A compilation of articles that have appeared in the publication *Stateline Midwest* in 2020 on policies related to criminal justice and public safety
AFTER DEATH OF GEORGE FLOYD, PUSH FOR STATE-LEVEL CHANGE INTENSIFIES

Proposals seek new police training, protocols and ways to prosecute misconduct cases

by Mitch Arvidson (marvidson@csg.org)

Eight minutes and 46 seconds. That’s how long Minneapolis police officer Derek Chauvin knelt on George Floyd’s neck while three other officers stood by and watched as Floyd died. Twenty rounds. That’s how many shots were fired by three Louisville, Ky., police officers into the home of Breonna Taylor as they executed a no-knock search warrant, killing her as she slept. Twelve years old. That’s how old Tamir Rice was when he was shot and killed by a Cleveland police officer while holding a pellet gun in a public park.

This list can go on and on.

After death of George Floyd, legislators repealed statutory language that had shielded police officer’s disciplinary records from public view.

“The death of Eric Garner [was] one of the many incidents that drove the reform,” says Weihua Li of The Marshall Project, a nonpartisan, nonprofit news organization that covers the U.S. criminal justice system. After Garner’s officer-involved death in 2014, Li says, “it was impossible for his family to obtain disciplinary records of the officer who killed him — until those records were leaked.” That will change as the result of New York’s new law.

In the Midwest, legislation has been introduced in many state capitols since the May 25 death of George Floyd. In one of those states, Iowa, a comprehensive police-reform measure already had been passed and signed into law by mid-June.

IOWA REFORMS ADOPTED SOON AFTER FLOYD’S DEATH

“Going as far back as the Civil War, House Majority Leader Matt Windschitl says, Iowa has been a national leader in the fight for racial parity and justice. (His home state, for example, sent more citizens to fight in the Civil War, on a per capita basis, than any other state.)”

“The times we are in now should be treated no differently,” he adds, “when we see injustices happening that should never happen in a civilized and equal society.”

This year’s response in Iowa was the passage of HF 2647.

The new law bans chokeholds by law enforcement, unless the officer “reasonably believes” that a
suspect will use deadly force and can’t be apprehended in another way. HF 1647 also authorizes the Iowa attorney general to prosecute officer-involved death cases; previously, the local county prosecutor had to request the attorney general’s participation. Lastly, under this new Iowa law, police departments will not hire individuals previously convicted of a felony, and officers will receive annual training on de-escalation techniques and implicit bias. Taken together, the bill’s sponsors say, these statutory revisions will help provide for meaningful change in policing. How did the Iowa Legislature act so quickly, and in such a bipartisan fashion? Windschitl credits communication, early and often, between the state’s legislative leaders. “There was the meeting of the speaker of the House (Pat Grassley) and I had upon the Legislature reconvening was with the minority leader [Todd Prichard] and Rep. Ako Abdul-Samad, who is a leader in the African American community in our capital city,” he says. “That meeting led to many subsequent meetings with leaders from both chambers and both parties, including Gov. [Kim] Reynolds, to come together and craft the justice-reform legislation.” Much more work remains to be done, on policing and overall disparities in Iowa’s criminal justice system. As of 2017, Black-Iowans were being incarcerated at a rate 9.5 times higher than White-Iowans, the second-highest rate of disparity in the Midwest. Statistics like those led Gov. Reynolds to form a special statewide committee on criminal justice reform. Its recommendations, released in 2019, focused on how to reduce rates of recidivism by expanding services to individuals while in prison (behavioral health, treatment, education, etc.) and strengthening re-entry programs (transportation and workforce development, for example). “The conversations are ongoing and will take time to properly identify what the next steps are moving forward,” Windschitl says. “Many times the best solutions are found in our communities, and the way we look at and treat one another.” MICHIGAN HOUSE, SENATE MOVE BILLS ON POLICE TRAINING Three days after the death of George Floyd, Michigan Sen. Jeff Irwin introduced SB 945, which would require all police officers to complete training on implicit bias, de-escalation techniques, and the use of procedural justice in interactions with the public. Additionally, the bill would require officers to complete 12 hours of continuing education annually. SB 945 passed the Michigan Senate in just one week. A near-identical measure, HB 5837, was passed by the House in June. According to Irwin, the language of SB 945 had been circulated and reviewed by Floyd’s death and the public outrage that followed, many senators were clamoring for action. That led to the legislation’s quick introduction and passage. But even if this measure on police training becomes law, Irwin says, it’s only a start. “The four main categories I focus on are citizen oversight, independent investigations of police misconduct, demilitarization of police forces, and better training and accountability around [officers’] licenses and certification,” Irwin says. Policing in the United States is quite dispersed, with several hundred city police departments and county sheriff offices every state. Still, Irwin says, state governments can help drive many of the necessary reforms. “We have a tremendous role when it comes to certification and licensing,” he says. “I also think the state has a role in most oversight practices to our local governments.” As one example in his home state, he points to the addition of public members to the Michigan Commission on Law Enforcement Standards as a best-practice model for increasing citizen oversight and police accountability. (This state commission handles the licensing, and license revocation, of officers.)
VALUE OF INDEPENDENT INVESTIGATIONS, PROSECUTIONS

Months before George Floyd’s death, an 18-member working group in Minnesota (including two members of the Legislature) released 28 recommendations aimed at reducing deadly-force encounters with law enforcement. Among the ideas:

- Adopt use-of-force standards that make sanctity of life a core organizational value and that include requirements for de-escalation;
- Improve training and develop new models of response to de-escalate incidents involving individuals in a mental health crisis, and
- Create a specialized, independent unit within state government to investigate all officer-involved shootings and uses of force that result in death or severe bodily injury.

Minnesota Attorney General Keith Ellison, a co-chair of that working group, says Floyd’s death “tragically highlights the importance” of adopting those 28 recommendations.

“What happened to George Floyd is of course tragic for him and our community, but the reason that it was so massively explosive is that it has become a common occurrence, an appalling condition that we see all too often,” he says. “The murder of Philando Castile (in Falcon Heights, a suburb of St. Paul) is fresh in my memory; Jamar Clark [in Minneapolis] as well; and many others.” Ellison will be leading the prosecution of the officers involved in the Floyd case, at the invitation of Hennepin County Attorney Mike Freeman and at the request of Gov. Tim Walz.

“The only way to get compliance is to enforce the law; it is an indispensable part of the overall move to reform police,” he says. “Yet it’s not sufficient.” He wants to see quick legislative action.

“It is time to get some of this stuff into policy and not just dangle around anymore,” he says of recommendations such as those proposed by the 18-member working group. The Legislature’s first chance to act after Floyd’s death came during a special session held in late June.

A House measure, dubbed the Minnesota Policy Accountability Act (HF 93), would have banned chokeholds and warrior-style training, as well as required changes to how officer-involved deaths are prosecuted (power given to the state attorney general) and how use-of-force cases are investigated.

