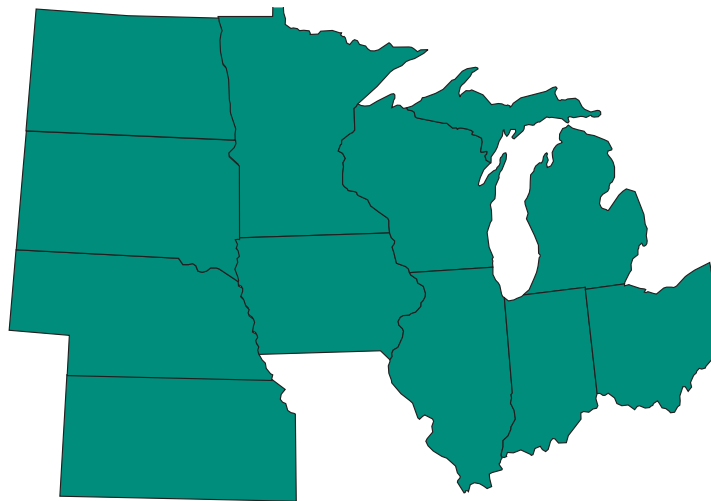


# Stateline Midwest

THE MIDWESTERN OFFICE OF THE COUNCIL OF STATE GOVERNMENTS



**A compilation of articles on criminal justice, public safety and the courts that have appeared over the past year in the publication *Stateline Midwest*.**



**MIDWEST**

The Council of State Governments | Midwestern Legislative Conference

701 East 22nd Street, Suite 110 | Lombard, Illinois 60148

630.925.1922 | [csgm@csg.org](mailto:csgm@csg.org) | [www.csgmidwest.org](http://www.csgmidwest.org)

## Wisconsin working with counties on overhaul of where and how juveniles are housed, treated

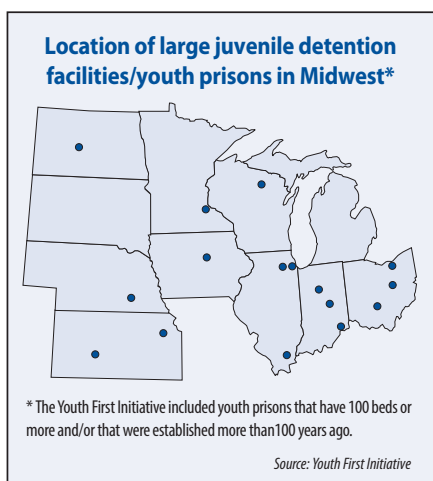
Wisconsin remains on a path to dramatically overhaul its juvenile justice system, but to get to the finish line, the state may need to find more money than originally expected.

AB 953, a bipartisan bill passed in 2018, aims to keep most young offenders in smaller, regional facilities, rather than locked up in one of two larger, faraway youth prisons in northern Wisconsin. That goal aligns with research on how to best rehabilitate young people, says Mary Jo Meyers, director of the Milwaukee County Department of Health and Human Services.

“Large, congregate youth prisons do not provide effective treatment or care for our youth involved in the system,” she says, adding that “we can more effectively serve our youth in settings that are close to their families and communities.”

Only juveniles charged with the most serious crimes will be held in one or more newly built state-run detention centers, referred to as “Type 1” facilities. The state’s existing youth prisons — Lincoln Hills School for Boys and Copper Lake School for Girls, both located in northern Wisconsin — must be closed. The Legislature’s move to shut down these larger facilities came after revelations of juvenile offenders being abused and neglected.

Legislators appropriated \$25 million for construc-



tion of new Type 1 facilities, \$15 million to double the capacity of a mental health facility for juveniles in the state’s capital city, and \$40 million for counties to build new Secure Residential Care Centers for Children and Youth. The new two-year state budget increased that \$40 million figure to \$80 million, the *Wisconsin State Journal* reports, but it still might not be enough.

Four of Wisconsin’s largest counties (Brown, Dane, Milwaukee and Racine, which, combined, account for most of the state’s juvenile commitments) have submitted plans to the Wisconsin Department of Corrections’ Juvenile Corrections

Grant Committee. Their initial proposals for construction of the Secure Residential Care Centers totaled \$130 million. State officials then asked the counties to reduce their budget requests.

Milwaukee County’s Department of Health and Human Services submitted its final proposal in September, asking for about \$24 million, down from its initial \$42 million request. Currently, 33 Milwaukee County juveniles are housed in the Lincoln Hills and Copper Lake locations.

Not only will a local Secure Residential Care Center keep these youths closer to home, Meyers says, it will provide them with access to rehabilitative services and to “staff that is trained in trauma-informed care.”

Milwaukee County’s grant proposal reflects this commitment. Though the state law was designed primarily to fund local construction costs, the county included \$2.9 million in its proposal for diversionary and post-incarceration transition programs.

“We felt it was important to highlight the community supports and programs necessary to reduce the overall carceral footprint,” Meyers says. She cites, for example, the county’s Project Rise project, which provides more education opportunities, mental health services and job training for youths in the system.

The county is also changing the way it detains girls in the juvenile system. Instead of building more bed space for girls in its Secure Residential Care Center, the county will strive to place them in community-based residential facilities.

## Is a ‘third way’ of policing — deflection — emerging?

A relatively new idea in criminal justice, deflection is a “third way” for police to interact with offenders they encounter.

Police officers often only have a binary choice, arrest or release. Deflection seeks to use alternative remedies such as drug and alcohol treatment, hospitalization, and other diversionary programs, when appropriate, instead of introducing nonviolent, low-level offenders into the criminal justice system or releasing them back into the community without assistance.

Lawmakers on the Midwestern Legislative Conference Criminal Justice and Public Safety Committee heard about deflection from Jac Charlier, executive director of the Chicago-based TASC Center for Health and Justice. His presentation, “Legislative Opportunities for Justice,” discussed reforms to pretrial justice and bail and the basics of good re-entry programs and legislation. But deflection received the most attention and questions.

The need for, and first usages of, deflection began in rural areas in response to substance use disorder and the opioid crisis. With 68 percent of local jail populations suffering from substance use disorders, the benefits of deflecting many of these people to treatment are clear: It saves state and local jurisdictions prosecutorial time and money, doesn’t burden citizens with the long-term

Prevalence of mental health problems, substance use disorders			
Issue or problem	General population	State prison	Local jail
Any mental health problem	19%	56%	64%
Serious mental illness	4%	16%	17%
Substance use disorder	9%	53%	68%

Source: TASC Center for Health and Justice

consequences of misdemeanors, and places offenders in treatment instead of jails or prisons, which often worsen mental health and substance use disorders.

In the TASC model, there are five identified deflection pathways to treatment: “self-referral,” when someone seeks treatment by contacting law enforcement; “active outreach,” when law enforcement intentionally seeks individuals for treatment; “Naloxone plus,” when treatment is part of law enforcement’s response to an overdose; “officer prevention referral,” when law enforcement initiates treatment with no charges after



North Dakota Rep. Shannon Roers Jones (left) and Illinois Sen. Mattie Hunter (center) oversee the MLC’s Criminal Justice & Public Safety Committee as co-chairs. Indiana Sen. Michael Crider (right) is the vice chair. (photo: JFkphoto)

a 911 call; and “officer intervention referral,” which is like “officer prevention referral” except charges are held in suspension pending the completion of treatment.

Since 2014, eight deflection-related laws have been passed in six states, including last year’s SB 3023 in Illinois. That measure authorizes and encourages law enforcement to create partnerships with treatment providers and others to deflect individuals away from the criminal justice system. To measure the impact of a local deflection program, the law includes a minimum data collection requirement (municipalities do not have to create a deflection program). Illinois lawmakers also provided civil liability immunity to law enforcement for program-related activities.

## State policies drive down Kansas' juveniles-in-custody population

Three years ago, with their passage of SB 367, Kansas legislators remade the state's juvenile-justice system.

A correctional facility for juveniles would soon close, the state would rely much less on "group homes" to house low-level offenders, and several alternatives to incarceration would be introduced into the system.

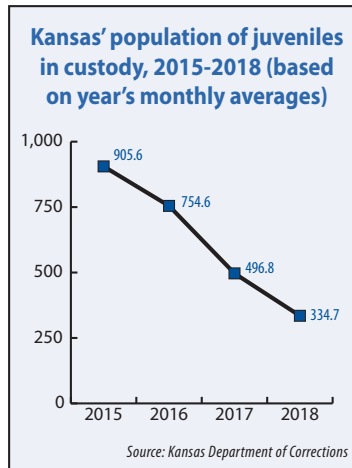
The result: Between 2015 and 2018, the monthly average of Kansas' juvenile custody population dropped by 63 percent.

