



**OHIO**

CRIMINAL SENTENCING COMMISSION

# 50 State Low-level Drug Possession Review

October 31, 2018

# Introduction

Presented is a summary review of low-level drug possession statutes in the United States. This summary review arose from an effort to identify states that reduced felony personal use drug possession offenses to misdemeanors. It also highlights recent efforts, and when available, the impact of state reform to drug possession laws, criminal justice practices generally, or both.

It is intended to highlight how possession of personal use amounts of controlled substances are charged in each state – felony or misdemeanor – and the potential punishment ranges. The document focuses Schedule I and II drugs like heroin, cocaine, and other opiates. Given the wide array of approaches to marijuana laws, low-level marijuana possession offenses are not included. Please note, charging practices can and do vary among jurisdictions. Thus, the statutes hyperlinked and identified as low-level drug possession offenses are presented purely for informational purposes.

## Alabama

### § 13A-12-212 – Unlawful Possession

- Class D felony is punishable by 1 year and 1 day to 5 years.
  - New felony class initiated by statute for drug possession and low-level property crime.
  - Sentence must be served in community corrections program unless multiple prior felonies.
- Possession with intent distinguished, determined by amount possessed § 13A-12-211.

Justice Reinvestment Initiative (JR)<sup>1</sup> efforts in 2015, funding expanded in Fiscal Year 2019.

- New felony class for drug offenses a result of 2015 efforts.

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*1 The Justice Reinvestment Initiative (JR) is a public-private partnership that includes the U.S. Justice Department's Bureau of Justice Assistance, The Pew Charitable Trusts, the Council of State Governments Justice Center, the Crime and Justice Institute at Community Resources for Justice, the Vera Institute of Justice, and other organizations. Although specific reforms vary from state to state, all aim to improve public safety and control costs for taxpayers by prioritizing prison space for serious and repeat offenders and investing some of the savings in alternatives to incarceration that are effective at reducing recidivism among low-level offenders.*

## Alaska<sup>2</sup>

[Senate Bill 91](#) was a massive reform bill that included reduction of low-level drug possession from a felony to a misdemeanor. Enacted in 2016.

- First and second possession offenses classified as misdemeanors, subsequent offenses are felonies.
  - [§ 11.71.050](#) – “any amount of a controlled substance.”
    - Enhancing circumstances for school zone/youth center/school bus.
    - Possession with intent to deliver distinguished.
  - [§ 11.71.060](#) – <1oz marijuana, <6g “spice.”
  - GHB excluded from possession reduction – still a felony.
- § 12.55.135 Eliminates imposition of “active imprisonment time” for first misdemeanor possession offense.
  - Class A Misdemeanor – (most drugs except GHB, marijuana, “spice”).
    - First offense – 0-30 days suspended.
    - Second offense – 0-180 days suspended.
    - Third offense – [0-30 days] - 1 year, \$10,000 fine.
- Many reforms were walked back in subsequent legislation (Senate Bill 54 in 2017).
  - In response to increase in theft offenses - [report](#).
  - Similar rollbacks for theft punishments, raising penalties initially lowered.
  - Noted in [#6](#) that “no other state has gone this far in their reforms.”
    - References [memo](#) about low-level felony sentencing.

Lack of resources in rollout cited as an issue – [Article](#) and [Article](#).

Citizen outrage over drug driven theft offenses – [Article](#) and [Article](#).

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<sup>2</sup> Since 2014, Alaska is one of five states to reclassify all drug possession from a felony to misdemeanor - [article](#).

## Arizona

### [§ 13-3408](#) – Possession, Use ... of Narcotic Drugs

- Possession is a Class 4 felony punishable with presumptive sentence of 2.5 years (range of 1 year to 3.75 years for first offense).
- Possession with intent distinguished.
- Threshold amounts distinguished for mandatory sentencing – used to distinguish personal use amounts.

Bill aimed at reducing low-level possession to misdemeanor unsuccessful in 2018 House Bill 2303.

[2017 Report](#) on drug sentencing.

[JR efforts](#) in 2008.

## Arkansas

### [§ 5-64-419](#) – Possession of a Controlled Substance

- Sch I & II – <2g is a Class D felony punishable by up to 6 years in prison and/or \$10,000 fine.
- Sch III, IV, V – lowest amounts are Class A misdemeanors punishable by up to 1 year.
- Possession with purpose to deliver distinguished.

First-time offender probation program.

Harsh penalties for repeat felony offenders.

[JR Efforts](#) in 2017.