The Minnesota Senate passed bills banning chokeholds and neck restraints, establishing a duty to intervene and report if an officer sees excessive use of force, and requiring officers to consider the sanctity of life before using deadly force. “He says. “The bill members also included more mandatory police training.

No final agreement between the Democratic-led House and Republican-led Senate was reached before the end of the June special session.

Unlike most years when the Minnesota Legislature would have already adjourned (it did for the year), though, lawmakers may come back to St. Paul multiple times in order to approve, or deny, Gov. Walz’s peacetime emergency declaration related to COVID-19. Ellison says he remains hopeful for meaningful legislative action this year.

He suggests that legislators look at reducing the scope of qualified immunity (the doctrine that grants government officials, including police officers, immunity from civil lawsuits as long as they did not violate “clearly established” law) and establishing independent investigations for use-of-force cases involving police.

For example, one of the Minnesota working group’s recommendations is to create an independent, specialized unit within the state’s Bureau of Criminal Apprehension. This unit would investigate all officer-involved shootings and uses of force that result in death or severe bodily injury.

“Make sure the investigation and prosecution are viewed to be independent and not based on any prior relationships that might lead people to believe there are some folks who are above the law,” Ellison says.

AFTER GEORGE FLOYD: EARLY LEGISLATIVE RESPONSES IN MIDWEST’S LEGISLATURES (AS OF JUNE 2020)*

ILLINOIS: TRIO OF BILLS IN COMMITTEE

After the death of George Floyd, the sponsors of three bills in Illinois renewed their push for passage of their reform measures: take away the pensions for any police officer convicted of a felony (HB 4499); require a special prosecutor to be assigned to all death cases involving a law enforcement officer (HB 3026); and require local governments to provide mental and behavioral health professionals, instead of the police, to individuals who call 911 in mental or emotional distress (SB 3449).

IOWA: LAW CHANGES POLICE PROSECUTIONS

HF 2647, signed into law in June, gives the state attorney general the power to prosecute cases involving the death of a civilian by a police officer, “regardless of whether the county attorney requests the assistance.” In addition, the use of chokeholds by law enforcement is not allowed, except in cases when an officer “reasonably believes” that an individual will use deadly force and cannot be apprehended in any other way. (This is the same standard under Iowa law for use of deadly force by police.)

KANSAS: RESOLUTION CONDEMNING BRUTALITY

On June 3, HCR 5002 was introduced to condemn “all acts of police brutality, racial profiling and the use of excessive and militarized force throughout the country.” The resolution died in committee when the Legislature adjourned the next day.

MICHIGAN: FOCUS ON DE-ESCALATION, TRAINING

Under separate bills passed by the Michigan House and Senate (HB 5727 and SB 8445), the state would require all incoming officers to complete training on implicit bias, de-escalation techniques and procedural justice. Procedural justice is described in these bills as prioritizing “legitimacy over deterrence in obtaining citizen compliance” and emphasizing “a fair process and respectful two-way communication.” As part of this training, too, incoming officers would receive information on mental health resources available to them. Lastly, these bills mandate that officers complete 12 hours of continuing education every year.

MINNESOTA: MANY BILLS, NO FINAL AGREEMENT

Under the House-passed Minnesota Policy Accountability Act (HF 93), the state would ban chokeholds and warrior-style training. It also would change how officer-involved deaths are prosecuted (power given to the state attorney general) and use-of-force cases are investigated (by an independent unit of state government). The Minnesota Senate passed bills banning chokeholds and neck restraints, establishing a duty to intervene and report if an officer sees excessive use of force, and requiring officers to consider the sanctity of life before using deadly force. Both chambers also included more mandatory police training. However, none of these bills passed during the special legislative session in June.

OHIO: REVIEW BILLS’ IMPACT ON RACIAL GROUPS

Two Ohio resolutions introduced in June (SCR 14 and HCR 31) would declare racism a public health crisis and request the formation of a working group to promote racial equity. HB 690, meanwhile, would require that human impact statements be completed by Ohio’s Legislative Service Commission on all criminal justice bills. The purpose: Determine if these measures would have a disparate impact on a racial or ethnic group. Finally, HB 703 would impose mandatory psychological testing of police officers and create a disciplinary database.

SASKATCHEWAN: IMPROVE POLICE OVERSIGHT

The Government of Saskatchewan introduced legislation in June to improve police oversight. One key provision: When someone suffers a serious injury or death while in police custody, or as a result of the actions of a police officer, turn over the investigation to the provincial Public Complaints Commission — a five-member, non-police body.

WISCONSIN: GOVERNOR UNVEILS NINE BILLS

Gov. Tony Evers and Lt. Gov. Mandela Barnes released drafts of nine bills that, among other provisions, would ban chokeholds, establish statewide use-of-force standards, require de-escalation training by police, and prohibit no-knock warrants. Even declined to convene a special session, so consideration of these bills must wait until 2021.}

### # OF PEOPLE SHOT AND KILLED BY POLICE: JAN. 1, 2015, TO JULY 1, 2020

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<th>% of people shot and killed by police who were Black or Hispanic</th>
<th>% of state’s total population that is Black or Hispanic</th>
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*As of the end of June, the Indiana, Nebraska, North Dakota, South Dakota and Wisconsin legislatures had not met in session since the death of George Floyd. The Nebraska Legislature is meeting in regular session this summer. 

Sources: The Washington Post and U.S. Census Bureau
CRIMINAL JUSTICE & PUBLIC SAFETY

Under Senate-passed bill in Ohio, many more drug possession offenses would no longer be felonies

by Mitch Arvidson (marvidson@csg.org)

The statistics about drug addiction and its consequences — the number of overdose deaths, and the rates of people arrested and imprisoned — are everywhere for policymakers to see.

But Ohio Sen. John Eklund says those numbers can’t tell the full story, and often fall short of moving legislators to reconsider the severe penalties on drug crimes and punishment.

“It’s really about learning the stories of those who are addicted, their family and their friends, and about the [personal] consequences,” he says, “and why the system is not working the way it is now.”

Those stories have helped fuel Eklund’s push for passage of SB 3, a bill that the Ohio Senate overwhelmingly approved in late June (by a vote of 25-4) — more than 16 months after he introduced the bill.

If signed into law, SB 3 would reclassify Level 4 and Level 5 felony drug possession charges as misdemeanors. Those charges typically apply to individuals arrested for having low amounts of controlled substances, with the possession assumed to be for personal use.

The bill’s sponsors, and Eklund’s work on recodifying drug laws, date back to the work of a multibranch committee that included legislators, judges, prosecutors, public defenders, police and criminal court experts.

During his time on that committee, Eklund was struck by “how felonies for drug possession charges have much broader consequences than just simply a criminal conviction.”

