

The Dope on Drug Sentencing

New approaches simplify sentencing, get more drug abusers treatment and save states money.

BY ALISON LAWRENCE

Drug abuse and the criminal justice system are inextricably entwined.

As much as 80 percent of what states spend for prisons, parole and probation is for offenders involved with drugs. Most of that money is spent on building and operating prisons, according to a study by the National Center on Addiction and Substance Abuse at Columbia University.

While only 20 percent of inmates in state prisons are serving time for drug crimes, 53 percent of them are considered substance abusers.

In recent years, a number of states have examined their drug sentencing laws to identify people who can benefit from community-based alternative programs so prison space can be reserved for the most serious criminals. Lawmakers have studied inequalities in sentencing, revised the hierarchy of serious drug offenses and placed a greater focus on treatment.

The efforts are aimed at creating a better system for drug offenders and saving states money that can be used for other programs.

Updating the Code

Delaware's drug code, like those of other states, was a complex web of laws that had been revised over the last 30 years. Mandatory minimum sentences had been increased, others decreased or eliminated, and drug weight thresholds modified.

In 2011, Delaware lawmakers authorized a complete revision of their drug sentencing laws, a move supported by a task force of legislators, police officials, defense and prosecuting attorneys, judges and a local advocacy group.

Delaware Senator Liane Sorenson believed that to avoid incremental success and "to avoid a battle each year in the General Assembly, the stakeholders should work together rather

than against each other."

The overhaul aimed to address the "inherent inequalities [of drug sentencing laws] and the impact on communities and the prison system," says Delaware Representative Melanie George, primary sponsor of the legislation, and to "narrowly identify, as a matter of public policy, who we want to be in jail and who needs treatment and deserves to be a contributing member of society."

A major provision of the 2011 act was restructuring drug offenses into three main categories—simple possession, possession of large amounts, and drug dealing—reflecting the seriousness of the drug crimes. Aggravating factors—such as resisting arrest by force or committing the crime in a school zone—were established that, if present, increase the penalties.

"We increased penalties for offenders dealing in large amounts of drugs or who are violent," George says, "on the theory that they are the ones who cause the most harm to the community."

The new structure also reduces penalties for possessing small amounts of drugs. "We wanted to give the people who were hurting themselves and not others the opportunity to be a productive member of the community, instead of being a \$33,000 a year burden on society," George says.

Sentencing ranges were set for each crime class that relaxed mandatory sentences and gave "some flexibility back to judges by allowing them to weigh the spectrum of issues related to a crime and not just the weight of drugs," says Representative Greg Lavelle.

Previously, penalties were based solely on the weight or amount of drugs the person possessed at the time they were arrested.

Since many offenders received stiffer penalties because they were in a school zone when they were arrested, drug-free school zones were decreased from 1,000 feet to 300 feet and possession in this area became an aggravating factor rather than a stand-alone offense. It was found that the previous drug-free school zone law had a disproportionate effect on minorities in cities where it was difficult not to be within a school zone.

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*Representative Melanie George,
Delaware*



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Liane Sorenson
Delaware



Representative
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Delaware



Representative
Greg Lavelle
Delaware

By The Numbers

138%

Increase in the arrest rate for possessing or using drugs from 1980-2009.

77%

Increase in the arrest rate for selling or manufacturing drugs from 1980-2009.

20%

State inmates serving time for a drug crimes.

53%

State inmates who meet the medical criteria for substance abuse.

2%

U.S. adult population that meet the medical criteria for substance abuse.

14%

Inmates with a history of recent drug use who received treatment while in prison.

33%

Those in state prisons who stole to get money for drugs.

78%

Drug offenders with a prior criminal sentence.

80.5%

Amount of states' corrections budgets spent on adult substance abusing offenders.



“With few areas in the city outside such a ‘school zone bubble,’ the law logically posed very little incentive for drug offenders to move away from schools,” Sorenson says.

“This law is a major step forward for Delaware,” she says, “and reflects some of the same evidence and philosophy that we are seeing in states such as New York with the repeal of the Rockefeller laws, and on a national level with the leveling of crack/cocaine sentencing disparities.”

New Jersey lawmakers addressed this same “urban effect” problem in 2009. A study commission created by the Legislature found more than 95 percent of people jailed for a crime in a drug-free zone were either African American or Latino. The commission recommended changing the law to permit judges to waive or reduce, in certain circumstances, the mandatory prison term required for drug-free school zone offenses.

Turning Toward Diversion

In Colorado, a tight budget and a growing awareness that substance abuse and mental health treatment can effectively reduce recidivism prompted state policymakers to focus on drug treatment instead of prison for some drug offenders.

“Our budget crisis brought the matter to light by

causing us to more thoughtfully consider the taxpayer’s ‘return on investment’ for those being incarcerated for drug possession and use,” says Senator Ellen Roberts. “We knew we needed another way to make improvements to slow or stop the revolving door of prisoners being released only to return shortly for a drug offense similar to the one originally committed.”

Colorado has targeted lower-level drug offenders—convicted of use and possession offenses—as suitable for community-based treatment in lieu of prison. Lawmakers decreased felony and misdemeanor classifications in 2010, shortening the sentences of some and sending fewer offenders to prison. The savings from housing fewer prisoners are reinvested in drug treatment programs.

“Rather than have cost savings be returned to the general fund,” Roberts says, “we set in statute a requirement that some of the cost savings must go to the drug offender treatment fund to attempt to get to the individual’s root problems and reduce the likelihood of recidivism.”

Colorado adopted two other measures in 2011 to reduce prison sentences for people convicted of low-



Senator
Ellen Roberts
Colorado

level drug crimes. One increased the opportunity for parole, and the other removed some possession offenses from habitual offender sentencing laws.

“We have taken a measured and deliberate pace in this reform because we don’t want to overwhelm the treatment system,” says Senator Pat Steadman. He notes low-level drug dealers who are selling to feed their own addiction also may be strong candidates for community-based treatment in the future. “I like to call this a ‘win, win, win’ for public safety because we’re reducing the cycle of crime, for taxpayers because we are making smarter use of their resources, and ultimately for the individual because they will get the help they need,” he says.



*Senator
Pat Steadman
Colorado*

Other states are exploring and have enacted similar policies. Earlier this year, Kentucky lawmakers adopted a comprehensive criminal justice reform act that included some key changes to the state’s drug sentencing laws.

The act created drug quantity thresholds for trafficking offenses that lowered penalties for smaller amounts of drugs while maintaining prison sentences for the larger amounts. The new law even requires, in some circumstances, that people convicted of possession serve their sentence on probation. The idea is to keep lower-level offenders out of prison and jail “if they do what they are supposed to do toward recovery,” says Kentucky Representative John Tilley. “We’re recognizing addiction is a disease of relapse.”



*Representative
John Tilley
Kentucky*

The reform package, slated to save the state \$42 million a year over the next decade, requires some of the savings from fewer incarcerations to be spent on drug treatment programs.

“One of the main complaints we have from judges, prosecutors and defense attorneys throughout the state,” says Tilley, “is that when they identify somebody who clearly needs treatment, they either can’t find a bed or a program for that person.”

In Kentucky, it costs nearly \$22,000 a year to incarcerate someone, or an average of \$3,000 for six to nine months of community-based treatment.

“You can see,” Tilley says, “the potential here for dramatic savings.”

