Criminal Justice Reform: A Survey of 2018 State Laws

by Robert Alt

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State legislatures across the country made significant strides in reforming their criminal justice regimes throughout 2018. States revised their existing criminal codes, passed new legislation, and amended their constitutions in order to address a range of criminal justice concerns. Several states enacted similar legislative reforms, and a survey of the changing criminal justice landscape reveals that states were most willing to modify their criminal laws in the areas related to pre-trial detention or bail reform, civil asset forfeiture, marijuana legalization, drug-induced homicide, and opioid abuse. The most notable new criminal justice legislation reforms fall generally among those categories.

Criminal justice reform did not trend in a singular direction. Some reform measures, for example, appear designed to liberalize drug enforcement by legalizing medical and recreational use of marijuana, while others establish more severe penalties and stricter enforcement protocols for fighting criminal drug trafficking and opioid abuse. Two states made significant changes to their pretrial detention protocols, giving state judges more latitude to use risk-assessment tools and easing the financial burdens that the cash bail systems had placed upon low-income criminal defendants. Several states amended their civil asset forfeiture laws to make their asset forfeiture process more transparent and to make asset forfeiture more difficult for law enforcement. Still other states, like Massachusetts, adopted sweeping reform measures across virtually their entire criminal code.

Public opinion about criminal laws and punishments does not tend to break along traditional partisan lines. Although some legislative reforms proved politically contentious, including several of the statewide ballot initiatives, others were largely bipartisan efforts that saw legislatures and governors from both ends of the political spectrum reach tenable compromises. Some reform measures even passed their state legislatures unanimously.

I. Bail Reform

New Hampshire and California revised their pretrial procedures for detaining criminal defendants. Both states provided judicial officers with additional latitude for handling pretrial detention, and both reformed their cash bail systems in an effort to reduce the number of people held before trial because they cannot afford bail.

A. New Hampshire

New Hampshire enacted the Criminal Justice Reform and Economic Fairness Act of 2018, which "revises the procedures for the granting of bail, amends the procedure for annulment of violations and class B misdemeanors depending on the date of conviction, and amends the requirements for demonstrating indigency [sic] for the purpose of annulment of a criminal record."[1] The law received bipartisan support in New Hampshire's legislature. It will reduce the number of people detained before trial because they cannot afford bail. But the new legislation also provides courts more latitude to detain arrestees without bail if they are determined to be too dangerous to be release before trial.

Under the new measure, upon appearing before the court pending arraignment or trial, a person charged with an offense shall be: (a) released on his or her personal recognizance or upon execution of an unsecured appearance bond; (b) released on a condition or combination of conditions; or (c) temporarily detained to permit revocation of conditional release. In determining the amount of the unsecured appearance bond or cash or corporate surety bail, if any, the court: (a) shall not impose a financial condition that will result in the pretrial detention of a person solely as a result of that financial condition; (b) shall consider whether the person is the parent and sole caretaker of a child and whether, as a result, such child would become the responsibility of the division of children, youth and families; and (c) shall consider whether the person is the sole income producer for dependents. For purposes of the court's determination, evidence of homelessness or a lack of a mailing address by itself shall not constitute prima facie evidence that a person will not appear in court.

When the court determines that a person charged with any criminal offense or a violation of a protective order is a danger to the safety of himself or the public, the court may order preventive detention without bail, or, in the alternative, may order restrictive conditions including but not limited to electronic monitoring and supervision. The court may consider the following conduct as evidence of posing a danger, including, but not limited to: threats of suicide; acute depression; history of violating protective orders; possessing or attempting to possess a deadly weapon in violation of an order; death threats or threats of possessiveness toward another; stalking; and cruelty or violence toward pets.

Upon signing the reform legislation, New Hampshire Governor Chris Sununu stated:

> In a system where "innocent until proven guilty" is the ultimate maxim, a person who is charged but not yet convicted of a minor crime should not be sent to prison merely because he or she lacks the financial ability to post bail. Pretrial detentions of any length can have devastating consequences for a defendant and their families, and therefore should be imposed with great care. Senate Bill 556 represents the culmination of a bipartisan effort to address these issues and reform our bail system by ensuring economic fairness, protecting the rights of defendants, and enhancing public safety.[2]

B. California

On August 28, 2018, Governor Jerry Brown signed into law Senate Bill 10, a comprehensive bail reform initiative that

1 2017 New Hampshire Senate Bill No. 556, New Hampshire Second Year of the One Hundred Sixty-Fifth Session of the General Court, *available at* https://legiscan.com/NH/text/SB556/2018.