## California

### [§ 11350](#) – Unlawful Possession

- Simple possession punishable by up to 1 year in jail.
- Subsequent offenses punished as felonies.
- Possession with intent distinguished.

Proposition 47 – November 2014. Ballot initiative was for statutory change, not a constitutional amendment.

- Defelonized possession of certain controlled substances as well as several nonviolent property offenses (theft and check fraud related offenses with values under \$950).
- Included retroactive provisions allowing those convicted to petition for reclassification and resentencing.

Public Policy Institute of California [Report](#) – June 2018

- Some evidence linking property crime reduction to increase in rate of theft crimes.
- Jail booking decreased, particularly for Prop 47 offenses.
- 15,000 decrease in jail and prison population in first 2 years (8,100 prison inmates, 7,000 jail inmates).
- Small decrease in two year reconviction rate from those released under Prop 47.
- \$103 million in savings over 3 years distributed in 2017.

Drug court participation down in [San Diego](#) – even after expansion of eligible offenses.

Prop 47 Year One [Report](#).

## Colorado

### [§ 18-18-403.5](#) – Unlawful Possession of a Controlled Substance

- Sch I or II and flunitrazepam are level 4 drug felonies punishable by 6 months - 1 year and/or \$1,000-\$100,000 fine.
- Sch III, IV, V level 1 drug misdemeanors are punishable by 6-18 months in jail and/or \$500-\$5,000 in fines.
- Possession with intent distinguished.

### [§ 18-18-404](#) – Unlawful Use of a Controlled Substance

- Use of a controlled substance is a level 2 drug misdemeanor punishable by up to 12 months in jail and/or \$750 fine.

Substantial reform of drug laws in 2013 including new drug sentencing guidelines and introduction of a “wobbler” provision.

- Wobbler - Drug possession is indicted as a felony, reduced to a misdemeanor after successful completion of sentence conditions.
- Exclusion from “wobbler” for prior violent convictions, prior drug convictions, etc.

[Report](#) from Colorado Dept. of Public Safety – February 2017

- ~5 percent decrease in prison sentences for drug convictions.
- Average length of sentence for drug conviction decreased.

Savings from reforms include \$22 million in [FY 2017](#) – determined by a statutorily created [board](#).

House Bill 1532 in 2010

- Created a separate statute for the crime of possession of drugs.
- Reduces the crime of drug use from a felony to a misdemeanor. Redefines the quantity of drugs that is considered “simple possession.” from 1g or less to 4g or less of a Sch I or II drug and 2g or less of methamphetamine. “Simple possession” is a felony.
- Standardizes that possession for personal use of amounts greater than “simple possession” quantities is a Class 4 felony.
- Reduces possession of Sch III-V drugs (i.e. prescription drugs) to a misdemeanor.
- Reduces the penalty for fraud and deceit in connection with controlled substances from a Class 5 to a Class 6 felony.

## Connecticut

### [§ 21a-279](#) – Illegal Possession of a Controlled Substance

- Class A misdemeanor is punishable by up to 1 year in jail and/or \$2,000 fine.
- Possession with intent distinguished, as is sale by non-drug dependent persons.
- Subsequent offenses are punishable as persistent offender.

Bipartisan legislation in 2015 reduced possession from felony to misdemeanor – [House Bill](#)

### [7104](#) “The Second Chance Society.”

- Punishes possession as a Class A misdemeanor subject to up to 1 year in prison and/or \$2,000 fine.
- Second offense may be suspended by court in favor of treatment.
- Third offense is punished as a “persistent offender” subject to felony sentencing.

## Delaware

### [Title 16, Ch. 47, § 4751 – 4769](#). Drug Offenses and Penalties.

- Tiers of offenses are based on threshold amounts.
- Possession with intent distinguished.
- § 4763 – Possession is a Class B misdemeanor is punishable by up to 6 months.
  - With aggravating factor a Class A misdemeanor is punishable by up to 1 year.
- Controlled substances diversion program for first offenders.

Drug law revisions by statute in 2011 - [House Bill 19](#).

## Florida

### [§ 893.13 \(6\)](#) – Possession of Controlled Substances

- <4g heroin/opiates, <1oz cocaine, <10mg MDMA, is a third degree felony punishable by up to 5 years in prison.
- Possession with intent distinguished.

Recently enacted new mandatory minimums for opioids.

2018 Criminal Justice reform efforts [detailed](#).

## Georgia

### [GA Code § 16-13-30](#) – Possession Offenses

- Sch I or narcotic Sch II is a felony punishable by up to 3 years.
- Punishment increases based on amount possessed.
- Distinguishes possession with intent.

