

Criminal Law Update: A Survey of State Law Changes in 2019

by Robert Alt

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CRIMINAL LAW UPDATE: A SURVEY OF STATE LAW CHANGES IN 2019

By Robert Alt

In 2019, state legislatures across the country modified rules and procedures related to every part of the criminal justice system, from pretrial detention to post-sentence re-entry. States passed new legislation and amended their criminal codes addressing a range of criminal justice concerns. A review of the legal landscape shows that states were most willing to adjust their criminal laws related to sentencing, record expungement and offender registries, marijuana legalization, and felon re-enfranchisement. This paper is not intended to serve as an exhaustive list of new criminal justice legislation in 2019, but rather highlights the most common reforms that fall generally among those categories.

As in 2018, criminal justice laws enacted in 2019 did not take a singular approach. Some states, for example, significantly enhanced penalties for certain offenses, while others reduced sentences and repealed mandatory minimums. Alaska adopted comprehensive criminal justice legislation that included repealing “catch and release” pretrial protocols, even as New York all but ended its pretrial detention and cash bail system. Three states revised rules for offender release and re-entry, and two states continued the national trend of restricting civil asset forfeiture and making the process more transparent. A handful of states amended their treatment of juvenile offenders, and several more stopped suspending driver’s licenses for unpaid fines and court costs.

Support for and opposition to criminal laws and punishments do not tend to break along traditional partisan lines. Although some legislative reforms proved to be politically contentious, including New York’s bail reform and Florida’s new re-enfranchisement requirements, others were largely bipartisan efforts wherein legislatures and governors from both ends of the political spectrum reached tenable compromises. Some legislatures even passed measures unanimously.

I. GENERAL ANTI-CRIME LEGISLATION

Alaska enacted new anti-crime legislation in July 2019. In signing House Bill 49, a comprehensive crime-fighting reform package, Alaska Governor Michael Dunleavy warned criminals in his state: “This is not your time, and this is the time to get out of the state. With signing this bill, we’re serious. If you’re going to try and prey on Alaskans[,] we’re coming after you, we will prosecute you. If you hurt Alaskans, if you molest children, if you assault women, we’re really going to come after you. This has got to end.”¹

1 Governor Dunleavy Signs Crime-Fighting Legislation Into Law (Jul. 8, 2019), available at <https://gov.alaska.gov/newsroom/2019/07/08/governor-dunleavy-signs-crime-fighting-legislation-into-law/>.

House Bill 49 repeals and replaces much of Alaska’s 2016 criminal justice legislation, Senate Bill 91.² Governor Dunleavy’s election campaign in 2018 had emphasized public safety and support for law enforcement after Alaska saw its crime rate rise and Anchorage homicides hit record levels in 2017—one year after Senate Bill 91’s reforms took effect.³ Primary provisions of House Bill 49 include enhanced penalties for sex offenses and drug possession and distribution, and significant revisions to sentencing guidelines, probation, parole, and what proponents described as the state’s “catch-and-release” bail policies.

Alaska’s new law enhances penalties for sex offenses against minors and incapacitated victims, indecent exposure, and the unlawful exploitation of a minor. The statute changes the mens rea requirement from “knowing” to “reckless” in second- and third-degree sexual assault cases in which the victim is incapacitated, mentally incapable, or unaware that a sexual act is being committed. The law makes sexual abuse of a minor a third-degree felony in cases involving a 6-year or more age difference, increasing the potential sentence from 0-2 years to 2-12 years. Alaska now requires anyone convicted of a registerable sex offense in another state to register in Alaska. And any solicitation of a minor for sex is now a class B felony.

House Bill 49 returns distribution of narcotics such as heroin, cocaine, and methamphetamine to class A and B felonies, and it removes drug quantity as an element of the offense. The statute makes possession of these same narcotics a felony upon a second conviction, and it restores the state’s earlier anti-methamphetamine manufacturing provisions.

The new law reclassifies offenses and amends Alaska’s sentencing guidelines. The law repeals the state’s presumptive 30-day sentence for class A misdemeanors and returns discretion to judges to impose sentences up to one year. Class B misdemeanor sentences have been raised from 0-10 to 0-90 days. The law also increases sentence terms and maximum probation periods for felonies, and repeals mandatory electronic monitoring for first DUI offenses, returning discretion to the Department of Corrections.

Alaska kept its Pretrial Services Program, which provides pretrial release options for Alaska’s criminal courts, including bail, probation, parole, and electronic monitoring, but it removed the presumption of release from its pretrial risk assessment tool, increasing judicial discretion. The new law allows defendants to request a bail review hearing based on an inability to pay, but only if the defendant demonstrates a good faith effort to post bail. And jail credit for defendants who complete drug treatment programs while on pretrial release has been limited to 365 days.

Finally, the Alaska reform initiative significantly changes the state’s approach to probation and parole. The measure reduces the hours available in the earned compliance credits

2 H.B. 49, 31st Legislature, 1st Special Sess. (Alaska 2019), available at <http://www.akleg.gov/PDF/31/Bills/HB0049Z.PDF>.

3 See Annie Zak & Tegan Hanlon, *Candidates for Alaska Governor Put a Spotlight on Crime*, ANCHORAGE DAILY NEWS, Sept. 15, 2018, available at <https://www.adn.com/politics/2018/09/15/candidates-for-alaska-governor-put-a-spotlight-on-crime-but-what-are-they-going-to-do-about-it/>.

program to one-third of the probation or parole period, and bars the program altogether for sex offenders, unclassified offenders, those convicted of felonies against a person, and those convicted of domestic violence. The statute eliminates the mandated recommendation of early termination of probation or parole after one to two years, and instead returns to the recommendation of the probation or parole officer. Under the new law, inmates who were subject to disciplinary action while in prison must apply to be considered for discretionary parole. The statute restricts which crimes are eligible for discretionary parole and makes certain crimes ineligible, including non-sex class A felonies, class B felonies if the inmate had one or more prior felony convictions, class C felonies if the inmate had two or more prior felony convictions, and class B and C sex felonies.

