



National Conference of State Legislatures
CRIMINAL JUSTICE REPORT

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State Crime Legislation in 2006

A summary of selected, significant state criminal justice, juvenile justice, victim rights and related legislation in 2006

State crime legislation in 2006 prominently included mandatory minimum sentencing laws for sex offenders who victimize children, as well as new policies to restrict and watch them in the community. State actions last year also continued to expand DNA databases, including for certain misdemeanor convictions and arrestees. Other laws addressed innocence, refined policy for drug offenses, and facilitated successful reentry of offenders from prison to communities.

The appropriate role of state and local law enforcement agencies in enforcing federal civil immigration law was taken up in several states, while other laws addressed smuggling and trafficking in people and other actions to exploit undocumented people. A number of states revived self-defense law in 2006, with "stand your ground" laws that allow for justifiable deadly force against an intruder in certain circumstances. States also addressed gang crime as well as mental health and competency issues in juvenile justice.

Monitoring Sex Offenders

Mimicking some of the most significant provisions of Florida's 2005 Jessica Lunsford Act, 15 states created a mandatory minimum sentence of 25 years to life for certain sexual offenses against children. About half of the states now provide for a life sentence for certain sexual offenses. In addition, 22 states passed legislation requiring or authorizing the use of Global

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Positioning Satellite (GPS) systems to monitor some sex offenders following their release from custody. In California, policy providing for lifetime GPS monitoring of felony registered sex offenders was passed by voters in 2006 as Proposition 83.

Under new laws in Oklahoma and South Carolina, certain rape convictions may be eligible for a death sentence. (Florida, Georgia, Louisiana and Montana also have such laws.)

States continued to expand and refine laws that restrict where sex offenders may live, work or visit. Eighteen states passed such laws in 2006. Among them, Kansas now prohibits transitional release facilities for sexually violent predators from being within 2,000 feet of facilities where children are. It also prohibits local restrictions on sex offender residency. Maryland requires the state's parole commission to establish restrictions on where sex offenders may live, work and visit. In Washington, legislation directs the Association of Washington Cities to develop statewide standards for determining residency restrictions on sex offenders. Another Washington measure allows sex offenders to petition the court concerning their prohibited status.

As a way to facilitate registration, several states now involve the department of motor vehicles in sex offender registration. Illinois, Kansas, Oklahoma and Utah created a one-year expiration date on driver's licenses for registered sex offenders. Mississippi requires a sex offender to report to a driver's license station for initial registration or certain changes in status. West Virginia joins Alabama and Delaware in requiring that sex offenders have a recognizable notation on their driver's license indicating they are a registered sex offender.

Virginia expanded the definition of an "abused and neglected child" to include a child knowingly being left alone in a residence with a person (not related to the child) who has been convicted of a sex offense against a minor.

Specialized measures regarding juvenile sex offenders were enacted in several states last year. Arizona established the Joint Legislative Committee on Youthful Sex Offenders to review charging and sentencing practices for youthful sex offenders who were charged as adults. It further requires an examination of the

current psychological and treatment services for youthful sex offenders, housing policies for youthful sex offenders, sex offender notification processes for transferred youth, and adult supervision and case management practices and policies. Colorado included both juvenile and adult offenders in an act that eliminates the statute of limitations for prosecuting sex crimes against children.

The growing problem of child solicitation via the Internet was addressed in several enactments in 2006. A Colorado act prohibits an unrelated person from using a computer network to communicate with a child under age 15 without consent of the child's parent if the person is at least four years older. Measures in Kansas and Oklahoma establish the crime of "electronic solicitation" as a felony, while Virginia lawmakers made it a felony to pay for any online sexually explicit material that includes children.

Expanding DNA

The importance of DNA in criminal justice continued to be evident in 2006, as states expanded databases, addressed statutes of limitations, and refined post-conviction opportunities based on DNA. Laws in two states—Kansas and New Mexico—require certain arrestees to submit DNA samples. In Kansas, anyone arrested for serious felonies must provide a DNA sample at the time of fingerprinting. The law expands arrestee sampling to all felons in 2008. New Mexico will collect DNA from those age 18 and older who are arrested for specified serious felonies.

Illinois, New York, Utah and Wisconsin expanded DNA testing to include some misdemeanor convictions, mostly adding sex offender registry crimes that are misdemeanors. Utah's measure expands the DNA database to include those convicted of any Class A misdemeanor.

States also are expanding DNA identification systems for missing persons and unidentified remains. States that enacted such policies in 2006 include Colorado, Louisiana, Nebraska and New Mexico. Other states—including Florida, Indiana, Iowa, Washington and Wisconsin—suspend statutes of limitations for certain crimes based on DNA identity.

