STATELINE MIDWEST

CSG MIDWEST

THE COUNCIL OF STATE GOVERNMENTS | MIDWESTERN OFFICE

THE MIDWESTERN OFFICE OF THE COUNCIL OF STATE GOVERNMENTS

A compilation of articles that have appeared in the publication *Stateline Midwest* in 2020 on policies related to criminal justice and public safety

CSG MIDWEST

The Council of State Governments | Midwestern Legislative Conference
701 East 22nd Street, Suite 110 | Lombard, Illinois 60148
630.925.1922 | csgm@csg.org | www.csgmidwest.org

STATELINE MIDWEST

CSG MIDWEST

JULY 2020 | VOLUME 29, NO. 6
THE COUNCIL OF STATE GOVERNMENTS | MIDWESTERN OFFICE

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 kneeled 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.

According to *The Washington Post*, 5,424 people have been shot and killed by police since Jan. 1, 2015. (See page 7 for state-by-state data for the Midwest.) African Americans make up 24 percent of those shot and killed by police; in 353 of these 1,298 incidents, the individual possessed neither a gun nor a knife. (African Americans make up 13.4 percent of the U.S. population.)

Following the death of George Floyd in late May, protesters took to the streets in all 50 states and in more than 60 countries.

Their calls for change have included a push for new state laws — for example, bans on chokeholds and certain other restraints, greater civilian oversight of police, and mandatory de-escalation training.

In New York, one of the first U.S. states to act following Floyd's death, legislators repealed statutory language that had shielded police officer's disciplinary records from public view.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.)

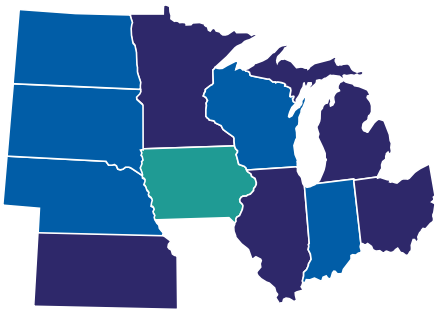
"The times we are in now should be treated no differently," he adds, "when we see injustices happening that should never happen in a civilized and equal society."

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

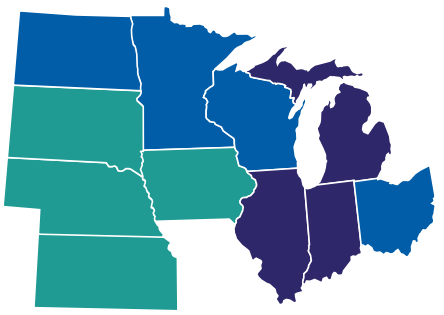
▶ COVER STORY CONTINUED ON PAGE 6

LEGISLATION ON POLICE REFORM, RACE FOLLOWING DEATH OF GEORGE FLOYD — MAY 25-JUNE 30 (SEE PAGE 7 FOR DETAILS)



- Bill introduced and signed into law
- Bills and/or resolutions introduced
- No bills or resolutions (legislatures not in session in May or June)

AVAILABILITY TO PUBLIC OF RECORDS ON POLICE MISCONDUCT



- Confidential
- Limited
- Available to public

Source: WNYC Radio review of relevant statutes, court cases, and interviews with attorneys and experts

IN IOWA, NEW LAW WILL CHANGE HOW DEATH CASES INVOLVING POLICE OFFICERS ARE PROSECUTED

» CONTINUED FROM PAGE 1

suspect will use deadly force and can't be apprehended in another way.

HF 2647 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.

"The first meeting 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 can be 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 incoming 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 circulating since last year, but after 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.

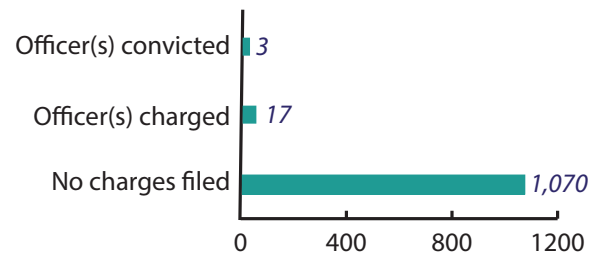
Policing in the United States is quite dispersed, with several hundred city police departments and county sheriff offices in every state.

