

≡ PUBLIC POLICY

# No Justice, NO PEACE

New state initiatives masquerading as criminal justice reform will actually subvert it.



BY DAVID ZIMMER



**A**t a time when legitimate concerns exist regarding whether Minnesota is doing enough to hold criminal offenders accountable, Minnesota’s Legislature and the Executive branch have created several extrajudicial mechanisms that serve to revisit convictions, commute sentences, and shorten or eliminate non-custodial supervision imposed by our courts. The reasoning behind these progressive-led initiatives came from a belief that the criminal justice system was too punitive, especially involving people of color and juvenile offenders.

The narrative behind these reforms serves to impugn the historical processes for seeking relief from a conviction or sentence. It undermines our established judicial appeals and executive pardon processes. These processes are intentionally limited in number and scope as judicial convictions are meant to be final.

The newly proposed mechanisms serve as an “end around” of our court system, further discrediting and undermining judicial authority.

Justice is more readily achieved when we focus our finite resources and attention on the tens of thousands of unsolved violent crimes, the tens of thousands of crime victims, and the tens of thousands of active arrest warrants in Minnesota at any given moment. Progressives have shown they are far more concerned with the effects of enforcement on offenders rather than the effect a lack of justice has on victims.

## How we got here

In the mid-1990s Minnesota experienced a significant rise in violent crime. So notable that *The New York Times* rechristened Minneapolis with the moniker “Murderapolis.” This notorious crime era ended when the collective criminal justice system fought back with the backing of citizens and political leadership. Through relentless enforcement and prosecution of offenders, Minnesota experienced a sustained drop in crime, and crime victims experienced a high degree of justice.

For the next 22 years, crime was kept

under control. But by the mid-2010s, progressives began to call for changes in our response to crime. They cited “over-incarceration,” “over-policing,” and “systemic racism” as some of the ills born out of the aggressive response to crime. Reformists saw an opportunity ripe for re-introducing their long-awaited criminal justice reform efforts.

Then, in 2020, the civil unrest following the death of George Floyd ripped the lid off any measured level of debate or rollout of reform efforts. Narratives of over-policing, over-incarceration, and systemic racism became integrated into every policy decision seemingly overnight.

Hostility towards law enforcement

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and the criminal justice system was overwhelming, and sadly, far too many civic leaders were willing to self-flagellate to appease the activists and reformists.

Criminals responded quickly to this attack on our criminal justice system, recognizing softer and more lenient consequences for criminal acts, and we have been paying the price ever since.

## Effects of the DFL trifecta during the past session

Once the 2023 session opened with Democrats controlling all three branches of the State government, there was a torrent of criminal justice system reform bills pushed through with limited discussion, debate, or amendments. Much of the following legislation received significant attention, but will have little or no impact on improving public safety or reducing crime:

- Decriminalization of marijuana and drug paraphernalia
- Gun control measures, including red flag laws and expanded background checks
- Creating new laws to define carjacking and retail theft
- Adding bias provisions to several existing offenses
- Restricting the use of No-Knock search warrants by police

Nevertheless, the Legislative leadership and Gov. Tim Walz were ecstatic with their progress. In a July 2023 *Arnold Ventures* article by Kaitlin Menza, House Majority Leader Jamie Long (DFL-Minneapolis) said, “This was a huge win. We had a number of provisions in the public safety budget bill that we had been working on for many, many years, and I think it is a transformational bill for public safety reform for Minnesota.”

## Lesser-known reforms with significant impact

While those legislative reforms received most of the attention, some lesser-known and more complex reforms will have a more consequential impact on our public safety by weakening accountability across the board.

These reform measures have been created in recent years legislatively or through executive action and have quietly altered our public safety landscape for the worse.

As the *Minnesota Reformer’s* Deena Winter described in June, some of the legislation passed in 2023 was likely to “result in scores of people being released from prison sooner; shorter terms of probation or community supervision; erasure of some aiding and abetting felony convictions and reduction in sentences of others; and easier expungement of certain non-violent crimes.”

What follows is a description of progressive programs and mechanisms that were adopted and now serve as extrajudicial means to reduce accountability for Minnesota’s criminal offenders.

