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Top Trends in Criminal Justice Reform, 2022

By Nicole D. Porter

Formerly incarcerated activists, lawmakers, and advocates achieved important changes in criminal justice policy in 2022 to challenge extreme sentencing, expand voting rights and advance youth justice. This briefing paper highlights top trends in criminal justice reform in 2022.

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Overview

The United States continues to lead the world in incarceration. More than [five million people](#) were under some form of correctional control in 2020 (the last year available) with nearly two million in prison or jail. Nationwide, an estimated 70-100 million persons have a criminal record, including at least 19 million persons living with a felony conviction.

Changes in policy and practice may help counter the impact of tough on crime rhetoric that reinforce mass incarceration policies. State lawmakers in at least 15 states and Washington D.C. adopted policy reforms in 2022 that may contribute to decarceration and addressing collateral consequences while promoting effective approaches to public safety. This briefing paper provides an overview of recent policy reforms in the areas of extreme sentencing and decarceration, drug policy, prison reform, probation and parole, guaranteeing voting rights, and youth justice.

Changes in criminal justice policy were realized for various reasons, including an interest in managing prison capacity. Lawmakers have demonstrated interest in enacting reforms that recognize that the nation’s scale of incarceration has produced diminishing returns for public safety. However, stakeholders working to reform adult and youth criminal legal system practices also [encountered rhetoric on increases in violent crime](#) which impacted the ability to adopt significant reforms like the repeal of mandatory minimum sentences and expansion of alternatives to incarceration for prison bound defendants. Consequently, legislators and other stakeholders have prioritized implementing policies that provide a more balanced approach to public safety. The evolving framework is rooted in reducing returns to prison for technical violations, expanding alternatives to prison for persons convicted of low level offenses and authorizing earned release for prisoners who complete certain rehabilitation programs.

Extreme Sentencing and Decarceration Reforms

Lawmakers enacted legal reforms to reduce prison admissions and to adjust penalties to criminal sentences that more fairly hold persons convicted of crimes accountable.

Washington D.C. council members unanimously approved [B24-0416](#), the Revised Criminal Code Act of 2022 (RCCA). The bill was a major overhaul to modernize the city's criminal code. Specifically, the comprehensive measure eliminated most mandatory minimum sentences, lowered maximum sentences to 45 years, eliminated accomplice liability for felony murder, and expanded judicial reconsideration for all persons serving long prison terms. The RCCA extends judicial reconsideration to all, allowing individuals convicted of offenses committed after their 25th birthday to submit a petition for resentencing after serving 20 years. While local officials in the District approved the change it must survive a 60-day congressional review period as of December 2022.

Challenging Racial Disparity

Racial and ethnic disparities in the criminal justice system have been extensively documented.

California officials adopted [Assembly Bill 256](#), the Racial Justice Act for All. The measure allows persons with convictions or judgements prior to January 1, 2021 to petition the court and seek relief if racial bias was proven to be present in their case.

AB 256 builds upon 2020 legislation (Assembly Bill 2542), which allowed individuals to challenge racial bias in criminal charges, convictions, and sentences but was limited to cases after January 1, 2021.

Drug Policy Reform

Lawmakers and advocates are revisiting policies adopted during the punitive War on Drugs era that resulted in dramatic growth in incarceration for drug offenses.

Lawmakers considered sentencing alternatives for certain drug offenses while voters considered ballot measures to legalize or decriminalize certain drugs.

- **Kentucky** officials adopted [Senate Bill 90](#) which authorizes the establishment of pilot behavioral health conditional dismissal programs in at least 10 Kentucky counties selected by the Kentucky Supreme Court chief justice for persons charged with certain low-level drug offenses. The measure allows someone charged with certain non-violent crimes determined to have a mental health or substance use disorder to have their case put on hold and go into treatment instead, under certain conditions. The pilot program would include access to services like outpatient treatment, cognitive and behavioral therapies, educational and vocational services and housing assistance.
- Voters in **Maryland** legalized recreational marijuana with 66% approval of Question 4 while **Missouri** authorized marijuana use with 53% support of Constitutional Amendment 3. Both ballot initiatives legalized possession of marijuana for persons 21 years of age or older. The approval of these ballot measures expands the [number of states](#) that legalize recreational marijuana use to 21 since 2012. Voters [did not approve](#) ballot measures in Arkansas, North Dakota, or South Dakota. Nationally, these changes might reduce hundreds of thousands of marijuana arrests made every year.

