



E-Bulletin

January 2012
Issue 6

Sentencing and Corrections Policy Updates



National Conference of State Legislatures, 7700 East First Place, Denver, CO 80230
www.ncsl.org – alison.lawrence@ncsl.org – 303/364-7700

INSIDE THIS ISSUE

Front Page	
2011 Drug–Policy Law Round–Up	1
Issue in Focus	
Risk and Needs Assessments	2
On the Fiscal Front	
Reorganization of Sentencing and Entities	4
On a Related Note	
Guiding Principles for Crime Victims and Survivors of America	5
Mark Your Calendars	5

For more information on Delaware’s 2011 changes, see NCSL’s State Legislatures magazine article, [“The Dope on Drug Sentencing.”](#)

Front Page

2011 Drug–Crime Policy Round–Up

This year, states updated drug offenses and sentencing policies and provided more treatment resources for substance–abusing offenders.

At least 19 states addressed controlled substances laws in 2011. States focused on reclassifying drug offense and penalty structures and on authorizing treatment and alternative sentencing options that address individual offenders’ treatment needs.

Arkansas, Delaware and Kentucky dealt broadly with drug laws. The Arkansas General Assembly [adopted](#) a data–driven sentencing and corrections law that, among other changes, decreased penalties for low–level possession offenses; reclassified certain delivery, manufacturing and possession offenses; and created trafficking offenses, including trafficking in methamphetamines. The legislation, which received broad bi–partisan majority votes, is projected to save Arkansas taxpayers \$875 million during the next decade. The Delaware legislature [adopted](#) comprehensive revisions to the state’s drug sentencing laws, including restructuring drug offenses, establishing aggravating factors, increasing penalties for more serious offenses, and decreasing penalties for certain low–level possession offenses.

In 2010, the Kentucky Legislature directed a [comprehensive study and recommendations](#) on its penal and controlled substances codes. As a result, this year Kentucky adopted the [Public Safety and Offender Accountability Act](#), which includes major changes to the state’s drug sentencing laws; the changes are aimed at treating low–level offenders and saving prison space for the most dangerous offenders. The act also directs some of the expected cost–savings generated by the changes to be allocated to expansion of drug treatment options.

Like Kentucky, Arkansas, California, Illinois, North Carolina and Oregon increased funding for drug treatment. California’s law creates a statewide fund to be used for public safety services, including prevention, treatment and recovery services for alcohol and drug abuse. Vermont’s [War on Recidivism Act](#) included a legislative finding that the state government should invest in “programs that work,” including drug treatment in prison.

At least seven states—Arkansas, Connecticut, Colorado, Delaware, Kentucky, Ohio and Pennsylvania—addressed quantity thresholds or reorganized drug crime classifications. Colorado exempted certain low–level felony drug offenders from habitual criminal punishment. Connecticut reduced penalties for certain nonviolent drug offenses and created new illegal use and possession offenses for cannabis–type substances. Kentucky

created a presumption of probation for first and second possession convictions and Ohio removed a presumption of prison for fourth degree felony drug crimes. North Dakota increased the penalty for delivery of large quantities of marijuana and added preschools and child care facilities to drug-free zones.

States also expanded diversion programs, drug courts and other sentencing policies aimed at educating, preventing and treating substance abuse. Alabama authorized establishment of pretrial diversion programs in two judicial districts, which will provide substance abuse treatment to eligible drug offenders. Florida and Idaho expanded eligibility for drug courts. In an effort to educate students on the dangers and legal consequences of controlled substances, the Texas Legislature [adopted](#) a law permitting judges, under certain circumstances, to hold sentencing hearings at secondary schools or to require the offender to provide community outreach.

Veterans' treatment courts are a type of specialty court that addresses the needs of veterans who are involved in the criminal justice system. Many of these offenders have substance abuse and mental health needs stemming from combat experience, and treatment services can be overseen by the courts in partnership with veterans' agencies and other veteran benefit programs. [A Virginia law this year](#) required specialized court handling of veterans and active military personnel who are offenders or

defendants in the criminal justice system and in need of access to proper treatment for mental illness, including major depression, alcohol or drug abuse, post-traumatic stress disorder, traumatic brain injury, or any combination of these. Virginia joins a number of other states that have legislatively established veterans' courts, including Colorado, Hawaii, Illinois, Indiana, Nevada and Texas.

