

# BUCKING THE TREND

**HOW WYOMING CAN REVERSE COURSE  
THROUGH REDUCED INCARCERATION  
AND LOWERED COSTS.**

**ACLU**  
Wyoming



Over the past twenty years, incarceration rates in Wyoming have skyrocketed, and the numbers are staggering. According to the Prison Policy Initiative, one in every 130 Wyoming residents is incarcerated, and one in every 58 is under some form of criminal justice supervision, whether in prison, in jail, or on probation or parole.<sup>1</sup> The number of people kept in jail pre-trial has nearly quadrupled since 1993, resulting in higher costs to local governments and thousands of individuals being incarcerated despite not having been convicted of a crime.<sup>2</sup>

*Perhaps the largest factor contributing to this trend is the increasing number of state laws establishing misdemeanors and felonies, and the move toward longer, harsher sentences for existing crimes.*

The intent of this report is to discuss this trend and suggest steps the legislature can take to mitigate its effects on Wyoming's large and growing prison population. The report also highlights key legislation that, if passed, would reform Wyoming's prison system effectively reducing incarceration rates and lessening the burden on the criminal justice system; additionally, it will illustrate the negative impact of passing new crimes legislation.

**These problems can be remedied by the Wyoming Legislature in 2018 and beyond by the following:**

- *Pass probation and parole reform legislation currently under consideration by the Joint Interim Judiciary Committee.*
- *Direct the Department of Corrections to establish a women's boot camp program.*
- *Conduct an interim study on low-level misdemeanors and felonies, in addition to examining state mandatory*

*minimum sentencing laws.*

- *Exercise caution when contemplating new crimes legislation.*

Looking toward 2019, the Legislature should focus on pre-trial policy reforms and examine the state's property crime laws.

Increasing crimes and penalties in Wyoming means the state is putting more and more people behind bars and under the supervision of government, plain and simple.

**IF EVERYONE WHO WAS IN PRISON OR UNDER THE SUPERVISION OF THE CRIMINAL JUSTICE SYSTEM MADE UP A WYOMING TOWN, IT WOULD BE THE 10TH LARGEST TOWN IN THE STATE.**

The legislature has the power to reverse this trend, and reform a broken system.

1 - "State Profiles, Wyoming." Prison Policy Initiative, 27 March, 2017. <https://www.prisonpolicy.org/profiles/WY.html>. Accessed 17 Sept, 2017.

2 - Aiken, Joshua. "Wyoming jail population by conviction status 1978-2013." Prison Policy Initiative, May 2017.

[https://www.prisonpolicy.org/graphs/WY\\_Convicted\\_Status\\_1978-2013.html](https://www.prisonpolicy.org/graphs/WY_Convicted_Status_1978-2013.html). Accessed 17 Sept, 2017.

## CRIMES AND PENALTIES IN WYOMING: *A Story of Growth*

Over the course of the past four years alone, the legislature has passed 28 bills establishing new crimes or increasing penalties for crimes which already exist. By contrast, a mere five bills have passed removing crimes or decreasing penalties, only two of which deal substantively with criminal issues such as drug use or juvenile crime.

A cursory look back ten years shows a similar picture. On average, few pieces of policy legislation are passed during budget sessions, and anywhere between zero to five bills establishing new crimes or increasing penalties are passed. During general sessions, however, the legislature makes up time; in these sessions anywhere from seven to 16 bills are passed creating new crimes or increasing penalties.

OVER THE COURSE OF THE PAST TEN YEARS, THE WYOMING LEGISLATURE HAS ESTABLISHED OVER 70 NEW CRIMES AND INCREASED PENALTIES.

It is certainly the case that as technology and society changes, laws must be created to address new types of criminal activity; for example, laws need to address issues such as computer extortion, which as a form of extortion did not exist when original robbery and blackmail laws were passed. Since legislation is considered and passed piece and parcel, it is easy to miss the impact of creating even just a few new crimes every legislative session. But the proof of impact is in our full prisons and jails, our overcrowded court rooms, and our busy and burdened defense attorneys.

In addition to a dramatic rise in criminal laws and penalties, over the past four years funding for parole, probation, and programs designed to lower recidivism rates (such as drug treatment) has been drastically cut. In the short term this may have been necessary. In the long run it will result in both higher incarceration rates and increased costs to the state. These issues will be critical to address in the 2018 budget session, in particular restoring funding to recidivism rate-reducing programs and ensuring corrections officers are being adequately compensated to ensure retention and proper recruitment.

## LEGISLATIVE TRENDS

A review of the 2014 to 2017 legislative sessions will provide insight into new crimes being legislated and increased penalties for what should be misdemeanor offenses or non-offenses.