He points, for example, to the ‘scarlet Letter’ that follows people who are criminally prosecuted for drug crimes in which there was effectively no malicious intent. The lasting effects include statutory collateral sanctions and societal effects such as having trouble finding housing and jobs.

The result, he says: Outsized consequences that do not match a drug possessor’s or user’s actions.

“We would be incarcerating the people we are afraid of, not the people we are mad at,” he adds.

Outside the Midwest, a handful of states already have changed their statutes in recent years to reclassify drug possession as a misdemeanor.

An attempt to change Ohio’s law via the ballot failed two years ago when voters rejected Issue 1, which had amended the state’s Constitution to reclassify the possession and use of drugs and drug paraphernalia as misdemeanors.

Issue 1’s failure was partly attributed to the permanent nature of a constitutional amendment and the difficulty in adjusting the law if needed. Those who backed Issue 1 regrouped, however, and decided to pursue legislation.

According to the nonpartisan Ohio Legislative Service Commission, SB 3 could result in a reduction of annual prison admissions by 2,700 and save the state Department of Rehabilitation and Correction up to $75 million annually.

Some additional cost burdens, though, may be borne by localities that handle lower-level offenses such as marijuana.

While SB 3 reduces penalties for many lower-level possession charges, it also creates a new felony charge for possession with intent to distribute or sell relatively low amounts. “Intent” in these cases would be determined by common-law processes on a case-by-case basis.

This clause was included in anticipation that legislators would otherwise object to the bill on the grounds that drug dealers would not be held accountable.

Why was there such a long time between introduction of SB 3 and Senate passage?

For one, Eklund says, there was a year-long process of negotiations. Then, after other legislative matters sucked up a lot of time and energy at the end of 2019, Eklund was hopeful SB 3 could be addressed in early 2020.

“Before you know it, we are in the middle of the coronavirus crisis,” he says. “Because of the inability of the legislature [to meet] and the orders from the state to stay home ... we basically lost eight weeks of our legislative lives.”

The House will have until the end of this year to act on SB 3.


EDUCATION

‘Game changer’: By working directly with broadband providers, states can help close ‘homework gap’

by Tim Anderson (tanderson@csg.org)

This spring, as schools across the nation shut down in-person instruction due to the COVID-19 pandemic, North Dakota and broadband service providers in the state stepped up.

The result was a quick reduction in what has been dubbed the “homework gap.”

“What’s really impressive is that in a matter of weeks, North Dakota was able to get 90 percent of unconnected student homes hooked up to broadband,” Jack Lynch, state engagement director for the nonprofit group EducationSuperHighway, said during a July 30 webinar held by three committees of the Council of State Governments’ Midwestern Legislative Conference.

The gap in student access to internet connectivity is enormous.

“What’s changed, though, is the urgency among state policymakers to address the problem, as schools rely more on remote learning to replace some or all in-person instruction and to ensure the continuity of learning if buildings have to be closed due to health- or weather-related events. According to Lynch, close to 10 million lower-income U.S. households with school-age children do not have a high-speed internet connection.

Every state has its unique set of challenges on broadband expansion, but Lynch singled out North Dakota because of its rapid response incorporated strategies that can be replicated across the country.

First, identify students lacking home access. Next, team up with providers to ensure affordability and adoption. In North Dakota, a list of 2,000 unconnected students was generated and then shared with broadband providers, who found that a vast majority of households (1,865 of the 2,000) could receive services almost immediately. At least initially, these providers launched the service at no cost, as part of a “keep Americans connected” pledge.

Fast forward a few months, and North Dakota is “continuing conversations with these service providers about how to use [federal] CARES money and some other funding sources to keep all of these households online,” Lynch said.

He told a similar promising story about access among students in Chicago Public Schools.

There, the district partnered with local service providers to identify students who lacked home access. Then, it issued a request for proposals from these providers, used a mix of funding sources (federal, local and philanthropic) to cover the costs, and reached out to families in need of service.

“The key is the school districts, as opposed to the individual provider, are starting to take responsibility for getting the solution deployed,” Lynch said.

Like school districts, states can take on that greater responsibility as well.

“Then it’s seen as a business opportunity for providers, and the reason is the volume and the ability to deal with just a single entity, as opposed to having to go household to household,” Lynch said.

That is totally a game changer for service providers. It makes offering a low-cost service actually attractive to them.

States also have the chance to close the “homework gap” by using a portion of the billions of dollars federal earmarked for education in this year’s CARES Act.

According to Lynch, Indiana was one of the first U.S. states to seize this opportunity, developing a $62 million program that supports initiatives to expand connectivity and students’ access to devices.

In Ohio, as part of a new $50 million grant program, the state will help schools establish internet “hotspots” for unconnected students. That state also is helping school districts work with providers. It recently issued a “request for information” from various entities seeking their lowest-cost options for providing students with device and broadband service. Ohio is using that information to create a pricing sheet for school districts.

Outside the Midwest, Lynch told legislators, states such as Virginia have begun to require school districts to collect information on which of their students lack home access to high-speed internet.

South Dakota Sen. Jim Bolin and Minnesota Rep. Mary Kunesh-Podein serve as co-chairs of the Midwestern Legislative Conference Education Committee. The vice chair is Ohio Sen. Harecel Craig. Tim Anderson serves as CSG Midwest staff liaison to the committee.
CRIMINAL JUSTICE & PUBLIC SAFETY

Voting rights for felons now in place across Midwest; Illinois law aims to raise awareness and access

by Mitch Arvidson (marvidson@csg.org)

When he and then-Rep. Juliana Stratton (she now the lieutenant governor) knocked on doors a few years ago trying to collect signatures of Chicago residents, Illinois Sen. Omar Aquino says, they were both stuck by a common misconception.

“We found people that would say, ‘I can’t sign your petition because I’m no longer allowed to vote,’” he recalls. “We would ask them why, and they would say because they’ve served time before.”

In Illinois, like most states, that isn’t true. But it is easy to understand why many believe ex-offenders cannot vote. It used to be a much more common policy of state governments. According to The Sentencing Project, many states instituted felony disenfranchisement policies in the wake of the Civil War; by 1869, 29 states had enacted such laws. Since 1997, though, at least 25 states have modified their disenfranchisement provisions.

In August, Iowa became the most recent to do so, with the signing of an executive order by Gov. Kim Reynolds that restores voting rights to felons who have completed their sentences, including probation and parole. This executive order will affect thousands of Iowans, with the only exceptions being for individuals convicted of murder, manslaughter and voluntary manslaughter, as well as those

who have special lifetime sentences for sexual crimes or other offenses. Those who were convicted of these crimes and who have finished their sentences would have to apply to the Iowa Board of Parole to regain their voting rights.

