

# CRIMINAL LAW UPDATE: A SURVEY OF STATE LAW CHANGES IN 2020\*

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\* Note from the Editor: The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the author. To join the debate, please email us at [info@fedsoc.org](mailto:info@fedsoc.org).

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Through legislation, local ordinances, ballot initiatives, executive orders, and constitutional amendments, states across the country continued to modify their criminal justice rules and procedures in 2020. Changes ranged from new rules for searches and seizures to pardons and voting rights for convicted felons.

Seven states continued the trend toward relaxing restrictions on recreational and medicinal marijuana use, while several others made their processes for criminal record-sealing and expungement easier. Two states restricted use of their death penalties, and two others banned the shackling of pregnant women. By contrast, Missouri enacted stricter criminal provisions that created mandatory prison sentences for many violent offenses and made individuals convicted of certain violent offenses ineligible for probation, conditional release, or suspended sentences. The onset of the COVID-19 pandemic in the spring prompted many states to take immediate sentencing action designed to relieve prison overcrowding and slow the spread of the virus in jails and prisons.

The most significant changes in criminal justice occurred in response to the death of George Floyd in Minneapolis and the ensuing protests and unrest. States and local jurisdictions pursued a wide range of new and amended rules for policing. Many put in place civilian oversight boards. Many also modified police training, techniques, and tactics through bans on chokehold restraints and crowd-control weapons. While some communities diverted a small percentage of police funds to other priorities, attempts to “defund the police” failed. Local communities in urban and suburban areas passed discrete, single-issue initiatives with overwhelming public support. And many state and local governments now require law enforcement officers to wear body-worn cameras and report any misconduct by their fellow officers.

Support for and opposition to criminal laws and punishments did not tend to break along traditional partisan lines. Changes were pursued by governors of both parties. Many of the new laws received support from members of both parties in statehouses. Some were approved unanimously. Ballot initiatives and state constitutional amendments that passed in November often did so by wide margins. Although not an exhaustive list of every new criminal justice rule or legislation, the following overview accounts for the most common and significant state and local criminal laws enacted in 2020. This report summarizes these significant new laws without evaluating the merits of the underlying policies, including the effects of these new laws on crime rates.

## I. MARIJUANA AND DRUG LAWS

In 2020, seven states eliminated or relaxed various state law restrictions on marijuana use and possession, continuing a multi-year trend across the country. Vermont and Virginia amended marijuana statutes through their legislatures; in the other five states, voters changed the law through ballot initiatives. Fifteen states and the District of Columbia have now eliminated their laws restricting adult recreational marijuana use, and 36 states have eliminated restrictions on its use for medicinal purposes. Oregon, which had already eliminated state-level criminal restrictions for recreational marijuana use in 2015, adopted some of the most lenient drug rules thus far, eliminating state-level criminal restrictions for adult and juvenile possession of small amounts of heroin, cocaine, LSD, and other drugs in 2020. All references to policy changes below are to state law. Marijuana and other narcotics are 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. Arizona

Arizona voters approved Proposition 207, the Marijuana Legalization Initiative, which removes state-level criminal penalties for the possession and use of marijuana for persons at least 21 years old, imposes a marijuana sales tax, and requires the Arizona Department of Health and Human Services to promulgate rules regulating marijuana businesses.<sup>1</sup>

### B. Mississippi

Approving Initiative 65—a constitutional amendment—Mississippi voters eliminated state-level criminal penalties for medical marijuana. Under Initiative 65, medical marijuana treatment may be provided only by licensed treatment centers for patients who suffer certain qualifying medical conditions, including cancer, epilepsy, Parkinson’s disease, post-traumatic stress disorder, Crohn’s disease, and HIV, among others. In so doing, Mississippi became one of the first Southern states to remove state-level criminal penalties for medical marijuana use. The amendment allows individuals to possess up to 2.5 ounces of marijuana, taxes marijuana sales at the state sales tax rate of 7%, and requires the state’s Department of Health to issue appropriate rules and regulations by July 1, 2021.<sup>2</sup>

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<sup>1</sup> Arizona Proposition 207, Marijuana Legalization Initiative (2020), BALLOTPEDIA, [https://ballotpedia.org/Arizona\\_Proposition\\_207,\\_Marijuana\\_Legalization\\_Initiative\\_\(2020\)](https://ballotpedia.org/Arizona_Proposition_207,_Marijuana_Legalization_Initiative_(2020)) (last visited Mar. 14, 2021).

<sup>2</sup> Mississippi Ballot Measure 1, Initiative 65 and Alternative 65A, Medical Marijuana Amendment (2020), BALLOTPEDIA, [https://ballotpedia.org/Mississippi\\_Ballot\\_Measure\\_1,\\_Initiative\\_65\\_and\\_Alternative\\_65A,\\_Medical\\_Marijuana\\_Amendment\\_\(2020\)](https://ballotpedia.org/Mississippi_Ballot_Measure_1,_Initiative_65_and_Alternative_65A,_Medical_Marijuana_Amendment_(2020)) (last visited Mar. 14, 2021).

*C. Montana*

Montana voters passed ballot Initiative 190, removing state-level criminal penalties for the possession and use of marijuana for those 21 and older.<sup>3</sup> Beginning January 1, 2021, individuals may legally grow no more than four marijuana plants and four seedlings for personal use in their residence, provided the plants are within a locked, enclosed area out of public view. The measure also imposes a 20% sales tax on marijuana, requires Montana's Department of Revenue to develop rules to regulate marijuana businesses, and allows for the resentencing or expungement of marijuana-related crimes.

*D. New Jersey*

New Jersey overwhelmingly approved Public Question 1, amending the state constitution to eliminate state-level criminal penalties for the possession and use of marijuana for those 21 and older, as well as the cultivation, processing, and sale of retail marijuana. The amendment, which took effect on January 1, 2021, provides for the state's medical cannabis program to oversee the new, personal-use cannabis market, and all retail sales of cannabis are subject to New Jersey's sales tax.<sup>4</sup>

*E. Oregon*

Voters in Oregon approved two ballot initiatives, Measure 109 and Measure 110, decriminalizing therapeutic use of some psychedelic mushrooms and possession of small amounts of certain schedule I-IV narcotics.

Measure 109 authorizes therapists to prescribe psilocybin mushrooms for medical use to patients with chronic mental health issues or terminal illnesses. The adopted measure "directs the Oregon Health Authority to regulate the manufacture, delivery, purchase, and consumption of psilocybin, a psychoactive component found in certain mushrooms, at licensed psilocybin service centers."<sup>5</sup> Under the new law, persons may "purchase, possess, consume, and experience the effects of psilocybin only at a licensed psilocybin service center during a psilocybin administration session with a licensed psilocybin service facilitator."<sup>6</sup>

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<sup>3</sup> Montana I-90, Marijuana Legalization Initiative (2020), BALLOTEDIA, [https://ballotpedia.org/Montana I-90, Marijuana Legalization Initiative \(2020\)](https://ballotpedia.org/Montana-I-90_Marijuana_Legalization_Initiative_(2020)) (last visited Mar. 14, 2021).

<sup>4</sup> New Jersey Public Question 1, Marijuana Legalization Amendment (2020), BALLOTEDIA, [https://ballotpedia.org/New Jersey Public Question 1, Marijuana Legalization Amendment \(2020\)](https://ballotpedia.org/New_Jersey_Public_Question_1_Marijuana_Legalization_Amendment_(2020)) (last visited Mar. 14, 2021); see also Joseph De Avila & Paul Berger, *Ballot Measure to Legalize Marijuana Passes in New Jersey*, WALL ST. J., Nov. 3, 2020, available at <https://www.wsj.com/articles/new-jersey-voters-to-decide-on-legalizing-recreational-marijuana-11604439274>.

<sup>5</sup> Measure 109, *supra* note 6.

<sup>6</sup> *Id.*

Measure 110 removes Oregon criminal prohibitions on personal possession of small amounts of schedule I-IV controlled substances by adults and juveniles: “heroin (1 gram or less), cocaine (2 grams or less), methamphetamine (2 grams or less), MDMA (less than 1 gram or 5 pills), LSD (less than 40 user units), psilocybin (less than 12 grams), methadone (less than 40 user units) and oxycodone (less than 40 pills, tablets, or capsules).”<sup>7</sup> Possessing these specified quantities in Oregon “becomes a non-criminal Class E violation for which the maximum punishment is a \$100 fine or completion of a health assessment with an addiction treatment professional.”<sup>8</sup>

*F. South Dakota*

South Dakotans passed both Initiated Measure 26 and Amendment A—addressing medical marijuana and recreational marijuana respectively. Initiated Measure 26 established a medical marijuana program for individuals with specified debilitating medical conditions, as certified by a physician. Pursuant to Initiated Measure 26, South Dakota will now permit patients to possess up to three ounces of marijuana and additional amounts of marijuana products. Those patients registered to cultivate marijuana at home may grow at least three plants, or another amount as prescribed by a physician.<sup>9</sup>

Amendment A decriminalized “the possession, use, transport, and distribution of marijuana and marijuana paraphernalia by people age 21 and older.” Individuals may now possess or distribute one ounce or less of marijuana. The amendment authorizes the Department of Revenue to issue licenses for cultivators, manufacturers, testing facilities, wholesalers, and retailers; permits local governments to regulate or ban the establishment of licensees within their jurisdictions; and imposes a 15% tax on marijuana sales. The amendment also requires the state legislature to pass laws regulating the cultivation, processing, and sale of hemp.<sup>10</sup>

On November 24, 2021, in response to a lawsuit challenging Amendment A, the Supreme Court of South Dakota found that Amendment A violated the state’s single subject rule, and therefore declared that “Amendment A is void in its entirety.”<sup>11</sup>

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<sup>7</sup> Measure 110, Shemia Fagan, Oregon Secretary of State (2020), <http://oregonvotes.gov/voters-guide/english/votersguide.html#Text%20of%20Measure> (last visited Mar. 14, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> South Dakota Initiated Measure 26, Medical Marijuana Initiative (2020), BALLOTPEdia, [https://ballotpedia.org/South\\_Dakota\\_Initiated\\_Measure\\_26\\_Medical\\_Marijuana\\_Initiative](https://ballotpedia.org/South_Dakota_Initiated_Measure_26_Medical_Marijuana_Initiative) (2020) (last visited Mar. 14, 2021).

