



## NATIONAL CONFERENCE *of* STATE LEGISLATURES

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### DRUG SENTENCING TRENDS

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Substance-abusing adult offenders account for about [80 percent of state costs](#) for prison, parole, probation and related aid to localities. And a growing [body of research](#) finds that longer prison sentences do not mean less crime.

This has prompted many states in recent years to rethink how they punish drug offenders. Trends have included amending criminal penalties and providing funding and oversight to ensure effective community supervision and treatment options.

For information on pretrial diversion, heroin and opiates, marijuana and synthetic drugs and other drug policies please visit NCSL's [State Drug Crime Policy](#) page. Information on [mental health needs](#) in the criminal justice system also is available.

#### **CRIMINAL PENALTIES: Possession**

More than a third of states have amended drug penalties in the past five years.

States have lowered penalties for possession of small amounts of drugs while maintaining or increasing penalties for larger quantities and drug trafficking offenses. One objective of these changes has been to reserve expensive prison space for the most serious offenders while providing treatment-based sentencing options, when appropriate. In the last couple of years, at least nine states have lowered some drug possession crimes from a felony to a misdemeanor.

<b>Laws Reducing Non-Marijuana Drug Possession Penalties</b>	
<b>Alaska</b> S 91 (2016)	Reduces to class A misdemeanor the penalty for drug possession offenses except GHB. Makes a first or second conviction punishable only as a suspended sentence.
<b>California</b> Proposition 47 (2014)	Reduces drug possession from a felony to a misdemeanor.
<b>Delaware</b> H 19 (2011)	Makes it a class B misdemeanor to possess, use or consume a controlled substance or counterfeit substance, except marijuana. Makes it a class A misdemeanor if there is an aggravating factor.
<b>Indiana</b> H 1006 (2013)	Decreases, from a felony to a misdemeanor, possession of a scheduled controlled substance.
<b>Maryland</b> S 1005 (2016)	Creates a separate penalty for drug possession punishable as a misdemeanor.
<b>Minnesota</b> S 3481 (2016)	Creates the offense of possession of trace amounts of drugs as a gross misdemeanor and applies it only to those defendants with no prior drug convictions.
<b>Mississippi</b> H 585 (2014)	Makes simple possession of a schedule I or II controlled substance punishable only as a misdemeanor.
<b>South Dakota</b> S 34 (2011)	Creates the crime of possessing, selling, or distributing certain substances intended for the purpose of intoxication as a class 1 misdemeanor; other possession offenses are felonies.
<b>Utah</b> H 348 (2015)	Reduces penalties for first and second convictions of possession of a controlled substance from 3rd degree felony to class A misdemeanor.

#### **CRIMINAL PENALTIES: Mandatory Minimums**

Recently, many states have revised some mandatory penalties, especially for nonviolent and drug offenses. Notable actions affecting drug crimes have included removing mandatory penalties associated with three-strikes policies (California, Florida and South Carolina) and giving courts discretion to depart from mandatory minimum sentences (Georgia, Maryland, North Dakota and Oklahoma). Iowa and Maryland have made their changes retroactive.

Notable Laws Relaxing Mandatory Minimums	
<b>California</b> Prop 36 (2012)	Removes the mandatory life sentence for a nonviolent, non-serious offense under the three strikes law.
<b>Colorado</b> S 102 (2016)	Removes the mandatory minimum term of incarceration for certain types of second degree assault or violations of bail bond conditions.
<b>Florida</b> S 228 (2016)	Removes aggravated assault from the list of crimes that qualify for three-strikes mandatory minimums.
<b>Georgia</b> H 349 (2013)	Authorizes the court to depart from the mandatory minimum sentence for certain drug trafficking offenses if the judge concludes that the defendant was not a leader of criminal conduct, did not possess or use a weapon and has no prior felony convictions, the offense did not result in death or serious injury, and the interests of justice will not be served by imposition of the mandatory minimum sentence.
<b>Iowa</b> H 2064 (2016)	Allows nonviolent drug offenders to be considered for parole after serving 50 percent of the mandatory minimum term. Requires the court to determine, at the time of sentencing, if the offender will be eligible for earlier consideration based on criminal record, a validated risk assessment and negative impact of the offense on victims or the community. Makes the reduced time served for nonviolent drug offenders retroactive. Authorizes the court to reduce from 70 percent to 30 percent the mandatory minimum prison for certain second degree robbery offenses. Requires a mandatory minimum term for child endangerment resulting in death.
<b>Maryland</b> H 121 (2015)	Authorizes the court to depart from specified mandatory minimum sentences for repeat offenders of crimes generally involving the manufacture, sale, and distribution of controlled substances. Requires the court find that the mandatory minimum would result in substantial injustice to the defendant and that the sentence is not necessary for the protection of the public.
<b>Maryland</b> S 1005 (2016)	Repeals mandatory minimum penalties for certain repeat drug offenders. Applies the changes made to mandatory minimum sentences in 2015 H 121 retroactively by allowing offenders to apply to the court for reconsideration.
<b>Minnesota</b> S 3481 (2016)	Removes mandatory minimum prison terms for low-level drug crimes committed by a repeat offender.
<b>North Dakota</b> H 1030 (2015)	Authorizes the court to depart from mandatory minimum sentences for many drug crimes if the mandatory minimum would result in "manifest injustice" to the defendant, is not necessary for the protection of the public and the court has considered the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation.
<b>Oklahoma</b> H 1518 (2015)	Authorizes the court to depart from certain nonviolent mandatory minimum sentences when the minimum is not necessary for the protection of the public and imposition would result in substantial injustice to the defendant; or when the minimum is not necessary for the protection of the public and the defendant is eligible for an alternative sentence program based on a risk and needs assessment.
<b>South Carolina</b> S 1154 (2010)	Removes the requirement that sentencing under two and three strikes provisions are mandatory.

## **FUNDING**

Community supervision and treatment can support a risk- and resource-sensitive system that holds offenders accountable, reduces recidivism and reserves prison space for the most serious offenders. States have allocated resources to supervision agencies to focus intensive supervision and treatment on offenders with the greatest crime-related needs, such as drug addiction.

As part of [justice reinvestment](#) sentencing and corrections reforms, states have made investments into public safety initiatives such as substance abuse and mental health treatment, evidence-based offender supervision and use of risk assessments. A recent [study](#) by the Urban Institute found a collective projected savings of \$4.6 billion during the next five to 11 years.

Colorado, Kentucky and Maryland are among states that have directed savings from reduced prison populations be used to fund drug treatment. [Colorado](#) uses savings from lowered drug penalties and a court surcharge to fund community-based treatment and related programs. Almost \$22 million is slated for [distribution](#) in FY 2017. In 2015, Kentucky (S 192) and Maryland (H 121) both directed prison savings be used for offender treatment.

## **OVERSIGHT**

Legislatures continue to address treatment needs and accountability measures for the high proportion of people in the criminal justice system who exhibit mental health and substance abuse disorders. Drug diversion programs and problem-solving courts are prevalent alternatives to incarceration for offenders with substance abuse needs. Increasingly states are taking action to ensure that these programs are delivered in a way that that has been proven by research to reduce recidivism. Since 2008, nearly 20 states have codified best practices or created oversight for treatment diversion options.

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NCSL's Criminal Justice Program is in Denver, Colorado, at 303-364-7700; or [cj-info@ncsl.org](mailto:cj-info@ncsl.org)

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