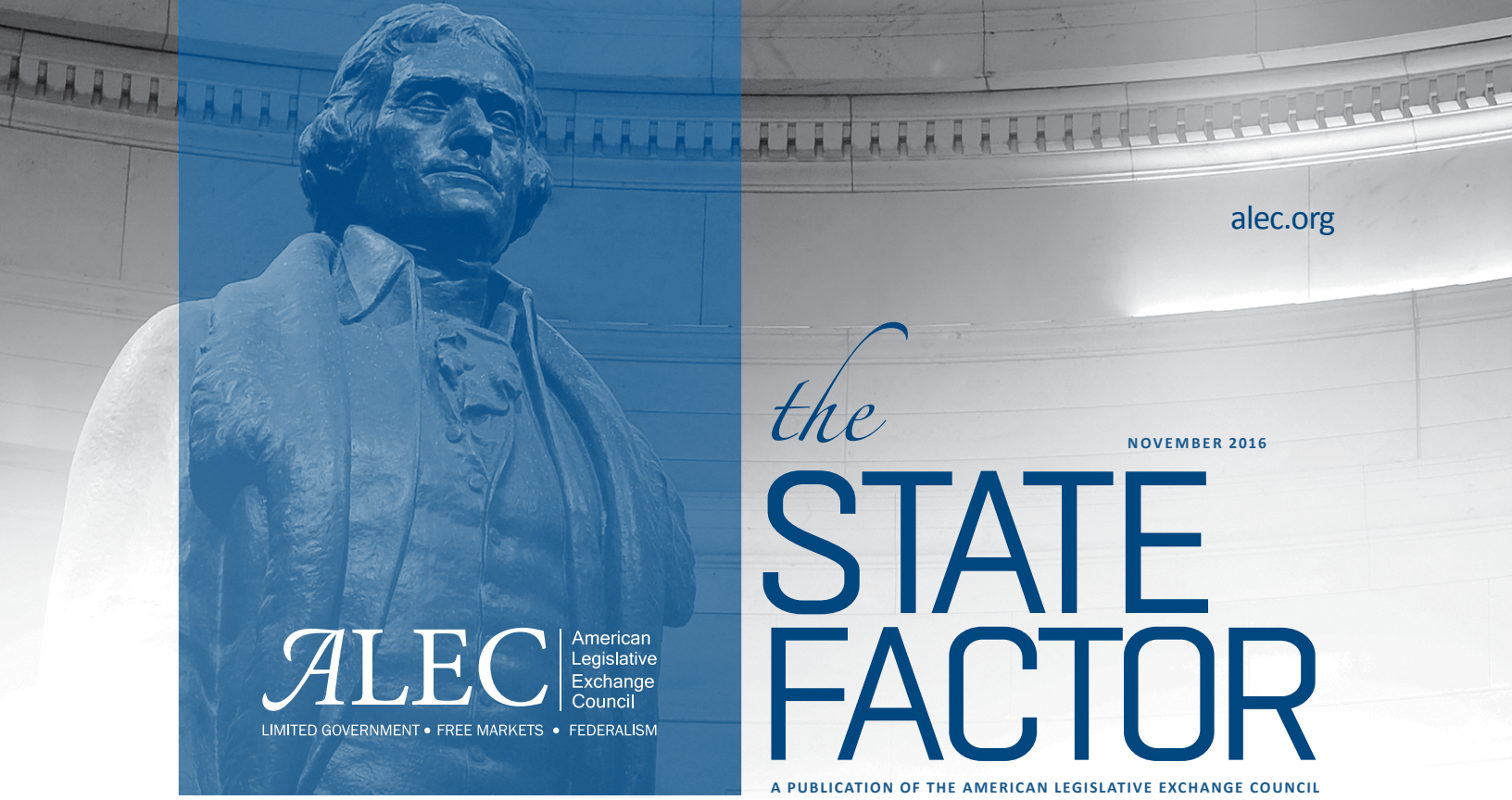

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2016: A Successful Year for Criminal Justice Reform and Path to the Future

By Ronald J. Lampard

Executive Summary

In 2005, Texas officials noticed the alarming rate at which their state's corrections budget was growing.[1] By 2007, the Texas Department of Criminal Justice wanted the state legislature to provide $523 million in additional funding for three new prisons, which would have allowed the prison population to grow to more than 168,000 by 2012.[2] The department had reasons to expect a positive response for a funding request. After all, Texas was well-known for its "tough on crime" stance.