Rep. J. Russell Jennings, the chair of a legislative committee created through SB 367 to oversee implementation of the reforms, is hopeful that this sharp decline will lead to better long-term outcomes.

"The deeper you push young people into the system and congregate youth at a single place, the risk is that relatively low-needs youth, at a low

risk of reoffending, are somewhat influenced by higher-risk offenders," he says.

"So by keeping them at home and in their communities with community-based programs, you've limited the negative impact that can be realized in a correctional facility."



A year prior to the law's passage, the Kansas Department of Corrections found that more than half of the juvenile offenders housed in group homes, or "youth residential centers," had recidivated, run away, or not completed required programming.

In response to findings like these, a legislative work group was formed to study Kansas' system, learn of best practices in other states, and explore evidence-based research with groups such as The

Council of State Governments Justice Center.

That work ultimately led to the passage of SB 367.

Along with the recent drop in Kansas' juvenile confinement population, the number of juvenile

arrests has fallen — by 29 percent between 2015 and 2017.

The Kansas Department of Corrections, meanwhile, has been able to save \$30 million in operating costs, and these savings are being placed into a special fund — known as the "Juvenile Justice Evidence Based Practice" fund — to help cover the costs of in-home programming for juveniles. By 2020, reinvestment in this fund is expected to reach \$72 million. The alternatives to incarceration now being provided to juveniles include:

- family-based interventions and therapies;
- a cognitive-behavioral type of treatment that seeks to increase moral reasoning; and
- the delivery of immediate interventions for youths diverted from formal charges.

Jennings says money from the Evidence Based Practice fund also has increased the availability of mental health services.

"We made a conscious decision in 2016 to create a new level of service, which is a juvenile mental health crisis intervention placement option," he notes.

"These are being regionally deployed and established to be able to provide assessment and stabilization services ... for kids who manifest some form of a mental health issue that renders them potentially dangerous to themselves."

## Capitol Clips ~ Written by Tim Anderson (tanderson@csg.org)

### Michigan ends practice of trying 17-year-old offenders as adults

As the result of a bipartisan package of bills signed into law in October, most 17-year-old offenders in **Michigan** will no longer be treated as adults in the state's criminal justice system. The goal of the "Raise the Age" Law is to better treat and rehabilitate young offenders by having them go through Michigan's juvenile justice system. For teenagers who commit certain violent offenses, a prosecutor will have discretion to try them as adults.

According to the National Juvenile Defender Center, most Midwestern states already give their juvenile courts jurisdiction over cases involving 17-year-old offenders; the lone exception is **Wisconsin**.

States also typically allow juvenile courts to retain jurisdiction, (most commonly up to age 21), provided the alleged offense occurred before the offender was an adult. In a 2018 study, the National Center for Juvenile Justice estimated that close to 76,000 U.S. juveniles are prosecuted as adults. The change in Michigan will substantially reduce this number. But states also typically allow for or require certain young offenders to be charged as adults — through statutory exclusions, and language allowing for prosecutorial discretion or transfers by the juvenile court.

November 2019 Stateline Midwest

### Minnesota law adds new tools to prevent, investigate wage theft

**Minnesota** leaders say their state now has the strongest law in the nation to protect workers against wage theft. The bipartisan measure (signed into law in May, as part of HF 2) includes greater enforcement tools and tougher penalties for violators.

Wage theft can take many forms — for example, underpayment of minimum wage, nonpayment of overtime compensation or mandatory breaks, and the misclassification of employees. According to the Minnesota Department of Labor and Industry, around 40,000 Minnesota workers pursue claims every year, with nearly \$12 million a year lost annually as a result of wage theft.

Wage theft in excess of \$1,000 will now be a felony, the *Minneapolis Star Tribune* reports, and new statutory language penalizes retaliatory actions taken against individuals who report the crime. HF 2 also enhances civil penalties and includes new notification and record-keeping requirements for employers.

Over the next two years, Minnesota's Department of Labor and Industry will get an additional \$3.1 million to enforce wage laws, and the state attorney general has established a new unit dedicated to investigating cases of wage theft.

August 2019 Stateline Midwest

### Illinois removes statute of limitations for major sex crimes

**Illinois** will lift its 10-year statute of limitations on major sex crimes starting in January, under a law signed by Gov. J.B. Pritzker in July.

HB 2135, which was unanimously approved by the General Assembly, allows prosecutors to file charges at any time for criminal sexual assault, aggravated criminal sexual assault or aggravated criminal sexual abuse. According to the *Chicago Tribune*, the limit had been 10 years, if the victim reported within three years of the crime.

In 2017, Illinois removed the statute of limitations for felony sexual assault and sexual abuse crimes against children. That bill, SB 189 of 2017, also was unanimously approved by the General Assembly.

According to the anti-sexual-violence organization RAINN (Rape, Abuse & Incest National Network), **Indiana, Kansas, Michigan, Nebraska, South Dakota and Wisconsin** have either no statute of limitations or one of 21 years or more for their most serious sex crimes. **Ohio** has a statute of limitations of 11 to 20 years, and **Iowa, Minnesota and North Dakota** have statutes of limitations of 10 years or less.

August 2019 Stateline Midwest

### Recreational marijuana legalized in second Midwestern state

**Illinois** has become the first state in the nation to legalize the sale and use of recreational marijuana through an act of the legislature. Sent to the governor for signing in early June, HB 1438 was being hailed by its legislative sponsors as marking a new era in Illinois public policy and as a "model for other states in its commitment to equity and criminal justice reform."

According to the *Chicago Tribune*, beginning next year, Illinois residents 21 and older will be able to legally possess up to 30 grams of cannabis, 5 grams of cannabis concentrate, or 500 milligrams of THC contained in a cannabis-infused product.

HB 1438 sets aside a portion of new revenue from legalization for substance-abuse programs and mental health services, as well as initiatives that seek to reduce gun violence and expand employment opportunities. Included in the bill, too, is language to promote minority involvement in the cannabis industry and expunge certain cannabis offenses.

Eleven U.S. states have legalized recreational marijuana, including **Michigan**. In that state, voters approved a statewide ballot initiative in fall 2018. (Approval by voters, rather than legislatures, has been the path to legalization in most states.) In recent years, ballot initiatives have failed in **North Dakota** and **Ohio**.

June/July 2019 Stateline Midwest

## Nebraska seeks answers to prison overcrowding; Michigan sees results from its policy changes

**P**rison overcrowding is one of the most persistent and confounding problems facing state criminal justice systems, and the issue is especially pertinent in the Midwest — home to three of the nation's five most overcrowded prison systems.

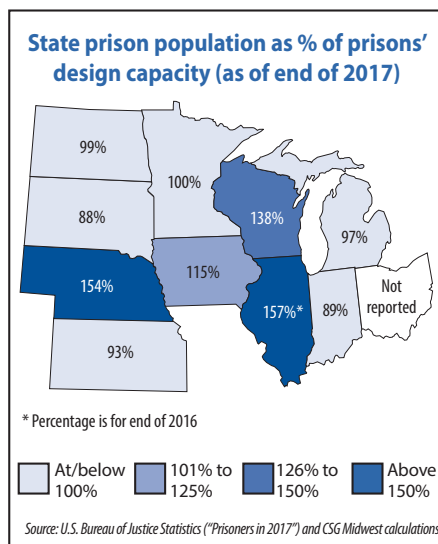
As of the end of 2016, Nebraska had the second highest prison population as a percent of designed capacity, Illinois was third and Wisconsin fifth.

In 2015, Nebraska legislators passed a package of prison reform bills, including language (LB 598) that an “overcrowding emergency” be declared if the state's inmate population is over 140 percent of design capacity as of July 1, 2020.

With a little over a year left before that date, Nebraska still has a lot of progress to make, and legislators are not standing idly by as the deadline approaches.

This year, for example, Sen. Carol Blood's LB 114 seeks to reduce the negative consequences of offenders' violations while in prison. This bill would limit the amount of “good time” taken away to six months for nonviolent misconduct and two years for violent misconduct. The bill also allows good time to be restored by the heads of Nebraska's prisons, with agreement from the corrections department director.

Citing her past experience as a corrections officer, Sen. Blood believes Nebraska's current policies permit dangerous working conditions: “If you are incarcerated and you have really nothing that you can work toward and no hope, why do you care how you behave? What



do you have to lose?”

She argues that prison employees would be safer if inmates had greater incentives to follow the rules.

LB 114 does not aim to release people before their prison sentences are finished. Rather, it seeks to ease Nebraska's overcrowding by releasing people as close to the date assigned by the judge as possible.

“If we are giving people incentive to get out and they're doing their programming and they are being good [prisoners], then we have an opportunity to move inmates through the system in an effective and appropriate manner,” Blood says.

