



National Conference of State Legislatures

## CRIMINAL JUSTICE REPORT

# State Crime Legislation in 2004

By Donna Lyons, Program Director, Criminal Justice

February 2005

State legislatures in 2004 continued the trend to supervise offenders in the community, especially diverting drug offenders to treatment and imposing sanctions other than return to custody for those who violate conditions of probation or parole. States also stepped up efforts to combat methamphetamine, with enactments to provide tighter controls on substances used in manufacture of the dangerous drug and to protect children and others put in harm's way. A number of new state laws address re-entry of offenders from prison to the community, while closer tracking and harsher penalties for violent offenders were themes of other new crime laws.

New York enacted significant reforms to drug offender sentencing that were decades in the making. Legislation reduces prison terms for nonviolent drug offenders, including retroactive sentencing relief. It significantly reduces sentences for first-time, nonviolent drug offenders, creating shorter, indeterminate terms in place of long mandatory minimum sentences. Other sentences for nonviolent felony convictions declined moderately, while sentences for drug offenders with prior felony convictions increased under the law.

The New York law restructures portions of the Rockefeller-era drug laws that legislators, advocates and others have for many years declared to be too harsh. The retroactive application means that hundreds of nonviolent offenders who were sentenced under the old law are eligible to apply for resentencing consistent with the new law. Other incarcerated drug offenders may apply for an additional "merit time" allowance, which effectively doubles the amount of sentence credit they may earn for work, education or treatment participation. Other prisoners will qualify

---

National Conference of  
State Legislatures

William T. Pound  
Executive Director

Denver  
7700 East First Place  
Denver, Colorado 80230  
Phone (303) 364-7700  
[www.ncsl.org](http://www.ncsl.org)

Washington, D.C.  
444 North Capitol Street, N.W., Suite 515  
Washington, D.C. 20001  
Phone (202) 624-5400

sooner for release to supervised community-based substance abuse treatment. The law also provides for post-release supervision of those sentenced under the new drug law.

A trend that continues in states and that was seen in state legislation last year is to give courts discretion to divert drug offenders to treatment.

An omnibus measure in Hawaii addresses many aspects of illegal use of controlled substances and, in particular, the methamphetamine epidemic in the Islands. It allows first time, nonviolent drug offenders to be sentenced to probation if they are assessed as amenable to treatment as a condition of community supervision. Another measure adds offenses for which offenders must pay assessments into the drug demand reduction fund, which is used to fund drug treatment. An act in Indiana creates a “forensic diversion program” to provide community treatment and mental health and addiction services as a condition of probation to nonviolent offenders who suffer mental illness or addiction.

### ***Intermediate Punishments***

A Pennsylvania enactment directs the state’s Sentencing Commission to adopt guidelines for identifying offenders who are suitable for intermediate punishments. The measure states as the primary purpose of state intermediate punishment to address drug or alcohol addiction or abuse of people who commit crimes and, in so doing, to reduce recidivism and enhance public safety. The law provides for assessment of defendants prior to sentencing and allows for a sentence of up to 24 months in a drug offender treatment program to be established under the act. Laws in Michigan and Virginia address use of drug court supervision to divert and treat drug offenders, and Connecticut and Georgia also will divert offenders to drug treatment.

Connecticut’s measure was part of a larger act aimed at managing and reducing the prison population. The law facilitates release of inmates by requiring a parole hearing for those who have served a required percent of their sentence and by allowing release of certain eligible inmates without a hearing. The law allows

transfer of some inmates who are near the end of their required sentence to a public or private halfway house, under Department of Corrections supervision. It also requires creation of incremental sanctions for parole violations that may include, but are not limited to, return to incarceration and that are based on the severity and frequency of violations. The legislation sets as an objective reducing prison admissions as a result of probation and parole violations by 20 percent, and charges the Judicial Branch and Board of Parole to develop plans to achieve that. Those and other agencies also are charged with collaborating on a strategy for re-entry of prisoners to the community, including an expected reinvestment of savings from reduction of the prison population to re-entry and community-based services and programs.

Legislation to create and require options other than return to prison for offenders who violate conditions of probation or parole, and for re-entry of offenders to the community, have been important criminal justice trends in states that continued in 2004. Arizona established a Community Accountability Pilot Program to provide for closer supervision—including electronic monitoring—of offenders who have violated conditions of community supervision but have not committed a new offense. Georgia established the Probation Management Act, which includes a pilot program in three circuits to impose sanctions that exclude incarceration for certain violations. A law in Mississippi will give correctional field officers more discretion in how they deal with certain violations of program conditions.