JR [Report](#).

## Hawaii

### [§ 712-1243](#) – Promoting a Dangerous Drug in the Third Degree

- Knowing possession = promoting.
- Punishment increases based on amount possessed.
- Class C felony is punishable by up to 5 years in prison and/or \$10,000 fine.
- Conditional discharge for first offenses.

[Recently](#) defelonized drug paraphernalia possession.

## Idaho

### [§37-2732\(c\)](#) – Possession Offenses

- Distinguished from possession with intent.
- Sch I or II drugs are felonies punishable by up to 7 years and/or a fine of up to \$15,000.
- Non-narcotics and other schedules are misdemeanors punishable by up to 1 year and/or \$1,000 fine.
- Trafficking is distinguished based on amounts.
- First offenses are eligible for “withheld judgement.”
- Subsequent offenses are treated more harshly.

Reforms being examined by [commission](#).

[JR](#) efforts in 2014.

## Illinois

### [720 ILCS 570/402](#) – Possession Offenses

- Possession of amounts under threshold are treated as Class 3 felonies – 1-3 years and/or \$25,000 fine.
- Distinguishes possession with intent.
- Second/subsequent offenses are double the first time penalty.

[Criminal Justice reform efforts detailed.](#)

## Indiana

### [§ IC 35-48-4-6 – Possession of Cocaine or Narcotic Drug](#)

- Cocaine and Narcotic Drugs – lowest level felony (Level 6) under 5g punishable by 6-18 months.
- Possession of Methamphetamine § IC 35-48-4-6.1 – lowest level felony under 5g.
- Other Sch I, II, III, IV drugs § IC 35-48-4-7 – Class A misdemeanors punishable by 12 months and/or \$5,000 fine.
- Enhancing circumstances exist.
- Possession with intent distinguished.

Recent (2015) reforms in House Enrolled Act 1006 created additional felony levels – [fiscal note](#).

Substantial restrictions on when low-level felonies can go to prison [§ IC 35-38-3-3](#).

Spike in jail [population](#).

2017 [Report – Struggles to Hold Lowest Level Felony Offenders Accountable](#).

## Iowa

### [§ 124.401\(5\) – Possession of Controlled Substances](#)

First offense possession without intent to deliver is a misdemeanor, enhanceable on subsequent offenses with increased penalties.

- First offense is “serious misdemeanor” punishable by up to 1 year and \$1,875 fine.
- Second offense is “aggravated misdemeanor punishable by up to 2 years and \$6,250 fine.
- Third offense is a felony punishable by up to 5 years.
- Mandatory 48 hour incarceration for positive meth test on probation.

2016 reforms increasing eligibility for drug offenders serving mandatory minimums.

## Kansas

[§ 21-5706](#) – Simple possession is classified as a severity level 5 felony punishable by 14-16 months in prison with presumptive probation.

- Exceptions for certain drugs as Class A misdemeanors.
- Marijuana is an enhanceable Class B misdemeanor.
- Complex sentencing grid details potential [punishments](#).

Intent to distribute distinguished by amount. A conviction for possession with intent is a registration offense.

[JR](#) led to House Bill 2170 in 2016.

- Graduated sanctions for technical violations, including “quick dip” 2-3 day jail sentences from probation officer.
- Presumptive early discharge from compliant probationers.
- Supervision for all inmates released from prison.
- Impact [study](#) by Kansas Sentencing Commission.

Recent [reforms](#) in Juvenile Justice.

## Kentucky

[§218A.1415](#) Possession in First Degree

- Narcotics, meth, LSD, date rape drugs are all Class D felony punishable by up to 3 years in prison.
- Deferred prosecution and presumptive probation for first and second offenses.
- Possession with intent distinguished in trafficking definition.

Reduced drug penalties in 2011 – [House Bill 463](#).

[Defelonization Bill](#) – introduced in 2018, massive reform bill.

- Defelonizes possession for first and second offenses, requires probation for first offense unless specific circumstances.
- Increases felony theft threshold.
- Numerous other changes.

Pew [Report](#).

State level JR group [detailed](#).

## Louisiana

### [§ 40:966-970](#) – Possession of Controlled Substances

- Sch I and Sch II – <2g is punishable by up to 2 years and/or \$5,000 fine.
- Possession with intent distinguished.

Numerous JR reforms in 2017 – practitioners guide [details](#) changes.