Alaska's comprehensive "tough-on-crime" overhaul stands in marked contrast to many of the other criminal justice reform initiatives pursued by most other states in 2019.

II. SEX OFFENDERS & CHILD PROTECTION

Tennessee and New York enacted new legislation intended to protect children from convicted sex offenders.

A. Tennessee

Governor Bill Lee signed Senate Bill 425 on May 10, 2019, making it a felony for anyone convicted of a sex offense against a child to knowingly reside or have an overnight visit where a minor resides or is present.⁴ Both chambers of the Tennessee legislature passed the legislation unanimously. Notwithstanding this provision, such an offender may reside or be alone with the offender's own child unless: the offender's parental rights have been or are in the process of being legally terminated; any minor or adult child of the offender was the offender's victim; or the offender has been convicted of a sexual offense against a child under 12-years old.

Three unnamed plaintiffs challenged the statute on grounds that it violated their parental rights. A federal district court judge temporarily enjoined the law in July 2019, pending further litigation.⁵

B. New York

New York also strengthened its protections for minors against felony sex offenders. In August 2019, the state amended its domestic relations law and the family court act to create a rebuttable presumption that a child should not "be placed in the custody of or have unsupervised visits with a person who has been convicted of a felony sex offense . . ." in cases in which "the victim of such offense was the child who is the subject" of the visitation order.⁶ Governor Andrew Cuomo called the amended law a "common sense" rule that "mandates that minors not be placed in the custody of or have unsupervised visits with anyone

who committed a felony sex offense against them and ensuring the future wellbeing of these vulnerable children."⁷

III. PENALTY ENHANCEMENTS

Two states—Kansas and Utah—enacted penalty-enhancing legislation. Kansas adopted "Mireya's Law," which stiffens penalties for crimes committed against young children. Utah passed "hate crime" legislation that increases penalties for criminals targeting members of protected classes.

A. Kansas

As part of Senate Bill 18, Governor Laura Kelly signed "Mireya's Law" on May 13, 2019. The omnibus legislation amends various criminal statutes and, most notably, enhances penalties for involuntary manslaughter and abuse of a child. In cases involving victims under age 6, the law raises the penalty for involuntary manslaughter from a severity level 5 to a severity level 3 felony, and raises the penalty for abuse of a child from a severity level 5 to a severity level 4 felony.⁸

B. Utah

Utah enacted "hate crime" legislation, SB 103, which adds a mens rea element to crimes against persons and property, and increases penalties for offenses committed against victims in protected classes. The new law subjects criminal defendants to enhanced penalties in misdemeanor and felony cases in which the defendant intentionally selects the victim because the defendant believes that the victim has certain "personal attributes." The newly protected "personal attributes" include age, ancestry, ethnicity, gender identity, national origin, political expression, race, religion, sex, sexual orientation, service in the U.S. military, and status as a law enforcement officer or emergency responder.⁹

IV. SENTENCING REFORM

Five states amended their criminal or penal codes to reduce available penalties or to expand their sentence reduction programs.

A. Arizona

Arizona expanded eligibility for early release credits. Senate Bill 1310 extends the state's earned early release program to inmates convicted of drug and drug paraphernalia possession.¹⁰ Under the revised program, inmates convicted of possession may earn three days off of their sentence for every seven days served, if they have completed a drug treatment program while incarcerated and have never been convicted of a violent or

⁴ S. B. 425, 111th Gen. Assem. (Tenn. 2019), available at <https://legiscan.com/TN/text/SB0425/2019>.

⁵ John Does #1-3 v. Lee, 3:19-cv-00532 (M.D. Tenn. 2019).

⁶ S. 2836-C, 2019 Gen. Assem., 2019-2020 Reg. Sess. (N.Y. 2019), available at <https://legislation.nysenate.gov/pdf/bills/2019/S2836C>.

⁷ Governor Cuomo Signs Legislation Strengthening Protections for Minors Against Felony Sex Offenders (August 22, 2019), available at <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-strengthening-protections-minors-against-felony-sex-offenders>.

⁸ K.S.A. 2018 Supp. 21-5405 and 21-562, available at http://www.kslegislature.org/li/b2019_20/measures/documents/sb18_enrolled.pdf.

⁹ S.B. 103, 2019 Leg., Gen. Sess. (Utah. 2019), available at <https://le.utah.gov/-2019/bills/static/SB0103.html>.

¹⁰ S.B. 1310, 54th Leg., 1st Reg. Sess. (Ariz. 2019), available at <https://www.azleg.gov/legtext/54leg/1R/bills/SB1310P.pdf>.

aggravated felony. The amended statute also allows prisoners convicted of other crimes to earn one day of early release for every six days served.

B. California

California amended two sentencing-related provisions during 2019. Senate Bill 136 modifies the state's statutory sentence enhancements. For non-violent felonies, California law had imposed an additional one-year term for each prior prison or county jail felony term, except under specified circumstances. The new law instead imposes that additional one-year term only for each prior separate prison term served for a violent sexual offense conviction.¹¹

Assembly Bill 484 changes a condition of probation for those convicted of furnishing or transporting a controlled substance relating to the sale of cocaine, cocaine hydrochloride, or heroin.¹² As a condition of probation for such crimes, California had required at least 180 days in county jail. Under the new law, that 180-day minimum term became permissive rather than mandatory.

