A compilation of articles that appeared in the publication Stateline Midwest in 2022 on policies related to criminal justice and public safety
BAIL, THE BALLOT AND PUBLIC SAFETY

A statewide vote on changes to the pretrial system is coming in Ohio, and maybe Wisconsin, while the end to cash bail in Illinois is now only a few months away.

The issue that received perhaps the most attention, however, has centered around cash bail. In places such as Ohio and Wisconsin, voters will or may soon have an opportunity to weigh in on possible changes to their respective state constitutions that would require judges to consider public safety ramifications when setting monetary bail amounts.

In Illinois, an imminent statewide end to cash bail (the result of legislation passed last year) has sparked a political debate over whether such a move will result in greater equity or increased violence. Indiana, meanwhile, has a new law limiting who can post bail for defendants.

Considering that a number of changes to pretrial release occurred only in the last few years, and the impact that the COVID-19 pandemic had on the criminal justice system, proving whether bail reform has led to increases or decreases in violent crime is still to be determined.

“When you look across the country, gun violence and murders have risen in blue states, red states, urban areas, rural and suburban areas,” Jullian Harris-Calvin of the Vera Institute of Justice said in an interview last year with PBS NewsHour.

“It’s going to take a while for us to really assess what exactly led to this, and there’s no one factor,” she added.

Part of that assessment is likely to be bail policies that can influence who is released, and isn’t released, from jail prior to trial.

**CONSIDER PUBLIC SAFETY WHEN MONETARY BAIL IS SET?**

Two years ago, Justin DuBose was arrested in Las Vegas for allegedly killing a man in Hamilton County, Ohio, during a robbery. A legal back-and-forth on bail for DuBose ensued. The amount was initially set at $1.5 million; DuBose sought a reduction to $500,000.

The case eventually made its way to the Ohio Supreme Court, and in January 2022, the justices issued a far-reaching decision: Public safety should not be considered when determining monetary bail amounts. The court also ruled the initial amount was excessive because DuBose didn’t consider DuBose’s available financial resources. In Ohio, judges can deny bail altogether for certain offenses (including murder and other violent felonies), and they can impose nonfinancial conditions of release such as electronic monitoring, surrendering a passport or agreeing not to contact witnesses in the case.

In response to the ruling, political leaders — including Attorney General Dave Yost — are seeking a constitutional change to explicitly include public safety considerations.

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sexual conduct with a minor to an existing list of offenses in which judges must hold a “no bail” hearing upon the request of a prosecutor. This same measure, along with SB 182, includes changes to Ohio’s cash-bail system designed to stop “wealth-based” detention. Supporters say these measures would give judges more tools to detain individuals who pose a risk to public safety, but also create a fairer pathway to release for low-risk defendants.

Werner’s biggest criticism against cash bail is that it separates defendants into two groups, those who can afford to get out and those who can’t. It’s a distinction that often runs along racial lines.

“What really is going to happen [if the referendum passes] is we’re going to see race disparity in the criminal justice system in Ohio explode through the roof and beyond,” Werner says.

Yost says he’s interested in exploring automatic bail review for misdemeanor cases so defendants don’t have to spend extended periods behind bars.

The END OF CASH BAIL IN ILLINOIS

Last year, as part of a comprehensive set of changes to the state’s criminal justice policies known as the “SAFE-T Act” (HB 3653), Illinois lawmakers committed to end cash bail by Jan. 1, 2023.

During a webinar hosted this year by the Midwestern Legislative Conference Forum on Social Justice, Rep. Justin Slaughter, one of the chief sponsors of the SAFE-T Act, said the goal is to stop “wealth-based” detention and pivot to a system that’s more going to look at the actual severity of the offense.

The law’s enacting date was recommended by the Illinois Supreme Court Commission on Pretrial Practices, which argued municipalities would need ample time to adjust to a no-cash-bail system.

But Illinois House Republican Leader Jim Durkin believes most municipalities won’t be prepared come New Year’s Day, and that transitioning away from monetary bail will weaken public safety.

Although the new law still gives judges the discretion to deny bail to individuals who pose a public safety risk, Durkin says the new system will place greater weight on the offense in question — as opposed to a person’s previous history of violence or court attendance.

“If the offense is not a forcible felony and probation-able, [the defendant] will be given a little notice to appear in court,” says Durkin. “I’m not prepared to say that the criminal element in Chicago and street gangs are ones who are able by the honor system.”

Durkin is particularly concerned about drug dealers and traffickers not being detained before trial. Also under the SAFE-T Act, if a defendant hasn’t appeared in trial for more than 90 days, his or her release must be granted. Some lawmakers attempted to extend this window to 120 days in order to give prosecutors more time to convict violent offenders, but the proposal died in committee.

Along with his concerns about public safety, Durkin questions the constitutionality of the SAFE-T Act. In 2014, Illinois voters adopted a constitutional amendment that included stronger protections for crime victims — referred to as “Marsy’s Law.” Subsequent legislation was passed (HB 1121 of 2015) ensuring that victims be free from harassment and intimidation throughout the criminal justice process.

Under the SAFE-T Act, Durkin argues, defendants will be allowed to compel victims to testify at pre-detention hearings. Proponents of the new law, however, point to the strong support that the legislation received from survivor groups.

“We actually strengthened, when it comes to domestic violence and sexual assault, to make sure that if someone is accused of it, they have to [prove to the state] that they did not commit that abuse,” says Illinois Sen. Robert Peters, another chief sponsor of the measure.

The measure adds that the objective of the new law is to break the status quo use of the “hammer of incarceration,” an approach that has disproportionately affected minority populations.

REGULATION OF ‘CHARITABLE BAIL’

In Indiana, this year’s legislative discussions on bail centered on who should be allowed to pay. With the recent passage of HB 1300, Indiana lawmakers passed a bill introduced last year (HB 315) would add offenses such as burglary, vehicular assault, and unlawful entry.

Ohio Attorney General Dave Yost

Stateline Midwest | August 2022

The measure also distinguishes organizations that post bail occasionally — such as a place of worship — and those that do it habitually.

“Say you have a church that’s a haven for those who have gotten into trouble, and the Knights of Columbus offers to post their bail,” Mayfield explains. “Those aren’t the kind of organizations that do it as a business model, and so we didn’t want them to be caught in the regulations.”

Opponents, however, argue the bill does not create an even playing field, and say the true intent was to punish a single organization, the Bail Project.

That organization has operated in the Indianapolis area since 2018, eventually receiving more than $100,000 in funding from a nonprofit group that was allocated money by the Indianapolis City-County Council.

According to the Indianapolis Star, taxpayers dollars that ultimately went to the Bail Project were used for administrative costs (for example, transporting defendants to court hearings) if not for directly paying bail.

Additional reporting found that since the Bail Project began operations, 37 people had committed homicides in Marion County while out on bail — three of whom were linked to the Bail Project. Sen. Greg Taylor, an opponent of HB 1300, points out that many of the defendants who reoffend while on pretrial release have been assisted by traditional bondsmen. Over the same time period since 2018, commercial bail bonds in Marion County had assisted 10 pretrial murderers. (In all, a total of 225 murder cases were reported in Marion County.)

During debate over HB 1300, he offered amendments to restrict for-profit bondsmen from assisting violent offenders and needed time to report data on how often clients show up to court.

“All of the information that we have is anecdotal right now because there’s no reporting requirement,” Taylor says. “A person who gets bailed out of a for-profit bail company, once they show up for court, that bail company’s name is removed from [public record].”

The Bail Project has filed suit against Indiana, claiming the new law violates its First Amendment rights.
REGIONAL ROUNDP: A LOOK AT RECENT PROPOSALS, LAWS IN MIDWEST STATES TO ADDRESS VIOLENT CRIME

Most recent data show rates falling in many cities, after increasing between 2020 and 2021

by Derek Cantu (dcantu@csg.org)

between 2020 and 2021, violent crime increased in some of the nation’s big cities. The Council on Criminal Justice has been regularly tracking data and reporting crime trends from cities nationwide (including Chicago, Cincinnati, Detroit, Milwaukee, Minneapolis and Omaha in the Midwest), and its end-of-year report for 2021 showed a 44% rise in homicides compared to 2019. Increases also were reported in the number of aggravated assaults, gun assaults, robberies, motor vehicle thefts and domestic violence cases. (Between 2020 and 2021, the council’s findings showed a decline in burglaries, larceny and drug offenses.)

In recent legislative sessions, the response from many state policymakers has been to propose, and often approve, new violence-prevention grants in states such as Illinois, Minnesota and Wisconsin, too, governors and other leaders have committed millions of dollars from the American Rescue Plan Act for violence intervention initiatives in high-crime areas. Some of the new laws, investments and proposals from the Midwest are highlighted on this page.

According to Thomas Abt, a senior fellow with the Council on Criminal Justice, effective intervention strategies are ones that appropriately involve a range of local partners — including community organizations, law enforcement and other groups.

“Ultimately, it is about having clarity on what your outcomes are,” Abt says. “The focus really needs to be on saving lives, and saving lives immediately.”

The council, through its Violent Crime Working Group, has developed 10 “essential actions” for policymakers to consider (see list on this page).

Meanwhile, before some of the new state laws took effect, there were some encouraging signs about crime numbers: The council’s mid-year report for 2022 documented a decrease in homicides, gun assaults, domestic violence cases, and drug offenses. However, it showed an increase in aggravated assaults, robberies, motor vehicle thefts, burglaries and larceny cases compared to early 2021.

