



The Bulletin

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Online Sentencing and Corrections Policy Updates



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2009 Legislative Recap

Amid the most difficult economic situation since the Great Depression, state legislatures addressed sentencing and corrections policies that better manage correctional populations and budgets. In 2009, states fine-tuned sentencing laws, expanded community-based diversion programs, and created policies and programs aimed at reducing recidivism. **California, Delaware, Maryland, Montana, Oregon** and **Washington** increased the monetary thresholds for theft-related crimes to better align low-level offenses with less severe penalties. States required presentence risk assessments to identify defendants appropriate for community-based sentences. In **Illinois** and **New Hampshire**, presentence screening that includes treatment recommendations must be completed for current military or veterans diagnosed with a mental illness.

Legislatures expanded access to substance abuse treatment by creating secure programs for more serious offenders and community-based programs for probation and parole violators. A measure in **Kentucky** places offenders, identified by pretrial screening as having substance abuse issues, in community-based or secure substance abuse treatment. **Florida** and **North Dakota** have designated specific substance abuse treatment programs as sanctions for probation and parole violations. States also relaxed mandatory sentences for drug offenders. **New York** amended the “Rockefeller Drug Laws” by decreasing mandatory minimum sentences, expanding probation eligibility, and permitting departures from mandatory incarceration for various felony drug offenses.

California, Colorado, Illinois and **Montana** enacted performance incentive policies that provide funds to counties for reducing probation revocations to state prisons. In **California**, recidivism reduction

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programming must be evidence-based, and funding provided to counties is directly related to costs avoided by the Department of Corrections and Rehabilitation due to a decrease in probation revocation admissions. Programs created in **Colorado** and **Montana** focus on mentally ill offenders.

Additional sentencing and corrections issues addressed in 2009 include creating or expanding inmate good time policies; permitting early termination of community supervision; and helping inmates and newly released offenders with resources for reentry such as identification, housing and employment. Thirteen states commissioned task forces or studies on a variety of issues related to sentencing and supervision of criminal offenders that legislatures expect to address in the 2010 or 2011 sessions.

For a state-by-state summary of 2009 sentencing and corrections enactments, see [*Significant State Sentencing and Corrections Legislation in 2009*](#).



On the Fiscal Front

In crafting FY 2010 budgets, states closed budget gaps in excess of \$145.9 billion only for a new round of shortfalls to open, totaling \$28.2 billion. State finances are not expected to recover any time soon, with shortfalls being projected for FY 2011, FY 2012, and beyond. NCSL's [State Budget Update: November 2009](#) report and [Actions and Proposals to Balance the FY 2010 Budget: Criminal Justice](#) examine the effects the economy is having on all areas of state budgets, including corrections.

Prisons put a costly strain on corrections budgets, yet legislatures must continue to find ways to deliver services under increasing financial restraints. When queried about the current state fiscal situation, the **California** Legislative Analyst's Office attributes part of the FY 2010 general fund budget problem to the state's inability to implement several major solutions in the July 2009 budget plan, including those related to corrections and Medi-Cal. **Kentucky** reports that corrections, K-12 education and Medicaid have so far been protected from budget cuts, mainly due to the availability of stimulus funds. FY 2011 and FY 2012 will be extremely difficult without the one-time resources, however.



State budgets have been plagued by revenue shortfalls, which has been the explanation for most fiscal woes. But a number of states also are reporting spending overruns. As of November 2009, **California, Connecticut, Idaho, Maryland, South Carolina,** and **Vermont** faced spending overruns in corrections or public safety programs for FY 2010. **California** reports a \$1.4 billion shortfall for the Department of Corrections and Rehabilitation. Departments of correction in **Connecticut** and **South Carolina** are projecting \$21.5 million and \$13.3 million deficiencies, respectively. **Idaho** lists corrections, Medicaid and the Medically Indigent Health Care program as areas of spending that are significantly over budget. **Maryland** estimates that \$40 million of the state's general fund shortfall is attributed to public safety staffing and inmate medical costs. **Vermont** notes that corrections is the single largest area of overspending in the state's general fund.

States are taking various approaches to close their budget gaps, including cutting costs and generating new revenue. Corrections budgets nationwide have been included in across-the-board general fund budget cuts. Additional targeted budget reduction measures include delaying construction or expansion of correctional facilities; closing wings or facilities; cutting staff or not filling vacant positions; cutting prison programs; and creating or amending a number of sentencing and correctional supervision policies summarized in the [Significant State Sentencing and Corrections Legislation in 2009](#) state-by-state chart.

Information in *State Budget Update: November 2009* is based on data collected from legislative fiscal directors from the states and Puerto Rico in November 2009.

The *Actions and Proposals to Balance the FY 2010 Budget: Criminal Justice* table summarizes information gathered from media sources and NCSL surveys of legislative fiscal offices. The report has been updated under a partnership project of NCSL's Fiscal Affairs Program in Denver, Colo., and the Pew Center on the States, based in Washington, D.C.



