. Sabol et al., *Prisoners in 2006* (Washington, DC: Bureau of Justice Statistics, 2007), 21. For information about 2012 state prison populations, see Carson and Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, 2013, 23. For information about consecutive declines in prison population, see E. Ann Carson and Daniela Golinelli, *Prisoners in 2012 – Advance Counts* (Washington, DC: Bureau of Justice Statistics, 2013). The state prison population in the United States decreased by 2.1 percent in 2012, following a 1.5 percent decrease in 2011 and a 0.2 percent decrease in 2010.
- 4 See James Austin and Michael Jacobson, *How New York City Reduced Mass Incarceration: A Model for Change?* (New York: Vera Institute of Justice, the Brennan Center for Justice, and the JFA Institute, 2013).
- 5 For information about New York and New Jersey, see James Austin et al., *Ending Mass Incarceration: Charting a New Justice Reinvestment* (Washington, DC: The Sentencing Project, 2013), 11-13. For information about Kentucky, New Hampshire, and Ohio, see Nancy LaVigne et al., *Justice Reinvestment Initiative State Assessment Report* (Washington, DC: Urban Institute, 2014), 80, 91, 99-100.
- 6 For information about the impact of the fiscal crisis on criminal justice policy, see Lauren-Brooke Eisen and Juliene James, *Reallocating Justice Resources: A Review of 2011 State Sentencing Trends* (New York: Vera Institute of Justice, 2012); Ram Subramanian and Rebecca Tublitz, *Realigning Justice Resources: A Review of Population and Spending Shifts in Prison and Community Corrections* (New York: Vera Institute of Justice, 2012); and Alison Shames and Michael Woodruff, *The Continuing Fiscal Crisis in Corrections: Setting A New Course* (New York: Vera Institute of Justice, 2010). For research on the recidivism rate, see Matthew Durose et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, (Washington, DC: Bureau of Justice Statistics, 2014). For results of public opinion polls which show that most Americans support alternatives to incarceration for nonviolent offenses, see Pew Center on the States, *Public Opinion on Sentencing and Corrections Policy in America* (Washington, DC: The Pew Charitable Trusts, 2012).
- 7 National Association of State Budget Officers, *State Spending for Corrections: Long-Term Trends and Recent Criminal Justice Policy Reforms* (Washington, DC: NASBO, 2013); and Alison Lawrence and Donna Lyons, *Principles of Effective State Sentencing and Corrections Policy* (Washington, DC: National Conference of State Legislatures, 2011).
- 8 National Association of Criminal Defense Lawyers, *Collateral Damage: America's Failure to Forgive or Forget in the War on Crime: A Roadmap to Restore Rights and Status after Arrest or Conviction* (Washington, DC: NACDL, 2014).
- 9 For research that demonstrates that community-based sanctions are more effective than incarceration for certain types of offenders generally, see Christopher T. Lowenkamp and Edward J. Latessa, "Understanding the Risk Principle: How and Why Correctional Interventions Harm Low-Risk Offenders," *Topics in Community Corrections* (2004), 3-8.
- 10 National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 139; and Juan R. Ramirez and William D. Crano, "Deterrence and incapacitation: An interrupted time series analysis of California's three-strikes law," *Journal of Applied Social Psychology* 33, no. 1 (2003), 110-144.
- 11 Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Jonson, "Imprisonment and Reoffending," *Crime and Justice: A Review of Research* 38, no. 1 (2009), 115-200; and Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Charitable Trusts, 2011).
- 12 Pew Center on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms* (Washington, DC: The Pew Center Charitable Trusts, 2012).
- 13 Statement of Mrs. Justice Saris, "Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences: Hearing Before the Committee on the Judiciary," United States Senate, 113th Cong. (2013); and National Research Council, 2014, 97.
- 14 For a review of recent state-level drug law reform, see Ram Subramanian and Rebecka Moreno, *Drug War Détente? A Review of State-level Drug Law Reform, 2009-2013* (New York: Vera Institute of Justice, 2014).
- 15 Ram Subramanian and Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences* (New York: Vera Institute of Justice, 2014).
- 16 HB 3194 repeals a ban introduced by Ballot Measure 57 (2008) on downward departures from sentencing guidelines for certain repeat drug and property offenders. Though the previous ban was not technically considered a mandatory minimum sentence, since defendants could still earn up to a 20 percent sentence reduction for good behavior, it may be considered so in its effect since it barred judges from deviating from the sentencing guideline range in those specified cases.
- 17 CCEC Work Group, *Criminal Code Evaluation Commission Review of Criminal Code: Introduction and Overview* (July 2012), 5, <http://www.in.gov/legislative/interim/committee/reports/CCECFB1.pdf> (accessed June 26, 2014).
- 18 This has been called the "Iron Law" of prison population. See Todd R. Clear and James Austin, "Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations," *Harvard Law & Policy Review* 3 (2009), 307-24.