Acts in Tennessee expand DNA lab capacity, creating new forensic scientist positions to perform DNA testing in criminal investigations. Missouri increased the surcharges on defendants convicted of certain felonies and required that portions of the revenues go to the DNA Profiling Analysis Fund. The same act allows those found innocent as a result of DNA analysis to be paid restitution. Several other states—including Hawaii, Louisiana, Maine and Ohio—expanded opportunity for post-conviction DNA testing for claims of innocence.

Addressing Innocence

North Carolina became the first state to establish a statewide Innocence Inquiry Commission to investigate and determine credible claims of factual innocence. The independent commission, established under the judicial branch, will include eight members and a staff director to conduct formal inquiries of cases accepted. Unanimous determinations by the eight members can send a case back to Superior Court, where three-judge panels are to review cases and rule on whether there is clear and convincing evidence to exonerate those convicted. Under the new law, once a case is heard by the commission and a three-judge panel, it is not subject to further review by appeal or motion.

Methamphetamine

The federal Combat Methamphetamine Epidemic Act became took effect in 2006, incorporating many of the provisions states had enacted in previous years to stop the abuse of cold medicine in the production of methamphetamine. The law preempts states with less restrictive laws but still permits states to take more restrictive action on these products. While states continued to fine-tune provisions related to the misuse of pseudoephedrine, they also enacted related measures to protect children and provide for clean-up, treatment, education and private property matters.

New laws designed to protect children who are exposed to methamphetamine included a measure in Hawaii that expanded the crime of endangering the welfare of a minor to include causing or permitting a minor to ingest methamphetamine. Lawmakers there also funded a pilot clinic to provide

prenatal, delivery, social services and postpartum care to women with a history of methamphetamine and other substance abuse.

Washington provided state funding to counties for mental health or substance abuse treatment for methamphetamine addicts. California implemented a statewide campaign to deter initial and continued use of methamphetamine. Colorado created the State Methamphetamine Task Force to study the best practices for prevention, intervention and treatment.

Illinois created the Methamphetamine Manufacturing Registry Act, which requires the state police to maintain a website, available to the public, with information about convicted methamphetamine manufacturers. Laws in Michigan and Ohio require law enforcement agencies to compile information about illegal methamphetamine activity for a yearly report to the legislature.

Under a new law in Colorado, sellers of residential property are required to disclose if the property has been used for manufacturing methamphetamine. Nebraska requires property owners to report clandestine drug labs to local authorities. A Washington act makes property owners responsible for costs of property testing, decontamination, demolition and disposal costs. In West Virginia, innocent property owners now may claim up to \$5,000 from the crime victims compensation fund for damage caused by an illegal lab.

Drug Policy

An important enactment in California amends, manages and funds the now five-year-old Proposition 36, which turned drug policy on its ear by mandating that certain drug offenders be diverted to treatment in lieu of incarceration. Achieving the two-thirds vote of each house needed to amend a voter measure, the 2006 act creates a Substance Abuse Treatment Trust fund to cover county costs for drug treatment programs. The act provides for drug testing and closer monitoring of diverted offenders by the courts and authorizes courts to order a term of incarceration or residential treatment if sentence conditions are violated. Courts also may set aside a conviction after a positive treatment completion report. Another action in California provides that certain inmates who complete prison drug treatment may, upon parole, be sent to a residential aftercare

program and discharge their parole after 150 days of successful residential care.

Lawmakers in Arizona also addressed funding of treatment services for diverted drug offenders, creating the Addiction Reduction and Recovery Fund in an act that provides funds for treatment, enforcement and prevention. A new law in Hawaii makes first-time, nonviolent property offenders eligible for probation and treatment if the court determines that the crime was significantly related to substance abuse or addiction. Another action there provides for expungement of records of anyone who, under existing law, completes a drug treatment diversionary sentence. Indiana amended its forensic diversion program to allow that failure to complete the program may result in revocation of probation, assignment to work release or other modification of sentence.

A Louisiana enactment will allow courts to defer proceedings and place defendants on probation, pending completion of a drug diversion program; upon completion, criminal charges will be dismissed. Another Louisiana act will make inmates convicted of certain controlled substances crimes eligible for work release.

Illinois will allow county fees imposed on defendants found guilty to be used for drug court and mental health courts under one measure, and another enactment authorizes additional county fees in drug court cases. Yet another Illinois measure specifies that proceeds from asset forfeiture can be used for drug enforcement, including security cameras to prevent and detect crime and violence. An enactment in Wisconsin increases the amounts of funds that law enforcement agencies will retain from cash and property seized in drug cases. Idaho created the Drug Enforcement Donation Fund, with money to be used to support a drug-reporting hotline and reward system for the reporting of drug violations. New fine assessments on drug violations also will go to that fund.