One of the other bills under consideration this year, LB 108, would continue the practice of contracting 150

beds with county jails, as long as there is a vacancy and the jails will meet programming requirements. Additionally, the bill would allow county jails to house inmates within one year of their parole or release eligibility. Finally, LB 277 would change the makeup of the five-member Nebraska Board of Parole, mandating that it have at least one female, one with professional corrections experience, one ethnic minority, and one with professional experience dealing with substance abuse or mental illness.

Another way to reduce prison overcrowding is to build more prison space. Nebraska Gov. Pete Ricketts has proposed funding a 384-bed addition at one of Nebraska's existing correctional facilities.

There is precedent for Midwestern states to successfully, and dramatically, reduce their prison populations. Between 2006 and 2016, Michigan's prison population fell by 20 percent. One reason for this drop was the creation of the Michigan Prisoner Reentry Initiative, which increased parole approval rates and reduced parole returns to prison by engaging with the community and establishing alternatives to revocation for parole violators. (Michigan's drop in prison rates was also accompanied by a 37 percent reduction in its index crime rate and a 41 percent reduction in recidivism.)

The Michigan Legislature has taken significant actions as well. Under an 18-bill package signed into law in 2017, the state's parole and probation practices were updated and new tools were established to reduce recidivism. Later in 2017, new laws were enacted (SB 435-438) to expedite the use of alternatives to prison, such as the use of specialized drug and mental health treatment courts.

[Editor's Note: In May, Nebraska legislators approved a \$54.7 million transfer of funds to cover the costs for two additional high security housing units for the state Department of Correctional Services.]

## Legislation seeks to improve how states handle cases of missing, murdered indigenous people

**T**wo bills introduced early in North Dakota's 2019 legislative session aim to raise awareness and improve law enforcement's responses to cases of missing and murdered indigenous people within the state, but outside of tribal lands.

Under HB 1311, the state's police officers and prosecutors would receive training on these specific types of cases. HB 1313 would require North Dakota's existing information-sharing system for law enforcement to include “data related to missing and murdered indigenous people.”

The bills are similar in intent to federal legislation that advanced through the U.S. Senate in 2018 before stalling in the U.S. House. Known as Savanna's Act — named after a Native American pregnant woman from North Dakota who was murdered while living in Fargo — the

legislation would have implemented data collection and training standards at the federal level. Another version of Savanna's Act has been introduced this year.

The federal government investigates and prosecutes most violent crimes committed on tribal lands, while states and localities are responsible for surrounding areas. The overlapping nature of these law enforcement jurisdictions can lead to poor criminal-reporting practices and missing information.

Most Native Americans, too, now live in urban areas. Two years ago, the Urban Indian Health Institute sought data from 71 U.S. cities on cases of missing and murdered indigenous women and girls. It identified a total of 506 cases, including 80 in the Midwest, though that number is likely an “undercount,” institute researchers say.

“We do not want to forget about our urban populations,” says Rep. Ruth Buffalo, a Native American woman from Fargo who was elected to the North Dakota Legislature in 2018 and who introduced HB

1311 and 1313 in early 2019.

“Savanna's murder happened in Fargo. Savanna was a member of a federally recognized tribe, but once you leave the reservation, you lose some of those protections.”

Rep. Buffalo first began working on the issue as the member of a local task force that formed in the wake of Savanna's disappearance and death. One of her takeaways from the work on that task force: the need for proper data collection and sharing.

“[It] raises awareness and shows that there is a need for special attention to this issue,” she says, “because if there is no data to be shown, then it looks like there is not an existing problem.”

North Dakota is not the only state seeking new ways to address the issue. In Nebraska, for example, legislators heard testimony in January on LB 154, which calls for a study on how the state can improve the reporting and investigation of missing Native American women.

[Editor's Note: Nebraska's LB 154 and North Dakota's HB 1311 and HB 1313 were signed into law.]



## U.S. Supreme Court case from Indiana challenges states' use of asset forfeitures, criminal fines

In November, the U.S. Supreme Court heard arguments in a case that could dramatically limit states' and localities' ability to levy criminal fines and asset forfeitures. The central question in *Tyson Timbs and a 2012 Land Rover LR2 v. State of Indiana* is whether the Eighth Amendment's ban on excessive fines applies to states and localities.

The case started in 2013, when Timbs pleaded guilty to selling about \$225 worth of heroin to undercover officers. Law enforcement in Indiana seized his vehicle, citing the state's civil forfeiture laws, which allow an individual's property to be seized (the vehicle in this case) if it were used to commit a crime.

Timbs disputed the state's right to seize his vehicle because the value of the car, \$42,000, was about four times the maximum allowable fine for the crime he committed. The trial court and a state appeals court sided with Timbs, citing the Eighth

Amendment's excessive-fines clause. The Indiana Supreme Court, however, disagreed, noting that the U.S. Supreme Court has never ruled on whether this clause applies to states.

Other parts of the Bill of Rights have been "selectively incorporated" through past Supreme Court decisions. But the brief filed by Timbs (as well as *amicus* briefs filed by his supporters) seem to argue for a full incorporation of the entire Bill of Rights.

While the court is months away from announcing opinions, *The New York Times* and other observers believed it was clear during oral arguments how the justices would rule: The excessive-fines clause should apply to the states, but the *Timbs* case should not be used to fully incorporate the Bill of Rights. Additionally, it does not appear that the justices will rule on whether the vehicle's forfeiture in the Indiana case, or similar fines, violate the excessive-fines clause.

"The most problematic aspect of this litigation ... is that it will consume enormous amounts of time and resources in the lower courts, as state and local

governments are required to litigate, case by case, in order to sort out what kinds of forfeitures are permitted and what kinds are not," says professor Lawrence Rosenthal of Chapman University, who wrote an *amicus* brief in the *Timbs* case on behalf of the National Association of Counties and other local-government groups.

The court's decision may prompt further discussion and/or legislation at the state level. According to the Institute of Justice, most Midwestern states have altered their civil forfeiture laws since 2014 (see map). The statutory changes tracked by the institute include:

- 1) abolishing civil forfeiture: Nebraska;
- 2) requiring a criminal conviction in most or all forfeiture cases: Iowa, Minnesota, Ohio and Wisconsin;
- 3) requiring the government to bear the burden of proof for innocent-owner claims: Illinois, Iowa and Wisconsin; and
- 4) instituting new reporting requirements for seizure and forfeiture activity: Illinois, Indiana, Iowa, Kansas and Michigan.

[ Editor's Note: In February 2019, the U.S. Supreme Court unanimously ruled in the *Timbs* case that states cannot impose excessive fines. In the Midwest's state legislatures, new laws on civil asset forfeiture were signed into law in 2019 in Michigan (SB 2 and HB 4001 and 4002) and North Dakota (HB 1286). ]

## Michigan turns to objective parole to reduce strain on its corrections system

The Michigan Legislature has codified the use of an objective, evidence-based scoring system that determines a prisoner's probability of parole success.

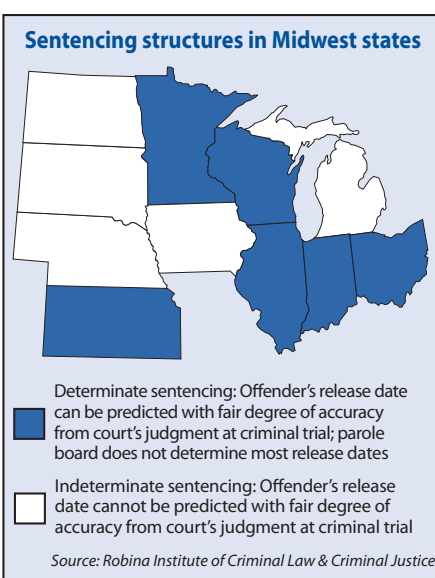
Under HB 5377, signed into law in September, individuals who score highly will be released from prison after completing their minimum sentence — unless the Parole Board provides one of 11 "substantial and compelling objective reasons" for not doing so.

The scoring system, which is based on a set of guidelines including mental and social evaluations, has been used for years and generally scores parole applicants as having a high, average or low probability of parole success.

However, only about 75 percent of highly rated prisoners have been approved for release. This partly led to the explosion of Michigan's prison population from about 14,000 in the 1970s to 39,000 today.

Additionally, Michigan's corrections spending as a percentage of the state budget increased from about 3 percent to about 20 percent during the same period.

"[HB 5377] will ensure more offenders are given a chance at being productive citizens in our state and lessens the burdens on taxpayers for corrections spending," says Rep. Clint Kesto, the bill's main sponsor.