Reynolds’ executive order listed several justifications for the change in policy — increasing public safety and reducing recidivism by fully welcoming individuals back to society, recognizing that the path to redemption includes access to political processes, reducing the burden on Iowans who have completed their sentences, and conserving resources currently used to review voting-restoration applications. Prior to the executive order, Iowa was the only state in the country to bar anyone with a felony conviction from voting unless this right was restored by an individual application to the governor’s office. An executive order restoring felon voting rights was first issued in Iowa 15 years ago by former Gov. Tom Vilsack but was rescinded in 2011 by former Gov. Terry Branstad.

Language in the Iowa Constitution states that “a person convicted of any infamous crime shall not be entitled to the privilege of an elector.” The Iowa Supreme Court has interpreted this passage to mean a felony criminal conviction. The governor has the power to restore these rights, but Reynolds has previously expressed her preference for a more permanent fix — via a legislatively referred, voter-approved constitutional amendment. However, no such proposal made it through the Legislature this year. (HJR 14 passed the House in 2019 by a vote of 95-2, but then stalled in the Senate.)

In Illinois, one of five Midwestern states that allow people on probation or parole to vote, Aquino says the kind of misconceptions that he encountered a few years ago can keep many individuals from the polls. Under a bill he helped get signed into law last year (SB 2090), individuals leaving the state’s prison system will be provided with a voter registration application and information about their voting rights. He also notes that even though people held in pre-trial detention are legally allowed to vote, this does not mean they are practically able to do so.

SB 2090 aims to change that. Eligible voters who are confined or detained in county jail must be provided vote-by-mail ballots. Furthermore, counties with a population of more than 3,000,000 (Cook County) must establish a temporary branch polling place within the jail. Finally, SB 2090 requires county jails and probation offices to provide voter registration and other resource materials to eligible voters upon discharge.

“There are people right now that are awaiting trial while sitting at home … and can go and vote in the next election,” Aquino says. “Why should someone who can’t afford to bail themselves out not be able to do the same?”

Great Lakes

Despite new initiatives and investments, region not yet meeting phosphorus-reduction goals

by Tim Anderson (tanderson@csg.org)

In most years, on most days, nutrients from the agricultural operations of the Great Lakes region largely stay on the fields. But when heavy rains come, the nutrient runoff of phosphorus and other nutrients occurs, as they leave the fields, enter streams and ultimately reach the lakes.

“The practices that are in place don’t work during those moments [of big storm events],” Santina Wortman of the U.S. Environmental Protection Agency’s Great Lakes National Program Office said during a Sept. 21 virtual meeting of the Great Lakes-St. Lawrence Legislative Caucus.

The result is a health and environmental problem that continues to vex the region’s policymakers, particularly those representing the western Lake Erie basin: how to get phosphorus loads below targeted levels in order to prevent harmful algal blooms.

Canada and the United States have concluded that a 40 percent reduction in phosphorus loads is needed in Lake Erie’s western and central basins. Michigan, Ontario and Ohio have committed to reaching that same level.

But as Wortman noted, progress has been slow, largely despite new investments and initiatives across the basin.

“We haven’t seen any kind of downward trend yet in terms of the [harmful algal blooms],” she said, adding that since 2012, annual phosphorus loading has exceeded targeted levels every year but one — with that single exception being a very dry year without the big rain events that lead to nutrient runoff.

According to Wortman, agricultural accounts for much of the nutrient pollution in western Lake Erie. To date, the policy response has centered on voluntary, incentive-based initiatives. In Michigan and Minnesota, the states offer voluntary restoration programs for agricultural operations that meet certain water quality standards and implement state-approved conservation practices. Wisconsin offers grants to groups of farmers that collaborate on conservation initiatives for a single watershed.

Ohio legislators invested $172 million this biennium in a new H2O Initiative, with one of the four main goals being a reduction in phosphorus runoff. Incentives are going to farmers that have been certified as having adopted a mix of nine “best practices” in nutrient management — for example, soil testing and the use of cover crops and managed edge-of-field buffers. Minnesota offers an example of a non-voluntary approach taken by a Great Lakes state: It pays for requiring perennial vegetative buffers of up to 50 feet along lakes, rivers, and streams as well as buffers of 16.5 feet along ditches.

Despite new initiatives and investments, region not yet meeting phosphorus-reduction goals

LAWs ON VOTING FOR PREVIOUSLY INCARCERATED INDIVIDUALS

People with felony convictions can vote upon completion of their full sentence (including probation and parole).

People in prison, regardless of sentence, everyone else can vote (including those on probation or parole).

* Iowa Gov. Kim Reynolds issued an executive order this year restoring voting rights; the order can be rescinded at any time.


SEVERITY OF HARMFUL ALGAL BLOOMS IN WESTERN LAKE ERIE: 2010 TO 2020

The goal of the United States and Canada is to have the severity index be no more than Three. The index is based on the bloom’s biomass (the amount of algae) over a sustained period in a given year.

New initiatives have also targeted reductions in point source pollution. One notable success story, Wortman said, has been the results of facility by facility operational improvements at the Great Lakes Water Authority, which provides water and sewer services in the Detroit area. “It has already achieved a 400 metric-ton reduction, which goes a long way toward Michigan’s 40 percent goal,” she said.

Along with these initiatives, Wortman added, other positive developments include a greater use of science, monitoring and evidence-based policy to tackle the nutrient problem. But some of the recent research also shows that eliminating harmful algal blooms and lowering phosphorus loads could take many years due to factors such as “legacy phosphorus” — buildup of this nutrient from applications in previous years.

“That is going to take some time to work through the system,” Wortman said. “In any given year, you have a combination of what was applied this year and what was there before.”

Nutrient pollution is a top priority of the Great Lakes-St. Lawrence Legislative Caucus, and a GLLC task force led by Wisconsin Sen. Andre Jacque has released model policies for consideration by the region’s state and provincial legislatures.

CSG Midwest provides staff support to the binational, nonpartisan Great Lakes-St. Lawrence Legislative Caucus. Indiana Sen. Eliza Chairperson serves as chair. Illinois Rep. Robin Gabel is the vice chair.
Bipartisan legislation in Wisconsin boosts incentives to invest in federally designated Opportunity Zones

by Laura Tomaka (ltomaka@csg.org)

A s of early March, Wisconsin was set to overcome one of the first states in the nation to expand incentives for private investments in federally designated Opportunity Zones. Under AB 532, which passed with bipartisan support in the Assembly and Senate, Wisconsin would double the tax credits for investors supporting projects in economically distressed, low-income communities across the state. (The bill had not yet been signed by the governor as of early March.)

Opportunity Zones were established by the U.S. Congress three years ago. Under that 2017 law, governors submit lists of low-income census tracts to be identified as Opportunity Zones. Through federal tax incentives, investors are then encouraged to reinvest unrealized capital gains into development projects in these areas. In particular:

• A deferral of federal taxes on any recent capital gains until 2026.
• A reduction of capital gains tax payment by up to 15 percent (10 percent if the investment is held for five years, and an additional 5 percent if held for at least seven years).

