

CRIMINAL JUSTICE

Reducing Admissions to Jail and Prisons

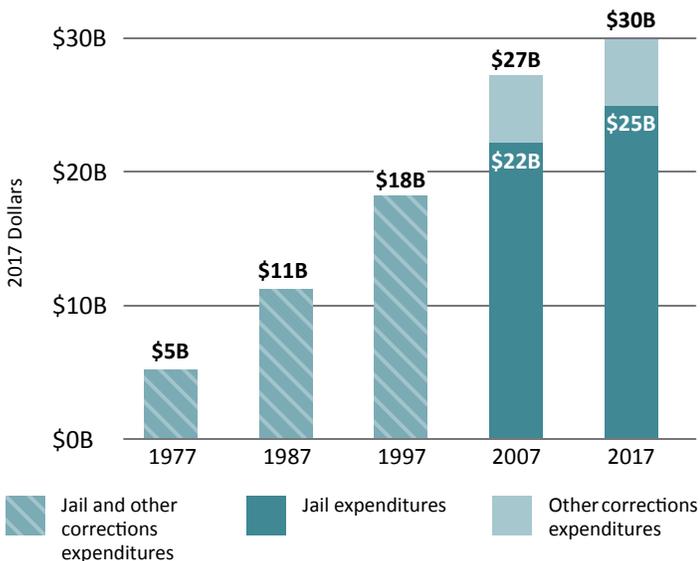
BY AMANDA ESSEX

Incarceration is expensive.

Jail costs were \$25 billion in 2017, up from \$22 billion in 2007, [according to research](#) from The Pew Charitable Trusts (Pew). These jail costs are generally local expenditures and are in addition to the estimated \$45 billion states spent on corrections in fiscal year 2019.

There are several policy options states can consider to reduce the use of prisons and jails while still holding people accountable and promoting public safety. This brief explores policy options such as improving responses to individuals with mental health needs and making changes to criminal offenses, including decriminalizing and “defelonizing” some offenses.

Total Local Corrections Expenditures



Notes: Expenditures have been adjusted to 2017 dollars and exclude the seven states that have unified or quasi-unified systems. Figures shown are rounded to the nearest \$1 billion.

Source: U.S. Census Bureau, “Annual Survey of State and Local Government Finances”

Reducing Entries into the Criminal Justice System

Individuals experiencing a mental health crisis often find that the criminal justice system and jail are the first or only available response—but not necessarily the best. In recent years, states are [looking to improve](#) coordination between community-based services and the criminal justice system to ensure that individuals avoid the system, if appropriate. Colorado enacted [legislation in 2017](#) with the goal of ending the use of correctional facilities to house individuals who are under emergency mental health holds and not charged with a crime.

[Police-mental health collaboration programs](#)—crisis intervention teams, co-responder teams, mobile crisis teams, case management teams and crisis stabilization centers—provide law enforcement with options to connect individuals with appropriate community-based services and reroute them away from the justice system prior to arrest or booking into jail.

Decriminalization

Decriminalizing behavior means imposing fines rather than jail. Recent decriminalization efforts have focused on traffic violations and marijuana possession.

About half of states have [decriminalized](#) the bulk of minor traffic offenses. Michigan’s [HB 5853](#), passed last year, changed a number of misdemeanor traffic violations to civil infractions. A [fiscal analysis](#) of the legislation indicated that by eliminating jail as a possible sentence, arrests and convictions should decline, reducing jail operation and probation supervision costs.

Even when states decriminalize traffic violations, some remain criminal offenses, such as driving under the influence.



Twenty-seven states and the District of Columbia have [decriminalized possession of marijuana](#), making most small, personal-consumption amounts a civil or local infraction or lowest misdemeanor with no possibility of jail time. These changes significantly reduce the costs of criminal processing and detention. People addressing a ticket avoid the criminal justice system, reducing the burden on court dockets.

Defelonization

Defelonization is the reclassification of an offense from a felony to a misdemeanor or a violation. Reducing the crime’s severity makes incarceration less likely or reduces the sentence length. Most defelonization actions involve changing what constitutes a felony by increasing drug possession thresholds or theft thresholds.

A handful of states have enacted laws defelonizing personal possession for drugs other than marijuana in order to differentiate people with substance use disorders from dealers. The decreased penalties allow for community treatment rather than using costly jail and prison beds.

In Utah’s 2015 [Justice Reinvestment legislation](#) (SB 348), the penalties for most first and second possession offenses were reduced to misdemeanors. Recognizing a potential increase in responsibilities for county probation agencies and jails, the state also decreased penalties for most traffic offenses from misdemeanor to infraction, resulting in little to no jail time. An [evaluation of Utah’s policy changes](#) from the Urban Institute found that the number of people serving time in prison for drug possession dropped by 59% between 2014 and 2018.

Since 2005, about 30 states have increased the dollar threshold for theft offenses, often adjusting based on the rate of inflation. Increasing the value amount has the effect of lowering penalties for smaller thefts, thereby reducing incarcerations.

More than half of states have a felony theft threshold of \$1,000 or more. Kentucky [passed legislation](#) in 2021 raising its felony theft threshold from \$500 to \$1,000. The legislation’s [corrections impact statement](#) indicated that the threshold changes would result in a significant reduction of incarcerations for felony convictions. This change, along with other threshold changes, are projected to save up to \$4 million per year.

[Raising the felony theft threshold](#) has shown no impact on overall property crime or larceny rates. Research by Pew found that states which raised felony theft thresholds experienced declines in crime rates comparable to states that did not make such an adjustment, and a [later study](#) of South Carolina data found that the average value of goods stolen did not rise after increasing the felony theft threshold.

Opportunities for policy changes that reduce admissions can be found throughout state statutes. A series of bills passed in Michigan following the work of the state’s [Joint Task Force on Jail and Pretrial Incarceration](#) demonstrate that there are statutes in multiple sections of code that create criminal offenses. The bill package eliminated some mandatory minimum jail sentences, created an opportunity for others to be waived if a person completed a specialty court program, created presumptions for most misdemeanors that individuals will not be sentenced to jail or probation, and presumptions that most low-level felonies will not result in jail sentences.

Michigan Jail Sentencing Changes

Legislation	Code Amended	Summary
HB 5844	Public health code	Eliminates certain mandatory minimum jail sentences.
HB 5854	Michigan vehicle code	Eliminates certain mandatory minimum jail sentences and makes others waivable.
HB 5855	Revised school code	Eliminates certain mandatory minimum jail sentences.
HB 5856	Natural resources and environmental protection act	Eliminates certain mandatory minimum jail sentences and makes others waivable.
HB 5857	Railroad code of 1993	Eliminates certain mandatory minimum jail sentences.
SB 1048	Code of criminal procedure	Creates a rebuttable presumption for non-jail sentences in some cases.
SB 1049	Code of criminal procedure	Expands age eligibility for deferred judgement of guilt under the specified act.

Source: [Guide to Michigan’s 2020 Jail Reforms](#), Michigan Joint Task Force on Jail and Pretrial Incarceration, 2021.



NCSL Contact:

Amanda Essex

Senior Policy Specialist, Criminal Justice Program
303-856-1369 | amanda.essex@ncsl.org

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