### *Office of Restorative Practices*

Created by the 2023 Legislature as part of “reforms” to Minnesota’s juvenile justice system. Nearly all the provisions serve to divert juvenile criminals away from juvenile court or juvenile detention and into alternative, community-based and “restorative” measures. DFL Rep. Sandra Feist, who sits on the Public Safety and Judiciary Committees and is described as one of the architects of this effort, did not try to hide the intent as quoted in the *Star Tribune*: “These changes are absolutely transformative... They are about wresting power to some degree from local judges and prosecutors and entrusting it with our communities.”

### *Automatic Expungements*

A significant part of the marijuana legalization effort in 2023 centered not only on its legalization but also on expunging criminal histories involving marijuana offenses, thereby removing the “stigma” associated with a criminal conviction. For most misdemeanor offenses, the expungement process will be automatic, and for more serious convictions, the convicted person must initiate the expungement process.

### *Prosecutor-Initiated Sentence Review*

A new law giving prosecutors the authority to revisit and re-examine cases and seek re-sentencing for defendants who were prosecuted in the past. This is another example of undermining the existing adversarial system that is governed by the balance provided when a prosecutor acts on behalf of the public, and the defense attorney acts on behalf of the defendant.

### *Clemency Review Commission*

This new commission will increase both the number of petitions screened for the Board of Pardons and the number of people receiving pardons or sentence commutations.

### *Board of Pardons*

The Minnesota Constitution allows for convicted persons to apply for relief from the Board of Pardons, which consists of the governor, attorney general, and the chief judge of the Supreme Court.

Prior to 2023, the Board of Pardons required a unanimous vote in favor of the applicant to pardon or commute a sentence. The 2023 Legislature voted to change Minnesota’s rules to allow for a two-thirds majority vote if the governor was part of the majority. While this puts Minnesota on par with other states that do not require a majority vote, it is expected to significantly increase the number of extrajudicial pardons or sentence commutations.

### *Supervision Abatement*

The 2023 Legislature created the Supervised Release Board. This Board, like the Clemency Review Commission, is designed to increase the number of probation cases reviewed for early release and final discharge decisions.

### *Felony Murder Resentencing*

This new law will serve to re-sentence people who have been convicted of aiding and abetting murder but were not a “major participant” in the murder. By law, the Department of Corrections will be notifying individuals who qualify for this resentencing.

### *Rehabilitation and Reinvestment Act*

The 2023 Legislature created an “Early Release Incentive” for prison inmates, reducing time behind bars to 50 percent of a sentence, down from 66 percent. The act also created “Earned Supervision Abatement.” This shortens the period of community supervision for parolees if they meet the goals of their release plan. It also caps probation at a maximum of five years.

### *Sentencing Guidelines Commission*

The 2023 Legislature added or “stacked” the commission with two commissioners. The appointment process was also

changed to give the governor more authority over appointments. The Legislature also funded a comprehensive review of the sentencing guidelines, which is viewed by many as the start of the systematic reduction of penalties that have been historically set by the Commission.

### *Conviction Review Unit*

Perhaps the most problematic reform mechanism is the attorney general’s Conviction Review Unit (CRU). This extra-judicial mechanism offers convicted persons a new form of potential relief from the conviction they received in the court system.

In August 2021, Atty. Gen. Keith Ellison announced the creation of the CRU within his office. The CRU is a full-time unit operating in partnership with the Great North Innocence Project. The endeavor has been heavily funded by federal grants in the initial stages. It is one of only four such units nationally to reside in a state AG’s office. The number of conviction review units across the U.S. has expanded considerably in recent years, from approximately 30 in 2018 to around 100 today.

The CRU’s charter proudly states that it was modeled after a special directive from L.A. County District Attorney George Gascon, a national figure in the progressive prosecutor movement. This emulation of West Coast progressive policies is cause for concern.

According to the Great North Innocence Project, “The purpose of the CRU is to prevent, identify, and remedy wrongful convictions.”