2 *Governor Chris Sununu Signs SB 556 Into Law*, New Hampshire Chris Sununu (2018), https://www.governor.nh.gov/news-media/press-2018/20180703-sb556.htm (last visited May 2, 2019).

requires courts to use pretrial risk assessments and significantly reduces the use of cash bail in California.[3]

The new law requires California courts to establish pretrial assessment services so that, as of October 1, 2019, persons arrested and detained will be subject to a pretrial risk assessment conducted by Pretrial Assessment Services. However, with some exceptions, persons arrested or detained for a misdemeanor will be booked and released without submitting to a risk assessment.

The law authorizes Pretrial Assessment Services to release those assessed as being a low risk on their own recognizance. The law also requires a superior court to adopt a rule authorizing Pretrial Assessment Services to release persons assessed as being a medium risk on their own recognizance. The law prohibits Pretrial Assessment Services from releasing persons who meet certain conditions.

If a person is not released, the law authorizes the court to conduct a pre-arraignment review and release the person. The law permits the court to detain the person pending arraignment if there is a substantial likelihood that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the person in court. The law creates a presumption that the court will release defendants on their own recognizance at arraignment with the least restrictive nonmonetary conditions that will reasonably assure public safety and the defendant's return to court.

The new statute allows prosecutors to file a motion seeking detention of the defendant pending trial under specified circumstances. If the court determines that there is a substantial likelihood that no conditions of pretrial supervision will reasonably assure the appearance of the defendant in court or reasonably assure public safety, the court has discretion to detain the defendant pending a preventive detention hearing provided that the court states the reasons for the detention on the record. The law, however, prohibits courts from imposing financial conditions.

In cases in which the defendant is detained, the law requires a preventive detention hearing no later than three court days after the motion for preventive detention is filed. The defendant has the right to be represented by counsel at that hearing. The law creates a rebuttable presumption that no condition of pretrial supervision will reasonably assure public safety if, among other things, the crime was a violent felony or the defendant was convicted of a violent felony within the past five years.

Under the new law, courts may order preventive detention pending trial if the court determines by clear and convincing evidence that no combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court. If the court determines there is not a sufficient basis for detention, the law requires that defendants be released on their own recognizance or supervised own recognizance, and that the courts impose the least restrictive nonmonetary conditions of pretrial release to reasonably assure public safety and the defendant's appearance in court.

3 2017 California Senate Bill No. 10, California 2017-2018 Regular Session, *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB10.

II. Civil Asset Forfeiture Reform

More than a half dozen states engaged in some form of civil asset forfeiture reform. Asset forfeiture tends not to be contentious politically, and several state legislatures unanimously enacted new requirements. Some states pursued relatively robust reforms, such as requiring a criminal conviction before assets may be seized, while others adopted modest measures designed to make the state's asset forfeiture process more transparent.

A. Wisconsin

In 2018, Wisconsin became the fifteenth state to require a criminal conviction before the state may seize personal assets. Governor Scott Walker signed Senate Bill 61, which forbids the state from seizing assets without a criminal conviction in most circumstances; raises the necessary proof of criminal activity from the "preponderance of the evidence" standard to the more stringent "clear and convincing" standard; and requires forfeiture proceeds to be allocated to the Common School Fund.[4] The new reform legislation also restores the presumption of innocence by shifting the burden of proof for innocent-owner claims back to the state; requiring agencies to itemize expense reports when they spend state or federal forfeiture proceeds; and establishing pretrial hearings for property owners. Under the law, if a person is acquitted or the charges against the person are dropped, the court must order that person's property to be returned within thirty days. The law allows the court, upon petition by a person whose property was seized but not yet forfeited, to return the property to the person under certain circumstances. Finally, the reforms create disincentives for equitable sharing—that is, sharing between the federal government and state or local entities in the net proceeds of forfeited property—by requiring police to report all civil asset forfeiture cases delegated to the federal government, and by forbidding local law enforcement from collecting the proceeds from equitable sharing unless the property owner was convicted of a state or federal crime.

B. Wyoming

Since House Bill 61 was enacted, Wyoming law now prohibits law enforcement officers from requesting, requiring, or inducing "any person to execute a document purporting to waive, for purpose of forfeiture . . ., the person's interest in or rights to property seized."[5] Wyoming became the third state to ban the use of such forms.

