State Crime Legislation in 2005

Controlling methamphetamine production and use and new means to supervise and protect the public from sex offenders were top anti-crime priorities of state legislatures in 2005. States also addressed transition of offenders from prisons to communities; offender drug and mental health treatment; expanded use of DNA in criminal justice; and other actions to inform victims and protect law enforcement officers.

Controlling Methamphetamine

Thirty-two states in 2005 passed measures to restrict sales of ephedrine-based products, the main ingredient necessary for manufacturing methamphetamine; this brings to 39 the number of states with such restrictions. Following Oklahoma's lead in 2004 to reclassify ephedrine-based products as a schedule V drug, eight states-Arkansas, Illinois, Iowa, Kansas, Minnesota, Missouri, West Virginia and Wisconsin-passed similar legislation in 2005. This reclassification requires a pharmacist to dispense the medication. In 20 states last year, legislation requires that these products be stored either behind the counter or in another manner to require employee assistance; 26 states to date have enacted such a requirement. Nine states require the purchaser to be age 18 or older, and 21 states require that the buyer present identification and the seller keep logs of transactions.

Oregon lawmakers took regulation of meth precursor substances one step further in 2005, classifying ephedrine products as a schedule III drug that requires a doctor's prescription.
Measures to address child protection issues raised by illegal manufacture of methamphetamine were seen in several states in 2005. Arkansas, Mississippi, Oregon and Virginia expanded their child abuse and neglect statutes to include exposing a child to methamphetamine. Indiana, Minnesota and New York now require that reports be filed with appropriate agencies when a child is discovered in a home with a methamphetamine laboratory. Other states created separate criminal offenses and increased penalties for child endangerment related to methamphetamine production and use.

In Tennessee, a comprehensive law to address methamphetamine requires the Department of Environment and Conservation to operate a registry of current properties quarantined due to manufacturing byproducts; requires hospitals to report to law enforcement injuries to a person believed to result from methamphetamine laboratories; and creates a public registry listing the names and offenses of convicted methamphetamine manufacturers.

**Encouraging Treatment**

Other actions of state legislatures revise sentencing and encourage treatment for drug offenders. Lawmakers in New York extended sentencing reforms of the previous year with an act that allows resentencing of certain felony drug offenders who were sent to prison under previous law. Mississippi also extended parole eligibility to first-time drug offenders who were convicted since 1995 but otherwise are not parole-eligible.

An act in Washington expands judicially supervised substance abuse treatment to include a residential treatment alternative. Courts have the option of sentencing an addicted, nonviolent offender to either prison-based or community residential treatment. In Illinois, offenders recommended for prison-based substance abuse treatment must participate in and complete the treatment to receive good time sentence credits. Minnesota's omnibus crime bill in 2005 included conditional, early release of some nonviolent drug offenders whose crimes were committed because of addiction.
North Dakota lawmakers created a pilot program for diversion of first-time offenders convicted of drug possession, distribution or manufacturing, allowing 18-month probation along with evaluation and treatment. Another law there directs the establishment of pilot substance abuse treatment programs.

An enactment in Texas will allow drug court judges to use community corrections facilities and "substance abuse felony punishment facilities" for some low-level offenders. Drug courts were expanded under new laws in Georgia, Montana, Utah and Virginia. A new Virginia law requires that defendants convicted of any felony undergo screening as part of sentence determination; another measure raises the penalty for certain drug manufacturing, selling or delivering of crimes.

Utah lawmakers directed a coordinating council to study 250 drug offenders in the state and passed another law to enhance sentences for possession of controlled substances if the defendant previously has committed drug distribution or manufacturing offenses.

Louisiana put place tough penalties related to hallucinogenic plants, and Mississippi added drugs for which sale can result in a life term. Under new law in Michigan, offenders can get a life term for drug delivery resulting in the death of the person to whom it was delivered.

A Connecticut act eliminates disparity in minimum amounts of crack and powder cocaine for which courts apply a mandatory minimum sentence; courts still have the option of suspending the sentence.

**Watching, Restricting Dangerous Predators**

States responded to high-profile sex offender cases by deploying satellite technology to watch sex offenders in the community, place restrictions on their residences, and take other steps to enforce registration requirements.