Independent organizations such as Safe & Just Michigan, the ACLU of Michigan, and the Alliance for Safety and Justice estimate that HB 5377 could reduce Michigan's prison population by between 1,800 and 2,400 over the next five years.

These organizations also claim that the legislation will save Michigan taxpayers between \$40 million and \$75 million annually within five years.

The legislation passed with overwhelming bipartisan support in the Michigan House and Senate.

HB 5377 eliminates some of the Michigan Parole Board's discretionary authority. Still, the board can continue to deny parole for prisoners rated as having a high probability of success — by citing one of the 11 "substantial and compelling reasons". Some of these reasons include "the prisoner is a suspect in an unsolved criminal case that is being actively investigated" or "the prisoner refuses to participate in programming ordered by the department to reduce the prisoner's risk."

According to the University of Minnesota's Robina Institute of Criminal Law and Criminal Justice, more than half of the Midwest's states have abolished discretionary parole since 1977.

Illinois, Indiana, Kansas, Minnesota, Ohio and Wisconsin all use a system of "determinate" prison sentencing, the institute found, in which a prisoner's release date can be accurately predicted by the judge's determination at the end of the offender's trial.

John Cooper, associate director of policy and research for Safe & Just Michigan, does not believe Michigan should follow in these states' footsteps.

"I think the Parole Board serves a necessary and important purpose, because the judge is thinking primarily in terms of punishment," Cooper says. "There is good reason to believe that judges underestimate a person's ability to change."

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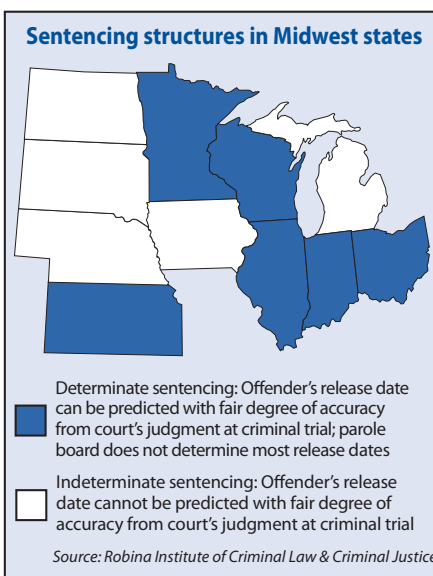
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## Iowa governor gets more power over selection of Supreme Court judges

A legislative change in **Iowa's** process for selecting Supreme Court judges will put more power in the hands of the governor.

SF 638, signed into law in May, alters how the 17-member State Judicial Nominating Commission will be appointed. The governor now has the authority to choose a majority of commission members, nine of the 17. The remaining eight appointments will come from elections held among the state's lawyers. Under previous Iowa law, the commission was split evenly — eight gubernatorial appointments and eight elected by the state's lawyers, with a sitting state Supreme Court justice serving as the final member.

Iowa's State Judicial Nominating Commission plays a crucial role in who gets selected to the Supreme Court. It selects three potential nominees, with the governor then choosing one individual from that list. This type of merit-based selection process is used in four other Midwestern states: **Indiana, Kansas, Nebraska** and **South Dakota**. Iowa is the region's only state where the governor has control over the majority of commission selections.

In the Midwest's six other states, voters fill vacancies on the supreme court via elections (either statewide or, in the case of **Illinois**, by judicial district).

June/July 2019 Stateline Midwest

## Minnesota legislators remove 'marital rape exemption' from statute

As part of a national movement that has states re-examining their laws on rape and marriage, **Minnesota** legislators have removed statutory language that allowed for a "pre-existing relationship defense" in cases of criminal sexual assault.

HF 15 was signed into law in early May by Minnesota Gov. Tim Walz.

Prior to the bill's passage, Minnesota law stated that "a person does not commit criminal sexual conduct ... if the actor and complainant were adults cohabitating in an ongoing voluntary sexual relationship at the time of the alleged offense."

The problem with this "marital rape exemption" was underscored by Jenny Teeson, who, in testimony this year to Minnesota legislators, recounted how she had discovered video footage of her then-husband drugging and raping her.

According to the *Chicago Tribune*, every state has a law making forcible marital rape a crime. However, citing research from the nonprofit organization AEquitas, the newspaper lists three states in the Midwest — **Iowa, Michigan** and **Ohio** — as among 17 nationwide that have some form of an exemption for spouses who rape partners when these partners are drugged or otherwise incapacitated.

May 2019 Stateline Midwest

## Two Midwest states have two very different new laws on guns

Within weeks of being sworn into office, two of the Midwest's newly elected governors took action on gun legislation, though the two measures have very different aims.

**South Dakota's** SB 47 was the first bill signed into law by Gov. Kristi Noem. It allows individuals to carry a concealed handgun without a permit. South Dakota joins two other Midwestern states (**Kansas** and **North Dakota** are the others) with so-called "constitutional carry" laws, according to the National Rifle Association. South Dakota still has restrictions on who can carry a concealed weapon, *The* (Sioux Falls) *Argus Leader* reports, and individuals may still want a permit for reciprocity with other states.

One of the first actions taken by **Illinois'** new governor, J.B. Pritzker, was the signing of SB 337, which allows the state to regulate gun dealers and to gather information on private sales and illegal gun transfers. With the new law in place, gun dealers must be certified by Illinois State Police and provide annual training to employees. Gun stores also must have a video surveillance system. The cost of certification is up to \$300 for sellers without a retail location and up to \$1,500 for retailers, the *Chicago Tribune* reports. According to the Giffords Law Center to Prevent Violence, **Indiana** and **Wisconsin** also require gun dealers to obtain state licenses.

February 2019 Stateline Midwest



# Stateline Midwest



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THE MIDWESTERN OFFICE OF THE COUNCIL OF STATE GOVERNMENTS

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# Time to bail on cash bail?

A growing number of states are scrutinizing current systems, and exploring alternatives such as use of risk-assessment tools

by *Mitch Arvidson (marvidson@csg.org)*

**B**ail, in its most ideal form, serves two purposes.

First, it maintains the American ideal of innocent until proven guilty by allowing suspects to continue their daily lives as normally as possible while they await further court actions. Second, it incentivizes the accused to attend future hearings or face financial consequences.

But in recent years, the downsides of the nation’s cash-bail system have state legislators, judges and other policymakers taking a closer look at their laws, as well as considering possible alternatives. Outside the Midwest, California and New Jersey have adopted some of the nation’s most significant changes. In this region, meanwhile, state or local reforms have either been proposed or implemented in every state.

States have used a variety of methods for exploring, and sometimes changing, their systems: for example, bills signed into law in Illinois, Indiana and Nebraska; the use of a legislative study committee in Wisconsin; and initiatives led by the state supreme courts of Kansas and Ohio.

However states get there, two interconnected policy changes are typically part of these legislative- or judicial-led initiatives: first, eliminate or curtail the use of cash bail in misdemeanor or low-level felony cases; second, replace cash bail with a risk-assessment tool to guide judges’ decisions on whether to release or detain a suspect.

## Factors behind the reform push

Why would states consider sweeping changes to a cash bail system that has been in place for so long?

Illinois Sen. Elgie Sims Jr. says he was motivated in part by the chance to reduce the number of people accused of nonviolent crimes being held in jails.

The Bail Reform Act (SB 2034 of 2017) has allowed for that reduction to occur in Illinois, he says, while giving important decision-making powers back to the judiciary.

“It gives judges the opportunity to use

their discretion and their better judgment,” Sims says of SB 2034, a bill he sponsored as a member of the Illinois House.

In Wisconsin, Sen. Van Wanggaard helped lead a recent legislative study of his home state’s bail system. One of his end goals: Ensure that public safety plays a larger role in bail decisions.

“Say, for instance, an individual has threatened to hurt citizens or victims once they get out,” he says. “It’s not so much about them thinking about fleeing, whether or not they’re a flight risk, but it should be the public safety issue.”

Under the current system, he adds, “judges don’t really have to consider [public safety] as a primary reason when you start talking about bail.”

Nancy Fishman, project director of the Vera Institute of Justice’s Center on Sentencing and Corrections, identifies four drawbacks with the cash-bail system currently in place in most states. The first is how it affects the accused differently.

“[If] the only thing that distinguishes the people who are innocent on the inside and the people who are innocent on the outside is money — the ability to pay — then you have a system that is built in inequities,” says Fishman, adding that this imbalance adversely impacts women and people of color.

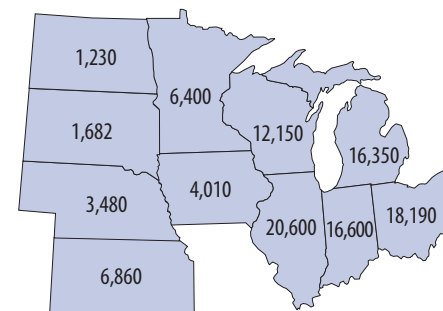
Second, as the price of cash bail has steadily risen, the system has become a way of keeping people in jail instead of a way of allowing people to be released. Third, Fishman says, cash bail is not the best way of determining who needs to stay in jail.