ILLINOIS

Last November, Illinois Gov. J.B. Pritzker signed an executive order that declared gun violence a “public health crisis.” He also committed to investing $250 million over the next three years in violence prevention programs.

His executive order reflects public safety goals outlined by the Illinois Criminal Justice Information Authority and SB 2017, the Reimagine Public Safety Act passed by Illinois legislators in 2021. Through this law, new state-funded grants are available for organizations that address violence prevention in specified high-crime areas — geographic locations that reported the highest number of firearm victims, per capita (including self-inflicted cases), between 2016 and 2020.

In addition, lawmakers this year passed legislation creating a crime reduction task force (HB 4736) and established new incentives to recruit and retain members of law enforcement — including lowered retirement ages and day care grants and behavioral health services for first responders.

“There’s a variety of different approaches we wanted to make sure that we took that weren’t rooted in a mechanism of the past that didn’t work,” says Illinois Sen. Robert Peters, who was a chief sponsor of HB 4736 and also serves as co-chair of The Council of State Governments’ Midwestern Legislative Conference Criminal Justice & Public Safety Committee.

INDIANA

This year, Indiana lawmakers passed two significant pieces of legislation to address crime in the Indianapolis area and to monitor offenders on release.

SB 7 establishes the Marion County Violent Crime Reduction Pilot Project. With this law in place, various law enforcement agencies (including city police and security outfits employed by local hospitals, universities and sporting arenas) can establish interoperability agreements. The goal of the project is not only to foster long-term cooperation and dialogue among local law enforcement groups, but also provide them with grants to bolster services in high-crime areas.

“When you talk about violent-crime reduction, everybody immediately thinks about law enforcement responses,” says Indiana Sen. Jack Sandlin, a chief sponsor of SB 7 and a former Indianapolis police officer.

“But there are a lot of things that impact violence in a community. It could be lack of education opportunities, lack of job opportunities, more.”

Another bill, SB 9, will streamline standards for notification when an offender on supervised release disables his or her electronic monitoring system.

MINNESOTA

The same session in Minnesota included many new legislative proposals for how to invest more in public safety — at a time when crime rates were on the rise and the state had a historically large budget surplus.

However, a final agreement in the politically divided Legislature proved elusive. In the Republican-led Senate, lawmakers passed a bill to provide bonus payments to police officers, require public documentation of stayed and dismissed criminal cases, create new criminal penalties for carjacking and retail theft, and establish new mandatory minimum sentences for certain violent crimes.

According to Minnesota Sen. Warren Limmer, the chief sponsor of SF 2673, new criminal deterrences are needed in Minnesota due to prosecutor leniency.

“It’s not a time necessarily to develop long-term reforms that we normally do during more passive times,” he says.

Provisions in HF 4608, a bill passed by the Democrat-led House, included new state dollars for local community policing, violence intervention programs, and wellness and mental health services for at-risk youths, the Minnesota Legislature’s publication Session Daily noted in an analysis of the differences between SF 2673 and HF 4608.

Despite bipartisan support in areas such as officer recruitment/retention and the funding of additional services for youths, a final compromise could not be reached prior to adjournment.

“Given Minnesota’s current budget situation, it’s not an either-or funding question,” Minnesota Sen. Ron Latz says. “We have the resources to do both. We just need the political will to put the funds in those directions.”

WISCONSIN

In October 2021, Wisconsin Gov. Tony Evers announced a public safety investment totaling $45 million. The entirety of this funding came from the federal American Rescue Plan Act.

More than half of this money is going to violence prevention: $17 million for statewide initiatives and $8 million for the city of Milwaukee.

The new state investment is being used in part to develop new competitive grants and partnerships among local government, nonprofit, neighborhood and faith groups.

The remaining $20 million is being used to bolster victim services.
Criminal Justice & Public Safety

Strains in Nebraska and Kansas reflect impact of staff shortages in U.S. states’ correctional facilities

by Jon Davis (jdavis@cs.org)

F or years, state’s departments of corrections have struggled to fully staff their facilities — a phenomenon only exacerbated by the COVID-19 pandemic.

In Nebraska, the shortage has reached "crisis" levels. According to the latest annual report published by the state Inspector General’s Office, there were a record-high 527 vacancies in June 2021, around 23 percent of total positions in the Nebraska Department of Correctional Services. The report also projected that by the end of calendar year 2021, the department will have lost 4,165 employees since 2015.

"Let’s face it, working in the correction system is tough work," says Nebraska Sen. John McCollister, who serves as vice chair of The Council of State Governments’ Midwestern Legislative Conference Criminal Justice & Public Safety Committee.

"If there are viable alternatives to working in the corrections system, I think some people have opted to take less-stressful work." (Nebraska’s unemployment rate in November was 1.8 percent, lowest in the nation.)

Added to the difficulty of the job is a deteriorating work culture, which Nebraska Inspector General Doug Koebernick says his office has found in recent surveys of correctional staff. The office’s annual report, too, references anecdotal evidence of staff members suffering emotional breakdowns after working mandated overtimes, sometimes lasting 24 hours straight.

Last September, several current and former NDCS employees voiced their concerns to members of the unicameral Legislature’s Committees on Corrections, and also to Nebraska Public Media, the hearing lasted more than six hours.

In neighboring Kansas, years of staffing shortages have resulted in in-person visits being suspended indefinitely in one facility, and offenders spending increased time in their cells — sometimes 23 hours a day — at another.

Sarah LaFrenz, president of the Kansas Organization of State Employees, points to ongoing wage compression — where seniority, similar step-pay strategies have seen increased pay to reflect their longevity, but not their actual value.

"We’ve had too, in less than a month, very serious staff assaults at one particular correctional facility," she says.

"There are fewer people working in those living units, maintaining order and ensuring that things are going the way they’re supposed to. There are fewer people who are going to cafeterias to help inmates get their food or get their meds.

“So it very much affects the people that live there, those who are incarcerated. And the safety of the people that work there is very much compromised.”

**WILL HIGHER PAY HELP?**

The governors of Kansas and Nebraska have reached new deals with labor unions representing workers in their respective state correctional facilities. In both states, the result will be considerably higher base wages and shift differential pay for overtime work.

In Nebraska, starting pay for a corporal corrections caseworker will jump by 40 percent, from $20 to about $28 an hour. And a new deal with the Nebraska Association of Public Employees (which represents nurses, counselors, food-service staff and others who work in correctional facilities) includes $3-an-hour raises, increased overtime pay, and 2 percent cost-of-living adjustments for certain employees.

This is the first time Nebraska has attempted to offer attractive financial incentives as a recruitment tool. In 2019, the state began offering $10,000 bonuses for new corporal hires at three of its most understaffed prisons.

According to the inspector general’s report, within two years, a near 60 percent of people who received these bonuses had left NDCS, including 79 employees who quit after being on the job for less than four months.

Additionally, although certain front-line security staff supervisors have recently seen increased pay to reflect their seniority, similar step-pay strategies have not occurred across the board, leading to ongoing wage compression — where subordinate employees essentially earn more than their supervisors, which, in turn, leads to more staff exits.

Despite past events, Koebernick is optimistic about the impact of the latest labor deals.

"It’s going to be very difficult for them personally to make that decision to leave just because they are getting paid such a significant amount higher than they were before," he says, "and it’s going to be harder to find a comparable position with that kind of rate of pay within the community."

Additionally, Koebernick is urging agency leadership and lawmakers alike to check in more frequently with correctional employees in order to assess complaints and staff morale.

McCollister also notes that broader legislative changes would help reduce correctional staff workloads.

"Sentencing reform, probation reform," McCollister says, "those things need to happen to reduce the prison population.”


Health & Human Services

Illinois establishing new license for midwives, with goals of closing service gaps and limiting legal exposure

by Jon Davis (jdavis@cs.org)

L ater this year, Illinois will become the sixth Midwestern state to license midwives and allow them to provide birthing services without being advanced-practice nurses.

HB 3401, signed in December 2021, sets qualifications for a new certified professional midwife license, defines the scope of midwifery practice and requires midwives to consult with physicians or certified nurse midwives for problems during birth.

It also creates the Illinois Midwifery Board — five of whose members must be licensed certified professional midwives — in the Department of Financial and Professional Regulation to oversee licensing.

The new law is a personal victory of sorts for the bill’s sponsor, Illinois Rep. Robyn Gabel, who says its passage was something she pursued since 2011, when she was elected to the General Assembly.

For pregnant women who prefer home births, she believes the new law will provide a gap in medical services.

For midwives without a license, Gabel adds, there was a potential of major legal exposure if something went wrong.

"Our feeling was women were going to have babies, provide medical advice, deliver babies, provide medical advice, and make referrals to hospitals if there are complications during a home birth. Midwifery dates from ancient times but..." (inmates) get their food or get their meds.

"There are fewer people who look like they're supposed to. There are fewer people who are going to cafeterias to help inmates get their food or get their meds.