Members of the Texas Legislature, such as Republican Representative Jerry Madden and conservative Democratic Senator John Whitmire, decided on a bold strategy. They teamed up to convince the members of the legislature and then-Governor Rick Perry to spend $241 million on treatment, mental health and rehabilitation, rather than on new prison facilities.[3] Three years later, Texas' prison population declined by 15,000 inmates and probation recidivism fell by nearly 25 percent.[4] In addition, by the time Governor Perry had left office in January of 2015, the crime rate declined to its lowest rate since 1968.[5] Ultimately, under Perry's leadership as governor, Texas shut down three prisons and saved taxpayers $2 billion.[6] The movement to reform underperforming and wasteful criminal justice programs had begun.

Criminal justice reform in many states across the country has shown that conservatives have followed Texas' lead and strongly supported the issue. Additionally, there is bipartisan consensus that the system is in need of reform. The high costs of incarceration and high rates of recidivism demonstrate this

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point of agreement. As of fiscal year 2010, the average annual cost of incarcerating a state prisoner was $31,286, with the costs ranging from $14,603 in Kentucky to $60,076 in New York.[7] Ultimately, taxpayers deserve the most efficient use of their funds. Enacting certain criminal justice reforms would save taxpayer funds while simultaneously ensuring public safety.

"Texas reduced its incarceration rate by 11 percent from 2009-2014 and experienced a 24 percent reduction in crime."

In previous years, states such as Texas, Georgia and Utah have enacted criminal justice reforms that have reduced the rate of incarceration in their respective states and have not seen their crime rates rise. In fact, many of those states experienced drops in crime.[8] For example, Texas reduced its incarceration rate by 11 percent from 2009-2014 and experienced a 24 percent reduction in crime.[9] Thus, other states have sought to reduce the cost of incarceration to their state by offering alternatives to incarceration for nonviolent, low-risk offenders and have placed an emphasis on treating those with substance abuse problems instead of incarcerating them. Due to the success of current criminal justice reform policies that have been enacted, states have begun to explore other potential areas of criminal justice reform. It is worth noting that this publication only discusses some of the criminal justice reforms that states have passed this year.

Policies Serving as the Basis for These Reforms in the Legislature

A. Alternatives to Incarceration and Taxpayer Saving Measures

Many states have recognized the exploding costs of incarceration and are seeking safe and reasonable ways to reduce their prison population. In some states this year, it was the legislature that took the lead despite no mention of criminal justice issues by their respective governor during their State of the State address. The United States currently has the highest incarceration rate in the world.[10] States have begun to consider criminal justice reform policies, especially when it comes to nonviolent individuals who struggle with substance abuse.

The American Legislative Exchange Council (ALEC) has numerous model policies that could serve to make these proposals become meaningful reforms in these states. In fact, many of these model policies have been enacted in various states. For example, the ALEC model *Resolution on Low-Level Drug Possession Offenders* emphasizes the need to offer those with substance abuse issues alternatives to incarceration, such as drug treatment programs that seek to reduce the recidivism rate.[11] State spending on corrections has grown faster than nearly any other budget item in the past 20 years, reaching roughly $50 billion.[12] Therefore, in conjunction with the *Resolution on Low-Level Drug Possession Offenders*, the ALEC model *Resolution in Support of Justice Reinvestment* is rooted in research-based policies that save money on corrections, lower recidivism rates, and make communities safer.[13] Certain states have adopted justice reinvestment principles, including alternatives to incarceration such as intervention, education, treatment, and intense supervision and have seen a sharp reduction in their correction costs.[14] These savings could subsequently be reinvested into other areas of a state's budget with the remaining being returned to hardworking taxpayers.

An additional policy to help reduce the costs of incarceration is to allow sentencing judges the discretion to depart from mandatory minimum sentences for certain nonviolent, low-risk offenders. The criteria listed in the ALEC model *Justice Safety Valve Act* ensures offenders eligible for a downward departure from an otherwise mandatory minimum sentence are nonviolent and low-risk and therefore would not jeopardize pub-

lic safety by allowing them to be sentenced more leniently.[15] Simultaneously, the policy allows for commonsense alternatives to lengthy, expensive prison sentences. The *Justice Safety Valve Act* does not require that judges depart from mandatory minimum sentences for offenders, but rather provides judges with discretion to do so if certain criteria are met.

I. Maryland

This year, Maryland passed the Justice Reinvestment Act. It was signed into law by Governor Larry Hogan after passing the Maryland House of Delegates by an overwhelming margin of 123-18 after it previously passed unanimously in the Senate.[16] The State of Maryland will be safer for moving forward with commonsense reforms that will improve and modernize the states' criminal justice system.