<sup>10</sup> South Dakota Constitutional Amendment A, Marijuana Legalization Initiative (2020), BALLOTPEdia, [https://ballotpedia.org/South\\_Dakota\\_Constitutional\\_Amendment\\_A\\_Marijuana\\_Legalization\\_Initiative](https://ballotpedia.org/South_Dakota_Constitutional_Amendment_A_Marijuana_Legalization_Initiative) (2020) (last visited Mar. 14, 2021).

<sup>11</sup> *Thom v. Barnett*, 2021 S.D. 65, ¶ 64, 967 N.W.2d 261, 283 (S.D. 2021).

*G. Vermont*

In 2018, Vermont decriminalized possession—but not the sale—of marijuana. In 2020, marijuana decriminalization continued as the state legislature passed Act 164 decriminalizing marijuana sales and establishing a marijuana tax and regulatory apparatus.<sup>12</sup> The bill became law without Governor Phil Scott’s signature. Vermont also enacted legislation providing for the automatic expungement of prior marijuana-possession convictions.<sup>13</sup>

*H. Virginia*

Virginia’s General Assembly passed Senate Bill 2, which eliminates the possibility of jailtime for first time possession of up to one ounce of marijuana and provides for sealing past marijuana-conviction records. The legislation reduces the penalty for “simple possession” of marijuana from a maximum 30-day jail sentence for a first offense to a civil summons and a maximum \$25 fine, with no court costs. The new law seals records related to prior arrest, charges, or convictions for marijuana possession, bars employers from requiring job applicants to disclose such information, and prohibits state and local governments from requiring license and permit applicants to disclose prior marijuana-possession arrests and convictions.<sup>14</sup>

II. GENERAL ANTI-CRIME LEGISLATION

Missouri Governor Mike Parson signed into law Senate Bill 600. This statute criminalizes an agreement to commit a criminal offense, allowing law enforcement and prosecutors to hold accountable individuals who plan criminal enterprises. It creates mandatory prison sentences for many violent offenses, and individuals convicted of some of those offenses will now be ineligible for probation, conditional release, or suspended sentences. The law increases the penalty for unlawful possession of a firearm by persons convicted of a dangerous felony, and it modernizes criminal gang prosecutions.<sup>15</sup> In signing the new legislation, Governor Parson said:

As Governor and a former law enforcement officer for 22 years, protecting the citizens of our state is of utmost importance to my administration. We all want our communities to be safe, and we worry when we see violent

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<sup>12</sup> S. 54, Gen. Assem. (Vt. 2020), available at <https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT164/ACT164%20As%20Enacted.pdf>.

<sup>13</sup> S. 234, Gen. Assem. (Vt. 2020), available at <https://legislature.vermont.gov/bill/status/2020/S.234>.

<sup>14</sup> S.B. 2, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB2>.

<sup>15</sup> S.B. 60, 2020 Gen. Assem., Reg. Sess. (Mo. 2020), available at <https://trackbill.com/bill/missouri-senate-bill-600-modifies-provisions-relating-to-dangerous-felonies/177778/>.

criminals threaten our neighborhoods. SB 600 holds violent offenders accountable for their actions and is a major step towards safety and justice for our communities. We must continue working together to identify solutions, address crime, and keep Missourians safe.<sup>16</sup>

### III. DEATH PENALTY

Two states—Colorado and Ohio—passed restrictions on the availability or execution of the death penalty. In March, Colorado Governor Jared Polis signed Senate Bill 20-100 repealing the state’s death penalty for all offenses charged on or after July 1, 2020.<sup>17</sup> Ohio retained its death penalty but eliminated execution for those defendants who suffered serious mental illness at the time of the offense. Ohio House Bill 136, signed by Governor Mike DeWine on January 9, 2021, also requires that, upon petition, previously-convicted defendants who suffered from serious mental illness at the time of the offense be sentenced to life imprisonment without parole. Under the new law, “serious mental illness” means a diagnosis of schizophrenia, schizoaffective disorder, bipolar disorder, or delusional disorder, which, while not meeting the “not guilty by reason of insanity” or “incompetent to stand trial” standards, at the time of the aggravated murder significantly impaired the defendant’s capacity to exercise rational judgement with respect to “conforming conduct to the requirements of law[,]” or “[a]ppreciating the nature, consequences, or wrongfulness of the [defendant’s] conduct.” Any disease attributable primarily to substance abuse does not qualify for the death penalty exemption.<sup>18</sup>

### IV. CRIMINAL RECORD SEALING & EXPUNGEMENT

Three state legislatures—Kentucky, Michigan, and Ohio—passed measures in 2020 that amend rules for sealing or expunging criminal records.

#### *A. Kentucky*

Kentucky’s General Assembly passed House Bill 327, which directs state courts to automatically expunge records upon acquittal or when a criminal defendant’s case is dismissed.<sup>19</sup>

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<sup>16</sup> *Governor Parson Signs SB 600 Addressing Violent Crime in Missouri* (July 6, 2020), available at <https://governor.mo.gov/press-releases/archive/governor-parson-signs-sb-600-addressing-violent-crime-missouri>.

<sup>17</sup> S.B. 20-100, 2020 Gen. Assem., Reg. Sess. (Colo. 2020), available at <https://leg.colorado.gov/bills/sb20-100>.

<sup>18</sup> H.B. 136, 133rd Gen. Assem., Reg. Sess. (Ohio 2020), available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-136>.

<sup>19</sup> H.B. 327, 2020 Gen. Assem., Reg. Sess. (Ky. 2020), available at <https://apps.legislature.ky.gov/record/20rs/hb327.html>.

### B. Michigan

Michigan enacted a broad package of “Clean Slate” legislation in October. The new law establishes an automatic mechanism to expunge convictions, expands petition-based eligibility to set aside convictions for an unlimited number of misdemeanors and up to three felonies (with certain limitations), and streamlines petitions to expunge marijuana misdemeanors with a presumption in favor of setting aside offenses that have been decriminalized. (Michigan voters passed Initiative 18-1 in 2018, which decriminalizes the possession of specified quantities of recreational marijuana by adults over 21 years old.)<sup>20</sup> It also specifies that conviction set-aside is not available for: felonies punishable by a life sentence; certain sex offenses; traffic offenses involving alcohol, injury, or commercial licensees; and felony domestic violence convictions for defendants with a misdemeanor domestic violence conviction. The law establishes new wait-periods for seeking conviction set-aside: more than one felony requires seven years; one felony, or one or more serious misdemeanors requires five years; and other misdemeanors require three years. These wait-periods run from the imposition of sentence, completion of incarceration, or completion of supervision, whichever is latest. The “Clean Slate” legislation provides for a rehearing or appeal in cases in which set-aside of a marijuana misdemeanor is denied, and provides that when a marijuana misdemeanor has been set aside, the applicant may not seek resentencing in another case in which the marijuana conviction affected sentencing.<sup>21</sup>

### C. Ohio

<sup>20</sup> See Robert Alt, *Criminal Justice Reform: A Survey of 2018 State Laws*, The Federalist Society, <https://fedsoc.org/commentary/publications/2018-criminal-justice-reform> (last visited Mar. 14, 2021).

<sup>21</sup> See H.B. 4980-4985, HB 5120, 100th Leg., Reg. Sess. (Mich. 2020), available at [http://www.legislature.mi.gov/\(S\(wzsawx5xxhol0n2i3qn5njqj\)\)/mileg.aspx?page=getObject&objectName=2019-HB-4980](http://www.legislature.mi.gov/(S(wzsawx5xxhol0n2i3qn5njqj))/mileg.aspx?page=getObject&objectName=2019-HB-4980); H.B. 4981, 100th Leg., Reg. Sess. (Mich. 2020), available at [http://www.legislature.mi.gov/\(S\(zw4zc53gzugaoanxcbk03tqh3\)\)/mileg.aspx?page=getObject&objectName=2019-HB-4981](http://www.legislature.mi.gov/(S(zw4zc53gzugaoanxcbk03tqh3))/mileg.aspx?page=getObject&objectName=2019-HB-4981); H.B. 4982, 100th Leg., Reg. Sess. (Mich. 2020), available at [http://www.legislature.mi.gov/\(S\(qjrwraqdblrtsqsnfxiukzsqc\)\)/mileg.aspx?page=getObject&objectName=2019-HB-4982](http://www.legislature.mi.gov/(S(qjrwraqdblrtsqsnfxiukzsqc))/mileg.aspx?page=getObject&objectName=2019-HB-4982); H.B. 4983, 100th Leg., Reg. Sess. (Mich. 2020), available at [http://www.legislature.mi.gov/\(S\(n53idtrsojgk4n2h0h5kuobz\)\)/mileg.aspx?page=getObject&objectName=2019-HB-4983](http://www.legislature.mi.gov/(S(n53idtrsojgk4n2h0h5kuobz))/mileg.aspx?page=getObject&objectName=2019-HB-4983); H.B. 4984, 100th Leg., Reg. Sess. (Mich. 2020), available at [http://www.legislature.mi.gov/\(S\(5oxppmssso5d0mifngy2ygay\)\)/mileg.aspx?page=getObject&objectName=2019-HB-4984](http://www.legislature.mi.gov/(S(5oxppmssso5d0mifngy2ygay))/mileg.aspx?page=getObject&objectName=2019-HB-4984); H.B. 4985, 100th Leg., Reg. Sess. (Mich. 2020), available at [http://www.legislature.mi.gov/\(S\(yaxnallmorp5ob2bcpbkpyjh\)\)/mileg.aspx?page=getObject&objectName=2019-HB-4985](http://www.legislature.mi.gov/(S(yaxnallmorp5ob2bcpbkpyjh))/mileg.aspx?page=getObject&objectName=2019-HB-4985); H.B. 5120, 100th Leg., Reg. Sess. (Mich. 2020), available at [http://www.legislature.mi.gov/\(S\(d2zbqvvnxi05vziiscvamghf\)\)/mileg.aspx?page=getObject&objectName=2019-HB-5120](http://www.legislature.mi.gov/(S(d2zbqvvnxi05vziiscvamghf))/mileg.aspx?page=getObject&objectName=2019-HB-5120). For a summary, see Senate Fiscal Agency, Expungement; “Clean Slate” Legislation H.B. 4980-4985 & 5120: Summary as Enacted (December 16, 2020), available at <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/Senate/pdf/2019-SFA-4980-N.pdf>.