C. New Hampshire

Governor Sununu signed Senate Bill 498 requiring the state attorney general to compile and "post a report on the department of justice website detailing state forfeiture activity, for the preceding fiscal year, including the type, approximate value, and disposition of the property seized, and the amount of any proceeds received or expended at the state and local

4 2017 Wisconsin Senate Bill No. 61, Wisconsin One Hundred Third Legislature - 2017-2018 Regular Session, *available at* https://docs.legis.wisconsin.gov/2017/related/proposals/sb61.

5 2018 Wyoming House Bill No. 61, Wyoming 2018 Budget Session, *available at* https://www.wyoleg.gov/Legislation/2018/HB0061.

levels. The report shall provide a categorized accounting of all proceeds expended. Summary data on seizures, forfeitures, and expenditures of forfeiture proceeds shall be provided by the law enforcement agency in disaggregated form to the attorney general."[6] The new law does not require the attorney general's report to include asset forfeiture cases delegated to the federal government under the equitable sharing program.

D. Idaho

The Idaho legislature unanimously passed—and the governor signed—House Bill 447, which prohibits law enforcement officers from seizing assets simply because those assets were in close proximity to contraband. Additionally, the legislation prohibits law enforcement officers from seizing any cars that are not connected to trafficking crimes and requires forfeitures to be reported.

Proponents of the law explained that the new provisions accomplish the following eight purposes:

> (1) vehicles would not be subject to forfeiture in connection with mere possession of a controlled substance; they would have to have been used in connection with trafficking offenses as enumerated, or to comprise ill-gotten gains; (2) property that is merely in proximity to a controlled substance is not subject to forfeiture absent a meaningful connection to a violation of the chapter; (3) presence of U.S. currency, without other evidence of wrongdoing, is not sufficient cause for a seizure or forfeiture; (4) creating a right of replevin of property while proceedings are pending provided the owners can show necessity and security; (5) courts must determine whether a property forfeiture is proportionate to the crime alleged, as is currently reflected in case law; (6) innocent owners are absolved of having to pay the state's costs associated with the seizure; (7) law enforcement may retain forfeited property with judicial approval; and (8) reporting requirements regarding forfeited property are instituted.[7]

E. Kansas

Kansas made its civil asset forfeiture process more transparent by enacting House Bill 2459. The new law, passed unanimously in the state Senate and by a wide margin in the House, requires the Kansas Bureau of Investigation (KBI) to establish the Kansas Asset Seizure and Forfeiture Repository (Repository) for compiling information concerning each seizure for forfeiture made by a seizing agency. The information gathered will include: the name of the seizing agency or multijurisdictional task force and any applicable agency or district court case numbers for the seizure; the time and location that the seizure occurred and a description of the law enforcement activity leading to the seizure; descriptions of the type of property and contraband seized and the estimated values of each; whether criminal charges were filed for an offense related to the forfeiture; a description of the final disposition of the forfeiture action; whether the forfeiture was transferred to the federal government; the total cost of the forfeiture action, including attorney fees; and the total amount of proceeds received by the seizing agency and the amount received by any other agency or person pursuant to the forfeiture action.[8]

F. Virginia

Virginia enacted Senate Bill 813, which:

> Provides that a state or local agency that receives a forfeited asset or an equitable share of the net proceeds of a forfeited asset from the Department of Criminal Justice Services (Department) or from a federal asset forfeiture proceeding shall inform the Department of (i) the offense on which the forfeiture is based, (ii) any criminal charge brought against the owner of the forfeited asset, and (iii) if a criminal charge was brought, the status of the criminal charge. The bill also provides that the Department shall include such information in the annual report that it provides to the Governor and the General Assembly concerning the sharing of forfeited assets.[9]

G. Tennessee

After the state legislature passed the measure unanimously, Tennessee Governor Bill Haslam signed the U.S. Attorney General Edwin Meese Civil Asset Forfeiture Reform Act, Senate Bill 1987, requiring law enforcement to provide a property owner with notice of a forfeiture-warrant hearing within 5 days of seizing the owner's property.[10]

> If an owner cannot be determined from public records of titles, registrations, or other recorded documents or information provided by the person in possession, the officer must document the attempts made to determine the owner and include the documentation with any application for forfeiture warrant for the judge to review.[11]

This bill also provides that if the person affected by the property seizure is found not guilty of the underlying charges, the agency must pay the property owner's attorneys' fees up to the lesser of $3,000 or 25% of the seized assets' value.

III. Marijuana Legalization

Four states liberalized their restrictions on marijuana use and possession. The Vermont legislature removed civil and criminal

6 2017 New Hampshire Senate Bill No. 498, New Hampshire Second Year of the One Hundred Sixty-Fifth Session of the General Court, *available at* https://legiscan.com/NH/text/SB498/2018.

