

# Setting the Scene for 2016

From opioid addiction to fantasy sports, state lawmakers will have plenty on their plates this year—no matter who occupies the White House.

BY JULIE LAYS

A few things we know for sure. In 2016, political pundits and pollsters will focus Americans' attention on presidential politics. The candidates—whoever they turn out to be—will tell us what “the American people” want before we know ourselves. The race indeed is extremely important. Who occupies the White House can have a huge effect on the states. But beyond all the hyper-analysis and grandiose claims that accompany a bid for the White House are 7,383 state lawmakers, most of whom face elections in the fall as well. Before the election, they will be working, making the hard policy decisions that matter most to “the American people,” searching for solutions outside the box, finding ways to streamline and save, and getting things done.

What can lawmakers expect? This year, 46 legislatures will convene, and as in most years, lawmakers will search for ways to balance the budget (constitutionally required in two states but practiced in 49), stimulate the economy, create new jobs, improve governmental efficiency, cut costs and maintain the infrastructure with fewer revenues. They will discuss how to improve the quality of our nation's K-12 education system, recruit and keep good teachers and control the costs of college. Pensions, corrections policing and energy will come up as well.

And finally, there's health care. Medicaid eats up more than a quarter of state budgets and continues to be a perennial topic of legislative debate.

Julie Lays, the magazine's editor, compiled this story with contributions from NCSL policy experts Glen Andersen, Dick Cauchi, Amanda Essex, Rochelle Finzell, Jon Griffin, Karmen Hanson, Kristy Hartman, Alison Lawrence, Donna Lyons, Kevin Pula, Wendy Underhill and Amber Widgerly.

The new president may change the tone or direction of these evergreen policy topics, but all have a reserved seat at most legislative tables.

For the last few years, our list has focused on the top 10 emerging issues, and it will again in 2016. These are the issues, according to NCSL's policy analysts, that are gaining steam—some prompted by upcoming federal deadlines, but not all. Emerging issues can become big quickly. In fact, most topics on our list from last year remain hot, including marijuana, community/police relations and e-cigarettes.

## I. Clean Power Plan

The Environmental Protection Agency's new rules require states to reduce carbon dioxide emissions from power plants by an average of 32 percent nationally by 2030. The rules, created under 111(d) of the Clean Air Act, are likely to require legislative action. States can choose to reduce emissions however they see fit, and have the option to comply individually or in coordination with other states. Their compliance plans are due in September; that is, if the federal law survives legal challenges filed by more than half the states. They claim the EPA over-reached its authority and that the plan would harm the many states that depend on coal to power their economies. Several states are requiring legislative approval of the state plan or a report or study of the potential impact the regulations could have on affordable power, reliability and consumers, as well as the feasibility of compliance. Whether working toward its goals or challenging its requirements, state lawmakers will come up against 111(d) sometime this year.



## 2. Opioid Addiction

Heroin-related deaths nearly quadrupled between 2002 and 2013, while prescription opioid overdoses now kill more Americans than all other drugs combined. Opioids include heroin and some prescription painkillers like morphine, methadone, hydrocodone and oxycodone. Every state has enacted legislation addressing opioid abuse. They have focused on addiction prevention, treatment and recovery options, good Samaritan immunity, medication-assisted treatment, diversion of low-level drug offenders, and access to opioid antagonists, including naloxone, which can reverse deadly overdoses. But the problem continues to grow, forcing policymakers to continue their search for solutions that curb abuse while protecting the legitimate use of prescription pain medicine. This issue involves many areas of law beyond the criminal justice system, including those related to children and families, emergency responders, health care and schools.

## 3. Electric Vehicle Fees

Thirty-seven states offer incentives to drive electric vehicles, such as tax credits and rebates, HOV-lane access and free parking. The widespread adoption of electric vehicles, however, could result in lower gasoline tax revenues. This has some state policymakers looking for new ways to maintain funding for transportation infrastructure projects. Georgia, Idaho, Michigan and Wyoming enacted fees on certain hybrid and electric vehicles last year, the most in one year to date. In total, nine states have imposed fees as a way to recapture lost gas tax revenue. More states are likely to consider adding fees in 2016, and Kentucky is leading the way. Legislation to put a fee on electric vehicles has already been pre filed there. But placing special fees on alternative fuels, such as electricity, is just one way states are looking to boost needed revenue. Oregon recently began a program that other states are watching. It separates transportation revenues from gasoline consumption by allowing drivers to pay a fee based on miles driven rather than gallons of fuel purchased.

## Preserving State Sovereignty

NCSL works with Congress and the administration to ensure that state legislatures receive flexibility to manage state-federal programs, are not subject to unfunded federal mandates or unwarranted federal pre-emption and are provided federal budget certainty.

### 1. E-fairness Legislation

NCSL leads the effort to allow states to require online and catalog companies (without a physical presence in the states) to collect the sales taxes owed them.

### 2. Cyber Security

NCSL urges Congress to avoid unfunded mandates and acknowledge states as partners in providing cybersecurity, while protecting privacy and guarding civil liberties.

### 3. Medicaid and CHIP

NCSL works to ensure continued funding and state flexibility in managing these state-federal programs.

### 4. Immigration

NCSL urges immigration reform that improves border security and addresses the state fiscal impact of immigration.

### 5. Transportation and Infrastructure

NCSL will work to ensure all funding and financing options are available to states.

### 6. Insurance Regulation

NCSL supports preserving states' accessible, accountable and responsive authority to regulate insurance.

### 7. Clean Power Plan and Waters of the United States

NCSL urges the EPA to continue to provide states flexibility that recognizes the uniqueness of each state's geography, energy mix and legislative processes.