C. Illinois

Like Arizona, Illinois expanded eligibility for its sentencing credit program in 2019. House Bill 94 amended the state's Unified Code of Corrections so that inmates serving sentences for convictions prior to June 1998 may be eligible for sentence credit for "any full-time substance abuse programs, correctional industry assignments, educational programs, behavior modification programs, life skills courses, or re-entry planning provided by the Department [of Corrections] . . ."¹³ Inmates may be eligible for 45 to 90 days of sentencing credit. With some statutory exceptions, the Department of Corrections also shall award an additional 180 days of sentence credit to prisoners who obtain a bachelor's, master's, or professional degree while in prison.

D. North Dakota

North Dakota joined the recent national trend of relaxing mandatory minimum terms for certain offenses and returning sentencing discretion to judges. House Bill 1183 removes mandatory minimum sentencing requirements for second and subsequent convictions for drug manufacturing or delivery.¹⁴ The legislation easily passed in the state's House of Representatives and passed in the Senate 44-1. Advocates, including North Dakota's Department of Corrections and Rehabilitation officials, argued that mandatory minimums had

been ineffective at deterring crime, and that the amended rule gives judges greater latitude in sentencing.¹⁵

E. Oklahoma

The Oklahoma legislature made retroactive a 2017 ballot initiative that reclassified simple drug possession and minor property crimes from felonies to misdemeanors. House Bill 1269 authorizes the Oklahoma Parole Board to commute sentences for nearly 1,000 inmates incarcerated for simple drug possession. The law also enables those convicted of the reclassified crimes to apply for record expungement 30 days after their sentence or commutation if they are not serving a sentence for another crime, they have paid any court-ordered restitution, and they have completed any court-ordered treatment program.¹⁶

V. DEATH PENALTY & LIFE WITHOUT PAROLE

Three states eliminated or reduced the availability of the death penalty or life-without-parole sentences for adults. California issued a moratorium on the death penalty, while Oregon substantially limited its applicability. Washington reduced the number of offenses for which adult life-without-parole is an available sentence.

A. California

Governor Gavin Newsom signed an executive order on March 13, 2019, granting "a reprieve for all people sentenced to death in California."¹⁷ The executive moratorium declared California's death penalty system "unjust, unfair, wasteful, [and] protracted" in repealing California's lethal injection protocol and immediately closing the "Death Chamber" at San Quentin penitentiary. The moratorium, however, did not provide for any person to be released from prison or for any current conviction or sentence to be changed.

B. Oregon

Oregon joined California in adjusting its death penalty provisions in 2019. Governor Kate Brown signed Senate Bill 1013 further limiting eligibility for the state's death penalty by redefining aggravated murder, the only crime punishable by death in Oregon. The new law redefines aggravated murder as the premeditated and intentional killing of two or more people as an act of terrorism; the premeditated and intentional killing of a law enforcement officer or child younger than 14-years old; and second-degree murder committed while incarcerated for a prior murder.¹⁸ During its passage, Oregon legislators assured

11 S.B. 136, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2019), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB136.

12 A.B. 484, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2019), available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB484.

13 H.B. 94, 101st Gen. Assem. (Ill. 2019), available at <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0440>.

14 H.B. 1183, 66th Leg. Assem., Reg. Sess. (N.D. 2019), available at <https://legiscan.com/ND/text/1183/2019>.

15 See John Hageman, *North Dakota Senate Votes to Eliminate Mandatory Minimum Sentences for Drug Dealing, Manufacturing*, BISMARCK TRIB., Feb. 28, 2019, available at https://bismarcktribune.com/news/local/govt-and-politics/north-dakota-senate-votes-to-eliminate-mandatory-minimum-sentences-for/article_30853b02-ccbc-5f67-beb1-0c04fdcc084b.html.

16 H.B. 1269, 2019 Reg. Sess. (Okla. 2019), available at http://webserver1.lsb.state.ok.us/cf_pdf/2019-20%20ENR/hB/HB1269%20ENR.PDF.

17 Exec. Order No. N-09-19 (Mar. 13, 2019), available at <https://www.gov.ca.gov/wp-content/uploads/2019/03/3.13.19-EO-N-09-19.pdf>.

18 S.B. 1013, 80th Gen. Assem., 2019 Reg. Sess. (Or. 2019), available at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/>

voters that the new definition would not be retroactive or affect inmates already sentenced to death row. After its enactment, however, officials in the state's Department of Justice opined that the new law, in fact, might be retroactive and that the state would be unlikely to prevail on challenges seeking retrial or new sentences. Legal challenges regarding the retroactive applicability of the new definition appear to be inevitable.

C. Washington

Senate Bill 5288 reduced the state's list of "most serious offenses" eligible for life-without-parole sentences.¹⁹ Effective July 28, 2019, judges could no longer sentence defendants convicted of second-degree robbery to life-without-parole in Washington.

VI. BAIL REFORM

After numerous states pursued bail reform initiatives in 2018, three more states followed suit in 2019. Colorado, Missouri, and New York each revised their approach to bail and pretrial detention, with New York most dramatically curtailing detention authority and eliminating bail for virtually all but the most violent offenses.

A. Colorado

In Colorado, Governor Jared Polis signed House Bill 1225, which eliminates cash bail for petty and municipal offenses,²⁰ and Senate Bill 191, which establishes timelines for bond hearings and creates protocols for electronic monitoring and releasing defendants before trial.²¹

B. Missouri

The Missouri Supreme Court promulgated new bail rules on December 18, 2018, that became effective July 1, 2019, which require state courts to start with non-monetary conditions of release and impose monetary conditions only if necessary for safety reasons. State courts must first consider how to minimize or waive defendant court costs before imposing them. Under the extensive new rules, the courts may order pretrial detention only if—by clear and convincing evidence—no combination of monetary and non-monetary conditions will ensure the safety of the community. Finally, Missouri's bail rules aim to ensure speedy trials for those remaining in jail by limiting how long courts may detain defendants without a hearing.²²

SB1013/Enrolled.