7 Idaho Fiscal Note, 2018 Idaho House Bill No. 447, Idaho Sixty-Fourth Idaho Legislature, Second Regular Session – 2018, *available at* https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/legislation/H0447SOP.pdf.

8 2017 Kansas House Bill No. 2459, Kansas Eighty-Seventh Legislature 2018 Regular Session, *summary available at* http://www.kslegislature.org/li_2018/b2017_18/measures/documents/summary_hb_2459_2018.pdf.

9 2018 Virginia Senate Bill No. 813, Virginia 2018 Regular Session, *available at* https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+SB813.

10 2017 Tennessee Senate Bill No. 1987, Tennessee One Hundred Tenth General Assembly - Second Regular Session, *available at* http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB1987&GA=110.

11 *Id.*

penalties for possessing one ounce of marijuana, but did not legalize its commercial production or sale. Three other states used state-wide ballot initiatives to legalize marijuana possession under certain circumstances. Utah and Missouri voters approved marijuana for medicinal use, while Michigan legalized not only marijuana's recreational use but also its commercial sale through state-licensed dealers. All references to policy changes below are to state law. Marijuana is still heavily regulated at the federal level, although the Department of Justice in recent years has adhered to a conditional non-enforcement policy in states that have removed criminal penalties for marijuana possession.

A. Vermont

Vermont became the ninth state to legalize possession and recreational use of marijuana; it was the first to do so through legislation, rather than a ballot initiative.[12] Act 86 "removes civil and criminal penalties for possession of one ounce of marijuana and two mature and four immature marijuana plants by adults 21 years of age or older. Any marijuana harvested from the plants allowed does not count toward the one-ounce possession limit."[13] Under the new law:

> Personal cultivation of marijuana may only occur: (A) on property lawfully in the possession of the cultivator or with the written consent of the person in lawful possession of the property; and (B) in an enclosure that is screened from public view and is secure so that access is limited to only the cultivator and persons 21 years of age or older who have permission from the cultivator.[14]

Anyone consuming marijuana in a public place or vehicle is subject to civil penalties. The statute creates various crimes related to dispensing marijuana to any person under 21 years of age, enabling marijuana consumption by a person under 21 years of age, and using marijuana in a vehicle while in the presence of a person under 18 years of age.

Notably, however, the law does not legalize the commercial production or sale of marijuana in Vermont.

B. Michigan

Michigan voters passed ballot initiative, Proposal 18-1, by a 56% to 44% margin on November 6, 2018. The initiative legalizes the possession and use of recreational marijuana by adults over 21 years old, and authorizes commercial sales of marijuana through state-licensed dealers. Individuals over 21 years old may now legally possess and use marijuana-infused edibles and grow up to 12 marijuana plants for personal consumption. Up to 10 ounces of marijuana may be kept at residences, but amounts over 2.5 ounces must be stored in locked containers. Proposal 18-1 creates a state licensing system for marijuana businesses, but allows Michigan municipalities to ban or restrict such businesses. Retail marijuana sales are subject to a 10% tax to be used for clinical trials, schools, roads, and municipalities.[15]

C. Utah

Utah approved possession and use of medical marijuana for some patients through a statewide ballot initiative. Proposition 2 asked voters whether the state should enact a law to:

> establish a state-controlled process that allows persons with certain illnesses to acquire and use medical cannabis and, in certain limited circumstances, to grow up to six cannabis plants for personal medical use; authorize the establishment of facilities that grow, process, test, or sell medical cannabis and require those facilities to be licensed by the state; and establish state controls on those licensed facilities, including: electronic systems that track cannabis inventory and purchases; and requirements and limitations on the packaging and advertising of cannabis and on the types of products allowed?[16]

The voters answered "yes" on Election Day by a 53% to 47% margin.

On December 3, 2018, the legislature passed and the governor signed the Utah Medical Cannabis Act, House Bill 3001.[17] As per a negotiated agreement between the advocates and opponents of Proposition 2, the December "compromise" legislation changed the original language of the voter-approved initiative, most notably by removing the provision allowing patients to grow their own marijuana, reducing the allowed number of privately-run dispensaries, and requiring dispensaries to employ pharmacists to recommend dosages. House Bill 3001 also added conditions that qualify for medical marijuana treatment, including terminal illness and a patient's receiving hospice care.

Two lawsuits were filed in December 2018 challenging the changes to Proposition 2 imposed by House Bill 3001.