### Who is being confined in U.S. local jails? Select inmate characteristics, 2000 vs. 2016

Characteristic	2000	2016
Male	88.6%	85.5%
Female	11.4%	14.5%
White	41.9%	48.1%
Black	41.3%	34.4%
Hispanic	15.2%	15.2%
Native American	0.9%	1.2%
Asian/Pacific Islander	0.8%	0.8%
<b>Convicted</b>	<b>44.0%</b>	<b>34.9%</b>
<b>Unconvicted (awaiting court action on charges)</b>	<b>56.0%</b>	<b>65.1%</b>

Source: U.S. Bureau of Justice Statistics

### Estimated # of inmates confined in local jails\*



\* The most recent federal data on state-by-state jail populations is for the year 2013 — from the U.S. Bureau of Justice Statistics’ “Census of Jails”

► PLEASE TURN TO PAGE 6



*According to the Prison Policy Initiative, more than 500,000 people in the United States were detained in jails before their trial in 2018. In some states, legislators and other leaders are examining whether changes in the current bail system could reduce that population while still preserving public safety.*



▶ CONTINUED FROM PAGE 1

# Growth in local jail populations fueled by rise in unconvicted inmates

For example, if a violent offender facing many years in prison has the financial means to pay for an expensive bail, he or she also probably has the means and incentive to skip town. Conversely, nonviolent offenders facing light sentences (community service, for example) would have little incentive to skip their future hearings if released from custody. But they may not be able to afford bail.

A fourth drawback, Fishman says, is that people who are unable to pay bail and spend any time in pretrial incarceration face long-term, negative consequences: “They’re more likely to recidivate. There’s long-term impact on their ability to work and take care of their families.”

And these effects are not limited to a small number of people.

According to the Prison Policy Initiative, more than 500,000 people in the United States were detained in jails before their trial in 2018. Over the last 20 years, all net growth in the number of people held in local jails can be attributed to the pretrial detention of unconvicted individuals.

## Two major changes outside Midwest

New Jersey was one of the first states to shift away from cash bail with its passage in 2014 of SB 946.

This legislation eliminated cash bail for most crimes, instead establishing non-monetary bail alternatives for release. (Under a constitutional amendment passed by New Jersey voters that same year, judges also can deny bail completely to certain high-risk defendants.)

Under SB 946, when an individual is booked into a county jail after arrest, a recommendation on whether he or she should be released is based on a Public Safety Assessment: What is the likelihood that this person will commit another crime or not return to court? Several factors are used in this assessment — whether the person was charged with a violent crime, for example, or if he or she has a criminal history.

If prosecutors want the suspect kept in jail, a judge considers the safety assessment and the prosecution’s arguments when deciding whether to detain the person, release him or her, or release with conditions.

Challenged in court by the commercial bail-bond

industry as a violation of a defendant’s constitutional right to bail, the law was upheld last year by a federal appeals court. In the program’s first year, 2017, New Jersey’s pretrial jail population fell by 20 percent.

More recently, California lawmakers passed SB 10 in 2018. It calls for complete elimination of the monetary bail system and, like New Jersey, the use of pretrial assessments to determine a person’s likelihood to flee and/or re-offend. Those arrested and/or detained for a misdemeanor would be booked and released without use of this risk assessment. Violent offenders and those defendants who fail the risk assessment could be denied pretrial release, while others could be released with conditions.

Implementation of California’s SB 10 has been delayed, however: Its opponents gathered enough signatures for voters to decide on its fate in a 2020 referendum.

## Three new laws in Midwest

Since 2017, legislatures in at least three Midwestern states have passed bills related to cash bail and/or the use of risk-assessment tools to determine an arrestee’s likelihood of committing a new criminal offense or failing to appear in court. Here is a summary of each of these new laws.

### NEBRASKA’S LB 259

Passed two years ago with overwhelming support in the Unicameral Legislature, LB 259’s goals include reducing overcrowding in local jails and preventing the pretrial detention of people who have been charged with low-level offenses and are too poor to post bonds. The bill’s sponsor, Sen. Matt Hansen, noted in a column last year for the *Lincoln Journal Star* that more than half of the

Prison, jail and pretrial detention incarceration rates in Midwest

State	# of prisoners per 100,000 adult residents <sup>1</sup>	# of jail inmates per 100,000 adult residents <sup>2</sup>	# of unconvicted jail inmates per 100,000 residents between the ages of 15 and 64 <sup>3</sup>
Illinois	341	210	157.1
Indiana	384	330	271.7
Iowa	286	170	157.9
Kansas	331	310	204.7
Michigan	414	210	126.1
Minnesota	191	150	111.0
Nebraska	274	240	210.4
North Dakota	234	220	200.7
Ohio	449	200	145.7
South Dakota	440	260	231.3
Wisconsin	383	270	158.4
United States	450	310	—

<sup>1</sup> Data are for 2016 (the most recent year available) and come from the U.S. Bureau of Justice Statistics.

<sup>2</sup> Data are for 2013 (the most recent year available) and come from the U.S. Bureau of Justice Statistics.

<sup>3</sup> Data are for 2015 (the most recent year available) and come from a Vera Institute of Justice analysis of figures compiled by the U.S. Bureau of Justice Statistics and other sources. “Unconvicted” means a person has not been convicted and is awaiting court action on the charges against him or her.

jail population in Nebraska’s largest counties was made up of pretrial detainees unable to afford bail.

LB 259 gives jurisdictional authority to county courts to determine the competency of a defendant to stand trial and his or her ability to pay bail or fines. Judges also must consider a defendant’s finances when setting the price of bail, fines and fees. Furthermore, LB 259 increased the credits that individuals could earn per day toward their debts, from \$90 to \$150. If, for example, a person receives a \$150 ticket for possession of an open container of alcohol and they are held in custody for failure to pay, one day in custody would be equivalent to paying the ticket.

## State supreme courts, local initiatives exploring use of risk assessments, other pretrial reforms

Changes to bail and pretrial incarceration policies typically involve cooperation among a state government’s three branches, and in some Midwestern states, the judiciary is leading the way.

In **Indiana**, for example, the state Supreme Court initiated a pilot project to test the use of a Risk Assessment System-Pretrial Assessment Tool, which is designed to help local courts make evidence-based pretrial decisions. The goal: Reduce pretrial incarceration for defendants with lower risk levels, as determined by the risk assessment, and provide suitable levels of detention for high-risk defendants. Eleven Indiana counties have been piloting the use of this risk-assessment tool in the pretrial process.

In 2018, the **Kansas** Supreme Court formed the Ad Hoc Pretrial Justice Task Force to explore the state’s bail laws and possible alternatives. It will submit recommendations to the Kansas Legislature in mid-2020. In **Ohio**, Supreme Court Justice Maureen O’Connor has brought together a 24-member task force to study other states’ bail practices, the use of risk assessments to assist bail decisions, and legal challenges to the elimination of bail. The task force was expected to deliver recommendations sometime in April.

Local-level initiatives, meanwhile, are in place in states such as **Iowa** and **South Dakota**.

In Iowa, despite opposition from some state lawmakers, four counties tested the use of a pretrial risk assessment tool in 2018. South Dakota’s Pennington County received a \$1.75 million grant from the MacArthur Foundation’s Safety and Justice Challenge to reduce its jail population. One of the county’s four new strategies is to expand non-jail options for lower-risk offenders through the use of a risk-assessment tool.



INDIANA’S HB 1137

With the passage two years ago of HB 1137, Indiana legislators tasked the state Supreme Court with developing a pretrial risk-assessment system by the end of this year. That system, combined with changes in bail policy, could help reduce the state’s jail population. Between 65 percent and 75 percent of that population is made up of people awaiting trial, according to a fiscal note on HB 1137 prepared by Indiana’s Legislative Services Agency.

Eleven Indiana counties, meanwhile, already have been piloting the use of a risk-assessment tool in the pretrial process.

Trained staff in these counties ask offenders a series of seven questions about their housing, drug use, employment and criminal history. Their answers and criminal records are used to classify them as a low, moderate or high risk of flight and/or re-offending. Judges then decide if a suspect should be released or held in jail — based on the criminal charge against him or her as well as the risk assessment.

Initial concerns about use of the risk-assessment tool were voiced both by public safety advocates who believed dangerous criminals would be set free and civil liberties groups that worried minorities would be disproportionately denied bail.