- 19 S.B. 5288, 66th Leg. (Wash. 2019), available at <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5288-S.SL.pdf>.
- 20 H.B. 1225, 2019 Gen. Assem., Reg. Sess. (Colo. 2019), available at https://leg.colorado.gov/sites/default/files/2019a_1225_signed.pdf.
- 21 S.B. 191, 2019 Gen. Assem., Reg. Sess. (Colo. 2019), available at https://leg.colorado.gov/sites/default/files/2019a_191_signed.pdf.
- 22 Supreme Court of Missouri Order re Rules 21, 22, and 33 (Dec. 18, 2018), available at <https://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfb8f8625662000632638/beec23ef4487304b86258367006ca1c6?OpenDocument>.

C. New York

New York overhauled its pretrial bail regime in 2019, with the new law taking effect on January 1, 2020.²³ The Empire State eliminated cash bail for the vast majority of defendants, including most arrested for drug possession or property crimes such as theft and burglary. Bail reform advocates had pressed hard for New York to repeal bail in all cases, but the new legislation preserves judicial authority to remand defendants to jail and set bail for those charged with violent felonies, witness intimidation or tampering, or violating a protective order against a household member.²⁴ Legislators, law enforcement, activists, and the state judiciary debated various reform provisions for months, including the "dangerousness standard" that would grant judges some discretion in deciding whether to detain a defendant pending trial. Supporters of the dangerousness standard argued that such common-sense discretion would help keep violent offenders off the street, while opponents worried that it would perpetuate racial bias in the judicial system.²⁵ Opponents of the discretionary dangerousness standard prevailed. New York's sweeping reform allows judges to only consider evidence relevant to whether the defendant will appear for court dates, and it repeals old provisions that permitted judges to consider the defendant's probability of conviction at trial.

Almost immediately after implementation, the new law generated substantial media attention and controversy following the New York Police Department's release of data indicating an increase in crime.²⁶ That attention and controversy led New York officials to revisit the 2019 legislation and amend it in the state's 2021 budget. Ultimately, the New York General Assembly made a list of crimes re-eligible for bail, including second-degree burglary, child pornography, vehicular manslaughter, sex

- 23 S. 1509-C, 2019 Gen. Assem., Reg. Sess. (N.Y. 2019), available at <https://legislation.nysenate.gov/pdf/bills/2019/S1509C>.
- 24 See Jeff Coltin, *How New York Changed Its Bail Law*, CITY AND STATE N.Y., Apr. 4, 2020 ("While many supporters, including Gov. Andrew Cuomo and Democratic state Sen. Michael Gianaris, wanted the law to go so far as to eliminate cash bail entirely, less far-reaching language that was enacted still had its intended effect."), available at <https://www.cityandstateny.com/articles/policy/criminal-justice/how-new-york-changed-its-bail-law.html>.
- 25 See Jeff Coltin, *Should Dangerousness Be a Factor in Granting Bail?*, CITY AND STATE N.Y., Mar. 9, 2019 (describing debate regarding dangerousness standard in competing legislative proposals), available at <https://www.cityandstateny.com/articles/policy/criminal-justice/should-dangerousness-be-factor-granting-bail.html>.
- 26 See, e.g., Insha Rahman & Craig Trainor, *The Pros and Cons of New York's Bail Reform*, FEDERALIST SOCIETY TELEFORUM, available at <https://fedsoc.org/events/the-pros-and-cons-of-new-york-s-bail-reform> [accessed Jul. 15, 2020]. See also Tina Moore & Jorge Fitz-Gibbon, *NYPD Stats Show Notable Jump in Crime So Far This Year*, N.Y. POST, Mar. 2, 2020, available at <https://nypost.com/2020/03/02/nypd-stats-show-notable-jump-in-crime-so-far-this-year/>; Tina Moore & Craig McCarthy, *NYCS Public Defenders Claim NYPD May Be Faking Spike in Crime*, N.Y. POST, Mar. 3, 2020, available at <https://nypost.com/2020/03/03/nycs-public-defenders-claim-nypd-may-be-faking-spike-in-crime/>.

trafficking, certain domestic violence offenses, and a litany of crimes against children.²⁷

VII. CRIMINAL RECORD & OFFENDER REGISTRY REFORM

Half a dozen states took steps to modify their criminal record and sex-offender registry protocols and requirements. Five of those six states—Colorado, Delaware, New Jersey, Utah, and West Virginia—made it easier for some criminal records to be expunged under certain conditions.

A. California

California amended two statutes related to criminal recordkeeping. The first, Assembly Bill 1076, creates an automated record-clearance system for low-level offenses.²⁸ In California, a person who was arrested and has successfully completed a pre-filing diversion program, a drug diversion program, a deferred entry of judgment program, or a person whose arrest did not result in a conviction, may petition the court to seal the arrest record. Under state law, if a defendant successfully completes certain diversion programs, the arrest for the crime for which the defendant was diverted is deemed to have never occurred. California also allows defendants to petition to withdraw pleas of guilty or *nolo contendere* and enter pleas of not guilty, if they have fulfilled the conditions of probation and are not then serving a sentence, on probation, or charged with any offense. If relief is granted, California requires the court to dismiss the accusation or information against the defendant and release the defendant from all penalties and disabilities resulting from the offense, with exceptions. Effective January 1, 2021, California will require the state's Department of Justice periodically to review the records in the statewide criminal justice databases and to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified. The new law, enacted in October 2019, requires California's Department of Justice to grant relief to eligible persons without requiring a petition or motion. The law also requires an update to the state summary criminal history information documenting the relief granted; and the Department must electronically notify the relevant superior court of all cases for which relief was granted.