D. Missouri

On Election Day, Missouri voted to amend the state constitution and legalize medical marijuana. Amendment 2 asked voters whether the Missouri Constitution should be amended to:

- Allow the use of marijuana for medical purposes, and create regulations and licensing/certification procedures for marijuana and marijuana facilities;
- Impose a 4 percent tax on the retail sale of marijuana; and

12 2017 Vermont House Bill No. 511, Vermont 2017-2018 Legislative Session, *available at* https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT086/ACT086%20As%20Enacted.pdf.

13 2017 Vermont House Bill No. 511, Vermont 2017-2018 Legislative Session, *summary available at* https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT086/ACT086%20Act%20Summary.pdf.

14 *Id.*

15 Michigan Proposal 1, Marijuana Legalization Initiative (2018), Ballotpedia, https://ballotpedia.org/Michigan_Proposal_1,_Marijuana_Legalization_Initiative_(2018) (last visited May 2, 2019).

16 Utah Proposition 2, Medical Marijuana Initiative (2018), Ballotpedia, https://ballotpedia.org/Utah_Proposition_2,_Medical_Marijuana_Initiative_(2018) (last visited May 2, 2019).

17 2018 Utah House Bill No. 3001, Utah Sixty-Second Legislature - 2018 Third Special Session, *available at* https://le.utah.gov/~2018S3/bills/hbillenr/HB3001.pdf.

- Use funds from these taxes for health and care services for military veterans by the Missouri Veterans Commission and to administer the program to license/certify and regulate marijuana and marijuana facilities?[18]

As the ballot explained to voters, Amendment 2 "creates regulations and licensing procedures for medical marijuana and medical marijuana facilities . . . . [and] creates licensing fees for such facilities."[19] Voting instructions also noted that the amendment levies a 4% tax on the retail sale of marijuana for medical purposes by dispensary facilities, and "funds from the license fees and tax will be used by the Missouri Veterans Commission for health and care services for military veterans, and by the Department of Health and Senior Services to administer the program to license/certify and regulate marijuana and marijuana facilities."[20]

The Show-Me State voters answered "yes," and by the beginning of January 2019, Missouri lawmakers had already introduced 10 marijuana-related bills for consideration.[21]

IV. Drug-Induced Homicide and Opioid Reforms

As some states relaxed restrictions on marijuana, other states enhanced criminal enforcement provisions for drug-induced homicide and opioid trafficking. Rhode Island made it easier for state prosecutors to target drug traffickers and authorized sterner sentences for those convicted of drug-induced homicide. Tennessee adopted comprehensive anti-drug legislation. The Ohio General Assembly addressed opioid abuse by amending the state's Revised Code with enhanced penalties for drug trafficking and fentanyl-related drug possession. And Maryland provided its law enforcement and public health officers with new tools for fighting opioid abuse.

A. Rhode Island

Rhode Island enacted S2279, "Kristen's Law," in memory of a girl who died of a fentanyl overdose. The law will "aid in the prosecution of drug traffickers whose drugs cause fatal overdoses,"[22] and it authorizes courts to hand down life imprisonment sentences to convicted traffickers for drug-induced homicides. The new provision "gives judges discretion in sentencing, does not include mandatory minimum sentences, . . . only targets drug dealers who are profiting on a public health crisis,"[23] and would not apply to drug users sharing narcotics. The law also includes a so-called Good Samaritan provision that exempts from prosecution anyone who, in good faith, "seeks medical assistance for someone experiencing a controlled substance overdose . . . if the evidence for the charge was gained as a result of the seeking of medical assistance."[24]

In November 2018, Rhode Island prosecutors filed the first charges under the newly enacted Kristen's Law after a woman fatally overdosed on fentanyl.[25]

B. Tennessee

Prosecutors in Tennessee may charge drug dealers or distributors under the state's second-degree murder statute for the "killing of another that results from the unlawful distribution of any Schedule I or Schedule II drug, when the drug is the proximate cause of the death of the user."[26] Tennessee's Schedule II now includes fentanyl.[27]

Tennessee's comprehensive legislative effort to combat opioid abuse and addiction—"Tennessee Together"—also includes two related pieces of legislation, House Bills 1831 and 1832. House Bill 1831 aims to prevent and treat opioid addiction.[28] The law limits the duration and dosage of opioid prescriptions for new patients, with exceptions for major surgical procedures and exemptions that include cancer and hospice treatment, sickle cell disease, and treatment in certain licensed facilities. Restricting initial opioid prescriptions to just a three-day supply, Tennessee's new law implements one of the strictest and most aggressive opioid policies in the nation.