# 2014

In 2014 there were 24 bills introduced creating new crimes or increasing penalties, eight of which passed.<sup>3</sup> Two key bills of note were House Bill 6, which established domestic assault and battery, both as misdemeanors; and House Bill 7, which established entering an occupied structure with the intent to commit battery or domestic battery as a felony.

3 - HB6: Domestic assault and battery; HB7, Unlawful entry into occupied structure; HB11, controlled substances; HB16, Misclassification of employees-penalties; HB25, Funeral Service Practitioners Act; HB30, Prohibited harassment of wildlife; HB94, Restoring constitutional governance act; HB97, Education-state administration; HB116, Towing company regulation; HB158, Indecency; HB 178, computer trespass; HB179, Privacy in education; SF22, Insurance policies; SF29, Supervised probation of misdemeanants; SF30, Compensation for persons exonerated based on DNA evidence; SF31, 24/7 sobriety program; SF35, Wearable computers-prohibition while driving; SF37, Penalties for misdemeanor offenses; SF49, Death penalty-execution; SF63, Sexual assault protection orders; SF85, Trespassing to collect data; SF86, Obstructing roads and highways; SF112, Penalties for misclassification of employees; SF116, Expungement of felonies.





In a move away from restorative justice principles, Senate File 116, a bill that would have provided for the expungement of felonies, removed seven felonies from the list of possible crimes which could be expunged. 2014 in particular can be noted as an example of how much the legislature can do in just one year to increase the burden on the criminal justice system. Senate File 116 deserves particular note as a punitive measure that ensures that a person's crime – for which they have already served their time – will follow them throughout life as they seek to find employment, secure safe housing, and contribute to society in a positive way.

*Only four bills were introduced to remove or decrease penalties; only one was even discussed and it failed in its first house.* <sup>4</sup>

## 2015

A significant piece of legislation which increased felony penalties from five to ten years was House Bill 243. As introduced, the legislation simply added to the definition of child abuse. However, as the legislation advanced through the House, the bill was amended to increase the maximum penalty by five years. This illustrates the ease with which sentence increases can be made; a bill with the intent to close a loophole can become a bill that doubles a prison sentence.

In 2015, there were 23 bills creating new crimes or increasing penalties; of those, five new or increased misdemeanor laws were established and the criminal trespass law was passed. <sup>5</sup>

One notable effort was the passage of three bills in conjunction with each other: Senate File 16, which added numerous

substances to the controlled substances act, alongside House Bill 32 and Senate File 38. House Bill 32 exempted hemp extract from the controlled substances act and Senate File 38 enabled a deferred prosecution for certain first-time drug use. This is an example of examining what may need to be added to the controlled substances act in tandem with what might be amended out or alleviated in terms of criminal punishment, which can help ensure that act does not simply become a vehicle for incarcerating more Wyoming residents. Of the ten bills introduced in 2015 that would reduce or remove crimes or decrease penalties, only these two bills passed. <sup>6</sup>

## 2016

The 2016 budget session was a marker for not passing any new crimes or increasing penalties. Sixteen such bills were introduced; ten failed introduction or were not introduced; none passed, though two were brought back in the 2017 session and did pass. <sup>7</sup>

*4 - HB49, Marijuana possession; HB58, Failure to attend school; HB134, Death penalty repeal; SF72, Burglary, which failed in the Senate.*

*5 - HB4, Prohibited livestock grazing; HB16, Offenses against public administration; HB46, Nyx's law; HB68, Photographing ballot-penalty; HB142, Child abuse penalty; HB150, Arrests for violation of probation; HB167, Material support to designated entities; HB174, Nicotine products regulation; HB206, Bicycles on roadways; HB221, Education-parental rights; HB224, Burn order violations; HB243, Child abuse; SF7, Tethering dogs; SF12, Trespassing to collect data; SF13, Method of execution-1; SF16, Controlled substances; SF21, Theft of identity-minors; SF36, Personal identifying information-definitions; SF46, Fire misdemeanors; SF63, Predator ownership; SF106, Powdered alcohol; SF115, Discrimination; SF135, Misclassification of employees-penalty.*

*6 - HB29, Marijuana possession; HB32, Hemp extract regulation; HB78, Plant derived pain medication; HB97, Death penalty repeal; HB109, Felony unlawful possession of controlled substances; HB125, Law enforcement citation quotas-prohibition; HB227, Cannabidiol medication; SF38, Controlled substances-first offense for possession; SF40, Burglary; SF83, Parole board authority.*

*7 - HB17, Collection of antlers and horns; HB37, Controlled substances; HB40, Operation of watercraft under influence of alcohol; HB69, Unlawful dissemination of an intimate image; HB70, Abortion amendments; HB109, Sentencing enhancement-bias motivated crimes; HB121, Reporting of abortions; HB129, Controlled substances-2; HB132, Strangulation of a household member; HB135, Restrictions on public benefits; HB144, Denturists-2; SF14, Student data privacy and transparency; SF16, Fireworks-prohibition; SF22, Hunting penalties; SF50, Sexual assault-position of authority; SF96, Marijuana edibles.*

In contrast, twelve bills were introduced to remove crimes or decrease penalties and two passed.<sup>8</sup> However, neither Senate File 62, which exempts homemade beverages under a certain limit from misdemeanor charges for being unlicensed, nor Senate File 75, which clarified the criminal trespass law, dealt substantively with the criminal justice system.