Some states also addressed "collateral consequences" for drug offenders. "[Collateral consequences](#)" refer to the legal ramifications and reentry barriers—such as employment disqualifications and denial of public benefit programs—that result from a criminal conviction. Arkansas now requires that any defendant given a deferred sentence for a misdemeanor controlled substance offense have his or her criminal record for that offense expunged after successful completion. Colorado broadened the applicability of criminal conviction record sealing policies to include more drug offenders. Delaware and Tennessee have extended eligibility for certain public assistance programs to felony drug possession, distribution and use offenders.

State legislatures are likely to continue addressing drug policies in 2012, since states including Hawaii, Louisiana, Nevada and New Mexico, requested studies and evaluations of the effects of controlled substance laws on state criminal justice systems and budgets.

"States expanded diversion programs, drug courts and other sentencing policies aimed at educating, preventing and treating substance abuse"

Additional resources on state controlled substance laws are available on NCSL's [Drug Policy](#) webpage.

Issue in Focus

Risk and Needs Assessments

State requiring assessment tools across the criminal justice system.

State legislatures are increasingly requiring courts, corrections agencies and release authorities to use offender risk and needs assessments. In 2011, at least six states—Arkansas, Colorado, Kentucky, Louisiana, North Carolina and New York—adopted such policies.

Additional information on development and implementation of valid risk and needs assessments by courts is available in [Using Offender Risk and Needs Assessment Information at Sentencing](#), a guide released by the [National Center for State Courts](#).

[NCSL's Principles of Effective State Sentencing and Corrections Policy](#) offers more information about states' use of risk and needs assessments as part of data-driven policy and evidence-based practices.

More information on 2011 enactments is available on [NCSL's 50-state Enactment Database](#).

System-Wide Use

As with 2010 [New Hampshire](#) and [South Carolina](#) laws, this year Arkansas, Kentucky and Ohio required implementation of assessments as part of broader reform bills. [The Arkansas law](#) requires the parole board to conduct a risk and needs assessment of all parole applicants. Further, all probation and parole supervision now must be based on evidence-based practices, which includes use of an assessment to place offenders in treatment and programming that addresses the individual's criminal risk factors. All drug court programs now also must use risk and needs assessments.

[Kentucky](#) now requires risk and needs assessments for offenders at nearly every stage of the criminal justice system. The law requires assessment results in presentence investigation reports for the court's use in determining an offender's eligibility for alternatives to incarceration. Courts also have the option to use an assessment to determine if certain offenders convicted of possession of marijuana, synthetic cannabinoids and salvia should be ordered to treatment rather than incarceration. The Department of Corrections must develop a validated risk and needs assessment for use at intake to state prison or community supervision, and the parole board must use a risk and needs assessment to determine parole conditions and supervision intensity.

Ohio's [law](#) instructs the Department of Rehabilitation and Correction to select a single risk assessment tool for use by all courts, probation departments, state and privately-run correctional facilities, and the parole board. All employees who will use the tool must be trained and certified. The law also requires training and certification for all employees who will use the tool. The law also instructs the parole board to consider assessment

results when setting conditions of release and offender reentry plans must include post-prison programming that addresses the assessed needs of high-risk offenders

Presentence Reports and Probation

Other state action in 2011 required assessments for consideration both at sentencing and for probation supervision. Colorado now requires all presentence reports to include the results of an assessment of the offender's criminological risks and needs. North Carolina's Department of Corrections must use an assessment to determine each probationer's risk of re-offending and criminogenic needs and place the offender in the proper supervision level. The state limited probation officer caseloads to 60 offenders when an officer's caseload consists of offenders who are assessed at moderate or high risk. The legislature also created post-release supervision and required that supervision be based on risk assessment results.

Release

Louisiana and New York required risk and needs assessments for parole. The Louisiana Legislature directed its Department of Public Safety and Corrections to develop and submit a plan for adopting an assessment tool for the parole board to use in making release decisions. The plan also must include procedures to guide the department, parole board and agents as they determine both supervision strategies, including risk classification, case planning and treatment decisions; and training and performance evaluations to ensure effective implementation of the assessment. The New York law now requires parole board guidelines to include risk and needs principles that measure the offender's rehabilitation and likelihood of success upon release.

[Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders](#), a new report from the [Public Safety Performance Project](#) of the [Pew Center on the States](#), finds that, when risk and needs assessments are developed and used correctly, they can help criminal justice officials accurately classify offenders, target treatment and other services to reduce recidivism, improve public safety and reduce costs. The report answers eight key questions in development and implementation of risk and needs assessments, including what assessments are and how they are used; what criminal risk factors are and how to differentiate between risk levels; the types of assessments available and their effectiveness; and the important considerations and challenges involved in implementation.