An act in Massachusetts provides funding to specified localities for a drug interdiction pilot program, while Utah lawmakers expanded a pilot program there to include all felony offenders—not just controlled substances defendants—in required screening and assessment.

Drug trafficking was addressed in a Georgia measure, which prohibits owning,

operating, selling or installing a vehicle with false or secret compartments. In Virginia, new mandatory minimum sentences will apply to third or subsequent convictions for the manufacture or sale of dangerous drugs, and an act in California will enhance the penalty by one year for drug trafficking near a drug treatment or detox facility or a homeless shelter. A sentencing action in Maine adds that a victim was homeless to the list of factors that a court may consider in determining a sentence.

Delaware and Tennessee added to controlled substances laws salvia divinorum as a hallucinogenic substance.

Five states—Connecticut, Iowa, Louisiana, South Carolina and Vermont—enacted legislation in 2006 creating a prescription drug monitoring program, bringing to 33 the total number of states with such programs. State prescription drug monitoring programs allow doctors and pharmacists to check an electronic database to ensure prescriptions are legitimate.

Sentencing and Supervising Offenders

The trend in states to better prepare inmates for and supervise them during reentry to the community continued in 2006; more than a dozen states added to or expanded laws in this area. Delaware law addressed the difficult issue of ex-offender employment, allowing many specified occupational boards to waive convictions for which the offender completed or discharged all sentence requirements at least five years previously, if the applicant is deemed capable of competent practice of the occupation. Illinois lawmakers amended the state's procurement code to require in vendor contracts the encouragement that they hire qualified veterans or state residents who have been discharged from a correctional facility. The act creates a tax credit for hiring veterans or ex-offenders within one year of their release. Another Illinois act allows for halfway houses for those released from state corrections facilities.

Actions in Virginia address employability of and housing for ex-offenders. Legislation requires the Department of Corrections to provide to inmates, upon discharge, documentation of work, education and treatment programs completed while in prison. Another act requires the Department of Housing and Community

Development to create and implement housing programs for offenders who are returning to the community from prison.

New York law added to purpose of penal law to ensure the public safety through promotion of successful and productive reentry and reintegration of those who have been convicted of crimes. Washington lawmakers established a joint legislative task force to examine prison-based training and education and recommend how community supervision and work release can be improved to benefit public safety and reduce recidivism.

California expanded pre-release programs to additional jurisdictions. Another enactment requires the Department of Corrections to establish a Reentry Advisory Committee to advise on planning, implementation and outcomes of department reentry programs. A Connecticut act requires the Criminal Justice Policy and Planning Division to develop and implement a comprehensive offender reentry strategy. The same act creates a task force to comprehensively address sentencing fines and terms of imprisonment.

Options for parole violators were addressed in Tennessee, with a measure that authorizes the Department of Corrections to establish therapeutic community diversion for offenders who have committed parole violations but not new felony offenses. Better information exchange for managing violators was addressed in a Connecticut enactment. The measure requires the Criminal Justice Policy and Planning Division to notify each municipality monthly of outstanding probation violation arrest warrants.

Alabama lawmakers adopted initial voluntary sentencing guidelines of a sentencing commission that has been at work there for several years, with more truth-in-sentencing standards expected for legislative review within the next two years. Two states enacted measures similar to “three strikes” laws popular in the 1990s. Arizona will require mandatory life imprisonment for a person convicted of a third specified violent or aggravated felony within 15 years of the first two convictions.

An act in Hawaii requires a mandatory minimum 30-year sentence for a “habitual violent felon,” defined as a person convicted of a third violent Class A or Class B

felony, except if the current or prior one is first degree burglary.

Immigrant Issues Abound

The prominence of immigration policy in states was seen in crime and law enforcement measures, as well. The appropriate role of state and local law enforcement agencies in enforcing federal civil immigration law was addressed in several states. A Colorado law, part of a broad set of reforms there, prohibits local jurisdictions from enacting “sanctuary” legislation that impedes law enforcement agencies from cooperating or communicating with federal officials concerning an arrestee. It requires officers of the law to report any suspected illegal immigrant arrestees to federal ICE authorities. Another Colorado measure instructs the state’s attorney general to pursue reimbursement from the federal government for all costs associated with illegal immigration, including incarceration. Omnibus legislation in Georgia also requires law enforcement agencies to determine the immigrant status of those charged with felonies. A measure in Ohio also seeks greater partnership with ICE, requiring that a list of all known, undocumented immigrants who currently are serving prison terms in the state be compiled and provided to ICE to encourage its assuming custody of such people. It also requires that these prisoners be released to ICE. In Virginia, a new law mandates reporting to ICE if a juvenile is being held on an allegation that he or she committed a violent felony and if intake officials have probable cause to believe the detainee is in the United States illegally. A Vermont law will require courts to advise defendants of immigration consequences when pleading guilty to criminal offenses, including deportation.

