

# Can Utah Make Justice Reform Work?

*A bold plan brought together Republicans and Democrats, police and justice-reform advocates, to rein in the state's soaring prison population and confront addiction. Two years in, questions are mounting.*

Link: <https://www.usnews.com/news/best-states/articles/2018-03-06/can-utah-make-justice-reform-work>

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The Justice Reinvestment Initiative – shepherded to Gov. Gary Herbert's desk by Republican lawmakers in the statehouse in 2015 – seemed almost liberal for deep-red Utah.

It had more than a dozen provisions aimed at justice reform, but at its heart it

downgraded certain drug possession charges from felonies to misdemeanors, restructured drug-free zones that generate harsher drug penalties and sought to rein in the state's booming prison population by putting people suffering from addiction or mental health problems in treatment beds, not behind bars. But nearly two years later, how well the initiative is working is a matter of fierce debate.

Utah ranks No. 14 in U.S. News & World Report's 2018 Best States rankings for crime & corrections. The state's rates of incarceration and violent crime remain among the lowest in the nation, but recidivism and property crimes such as theft and burglary are among the highest – issues that the Justice Reinvestment Initiative was intended to address.

In 2013, Utah's two state prisons population was exploding, threatening to break the budget of this low-tax state. Between 2004 and 2013, the state's incarcerated population grew 18 percent, six times faster than the national average, and by



2015 it was on track to expand by 37 percent – leaving taxpayers on the hook for over half a billion dollars.

Yet the state hadn't been plunged into a crime wave – in fact, its overall crime rate had been steadily falling for more than two decades, even as the state's population increased.

"We were creating something like 10 new felonies and 30 new misdemeanors in one year," says state Rep. Eric Hutchings, a Republican who represents suburban neighborhoods west of Salt Lake City, and who sits on a law enforcement committee and subcommittee. "I started looking at that and thinking about it – because I have a background in finance – and if you look at that kind of growth rate, it's no wonder you have this massive increase in incarcerated people."

A group of lawmakers launched an audit in 2013 that brought together police, prison guards, judges and prosecutors to figure out what was happening. The following year, the governor brought in the Pew Charitable Trusts for help.

What the nonprofit found was eye-popping: Nearly half of all the inmates released from state prisons were ending up back behind bars within three years. Offenders who were on probation and parole were flunking at their highest rates in a decade – more than two-thirds of those admitted to prison in 2013 were people who'd violated their probation or parole, and more than 60 percent of those admissions were for non-violent offenses. And though some of those offenses were the newly designated crimes that Erickson had been tracking, one type of charge stood out from the others: The state was sending more people to prison for drug possession than any other crime, and the amount of time that they were being sent away for was climbing.

Drug users, in short, were the ones increasingly getting caught in the system: arrested, sent to prison, released, caught with drugs again, put back in prison for longer, then relapsing again. And as the opioid crisis swept through Utah, the pattern only got worse.

"We were spending exorbitant amounts of money to incarcerate people, and we just weren't seeing the benefits in public safety, we were just seeing people's lives ruined," says Marshall Thompson, director of the state's Sentencing Commission, which advises the legislature and governor's office on sentencing and release policies.

Utah is the home of the Mormon Church, which bans alcohol, and the rate of alcohol consumption in the Beehive State is among the lowest in the U.S. But drug use has climbed, and in 2014, according to the Centers for Disease Control and Prevention, the rate of fatal drug overdoses in Utah was the seventh-highest in the nation.

In spite of its rugged, rural and ranching reputation, 90 percent of Utah's residents live in just 1 percent of the state; according to the most recent census in 2010, most are concentrated in counties around Salt Lake City. By 2015, it seemed that everyone in Utah was friends with or had a family member affected by the opioid crisis.

"We would sit down with legislators, stakeholders, and they all had a story about how devastating it was to a family member, a friend," says Ron Gordon, who led the state's Commission on Criminal and Juvenile Justice during the development and rollout of the justice reform measures, and who now serves as the governor's general counsel. "They all believed that if that person could get some help for addiction, they they could probably overcome the other behaviors. It's different when you can relate at that level, because you can look at this family member or friend and say, 'Oh, wow, they're more than a criminal.'"

The 2015 Justice Reinvestment Initiative, or JRI, garnered support from not only defense attorneys and county district attorneys, but libertarians fretting about state encroachment on civil liberties, mainstream Republicans agonizing over budget pressures from the state's rising prison population, and Utah's few Democrats who were eager to rein in what they saw as excesses in the fight on crime.