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**LICENSURE OF MIDWIVES (AS OF JANUARY 2022)**

Midwives directly licensed

Midwives licensed as a nursing specialty

* Illinois law takes effect Oct. 1, 2022

Source: Midwives Alliance of North America

*License taken effect Oct. 1, 2022

**HOURLY MEAN WAGE OF CORRECTIONAL OFFICERS AND JAILERS (AS OF MAY 2020)**

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<thead>
<tr>
<th>State</th>
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</tr>
<tr>
<td>Wisconsin</td>
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</tbody>
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Source: U.S. Bureau of Labor Statistics

**STATELINE MIDWEST | JANUARY/FEBRUARY 2022**

**ILLINOIS**

- Chicago
- Elgin
- Joliet
- Lombard
- Naperville
- Rockford
- Springfield
- Springfield

**KANSAS**

- Kansas City
- Olathe
- Wichita

**NEBRASKA**

- Omaha
- Lincoln

**SOUTH DAKOTA**

- Sioux Falls
- Pierre

**WISCONSIN**

- Madison
- Milwaukee

**APRIL 2022**

**IOWA**

- Des Moines
- Cedar Rapids
- Sioux City

**MICHIGAN**

- Detroit
- Grand Rapids
- Lansing

**MINNESOTA**

- Minneapolis
- St. Paul

**OHIO**

- Columbus
- Cleveland
- Cincinnati

**SOUTH DAKOTA**

- Pierre
- Rapid City

**Wisconsin**

- Madison
- Milwaukee

**March 2022**

**Michigan**

- Detroit
- Grand Rapids
- Lansing

**MINNESOTA**

- Minneapolis
- St. Paul

**WISCONSIN**

- Madison
- Milwaukee
Criminal Justice & Public Safety

Police in the schools: States play central role in the funding and training of resource officers

by Derek Cantú

at November, a teenage gunman opened fire at Oxford High School in Michigan, killing four students. According to local news sources, an on-campus school resource officer (SRO) played a key role in ending the tragedy. Michigan Rep. Gary Howell, too, credits the SRO for preventing further losses of life at the school, where his own son works as a teacher.

Two days after the shooting, Howell took legislative action: a proposal to increase state support for schools seeking to employ SROs. As originally written, HB 5522 would have provided $10 million in grants, via a mix of state and federal dollars. Howell’s amendment — included in a House-passed version of HB 5522 — hiked that total to $50 million.

“There are some districts that, for whatever reason, prefer not to have police officers in the schools,” he says. But for districts wanting SROs in their schools, Howell does not want a lack of financial resources standing in the way. Across the country, the presence of SROs in schools has become more common in recent decades; the availability of state and federal dollars is one reason why.

However, this approach to school safety also has been under increased scrutiny, particularly following the police killing of George Floyd.

In the Midwest, some of the largest school districts have dramatically reduced, if not outright eliminated, the use of SROs.

In Des Moines, Iowa, this decision was made in part based on feedback from town hall events and survey responses. District leaders also had found that Black students were twice as likely to receive referrals to the principal’s office compared to White students, and were arrested at a rate of six times their White classmates.

“What we have seen is that we reversed the law enforcement when they were on campus,” says Jake Troja, an administrator in the Des Moines school district.

“In all cases, law enforcement are invited into the situation by the schools. The disproportionality that occurred, is that the responsibility of the school? I think that’s why we evaluated that program and wanted to make some changes.”

Another factor in shifting away from SROs, Troja adds, was an evaluation of the return from investing in these officers.

“Looking at data, we saw that almost always our staff or students were the first folks involved (in responding to student misbehavior incidents),” he says.

Recent national studies that have examined the roles and impacts of SROs as well.

In 2021, researchers from the RAND Corp. and State University of New York-Albany found that SROs reduce the number of in-school fights, but don’t make a statistically significant difference in preventing other incidents such as school shootings.

Their study, “The Thin Blue Line in Schools: New Evidence on School-Based Policing Across the U.S.,” also concluded that the presence of SROs can increase schools’ use of suspensions, expulsions and arrests, all of which disproportionately affect students who are Black, are male or who have a disability.

“Proactive and versatile” D.J. Schoeff, president of the National Association of School Resource Officers, says some of the data on SROs doesn’t necessarily reflect their true impact in schools. For example, serious incidents preemptively thwarted by an SRO are hard to measure.

During the school shooting at Oxford High School, Howell says, the quick response time of an on-campus SRO proved to be invaluable.

According to Schoeff, who is a police sergeant in the Indianapolis suburb of Carmel, the job of an SRO is to foster safe school environments through supportive student interactions.

“Our role is proactive. We’re about being a positive adult influence in the lives of kids who need it,” he says.

“It is a very versatile position,” he adds. “You have to understand the teen brain, you have to understand special education.”

The National Association of School Resource Officers offers its members a 40-hour training course on those topics, as well as on-deck safety tactics, cultural awareness, and how to effectively address behavioral problems in adolescents.

As of 2019, five states in the Midwest required SROs to take part in training of some kind (see map). Early in 2022, Indiana lawmakers were advancing a bill (HB 1093) to tighten statutory language defining SROs and related training requirements.

Rep. Howell says he supports training SROs on adolescent behavior, but cautions that some smaller communities in Michigan may not have the capacity to devote a single officer to work in schools.

“Some of these (officers) may end up being very part-time people, and if you’re in a small town with, say, a three- or four-person police force, it’s harder to specialize,” Howell says.


Nebraska Sen. John McCollister is the vice chair. Derek Cantú is CSG Midwest’s staff liaison to the committee.

Midwest-Canada Relations

First two disputes under new trade agreement center on core Midwest industries: dairy and autos

by Mitch Arvidson

or the first time under the 20-month-old United States-Mexico-Canada Agreement (USMCA), a three-person panel has ruled in favor of a dairy dispute among participating countries.

The decision, announced in early January, revolved around Canada’s administration of tariff rate quotas (TRQs) on dairy products. Under a TRQ, a predetermined amount of imports is allowed into a country at a low or zero-tariff rate; once that limit is reached, additional imports face higher tariffs.

Canada maintains TRQs on a variety of dairy products — from milk and cream to industrial cheeses and yogurt — under the USMCA.

The problem, U.S. trade officials and dairy groups said, was that a large share of the lower-tariff quotas were being designated for Canadian processors. According to the International Dairy Foods Association, this kind of TRQ allocation was “restricting the ability of exporters to sell directly to [Canadian] distributors or retailers.”

The three-person panel, which heard arguments from Canadian officials, meanwhile, cited the ruling’s endorsement of the country’s system of supply management in the dairy industry: controls on production and imports along with the use of pricing mechanisms.

According to Schoeff, the decision marks a victory for the continent as a whole — because there are far fewer Canadian official, 107,000 of which were in the USMCA.

The North American Free Trade Agreement had a dispute-panel process as well, but there were no deadlines to appeal members.

For example, a country on the receiving end of a complaint could effectively avoid a decision by refusing to appoint panelists. In the earliest stage of NAFTA, only three disputes were settled through the panel process.

In contrast, under the USMCA, if one or both countries refuse to make selections, panelists are drawn randomly from a roster of 30 predetermined individuals.

“The new interpretation changes how we’ve been doing things for 30 years,” says Uzcátegui, who also works with automakers and parts suppliers.

“The new interpretation changes how we’ve been doing things for 30 years,” says Uzcátegui, who also works with automakers and parts suppliers.

“We need to get that resolved now... because we are planning models for five, seven years out right now, and we need to know what the rules of the game are.”

Ohio House Speaker Robert Cupp and Manitoba Minister Kelvin Goertzen serve as co-chairs of the Midwestern Legislative Conference Midwest-Canada Relations Committee. Ontario MPP Percy Hatfield and Michigan Sen. Jim Stamas are co-vice chairs.

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Canada maintains TRQs on a variety of dairy products — from milk and cream to industrial cheeses and yogurt — under the USMCA.

The problem, U.S. trade officials and dairy groups said, was that a large share of the lower-tariff quotas were being designated for Canadian processors. According to the International Dairy Foods Association, this kind of TRQ allocation was “restricting the ability of exporters to sell directly to [Canadian] distributors or retailers.”

The three-person panel, which heard arguments from Canadian officials, meanwhile, cited the ruling’s endorsement of the country’s system of supply management in the dairy industry: controls on production and imports along with the use of pricing mechanisms.

According to Schoeff, the decision marks a victory for the continent as a whole — because there are far fewer Canadian official, 107,000 of which were in the USMCA.

The North American Free Trade Agreement had a dispute-panel process as well, but there were no deadlines to appeal members.

For example, a country on the receiving end of a complaint could effectively avoid a decision by refusing to appoint panelists. In the earliest stage of NAFTA, only three disputes were settled through the panel process.

In contrast, under the USMCA, if one or both countries refuse to make selections, panelists are drawn randomly from a roster of 30 predetermined individuals.

“The new interpretation changes how we’ve been doing things for 30 years,” says Uzcátegui, who also works with automakers and parts suppliers.

“We need to get that resolved now... because we are planning models for five, seven years out right now, and we need to know what the rules of the game are.”

Ohio House Speaker Robert Cupp and Manitoba Minister Kelvin Goertzen serve as co-chairs of the Midwestern Legislative Conference Midwest-Canada Relations Committee. Ontario MPP Percy Hatfield and Michigan Sen. Jim Stamas are co-vice chairs.

Mitch Arvidson is CSG Midwest’s staff liaison to the committee.
Since he joined the Legislature, Nebraska Sen. Tom Brandt has been eager to find ways of providing Nebraska children with more opportunities to access and enjoy the foods grown right in their home-state communities.