While it remains to be seen if Indiana’s risk-assessment tool has any kind of racial or ethnic bias, there is evidence that its use has not decreased public safety, *The Indianapolis Star* reported last year.

Hamilton County placed 1,708 of 2,166 defendants on pretrial supervision in 2017. Of those released without having to pay bail, 91.2 percent made their scheduled hearings and 89.4 percent were not charged with new crimes during the pretrial stage. From October 2017 to August 2018, nearby Hendricks County released 70 defendants on the lowest level of supervision. Only two of those 70 failed to appear at their future hearings, and only one was arrested for a new offense.

ILLINOIS’ SB 2034

The Illinois Bail Reform Act (SB 2034 of 2017) set in statute a presumption that the conditions of release for individuals arrested for nonviolent misdemeanors or low-level felonies “shall be non-monetary” and least restrictive as possible, while still assuring a defendant’s appearance at future proceedings. In addition, courts are expected to consider the defendant’s socioeconomic status when setting conditions of release or imposing monetary bail.

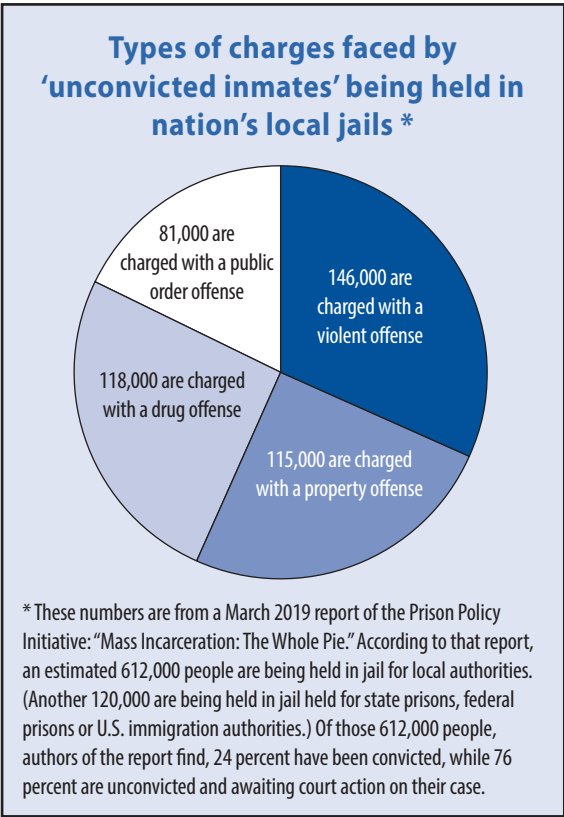


Illinois Sen. Elgie Sims Jr.

SB 2034 also authorizes the Illinois Supreme Court to establish a risk-assessment tool to help determine pretrial release decisions.

In April 2017, the state Supreme Court adopted a statewide policy statement encouraging circuit courts to establish pretrial services agencies that help judges make bail determinations. Furthermore, Illinois’ highest court formed a Pretrial Practices Commission to conduct a comprehensive review of the state’s pretrial detention system and to make recommendations for change by December.

Sen. Sims says he has taken away three lessons from his work on SB 2034, and some of the changes that have come since its passage.



“First and foremost, be bold, understand that you have the ability to change the system,” he says about the role for state legislators. “Second, be comprehensive, focus on the system from the ground up ... My last point, be inclusive, have different voices in the room.”

Potential for future legislative action

Between August 2018 and February of this year, a bipartisan, 14-member group of state legislators, judges, district attorneys and others studied Wisconsin’s policies on bail and pretrial release.

“It gives us a little more direction [compared to the traditional legislative process] when we work through a study committee,” says Sen. Wanggaard, who served as chair of this Wisconsin Joint Legislative Council group.

“We were able, over that period of time, to have six separate meetings. We heard from different

experts in the field and we were able to ask if this really answered all of our questions. And if not, who else do we need to bring in for our next meeting?”

The committee’s final report recommends that the Joint Legislative Council propose an amendment to the Wisconsin Constitution. This constitutional revision would, in turn, allow for policy changes related to the pretrial release or detention of arrestees. For example, all suspects would be “presumed” to be eligible for release, though judges would still weigh factors such as risk to the community and failure to appear in court.



Wisconsin Sen. Van Wanggaard

Also under the constitutional amendment, any law authorizing circuit courts to deny release prior to conviction would have to:

- specify the circumstances under which an accused may be denied pretrial release;
- limit the amount of time a suspect may be denied release prior to conviction; and
- require courts to conduct pretrial detention hearings.

The Wisconsin committee also has proposed three additional bills related to bail and pretrial risk assessments. These measures could only take effect, however, with passage of the constitutional amendment.

Various bail-related measures have been introduced in Michigan, Minnesota, Ohio and North Dakota in recent years. None has passed. The bills in Ohio (HB 439 of 2017) and North Dakota (HB 1258 of 2019) would have created pretrial risk-assessment programs, while a package of bills last year in Michigan (HB 6455-6463) would have completely overhauled the cash bail system.

Minnesota’s HB 741 and SF 87 were introduced earlier this year; they would limit the use of cash bail for certain offenses.

Provisions on bail in constitutions of Midwestern states			
State	Constitutional right to bail?	Constitutional protection from “excessive bail”?	When bail/pretrial release can be denied
Illinois	Yes	No	Suspect is charged with a capital offense, faces possible life in prison, or poses threat to “physical safety” of anyone; the safety of the victim and the victim’s family also must be considered
Indiana	Yes	Yes	Suspect is charged with murder or treason
Iowa	Yes	Yes	Suspect is charged with a capital offense
Kansas	Yes	Yes	Suspect is charged with a capital offense
Michigan	Yes	Yes	Suspect is charged with murder or treason; has been convicted of two or more violent felonies within past 15 years; faces certain charges of criminal sexual conduct, armed robbery or kidnapping; or has been charged with a violent felony while out on bail
Minnesota	Yes	Yes	Suspect is charged with a capital offense
Nebraska	Yes	Yes	Suspect is charged with a capital offense
North Dakota	Yes	Yes	Suspect is charged with a capital offense; the safety of the victim and the victim’s family also must be considered
Ohio	Yes	Yes	Suspect is charged with a capital offense or poses a “substantial risk of serious physical harm to any person or to the community”
South Dakota	Yes	Yes	Suspect is charged with a capital offense; the safety of the victim and the victim’s family also must be considered
Wisconsin	Yes	Yes	Legislature has authority to prevent release of a person charged with murder, certain sexual assaults, or felonies that involve actual or threatened “serious bodily harm”



# Stateline Midwest



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THE MIDWESTERN OFFICE OF THE COUNCIL OF STATE GOVERNMENTS

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## ‘Victim-centered’ approach

### New policies on sexual assault, from handling of rape kits to new supports in hospitals, being implemented across Midwest

by Tim Anderson ([tanderson@csg.org](mailto:tanderson@csg.org))

As she’s worked on policies to improve how her state handles sexual assault investigations and helps victims, Nebraska Sen. Kate Bolz has talked to advocacy groups and consulted with experts.

But she also has in her mind a constituent, a survivor who approached her after a town-hall meeting.

“She was so young and had been so hurt by her circumstance,” Bolz says, “and she talked about the kind of support and information she needed.”

“Over the past couple of years,” she adds, “we’ve heard a lot from survivors.”

The same likely can be said for legislators across the Midwest, as evidenced by statistics on the prevalence of sexual assault and the burst of activity in state capitols.

According to RAINN, the nation’s largest anti-sexual violence organization, someone is sexually assaulted in the United States every 98 seconds. And more than 20 percent of women report having been a victim of rape (either attempted or completed) during their lifetimes, federal data show.

States have explored various ways to improve their policies around sexual assault, and the result has been several new laws that aim to help victims and improve investigations of the crime, particularly through a better handling of sexual assault kits. Here is a look at some of the strategies being proposed and implemented in the Midwest.

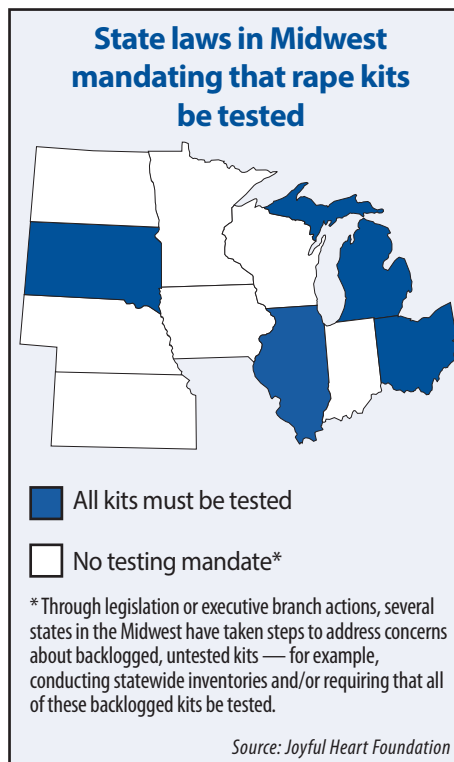
### New supports, rights for victims

Earlier this year, Bolz introduced LB 43, the Sexual Assault Survivors Bill of Rights.

