

Drug War Détente?

A Review of State-level Drug Law Reform, 2009-2013

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FROM THE CENTER DIRECTOR

It has been forty years since the “War on Drugs” began and, as drug use and drug crime waxed and waned, both the federal and state governments continued to spin a dense web of increasingly punitive laws defining and enforcing drug-related offenses. The growth of mandatory minimum sentences and zero-tolerance sentencing practices have contributed to the massive increase in prison populations, while uneven enforcement has caused the devastation of communities on the frontlines of drug interdiction and enforcement activities. Until now.

Attorney General Eric Holder has, since his speech to the American Bar Association in August 2013, repeatedly signaled the intention of the U.S. Department of Justice to dial back its use of harsh penalties for drug crimes—including most recently his appearance before the U.S. Sentencing Commission to speak in favor of reducing sentences for most federal drug offenses. This legislative roundup, however, documents that a shift in drug policy has been underway on the state level for some time.

Facing significant economic constraints and cognizant of the growing body of research showing that community-based treatment and support is a more effective response to drug-related offenses than long terms of incarceration, state policymakers are revisiting and revising existing laws and sentencing practices. To date, these changes have been largely piecemeal, and most are too new to have produced substantial results, but the trend toward reform is widespread and promising. The Vera Institute of Justice’s Center on Sentencing and Corrections continues to track these changes and to work with states and counties as they undertake the difficult work of systems change.



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About this review

From 2009 through 2013, more than 30 states passed nearly 50 bills changing how their criminal justice systems define and enforce drug offenses. In reviewing this legislative activity, the Vera Institute of Justice’s Center on Sentencing and Corrections found that most efforts have focused on making change in one or a combination of the following five areas: mandatory penalties, drug sentencing schemes, early release mechanisms, community-based sanctions, and collateral consequences. By providing concise summaries of representative legislation in each area, this review aims to be a practical guide for policymakers in other states and the federal government looking to enact similar reforms.

Background

Ever since 1971, when President Richard Nixon declared an “all-out offensive” against drug abuse—“America’s public enemy number one”—drug interdiction has been a mainstay of crime control policy in the United States.¹ The crack epidemic and attendant gang violence in the 1980s and the 1990s brought about the militarization of crime control discourse (e.g., the “War on Drugs”) and prompted policymakers at both the state and federal levels to escalate dramatically the criminalization and enforcement of drug offenses and incarceration of drug offenders.² With public concern increasing apace, punitive, zero-tolerance sentencing policies, such as mandatory minimum sentences, flourished in relation to drug or drug-related offenses.³ As a result, the proportion of state inmates incarcerated for drug offenses rose from six percent in 1980 to 17 percent in 2011.⁴ The percentage of state prison admissions for drug offenses likewise grew during this time, peaking in 2001 at 32.1 percent before decreasing to 25.4 percent by 2011.⁵ However, on the federal level, drug interdiction remains a central focus: in 2012 drug offenders accounted for 30.2 percent of convictions and 50.6 percent of the inmate population, with many serving lengthy obligatory sentences.⁶

Despite more than four decades of concerted law enforcement effort, meaningful reductions in drug supply and use have remained elusive: 9.2 percent of Americans age 12 or older freely admit to using drugs at least once in 2012, and the underground drug market continues to be persistently resilient.⁷ At the same time, the institutional costs have been immense, with state and local governments spending approximately \$25 billion on arrest, prosecution, and incarceration of drug offenders every year, and the federal drug war budget reaching the same amount in 2013.⁸ Moreover, unaccounted for in these calculations are the many now well-documented but difficult to quantify social costs of the drug war. These include the loss of educational opportunities, wages, or public benefits as a collateral consequence of a criminal conviction, as well as the drug war’s disproportionate impact on communities of color.⁹

Shifting course

In recent years, confronted by a difficult budgetary environment and more informed about the drug war's fiscal and human costs, policymakers have increasingly taken note of research demonstrating that for many offenders, community-based sanctions, including substance abuse treatment, are more effective at reducing recidivism than incarceration.¹⁰ Guided by this research and buttressed by shifting public attitudes that now overwhelmingly support treatment and prevention efforts over punitive sanctioning policies, many states are reassessing long-held beliefs about drugs and drug addiction and are exploring how their criminal justice systems can more appropriately deal with drug offenders.¹¹ In particular, states have taken steps to:

- > **Repeal or limit mandatory penalties.** After years of increasing use, states are scaling back mandatory penalties for drug offenses by (1) repealing or shortening mandatory minimum sentences; (2) limiting automatic sentence enhancements that subject an offender to an increased penalty if certain triggering criteria apply, such as the number of previous convictions or if an offense occurs in a designated drug-free zone; and (3) increasing judicial discretion to sentence below the mandatory minimum.
- > **Modify drug sentencing schemes.** States have also focused attention on improving the proportionality of their drug sentencing schemes by passing legislation that 1) adjusts the number of penalty levels (i.e., the number of felony or misdemeanor categories) or the quantity of drugs associated with each level; 2) institutes presumptive probation for certain drug offenses; and, in particular, 3) legalizes, decriminalizes, or lowers penalties for the possession of small amounts of marijuana.
- > **Expand access to early release mechanisms.** States have created ways for offenders to reduce their sentence length by earning good time credits through drug treatment program participation or advancing parole eligibility.
- > **Expand or strengthen community-based sanctions.** States have adopted new laws to 1) increase deferred prosecution options for drug defendants; 2) expand community-based drug sentencing options; 3) increase the use of incentives for drug offenders by permitting a reduction in offense class from a felony to a misdemeanor on the successful completion of probation or drug treatment; 4) expand, strengthen, promote, or better regulate drug courts; and 5) broaden the availability of, or advise investment in, drug treatment programs.
- > **Ameliorate collateral consequences.** Many states passed new laws to alleviate the burden of civil penalties that attach to convictions for drug offenses, such as restrictions on housing, employment, and occupational licensing by 1) expanding options for sealing or expunging criminal records, and 2) limiting restrictions on state benefits and licenses.