The second, Assembly Bill 1331, addresses data gaps and improves access to criminal justice data by establishing reporting requirements across the system and clarifying existing law regarding access.²⁹ California law authorizes public criminal justice agencies and certain criminal justice researchers to access criminal record information required for their duties, provided that personal identifying information is not transferred, revealed, or used for anything other than research or statistical activities; that reports or publications derived from that

information do not identify specific individuals; and that the agency or researcher pays the cost for processing the data. As of July 1, 2020, Assembly Bill 1331 requires that criminal record information also include criminal court records, and prohibits a person from being denied access to that information solely on the basis of that person's criminal record, unless that person has been convicted of a felony or any offense involving moral turpitude, dishonesty, or fraud.

B. Colorado

Colorado's House Bill 1275 streamlines the process and increases eligibility to seal criminal records without filing for such action in civil court, and it requires courts to expunge the arrest and criminal records of any person arrested due to mistaken identity and who did not have charges filed against him or her.³⁰ Under the new law, job and student applicants may not be required to disclose any information contained in expunged records, nor be made to answer questions concerning arrest and criminal records information that have been expunged, but instead may state that no such action ever occurred.

C. Delaware

In June 2019, Governor John Carney signed amendments to Delaware's rules for expunging adult criminal records.³¹ State law had allowed adults to petition to have a record expunged in only two circumstances—for an arrest that did not lead to conviction and after a pardon had been granted—and only for certain misdemeanors. Delaware's new law now allows adult records to be expunged by petition to the State Bureau of Identification for charges resolved in favor of the petitioner; for records that include some violations more than three years old; and for some misdemeanors more than five years old. Delaware law specifically bars expunging convictions for second degree vehicular assault; incest; unlawful sexual contact in the third degree; coercion; and certain crimes committed against children. Under the new law, many misdemeanor convictions are not eligible for mandatory expungement, including domestic violence, sexual harassment, first- and second-degree indecent exposure, resisting arrest, hate crime, patronizing or permitting prostitution, and illegally concealing a dangerous weapon.

D. New Jersey

New Jersey also revised its criminal records expungement statute to allow those with low-level drug and nonviolent offenses to have their records expunged provided that they do not commit another offense for 10 years.³²

E. Utah

Utah amended its rules for expungement and added new provisions to its sex offender registry requirements. House Bill

27 S. 7506-B, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://legislation.nysenate.gov/pdf/bills/2019/a9506b>.

28 A.B. 1076, 2019 Gen. Assem., 2019-2020 Reg. Sess. (Cal. 2019), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1076.

29 A.B. 1331, 2019 Gen. Assem., 2019-2020 Reg. Sess. (Cal. 2019), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1331.

30 H.B. 1275, 2019 Gen. Assem. (Colo. 2019), available at https://leg.colorado.gov/sites/default/files/2019a_1275_signed.pdf.

31 S.B. 37, 150th Gen. Assem. (Del. 2019), available at <https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocumentEngrossment?engrossmentId=23540&docTypeId=6>.

32 S.B. 4154, 2019 Gen. Assem., Reg. Sess. (N.J. 2019), available at <https://legiscan.com/NJ/text/S4154/id/2081915>.

431 allows for automatic expungement of charges of which a person has been acquitted, charges that have been dismissed with prejudice, and certain misdemeanor convictions.³³ The law establishes processes for automatic expungement and deletion, which include modifying the circumstances under which the state may petition a court to open an expunged record.

In March 2019, Governor Gary Herbert signed HB 298, which adds a new petition provision for convicted sex offenders.³⁴ Utah requires convicted sex offenders to register for a period of 10 years after their sentence terminates. The new law allows such sex offenders to petition the court to be removed from the registry as early as 10 years after being sentenced to probation or committed to a community-based residential program, or 10 years after release from incarceration to parole. Courts may grant such requests as long as the petitioning sex offender commits no further serious offense, completes treatment, pays restitution, and otherwise complies with the terms of registration.

F. West Virginia

Senate Bill 152 makes most nonviolent state felonies eligible for expungement in West Virginia.³⁵ Those convicted of nonviolent felonies must be out of prison and off parole for five years before petitioning for expungement. Those convicted of nonviolent misdemeanors must be out of jail and off parole for between one and two years. Under the expanded eligibility requirements, West Virginia still charges a non-refundable filing fee and allows petitioners to request expungement only once. The new law went into effect in June 2019.

VIII. MARIJUANA & DRUG LAW REFORM

Six states continued the nationwide trend of liberalizing marijuana and drug possession laws, including reducing penalties for possessing amounts consistent with personal and medicinal use. Notably, Illinois established a statewide regime to tax and regulate cannabis similar to the way it controls alcohol. Minnesota did not modify its marijuana policy, but it did significantly increase licensing and registration fees for drug-makers and distributors in an aggressive revenue-raising effort to combat the state's opioid epidemic.

A. Colorado

House Bill 1263 reduced personal drug possession of fewer than 4 grams from a felony to a misdemeanor in Colorado and eliminated the potential for criminal charges for drug residue found on drug paraphernalia. Under the statute, possession of more than 12 ounces of marijuana or three ounces of marijuana concentrate is no longer a level-four felony; and possession

of more than six ounces of marijuana is now a level-one drug misdemeanor.³⁶ The new law took effect on March 1, 2020.

B. Florida

The Florida legislature relaxed its medical marijuana restrictions by redefining “medical use” to include the possession, use, and administering of marijuana in a form conducive with smoking.³⁷ Senate Bill 182 effectively repealed Florida's ban on smoking marijuana for medical purposes.

C. Hawaii

After acknowledging that dozens of states already have decriminalized the use of medical marijuana, Hawaii's House Bill 1383 decriminalized possession of up to three grams, but established that possession of such an amount is punishable by a \$130 fine. The new law, which took effect without Governor David Ige's signature, also provides for expungement of criminal records pertaining to possession of three grams or less of marijuana.