### ***Offender Reintegration***

Louisiana lawmakers created pilot programs to provide post-release services to help reintegrate offenders into the community. This follows an action last year to provide transition services in Louisiana prisons. Other states that addressed re-entry include Colorado, which will require the Department of Corrections to administer a re-entry program in concert with other state agencies; Oklahoma enacted a similar measure. Kentucky lawmakers included those being discharged from prisons among those for whom agencies will develop and implement homelessness prevention pilot projects.

Tennessee legislation directs the Department of Corrections to include in the prerelease orientation provided to inmates information about such issues as education and employment services and family and child support. Another Tennessee act directs the Department of Corrections and the Department of Personnel to study the issues of education and employment of those convicted of nonviolent crimes. Illinois deleted several occupational licenses from those that can be denied on the basis of a criminal record for an individual who has served his or her sentence and been released on disability.

Offenders who are nearing release in Maine can be placed in supervised community confinement, under an act that also creates sentencing alternatives of deferred disposition and administrative release for low-level crimes. An act in Oklahoma also expands eligibility for community sentencing. Two more states—Mississippi and Virginia—in 2004 joined the Interstate Compact on Adult Offender Supervision, bringing to 49 the number of states that now participate in the compact, which establishes procedures for interstate information exchange and tracking of offenders who are being supervised in the community.

Two states will work during the next year to study criminal sentencing under legislative actions in 2004. Kansas created the Criminal Justice Recodification, Rehabilitation and Restoration Project to study the state's sentencing guidelines and related criminal statutes and procedures. New Jersey also created a commission to review the fairness and proportionality of criminal penalties.

### ***Controlling Methamphetamine***

Many states in 2004 looked for ways to counter the growing problem of methamphetamine production and use. A number of states took action to regulate over-the-counter substances that are necessary ingredients for producing the drug. Notably, an Oklahoma enactment establishes strict guidelines for the sale of all products containing pseudoephedrine, found in decongestants. The law makes it a Schedule V substance that, while still sold over the counter, may be dispensed only at a pharmacy. Purchaser identification is required and a log of sales must be kept. It limits to 9 grams the amount of the cold remedy any one customer may purchase in 30 days. An Illinois enactment

similarly requires that products containing precursor active ingredients be stored behind a counter. It also limits the size of the package that can be sold in the state to 3 grams, and allows no more than two packages to be purchased in a single transaction.

At least a dozen other states—including Alabama, Hawaii, Iowa, Louisiana, Michigan, New Mexico, New York, North Carolina, Pennsylvania, Tennessee, Utah and Washington—passed laws that address over-the-counter or other precursor substances or other aspects of illegal manufacture of methamphetamine.

Measures to address child protection issues raised by illegal manufacture of methamphetamine were included in state laws. Colorado, Georgia, Hawaii, Illinois, New Mexico, North Carolina and South Dakota passed laws that took various steps to protect children from the dangers of methamphetamine production. These included provisions to create penalties and to add drug manufacture to circumstances and responses under various child welfare laws.

Hawaii's comprehensive law to address methamphetamine included establishing a multi-agency task force to respond to the effects of "ice" on children. Legislation also provides sentencing enhancements for manufacture of drugs with a child present and additional enhancements for serious injury or death to a child or others. In addition, the Legislature appropriated funds for treatment, prevention, rehabilitation and education related to methamphetamine.

### ***Tracking Violent Offenders***

An important law in Oklahoma takes to the next level registration and notice usually reserved for sex offenders, with a "violent offender registry." The act requires that those convicted of specified violent crimes register with the Department of Corrections or local law enforcement agency for 10 years after completion of a suspended sentence or term of incarceration. Information about violent offenders in the registry is to include address, fingerprints, photograph, DNA record and other information. An "habitual violent crime offender" designation is included for individuals with two or more qualifying offenses, and

registry information is available to state, county and municipal law enforcement personnel. The law requires that correctional and court personnel provide notice of duty to register. In addition, local law enforcement agencies are to notify those deemed appropriate—which may include family, prior victims, local schools and businesses—of the description and habits of violent offenders named in the registry.