The most significant pieces of drug law reform legislation passed between 2009 and 2013 are summarized below under these broad categories. Where legislation makes distinct changes in multiple areas (e.g., by reducing mandatory minimums and also expanding community-based sentencing options), it is included under each relevant category.¹²

Repealing or limiting mandatory penalties

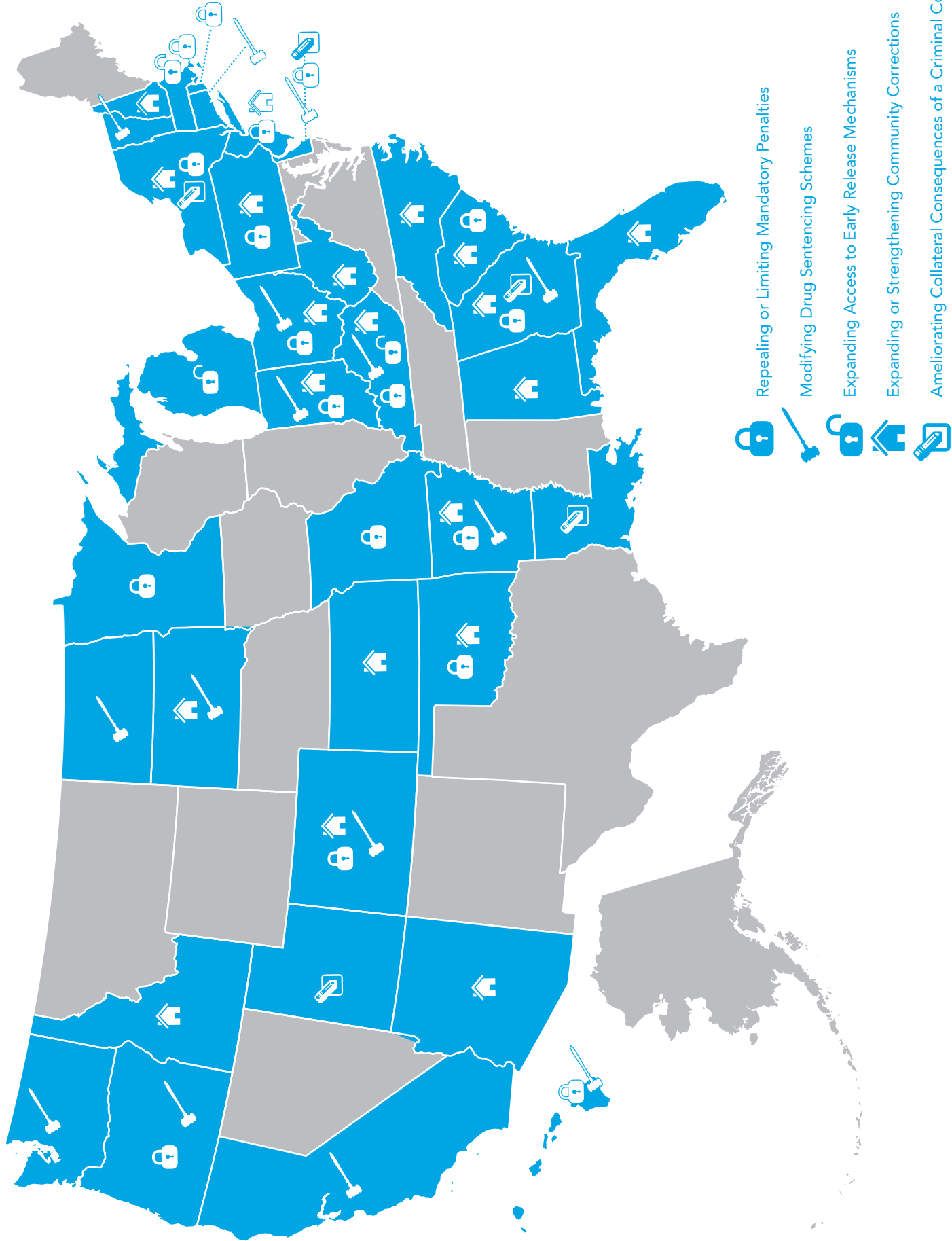
States are taking steps to scale back mandatory sentences in relation to drug offenses by (1) repealing or shortening mandatory minimum sentences; (2) limiting automatic sentence enhancements—laws that trigger sentence increases in specified circumstances, such as if a drug offense occurs within a statutory drug-free zone, or if an offender possesses previous criminal convictions; and (3) enhancing judicial discretion to sentence below a mandatory minimum if certain factual criteria are satisfied and if the judge deems it appropriate given the individual circumstances of the case.

REPEALING OR SHORTENING MANDATORY MINIMUM SENTENCES

- > **New York S 56-B (2009):** S 56-B revised New York's Rockefeller drug laws by eliminating mandatory minimums for first-time offenders convicted of a Class B, C, D, or E drug felony and second-time drug offenders convicted of a Class C, D, or E drug felony. The law also eliminates mandatory minimums for second-time offenders convicted of a Class B drug felony who are drug dependent. Mandatory minimum sentences for second-time Class B and C drug felony offenders with a prior nonviolent conviction are reduced from 3.5 to two years and from two to 1.5 years, respectively.
- > **Rhode Island SB 39aa (2009):** This law eliminates mandatory minimums for the manufacture, sale, or possession with intent to manufacture or sell a Schedule I or II controlled substance. For example, offenses involving less than one kilogram of heroin or cocaine, or less than five kilograms of marijuana, previously carried a mandatory minimum sentence of 10 years and a maximum of 50 years. Now, there is no mandatory minimum and the judge may assign a sentence anywhere from zero to 50 years. For offenses involving at least one kilogram of heroin or cocaine or at least five kilograms of marijuana, the previous mandatory minimum of 20 years has been eliminated; the maximum remains life.
- > **Colorado HB 1352 (2010):** HB 1352 alters the application of the special offender sentencing provision, which requires the judge to sentence an offender to the minimum sentence of the applicable presumptive sentenc-

MAPPING DRUG LAW REFORM

From 2009 through 2013, more than 30 states passed nearly 50 bills reforming how their criminal justice systems define and enforce drug offenses.



ing range. Previously, the enhancement applied when a person imported any amount of a Schedule I or II drug into Colorado. Now, this enhancement only applies upon importing more than two ounces of methamphetamine or more than four ounces of any other Schedule I or II drug; importing less than these amounts does not trigger the enhancement.

- > **South Carolina S 1154 (2010):** S 1154 eliminates mandatory minimum sentences for first-time offenders convicted of simple drug possession.
- > **Arkansas SB 750 (2011):** SB 750 creates shorter mandatory minimum sentences for drug users than for drug manufacturers.
- > **Delaware HB 19 (2011):** HB 19 brought about a broad overhaul of Delaware's drug laws by repealing much of the existing drug code and creating three main types of drug crime based on level of seriousness: possession, aggravated possession, and drug dealing. (See bill summary on page 14.) In doing so, only Class B drug felonies now trigger mandatory sentences, and drug thresholds necessary to reach Class B have been increased substantially. For example, the amount of cocaine needed to trigger the mandatory two-year sentence was raised from 10 to 25 grams. In addition, for cases with less than 25 grams, only aggravated possession or the existence of aggravating factors can trigger the mandatory two-year sentence.
- > **Ohio HB 86 (2011):** HB 86 decreases mandatory minimum sentences for some crack cocaine offenses by eliminating the difference between crack cocaine and powder cocaine. The law also raises the amount of marijuana needed to trigger an eight-year mandatory sentence for trafficking or possession from 20 kilograms to 40 kilograms.
- > **Georgia HB 1176 (2012):** HB 1176 reduces mandatory minimum sentences for drug purchase and possession offenses. For Schedule I or II drugs, the mandatory minimum is reduced from two to 15 years to one to 15 years. Although possession of a Schedule III, IV, or V drug still carries a mandatory minimum of one year, this law reduces the maximum sentence from five to three years.
- > **Massachusetts H 3818 (2012):** H 3818 lowers mandatory minimums for some drug offenses.¹³ A second Class A manufacture or delivery conviction now carries a mandatory minimum of 3.5 years, down from five years. The mandatory minimum for second Class B and Class C offenses are reduced from three to two years and two years to 18 months, respectively. For marijuana trafficking, the law reduces mandatory minimum sentences from three to two years for 100 to 2,000 pounds, from five to 3.5 years for 2,000 to 10,000 pounds, and from 10 years to eight years for more than 10,000 pounds. The quantity necessary to trigger a mandatory minimum sentence for trafficking other substances, such as heroin, is now 18 grams rather than 14 grams.