## 2017

*In 2017 a notable 33 bills were introduced to create new crimes or increase penalties, twelve of which passed.*<sup>9</sup>

House Bill 116 established mandatory minimum sentences for tissue donation from aborted fetuses under certain circumstances, despite there being no evidence of this being a problem either in Wyoming or nationwide. While other legislation initially considered mandatory minimum sentences, those minimums were amended out.

The legislature should consider moving away from mandatory minimum sentences, as they have proven ineffective as a deterrent and result in longer prison terms. Additionally, mandatory minimum sentences remove judicial discretion in cases where such discretion may be beneficial. A comprehensive review of mandatory minimums in state law is one step the legislature could take to mitigating Wyoming's growing prison population.

Increasing sentences and penalties, or establishing new criminal punishments, at ten years and \$10,000 is a notable trend in legislation. For example, Senate File 33 established the crime of computer extortion and set the penalty at ten years and \$10,000 simply because current sta-

tue establishes non-computer extortion at that level.

It is pertinent to not only consider what has been the punishment in the past but what an appropriate penalty is now, knowing often the maximum penalties are supported by prosecutors in court.

**THE DISPROVEN “TOUGH ON CRIME” TACTICS OF THE PAST ARE INEFFECTIVE AND HAVE NOT REDUCED INCARCERATION NOR MADE OUR CITIES SAFER.**<sup>10</sup>

8 - HB3, Marijuana possession; HB7, Medical marijuana reciprocity; HB38, Property offenses; HB100, Felony unlawful possession of controlled substances; HB106, State lands-camping; HB115, Death penalty repeal; HB152, Definition of marijuana; HB156, Property damage or threshold for police reports; SF48, Criminal justice-reform; SF62, Homemade beverages; SF75, Criminal trespass to collect data-amendments; SF87, Data trespass repeal.

9 - HB15, Sex offender registration fees and penalties; HB57, Nyx's law; HB61, Collection of antlers and horns; HB73, Interference with emergency services; HB95, Vehicle registration-penalties; HB114, Service and assistance animals; HB116, Abortion amendments; HB122, Death with dignity; HB132, Reporting of abortions; HB157, Marijuana possession of less than three ounces; HB160, Handgun purchases; HB193, Animal protection; HB197, Marijuana and THC products policy reform act; HB202, Motor vehicle insurance-penalties; HB207, Restrictions on public benefits; HB215, Drug induced infant endangerment; HB221, Nonresident employer bonding requirements; HB238, Nude image of a minor disseminated or possessed by a minor; HB244, Public indecency; HB245, Human trafficking and child exploitation prevention; HB250, Public health statutory amendments; HB259, Child battery and child abuse; HB272, Mountain biking-decals; SF31, Genetic information privacy; SF33, Computer extortion; SF65, Sexual assault-position of authority; SF76, Burglary; SF84, Stalking-penalties; SF113, Felony fleeing or eluding police; SF115, Malicious cruelty to animals; SF126, Guides and outfitters-penalties; SF129, Sexual assault-school employee; SF133, Postmortem despoiling and disposal penalties.

10 - King, Ryan S.; Mauer, Marc; Young, Malcom C. "Incarceration and Crime: A Complex Relationship." *The Sentencing Project*, 2005. <http://www.sentencingproject.org/wp-content/uploads/2016/01/Incarceration-and-Crime-A-Complex-Relationship.pdf>. Accessed 13 Oct, 2017.



**EXAMINING THE STATE'S BAIL  
AND PRE-TRIAL POLICIES WITH  
A GOAL OF REDUCING PRE-TRIAL  
PRISON POPULATIONS SHOULD  
BE A HIGH PRIORITY IN 2019.**





In stark contrast to the number of new crimes bills, in 2017 only eight bills eliminating crimes or reducing penalties were introduced.<sup>11</sup> One passed, and is an example of a creative approach to appropriate penalties. House Bill 238 created a new crime (possession and distribution of a nude image by a minor), but it addressed the issue of minors being charged with felonies and marked as sex offenders for engaging in the very teenage behavior of “sexting.” The problem needed to be dealt with in law; however, saddling a youth with a felony is an enormous burden. The drafters of HB 238 struck a balance of penalties that should be a model for future legislation dealing with low-impact crimes.

