

JUSTICE DE-INVESTMENT



The Regrettable Expansion of the Statehouse-To-Prison Pipeline in 2018

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In January of this year, the ACLU of Rhode Island issued a report examining the “Statehouse-to-prison pipeline” – the problems of mass incarceration and overcriminalization that arise from the General Assembly’s routine passage of laws that create new crimes and increase prison sentences for current offenses, often with little analysis or logic behind them. That report found that, between the years 2000 and 2017, the Rhode Island General Assembly created more than 170 new crimes, and also increased the criminal sentences for dozens of existing offenses.¹

Between 2000 and 2017, the RI General Assembly created more than 170 new crimes. That trend continued in 2018, as more than a dozen new felonies were added to the books.

Regrettably, as the attached chart indicates, that trend continued in 2018. The “Statehouse-to-prison pipeline” got a little wider this year as the result of the General Assembly’s passage of a number of laws adding more than a dozen new felonies to the books and increasing sentences for a handful of crimes, while failing to pass any laws reducing or repealing prison sentences.

The continuation of this long-standing pattern was particularly disappointing since it came less than a year after the General Assembly enacted justice reinvestment legislation designed to bring “smart justice” to the state. Unfortunately, it was nowhere to be seen this year. In fact, as explained shortly, the state took a significant step *backward* by passing two bills providing for mandatory minimum sentencing.

When it comes to legislative initiatives on crime, the evidence and costs continue to be minimized or ignored.

Justice reinvestment needs to be a commitment if it is to have any lasting effect; it cannot be a one-year fad whose lessons soon get quickly disregarded. Too often, however, when it comes to legislative initiatives on crime, the evidence and costs continue to be minimized or ignored. Instead, bills that will have a significant impact on individuals, the budget, public policy and the promotion of justice rely on anecdote, political calculations, and myths about crime, all to the long-term detriment of the public

¹ http://riaclu.org/images/uploads/2018_report_StatehouseToPrison_FullReport.pdf

and to criminal justice reform. In contrast, justice reinvestment recognizes that legislating on criminal justice – like legislating on any other important issue – should be evidence-based. And the evidence is clear that the “lock ’em up” mentality that has pervaded the country’s approach to crime for decades simply does not work; it is ineffective, enormously expensive, and often counter-productive. Yet that recognition by legislators, so prominent a year ago, seemed to be missing this year.

Some of the new criminal offenses enacted this year were well-publicized, and included a ban on alleged “revenge porn,” a gun control bill prohibiting bump stock devices, and “drug-induced homicide” legislation, authorizing a life sentence for any person convicted of delivering a controlled substance that results in a person’s overdose death.

Other new laws – making it a crime to sell dogs that are not fully weaned, and the establishment of numerous new criminal penalties in a statutory scheme addressing misconduct by professional contractors – did not get much attention. But they all added to the ongoing upward trend of creating new crimes, adding harsher sentences, and sending more and more people to prison while doing nothing to stem that tide.

The General Assembly took a major step backward in 2018 by enacting mandatory minimum sentencing laws, promoting a dangerous mindset that this is good criminal justice policy.

In at least one significant respect, criminal justice reform took a major step backward this year. Recognizing the importance of judicial discretion in imposing sentences, the General Assembly had for years largely shied away from tying the hands of judges through the enactment of mandatory minimum sentencing laws. This year, however, the legislature enacted *two* laws imposing mandatory prison sentences on certain second offenders.

By creating the impression that mandatory sentencing is an effective way to address second-time offenders, these new laws instead just give prosecutors greater power to coerce pleas out of defendants and avoid having to prove beyond a reasonable doubt that the crimes have been committed. Worse, passage of these two bills promotes a dangerous mindset that the General Assembly had avoided for many years — that mandatory minimum sentencing is good criminal justice policy. It is not.

In fact, more than a decade ago, a distinguished commission chaired by former U.S. Supreme Court Justice Anthony Kennedy urged all jurisdictions in the country to “[r]epeal mandatory minimum sentence statutes.” As the American Bar Association noted in supporting that recommendation:

Mandatory minimum sentences raise serious issues of public policy. Basic dictates of fairness, due process and the rule of law require that criminal sentencing should be both uniform between similarly situated offenders and proportional to the crime that is the basis of conviction. Mandatory minimum sentences are inconsistent with both commands of just sentencing.²

² https://www.americanbar.org/.../2007jul03_minimumsenth_1.authcheckdam.pdf

Only time will tell whether these two new laws are an anomaly or represent a troubling new regressive trend.

