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How is the debate over approaches to violent crime and incarceration playing out in legislatures?

From the White House to statehouses around the country, there is unprecedented support for criminal justice reform and efforts to reduce the imprisonment of 2 million plus people—what some call “mass incarceration.” While the national conversation and policy reforms being advanced largely focus on reducing the incarceration of people convicted of “nonviolent offenses,” just under half the people in prison were convicted of a violent crime. It would be impossible for the U.S. to significantly lower its incarceration rate without changing how the justice system treats violent crimes.

There are indicators that the justice reform movement may be broadening to include a different approach to violence. The 50-percent drop in the number of youth confined or placed out-of-the-home, and reforms spurred on by the Supreme Court around juvenile life without parole means some young people convicted of violent crimes are at-home, or are coming home, sooner. From California to Michigan to New York, there is a push to change parole decisions away from simply considering “the nature of the crime” to whether or not someone may reoffend if released. Mandatory minimum sentences covering some violent offenses are slowly being diminished. When faced with spikes in violent crime, some city leaders are rejecting approaches that simply rely on enhanced penalties, and are proposing to make more holistic investments in communities where crime is a problem.

These small steps show that there is a justice reform constituency that is working to promote

an approach to violent offenses that could reduce reliance on incarceration in a more meaningful way.

These modest steps are a starting place, but need to be tempered with some realities: Many of the proposals that are advocating for a better approach to violence were not enacted in 2016. These realities may explain why the latest surveys show only a 1 percent reduction in the national prison population (and a slight increase in jail populations).

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- **California:** A bill that would have expanded an elderly parole program to people convicted of violent crimes was introduced, and withdrawn from legislative consideration this year. A ballot initiative that would have changed the way burglary is treated like a violent crime under Three Strikes Law also failed to move forward in 2016. Another ballot initiative that would change California’s juvenile transfer laws and would extend earned-time credits to people in prison who were convicted of violent crimes will be on the ballot in November.
- **Colorado:** When Colorado legislators amended their statute removing a five-year mandatory minimum for someone convicted of 2nd degree assault on peace officer, it became the *first mandatory*

minimum repealed in Colorado in decades. Colorado legislators made modest changes to laws governing how sentences for violent crimes are imposed consecutively rather than concurrently.

- **Florida:** policymakers have faced challenges marshalling any kind of meaningful sentencing reform, regardless of whether it is primarily focusing on people whose most serious offense at conviction was a violent crime, or a nonviolent crime. But in 2016, legislation that changed the state's **10-20-Lifer law for aggravated assault** with a firearm was approved, marking the first time Florida repealed a mandatory minimum.
- **Georgia:** In 2013, the General Assembly overwhelming passed HB 349 which allows the departure from mandatory sentences for people convicted of serious violent and serious sexual offenses when there is consent from the prosecutor and the defendant. This was done to promote "truth in pleading" allowing the judge to sentence the defendant in accordance with a plea agreement which could deviate from the statutory minimum sentence. However in January 2016, in contemplating additional sentencing reforms for 2017, Governor Nathan Deal said that the reforms would not extend to people convicted of serious violent felonies, because "those are still sacrosanct."
- **Maryland:** Maryland's Justice Reinvestment Act was significantly changed as a result of a debate where people convicted of drug offenses were portrayed as causing violent crime, and various proposals to improve parole and release practices included exceptions if the person was convicted for a violent crime. A proposal failed that would have amended Maryland's assault statute to offer more options to reduce the use of

incarceration for certain categories of people.

- **Michigan:** There is substantial bipartisan support (including from the Republican governor) to reform the parole process to focus more on a person's risk of future violence, and on whether the person committed a violent offense in their distant past, and medical parole is being considered that would apply to all people in prison who qualify, "*regardless of offense.*"
- **New York State:** Legislation that has been offered for several sessions that would require the parole board to consider a range of factors beyond "the nature of the crime" failed to move forward in 2016, as did legislation that would have "Raised-the-Age" of juvenile court jurisdiction to 18 that carved out exceptions for juveniles convicted of violent crime.
- **Ohio:** During a year when a Criminal Justice Recodification Committee was reviewing how various crimes are treated under the statute to potentially reduce imprisonment, fifty four new bills—11 percent of the total number considered by the Ohio legislature—would increase the number of offenses or penalties that could result in a prison or jail term.
- **Virginia:** A bipartisan Commission on Parole Review offered recommendations to the legislature to change penalties for burglary and larceny and to create pathways for the release of people serving time on long mandatory minimums. None of these proposals became law. When the Governor took steps to re-enfranchise people who have completed their prison term and probation and could not vote because of a past felony conviction, the change was critiqued for franchising "*violent offenders.*"

- **Washington, D.C.:** legislators rejected a series of law changes that would have lengthened sentences or increased the ability to detain people pretrial in favor of a public health approach to violence prevention. The Council and Mayor have all called for reforms to the city's Assault on a Police officer statute, to reduce justice system involvement for people when they have an altercation with the police.
- **Congressional debate:** In 2016, the **U.S. Sentencing Commission** amended how burglary is treated under the sentencing guidelines, reducing the number of behaviors included in the category of "*crimes of violence.*" Federal **sentencing reform legislation** got mired down this spring and summer as Senators debated what constitutes a "nonviolent" person.

In *Defining Violence*, JPI recommends a series of strategies for policymakers that would help shift the approach to violence and achieve more significant reductions in the use of incarceration. JPI recommends that policymakers build their justice reform proposals around these principles:

- Increase prevention and intervention approaches to violence;
- Expand diversion without stringent offense prohibitions;
- Reduce the number of offenses that can result in incarceration;
- Reduce the number of offenses that result in criminal and delinquency proceedings;
- Reduce the number of people on community supervision;
- Change laws, policies, and practices that affect length of stay;
- Increase restorative justice and trauma-informed approaches to violence;
- Use risk assessment tools in decision-making;
- Make prison and jail closures part of justice reform proposals; and
- Reduce gun availability.