The companion piece of Tennessee Together legislation, HB1832, creates incentives for offenders to complete intensive substance use treatment programs while incarcerated and updates the schedule of controlled substances to better track, monitor, and penalize the use and unlawful distribution of opioids.[29] The law adds synthetic versions of fentanyl to Tennessee's controlled substance schedules.

C. Ohio

Ohio adopted Senate Bill 1 amending the state's Revised Code with increased penalties for drug trafficking violations, drug possession violations, and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound.[30] The statute makes an exception for drug possession

18 2018 Ballot Measures, John R. Ashcroft, Missouri Secretary of State (2018), https://www.sos.mo.gov/elections/petitions/2018BallotMeasures (last visited May 3, 2019).

19 *Id.*

20 *Id.*

21 Gregory J. Holman, *Missouri lawmakers have filed 10 marijuana bills since Amendment 2 passed. Here's a roundup*, Springfield News-Leader, January 5, 2019, https://www.news-leader.com/story/news/local/ozarks/2019/01/05/10-weed-laws-amendment-2-missouri/2433194002/ (last visited May 3, 2019).

22 *Governor Signs Kristen's Law to Prosecute High Profile Drug Dealers*, RI.gov, June 29, 2018, https://www.ri.gov/press/view/33610 (last visited May 3, 2019).

23 *Id.*

24 2017 Rhode Island Senate Bill No. 2279, Rhode Island 2018 Legislative Session, *available at* https://legiscan.com/RI/text/S2279/id/1809715.

25 Samuel Vaccaro, *First Drug Dealer Charged Under Kristen's Law in RI*, ABC6, November 30, 2018, http://www.abc6.com/story/39568097/first-drug-dealer-charged-under-kristens-law-in-ri (last visited May 2, 2019).

26 Tenn. Code § 39-13-210.

27 Tenn. Code § 39-17-408.

28 2017 Tennessee House Bill No. 1831, Tennessee One Hundred Tenth General Assembly - Second Regular Session, *available at* https://legiscan.com/TN/text/HB1831/2017.

29 2017 Tennessee House Bill No. 1832, Tennessee One Hundred Tenth General Assembly - Second Regular Session, *available at* https://legiscan.com/TN/drafts/HB1832/2017.

30 2017 Ohio Senate Bill No. 1, Ohio One Hundred Thirty-Second General Assembly - 2017-2018 Session, *available at* https://www.legislature.ohio.

violations when the fentanyl-related compound is combined with marijuana or a Schedule III, IV, or V controlled substance and the offender did not know or have reason to know of the fentanyl content. The new provisions also allow those convicted of trace amounts of fentanyl possession to opt for treatment as an alternative to incarceration, and it targets traffickers by imposing prison sentences of up to eight years if the fentanyl-related crime is serious enough. The law's sentencing provisions do not distinguish between violations involving substances composed of 100% fentanyl and those containing only traces of fentanyl. And finally, the statute adds lisdexamfetamine to the list of schedule II controlled substances.

D. Maryland

At the request of its Attorney General, Maryland adopted Senate Bill 982 to provide state law enforcement and public health officials with a new tool for fighting the opioid crisis. The law requires drug distributors—the businesses responsible for shipping drugs from factories to pharmacies—to report suspicious orders for controlled dangerous substances to the Office of the Attorney General and the Department of Health. A suspicious order is any order "of unusual size; of unusual frequency; or that deviates substantially from a normal pattern."[31]

V. Miscellaneous Reforms

Some significant criminal justice reforms did not fall within the broad categorical trends discussed above. Massachusetts, for example, passed sweeping legislation that touched upon nearly every facet of its criminal justice system. California, Florida, Maryland, and Ohio enacted numerous criminal justice provisions, as well as various sentencing and rehabilitation-related measures. And Pennsylvania revised the state's requirements and protections related to sealing criminal records.

A. Massachusetts

With bipartisan support, Massachusetts adopted sweeping criminal justice legislation reforming nearly every aspect of the state's criminal justice system. Governor Charlie Baker signed House Bill 4012[32] and Senate Bill 2371[33] that address a comprehensive range of issues, including: rehabilitation incentives through recidivism-reduction programs and earned-time credits; bail reform; expanding judicial discretion for requiring participation in pretrial service programs instead of incarceration before trial; expanding diversion and treatment programs in lieu of jail; raising the felony larceny threshold from $250 to $1,200; eliminating mandatory minimum sentences for some low-level drug crimes; imposing a mandatory three-and-a-half years minimum sentence on those convicted of trafficking synthetic opioids; new sanctions for repeat drunken drivers; new mandatory minimum sentences for assaulting a police officer; and an improved, standardized data collection and transparency policy that requires all law enforcement agencies to report crime and arrest data on a quarterly basis.