A good place to start, he says, was the nation’s largest “restaurant chain” — K-12 school lunch programs.

And Brandt’s vision for a more robust farm-to-school program in his home state appears to be becoming a reality.

One year after the passage of LB 396 (it received unanimous legislative approval), local producers were being offered state-led training sessions on the process of selling to schools. Likewise, leaders from select Nebraska schools had participated in virtual Farm To School institutes, where plans were developed on how to bring locally grown foods to their cafeterias.

“The economic benefits of farm-to-school percolate throughout our local communities,” says Brandt, whose background includes work as a food system engineer and farmer.

“By providing a stable, reliable market for local produce, it enables Nebraska communities to start recapturing a portion of the 90 percent of our school food dollars that are currently leaving the state.”

Previously, he adds, one missing piece in state policy was a full-time farm-to-school coordinator — someone to connect farmers and schools and to raise awareness about the program. Hiring such a coordinator was recommended by an interim legislative task force in 2020 and subsequently included in LB 396, which established the statewide Farm to School program.

“It’s a win for our farms, it’s a win for our communities, and it’s a win for our students at our schools,” says Sarah Brooks, who heads the Nebraska Department of Education as the farm-to-school coordinator, says about local procurement.

Through the Farm to School Institute, eight school teams were connected with coaches and developed action plans for implementing programs this school year. (The institute gets its funding from the U.S. Department of Agriculture and assistance from Nebraska Corn Growth and Development Extension.)

Along with the institutes for school leaders on local procurement and training for producers on selling locally, other new or growing initiatives in Nebraska include:

- the launch of a local version of MarketMaker, a database that connects producers of food directly with consumers of food (one finding of the legislative task force was that local procurement was being limited by school districts’ lack of knowledge about producers in their area);
- “Nebraska Thursdays,” a partnership between the state and the Center for Rural Affairs that strives to have locally sourced menus in school cafeterias on the first Thursday of the month;
- a “Harvest of the Month” program that introduces a new fruit or vegetable into participating schools and encourages taste-testing among students;
- a “Beef in Schools” partnership between schools and the Nebraska Cattlemen association that gets locally produced beef on lunch menus (more was hired by the Nebraska state’s schools are participating).

Brandt also believes that by raising awareness among young people about Nebraska agriculture and how food is made, LB 396 can help build the state’s future workforce in this sector of the state’s economy.

One provision in the new law, for example, says the farm-to-school program “may include activities that provide students with hands-on learning opportunities, including, but not limited to, farm visits, cooking demonstrations, and school gardening and composting programs.”

“[It] encourages some young people to get involved in agriculture and food, and provides an opening for those young people to farm, it’s a winning proposition,” says Brandt, who this year proposed expanding to include early-childhood education programs (LB 758).

Across the Midwest, there is a great deal of variability in terms of the scope and reach of farm-to-school programs, as well as how they are formalized in state law.

Nebraska has now joined Iowa, Michigan and Wisconsin with a comprehensive program that includes a statewide coordinator, budget appropriations, and resolutions or laws directing schools to buy local.

Recently, too, Michigan and Nebraska legislators appropriated additional funds for schools to increase their purchase of locally sourced foods. In Michigan, schools are incentivized with matching funds: 10 cents per meal for purchasing and serving foods grown in the state.


Nebraska Sen. Tom Brandt

# of Nursing Facility Residents in Midwest (2020)

<table>
<thead>
<tr>
<th>State</th>
<th># Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iowa</td>
<td>10,584</td>
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<tr>
<td>Indiana</td>
<td>22,880</td>
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<td>14,520</td>
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<tr>
<td>Kansas</td>
<td>18,707</td>
</tr>
</tbody>
</table>

Source: Kaiser Family Foundation

The legality of such monitoring.

“The law was silent, so nursing homes defaulted to, ‘You’re not allowed,’” she says. “This is a permissive bill. It doesn’t require anyone to do anything.”

Louisiana, Missouri, Oklahoma, New Mexico, Texas and Washington also allow cameras to be placed in residents’ rooms. Maryland has issued guidelines for use of these cameras, and the New Jersey attorney general’s office will likewise. According to the National Center on Elder Abuse.

Sam Brooks, program and policy manager for The National Consumer Voice for Quality Long-Term Care, says effective camera permission laws should require a roommate’s consent and bar nursing facilities from using video surveillance to monitor residents.

Families should also work to ensure that a roommate is not visible on the camera and — if a loved one is unable to consent — consider the resident’s privacy interests, and balance it with the family’s interest in ensuring the security of a loved one, he adds.

“Our primary and motivating concerns are consent and privacy,” Brooks says. “We also strongly believe that video surveillance should never be considered a replacement for proper nursing care and supervision.”


Photo by Carolyn Orr (carolyn@strawridgefarm.us)
CRIMINAL JUSTICE & PUBLIC SAFETY

With local jails overcrowded and lacking treatment options, Indiana gives judges discretion to send low-level offenders to state prisons

by Derek Cantú (dcantu@csj.org)

In Indiana, as in states across the country, a significant number of the people who commit low-level felonies suffer from drug addictions and/or mental health disorders. In recent years, these Level 6 offenders have mostly been sent to local jails across Indiana.

The problem: Many of the jails are overcrowded and not equipped to provide treatment services. Without a path to recovery, the result can be high rates of recidivism.

In response, the Indiana General Assembly passed HB 1004. As a result, starting in July, judges will have the discretion to place Level 6 offenders in state prisons, which have a greater capacity to provide counseling and treatment services.

This policy shift will give individuals a “better chance of recovery” and “help them stay out of the criminal justice system,” Indiana Rep. Randy Frye, the author of HB 1004, said in a statement after the bill’s passage.

Despite the proposal receiving overwhelming bipartisan support, some legislators say the need for HB 1004 reflects a policy shortcoming: inadequate support for local programs that treat drug and mental health issues and reduce recidivism.

“We have to acknowledge that this bill is kind of a recognition of [our] failure,” Rep. Matt Pierce, who voted for HB 1004, said during a committee hearing earlier this year.

LOCAL NEEDS NOT ALWAYS MET

Back in 2013, the Indiana General Assembly passed comprehensive legislation (HB 1006) overhauling the state’s criminal code.

In part, the revisions reflected new guiding principles on how the justice system should treat low-level offenders struggling with addiction and mental illness.

“The whole premise was we’re going to essentially lower these drug sentence levels, get rid of mandatory minimums,” Pierce says. “Shift the system away from warehousing people and focus more on getting them to treatment."

As part of this new approach, legislators changed how Level 6 offenders would be confined — in local jails rather than state prisons. Soon after the criminal justice overhaul, too, pilot programs were established to evaluate the effectiveness of pre- and post-incarceration treatment services, with a particular focus on local care.

One of those services still in operation is RecoveryWorks. Through the program, criminal justice-involved individuals who don’t have health insurance are connected with certified mental health and addiction treatment providers. The state then provides vouchers to those providers.

As part of a 2018 study, Indiana University researchers analyzed how RecoveryWorks has impacted recidivism. Its findings:

• Among participants who had never been incarcerated, 93.4 percent remained out of a correctional facility one year following their treatment.
• For participants who had previously spent time locked up, 90.2 percent remained free.
• Two years after treatment under the program, 87 percent of never-incarcerated participants and 79.1 percent of previously incarcerated participants had remained free.

What’s needed, Pierce says, is to increase the reach of treatment programs such as RecoveryWorks. Instead, since passage of the 2013 law, the legislature has failed to consistently fund local treatment services statewide — despite evidence of their benefits, Pierce says.

“Making sure that every single county — either working on its own or with other counties around it in a regional way — would have that mental health facility, would have that drug treatment facility, would have the counselors and the mental health professionals that are needed,” Pierce said this year on the House floor.

“That was an us to do, and we’ve never done it.”

He believes this failure has contributed to jail overcrowding and recidivism.

CLOSER TO TREATMENT, BUT FARThER FROM HOME

One concern with HB 1004 is that it will place some low-level offenders in a facility far from their loved ones.

“Having a support system, knowing that people are willing to come and see you … it has a tremendous effect on an individual that’s trying to get [his or her] life together,” says Sen. Rodney Pol, a former public defender.

He adds that certain DOC treatment programs like drug therapy have long waiting lists and “are designed for long-term engagement.”

“So the benefit of these programs [for Level 6 offenders] are probably going to be slim to nothing,” Pol says.

He proposed an amendment to HB 1004 that would have required consent from certain Level 6 offenders (those with a sentence of less than a year) before placement in a state Department of Corrections facility, rather than a county jail. That amendment was rejected.


TREATING SUBSTANCE ABUSE AND MENTAL ILLNESS IN CRIMINAL JUSTICE POPULATIONS: TWO EXAMPLES FROM THE MIDWEST

POSITIVE RESULTS SEEN FROM MINNESOTA’S ALTERNATIVES TO INCARCERATION PILOT PROJECT

Under a state-funded pilot project, one county in the Twin Cities metropolitan area launched a community-based strategy for non-violent offenders in need of treatment for substance abuse. Traditionally, these offenders would have been sent to prison for technical violations. Instead, they were assigned a specialized probation officer and provided other community-based resources.

“[County officials] offered housing when they needed it, they did intensive group/individual therapy, they did a whole chemical dependency treatment modality right there on site,” says Minnesota Rep. Marion O’Neill, a proponent of the 2017 legislation that first created the Alternatives to Incarceration grant.