Sex offenders remain a perennial target of legislation to provide for closer tracking and tougher penalties. A California enactment puts the state among those that post to the Internet information about registered sex offenders, including home addresses. Certain sex offenders will be allowed to apply to be excluded from the listing, with the burden on the offender to demonstrate why he or she should not be listed. California lawmakers also took action to address registration of transients and those who have been convicted in another state and move to California. Another act requires any state or local government agency with residency information to provide the Department of Justice with the address of any person who is in violation of his or her duty to register. Another measure requires counties to provide housing advice and assistance to sex offenders who are being placed in the community, and yet another ensures that law enforcement agencies are notified when a sexually violent predator is released from civil commitment. These actions in California follow a 2003 state audit that identified improvements needed to the accuracy and completeness of public information on sex offenders.

Arizona addressed notice regarding sex offenders with a measure to require law enforcement agencies to notify personnel in any place where children regularly congregate when certain registered sex offenders reside in the area. Another act expands notice of the presence of sex offenders to those convicted before 1996, requires assessment, and requires that guidelines be developed for when certain notice must take place.

Other states, as well, are attentive to sex offenders who victimize children. An act in Tennessee calls for development of a pilot program of continuous satellite monitoring of violent sex offenders, and a Georgia enactment eliminates any type of “first offender” status and penalties for those convicted of child molestation

crimes. Washington also imposed sentence enhancements for sex crimes against children, and a law in New York provides a mandatory life sentence for murder committed in the course of a sex crime against a victim who is younger than age 14. Maine lawmakers raised the crime class, and therefore increased penalties for sex crimes against children. The act also increases periods of probation, including possible lifetime supervision, for those who have committed a sex crime against a child.

A California law is the first of its kind to treat as sex offenders adults who hire juvenile prostitutes. The measure enhances by one year the sentence of adults convicted of any crime committed with a minor that involves the exchange of money for “services.”

### ***Enabling Services to Juvenile Offenders***

Michigan legislation reduces from 25 years to 10 years the time period that juveniles adjudicated for certain sex crimes would have to register as sex offenders. Michigan also passed a 2004 law to send juveniles to drug treatment courts. The Redeploy Illinois Program, created under legislation in that state, encourages counties to take part in a pilot program to reduce the number of juvenile offenders committed to the Department of Corrections and use the savings to develop local programs to supervise them at the county level. Connecticut lawmakers also are pursuing community-based services for juvenile offenders, with an act to require the Department of Children and Families to establish a plan for providing services to female juveniles who commit status offenses. Programming is to include substance abuse and mental health intervention and treatment. Actions in Maryland and Oklahoma address the importance of aftercare services for youth who are released from secure settings. Maryland and Louisiana addressed due process for juvenile offenders with measures that prohibit juveniles from waiving right to counsel in delinquency proceedings.

## ***Funding Technology, Information Exchange***

In Utah a measure adds a security surcharge to court convictions that will be used to fund security and technology in juvenile and justice courts. Tennessee will allow the Bureau of Investigation to use expungement fee proceeds to support the computer system that provides criminal history information to the private sector and other noncriminal justice agencies. Ohio became the 21<sup>st</sup> state to enact the National Crime Prevention and Privacy Compact, which establishes formal procedures and governance structure for interstate use and sharing of criminal information for noncriminal justice purposes. States have shown growing interest in policies that direct for whom the government keeps records, who may access the information and under what circumstances. As a result of legislation in Washington, a joint task force will study criminal background policy and reporting.

Other Washington legislation also addressed sealed juvenile court records and removes the requirement that a juvenile be at least age 18 to request that records of certain offenses be sealed after five years. Eleven states in 2004 enacted the Interstate Compact for Juveniles; 21 states now are party to that compact. Similar to the adult compact, it provides for information exchange, procedures and services when adjudicated, charged juveniles or certain runaway juveniles move across state lines. Colorado, Maryland and Oklahoma passed laws in 2004 on sealing or expunging certain crime records. Another Oklahoma act requires that the Criminal Justice Resource Center implement an offender information center that uses a uniform method to share information among existing agency data bases.

## ***DNA Records***

A proposition passed by California voters in November expanded DNA testing to all convicted felons, and increased fees for criminal cases to help offset costs incurred by the state and by local governments. In addition to collecting DNA samples from all adults and juveniles convicted of any felony and nonfelony sex offenses, those arrested for or charged with felony sex offenses, murder or voluntary manslaughter also will be required to provide a DNA sample. Starting

in 2009, the measure requires collection of DNA from adults arrested for or charged with any felony offense. The legislative analyst's office has estimated that costs to the state will be several million dollars initially, increasing to nearly \$20 million annually when costs are fully realized in 2009-2010. The office expects that costs to local governments are likely to be fully offset by revenues.