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 modeling best 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.)

DEADLY-FORCE ENCOUNTERS INVOLVING POLICE IN MIDWEST: CONVICTIONS, CHARGES OR NO CHARGES FILED AGAINST OFFICERS (2013-2020)



Source: Mapping Police Violence

'WE NEED TO DO A WHOLE RANGE OF THINGS': Q & A WITH MINNESOTA ATTORNEY GENERAL KEITH ELLISON

Within days after the death of George Floyd, Minnesota Gov. Tim Walz asked another statewide, constitutional officer to lead prosecution of the case. Attorney General Keith Ellison agreed to take on this new responsibility, and soon after, he filed formal charges against the four Minneapolis police officers involved in Floyd's death.

In a June interview with CSG Midwest, Ellison discussed his leadership role in this historic case, and moment in U.S. history. Here are excerpts.

Q Why are you leading prosecution of the case, rather than the local county prosecutor (Hennepin County Attorney Mike Freeman)?

A Well, the first thing that happened was Mike Freeman asked us to partner with him on the case, and Hennepin County is still very involved. We're working together. The governor wanted us in publicly, and that was important to him. The way that the Minnesota attorney general can get into a criminal case is if we're referred to by a county and invited in, or if we're assigned by the governor. In this situation, both happened.

Q For state legislators across the Midwest and country, what are some state-level policies that you would single out as ways to prevent deadly-force encounters among police and civilians?

A I think it is a good idea to reduce the civil burdens to hold police accountable. Getting rid of, or modifying, qualified immunity is a very appropriate thing to do.

I think that it's critical to have independent investigation and accountability by creating units within [government] to 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. People need to know that the outcome is based on the facts and the law.

Q What are some of those "civil burdens" that you view as an obstacle to accountability?

A With collective bargaining agreements, which are basically a labor contract between the city and the police union, if there is a dispute around misconduct, it goes to an arbitrator. That shouldn't be.

I don't have a problem with things like pay and pension and working conditions being bargained collectively, because I believe in unions. But when it comes to an officer engaging in misconduct, that should not be subject to arbitration. Those provisions should simply be void in the public interest. So that the chief can fire people and there can be a city council or a mayoral appeals process, but that you don't go to a nameless, faceless arbitrator who just puts the person back on the force.

What you have now is a situation where somebody beats up a citizen, they've been in trouble for it before. Meanwhile, the arbitrator just puts them right back on, in defiance of the chief.

Q Months prior to the death of George Floyd, you helped lead a working group in Minnesota that released 28 recommendations on how to reduce deadly-force encounters. Which of those strike you as particularly relevant right now?

A All 28 of them! The bottom line is, we need to do a whole range of things that make the system of safety and security more responsive and interactive with the community, and more accountable to the community. This starts with changing the POST [Peace Officer Standards and Training] Board conditions. People need to know about and engage with the POST Board.

It means that police departments need to engage in trauma-informed training. It means that mayors and city councils really need to adopt systems on what to do in the tragedy of an officer-involved shooting or death. Families lack information. They might have a loved one die, and nobody knows, and they never get any answers.

We do need to change our system of standards for uses of force. We do need a system that really says we have sanctity of life at the core of our policy, and that an officer might need to back off of someone if that person is not posing an immediate threat to others. Even if they may have a weapon or a knife doesn't mean you go shoot them. Maybe it means you close the door of the room that they're in, and call mental health people to say we've got somebody in a mental health crisis.

We need to use things like body cameras in a non-disciplinary way, meaning we need to use it to do training and assimilation and review.

I know that the public thinks that this is a finger snap, but this system has developed over the course of 350 years. This system of law enforcement has developed over long periods of time. It won't just be fixed with officer training, and it won't just be fixed with changes in legal accountability, or body cameras. We need all of this stuff — plus more.