DRUG SCHEDULES

Drugs are classified into distinct categories known as schedules. These classifications are typically based on a particular drug's potential for abuse and dependency, as well as whether it has an accepted medical use. The federal government and most states have five drug schedules, although some states have more.^a

In general, Schedule I drugs have the highest risk of dependency and abuse and no approved medical use.^b This category typically includes substances such as heroin, ecstasy, and LSD. Schedule II drugs have an accepted medical use but nevertheless carry a high potential for dependency and abuse. Schedule II drugs include cocaine, opium, methadone, and morphine. Schedules III, IV, and V drugs have approved medical uses and decreasing potentials for dependency and abuse. In general, Schedule III drugs include anabolic steroids and barbiturates, Schedule IV drugs include Xanax, Klonopin, and Valium, and Schedule V drugs include medications with small amounts of opium or codeine.

^a For example, North Carolina has six drug schedules; Iowa has five drug schedules but seven actual categories (Schedules 1, 2, 2N, 3, 3N, 4 and 5).

^b The federal government has three statutory criteria for all Schedule I drugs. There must be a high potential for abuse, no accepted medical use, and a lack of accepted safety for use under medical supervision.

- > **Missouri SB 628 (2012):** SB 628 lowers the mandatory minimum sentence for some crack cocaine offenses. Previously, trafficking two to six grams was a Class B felony and carried a mandatory sentence of five years, while trafficking more than six grams was a Class A felony and carried a mandatory sentence of 10 years. Now, trafficking eight to 24 grams is a Class B felony that carries a five-year mandatory minimum sentence. Trafficking more than 24 grams is a Class A felony with a 10-year mandatory sentence. The law also lowers the sentencing ratio for crack and powder cocaine from 75:1, previously the highest weight-based disparity in the nation, to 18:1.
- > **Oklahoma HB 3052 (2012):** HB 3052 halves the mandatory minimum sentence for a repeat marijuana or other low-level drug offender if at least 10 years have passed since completing the sentence for the first offense. These offenders are now subject to a mandatory term of one to five years rather than two to 10 years.

LIMITING AUTOMATIC SENTENCE ENHANCEMENTS

School zone enhancements

- > **South Carolina S 1154 (2010):** S 1154 now specifies that the school zone enhancement for drug distribution and sale offenses applies only when the defendant has knowledge that he or she is within a one-half mile radius of a school, park, or playground. Previously, defendants were held strictly liable for drug offenses occurring within a school zone, regardless of knowledge of a school's proximity.
- > **Delaware HB 19 (2011):** HB 19 decreases the size of the protected school zone from 1,000 feet to 300 feet, bringing the school zone in line with the drug-free "protected park or recreation area" enhancement. This law also excludes places of worship that do not have a school, park, or recreational area.
- > **Kentucky HB 463 (2011):** HB 463 reduces from 1,000 yards to 1,000 feet the size of the statutory drug-free school zone that makes drug trafficking a Class D felony and triggers a mandatory sentence of one to five years.
- > **Massachusetts H 3818 (2012):** H 3818 reduces the size of the drug-free school zone from 1,000 feet to 300 feet.¹⁴ Drug offenses committed within the school zone are subject to a mandatory minimum of two years. This law also limits the hours during which the drug-free school zone enhancement will apply to between 5 a.m. and midnight. Previously, the enhancement was applicable 24 hours a day.
- > **Indiana HB 1006 (2013):** HB 1006 reduces the size of the drug-free school zone for all drug offenses from 1,000 to 500 feet and limits the application of the enhancement to when children are reasonably expected to be present. The new law also removes family housing complexes and youth program centers from the definition of sites protected under the school zone enhancement.

Habitual Offender Enhancements

- > **South Carolina S 1154 (2010):** S 1154 narrows the scope of second offenses which carry an increased mandatory penalty. A second conviction for marijuana possession no longer triggers a sentencing enhancement if it occurs more than five years after the sentence on the first offense has been completed. Possession offenses for other drugs no longer count as first offenses if more than 10 years have passed since completing the first sentence.
- > **Colorado SB 96 (2011):** This law excludes Class 6 felony drug possession from offenses that trigger the habitual offender sentencing enhancements which previously would have quadrupled the base sentence for offenders.

- > **Kentucky HB 463 (2011):** HB 463 repeals the automatic sentence enhancement for certain subsequent drug offenses, including possession and some offenses involving prescription drugs. Additionally, this law changes the way that drug possession offenses interact with Kentucky's persistent felony offender statute. Under HB 463, for example, a first degree drug possession conviction no longer leads to second degree persistent felony offender status upon another non-drug conviction.
- > **Ohio HB 86 (2011):** Under HB 86, an offender is subject to a mandatory prison sentence for third degree aggravated drug trafficking only if he or she has at least two prior felony drug convictions. Additionally, the law repeals the sentencing enhancement for major drug offenders (MDO). Offenders are designated major drug offenders if they are convicted of crimes involving particularly large quantities of drugs. Previously, an MDO had to receive the maximum sentence for a first degree felony, to which the judge could add up to 10 additional years. The law eliminates the discretionary MDO enhancement but increases the mandatory maximum sentence for a first degree felony from 10 to 11 years.
- > **Georgia HB 1176 (2012):** HB 1176 repeals the sentence enhancement for a second drug possession offense, which previously subjected offenders to a five-to-30-year mandatory minimum sentence for Schedule I and II drugs, and a one-to-10-year mandatory sentence for Schedule III, IV, or V drugs. A third offense, however, now carries a penalty of up to double the original sentence for Schedule I and II drugs, and a mandatory minimum of one to five years for a Schedule III, IV, or V drug.
- > **Colorado SB 250 (2013):** SB 250 removes the sentence enhancement for a second drug distribution conviction. Previously, the felony class was raised by one level on a second offense.