But that was far from the only setback in criminal justice reform this year. Unfortunately, other laws enacted in 2018 mirrored the problems that our January report highlighted, and further undermine the point and goals of justice reinvestment.

- **Our January report noted that many laws establishing “new” crimes actually criminalize conduct that is already prohibited by other laws, but repackage the offense in a different way, creating additional and harsher penalties with more serious consequences. Similar bills were enacted this year.**

The harshest new crime that was added to the General Laws this year was Attorney General Peter Kilmartin’s “drug induced homicide” bill, allowing a life sentence to be imposed for delivering a controlled substance that results in a person’s overdose death.

Enacted over the objections of virtually every major medical professional organization in the state, the recovery community and many others, the bill’s impact is likely to often fall on addicted individuals and friends and family members of the overdose victim. That has certainly been the impact of these laws elsewhere.

In light of the overwhelming opposition to Kristen’s Law legislation from those working on the front lines of the epidemic, its passage highlighted the returning chasm between evidence-based criminal justice practices and the politicization of crime.

It is also important to note that the bill was unnecessary. The tragic death that led to the introduction of the bill, and for whom the legislation is named, was avenged under current law. The dealer who provided that victim the overdose was charged under the state’s current felony murder statute and sentenced to 40 years in prison – all done without the necessity of this bill.³

In light of the overwhelming opposition to this legislation from those working on the front lines of the opioid epidemic, its passage highlighted the returning chasm between evidence-based criminal justice practices and the politicization of crime – a chasm that repudiates 2017’s focus on justice reinvestment.

³ <http://www.providencejournal.com/news/20170412/dealer-convicted-of-murder-in-cranston-womans-fentanyl-overdose>

- **Our January report noted that laws like these not only increase the punishment and sentencing range for people who commit certain offenses, they – like the mandatory minimum sentencing legislation – vastly expand the power of police and prosecutors to coerce defendants to waive their right to a jury trial and prod innocent defendants to plead guilty. Bills with this effect were enacted in 2018.**

The effect noted above is true not only of the drug homicide bill, but for many of the other crime bills passed this year. A good example is a new law that establishes a six-year prison sentence for any person who commits a second or subsequent offense of “animal cruelty.” The laws that constitute “cruelty” range far and wide, and include such conduct as shearing horses in winter, releasing caged animals from a park or zoo, or failing to properly register with the Department of Health when using animals for research. Some of these offenses carry penalties of only a few hundred dollars, but if committed a second time, they will now constitute felonies with serious prison sentence penalties and a wide range of collateral consequences.

Even for “animal cruelty” crimes that currently carry a one-year prison sentence, this new law will increase the penalty *six-fold* for a second offense. Rather than face such draconian consequences instead of what would otherwise be a relatively mild penalty, it is inevitable that many people will plead to a lesser offense, even if they may be completely innocent of the charge.

- **Our January report noted that in the rare instances when the legislature reduces or repeals criminal penalties, they are generally to address patently archaic laws, not to promote positive substantive sentencing reform. Not one bill reducing or repealing criminal sentencing laws, whether archaic or not, passed in 2018.**

As part of a crusade to modernize the General Laws, Rep. John Edwards introduced more than 30 bills to repeal archaic statutes. Not one of the bills passed.

This year, the General Assembly did not even wipe one archaic criminal law off the books. It wasn't for lack of opportunity. As part of a crusade to modernize the General Laws, Rep. John Edwards introduced more than 30 bills to repeal archaic statutes, including criminal laws that ban adultery and that prohibit a person from entering a building with the “intent to steal poultry.” Not one of the bills passed.

It is thus unsurprising that no action was taken on more consequential efforts to reduce sentences or repeal criminal statutes, including bills to repeal a series of anti-abortion laws that have been declared unconstitutional by the courts, or a bill to specify that crimes that carry no prison sentence cannot be deemed felonies.

- **Our January report noted that the length of prison sentences and the financial penalties established by new laws are largely arbitrary. It was more of the same in 2018.**

The General Assembly’s arbitrariness in deciding what penalties to attach to crimes was on full display this year. For example, the “red flag” law makes it a crime to knowingly return a firearm to a person who is subject to an order barring them from possessing guns, and also makes it a crime to provide false information in a petition in support of the issuance of a gun seizure order. Without minimizing the latter offense, the former certainly would seem to be far more dangerous, but both crimes carry the same prison sentence – five years.

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Even more bizarrely, the monetary fine is actually greater for the person providing false information than for the one who returns a weapon to somebody who shouldn’t have it: a \$5,000 fine can be imposed for providing false information, but only \$1,000 for wrongly giving back a gun to a person alleged to be a danger.

