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The United States is the world leader in incarceration and keeps nearly 7 million persons under correctional control. More than 2 million are in prison or jail, and 4.6 million are under community surveillance on probation or parole. At least 19 million persons are living with a felony conviction while an estimated 100 million have a criminal record. The persistence of extremely punitive sentencing laws and policies, not increases in crime rates, sustain the nation's high rate of incarceration. Ending mass incarceration requires a transformative change to sentencing policies and practices aligned with the scaling back of collateral consequences of conviction, and challenging racial disparities in the criminal justice system.

In recent years most states have enacted reforms designed to reduce the scale of incarceration and the impact of the collateral consequences. This briefing paper highlights key reforms undertaken in 2020 prioritized by The Sentencing Project.

EXPANDING PRISON RELEASES AMID THE PANDEMIC

People housed in congregate settings, like state prisons and jails, experience higher rates of COVID-19

infections and morbidities than the general population. The cumulative infections among incarcerated residents are [nearly five times higher](#) than the general population. During the 2020 pandemic, several states took steps to reduce prison population levels. [The National Academy of Sciences](#) recommends that correctional facilities be reduced to the optimal population level of state prisons to follow public health guidelines, considering overcrowding, the physical design and prison conditions, and delivery of health services to the incarcerated population.

Incarcerated people are nearly 5X more likely to get COVID-19 compared to the general population. Yet only a handful of states took steps to decarcerate in 2020.

New Jersey lawmakers adopted [Senate Bill 2519](#) to reduce the state prison population to improve public health practices. Specifically, the legislation authorizes public health emergency credits for any incarcerated adult or juvenile within 365 days of their scheduled release. Credits accrue at the rate of 122 days (four months) for each month, or portion of each month, served during the declared emergency with a maximum of 244 days (eight months) of remission to be awarded for any declared emergency period. Persons serving a sentence for murder or aggravated sexual assault, or convicted of certain sex offenses are excluded. A [reported 2,258](#) persons were released from state prison when the law went into effect.

The **Virginia** General Assembly approved a [proposed budget amendment](#) sponsored by Governor Ralph Northam that authorizes the Department of Corrections to release imprisoned residents with less than one year left during the pandemic; persons sentenced to a Class 1 felony or a sexually violent offense are excluded from the early release. As of December 2020, [more than 800 persons](#) were released from state prisons.

In **Washington D.C.**, City Council members passed [DC B23-0735](#), an emergency measure focused on the pandemic. The law includes a provision that expanded eligibility for persons imprisoned for D.C. Code offenses who have served at least 20 years in prison. Individuals can cite their age, health or other “extraordinary and compelling circumstances” as justification to petition D.C. Superior Court for compassionate release.

During 2020, governors in several states authorized limited orders to reduce incarcerated populations generally restricted to persons with nonviolent offenses. **California** officials halted prison admissions and [enacted early releases](#) that benefited persons with 180-days or less to serve on their prison term. Prison officials also authorized [12 weeks of credit](#) for incarcerated people with no rules violations to expedite their early prison release.

In **Colorado**, Governor Jared Polis issued an executive order relaxing the state’s release policy by suspending time restrictions to earn early release credits. **Illinois** Governor J.B. Pritzker [allowed](#) the Department of Corrections director to use medical furloughs to temporarily release medically vulnerable persons.

Kentucky’s Gov. Andy Beshear signed an executive order commuting the sentences of more than 180 persons sentenced to low level felonies, authorizing their early release. Officials also plan to release more than 760 persons who were within 6 months of completing their prison term.

Maryland’s Governor Larry Hogan issued an [executive order](#) authorizing early release for elderly persons and those nearing the end of their prison sentence; officials estimate 1,200 are eligible for early release under the order.

Governor Andrew Cuomo [directed](#) the **New York** State Department of Corrections and Community Supervision to release persons detained in jail on parole revocations. This year, other states like **Florida** and **Oklahoma** temporarily ended prison admissions to minimize coronavirus outbreaks.

SCALING BACK SENTENCING PRACTICES

State officials enacted legal reforms to reduce prison admissions and recalibrated punishments to address extreme sentencing practices. Adopted changes are part of ongoing efforts to address the nation’s incarceration growth.