Key provisions of the bill include eliminating mandatory minimum sentences for nonviolent drug offenders, better utilization of alternatives to incarceration, the elimination of the sentencing disparity between crack cocaine and powder cocaine and a reduction in age for the possibility of geriatric parole.[17] While many provisions include reducing sentences, including mandatory minimum sentences for nonviolent or low-risk offenders, the bill also increases penalties for violent criminals. For example, the maximum sentence for a second-degree murderer was increased from 30 years to 40 years.[18] In addition, abuse that results in the death of a child who is at least 13 years of age is now punishable by up to 40 years in prison.[19] Furthermore, abuse that results in the death of a child under the age of 13 is now punishable by a maximum sentence of life in prison.[20] Finally, the act creates a state racketeering statute to give police and prosecutors another option for going after gang members who deal drugs.[21] Racketeering statutes passed in other states have improved the ability of law enforcement agencies in those states to better combat illegal gang activity. For example, under Louisiana's racketeering statute, state prosecutors are not limited to proving individual criminal acts. Essentially, the statute permits prosecutors to charge individuals who participate in two or more criminal activities in support of an overarching criminal enterprise.[22] In practice, Louisiana's Racketeering statute was used to successfully prosecute 20 individuals in a gang that was responsible for ten murders, a large stash of weapons and an illegal drug trade.[23]

> "These increases in punishments for dangerous offenders, as well as offering alternatives to incarceration for nonviolent and low-risk drug offenders demonstrate that the Maryland Justice Reinvestment Act is not soft on crime, but rather smart on crime. It keeps dangerous offenders off the streets and provides rehabilitative services to low-risk offenders, which cost the taxpayer significantly less."

These increases in punishments for dangerous offenders, as well as offering alternatives to incarceration for nonviolent and low-risk drug offenders demonstrate that the Maryland Justice Reinvestment Act is not soft on crime, but rather smart on crime. It keeps dangerous offenders off the streets and provides rehabilitative services to low-risk offenders, which cost the taxpayer significantly less. Overall, the measure is a balanced policy reform that will serve the citizens of Maryland well.

II. Oklahoma

One way states have sought to reduce costs is to reclassify crimes. In essence, certain states have proposed or passed reforms that reclassify lower-level felonies, such as drug possession and nonviolent property crimes like theft under a certain dollar value. Some states, like Oklahoma and Alaska, have sought to reclassify simple possession of drugs under a certain amount as misdemeanors and have additionally sought to have the lowest level misdemeanor offenses be punishable by only a fine.[24]

Following-up on her call for reform during her State of the State Address, Oklahoma Governor Mary Fallin signed four major,

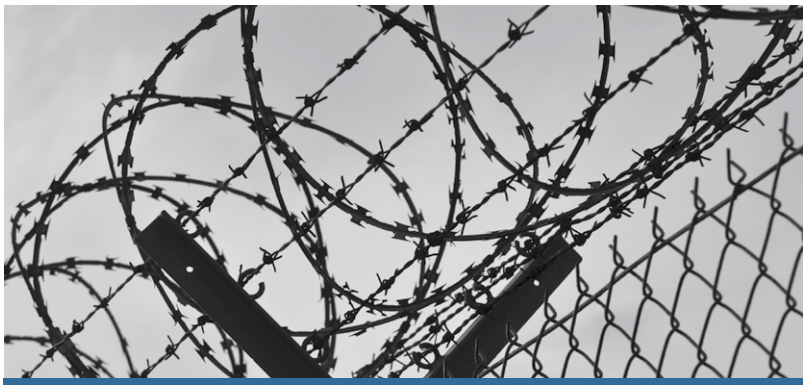
bipartisan bills into law on April 27. The bundle of bills overwhelmingly passed the Oklahoma House, and then cleared the Senate on April 20. House Bill 2472 gives prosecutors the discretion to file misdemeanor rather than felony charges for any crime that does not require offenders to serve 85 percent of their sentence.[25] Those crimes which require offenders to serve 85 percent of their sentence include felony crimes of violence. The law allows for a prosecutor to take into account the defendant's criminal history and the nature of the criminal offense.[26] Hence, violent and high-risk offenders would not be eligible to be charged with misdemeanor offenses. This is an effort to help nonviolent and low-risk offenders get back on their feet and to allow for a more informed and individualized approach to sentencing.

Oklahoma also decided to directly address the problem of substance abuse. House Bill 2753 expands the eligibility for drug courts and community sentencing to a larger number of defendants.[27] This is timely, as alternatives to prison for these types of offenders are more commonly being recognized as a superior solution that results in saving taxpayer dollars and increasing the likelihood of rehabilitation.