B. Ohio

Ohio enacted Senate Bill 4, amending the state's Revised Code to allow defendants to expunge their official records if they are found to be victims of human trafficking. The statute also allows human trafficking victims convicted of certain prostitution-related offenses to have their records expunged.[34]

Senate Bill 66, signed by Governor Kasich in the summer of 2018, expands Ohio's rehabilitative approach to criminal justice by promoting:

> [E]ffective rehabilitation as a purpose of felony sentencing, removing the one-year minimum for presumptive fourth or fifth degree felony community control sanctions, modifying sanctions for a violation of a community control condition, modifying the manner of calculating confinement credits, modifying eligibility criteria and procedures for granting pre-trial diversion and intervention in lieu of conviction, making offenders convicted of certain multiple fourth or fifth degree felonies eligible for conviction record sealing, revising procedures for the Adult Parole Authority to grant a final release or terminate post-release control, and modifying the criteria for considering a prison term sanction for a post-release control violation . . . .[35]

The new law requires courts to consider drug treatment or rehabilitation in felony sentencing, expands use of local jails and other community-based corrections facilities, and allows more people to have their criminal charges dropped after completing drug treatment.

Governor Kasich signed into law part of Senate Bill 201—the Reagan Tokes Act, which reinstates indefinite sentencing for some felonies. The law emphasizes rehabilitation rather than punitive incarceration as a means of reducing recidivism after release. Rather than sentencing a felon to a specified term, the law gives courts discretion to sentence a convicted felon to a range of years, with the inmate's behavior in prison determining the length of incarceration. As the statute's co-sponsor, Senator Sean O'Brien, explained, the new law "add[s] indefinite sentences to first- and second-degree felonies, incentivizing good behavior in prison and decreasing the chances that violent criminals are released before their total rehabilitation."[36] The Ohio Department

gov/legislation/legislation-documents?id=GA132-SB-1.

31 2018 Maryland Senate Bill No. 982, Maryland 438th Session of the General Assembly, 2018, *available at* https://legiscan.com/MD/text/SB982/2018.

32 2017 Massachusetts House Bill No. 4012, The 190th General Court of the Commonwealth of Massachusetts, *available at* https://malegislature.gov/Bills/190/H4012.

33 2018 Massachusetts Senate Bill No. 2371, The 190th General Court of the Commonwealth of Massachusetts, *available at* https://malegislature.gov/Bills/190/S2371.

34 2017 Ohio Senate Bill No. 4, Ohio One Hundred Thirty-Second General Assembly - 2017-2018 Session, *available at* https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-4.

35 2017 Ohio Senate Bill No. 66, Ohio One Hundred Thirty-Second General Assembly - 2017-2018 Session, *available at* https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-66.

36 *Legislature Passes O'Brien's Bill to Reform Criminal Sentencing*, Ohiosenate.gov, December 14, 2018, *available at* http://www.ohiosenate.gov/senators/obrien/news/legislature-passes-obriens-bill-to-reform-criminal-sentencing (last visited May 3, 2019).

of Rehabilitation and Correction will monitor and assess the inmate's behavior and rehabilitation and recommend release or further incarceration to the sentencing court.

Ohio enacted Sierah's Law, Senate Bill 231, creating a violent offender registry for law enforcement-use only that will include the names and addresses of convicted repeat offenders to better monitor offenders and to help law enforcement pursue suspects.[37] Both chambers of Ohio's General Assembly passed the bill by wide, bipartisan margins.

C. Pennsylvania

Pennsylvania enacted a new "Clean Slate" law, Act 56, which allows individuals to petition the courts for their records to be sealed if they have been free from conviction for ten years for an offense that resulted in a year or more in prison and has paid all court-ordered financial debts. Additionally, the law allows automatic sealing of records for second- or third-degree misdemeanor offenses that included a less than two-year prison sentence if a person has been free from convictions for ten years, as well as sealing of criminal history records related to charges that resulted in non-convictions. The legislation does not allow for records-sealing in more serious crimes, such as firearms charges, sexual offenses, murder, kidnapping, child endangerment, and endangering the welfare of children, among other serious offenses.[38]

Act 95 of 2018 eliminates driver's license suspensions for non-driving infractions.[39] And Act 147 updates Pennsylvania's DNA testing law to reflect significant advances in technology and criminal justice research by allowing those convicted of criminal offenses to request DNA testing on evidence in cases in which newer DNA technology could provide more accurate and substantially probative results; the bill also removes the requirement that only people serving a sentence can apply for DNA testing.[40]