Colorado lawmakers repealed the state’s death penalty statute with adoption of [Senate Bill 100](#). Sentences for offenses charged before July 1, 2020 are not impacted; persons convicted of a class 1 felony prior to the law’s enactment are subject to the death penalty. Now, the maximum penalty for this conviction is life imprisonment without parole.

Oregon voters approved decriminalization for possession of drugs like cocaine, heroine, and methamphetamine with passage of ballot [Measure 110](#); the measure passed with 58.5% support. The measure also funds health assessments, addiction treatment, and other services for people with substance use disorders by reallocating marijuana tax revenue and savings projected from scaling back drug enforcement.

Legislators in **North Carolina** adopted the state’s First Step Act: [House Bill 511](#). The legal change is a narrow counterpart to a similarly named law at the federal level. The North Carolina change allows those

convicted of certain drug offenses including trafficking and conspiracy to petition the court to have their mandatory 25-month sentence reduced.

Two states addressed the length of probation and parole terms. **California** lawmakers adopted [Assembly Bill 1950](#) which restricts most felony probation terms to 2 years and most misdemeanor probation terms to 1 year. The **Minnesota** Sentencing Guidelines Commission [authorized](#) an advisory 5-year cap on felony probation terms for most offenses; persons convicted of murder, vehicular homicide, sex offenses, and conspiracy are excluded from the advisory cap. State law requires a probation term range of four years or the maximum sentence of imprisonment; the maximum period allowed under the state's criminal code is 40 years. Persons subjected to 40 year probation terms can be revoked for technical violations including traffic violations or marijuana use. District judges can depart from the probation cap but must justify their reasons for deviating for the court record.

During 2020 several states decriminalized marijuana use. **Virginia** lawmakers approved [Senate Bill 5013](#) to decriminalize possessing an ounce of marijuana, imposing a \$25 fine instead of jail time. Voters in **Arizona, New Jersey, Montana,** and **South Dakota** approved marijuana ballot measures in November 2020 that legalized marijuana for adults 21 and older. **Mississippi** voters legalized medical marijuana.

TAKING A SECOND LOOK AT EXTREME SENTENCES & RECOGNIZING THE CAPACITY TO CHANGE

Second Look and sentencing review reforms allow courts, parole boards, or other entities to consider release petitions and recognize the capacity for change among persons sentenced to prison. Expanding sentencing practices to include universal second look reviews, without age or offense restrictions, allow mid-sentence adjustments for persons imprisoned to life and other extreme sentences.

Officials in **Washington, DC** authorized [B23-0127](#), the Second Look Amendment Act. The measure allows individuals who committed an offense before age 25

and who have served 15 years in prison to petition for a sentence modification.

Louisiana lawmakers ended juvenile life without parole with the adoption of [House Bill 173](#) for individuals who served at least 25 years and met other requirements including education and other prerelease rehabilitation programming. **Ohio** policymakers also eliminated juvenile life without parole by adopting [Senate Bill 256](#).

Virginia lawmakers authorized several reforms in 2020. [House Bill 33](#) authorized parole reviews for individuals sentenced during the five year period that juries were not properly notified that parole was abolished in 1995. The measure allows parole reviews for most persons sentenced to prison during this time period. [House Bill 35](#) eliminated juvenile life without parole as a sentencing option, allowing persons convicted of an offense committed before the age of 18 eligible for parole after 20 years in prison. Lawmakers also passed [House Bill 5148](#), that allows individuals to have their sentences reduced by a third for persons with most offenses without conduct violations who participate in counseling and education programs.

CHALLENGING RACIAL DISPARITY

Racial disparities persist and can be exacerbated by decarceration if lawmakers and practitioners do not take the necessary steps to address them and repair the harm.. Addressing disparities requires intentional actions on behalf of policymakers and practitioners.

California lawmakers passed [Assembly Bill 2542](#), the state's Racial Justice Act, which prohibits prosecutors from seeking, obtaining, or imposing a conviction or sentence on the basis of race by empowering defendants to challenge racial bias in their case. The measure allows individuals charged with or convicted of a crime to challenge their sentence by demonstrating that discriminatory practices influenced the prosecution of their case including evidence of racial animus, use of racial discriminatory language during trial, statistical documentation of racial disproportionality in charging or convictions at the offense level and in extreme sentencing outcomes like life without parole.

