

November/December 2018

STATE LEGISLATURES

 NATIONAL CONFERENCE *of* STATE LEGISLATURES

RED, WIDE & BLUE

WILL ELECTION RESULTS NARROW
THE WIDENING PARTISAN GAP?



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Sports Gambling

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Editor Julie Lays

Assistant Editor Kevin Frazzini

Contributing Editor Jane Carroll Andrade

Online Magazine Ed Smith Mark Wolf

Contributors Kate Blackman Iris Hentze Tahira Johnson Jen Schultz

Advertising Sales Henry Springer Henry.Springer@ncsl.org

Art Director Bruce Holdeman

NCSL President Senator Toi Hutchinson Illinois

NCSL Staff Chair Jon Heining Texas Legislative Council

Denver Office 7700 East First Place Denver, Colorado 80230 (303) 364-7700

Washington, D.C., Office 444 N. Capitol St. N.W., Suite 515 Washington, D.C. 20001 (202) 624-5400

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STATE LEGISLATURES

The magazine of state policy and politics from the National Conference of State Legislatures, the bipartisan organization that serves all lawmakers and staff.

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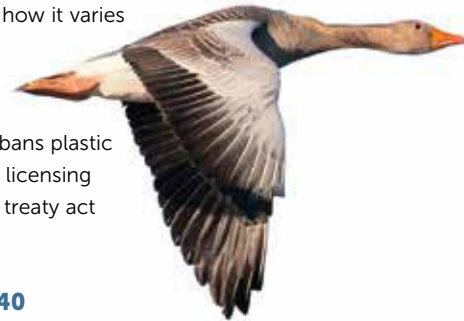
Meet Iowa Senate Majority Leader JACK WHITVER
“Being a small-business owner who has to work in this business environment gives you a different perspective when you’re at the Capitol trying to make laws.”

SL ONLINE

You can find more information and links to resources on topics covered in these pages at SL Online.

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Insure and Mitigate Before Disaster Strikes

Storm surges and tidal floods, high winds, heavy rains, even tornadoes. The dangers brought ashore by hurricanes can be devastating—and costly. The damages inflicted by Hurricanes Harvey, Irma and Maria, which hit parts of Texas, Florida and the Caribbean islands in 2017, totaled \$265 billion, according to the National Oceanic and Atmospheric Administration.

Still being calculated are the damages caused by Hurricanes Florence and Michael, which struck North Carolina and Florida, respectively, this fall.

To help communities become more resilient, the Federal Emergency Management Agency is working with state emergency management agencies and other partner organizations to communicate a better understanding of weather-related risks and how to prepare for and even prevent their damaging effects. These efforts are key to reducing suffering from disasters.

Insurance. Floods occur in every state. Still, flood insurance policies are often viewed as optional. The lack of policies in the areas hit by Florence and Michael, for example, will affect recovery, FEMA says. That those areas were underinsured is not unusual. On average, only 30 percent of residential structures in the highest risk flood areas are insured.

Insurance is the best resource for recovery, according to FEMA. Even if a presidential disaster declaration is made, federal assistance may be limited, which can be especially burdensome on those with uninsured properties. After Harvey, the average flood insurance claim paid more than \$100,000, while the average disaster grant from FEMA was less than \$10,000. Insurance leads to a quicker, more complete recovery.

Mitigation. Mitigation is critical to reducing damages, and proactive land-use planning and improved building codes are two effective mitigation strategies. Only 33 percent of jurisdictions have approved building codes with disaster provisions. Adopting and enforcing strong codes will help ensure that structures are built stronger and safer before, and after, a disaster.

Insurance and mitigation are not just for homes, FEMA says. Disaster aid provides billions of dollars for repair and mitigation of public and private infrastructure, which can also be insured. The National Institute of Building Sciences found that, on average, every \$1 spent on federally funded hazard mitigation grants saves \$6 in future disaster costs. That translates to cost savings, reductions in disaster losses and, with insurance coverage for buildings and infrastructure, a faster economic recovery for the community than relying solely on disaster aid.

—Kim Tyrrell

FEMA: BE PREPARED

- **Know your risks:** Floods cost state and federal governments \$8.2 billion annually.

- **Fortify the code:** Strong building codes increase the likelihood of structures withstanding a storm.

- **Promote insurance coverage:** An insured survivor recovers more quickly.

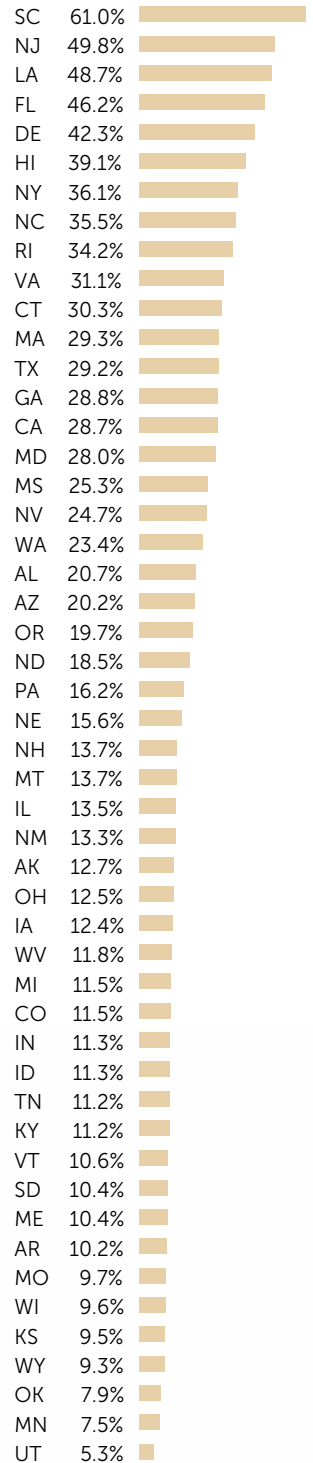
- **Close the insurance gap:** Public buildings and infrastructure can (and should) be insured too.

Additional Resources

- **Historical flood risk:** Search by state at fema.gov.

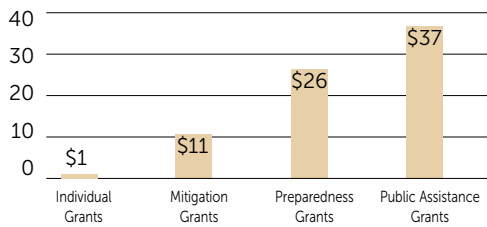
- **Building codes:** "National Building Code Assessment Report," published by the Insurance Services Office, at isomitigation.com.

Portion of Residential Structures With Flood Insurance Coverage in High Hazard Areas



Source, all graphics: FEMA

Preparedness and Disaster Grants to States, in Billions of Dollars, FY05-17



Gift Cards Linked to Drug Overdoses

An observant Tennessee sheriff's deputy told his state legislators in 2017 that he almost always recovers gift cards from several stores when he responds to a drug overdose call. That sparked a probe into the relationship between the two.

Investigators discovered that organized criminal rings recruit shoplifters to steal merchandise from retail stores, then enlist addicts and homeless people (with the promise of drugs or money) to return the items for gift cards. Ultimately, the ringleaders sell the cards for cash.

In March 2017, 16 of 19 overdose victims sold gift cards for cash in Knox County, Tenn., with similar rates in the city of Knoxville, according to a CNBC report that includes data from NCSL. One person in Knox County fraudulently earned \$96,000 in one year from selling cards to a retail storefront. That criminal was connected to more than \$250,000 in stolen merchandise.

These facts, along with an estimated annual loss of \$14 million in sales tax revenue due to theft involving gift cards, helped persuade Tennessee lawmakers to act. The Legislature passed a series of bills, sponsored by Senator Richard Briggs (R) and Representative Jason Zachary (R), to give law enforcement officers additional

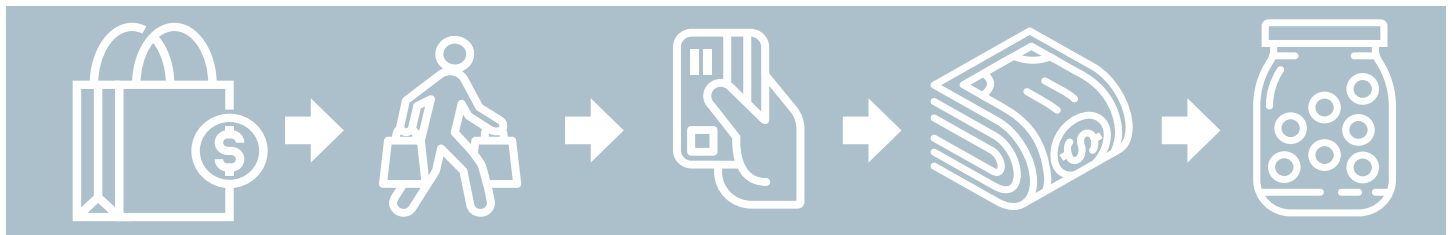
tools to find and arrest card-fraud ringleaders. The legislation requires retailers to monitor the resale of gift cards, enhances penalties for the ringleaders and builds a statewide database to help target retail theft and lost sales tax revenue.

Tennessee is hardly the only state with a gift card fraud problem. Sophisticated criminal rings throughout the U.S. are coercing homeless and addicted people to do their dirty work, CNBC reports.

Last year, Oklahoma closed a case of gift card fraud after two years of investigation. Based on figures from the National Retail Federation, one resale card shop was linked to 60,000 cards gained from stolen merchandise, equating to losses of \$9 million in revenue to local retailers, \$900,000 in sales tax revenue to the state and \$750,000 in sales tax revenue to Oklahoma City.

The impact of gift card fraud is significant in parts of the country where opioid-related drug overdoses are at record levels. Monitoring card sales, as Tennessee is now doing, won't end the opioid epidemic. But it might make it more difficult for crime rings to prey on vulnerable populations. And it might help reduce the number of drug overdoses.

—Sarah Adaire, legislative assistant



Merchandise is stolen from a retailer and returned for gift cards. The cards are resold online for cash and used to buy opioids.

America's Diverse Future

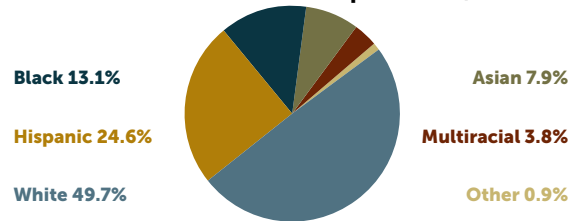
The nation's future growth will come thanks largely to racial minorities. Using new census statistics, the Brookings Institution projects that the nation will become "minority white" in 2045, when whites will make up 49.7 percent of the population, Hispanics 24.6 percent, blacks 13.1 percent, Asians 7.9 percent, and multiracial groups 3.8 percent.

Between 2018 and 2060, combined racial minority populations will grow by 74 percent. Also during that period, the white population will increase modestly through 2024, then experience a long-term decline through 2060, a result of more deaths than births.

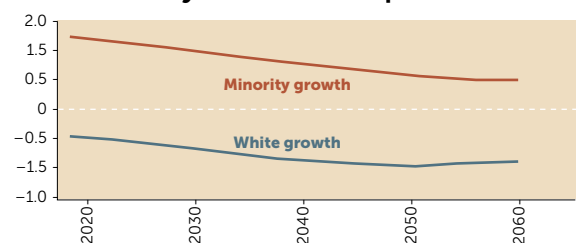
Among minority groups, the greatest growth is projected for multiracial, Asian and Hispanic populations, with 2018-60 growth rates of 176, 93 and 86 percent, respectively. The projected growth rate for blacks is 34 percent.

—Magazine staff

Racial Profile of U.S. Population, 2045



Growth Rate of Minority and White Populations



Source: The Brookings Institution

Halting High Times on the Highway

Canada just hogged the pot-light. Passage of the Cannabis Act in October made our friendly neighbor to the north the world's second country, after Uruguay in 2013, to allow a nationwide marijuana market.

The Canadians' move comes as U.S. state lawmakers continue to wrestle with the pros and cons of legalization. One of their challenges is to develop and refine legislation that addresses driving under the influence of marijuana.

Detection of marijuana in drivers involved in traffic crashes has become increasingly common. According to the National Highway Traffic Safety Administration, 12.6 percent of weekend nighttime drivers tested positive for THC in 2013-14, compared with 8.6 percent in 2007.

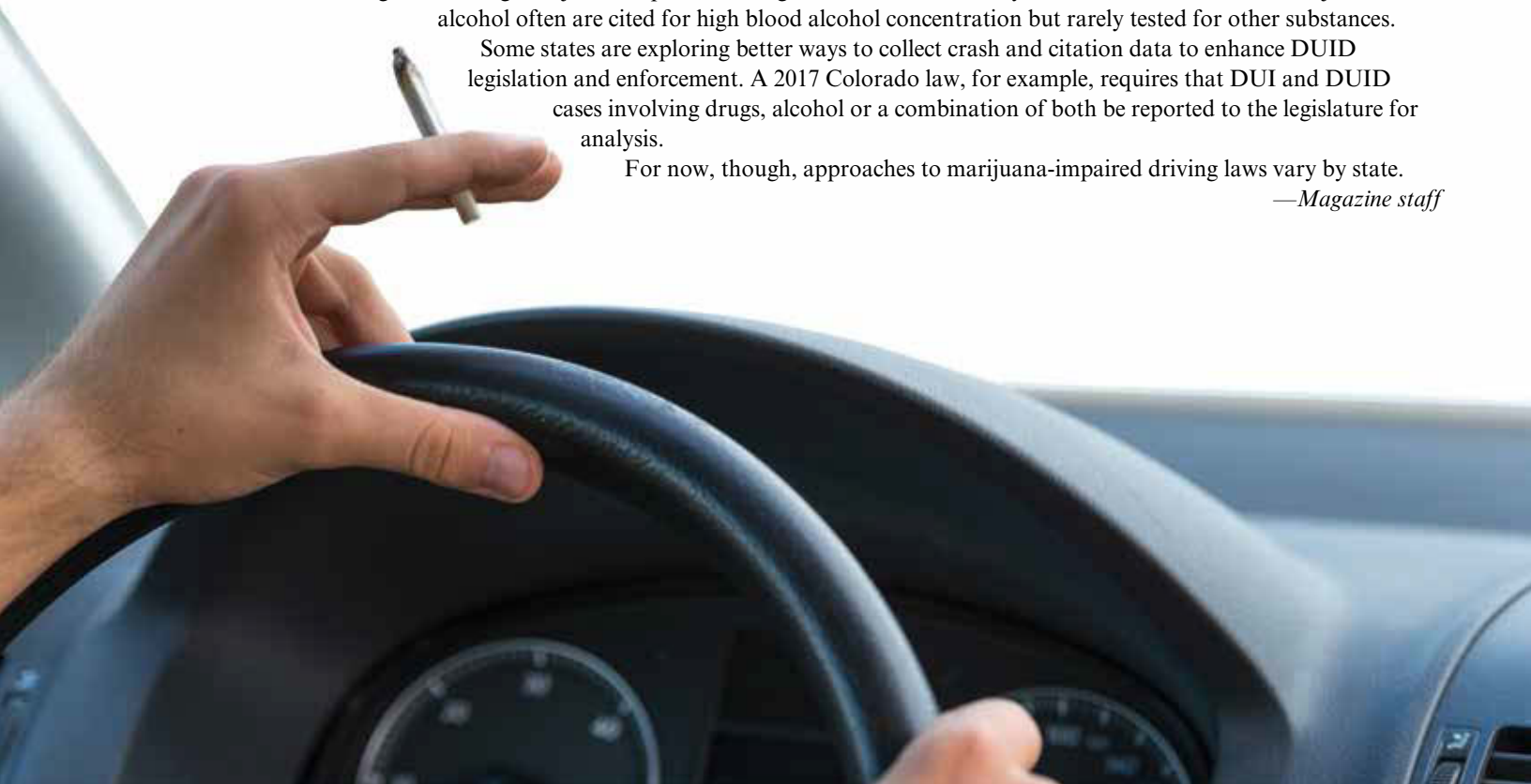
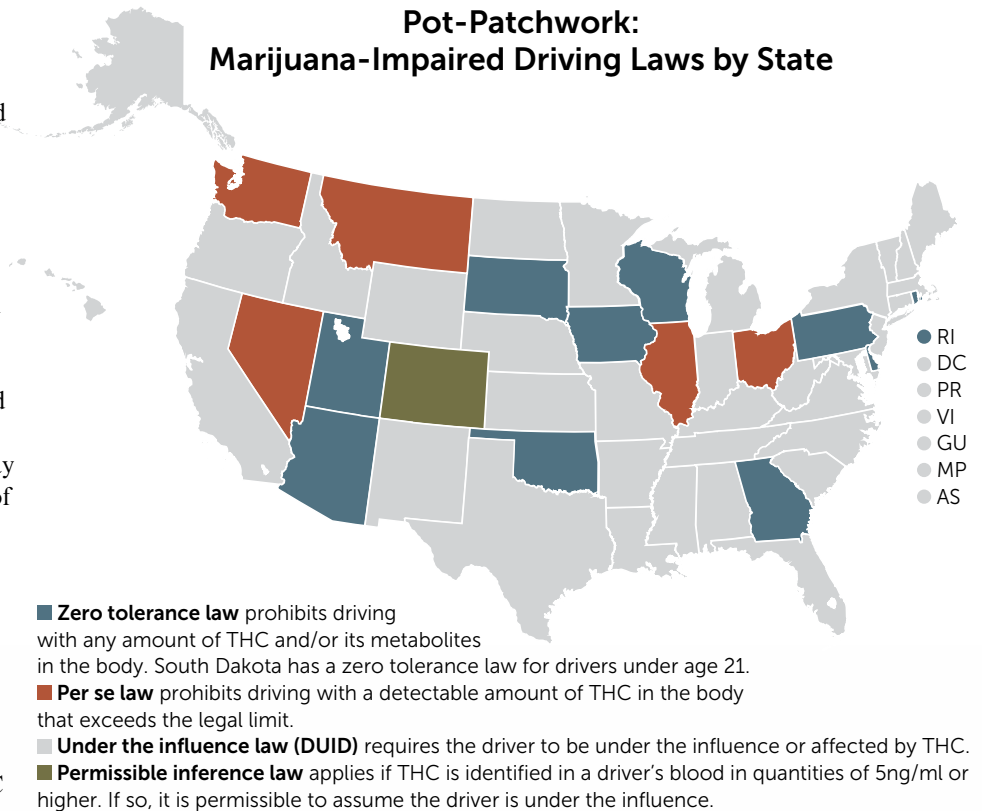
Currently, marijuana is most commonly detected by testing blood, urine or saliva. But testing for impairment is problematic due to the limitations of drug-detecting technology and the lack of an agreed-upon impairment limit. The mere presence of THC does not indicate impairment; marijuana's main psychoactive component can stay in the system for weeks, no longer causing intoxication. Another challenge in tracking marijuana-impaired driving is that drivers who may be under the influence of marijuana and alcohol often are cited for high blood alcohol concentration but rarely tested for other substances.

Some states are exploring better ways to collect crash and citation data to enhance DUI and DUID legislation and enforcement. A 2017 Colorado law, for example, requires that DUI and DUID cases involving drugs, alcohol or a combination of both be reported to the legislature for analysis.