Close to 90 percent of recent participants in this $160,000 incarceration-alternative treatment program have remained out of lockup. According to O’Neill, many of the people selected for the initial pilot study — nonviolent parolees at risk of reincarceration due to technical violations — would not otherwise have received treatment in prison due to their short sentences. The program has been expanded to two additional counties.

KANSAS HELPS COUNTIES’ STEP UP EFFORTS TO REDUCE NUMBER OF PEOPLE WITH MENTAL ILLNESS IN JAIL

Last year, Kansas became the second U.S. state to open a Stepping Up Technical Assistance Center that helps counties reduce the prevalence of people with a serious mental illness in jail. Along with providing baseline data on the number of jail inmates with mental illnesses and substance use disorders, the center helps counties set reduction targets, measure progress, and develop evidence-based strategies and programs.

Stepping Up is a national initiative of The Council of State Governments Justice Center, the National Association of Counties and the American Psychiatric Association Foundation. Its goal: rally counties to achieve a measurable reduction in the number of people in jail who have mental illnesses. As of July 2021, more than 200 counties in the Midwest were participating (see map above).
The agriculture industry as a whole has not prepared for attacks like the banking and utility sectors [have],” says Aaron Warner, CEO of ProCircular.

“The rapid adoption and deployment of new technologies to operate machinery, to gather and analyze the data that drives precision agriculture, and the increasing reliance on communication technologies to link them have really expanded the number of vulnerabilities in the food and agriculture industries,” Jose Marie-Griffiths, the president of Dakota State University, said in legislative testimony earlier this year on HB 1092.

Of the cyberattacks experienced by the U.S. agriculture and food system, more than 70 percent involve ransomware; another 40 percent include some form of hacking. (Some attacks involve both ransomware and hacking.) In April, the FBI issued a warning to the nation’s agricultural cooperatives to be on high alert for ransomware attacks during planting and harvesting seasons. Last fall, such attacks hit six grain cooperatives; two other incidents occurred in early 2022.

“Cyber actors may perceive cooperatives as lucrative targets with a willingness to pay due to the time-sensitive role they play,” according to the FBI notice. Last summer, too, one of the world’s biggest meat processors was forced to shut down several plants due to a ransomware attack.

PROTECTING ONE INDUSTRY, BUILDING ANOTHER

According to Tidemann, an upcoming symposium of farmers, manufacturers and university researchers will help determine initial priorities. He expects part of the two universities’ work to focus on how to retrofit existing equipment and add security features to new designs. Tidemann says another benefit of the initiative will be building a workforce pipeline for the cybersecurity industry, a sector that South Dakota has targeted for new investments and economic growth.

This year’s passage of HB 1092 marks the second straight year that the South Dakota Legislature has provided funding for new partnerships among its universities. In 2021, lawmakers appropriated $20 million for the construction of a bio-products research facility, a joint venture between South Dakota State University and the South Dakota School of Mines and Technology.

“That collaborative brought the technology of the School of Mines to the raw materials of SDSU’s agriculture and natural-resources work,” Tidemann says. “It focuses on creating new bio-products from the state’s raw materials, including corn and timber.”

HB 1092 aims to build on an emerging economic sector, cybersecurity, while protecting one of South Dakota’s most important industries — agriculture.

Aaron Warner, CEO, ProCircular

Source: U.S. Department of Agriculture Economic Research Service (numbers and rankings for 2020)

THE 16 CRITICAL INFRASTRUCTURE SECTORS IDENTIFIED BY THE FEDERAL GOVERNMENT

- Chemical
- Commercial facilities
- Communications
- Critical Manufacturing
- Dams
- Defense industrial bases
- Emergency services
- Energy
- Financial services
- Food and agriculture
- Government facilities
- Health care and public health
- Information technology
- Nuclear reactor materials and waste
- Transportation systems
- Water and wastewater systems

The agriculture and food sector is among 16 critical infrastructure sectors identified by the U.S. government (see above). Under a new federal law, signed by President Joe Biden in March, owners and operators in these sectors must now do the following:

1) Within 72 hours of any substantial cyberattack against them, report the incident to the U.S. Cybersecurity and Infrastructure Security Agency (CISA).

2) Report any ransomware payments that they have made within 24 hours.

Also under the law, which received bipartisan support in the U.S. Congress, the CISA has the authority to subpoena entities that fail to meet these two provisions. Organizations that fail to comply with the subpoena can be referred to the U.S. Department of Justice.

To prevent cyberattacks to the nation’s critical infrastructure, the CISA will launch a program that warns organizations of their vulnerabilities while also establishing a task force (with involvement by the 16 industries) to coordinate federal efforts.
Majority of Midwest states now have ‘permitsless carry’ laws in place

by Derek Cantú (dcantu@csg.org)

A
nnowners in Ohio and Indiana no longer need to obtain a permit in order to conceal a firearm on their person. These two legislative changes in the Midwest, adopted in early 2022, continue a national trend toward “permitsless” or “constitutional” carry.

Across the country, 25 U.S. states (including six in the Midwest) now have such measures in place. “Making lawful people jump through these hoops [in order to secure a concealed-carry permit] doesn’t stop the criminals from breaking the law,” says Indiana Rep. Ben Smaltz, a chief sponsor of his state’s permitsless-carry legislation (HB 1296).

He adds that a person ultimately is responsible for his or her own safety, citing previous U.S. Supreme Court decisions (for example, Castle Rock v. Gonzales of 2005) which found that law enforcement does not have a constitutional duty to protect individuals from harm.

According to Giffords Law Center, views on permitsless carry among Indiana law enforcement have been evenly divided over the past five years it’s been proposed. This year, though, some of the most vocal, high-profile opposition to HB 1296 came from police testimonials, including Detective Matt Foote of Fort Wayne.

During an eight-hour committee hearing on the bill, Foote told legislators that the state’s gun-permit requirement has given officers some peace of mind during traffic stops and other interactions with the public.

The reason: the information collected via the permit system is documented in law-enforcement databases, which officers can then access while on duty.

“A valid handgun permit currently is prima-facie evidence that somebody is a proper person [to carry],” Foote said. “If we do not have a database, officers are going to have to conduct their own background investigation.”

Foote stressed to lawmakers that the necessity to conduct such searches could extend the length of traffic stops to as long as 45 minutes.

Hamilton County, Ohio, Sheriff Charmaine McGuffey — an opponent of the state’s new permitsless-carry law (SB 215) — says prolonged traffic stops jeopardize officer safety.

“How many times have we seen officers either hit or nearly hit in traffic accidents because the officer is standing at the car he or she has stopped?” McGuffey asked.

According to FBI data, between 2017 and 2021, 26 police officers nationally were accidentally killed while performing a traffic stop, with another 34 officers feloniously killed during traffic-related incidents.

As part of Ohio’s new law, a new “duty to inform” provision is in place: when an officer asks a person if he or she is in possession of a firearm, the individual must answer truthfully.

The state’s previous statutory language required individuals to “promptly inform” police that they were carrying a concealed handgun.

McGuffey believes putting the onus on law enforcement to ask (as opposed to an individual already killed by police) not only adds to officers’ already complicated duties, but could result in judges dismissing certain cases due to an officer forgetting to pose the question.

But Ohio Sen. Theresa Gavarone, a co-sponsor of SB 215, says the “promptly inform” standard was too ambiguous.

Placing the responsibility on law enforcement takes out any legal guesswork, she says, adding that “sometimes people get stressed [during police interactions] and they forget, not through any bad intentions.”

CONCEALED-CARRY LIMITS

According to the Giffords Law Center to Prevent Gun Violence, federal and state laws across the country prohibit individuals with felony convictions from possessing a firearm. From there, the restrictions can vary from state to state. For instance, Indiana’s ban also covers individuals with violent or gun-related misdemeanors, while Ohio law prevents guns access to people with a serious mental condition or an addiction to drugs or alcohol.

Those two states’ existing restrictions remain in place. Previously, though, all individuals had to undergo background checks before being legally authorized (via a state permit) to carry a concealed firearm. Now, securing such a permit is no longer required.

Indiana Sen. Liz Brown is concerned that the change in law will make it easier for domestic abusers and other prohibited permit carriers to escape prosecution for illegally carrying a concealed weapon.

“No, the law says you’re only going to get in trouble for [carrying] knowingly or intentionally,” says Brown, who views HB 1296 as allowing an ignorance-of-the-law defense.

During debate over HB 1296, she recommended keeping the licensing system but creating a provisional permit until completion of the background check. Her amendment did not receive a vote.

According to Smaltz, prosecutors will still have to determine whether someone knowingly carried a gun illegally.

SAFETY TRAINING FOR PERMITS

Five Midwestern states still require a concealed-carry permit (see table). Typically, in permit-to-carry states, individuals must take part in firearms safety courses. In Nebraska, for instance, permit holders complete a course approved by state police.

(Ohio’s requirement, which was eight hours of training, was removed under SB 215; Indiana did not require such training under its permitting system.)

“It’s important, one, that people who are concealed-carrying have the highest safety and training standards,” says Nebraska Sen. Adam Morfeld, who voted against an unsuccessful permitsless-carry bill (LB 733) this year.

“I, two, I think it’s important that [people] be required to understand all of the laws surrounding concealed carry, because they can end up in some pretty serious trouble.”

For example, even if they don’t need a permit, gun owners often are barred from carrying firearms inside schools and courthouses.