• An elimination of taxes on potential profits from an Opportunity Fund if the investment is held for 10 years. (An Opportunity Fund is an investment vehicle for business investments in these zones.)

Up to 25 percent of a state’s census tracts that qualify as low income (along with a limited number of contiguous census tracts) can be submitted for designation. Nationally, there are now more than 8,700 Opportunity Zones. In Wisconsin, which has 120 designated zones, lawmakers saw an opportunity to build on the federal program. AB 532 doubles the state’s Opportunity Zone tax exclusion for investors who invest in a Wisconsin Qualified Opportunity Fund. Under the legislation, investors receive an additional 10 percent state capital gains tax reduction if they hold an investment in a Wisconsin Qualified Opportunity Fund for at least five years, and an additional 15 percent after seven years.

“We should be doing what we can to incentivize investment in Wisconsin, and this bill does that,” says Rep. Nancy VanderMeer, sponsor of the legislation. Eligible projects include commercial and residential real estate development, new business ventures, and the expansion of existing operations.

“One of the things that stood out to us here is that we’re incentivizing private capital investment and not spending tax dollars,” VanderMeer adds. Another plus: Opportunity Zones cover a diverse group of communities. For example, nearly 30 percent of them are in Wisconsin’s rural areas. “[It] is incentivizing private capital to areas of the state that might not otherwise garner investment,” she says, adding “there’s a somewhat rare rural and urban appeal to the proposal.”

“I’m always thinking about how to drive investment to rural areas, and economic development in general,” VanderMeer says. “This legislation is a unique way to do that, especially utilizing an already existing program and structure set up at the federal level.”

The most typical type of investment that has been and will be utilized in the program is real estate investment, both residential and commercial,” she adds. “That might mean a new apartment complex, a business expansion or investment in a new mixed-use retail-residential building.”

ECONOMIC DEVELOPMENT

CRIMINAL JUSTICE & PUBLIC SAFETY

Michigan took a hard look at its county jail system and population, and now has several ideas for reform

by Mitch Arvidson (marvidson@csg.org)

Af ter nine months of extensive, unprecedented analysis of Michigan’s county jail populations, a specially formed task force has delivered 18 recommendations to the Legislature designed to improve state policies and curb rising jail incarceration rates.

The bipartisan task force’s work reflects concerns in Michigan about the impact of a growing population, which has occurred even amid big drops in the state’s total crime rate (see line graph). Who is being sent to these facilities? Why? And for how long?

Getting statewide answers to these questions has been difficult because the data and records on jail inmates are held individually by Michigan’s 83 counties. Part of the job of the task force (formed by gubernatorial executive order), then, was to collect this information and find statewide patterns. It analyzed arrest information from 600 law enforcement agencies, court data from 200 district and circuit courts, and admission records from 20 representative county jails.

Among the findings:

• Michigan’s jail growth is equally attributable to pretrial detentions and inmates serving short-term, post-conviction sentences.
• While most people admitted to jail stayed for less than a week, those who stayed for longer than one month made up 82 percent of jail bed-days.
• Driving without a valid license was the third most common reason for jail admission.

The recommendations now under legislative consideration reflect these and other findings. For example, because of the role of traffic violations in the overall jail population, one idea is to “stop suspending and revoking licenses for actions unrelated to safe driving.” And because the majority of the population in jail for less than a week, the task force recommends shortening the time people spend in jail between arrest and arraignment — to 24 hours in most instances, and no more than 48 hours. It also says the state’s bail laws should be revised, by strengthening the presumption of release on personal recognizance and setting higher thresholds for judges to impose non-financial and financial conditions for release.

For defendants who cannot afford bail, or who are not eligible for pretrial release and must stay in jail for longer than a week, the task force recommends that they be tried within 18 months of arrest. It also proposes policy changes to decrease the number of people entering the jail system at the front end — for example, expand police officers’ discretion to use appearance tickets as an alternative to arrest; reduce the use of arrest warrants for failure to appear in court or pay fines and fees; and make greater use of behavioral health services to deflect people away from Michigan’s criminal justice system and connect them with treatment options.

In January, Michigan House Speaker Lee Chatfield and Senate Majority Leader Mike Shirkey stated their intentions to review the recommendations and introduce them to the legislative process. “I really feel strongly that the recommendations are intertwined; they really should be adopted as a package,” says Bridget Mary McCormack, chief justice of the Michigan Supreme Court.

McCormack, who served as co-chair of the task force along with Lt. Gov. Garlin Gilchrist II (other members included legislators, law enforcement and judges), says the nine months of jail population analysis yielded useful, and sometimes unexpected, results.

“For me personally, I was surprised to learn that the jails in our rural counties were growing far more significantly than the jails in our urban populations,” McCormack notes.

This could be due to rural counties having a lack of alternatives to jail, but also the fact that one in four people in rural jails are held by non-county authorities, such as the federal government or the state Department of Corrections. This is up from one in nine in the 1970s.

Minnesota responds to rise in farm bankruptcies with change in law requiring creditors to offer mediation

by Carolyn Orr (carolyn@csg.org)

CRIMINAL JUSTICE & PUBLIC SAFETY

New state laws, court initiatives identify better data sharing as path to better policymaking in justice system

by Mitch Arvidson (marvidson@csg.org)

Agriculture & Natural Resources

Minnesota is the only state to have a database that tracks the number of people held in jail per county. The database, known as the Minnesota Jail Count, provides local and state agencies with data to better understand the number of people in jail and the reasons they are there.

The database is updated monthly and includes information such as the number of people held in jail, the reason for their arrest, and the duration of their stay. The data is also used to identify trends and patterns in the criminal justice system.

The Minnesota Jail Count is a valuable tool for lawmakers and policymakers as they work to address the issue of overcrowding in the state’s jails. By providing a comprehensive view of the state’s jail population, the database allows for more informed decision-making and helps to reduce unnecessary incarceration.
**COULD MEDIA LITERACY EDUCATION BE THE ANTIDOTE FOR MISINFORMATION?**

by Jon Davis (jdavis@csg.org)

In an age when the definition of “media” has expanded by orders of magnitude and the very definition of “truth” seems up for grabs, how are elementary and high school students to make sense of the myriad images and messages — overt and subliminal — bombarding their neurons?

The answer is comprehensive media-literacy education for K-12 students, says Erin McNeill, founder and president of Media Literacy Now, a Massachusetts-based nonprofit advocacy group.

People are aware of how the nuts and bolts of media systems work, but not as aware of how the messages work their way into their thinking, McNeill says.

“101’s literacy for the 21st century,” McNeill says. “I think a good analogy is smoking and vaping: Showing teens how they were manipulated by tobacco companies is effective, but that wasn’t helpful when vaping companies used the same playbook.