» CONTINUED FROM PAGE 6

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 policing," Ellison 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 dawdle 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. Both chambers also included more mandatory police training.

No final agreement between the Democrat-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 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.

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

State	Total	% of people shot and killed by police who were Black or Hispanic	% of state's total population that is Black or Hispanic
Illinois	104	68.3%	32.0%
Indiana	95	35.4%	16.9%
Iowa	31	22.6%	10.2%
Kansas	50	28.0%	18.2%
Michigan	78	33.3%	19.3%
Minnesota	61	21.3%	12.3%
Nebraska	24	29.2%	16.3%
North Dakota	11	0.0%	7.3%
Ohio	156	36.5%	19.6%
South Dakota	17	0.0%	6.5%
Wisconsin	91	28.6%	13.6%

Sources: The Washington Post and U.S. Census Bureau

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

ILLINOIS: TRIO OF BILLS IN COMMITTEE

Soon 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 4999); require a special prosecutor to be assigned to all death cases involving a law enforcement officer (HB 3926); 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 5837 and SB 945), 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 their 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 an officer, turn over the investigation to the province's 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. Evers declined to convene a special session, so consideration of these bills must wait until 2021.

** 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.*

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 their states' policies 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."

Ohio Sen. John Eklund

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. These 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 origins, 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 justice experts.

During his time on that committee, Eklund was struck by "how felonies for drug possession charges have much broader implications 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 should 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 would have 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 misdemeanors.

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 that 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.

DRUG OFFENSES IN OHIO, THE NUMBER OF OFFENDERS IN PRISON, AND THE POTENTIAL IMPACT OF SB 3

5,070 | ***# OF PEOPLE SERVING TIME IN PRISON FOR A DRUG OFFENSE IN 2016***

1.62 | ***AVERAGE AMOUNT OF TIME (IN YEARS) SPENT IN PRISON FOR A DRUG CRIME***

2,700 | ***POTENTIAL # OF FEWER OFFENDERS SENTENCED EVERY YEAR UNDER SB 3***

$75 MILLION | ***POTENTIAL YEARLY SAVINGS FOR PRISON SYSTEM UNDER SB 3***

Source: Ohio Legislative Service Commission

North Dakota Rep. Shannon Roers Jones and Illinois Sen. Mattie Hunter serve as co-chairs of the Midwestern Legislative Conference Criminal Justice & Public Safety Committee. The vice chair is Indiana Sen. Michael Crider. Mitch Arvidson 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 is 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 struck 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 ban 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.

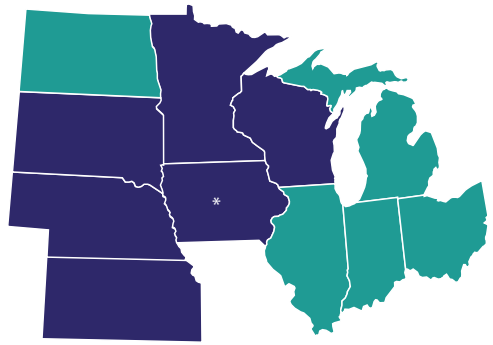
He also notes that even though people held in pre-trial detention are legally allowed to vote, this does not mean they are practically able to do so.

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?"

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 cannot vote; everyone else can vote (including those on probation and parole)

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

Source: ACLU

North Dakota Rep. Shannon Roers Jones and Illinois Sen. Mattie Hunter serve as co-chairs of the Midwestern Legislative Conference Criminal Justice & Public Safety Committee. The vice chair is Indiana Sen. Michael Crider. Mitch Arvidson serves as CSG Midwest staff liaison to the committee.

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)*

After 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 jail 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.

Michigan Chief Justice Bridget Mary McCormack

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 is 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 arrests; 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.