“I think maybe the most important element [in the legislation] is the proactive requirement that people are provided information about their rights — everything from the right to being treated with dignity and respect to the right to participate in the criminal justice process,” she says.

“When you are experiencing a traumatic situation, information that you can trust, about the choices you have, is really important.”

Under LB 43, sexual assault victims



would be informed of their rights during initial interactions with nurses, medical examiners or police officers.

Bolz worked with the advocacy group Rise on the legislation. That same group lists South Dakota and Illinois as having passed some version of a Sexual Assault Survivors Bill of Rights in 2018.

Illinois’ SB 3404, for example, spells out the rights of every victim to have an advocate present during a hospital examination; to consent to the collection of DNA evidence; and to shower after a medical exam is complete. (Nebraska’s

LB 43 includes these provisions as well.) Also last year, Illinois legislators adopted new requirements for how sexual assault victims are cared for in the hospital.

Under HB 5245, hospital emergency rooms must have a staff member who has received training on how to collect physical evidence, respond to the medical and psychological needs of a survivor, and testify in court. These requirements take effect in three years.

The goal of Illinois’ HB 5245 is two-fold: improve support for victims and government prosecutions of sexual assault crimes.

By improving supports, too, the state hopes it encourages more victims of sexual assault to report their cases to law enforcement. (Nationally, only about one-third do.)

Illinois formed a working group four years ago to explore various “victim-centered” policies, and HB 5245 and SB 3404 are among the results of this group’s work and recommendations.

A third example was the legislature’s passage three years ago of SB 3096, which requires specialized training on sexual assault for law enforcement, first responders and 911 operators. That same measure also extended the time for survivors to consent to the testing of forensic evidence, for use in sexual assault kits, from 14 days to five years.

### Policies on testing of rape kits

A sexual assault kit, or rape kit, contains biological evidence collected in the aftermath of a sexual assault.



*It is estimated that every 98 seconds, a person in the United States is sexually assaulted. State governments are at the center of efforts to improve the government’s response to these crimes — including more supports for victims, new policies on sexual assault kits, and prevention programs on college campuses.*

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State laws aim to improve support for victims, testing of sexual assault kits

The handling of these kits — by hospitals, law enforcement and crime labs — has been the focus of many states’ new policies on sexual assault. In particular, states have tried to address concerns about a backlog of untested kits, and how this lack of testing prevents crimes from being solved, keeps serial rapists from being caught, and adversely impacts victims.

“There is a big message that you send to survivors [with the handling of those kits], and that message should be, ‘If you get this done, we will do something with it,’ ” says Ilse Knecht, the director of policy and advocacy for the Joyful Heart Foundation.

The foundation has been advocating that states across the country “end the backlog,” through the adoption of “six legislative pillars of comprehensive rape kit reform.”

One of those pillars is to conduct a statewide inventory of untested sexual assault kits — a step that most states in the Midwest have taken. In addition, through new laws or voluntary partnerships with law enforcement, many states have taken the next step of trying to clear the backlog. In 2018, for example, Ohio announced that all of its old kits had been tested.

Nine years ago, Illinois became the first in the nation to require a statewide audit of untested rape kits and to require new kits to be tested, though even with this law in place, the *Chicago Tribune* reported in November on problems with the length of time it takes to process these kits.

Other states in the Midwest with mandates to test new rape kits include Michigan, Ohio and South Dakota.

According to Joyful Heart, Michigan requires law enforcement to collect kits from the hospital within 14 days and then send them for testing within 14 days. The lab must then analyze the kits within 90 days, if sufficient resources are available.

That question of “sufficient resources” is a big one in all of the states. Last year in Nebraska, a different version of the Sexual Assault Survivors Bill of Rights would have mandated that all kits be tested, estimated to be about 600 a year.

Legislatures revisit statute of limitations for sex crimes

How to set statutes of limitations — or whether to have them at all — in cases involving sexual assault has been the subject of much legislative debate in recent years. Here is a look at some of the changes adopted by state legislatures in the Midwest.

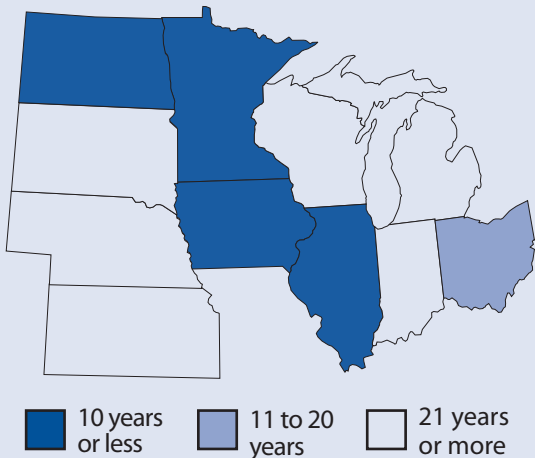
• **Eliminate or extend time limit in cases involving children** — Two years ago, **Illinois** eliminated the statute of limitations for felony criminal sexual assault and sexual abuse crimes against children (SB 189). Last year, **Michigan** lawmakers changed their statute-of-limitations provisions to allow for a criminal indictment to be filed within 15 years of the offense or by a survivor’s 28th birthday, whichever is later (SB 871). The limits had been 10 years and the survivor’s 21st birthday.

• **Eliminate or extend the time limit in cases involving violent sex offenses** — Six years ago, **Kansas** eliminated the statute of limitations on rape (HB 2252). According to the anti-sexual violence organization RAINN, **Nebraska, North Dakota** and **Wisconsin** also have no statute of limitations for this crime. In 2015, **Ohio** legislators extended the time limit for prosecutors to pursue cases involving rape and sexual battery, from 20 years to 25 years (HB 6).

• **Eliminate or extend time limit in certain circumstances** — **Illinois** lawmakers passed a bill in 2018 for cases in which victims were unaware that a sexual assault was committed against them, due to circumstances such as a drug-induced assault. SB 2271 extends the statute of limitations to within one year following a victim’s discovery of a crime, when corroborating physical evidence is available. **Indiana’s** SB 94, signed into law in 2015, extended the statute of limitations by five years in rape cases when new DNA evidence is found.

• **Change law on civil actions** — Six years ago, with the passage of HF 681, **Minnesota** legislators gave child victims of sex crimes a temporary, three-year window to file civil lawsuits from older cases that otherwise would have run up against the state’s statute of limitations. In 2017, **Nebraska** legislators eliminated the statute of limitations for the victims of childhood sex abuse to pursue civil actions (LB 300) against the perpetrator who “directly” caused the “injury or injuries.”

Statutes of limitations for most types of serious felony sex crimes



\* States may have longer time limits in their statutes for the most serious types of felony sex crimes and those involving children.

Source: RAINN

That would have required the hiring of new forensic scientists, among other new expenses; a fiscal note on this legislation estimated a cost of \$1.2 million in the first year and \$433,000 in the second. Bolz removed the testing requirement this year from LB 43 to improve the bill’s chances of passing.

The state of Kansas has thus far used a voluntary approach to address its backlog of kits and to prevent future ones.

A few years ago, Kansas became the first U.S. state to get 100 percent compliance from local law enforcement on an inventory of all untested sexual assault kits. More than 2,220 such kits

Two federal grants address backlog of untested rape kits

As they’ve worked to address backlogs of untested sexual assault kits, and to bolster the overall collection and use of DNA evidence, states have been helped in these efforts by two federal grant programs.

Under the Debbie Smith Act, the federal government awards grants via the DNA Capacity Enhancement and Backlog Reduction Program. In fiscal year 2018, close to \$68 million went to states and their localities to improve lab capacity (see table for totals from the Midwest). State and local governments also get federal grants through the Sexual Assault Kit Initiative (\$43 million in FY 2018), the goal of which is to “address the growing number of unsubmitted [kits] in law enforcement custody.”

\$ awarded through DNA Capacity Enhancement and Backlog Program, FY 2018

State	Amount
Illinois	\$2.6 million
Indiana	\$1.4 million
Iowa	\$631,000
Kansas	\$463,000
Michigan	\$2.1 million
Minnesota	\$966,000
Nebraska	\$459,000
North Dakota	\$226,000
Ohio	\$2.0 million
South Dakota	\$312,000
Wisconsin	\$1.1 million

Sources: National Institute of Justice

With goal of preventing sexual assault, some states requiring more of college campuses

Three years ago, in a poll done by *The Washington Post* and the Kaiser Family Foundation, 20 percent of current or recent female students reported that they had been sexually assaulted during their time in college.