For now, though, approaches to marijuana-impaired driving laws vary by state.

—Magazine staff

Pot-Patchwork: Marijuana-Impaired Driving Laws by State



Full-Time Daylight Delight?

Most of us “fell back” at 2 a.m. on Sunday, Nov. 4, when once again we adjusted all our clocks and watches back one hour to standard time and tried to use the extra hour for something wonderful. A growing number of critics, however, are questioning the benefits of the well-established practice of flipping between daylight and standard times twice a year. Switching back and forth is not only a nuisance, they argue, it also disrupts a person’s natural circadian rhythms, which is bad for health in the couple of days following a change.

Daylight saving can be traced back to at least World War I, but wasn’t established nationwide until the Uniform Time Act was passed in 1966 to save

on energy costs. The act allows a state legislature to exempt itself from observing daylight saving time but does not let states observe it permanently.

The current system is in practice in 48 states—Arizona, Hawaii, some Amish communities, and the American territories don’t use it—but every year brings more legislation to change it. In 2016, 13 states considered 22 bills; in 2017, 18 states considered 39 bills and resolutions; and, as of August, 25 states were considering 39 bills or resolutions.

Some bills propose getting rid of daylight time altogether; others aim to adopt it full time. The issue appears to be not so much which time to adopt but to stop flipping between the two twice a year.

Proponents of staying on daylight saving time all year argue that more daylight makes driving safer, reduces crime and helps productivity.

So far this year, a handful of bills or resolutions have passed and some are pending, but most have failed. Alabama lawmakers urged Congress to permanently adopt daylight time. Florida legislators declared their intent to go to daylight time full time, when allowed. Legislatures in Louisiana and South Carolina decided to study the issue further. And in California voters just approved a ballot measure to essentially end daylight saving time by requiring the state to add an hour to current daylight saving time.

—*Magazine staff*

PROS AND CONS Daylight Saving Time

UPSIDES OF DAYLIGHT TIME

- **It’s safer.** More daylight lowers car accident rates and the risk of pedestrians being hit by vehicles.
- **It’s good for the economy.** More daylight means more people shopping after work, increasing retail sales, and more people driving, increasing gas and snack sales.
- **It promotes active lifestyles.** When the day is lighter later, people tend to participate in more outdoor activities after work or school.

DOWNSIDES OF SWITCHING

- **It’s bad for your health.** One study found that the risk of a heart attack increases 10 percent the Monday and Tuesday following the spring change.
- **It hurts productivity.** The week after the spring change sees an increase in “cyberloafing” (wasting time on the internet) because employees are tired.
- **It’s expensive.** One economist found that the simple act of changing clocks costs Americans \$1.7 billion in lost opportunity cost based on average hourly wages.

Source: ProCon.org





EACH DAY ARTS, COMMUNITY, BUSINESS, PHILANTHROPIC, AND ELECTED LEADERS ARE TRANSFORMING AMERICA'S COMMUNITIES THROUGH THE ARTS.

2018 NATIONAL ARTS AWARDS – Honoring the Philanthropic Community, Arts Leadership, and Artists

<p>Mavis Staples Carolyn Clark Powers Lifetime Achievement Award</p>	<p>Justin Peck Ted Arison Young Artist Award</p>	<p>Ai Weiwei Marina Kellen French Outstanding Contributions to the Arts Award</p>	<p>Ann Ziff Philanthropy in the Arts Award</p>	<p>Alliance for Young Artists & Writers Arts Education Award</p>

2018 BUSINESS COMMITTEE FOR THE ARTS BCA 10 AWARDS – Honoring the Business Community

<p>Churchill Downs</p>	<p>Fifth Third Bank</p>	<p>Fosun Int'l Shanghai CN</p>	<p>Phillips 66</p>	<p>The Standard</p>	<p>Tierney</p>
<p>UMB Financial Corporation</p>	<p>VF Corporation</p>	<p>West Bend Mutual Insurance Company</p>	<p>Zions Bank</p>	<p>Chandrika Tandon Chairman of Tandon Capital Associates BCA Leadership Award</p>	<p>Square and Cheyenne River Youth Project David Rockefeller pARTnership Award</p>

2018 ANNUAL LEADERSHIP AWARDS – Honoring Arts Community Leaders and Tourism Partners

<p>Sarah Gonzales Triplett Director of Public Policy, Creative Many Michigan Alene Valkanas State Arts Advocacy Award</p>	<p>William Marino CEO & Executive Director, West Colfax Business Improvement District Michael Newton Award for Innovative Arts and Business Partnerships</p>	<p>Quance Floyd Founder & Director, Arts Administrators of Color Network American Express Emerging Leaders Award</p>	<p>Renee Piechocki Artist & Public Art Consultant Public Art Network Award</p>	<p>Paul Sznawajs Executive Director, Ingenuity Arts Education Award</p>	<p>Kristina Newman-Scott Director of Culture & State Historic Preservation, State of Connecticut Selina Roberts Ottum Award for Arts Leadership¹</p>

2018 PUBLIC LEADERSHIP IN THE ARTS AWARDS – Honoring Elected Officials and Artist Advocates

<p>Community Arts Training Institute, Regional Arts Commission of St. Louis Robert E. Gard Award for the Arts in Community Life</p>	<p>New Jersey Representative Leonard Lance Public Leadership in the Arts Award for Congressional Arts Leadership²</p>	<p>Maryland Governor Larry Hogan Public Leadership in the Arts Award for Governors Arts Leadership²</p>	<p>Connecticut Lt. Governor Nancy Wyman Public Leadership in the Arts Award for State Arts Leadership⁴</p>	<p>Arkansas State Senator Joyce Elliott Public Leadership in the Arts Award for State Arts Leadership²</p>	<p>Santa Fe, NM Mayor Javier Gonzales Public Leadership in the Arts Award for Local Arts Leadership³</p>

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<p>Dallas, TX Mayor Mike Rawlings Public Leadership in the Arts Award for Local Arts Leadership²</p>	<p>Hillsborough County, FL Board of County Commissioners Public Leadership in the Arts Award for County Arts Leadership²</p>	<p>Michael Cerveris Citizen Artist Award²</p>	

(1) presented in conjunction with the National Endowment for the Arts. (2) presented in conjunction with The United States Conference of Mayors. (3) presented in conjunction with the National Association of Counties. (4) presented in conjunction with the National Lieutenant Governors Association. (5) presented in conjunction with the National Conference of State Legislatures.

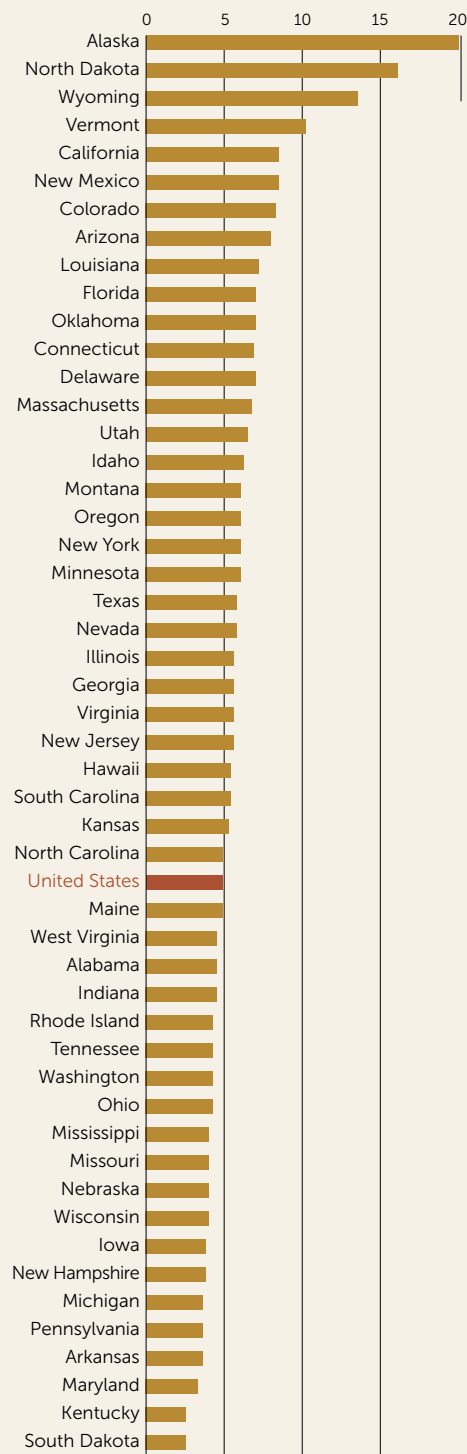
Ups and Downs of Revenue Recovery

After the Great Recession, North Dakota led the country in reaching its previous highest level of tax revenues, doing so in mid-2013. By 2018, a majority of states had achieved that milestone. But it hasn't been one steady climb.

Wide swings in revenue are common, especially when it comes to severance taxes (fees paid for extracting natural resources) and corporate income taxes. Volatility is greatest in states that depend heavily on severance taxes. States relying on corporate income taxes tend to be less volatile because they have other revenue streams as well.

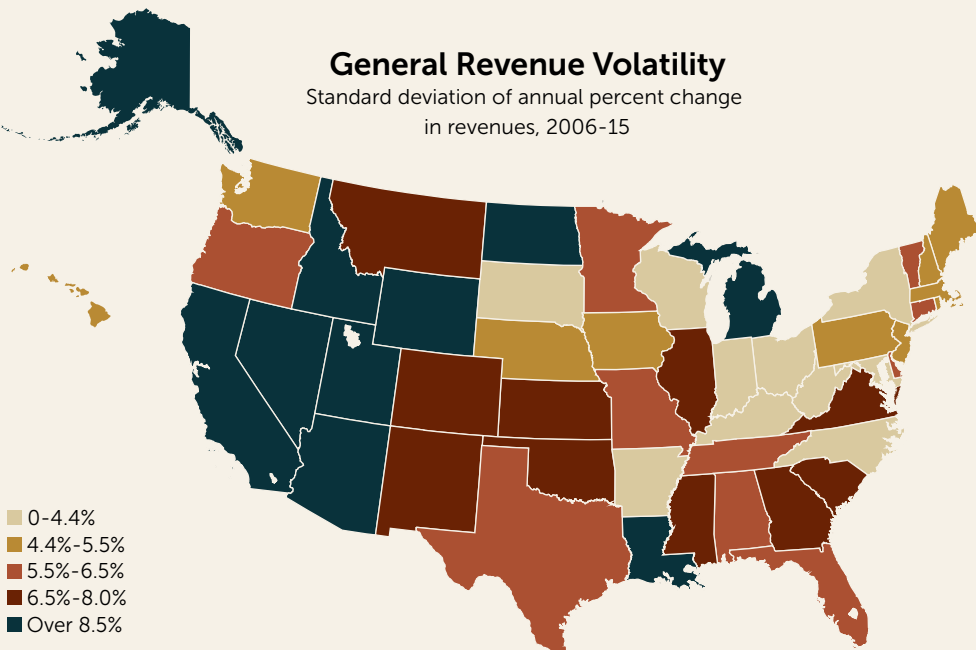
All states, however, experience some level of tax revenue volatility, thanks to fluctuations in the business cycle and in energy prices. The resulting uncertainty makes it hard to balance budgets and forecast revenues. Over the past two decades, Alaska has faced the greatest volatility and South Dakota the least, not counting fluctuations caused by changes in tax policy.

Revenue Fluctuation



General Revenue Volatility

Standard deviation of annual percent change in revenues, 2006-15



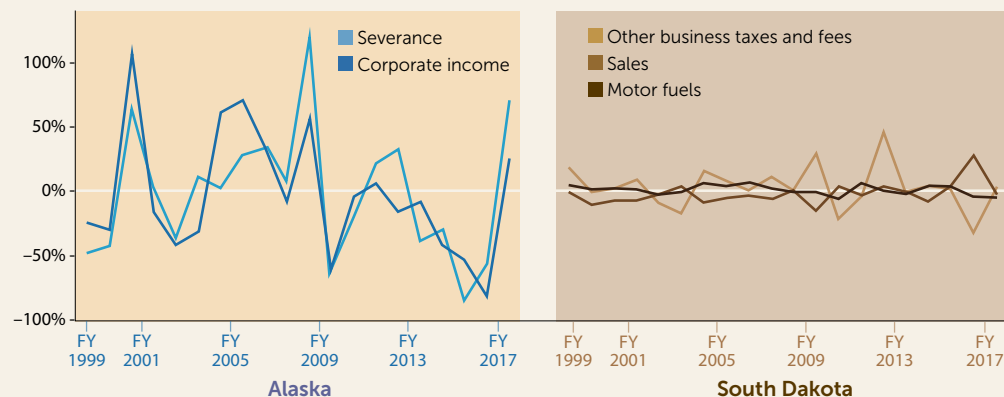
- 0-4.4%
- 4.4-5.5%
- 5.5-6.5%
- 6.5-8.0%
- Over 8.5%

Note: Volatility is defined as the standard deviation of the annual percent change in revenues between 2006 and 2015 (from "State Tax Revenue Forecasting Accuracy: Technical Report," Nelson A. Rockefeller Institute of Government and Pew Center on the States). Data exclude the District of Columbia and include only general fund revenues.

Source: National Association of State Budget Officers, Fall Fiscal Survey of the States, 2005-2016

Two Tales of Volatility, One High, One Low

Percent change of major revenue sources, FY 1998-2017



Note: The scores measure the variation in year-over-year percent changes between fiscal 1998 and 2017, based on a calculation of standard deviation. A low score means that revenue levels were similar from year to year, and a high score indicates that revenue grew or declined more dramatically.

RED, WIDE & BLUE



Will election results narrow the widening partisan gap?

BY TIM STOREY AND WENDY UNDERHILL

Democrats scored significant wins in state legislatures on Nov. 6, beating Republicans handily and notching some key chamber flips. Yet, it was hardly a “thumping,” as President George W. Bush described the results of his 2006 midterm elections, or a “shellacking,” as President Barack Obama referred to his first midterms.

The GOP was braced for deeper losses given that their control was at all-time highs going into the election and a swing of the pendulum was likely. The party of the president had lost seats in 27 of the 29 midterm elections since 1902. The exceptions: 1934, with America in the teeth of the Great Depression, when FDR’s Democrats won big, and 2002, as the nation prepared to go to war after 9/11, when Republicans made gains.

The net gain for Democrats in this two-year cycle will be a little more than 300 seats. That’s somewhat modest and well under the average loss of 424 seats for the party in the White House during a midterm. Republicans control 53 percent of the nation’s 7,383 legislative seats, but the gap between the two parties narrowed considerably and Democrats now have more seats than at any point since they lost 710 in the 2010 election.

Control Is Key

Seats are important. But what really matters is gaining functional majorities in legislative chambers, and Democrats added seven of

those this year.

Democrats took the senates in Colorado, Connecticut (which was previously tied) and Maine, the House in Minnesota and both chambers in New Hampshire. Add to that tally the New York Senate, which had been nominally a majority-Democratic chamber (32-31) but was led by a coalition of a few Democrats and all the Republicans. Democrats surged to 40 seats, ending the GOP-led coalition.

The brightest spot for the GOP was in the Last Frontier. The Alaska House, like the New York Senate, was led by a coalition for the last two years. Republicans gained enough seats to end the Democrats’ functional control of the chamber.

Where We Stand

When legislatures convene next year, the GOP will lead 61 chambers to the Dems’ 37. That adds up to 98 chambers because Nebraska’s single-chamber legislature is officially nonpartisan, though widely acknowledged to be Republican controlled. Democrats control both chambers in 18 states, compared with the Republicans’ 30.

This midterm also consolidated partisan control of states more so than any election in over a century. Minnesota is now the only state where the two parties share legislative power. Republicans hold the North Star Senate by just one seat, while Democrats have an eight-seat

Tim Storey is NCSL’s director of state services.

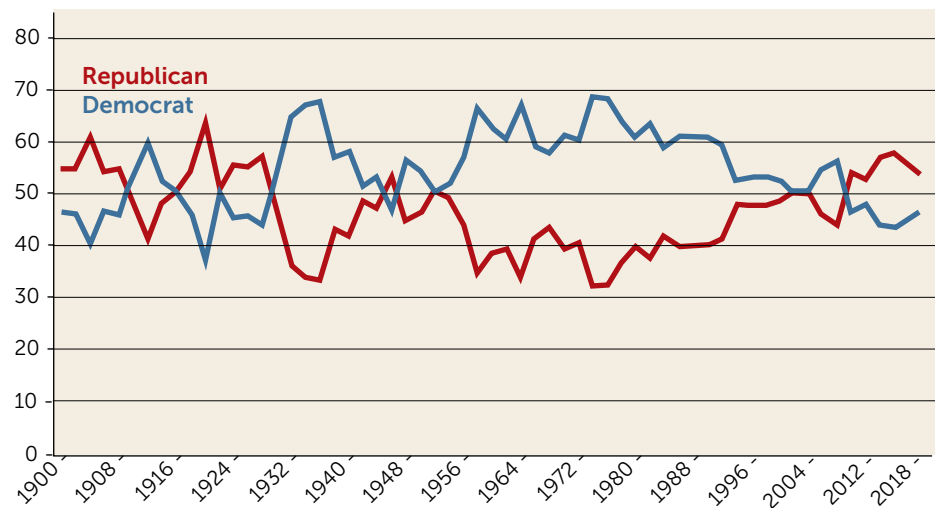
Wendy Underhill is NCSL’s director for elections and redistricting.

Flipped Chambers Post-Election

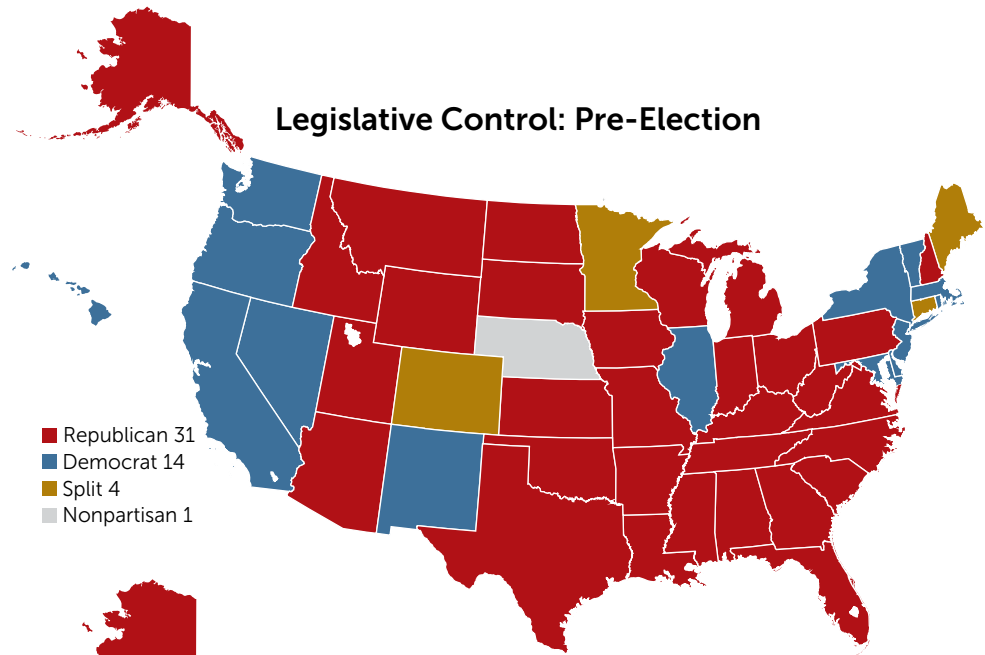
CHAMBER	PRE	POST
NH Senate	R	D
CO Senate	R	D
CT Senate	T	D
MN House	R	D
NH House	R	D
ME Senate	R	D
NY Senate*	R	D
AK House*	D	R

*Minority-led coalitions controlled the chambers before the election.