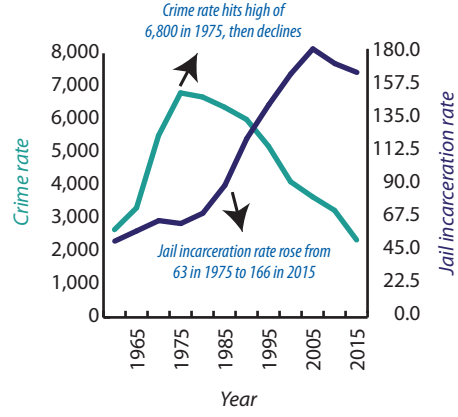
"I really feel strongly that the recommendations are interrelated; they really should be adopted as a package," says Bridget Mary McCormack, chief justice of the Michigan Supreme Court.

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.

IN MICHIGAN, CRIME RATES HAVE FALLEN, WHILE JAIL INCARCERATION RATES HAVE INCREASED



Source: The Pew Charitable Trusts

North Dakota Rep. Shannon Roers Jones and Illinois Sen. Mattie Hunter serve as co-chairs of the Midwestern Legislative Conference Criminal Justice & Public Safety Committee. The vice chair is Indiana Sen. Michael Crider. Mitch Arvidson serves as CSG Midwest staff liaison to the committee.

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)*

When a county in Indiana Rep. Randy Frye's district proposed a tax increase to build a new jail in order to relieve overcrowding, his constituents balked. After noticing their opposition to the tax increase, he wanted to get to the root of the issue.

"The question was, Why is the jail overcrowded? And when I went to find out, there wasn't any data available, it's always an opinion," Frye says. "I didn't feel like I could competently address the issue."

Since most data were collected by cities and counties, and not shared between jurisdictions, it wasn't there for a statewide view. So he introduced HB 1346, which became law in March and requires all Indiana jails to contribute to a new database that measures who is in jail, why they are, and for how long.

"Legislators and the court system will be able to look at the data and be able to see if there is significant disparity from county to county in how someone is handled for a similar offense, how long the sentence is vs. the other 91 counties," Frye says. "We also need to know how long folks are in jail before their case comes to trial, how long were they in jail before they saw a public defender if they couldn't afford an attorney.

"Those are facts that we don't have today."

That pursuit of facts, through data collection, to inform decision-making on criminal justice policy has led to a series of actions in the Midwest's states.

Last year, for example, Iowa legislators established a Justice Advisory Board (HF 634) whose duties include providing for a "clearinghouse of justice system information" and assisting policymakers in using the data.

In North Dakota, law enforcement agencies must now share information on cases involving "missing and murdered indigenous people" (the result of HB 1313), and the state Supreme Court and Department of Human Services are sharing data to better serve youths involved in the juvenile justice and child welfare systems.

Five years ago, Nebraska lawmakers created a new legislative Committee on Justice Reinvestment Oversight. It collects and analyzes data from counties and relevant state agencies to monitor the performance of the state's justice system.

Indiana Rep. Randy Frye

> "Legislators and the court system will be able to see if there is significant disparity in how someone is handled for a similar offense."

(This committee was established by LB 605, a bill that came out of work led in part by The Council of State Governments' Justice Center.)

Illinois, meanwhile, will begin to track how many people are in the state's county jails, how long they are in jail, and how quickly dockets are cleared. Illinois Supreme Court Chief Justice Anne Burke proposed this kind of tracking system earlier this year, and the General Assembly approved the $1.6 million request in its budget. Other examples from the Midwest include:

- An initiative in South Dakota that, for several years, has allowed county sheriffs and other law enforcement agencies to share information and track records in a comprehensive way.
- Wisconsin's Criminal Justice Coordinating Council, whose work includes mapping existing criminal justice data systems and identifying opportunities for improvement.
- The Ohio Supreme Court's disbursement of grants (via the state's Courts Technology Initiative) to improve data sharing and collection.

North Dakota Rep. Shannon Roers Jones and Illinois Sen. Mattie Hunter serve as co-chairs of the Midwestern Legislative Conference Criminal Justice & Public Safety Committee. The vice chair is Indiana Sen. Michael Crider. Mitch Arvidson serves as CSG Midwest staff liaison to the committee.