In that same national survey, 72 percent of respondents (male and female) reported that their college had some type of awareness and training program in place. In **Michigan**, the state’s universities must now have such a program in place in order to receive all of their state funding. The Legislature adopted this requirement as part of the current budget. Schools must offer an in-person course or presentation to all freshmen and transfer students.

**Minnesota’s** latest budget for higher education created a new statewide coordinator (within the Office of Higher Education) to assist campuses with sexual assault prevention and response efforts. That followed legislation in 2015 requiring schools to provide training to staff and students, as well as to have an online system for individuals to report sexual harassment and violence. Minnesota colleges also must provide annual reports on incidents of sexual assault.

**Illinois’** HB 821, signed into law in 2015, addressed training on college campuses as well as the policies that each institution must have to address allegations of sexual violence, stalking and other offenses.



% of U.S. women, men reporting they had experienced some form of contact sexual violence during their lifetimes		
Type of contact sexual violence	Women	Men
Rape (attempted or completed)	21.3%	24.8%
Made to penetrate someone else	1.2%	2.6%
Sexual coercion	16.0%	9.6%
Unwanted sexual contact	37.0%	17.9%
Source: The National Intimate Partner and Sexual Violence Survey		

were identified, as were four primary causes for the backlog: a lack of 1) training on sexual assault cases, 2) resources among investigative units and labs, 3) policies on how to handle evidence, and 4) societal awareness.

“There are a number of reasons that this problem [of untested kits] occurred over decades,” says Katie Whisman, who leads work on the Sexual Assault Kit Initiative (SAKI) for the Kansas Bureau of Investigation. “To fix the problem is just as complex.”

Last year, thanks in part to additional resources allocated by the Legislature, Kansas recommended that all new kits be submitted for testing, and that law enforcement and laboratories communicate on a case-by-case basis to decide which kits should be prioritized for processing.

Meanwhile, progress on Kansas’ backlog continues: As of the end of October, testing on 993 of the state’s 2,220 kits had been completed.

Knecht agrees that myriad factors led to the nationwide backlog of untested sexual assault kits, but she identifies one overriding cause: “I think the biggest reason it exists is because of a lack of prioritizing sexual violence, not treating it as the violent crime that it is, not understanding the fact that a lot of rapists are serial rapists.”

As of late 2018, she says, three U.S. states (all outside the Midwest) had adopted each of the foundation’s six “pillars of reforms”; many others had implemented some of them.

“We are hopeful and optimistic about the progress that has been made so far,” Knecht adds.

### New law for tracking rape kits

The Ohio law requiring old and new sexual assault kits to be tested dates back to 2014 (SB 316). In late 2018, with the passage of SB 201, legislators established a new system that allows each kit to be tracked as it goes through the chain of custody — from collection to testing to storage.

Ohio’s labs, hospitals and law enforcement must participate in this tracking system, which will improve state accountability over how these kits are handled, Ohio Sen. Stephanie Kunze says.

SB 201 stipulates, too, that victims have the ability to anonymously access the statewide tracking system. By using a bar code, an individual will be able to track the location and status of his or her kit.

“If you’ve been a victim of sexual assault or rape, not having an idea of where that kit is in the process can be concerning,” Kunze says. “And it was important to have a way that they could track it privately on their computer, instead of having to call different places, to find out the status.”

In late 2018, Indiana announced plans to establish a tracking system of its own.

## Examples of recent state laws, proposals and programs in Midwest to improve sexual assault policies



### ILLINOIS SEEKS TO IMPROVE HOSPITAL CARE FOR VICTIMS

By 2022, every hospital emergency room in **ILLINOIS** must have a nurse or other staff that has received training on how to provide specialized care to victims of sexual assault, as well as how to properly collect physical evidence. This new requirement is the result of last year’s passage of HB 5245, which aims to reduce trauma among victims and improve government prosecutions of sex crimes.



### INDIANA DEVELOPING NEW SYSTEM TO TRACK SEXUAL ASSAULT KITS

**INDIANA** is taking steps to develop a statewide system for tracking rape kits, a move that is the result of last year’s passage of SB 264 and that the Joyful Heart Foundation says will help ensure “all rape kits associated with a reported crime are collected, transported and tested in an expeditious manner.” In late 2018, an Indiana advisory council reported that a tracking system “will be available in the near future.”



### IOWA CONDUCTS STATEWIDE SURVEY OF UNTESTED KITS

In 2016, **IOWA** legislators passed a bill (HF 2420) requiring local law enforcement to participate in a survey about the state’s untested rape kits. The results, released in 2017, shed light not only on the number of untested kits (4,265), but reasons for the lack of testing. The top three reasons: 1) the victim did not wish to file charges; 2) law enforcement doubted the truthfulness of the accusation; and 3) the victim did not cooperate.



### KANSAS WORKING GROUP CALLS FOR ALL KITS TO BE TESTED

**KANSAS** has a working group of prosecutors, law enforcement, forensic scientists and victim advocates examining the issue of untested sexual assault kits. In April 2018, this group recommended that all of the state’s more than 2,200 untested kits be submitted to a forensic laboratory. It also developed a set of model policies for local law enforcement, including that any new kits be submitted to a lab within 14 days from evidence collection.



### MICHIGAN TIES UNIVERSITY FUNDING TO SEXUAL ASSAULT PREVENTION

In 2018, when **MICHIGAN** legislators approved the higher-education budget, they made some funding contingent on these schools having policies on sexual assault in place. For example, universities must provide an in-person prevention course or presentation for all freshmen students and establish policies on how to report and investigate allegations. Lack of compliance results in a 10 percent drop in operations funding.



### MINNESOTA ESTABLISHES NEW RULES ON SEXUAL ASSAULT KITS

**MINNESOTA**’s HF 3017, signed into law in 2018, improves victim notification on sexual assault kits and establishes new rules for handling this evidence. If a victim has agreed to have a kit tested, law enforcement must retrieve the evidence within 10 days and then have it sent to a lab within 60 days, unless investigators determine the kit does not “add evidentiary value.” However, they must then record their reasons for not testing.



### NEBRASKA CONSIDERS BILL OF RIGHTS FOR SEXUAL ASSAULT SURVIVORS

A Sexual Assault Survivors Bill of Rights has once again been introduced in the **NEBRASKA** Unicameral Legislature. Last year’s LB 1126 never made it out of legislative committee, but the bill’s sponsor, Sen. Kate Bolz, announced plans in October to introduce a “new, streamlined version.” Her goal with LB 43: Ensure that survivors are notified of formal and informal supports available to them during medical and law enforcement interactions.



### NORTH DAKOTA ENSURES RIGHT TO COUNSEL FOR STUDENTS ACCUSED OF SEXUAL ASSAULT

**NORTH DAKOTA** gives students at public universities the right to be represented by legal counsel (at their own expense) when contesting sexual misconduct allegations or other serious non-academic disciplinary charges. SB 2150 received near-unanimous approval in 2015. Its passage followed the controversial expulsion of a University of North Dakota student accused of sexual assault. He was later cleared by the university.



### OHIO ALLOWS VICTIMS TO TRACK RAPE KITS — FROM COLLECTION TO STORAGE

Legislation passed in **OHIO** (SB 201) in late 2018 creates a Sexual Assault Kit Tracking System. All agencies involved in the chain of custody of these kits must participate in the system, which will be run by the state attorney general’s office. With the new system, victims of sexual assault can anonymously follow the status of evidence as it is collected, analyzed, stored and, in some cases, destroyed.



### SOUTH DAKOTA LAW HELPS VICTIMS THROUGH FORENSIC-EXAM PROCESS

A bill passed by the **SOUTH DAKOTA** Legislature in 2018 (HB 1126) ensures that victims of sexual assault don’t have to worry about erroneously being billed for the cost of a forensic medical exam. The new statutory language adds clarity to an existing law that says the county or the perpetrator, upon his or her conviction, must pay the exam costs. Victims also must be notified of the availability of the no-cost exam.



### WISCONSIN CLEARS BACKLOG OF SEXUAL ASSAULT KITS, CONSIDERS NEW MANDATE

In fall 2018, the **WISCONSIN** attorney general’s office announced that the state had cleared its backlog of more than 4,100 untested sexual assault kits. Some of the kits dated back to the 1980s, according to the *Wisconsin State Journal*. Brad Schimel, then the state’s attorney general, also called on legislators to pass a law to prevent future backlogs — by requiring law enforcement to send new kits for testing within 72 hours.