D. Illinois

In May 2019, Illinois's General Assembly determined that the state would tax and regulate marijuana “in a manner similar to alcohol.” Accordingly, House Bill 1438 provides in relevant part:

- (1) persons will have to show proof of age before purchasing cannabis;
- (2) selling, distributing, or transferring cannabis to minors and other persons under 21 years of age shall remain illegal;
- (3) driving under the influence of cannabis shall remain illegal;
- (4) legitimate, taxpaying business people, and not criminal actors, will conduct sales of cannabis;
- (5) cannabis sold in this State will be tested, labeled, and subject to additional regulation to ensure that purchasers are informed and protected; and
- (6) purchasers will be informed of any known health risks associated with the use of cannabis, as concluded by evidence-based, peer reviewed research.³⁸

The statute legalizes possession of up to 30 grams of marijuana, up to five grams of concentrated cannabis, and products containing up to 500 milligrams of THC for any Illinois resident who is at least 21 years old, but consuming marijuana in public places remains illegal.

E. Minnesota

Minnesota substantially increased licensing and registration fees for prescription drug manufacturers and distributors to help raise revenue for the state's anti-addiction and prevention efforts. Drug wholesalers and manufacturers of even non-opiate drugs accustomed to paying state licensing application fees under \$250 will now pay \$5,000, along with an annual \$5,000 licensing

33 H.B. 431, 2019 Leg., Gen. Sess. (Utah 2019), available at <https://le.utah.gov/-/2019/bills/static/HB0431.html>.

34 H.B. 298, Leg., Gen. Sess. (Utah 2019), available at <https://le.utah.gov/-/2019/bills/hbillenr/HB0298.pdf>.

35 S. B. 152, 2019 Leg., Gen. Sess. (W.Va. 2019), available at http://www.wvlegislature.gov/Bill_Text_HTML/2019_SESSIONS/RS/bills/SB152%20SUB1%20enr.pdf.

36 H.B. 1263, 2019 Gen. Assem. (Colo. 2019), available at https://leg.colorado.gov/sites/default/files/2019a_1263_signed.pdf.

37 S.B. 182, 2019 Leg., Reg. Sess. (Fla. 2019), available at <https://flsenate.gov/Session/Bill/2019/182/BillText/er/PDF>.

38 H.B. 1438, 2019 Gen. Assem. (Ill. 2019), available at <https://www.ilga.gov/legislation/publicacts/101/101-0027.htm>.

renewal fee. Companies that manufacture certain controlled substances containing opiates must now pay a registration and annual renewal fee of \$55,000.³⁹

F. New Mexico

Senate Bill 323 reduces New Mexico's penalties for first-time possession of up to one-half ounce of cannabis from a criminal misdemeanor—punishable by up to 15 days in jail—to a “penalty assessment,” punishable by a \$50 fine.⁴⁰ Subsequent offenses and possession of greater amounts of marijuana remain punishable by the possibility of jail time.

G. New York

New York amended its penal code to reduce penalties for first- and second-degree possession of marijuana and marijuana products. The amended code makes second-degree possession punishable only by a fine of not more than \$50, and it raises the amount needed for first-degree possession from 25 grams to one ounce, punishable only by a fine of not more than \$200.⁴¹

IX. JUVENILE JUSTICE REFORM

California, Michigan, and Oregon amended their treatment of juvenile defendants and juvenile records.

A. California

California law authorizes district attorneys to request that minors be transferred from juvenile court to a court of criminal jurisdiction in cases in which a minor is alleged to have committed a felony when the minor was 16 years of age or older. After a fitness hearing, the law requires the juvenile court to determine whether the minor should be transferred to a court of criminal jurisdiction and to recite the basis for its decision. In 2019, California enacted Assembly Bill 1423, which allows a person whose case was transferred from juvenile court to a criminal court to request that the case return to juvenile court under certain circumstances, including when the person is convicted at trial only of an offense that was not the basis for the transfer from juvenile court to the criminal court.⁴²

The California Assembly also enacted Assembly Bill 1394, eliminating fees charged by a superior court or probation department to an applicant who petitions to seal juvenile court records.⁴³

39 H.F. 400, 91st Leg. (Minn. 2019), available at https://www.revisor.mn.gov/bills/text.php?session=ls91&number=HF400&session_number=0&session_year=2019&cversion=list.

40 S.B. 323, 2019 Leg. (N.M. 2019), available at <https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0323.pdf>.

41 S.B. 6579-A, 2019 Gen. Assem., Reg. Sess. (N.Y. 2019), available at <https://legislation.nysenate.gov/pdf/bills/2019/S6579A>.

42 A.B. 1423, 2019 Gen. Assem., 2019-2020 Reg. Sess. (Cal. 2019), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1423.

43 A.B. 1394, 2019 Gen. Assem., 2019-2020 Reg. Sess. (Cal. 2019), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1394.

B. Michigan

In October 2019, Governor Gretchen Whitmer signed 18 bills as part of a “Raise the Age” legislative package. The bipartisan legislation, which takes effect October 21, 2021, raises the age of whom the state considers an adult under the criminal justice system from 17 to 18 years old. Michigan joined 46 states in ending the practice of charging 17 year olds as adults.⁴⁴ The new law requires anyone under 18 to be treated as a minor in juvenile court and receive the rehabilitation services offered in the juvenile justice system. Although most crimes will be subject to the new age threshold, prosecutors retain discretion to prosecute underage violent offenders as adults.