“If we had educated young people, we wouldn’t have lost 50 years of public health [progress].”

**LEGISLATING FOR LITERACY**

The idea has caught on since Media Literacy Now was formed between 2011-13. While Ohio and Florida are the only states with statutory requirements to include media literacy in their curricula for K-12 students, Minnesota’s administrative rules include media literacy standards, specifically that students “will critically analyze information found in electronic, print and mass media and use a variety of these sources” and “will communicate using traditional or digital multimedia formats and digital writing and publishing for a specific purpose.”

A Minnesota law requires the state’s education commissioner to “revise and appropriately embed technology and information literacy standards” based on recommendations from school media specialists into the state’s academic standards and graduation requirements (and to review them every 10 years).

**Media Literacy Laws/Legislation in Midwestern States (2020)**

- State has strong statutory language requiring media literacy to be taught in schools
- State has passed legislation requiring elements of media literacy to be taught in schools
- Media literacy legislation introduced in recent past sessions, but did not pass

**LAW ENFORCEMENT OFFICER CERTIFICATE REVOCATIONS IN MIDWEST 2015**

- **Ohio** did not differentiate between revocations for law enforcement officers, correctional officers, private security officers, reserve or auxiliary officers, or others.
- **Illinois** law has required schools to teach students in grades three and up an annual unit on internet safety since 2009.
- Rep. Elizabeth Hernandez has been trying to build on that base to incorporate media literacy. During the General Assembly’s 2018 session, she sponsored HB 5096, which, as originally written, would have required high schools to include a unit of instruction on media literacy, defined in the bill as “the ability to access, evaluate, create and communicate using a variety of forms, including, but not limited to, print, visual, audio, interactive and digital texts.”
- Language in that bill ultimately was changed from “shall include” media literacy to “may include.” Last year, Hernandez reintroduced that version as HB 1559. While it unanimously passed the House in March 2019, the bill has stalled in the Senate.
- If nothing happens during Illinois’ regular fall veto session, Hernandez says, she will revisit the subject in the next General Assembly.
- “As we move on, this is a matter we really do need to support — that our students can tell what’s real from what’s not,” she adds.
- Hernandez also introduced a House resolution, HRJ 9, calling for creation of a state task force to study the media habits of K-12 students, examine media influence on mental, emotional and physical well-being, identify other states’ laws or legislation worth emulating, and make recommendations on what, if any, steps the General Assembly should take.

Media literacy legislation has also been introduced during recent sessions in Iowa (HF 2188 of 2015), Michigan (HB 4340 of 2017, HB 4781 and HB 5044 of 2015) and Nebraska (LB 572 of 2015).

In Canada, Ontario was the first province to require media education, in 1987, according to the Canadian nonprofit advocacy group MediaSmarts.

Saskatchewan, Alberta and Manitoba are members of the Western and Northern Canadian Protocol for Basic Education, whose suggested curriculum for K-12 English language arts calls for students to “listen, speak, read, write, view and represent to comprehend and respond personally and critically to literary and media texts.”

**STATELINE MIDWEST | AUGUST 2020**

**QUESTION OF THE MONTH**

**QUESTION | Do states certify police officers, and can certifications be removed for misconduct?**

While not technically an occupational license, the certification of police officers is required in most states. The International Association of Directors of Law Enforcement Standards and Training defines certification as “the process by which law enforcement officers are licensed in their respective jurisdictions, establishing the satisfaction of selection, training and continuing performance standards.”

In most states, police officer standards and training (POST) commissions establish these standards and carry out certification. They also are responsible for decertification.

Nearly all U.S. states, including all 11 in the Midwest, have existing statutory authority to certify or decertify, according to Roger Goldman, a law professor at Saint Louis University and leading researcher on this issue. (The states without such authority are California, Massachusetts, New Jersey and Rhode Island.)

However, some states (including Indiana, Michigan, Nebraska, Ohio and Wisconsin in the Midwest) do not provide their POST commissions with the authority to administratively revoke the certifications of police officers for non-criminal misconduct. In addition, the use of decertification varies greatly state by state. For example, in a 2016 study, University of Seattle criminal justice professor Matthew Hickman found that Florida and Georgia alone accounted for well over half of the country’s total revocations during the previous year. The 11 Midwestern states accounted for 8.6 percent of the country’s revocations.

Furthermore, there is sometimes no guarantee that law enforcement agencies will report officer arrests, non-criminal misconduct or firings to the state POST commission. A 2017 Michigan law requires law enforcement agencies to create a separation of service record when an officer resigns, and for agencies to obtain individuals’ service records prior to hiring. However, this does not necessarily mean the hiring agencies cannot, or will not, hire officers who resigned because of past misconduct in another jurisdiction.

“There are many cases around the country where officers leave their departments because of misconduct and then they are rehired — sometimes knowingly, sometimes not — by other departments... That’s why you absolutely need to have the states come in and prevent this sort of thing from happening,” Goldman said in a 2017 interview with The Atlantic.

Ohio Gov. Mike DeWine, Illinois Gov. J.B. Pritzker, and Michigan Attorney General Dana Nessel have all recently called for legislative fixes to a system that allows for officers fired in one jurisdiction to be hired in another. In Illinois, Attorney General Kwame Raoul is calling for a new police-licensing system, similar to the way the state licenses doctors, lawyers, hairdressers, etc. Meanwhile, one state that currently cannot de-certify police officers is poised to enact one of the most far-reaching laws in the country: Massachusetts HB 4794 and SB 2800 would establish certification committees made up of half, if not all, community members.

Question of the Month response by Mitch Avisdon (mavisdon@csg.org), policy analyst for CSG Midwest, which provides individualized research assistance to legislators, legislative staff and other government officials. This section highlights a research question received by CSG Midwest. Inquiries can be sent to csgm@csig.org.
CAPITAL CLOSEUP

AS IMPORTANCE OF STATE COURTS RISES, SO WILL SCRUTINY OVER JUDICIAL SELECTIONS

by Tim Anderson (tanderson@csg.org)

I n a given year, state courts hear and decide about 95 percent of all the cases filed in the nation’s courts. They cover topics ranging from traffic and family law, to the state funding of schools and the extent of the emergency powers of governors. It’s a reminder of the critical role that state judicial systems play in the everyday lives of America, even with all of the attention to the future direction of the U.S. Supreme Court.

“State courts are even going to be more important than they have been before,” says Douglas Keith, counsel in the Brennan Center for Justice’s Democracy Program.

“As the federal judiciary looks to have an increasingly locked-in conservative majority, it’s likely we’re going to see lots of fights play out in state courts, whereas before we might have put our energy in federal courts.

“We’ve already seen that in some of the major gerrymandering decisions in states, or the Kansas Supreme Court’s decision on reproductive rights,” (In 2019, the court ruled that the Kansas Constitution protects a woman’s right to abortion.)