Leaving that example aside, a trend evident this year was that, in almost every case, fines were directly related to the length of the prison sentence that could be imposed, with each year of prison equaling a \$1,000 fine. That is, if the penalty was one year in prison, the fine was \$1,000; if the penalty was five years in prison, the maximum penalty

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rose to \$5,000. While this is a convenient way of deciding the fine that should be associated with a criminal offense, it certainly does not have any logic behind it.

For example, one would expect financial crimes to carry larger financial penalties than other offenses, but they did not. Almost uniformly, the fines attached to criminal offenses had no logical rationale behind

them, but instead simply followed a meaningless formula based on whatever the maximum prison sentence could be.

CONCLUSION

When the package of justice reinvestment legislation was signed into law last October, a General Assembly news release trumpeted that:

Justice Reinvestment embraces the sensible reallocation of criminal justice resources from incarceration to treatment in order to improve public safety, reduce costs and promote rehabilitation of past offenders and successful reentry into society. The bills emphasize not only the hallmarks of Rhode Island's legal system – equality, justice, and rehabilitation – but also effectiveness and efficiency.

Rhode Island cannot afford, and should not tolerate, a system that places 1 in every 20 adult males and 1 in every 6 adult black males on probation. Without Justice Reinvestment, the Department of Corrections estimates that our state's prison population will grow by 11% over the next decade, adding \$28 million in additional operating and staffing costs.⁴

Regrettably, the various criminal sentencing laws enacted in 2018 fail to further the vision contained in those statements. Instead, we can only repeat the entreaty with which we concluded our January report:

Creating more and more offenses and responding to high-profile individual crimes with increased sentences are very unproductive ways to deal with crime, as the evidence is scant that increased sentences have any effect on the crime rate. Whether for fiscal, social, pragmatic or humanitarian reasons, the General Assembly should spend more time considering all the adverse consequences that have arisen from a “get tough on crime” approach, and recognize that the time has come for a different, smarter approach.

Our criminal justice system is broken in many ways. Taking steps to address the “statehouse-to-prison pipeline” is an essential component to fixing that system, promoting fairness, and reining in the deep-seated problems of overcriminalization and mass incarceration.

We hope that in 2019, legislators will take to heart the promises of justice reinvestment from 2017 and promote criminal justice legislation that looks forward, not backward.

⁴ <http://www.rilin.state.ri.us/pressrelease/layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=13228>

EXPLANATION of TABLE

The table on the following page lists new and amended criminal sentencing laws made by the R.I. General Assembly in 2018. The table includes only misdemeanors (including petty misdemeanors) and felonies and lists penalties of prison sentences and/or fines. Not listed are other types of penalties, such as restitution, community service, or license suspension.

The breakdown of information is as follows:

- **Year** – year that the legislation was passed
- **Chapter number** – refers to the officially enacted Chapter number of the law designated by the Office of Law Revision
- **Bill number** – details if it was either a House (H) or a Senate (S) bill
- **Crime** – brief summary of the crime amended, created, repealed, increased or expanded by legislation
- **Statute** – outlines if an existing statute was amended or if the bill created a new one
- **Category** – details if the crime is a misdemeanor or felony (see legend)
- **Sentence** – lists the maximum prison sentence and/or fine authorized by the offense.

Legend:

Category	Explanation
N-M	New Misdemeanor
N-F	New Felony
N-M/F	New offense with both Misdemeanor and Felony penalties
I-M to F	Crime was Increased from a Misdemeanor to a Felony