To date, 39 states require DNA samples from all convicted felons. Two other states—Louisiana and Virginia—require samples of arrestees, while Texas law provides for post-indictment samples from those charged with a sex offense. Virginia last year expanded arrestee sampling to include those arrested for attempted commission of a violent felony and certain attempted violations. All convicted felons were added to DNA databases last year in Missouri, Rhode Island, South Carolina and West Virginia.

Other states, as well, expanded DNA testing to include more crimes and offenders. Connecticut law now extends all-felon sampling to offenders who are in corrections custody for a qualifying offense or who are in mental health custody after being found not guilty by reason of mental illness. The law also clarifies the responsibility of various agencies and branches to collect samples from those in their custody and provides procedures and penalties for refusal to submit to DNA testing. A Kansas enactment similarly provides for retroactive application of DNA sample requirement to those sentenced after July 1, 1993, including adult and juveniles imprisoned and on probation. To help clear unsolved cases, Georgia added those on death row and those serving life sentences to the list of felons who must provide a sample. Idaho added felony domestic violence and felony burglary to the list of crimes for which convicted offenders must provide a sample. Under new law in Oklahoma, county sheriffs are authorized to collect DNA samples from offenders who receive probation or are incarcerated in county jail.

Delaware will delay implementation of the all-felons law passed in 2002, pending appropriations to fulfill the expansion effort. A measure passed in Illinois requires reports to the legislature on backlogs of cases that await DNA analysis, including what measures are being taken to reduce the backlog and the estimated costs. Another Illinois act requires that evidence collected in sexual assaults be

compared with the state and the FBI national databases to help identify and prosecute these cases.

Florida lawmakers authorized prosecution of specified sexual offenses in certain circumstances within one year after identity of a “John Doe” perpetrator is determined through DNA evidence analysis.

West Virginia’s all-felon enactment last year also established the right to post-conviction DNA testing for anyone convicted of and imprisoned for a felony. A New Hampshire act also will permit petitions for post-conviction DNA testing under certain circumstances. Actions in Tennessee amended post-conviction DNA testing law to require that indigent defense funds pay for court-ordered tests, and another law establishes circumstances that must be met for claims of wrongful imprisonment and a \$1 million compensation cap, payable in monthly installments.

An act in Virginia establishes a process similar to that already in law for post-conviction claims based on DNA evidence. It allows other convicted felons to raise claims of innocence based on previously unknown or unavailable evidence. Another law provides guidelines for compensation of people who are wrongfully incarcerated, including formulas to calculate compensation and payment distribution.

Legal experts identify false or coerced confessions as among the major causes of wrongful conviction. An act in Maine addresses police interrogations of suspects, requiring that law enforcement agencies videotape such discussions that concern the commission of a crime. Other states that have such measures in law are Illinois, which included recording interviews with first-degree murder suspects in a major capital justice reform act a year ago, and Texas. Alaska and Minnesota have case law requirements to do so, as well.

### ***Police Impersonation, Conduct***

Two states—Arizona and Colorado—in 2004 upgraded to a felony impersonating a peace officer. A measure in California also seeks to address false identification

as a police officer by prohibiting the sale and wearing of any badge or insignia that falsely purports to be that of an authorized officer. An act in Wisconsin makes it a felony to point a firearm at a law enforcement officer or other public safety worker.

States continue to address “racial profiling” by law enforcement officers. Rhode Island is among the most recent to place a ban on racial profiling in traffic stops by state and municipal law enforcement agencies. That act also requires law enforcement agencies to collect data and submit statistics on traffic stops. A law in West Virginia requires law enforcement officers to collect certain data during traffic stops and requires government agencies to report the data to the legislature to analyze racial profiling. A Tennessee act declares that racial profiling by law enforcement officers is contrary to public policy, and an enactment in Nebraska includes creation of a study committee on racial profiling.

### ***Jurisdictional Issues and Anti-Terrorism Efforts***

Utah lawmakers put in 2004 state law additional procedures to determine whether the state has jurisdiction over an offense and clarifies procedures for challenging jurisdiction for prosecution. California legislation codified and centralized under the Department of Justice a foreign prosecution and law enforcement unit, which has responsibility for liaison with foreign governments related to prosecution of those who commit crimes in California and flee abroad, for child abduction recoveries, and for coordination with local law enforcement agencies on these and related matters.