At the federal level, proposals have been introduced recently to dramatically change the makeup of the U.S. Supreme Court — “a packing of the court” by the legislative and executive branches, for example, or a replacement of lifetime appointments with a single, limited term in office.

At the state level, the selection and retention process is typically much different than the current federal model. In the Midwest, for example, no state provides for a lifetime appointment to the state supreme court; every justice must face either a retention or competitive election.

In six of the region’s 11 states (Illinois, Michigan, Minnesota, North Dakota, Ohio and Wisconsin), the initial selection of a supreme court justice is done through an election among competing candidates. In the other five states, the governor selects a supreme court justice from a list of candidates developed by a nominating commission, with the legislative branch lacking any confirmation authority.

Keith believes lawmakers should re-examine their state systems, particularly those that use elections.

“We are seeing state supreme court elections become politicized in a way they haven’t been before,” Keith says. “Judges are supposed to be doing things different than our political officials. They’re supposed to be making decisions at least somewhat independent from the pressures of politics.”

This year, elections were held in 31 states to decide who would serve on state supreme courts. Some of those races were quiet, others attracted big money and lots of public attention.

As of early October, more than $31.5 million in political contributions had been made to state supreme court candidates, according to the National Institute on Money in Politics. That already was among the highest totals since 2000.

Wisconsin led the way in the Midwest, with millions of dollars spent on a single race for a state Supreme Court seat.

Two years ago, the Brennan Center for Justice released a study calling for a new way of choosing state supreme court judges: Have them selected by a judicial nominating commission (some states do this), and then have them serve a “one and done” term of between 14 years and 18 years (no states do this).

Imposing such a single term, Keith says, would insulate these judges from the political pressure that comes with facing an election or a reappointment by the governor or other elected officials.

“Judges sitting on the court should not have to be thinking about the next election or the next appointment when it comes to making a decision;” he says.

On the flip side, some worry that too much insulation leads to a lack of accountability. States use of judicial nominating commissions spread in the mid-20th century as a means of limiting the influence of party machines, ensuring the independence of the judiciary, and putting the selection of judges in the hands of the legal community itself.

But more recently, these merit-based systems have been questioned and sometimes tweaked by lawmakers. In Iowa, a 2019 law gave the governor the power to choose the majority of people who sit on the state’s 17-member nominating commission; previously, the governor and bar association made eight selections each, with a sitting member of the Supreme Court serving as the final member.

Keith recommends that states strive to have diverse nominating commissions in which no single person or group (governor, bar association, legislature, etc.) can name the majority of members. He also says state statutory language can ensure these commissions are bipartisan and have spots secured for different groups of attorneys, as well as citizens who are not lawyers.

Capital Closeup is an ongoing series of articles focusing on institutional issues in state governments and legislatures. Previous articles are available at csgmidwest.org.

QUESTION

Do Midwest states require that young people adjudicated in juvenile court for certain offenses be part of a state-run sex offender registry?

With the exception of Nebraska, every state in the Midwest has statutes that require certain juvenile sex offenders to be registered. Nebraska does have a sex offender registry that adult offenders must be a part of, but the requirement typically does not apply to juveniles. There is one exception, however — if individuals have been adjudicated as juveniles for a sex offense in another state.

That requirement was affirmed two years ago by the Nebraska Supreme Court, based on its reading of a state law that dates back to 1997.

Elsewhere in the Midwest, juveniles must register, regardless of where the offense was committed. Important differences exist in these state laws, however, as a study released earlier earlier this year shows.

According to the Juvenile Law Center’s “Labeled for Life,” more than 200,000 individuals are on sex offender registries for offenses they committed as children. Exactly which offenses require registration by juvenile-age offenders varies — 1) most or all offenses in states such as Illinois, Indiana, Minnesota and Wisconsin; 2) higher-tier, more serious offenses in states such as Iowa and Michigan; and 3) only rape in South Dakota.

In Ohio, any juvenile 14 or older who has twice committed a “sexually oriented” offense or “child victim oriented offense” is placed on the registry. Earlier this year, the Ohio Supreme Court upheld the state’s registry requirement. That decision stemmed from a case brought by an individual who challenged Ohio’s law on the grounds that it was an unconstitutional violation of due process.

The individual in the case was 14 years old when he was adjudicated in juvenile court on a felony sex offense, and 19 years old when he was convicted in adult court for failing to register.

Another option for states is to give judges discretion on whether a juvenile should be placed on a sex registry. In Kansas, such discretion is given to judges for cases involving nonviolent offenses. North Dakota requires mandatory registration for felonies and provides judicial discretion for misdemeanors.

States also differ on how long they require individuals adjudicated in juvenile court on a sex offense to remain on the registry. In the Midwest, the time frame varies from two years to life, depending on the state and severity of the offense (see table).

In some states, too, these individuals appear on publicly available websites that list sex offenders. According to the “Labeled for Life” study, Indiana and South Dakota include these names on a publicly available website; they are not included in Iowa, Kansas and Minnesota. A third option is for states to leave this decision to judges or law enforcement, or to only include the names of people who committed violent or more serious sex offenses as juveniles.

The Juvenile Law Center issued the study as part of its efforts to change state laws that place young offenders on registries. The center says registration requirements are imposed without consideration of individual circumstances and without regard to research showing that children who engage in sexual offenses are unlikely to recidivate. The center also says being on a registry can harm an individual’s ability to secure housing, live with siblings, or get a job or an education.

Question of the Month response by Tim Anderson (tanderson@csg.org), publications manager for CSG Midwest, which provides individualized research assistance to legislators, legislative staff and other government officials. This page highlights a research question received by CSG Midwest. Inquiries can be sent to csg@csg.org.
Growing pains likely as hemp production, and regulation of it, comes to states across the Midwest

by Carolyn Orr (carolyn@strawdikefarm.us)

1. hadn't took long for the Midwest’s legislators, and farmers, to jump at one of the new opportunities provided in the 2018 federal farm bill — the legalization and cultivation of industrial hemp.

According to a CSG Midwest survey of state departments of agriculture, more than 70,000 acres of land were licensed in 2019 for hemp production across eight of the region’s 11 states. The three states without any licensed hemp growers in 2019 were South Dakota, where the governor has vetoed legislation to allow production, and Iowa and Ohio, which have been awaiting U.S. Department of Agriculture approval of their regulatory plans. (Ohio’s plan was approved in early 2020.)

New U.S. Department of Agriculture rule, which includes all in the Midwest except South Dakota) now have laws in place allowing for legal hemp production, for research and/or commodities.

Despite these major policy changes, though, questions remain about how hemp will be regulated and where farmers will find markets for their crop.

In October, the U.S. Department of Agriculture issued its interim final rule outlining requirements for state licensing programs. Many states are building out requirements that match what states are already doing, but parts of the rule will require states to adjust.