## **REVERSING THE TREND – THE POWER OF THE WYOMING LEGISLATURE**

There are several immediate next steps which the legislature can take in the next year to begin addressing some of these issues, all of which can be considered incremental steps well within the power of the Wyoming Legislature.

### ***Hold all legislation creating new crimes.***

With budget concerns being paramount and criminal justice reforms clearly needed, we suggest not passing any legislation creating new crimes or increasing penalties unless there is a demonstrated and urgent need to do so.

## **DISCUSSIONS ABOUT CREATING NEW CRIMES OR INCREASING PENALTIES DESERVE THE TIME A GENERAL SESSION CAN AFFORD**

## **SO BILLS DO NOT SIMPLY BECOME VEHICLES FOR PUTTING MORE PEOPLE BEHIND BARS FOR LONGER THAN NECESSARY.**

### ***Pass probation and parole reform legislation currently under consideration by the Joint Interim Judiciary Committee.***

Supporting limited probation and parole reforms currently under consideration will provide a pathway to future reforms. While comprehensive reform is preferable, there are issues which still need to be addressed and incremental reforms could be more effective in gaining consensus and support.

### ***Direct the Department of Corrections to establish a women’s boot camp program.***

The Honor Boot Camp program has been used exclusively for men since the program’s inception despite there being no requirement in law that the program be only for men. Sentences can be significantly reduced and women could get back to their lives and families far more quickly if a boot camp option were available as an alternative to incarceration. The clear discrimination against the women who could have benefited from a boot camp program in the past should not continue. The legislature can fix this easily by requiring the establishment of a women’s boot camp program in Wyoming.

11 - HB94, Criminal justice reform; HB145, Possession of controlled substances-subsequent offenses; HB157, Marijuana possession of less than three ounces; HB200, Beef check-off penalty-repeal; HB238, Nude image of a minor disseminated or possessed by a minor; HB240, Death penalty repeal; HB247, Medical marijuana reciprocity; HB265, Plant derived pain medication.

***Conduct an interim study on low-level misdemeanors and felonies, in addition to examining state mandatory minimum sentencing laws.***

During the 2014 legislative session, a comprehensive review of Wyoming's misdemeanor laws was undertaken. This effort could be used as a launching point to re-examine penalties. For example, penalties which now may carry criminal misdemeanor charges might be changed to fines, deterrence programs, or other alternatives to incarceration.

Additionally, the legislature should consider moving away from mandatory minimum sentences and conduct a comprehensive review of mandatory minimums in state law with the intent to remove them in the 2019 session.

**FUTURE REFORMS**

Looking toward future legislative sessions, there are two key areas where reforms may be made which will significantly impact Wyoming's incarceration rates while still providing for public safety.

***Property crime reform***

Nearly half of women incarcerated in Wyoming and nearly a quarter of men are in prison for property crimes. A review of property crime statutes may address some of these crimes and their penalties, as well as taking a broader look at why incarceration rates for women is much higher than for men for property crimes. For example, the legislature could establish minor theft as a misdemeanor rather than a felony.<sup>12</sup>

***Pre-Trial Policy Reform***

Across the state nearly 1,000 people are held in jail pre-trial. The cost of incarcerating those who are awaiting trial has a significant fiscal impact. Pre-trial detainees are often held because they do not have the means to post bail, even in the absence of any proof or evidence that they are a public safety risk.

**EXAMINING THE STATE'S BAIL AND PRE-TRIAL POLICIES WITH A GOAL OF REDUCING PRE-TRIAL PRISON POPULATIONS SHOULD BE A HIGH PRIORITY IN 2019.**

12 - Senate File 40 from 2015 and Senate File 72 from 2014 would have established minor theft as a misdemeanor with a one year maximum penalty rather than a felony with a ten year maximum penalty.

## CONCLUSION

The trend is clear: a growing number of bills are introduced every year creating new crimes or increasing penalties, and legislation that would remedy Wyoming's overburdened criminal justice system fails, resulting in a justice system that is at capacity.

In 2018 the legislature can take steps to solve over incarceration in our state and ease the burden on our overtaxed criminal justice system and prison infrastructure. The legislature should examine and implement policies related to probation and parole and an equitable boot camp program, in addition to taking steps to reevaluate low-level misdemeanor punishments and the elimination of harsh mandatory minimum sentencing laws. In a non-budget year lawmakers should focus on pre-trial policy reforms and examining the state's property crime laws. These are small steps that would move our state toward long-term comprehensive criminal justice reform and policies that keep our state both safe and fiscally sound.