Governor Mike DeWine signed House Bill 1, which—among other things—expands eligibility for criminal record-sealing by eliminating statutory limits on the number of fourth- and fifth-degree felony and misdemeanor convictions an offender is eligible to seal.<sup>22</sup>

#### V. PAROLE, PROBATION, & PARDONS

Four states—California, Nevada, Ohio, and Virginia—amended rules regarding parole, probation, or pardons.

##### *A. California*

Governor Gavin Newsom signed into law Assembly Bill 1950, which limits probation terms to one year for misdemeanors and two years for felonies.<sup>23</sup> California also enacted Assembly Bill 3234, expanding eligibility for the state’s elderly parole process by lowering the eligibility age from 60 to 50 years old. The statute also authorizes judges, without prosecutor approval, to steer defendants charged with misdemeanors into a pretrial diversion program—the completion of which would mean dismissal of the charges.<sup>24</sup>

##### *B. Nevada*

Nevada voters approved Question 3, a legislatively-referred constitutional amendment to modify the process for granting pardons and commuting sentences. Question 3 amends the state constitution by authorizing the Board of Pardons Commissioners—comprised of the governor, the justices of the Nevada Supreme Court, and the attorney general—to “grant pardons and make other clemency decisions by a majority vote . . . without requiring the governor to be part of the majority . . . in favor of such decisions.”<sup>25</sup> In effect, Nevada no longer requires the governor to support a pardon or clemency.

##### *C. Ohio*

Governor Mike DeWine signed Senate Bill 256, which eliminates the sentence of life imprisonment without parole for offenses committed by juvenile defendants under 18 years old. The new law also requires Ohio’s Parole Board to consider enumerated mitigating factors for persons eligible

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<sup>22</sup> H.B. 1, 133rd Gen. Assem., Reg. Sess. (Ohio 2020), *available at* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-1>.

<sup>23</sup> A.B. 1950, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2020), *available at* [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB1950](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1950).

<sup>24</sup> A.B. 3234, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2020), *available at* [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB3234](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3234).

<sup>25</sup> Nevada Question 3, State Board of Pardons Commissioners Amendment (2020), BALLOTEDIA, [https://ballotpedia.org/Nevada\\_Question\\_3\\_State\\_Board\\_of\\_Pardons\\_Commissioners\\_Amendment\\_\(2020\)](https://ballotpedia.org/Nevada_Question_3_State_Board_of_Pardons_Commissioners_Amendment_(2020)) (last visited Mar. 14, 2021).

for parole and specifies additional mitigating factors courts must consider when sentencing a juvenile convicted of a felony.<sup>26</sup>

*D. Virginia*

Virginia enacted House Bill 35, which provides parole eligibility for those who have served at least 20 years of a life imprisonment sentence (or other sentence longer than 20 years) for a felony committed while the felon was a juvenile.<sup>27</sup> The General Assembly also amended parole eligibility for adults when it passed House Bill 33. Under the new law signed by Governor Ralph Northam, a person is eligible for parole,

if (i) such person was sentenced by a jury prior to the date of the Supreme Court of Virginia decision in *Fishback v. Commonwealth*, 260 Va. 104 (June 9, 2000), in which the Court held that a jury should be instructed . . . that parole has been abolished, for a felony committed on or after the abolition of parole going into effect (on January 1, 1995); (ii) the person remained incarcerated for the offense on July 1, 2020; and (iii) the offense was not . . . a Class 1 felony [or specified sex crimes].<sup>28</sup> Virginia's Parole Board must establish appropriate parole-consideration procedures and any person eligible for parole as of July 1, 2020, shall be scheduled for a parole interview no later than July 1, 2021.<sup>29</sup>

VI. SEARCHES & SEIZURES

Michigan and Virginia each modified their rules for searches and seizures. Voters in Michigan approved Proposal 2, which amends the state's constitutional protections against warrantless search and seizure of "a person, house, papers, or possessions" to explicitly include electronic data and communications. The ballot initiative was approved by both chambers of the legislature and attempts to make state law unambiguously consistent with *Riley v. California*, which held that warrantless searches and seizures of digital contents of a cell phone during arrest are unconstitutional.<sup>30</sup>

Governor Northam and Virginia's General Assembly enacted House Bill 5058, changing the search and seizure protocols for routine traffic stops. The statute prohibits law enforcement from stopping vehicles solely because they

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<sup>26</sup> S.B. 256, 133rd Gen. Assem., Reg. Sess. (Ohio 2020), available at <https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA133-SB-256>.

<sup>27</sup> H.B. 35, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB35>.

<sup>28</sup> H.B. 33, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=HB33&ses=201&typ=bil&val=HB33>.

<sup>29</sup> *Id.*

<sup>30</sup> *Riley v. California*, 573 U.S. 373 (2014); Michigan Proposal 2, Search Warrant for Electronic Data Amendment (2020), BALLOTEDIA, [https://ballotpedia.org/Michigan\\_Proposal\\_2,\\_Search\\_Warrant\\_for\\_Electronic\\_Data\\_Amendme nt\\_\(2020\)](https://ballotpedia.org/Michigan_Proposal_2,_Search_Warrant_for_Electronic_Data_Amendme nt_(2020)) (last visited Mar. 14, 2021).

operate (i) without an illuminated license plate, (ii) with defective and unsafe equipment, (iii) without brake lights, (iv) without an exhaust system that prevents excessive noise, (v) with window tinting, and (vi) with certain objects suspended in the vehicle. Evidence discovered or obtained as a result of an unlawful stop is inadmissible in any trial or other proceeding. The law also provides that officers may not lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana. Evidence discovered or obtained as a result of such a search or seizure is inadmissible. And no evidence discovered or obtained due to an impermissible stop, including evidence obtained with the person's consent, is admissible in any trial or proceeding.<sup>31</sup>

Virginia also enacted House Bill 5099, which changes various protocols for executing search warrants and prohibits the use of no-knock warrants. The law requires that in executing search warrants law enforcement officers must be uniformed, be recognizable and identifiable as officers, and provide audible notice of authority and purpose prior to executing a search. The statute also prohibits executing search warrants at night unless authorized by a judge or magistrate for good cause, or unless the search warrant is for the withdrawal of blood.<sup>32</sup>

## VII. SHACKLING RESTRICTIONS

### *A. South Carolina*

Governor Henry McMaster signed legislation banning the shackling of women who are pregnant, in labor, or recovering from giving birth. The amended law also requires that jails and prisons provide menstrual hygiene products, and it restricts the use of cavity searches and solitary confinement on women who are within 30 days of giving birth.<sup>33</sup>

### *B. Ohio*

With House Bill 1, Ohio's General Assembly prohibited restraining (with handcuffs, shackles, or other physical restraints) or confining a woman or female child who is a charged, convicted, or adjudicated criminal offender or

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<sup>31</sup> H.B. 5058, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5058>.

<sup>32</sup> H.B. 5099, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at [https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5099&utm\\_source=The+Appeal&utm\\_campaign=4b582c88c5-EMAIL\\_CAMPAIGN\\_2018\\_06\\_22\\_03\\_58\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_72d992d84-4b582c88c5-58410691](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5099&utm_source=The+Appeal&utm_campaign=4b582c88c5-EMAIL_CAMPAIGN_2018_06_22_03_58_COPY_01&utm_medium=email&utm_term=0_72d992d84-4b582c88c5-58410691).

<sup>33</sup> A136, R141, H3967, Gen. Assem., 123rd Sess. (S.C. 2020), available at [https://www.scstatehouse.gov/sess123\\_2019-2020/bills/3967.htm](https://www.scstatehouse.gov/sess123_2019-2020/bills/3967.htm).

delinquent child during pregnancy or postpartum recovery, except under specified emergency conditions.<sup>34</sup>

### VIII. OCCUPATIONAL LICENSING

Three states—Iowa, Missouri, and Ohio—passed laws easing occupational license restrictions on ex-offenders.

#### *A. Iowa*

Governor Kim Reynolds signed House File 2627, which limits the bases for occupational license restrictions on ex-offenders. Under this law, a licensing board may deny or revoke a license on account of a criminal conviction only if it finds by a preponderance of the evidence that either the individual has been convicted of an offense that “directly relates to the duties and responsibilities of the profession” or “there has been a founded report of child abuse against the person.”<sup>35</sup>

#### *B. Missouri*

As part of House Bill 2046, Missouri enacted the Fresh Start Act, which made numerous modifications to the state occupational license law. Beginning on January 1, 2021, a state licensing authority may not disqualify an individual from receiving an occupational license because of a prior offense “unless the crime is directly related to the duties and responsibilities for the licensed occupation or the crime is violent or sexual in nature.” Offenses relating directly to the duties of a licensed profession may only be used to disqualify an individual for four years, unless the offenses are violent or sexual in nature. The bill removes provisions throughout the code that prevent licensure based on crimes involving “moral turpitude” or requiring “good moral character.” The bill also allows individuals to petition a licensing authority for a determination of whether he or she would be disqualified from receiving a license, and provides license applicants denied because of a conviction notice of the reason for denial and the opportunity to appeal. The Fresh Start Act “does not apply to teachers; accountants; podiatrists; dentists; physicians and surgeons; nurses; pharmacists; real estate brokers, real estate salespersons, or real estate broker-salespersons; veterinarians; licensing requirements from the Director of the Division of Finance; or peace officers or other law enforcement personnel.”<sup>36</sup>

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<sup>34</sup> H.B. 1, 133rd Gen. Assem., Reg. Sess. (Ohio 2020), available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-1>.

<sup>35</sup> H.F. 2627, 88th Gen. Assem. (Iowa 2020), available at <https://legiscan.com/IA/text/HF2627/id/2194555/Iowa-2019-HF2627-Enrolled.html>.