In Florida, the Jessica Lunsford Act mandates that designated sexual predators and others who have committed specified sex crimes must, upon release and for the rest of their lives, be subject to GPS "active electronic monitoring." Satellite
surveillance, to be used in particular for offenders who have committed crimes against children, provides for 24/7 monitoring of location and movement. The Florida law also imposes a mandatory sentence of 25 years to life for many offenders who commit crimes against children. It toughened penalties for failure to comply with registration requirement, including penalties for those who harbor a sex offender in violation of duty to register. Legislation in eight other states—California, Indiana, Missouri, Montana, New Jersey, Ohio, Oklahoma and South Carolina—last year called for GPS tracking of sex offenders. In these states, as well, GPS technology allows probation and parole officials to monitor the real-time locations of offenders, alerts them when offenders enter a prohibited location, and can provide historical location data to determine if the offender was at the location of a crime at a certain time.

Other states enacted laws to help law enforcement agencies keep better tabs on sex offenders. Under new Mississippi law, persons required to register as sex offenders must appear at the driver's license station every 90 days to show proof of domicile in the state and present payment of any fees associated with registration. Failure to personally appear is a felony with penalties of $5,000 or up to five years in prison. Alabama now requires adult sex offenders to obtain and have in their possession a state-issued driver's license or identification that bears a designation that enables law enforcement officers to identify the person as a criminal sex offender.

Following hurricane Katrina, a Louisiana law was enacted to require that sex offenders who enter a shelter during an emergency notify management of their status within 24 hours. It also requires sex offenders who are temporarily displaced or absent from their last address to notify the chief of police in their new location.

As in Florida, legislation in Iowa mandates life sentences for certain sex crimes against children. Indiana authorized a life sentence for certain repeat sex offenders. Minnesota mandated life without parole for certain violent sex crimes, and Nevada enhanced to life imprisonment the maximum sentence for battery with intent to commit sexual assault and certain crimes associated with child pornography.
Several states addressed the use of computers to solicit or exploit a child. Hawaii, Kentucky, Louisiana and Texas created specific offenses prohibiting the solicitation of a minor through the Internet. California expanded its child luring statute to cover children under age 14, up from children under age 12. New Mexico raised the crime of solicitation of a minor by computer from a fourth degree felony to a second degree felony, and Utah authorized the attorney general to create programs and informational materials to educate families on the safe use of the Internet.

Other restrictions placed on sex offenders as a result of 2005 actions in state legislatures include measures in Texas and California to prohibit government health programs from providing sexual performance-enhancing drugs to people who are required to register as sex offenders. A New York act prohibits a registered sex offender from being employed as an ice-cream truck driver. In Illinois, legislation bars sex offenders from being employed for holiday events that include contact with children who are not related to the offender, such as in passing out Halloween candy or playing Santa Claus or the Easter Bunny.

Maximizing DNA

In 2005, states continued policies to maximize and improve use of DNA in the criminal justice arena. Texas lawmakers passed what may be the strongest legislation to date addressing quality assurance in forensic laboratories. The 2005 act creates the Texas Forensic Science Commission, and gives this group responsibility for investigating any suspected misconduct or incompetence that results in flawed forensic science. It mandates that forensic evidence used in court be from an accredited lab. The legislation also expanded collection of DNA samples to all prison inmates and provided updated rules for the Department of Public Safety’s use of the DNA database.

Four states last year—Hawaii, Indiana, North Dakota and Vermont—expanded to all felons the requirement that a DNA sample be submitted to the state database, bringing to 43 the number of states with such a requirement. Idaho law added 50 felony crimes that require DNA sampling of offenders, significantly expanding its database.
Minnesota became the fifth state to require that some arrestees provide samples. Adults and juveniles charged with many serious crimes will provide DNA after a probable cause determination is made. Virginia expanded arrestee sampling to those arrested for attempts of violent felonies.

Several states—including Arkansas, Hawaii, North Dakota, and Washington—addressed motions for post-conviction DNA testing. Michigan extended until 2009 the deadline for convicted felons to petition the court for DNA tests related to their conviction.

**Assisting Re-Entry**

The process of re-entry of offenders from prison to communities continues to receive attention in state legislatures. Under a Arkansas law, offenders can be placed in transitional housing for up to one year before their parole or transfer date. Illinois lawmakers authorized counties to establish re-entry programs for offenders, with the requirement that offenders in these programs work or train and meet restitution obligations. Counties may contract with private providers for housing, treatment and training services for offenders who are re-entering communities. Mississippi similarly authorized the Department of Corrections to establish community prerelease programs, and another action in that state authorizes intensive supervision, including electronic monitoring, for parolees as well as a sentencing alternative to prison.