ENDING COLLATERAL CONSEQUENCES

Collateral consequences of convictions can follow justice-involved residents during and past the completion of their sentences and even years after incarceration. The results of these collateral consequences undermines the ability to fully participate in the community following a conviction and limits both economic and life opportunities. The time is now to enact structural changes to address and repair collateral harms and encourage full and active community participation for all people regardless of justice involvement.

Expanding Voting Rights

As of November 2020, 5.2 million Americans were disenfranchised from voting due to a felony conviction.

Washington, DC officials authorized universal suffrage through passage of the [B23-0324](#), the Restore the Vote Amendment. The change authorizes voting rights for incarcerated citizens with a felony conviction. The District joins Maine, Vermont, and Puerto Rico in the elimination of felony disenfranchisement.

California voters overwhelmingly expanded voting rights by approving the [Proposition 17](#) ballot measure which allows voting for citizens in the community under parole supervision. The change follows reforms in Colorado, New Jersey, Nevada, and New York which also expanded voting rights to persons on parole supervision in recent years.

Iowa's Governor Kim Reynolds signed an [executive order](#) automatically restoring voting rights to returning citizens with felony convictions who completed their sentence. Iowa's lifetime voting ban for people with felony convictions was the most extreme in the nation. The order does not change the state's constitution which established the disenfranchisement law

Second Chance Reforms

At least 19 million residents live with felony convictions while an estimated 100 million live with a criminal record. Justice-involved residents often experience civil barriers that impact employment, housing, and access to public benefits long after criminal sentence

completion. Several states took action to minimize the impact of past convictions or criminal justice involvement on individuals' ability to fully function and participate in society without economic and social barriers and stigma.

Michigan policymakers adopted a reform package that included [House Bill 4980](#) known as Clean Slate legislation that creates an automatic system for expungement. A misdemeanor would be expunged seven years after sentencing and up to two felonies could be cleared 10 years after sentencing. Certain offenses are excluded from expungement.

Lawmakers in Michigan also repealed the lifetime ban on food stamps for residents with two or more felony drug convictions. Nationally, 1996's federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) included a lifetime ban on welfare assistance and food stamps for residents with any felony drug convictions. States can opt out of the federal bans. All states except South Carolina have repealed or modified implementation of the federal ban on food stamps.

Legislators in **South Dakota** passed [Senate Bill 96](#) and repealed the state's lifetime ban on Temporary Assistance for Needy Families (TANF) or welfare for residents with felony drug convictions. The measure builds on a previous second chance effort expanding food assistance.

North Carolina lawmakers enacted the Second Chance Act with passage of [Senate Bill 562](#). The bill expands eligibility for expunging nonviolent criminal convictions after a 7 year waiting period. Specifically, the bill allows prosecutors to expunge dismissed or "not guilty" charges and Raise the Age convictions, and allows individuals to petition for expungement of multiple nonviolent misdemeanor convictions after a 7 year waiting period.

Vermont policymakers adopted [Senate Bill 234](#) that authorizes automatic expungement for possession of two ounces or less of marijuana convictions. Under the legislation, the state will establish a process to expunge low level marijuana offenses.

NEXT STEPS IN CHALLENGING MASS INCARCERATION

Lawmakers advanced policy reforms to address mass incarceration and scale back collateral consequences. Too few policy changes were adopted to address COVID-19 and its impact on the incarcerated in overcrowded congregate lock ups. While reforms help improve criminal justice policy, most measures will have a modest impact on the scale of incarceration. It will take substantial changes to significantly reduce the nation's rate of incarceration. Given the limited impact of incarceration on crime, there continues to be potential for substantial reductions in state prison populations. Lawmakers and advocates must explore key changes that limit the use of incarceration by retroactively ending mandatory minimum sentencing, adopting universal sentencing review policies, challenging racial disparities through structural reforms, and addressing collateral consequences.



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The Sentencing Project has been working for a fair and effective U.S. justice system since 1986.