<sup>36</sup> H.B. 2046, 2020 Gen. Assem., Sec. Reg. Sess. (Mo. 2020), available at <https://legiscan.com/MO/text/HB2046/id/2186177/Missouri-2020-HB2046-Enrolled.pdf>. see

*C. Ohio*

Governor Mike DeWine signed House Bill 263, making ex-offenders eligible for some occupational licenses. The law allows state licensing authorities to consider criminal convictions when deciding whether to disqualify an ex-offender from license eligibility, provided that the authorities also consider the offense in light of specified factors supported by a preponderance of the evidence. Licensing authorities that refuse to issue an initial license because of a disqualifying offense must now notify applicants of the reason for refusal. Applicants may appeal and offer evidence of rehabilitation upon reapplication. And in any proceeding reviewing the licensing authority's denial of an initial license due to a disqualifying offense, the burden lies with the authority to show a relationship between the offense and the licensed occupation.<sup>37</sup>

IX. BAIL

*A. New Hampshire*

Governor Chris Sununu signed House Bill 1645, which modifies New Hampshire's bail and pretrial detention policies. The statute adds a bail commissioner to the state's commission on pretrial detention, pretrial scheduling, and pretrial services; it also enumerates the considerations for judges to weigh when deciding whether to release or detain a defendant before trial. Defendants charged with certain offenses may be detained without bail or subjected to electronic monitoring only if the court determines by clear and convincing evidence that release will endanger the public's or the defendant's own safety. The statute also provides that in determining the amount of bond or bail, courts may consider all relevant factors bearing upon a defendant's ability to post bail, but shall not impose a financial condition that will result in a defendant's pretrial detention solely because of that financial condition unless the court determines by clear and convincing evidence that there is a substantial risk that the defendant will not appear for trial and that no reasonable alternative would assure the defendant's appearance.<sup>38</sup>

*B. California*

California voters rejected Proposition 25, a referendum on Senate Bill 10 (passed in 2018) that would have banned the use of cash bail and replaced it

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*also,* H.B. 2046 Bill Summary, *available at* <https://house.mo.gov/billtracking/bills201/sumpdf/HB2046T.pdf>.

<sup>37</sup> H.B. 263, 133rd Gen. Assem., Reg. Sess. (Ohio 2020), *available at* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-263>.

<sup>38</sup> H.B. 1645, Gen. Ct. Reg. Sess. (N.H. 2020), *available at* <https://legiscan.com/NH/text/HB1645/id/2194961>.

with a risk assessment tool for pretrial release. The ballot measure garnered only 43% of the statewide vote, which prevented Senate Bill 10 from going into effect.<sup>39</sup>

## X. CIVIL ASSET FORFEITURE

The New Jersey legislature amended the state's civil asset forfeiture procedures. Senate Bill 1963 requires police departments to release quarterly forfeiture reports and make them available on a public database.<sup>40</sup> Senate Bill 4970 requires a criminal conviction for assets to be forfeited, but applies only to cases that involve less than \$1,000 in cash or \$10,000 in property.<sup>41</sup>

## XI. COVID-19: PRISON POPULATION REDUCTION

With the onset of the COVID-19 pandemic, state legislatures, governors, and departments of corrections throughout the country grappled with the threat of coronavirus spreading through the close confines of crowded jails and prisons—and how best to contain it. Many states engaged in some measure of early-release for inmates, but did so through existing authorities such as the discretionary authority of the state's department of corrections. The summaries below concern only actions taken through legislation or executive order, and consistent with the methodology of the paper, do not evaluate the effect of these policies on crime rates.<sup>42</sup>

### A. California

Governor Gavin Newsom's executive order halted intake or transfer of inmates into the state's prisons and youth correctional facilities for 30 days, and directed the Board of Parole Hearings to develop a process for conducting parole hearings via videoconference.<sup>43</sup>

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<sup>39</sup> California Proposition 25, Replace Cash Bail with Risk Assessments Referendum (2020), BALLOTEDIA, [https://ballotpedia.org/California\\_Proposition\\_25,\\_Replace\\_Cash\\_Bail\\_with\\_Risk\\_Assessments\\_Referendum\\_\(2020\)](https://ballotpedia.org/California_Proposition_25,_Replace_Cash_Bail_with_Risk_Assessments_Referendum_(2020)), (last visited Mar. 14, 2021).

<sup>40</sup> A. 4970, 218th Leg. (N.J. 2020), available at [https://www.njleg.state.nj.us/2018/Bills/A5000/4970\\_R3.HTM](https://www.njleg.state.nj.us/2018/Bills/A5000/4970_R3.HTM).

<sup>41</sup> S. 1943, 218th Leg. (N.J. 2020), available at [https://www.njleg.state.nj.us/2020/Bills/S2000/1943\\_I1.HTM](https://www.njleg.state.nj.us/2020/Bills/S2000/1943_I1.HTM).

<sup>42</sup> Furthermore, it is worth noting that while state criminal codes generally define “violent offenses” or “violent offenders” similarly, nonetheless definitions can and do vary. Virginia, for example, defines an “act of violence” to include “mob-related felonies” in the list of applicable offenses, whereas Kentucky’s list defining “violent offenders” does not. *Compare* Va. Code Ann. § 19.2-297.1(b) and KRS § 439.3401. Accordingly, executive orders granting early release to “non-violent” offenders may vary from state to state based upon differences in the definitions of that term.

<sup>43</sup> CA. Exec. Order N-36-20 (Mar. 24, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.24.20-EO-N-36-20.pdf>.

*B. Colorado*

Governor Jared Polis issued an executive order that placed a 30-day moratorium on new prison intakes and granted the Department of Corrections broad authority to release inmates within 180 days of their parole eligibility date, as well as to suspend limits on awarding earned time.<sup>44</sup>

*C. Kentucky*

Governor Andy Beshear signed an executive order releasing nearly 900 state prison inmates as part of an initial phase to reduce the prison population. Before release, each inmate was tested for COVID-19 and the state verified where released inmates would be quarantined. Those inmates eligible for commutations under the order were serving time for low-level felonies, and inmates convicted of violent or sex offenses were ineligible for early-release.<sup>45</sup> In response to a subsequent spike in coronavirus cases, on August 25, the governor authorized the early release of another 700 inmates, prioritizing those more vulnerable to coronavirus and again excluding violent and sexual offenders.<sup>46</sup> News reports noted that “beginning in April and ending in August, 1,881 prisoners saw their sentences commuted by Governor Beshear.”<sup>47</sup> Responding to questioning during legislative hearings, prison officials “insisted that none of those released committed violent or sexual offenses and most were within six months of finishing their sentence and/or at high risk from the virus.”<sup>48</sup>

*D. Maryland*

Governor Larry Hogan signed an executive order expediting release for inmates eligible for release within four months. The order also directed the Maryland Parole Commission to accelerate parole consideration for inmates convicted of nonviolent crimes who are older than 60 and have an approved plan for re-entry to society.<sup>49</sup> Another executive order allowed early release and/or home detention for those with prison terms set to expire within four

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<sup>44</sup> Colo. Exec. Order No. D 2020 016 (March 25, 2020), [https://www.colorado.gov/governor/sites/default/files/inline-files/D\\_2020\\_016\\_Suspending\\_Certain\\_Regulatory\\_Statutes\\_Concerning\\_Criminal\\_Justice\\_0.pdf](https://www.colorado.gov/governor/sites/default/files/inline-files/D_2020_016_Suspending_Certain_Regulatory_Statutes_Concerning_Criminal_Justice_0.pdf).

<sup>45</sup> Ky. Exec. Order No. 2020-267 (April 2, 2020), available at [https://governor.ky.gov/attachments/20200402\\_Executive-Order\\_2020-267\\_Conditional-Commutation-of-Sentence.pdf](https://governor.ky.gov/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf).

<sup>46</sup> Ky. Exec. Order No. 2020-699 (August 25, 2020), available at [https://governor.ky.gov/attachments/20200825\\_Executive-Order\\_2020-699\\_Commutations.pdf](https://governor.ky.gov/attachments/20200825_Executive-Order_2020-699_Commutations.pdf).

<sup>47</sup> Chris Williams, *Lawmakers question DOC officials on Governor Beshear's COVID-19 commutations*, WHAS 11 (December 3, 2020), available at <https://www.whas11.com/article/news/kentucky/kentucky-governor-prisoners-released-covid-19-lawmakers-face-off-corrections-officials/417-84c107ff-50e3-452d-b050-31a7d3b5db05>.

<sup>48</sup> *Id.*

<sup>49</sup> Md. Exec. Order No. 20-04-18-01 (April 18, 2020), available at <https://governor.maryland.gov/wp-content/uploads/2020/04/Prisoner-Release-4.18.20.pdf>.

months. All released inmates were subject to COVID-19 testing and quarantine requirements. Prisoners serving time for a violent or sexual offense were not eligible for early release.<sup>50</sup>

*E. Michigan*

Governor Gretchen Whitmer's executive order "strongly encouraged" corrections officials to consider early release from county jails, prisons, and juvenile detention centers for the following inmates: elderly and/or chronically ill individuals; pregnant women; those nearing their release date; those incarcerated for traffic violations or court violations; and those with behavioral health problems who can be diverted safely to treatment.<sup>51</sup>

*F. New Jersey*

New Jersey enacted S2519, which provided early release for thousands of prisoners, specifically adult and juvenile inmates with less than a year remaining on their sentences. Prisoners convicted of aggravated sexual assault or murder and "repetitive, compulsive" sex offenders were not eligible for release under the statute.<sup>52</sup>

*G. Pennsylvania*

By executive order, Governor Tom Wolf directed the state's Department of Corrections to establish a temporary reprieve or early-release program for non-violent, at-risk state prison inmates who were within several months of their scheduled release.<sup>53</sup>

*H. Virginia*

Virginia's General Assembly approved Governor Northam's proposal to grant the Department of Corrections the authority to grant early release to inmates convicted of non-violent crimes who also had no more than one year remaining on their original sentence. Those convicted of Class 1 felonies or sexually violent offenses were ineligible for consideration.<sup>54</sup>

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<sup>50</sup> Md. Exec. Order No. 20-11-17-03 (November 17, 2020), available at <https://governor.maryland.gov/wp-content/uploads/2020/11/Prisoner-Release-RENEWAL-11.17.20.pdf>.

<sup>51</sup> Mich. Exec. Order No. 2020-29 (March 10, 2020), available at [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-523422--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523422--,00.html).

<sup>52</sup> S. 2519, 218th Leg. (N.J. 2020), available at [https://www.njleg.state.nj.us/2020/Bills/S3000/2519\\_R4.PDF](https://www.njleg.state.nj.us/2020/Bills/S3000/2519_R4.PDF).