California legislation authorizes counties to develop multi-agency plans to prepare offenders for successful re-entry to the community. In Virginia, a similar requirement calls for coordination of offender transition services among state, local and nonprofit agencies.

Louisiana will allow a tax credit for businesses that employ certain offenders, and in Hawaii, an appropriation will support community-based reintegration programs for women offenders. An act in Arizona will allow terminally ill or permanently disabled people to be transferred to a medical facility or to home detention.
Alternatives to incarceration—including alternatives to return-to-custody for those who violate probation or parole conditions—were in addressed in several states. States also continue to enact policies to increase sentences for more serious offenders.

In Washington, legislation requires an electronic monitoring program for low-risk offenders who violate terms of community custody and placement of at least 100 such offenders in the program as an alternative to return-to-custody. An Oklahoma act also authorizes the Department of Corrections to use intermediate sanctions for probation and parole violations.

Texas legislation gives prosecutors discretion to request that "state jail felonies" instead be handled as a Class A misdemeanor. Mississippi lawmakers extended an intensive community supervision program and authorization for courts to place offenders in the program as an alternative to incarceration. Alternatives will be studied in North Dakota as a result of 2005 legislation.

Also in Washington, an enactment eliminated application of mandatory minimum sentences when juveniles are waived to adult court. Those sentences will continue to apply to juveniles sent to adult court under automatic transfer based on the alleged offense. Maryland legislation allows certain offenders who are sentenced to mandatory minimum sentences for burglary or daytime housebreaking to apply for sentence review.

Other sentencing measures in 2005 include weapons enhancements in Illinois. One act creates the offense of being an "armed habitual criminal" who must serve 85 percent of the Class X felony sentence. Another measure requires prison sentences for certain other violations involving unlawful use of a weapon. In Oregon, offenders convicted of any assault against children will be required to have a term of post-prison supervision that, added to the term of imprisonment, equals the statutory maximum sentence for the crime.
Revising Sentencing Procedure

At least six states in 2005 enacted laws in response to the 2004 U.S. Supreme Court decision in *Blakely vs. Washington*. The *Blakely* decision extended the constitutional right to a jury trial to fact-findings that increase or enhance a criminal sentence from a presumptive, or set, statutory sentence. Rather than dismantling the guidelines systems affected by the ruling, states have largely preserved those but have amended the process to include jury fact-finding in those matters. Actions this year in Arizona, North Carolina, Oregon and Washington took this approach. In Alaska, lawmakers replaced presumptive terms with ranges, allowing for judicial adjustment for aggravating and mitigating factors. An action in Indiana similarly replaced fixed terms for felonies with advisory sentences that a court may voluntarily consider midway between maximum and minimum sentences.

Oklahoma addressed death penalty counsel in a 2005 enactment that sets compensation for state-assigned counsel, including allowing maximum fees to be exceeded in certain capital cases. Texas added as a capital crime murder in retaliation for or on account of a person being a judge. Following the U.S. Supreme Court ruling in *Roper vs. Simmons* earlier in 2005, Nevada raised to 18 years the minimum age allowed for the death penalty to be imposed.

Addressing Juveniles' Mental Health

Other Nevada legislation requires screening for mental health and substance abuse when juveniles are taken into custody. A California act similarly requires that juveniles under court jurisdiction be evaluated for mental or emotional disturbance, and further requires that judges and other juvenile justice system personnel be trained in these issues. An Idaho law allows juvenile courts to order mental health assessment and plan treatment for juveniles who suffer from emotional disturbances. Under new law in Virginia, the Board of Juvenile Justice will plan for mental health, substance abuse and other therapeutic treatment for juveniles who return to the community following commitment.
Colorado enacted a "competency to proceed" statute, requiring that competency of a juvenile be raised and evaluated as part of the court process and prohibiting a juvenile found incompetent from being tried or sentenced. The court must plan services to address mental health problems and review progress every 90 days. A Oregon act similarly allows for an affirmative defense of mental disease or defect in juvenile delinquency proceedings.

Another Oregon act addresses adult mental health in the criminal justice system. It requires a court in entering a verdict of guilty but mentally ill to state on the record the mental disease or defect relied upon in reaching this judgment. The law also requires the defendant receive evaluation and assistance.

Idaho legislation creates mental health courts to be incorporated with existing drug courts, and includes them under the “fund for special service courts,” which receives misdemeanor fine revenues. Several other states addressed mental health courts. In Texas, legislation provides that a person charged with a felony and handled in a mental health court must be afforded the choice to participate in the program and provided counsel as part of that agreement. "Mary Lynn's Law" in South Carolina will exclude from participation in diversionary programs (such as mental health and drug courts) those who are charged with or are on probation or parole for certain violent, harassing or stalking crimes, those subject to a restraining order, or in cases where the victim opposes diversion.