Senate Bill 220:

- Altered sentencing for drug offenses.
- Distinctions based on weight are refined – possession over threshold amounts are considered commercial drug activity.
- Low-level possession of most narcotics is still punishable by up to 2 years.
- Low-level heroin and fentanyl is punishable by up to 4 years.
- Reduced penalties for theft offenses and raised felony theft threshold.
- Eliminated mandatory minimums and reduced maximums for some nonviolent offenses.
- Not retroactive.

Also expanded access to probation and drug court programs.

Increase for “good time” accruals.

- Possible release at 35 percent of sentence for non-violent offenses.
- 75 percent of sentence for violent offenses.
- Habitual offenders excluded.

Performance [report](#) from June 2018.

- 20 percent decrease in imprisonment for non-violent offenses.
- Total prison population dropped 7.6 percent.

PEW [report](#) on reform package.

## Maine

### 17-A MRS §1107-A – Possession of Scheduled Drugs

- 2016 statutory reforms reduces small amounts to misdemeanors for first-time offenders.
  - <200mg oxycodone.
  - <200mg heroin or fentanyl.
  - <2g cocaine.
- Class D crimes (misdemeanors) are punishable by up to 1 year in jail.

## Maryland

### § 5-601(a)(1) – Possession of Controlled Dangerous Substance

- First offense is a misdemeanor punishable by up to a year and/or \$5,000 fine.
- Second and third offenses by up to 18 months and/or \$5,000 fine.
- Fourth and subsequent offenses by up to 2 years and/or \$5,000 fine.
- Includes “administering” a controlled substance to another.
- Presumptive treatment for possession offenses with provisions for incarceration to facilitate medically appropriate level of treatment.

Criminal Justice reform legislation [Senate Bill 1005](#) passed in 2016 – partnered with [Pew Charitable Trusts](#).

- Raised felony theft threshold.
- Revised drug penalties.
- Possession offenses are treated as misdemeanors.
- Lowered mandatory minimums.
- Presumption of treatment for possession offenses.
- Graduated responses to technical violations.
- Expanded earned credit provisions.

Delayed implementation until 10/1/17.

Oversight board [information](#).

- Slight decrease in prison population since implementation – 1.3 percent.
- Substantial increase in open supervision cases 13.7 percent.

## Massachusetts

### [94C § 34](#) – Unauthorized Possession

- Punishable by up to 1 year and/or \$1,000 fine.
- Subsequent convictions are punishable by up to 2 years and/or \$2,000 fine.
- Heroin possession is subject to up to 2 years in jail and/or \$2,000 fine on first offense. Subsequent offenses are punishable by 2.5-5 years in state prison or 2.5 years in jail.
- First offense is mandatory probation and if successfully completed, dismissal and record seal.

Distinguishes possession with intent to distribute. Intent can be inferred from amount possessed.

Recent reforms are aimed at reducing mandatory minimums and decreasing size of school zones (a trigger of mandatory sentences).

Massive criminal justice reform bill in 2018 reduces mandatory minimums, but retains for trafficking offenses.

## Michigan

### [MCLS § 333.7403](#) – Possession of Controlled Substances

- Lowest level possession is <25g. Felonies are punishable by up to 4 years and/or \$25,000 fine.
- Marijuana and LSD are misdemeanors punishable by up to 1 year and/or \$2,000 fine.
- §333.7411 allows deferral of judgement of first possession offense.

Recently repealed provisions that allowed for Life Without Parole (LWOP) sentences for cocaine trafficking. Mandatory minimums for drug offenses were mostly abolished in 2002.

Marijuana legalization on ballot in 2018.

Recidivism reduction efforts have led to a substantial decrease in prison population and the closing of several prisons – [article](#) and [report](#).

## Minnesota

### § 152.025 Controlled Substance Crime In Fifth Degree

- First offense is a gross misdemeanor punishable by up to 1 year and/or a \$3,000 fine unless
  - Controlled substances are <.25g
  - Heroin <.05g.
- Subsequent offenses are punishable by up to 5 years and/or \$10,000 fine.
- Possession with intent is a separate crime.

Drug Reform Act of 2016 – Substantial changes to penalties for drug offenses. Enacted by statute. Proposed by Minnesota Sentencing Commission.

- Possession of trace amounts of drugs were lowered to misdemeanor for first-time offenders.
- Removed mandatory minimums for low-level repeat drug offenders.
- Low-level possession offenders are eligible for conditional release.
- Expands deferred prosecution for first-time drug offenders.
- Numerous other changes.