Several state crime enactments in 2004 contribute to state and local anti-terrorism and public safety efforts. Florida law requires name change petitions to include fingerprints for background purposes and that updates be made to certain law enforcement and motor vehicle reports. Bills passed in New York allow certain counties to increase fees for improvement in public safety communications systems, and a Kansas law provides emergency authority for deputizing peace officers in the event of a terrorist attack.

Links to legislation referred to in this report may be accessed via state legislative Web sites at <http://www.ncsl.org/public/leglinks.cfm>. Bill citations, by topic, appear below.

### **DNA**

California Proposition 69; Connecticut H 5662; Delaware H 413; Florida H 1831; Georgia S 482; Idaho H 520; Illinois S 3014 and H 4424; Kansas H 2542; Missouri S 1000; New Hampshire H 640; Oklahoma S 1374; Rhode Island H 7290; South Carolina H 3594; Tennessee S 3008; Virginia H 776; West Virginia H 4156.

### **Drug Sentencing and Related Reforms**

Connecticut H 5211; Georgia S 503; Hawaii H 2003, S 2748; Indiana H 1437; NY A 11892; Michigan S 998; Pennsylvania S 217; Virginia H 1430.

### **Intermediate Punishments, Community Supervision and Re-entry**

Arizona H 2646; Connecticut H 5211; Colorado H 1074; Georgia H 1161; Illinois S 948; Kentucky H 376; Louisiana S 594; Maine H 1409B; Mississippi H 652; Oklahoma S 1486 and S 1174; Tennessee H 2260 and S 2663.

### **Interstate Compact on Adult Offender Supervision**

Mississippi H 495; Virginia S 448.

### **Jurisdiction, Including Foreign**

California A 2160; Utah S 119.

### **Juvenile Offenders**

Connecticut H 5366; Illinois H 2545; Louisiana H 1508; Maryland S 163 and S 767; Michigan S 4920 and H 5716; Oklahoma S 985.

### **Interstate Compact for Juveniles**

Alabama S 58; Colorado H 1304; Florida S 274; Idaho H 518; Kansas S 183; Montana S 139; New Jersey A 839; Oklahoma S 1552; Pennsylvania S 319; South Dakota H 1102; Wyoming S 5.

## **Methamphetamine**

Alabama S 385; Hawaii H 2206; Illinois S 2244; Iowa S 2101; Louisiana H 477; Michigan S 651; New Mexico H 111 and S 160; New York A 10882; North Carolina S 1054; Oklahoma H 2176; Pennsylvania H 2739; Tennessee H 2385; Utah H 123; Washington S 6478.

## **Methamphetamine Child Protection**

Colorado S 117; Georgia S 467; Hawaii H 2003 and H 2004; Illinois S 2447; New Mexico H 112 and S 161; North Carolina S 1054; South Dakota S 66.

## **Police**

Arizona S 1127; California A 1153; Colorado H 1003; Kansas H 2293; Maine S 286; Nebraska L 1162; New York S 1345 and A 9038; Rhode Island H 8663 and S 2569; Tennessee H 861; West Virginia S 271; Wisconsin A 206.

## **Post-Conviction Claims and Wrongful Imprisonment**

Tennessee H 2859; Virginia H 638.

(Also see DNA, West Virginia and New Hampshire).

## **Records Policy, Systems and Sharing**

Colorado H 1376; Florida H 1787; Maryland H 624; Oklahoma H 1853 and S 1394; Tennessee H 2277; Utah S 196; Washington H 2556 and H 3078.

## **National Crime Prevention and Privacy Compact**

Ohio S 53.

## **Sentencing Study**

Kansas S 45; New Jersey S 2215.

## **Sex Offenders**

Arizona H 2452 and H 2602; California A 488, California A 3042, A 493, A 2527 and A 2450; Georgia H 1093; Maine H 1373B; New York S 7488; Tennessee H 3182; Washington H 2400.

This report highlights selected state legislation. For more information, contact the Criminal Justice Program in NCSL's Denver office at (303) 364-7700; or [cj-info@ncsl.org](mailto:cj-info@ncsl.org). To receive regular criminal justice information updates from NCSL, go to <http://www.ncsl.org/programs/cj/crime.htm> and sign up for NCSL e-news.

©2005 by the National Conference of State Legislatures. All rights reserved.

ISBN 1-58024-385-1