<sup>53</sup> Pa. Exec. Order Regarding Individuals Incarcerated in State Correctional Institutions (April 10, 2020), available at <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-reprieve-release-order-COVID-19.pdf>.

<sup>54</sup> Am. H.B. 29, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at <https://budget.lis.virginia.gov/amendment/2020/1/HB29/Enrolled/GE/>.

XII. CIVIL UNREST: PROTESTS, RIOTS, & POLICING

States and local jurisdictions enacted new statutes and adopted new rules in response to the civil rights protests and riots that gripped many urban centers across the country following George Floyd's death in Minneapolis. State and local governments enacted policing policy changes designed to make law enforcement agencies more transparent and accountable through civilian oversight boards, and to modify police training, techniques, and tactics through bans on chokehold restraints and use of crowd-control weapons. New York went further by making "aggravated strangulation by a police officer" a new crime, and Tennessee enhanced penalties for offenses associated with riots and protest activities. Many jurisdictions made it easier for civilian oversight committees to investigate police behavior and required officers to wear body cameras. Local communities in urban and suburban areas passed discrete, single-issue initiatives with overwhelming public support, while state legislatures passed laws of varying scope.

While numerous policing policy changes passed, proposals to "defund" the police ultimately failed. Most notably, a pledge made by a majority of the Minneapolis City Council to defund the city's police department garnered national attention, but it did not result in significant funding changes or serious restructuring of the police department. In addition to public backtracking on the meaning of the pledge by the city council members, the pledge was "rejected by the city's mayor, a plurality of residents in [ ] public opinion polls, and an increasing number of community groups."<sup>55</sup> The Minneapolis City Council made a relatively modest \$8 million cut to the police force's \$179 million budget, shifting those resources to expand other services, including violence prevention and mental health crisis response teams.<sup>56</sup> But soon thereafter, the city council approved \$6.4 million in additional funding for the police.<sup>57</sup> As discussed below in Local Policing Initiatives, some municipalities passed measures that expressed priorities concerning policing resources or shifted some resources to alternative programs. Yet despite budgeting challenges for municipal governments during the pandemic, a study of 34 of the 50 largest U.S. cities found that

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<sup>55</sup> Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, N.Y. TIMES (Sept. 26, 2020), available at <https://www.nytimes.com/2020/09/26/us/politics/minneapolis-defund-police.html>.

<sup>56</sup> Avie Schneider, *Minneapolis Shifts \$8 Million In Police Funding, But Keeps Force At Current Level*, NAT'L PUB. RADIO (Dec. 10, 2020), available at <https://www.npr.org/2020/12/10/944938471/minneapolis-shifts-8-million-in-police-funding-but-keeps-force-at-current-level>.

<sup>57</sup> Bradford Betz, *Minneapolis push to defund police backfires after residents complain of slow response times, increase in crime*, FOX NEWS (Feb. 14, 2021), available at <https://www.foxnews.com/us/minneapolis-defund-police-backfires-residents-complain-slow-response-times-increase-crime>.

“police spending as a share of the general funds fell less than 1%” in the wake of calls to defund the police.<sup>58</sup>

*A. Local Policing Initiatives*

Local jurisdictions put a variety of policing initiatives on the ballot in November, asking city and county voters to approve or reject proposals designed to increase police transparency, make officers more accountable, enhance civilian oversight, adjust law enforcement staffing and spending levels (in some cases expressing other spending priorities, and—in at least one case—expressing the view of the voters that law enforcement and public safety is the top budget priority), and rewrite training programs.

1. California

Los Angeles County voters passed Measure J requiring no less than 10% of the county’s general fund be appropriated to community programs and alternatives to incarceration in order to help “address the disproportionate impact of racial injustice” in the county. Such programs and alternatives include community-based restorative justice programs, pre-trial non-custody services and treatment, health services, counseling, and mental health and substance use disorder services.<sup>59</sup>

Oakland approved Measure S1, which changed the powers, duties, and staffing of the Oakland Police Commission and the Community Police Review Agency. The charter amendment also created an Office of the Inspector General to review the policies of the Police Commission and Review Agency.

San Diego voters approved Measure B to amend the city charter by dissolving the Community Review Board on Police Practices and replacing it with the Commission on Police Practices. The new Commission will be appointed by the city council to conduct investigations and subpoena witnesses and documents related to deaths resulting from police interactions and complaints made against police officers.<sup>60</sup>

San Francisco passed Proposition D and Proposition E. Proposition D creates a Sheriff’s Department Oversight Board and a Sheriff’s Department Office of Inspector General “to investigate non-criminal misconduct by

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<sup>58</sup> Sarah Holder, Fola Akinnibi, and Christopher Cannon, *We Have Not Defunded Anything: Big Cities Boost Police Budgets*, BLOOMBERG CITYLAB (Sept. 22, 2020), available at <https://www.bloomberg.com/graphics/2020-city-budget-police-defunding/>.

<sup>59</sup> Los Angeles County, California Measure J, Budget Allocation for Alternatives to Incarceration Charter Amendment (2020), BALLOTPEDIA, [https://ballotpedia.org/Los\\_Angeles\\_County,\\_California,\\_Measure\\_J,\\_Budget\\_Allocation\\_for\\_Alternatives\\_to\\_Incarceration\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/Los_Angeles_County,_California,_Measure_J,_Budget_Allocation_for_Alternatives_to_Incarceration_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>60</sup> San Diego, California Measure B, Commission on Police Practices Amendment (2020), BALLOTPEDIA, [https://ballotpedia.org/San\\_Diego,\\_California,\\_Measure\\_B,\\_Commission\\_on\\_Police\\_Practices\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/San_Diego,_California,_Measure_B,_Commission_on_Police_Practices_Amendment_(November_2020)) (last visited Mar. 14, 2021).

employees and in-custody deaths and recommend policy changes to the sheriff and board of supervisors.”<sup>61</sup> Proposition E removes a mandatory police-staffing level provision from the city charter and requires the police department to recommend staffing levels every two years.<sup>62</sup>

San Jose voters backed Measure G, which—among other things—authorizes the independent police auditor to review all police department investigations initiated by the public or administrative investigations initiated by the police department; make policy recommendations to the police department; review records related to officer-involved shootings and use of force that resulted in injury or death; and review redacted records such as force statistics, police reports, and body camera footage.<sup>63</sup>

Sonoma County passed Measure P in an effort “to increase law enforcement transparency and accountability and to build the public trust in . . . the Sheriff’s Office.”<sup>64</sup> The measure authorized restructuring the county’s law enforcement review board by making the office’s director removable only for cause and by a 4/5 majority of the board of supervisors, and “expand[s] the oversight authority and independence of the Independent Office of Law Enforcement Review and Outreach to investigate Sheriff related issues.”<sup>65</sup>

## 2. Illinois

DuPage County, a Chicago-area suburb, approved two law enforcement-related referenda. The county’s Law Enforcement Budget Advisory Referendum advises the county to continue considering law enforcement and public safety as its top budgeting priority.<sup>66</sup> And the Law Enforcement Injury Risk Training Advisory Referendum advises the county to fund and support

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<sup>61</sup>San Francisco, California Proposition D, Sheriff’s Department Oversight Board Charter Amendment (2020), [https://ballotpedia.org/San\\_Francisco,\\_California,\\_Proposition\\_D,\\_Sheriff%27s\\_Department\\_Oversight\\_Board\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/San_Francisco,_California,_Proposition_D,_Sheriff%27s_Department_Oversight_Board_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>62</sup>San Francisco, California Proposition E, Police Staffing Charter Amendment (2020), [https://ballotpedia.org/San\\_Francisco,\\_California,\\_Proposition\\_E,\\_Police\\_Staffing\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/San_Francisco,_California,_Proposition_E,_Police_Staffing_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>63</sup>San Jose, California Measure G, Police Auditor Powers, Redistricting Procedures, and Planning Commission Charter Amendment (2020), [https://ballotpedia.org/San\\_Jose,\\_California,\\_Measure\\_G,\\_Police\\_Auditor\\_Powers,\\_Redistricting\\_Procedures,\\_and\\_Planning\\_Commission\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/San_Jose,_California,_Measure_G,_Police_Auditor_Powers,_Redistricting_Procedures,_and_Planning_Commission_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>64</sup>Sonoma County, California Measure P, Changes to Law Enforcement Review Board (2020), [https://ballotpedia.org/Sonoma\\_County,\\_California,\\_Measure\\_P,\\_Changes\\_to\\_Law\\_Enforcement\\_Review\\_Board\\_\(November\\_2020\)](https://ballotpedia.org/Sonoma_County,_California,_Measure_P,_Changes_to_Law_Enforcement_Review_Board_(November_2020)) (last visited Mar. 14, 2021).

<sup>65</sup>*Id.*

<sup>66</sup>DuPage County, Illinois Law Enforcement Budget Advisory Referendum (2020), [https://ballotpedia.org/DuPage\\_County,\\_Illinois,\\_Law\\_Enforcement\\_Budget\\_Advisory\\_Referendum\\_\(November\\_2020\)](https://ballotpedia.org/DuPage_County,_Illinois,_Law_Enforcement_Budget_Advisory_Referendum_(November_2020)) (last visited Mar. 14, 2021).

law enforcement training methods that decrease the risk of injury to officers and suspects.<sup>67</sup>

### 3. Ohio

Akron voters overwhelmingly approved Issue 2, which requires law enforcement agencies to release body- and dashboard-camera footage following any law enforcement use of force that results in death or serious harm.<sup>68</sup>

Columbus passed Issue 2, amending the city charter by creating a Civilian Police Review Board authorized to investigate alleged police misconduct, subpoena testimony and evidence during such investigations, make recommendations to the Division of Police, and appoint and manage the new position of Inspector General for the Division of Police.<sup>69</sup>

### 4. Oregon

Portland, which experienced significant civil unrest directed at law enforcement throughout the summer, adopted Measure 26-217, establishing a new Community Police Oversight Board “to independently investigate Portland Police Bureau sworn employees and supervisors thereof promptly, fairly, and impartially, to impose discipline as determined appropriate by the Board, and to make recommendations regarding police practices, policies and directives to the Portland Police Bureau and with a primary focus on community concerns.”<sup>70</sup> Board members are appointed by the city council and may not be current or former law enforcement agency employees. The Board may subpoena witnesses and request police documents and evidence as it investigates complaints made against the Portland police.<sup>71</sup>

### 5. Pennsylvania

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<sup>67</sup> DuPage County, Illinois Law Enforcement Injury Risk Training Advisory Referendum (2020), BALLOTPEdia, [https://ballotpedia.org/DuPage\\_County,\\_Illinois,\\_Law\\_Enforcement\\_Injury\\_Risk\\_Training\\_Advisory\\_Referendum\\_\(November\\_2020\)](https://ballotpedia.org/DuPage_County,_Illinois,_Law_Enforcement_Injury_Risk_Training_Advisory_Referendum_(November_2020)) (last visited Mar. 14, 2021).