ENHANCING JUDICIAL DISCRETION

- > **Minnesota SF 802 (2009):** SF 802 grants judicial discretion to sentence below the mandatory minimum when a defendant with a prior controlled substances conviction is convicted of a fifth degree controlled substance possession or sale offense. The court may make its own motion to sentence below the mandatory minimum or the prosecutor may file a motion to do so. The judge must find substantial and compelling reasons on the record to depart from the mandatory minimum.
- > **New Jersey SB 1866 (2009):** This law permits judges to waive or reduce the minimum term of parole ineligibility when sentencing a person convicted of certain drug trafficking offenses within 1,000 feet of a school. Judges may also now place such a person on probation, so long as he or she first serves a term of imprisonment of not more than one year. Before waiving

or reducing a parole ineligibility period or imposing a term of probation, judges are still required to consider certain enumerated factors, such as prior criminal record, or whether the school was in session or children were in the vicinity when the offense took place.

- > **New York S 56-B (2009):** S 56-B gives judges the discretion to sentence below the mandatory minimum for second-time offenders convicted of a Class C, D, or E drug felony and who are typically subject to a 1.5-year mandatory minimum. A sentence of one year or less may be imposed upon determining that imprisonment is necessary but the mandatory minimum is “unduly harsh.” The nature and circumstances of the crime as well as the history and character of the defendant are to be considered when making this determination.
- > **South Carolina S 1154 (2010):** S 1154 retains the mandatory minimum sentences for second- and third-time non-trafficking drug offenders but gives judges the discretion to suspend the sentence and grant probation under certain circumstances (e.g., when all prior convictions are possession offenses). When these circumstances are present but the mandatory minimum sentence is still imposed, an offender is now eligible for parole, work release, supervised furlough, and credits for good conduct, work, and education.
- > **Hawaii HB 2515 (2012):** HB 2515 permits judges the discretion to sentence second-time drug felony possession offenders to probation. Previously, this was restricted only to first-time offenders.
- > **Pennsylvania SB 100 (2012):** SB 100 allows low-level drug felons to be sentenced to a county-run intermediate punishment even when a mandatory sentence otherwise applies. The intermediate punishment may involve a residential facility, house arrest, and/or intensive supervision. Previously, many of these offenders were sentenced to incarceration or a state-run intermediate punishment facility. The law also allows the prosecutor to waive offender eligibility requirements, such as no history of violence. If the prosecutor makes such a waiver, the victim must be given notice and an opportunity to be heard on the matter. Judges have discretion to refuse or accept the prosecutor’s waiver.
- > **Georgia HB 349 (2013):** HB 349 allows departure from the mandatory sentence for some drug offenses if the offender was not a ringleader, did not possess a weapon during the crime, did not cause a death or serious bodily injury to an innocent bystander, had no prior felony conviction, and if the interests of justice would otherwise be served by a departure. The offenses that are covered by the new law include trafficking and manufacturing of cocaine, ecstasy, marijuana, and methamphetamine; and the sale or cultivation of large quantities of marijuana. The judge must specify the reasons for the departure. Alternatively, a judge may sentence below a mandatory minimum if the prosecuting attorney and the defendant have both agreed to a modified sentence.

- > **Hawaii SB 68 (2013):** SB 68 allows departure from a mandatory sentence in favor of an indeterminate sentence when the defendant is convicted of a Class B or Class C felony drug offense and the judge deems the departure “appropriate to the defendant’s particular offense and underlying circumstances.” Previously, Class B and Class C drug felonies had mandatory sentences of ten and five years respectively. Under the new law, judges may impose a term of between five and ten years for a Class B felony, and between one and five years for a Class C felony. Exceptions apply for some offenses, including promoting use of a dangerous drug, drug offenses involving children, and habitual offenders.
- > **Indiana HB 1006 (2013):** HB 1006 allows judges to suspend any part of any felony sentence except for Level 1 and 2 felonies and murder, for which the judge may suspend only the portion of the sentence that is above the mandatory minimum for those offenses. Previously, a judge had no discretion to suspend sentences for a long list of felonies (e.g., dealing a narcotic drug while possessing a firearm) and could not suspend other felony sentences if an offender had a prior felony conviction within the preceding three to seven years, depending on the offense.
- > **Oregon HB 3194 (2013):** HB 3194 repeals a prior ballot measure that mandated a minimum sentence of incarceration and prohibited judges from granting a downward departure from the sentencing guidelines or ordering probation for certain repeat drug offenders.¹⁵

Modifying drug sentencing schemes

Past zero-tolerance drug policies often produced harsh sentences for small amounts of drugs, at times attracting prison terms that were more severe than those for some violent crimes. Now, reflecting more nuanced views about drug offenses and offenders, many states have recalibrated their drug sentencing schemes in order to allow for greater differentiation between minor and more serious offenses, and to provide more flexibility in the types of sentences that drug offenses attract. Some states have accomplished this by increasing the number of penalty scales (i.e., the number of misdemeanor and felony classes in relation to drug offenses) and adjusting the weight thresholds which trigger offense levels. This has resulted in more gradation in drug penalties, effectively reducing the felony class of certain low-level drug crimes or reclassifying them as misdemeanors. Still other states have introduced the presumption of community-based supervision for certain drug offenses, which previously attracted custodial sentences. Finally, significant drug offense reclassification efforts in several states have resulted in laws that legalize, decriminalize (by converting certain offenses to a civil violation or equivalent), or lower penalties for the possession of a small amounts of marijuana.

REDEFINING OR RECLASSIFYING DRUG OFFENSES

- > **Colorado HB 1352 (2010):** HB 1352 reclassifies all drug use offenses as Class 2 misdemeanors. This law also separates possession from manufacture and trafficking and introduces gradation for possession offenses. Possession of any amount of a Schedule III, IV, or V drug is now a Class 1 misdemeanor. For Schedule I or II drugs, except methamphetamine, possession of less than four grams is now a Class 6 felony while possession over four grams is a Class 4 felony. The law also introduces gradation for cultivation of marijuana plants, whereas previously all cultivation was a Class 4 felony.
- > **Arkansas SB 750 (2011):** SB 750 reclassifies the felony level of various drug offenses. For instance, possession of any amount previously was a Class C felony and possession of over one gram of cocaine or two grams of other Schedule I or II drugs created a rebuttable presumption of possession with intent to distribute. Now, possession of less than two grams of a Schedule I or II drug is a Class D felony, and the presumption no longer applies.
- > **Delaware HB 19 (2011):** HB 19 repealed much of the existing drug code and created three main types of drug crime based on level of seriousness: possession, aggravated possession, and drug dealing. Each new offense type is now assigned a revised sentence range, reducing some drug offenses previously classified as felonies—such as simple possession of small amounts of drugs—to misdemeanors. The new sentencing scheme streamlines drug charges, so that drug cases will no longer carry multiple charges that involve separate sentences. The drug charge provides the base offense level and aggravating factors, such as resisting arrest, may increase the felony level. If aggravating factors cause an upgrade to a Class B drug felony, a two-year mandatory minimum is invoked. (See bill summary on page 8.) In all other cases, aggravating factors cause an offender to be subjected to an increased sentencing range, for example, from zero to 15 years instead of zero to five years.
- > **Kentucky HB 463 (2011):** HB 463 introduces weight thresholds for drug trafficking. For some drugs, including cocaine and heroin, there is now a reduced offense level for trafficking in weights under the specified threshold. The thresholds may be met in a single transaction or in a series of transactions over a 90-day period.
- > **North Dakota SB 2251 (2011):** SB 2251 downgrades the manufacture, delivery, or possession with intent to manufacture or deliver more than 100 pounds of marijuana from a Class A to a Class B felony. Marijuana is no longer treated like more serious drugs such as methamphetamine, heroin, and cocaine.
- > **Georgia HB 1176 (2012):** HB 1176 assigns different penalties to the possession or purchase of increasing drug quantities and lowers the minimum sentence to one year from two. Previously, purchasing or possessing any quantity of drugs carried a maximum sentence of 15 years. Now, that max-