**Hearing Victims**

Victim interests were addressed in other state laws last year. In Maine and Wyoming, prosecutors must notify victims of any offender motion to seek early termination of probation and allow victims to address the court during any hearing on such motion. Wyoming also will allow victim impact statements to be submitted at any hearing held to determine, correct or reduce a sentence. Legislation in New Mexico directs courts to not accept any plea agreement unless the district attorney has informed the victims and heard their views.
Victim restitution was addressed in a number of states last year, including Hawaii, where an act eliminates judicial discretion for ordering restitution, making it a mandatory part of criminal sentences. A restitution-strengthening measure in Georgia requires that victims be allowed to provide input in orders of restitution and extends enforcement of restitution beyond the offenders' completion of the criminal sentence. An Oregon enactment provides that restitution orders will not expire for 50 years. In California, judges now are allowed to apply funds confiscated at arrest to restitution debt under legislation that also requires notice to the government claims board when an inmate receives an inheritance.

Connecticut lawmakers strengthened victim rights when the offender is a juvenile. A new law prohibits judges from excluding victims from juvenile proceedings and allows victims' impact statements before the court accepts a plea. Connecticut also removed deadlines for certain victim compensation claims and established a Victim Services Unit within the Department of Corrections to carry out various victim notice requirements.

Protecting Officers, Regulating Tasers

In Louisiana, the "Trey Hutchison Act" creates a registry of those who have committed violent crimes against police officers. As with a sex offender registry, annual address verification and updates are required and penalties are in place for failure to register as required. The information is broadly available to law enforcement agencies.

Several states took action in 2005 with regard to stun guns or Tasers and police. Maine will permit law enforcement and corrections personnel to use electronic weapons in the performance of their duties in an act that also allows individuals to use tasers to defend themselves, a third person or their home. New Jersey legislation permits law enforcement use of less-lethal ammunition, and an action in Washington makes use of a stun gun against an officer of the law a third degree assault.

Other law enforcement protection measures in 2005 included a Minnesota law that creates the crime of falsely reporting police misconduct. The measure also
allows police officers to be reimbursed every five years for a new bulletproof vest. Under a Delaware law, use of deadly force is permitted against a hostage taker.

Kansas lawmakers redefined fleeing or attempting to elude a police officer as an "inherently dangerous felony", and North Carolina made speeding to elude arrest a Class E Felony when it is the proximate cause of a death. California increased penalties for fleeing from police in a motor vehicle and conditioned law enforcement immunity from liability for injuries in vehicle pursuits on the agency having a pursuit policy and providing for regular officer training in this area.

Addressing private citizen personal defense, Florida amended its use-of-deadly-force law to authorize people to use force, including deadly force, against an intruder or attacker in a dwelling, residence or vehicle, under specified circumstances. The measure includes the presumption of reasonable fear of death or great bodily harm and asserts that the person has no duty to retreat when faced with a forcible felony.

**Human Trafficking**

A number of states in 2005 took action against the international problem of human trafficking. In Arizona, California, Illinois, Kansas, Louisiana and New Jersey, enactments made human trafficking a felony and set penalties. At least 10 states today now have such crimes. States—including California, Colorado, Idaho, Minnesota and Washington—also created task forces or other study groups to consider the issue.

Other new crimes addressed in 2005 included the crime of "torture," created in Michigan. The law specifies acts that constitute torture and makes it a Class A felony and possible life imprisonment. Michigan also established a felony for a false report of child abduction, with a penalty up to four years in prison and a fine. Louisiana lawmakers raised from $500 to $2,000 the fine for false report of or information on a missing child in an act that also requires that agencies provide information and advice to parents on preventing child abduction. In another sign
of the times, Illinois created the crime of gas theft, and Minnesota also addressed
gas theft with an act that will suspend a driver's license upon conviction.

Louisiana enacted a process for compensation for wrongful conviction and
imprisonment. The law creates an Innocence Compensation Fund in the state
treasury and sets rates of compensation and other assistance to be provided to
those who apply.

Planning for Results

In Connecticut, a Criminal Justice Policy and Planning Division was created to
develop approaches for a more effective and cohesive criminal justice system,
and to address juvenile justice issues. The planning objective is to reduce prison
overcrowding, improve rehabilitation and enhance offender re-entry strategies.