- In **Colorado**, 54% of voters approved Proposition 122 to decriminalize certain psychedelics, including psilocybin mushrooms — a substance that is decriminalized only in Oregon and a handful of cities. Oregon became the [first state to legalize](#) the supervised use of psilocybin in 2020.

Limiting Incarceration for Probation and Parole Violations

Too many persons are admitted to prison due to technical probation and parole violations. In 2022, lawmakers advanced policies that allowed early completion of probation and parole sentences. Two states enacted legislative measures that reduce time served requirements for successful participation in rehabilitation programs that include vocational training, education, and substance abuse treatment.

- **Florida** officials enacted [Senate Bill 752](#) which allows residents on probation to receive education and workforce credits to reduce their probation terms. Individuals under this law can earn at least 30 days off their supervision terms during each six-month period they work at least an average of 30 hours per week. The measure also authorizes persons to earn 60 days off their probation term for each completed educational activity.
- **Oklahoma** lawmakers adopted [House Bill 4369](#). The law modifies the administrative parole process by allowing consideration of early termination of probation and parole for persons within one calendar year of their discharge date. HB 4369 also allows for persons under parole supervision to earn compliance discharge credits every month to reduce the length of time supervised on parole.

Prison Reform: Abolishing Involuntary Servitude and Slavery

Four states – Alabama, Oregon, Tennessee, and Vermont – adopted ballot measures to remove language from their state constitutions allowing slavery and involuntary servitude as punishment for the conviction of a crime.

Louisiana [voters did not](#) approve a related initiative. Similar ballot measures were passed in Colorado in 2018 and Nebraska and Utah in 2020.

- **Alabama** voters approved the [Alabama Recompiled Constitution Ratification Question by 77%](#) to eliminate racist language from the state Constitution and delete an exemption that allows for involuntary servitude for certain crimes.
- Voters in **Oregon** approved a [Measure 112 with 56%](#) support to remove “all language creating an exception” and make “the prohibition against slavery and involuntary servitude unequivocal.” The ballot initiative also amended the Oregon Constitution to allow “programs to be ordered as part of sentencing,” including programs for education, counseling, treatment and community service.
- **Tennessee** voters approved [Constitutional Amendment 3 by 79%](#) to amend the state’s constitution to say slavery and indentured servitude shall be “forever prohibited.”
- Voters in **Vermont** approved [Proposition 2 by 89%](#) to remove text from the state’s constitution that read “no person born in this country, or brought from overseas, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person’s own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.”

Expanding the Vote

In 2022, [4.6 million citizens](#) were ineligible to vote because of a felony conviction although many residents with felony convictions had regained their voting rights since 1997 due to policy reforms. During 2022, officials in Massachusetts and Washington state approved various efforts to guarantee ballot access for incarcerated voters.

- **Massachusetts** Republican Governor Charlie Baker signed a comprehensive voting rights bill named the [VOTES Act](#) which included provisions guaranteeing ballot access for persons in jails. The law directs jails to “ensure the receipt, private voting, where possible, and return of mail ballots” for incarcerated people. The measure also requires sheriffs to track the number of people incarcerated in their jails who sought to vote, any complaints related to voting issues and the outcome of those requests.
- **Washington** officials adopted a policy to support ballot access for jail based voting. The state’s 2022 [budget allocated](#) \$628,000 to the Office of the Secretary of State to distribute to county jails to help improve voter awareness, registration and voting in jails. Grants were allocated prior to this year’s August primary with plans to continue funding through the November general elections.

Promoting Youth Justice

Lawmakers adopted policies that demonstrated a commitment to protecting young defendants and expanding release options for persons sentenced in their youth.

These changes in policy continue a trend that seeks to change the response to juvenile crime.