imum is only imposed on those who purchase or possess four to 28 grams. Purchasing or possessing less than one gram of Schedule I or some Schedule II narcotics, or less than two grams of Schedule II non-narcotics, now carries a three-year maximum sentence. Offenses involving intermediate quantities of drugs now carry a maximum sentence of eight years.

- > **Hawaii HB 2515 (2012):** HB 2515 reduces the maximum probation sentence for Class B and C drug felonies from five to four years. The law argues that since the risk of recidivism is highest during the first two years of probation, the minimal additional benefit to public safety is not worth the costs of the final year of probation.
- > **Colorado SB 250 (2013):** SB 250 removes drug crimes from the state's general felony classification and sentencing grid and creates a new stand-alone classification scheme. Each level is assigned a presumptive sentencing range, and some levels are assigned an aggravated sentencing range that applies when an aggravating factor (such as, if the offense was committed while on probation or parole) is involved. The law classifies all felony possession as the lowest drug felony level.
- > **Indiana HB 1006 (2013):** HB 1006 expands Indiana's felony classification scheme from four levels to six. One result is that drug crimes are now subject to more graduated sentencing. Possession of marijuana and other low-level drug offenses are now misdemeanors, and possession of small amounts of more serious drugs were reduced to less serious felonies.
- > **South Dakota SB 70 (2013):** SB 70 adjusts the state's offense classification structure by downgrading the felony level of many minor drug crimes. For example, possession and use are both reduced from Class 4 to Class 5 or 6 felonies, depending on the substance. At the same time, the law increases the felony level for trafficking, from Class 4 to Class 3, where the offender possessed items indicative of large-scale drug dealing.

ALTERING SENTENCE PRESUMPTIONS

- > **Kentucky HB 463 (2011):** HB 463 grants a sentence of presumptive probation to first-time lower-level trafficking offenders. In addition, first and second-time possession offenders who do not receive deferred prosecution must be given presumptive sentences of probation.
- > **Ohio HB 86 (2011):** HB 86 removes the presumption of prison for fourth and fifth degree drug trafficking, which includes trafficking small quantities of marijuana, cocaine, heroin, and LSD. These changes were made in an effort to more closely align drug sentencing with sentencing for other crimes.
- > **Colorado SB 250 (2013):** SB 250 establishes a presumption that low-level felony drug offenders be sentenced to a community-based sanction. A judge may sentence convicted offenders to incarceration only after showing that

community-based sanctions have been tried and failed, would fail if they were tried, or present an unacceptable risk to society. The law explicitly states that high-risk offenders can be successfully managed in the community with proper supervision and programming and should not be excluded from consideration. The law also directs the probation department to assess all probationers and to place all high-risk offenders in an intensive supervision program. The court may also make residential drug treatment a condition of probation.

- > **Oregon HB 3194 (2013):** HB 3194 introduces presumptive sentences of probation for marijuana offenses and driving with a suspended license by placing these offenses in a different part of the sentencing grid. The Oregon sentencing grid assigns presumptive sentencing ranges according to a person's criminal history and the seriousness of the crime. Each offense is given a "crime seriousness" ranking from one to 11. HB 3194 downgraded the crime seriousness ranking of the aforementioned offenses from six to four.
- > **South Dakota SB 70 (2013):** SB 70 mandates that most Class 5 and 6 felonies carry a presumptive sentence of probation, from which a judge may depart only if there are aggravating circumstances present that pose a significant risk to the public. The offenses excluded from presumptive probation are certain violent offenses, certain offenses against children, some offenses committed by inmates, and felony possession of marijuana with intent to distribute.

REFORMING MARIJUANA LAWS

- > **California SB 1449 (2010):** SB 1449 converts criminal misdemeanor possession of less than 28.5 grams of marijuana to an infraction on par with a traffic ticket. The infraction, like the previous misdemeanor, is punishable by a \$100 fine.
- > **Connecticut SB 1014 (2011):** SB 1014 decriminalizes possession of less than one-half ounce of marijuana for personal use. Previously, defendants convicted of the offense were subject to a possible prison term and fine. Under the new law, the offense is now a non-criminal infraction subject to a fine and no jail time or criminal record. Third time offenders who plead guilty or enter a no contest plea must enroll in a drug treatment program at their own expense. The law also reduces, from a crime to an infraction, the penalty for actions involving drug paraphernalia related to the use of less than one-half ounce of marijuana.
- > **Colorado Amendment 64 (2012):** Amendment 64 legalizes the possession, sale, and transfer of up to an ounce of marijuana for personal use in non-public areas. This amendment also legalizes the cultivation of up to six plants for personal use, three of which may be mature and flowering. The amendment only applies to those aged 21 or older. It also legalizes purchase and sale of up to one ounce of marijuana from licensed dispensaries.

- > **Washington Initiative 502 (2012):** Initiative 502 legalizes and regulates the possession and distribution of marijuana. Those at least aged 21 may possess for personal use up to one ounce of marijuana, 16 ounces of a marijuana-infused solid, and 72 ounces of a marijuana-infused liquid.
- > **Vermont H 200 (2013):** H 200 decriminalizes possession of up to one ounce of marijuana and up to five grams of hashish, treating it instead as a civil violation punishable by a fine. For those aged 21 and older, possession of under an ounce remains a civil violation no matter how many subsequent offenses are entered. The bill also adds a presumption of diversion for certain first-time possession defendants. Municipalities are permitted to regulate the use of marijuana in public places, with fines collected to be used to fund diversion and drug enforcement programs.