One of the package's sponsors, Sen. Peter Lucido, praised the legislative effort, stating:

This long-overdue reform will ensure youth who are charged with criminal acts will, in most cases, be treated as the children they are. While they will still be held accountable for their actions, they also will have the opportunity to learn from their mistakes and have a better chance of becoming productive members of society.⁴⁵

C. Oregon

Oregon enacted Senate Bill 1008, abolishing life-without-parole sentences for minors, expanding opportunities for early release, and restricting the prosecution of children as adults.⁴⁶ The new bipartisan legislation is not retroactive, but it significantly amends Measure 11, a 1994 ballot initiative that, among other things, required that anyone over age 15 who is charged with a qualifying offense be tried as an adult. Those qualifying offenses carried mandatory minimum sentences. Amending Measure 11 required a two-thirds majority in both legislative chambers, and the Oregon Senate reached that threshold with no votes to spare. Although the Oregon statute still allows juveniles to be prosecuted as adults in some circumstances, such prosecutions will no longer be automatic or mandatory as they were formerly, and prosecutors must now request and receive court approval to pursue such prosecutions.

X. CIVIL ASSET FORFEITURE

In 2019, two states enacted civil asset forfeiture reforms to curb the controversial practice of governments seizing private property prior to a criminal conviction. Arkansas all but banned such seizure altogether.

44 S.B. 100, 100 Leg., Reg. Sess (Mich. 2019), available at <https://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0113.pdf>.

45 Sonia Khaleel, *State Senate Finalizes Plan to Raise the Age of Legal Adulthood in Court System*, DET. METRO TIMES, Oct. 16, 2019, available at <https://www.metrotimes.com/news-hits/archives/2019/10/16/state-senate-finalizes-plan-to-raise-the-age-of-legal-adulthood-in-court-system>.

46 S.B. 1008, 80th Leg. Assem. Reg. Sess. (Ore. 2019), available at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1008/Enrolled>.

A. Arkansas

Arkansas became the fourth state to abolish or severely limit civil asset forfeiture, joining Nebraska, North Carolina, and New Mexico. The legislation passed both chambers of the Arkansas legislature unanimously. Since Governor Asa Hutchinson signed Senate Bill 308, the state now requires prosecutors to obtain a criminal conviction before seized property is forfeited.⁴⁷ There are several exceptions to that requirement, including cases in which the property owner is dead, deported, flees the jurisdiction, or does not challenge the forfeiture.

B. Michigan

Governor Gretchen Whitmer signed House Bill 4001-02 and Senate Bill 2, bipartisan legislation that prohibits assets taken in suspected drug cases from being forfeited unless the defendant is later convicted or the value of the money and property is more than \$50,000, excluding the value of the contraband.⁴⁸

XI. FELON ENFRANCHISEMENT

Re-enfranchising convicted felons proved to be a recurring theme in 2019. Six states passed or amended legislation related to voting rights for convicts. In November 2018, Florida voters amended the state's constitution to restore voting rights to felons. Less than a year later, the Florida legislature garnered national attention when it passed Senate Bill 7066, requiring felons to repay all financial obligations associated with their criminal records before their right to vote is restored, including court fees, fines, and restitution to victims. The new prerequisites met with immediate court challenges. The other five states adopted measures that ease or expand voting rights for felons.

A. Colorado

Colorado law previously barred felons serving prison terms or parole from voting or registering to vote in any election. House Bill 1266, passed in the summer of 2019, re-enfranchises those serving a parole sentence by clarifying that, “for purposes of the ‘Uniform Election Code’ and for applying state constitutional provisions governing disenfranchisement during imprisonment, persons sentenced to parole have completed their ‘full term of imprisonment’ as that term appears in the state constitution.”⁴⁹ Accordingly, the new law adds Colorado to the growing list of states that allow released and paroled felons to register to vote and to vote in any election.

47 S.B. 308, 92nd Gen. Assem., Reg. Sess. (Ark. 2019), available at <https://www.arkleg.state.ar.us/Acts/Document?type=pdf&act=476&ddBienniumSession=2019%2F2019R>.

48 S.B. 2, 100th Leg., Reg. Sess. (Mich. 2019), available at <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0007.pdf>.

H.B. 4001, 100th Leg., Reg. Sess. (Mich. 2019), available at <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0008.pdf>.

49 H.B. 1266, 72nd Gen. Assem., Reg. Sess. (Colo. 2019), available at <https://leg.colorado.gov/bills/hb19-1266>.

B. Florida

Through a November 2018 ballot initiative, Florida voters—by a 64.5% supermajority—passed Amendment 4, the Voting Rights Restoration for Felons Initiative, amending the state constitution. With exceptions for those convicted of murder or felony sexual assault, the amendment automatically restores the right to vote for people with prior felony convictions upon completion of their sentences, including prison, parole, and probation. In June 2019, Governor Ron DeSantis signed Senate Bill 7066, which requires felons to repay all financial obligations associated with their criminal record, including court fees, fines, and full payment of restitution, before they can regain the right to vote.⁵⁰ A flurry of lawsuits and constitutional challenges to Senate Bill 7066 followed, arguing, among other things, that the law's pecuniary requirements for repaying fees, fines, and restitution essentially functions as a “poll tax” and violates the 14th, 15th, and 24th Amendments to the U.S. Constitution. In May 2020, a federal district court largely agreed with the petitioners and ruled against the state.⁵¹ Florida has appealed the district court's decision to the 11th Circuit Court of Appeals.

C. Illinois

Senate Bill 2090 directs Illinois county jails and local election officials to establish processes for allowing detainees awaiting trial to cast ballots by mail or at temporary polling stations inside county jails.⁵² The new legislation also requires the state's Department of Corrections and county jails to provide incarcerated non-felons with voter registration applications and detailed information about voting rights.

D. Kentucky

Governor Andy Beshear issued an executive order on December 19, 2019, re-enfranchising convicted felons who have completed their sentences.⁵³ The order expressly does not apply to those convicted of treason, bribery in an election, homicide, assault in the second degree, strangulation, human trafficking, or certain violent offenses defined by law.⁵⁴

E. Nevada

Assembly Bill 431 maintains the voting rights of those convicted of a crime who are not currently in prison, and it restores voting rights to those convicted of a felony immediately upon their release from prison.⁵⁵ The new law, signed by

50 S.B. 7066, 2019 Leg., Reg. Sess. (Fla. 2019), available at <https://www.flsenate.gov/Session/Bill/2019/7066/BillText/er/PDF>.