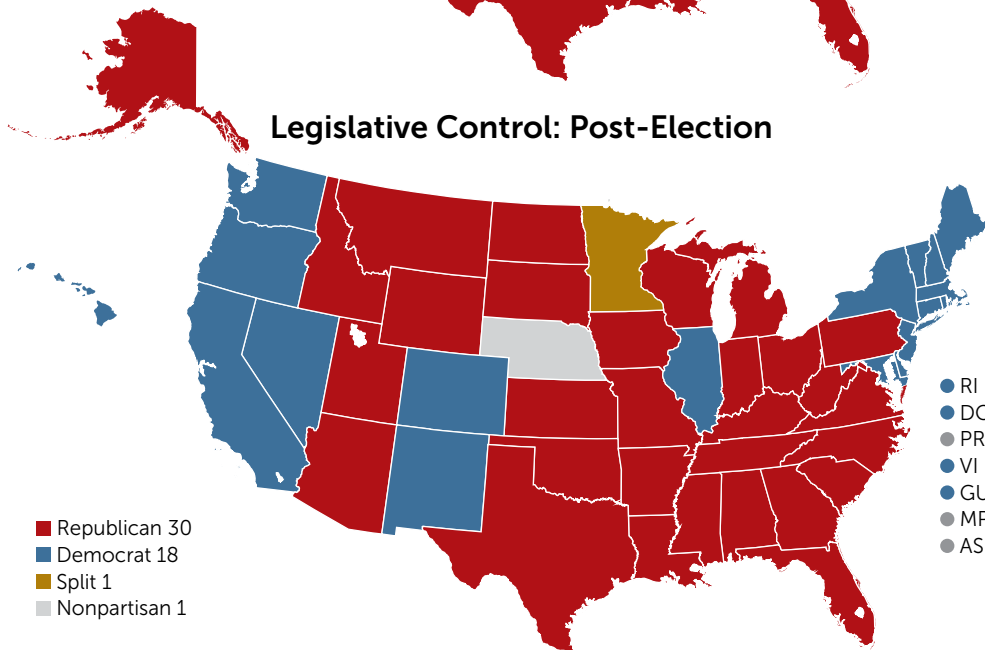
Legislative Seats Held by Party 1900–2018



Legislative Control: Pre-Election



Legislative Control: Post-Election



advantage in the House. It has been 104 years since there was only one divided legislature—Montana’s in 1914.

Add the governor’s office to a legislative majority and you’ve got total state control, aka a “trifecta.” Dems gained six trifectas, for a total of 14, up from eight before the election, while the GOP maintained its strong advantage in state policymaking, with 21 trifectas.

Speaking of governors, Democrats gained seven and Republicans picked up Alaska, which had an independent governor. That leaves the governorship numbers at 23 Democrats and 27 Republicans.

Based on unofficial returns, Democrats achieved veto-proof supermajorities in both Oregon chambers, the Delaware House, the Illinois House and the Nevada Assembly. They also gained enough seats to end Republican supermajorities in the Michigan Senate, both North Carolina chambers and the Pennsylvania Senate.

Turnout and Turnover

This election clearly got voters’ attention. Turnout was up. Way up. In midterms, anything north of 40 percent participation is considered average, even good. In the 2014 midterm, turnout dipped to 37 percent. According to elections guru Michael McDonald at the University of Florida, more than 48.5 percent of eligible voters

participated this year, a 50-year high.

Perhaps the biggest headline was the spike in turnover. This election will bring a flood of new faces—nearly 1,700—to legislatures nationwide. More than 23 percent

of the seats will be filled by new legislators, including record numbers of women. Average turnover for legislative elections is typically under 20 percent.

Voters in 19 states elected new gover-

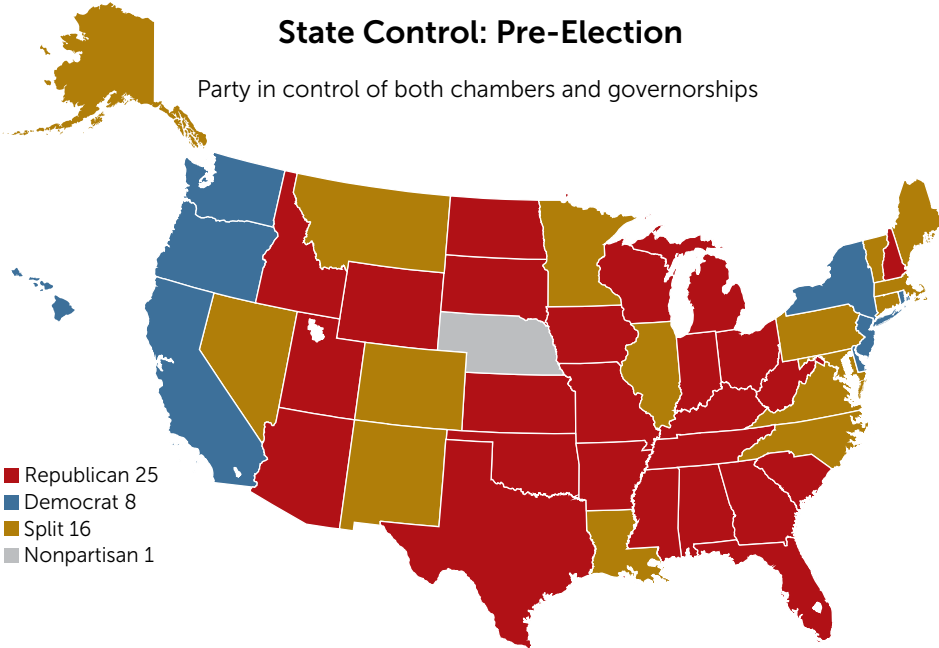
nors. And more than 35 of the country's 99 chambers will have a new top leader. That translates to a lot of new ideas, innovations and varied experiences to draw on as these state leaders get to work.

Did You Know?

- Among the six chambers won by Democrats, three—the New Hampshire House, the Maine Senate and the Minnesota House—have been very volatile in recent years, swapping party control in four of the last five elections.
- The Connecticut Senate was tied going into the election and is now under Democratic control. Since 1900, the chamber has changed hands 23 times—more than any other state legislative body in the United States.
- No chambers are tied, post-election. At least one chamber has been tied since 1966, except for a few years between 2011 and 2016.
- The Republican caucus in the Hawaii Senate took a huge leap forward, from zero members to one.
- At least 12 GOP-controlled chambers gained seats: both Alabama chambers, the Alaska House, the Arkansas Senate, the Florida Senate, the Iowa Senate, both Kansas chambers, the Kentucky House, the Missouri House, the Oklahoma House and the South Dakota Senate.
- Official numbers weren't available at press time, but it looks like there will be more legislators of color than ever.
- According to the Victory Fund, at least 84 LGBTQ candidates, from both parties, won legislative seats.
- Nineteen-year-olds were elected in New Hampshire, West Virginia and Wisconsin. (See page 41 for more details.)
- As occasionally happens, a candidate died shortly before Election Day, but his name remained on the ballot. Nevada brothel owner Dennis Hof, who died Oct. 15, prevailed in his race, getting more than 17,000 votes.

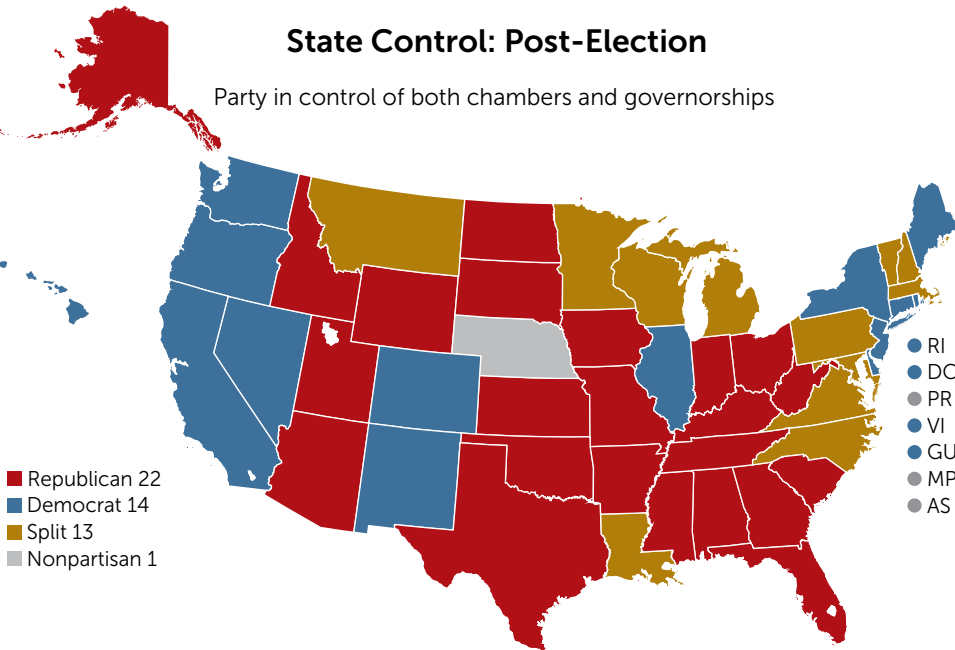
State Control: Pre-Election

Party in control of both chambers and governorships



State Control: Post-Election

Party in control of both chambers and governorships



Women Ran, Women Won

When women run, they win. So, what happens when more women run than ever before? They break all kinds of records. Approximately 3,564 female candidates ran for state legislative seats in the recent midterm elections (Democrats, Republicans and third-party members), which is a whopping 28 percent increase compared with the 2,781 women who ran two years ago.

And many of them won. As sessions begin in 2019, at least 2,073 women (190 more than in 2018) will occupy seats in statehouses. That's more than 28 percent, an all-time high, and nearly 3 percentage points higher than in 2018, according to NCSL's preliminary analysis.

There hasn't been an increase in the share of women this large since another significant election: 1992, also deemed a "Year of the Woman." That was when the nationwide portion of women in office jumped from 18.4 percent to 20.5 percent, following Anita Hill's allegations during the Senate confirmation hearings for Supreme Court nominee Clarence Thomas.

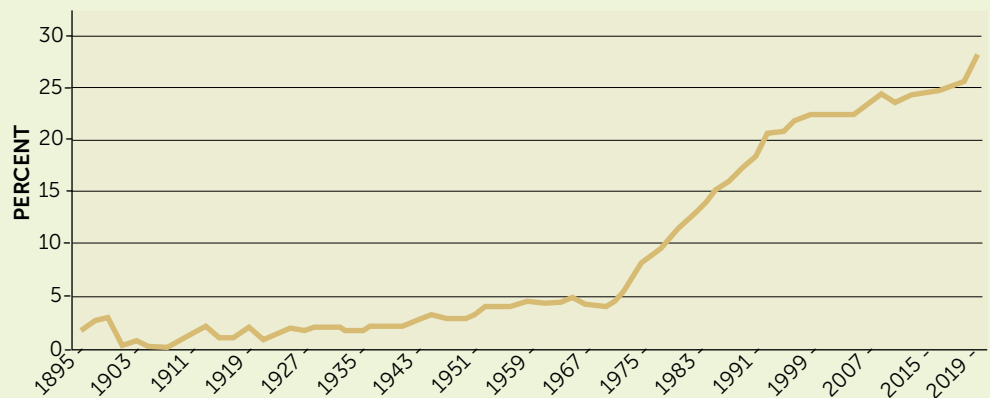
It's been a slow but steady climb for women. The portion of female lawmakers was stuck under 5 percent until 1973, when it began creeping upward.

But it wasn't only state legislatures that saw gains. The recent midterm was a history-making election for female candidates up and down the ballot. At least 118 women will serve in Congress next year and there will be at least nine female governors, tying a previous record. Still, states vary greatly.

Women gained seats or held steady at the same ratio in most states. The U.S. territory of Guam set the pace election night, coming in with the first resounding victories for women. The island of about 166,000 American citizens elected women to be governor and



Percentage of Women in State Legislatures, 1895–2019



to hold 10 of the 15 seats in the unicameral Legislature.

If preliminary results hold, women will now outnumber men in the Colorado House (33-32) and in the Nevada Assembly (22-20). Women have been in the majority only once before, in 2009-10, when 13 of 24 members in the New Hampshire Senate were women. Nevada is poised to have the largest number of female legislators, 47.6 percent, which is a record for any state.

Along with Nevada, states with the high-

est percentages of women are Colorado, Oregon, Vermont, Alaska, Arizona, Maine and Washington. States with an increase of 5 percentage points or more include Alaska, Iowa, Maine, Maryland, Michigan, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Pennsylvania, Rhode Island and Utah.

What influence will this influx of women have on legislatures? We'll be keeping an eye on that. Stay tuned.

—Katie Ziegler

Voters Make Policy

Citizens had their say on more than 150 ballot measures that could transform their states.



BY PATRICK R. POTYONDY

If you tuned in to any of the major television news stations on election night, you couldn't miss the focus on candidates for the U.S. House, U.S. Senate and governorships. You no doubt heard about the state legislators, secretaries of state, attorneys general and others vying for office.

But, on top of all that, voters enacted policies across 37 states, saying “yes” or “no” to 155 statewide ballot measures (with 13 having been decided earlier in the year). Of them, as of press time, 107 passed. The measures included legislative referrals (when a legislature places an item on the ballot), initiatives (when enough signatures are gathered to place an item), popular referendums (when voters are given the power to “veto” a bill) and a handful of other items. Ballot measures

can amend constitutions or statutes, with wildly different rules governing the process in each state.

This year, voters weighed in on some of the most pressing issues of our day—elections, redistricting, ethics, health care, revenues, transportation, criminal justice, housing, energy, the environment and more.

Elections and Public Office

Perhaps the major election issue of the night was the passage of an amendment in Florida that will re-enfranchise individuals with a felony conviction once they have served their sentence—which is about 1.4 million people, predominately African-Americans. The measure excludes those who were convicted of murder or sexual crimes. The pendulum swung in the opposite direction in Louisiana where voters chose to bar anyone with a felony from holding public office for five years after completing their sentence.

Maryland voters passed Election Day

registration. Nevadans will now have automatic voter registration. And Michiganders passed a sweeping measure that included a package of voting policies from automatic registration to post-election audits. Voters went in a different direction in Arkansas and North Carolina by passing new photo ID requirements.

Voters in Arizona, Florida, Massachusetts, New Mexico and North Dakota were keen to pass ethics-related issues, while Arkansas tightened its term limits from 16 to 10 years.

Redistricting

Redistricting reformers—who support increased, direct public control and oversight of the process—had a good night. Colorado voters passed two measures with 70 percent of the vote, falling just short of Ohio's 75 percent margin when that state passed redistricting reform earlier in the year. Sixty-one percent of Michigan voters approved using a redistricting commission,

Patrick Potyondy is a Mellon-ACLS public fellow and a legislative policy specialist with NCSL's Elections and Redistricting Program.

and 62 percent of Missourians passed their measure. Utah's measure is still up in the air, though ayes held a slight lead over noes with about 75 percent of the votes counted.

Health Care

After Maine voters approved Medicaid expansion last year, Idaho, Nebraska and Utah put initiatives on their ballots. The Gem State passed it with more than 60 percent of the vote, the Cornhusker State with 53 percent. The Beehive State's measure was leading at press time. If all three pass, only 14 states will not have expanded Medicaid under the Affordable Care Act.

Two of the three abortion restriction measures passed. Alabama and West Virginia voters approved restrictions, Oregon voters did not.

California voters chose not to regulate dialysis costs, but they did authorize paid on-call breaks for EMTs and bonds for children's hospitals. Massachusetts voters decided not to limit the number of patients that hospital nurses could care for at one time. And Mainers elected not to tax higher incomes to create a universal in-home care program.

Raising or Reducing Revenue

Sixteen of 18 bond measures passed (with two still being counted). Voters in most states decided to fund their community colleges, K-12 public education, transportation, senior centers and more. Coloradans, however, decided against two transportation bond measures to fund infrastructure improvements.

Voters in general rejected measures that would raise taxes. In addition to voting down the two bond measures, one of which included a tax increase, Coloradans also rejected taxing the wealthy to better fund K-12 education.

In Florida and North Carolina, it will now be harder for officials to raise tax revenue. Arizona will not be able to create taxes on untaxed services. And Montana will not increase tobacco taxes to fund Medicaid. Ultimately, states were split on whether to erect supermajority requirements when raising taxes. Floridians passed their measure; Oregonians rejected theirs. And Nevadans

decided to exempt feminine hygiene products from taxes.

Transportation

As on many issues this year, voters were split on transportation funding. Colorado voters turned down the two above-mentioned transportation bonds. Likewise, Missourians rejected a 10-cent gas tax increase. Alternatively, Californians chose to keep the state's recent gas-tax hike and turned down the chance to make any future tax increases require voter approval. And, like Californians earlier in the year, Connecticut voters passed a transportation lockbox amendment, which requires funds marked for transportation to be used only for transportation.

Criminal Justice

Criminal justice comprised the widest array of topics. Michigan became the first Midwestern state to pass recreational marijuana, while North Dakotans just said no to drugs (including the expungement of pot convictions that went along with the proposed legalization). A crime victims bill of rights, often known as a Marsy's Law, was passed in six states. Coloradans voted to remove constitutional language that allowed slavery to be used as punishment for a crime. Louisiana will now require unanimous juries to convict people of capital felonies. Ohioans declined to reform their drug laws and dedicate savings to rehabilitation.

In the Northwest, Washingtonians passed the country's only gun control measure with 60 percent of the vote. The measure raises the age of owning a semiautomatic rifle, makes safe gun storage mandatory, enhances background checks and lengthens the waiting period before buying a gun. The state also passed a significant reform on how police use of force is justified. Oregonians decided against repealing a 30-year-old statute limiting the ability of state and local police to enforce federal immigration laws.

Housing

A few states addressed housing affordability, which continues to worsen in many parts of the country. Californians supported bonds for affordable housing and to fight

homelessness, but they chose to keep the law that prevents local governments from enacting rent controls. They also rejected a proposal to let homeowners over 55 purchase new, more expensive homes but keep the old home's tax rate. Oregonians voted to allow municipalities to fund privately owned affordable-housing developments.

Energy and the Environment


Generally, voters were also split on efforts to pass state-level environmental protections, although the overall trend seems to favor industry. While Florida voters passed a ban on off-shore drilling, Coloradans declined to require larger setbacks for new oil and gas drilling. Washington voters rejected what would have been the first carbon fee in the nation. Montanans will not require new hard-rock mines to have a long-term plan for rehabilitation to avoid toxic pollution. And Alaskans declined to require permits and higher protection standards for salmon waters.