2018 Report from MN Sentencing Commission contained preliminary observations.

- Expected reduction in need for prison beds not seen, but avoided growth in number of beds that would have been needed but for the Act.
- Substantial adoption of misdemeanor possession offense.
- Substantial adoption of deferred prosecution of first-time offenders.

## Mississippi

### [§ 41-29-139\(c\)](#) Simple Possession

- Possession with intent exists for amounts 2g and above.
- Possession of .1g or 2 UD of a Sch I or II substance is a misdemeanor punishable by 1 year and or \$1,000 fine.
- >30g of marijuana is still a felony.

House Bill 585 in 2014 – Legislation introduced establishing drug courts, changing theft/fraud amounts and drug penalties. Established misdemeanors, but only for very small amounts.

Additional efforts led to second reform bill in 2018 – PEW [report](#).

## Missouri

### [§ 579.015](#) Possession of Controlled Substance

- A Class D felony punishable by up to 7 years.
- 3-10 year sentences for “persistent offenders.”
- Possession with intent distinguished in “delivery” statute.

2017 drug sentencing [guide](#).

[§ 579.068](#) trafficking charge for possession over threshold amounts – felony level determined by amounts involved.

### [Recent JR](#) bill passed in 2018 – [House Bill 1355](#)

- Changes to parole decision making, including use of risk assessment tools.
- Established electronic monitoring programs.
- Created law enforcement assistance program to provide financial and technical assistance to local law enforcement.

## Montana

### [§ 45-9-102](#) Criminal Possession of Dangerous Drugs

- Punishable by up to 5 years and/or \$5,000 fine.
- Marijuana is a misdemeanor <60g, enhanceable for subsequent offenses.
- Deferred imposition of imprisonment on first offense.

### [§ 45-9-103](#) Possession With Intent to Distribute.

2017 Department of Justice substance abuse [report](#).

[JR efforts](#) produced 10 bills in 2017

- Reduced sentences for certain felonies, including eliminating mandatory minimums for some drug offenses.
- Eliminated jail time for some first-time misdemeanors.
- Numerous other changes.

## Nebraska

### [§ 28-416](#) Prohibited Acts With Controlled Substances

- § (3) – Simple possession is a Class IV Felony (except marijuana) – up to 2 years and/or \$10,000 fine.
- § (1) – Possession with Intent to Distribute – felony level is distinguished by schedule of drug involved.
- Marijuana <1oz is a first offense citation, enhanceable to misdemeanor on subsequent convictions.

[JR](#) LB 605 in 2015

- Changed theft/property crime thresholds.
- Established judge-led re-entry courts.
- Directed low-level offenders to probation.
- Strengthened parole supervision to reduce recidivism.

Some [evidence](#) of jail population increase after reforms.

## Nevada

[§ 453.336](#) – Unlawful Possession Not for Purpose of Sale.

With the exception of marijuana, possession of controlled substance is a felony in Nevada.

- Category E Felony – Up to 1 year in jail and/or \$5,000 fine.
- Category D Felony – 1-4 years in prison and/or \$20,000 fine.
- The penalty for a first and second possession offense is a Category E felony.
  - Only for Sch I-IV.
  - Possession of Sch V drugs is a Category E felony only for the first offense.
- All subsequent possession offenses are Category D felonies.
- Penalty of up to 6 years for possession of GHB.

Recreational Marijuana

- Effective January 1, 2017.

Established a Sentencing Commission in 2017 Senate Bill 451 amidst other reform [efforts](#).

JR involvement in 2007. State just announced their [JR 2.0](#) in August 2018.

## New Hampshire

[§ 318-B:2](#) – Prohibited Controlled Drug Acts

- Distinguishes between possession and possession with intent.

[§ 318-B:26](#) – Penalties for Drug Offenses

- Felony punishments are enhanceable for subsequent convictions.
- Class B felonies are punishable by 3.5-7 years in prison.

Statewide drug court program [established](#) in 2016.

[JR involvement](#) in 2010 resulting in Senate Bill 500.

- Reallocation of probation resources to high risk probationers.
- Limit on incarceration of parolees for technical violations.
- Modified/repealed through legislation in 2011.

## New Jersey

[§ 2C:35-10](#) Possession, Use or Being Under the Influence, or Failure to Make Lawful Disposition

- Possession of any commonly used substance Sch I-IV is a crime (felony) in the third degree punishable by 3-5 years of prison and/or \$35,000 fine.
  - Although, a presumption of non-imprisonment applies to first-time time offenders.
- All drug charges in New Jersey also carry a mandatory minimum 6-month drivers' license suspension regardless of whether the offense took place in a car.
- Possession of > 50g of marijuana or >5g of hashish is guilty of a crime of the fourth degree punishable by up to 18 months in prison.

