



Michigan Must Seize Opportunities for Criminal Justice Reform

By Michael J. Reitz

Summary

Given the significant financial and nonfinancial costs of sending someone to prison, Michigan must consider a range of reforms to its justice system, with an eye toward saving money, improving the economy and protecting liberty from an overreaching government.

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The state's most effective and fearsome power is the ability to penalize a person for crimes committed. Thus, the manner in which the state administers that responsibility is a fundamental issue of liberty.

The fiscal component of criminal justice is of concern as well; every year, Michigan's corrections budget consumes nearly \$2 billion. The business community, always interested in a talented and vibrant workforce, recognizes the value of training and societal assimilation for former inmates. Finally, it is appropriate to evaluate how free-market solutions can improve the efficiency of the justice system.

A focus on criminal justice reform is not new for the Mackinac Center; our first study on civil asset forfeiture was published in 1998. A new development, however, is a recognition by each branch of government in Michigan that reforms are needed.

For example, in May Gov. Rick Snyder called for reforms to address prisoner re-entry, preventative solutions and the problem of overcriminalization. Michigan Supreme Court Chief Justice Robert Young stated his priority that Michigan's judiciary be a "national model of efficiency and service to the public." Michigan Supreme Court Justice Stephen Markman has urged the Legislature to improve the definitions of criminal intent in the penal code. House Republicans this year announced several bold criminal justice reforms in their House Action Plan, with Speaker of the House Kevin Cotter championing civil asset forfeiture reform.

The Mackinac Center's current priorities include:

- **Criminal intent reform:** The severity of punishment for a crime should be related to the defendant's culpable mental state (the legal term taken from Latin is "mens rea"), and when a criminal law is silent on the element of intent then a default standard should be required, one which requires a guilty state of mind to convict. The Michigan House unanimously passed a bill establishing this in October, House Bill 4713. Senate Bill 20 addresses the same issue.
- **Civil asset forfeiture reform:** The police should not be able to keep property taken from individuals who are never charged with a crime, much less convicted. A package of bills just signed by the governor takes steps to constrain this practice. This legislation was supported by a broad coalition that included the Mackinac Center, ALCU of Michigan, Fix Forfeiture, Congressman Tim Walberg and Attorney General Bill Schuette.
- **Overcriminalization:** Michigan has 3,100 crimes on the books. The criminal code should be used to penalize truly blameworthy conduct. Unfortunately,



Michigan spends nearly \$2 billion a year on corrections.

criminal law is increasingly used as a regulatory tool, which can constrain the behavior of well-intentioned people and impose severe consequences on actions that most people wouldn't consider wrong. As a modest first step, the House recently passed a package of bills that repeals some outdated and unnecessary criminal laws.

- Corrections costs: Mackinac Center expert Michael LaFaive has published many recommendations that would result in trimming corrections costs, including the privatization of prison management.
- Michigan's prison population: A study from the Pew Center on the States found that Michigan's sentences and average prison stays have increased over time and exceed the national average, resulting in higher correctional costs. It is appropriate to evaluate whether these lengthier prison stays have improved Michigan's public safety.

Several other criminal justice issues are under consideration in Michigan: presumptive parole, sentencing guidelines, mandatory minimum sentences and medical parole are just a few. Organizations like the ACLU, U.S. Justice Action Network, the Council of State Governments and Citizens Alliance on Prisons and Public Spending are providing leadership on many of these issues. Sentencing and parole policies can be refined using research and empirical evidence in order to incarcerate prisoners who are dangerous and most likely to reoffend.

A distinct feature of criminal justice reform is that it brings together organizations and individuals from many perspectives. The Mackinac Center and ACLU, for example, don't often agree on policy recommendations, but we have proudly partnered on forfeiture and criminal intent legislation.

Effective collaboration on bipartisan issues requires that we focus attention on areas of agreement, not areas of sharp disagreement. Disagreements should be openly and candidly acknowledged, but not used to avoid cooperation.

As the Mackinac Center says in its Seven Principles of Sound Policy, sound policy requires that we consider the long-term effects of laws on all people, not simply the short-term effects on some people. Speaking recently on criminal justice reform, I encouraged members of a bipartisan audience to communicate with each other with an open mind, to avoid personal attacks or assign motives to opponents. Citizens with differing political and ideological perspectives should acknowledge the legitimacy of alternative points of view without having to agree with them.

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