Both smuggling (illegally crossing or transporting people across the border) and trafficking (the act of forced servitude that sometimes includes crossing borders) were issues addressed in states in 2006. Colorado’s immigration reforms package included several related measures. One makes smuggling humans a Class 3 felony and upgrades that to a Class 2 felony for adult illegal immigrants. Another Colorado act makes human trafficking a crime and increases penalties. Trafficking a human under that law includes selling, exchanging, bartering or leasing an adult in exchange for money. Another act addresses threats to report a person’s immigration status to authorities, and yet another makes it illegal to threaten the destruction of immigration or work documents or to give notice to

law enforcement agencies in order to force a person into labor or services, with or without compensation. Such acts become Class 6 felonies under Colorado law. A similar law in Virginia makes it a Class 5 felony to threaten to report immigrant status to authorities for the purpose of extortion.

Connecticut, Florida, Idaho, Iowa, Michigan, Mississippi and North Carolina addressed the crime of or penalties for human trafficking in new criminal law in 2006. Hawaii lawmakers and those in Maine established study groups on the issue. In Colorado, an act was passed requiring the Colorado State Patrol to create a division to address human trafficking and smuggling on state highways.

Victims and Witness

An Alaska measure allows law enforcement personnel to temporarily detain a person if the officer believes the person has information related to various specified crimes. The measure allows the person to be fingerprinted if he or she has no identification, although those prints cannot be used in investigations unless the person becomes a suspect.

An enactment in Mississippi created a number of new crimes to address obstruction of justice. These include first and second degree hindering prosecution of crimes, bribing a witness, a bribe received by a witness, intimidating or tampering with a witness, bribery or intimidation of a juror, tampering with physical evidence, and retaliation against a public servant or witness. Five-year sentences and \$5,000 fines can apply to some felonies.

State laws in 2006 continue to strengthen rights of crime victims. Arizona law now allows a victim to request a reexamination proceeding within 10 days of a proceeding for which the victim asserts that his or her rights were denied. Decisions made can be reconsidered with the victim's involvement. Legislation in Colorado focused on better training in the criminal justice system to ensure that victims' rights are carried out as intended under state law.

A wave of "stand your ground" self-defense laws emerged in states in 2006. These followed a 2005 Florida act with three notable provisions: that a person being attacked has no duty to retreat, that they may return force with force, and

that they are protected from criminal prosecution in doing so against an intruder in their residence or vehicle. States that added similar provisions about self defense and justifiable deadly force in 2006 included Alabama, Alaska, Arizona, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Oklahoma, South Carolina and South Dakota.

Crime Rates Trend Upward

State legislatures responded to increased rates of violent crime in 2006 with various measures to address gang and weapon-related crime.

An omnibus public safety act in the District of Columbia includes making it a criminal offense to recruit members for a gang or participate in crime on behalf of a street gang. A new Idaho Criminal Gang Enforcement Act enhances penalties for gang-associated crimes, including recruitment. California added certain weapons crimes to those that may establish a pattern of criminal gang activity, and Hawaii addressed use of weapons to commit crimes with new crime categories and penalties. Other states with enactments concerning gang association and crime included Georgia, Indiana and Virginia. Actions in Virginia included information sharing about criminal gang members among the corrections and juvenile justice departments, law enforcement agencies and schools. A Utah measure adds discharge of a weapon from a vehicle to the list of offenses that can be used to charge homicide as first degree murder.

Racial Justice

States continue to deal with the disparate effects of crime policies on minority populations. Illinois enacted the Racial Profiling Prevention and Data Oversight Act to identify and address bias-based policing. Kansas extended the term of a task force to review and make recommendations to address racial profiling, and Maryland extended the sunset on policy requiring collection of traffic stop data. In California, the Gwen Araujo Justice for Victims Act addresses best practices for preventing bias from affecting the outcome of jury trials. Kansas lawmakers added to responsibilities of the Advisory Group on Juvenile Justice and Delinquency Prevention to study the effectiveness of programs in addressing racial, geographic and other biases that may exist in the system.