House Bill 2479 adjusts mandatory minimum and maximum sentences for felony drug possession.[28] Under current law, mandatory minimum and maximum sentences are two to 10 years for a first offense, and four to 20 years for a second and third offense. The bill changes that to zero to five years for a first offense, zero to 10 years for a second offense and four to 15 years for a third offense. In addition, the law classifies possession of marijuana first offense as a misdemeanor punishable by up to one year of incarceration. Furthermore, it classifies possession of marijuana second offense as a felony, but reduces both the mandatory minimum sentence to one year and the maximum sentence to five years, down from the previous sentencing range of two to 10 years.[29] Lastly, House Bill 2751 raises the threshold to be charged with a felony property crime from $500 to $1,000.[30] All of these reforms affect nonviolent offenders who are a low-risk to public safety, while simultaneously saving Oklahoma taxpayer dollars. Oklahoma County District Attorney David Prater and Former Tulsa County District Attorney Tim Harris supported the comprehensive reforms. In fact, Prater believed the law would have a positive impact. "With measures like this, I do believe that ultimately we will see a decrease in the prison population while not increasing violent crime, and actually this will have a positive impact, I believe ultimately, on public safety," he said.[31]

III. Alaska

The Alaska Legislature also followed their governor's call to reform their criminal justice system. Senate Majority Leader John Coghill sponsored Senate Bill 91 (S.B. 91), a broad reform measure that is estimated to save Alaska hundreds of millions of dollars over the next decade.[32] This law brings Alaska's criminal sentences in line with other states that have passed criminal justice reforms and divert those low-level, nonviolent offenders into more effective alternatives to incarceration. It also provides for more robust community supervision programs by focusing resources on dangerous or high-risk offenders. In addition, the law expands treatment and programming for those who suffer from substance abuse issues.



"Alaska's prison population was projected to rise by 27 percent by 2024, but S.B. 91 will reduce the prison population by 13 percent during the same period, which will result in saving an estimated $380 million."

Similar to one of the measures passed in Oklahoma, S.B. 91 also raises the threshold to be charged with a felony property crime to $1,000. The previous threshold for felony theft in Alaska was $750, which differed from Oklahoma's $500 threshold.[33]

Importantly, it does not reduce penalties for violent offenders. Furthermore, the sweeping overhaul will reinvest nearly $100 million from savings to substance abuse treatment, victim services and reentry services during the next six years. Alaska's prison population was projected to rise by 27 percent by 2024, but S.B. 91 will reduce the prison population by 13 percent during the same period, which will result in saving an estimated $380 million.[34] After he signed the bill into law, Governor Walker spoke of the positive effects that the law will have.

> With S.B.91, we're dropping the practices that we know don't work to keep communities safe, and expanding the practices that do. I'm proud to join legislative leaders in adopting this reform package. It reflects a broad consensus among stakeholders and practitioners in Alaska on how to get the most public safety out of the dollars we spend.[35]

IV. New Hampshire

Finally, New Hampshire addressed its growing substance abuse problem with Senate Bill 464 (S.B. 464), which was primarily sponsored by Senate Majority Leader Jeb Bradley, a Republican. Governor Maggie Hassan, a Democrat, signed the bill into law on June 14. S.B. 464 establishes and permits more than $2 million in matching state grants for drug court programs at the county level, while also expanding existing ones. In essence, S.B. 464 establishes a state-wide drug court program.[36] In addition, S.B. 464 creates a statewide coordinator to work with the courts to help guarantee best practices are implemented. Drug courts take nonviolent and high-need offenders and put them into a program of treatment and accountability.

A statewide approach to drug courts will help reduce crime and save taxpayer dollars, while helping people with addiction return to being productive members of society. Saving taxpayer dollars is a central pillar of a public official's duty, and given the overall criminal justice cost of opioid dependence is estimated to be $5.2 billion annually, measures that seek to reduce that cost are necessary, especially if such measures simultaneously reduce crime rates.[37]

During the past 20 years, research has revealed evidence-based policies and practices for protecting communities while also reducing state spending on corrections. For example, research demonstrates that incarceration can increase recidivism for low-risk drug offenders. Dedicating resources to violent or repeat offenders would allow the state to focus on the individuals most likely to reoffend or to be a danger to the community.[38] In addition, during the past five years, a majority of states decreased their incarceration rates while simultaneously seeing a decrease in their crime rates.[39]

Furthermore, research establishes that states can place an emphasis on alternatives to incarceration for nonviolent and low-risk offenders and not see an increase in the crime rate. Additionally, by placing an emphasis on treatment programs for low-level drug offenders, recidivism rates will indeed fall. In essence, policies that promote alternatives to incarceration for drug offenders and prioritize a focus on serious or violent offenders both improve public safety and save taxpayer money.