It is telling that the AG’s own charter acknowledges the CRU is an “extrajudicial” process. *Webster’s Dictionary* defines “extrajudicial” as 1)



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“not forming a valid part of regular legal proceedings,” 2) “delivered without legal authority,” and 3) “done in contravention of due process of law.”

In his report “Overstating America’s Wrongful Conviction Rate?” Prof. Paul G. Cassell of Quinney College of Law at the University of Utah clearly established the national rate of innocent people being wrongly convicted at between .016 percent and .062 percent. Putting this figure into useful context, Cassell concluded that a U.S. citizen was 30,000 times more likely to become a victim of violent crime than to be wrongfully convicted and sent to prison for a violent crime he or she did not commit.

Despite this extreme rarity, of which an appropriate judicial remedy of appeal already exists, Minnesota has decided to invest energy and resources in overturning convictions, commuting sentences, and reducing accountability for those found guilty by our judicial system.

Throughout our state’s history, we have invested in and valued a robust and credible court system. That system has allowed for appeals that have merit. Those appeals go through an appropriate adversarial process where each side is represented, and an impartial group of judges make decisions based on the law — not emotion or public opinion.

Expanding the number of groups that now “re-investigate” cases that have already been adjudicated only serves to undermine the legitimacy and authority we have rightly bestowed upon our court system. These efforts are often fueled by emotion and take advantage of the misguided notion that it is appropriate to apply today’s morality and conventions to decisions made in the past.

The emotional aspect of these “re-investigations” leaves the results vulnerable to subjective whim rather than an established process based on fact, as does the tendency to give more credibility to new information than information vetted contemporaneously with the events of the case. These tendencies make for good theater, but they make for poor public policy

in determining whether justice was appropriately meted out decades earlier.

The Myon Burrell murder case is a striking example. In 2002, Burrell, a gang member who shot at a rival gang member, accidentally killed an 11-year-old girl in Minneapolis. Over the course of several years, Burrell was tried and convicted by two separate district courts and had several appeals via the Court



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of Appeals and the Minnesota Supreme Court. At the end of this rigorous and exhaustive judicial process — during which Burrell had multiple opportunities for relief — the justice system stood resolved that Burrell was guilty and that justice required him to serve a minimum of 45 years to life in prison.

The county attorneys at the time of Burrell’s two trials were Amy Klobuchar and Mike Freeman. Both cited Burrell as an example of their tough-on-crime approach to law enforcement, so long as it was politically expedient.

Activists had been lobbying politicians for years calling for a re-examination of Burrell’s case. They also persuaded an *Associated Press* reporter to examine the case, which resulted in a lengthy investigative piece published in 2019

calling into question Burrell’s conviction, largely based on purported changes of heart by key witnesses years after the conviction.

Despite years of prominently defending and touting her role in Burrell’s conviction, Klobuchar appeared to reverse course with the political winds, calling for a re-investigation of the case in the midst of her 2019 candidacy for president.

Freeman reacted similarly, and while he has professed to never doubt Burrell’s guilt, he made an offer to the court to dismiss 15 years of Burrell’s sentence.

Ellison and Walz went further. Ellison assembled a group to review Burrell’s case. This group recommended forming an official conviction review unit as they could not properly assess Burrell’s guilt or innocence. However, the group did offer a revealing opinion: “We concluded that no fundamental goal of sentencing is served by Burrell’s continued incarceration.”

The statement was what Ellison and Walz needed. In December 2020, they joined together as two-thirds of the Minnesota Board of Pardons (the Chief Justice abstained from voting) and commuted Burrell’s sentence to 20 years, with the final two years to be served under community supervision. Burrell walked out of Stillwater Prison that day. He has since been arrested and charged with possessing both a firearm and felony amounts of controlled substances in August 2023.

## The consequences

Altogether, these reforms were designed to reduce time in custody, reduce any form of supervision period, and eliminate the “burden” of a criminal history for Minnesotans convicted of a crime.

These reforms will further undermine a justice system struggling to hold offenders accountable. Consequently, we risk returning to an era of high crime while institutional trust in the criminal justice system falls further into decay. No amount of bureaucratic and extrajudicial layers can match the crime-fighting resolve of blind justice — for both criminals and victims. ★