According to the North Dakota Department of Agriculture’s John Mortenson, his department has enough concerns about the USDA rules that it plans to continue to operate under the 2014 farm bill’s pilot program.

For it to be cultivated legally, hemp

Agriculture & Natural Resources

HEMP PRODUCTION IN MIDWEST, 2019* (1)

<table>
<thead>
<tr>
<th>State</th>
<th>Planned or actual planting</th>
<th># of licenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>19,500 acres</td>
<td>733</td>
</tr>
<tr>
<td>Indiana</td>
<td>5,300 acres</td>
<td>163</td>
</tr>
<tr>
<td>Kansas</td>
<td>5,700 acres</td>
<td>213</td>
</tr>
<tr>
<td>Michigan</td>
<td>32,000 acres</td>
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<tr>
<td>Minnesota</td>
<td>8,000 acres</td>
<td>560</td>
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<tr>
<td>Nebraska</td>
<td>***</td>
<td>10</td>
</tr>
<tr>
<td>North Dakota</td>
<td>3,900 acres</td>
<td>64</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1,251 acres</td>
<td>1,247</td>
</tr>
</tbody>
</table>

* In South Dakota, hemp production has been legal for more than 20 years. Production in this state’s current provisions tends to be higher than in the Midwest’s states.

** The numbers for Kansas and Minnesota are actual plantings; for the other states, the numbers represent planned plantings. These figures may not represent final, end-of-year tallies in some states.

** Nebraska did not have any outdoor plantings.

Source: CSG Midwest survey of departments of agriculture.

Very few of the existing state licensing plans provide for the testing of every field, especially within a 15-day window as envisioned by the USDA. In Illinois, for example, the state was planning to rely on random samples and to give growers the responsibility of contacting an approved lab. This will have to change in order to meet USDA requirements.

Across the border, in Canada, hemp production was approved more than 20 years ago. In that country, hemp fields are exempt from testing of a farmer uses government-approved seed varieties. The new USDA rule, however, does not allow seed approval or certification.

Another potential problem for states under the USDA rule is that THC testing of hemp crops be handled only by laboratories registered with the U.S. Drug Enforcement Agency. There currently are not enough DEA-certified labs to test the number of expected samples in a timely fashion. In addition, if farmers’ plants test at 0.5 percent or higher, they could be banned from growing hemp or face more serious consequences.

Various environmental conditions, beyond the control of farmers, can impact the crop and cause THC levels to increase. As a result, the USDA expects that 20 percent of the hemp plants be destroyed because it exceeds the THC limit.

Under the USDA rule, DEA agents or approved law enforcement must destroy the crops. This could require a big commitment of state resources, notes Braden Hoch of the Kansas Department of Agriculture, and he hopes the USDA will reconsider this part of the rule.

For hemp farmers, there are even bigger

issues than this regulatory uncertainty. According to the USDA, 55 percent of all hemp grown in the United States is still in search of a market.

Right now, U.S. growers are focusing on CBD oil production, but there also is a need for processors of non-CBD-eligible hemp fiber. And as a look across the border, at Canada’s mature market, points to other potential uses. According to Dale Risula of the Saskatchewan Department of Agriculture, domestic hemp is used in the production of hemp oil and hemp hearts for use in foods. Because hemp seed contains a beneficial mixture of healthy fats and fatty acids, demand for it may grow.

Risula notes, too, that Canada has a plan to eliminate single-use plastics; hemp could be a substitute fiber.


Criminal Justice & Public Safety

Midwest states in middle of national debate over laws on ‘riot boosting,’ protecting energy infrastructure

by Mitch Arvidson (marnsdon@jciq.org)

Six months after passage of an “anti-riot” law by the Iowa Senate, national attention, South Dakota’s governor and attorney general agreed to a settlement that effectively nullifies certain provisions of this 2019 legislation (SB 189), along with two other existing laws.

The settlement was announced in October, one month after parts of SB 189 were ruled unconstitutional in U.S. District Court. Under the agreement, the state will no longer enforce laws that made it a felony for an individual to encourage or solicit violence in a riot, whether or not not participating directly. The agreement also strikes down most provisions in SB 189, except a section that allows the state to collect compensation from individuals who cause damage during protests.

South Dakota’s Riot Boosting Act aimed to create ways for the state to pursue legal action against out-of-state actors who assist, financially or otherwise, with violent protests and rioting.

Over the past five years, 17 states have passed laws related to riots or protests, often with a particular emphasis on protecting pipelines or other critical energy infrastructure, according to the International Center for Not-For-Profit Law. Much of this legislative activity has been a reaction to protests in 2016 in North Dakota over the Dakota Access Pipeline. According to Gov. Kristi Noem, SB 189 was introduced to “ensure the Keystone XL pipeline and other future pipeline projects are built in a safe and efficient manner while protecting our state and counties from extraordinary law enforcement costs.”

With that goal in mind, and in an attempt to adhere to free speech norms, Noem was planning in late 2019 to introduce new legislation. Her idea, the Minneapolis Star Tribune noted in December, is to charge down portions of the law so that oral and written advocacy is not considered urging or inciting a riot.

NEW LAWS IN 3 OTHER STATES

The ACLU of South Dakota argued that the 2019 law’s “broad language invites arbitrary enforcement” and was too vague to understand what behaviors and actions were and were not allowable. In the Midwest, three other states have new laws that increase potential penalties for protests near pipelines or other “critical infrastructures.”

These laws don’t have the same “riot boosting” language as South Dakota’s, though Indiana and North Dakota legislators did include language allowing for fines of up to $100,000 for any individual and/or organization that conspires with individuals who commit offenses outlined in the new statutes.

Indiana’s SB 471 creates the offenses of “criminal infrastructure facility trespass” and “criminal infrastructure facility mischief,” carrying penalties of up to 30 months and six years in prison, respectively. North Dakota’s SB 244 criminalizes “interfering, inhibiting, impeding or preventing the construction or repair of a criminal infrastructure facility.” Violators face a $10,000 fine and/or up to five years in prison.

In November, Wisconsin Gov. Tony Evers signed AB 426. Individuals who trespass or intentionally cause damage to the property of an energy provider now face a felony charge punishable by up to six years in prison and a $10,000 fine.

By Mitch Arvidson (marnsdon@jciq.org)


STATUS OF LEGISLATION INCREASING POTENTIAL PENALTIES FOR PROTESTS NEAR PIPELINES, OTHER ENERGY INFRASTRUCTURE

Bills signed into law in 2019 (some provisions in South Dakota not being enforced as result of legal settlement)

Bills introduced in 2019 but had not been passed as of end of year

No bills introduced as of end of 2019

Source: International Center for Not-For-Profit Law

STATETLINE MIDWEST | JANUARY/FEBRUARY 2020 3