B. Expanding Employment Opportunities

Each year, many of those convicted of crimes are released from prison. These individuals often face daunting obstacles for the remainder of their lives in securing employment and making a livelihood for themselves. The ALEC model *A Bill to Ban the Box on Employment Applications* precludes state employers from asking about criminal history on the initial application.[40] It does permit the state employer to inquire about prior criminal history and any mitigating factors later in the application process, such as the length of time elapsed since the offense, the age at the time of conviction, and the nature and gravity of the offense. It does not apply to the private sector; companies would be free to choose whether they would have a "ban the box" policy for potential employees. ALEC does not support "ban the box" for private sector employers as it represents an unnecessary mandate on the private-sector.

This policy is not an attempt to force employers to hire a convicted criminal, but rather necessitates a more holistic and thorough consideration of applicants. ALEC recognizes the importance of employment for stable and prosperous communities, and the essential role employment plays in reducing recidivism. This issue is especially crucial when bearing in mind between 70 and 100 million Americans have a criminal history, some including minor infractions, misdemeanors, and nonviolent crimes.[41]

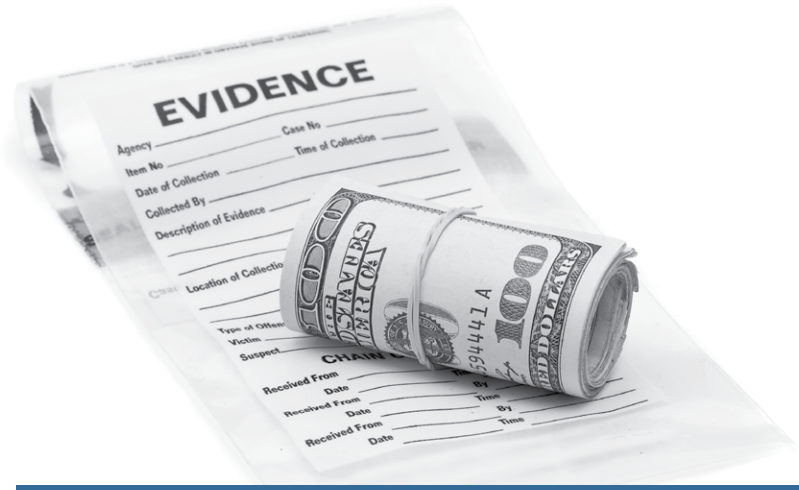
This year, both Tennessee and Louisiana passed measures colloquially known as "ban the box." Tennessee passed Senate Bill 2440, which requires state employers to delay inquiring about criminal records while considering candidates for employment.[42] Certain jobs do not qualify for this deferment, such as those requiring a criminal background check under federal law or jobs in education.[43] In addition, Louisiana passed House Bill 266, a measure nearly identical to the one passed in Tennessee.[44] The bill passed the Louisiana Senate by a 30-6 vote, with broad bipartisan support.[45] In essence, the bill removes the requirement that applicants for state jobs disclose their criminal record on the initial job application. The government employer may choose to inquire into criminal history during an interview, which allows the applicant an opportunity to show efforts at rehabilitation.

Importantly, the "ban the box" laws in Tennessee and Louisiana do not apply to the private sector. Therefore, private employers are free to inquire about one's criminal history on the application. However, some companies, such as Koch Industries, have adopted a "ban the box" policy for those applying for employment.[46]

C. Civil Asset Forfeiture Reform

Numerous states reformed their civil asset forfeiture process. Maryland Governor Larry Hogan signed Senate Bill 161, which was introduced by Republican State Senator Michael Hough. It contains several provisions of the ALEC model *Asset Forfeiture Process and Private Property Protection Act* and also contains substantial similarities to the ALEC model *Reporting of Seizure and Forfeiture Act*.[47] One specific feature both the ALEC model policies and S.B. 161 share is a requirement that government agencies that have conducted either seizures or forfeitures be more open and transparent. For example, S.B. 161 requires those agencies to report on an annual basis the date of the seizure, the type of property seized, the type of crime associated with the seizure, the outcome of the related criminal action, and the market value of the property seized. Additionally, it requires reporting of judgments of forfeiture in favor of the state. The measure had great bipartisan support; it passed in the Maryland Senate unanimously.[48]

Governor Hogan's signature demonstrates that Maryland is committed to reforming its civil asset forfeiture laws. The



"In addition, before S.B. 161 was enacted, the property owner had to prove the innocence of their property from the alleged underlying criminal activity, rather than placing the burden on the government to prove that the property was tied to criminal activity."