2018 Criminal Justice Sentencing Legislation in Rhode Island

Year	Chapter Number	Bill Number	Crime	Statute Created or Amended	Category	Sentence
2018	200/177	S-2135A/ H-8170am	Makes it a crime to commit two acts of animal cruelty within a ten year period	Created 4-1-2(b)	N - F	6 years/\$5,000 fine
2018	111/105	S-2279B/ H-7715Aam	Makes it a crime to deliver a controlled substance, resulting in death	Created 11-23-7	N - F	Up to life in prison
2018	5/8	S-2292A/ H-7075Aam	Makes it a crime to modify a semi-automatic weapon to shoot automatic fire	Created 11-47-8.1	N - F	First offense: 10 years/\$10,000 fine Second offense: Mandatory minimum sentence
2018	5/8	S-2292A/ H-7075Aam	Makes it a crime to possess a bump fire device	Created 11-47-8(d)	N - F	First offense: 10 years/\$10,000 fine Second offense: Mandatory minimum sentence
2018	5/8	S-2492A/ H-7688Aam	Makes it a crime to return a firearm to a person subject to an extreme risk protection order	Created 8-8.3-8(c)(2)	N - F	5 years/\$1,000 fine
2018	5/8	S-2492A/ H-7688Aam	Makes it a crime to violate an extreme risk protection order	Created 8-8.3-10(b)	N - F	10 years/\$10,000 fine
2018	5/8	S-2492A/ H-7688Aam	Makes it a crime to provide false information in a petition seeking an extreme risk protection order	Created 8-8.3-10(c)	N - F	5 years/\$5,000 fine
2018	27/28	S-2581A/ H-7452A	Makes it a crime to disseminate sexually explicit images without the person's consent	Created 11-64-3	N - M/F	First offense: 1 year/\$1,000 fine Second offense: 3 years/\$3,000 fine
2018	27/28	S-2581A/ H-7452A	Makes it a crime to threaten to disseminate sexually explicit images in exchange for payment of something of value	Created 11-64-3	N - F	5 years/\$5,000 fine
2018	267/161	S-2777A/ H7641am	Makes it a crime to sell or transfer a dog that is not fully weaned	Created 4-13-44	N - M	1 year/\$1,000 fine (per dog)
2018	274/133	S-2867A/ H-7223A	Establishes penalties for second offense of driving under the influence with a child in the car	Amended 31-27-2(d)(5)(2)	I - M to F	Increased from 1 year/\$1,000 fine to 5 years/\$5,000 fine
2018	281/232	S-2952A/ H-8156A	Makes it a crime to have an incendiary device without lawful authority	Created 11-13-9(c)	N - F	20 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Establishes penalties for third offense of failing to register as a contractor	Amended 5-65-19	I - M to F	Increased from 1 year/\$10,000 fine to 2 years/\$2,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to violate a final order of the contractors' registration and licensing board	Amended 5-65-19	N - M/F	If monetary total of the order is \$5,000 or less: 1 year/\$1,000 fine If monetary total is more than \$5,000: 10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to operate as a home inspector without a license	Amended 5-65.1-13	N - M/F	1st or 2nd offense: 1 year/\$1,000 fine 3rd offense: 2 years/\$2,000 fine

2018	69/64	S-2607/ H-7443	Establishes penalties for violating a final order of the contractors' board where the monetary total is more than \$5,000	Amended 5-65.1-13	I - M to F	Increased from 1 year/\$1,000 fine to 10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Establishes penalties for a home inspector to violate 3 or more final orders of the contractors' board in 3 separate contracts within 24 months	Amended 5-65.1-13	I - M to F	Increased from 1 year/\$1,000 fine to 10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to operate as a well drilling inspector without a license	Created 5-65.2-5	N - M/F	1st or 2nd offense: 1 year/\$1,000 fine 3rd offense: 2 years/\$2,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to violate a final order of the contractors' board	Created 5-65.2-5	N - M/F	If monetary total of the order is \$5,000 or less: 1 year/\$1,000 fine If monetary total is more than \$5,000: 10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Establishes penalties for a well drilling inspector to violate 3 or more final orders of the contractors' board in 3 separate contracts within 24 months	Created 5-65.2-5	N - F	10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to operate as an underground utility contractor without a license	Amended 5-65.3-17	N - M/F	1st or 2nd offense: 1 year/\$1,000 fine 3rd offense: 2 years/\$2,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to violate a final order of the contractors' board	Amended 5-65.3-17	N - M/F	If monetary total of the order is \$5,000 or less: 1 year/\$1,000 fine If monetary total is more than \$5,000: 10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Establishes penalties for an underground utility inspector to violate 3 or more final orders of the contractors' board in 3 separate contracts within 24 months	Amended 5-65.3-17	N - F	10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to operate as a roofing contractor without a license	Created 5-73-5	N - M/F	1st or 2nd offense: 1 year/\$1,000 fine 3rd offense: 2 years/\$2,000 fine
2018	69/64	S-2607/ H-7443	Makes it a crime to violate a final order of the contractors' board	Created 5-73-5	N - M/F	If monetary total of the order is \$5,000 or less: 1 year/\$1,000 fine If monetary total is more than \$5,000: 10 years/\$10,000 fine
2018	69/64	S-2607/ H-7443	Establishes penalties for a roofing contractor to violate 3 or more final orders of the contractors' board in 3 separate contracts within 24 months	Created 5-73-5	N - F	10 years/\$10,000 fine