In Arizona, 70 percent of voters turned down a measure requiring utilities to use 50 percent renewable energy by 2030, while 60 percent of Nevadans approved a similar measure.

Always Something More to Compromise On

Of course, other interesting measures abound. One to expand school vouchers was defeated by nearly 70 percent of the vote in Arizona. On the minimum wage front, gradual increases passed in Arkansas and Missouri. (Washington, D.C., voters passed an increase earlier in the year, though the city council soon repealed it.) And Massachusetts voters made history, on the first statewide vote on the issue, in choosing to uphold nondiscrimination protections for transgender individuals.

In the end, many of the measures—from wages to environmental protection to health care—reveal that Americans will have to find common ground if they hope to address major issues facing their states and the country.

For details on every measure passed this year, refer to NCSL's Statewide Ballot Measures Database. 

Data: Confidential



California wields a 'stick' with tough new privacy regulations. Ohio takes a 'carrot' approach.

BY RICH EHISEN

Rich Ehisen is the managing editor of State Net's Capitol Journal. This article first appeared there on Sept. 14, 2018.

Taking a cue from the European Union's expansive new General Data Protection Regulation, California lawmakers in June adopted the toughest and most complex data privacy regulations in the United States. Given the state's history of driving national policy, the logical question is whether the California Consumer Privacy Act will inspire other states or even the federal government to impose strict new data privacy regulations of their own.

According to experts we spoke to, the answer is a definite maybe.

"Over the years several California privacy statutes have been copied by other states. But they were mostly simple and straightforward," says Kristen Mathews, a partner in the New York City law firm Proskauer Rose LLP and the head of its global privacy and cybersecurity group. "This new California law is not simple. I don't think it would be my first contender for a law that other states will copy."

She'll get no argument from David Zetoony, a partner with Bryan Cave Leighton Paisner LLP, based in St. Louis. Zetoony, head of the firm's global data privacy and security practice, calls the law "misguided, dubious in value and not well-thought-out at all."

To be sure, not everyone sees it that way. In a blog post shortly after the bill was signed on June 28, Alan Friel and Nilou Massachi, privacy attorneys for Cleveland-based Baker Hostetler LLP, called it "a win for both industry and consumers."

Meanwhile, in a statement released that same day, California Senator Bill Dodd (D), one of the measure's three authors, noted his hope that "other states will follow, ensuring privacy and safeguarding personal information

in a way the federal government has so far been unwilling to do."

That remains to be seen, but Zetoony says it really doesn't matter if states follow suit or not, noting that California was the first state to adopt online privacy requirements for companies doing business there. Even though other states didn't copy them, he says most large companies adopted those policies themselves, essentially spreading the power of the law across the country.

"This law may not get emulated quickly, but it doesn't need to be to have a national impact," he says.

As noted, the California Consumer Privacy Act borrows heavily from the European Union's statute—"80 or 90 percent," Zetoony says. Whether you think that's good or bad likely depends on whether you are a consumer advocate or a big tech company that currently collects consumer data with almost unfettered access. But wherever you fall on California's privacy act, everyone agrees it is a lot less demanding than its original incarnation, which was well on its way to going before voters as a ballot initiative.

Earlier this year, a group called Californians for Consumer Privacy sponsored a drive to put a version of the state law in front of voters in November. Although it collected more than 600,000 signatures—far more than needed to get the measure on the ballot—the group said it would withdraw the proposal if lawmakers passed an acceptable privacy bill. That sparked a frenzied effort to get something through both chambers and to the governor before the June 28 cutoff date for removing the measure from



Senator
Bill Dodd
California

California's Out Front in Privacy Protection

The Consumer Privacy Act is not the only example of groundbreaking consumer privacy and security legislation to come from California. The home of Silicon Valley also enacted the first law requiring companies to notify consumers of data breaches. All 50 states now have breach-notification laws like California's.

California lawmakers have passed several other privacy laws, and although only a few other states have followed suit, the Golden State's actions have had an impact beyond its borders.

Online Privacy Policies It's now common to see privacy policies posted prominently on websites and online services. That's at least partly due to California's Online Privacy Protection Act, enacted in 2003. It requires websites and other online services that collect personally identifiable information from California residents to post and comply with an online privacy policy.

The law also requires commercial websites and online services to disclose in their privacy policies how they respond to web-browser "Do Not Track" signals or similar mechanisms. Consumers can turn on these mechanisms to prevent tracking of their personal information across sites or services and over time.

An Online Eraser for Minors In another first, California passed the Privacy Rights for California Minors in the Digital World Act, known as the "Online Eraser" law, in 2013. It allows Californians under 18 to request removal of their own social media or other online postings that they later regret having shared.

It also prohibits websites or online services catering to children from advertising products or services that minors are legally prohibited from buying or are based on personal information collected about a minor.

Protecting Personal Information California law requires entities that own, license or maintain personal information to protect it. About half the states have data security laws. Some simply require that a company follow security procedures and practices; others require annual security assessments or audits, mandate training and specify that security frameworks and standards must be followed.

Protecting Connected Devices California recently became the first state to address security concerns surrounding the "internet of things." The new law, which passed in September with bipartisan support, requires manufacturers to equip smart devices with reasonable security features to prevent cyberattacks. Assemblywoman Jacqui Irwin (D) sponsored the bill to combat attacks that have infected routers, cameras, printers, digital video recorders and other devices. The infected devices enabled distributed denial of service attacks that shut down prominent websites and services.

"With our growing reliance on internet of things devices, the threat that unsecure devices pose to individuals, businesses and our state looms large. Ensuring we have the right tools to keep our devices and information secure is critical," Irwin says. "This new law was the result of hard work with many stakeholders from the business, technology, privacy and consumer communities."

Whether other legislatures follow its lead in these and future tech-related laws, California leaves a large footprint.



Assemblywoman
Jacqui Irwin
California

—Pam Greenberg

the ballot. They made it with a just few hours to spare.

It's Complicated

So what exactly does that measure (AB 375) do? The short answer is a lot.

As of Jan. 1, 2020, consumers will be able to request that companies provide them with an accounting of the data they have collected on them and require the company to delete that information. Companies will have to notify consumers that they have the right to opt out of having their information sold, and businesses can't retaliate or discriminate against a consumer who chooses that option. Consumers will further be allowed to take legal action against a company that violates these or other tenets of the law.

As noted by the Harvard Business Review, the statute establishes a fairly broad definition of personal information that includes a whole raft of personal identifiers, such as geolocation, biometric data, internet browsing history, psychometric data, and inferences a company might be able to make about the consumer from that data.

There are, however, some limitations on whom the law applies to. Companies under the law must meet one of the following criteria: have annual gross revenues in excess of \$25 million; process the information of 50,000 or more consumers; or derive at least 50 percent of their annual revenues from the sale of personal information.

The bill also gave the California attorney general's office the chore of drafting regulations and advising businesses about compliance with the new law. That drew the ire of

Attorney General Xavier Becerra (D), who in a letter to lawmakers complained that such a mandate comprised "unworkable obligations and serious operational challenges" for his office. He also questioned the legality of the new law's civil penalties.

That led to more legislation, SB 1121, signed by Governor Jerry Brown (D), which, among several things, kills a requirement that someone suing over a data breach

first notify the attorney general's office. It also delays enforcement of the law until six months after the attorney general publishes the new regulations and clarifies that consumers can file suit under the law only if the breach is caused by a company's failure to implement reasonable security steps.

That is far less than some advertising and tech companies want. The Internet Association—an industry trade group



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comprising tech giants like Amazon, Google, Microsoft, Facebook and Uber—has made clear its intention to continue working to modify the law before it goes into effect in 2020.

Several of those same companies are also lobbying the Trump administration to come up with a federal law that would override the Golden State measure.

Do Companies Have Time to Comply?

In the meantime, however, companies around the nation that do business in California are girding up to comply with the new law. Zetoony believes that how ready they are when the calendar clicks over to 2020 will be determined in great part by the effort they have already been making to comply with the European statute.

“A company that has been diligently preparing to comply with the GDPR should be in good position to comply with the California law,” he says, referring to the European statute by its initials. “But if you’re starting from a dead stop, I think

you’re going to find California’s timetable very aggressive.”

Mathews says that preparation is even more challenging because the ground is still shifting under the California law.

“If you really had a full year to prepare, it would be enough,” she says. “But we don’t really have a year because while we know there will be more amendments; we don’t know what they will be. We don’t want to start implementing compliance programs without knowing what the final law will look like.”

Using the European statute as a model for preparation purposes is a start, but hardly a foolproof one. The law has been enforceable only since May of this year and has not yet been cited in any enforcement actions. Without that, there is no way to know if the law will hold up to legal challenges.

An Eye on Ohio

Amid so much uncertainty, Zetoony argues that states looking for a model to

follow cast their eyes not to California but to Ohio, where Senators Bob Hackett (R) and Kevin Bacon (R) sponsored SB 220, aka the Ohio Data Protection Act.

That law offers Buckeye State companies that compile and transfer personal data a safe harbor from litigation over breaches if they have in place at least one of 10 specific industry-recognized cybersecurity frameworks. These are designed to “protect the security and confidentiality of personal information; protect against anticipated threats or hazards to the security or integrity of personal information; and protect against unauthorized access to and acquisition of personal information that is likely to result in a material risk of identity theft or fraud.”

Ohio is the only state that uses a carrot rather than a stick regarding data privacy. Zetoony hopes it isn’t the last.

“If states adopted the Ohio law,” he says, “it would create a real sea change by getting far more companies to invest far more money into their data security systems.”

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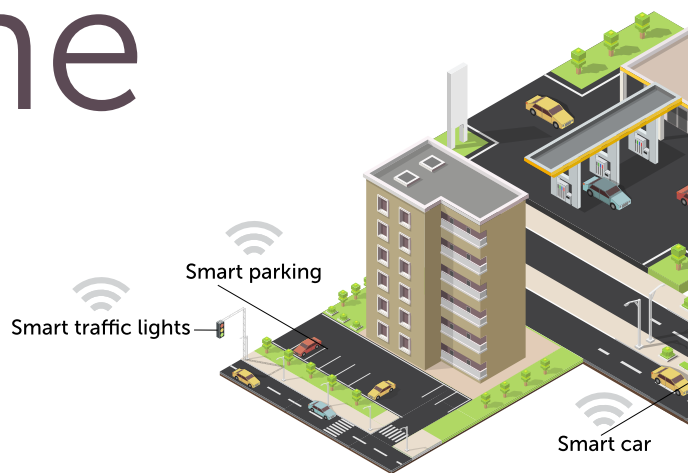
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It's 5G Time



States press ahead with deployment even as the FCC raises a regulatory hurdle.

BY DANIELLE DEAN

Imagine transferring data onto your handheld device 30 to 50 times faster than you can now. Picture an interconnected, automated transportation/traffic system so smart the bus catches you rather than the other way around. That's the promise of fifth-generation, or 5G, wireless technology, which is both smarter and faster than anything we've seen.

"The importance of understanding 5G technology and what it can mean for local and state government cannot be expressed enough," says North Carolina Representative Jason Saine (R), who sponsored legis-

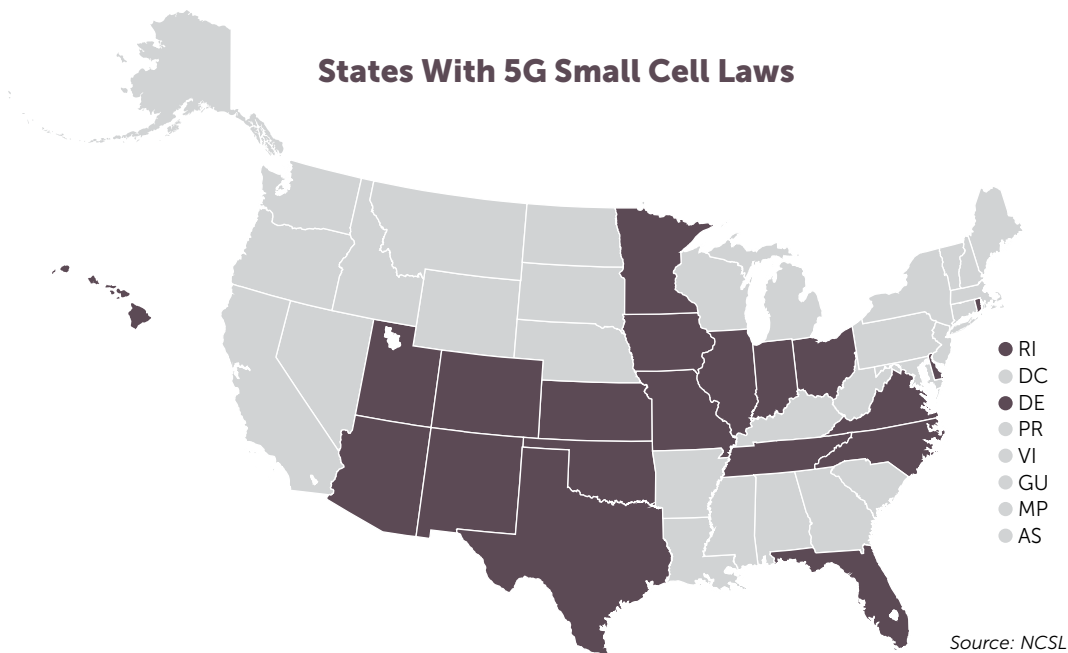


Representative Jason Saine North Carolina

lation to set a standard regulatory process for installing 5G infrastructure in his state. "This technology can pave the way with how we as legislators make better and more informed policy decisions."

The technology's potential is wide-ranging, with proponents foreseeing advances in everything from health care and transportation to public safety. It will also play a key role in the growing "internet of things" environment, in which our devices "talk" to each other.

The result could be better service, reliability and capacity on the network. 5G is potentially so powerful, in fact, that some are claiming its deployment will bring about a fourth industrial revolution.

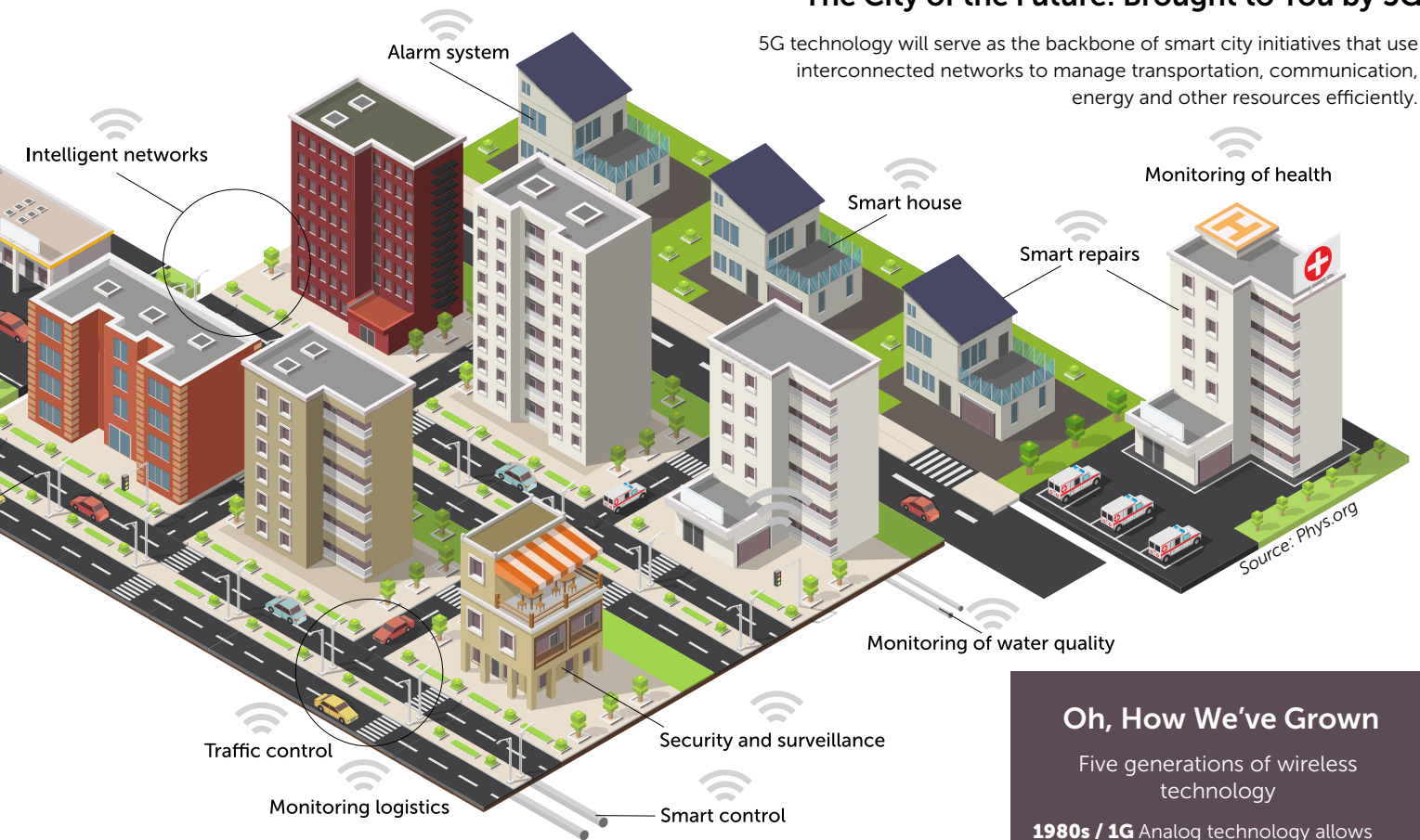


Danielle Dean is the director of NCSL's Communications, Financial Services and Interstate Commerce Committee.

Source: NCSL

The City of the Future: Brought to You by 5G

5G technology will serve as the backbone of smart city initiatives that use interconnected networks to manage transportation, communication, energy and other resources efficiently.



5G deployment depends on small cell technology. Small cells are wireless transmitters and receivers about the size of a picnic cooler or mini-fridge.

“It is crucial for the United States to lead the world in 5G advancements, especially with other countries making great strides,” says Hawaii Representative Takashi Ohno (D), who sponsored 5G legislation that the governor signed earlier this year.



Representative Takashi Ohno Hawaii

Striking a Balance

State lawmakers are trying to strike a balance between industry’s desire to see infrastructure installed quickly and local concerns about how the new technology will affect their communities. Twenty legislatures have enacted bills that streamline regulations to enable small cell deployment. Lawmakers in some states set stringent requirements for state agencies and local governments responsible for administering small cell deployment. Others, like

Hawaii, developed loose frameworks to guide local governments and agencies.

“In Hawaii, we took a big step forward in deploying 5G technology by instituting certainty in the permitting process while still allowing cities and counties to negotiate to address their needs with the industry,” Ohno says.

With these reforms, often referred to as small cell laws, lawmakers are taking into account the unique circumstances of their states and local environments. They’re paying special attention to concerns over access, control, safety and public health.

Small Cell Snag?