Juvenile Mental Health

Other states addressed mental health and competency issues in juvenile justice. Mississippi now requires the Adolescent Offender Program operated with local mental health entities, to include evidence-based practices and behavioral interventions such as academic, vocational and mentoring programs. The law emphasizes community-based programming in place of incarceration for certain juvenile offenders. Laws in Georgia, Louisiana and Maryland address the process of evaluating mental competency of a juvenile in proceedings for either juvenile or criminal charges. Colorado legislation prohibits mental health benefit providers from denying coverage of treatment to young clients because such treatment is the result of a court order.

Also in 2006, Washington lawmakers created “reinvesting in youth” grants to counties that implement research-based youth services. The objective of this ambitious new partnership of state and local governments is to reduce crime.

Links to most legislation in this report can be accessed via state legislative web sites at [http:// www.ncsl.org/public/leglinks.cfm](http://www.ncsl.org/public/leglinks.cfm).

Community Supervision, including Reentry

California A 1998 and A 2436; Connecticut H 5787 and H 5781; Delaware S 403; Illinois H 4446 and S 1279; New York S 7588; Tennessee H 3989p; Virginia H 1093 and S 184; Washington S 6308

DNA

Colorado H 1122; Florida H 7177; Hawaii S 2243; Illinois S 2985; Iowa H 2624; Kansas H 2554; Louisiana H 1140 and S 401; Maine H 1348; Missouri S 1023; Nebraska L 285 and L 1113; New Mexico S 216; New York S 8446; Ohio S 262; Tennessee S 2651; Washington S 5042; Wisconsin A 47

Drugs

Arizona H 2554; California S 1137, S 1318 and S 1423; Connecticut S 505; Delaware S 259; Georgia H 1193; Hawaii H 2780; Idaho H 633; Illinois H 4527, S 2272 and S 2869; Indiana S 275; Iowa H 722; Louisiana H 153, H 376 and H 1154; Massachusetts H 5098; South Carolina H 3803; Tennessee S 3247; Utah S 185; Vermont S 90; Virginia H 1347

Gangs and Violence

California S 1222; Georgia H 1302; Hawaii H 877; Idaho 1336; Utah H 102; Virginia H 901 and S 561; District of Columbia B 964

Immigration and Criminal Justice

Colorado H 1014 and S 90; Georgia S 529; Ohio S 9; Vermont S 182; Virginia H 1046

Innocence

North Carolina H 1323

Juvenile Justice

Colorado S 5; Georgia H 1145; Kansas S 47; Louisiana H 503; Maryland H 1257; Mississippi H 199; Washington H 1483

Law Enforcement

California A 1160; Idaho H 404; Illinois S 2870 and S 2368; Kansas S 486; Maryland S 288

Methamphetamine

California S 1500; Colorado H 1145 and S 2; Hawaii H 1996 and H 2045; Illinois S 2915; Michigan H 5841; Nebraska LB 915; Ohio S 53; Washington S 6239; West Virginia S 566

Self Defense, Use of Force

Alabama S 283; Alaska S 200; Arizona S 1145; Florida 2005 S 436, Florida Statutes 776.031; Georgia S 396; Idaho S 1441; Indiana H 1028; Kansas S 366; Kentucky S 38; Louisiana H 1097; Michigan S 1046; Oklahoma H 2615; South Carolina H 4301; South Dakota H 1134

Sentencing

Arizona S 1444; Connecticut H 5781; Hawaii S 2260; Maine H 1442

Sex Offenders

Arizona S 1328; Colorado H 1088 and H 1011; Illinois S 2962; Kansas H 2576 and S 506; Maryland H 28; Mississippi S 2865; Oklahoma S 1479, S 1800 and S 1964; South Carolina S 1138; Utah H 158; Virginia H 1014 and H 1066; Washington H 2409 and S 6144; West Virginia H 101A

Trafficking and Smuggling Humans

Colorado S 206, S 207, S 4, S 5 and S 225; Connecticut S 153; Florida S 250; Hawaii H 2051; Idaho H 536; Iowa S 2219; Maine H 893/LD 1296; Michigan H 5747; Mississippi H 381; North Carolina H 1896; Virginia S 291

Victims and Witnesses

Alaska S 3005C; Arizona SB 1176; Colorado H 1379

The selected legislation covered in this report is not intended as a comprehensive list. This report was authored by Sarah Hammond, Blake Harrison and Donna Lyons. Alison Lawrence researched and prepared summaries of crime enactments. Ann Morse contributed research and information about immigration-related enactments, and Pam Greenburg contributed information about Internet-based child exploitation and solicitation.

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

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