Issue in Focus: Substance Abusing Offenders

Laws in 2009

In 2009, at least 25 states enacted laws that address substance abuse in the criminal justice system.

A handful of states relaxed sentences for controlled substance offenses. **Louisiana, Minnesota and Rhode Island** eased mandatory minimum sentences for certain classes of drug offenders. **Nevada** passed a law that permits the court to reduce or suspend a sentence for trafficking of a controlled substance if the defendant provides substantial assistance to an investigation or prosecution. Probably the most high profile amendment to drug sentencing laws in 2009 was **New York's** revision of the "Rockefeller Drug Laws." The legislation decreases mandatory minimum sentences, expands probation eligibility, and permits departures from mandatory incarceration for various felony drug offenses. A provision allows certain previously convicted offenders to apply for resentencing. Offenders convicted of operating as a major drug trafficker and criminal sale of a controlled substance to a child were exempted from the sentencing and supervision changes. The *Time* article, "[A Brief History of the New York's Rockefeller Drug Laws](#)," provides a summary of the changing political climate in New York that led to the 2009 law change.

Specialized court programs are one option states use to divert low-level drug-addicted offenders from prison. **Alabama, California, Kentucky and New York** created pretrial or deferred judgment programs. San Francisco's successful deferred judgment program, "[Back on Track](#)," was placed in **California** law. The program is designed to prevent recidivism of first-time, nonviolent felony drug offenders. Components of the Back on Track legislation include transitional programming and graduated sanctions. **Florida, Louisiana, Oklahoma, West Virginia and Wyoming** laws now authorize and expand the use of drug courts as a sentencing option.

Hawaii, Kentucky and Virginia authorized secure treatment programs to address the substance abuse needs of higher-risk offenders. **Virginia's** Behavioral Correction Program targets nonviolent offenders who face three or more years in prison and have been identified as needing substance abuse treatment. In lieu of prison, offenders are required to spend at least 24 months in an intensive therapeutic community-style substance abuse treatment program. Upon successful completion, the court may suspend the remainder of the sentence and grant release to supervised probation. **New York and Wisconsin** expanded existing secure treatment programs. **New York** expanded eligibility for the [shock incarceration program](#). **Wisconsin** now permits inmates with treatment needs not necessarily related to substance abuse to participate in the earned release program. This measure was part of a larger [early release and sentencing reform package](#) in the 2009 budget bill.

At least five states expanded treatment opportunities for offenders who already are under community supervision. **Maryland and New York** now permit the court to extend a term of probation for up to one year for continued participation in treatment. **Florida and North Dakota** designated specific substance abuse treatment programs as possible sanctions for probation and parole violations in lieu of revocation. **Louisiana** permits a structured incarceration program to be used as a sanction for violations of drug diversion probation.

Expungement of a criminal record upon successful completion of a drug treatment sentence was addressed in four states. Drug court judges in **Arkansas** now are authorized to expunge or dismiss a case upon successful completion of drug court. An offender in **Louisiana** can now have their conviction set aside for successful completion of intensive incarceration. The three-year waiting period to have a record sealed for successful completion of a specialty court was removed in **Nevada**. **New York** now permits conditionally sealing arrest, prosecution and conviction records for offenders who complete a judicially sanctioned drug treatment diversion program.

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Drug Diversion

In recent years, legislatures have increased treatment options available to the court for diverting low-level drug offenders from prison. The March 2010 edition of [State Legislatures](#) magazine features policies and programs around the country that are used to divert offenders into treatment programs. Highlights of the article include:

- A 2009 **Kentucky** law that offers some felons the option of substance abuse treatment in lieu of criminal charges.
- A 2007 initiative in **Texas** that expanded treatment and diversion programs has garnered national attention.
- In 1989, **Florida** introduced the first drug court; since then drug courts and other problem-solving courts have been established in all 50 states.
- [California's Proposition 36](#), approved by voters in 2000, provides treatment instead of incarceration for nonviolent drug offenders.
- [Hawaii's Opportunity Probation with Enforcement](#) (HOPE) is a court-based program for high-risk probationers that uses swift and certain sanctions for program violations.

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.

On a Related Note

Mark Your Calendars

On the Hill

The [Criminal Justice Reinvestment Act of 2009](#), introduced in November 2009, would provide grants to state and local governments to analyze criminal justice data and to implement policies identified by the data analysis. This bill builds on the [justice reinvestment](#) work conducted in states such as **Kansas** and **Texas** that analyzes criminal justice data to identify and implement policies to reduce corrections spending and increase public safety.

Recent Reports

[Right-Sizing Prisons](#), a new report by the Public Safety Performance Project of the Pew Center on the States, highlights business leaders from around the country who are advocating for policies that control corrections costs, keep communities safe and ensure states have the workforce they need for a thriving economy. Five business leaders explain their approach to working with policymakers on public safety issues.