Additionally, each state has its own unique gun reciprocity laws.

One commonality, however, among the 11 Midwestern states is their “shall-issue” status, meaning little to no discretion is given to law enforcement to deny a permit to an individual who meets statutory qualifications. The eight U.S. states that provide more discretion are known as “may-issue.”

A combination of data limitations, state-to-state policy differences and research restrictions makes it difficult to determine what casual effects these state-level gun classifications have on public safety. For example, the 2020 RAND Corporation meta-analysis study “The Science of Gun Policy” found shall- issue, concealed-carry policies have an uncertain effect on suicides, homicides, robberies and assaults.

Rosanna Smart, the study’s lead researcher, cautions inconclusive evidence does not mean an effect doesn’t exist, but that researchers “don’t quite know yet what that effect is likely to be.”


Derek Cantú is CSG Midwest’s staff liaison to the committee.
Leadership, including from legislators, is needed to launch mental health courts — and make them work.

You do not have to struggle in the dark,” Quattlebaum said. (The CSG Justice Center is among the groups available to help.)

At the federal level, the U.S. Substance Abuse and Mental Health Services Administration administers the GAINS Center for Behavioral Health and Justice Transformation. Through the agency, state and community leaders are able to access training, launch peer-support services (matching offenders with former patients), and learn how best to connect individuals with local mental health resources.

“You can gather at any municipality level and meet with other municipalities that are working toward establishing mental health courts, or drug courts, or trauma-informed courts,” Kim Nelson, a SAMSHA regional administrator and session panelist, said.

As to the role of state lawmakers in advancing mental health courts, Quattlebaum emphasized the importance of establishing statewide structures — not only securing sufficient appropriations and staff supports, but also establishing standards that are unique from other special dockets in a state’s court system. In Georgia, for example, the Council of Accountability Court Judges sets criteria and best practices for the state’s mental health court operations.

Each of the panelists also stressed that mental health courts are only one piece of the puzzle, and that lawmakers should also prioritize early-intervention strategies that occur long before a person goes before a judge. For example:

• investing in co-responder models that pair behavioral health specialists with police;
• securing operators for the new national 988 suicide and mental health crisis hotline;
• and supporting local intervention groups and mental health community centers such as the Wichita-based, county-run COMCare program.


The best of fiscal times may be the ideal period for budget leaders to prepare for the worst, and smart planning means more than building up state rainy day funds and other reserves. According to Airie Loiaconi of the Pew Charitable Trusts, two emerging best practices in states stand out: long-term forecasting and budget “stress testing.”

“You already have the building blocks [to implement these practices]; it’s just a matter of bringing them all together,” Loiaconi said during a presentation in July at a meeting of the Midwestern Legislative Conference Fiscal Affairs Committee.

The session was held a few weeks after many states closed the books on a historically strong fiscal year. But legislators during the MLCS session also expressed caution about what may soon lie ahead: a slowdown in consumer spending due to inflation and other factors, and a “fiscal cliff” when the additional federal dollars stop flowing to states.

Among the 50 states, Loiaconi singled out Utah as being the “gold standard” in crime reduction and in incarceration, but said that other states should take note of Utah’s successes.

In Utah, 20 percent of jail bookings were people with a history of mental illness, according to a recent Pew study. The state has a mental health court program that has been successful, and the state is making investments in those types of programs.

In other states, the data may be different, but the principles are the same. Loiaconi said that states should be looking at ways to reduce recidivism and improve public safety.

The Pew Charitable Trusts, Fiscal Health Project administers the GAINS Center for Behavioral Health and Justice Transformation. Through the agency, state and community leaders are able to access training, launch peer-support services (matching offenders with former patients), and learn how best to connect individuals with local mental health resources.

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**Criminal Justice & Public Safety**

Another Midwestern state has a ‘sanctuary city’ law on the books; Illinois, Indiana and Kansas show how the varied approaches can be.

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**FOLLOWING INDIANA’S LEAD**

In written legislative testimony, HB 2717 architect Kansas Attorney General Derek Schmidt wrote, “It seems to me an affront to basic rule-of-law principles for local governments to dictate non-cooperation with federal authorities who are attempting to enforce laws that Congress unquestionably had the constitutional authority (and duty) to enact.”

Opponents of such preemption, however, contend sanctuary policies can prevent undocumented residents from exploitation while promoting greater dialogue between community members and police. In 2012, University of Illinois-Chicago researchers surveyed more than 2,000 Latinos living in and around four major U.S. cities; about 70 percent of undocumented respondents indicated they were less likely to contact police with information about a crime due to concerns about being asked about their immigration status.

During a committee meeting on HB 2717, a man testified about his mother, who had two children kidnapped by an abusive ex-husband and taken to Mexico. Because the mother was undocumented, she was unwilling to contact law enforcement and didn’t see her children for two decades. According to Schmidt’s testimony, at least 12 states have enacted statewide bans on local sanctuary policies, including Indiana, whose 2011 bill (SB 596) served as a model for Kansas. Indiana’s law included provisions that prohibited law enforcement from verifying a person’s citizenship or immigration status temporarily had contacted law enforcement to either report a crime or be a witness to one. Kansas’ law, however, does not include such language.

**ILLINOIS’ DIFFERENT PATH**

Illinois, meanwhile, has taken a very different approach. Over the last five years, the General Assembly passed multiple bills changing the relationship between local law enforcement and federal immigration agencies, including:

- The TRUST Act (SB 31 of 2017), which instructs law enforcement not to honor federal immigration detainers in the absence of a judicial warrant. Local police also cannot stop, search or arrest individuals based solely on their immigration or citizenship status.
- The VOICES Act (SB 34 of 2018) established new state certification requirements for federal T and U visas, which provide temporary immigration protections for undocumented individuals who are victims of human trafficking or certain other crimes. Victims who obtain these visas agree to assist with prosecutions and investigations of the case.
- SB 667, the Illinois Way Forward Act, passed last year. It bars law enforcement from assisting in federal immigration investigations and from transferring undocumented persons to immigration detention centers (the bill outlawed such facilities statewide beginning in 2022) in cases where the only alleged offense is the civil violation of illegal immigration.

“It’s not the job of local law enforcement to essentially be ICE,” says Illinois Sen. Omar Aquino, who sponsored each of those bills. “It’s not in their jurisdiction [or] their role to enforce immigration policy, and especially a policy on the federal level, which is one that is certainly outdated and in need of comprehensive immigration reform.”

Fred Taos of the Illinois Coalition for Immigrant and Refugee Rights, says sanctuary policies don’t make undocumented immigrants immune to federal seizure. “If ICE were to somehow find out that someone is getting released from a county jail or from a state prison, and they’re waiting outside the jail or prison door, nothing is to stop those ICE agents from immediately apprehending that person,” Taos says.

In Kansas, both Schmidt and Gov. Laura Kelly, who signed HB 2717 into law, agreed immigration concerns should be the prerogative of the federal government and not states. (Schmidt and Kelly are opponents in this year’s race for governor.)

HB 2717 opponent Rep. Louis Ruiz says local governments should have the authority to deal with immigration and law enforcement issues on the ground level, as they see fit, until federal reform is achieved.

Although Wyandotte County’s ordinance may have differed from other Kansas communities that passed sanctuary policies in that it also distributed municipal IDs, Ruiz says these cards allowed undocumented residents “to move around the city without fear of retribution.”

With the new law in place, Ruiz fears those residents will be forced to move back into the ‘shadows.’


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**ESTIMATED # OF UNAUTHORIZED IMMIGRANTS IN MIDWEST (2015-2019)**

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<thead>
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<th>State</th>
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<tr>
<td>Wisconsin</td>
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Source: Migration Policy Institute

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**2 OTHER EXAMPLES OF RECENT LAWS, PROPOSALS IN MIDWEST**

**IOWA**

Passed in 2018, Iowa SF 481 orders local law enforcement to fully comply with federal immigration detention requests, and it bars municipalities from adopting policies that restrict cooperation with immigration authorities. Violation of the law can result in a loss of state funding. Also under SF 481, the state prohibits local ordinances that discourage police from asking about the immigration status of a person who has been detained or arrested. However, officers cannot inquire about the immigration status of a person who is reporting a crime.

**MINNESOTA**

Bills introduced last year (HF 1199 and SF 2118) sought to make Minnesota a ‘sanctuary state.’ State and local government employees would have been protected from honoring immigration detainers, making arrests solely for immigration purposes, sharing government database information with immigration authorities, or assisting in civil immigration enforcement operations. The measures included exceptions to allow communication with federal immigration authorities about a person’s criminal record.

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by Derek Cantú (dcantu@csorg.com)

Lawmakers in Kansas this year passed a bill preempting local jurisdictions from enacting so-called ‘sanctuary’ protections — policies that don’t allow for or let rest, restrict cooperation between local law enforcement and federal immigration authorities. HB 2717 became law only a few months after a sanctuary ordinance was adopted by officials in Wyandotte County, one of Kansas’ most populated counties.

That ordinance included language instructing police not to ask about the immigration status of individuals seeking help.

It also directed local law enforcement not to respond to calls for assistance for federal immigration authorities to enforce immigration law (‘unless to mitigate a public safety threat’).

For example: a ‘federal immigration detainer,’ in which the U.S. Immigration and Customs Enforcement asks for information about the impending release of an undocumented person in custody, and requests that the person be held an extra 48 hours after his or her scheduled release from jail or prison in order to give agents time to collect the individual.