Institute for Justice's report, Policing for Profit, states that Maryland's current civil asset forfeiture laws, "suffer from a troubling lack of transparency: Agencies are not required to track or report their forfeitures."[49] In addition, before S.B. 161 was enacted, the property owner had to prove the innocence of their property from the alleged underlying criminal activity, rather than placing the burden on the government to prove that the property was tied to criminal activity. As a result of S.B. 161, the civil asset forfeiture process is more transparent and will not require an individual to prove their property is "innocent." Furthermore, it places restrictions on the state of Maryland being able to participate in the United States Department of Justice's Equitable Sharing Program, which allows state government agencies to receive funds as the result of seizures and subsequent forfeitures conducted in conjunction with federal agencies.[50] While the new law does

not require a criminal conviction for an individual's property to be forfeited, it nevertheless makes numerous improvements to the civil asset forfeiture process.

New Hampshire also reformed their civil asset forfeiture laws in 2016. These reforms no longer allow government agencies to seize and keep one's property without ever being charged with a crime. Senate Majority Leader Jeb Bradley was the primary sponsor of the bill. As a result of this law being passed, the Granite State became the eleventh state to require a criminal conviction in order for the state to obtain a judgment of forfeiture in most or all forfeiture cases.[51] The legislation, Senate Bill 522 (S.B. 522), also raises the standard of proof to "clear and convincing evidence," as the burden the government must meet in demonstrating that the property seized was connected to the underlying charges of which the defendant was convicted.[52] In addition, the law requires the attorney general to provide thorough accounting records of grants made via the state's drug forfeiture fund.

S.B. 522 makes several significant reforms; however, individual agencies' incentive to profit from forfeiture cases remains. Under New Hampshire law, once property is forfeited, local agencies are permitted to keep 45 percent of the proceeds; an additional 45 percent is provided to the state's drug forfeiture fund.[53] The remaining 10 percent goes to an account for the state's Department of Health and Human Services. According to the Institute for Justice's Policing for Profit report, more than $1.15 million in property has been forfeited in New Hampshire from 1999 to 2013.[54]

It is worth noting that S.B. 522 does not end New Hampshire's participation in the U.S. Justice Department's Equitable Sharing Program, which will allow state government agencies to keep funds seized by federal and state agencies or joint task forces. According to the Institute for Justice, New Hampshire received more than $17.8 million via the United States Justice Department's Equitable Sharing Program between 2000 and 2013.[55]

However, due to the law's requirement of a criminal conviction, New Hampshire became the latest state to join a growing, bipartisan movement of states across the country. The signing of S.B. 522 means New Hampshire is the eighth state to have reformed its forfeiture laws in 2016.[56]

D. Juvenile Justice

As of 2016, 41 states presumptively treat 17-year-olds as juveniles. Currently, Louisiana remains one of the nine states where all 17-year-olds are treated as adults in the state's criminal justice system. In Louisiana in 2014, approximately 6,000 17-year-olds were arrested, the vast majority for nonviolent crimes.[57] ALEC supports alternatives to incarceration for nonviolent, low-risk offenders, particularly those who are under the age of 18. In addition, the ALEC model *Resolution to Treat 17-Year-Olds as Juveniles* calls for 17-year-olds to be treated as juveniles in the criminal justice system.[58]

The initial costs of placing 17-year-olds in the juvenile justice system will be an investment in long-term improved outcomes, as well as long-term savings.[59] For example, in 2007 Connecticut began the shift of presumptively treating 17-year-olds as juveniles and subsequently saw a reduction of roughly $2 million in overall annual juvenile justice spending.[60]

Several states currently provide a mechanism for prosecuting juveniles as young as fourteen as adults. For example, Louisiana state law allows for 14-year-olds to be prosecuted as adults for certain crimes upon a finding by a juvenile court judge that the offender cannot be rehabilitated by the state's juvenile justice system.[61] Older juveniles, such as 15- and 16-year-olds, can be prosecuted as adults for certain violent crimes or sex offenses upon a finding of probable cause by a grand jury or juvenile court judge.[62] ALEC does not support changing or amending the authority of prosecutors to seek to have violent, dangerous juvenile offenders be tried as adults.

This year, Louisiana passed Senate Bill 324 that presumptively treats 17-year-olds as juvenile offenders. Colloquially known as the "Raise the Age" bill that will change the minimum age to charge someone as an adult from 17 to 18, it requires that 17-year-olds be treated presumptively as juveniles rather than adults.[63] The measure provides that 17-year-old offenders will be phased into the juvenile justice system over several years, completely by 2020.