Distinguishes possession with intent, e.g. [§ 2C:35-5](#).

Conditional Discharge and Pretrial Intervention programs for first-time offenders.

## New Mexico

### § 30-31-23 – Possession of Controlled Substances

- Meth, GHB, flunitrazepam, or narcotic drug of Sch I or II (opiates, cocaine), are a fourth degree felonies punishable by up to 18 months imprisonment and/or \$5,000 fine.
- Most other possession is a misdemeanor punishable by up to 1 year imprisonment and a fine of at least \$500 up to \$1,000.

§ 30-31-20 – Distinguished Possession With Intent as Trafficking.

§30-31-28 – Conditional Discharge For First Offense Possession.

JR with reforms expected in 2019.

## New York

### § 220.03-220.25 Possession of Controlled Substances

Distinguished by amount and type of drug, possession with intent.

- Possession in the seventh degree is a Class A misdemeanor punishable by up to 1 year in jail and/or \$1,000 fine.
- Possession in the fifth degree is a Class D felony punishable by up to 7 years in prison and/or \$5,000 fine.

First offenses can be handled through “adjournment and contemplation of dismissal”.

Current reform efforts are aimed at “raise the age” issues of juvenile justice, bail and pretrial issues, and discovery/speedy trial reforms.

## North Carolina

### [§ 90-95\(a\)\(3\)](#) – Possession of a Controlled Substance

- Sch I and Sch II hydromorphone and meth, cocaine are punished as Class I felonies, punishable by 3-12 months in prison.
- Distinguishes possession with intent.
- Trafficking is distinguished by amount possessed.

First offender diversion programs exist for drug cases.

[JR](#) reforms enacted in 2011, have resulted in closed prisons.

## North Dakota

### [§ 19-03.1-23\(8\)](#) – Possession Offenses

- Class A misdemeanor for first offense, punishable by up to 1 year and/or \$3,000 fine.
- Class C felony for second/subsequent offense, punishable by up to 5 years and/or \$5,000 fine.
- 5 or less pills from Sch II-V is a Class A misdemeanor.
- Possession with intent distinguished.

[JR](#) reforms passed in 2017 have led to prison population [decrease](#).

- Increased sentence reductions credits.
- Sentencing alternatives.
- Pretrial services pilot program.
- Numerous other changes.

## Ohio

### [§ 2925.11](#) – Possession of Drugs

- Possession is determined by amount and type of drugs involved.
- Heroin, Cocaine, Sch I and II drugs are a felony of the fifth degree at lowest amounts – punishable by up to 12 months and/or \$2,500 fine.
- No possession with intent – trafficking based on sale or offer to sell or other indicia of trafficking behavior.

[JR](#) reforms passed in 2011. Currently participating in [JR 2.0](#) and policy recommendations expected December 2018.

## Oklahoma

### [§63-2-402](#) – Unlawful Possession of a Controlled Dangerous Substance

- Misdemeanors are punishable by up to 1 year and/or \$1,000 fine.
- Possession with intent distinguished.
- Conditional discharge for possession as first offenses available.

State Questions 780 and 781 were petition initiated statutory changes to state law. Not a constitutional amendment.

- State Question 780 – drug possession and non-violent property crimes were reduced to misdemeanors.
- State Question 781 – cost savings allocations.

Oklahoma Office of Management and Enterprise Services [Report](#) estimated savings of \$63.5 million in the first year and \$140 million between 2018 and 2026.

Oklahoma Policy Institute [Report](#) on problems with cost savings analysis.

## Oregon

Defelonization of possession of specific controlled substances from a felony to a “Class A misdemeanor.”

- Occurred by statute effective August 15, 2017.
- [House Bill 2355](#) – Defelonization of drug possession offenses.

### [§ 475.854](#) – Possession of Heroin

- Class A misdemeanor is punishable by up to 1 year in jail and/or \$6,250 fine.
- Drugs include Sch I and II, methamphetamine, methadone, oxycodone, heroin, and cocaine.
- Misdemeanor offenses are enhanceable to felony if any:
  1. The defendant has a prior felony conviction of any kind;
  2. The defendant has two or more prior convictions for possessing a usable quantity of a controlled substance;
  3. The offense is a commercial drug offense; or
  4. The defendant possesses more than a specified amount of certain controlled substances.