Expanding access to early release mechanisms

Based on research demonstrating that prison terms can be reduced without an increase in recidivism, some states have passed laws which allow for the accelerated release of incarcerated drug offenders—by either expanding opportunities to earn good time credits upon successful completion of drug treatment or by advancing parole eligibility dates for certain classes of drug offenders.¹⁶

- > **Kentucky HB 564 (2010):** HB 564 establishes a good time sentence credit of 90 days to be awarded to any inmate who completes a drug treatment program of at least six months in duration. Previously, only a good time credit of 60 days was available for completion of an educational program, such as earning a GED or college degree.
- > **Massachusetts S 2538 (2010):** S 2538 makes certain drug offenders serving mandatory minimum sentences in county facilities eligible for parole after serving 50 percent of their maximum sentences. Offenders who used a weapon or threatened violence, served as a ringleader, or sold drugs to a minor remain ineligible for parole.
- > **Michigan HB 4920 (2010):**¹⁷ HB 4920 retroactively extends sentencing and parole eligibility provisions to certain drug offenders whose offenses occurred prior to March 1, 2003 (before the effective date of sweeping drug sentencing reforms enacted through Public Act 670 of 2002) but were convicted and sentenced under previous drug penalty provisions. The retroactivity clause of the 2002 amendment only applied to those already convicted of the drug offenses at issue, not to those with pending charges. This legislation closes this loophole so that these offenders are no longer at an unintended disadvantage when compared to other similar drug offend-

ers. Now, for example, an individual sentenced to a life sentence or a term of years under the previous law for manufacturing, creating, delivering, or possessing with intent to manufacture, create or deliver, more than 1000 grams (or, prior to March 1, 2003, more than 650 grams) of a Schedule 1 or 2 narcotic or cocaine, is now eligible for parole at 15, 17.5, or 20 years, depending on if the individual has as a prior serious offense and whether the individual cooperated with law enforcement. Thus, if individuals without prior serious offenses were sentenced to 25-30 years, they are now eligible for parole after serving 17.5 years.

Expanding or strengthening community corrections

In an effort to expand or strengthen community-based responses to drug offenses, states have enacted laws to (1) increase early deferred prosecution options for drug defendants; (2) expand community-based drug sentencing options; (3) increase the use of incentives in drug offender supervision; (4) expand, strengthen, promote, or better regulate drug courts—a type of problem-solving court focused on providing safe and effective treatment and supervision in the community to eligible defendants; and (5) expand the availability of, or advise investment in, drug treatment programs.

INCREASING AVAILABILITY OF DEFERRED PROSECUTION FOR DRUG DEFENDANTS

- > **Kentucky HB 463 (2011):** HB 463 creates a deferred prosecution program for first and second-time possession defendants. In order to enter the program, eligible defendants must request the program, and the prosecutor must agree and set individual terms. A prosecutor may deny entry only after putting forth substantial and compelling reasons why a defendant should not receive the benefit of deferred prosecution. Deferred prosecution is the preferred alternative for first-time defendants, and first- and second-time offenders who are denied deferred prosecution must be given a presumptive sentence of probation. Upon completing the deferred prosecution program, the charges are dismissed and all related criminal records are sealed.
- > **North Carolina HB 642 (2011):** HB 642 expands eligibility for the deferred prosecution program to all first-time felony drug possession defendants. Previously, the program was available only to those charged with misdemeanor possession or felony possession of less than one ounce of cocaine. The law requires that all eligible defendants participate in the program.
- > **Ohio HB 86 (2011):** HB 86 broadens the scope of “intervention in lieu of conviction”—a deferred prosecution program available to defendants whose

drug use contributed to the commission of an offense. Additional offenses, such as low-level trafficking and possession, are now eligible. The law also expands eligibility, with the prosecutor's consent, to those with a prior non-violent felony. Previously, any prior felony plea or conviction disqualified a person from participation.

- > **Arizona HB 2374 (2012):** HB 2374 broadens eligibility for deferred prosecution. Before this law, anyone with a prior felony conviction or who had previously been granted a deferred prosecution was ineligible. Now, a prior felony is disqualifying only if it is serious or dangerous, and individuals may participate in deferred prosecution more than once. Defendants become ineligible after three prior convictions for possession of a controlled substance or possession of drug paraphernalia.

EXPANDING COMMUNITY-BASED SENTENCING OPTIONS

- > **Colorado HB 1338 (2010):** HB 1338 expands eligibility for probation. Previously, two prior felony convictions rendered an offender ineligible for probation on a third or subsequent offense except with the prosecutor's consent in certain limited circumstances. Now, consent is only required if the current or a prior felony is among a list of very serious offenses, such as murder, kidnapping, and arson.
- > **Kansas HB 2318 (2012):** HB 2318 expands sentencing options for low-level drug possession and dealing offenders with one prior conviction. Previously, these crimes carried presumptive prison sentences and a judge could only depart upon stating specific findings. This law puts these offenses into a new category in Kansas's sentencing grid, which allows a judge to impose probation or drug treatment without making specific findings. Eligible possession offenders must be placed in a drug treatment program if they are identified as high risk following a drug abuse assessment and moderate or high-risk following a criminal risk-need assessment.
- > **West Virginia SB 371 (2013):** SB 371 creates a new drug treatment program for felony drug offenders who (1) are determined by a risk and needs assessment to be at high risk to reoffend and in high need of treatment and (2) would otherwise be incarcerated. Participants who violate the conditions of treatment supervision are subject to up to 30 days of incarceration. Drug offenders whose felonies involved firearms, a minor victim, or violence against a person are ineligible.

INCREASING THE USE OF INCENTIVES

- > **New York S 56-B (2009):** This law allows defendants charged with a Class B, C, D, or E felony who enter a guilty plea and successfully complete an alcohol or substance abuse treatment program to withdraw the guilty plea in

exchange for a misdemeanor conviction or have the indictment dismissed, depending on the terms of the initial agreement to enter the treatment program. The defendant is not required to first enter a guilty plea if doing so would likely lead to severe collateral consequences, such as deportation.

- > **Colorado SB 250 (2013):** SB 250 requires that a felony conviction for certain low-level drug offenses (particularly possession) be vacated in favor of a misdemeanor conviction if the offender successfully completes probation or another community-based sentence. The measure is designed as an incentive for offenders to remain compliant and to reduce the negative consequences of a felony conviction. The provision does not apply to offenders who have previously been convicted of two or more felony drug crimes or any crime of violence.