### 8. Federal Land Management and Disaster Funding

NCSL supports federal wildfire policy that lowers the risk of fire transfers and urges the federal government to fund wildfires in the same way as it does natural disasters.

### 9. Education

NCSL will work to strengthen the states' voice in all major federal education programs.

—Molly Ramsdell and Neal Osten, NCSL

## 4. Child Sex Trafficking

The federal 2014 Preventing Sex Trafficking and Strengthening Families Act contains many state requirements, some of which have deadlines this year that involve legislative action in areas such as foster parenting and adoption incentive payments. In addition, the law requires states to collect certain data, report sex trafficking and identify children who may be at high risk of becoming victims, particularly current and former foster children. Lawmakers will be searching for efficient ways to meet these new federal requirements.

## 5. Drones

Unmanned aircraft systems have a host of uses in law enforcement, land surveillance, wildlife tracking, disaster response, border patrol and many other areas. As they continue to fill the skies, the Federal Aviation Administration has proposed regulations for their use and state legislatures are debating whether and how they should be regulated. Taking into account the benefits of their use, privacy concerns

and their potential economic impact, 20 states passed legislation in 2015. The bills often define the aircraft and describe acceptable uses by law enforcement or other state agencies, as well as the general public.

## 6. End of Life

The youngest baby boomers turn 52 and the oldest 70 this year, bringing long-term care and end-of-life issues closer to reality for many. Medicaid is the largest payer of long-term care services, forcing many state policymakers to look for ways to help seniors remain in their homes or in community-based settings, which they tend to prefer, rather than enter more costly facilities. Lawmakers will consider policies to support Medicaid recipients, ensuring they receive appropriate services in the most appropriate setting.

In another area, four states have passed death-with-dignity or right-to-die laws allowing mentally competent, terminally ill people to voluntarily request a prescription medication to hasten their death. In

addition, more states are creating a centralized database of people's end-of-life wishes, and many states are actively looking at their role in easing the difficulties that come with end-of-life decisions.

## 7. Fantasy Sports

Fantasy sports, football in particular, have become wildly popular. From 2014 to 2015, they added 14.3 million participants. But a real battle is brewing between fantasy sports companies and state officials over whether daily fantasy sports website operators should be regulated in a manner similar to gambling. Although traditional fantasy sports have been around for decades, daily fantasy sports sites are relatively new. They have grown quickly to become a multibillion-dollar industry. Recently, New York's attorney general went on the offense against the two giants of the industry, DraftKings and FanDuel. He sent them cease-and-desist letters and accused them of insider trading, fraud and false advertising. The companies are fighting back. And lawmakers will likely play a greater role than spectator as the matches heat up.

## 8. Gay Rights, Religious Freedom

Having achieved victory with the U.S. Supreme Court ruling last summer that legalized same-sex marriage nationwide, gay rights advocates are turning their attention to the states, half of which do not include sexual orientation in their anti-discrimination laws. Advocates will be working to broaden state protections for all sexual orientations and gender identities in various areas of state law. Lawmakers will be asking: Do statutes need to change to acknowledge same-sex couples when it comes to birth certificates, child custody, child support, paternity and parentage? A new Maryland law, for example, allows all married women, including lesbian couples, who have exhausted other attempts at pregnancy for two years, to receive the same infertility benefits.

Proponents of religious freedom and religious liberty legislation—often at odds with the LGBT community—feel just as passionate about protecting their right to freely exercise their religion, even in their places of work. This has come up against anti-discrimination laws when it involves



refusing to perform marriage ceremonies, issue marriage licenses or provide products and services to gay or lesbian couples. Currently, 21 states have Religious Freedom Restoration Acts, some modeled after the federal law signed by President Bill Clinton in 1993. Clinton said that the law was needed to hold the federal government to “a very high level of proof before it interferes with someone's free exercise of religion.”

## 9. Online Voter Registration

Voter registration has seen a lot of change in the last few years, and the most interest is in online registration. A total of 26 states plus the District of Columbia now offer the convenience, and another three states recently passed legislation to create systems. Currently, online applications are compared with the would-be voter's driver's license or other state-issued identification card. When the information doesn't match, the application is sent to officials for further review or action. It's likely more states will offer online registration. And in the states that already do, lawmakers will tweak the systems in a never-ending quest to make them better—offering forms translated into more languages, adapting systems for mobile devices, enhancing security features and permitting citizens who don't have driver's licenses to register online.

## 10. Sentencing Policies

From the president and the pope to political heavyweights (Koch Industries and the ACLU) and cultural icons (Mark

Zuckerberg and John Legend), a growing chorus is drawing national attention to corrections and sentencing reforms. A decade ago, rising prison populations and costs seemed to be an unintermittable trend. The tide appears to be changing, however. The spike in the prison population has leveled off, violent and property crime rates are down and corrections budgets are pretty close to flat. States are leading the charge. Many of these efforts involve bipartisan, multi-branch task forces that collect and analyze information on what drives prison populations and costs. What then emerges are policies that address the costs while holding offenders accountable and protecting the public. Some adopted policies focus on reserving prison space for the most dangerous offenders and safely supervising and treating others in the community. Currently, task forces are developing legislation in Alaska, Maryland, Massachusetts, Montana and Rhode Island.

## Plenty to Do

So, there you have it. These are some of the issues legislators are increasingly asked to address. But this could change quickly with an unexpected event or a menacing new threat, which could take lawmakers down an unforeseen path. The terrorist attacks in Paris, which occurred just as we were finishing this list, may force legislatures to renew their focus on immigration and refugee policies and security safeguards.

Because no one knows for sure what lies ahead.