### Oregon Criminal Justice Commission [Report](#) – September 2018

- Still early in the process, but classifies impact as “profound.”
- 40 percent reduction in convictions for Possession of Controlled Substances.

[News](#) article from 1/27/18 – law enforcement sees little impact to defelonization. Possession is still being enforced, as are the crimes surrounding the possession arrest.

## Pennsylvania

### 35 P.S. § 780-113(a)(16) – Possession of a Controlled Substance

- First offense is a misdemeanor, up to 1 year in jail, maximum \$5,000 fine, or both.
- Subsequent offenses are misdemeanors, up to 3 years in jail, maximum \$25,000 fine, or both.
- Distinguishes possession with intent.
- GHB possession is a felony.
- First offenders are eligible for probation without verdict.
- Disposition in lieu of trial available as well.

Numerous [JR](#) efforts.

## Rhode Island

§ 21-28-4.01(c)(1) – Simple possession is a crime punishable by up to 3 years and/or a fine of at least \$500 up to \$5,000.

- Exception for misdemeanor.
- Distinguishes possession with intent.
- Mandatory treatment program for violators sentenced to probation.

§ 21-28-401.1 – Possession of larger amounts of controlled substances punishable by up to 50 years.

[JR](#) participation led to legislation and rule changes in 2016, 2017.

- Risk assessment tools for sentencing and bail/pretrial.
- Changes to sentencing guidelines.
- Changes to response policies for probation violations.

[Effective use](#) of Medically Assisted Treatment (MAT) program in prisons.

## South Carolina

### § 44-53-370(c) – Possession of a Controlled Substance

- Two year maximum misdemeanor for any narcotic drug in Sch I(b)-(c) and II (such as heroin) or LSD.
  - For a second offense, the offender is guilty of a felony punishable by up to 5 years and/or \$7,500 fine.
  - Third offense is punishable by up to 10 years and/or \$12,500 fine.
- Other substances in Schedules I-V are misdemeanors punishable by up to 6 months and/or \$1,000 fine. Subsequent offenses are double the first time penalty.
- More than 4g opium, 4g morphine, 2 grains heroin, 28marijuana, 10g hashish, 50mg LSD, fifteen tabs/capsules of MDMA, e.g., is prima facie evidence of intent to distribute (felony).

### § 44-53-375 – Possession of Meth, Cocaine Base

- <1g meth or cocaine base is a misdemeanor punishable up to 3 years and/or \$5,000 fine.
- Second offense is a felony punishable by up to 4 years and/or \$7,500.
- Third and subsequent offenses are punishable by up to 10 years and/or \$12,500 fine.
- Possession of >1g is prima facie evidence of intent to distribute, punished much more harshly.

Legislative reforms in 2010 reduced prison population – PEW [report](#).

## South Dakota

### § 22-42-5 Unauthorized Possession

- Sch I or II drugs are a Class 5 felony punishable by up to 5 years and/or \$10,000 fine.
- Possession with intent distinguished.
- § 22-472-5.1 “ingestion” is a Class 5 felony – can be charged for positive drug screens.

### § 22-42-15.1 Possession for Purpose of Intoxication

- Class 1 misdemeanor is punishable by up to 1 year in jail and/or \$2,000 fine.

Senate Bill 70 in 2013 – Statutory changes in conjunction with JR.

- Expanded felony levels.
- Reclassified theft and burglary offenses.
- Created a tiered offense structure for controlled substances.
- Reclassified drug possession and ingestion to lower felony levels.
- Presumptive probation at lowest felony levels.

### JR impact Report

- Decrease in prison admissions and sentence lengths, but increase in drug related filings.
- South Dakota is one of a few states that criminally charges for the ingestion of controlled substances – which is a felony and has contributed to an increase in the number of people criminally charged for a controlled substance.

## Tennessee

[§ 39-17-418](#) – Simple possession or casual exchange is a Class A misdemeanor punishable by up to 11 months 29 days in jail and/or \$2,500 fine.

- Meth possession requires a 30 days jail sentence, allows credit for drug or recovery court.
- Enhanceable to Class E felony with 2 priors if the drug in question is heroin, punishable by 1-6 years in prison and/or \$3,000 fine.

[§ 39-17-417](#) – Includes possession with intent to manufacture, deliver, or sell

- Covers very small amounts, <.5g in some cases.
- Possession with intent covers meth prepared for personal use.