EXPANDING THE AVAILABILITY OF DRUG COURTS

- > **Alabama HB 348 (2010):** HB 348 provides general guidelines for drug courts across Alabama. Previously, the Administrative Office of Courts administered drug court programs throughout the state. Now, the presiding judge of every judicial circuit may create a drug court, with the consent of the local district attorney, and establish procedures by which they will run. The law also authorizes the use of incentives for compliance.
- > **Indiana HB 1271 (2010):** HB 1271 authorizes city and county courts to establish drug courts. The law specifies eligibility criteria for offenders, provides for a certification mechanism, and prohibits non-certified courts from collecting fees.
- > **Oklahoma HB 3158 (2010):** HB 3158 allows for a six-month extension of drug court supervision. Active drug court participation ranges from six to 24 months and was previously followed by a six to 12 month period of supervision. Now, the period of supervision may be extended by six months, allowing offenders additional time to complete their programs.
- > **Pennsylvania SB 383 (2010):** SB 383 authorizes local courts to establish drug courts and adopt rules to administer them. The state supreme court may appoint a drug court coordinator to provide technical assistance and draft guidelines.
- > **South Carolina S 1154 (2010):** S 1154 extends drug court eligibility to drug defendants on probation or parole for a previous nonviolent offense. These defendants were previously barred from drug court participation.
- > **Arkansas SB 750 (2011):** SB 750 expands drug court eligibility to certain defendants with a violent criminal history who were previously excluded from drug court participation. It does so by narrowing the definition of a violent offense to that which involves a weapon, the use of deadly force, or death or serious injury.

- > **Florida SB 400 (2011):** SB 400 expands eligibility for post-adjudication drug courts by allowing offenders with more sentencing points to participate. Sentencing points are used to determine an appropriate penalty and are based on the offense level, the presence and extent of injury to the victim, and offender's prior record. SB 400 permits drug court participation by offenders with 60 or fewer sentencing points. Previously, only those with 52 or fewer points were eligible.
- > **Idaho HB 225 (2011):** HB 225 expands eligibility for drug courts to defendants charged with certain violent crimes. Previously, a current charge or past conviction for a violent crime was a complete bar to entering drug court. Now, such defendants may do so with the consent of the prosecuting attorney and drug court team.
- > **Georgia HB 1176 (2012):** HB 1176 requires the Judicial Council of Georgia to establish policies and practices for drug courts (and mental health courts), including the use of risk and needs assessments to identify the likelihood of recidivism and to ensure resources are focused on the highest-risk offenders. The bill also creates a certification and review process for drug courts. With minor exceptions, funding is limited to certified programs.
- > **New Hampshire HB 1665 (2012):** This law authorizes a superior or circuit court to implement one or more drug courts. Drug courts may convene a local steering committee of community leaders to provide it with support.
- > **New Jersey S 881 (2012):** S 881 expands eligibility for the special probation program, otherwise known as the drug court program. Previously, a judge had to make specific findings in relation to each eligibility requirement in order to place a defendant in drug court. Now, a judge may place a defendant in the program even when some eligibility criteria are not met but it is determined that the individual may still benefit from treatment. This law also removes a prosecutor's ability to exclude persons with two or more prior felony convictions. However, those with a history of very serious crimes, such as murder and kidnapping, remain ineligible for special probation.
- > **Indiana HB 1016 (2013):** HB 1016 expands the availability of problem-solving courts such as drug courts by allowing a person to be referred as a condition of a misdemeanor sentence. In addition, an offender may now be referred to a problem-solving court as a condition of a program authorized by a county sheriff or the Indiana Department of Corrections.
- > **South Dakota SB 70 (2013):** SB 70 authorizes any criminal court in the state to create a drug court. The law also establishes and directs an advisory council to design the basic framework and conditions for eligibility for drug courts.
- > **West Virginia SB 371 (2013):** SB 371 requires every judicial district in the state to establish a drug court by July 1, 2016.

EXPANDING THE AVAILABILITY OF DRUG TREATMENT PROGRAMS

- > **Kentucky HB 463 (2011):** HB 463 permits the court to request a risk and needs assessment for any person convicted of a drug possession offense. The court may then order an offender to complete a treatment or recovery program if the assessor recommends it. If at any time the offender is or becomes unwilling to participate, the court may withdraw the treatment order and enter a custodial sentence.
- > **Georgia HB 742 (2012):** HB 742 is an appropriations bill that invests savings generated by sentencing changes in HB 1176 (see pages 8, 14, and 21) into new Residential Substance Abuse Treatment programs, a six-to-nine-month program for probationers and inmates in need of intensive substance abuse treatment who are nearing the end of their sentences.
- > **Kentucky HB 265 (2012):** HB 265 appropriates over \$6.7 million for new substance abuse treatment programs. The law specifies that actual expenditures may not exceed the potential savings in prison costs as a result of drug sentencing changes made in HB 463 (see pages 10, 15, 18, 22).

Ameliorating collateral consequences

Individuals with criminal convictions are typically burdened with various civil penalties or restrictions that do not stem from a court's sentence but, rather, from a vast network of state and federal statutory and regulatory law as well as local policies—commonly known as “collateral consequences” of a conviction.¹⁸ They can include temporary or permanent ineligibility for social benefits, such as public housing, food stamps, or federally-funded student aid; employment or occupational licensing restrictions; voter disenfranchisement; and for non-citizens, including permanent residents, deportation.¹⁹ These consequences can persist long after the completion of an individual sentence and often frustrate ex-offenders in their ability to move beyond their criminal records in order to reintegrate themselves as rehabilitated and contributing members of families, neighborhood, and society generally.²⁰

As awareness of the negative effect of collateral consequences on reentry outcomes has grown, many states have made efforts to ameliorate some of those consequences, particularly for drug offenders, including on 1) creating or expanding remedies aimed at clearing—“sealing” or “expunging”—criminal records and 2) lifting certain restrictions on public benefits or licenses.

EXPANDING OPTIONS FOR SEALING OR EXPUNGING CRIMINAL RECORDS

- > **New York S 56-B (2009):** S 56-B creates a conditional criminal record sealing program. A defendant who is convicted of a controlled substance or marijuana crime and completes a judicial diversion program is eligible to have his or her criminal record sealed. In addition to the current conviction, the records of up to three prior controlled substance or marijuana misdemeanor convictions may be sealed as well. In deciding whether to seal the records, the court shall consider the circumstances and seriousness of the offense, the character of the offender, the offender's criminal history, and the impact of sealing on the offender's rehabilitation and reentry into society. If the records are sealed and the offender is subsequently rearrested, the records will be unsealed and will remain unsealed unless the offender is acquitted or the charges are dropped.
- > **Georgia HB 1176 (2012):** HB 1176 allows for certain low-level drug offense records to be sealed. Records are eligible to be sealed once a person has pled or been found guilty of low-level possession and successfully completes his or her probationary sentence. Records may also be sealed after an offender successfully completes a drug court treatment program and avoids re-arrest for five years, excluding any arrest for a non-serious traffic offense.
- > **Louisiana SB 403 (2012):** SB 403 provides for the expunging of records for first-time nonviolent felony offenders convicted of distributing or possessing with intent to distribute 28 grams or less of amphetamine, methamphetamine, cocaine, oxycodone, or methadone. The offender must successfully complete an intensive incarceration program and then remain conviction free for a minimum of 19 years.²¹ Ex-offenders are ineligible to have their records expunged if they have any pending charges.
- > **Utah HB 33 (2013):** HB 33 adds felony drug possession to the list of offenses that may be expunged. In order to be eligible, an ex-offender must wait five years, remain free of all illegal drug use, and be successfully managing any addiction, if indicated. The law also excludes drug possession convictions from a person's criminal record when eligibility for expunging other crimes is under consideration. A person's third felony possession conviction or fifth overall possession conviction cannot be expunged.