<sup>68</sup> Akron, Ohio Release of Recordings from Police Body and Dashboard Cameras After Use of Force Charter Amendment (2020), BALLOTPEdia, [https://ballotpedia.org/Akron,\\_Ohio,\\_Release\\_of\\_Recordings\\_from\\_Police\\_Body\\_and\\_Dashboard\\_Cameras\\_after\\_Use\\_of\\_Force\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/Akron,_Ohio,_Release_of_Recordings_from_Police_Body_and_Dashboard_Cameras_after_Use_of_Force_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>69</sup> Columbus, Ohio Issue 2, Civilian Police Review Board and Inspector General Charter Amendment (2020), BALLOTPEdia, [https://ballotpedia.org/Columbus,\\_Ohio,\\_Issue\\_2,\\_Civilian\\_Police\\_Review\\_Board\\_and\\_Inspector\\_General\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/Columbus,_Ohio,_Issue_2,_Civilian_Police_Review_Board_and_Inspector_General_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>70</sup> Portland, Oregon Measure 26-217, Police Oversight Board Charter Amendment (2020), BALLOTPEdia, [https://ballotpedia.org/Portland,\\_Oregon,\\_Measure\\_26-217,\\_Police\\_Oversight\\_Board\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/Portland,_Oregon,_Measure_26-217,_Police_Oversight_Board_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>71</sup> *Id.*

Philadelphia amended its city charter by approving Question 1, which directs the police department to “eliminate the practice of unconstitutional stop and frisk, consistent with judicial precedent.”<sup>72</sup> Voters also passed Question 3 creating a Citizens Police Oversight Commission to replace the city’s Police Advisory Commission.<sup>73</sup>

Pittsburgh voters approved amending the Independent Citizen Police Review Board Charter to require police officers to cooperate with Review Board investigations. Failure or refusal to do so could result in dismissal from employment. The amendment prohibits the chief of police, the director of safety, and the mayor from imposing disciplinary action before the Review Board issues its findings.<sup>74</sup>

#### 6. Texas

Kyle approved Proposition F authorizing the city council to review and modify police department procedures and policies, and requiring the police chief to update the city council with an annual report about police department operations.<sup>75</sup> The proposition also directs “the city council to establish a committee with oversight over standard operating policies and strategies, data sharing, and use of resources of the police department for the purpose of promoting public safety, transparency, and crime reduction through community policing models.”<sup>76</sup>

#### 7. Washington

King County approved four ballot initiatives, each amending the county charter and designed to increase police transparency and civilian oversight. Charter Amendment 1 requires the county to investigate any deaths to which police action or inaction may have contributed, and to provide and pay for public attorneys to represent the decedent’s family during such

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<sup>72</sup> Philadelphia, Pennsylvania Question 1, Call on Police to End Unconstitutional Stop-and-Frisk Amendment (2020), [https://ballotpedia.org/Philadelphia, Pennsylvania, Question 1, Call on Police to End Unconstitutional Stop-and-Frisk Amendment \(November 2020\)](https://ballotpedia.org/Philadelphia,_Pennsylvania,_Question_1,_Call_on_Police_to_End_Unconstitutional_Stop-and-Frisk_Amendment_(November_2020)) (last visited Mar. 14, 2021). BALLOTPEDIA,

<sup>73</sup> Philadelphia, Pennsylvania Question 3, Citizens Police Oversight Commission Amendment (2020), [https://ballotpedia.org/Philadelphia, Pennsylvania, Question 3, Citizens Police Oversight Commission Amendment \(November 2020\)](https://ballotpedia.org/Philadelphia,_Pennsylvania,_Question_3,_Citizens_Police_Oversight_Commission_Amendment_(November_2020)) (last visited Mar. 14, 2021). BALLOTPEDIA,

<sup>74</sup> Pittsburgh, Pennsylvania Independent Citizen Police Review Board Charter Amendment (2020), [https://ballotpedia.org/Pittsburgh, Pennsylvania, Independent Citizen Police Review Board Charter Amendment \(November 2020\)](https://ballotpedia.org/Pittsburgh,_Pennsylvania,_Independent_Citizen_Police_Review_Board_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021). BALLOTPEDIA,

<sup>75</sup> Kyle, Texas, Proposition F, Police Department Oversight Charter Amendment (2020), [https://ballotpedia.org/Kyle, Texas, Proposition F, Police Department Oversight Charter Amendment \(November 2020\)](https://ballotpedia.org/Kyle,_Texas,_Proposition_F,_Police_Department_Oversight_Charter_Amendment_(November_2020)) (last visited Mar. 14, 2021). BALLOTPEDIA,

<sup>76</sup> *Id.*

investigations.<sup>77</sup> Charter Amendment 4 authorizes the Office of Law Enforcement Oversight to subpoena witnesses, documents, and other evidence in its investigations of law enforcement personnel.<sup>78</sup> Voters also passed Charter Amendment 5, returning the office of the sheriff from an elected position to one appointed by the county executive and confirmed by the county council;<sup>79</sup> and Charter Amendment 6, authorizing the county council to specify the sheriff's duties.<sup>80</sup>

### *B. State Legislative Initiatives*

Policing initiatives at the state level ranged from single-issue changes, such as Delaware's ban on chokehold restraints, to comprehensive law enforcement policy packages in New York, Connecticut, and Colorado. Many states banned or restricted police use of chemical crowd-control agents, required officers to wear body cameras, and created civilian review and oversight boards to monitor police work and make agencies more transparent. Some states now require officers to undergo mental health evaluations and to intervene if and when they witness a fellow officer's misconduct or abuse of authority. And several states modified or barred qualified immunity protections for officers, streamlined officer dismissal and appeals processes, and made disciplinary records more readily available to departments and the public. Only Tennessee responded to the violent riots of 2020 by enhancing penalties for criminal trespass during protests.

#### 1. California

Governor Gavin Newsom signed four policing policy bills into law.

Assembly Bill 846 requires law enforcement officers to be evaluated by a psychologist for potential bias against someone's race, ethnicity, gender, nationality, religion, disability, or sexual orientation. It requires the Commission on Peace Officer Standards and Training to "study, review, and

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<sup>77</sup> King County, Washington Charter Amendment 1, Mandatory Inquests for Police-Related Deaths (2020), [BALLOTPEDIA, https://ballotpedia.org/King\\_County,\\_Washington,\\_Charter\\_Amendment\\_1,\\_Mandatory\\_Inquests\\_for\\_Police-Related\\_Deaths\\_\(November\\_2020\)](https://ballotpedia.org/King_County,_Washington,_Charter_Amendment_1,_Mandatory_Inquests_for_Police-Related_Deaths_(November_2020)) (last visited Mar. 14, 2021).

<sup>78</sup> King County, Washington Charter Amendment 4, Office of Law Enforcement Oversight Subpoena Power Amendment (2020), [BALLOTPEDIA, https://ballotpedia.org/King\\_County,\\_Washington,\\_Charter\\_Amendment\\_4,\\_Office\\_of\\_Law\\_Enforcement\\_Oversight\\_Subpoena\\_Power\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/King_County,_Washington,_Charter_Amendment_4,_Office_of_Law_Enforcement_Oversight_Subpoena_Power_Amendment_(November_2020)) (last visited Mar. 14, 2021).

<sup>79</sup> King County, Washington Charter Amendment 5, Return Sheriff to an Appointed Position Measure (2020), [BALLOTPEDIA, https://ballotpedia.org/King\\_County,\\_Washington,\\_Charter\\_Amendment\\_5,\\_Return\\_Sheriff\\_to\\_an\\_Appointed\\_Position\\_Measure\\_\(2020\)](https://ballotpedia.org/King_County,_Washington,_Charter_Amendment_5,_Return_Sheriff_to_an_Appointed_Position_Measure_(2020)) (last visited Mar. 14, 2021).

<sup>80</sup> King County, Washington Charter Amendment 6, Allow County Council to Determine Duties of the Sheriff Measure (2020), [BALLOTPEDIA, https://ballotpedia.org/King\\_County,\\_Washington,\\_Charter\\_Amendment\\_6,\\_Allow\\_County\\_Council\\_to\\_Determine\\_Duties\\_of\\_the\\_Sheriff\\_Measure\\_\(2020\)](https://ballotpedia.org/King_County,_Washington,_Charter_Amendment_6,_Allow_County_Council_to_Determine_Duties_of_the_Sheriff_Measure_(2020)) (last visited Mar. 14, 2021).

update regulations and screening materials to identify explicit and implicit bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation related to emotional and mental condition evaluations.”<sup>81</sup> And the new law requires that law enforcement job descriptions “deemphasize the paramilitary aspects of the job and place more emphasis on community interaction and collaborative problem solving, as specified.”<sup>82</sup>

With Assembly Bill 1185, the California legislature authorized counties to create a board to oversee the county’s sheriff’s office.<sup>83</sup> In response to the death of George Floyd, California passed Assembly Bill 1196, prohibiting law enforcement officers from using a carotid or choke hold restraint.<sup>84</sup> After enacting Assembly Bill 1506, California law also now requires the state’s attorney general “to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian,” and, “[c]ommencing on July 1, 2023, ... to operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.”<sup>85</sup>

## 2. Connecticut

Governor Ned Lamont signed House Bill 6004, a comprehensive policing policy bill.<sup>86</sup> The broad legislation (i) amends police training policies; (ii) requires police officers to use body and dashboard cameras; (iii) limits the circumstances under which an officer’s use of deadly physical force is justified, establishes factors for evaluating the officer’s action, and limits the use of a chokehold or similar restraints; (iv) allows towns to establish civilian police review boards; (v) requires law enforcement to adopt a uniform statewide crowd management policy for police officers; (vi) establishes the Office of the Inspector General, and requires the inspector general to investigate use-of-force cases and prosecute cases in which the use of force was not justified; and (vii) limits the circumstances under which law enforcement officials may conduct consent searches on an individual’s body and motor vehicles stopped solely for motor vehicle violations.<sup>87</sup>

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<sup>81</sup> A.B. 846, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2020), *available at* [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB846](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB846).