- 19 For research that demonstrates that recidivism rates are no higher among prisoners whose release is accelerated, see Elizabeth K. Drake and Robert Barnoski, *Increasing Earned Release From Prison: Impacts of 2003 Law on Recidivism and Criminal Justice Costs* (Olympia: Washington State Institute for Public Policy, 2008); Carolina Guzman et al., *Accelerated release: A literature review* (Oakland, CA: National Council on Crime and Delinquency, 2008); and James Austin, "Reducing America's Correctional Populations: A Strategic Plan," *Justice Research and Policy* 12 (2010), 9-40. For research that demonstrates that good time credits can improve reentry outcomes, see Drake and Barnoski, 2008. For research that demonstrates that good time credits can improve institutional safety, see M.S. Harer and J. Klein-Saffran, *Lewisburg ICC Evaluation* (Washington, DC: U.S. Bureau of Prisons, Office of Research and Evaluation, 1996), http://www.bop.gov/resources/research_projects/published_reports/recidivism/orepriccxst.pdf (accessed June 26, 2014).
- 20 For violent offenders (including those who offended against children or whose offense involved the use of a firearm), this law introduces one year of mandatory post-release supervision to be served at the calculated discharge date. This is achieved by deducting one year from the offender's "good time" credits, which must be served in the community under supervision. Inmates are subject to GPS monitoring while under supervision.
- 21 Vera Institute of Justice, *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013).
- 22 Catherine Camilletti, *Pretrial Diversion Programs: Research Summary* (Washington, DC: Bureau of Justice Assistance, 2010).
- 23 Although, in practice, diversion shares many characteristics with traditional community supervision, the anticipated outcomes differ and can include dismissal, declination of prosecution, and expungement of charges and other criminal records.
- 24 This law applies only to district attorneys operating in the absence of a local act. Additional laws were passed in 2013 granting the authority to establish discretionary pretrial diversion programs to any governing body of a municipality generally (HB 648) as well as specifically to Huntsville (HB 452), Geneva County (HB 495), Irondale (HB 638), Fultondale (HB 644), Hoover (HB 645), St. Clair County (HB 649), and Alabaster (SB 467).
- 25 Prosecutors are given broad discretion regarding program eligibility, but they must consider: the nature of the alleged crime, any special circumstances or characteristics of the defendant, whether diversion would be consistent with rehabilitation, and whether diversion will serve the public interest. Although adult pretrial diversion programs already operated in some jurisdictions in Colorado, the purpose of HB 1156 was to standardize the programs, establish criteria to receive state funding, and encourage other jurisdictions to launch the programs.
- 26 See Colorado Commission on Criminal & Juvenile Justice, *FY2013 Recommendation: Expand the availability of adult pretrial diversion within Colorado's Criminal Justice System*, <http://www.colorado.gov/ccjdir/Resources/PM/FY13-CS04.pdf> (accessed July 7, 2014).
- 27 New Jersey has two diversion programs: the Pre-Trial Intervention Program (PTI) and the Conditional Discharge Program (CDP), both of which result in the dismissal of charges upon successful completion. PTI only applies to felonies, and CDP only applies to misdemeanors and (now) petty offenses.
- 28 Vera Institute of Justice, 2013, 4.
- 29 The bill also repeals a ban on downward departures from guideline sentences. Prior to the passage of HB 3194, there were 16 property offenses and 21 drug offenses for which a downward departure or probation sentence was unavailable on a second-or-subsequent offense.
- 30 Eric J. Miller, "The Therapeutic Effects of Managerial Reentry Courts," *Federal Sentencing Reporter* 20, no. 2 (2007).
- 31 West Huddleston and Douglas B. Marlowe, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States* (Alexandria, VA: National Drug Court Institute, 2011), 7.
- 32 Rachel Porter, Michael Rempel, and Adam Mansky, *What Makes a Court Problem-Solving? Universal Performance Indicators for Problem-Solving Justice* (New York: Center for Court Innovation, 2010).
- 33 For examples of legislative resolutions that urge or encourage the creation of veterans courts, see Oregon HCR 24 and Tennessee HJR 124.
- 34 This law was tie-barred with three other enacted bills—HB 4695, HB 4696 and HB 4697—all of which deal with more detailed aspects of mental health court operations, procedures, and requirements.
- 35 For example, in 2007, 40 percent of all new prison admissions in California were probation violators. See Paul Golaszewski and Brian Brown, *Achieving Better Outcomes for Adult Probation* (Sacramento, CA: Legislative Analyst's Office, 2009), 20. Also, in 2011, more than a third of West Virginia's new prison commitments were attributable to revocations from parole, probation, or other community supervision; of these, more than half were due to technical violations, not a new offense. See Council of State Governments Justice Center, *Justice Reinvestment in West Virginia* (New York: Council of State Governments, 2013), 5, Fig. 3.
- 36 L. Vieraitis et al., "The Criminogenic Effects of Imprisonment: Evidence from State Panel Data, 1974-2002," *Criminology and Public Policy* 6, no. 3 (2007), 589-622.
- 37 Graduated sanctions were already in use for violations of parole and post-release supervision. See Council of State Governments Justice Center, *Justice Reinvestment in Kansas* (New York: Council of State Governments Justice Center, 2013), 11.
- 38 Vera Institute of Justice, 2013, 19.
- 39 D. A. Andrews et al., "Classification for Effective Rehabilitation: Rediscovering Psychology," *Criminal Justice and Behavior* 17 (1990), 19-52; Vernon L. Quinsey et al., *Violent Offenders: Appraising and Managing Risk* (Washington, DC: American Psychological Association, 1998); D.A. Andrews et al., "The Recent Past and Near Future of Risk and/or Need Assessment," *Crime & Delinquency* 52 (2006), 7-27; James Bonta and D.A. Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation* (Ottawa: Public Safety Canada, 2007); and Michael L. Prendergast et al., "The Andrews' Principles of Risk, Needs and Responsivity as Applied in Drug Treatment Programs: Meta-Analysis of Crime and Drug Use Outcomes," *Journal of Experimental Criminology* 9 (2013), 275-300.
- 40 Carson and Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*, 2013, 4, Table 2.
- 41 See Talia Sandwick et al., *Making the Transition: Rethinking Jail Reentry in Los Angeles County* (New York: Vera Institute of Justice, 2013), 30-31.