Importantly, the bill will not affect a district attorney's option to charge 17-year-olds accused of certain crimes as adults. For example, if a 17-year-old committed a violent crime such as a homicide, rape, or armed robbery, they could still be

charged as an adult and sent to an adult prison facility upon conviction.[64] However, for lesser crimes such as felony theft or drug possession, convicted 17-year-olds would be charged and sentenced as juveniles, a key change that advocates say will help rehabilitate the offender.[65] Louisiana law provides a demonstrative example of allowing a balance between offering alternatives to incarceration for nonviolent, low-risk juvenile offenders while simultaneously being tough on violent or repeat offenders.

STATE OF THE STATES

Many Governors from all states across the nation spoke in favor of criminal justice reform during their 2016 State of the State addresses. Not all governors who spoke of reform are listed here, but here are many of their statements on criminal justice reform during their State of the State Addresses. They are listed by state in alphabetical order.

Alaska took bold approaches to criminal justice reform during this year's legislative session, which Governor Bill Walker, a Republican, endorsed during his State of the State address. "During this legislative session, you have before you a criminal justice reform initiative that is the result of collaboration between all three branches of government—legislative, executive and judicial," he said.[66] "It proposes practical reforms to reduce crime and the recidivism rate and relieve overcrowding and improve conditions in our prisons," he added.[67]

Arizona Governor Doug Ducey suggested alternatives to incarceration for those who are suffering from drug addiction. The Arizona Republican also expounded that in order to reduce recidivism for nonviolent, low-risk offenders, there needs to be drug treatment facilities for these individuals.[68]

Delaware Governor Jack Markell stated, "We recognize that public safety is vital to creating opportunities in communities statewide. We remain vigilant in cracking down on criminals who threaten that safety. But we also recognize that a 'lock 'em up and throw away the key' mentality is not always the best approach." the Delaware Democrat further stated, "[W]e have supported community-based supervision programs as effective alternatives to incarceration for lower-risk offenders…We are starting to see results. We have cut our prison population by 18 percent over the past two years," he said.[69] Additionally, Governor Markell noted that together with members of the legislature, they passed a version of ""ban the box"," which prevents certain public sector employers from asking about prior criminal history on an initial job application.[70]

Georgia Governor Nathan Deal, a Republican, also spoke of the positive impact that criminal justice reform has had in the Peach State.

> As a result of (the legislature) passing legislation…we have seen a substantial drop in our prison population as thousands of non-violent offenders are being diverted into accountability courts where they are given a second chance to receive treatments for their addictions. By converting inmates into taxpayers, and by educating and giving paroled inmates marketable skills, we will begin to reduce our rates of recidivism, which will in turn make our state safer.[71]

Governor Deal further noted that Georgia is recognized for its leadership for implementing meaningful criminal justice reform.[72]

Indiana Governor and 2016 GOP Vice-Presidential candidate Mike Pence alluded to the effect drug addiction has had on families by stating that Indiana needs to make sure that people, "have more options for treatment and somewhere to go when a loved one is caught up in drug addiction." He also noted that it is not possible to "arrest our way out of this problem."[73]

Maryland Governor Larry Hogan, a Republican, also spoke of the need to address substance abuse, as he commended the efforts and "important steps" undertaken by the legislature in 2015 to address heroin and opioid addiction.[74] He also spoke about the need to break the cycle of incarceration and creating an "environment of economic opportunity for every Marylander. We cannot afford to leave anyone behind. Instead, we must commit to recognizing the fundamental human potential of all of our citizens," he said.[75]

Oklahoma Republican Governor Mary Fallin spoke of how prison costs in Oklahoma, which has the highest rate of female incarceration in the country, have become extraordinarily problematic. "This has been a decades long problem…I'm calling for serious sentencing changes that will preserve public safety while helping control prison costs and reduce incarceration rates," she said.[76] She also addressed the types of crimes in which she proposed alternatives to incarceration.

> Oklahoma's drug possession sentences haven't deterred substance abuse and have filled our prisons to over-capacity. These sentences, while well intentioned, tend to send some nonviolent offenders into prison for years and years, where they live alongside violent offenders whose bad influences can make nonviolent offenders worse. …I'm calling for lowering Oklahoma's mandatory minimum drug possession sentences…from two to 10 years to zero to five years. For second felony offenses for drug possession, lower the mandatory minimum sentences from two years to life to zero to 10 years. And for third felony offenses for drug possession, lower the mandatory minimum sentence from 15 years to life with no probation to zero to 15 years.[77]

"Each of these governors recognize that criminal justice reform is in the best interest of their respective state, as these reforms have saved taxpayer funds while not compromising public safety."