In Oregon, new laws continue the state's commitment to results-based policy. An
enactment requires the Department of Corrections to establish uniform
presentence reports that include analysis of which disposition is most likely to
reduce the offender's criminal conduct, along with assessment of available
programs, in or out of custody, that would be relevant to the offender's needs.
Another measure requires the Oregon Criminal Justice Commission to study the
feasibility of incorporating into the state's sentencing guidelines a means for
determining sentences that serve the objective of reducing crime.

Links to most legislation referred to in this report may be accessed via state
topic, appear below.

Capital Punishment
Nevada A 6; Oklahoma S 329; Texas S 1791.

Community Alternatives, Supervision and Re-Entry
Arizona S 386; Arkansas S 385; California S 619; Hawaii H 1750; Illinois S 554;
Louisiana S 61; Mississippi H 244; Oklahoma H 1267; Oregon H 2322; Texas H
2296; Virginia H 1763; Washington H 1136.
DNA
Arkansas H 2857; Hawaii H 1733; Idaho S 1197; Indiana H 1241; Michigan H 4413; Minnesota HF 1/SL 609; North Dakota H 1235 and H 1288; Texas H 1068; Vermont S 15; Virginia H 776; Washington H 1014.

Drugs
Connecticut H Sub. 6875; Georgia H 254; Illinois S 2090; Louisiana H 20; New York S 5880; Mississippi S 2988 and S 2235; Michigan S 423 and H 4673; Minnesota HF 1/SL 609; Montana H 721; North Dakota S 2341 and S 2373; South Dakota H 11; Texas H 2791; Utah S 1004, S 135, and H 55; Virginia H 1055, H 1430 and H 2291; Washington H 2015 (see also methamphetamine below).

Human Trafficking
Arizona HB 1372; California AB 22 and SB 180; Colorado HB 1143; Idaho HCR 18; Illinois HB 1469; Kansas SB 72; Louisiana HB 56; Minnesota HF 1/SL 609; New Jersey AB 2730; Washington SB 5127.

Law Enforcement
California S 719; Kansas H 2180; Illinois S 1962; Louisiana H 88; North Carolina H 1279; Maine H 868; New Jersey S 252; Nevada AB 123; Washington H 1934; Delaware S 142; Minnesota HF 1; Louisiana H 88.

Mental Health, Juvenile and Adult
California S 570; Colorado H 1034; Idaho H 301, H 334 and S 1165; Nevada A 47; Oregon S 39 and S 232; South Carolina H 3543; Texas H 2518; Virginia S 843.

Methamphetamine
Arkansas S 2611 and H 1709; Illinois S 562; Indiana S 444; Iowa S 169; Kansas S 27; Minnesota S 2273; Mississippi H 1058; Missouri H 441; New York S 5920; Oregon H 2485 and S 907; Tennessee S 2318; Virginia H 1041; West Virginia S 147; Wisconsin S 78.
Other
Connecticut H 6976; Florida S 436; Illinois H 692; Louisiana H 663 and S 318; Michigan S 74, S 134 and H 5296; Minnesota H 1/S 609; Oregon S 914 A and S 919 A.

Sentencing
Alaska S 56; Arizona H 2522; Illinois S 319 and H 524; Indiana S 96; Maryland H 596; North Carolina H 822; Oregon S 528; Washington S 5477 and H 1187.

Sex Offenders
Alabama S 53; California S 619, S 963, AB 33 and AB 522; Florida H 1877; Hawaii H 1763; Illinois H121 and S 554; Indiana S 175, S 525, and S 525; Iowa H 619; Kentucky H 106; Louisiana S 1 and H 547; Minnesota HF 1; Mississippi H 1034; Missouri H 353; Montana S 207; Nevada S 341; New Jersey S 1889; New Mexico S 415; New York S 2795; Ohio Sub. HB 66; Oklahoma S 631; South Carolina H 3328; Texas H 867 and H 2228; Utah H 132.

Victims
California S 972; Connecticut H 6579 and H 6976; Georgia H 172; Hawaii H 278; Maine S 521; New Mexico H 692; Oregon H 2233; Wyoming H 86 and H 103.

This report, authored by Sarah Hammond, Blake Harrison, Donna Lyons and Nathan Mattison, highlights selected state legislation and is not an exhaustive list. For more information, contact the Criminal Justice Program in NCSL's Denver office at (303) 364-7700 or cjinfo@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.

© 2006 by the National Conference of State Legislatures. All rights reserved.