All this action toward deployment hit a roadblock in September, however, when the Federal Communications Commission approved the Declaratory Ruling and Third Report and Order, developed to address what it describes as “regulatory obstacles that have threatened the widespread deployment of these new services and, in turn, U.S. leadership in 5G.”

The order places substantial new time

Oh, How We’ve Grown

Five generations of wireless technology

1980s / 1G Analog technology allows the first wireless conversations from across the globe.

1990s / 2G Short Message Service (SMS) brings us text messaging—a new way to chat and a new language to go with it.

2000s / 3G Multimedia Messaging Service (MMS) lets us share more of our lives through photos and other media.

2010s / 4G Live video and wireless broadband brings the world to us in real time on our smart devices no matter where we are.

2020s / 5G By far the fastest, smartest technology the world has seen, sure to transform how we live, work and play.

limits on local wireless siting reviews and pre-empts state small cell laws. State and local elected officials will continue “to play a key role in reviewing and promoting the deployment of wireless infrastructure in their communities,” according to the FCC, which says it will draw on the “balanced and commonsense ideas generated by many of our state and local partners in their own small cell bills.”

But several cities and counties aren’t buying that promise. At least 20 have challenged the rule as limiting their autonomy in the rollout of 5G wireless networks.



Bird Lovers Cry Foul

Is the Migratory Bird Treaty Act getting plucked? Previous federal administrations have interpreted the act as strictly prohibiting the unregulated killing of birds. But late last year, as part of its effort to roll back regulations it views as burdensome to business, the Trump administration issued a reinterpretation. The act will forbid only intentional killing without a permit and will no longer apply to industries that inadvertently kill birds—sometimes a lot of them—through oil drilling or because of wind power and communications towers, the Washington Post reports. Eight states are now suing the Interior Department, citing the millions of dollars that birdwatchers and bird-hunting licenses bring to their economies annually, and the birds’ cultural and ecological value, among other benefits.

What Horses Knead

Nebraska’s equine massagers aren’t looking this gift horse in the mouth. After six years, the state’s massagers succeeded in convincing lawmakers, and the governor, to change a law that once required them to be licensed veterinarians themselves, work in conjunction with a vet or be certified in human massage therapy. Pew’s Stateline reports that Nebraska’s move is in line with those in other states to loosen requirements for occupations ranging from hair braiders and dental hygienists to florists and interior designers. Some states, however, are considering tighter restrictions, reflecting lawmakers’ attempts to balance access to jobs with consumer safety. New Jersey, for example, may require licenses for dog groomers, following an investigation documenting 47 cases in 14 states since 2008 in which dogs died during or shortly after being groomed.



The Last Straw?

To sip your drink through a plastic straw at many California restaurants, you’ll now have to ask for one. A new, first-in-the-nation law bars dine-in restaurants from giving customers plastic straws unless they are requested, the Los Angeles Times reports. The law, which takes effect Jan. 1, “will minimize the harmful impacts of single-use plastic straws in the environment,” says Assemblyman Ian Calderon (D), who introduced the measure. But limits on straws concern some in the disabled community, who say they are needed by people who don’t have the arm or hand strength to lift cups and glasses. And some lawmakers object to the state meddling in restaurants’ affairs. “When I take my wife out to eat ... I’m not looking for a lecture on straws and ocean health,” says Assemblyman Deven Mathis (R). The law exempts fast-food restaurants and provides full-service restaurants with written warnings for the first two violations and a fine of \$25 a day for subsequent infractions. At least five other legislatures considered measures this year to ban plastic straws or recognize their negative environmental impact. Most of those bills are still pending.



Maternal Health Alert

What do the United States, Afghanistan, Lesotho and Swaziland have in common? Rising maternal mortality rates. Over the last three decades, as the number of women dying from childbirth has steadily declined around the world, it’s grown in the United States. But, as Pew’s Stateline reports, one state is bucking that trend: California, where the state’s Department of Public Health calculates that between 2006 and 2013, the maternal mortality rate fell by 55 percent, from 16.9 to 7.3 deaths for every 100,000 live births. That equates to saving about one life in every 10,000 live births, a rate in line with those in Western Europe. During that same period, the U.S. rate rose from 13.3 to 22, according to federal data. Health experts aren’t certain why the U.S. rate is so high but point to poverty, untreated chronic conditions and a lack of access to health care, especially in rural areas, as likely factors.

Update on Dieselgate

The \$4.7 billion Volkswagen settlement, reached in 2016 following the automaker's diesel scandal, includes \$2 billion to be used for electric-car-charging infrastructure and the promotion of zero-emission vehicles. States receive a portion of the ZEV

Investment Fund, as it's known, based on the number of VW diesel cars sold and driven in each. States have a lot of leeway in spending the funds, Sierra magazine reports, and are now beginning to publicize their plans. Some states, like Washington, are opting to electrify transit vehicles and others, such as Georgia, are considering fleet upgrades that might include a mix of electric, natural gas, propane or even "clean diesel" vehicles. School bus

replacement is emerging as a popular option in several state plans. That's welcome news to environmentalists and child-health advocates because the nation's 480,000 mostly diesel-powered school buses make up its largest transit fleet. Replacing them could reduce diesel pollution, protect kids' health and juice the electric-vehicle market.



Paddle Policy

In updating his charter school's "disciplinary toolbox," one Georgia superintendent is going decidedly old-school. Under a new policy, students will be paddled—that is, spanked on the behind with a wooden board—after their third disciplinary offense, if parents give the school their consent, CBS News reports. About a third of the parents who returned the school's consent form gave their permission. If parents opt out, they must agree to suspensions of up to five days as punishment for their kids. Paddling, which is legal in 20 states including Georgia, remains controversial. The American Academy of Pediatrics opposes corporal punishment in schools, saying hitting kids impairs their self-image and school achievement.

Where Voting Is Easiest, Hardest

It's not voter fraud that's shaping elections, according to one new study. Rather, states are influencing who votes by making it easier or harder to cast a ballot. Analyzing 33 variables related to registration and voting laws, researchers led by the University of Northern Illinois created a "Cost of Voting Index" to rank each state according to the time and effort it took to vote in each presidential election year from 1996 through 2016. A second report, *Improving the Voter Experience*, from the Bipartisan Policy Center, suggests it is long lines that states can (and should) address to make voting easier. At the same time, the Heritage Foundation added new entries this year to its Election Fraud Cases from Across the United States database. The one thing these experts agree on: voting matters.

Trainers Without Borders

An athletic trainer who travels to an out-of-state event can treat an injured athlete from her team, but much of the time she does so at her own risk. In many states, medical liability insurance does not cover the services performed by sports medicine professionals outside the state where they are licensed. That leaves them vulnerable to lawsuits and loss of professional licenses. New federal legislation, the Sports Medicine Licensure Clarity Act, would protect trainers by treating services provided in a secondary state as having occurred in the primary state, if licensure requirements are similar. The measure, which is backed by the National Athletic Trainers' Association, the NCAA and all major American professional sports leagues, has passed both houses of Congress and awaits President Trump's signature.



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Director of Government Relations
National Association of Convenience Stores



Ever since the U.S. Supreme Court opened the door for sports betting, state after state has been wrestling with countless issue challenges that betting presents. Should our state open the door as well? If so, who can bet? How do they bet? On what can they bet? Where do they bet? If online, how do you protect kids? Question after question is rife with significant economic, social and of course, political implications.

The convenience store industry is no stranger to the challenges our legislators are facing. Very few industries have as much regulatory connectivity to state governments than ours and we view ourselves as partners with them in countless ways. Whether it's the tax and regulatory frameworks around motor fuel, tobacco, lotteries, food and beverage – you name it – our industry works with regulators every day to make sure our products are safe, our customers are protected and our communities are secure.

As for sports betting, we have no opinion one way or the other whether states should go down that road or not. It is for them to decide for themselves. But if states do choose to open the doors to sports betting, our hope is that they don't choose winners and losers – that some businesses are authorized

to participate and others are not. Our hope is for a level playing field for all that wish to partner with the state in this new business.

We have demonstrated our vigilance as an industry when it comes to protecting underage kids from tobacco, alcohol and other products. Our identification compliance programs are best in class and we work with federal, state and local regulatory and law enforcement agencies across the country to ensure that underage kids will not have access to tobacco and alcohol. We can be counted on as well to protect kids from illegal betting. We have also demonstrated that we're a valued and longtime partner of states as we help them administer their various lottery programs. We can be counted on to bring that same level of cooperation to assist in administering their efforts on sports betting.

We appreciate the challenges that this issue will continue to bring for states and elected officials. We hope that we are afforded the opportunity to be a participant in their deliberations as it pertains to sports betting and look forward to building on our longstanding partnerships with the states as we work together to serve our communities.

From left, California Senate staffers Claudia Mendoza-Perez, Heshani Wijemanne and Anabel Urbina at an NCSL meeting in Madison, Wisc.

WISCONSIN ASSEMBLY STAFF PHOTO

NCSL Legislative Staff Week

DECEMBER 10-14

WELCOME TO STAFF WEEK

Enjoy the staff-focused stories in this special section, and look for more on NCSL's website, blog, social media pages and the "Our American States" podcast.

Why aren't you doing any work?"

A constituent asked me that question several years ago. It was early in the session, and he was upset because both chambers of the Texas Legislature were meeting for very short periods with several days in between. Given that I had just worked through the previous night on language for a bill, I knew that the first response that popped into my head was probably not going to be appropriate, so I struggled to find a better, more informative reply that would not result in my termination.



Jon Heining
Texas Legislative
Council

I asked the constituent if he had ever considered what goes into even a small wedding, from the best man writing his toast, to the artisans who make the bride's bouquet, to the cooks who prepare the reception buffet. I reminded him that those folks are working—often furiously—out of sight of the bride, the groom and the guests. I also pointed out that, while

what the bride and groom did during the ceremony was the most important part of the wedding, all those things happening in the background were critical to the success of the event. I assured him that, although he couldn't see it when he tuned in to watch the Legislature on TV, we were indeed hard at work ensuring that lawmakers would be successful in doing the people's business over the coming months.

The constituent was wholly and unreservedly unconvinced by my metaphor, but I've used it to some success since.

Many of you working behind the scenes, at times furiously, in your legislatures can probably relate, and I proudly wish you a happy Legislative Staff Week. Twice a year, NCSL puts a spotlight on all the folks like you who help to ensure the success of our legislatures across the nation.

Legislative staffers seldom get the attention they deserve. True, many staff like it that way. But NCSL knows how

vital you are. So, during the second week of December, we celebrate your contributions, appreciate your hard work and encourage each one of you to get involved in NCSL. This is your organization.

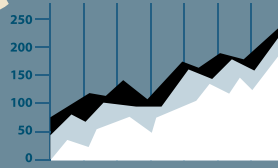
And remember, these NCSL resources are available year-round to all legislative staff:

- A network of policy experts and a database full of state policy research—available 24/7.
- Enriching annual development seminars for each of NCSL's professional staff associations.
- Engaging webinars filled with innovative ideas and best practices designed specifically for staff.
- The Legislative Staff Management Institute—the pre-eminent professional development seminar for legislative staff.
- State Legislatures magazine, which showcases legislative staff to a national audience like no other publication out there.

We have a lot more in the works for 2019. It's time to get involved and make NCSL work for you!

—Jon Heining, NCSL staff chair

As Simple As ABC



Reorient your to-do list to unlock your productivity potential.

BY CURT STEDRON

New year, new you. The start of a new legislative session offers the chance for a fresh start. To do things differently this time around, to create new (ideally good!) habits and routines. To make better use of time with the hope of feeling slightly less depleted at the end of the session.

The challenge is one we all know: Accomplish more, in less time.

In the increasingly busy and chaotic world

of the legislature, staffers regularly face this paradoxical demand. Yet doing more with less requires not so much an increase in effort as a sharper focus on what truly matters, and a system of prioritizing tasks that makes that distinction crystal clear. In the words of efficiency expert Stephen R. Covey, “The key is not to prioritize what’s on your schedule, but to schedule your priorities.”

Many of us try to focus on our priorities by making lists. But the to-do list of a typical leg-



Curt Stedron is a program principal in NCSL’s Leaders Services and Legislative Training Program.

Flip Your To-Do Script

Reorient your to-do list from a vertical to a horizontal layout and you’ll see immediately what your priorities are.

A (Crucial)	B (Important)	C (Nice to do)	D (Delegate)	E (Eliminate or extend)
Complete bill draft and deliver to sponsor	Complete bill analysis before committee deadline	Update state agency contact list	Accompany school group on capitol tour	Drop by sponsored luncheon for free food
Complete and file bill summary before leaving for the day	Complete report for committee hearing in two days	Begin preparation, for interim	Print copies of presentation for colleagues	Unproductive standing weekly meeting
	Write talking points for next week’s event and deliver to legislator	Research anticipated issue		
		Revise news release template		



Manage Energy and Stress—and Do More With Less

When the American Society of Legislative Clerks and Secretaries met in Madison, Wisc., in September, Cindy Maher and Jamie Guite, with Leading Edge Coaching and Development, led an enlightening and entertaining workshop on managing energy and stress in a high-change, high-pressure environment. (Sound familiar?) The workshop was inspired by a Harvard Business Review article, “Manage Your Energy, Not Your Time,” by Tony Schwartz and Catherine McCarthy.

Resilience, Maher and Guite said, is critical for adapting to change and is affected by how much control we think we have over events—something psychologists describe as our locus of control. If our locus is internal, we make things happen; if it’s external, things happen to us. This in turn affects how we perceive change.

“People can cultivate positive energy by learning to change the stories they tell themselves about the events in their lives,” Schwartz and McCarthy write.

According to Maher, the connection between energy and productivity is this:

- ◆ All of us are required to do more with less. That usually means we work longer. The problem is that time is a finite resource; we only get 24 hours in a day. But energy is renewable.
- ◆ Energy (our capacity to work) is renewed through four wellsprings:
 - Physical: Exercise, eat well, take breaks during the workday.
 - Mental (our ability to focus): Avoid multitasking, tackle strategic or difficult tasks at the beginning of the day, learn to manage interruptions.
 - Emotional: Pay attention to your emotions (and their triggers) so you can better control them and feel happier at work. Make a habit of expressing appreciation for others.
 - Spirit: Ensure your work aligns with your values. Carve out time in every workday for what you do best and enjoy most. Allocate time and energy to other areas of your life: family, health, helping others.
- ◆ When we ignore our wellsprings, we’re like cars that run out of gas. We are less productive.

—Holly South

Holly South is a policy specialist in NCSL’s Legislative Staff Services Program.

islatiue staffer can be intimidating. Often, there are simply too many tasks for one person to accomplish in any given day. Those unfinished items inevitably spill over onto the next day’s list, and as the cycle repeats itself the accumulation of unmet goals can become paralyzing. Complicating matters are the limitations of the traditional to-do list: We tend to add items randomly, which gives us no real sense of their relative importance and, as a result, no clear order of execution.

Fortunately, there is a simple way to reorganize the traditional to-do list into a tool that clearly defines the most important tasks, while indicating the optimal order in which to tackle them. Productivity guru Brian Tracy calls it the ABCDE Method, which he outlines in his book “Eat That Frog!” His system lets you group tasks into five lettered categories, generating a visual road map for efficient execution. Each letter stands for a different level of importance:

- **A:** Very important; highest priority; serious consequences if not completed.
- **B:** Important; a priority; moderate or minor consequences if not completed.
- **C:** Nice to do; no negative consequences if not completed.
- **D:** Delegate; someone else can complete this task for me.

- **E:** Eliminate or extend; low priority; doesn’t really belong on the list.

The first step is to assign each of your tasks to a category. Tracy notes that the successful use of this method requires an ability to discern the essential from the important. Think of it like medical triage: Stopping the bleeding is essential, splinting a limb is important, administering aspirin is nice to do. Increasing productivity requires ruthless prioritization.

Next, flip your to-do list from vertical to horizontal. Now you have five columns across the page, one for each letter, rather than a random list down the page.

Instantly, your priorities become clear. A task that may have languished halfway down your traditional list is now clearly an “A” priority. And one that may have felt satisfying to cross off is seen to rate an “E”—unworthy of the time you would have spent accomplishing it. Your order

of execution also becomes obvious: Work from left to right, tackling “A” tasks before moving to “B” tasks.

But the greatest benefit of this method may be the way it makes a previously daunting list seem suddenly more manageable. Even the busiest staffers will find they have far fewer “A” tasks than “B” or “C” tasks. And three tasks in your “A” column will always be less intimidating than 14 tasks listed in the old vertical method.

In the legislative environment, increased productivity can sometimes seem like a unicorn—a mythical entity that people talk about but never see. Yet by reorienting the way we look at our priorities, we can transform our to-do lists from long and overwhelming to focused and achievable.

At its core, productivity is a function of knowing what is essential, and of doing those things first. Turns out, it’s as simple as ABC.

A Family Thing

Not many dads and daughters share a love of parliamentary procedure like these two.

BY HOLLY SOUTH



Although it's not uncommon for a daughter to follow a parent into a law career, it's more than a little unusual to follow one into legislative administration. But that's what Morgan Speer did. She's the calendar clerk for the Colorado Senate. Her dad? He's Alfred W. "Butch" Speer, longtime clerk of the Louisiana House of Representatives.

Morgan grew up accompanying her parents each summer to NCSL's Legislative Summit and now gets to see them at meetings of the American Society of Legislative Clerks and Secretaries. Neither Speer would have predicted this outcome—nor the paths their careers have taken.

His Path—Seek Cool Air

Butch Speer was working long hours outdoors in the heat for the agriculture department at Louisiana State University during his sophomore year when he heard about a job at the House of Representatives. It was, he jokes, "inside, with air conditioning, so it sounded like a great opportunity." It was indeed. He worked himself up from assistant head page to

endorsement clerk and stayed for the remainder of his college and law school days.

He balanced his role as assistant clerk with his private law practice outside of session for several years, until the House clerk was forced to leave office for health reasons. Taking over was one of the most difficult times of Speer's career, he says, even after 11 years working beside the former clerk. "It's a different set of circumstances when it's all you."

His next session—his first as an elected clerk—wasn't much easier. Governor Edwin Edwards, a Democrat, decided to remove Republicans from all leadership positions, thrusting the Legislature into "political turmoil."

Louisiana politics up to that time (and for years after) was defined less by party and more by those in favor of or opposed to the governor. But that changed during Edwards' tenure. "Learning to be clerk at a time when the body was going through serious partisan strife was very difficult," Speer says, noting that things aren't much different in the chamber today. Rancor on the floor between members, and between the governor's office

Holly South is a policy specialist in NCSL's Legislative Staff Services Program.



Her Path—Be an Out-of-Court Lawyer

Morgan shares her father’s desire to remain nonpartisan. “The nonpartisan desk staff is a huge benefit to state legislatures,” she says. “Keeping staff nonpartisan allows for longevity, a better process, and legislation to pass the way it should.”