51 Jones v. DeSantis, No. 4:19cv300-RH/MJF (N.D. Fla. May 24, 2020).

52 S.B. 2090, 2019 Gen. Assem. (Ill. 2019), available at <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0442>.

53 Exec. Order No. 2019-003 (Dec. 12, 2019), available at <https://www.brennancenter.org/sites/default/files/2019-12/Executive%20Order%202019-003.pdf>.

54 KY. REV. STAT. ANN. §§ 439.3401, 507, 507A, 508.020, 508.040, 508.170, and 529.100.

55 A.B. 431, 80th Leg. (Nev. 2019), available at https://www.leg.state.nv.us/Session/80th2019/Bills/AB/AB431_EN.pdf.

Governor Steve Sisolak, passed the state Senate on a party line vote with all eight Republicans voting against the measure, and it mustered only three Republican votes in the Assembly. The provisions took effect July 1, 2019.

F. New Jersey

Just before Christmas 2019, Governor Phil Murphy restored voting rights to felons on probation and parole when he signed A5823 into law.⁵⁶ The governor observed that felons on probation and parole “are residents who are living as full participants in their communities and yet have been needlessly prevented from having a voice in the future direction of their communities.”⁵⁷ The new law became effective in March 2020 and will immediately affect an estimated 80,000 felons on probation and parole in New Jersey.

XII. RELEASE & RE-ENTRY REFORM

California, Illinois, and Texas enacted legislation affecting various aspects of prisoner release or re-entry into society.

A. California

California enacted Assembly Bill 433 in 2019, which now requires a hearing in open court before terminating probation early.⁵⁸ The new law also requires that the victims of the crime at issue and the prosecuting attorneys be notified of the hearing for early termination of probation. California also repealed its requirement that those convicted of certain drug offenses (in or out of the state) register with local law enforcement upon arrival and provide their fingerprints and a photograph.⁵⁹

B. Illinois

Illinois enhanced its prison education system by requiring the state’s Department of Corrections and Department of Juvenile Justice to provide a nonpartisan, peer-taught civics program to teach civics workshops to detainees shortly before they re-enter society.⁶⁰ The new program created by House Bill 2541 is designed to improve re-integration and reduce recidivism by helping detainees re-entering society to better understand their civic responsibility and how to regain their right to vote. Workshop participants will be instructed on voting rights, governmental institutions, current affairs, elections, the democratic process, and voter registration. Re-entering

detainees must enroll in the new program within 12 months of their scheduled release.

C. Texas

Texas adopted two provisions designed to make it easier for former inmates to obtain employment after their release. House Bill 918 provides discharged inmates with access to important documents, including social security cards, birth certificates, and work history, after release from a correctional facility.⁶¹ House Bill 1342 amended the state’s occupational licensing provisions so that licensing authorities may no longer suspend, revoke, or deny a license to an applicant on the grounds that the person has been convicted of an offense that does not directly relate to the duties and responsibilities of the licensed occupation. With some limitations, the statute also allows licensing authorities to accept an applicant’s education, training, and work experience while in prison as evidence of the applicant’s eligibility for an occupational license.⁶²

XIII. DRIVER’S LICENSE SUSPENSION REFORM

Four states revised their driver’s license suspension policies in 2019. Montana, Tennessee, and Virginia each ended their respective practices of suspending driver’s licenses due to unpaid court fines, costs, or restitution.⁶³ Texas repealed its Driver Responsibility Program that had required those convicted of certain traffic offenses to pay an annual surcharge—in addition to court fines and penalties—in order to maintain their driving privileges.⁶⁴

XIV. CONCLUSION

A significant number of states maintained the trend of amending their criminal codes in 2019. New laws and amendments varied from state to state, with some pursuing robust reforms and others enacting more modest changes. Some states enhanced penalties for those convicted, while others eased restrictions on those awaiting trial. Sentencing reform, relaxed marijuana restrictions, and felon re-enfranchisement were recurring themes, and one state adopted sweeping anti-crime initiatives.

56 A. 5823, 218th Leg. (N.J. 2019), available at https://www.njleg.state.nj.us/2018/Bills/A9999/5823_11.PDF.

57 Vanessa Romo, *New Jersey Governor Signs Bills Restoring Voting Rights To More Than 80,000 People* (Dec. 18, 2019), available at <https://www.npr.org/2019/12/18/789538148/new-jersey-governor-signs-bills-restoring-voting-rights-to-more-than-80-000-peop>.

58 A.B. 433, 2019 Gen. Assem., Reg. Sess. (Cal. 2019), available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB433.

59 A.B. 1261, 2019 Gen. Assem., Reg. Sess. (Cal. 2019), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1261.

60 H.B. 2541, 2019 Gen. Assem. (Ill. 2019), available at <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0441>.

61 H.B. 918, 86th Leg. (Tex. 2019), available at <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB00918F.pdf#navpanes=0>.

62 H.B. 1342, 86th Leg. (Tex. 2019), available at <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB01342F.pdf#navpanes=0>.

63 H.B. 217, 2019 Leg., Reg. Sess. (Mont. 2019), available at <https://legiscan.com/MT/text/HB217/id/1958082>; H.B. 839, 111th Gen. Assem., Reg. Sess. (Tenn. 2019), available at <https://legiscan.com/TN/text/HB0839/id/2029562>; H.B. 2488, 2019 Gen. Assem. (Va. 2019), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+HB2488&191+ful+HB2488>.

64 H.B. 2048, 86th Leg. (Tex. 2019), available at <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB02048F.pdf#navpanes=0>.