<sup>82</sup> *Id.*

<sup>83</sup> A.B. 1185, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2020), *available at* [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1185](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1185).

<sup>84</sup> A.B. 1196, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2020), *available at* [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1196](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1196).

<sup>85</sup> A.B. 1506, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2020), *available at* [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1506](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1506).

<sup>86</sup> H.B. 6004, 2020 Leg. (Conn. 2020), *available at* [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which\\_year=2020&bill\\_num=6004](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2020&bill_num=6004).

<sup>87</sup> *Id.*

### 3. Colorado

Colorado enacted two policing bills. With House Bill 20-1375, the legislature repealed the “authority for the division of criminal justice to expend an unused appropriation for the law enforcement grant program in the next fiscal year without further appropriation.”<sup>88</sup>

Senate Bill 20-217 covers a broad range of policing activity, including the following:

- Requires officer dismissal for unlawful use of force;
- Requires officers to give crowds at protests and demonstrations advance notice before using crowd-control agents such as impact projectiles, pepper spray, and tear gas;
- Bans qualified immunity as a legal defense for law enforcement officers in civil actions alleging violations of constitutional rights;
- Bans the use of chokehold restraints;
- Requires officers to intervene if another officer uses unlawful physical force;
- Requires officers use a legal basis for stopping an individual;
- Will require officers to wear body cameras and release recording of all incidents to the public within 21 days after the incident, beginning July 1, 2023;
- Will require the division of criminal justice to issue an annual report containing information about officer interactions with the public and create a searchable database with this information, beginning July 1, 2023;
- Will require the Police Officer Standards and Training Board to create and maintain a database containing information about all officers’ “[u]ntruthfulness; [r]epeated failure to follow P.O.S.T. board training requirements; [d]ecertification; and [t]ermination for cause.”<sup>89</sup>

### 4. Delaware

Governor John Carney signed legislation banning law enforcement officers from using chokeholds in most situations. House Bill 350 created the crime of aggravated strangulation, a Class D felony, and allows “a chokehold . . . only . . . when the person reasonably believes deadly force is warranted in order to protect the life of a civilian or law-enforcement officer.”<sup>90</sup>

### 5. Hawaii

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<sup>88</sup> H.B. 20-1375, 2020 Gen. Assem., Reg. Sess. (Colo. 2020), *available at* <https://leg.colorado.gov/bills/hb20-1375>.

<sup>89</sup>S.B. 20-217, 2020 Gen. Assem., Reg. Sess. (Colo. 2020), *available at* <https://leg.colorado.gov/bills/sb20-217>.

<sup>90</sup> H.B. 350, 150th Gen. Assem. (Del. 2020), *available at* <https://legis.delaware.gov/BillDetail?legislationId=48157>.

HB 285 HD1, SD2, CD1 became law without Governor David Ige's signature. The legislation is intended "to enhance the public's trust in law enforcement and standardize best practices for the use of force between the counties."<sup>91</sup> Accordingly, the statute (i) requires county police chiefs to disclose to the legislature the identity of suspended or discharged officers; (ii) amends Hawaii law to allow for disclosing information related to the suspension or discharge of a police officer; (iii) authorizes the law enforcement standards board to establish uniform statewide standards for law enforcement and the use of force; and (iv) explicitly allows the law enforcement standards board to revoke the certification of law enforcement officers for misconduct or failure to meet qualifying standards as warranted.<sup>92</sup>

#### 6. Iowa

House File 2647 bans police officers from using chokeholds, prevents the hiring of officers previously fired because of misconduct, allows the state's attorney general to prosecute an officer if the officer kills someone, and requires officers to undergo anti-bias training annually.<sup>93</sup>

#### 7. Minnesota

Governor Tim Walz signed House File 1 into law.<sup>94</sup> The wide-ranging police policy legislation:

- Prohibits officers from using chokeholds in most situations;
- Bans so-called "warrior training" for law enforcement officers;
- Requires officers to intervene if another officer uses unlawful physical force;
- Requires officers to have mental health and crisis intervention training;
- Creates a law enforcement advisory council;
- Amends use of force and incident reporting policies; and
- Allocates \$3.37 million "to establish an independent Use of Force Investigations Unit in the Bureau of Criminal Apprehension to conduct officer-involved death investigations, investigate conflict of interest cases involving peace officers and investigate criminal sexual conduct cases involving peace officers."<sup>95</sup>

#### 8. Nevada

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<sup>91</sup> H.B. 285, H.D. 1, S.D. 2, C.D. 1, 30th Leg. (Haw. 2020), *available at* [https://www.capitol.hawaii.gov/session2020/bills/HB285\\_CD1\\_.htm](https://www.capitol.hawaii.gov/session2020/bills/HB285_CD1_.htm).

<sup>92</sup> *Id.*

<sup>93</sup> H.F. 2647, 88th Gen. Assem. (Iowa 2020), *available at* <https://www.legis.iowa.gov/docs/publications/LGI/88/HF2647.pdf>.

<sup>94</sup> H.F. 1, 91st Leg. Second Spec. Sess. (Minn. 2020), *available at* [https://www.revisor.mn.gov/bills/text.php?session=ls91&number=HF1&session\\_number=2&session\\_year=2020&version=list](https://www.revisor.mn.gov/bills/text.php?session=ls91&number=HF1&session_number=2&session_year=2020&version=list).

<sup>95</sup> *Id.*

Nevada enacted two policing policy laws, both signed by Governor Steve Sisolak. Assembly Bill 3 allows civilians to record law enforcement activity in certain circumstances; modifies use of physical force policies; requires officers to intervene if another officer uses unlawful physical force; requires a written drug and alcohol testing policy for officers; and requires law enforcement agencies to submit traffic stop-related reports to the legislature.<sup>96</sup>

Senate Bill 2 amends provisions of Nevada law commonly known as the “Police Officer Bill of Rights.” The statute largely enhances monitoring and oversight of law enforcement officer behavior. The amendments permit compelling an officer’s statement in a civil lawsuit; make it easier to investigate alleged officer misconduct; change rules for reassigning officers under investigation; allow investigated officers to inspect evidence and submit responses after an investigation; and change evidentiary rules for administrative proceedings against officers.<sup>97</sup>

#### 9. New Hampshire

New Hampshire statutorily amended police protocols, enacting House Bill 1645, which prohibits officers to use chokeholds, bans private prisons, requires officers to report police misconduct, and provides funding to municipalities for psychological stability screening for prospective law enforcement officers.<sup>98</sup>

#### 10. New Jersey

New Jersey’s legislature passed Assembly 744, requiring any law enforcement agency to receive the internal affairs and personnel files of prospective law enforcement officers before hiring any officer.<sup>99</sup>

#### 11. New Mexico

Governor Michelle Lujan Grisham signed Senate Bill 8 into law, which requires all state and local law enforcement officers to wear body cameras and archive the footage for at least 120 days. Additionally, the law imposes

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<sup>96</sup> A.B. 3, 80th Leg. (Nev. 2020), available at <https://www.leg.state.nv.us/Session/32nd2020Special/Reports/history.cfm?ID=21>.

<sup>97</sup> S.B. 2, 80th Leg. (Nev. 2020), available at <https://www.leg.state.nv.us/App/NELIS/REL/32nd2020Special/Bill/7153/Overview>.

<sup>98</sup> H.B. 1645, Gen. Ct. Reg. Sess. (N.H. 2020), available at [http://gencourt.state.nh.us/bill\\_status/billText.aspx?sy=2020&txtFormat=html&v=SA&id=1264](http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2020&txtFormat=html&v=SA&id=1264).

<sup>99</sup> A. 744, 218th Leg. (N.J. 2020), available at [https://www.njleg.state.nj.us/2020/Bills/A1000/744\\_11.HTM#:~:text=A744&text=Requires%20law%20enforcement%20agencies%20to,other%20agencies%20under%20certain%20circumstances](https://www.njleg.state.nj.us/2020/Bills/A1000/744_11.HTM#:~:text=A744&text=Requires%20law%20enforcement%20agencies%20to,other%20agencies%20under%20certain%20circumstances).

sanctions for law enforcement officers convicted of unlawful use of force or for failing to intervene when a fellow officer engages in excessive force.<sup>100</sup>

## 12. New York

New York enacted ten laws spanning a broad range of law enforcement policy and generally enhancing oversight and transparency requirements. The state's comprehensive legislation creates the Law Enforcement Misconduct Investigative Office to study and recommend policing strategies;<sup>101</sup> mandates New York State Police to have, wear, and use body cameras;<sup>102</sup> requires officers to report any instance in which they discharge a firearm;<sup>103</sup> and directs officers to give "attention to the medical and mental health needs" of a person in custody.<sup>104</sup> New York also amended reporting requirements related to misdemeanors;<sup>105</sup> made reporting a non-emergency incident involving someone in a protected class a Class B misdemeanor;<sup>106</sup> allows persons not under arrest or in police custody to record police activity;<sup>107</sup> permits disclosure of law enforcement disciplinary records;<sup>108</sup> and established the Office of Special Investigation to investigate any death following an encounter with law enforcement.<sup>109</sup> Lastly, New York criminalized "aggravated strangulation for police officers or peace officers where such officer commits the crime of criminal obstruction or breathing or blood circulation, or uses a chokehold or similar restraint, and causes serious physical injury or death."<sup>110</sup>

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<sup>100</sup> S.B. 8, 2020 Leg. (N.M. 2019), available at <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=8&year=20s>.

<sup>101</sup> S.B. 3595, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at

<https://www.nysenate.gov/legislation/bills/2019/s3595/amendment/original>.

<sup>102</sup> S.B. 8493, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/s8493>.

<sup>103</sup> A.B. 10608, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/a10608>.

<sup>104</sup> S.B. 6601, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/s6601/amendment/original>.

<sup>105</sup> A.B. 10609, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/a10609>.