After college in Denver, Morgan wanted to go to law school but “was not excited about the concept of being a courtroom attorney.” Her father encouraged her to apply anyway, because law school taught him “how to think, analyze problems, how to form arguments, how to write,” he says. “It doesn’t mean you have to practice.” He knew there were plenty of places where she could apply her degree, and Morgan found one, starting as a ses-

upbringing was a good start, with regular dinnertime conversations about national news, history and politics. Her mother, Carol, also worked for years in politics, dealing with campaign finance and fundraising. Together, her parents “have instilled a faith in government and respect for government procedure,” she says. “I’m not overly patient and I wish I were a better listener, but I think a lot of it is knowing the process, understanding the process and wanting to understand what you don’t know about the process.”

Plus, she adds, you need “intuition as to when to step in and when not to step in.”

For the Love of Procedures

Her father, she says, is extremely skilled at that. “He’s a very patient person, a good listener, he knows everything before he acts. He’s incredibly intelligent ... an expert on parliamentary procedure.” He’s the reason she’s “obsessed with Mason’s Manual as the ultimate authority on parliamentary procedure.”

Butch chairs the Mason’s Manual Commission, which is charged with editing the 2020 edition of the handbook that’s used by most state legislatures. He has served as NCSL staff chair and as president of the American Society of Legislative Clerks and Secretaries.

“I never thought she’d follow this career path,” Butch says, “because she is so independent. ... All we ever wanted was for her to pursue something that would give her fulfillment and joy.”

Morgan has found both. “There’s something to be said for the middlemen—those who direct the process—being dedicated and competent long-term public servants,” she says. “I see substantial benefit in not having a lot of turnover. I can see myself staying around.”

And her father is just a phone call away, though he plans to retire at the end of next year. After 36 years as elected clerk, Butch Speer will likely always be a sounding board for his daughter, regardless of where she works. He just wants her to enjoy her work and be challenged. For now, the Colorado Senate is a perfect fit.



and the membership, means no one’s job is easy, he says.

Further complicating matters, he suspects his longtime status as clerk may prevent some members from seeking his advice. “I’ve operated as a truly, completely 100 percent nonpartisan clerical officer,” he says, “but there’s a lot of distrust these days and it rubs off.” He believes it’s made some members fear seeking the advice they need. “Which makes their job more difficult—and mine as well.”

session-only staffer three years ago for the Colorado secretary of the Senate.

Her father describes Morgan as “argumentative and hard-nosed.” She believes in following the rules but is “a much nicer person than I am,” he says. “The concept of rules, structures, a right way to do things, that the end doesn’t always justify the means—it takes a fairly rigid-thinking person to do well in our environment.”

Now a full-time staffer for the Colorado Senate, Morgan feels she’s in the right place. She acknowledges that her

Why I Love the Legislature

Legislative staffers tell us why they feel at home in the statehouse.

By HOLLY SOUTH and PAM GREENBERG

BRITTANY YUNKER-CARLSON

Status and Minute Clerk
Washington Senate



“My job is not to go to the moon, but to get others there (and back) while looking good on camera.”

Who says what you do in middle school doesn't really matter? Brittany Yunker-Carlson was a legislative page back then, and those connections helped her land what she calls her first “real” job as a committee services staffer for the Washington Senate. Now in her 10th year with the Senate, she updates daily calendars and the status of bills and takes notes for the journal.

“I like to say that I work in ‘mission control’ at the Senate,” she says. “My job is not to go to the moon, but to get others there (and back) while looking good on camera and with no major incidents. I support the process—the mission—even if that means working into the wee hours or skiing 3 miles into work”—which got her into the national news after Washington’s “snowpo-

calypse” of 2012 closed down the roads.

Yunker-Carlson is probably best known, however, for what she did before her work at the Legislature. After finishing college and spending a few years working as a fishing guide in Alaska and Chile, she wanted a home of her own. Armed with a basic building plan she found online and some experienced friends, she set out to build a “tiny house,” on wheels, of course, so she’d be at home wherever she was. Five months and a few blisters later, she had a 165-square-foot home to show for it—“an upgrade from dorm rooms and shared houses,” she says with a laugh.

Although her home was on wheels, she found the job at the Capitol and has stayed put.

She works alongside Cyrus Habib (D), the nation’s first blind lieutenant governor, who presides over the Senate “mostly unscripted,” she says. “He has presided fairly, giving equal time to both sides and managing debate turn by turn across the aisle.”

Yunker-Carlson’s seat at the rostrum puts her right where the action is during floor debate, and she loves hearing both sides of an issue. “Especially in the era of smartphones, Facebook, web history and cookies, our devices learn our browsing history and continually show us what ... we like to view, so we’re rarely exposed to different perspectives,” she says. “Now, more than ever, we need to work hard to hear from those with varying viewpoints and work together to find consensus.”

The cyclical nature of legislative work is a good fit for her more recent role as landlady: After two years in her tiny house, she married and now rents out her little “Bayside Bungalow” during the summer months, managing the bookkeeping and maintenance when the Legislature is out of session.

Holly South is a policy specialist and Pam Greenberg is a senior fellow; both are in NCSL’s Legislative Staff Services Program.

KRISTA LEE

Executive Director,
Fiscal Review Committee
Tennessee General Assembly



“Always listen more than you talk and make connections with staff in parallel roles.”

Krista Lee is one of many legislative employees whose internship turned into a career with the legislature. Hers was with the Tennessee Senate, and she admits she “had no clue” what a health care fiscal analyst did but recalls feeling very lucky to earn a full-time position. She still feels lucky.

“Fourteen years and hundreds of responsibilities later, I am still hooked.”

Now executive director of the Tennessee General Assembly’s Fiscal Review Committee, Lee oversees “fiscal analysis of all legislation, annual revenue projections, state contract review and oversight, and general oversight of all state fiscal matters.”

In order for her office to produce an accurate, unbiased work product, its only concern is nonpolitical: “whether the legislation will generate revenue, cost money, or both.”

Because of this “unique perspective” on the legislative process, she’s found it important to develop relationships with peers from other states. Her “favorite

fiscal minds” include Patrick Goldsmith in Louisiana, Melody DeBussey in Georgia and Kirk Fulford in Alabama, all of whom she met through her involvement in NCSL.

Her greatest source of pride, however, are the relationships she’s cultivated closer to home—between her committee and the legislature and among coworkers in her office.

Her secret for building strong relationships? “Always listen more than you talk.” Following her own advice has helped to improve communication between her office and the legislature.

“In the past, our office was perceived as very closed off,” she says. “Members did not feel comfortable discussing our work with us and did not feel they had a voice within the fiscal analysis process. We still have work to do ... but we are more open, transparent and available than ever before. Our relationship with the legislature gets better each year.”

She credits the support from committee leadership. Senator Ken Yager (R), the committee chair, ensures that the staff is supported, included and appreciated. The committee’s vice chair, Representative Mark White (R), has “worked tirelessly to understand our office and gave us an endless amount of support.”

She’s also gratified by the atmosphere in her office. “We truly are a team. Everyone loves each other and considers everyone family. We may argue and feel frustrations, but at the end of the day we completely support each other through professional and personal experiences.”

No surprise, then, that she considers the most rewarding part of her job to be “the cultivation of talented fiscal analysts,” some of whom she’s worked with for nearly 10 years. With each session, she’s seen them improve their command of the material and their ability to find efficiencies. Perhaps most satisfying is that they’ve become less dependent on others for information.

“While we are continually improving each day, I am confident our office is one of the most talented in the country.”

MANISH JANI

**Deputy Director,
Legislative Council Staff
Colorado General Assembly**



“I love that there is still something new to learn every day.”

For Manish Jani, the most important word in the phrase “information technology” is not “technology”—it’s “information.”

“At a basic level, the legislature’s most valuable resource after legislators and staff is information,” he says. “Lawmaking depends on information, and IT plays a significant role in information gathering, analysis, curation, distribution and consumption. Providing the right information at the right time needs to be front and center for staff.”

Jani’s path to the legislature began in Mumbai, India, where he was born and raised. After completing a graduate program in computer applications, he got a job with IBM in Boulder, Colo. After a few years of moving around the country with the tech giant, Jani was ready to put down roots. He chose Colorado and found a job as a programmer for the state’s Legislative Information Services.

“I have been here for about 15 years, and I love that there is still something new to learn every day,” he says. His role as manager and leader of the IT function for the legislature during the past seven years has taught him much about the legal, research, budget and audit functions of the statehouse.

Jani says the various roles he’s held in the

private sector and the legislature have one thing in common: “working closely with people to identify and solve problems.”

Adding more employees is not often possible, but “IT acts as a force multiplier,” he says, helping staff do their job easier and faster. “There are times we can see a solution where the problem has not been explicitly stated.”

Jani is proud of the projects he and his staff have been able to achieve. “We have moved from a purely operational and stay-safe mind-set to an innovation-focused, calculated-risk-taking approach with support from senior management.”

Successes include the turnaround of a failing voting system; a revamp of an 18-year-old website, including bringing all six service agencies under one brand; an “iLegislate” app specifically for members; display boards showing floor and committee actions; and the establishment of a new budgeting system. “I am also proud of having been able to get an information security practice started in the Colorado legislature.”

Increasingly, organizations are viewing IT not as a purely support function but as being critical to their strategic success, Jani says. It’s not surprising, then, that he has just taken on the deputy director role for the Legislative Council staff agency. In his new position, Jani is responsible for strategic planning, outreach, market research and competitive analysis, strategic initiatives, change management, and process improvement across all the council’s functions, including committee work, research, economic forecasts, fiscal analysis, constituent services and IT.

Noting that the only constant is change, Jani and his team work to provide the best products and services for the institution. “As the use of technologies like artificial intelligence, blockchain, the ‘internet of things,’ etc., increase in our daily lives, our work will continually evolve,” he says.

What makes his work for the legislature rewarding? “There is a clear sense of purpose and you can see your work’s direct impact,” Jani says.

“That is very satisfying.”

The Front Line

The criminal justice system is getting a front-end makeover.

BY AMBER WIDGERY

State and local policymakers are turning their attention from the back end of the criminal justice system—who goes to prison and for how long—to the front end. They are focusing on helping people avoid involvement in the system altogether, rerouting those who get caught up in it but don't belong, and helping those already involved from getting in even deeper.

Back-end changes over the last decade have led to cost savings and a decline in prison populations in many states, but they've addressed only one lever in the complex machinery of the American justice system. And they haven't stemmed the tide of individuals coming through the system's front door.

Nearly 12 million people are booked into county jails each year—almost 19 times the admissions to state and federal prisons combined. Nationally, our jails are bursting at the seams and most people—sentenced offenders and those detained before trial—are there for nonviolent traffic, property, drug or other public order offenses.

Research shows that even a few days in jail can harm an individual's employment prospects and health and can increase the chances they will reoffend or be incarcerated in the future, making jails a virtual gateway to further crime and punishment.

Front-end reforms are aimed at reducing this influx. They require rethinking the way America uses jails, including:

- Expanding community-based services like housing programs and treatment for mental health and addiction to prevent justice involvement and to help jail inmates successfully reenter the community.
- Supporting programs like LEAD (Law Enforcement Assisted Diversion), which allows

Amber Widgery, Amanda Essex and Rebecca Pirius are senior policy specialists in NCSL's Criminal Justice Program.



12 million people are booked into county jails each year.

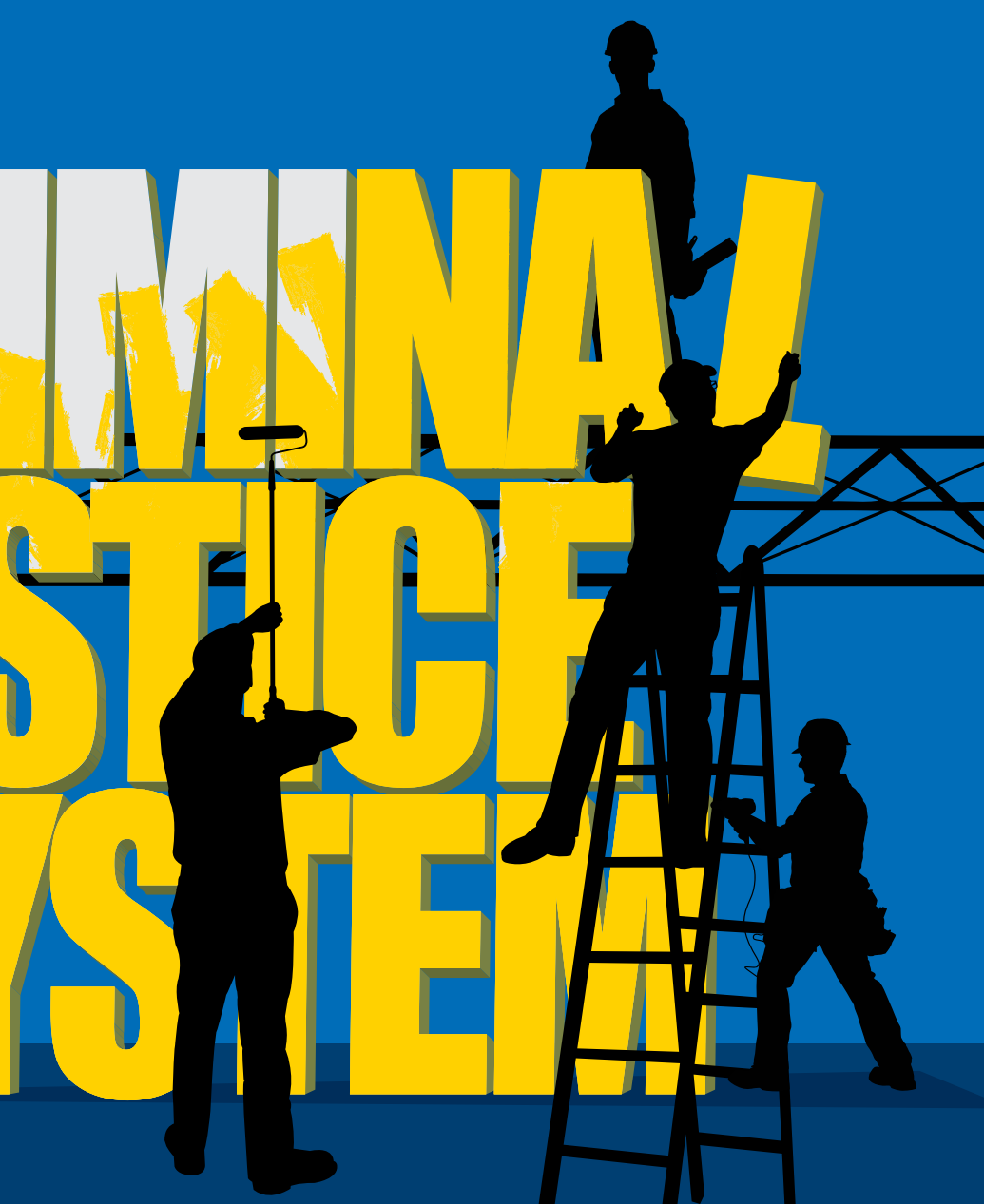
law enforcement officers to redirect low-level drug offenders to community-based services, instead of jail and prosecution.

- Changing bail/pretrial release policies to create a system that's person-based, not wealth-based.

Starting With the Facts

Many front-end justice reforms have been kick-started by the need to address jail overcrowding. With jails across the nation operating at or above capacity, officials have been forced to improvise, double- or triple-bunking inmates and turning common areas into makeshift dormitories.

These extreme conditions have prompted



What Makes Up the Complex Criminal Justice System?

- 1,719 state prisons
- 102 federal prisons
- 1,852 juvenile correctional facilities
- 3,163 local jails
- 80 Indian jails
- A variety of military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the territories.

Source: *PrisonPolicy.org*

Change at All Levels

The justice system encompasses states, counties, cities, courts, law enforcement agencies and other local entities. All of these stakeholders are part of a national movement to improve the system—driving change at all levels.

Many innovative efforts are supported by national campaigns, including:

- The John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge—A network of 43 counties, seven cities and two states committed to changing how America thinks about and uses jails.

- The Stepping Up Initiative—A national partnership between the Council of State Governments Justice Center, the National Association of Counties and the American Psychiatric Association Foundation encompassing 455 counties dedicated to reducing the number of people with mental illness in jail.

- The Laura and John Arnold Foundation’s Public Safety Assessment—A suite of resources supporting at least 40 jurisdictions, including the states of Arizona, Kentucky and New Jersey, to implement pretrial risk assessment.

- Measures for Justice—An effort, funded by the Chan Zuckerberg Initiative, Google, and the MacArthur and Arnold foundations, to collect county-level criminal justice data and report information from 20 states by 2020.

There’s no quick fix to the issues at the system’s front end, but doing nothing will certainly not solve the problems and could even make them worse.

some local officials to take a closer look at who is in jail, why they are there and whether their detention promotes or hinders public safety.

National data show that people having a mental health crisis are more likely to encounter law enforcement than medical assistance. Data also show that most people in local jails have not been convicted, but are awaiting trial, and that nearly 70 percent of those detainees are held on traffic, property or drug charges, not for violent offenses.

But the devil is in the data we don’t have. It is hard to find statewide data that are current, uniform and comprehensive. Cities and counties are responsible for large portions of the criminal justice system infrastructure. Localities often collect data in different formats or by using different metrics. Some don’t collect data at all. As

a result, it can be difficult to piece together a clear statewide picture of the justice system.

Florida is the first state to pass legislation to address this issue by requiring information across the system to be compiled in a publicly available central database. The measure passed with nearly unanimous support.

“It’s hard to fight the idea of being completely transparent,” says Representative Chris Sprowls (R), a former prosecutor.



Representative
Chris Sprowls
Florida

Nearly 70 percent of pretrial detainees are held on nonviolent charges.

Police, Policy, People

Police departments and lawmakers are striving to create safer communities.

BY AMANDA ESSEX

From holding lip-sync challenges to negotiating serious policy changes, law enforcement officials, citizens and policymakers are working together to create safer communities and increase police effectiveness. Efforts can be seen at all levels of government. At the state level, the volume of legislation addressing law enforcement has increased significantly in the last few years. In 2017 alone, lawmakers introduced some 1,500 bills nationwide and enacted more than 260 of them. That’s a big leap from the 93 new laws passed in 2016 and 64 in 2015. Police have worked with legislators in the development of some of these new laws.

States and law enforcement agencies have re-evaluated their use-of-force policies in light of high-profile incidents involving police and community members. New approaches to dealing with mental illness and emerging technologies have also spurred changes.

Significant legislative trends in recent years include alternatives to arrest, law enforcement training and officer safety.

Not Just Arrests

It used to be that when law enforcement officers encountered someone having a mental health crisis, the only option available was to arrest that person and hold him or her in custody.

As we recognize the unique response required for people with behavioral health needs, however, police options are changing. A few state legislatures have expanded police authority, allowing officers to take people in crisis to treatment facilities or

260 bills on law enforcement passed in 2017

hospitals to address their needs.

A bill signed in August in Illinois supports programs that direct people with substance use disorders away from the criminal justice system and into treatment services. Known as “deflection,” an officer makes the connection between a person who might otherwise have been arrested and a treatment provider or medical professional.

The new law acknowledges that “law enforcement officers have a unique opportunity to facilitate connections to community-based behavioral health interventions that provide substance use treatment and can help save and restore lives,” reduce drug use, overdoses, crime and recidivism, “and help prevent arrest and conviction records that destabilize health, families and opportunities for community citizenship and self-sufficiency.”