She also supported giving prosecutors the discretion to file any first possession drug offense as a misdemeanor. Finally, she supported raising the felony theft threshold amount from $500 to $1,000. She explained that her 40-member task force of law enforcement professionals recommended those proposals. If implemented, they could help "prevent thousands of people annually from becoming a felon for life, which makes it harder for them to get a job and many times leads to the breakup of their family." She lamented that Oklahoma's prisons were at "119 percent capacity" and that the status quo is clearly not working.[78] The criminal justice reform package attracted the support from a diverse coalition, including the Oklahoma District Attorneys Association and Oklahoma City Thunder Chairman Clay Bennett.[79] In essence, both law enforcement agencies and business leaders realized that it is possible to be smart on crime without compromising public safety.

South Dakota Governor Dennis Daugaard, a Republican, spoke of the benefits of recently-enacted criminal justice reforms. He stated that due to the Public Safety Improvement Act adopted by the legislature, the prison population has dropped faster than anticipated. Furthermore, as a result of this decline in the prison population, "South Dakota should save over $100 million in correctional costs this decade," he said. In addition, last year South Dakota passed significant reforms to the juvenile justice system. "The new policies are expected to cut in half the number of youth committed to the Department of Corrections, allowing the state to reinvest in programs and practices that will achieve better outcomes," he added.[80]

Tennessee Governor Bill Haslam, a Republican, spoke of the need "to invest in more drug recovery courts to offer services in 95 counties…80 percent of participants in (Tennessee's) drug recovery courts in the last two years have landed a job or secured a better job."[81] This approach embraces alternatives to incarceration for those with substance-abuse issues and has reduced recidivism rates, which help to drive down the costs of incarcerating nonviolent or low-risk offenders.

West Virginia Governor Earl Ray Tomblin, a Democrat, spoke of the struggle West Virginia has faced regarding substance abuse. "We know our state's substance abuse epidemic is heartbreaking for so many of our families and communities, but in many cases, our children suffer most," he said. As a result, last year West

Virginia "launched comprehensive juvenile justice reform," he said. These reforms sought to offer alternatives to incarceration for juveniles battling addiction. These reforms have saved $6 million already and the state's Division of Juvenile Services believes the savings can be doubled in the coming years. Additionally, as a part of these comprehensive juvenile justice reforms, high school graduation rates "have increased from 78 percent to 90 percent" since 2010.[82]

Each of these governors recognize that criminal justice reform is in the best interest of their respective state, as these reforms have saved taxpayer funds while not compromising public safety. Additionally, some governors noted that their respective state's rate of drug abuse has dropped due to treatment programs in place. Ultimately, these governors have spoken out in favor of criminal justice reform in their respective State of the States. Many of these governors are conservative and recognize the benefits of pursuing criminal justice reforms. The fact that more than 60 percent of all governors have spoken about the need for criminal justice reform shows the pressing need for this issue to be addressed.

CONCLUSION

Criminal justice spending should be scrutinized for the purpose of promoting policies that give taxpayers a better public safety return for every dollar spent. These reforms accomplish that premise by allowing for taxpayer funds to be reinvested into programs that have been successful in other states. These programs have cost states substantially less money than incarcerating nonviolent and low-level offenders and have not compromised public safety.

Numerous states have recognized the need to reform certain criminal justice policies. Diverting nonviolent, low-risk offenders has saved taxpayer dollars and has not led to an increase in crime. In some instances, it has caused crime rates to drop. In addition to saving these budgetary expenditures, increased incarceration comes with an equally large human cost. As of March 2009, approximately one out of every 31 adults was under some form of correctional control, compared with roughly one out of 77 adults during Ronald Reagan's presidency.[83] Additionally, as of 2010, one out of every 28 children had a parent behind bars, up from one out of every 125 children in 1985.[84]

"These reforms should not be mistaken for being soft on crime. Violent or repeat offenders deserve substantial punishments, including lengthy prison sentences."

These reforms should not be mistaken for being soft on crime. Violent or repeat offenders deserve substantial punishments, including lengthy prison sentences. However, nonviolent offenders, such as petty thieves and those who suffer from substance abuse, ought to be able to have certain rehabilitative measures available to them. These include alternatives to incarceration, such as those prescribed in the ALEC models *Resolution on Diversion on Low Level Offenders and the Resolution in Support of Justice Reinvestment*.

States have taken the lead on this issue and have made it a priority to reform their criminal justice system. In many states, both the governor and the legislature had the political will to

pass reform measures. These states have seen the benefits of these reforms and have created a nationwide push at the state level for other states to subsequently follow. In other states, the governor and the legislature were not able to get on the same page and pass reforms. However, the reforms passed in 2016 will hopefully serve as an example for other states to follow and help create a criminal justice system that is just and provides equitable outcomes for all individuals.

(Endnotes)

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