Criminal justice reform [reporting](#) and [advocacy group](#).

## Texas

[§ 481.115-118](#) – Possession offenses – easier to read [chart](#).

- Drugs separated by penalty groups.
- “State jail felonies” – felony conviction, but sentence served in jail, not prison.
  - Group 1 – Opiates, date rape drugs, meth, cocaine – state jail felonies at low-levels (LSD group 1a) – 6 months-2 years and/or \$10,000 fine.
  - Group 2 – Hallucinogens, depressants – starts as a felony: 6 months to 2 years and/or \$10,000 fine.
  - Groups 3 and 4 – other drugs <1oz are misdemeanor offenses.

JR [efforts](#) in Texas.

- Efforts in 2007 expanded access to drug courts and mental health treatment.
- Earned credit programs expanded up to 20 percent in 2011 – available in jails.

## Utah

### [§58-37-8\(2\)\(a\)](#) – Possession or Use of Controlled Substances

- Sch I or II drugs are a Class A misdemeanor on first and second offense, punishable by up to 1 year in jail and/or \$2,500 fine.
- Subsequent convictions are enhanced to third degree felonies, punishable by up to 5 years in prison and/or \$5,000 fine.
- Possession with intent distinguished.

2015 Legislative Reforms – House Bill 348 – received technical assistance from [Pew Charitable Trusts/JR](#).

- Reduced first and second offense drug possession from felonies to misdemeanors.
- Reduced area and times of drug free zones.
- Numerous other changes.
- Projected savings of \$500 million over 20 years.

2017 Utah JR [Report](#).

Implementation efforts not fully funded, limiting treatment options - [article](#) and [article](#).  
[News](#).

Drug court participation [down](#).

## Vermont

### [18 VSA §4231-4235a](#) – Possession of Controlled Drugs

- In VT, crimes punishable by <2 years are misdemeanors.
- Generally low-level possession of most narcotics is punishable by up to 1 year and/or \$2,000 fine.
- Punishments are increased based on amounts and prior offenses.
- Trafficking distinguished based on possession of large amounts with “permissive inference of intent to sell or dispense.”
- Marijuana decriminalized up to 1 oz.

JR efforts in 2008 [detailed](#).

## Virginia

### [§ 18.2-250](#) Possession of Controlled Substances Unlawful

- Possession of Sch I and II drugs is a Class 5 felony punishable by 2-10 years in prison and/or \$2,500 fine.
- [§ 18.2-251](#) – First offense possession is eligible for deferred judgement.
- Date rape drugs are treated differently.
- [§ 18.2-248](#) – Possession with intent distinguished.

Recent drug law reform efforts aimed at marijuana.

Felony theft threshold raised to \$500 [this year](#).

## Washington

### [§ 69.50.4013](#) – Possession of a Controlled Substance is a Class C Felony

- Punishable by up to 5 years and/or \$10,000 fine.
  - Separate, specific set of guidelines for drug offenders.
- Enhanceable for second/subsequent offenses.
- “Drug Offender Sentencing Alternative” – deviation from standard prison sentencing range or residential chemical dependency treatment.

## West Virginia

### [§ 60A-4-401](#)

- Low-level possession is punishable as a misdemeanor.
- Whether amount possessed is indicative of intent to deliver is determined on case by case basis.
- First offense allows conditional discharge upon completion of probation terms.
- Second or subsequent offenses are punishable by up to double the first time penalty.

Recent [Report](#) on enactment of MAT program. JR Fact [Sheet](#).

## Wisconsin

### [§ 961.41\(3g\)](#) – Prohibited Acts

- Sch I or II Narcotic and specified drugs is a Class I felony.
- Possession with intent provisions.
- Conditional discharge provisions for first-time offenders.
- §961.475 Treatment option sentencing.

2008-2009 JR [efforts](#).

## Wyoming

### [Wyo Stat § 35-7-1031\(c\)](#) –

- Misdemeanors are punishable by 12 months in jail and/or \$1,000 possible on first offense.
  - <3oz plant controlled substance.
  - <.3g liquid controlled substance or LSD.
  - <3g powder or crystal, or pill or capsule form.
  - <.5g crack.
- Third or subsequent offense punishable by up to 5 years and/or \$5,000 fine.
- Conditional discharge for first-time offenders.
- Possession with intent provisions.

Deferred prosecution to first-time drug offenders for related crimes enacted in 2015.

Currently participating in [JR](#).



**OHIO**

**CRIMINAL SENTENCING COMMISSION**

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65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309