A current Illinois police chief and a former chief and current city manager were instrumental in getting the legislation passed. Eric Guenther, chief of police in Mundelein, Ill., says the legislation is unique because it “recognizes a paradigm shift in law enforcement’s approach to those who struggle with substance use.”

Danny Langloss, city manager and former police chief in Dixon, Ill., describes the enactment of the law as a “hopeful day for Illinois law enforcement and those suffering from substance use disorder. ... With this bill, the police now have new programs

Front-End Justice at Work

When Greg began destroying property and disturbing the peace in his rural Nebraska hometown, the sheriff’s deputy was called. Normally, Greg (a pseudonym) would have been arrested. But he was acting so strangely, claiming God was sending him important messages, that the deputy requested assistance from a remote mobile crisis response team, which recommended that Greg receive immediate medical attention instead of being placed in custody. Greg was airlifted to a regional hospital, where doctors discovered a large tumor on his brain.

at their disposal that save lives and make our communities safer.”

Kentucky, New Jersey and Texas are among the states that have enacted laws allowing deflection programs.

Law Enforcement Training

States also are requiring officers to complete training on how to respond to someone experiencing an acute crisis. Alabama, California, Montana and South Carolina are among the states to require or encourage crisis intervention training for officers.

A resolution adopted by the Alabama Legislature in 2017 encouraged the state’s Peace Officers Standards and Training Commission to offer mental health awareness training. Resolution sponsor Representative Mike Ball (R) says the training is important because it might allow an officer to avoid using force—especially deadly force. “Nobody wants to use deadly force, though in some instances you might have to,” he says. “But we need our officers trained to de-escalate.”



Representative Mike Ball Alabama

Arkansas requires officers in the police academy to complete at least 16 hours of training on behavioral health crisis intervention, and South Carolina requires some officers to complete continuing education credits addressing mental health or addictive disorders. Both states’ requirements were put in place in 2017.

POLICY



Protecting Those Who Serve

Training requirements ensure that officers are prepared to protect themselves in a crisis, to diffuse dangerous situations and to prevent harm to the people they encounter.

States also are considering the mental health needs of their officers, about a quarter of whom have thoughts of suicide, according to The National Alliance on Mental Illness. In addition, law enforcement professionals report “much higher rates of depression, PTSD, burnout and other anxiety-related mental health conditions” than the public.

Colorado created a task force that studied the effect of post-traumatic stress disorder on police officers, many of whom see “horrific things the vast majority of the public will never see,” Sgt. Sean Harper, one of the task force co-chairs, says.

Among the task force recommendations lawmakers incorporated in legislation was making counseling services available to officers. “Who protects the protectors when they fall down?” asked Representative Jonathan Singer (D) before introducing the legislation. The state now includes PTSD among the conditions that qualify for workers’ compensation.

As the body of evidence and research grows, legislatures will be better equipped to make policy decisions that lead to safer communities and promote police effectiveness.



Representative
Jonathan Singer
Colorado

Opioids: What’s Working

State lawmakers are all too familiar with the human costs and policy challenges associated with opioid misuse. They also recognize the need for collaboration between health, criminal justice and other professionals whose daily work is touched by the epidemic and who can aid in preventing overdoses.

Lawmakers have led efforts to forge new partnerships between criminal justice and health care stakeholders and have encouraged evidence-based practices. Recent legislation has focused on intervening at the front end of the justice system by rerouting people toward community-based treatment and other supports before they are arrested and by increasing access to treatment for people involved in the system.

Recent research has shown the effectiveness of these collaborations in reducing overdose deaths. A new publication from the Centers for Disease Control and Prevention, “Evidence-Based Strategies for Preventing Opioid Overdose: What’s Working in the United States,” identified 10 best practices, some of which directly involve collaboration between public health and public safety partners.

Access to naloxone, the opioid-overdose antidote, is the focus of two of the strategies. Putting naloxone into the hands of individuals reentering the community after a period of incarceration can help mitigate their heightened risk of overdose. Providing the antidote to people likely to witness or respond to an overdose, such as law enforcement officers, also has been shown to save lives. Every state has a naloxone access law, and by the end of 2016 it was estimated that more than 1,200 law enforcement agencies had naloxone programs.

Bystanders who witness an overdose often have been using opioids themselves and may be hesitant to call 911 for help. All but five states have adopted a 911 Good Samaritan Law, which provides limited immunity for bystanders and overdose victims who seek medical assistance.

People who have had contact with the justice system have disproportionately high rates of substance use disorders. But correctional facilities are not always able to provide comprehensive treatment. In fact, abstinence requirements often disrupt medication-assisted treatment. In its report, the CDC identified expansion of such treatment as one of its best practices.

Equally important is ensuring continuity of care for people leaving the system by establishing links to treatment in the community. Several states have enacted legislation in the past few years to increase access to medication-assisted treatment, and some corrections facilities have started programs of their own.

The Rhode Island corrections department, for example, runs a statewide program that offers access to all FDA-approved medications for treating opioid addiction, something other correctional programs have been hesitant to authorize due to security concerns. After one year, fatal overdoses for recently incarcerated people dropped by 60 percent, and overdose fatalities statewide fell by 12 percent.

States will continue to innovate in their efforts to stem the opioid tide. Time will tell if those efforts are succeeding.

—Amber Widgerly

Pay Up or Stay Put

The ability to post bail plays a big role in who gets out of jail.

BY REBECCA PIRIUS

In the 1800s, a person could land in jail for not paying rent to his or her landlord.

Debtors' prisons were banished almost two centuries ago, but it's not uncommon to see the term in news headlines today. A debtor can no longer be locked up for failing to pay a private creditor, but people can end up behind bars if they can't pay their court fees or can't make bail before their case is heard. Pretrial defendants, despite being presumed innocent until proven guilty, can languish in jail, sometimes for months, without being convicted of a crime.

Recent criminal justice reforms are shedding light on the roles wealth and poverty play in determining who goes free.

Recent Reforms and Court Cases

Pretrial release and bail reform efforts, such as reducing reliance on cash bail and using non-financial release options, are sweeping the nation. In nearly half the states, the law starts with the presumption that certain defendants be released solely on their promise to appear.

Now, attention is turning to whether the accused's ability to pay should matter when setting bail. According to a report from the Federal Reserve, making bail would be a hardship for 40 percent of Americans, who say they do not have at least \$400 available in cash for unexpected, emergency expenses, like a flat tire or broken appliance, or a bail bond.

A California case made headlines earlier this year when a court ruled that a "defendant may not be imprisoned solely due to poverty." The case involves Kenneth Humphrey, then 63, who was accused of following a 79-year-old disabled man

40 percent of Americans do not have enough cash on hand to make bail.

into his apartment and demanding money. Humphrey has a history of substance abuse and several prior felony convictions. In this case, he allegedly took \$7 and a bottle of cologne from the man.

Bail was originally set at \$600,000, tantamount to a detention order for Humphrey. California's 1st District Court of Appeal held that the lower court's failure to consider what Humphrey could afford when setting his bail violated his due process and equal protection rights.

The case is just one of several nationwide in which bail schedules amount to a form of wealth-based detention. As courts address the issue, state legislatures are beginning to step in and tackle financial inequities associated with pretrial detention. Below are examples of several recent legislative efforts.

Ability to Pay

Ability-to-pay determinations often require courts to consider factors beyond a defendant's income and assets when setting bail. Courts must consider, for example, whether a defendant is a family's sole breadwinner. The goal is to prevent long-term detention of defendants who are neither a threat to public safety nor a flight risk. New Hampshire law, for example, states that the court "shall not impose a financial condition that will result in the pretrial detention of a person solely as a result of that financial condition."



Pretrial Fees and Options

A few states have extended ability-to-pay determinations to include pretrial supervision fees, such as those for electronic monitoring or substance use treatment. Nebraska directs the courts to waive pretrial supervision fees that a defendant cannot afford, while Illinois law presumes conditions of release are nonmonetary. California's recently enacted legislation goes the furthest by prohibiting courts from requiring a defendant to pay any pretrial supervision fees.

Use of community supervision as an alternative to jail is on the rise. A few days in jail can upend people's lives, costing them

BAIL

BY THE NUMBERS

40%

Portion of adults who don't have \$400 in cash for an unexpected event

88%

Portion of NYC defendants unable to post bond at their first court appearance

76%

Portion of NYC defendants unable to post bond of \$500 or less at first appearance

\$55,400

The average felony bail amount

62%

Portion of jail detainees who are not convicted

10,600,000

Annual jail admissions

Sources: Bureau of Justice Statistics, Felony Defendants in Large Urban Counties, 2009, December 2013; New York City Criminal Justice Agency, Annual Report 2016; BJS, Jail Inmates 2016, February 2018.



their jobs and financial stability. Supervision in the community lets defendants keep their jobs while protecting public safety.

States also are increasing the use of electronic monitoring and home detention—often used to supervise probationers and parolees—for pretrial detainees. A new Massachusetts law will soon enable sheriffs to recommend that the court place pretrial detainees unable to make bail in pretrial service programs. Vermont law now encourages judges to consider home detention if a defendant is unable to pay bail. And Louisiana's Lafourche Parish made permanent its Pretrial Home Incarceration Pilot Program, which includes electronic monitoring of defendants.

Second-Look Hearings


Some states require courts to take a “second look” at the bail amount initially ordered and determine whether inability to pay is keeping a detainee behind bars. Some states mandate a review after a certain time frame; others require the defendant or another party to make the motion. The time limits and procedures vary by state.

Delaware requires judicial review of pretrial release conditions within 10 days of detention, if the person is unable to make bail within 72 hours. In Texas, certain defendants who do not post bail after 48 hours are presumed to be unable to pay. Illinois not only requires a second-look

hearing, but also provides a \$30 credit against a detainee's 10 percent cash bond for every day he or she is detained pretrial. Once the bond amount reaches \$0, the defendant must be released.

A New Conversation

The dialogue on bail continues to change. This year, the Delaware legislature renamed its “system of bail” a “system governing the release of defendants pending a final determination of guilt.” Nebraska added statutory language directing courts to consider “all methods of bond and conditions of release to avoid pretrial incarceration.”

And California—well, California just entirely eliminated cash bail. 

NEWSMAKERS

NCSL welcomes 36 new presiding officers in chambers across 27 states and two territories for the 2019 session. These numbers, based on retirements, term limits and chambers flipped during the midterm elections, could change as officials determine final results, which weren't available at press time.

"That's the biggest asset that our state has is our roads and bridges and our railways and our waterways. If we don't do something ... then it's going to start to crumble."

Missouri Representative Nate Tate (R), from the *Missourian.com*.



NORTH DAKOTA HOUSE MAJORITY LEADER AL CARLSON (R) LOST HIS BID FOR RE-ELECTION, coming in fourth among four candidates for two seats in District 41. The top two vote-getters were Michelle Strinden (R) and Pamela Anderson (D). Carlson had been in the North Dakota House since 1993.

"It is incumbent upon government agencies, and particularly the University of Hawaii, to reconcile culture and astronomy. In this modern day, we can have both. The entire world will benefit from our astronomy program."

Hawaii House Speaker and NCSL Vice President Scott K. Saiki (R) on the state Supreme Court's decision supporting construction of the Thirty Meter Telescope atop Mauna Kea, from *Big Island Now*.



NOT ONLY DID GUAM ELECT ITS FIRST FEMALE GOVERNOR—Lou Leon Guerrero, a former lawmaker—the U.S. island territory also elected 10 women to its 15-seat Senate.

MAC TAYLOR IS RETIRING FROM CALIFORNIA'S LEGISLATIVE ANALYST'S OFFICE at the end of the year. Taylor began his career with the office in 1978 and became director in 2008. During his 40 years of service, he provided nonpartisan fiscal advice to both houses and prepared impartial analysis on hundreds of policies to inform California lawmakers and the public.



PEGGY PIETY, FORMER NCSL STAFF CHAIR, IS RETIRING after an 18-year career with the Indiana Legislative Services Agency. Piety earned high praise from her colleagues and members of the Indiana General Assembly for her trusted, nonpartisan work through two redistricting cycles, drafting legislation on labor and employment, public pensions and election topics. Piety was NCSL staff chair from 2014-15. Notably, she is one of a handful of legislative staff to receive the Legislative Staff Achievement Award twice, in 2006 and again in 2015.

“Being young is going to play well with some people, but there will also be people who doubt me because of my age, which is fair—it’s new.”

Representative-elect Kalan Haywood (D), recently elected to the Wisconsin House at age 19, making him the state’s youngest lawmaker, in the Milwaukee Journal Sentinel.



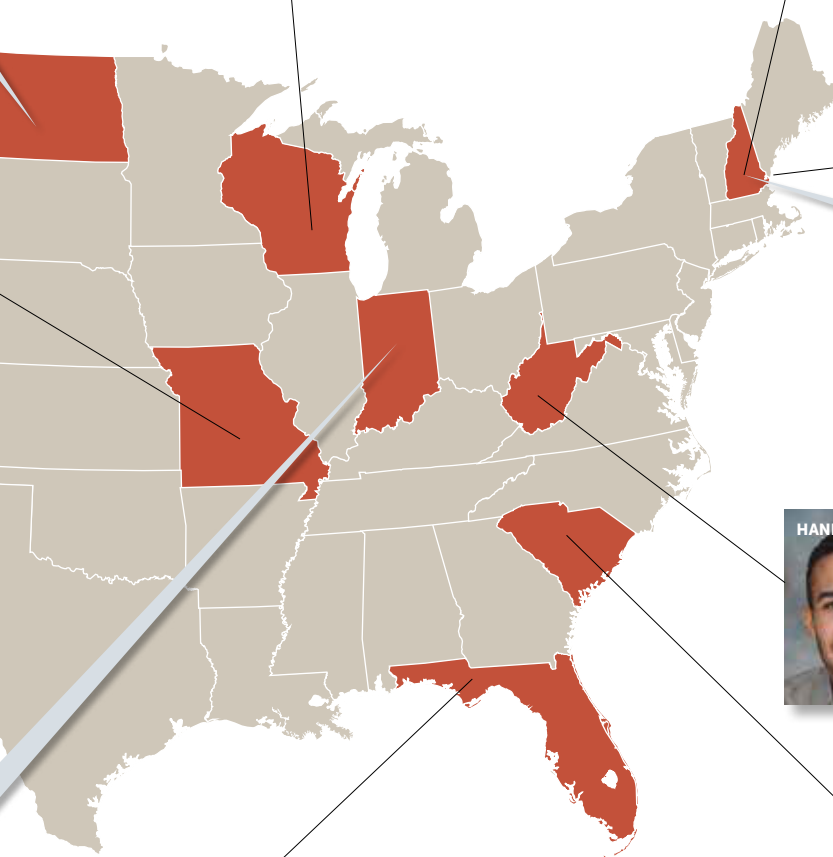
“I knew that if I did that as a citizen of New Hampshire, what could I do as a state rep? I could do a lot more and I won’t have to jump through so many hoops and not hear anything. I will be right there.”

New Hampshire Representative-elect Cassie Levesque (D), who as a high-schooler led a successful effort to raise the marriage age to 16, from EDGE Radio. Levesque is one of at least three new legislators who are just 19 years old.

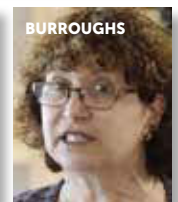


“I think there’s a fear about the state of our nation. ... I’ve also noticed more voters expressing an interest about our environment.”

New Hampshire Senator Jay V. Kahn, (D) before the election, from SentinelSource.com.



NEW HAMPSHIRE SPEAKER GENE CHANDLER (R) LOST HIS SEAT to Anita Burroughs (D), after having served 36 years in the House. He has served as speaker since late 2017.



“I always told myself, when I had the chance, I would try to make a difference and I would do something myself.”

Caleb Hanna (R), 19, on why he ran for the West Virginia legislature, from metronews.com.



“I am blessed by a deep bench of talent to pull from. ... The chairs named today are men and women of principle, integrity, and an unrelenting desire to serve the people of Florida.”

Incoming Florida House Speaker Jose Oliva (R), in a statement after the election, in Florida Politics.

“Injuries are relatively minor when they happen to somebody else. But when it happens to your child or grandchild, it’s very serious.”

South Carolina Representative Gary Clary (R), who supports installing seat belts on school buses, in the Index-Journal.



A Gamble on Sports



Sports betting

**PLACE
A BET**

States looking to close budget gaps with sports-betting revenue may be disappointed.

BY JACKSON
BRAINERD

Jackson Brainerd is a policy associate in NCSL's Fiscal Affairs Program.

You better believe it. The U.S. Supreme Court's ruling last spring in *Murphy v. National Collegiate Athletic Association* paved the way for states to authorize gambling on sports events, booking the topic a slot in future headlines for months to come. New gaming-related opportunities and puns abound.

The court's decision was long in the making.

Congress passed the Professional and Amateur Sports Protection Act, widely known as PASPA, in 1992. It prohibited states from legalizing sports-betting operations, but allowed states already offering sports betting or related games (Delaware, Montana and Oregon) to maintain their current operations. Other states had the opportunity to jump in and offer sports betting at the time, but all declined. For the last 26 years, only Nevada has offered full-fledged sports betting.

When New Jersey passed a law to repeal the state's ban on sports betting in 2014, the move was challenged by the NCAA and a handful of major pro sports leagues as a violation of PASPA. The case made its way to the Supreme Court, which ruled 6-3 that provisions of the act violated the Constitution's anti-commandeering rule. That rule prevents Congress from compelling states to adopt or enforce federal law.

States have since rushed to get in on the

action, passing legislation to allow sports betting. Delaware, Mississippi, New Jersey and West Virginia have now joined Nevada in offering sports betting at their commercial casinos. In Delaware, the legal and regulatory framework was already in place; it just needed the governor's approval. Connecticut, New York, Pennsylvania and Rhode Island have also enacted measures legalizing sports betting and are expected to begin offering it soon. In total, 21 states, the District of Columbia and Puerto Rico proposed or enacted measures in 2018 to either legalize and regulate sports betting or form commissions to study the issue.

Most of the states leading the way enacted legislation before the Supreme Court decision, allowing them to get a jump on expanded gaming opportunities. Because some of the bills were relatively bare-bones and merely instructed a regulatory authority to investigate sports-betting, several states still must develop rules or pass additional legislation to flesh them out. But the measures in a few states are more comprehensive in their regulatory scope and provide useful insights into how states are approaching the issue. In general, states are grappling with the following policy concerns.

Integrity Fees

To address the question of how to protect sports events from the potential corruption



of gross sports wagers are paid out in winnings, leaving only 5 percent in profit for the operators. So, an integrity fee of 1 percent of gross wagers would eat up roughly 20 percent of net profits. Fiscal analysts have questioned whether integrity fees this high would erode states' revenue share to such an extent that sports betting would become cost prohibitive.

Pro sports leagues support the fees, but not all lawmakers like the idea. West Virginia Senate Majority Leader Ryan Ferns (R) says, "There is zero interest in integrity fees or anything else associated with professional sports in the Legislature. I think major league sports were late to the game ... It wasn't a partisan issue, I just don't think there was any support for it."