Kansas Rep. Patrick Penn

Omar Aquino

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CRIMINAL JUSTICE & PUBLIC SAFETY

Changing behaviors of domestic abusers is goal of interventions being used in some state prisons; the search for an effective model continues

by Derek Cantú (dcantu@csg.org)

For 33 years, October has been recognized as National Domestic Violence Awareness Month. Progress has been made over that time in reducing instances of domestic abuse against women and men. According to the Latest Annual Report of the U.S. Bureau of Justice Statistics, in 2003, there were more than 1.48 million known victims of domestic abuse in the country, or 6.2 people for every thousand people ages 12 and older. Last year, that number was around 911,000, or 3.3 people for every thousand.

Despite the positive turn, understanding how to successfully reform abusers has proven to be elusive.

One place where such programming for domestic violence offenders can and often does take place: state correctional facilities. Can prison-based interventions be effective in reducing recidivism and preventing future, sometimes fatal acts of abuse? Policymakers, correctional leaders and experts on domestic-violence prevention continue to grapple with this question in many states, including Nebraska and Iowa.

2 TRAGIC DEATHS IN NEBRASKA

For years, Doug Koebernick, inspector general of the Nebraska Correctional System, has recommended that the state consider reinstating domestic violence intervention programming in prisons. It has not existed for incarcerated individuals since 2015. In the inspector general’s latest annual report, he noted that department clinicians had recommended domestic violence programming for more than 500 people in Nebraska’s prison system. Without the availability of such programs, interventions occur post-release and at trial.

The Nebraska Department of Correctional Services has cited at least two reasons for not offering services: a lack of evidence supporting their efficacy, and the availability of more-effective interventions in community settings for parolees. However, in multiple annual reports, Koebernick has pointed out that parolees’ participation in those community-based programs apply only “if it is a condition of their parole, or if [they] are participating in work release,” and that “people who wait until reaching community corrections to undergo treatment might already have regular access to their domestic partners.”

Such was the case for Hailey Christiansen and Brooke Koch, two Nebraska women murdered by intimate partners who had previously abused them and had been incarcerated. The two women’s stories helped inspire the successful passage this year of the Domestic Abuse Death Review Act (see sidebar article). Koebernick acknowledges that the model of intervention training previously used in Nebraska prisons — known as the “Duluth Model” — had limited success. National studies, too, have raised questions about the value of this model in preventing future domestic violence.

Nonetheless, Koebernick believes the state should evaluate if non-Duluth models could be useful in Nebraska. One possible alternative already is being employed in a neighboring state.

NEW INTERVENTION IN IOWA

In 2010, the Iowa Department of Corrections began a pilot project to assess whether a new intervention model could change the behavior of convicted domestic abusers. Today, that same model — a revised version of the Achieving Change Through Values-Based Behavior Program, or ACTV — has replaced all previous domestic assault programming. It now operates in multiple prison settings.

Earlier this year, Dr. Amie Zarling, a developer of the ACTV model, published the results of an experimental study examining differences in the outcomes of two sets of Iowa Department of Corrections offenders: those who took ACTV-based intervention classes vs. participants in the Duluth Model. The 338 men evaluated were all first-time (convicted) domestic abusers; they took part in the programming outside of prison while on probation.

Her study sums up the differences in the two types of interventions this way: “Instead of examining how one’s thoughts about women-originated or replaced the thinking that ‘She shouldn’t treat me this way’ with a more positive or egalitarian thought, [the ACTV model] encourages behaving with respect toward one’s partner even when having that thought.” That is not to say that the ACTV model teaches participants to suppress feelings of toxic masculinity. “If a man’s belief that he is superior to women comes up, ACTV addresses that; it just doesn’t automatically assume that is the thing shaping his behavior,” says Zarling, a psychologist and associate professor of human development and family studies at Iowa State University.

Her study showed mixed results.

In terms of participants who acquired a domestic abuse charge one year following their treatment, there was not a significant difference between Iowa’s ACTV and Duluth participants. (Zarling notes the number of transgressors was low and that “it’s really hard to find differences between groups when the outcome measure has such a low base rate.”) Conversely, data collected from administrative records and female victim reports show that ACTV participants had fewer violent and nonviolent criminal charges and engaged in fewer acts of intimate partner violence after treatment when compared to those in the Duluth group.

“I think this indicates we might be on the right track,” Zarling says. She adds that subsequent studies are still needed, as are more resources to train programmers.


NEBRASKA IS TAKING A DEEPER DIVE INTO DOMESTIC VIOLENCE-RELATED DEATHS TO UNDERSTAND AND PREVENT THEM

When he first began working on a bill to create an administrative body to examine domestic abuse-related deaths, Sen. Tom Brandt says, Nebraska was one of nine states that did not have such a review team in place. The absence of one made it more difficult to identify patterns of behavior and implement preventive measures. (A 2021 report from the National Domestic Violence Fatality Review Initiative also found that Illinois and Wisconsin had no or limited activity review teams in place.)

Working with victims’ families, advocacy groups and others, Brandt developed the framework for a State Domestic Abuse Death Review Team. Run out of the attorney general’s office, the team would investigate contributing factors to these deaths and provide recommendations for change. Members would be privy to a large number of records related with individual cases, including, when applicable, information from the state prisons.

Brandt initially thought his bill would only get a hearing, and not pass, as it was getting late into the unicameral’s 2022 session. However, during that hearing, another senator, Wendy DelBeer, asked to include the measure in her own omnibus public safety bill, LB 741. “That happened like zero times — that somebody asks to include somebody else’s bill,” Brandt says.

LB 741 passed unanimously and was signed into law in April. The result: Brandt’s vision for a Domestic Abuse Death Review Team is now a reality.

After he introduced the state’s Domestic Abuse Death Review Act (as of October 2020)

State has mandatory standards in place.

State has standards in place, but not mandatory (viewed as best practices)

No state standards found in 2020 survey


RATES OF DOMESTIC VIOLENCE VICTIMIZATION IN U.S., 2011-2021: % of VICTIMS PER 1,000 PEOPLE AGE 12 AND OLDER, 2011-2021

Source: “The National Intimate Partner and Sexual Violence Survey” (2017 report, which includes most recent state-by-state information, from 2010-2012 survey)
Expunge? Seal? States re-examining laws that determine fate of conviction records for low-level marijuana possession offenses

by Derek Cantú (dcantu@csorg.org)

During early October, President Biden signed an executive order pardoning about 6,500 individuals who were federally convicted of simple marijuana possession between 1992 and 2021. He also urged governors to follow suit by pardoning state-level marijuana possession convictions. While all Midwestern states allow people to petition for such pardons, they diverge over what to do with possession conviction records. Illinois’ 2019 legislation legalizing recreational marijuana (HB 1438) includes language to automatically expunge most past convictions, while Michigan lets people apply to have their records sealed. Under a 2020 law (HB 4980), Michigan will begin automatically sealing a limited number of certain convictions, but only after seven years. Legislators and policymakers in other states remain uncertain, or unconvincing. In North Dakota, for example, the debate over how best to address low-level possession and related criminal records has evolved over the past four years. A failed 2018 ballot initiative sought not to only legalize recreational cannabis, but also automatically expunge all nonviolent marijuana convictions within 30 days of passage (excluding sale-to-minor convictions).

Rep. Shannon Roers Jones, co-chair of the Midwestern Legislative Conference’s Criminal Justice & Public Safety Committee, says although she spoke out against the measure at the time, she found common ground with advocates regarding decriminalization and clemency.

In the 2019 legislative session, she sponsored two bills on that front. The first, HB 1155, would have made possession of drug paraphernalia and up to an ounce of marijuana a noncriminal, fineable offense instead of a misdemeanor.

“My thought process is more on weighing the harm to the person of consuming marijuana versus the harm to that person of having a criminal record that impacts (his or her) ability to hold a job, to find housing, to join the military,” Roers Jones says.

HB 1155 didn’t advance, but parts of it became HB 1050, which was signed into law that year, making possession of less than half an ounce of marijuana a criminal infraction. Subsequent infractions within a year elevate the penalty to a misdemeanor.

Another of her bills (HB 1250) created a way for people to petition to seal records of nonviolent, non-sex-offense convictions if they have been in good standing for three years. Courts were also given the ability to grant “certificates of rehabilitation” to which people can refer for criminal background checks.

“I think that’s maybe even more valuable than just having the record sealed, because we all know that if you do a Google search for somebody’s name, that information is still going to be out there,” she says. In 2021, legislators passed HB 1196, allowing multiple eligible convictions to be sealed at once rather than just the most recent one.

EXPUNGEMENT VS. SEALING

Requiring offenders to apply to seal a marijuana record is common in multiple states. Some advocates say a better process would include automatic and full expungement — the actual destruction of physical records instead of sealing them from public view.

“When they are sealed or set aside, there are certain circumstances under which those records are still available for review by either law enforcement or the court system, and in some cases third-party background check companies,” says Morgan Fox, political director for the National Organization for the Reform of Marijuana Laws.

Roers Jones says erasing all traces of a criminal offense is nearly impossible in a digital age, while full expungement could complicate high-level background checks such as for federal employment. Instituting an automatic expungement process would put undue burdens and costs on state court systems, she adds.