On the Fiscal Front

Reorganization of Sentencing and Corrections Entities

In 2011, at least seven states restructured state entities charged with sentencing and supervising adults offenders.

To [address budget gaps](#) in recent years, policymakers have cut spending, enacted revenue increases, used rainy day and federal funds, and used various other measures to satisfy statutory and constitutional balanced budget requirements. Among state spending cuts, some have sought to eliminate or consolidate various state entities, including departments, agencies, offices, divisions, boards, commissions and councils. In 2011, at least seven states eliminated and/or consolidated state entities charged with sentencing and supervising adult offenders.

Parole Boards

Parole boards in four states—[Kansas](#), [Michigan](#), [New York](#) and [Washington](#)—no longer are independent state entities. In Kansas, Michigan and Washington, the boards were transferred into the corrections department. New York’s Division of Parole—which was charged with both release decisions and post-prison supervision—and Department of Correctional Services were merged into the newly created Department of Corrections and Community Supervision.

Under new structures the head of the corrections departments in Kansas and Michigan now will be responsible for board appointments, while the governors in New York and Washington retain the authority to appoint the chair and/or members to the board.

Although the parole boards will maintain independent authority over release decisions, staffing and administrative support will be assumed by the corrections departments. The Michigan and New York laws cite a greater efficiency of the corrections system as a result of change. In Washington, the [fiscal note](#) provided by the Department of Corrections found that the transfer of administrative duties will reduce staffing needs and result in a net savings of \$427,000 for FY 2012 and will offer continued savings in future years.

Other eliminations and consolidations in 2011 include:

- In [California](#), the Council on Criminal Justice (an independent board), the Corrections Standards Authority (within the Department of Corrections and Rehabilitation), and the Governor’s Office of Gang and Youth Violence Policy are set to be eliminated in 2013; the newly created Board of State and Community Corrections will assume many of the responsibilities. The new board also

For information about elimination and consolidation of state entities in other policy areas, see NCSL’s report, [Elimination and Consolidation of State Entities](#)

NOTE: Links to external websites and reports are for information purposes only and do not indicate NCSL's endorsement of the content on those sites.

This newsletter is prepared under a partnership project of NCSL's Criminal Justice Program in Denver, Colorado and the Public Safety Performance Project of the Pew Center on the States, based in Washington, D.C. The NCSL project is designed to help states tap the best research and information available to put a fiscal lens to sentencing and corrections policy options and reforms.

will provide leadership, coordination and research expertise to state and local corrections systems.

- [Nebraska](#) eliminated the governing board of the Community Corrections Council and created the Community Corrections Division within the Nebraska Commission on Law Enforcement and Criminal Justice to assume the council's responsibilities. Council staff will be transferred to the new division with a neutral budgetary impact, but elimination of the council is [estimated](#) to save the state \$31,000 per year.
- [North Carolina](#) consolidated the departments of Crime Control and Public Safety, Juvenile Justice and Delinquency Prevention, and Corrections into a single Department of Public Safety. The new department allows coordination of administrative and facility management functions of the juvenile and adult systems. Net savings are [estimated](#) at \$1.1 million in FY 2011–12 and \$3.6 million in FY 2012–13; additional future savings are anticipated in areas such as purchasing and training.
- In addition to merging the parole board, Washington made the previously independent Sentencing Guidelines Commission into an advisory agency within the Office of Financial Management. The commission will advise the legislature and governor as necessary, but other responsibilities of the commission—such as maintaining the state's sentencing information system and databases, publishing annual sentencing manuals and reports, and serving as a clearinghouse and information center on sentencing—will be assumed by the Caseload Forecast Council. The [fiscal note](#) projects that the Caseload Forecast Council and the Office of Financial Management will incur increased staffing and administrative costs; however, savings from elimination of the commission as an independent agency should result in a net savings to the state.

At least two states are studying the possibility of restructure. A [Massachusetts law](#) this year established a special commission to, among other duties, investigate the effectiveness of the Office of Community Corrections and the feasibility of relocating it to the executive Office of Public Safety and Security. [New Mexico](#) requested a study on the viability of moving supervision of probationers from the Probation and Parole Division of the Corrections Department to the Judicial Department.

On A Related Note

Guiding Principles for Crime Victims and Survivors in America

[Guiding Principles for Crime Victims and Survivors in America](#) was recently released by Anne Seymour, a national victim advocate, in partnership with the [Public Safety Performance Project](#) of the [Pew Center on the States](#). The report offers seven guiding principles for fair treatment of crime victims and survivors in sentencing, corrections and public safety reform. Victim advocates and organizations nationwide have signed on to the principles.