<sup>106</sup> A.B. 1531, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at [https://www.nysenate.gov/search/legislation?sort=desc&searched=true&type=f\\_bill&bill\\_printno=A1531&bill\\_session\\_year=2019&bill\\_status=SIGNED\\_BY\\_GOV&page=1](https://www.nysenate.gov/search/legislation?sort=desc&searched=true&type=f_bill&bill_printno=A1531&bill_session_year=2019&bill_status=SIGNED_BY_GOV&page=1).

<sup>107</sup> S.B. 3253, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/s3253/amendment/original>.

<sup>108</sup> S.B. 8496, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/s8496>.

<sup>109</sup> S.B. 2574, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/s2574/amendment/original>.

<sup>110</sup> A.B. 6144, 2020 Gen. Assem., Reg. Sess. (N.Y. 2020), available at <https://www.nysenate.gov/legislation/bills/2019/a6144/amendment/original>.

### 13. Oregon

Governor Kate Brown signed six policing bills. Senate Bill 1604 requires an arbitrator in officer misconduct appeals “who makes a finding of misconduct consistent with the law enforcement agency's finding of misconduct to impose the same disciplinary action that was imposed by the agency, so long as the discipline was done pursuant to a discipline guide or matrix that was adopted by the agency as a result of collective bargaining.”<sup>111</sup> Like many other states, Oregon banned its law enforcement officers from using chokehold restraints in making arrests and detentions, except during cases in which officers may use deadly force,<sup>112</sup> and it now requires agencies to implement “rules requiring [a] police officer to intervene to stop another police officer from engaging in any act that is unethical or that violates law, rules or policy.”<sup>113</sup> House Bill 420 created the Joint Committee on Transparent Policing and Use of Force Reform to examine state law enforcement’s use of force and transparency policies.<sup>114</sup> House Bill 4207 directs the Department of Public Safety Standards and Training to establish a public statewide online database of police officer suspensions.<sup>115</sup> And, finally, Oregon responded to the confrontations between police and protestors by prohibiting law enforcement “from using tear gas for purposes of crowd control except in circumstances constituting riot.”<sup>116</sup>

### 14. Pennsylvania

Governor Tom Wolf signed House Bill 1841 and House Bill 1910 into law. The former requires law enforcement agencies to create a database containing information about law enforcement officers’ past disciplinary actions and performance evaluations, and to consult that database before hiring officers.<sup>117</sup> The latter requires agencies to provide officers with mental health evaluations focused on post-traumatic stress disorder if requested by an officer, by a police chief, or within 30 days of an incident where an officer used lethal force. The law also requires officers to have additional training

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<sup>111</sup> S.B. 1604, 80th Leg. Assem. Reg. Sess. (Ore. 2020), available at <https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/SB1604>.

<sup>112</sup> H.B. 4203, 80th Leg. Assem. Reg. Sess. (Ore. 2020), available at <https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4203>.

<sup>113</sup> H.B. 4205, 80th Leg. Assem. Reg. Sess. (Ore. 2020), available at <https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4205>.

<sup>114</sup> H.B. 4201, 80th Leg. Assem. Reg. Sess. (Ore. 2020), available at <https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4201>.

<sup>115</sup> H.B. 4207, 80th Leg. Assem. Reg. Sess. (Ore. 2020), available at <https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4207>.

<sup>116</sup> H.B. 4208, 80th Leg. Assem. Reg. Sess. (Ore. 2020), available at <https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4208>.

<sup>117</sup> H.B. 1841, 2019 Gen. Assem. Reg. Sess. (Va. 2020), available at <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=1841>.

regarding (i) individuals with mental illness, intellectual disabilities, and autism; (ii) de-escalation techniques; and (iii) when use of deadly force is allowed.<sup>118</sup>

#### 15. Tennessee

Unlike other states that responded to the protests and civil unrest by adopting new officer training requirements or enacting comprehensive police reform measures, Tennessee responded by enhancing penalties for offenses associated with riots and protest activity. House Bill 8005 made it a felony punishable by up to six years in prison to camp illegally on state property and created a mandatory incarceration period for offenses related to rioting.<sup>119</sup>

#### 16. Utah

Utah's House Bill 5007 bans law enforcement officers from using chokehold restraints in most situations.<sup>120</sup>

Prior to the riots and unrest following George Floyd's death, Utah had enacted Senate Bill 173, establishing criminal penalties for protests that disturb legislative or other government meetings. The legislation expanded the definition of "disorderly conduct" to include recklessly causing public inconvenience or alarm at official meetings, refusing to leave, and obstructing pedestrian traffic at an official meeting. Such disorderly conduct is punishable by fine and up to three months in jail for a third offense.<sup>121</sup>

#### 17. Vermont

Vermont's legislature passed and Governor Scott signed S219, requiring a statewide law enforcement use of force policy; prohibiting the use of chokeholds; and requiring all law enforcement officers to wear body cameras.<sup>122</sup>

#### 18. Virginia

Virginia enacted two policing measures designed to curb misconduct and enhance civilian oversight of law enforcement. House Bill 5051 directs the Virginia Department of Criminal Justice Services to adopt standards of conduct for law enforcement and corrections officers, as well as due process

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<sup>118</sup> H.B. 1910, 2019 Gen. Assem. Reg. Sess. (Pa. 2020), *available at* <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/brCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=1910&pn=4012>.

<sup>119</sup> H.B. 8005, 111th Gen. Assem. (Tenn. 2020), *available at* <http://www.capitol.tn.gov/Bills/111/Bill/HB8005.pdf>.

<sup>120</sup> H.B. 5007, 2020 Leg. (Utah 2020), *available at* <https://le.utah.gov/~2020s5/bills/static/HB5007.html>.

<sup>121</sup> S.B. 173, 2020 Leg. (Utah 2020), *available at* <https://le.utah.gov/~2020/bills/static/SB0173.html>.

<sup>122</sup> S. 219, Gen. Assem. (Vt. 2020), *available at* <https://legislature.vermont.gov/bill/status/2020/S.219>.

procedures and notification requirements for decertifying officers for serious misconduct and standards violations.<sup>123</sup> A second statute, House Bill 5055, authorizes local jurisdictions to create law enforcement civilian oversight bodies. The law authorizes such oversight bodies to (i) investigate civilian complaints regarding law enforcement misconduct; (ii) investigate law enforcement incidents involving use of force, death, serious injury, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents; (iii) make binding disciplinary determinations in cases that involve serious breaches of departmental and professional standards; (iv) investigate and recommend changes to law enforcement policies, practices, and procedures; (v) review all internal law enforcement agency investigations and the sufficiency of any discipline resulting from such investigations; (vi) request law enforcement agency annual expenditure reports and make budgetary recommendations; and (vii) undertake any other duties reasonably necessary to effectively oversee law enforcement agencies. Such oversight bodies, however, are not authorized to oversee Virginia's sheriff's departments.<sup>124</sup>

## VII. MISCELLANEOUS

### A. California

Governor Gavin Newsom signed into law Senate Bill 203, which requires minors to consult with legal counsel prior to a custodial police interrogation or the waiver of *Miranda* rights.<sup>125</sup>

California also restored voting rights for some convicted felons. California voters approved Proposition 17, which restored voting rights to those on parole for a felony conviction.

### B. Kentucky

Kentucky voters approved Amendment 1, or "Marsy's Law," which adds crime victims' rights to the state constitution, including the rights to due consideration for the victim's safety, dignity, and privacy; to notification

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<sup>123</sup> H.B. 505, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at [https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5051&utm\\_source=The+Appeal&utm\\_campaign=4b582c88c5-EMAIL\\_CAMPAIGN\\_2018\\_06\\_22\\_03\\_58\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_72df992d84-4b582c88c5-58410691](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5051&utm_source=The+Appeal&utm_campaign=4b582c88c5-EMAIL_CAMPAIGN_2018_06_22_03_58_COPY_01&utm_medium=email&utm_term=0_72df992d84-4b582c88c5-58410691).

<sup>124</sup> H.B. 5055, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at [https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5055&utm\\_source=The+Appeal&utm\\_campaign=4b582c88c5-EMAIL\\_CAMPAIGN\\_2018\\_06\\_22\\_03\\_58\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_72df992d84-4b582c88c5-58410691](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5055&utm_source=The+Appeal&utm_campaign=4b582c88c5-EMAIL_CAMPAIGN_2018_06_22_03_58_COPY_01&utm_medium=email&utm_term=0_72df992d84-4b582c88c5-58410691).

<sup>125</sup> S.B. 203, 2019-2020 Gen. Assem., Reg. Sess. (Cal. 2020), available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB203](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB203).

about proceedings; to be heard at release, plea, or sentencing proceedings; to be present at trials; to consult with the state's attorneys; to reasonable protection from the accused; to be notified of the accused's release or escape; to safety considerations when setting bail or determining the accused's release; and to restitution from the convicted. The amendment relies upon the state legislature to define "victim."<sup>126</sup>

*C. Virginia*

Virginia's Senate Bill 1 repealed the requirement that failure to pay fines or court costs results in a suspended driver's license. And the new law requires the Department of Motor Vehicles to return or reinstate any driver's license that was suspended prior to July 1, 2019, solely for nonpayment of fines or costs.<sup>127</sup>

XIV. CONCLUSION

In 2020, states and local jurisdictions passed a variety of new criminal laws and amendments, ranging from robust reforms and state constitutional amendments in some cases to more modest and local steps in others. An array of criminal justice measures appeared on local and statewide ballots in November, giving voters a more direct say in these matters. But in the wake of the unrest over the summer, changes to policing policy at the state and local levels were by far the most common and widespread criminal law modifications made in 2020.

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<sup>126</sup> Kentucky Constitutional Amendment 1, Marsy's Law Crime Victims Rights Amendment (2020), BALLOTPEDIA, [https://ballotpedia.org/Kentucky\\_Constitutional\\_Amendment\\_1,\\_Marsy%27s\\_Law\\_Crime\\_Victims\\_Rights\\_Amendment\\_\(2020\)](https://ballotpedia.org/Kentucky_Constitutional_Amendment_1,_Marsy%27s_Law_Crime_Victims_Rights_Amendment_(2020)) (last visited Mar. 14, 2021).

<sup>127</sup> S.B. 1, 2020 Gen. Assem., Reg. Sess. (Va. 2020), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB1>.