Senate Majority Leader Ryan Ferns
West Virginia

Alternate proposals to preserve the integrity of sports contests include one from the American Gaming Association to create an independent Integrity Monitoring Association that would help flag suspect activity surrounding sporting events via information sharing and an enhanced reporting system.

Betting-Eligible Events

Whether to allow betting on collegiate

that results from millions of dollars riding on the outcome of a game, a handful of states have proposed "integrity fees." These would amount to 1 percent of the gross amount wagered and would be paid to professional sports leagues, essentially as compensation for increased self-policing to fight corruption. The amount would not be insignificant. Roughly 95 percent

and other amateur sports presents another integrity issue. It's not difficult to see why it might be easier to convince an unpaid collegiate baseball player to deliberately pitch a poor game than it would be to influence a professional being paid millions of dollars to do the same. (That's one of the reasons the NCAA was a plaintiff in *Murphy*.) New York lawmakers enacted a measure that prohibits betting on collegiate sports. New laws in Rhode Island and New Jersey prohibit betting on games played by the states' collegiate teams and on any collegiate event taking place in the state. Other states have either not addressed this or allowed collegiate sports betting to proceed.

Online Betting

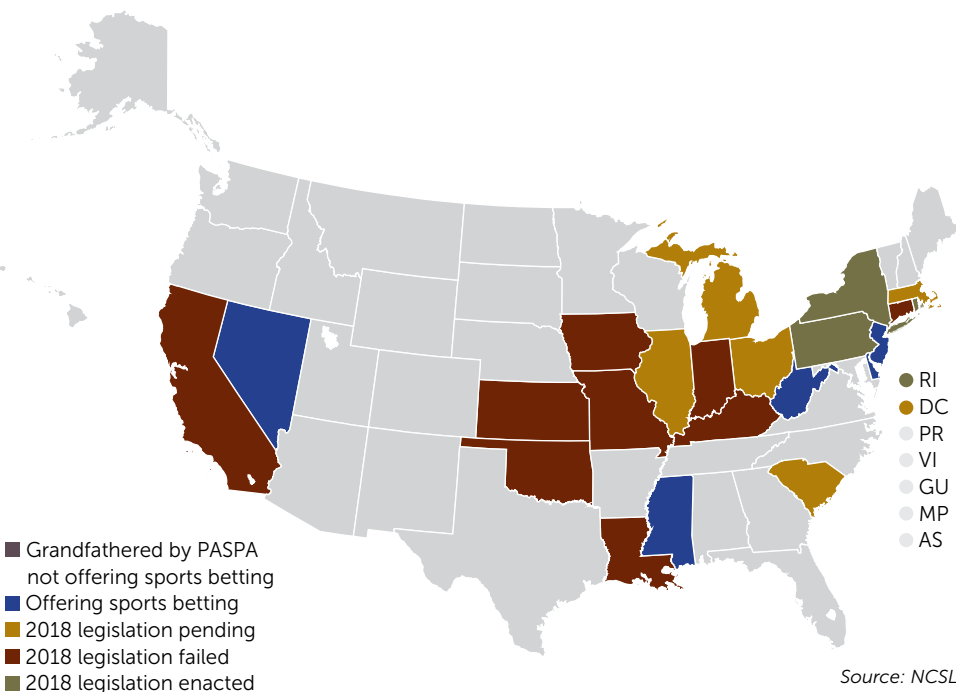
Even in the year 2018, the gambling world is relatively untouched by the internet. Only a handful of states—Delaware, Nevada, New Jersey and Pennsylvania—have legalized online gambling, in part because it can hurt the casino industry. If people can gamble online, they are less likely to spend their money at a casino. Many states have proposed or enacted legislation allowing sports betting online or through mobile devices, however, in part because both options are more appealing to younger bettors than casinos, which have struggled to attract millennials. A study conducted by Nielsen Sports on behalf of the American Gaming Association found that "44 percent of sports bettors are adults under the age of 35, as opposed to 31 percent of the general population."

Nevada accepts online bets anywhere in the state if the gambler has registered in person at a sportsbook. Pennsylvania and West Virginia have authorized sports betting online or through mobile devices, and a measure pending in New York would allow gaming on a mobile sports-wagering platform.

Mississippi allows bettors to place online sports bets using an app, but only if the bettor is on casino premises. New Jersey appears to have left the decision up to the Division of Gaming Enforcement.

Tribal Concerns

A few states are working to fit legalized sports betting into existing state compacts with tribal governments. In Connecticut, tribal leaders have argued they hold the



GAMBLING

exclusive right to offer sports betting in the state and have threatened to stop paying the state 25 percent of slot machine revenue (\$270 million in 2018), per their existing agreement, should the state allow sports betting elsewhere. In Michigan, efforts have been slowed by tribal concerns about the language in proposed online sports betting legislation. And in Arkansas and Oklahoma, tribes are pushing for legalizing sports betting and allocating a portion of the proceeds to the states.

Tax Rates

Existing and proposed tax rates on sports-betting profits vary widely. States seem to be falling into two camps: those taking a relatively lower cut (rates between 5 and 15 percent) and those taking a larger share (up to a third or more). On the lower end, Nevada takes 6.75 percent of the gross revenue of the licensee. New Jersey will tax gross sports pool revenues at 8 percent but apply a 12.5 percent rate to online sports-betting revenues. Casinos pay a 12 percent tax in Mississippi.

On the higher end, a recently enacted Pennsylvania law set the rate at 34 percent, with an additional local-share assessment of 2 percent. The Delaware Lottery's revenue-sharing agreement with sports-betting operators grants the state 50 percent of total winnings. And in Rhode Island, the state takes 51 percent.

As with any other "sin tax," there is the potential that a rate perceived as being too high will allow the black market to flourish. Pennsylvania casinos were reluctant to offer sports betting due to the state's high tax rate, but at least one is expected to begin providing it this fall.

What will states do with the added revenue? Lawmakers are considering various options. West Virginia will deposit the first \$15 million into the state's lottery fund, with any additional revenue going to the Public Employees Insurance Agency Financial Stability Fund. Proposals in New York and West Virginia would direct money to education. And the laws in Pennsylvania and Rhode Island direct revenues to the general fund.

States have been known to direct revenue to programs, including education and

pensions, that come with costs that can easily outpace gaming profits. Gambling expansions typically result in an immediate revenue increase that plateaus or even declines over time, until a new game is introduced. States looking to close budget gaps with sports-betting revenue may be disappointed, especially as more states legalize it and take their slice of the market.

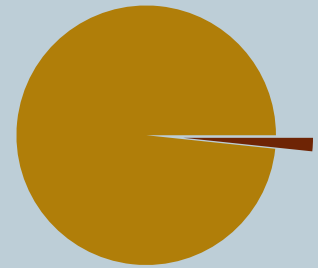
Place Your Bets

The push for legalized sports betting comes at a time of gaming expansion nationwide. Since 2000, seven states have legalized lotteries and 11 have legalized casinos or racinos, or both. In concert with this growth, however, has been a gradual flattening or even decline in state gambling revenues across the country. A 2016 Rockefeller Institute report shows that, between fiscal years 2008 and 2015, 21 states saw their lottery revenues decline, and national lottery revenue grew by just 0.2 percent when adjusted for inflation. The trend results partly from states with newly legalized gambling siphoning off—or "cannibalizing"—gamblers from other states or keeping their own residents from crossing state lines in search of opportunity.

The ability of sports betting to generate revenue for states will also depend in part on drawing gamblers away from the sizable black market. Estimates of the money in the black market range from tens of billions to hundreds of billions of dollars. Unfortunately, billions in total sports-betting wagers do not necessarily translate to huge profits or tax revenue for states. It's hard to say how much revenue sports betting will generate. Most states estimate a couple million to tens of millions of dollars, but nothing resembling a true windfall. Potential annual revenue was estimated to be \$3.1 million to \$18.8 million in Indiana, \$2 million to \$2.4 million in Michigan and \$5.5 million in West Virginia.

Nevada's 2017 gaming revenues provide a useful example: Of a total \$11.6 billion in casino winnings in 2017, only \$248.8 million, or 1.7 percent, was attributable to sports betting. The tax rate on those winnings was 6.75 percent, resulting in less than \$20 million for the only state with legalized sports betting.

Nevada's 2017 Gaming Revenues After Paying Winners



Total Gaming \$11.6 billion
Sports Betting \$248.8 million

Source: UNLV Center for Gaming Research

Among the states with recently authorized sports betting, Mississippi took in \$54,000 in revenue off \$9.8 million in total wagers in its first month; Delaware brought in just over \$1 million in its first three months; and New Jersey casinos generated just under \$1 million in August, its third month of operation. New Jersey Senate President Stephen Sweeney (D) responded that legalized sports betting "helps our [fiscal] situation but it doesn't fix anything."



Senate President Stephen Sweeney
New Jersey

Federal Interference?

The states' varied approaches to regulating sports betting have produced some nervousness at the federal level. In its first hearing on sports betting since the *Murphy* decision, the U.S. House Subcommittee on Crime, Terrorism, Homeland Security and Investigations discussed a possible regulatory framework that could pre-empt state authority. And in the U.S. Senate, Minority Leader Chuck Schumer (D) of New York has proposed a federal framework.

As the voice of the states, NCSL has called on Congress to respect the states' sovereignty to regulate and tax sports gambling. Odds are, whether regulation remains a state-by-state patchwork or the feds step in, sports betting is here to stay.



What about that second job?

An NCSL colleague told me a while back about using a ride-hailing service and running into a legislator—who was driving the car.

While it was apparently a shock at the time, that official was far from unique in having to work a second job. Being a state legislator is not particularly lucrative. According to NCSL research, average annual salaries in 2017 were around \$34,000, or about \$21,000 less than the national median household income.

A few states pay generously, but mostly these are full-time legislatures in areas with a high cost of living. Twenty states pay \$25,000 or less and are out of session for at least a third of the year.

Public officials who represent districts far from state capitols often face even more substantial financial barriers in the form of lengthy travel times or the need to rent less remote apartments during session.

Without great personal wealth, passive income sources or generous spouses, more than a few legislators will have to work a second job. But this practical need can conflict with ethics rules.

Dual-office holding laws prevent legislators from holding more than one elected or appointed office at the same time. The

rule originated from the English common law doctrine of incompatibility, which forbids a public official from occupying multiple roles in government that have potentially conflicting duties.

A defense attorney cannot also act as a prosecutor or judge because each role serves a distinct purpose. The effectiveness of the judicial system, like that of the government generally, depends on the tension between different figures.

Dual-employment laws, limits on representing others before the state and conflict of interest prohibitions similarly aim to preserve separation between potentially incompatible roles. All these rules vary by state. Some, for example, allow legislators to hold multiple state or local offices so long as no conflict exists between the positions. Others prohibit legislators from holding statewide offices but allow them to hold county or municipal positions.

Restrictions also apply vertically. A legislator cannot also serve as a federal official. Members of local governments may be prohibited from serving as state legislators. Some states allow for limited exceptions, particularly for state legislators from low-population districts with a smaller pool of potential public servants to draw from.

Conflict of interest prohibitions can limit private-sector work or the matters in which a public official can participate. For example, ethics rules often restrict public contracts for legislator-owned or -operated businesses. Legislators may also have to recuse themselves from votes that affect a personal financial interest—such as a bill on ride-hailing services if a lawmaker works for Uber or Lyft.

Is higher pay the answer? In addition to enabling non-wealthy individuals to serve, legislative pay increases may give capable individuals the incentive to forego more lucrative work for public service. However, financial costs to the state and public perception can make salary adjustments a difficult option.

The challenge for states is to prevent conflicts between public duties or between those duties and personal interests, while enabling the greatest number of citizens to serve. States handle this in different ways, and any legislator considering a side gig should consult his or her state's ethics rules.

—Nicholas Birdsong

Nicholas Birdsong is a policy associate with NCSL's Center for Ethics in Government. Email: nicholas.birdsong@ncsl.org.

Jack Whitver

Majority Leader, Iowa Senate

A lifelong Iowan, Whitver graduated from Iowa State University, where he was a three-year starter as wide receiver for the Cyclones football team. His entrepreneurial nature led him to start his first small business after graduating and eventually to the fitness and restaurant industries. Whitver graduated from Drake University Law School in 2012. He currently practices in Des Moines, specializing in estate planning and business law. First elected to the Iowa Senate in 2011, he was elected president after Republicans gained control of the chamber in 2016. He has served as majority leader, the Senate's top post, since March. He and his wife, Rachel, have three children.



What was the moment when you first knew you were interested in politics? I was playing football at Iowa State. I think our second or third game my junior year, we were playing the University of Iowa. It was a huge game and a really big deal in the state. That just happened to be the week of 9/11. They canceled our game and all other football games. It made me pause and think, You know what? Maybe football isn't the most important thing in the world. There's a much bigger world out there. It opened my eyes to the fact that maybe I should pay a little bit more attention to what's going on in the political world.

How has your experience in small business and law helped you in your legislative work? It's been very important because, unlike what happens in Washington, D.C., we actually have to live by the laws we write. Being a small-business owner who has to work in this business environment gives you a different perspective when you're at the Capitol trying to make laws.

What does it take to be an effective leader? The most important thing is being able to listen and understand what motivates people, what people want, and just overall, to listen more than you talk. That's not always easy, but that's something I try very hard to do. Patience is key.

What is your most important legislative priority? Creating a growth environment here in Iowa. I believe we're positioned well for growth, but we need to continue to improve our job-creating environment to take advantage of that growth. We've worked very hard on that in the last couple of years.

Beth Hladick, a policy associate in NCSL's Leaders' Services program, conducted this interview, which has been edited for length.

PHOTO: IOWA SENATE REPUBLICAN CAUCUS

How does having young children inform the way you approach your responsibilities in the legislature? It helps you to take a long-term view of everything you do. Having young kids, knowing they're going to grow up, makes you think about that long-term vision of what Iowa should look like over the next 20, 30 or 40 years.

What was the worst job you ever held and what did it teach you? My worst job was my first job, which was washing dishes at a pizza place in my hometown. But it did teach me that if you're willing to work hard and do your job to the best of your ability, you can move up very quickly. It wasn't the most fun job, but it did teach me a lot about work ethic.

You recently participated in an NCSL leadership program where we talked about legacies. What do you hope your legacy will be? Being known as someone who was willing to look beyond the next election to the next generation. And in politics it's not very easy to do because everyone wants a solution now. But to put in place policies that will make Iowa successful for decades is really important to me.

Who inspires you and why? Politically, it's Ronald Reagan. When I was born he just became president. I didn't really know him much as a president other than to know that's what a president looks like and that's how a president acts. That stuck with me for a long time. Now as I look back and read up on his life and the way he conducted himself, the way he communicated, his integrity is something that not only I but a lot of people in politics strive to achieve.

What book is on your nightstand? "Shoe Dog," by Phil Knight. It's the story of how he built Nike. It's really interesting to see how he built a company from nothing and took on the biggest shoe powers in the world and beat them. I don't read a lot of political books. I read business books and motivation books because I think you can learn a lot of lessons from reading about business success.

What final words would you like to leave with readers? It's really important today in America to continue to have civil dialogue and get back to talking to each other instead of tweeting at each other or posting on Facebook about each other. Often you'll see tweets from across the chamber, and this comes from both sides. We can just get together like they used to in the old days. I think it's really important for our future politically to work on having those conversations instead of just having them out on social media. I'm not perfect at it. But we need to continue to work on civility in our politics.

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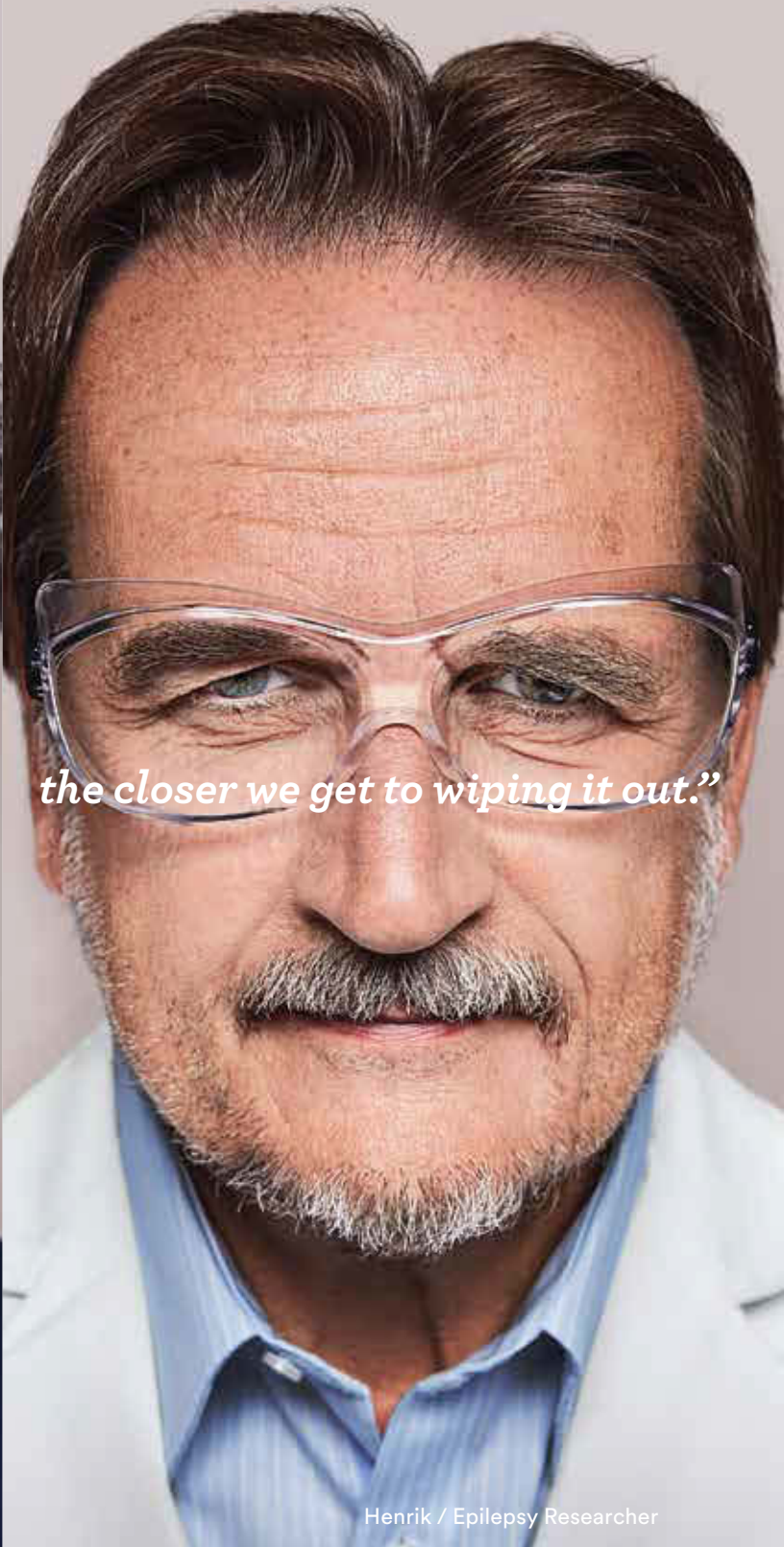


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