"This was a radical mindset change from when I first came into the legislature," says Hutchings, who spearheaded the legislation. "It was 'lock 'em up, throw away the key,' and that was all we did" before.

The impact of the initiative was strong in Salt Lake County, home to a third of Utah's residents and, like many large cities, a hub for the state's homeless population and people who are mentally ill or suffering from addiction.

The Rio Grande neighborhood in Salt Lake City, named for a shuttered historic train station nearby, and blocks from the city's light rail and bus lines, had long been designated by the city as an official gathering place for Salt Lake City's down-and-out. A soup kitchen and homeless shelter were opened there in the 1980s,

and a health clinic and the Rescue Mission of Salt Lake began serving the population there, too.

The number of people living in Rio Grande grew rapidly and, by 2015, the number of drug crimes spiked, thanks to the use and sale of heroin and amphetamines, according to an analysis by the Sorenson Impact Center, a think tank at the University of Utah. But police patrolling the area felt like their hands were tied. Under the changes implemented in the justice reform bill, drug abusers who had previously been charged with felonies were now being hit with misdemeanors; rather than going to prison, they were ending up in overcrowded county jails. "When they came into contact with law enforcement, they weren't afraid to go to jail and have their behavior disrupted, they were actually basically shooting up in front of us on the streets of Salt Lake," Salt Lake City Detective Gregory Wilking says. "We had this area ... and it basically became an open-air drug market."

The Salt Lake County jail, unable to keep up with the rising population of inmates, began turning away anyone who wasn't accused of a felony -- a policy it was forced to reverse in June 2017 after an outcry over drug addicts and non-violent offenders ending up back on the street. Barely two years after it was enacted, some law enforcement leaders and prosecutors, as well as a handful of lawmakers, were calling for an end to the justice reform experiment, complaining that it had caused more problems than it solved.

"There have already been efforts to roll back those provisions," says Marina Lowe, legislative and policy counsel for ACLU of Utah. "Just last year, we had to fight against two measures that would have re-implemented drug-free zones, so legislators' memories are short."

Proponents of the reform effort acknowledge that the rollout of the initiative was problematic, but they argue that crime and drug use in the Rio Grande neighborhood were a problem long before the rollout.

"Crime existed before JRI, and sometimes you would think that it didn't -- that JRI triggered all this criminal behavior," Gordon, the governor's general counsel, says. The justice reform effort was also being hobbled by state lawmakers' refusal to pass a companion bill that would have expanded the state's Medicaid program and freed funding for treatment beds and programs. As a result, while certain drug crimes were downgraded to keep addicts out of prison, few treatment beds

and programs were made available to help them recover and stay out of the justice system.

"JRI, without being fully funded for treatment, did it create a crisis for the county jails? I think it did," says Salt Lake County District Attorney Sim Gill, a Democrat. The homeless outreach organization Crossroads Urban Center was among the groups that tried to help the rising number of people that found themselves living on the street.

"If it's not funded, if there aren't other options for people besides jail or the streets - like treatment, for example - you're just saying, 'We're not going to arrest you for using drugs on the street, but we're not going to help you, either,'" Crossroads executive director Glenn Bailey says. "That creates chaos, especially if those activities are concentrated in one particular area."

The state was able to allocate more money for substance abuse treatment and intervention programs – progress, but advocates maintain that it came nowhere close to meeting the state's needs. And there were some questionable line items, according to homeless advocates and addiction outreach services. Only people with no income, for example, could be eligible to get into a treatment program under Medicaid.

"That pushes us to do some quirky things where we're delaying someone from getting a job," says Salt Lake County Mayor Ben McAdams, a Democrat who's running for Congress. "The incentive becomes we don't want someone to get a job until they get coverage, and I think we should be working to get someone a job."

Still, some groups are cautiously optimistic that, given more time, the Justice Reinvestment Initiative could work.

"We're only talking about a couple years of trying to achieve the change that JRI was trying to achieve," says Tom Ross, president of the Chiefs Association and chief of the Bountiful Police Department north of Salt Lake City.

"Every family that I know of, including my own, is touched with drug addiction, so we recognize that good people end up in a drug addiction problem because of things outside of their control he adds. "What I can say is that our association is in support of trying to find ways to make this work."