QUESTION OF THE MONTH

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

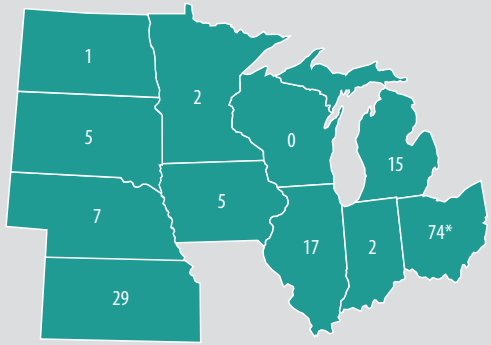
While not technically an occupational license, the certification of police officers is required in most states. The International Association of Directors of Law Enforcement Standards and Training defines certification as "the process by which law enforcement officers are licensed in their respective 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.

LAW ENFORCEMENT OFFICER CERTIFICATE REVOCATIONS IN MIDWEST IN 2015



* Ohio did not differentiate between revocations for law enforcement officers, correctional officers, private security officers, reserve or auxiliary officers, or others.

Source: "POST Agency Certification Practices" (2016 report by Seattle University professor Matthew Hickman)

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 decertify police officers is poised to enact one of the most far-reaching laws in the nation. 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 Arvidson (*marvidson@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@csg.org*.

QUESTION OF THE MONTH

QUESTION | Do Midwestern 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 juveniles to be registered as sex offenders. Nebraska does have a sex offender registry that adult offenders must be a part of, but this 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 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 indicted 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.

LENGTH OF TIME SOMEONE MUST REMAIN ON SEX OFFENDER REGISTRY AS RESULT OF OFFENSE COMMITTED AS JUVENILE

State	Duration
Illinois	2 or 5 years
Indiana	10 years or life
Iowa	10 years to life (some court discretion)
Kansas	Until age 18, five years or life
Michigan	15 years, 25 years or life
Minnesota	10 years
Nebraska	Not required to register
North Dakota	15 years, 25 years or life
Ohio	10 years, 20 years or life
South Dakota	10 years
Wisconsin	15 years

Source: Juvenile Law Center, "Labeled for Life"

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 *csgm@csg.org*.

CRIMINAL JUSTICE & PUBLIC SAFETY

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

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

Six months after passage of an "anti-riot boosting" measure that received 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 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/or riots.

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 not violate rights to free speech, Noem was planning in late 2019 to introduce new legislation. Her idea, the Minneapolis *Star Tribune* noted in December, is to change struck-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 infrastructure."

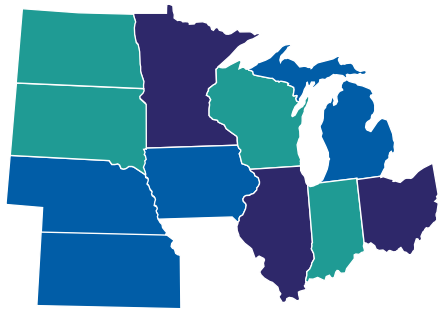
These laws don't have the same "riot boosting" language as South Dakota's, though Indiana and North Dakota legislators did include language allowing for fines of up to $100,000 for any individual and/or organization that conspires with individuals who commit offenses outlined in the new statutes.

Indiana's SB 471 creates the offenses of "criminal infrastructure facility trespass" and "critical infrastructure facility mischief," carrying penalties of up to 30 months and six years in prison, respectively. North Dakota's SB 2044 criminalizes "interfering, inhibiting, impeding or preventing the construction or repair of a critical 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.

North Dakota Rep. Shannon Roers Jones and Illinois Sen. Mattie Hunter serve as co-chairs of the Midwestern Legislative Conference Criminal Justice & Public Safety Committee. The vice chair is Indiana Sen. Michael Crider. Mitch Arvidson serves as CSG Midwest staff liaison to the committee.

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)
- Bill(s) 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