- **Indiana** lawmakers adopted [House Bill 1359](#), a comprehensive youth justice reform measure that included raising the age of detention to 12, instituting risk assessment to divert youth away from court involvement and improving data collection, among other policy changes.
- **Maryland** lawmakers adopted several youth justice reforms with enactment of [Senate Bill 691](#) including raising the minimum age of juvenile court jurisdiction to 13 (with some rare exceptions). The measure also largely prohibits the use of secure detention or commitment to the Department of Juvenile Services for technical violations of probation and misdemeanor offenses (with exceptions for handgun violations and repeated misdemeanor offenses). The law also removes barriers to diversion, including allowing youth with nonviolent felonies to be diverted without prosecutor or victim approval.
- The **Tennessee** Supreme Court declared mandatory 51-life sentences for youth unconstitutional in [Tennessee v. Booker](#). Tennessee is among several states where nearly 10% of the people serving a life sentence were under 18 at the time of their crime. The state supreme court ruling impacts all persons who were under 18 at the time of their offense and sentenced to mandatory life and de facto life sentences. In each of those cases, the opinion stated, the person sentenced should receive individualized parole hearings after serving a minimum of 25 years.
- **Wyoming** officials enacted [House Bill 37](#) to require the Department of Family Services to collect juvenile justice data from state and local governments to standardize juvenile justice information. Compiling these data will better track outcomes, including the use of detention and commitment, as well as the transfer of youth into adult courts.

Trends that Reinforce Mass Incarceration

Despite reforms, policies were adopted that might exacerbate mass incarceration and lengthen sentences. **Indiana** lawmakers adopted [House Bill 1004](#) to reverse a 2014 reform that authorized incarceration in jails rather than prison for persons sentenced to low level felonies. **Tennessee** officials enacted a “truth-in-sentencing” framework with [Senate Bill 2248](#) to require 85% time served requirements for certain criminal penalties. [House Bill 215](#) was passed in **Kentucky** to increase minimum time served requirements to 85% time served from 50% time served for persons convicted of trafficking fentanyl. It also makes importing those drugs from another state or country a Class C felony, subject to five to 10 years in prison, and eliminates pretrial diversion for persons charged with this offense.

Recommendations to Challenge Mass Incarceration

In 2022 Lawmakers advanced policy reforms to decarcerate, challenge racial disparities in imprisonment, guarantee ballot access for justice impacted voters, and address youth justice. Most of these measures will have a modest impact on the scale of incarceration or its consequences, and while helpful, more comprehensive reforms are needed to transform the adult and youth legal systems to meaningfully challenge mass incarceration.

To end mass incarceration transformational changes are necessary:

- **Reform Extreme Sentencing Statutes:** The Sentencing Project is part of a coalition of national and state-level organizations that work to end extreme sentencing practices in the United States. Recommended reforms include: limiting maximum prison terms to 20 years, except in unusual circumstances; repealing mandatory minimums; establishing “Second Look” sentencing review practices; ending Life-Without-Parole (LWOP) sentences and authorizing presumptive parole.
- **Advance Policy to Address Racial Disparities:** The Sentencing Project supports state, local and national partners in advancing racial impact statements. [Racial impact statements](#) offer a specific legislative solution to forecast potential impact of proposed sentencing laws on racial disparities in imprisonment; retroactive application of racial impact statements would allow lawmakers and other stakeholders to review current policies and practices. Responsible lawmaking increases when information about the consequences of harsh punishments is available. Additional policy reforms addressing racial disparity include reducing prison admissions and enacting presumptive release policies.
- **Expand Voting Rights to All Justice Involved Citizens:** As of 2022, 4.6 million citizens with a felony conviction were disenfranchised from voting, most living in the community. While voter suppression laws have proliferated in recent years across the country, The Sentencing Project supports state, local and national partners in efforts to expand the franchise to justice-involved residents and guarantee ballot access for voters who are incarcerated. Much progress is being made, but millions are still denied the vote. Guaranteeing voting rights for persons completing their sentence inside and outside of prison or jail will ensure a stronger democracy for all.
- **Decarcerate Youth in Custody:** The Sentencing Project works with groups at the national, state and local level to minimize all involvement by youth in both the adult and youth justice systems. Significant youth justice reforms continued this year and the number of states ending juvenile life without parole increased to 25. States should continue safeguards that prevent transfers to adult court and keep youth out of adult jails while continuing to shrink the footprint of the youth justice system by diverting youth from all forms of detention in favor of community-based interventions and supports.

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Named a "New Civil Rights Leader" by Essence Magazine for her work to challenge mass incarceration, Nicole D. Porter manages The Sentencing Project's state and local advocacy efforts on sentencing reform, voting rights, and confronting racial disparities in the criminal legal system.

[Read more about Nicole](#)