“If the burden for sealing those records goes back to the court and they miss something, does that create a liability to someone whose record they haven’t sealed?” Michigan Rep. Graham Filler agrees.

In 2020, he led the passage of a package of bipartisan expungement-reform bills, one of which, HB 4982, allows individuals convicted of a marijuana misdemeanor offense to petition to have their conviction sealed. (Prior to legalization, possession of any amount of marijuana was a misdemeanor.)

After law enforcement input, legislators included a 60-day window for prosecutors to rebut the sealing of a person’s record.

“Law enforcement said, Look, there are a couple of cases where an individual was clearly a high-level drug dealer. … For whatever reason, they simply enforcing the law,” Filler says. “That’s really bad in a community when that individual is now going to automatically be able to ‘walk that away.’”

Illinois’ law requires that all relevant records for previous possession arrests for up to 1.06 ounces (the current legal limit) be expunged by January 2025. For previous convictions of nonviolent possession charges, State Police said until mid-2020 to study and share records with the Prisoner Review Board to evaluate for possible pardons. The board, before submitting its recommendations to the governor, informs county state’s attorneys and gives them 60 days to object. The attorney general then petitions courts to expunge the criminal records of those granted a pardon.

People convicted of possessing more than 17.64 ounces but less than 17.64 ounces can petition the courts to have their records expunged (with input from state county attorney).

“Illinois Gov. JB Pritzker said in October that nearly 800,000 convictions had either been pardoned or expunged.

A FEDERAL ISSUE

Some Midwestern governors reject President Biden’s suggestion. Nebraska Gov. Pete Ricketts and Attorney General Doug Peterson released a joint statement calling the policy “ill-advised.”

In his statement, Indiana Gov. Eric Holcomb said Biden should work to change federal law, “especially if he is requesting governors to overturn the work local prosecutors have done by singling individuals out and the law.”

“Until these federal law changes occur, I can’t in good conscience consider issuing blanket pardons for all such offendours,” Holcomb said.

Fox says Biden’s action is a step in the right direction, but that Congress should extend federal pardons further back than 1992, make people eligible for pardons regardless of immigration status, and completely de-list cannabis from the Controlled Substance Act.

He also referenced federal legislation (HR 6129) that would award grants to states to help reduce the financial burden of expunging cannabis-related convictions.

CRIMINAL JUSTICE & PUBLIC SAFETY

Though nearly all Midwestern states allow for compassionate release of elderly, terminally ill incarcerated residents, obstacles often stand in the way.

by Derek Cantù (dcantu@csg.org)

For people lucky enough to reach an advanced age, the ability to receive competent geriatric care and “die with dignity” is eschewed. For elderly individuals in incarceration, such end-of-life experiences are rare.

With the exception of Iowa, every state has processes in place allowing for the release of certain incarcerated offenders who are nearing the end of their lives — commonly referred to as “compassionate release.”

However, according to comparative state research conducted by FAMM (formerly Families Against Mandatory Minimums), such releases continue to be used infrequently due to numerous bureaucratic barriers.

Mary Price, general counsel for FAMM and author of the 2018 report “Everywhere and Nowhere: Compassionate Release in the States,” says the issue is not whether prison facilities are capable or equipped to care for elderly offenders, but whether such an environment is ever appropriate for terminal individuals.

Prisons aren’t the place to host people who are so ill that they may not be able to comprehend the fact of their imprisonment or to benefit at all from it, Price says. “Imprisonment has lost any meaning for them or for us as a society. We are no longer in danger of being harmed by that person, if we were, or concerned about whether they would re-offend.”

Between 1993 and 2013, the number of people age 55 years and older housed in state prisons increased by 400 percent, accounting for 10 percent of overall state prison populations in 2013, according to the U.S. Bureau of Justice Statistics.

Others have estimated this age group could represent close to one-third of all state and federal prison populations by 2030.

“It’s very costly if you don’t have a [compassionate release] program or you have a program that doesn’t get used — because those people are very expensive to imprison,” says Price. “They may have durable medical needs in terms of equipment. They have to be housed sometimes in special units. They have to receive an ‘A.’”

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“It’s very costly if you don’t have a [compassionate release] program or you have a program that doesn’t get used — because those people are very expensive to imprison,” says Price. “They may have durable medical needs in terms of equipment. They have to be housed sometimes in special units. They may need ventilators or round-the-clock nursing care.”

In an effort to raise awareness amongst policymakers, FAMM in October released evaluations of all states’ compassionate release policies, based on elements ranging from eligibility criteria and release procedures to data collection and right to counsel (see graphic for the organization’s full rubric).

NEED FOR GREATER CLARITY

Indiana, Iowa, Kansas, Michigan, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin received variations of an “F” grade, yet got high marks for certain aspects of their compassionate release policies.

The eligibility criteria used in Wisconsin’s “sentence modification due to extraordinary health condition or age” policy, for example, was credited as a “model of clarity and breadth” for providing “very clear descriptions of what constitutes extraordinary health conditions and includes easy-to-understand examples of qualifying conditions.”

FAMM also deemed Wisconsin’s release planning policies as the “crowd jewel” of the program, because “it starts early, is comprehensive, and includes assistance with applying for benefits and finding housing and funding.”

In addition, Illinois, South Dakota, and Wisconsin were commended for not requiring an offender’s past compassionate release when the person’s medical condition improves.

Nonetheless, most states in the region earned low grades for possessing policies that were deemed confusing or contradictory, place undue burden on impaired offenders to start the application process, use vague or restrictive definitions of what it means to be “near death,” and other reasons.

Iowa, which does not currently provide for compassionate release, was the only state to receive an automatic zero grade from FAMM.

Attempts to change the state’s policies have been made, however. In 2021, for example, HF 377 included a provision that would have allowed for people convicted of a Class A felony offense — which usually includes a life sentence — to be able to petition for a commutation if diagnosed with a terminal illness or they became medically incapacitated.

Although that bill never made it out of committee, a neighboring state did pass a similar proposal that same year.

THE ILLINOIS MODEL

Illinois was the only Midwestern state (and one of just five nationwide) to receive an “A.” However, this lauded status was not always the case.

“The process for applying for medical release was complicated, burdensome, took a very long time and required executive action by the governor,” says Illinois Rep. Will Guzzardi.

That led him in 2021 to introduce the Joe Coleman Medical Release Act, a bill (HB 3665) named after a Vietnam War veteran who had been in prison since the early 1980s for multiple robberies and whose family had tried for years to see his release due to failing health.

“When Joe Jr., Joe’s son, was in the car driving to Springfield to get the final paperwork, it had to be notarized and then hand-delivered to some bureaucrat in Springfield in order to secure his father’s release, and as he was in the car on the road to Springfield, his father passed away in prison,” Guzzardi recalls.

HB 3665 was signed into law that August. As a result, offenders and other parties (for example, family members, attorneys and doctors) now can petition the Prisoner Review Board for an incarcerated individual to transition to mandatory supervised release if he or she is suffering from a terminal illness or is deemed medically incapacitated.

“Terminal illness” is defined as an incurable condition that will most likely result in death within 18 months. “Medically incapacitated” is defined as a medical condition or cognitive disorder, developed after sentencing, that prevents an individual from performing more than one activity of daily living — for example, feeding, personal hygiene, dressing or toiletting.

The new policy applies retroactively to all incarcerated individuals regardless of when they were sentenced. Applicants can file for compassionate release multiple times, and the Prisoner Review Board must consider victim reports when evaluating release claims.

Despite receiving an overall high score, Illinois’ release planning policy earned low marks from FAMM for placing too much of the onus on the petitioners to find housing and medical support upon release. In comparison, states such as Kansas, Minnesota and Wisconsin earned praise in the FAMM study for their release planning procedures.

Guzzardi agrees this is an area that needs to be addressed.

“The [Illinois Department of Corrections] has not yet created a strong enough system to connect these folks who are going home with the medical care they’re unendingly going to need,” he says.

“Too many of the successful petitions under the act have actually been helped by the help of nonprofit legal aid clinics — specifically the Illinois Prison Project … But ultimately, this shouldn’t be an ad hoc thing that falls to the well-intentioned nonprofit sector. This should be the responsibility of the state.”


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* Total includes persons of all ages, even those age 17 or younger.

Source: U.S. Bureau of Justice Statistics

#% of Incarcerated People by Age in State and Federal Custody (as of Dec. 31, 2020)*

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* Total includes persons of all ages, even those age 17 or younger.

Source: U.S. Bureau of Justice Statistics

CRITIERIA USED BY GROUP FAMM IN NATIONAL STUDY EVALUATING STATES’ COMPASSIONATE RELEASE POLICIES

- Clearly stated eligibility criteria are in place, aren’t unduly restricted, and apply to all incarcerated people
- Engaging the process can be done by staff, incarcerated people or their families
- Agency policy design keeps rules consistent and up to date with statutes, rules provide clear guidance
- Procedures involve the minimum number of people to review applications and maintain time frames
- Release planning support is comprehensive and begins as soon as eligible people are identified
- Right to counsel and appeals are provided throughout the process, and individuals have a right to reapply if circumstances change
- Data collection and reporting to legislatures and the general public should be required

ILLINOIS REP. WILL GUZZARDI

ILLINOIS SEN. ROBERT PETERS

NEBRASKA SEN. JAMIE ELLIS

ILLINOIS DEPARTMENT OF CORRECTIONS