D. California

Governor Jerry Brown signed Senate Bill 1393, returning some sentencing discretion to state judges by amending California's criminal code to eliminate automatic sentencing enhancements that add five years of imprisonment to the sentences of some convicted criminals. Formerly, California law required "the court, when imposing a sentence for a serious felony, in addition and consecutive to the term imposed for that serious felony, to impose a 5-year enhancement for each prior conviction of a serious felony."[41] The law had generally authorized judges to order an action dismissed, but had precluded judges "from striking any prior serious felony conviction in connection with imposition of the 5-year enhancement."[42] Senate Bill 1393 amends those provisions and "delete[s] the restriction prohibiting a judge from striking a prior serious felony conviction in connection with imposition of the 5-year enhancement . . . ."[43]

E. Florida

Constitutional Amendment 11 passed by the required super-majority (62% to 38%) of the Florida electorate on Election Day and repealed the state's "constitutional provision that an amendment to a criminal statute does not affect the prosecution of a crime committed before the statute's amendment."[44] The Florida Constitution's "savings clause" forbade making changes to criminal sentencing retroactive. Thus, if the state legislature reduced a mandatory sentence for a certain crime from 10 years to 5 years, for example, anyone prosecuted for or convicted of a crime before the legislative reduction would still have to serve the 10 years. Amendment 11 repealed that savings clause provision, allowing those convicted under the old sentencing rules to serve their sentences under a subsequent sentencing regime.

F. Maryland

Maryland enacted House Bill 1124,

> [R]equiring the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to develop recommendations regarding the creation and operation of a statewide sexual assault evidence collection kit tracking system that is accessible to victims of sexual assault and law enforcement; and requiring the Committee to submit an application for a grant for funding to support the implementation of the Committee's recommendations to the federal government, including the Department of Justice, by January 1, 2019.[45]

Maryland also adopted Senate Bill 101, bipartisan legislation that expands a ten-year mandatory minimum sentence to additional violent crimes. The law eliminates parole eligibility for repeat violent offenders and adds stronger sentences for those who commit crimes with a firearm. The legislation also prohibits violent offenders from being ordered to treatment in

37 2017 Ohio Senate Bill No. 231, Ohio One Hundred Thirty-Second General Assembly - 2017-2018 Session, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-231.

38 2017 Pennsylvania House Bill No. 1419, Pennsylvania Two-Hundred Second General Assembly - 2017-2018, *available at* https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=56.

39 2017 Pennsylvania House Bill No. 163, Pennsylvania Two-Hundred Second General Assembly - 2017-2018, *available at* https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=95.

40 2017 Pennsylvania Senate Bill No. 916, Pennsylvania Two-Hundred Second General Assembly - 2017-2018, *available at* https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=147.

41 2017 California Senate Bill No. 1393, California 2017-2018 Regular Session, *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1393.

42 *Id.*

43 *Id.*

44 Florida Amendment 11, Repeal Prohibition on Aliens' Property Ownership, Delete Obsolete Provision on High-Speed Rail, and Repeal of Criminal Statutes' Effect on Prosecution Amendment (2018), Ballotpedia, *available at* https://ballotpedia.org/Florida_Amendment_11,_Repeal_Prohibition_on_Aliens'_Property_Ownership,_Delete_Obsolete_Provision_on_High-Speed_Rail,_and_Repeal_of_Criminal_Statutes'_Effect_on_Prosecution_Amendment_(2018)#Constitutional_changes (last visited May 3, 2019).

45 2018 Maryland House Bill No. 1124, Maryland 438th Session of the General Assembly, 2018, *available at* https://legiscan.com/MD/bill/HB1124/2018.

lieu of incarceration and strengthens sentences for sexual abuse of a minor.[46]

VI. Conclusion

Just as Congress and the Trump Administration pursued federal criminal justice reform legislation last year, so too did a significant number of states set about amending their criminal codes. New provisions varied from state to state, with some pursuing more robust reforms or more stringent penalties than others. Pretrial detention, asset forfeiture, relaxed marijuana restrictions, and anti-drug-trafficking campaigns comprised a recurring theme, even as a few states took up comprehensive, cross-cutting revisions to their criminal statutes.

46 2018 Maryland Senate Bill No. 101, Maryland 438th Session of the General Assembly, 2018, *available at* https://legiscan.com/MD/bill/SB101/2018.