- 42 Council of State Governments Justice Center, *Reducing Recidivism: States Deliver Results* (New York: Council of State Governments Justice Center, 2014).
- 43 Cindy Redcross et al., *More Than a Job: Final Results from the Evaluation of the Center for Employment Opportunities (CEO) Transitional Jobs Program* (New York: MDRC, 2012); Le'Ann Duran et al., *Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness* (New York: Council of State Governments Justice Center, 2013); and Lois M. Davis et al., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs that Provide Education to Incarcerated Adults* (Santa Monica: RAND Corporation, 2013).
- 44 For more information about criminal justice debt, see Alicia Bannon, Mitali Nagrecha and Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry* (New York: Brennan Center for Justice, 2010).
- 45 Scott Thurm, "Employment Checks Fuel Race Complaints," *The Wall Street Journal*, June 11, 2013.
- 46 See Joe Graffam et al., "Variables Affecting Successful Reintegration as Perceived by Offenders and Professionals," *Journal of Offender Rehabilitation* 40, no. 1/2 (2004), 147-171; Michael Pinard, "An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals," *Boston University Law Review* 86 (2006), 623, 647-49; and Emily Jane Bell et al., *Collateral Consequences of Criminal Conviction: warning your client about the effects of conviction, with a focus on employment, parental rights and public housing consequences*, Wisconsin State Public Defender Conference, November 4, 2011.
- 47 American Civil Liberties Union et al., *State Reforms Reducing Collateral Consequences for People with Criminal Records: 2011-2012 Legislative Round-Up* (New York: ACLU, 2012).
- 48 Devah Pager and Bruce Western, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men* (Washington, DC: U.S. Department of Justice, National Institute of Justice, October 2009, NIJ Grant 2005-IJ-CX-0019).
- 49 Ban the Box Campaign, "About" (accessed July 7, 2014), <http://bantheboxcampaign.org/?p=20>.
- 50 Georgia law requires that a person's driver's license be automatically suspended for 180 days on a first drug conviction, for three years on a second drug conviction within a five year period, and for five years on a third drug conviction in a five year period.
- 51 State of Oregon, Commission on Public Safety, *Report to the Governor* (December 17, 2012), 17, <http://www.oregon.gov/CJC/Documents/CPS%202012/FinalCommissionReport12.17.12.pdf> (accessed June 25, 2014).
- 52 Talia Sandwick et al., 2013.
- 53 For example, in participating in the federally-funded Justice Reinvestment Initiative, four states in 2013 convened a task force or working group to analyze drivers of their prison population and formulate policy solutions to address those drivers. These states (and their resulting legislation) are: Kansas (HB 2170), Oregon (HB 3194), South Dakota (SB 70), and West Virginia (SB 371).
- 54 Michael Leachman, Nimai M. Chettiar, and Benjamin Geare, *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money* (Washington, DC: Center on Budget and Policy Priorities and American Civil Liberties Union, 2012).
- 55 Ibid. Nearly all states produce fiscal notes for at least some bills. The Center on Budget and Policy Priorities reported in 2012 that 14 states require written fiscal notes for specified types of criminal justice bills, typically those that increase sentences or create new crimes. These states are: Colorado, Connecticut, Illinois, Iowa, Kansas, Kentucky, Missouri, Nevada, North Carolina, Ohio, Oregon, Rhode Island, South Carolina and Virginia.

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Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Tel: (212) 334-1300
Fax: (212) 941-9407

Washington DC Office
1100 First St. NE, Suite 950
Washington, DC 20002
Tel: (202) 465-8900
Fax: (202) 408-1972

New Orleans Office
546 Carondelet St.
New Orleans, LA 70130
Tel: (504) 593-0937
Fax: (212) 941-9407

Los Angeles Office
707 Wilshire Blvd., Suite 3850
Los Angeles, CA 90017
Tel: (213) 223-2442
Fax: (213) 955-9250

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