LIMITING RESTRICTIONS ON STATE BENEFITS AND LICENSES

- > **Delaware SB 12 (2011):** SB 12 fully repeals the lifetime ban on receiving certain federal benefits for those with a felony drug conviction. Although under federal law anyone who is convicted of a drug related felony cannot receive SNAP (Supplemental Nutrition Assistance Program, formerly food stamps) and TANF (Temporary Assistance to Needy Families) benefits, states are free to pass legislation that limits the ban or eliminates it entirely.

> **Georgia HB 349 (2013):** HB 349 gives judges in drug and mental health courts the discretion to fully restore driving privileges or issue limited driving permits. Under Georgia law, a person's driver's license is automatically suspended for 180 days on a first drug conviction, for three years on a second drug conviction and for five years on a third drug conviction, within a five-year period. Previously, a person had to wait at least one year to apply for early reinstatement and the application was made to the Department of Driver Services, not to the court.

Postscript: Has a new era in drug law sentencing arrived?

The legislative activity reviewed here indicates growing momentum among states to reconsider how their criminal justice systems can more effectively respond to drug offenders. These efforts may also be contributing to recent shifts in discourse and practice on the federal level. Indeed, recognizing that the U.S. Bureau of Prisons has experienced an almost tenfold increase in population since 1980—from approximately 23,779 inmates in 1980 to nearly 196,574 inmates in 2012—and that drug offenders constitute the largest portion of the system's inmates (at just over half of its year-end population in 2012), policymakers have begun to pursue reforms to lower the severity and rigidity of federal drug sentencing laws.²²

An early watershed moment in this development came in 2010 when Congress unanimously passed the Fair Sentencing Act—a rare example of bipartisan legislating, which significantly reduced the excessive sentences associated with federal crack cocaine offenses.²³ Since then, Attorney General Eric Holder has signaled the U.S. Department of Justice's strong support of other reforms in the area, including the U.S. Sentencing Commission's recently issued guideline amendment that reduces sentences for most federal drug offenders.²⁴ And Congress has taken up consideration of a raft of new bills, which again have garnered broad bipartisan support. Among these, the Smarter Sentencing Act would lower mandatory minimum sentences for certain nonviolent drug crimes, grant judges more discretion to sentence below the mandatory minimum in other cases, and apply the Fair Sentencing Act retroactively, potentially shortening the sentences of thousands of inmates sentenced under the previous—and now discredited—crack cocaine law.²⁵ In the words of one of its chief sponsors, this legislation “takes an important step forward in reducing the financial and human cost of outdated and imprudent sentencing policies.”²⁶

Have we entered a new era of fairer and more cost-effective responses to drug-involved offenders? With state reforms well-established and the federal government following suit, indications are that there is reason to believe that we may be.

Appendix A

DRUG LAW REFORM LEGISLATION BY STATE, 2009-2013

STATE	BILL	YEAR
ALABAMA	HB 348	2010
ARIZONA	HB 2374	2012
ARKANSAS	SB 750	2011
CALIFORNIA	SB 1449	2010
COLORADO	HB 1352	2010
COLORADO	HB 1338	2010
COLORADO	SB 96	2011
COLORADO	Amendment 64	2012
COLORADO	SB 250	2013
CONNECTICUT	SB 1014	2011
DELAWARE	HB 19	2011
DELAWARE	SB 12	2011
FLORIDA	SB 400	2011
GEORGIA	HB 1176	2012
GEORGIA	HB 742	2012
GEORGIA	HB 349	2013
HAWAII	HB 2515	2012
HAWAII	SB 68	2013
IDAHO	HB 225	2011
INDIANA	HB 1271	2010
INDIANA	HB 1006	2013
INDIANA	HB 1016	2013
KANSAS	HB 2318	2012
KENTUCKY	HB 564	2010
KENTUCKY	HB 463	2011
KENTUCKY	HB 265	2012

STATE	BILL	YEAR
LOUISIANA	SB 403	2012
MASSACHUSETTS	S 2538	2010
MASSACHUSETTS	H 3818	2012
MICHIGAN	HB 4919	2010
MICHIGAN	HB 4920	2010
MINNESOTA	SF 802	2009
MISSOURI	SB 628	2012
NEW HAMPSHIRE	HB 1665	2012
NEW JERSEY	SB 1866	2009
NEW JERSEY	S 881	2012
NEW YORK	S 56-B	2009
NORTH CAROLINA	HB 642	2011
NORTH DAKOTA	SB 2251	2011
OHIO	HB 86	2011
OKLAHOMA	HB 3158	2010
OKLAHOMA	HB 3052	2012
OREGON	HB 3194	2013
PENNSYLVANIA	SB 383	2010
PENNSYLVANIA	SB 100	2012
RHODE ISLAND	SB 39aa	2009
SOUTH CAROLINA	S 1154	2010
SOUTH DAKOTA	SB 70	2013
UTAH	HB 33	2013
VERMONT	H 200	2013
WASHINGTON	Initiative 502	2012
WEST VIRGINIA	SB 371	2013

Appendix B

DRUG LAW REFORM LEGISLATION BY TYPE, 2009-2013

STATE	REPEALING OR LIMITING MANDATORY PENALTIES				MODIFYING DRUG SENTENCING SCHEMES		
	REPEALS OR SHORTENS MANDATORY MINIMUM SENTENCES	LIMITS AUTOMATIC SENTENCE ENHANCEMENTS		ENHANCES JUDICIAL DISCRETION	REDEFINES OR RECLASSIFIES DRUG OFFENSES	ALTERS SENTENCE PRESUMPTIONS	REFORMS MARIJUANA LAWS
		SCHOOL ZONE ENHANCEMENTS	HABITUAL OFFENDER ENHANCEMENTS				
ALABAMA							
ARIZONA							
ARKANSAS	•				•		
CALIFORNIA							•
COLORADO	•		• •		• •	•	•
CONNECTICUT							•
DELAWARE	•	•			•		
FLORIDA							
GEORGIA	•		•	•	•		
HAWAII				• •	•		
IDAHO							
INDIANA		•		•	•		
KANSAS							
KENTUCKY		•	•		•	•	
LOUISIANA							
MASSACHUSETTS	•	•					
MICHIGAN							
MINNESOTA				•			
MISSOURI	•						
NEW HAMPSHIRE							
NEW JERSEY				•			
NEW YORK	•			•			
NORTH CAROLINA							
NORTH DAKOTA					•		
OHIO	•		•			•	
OKLAHOMA	•						
OREGON				•		•	
PENNSYLVANIA				•			
RHODE ISLAND	•						
SOUTH CAROLINA	•	•	•	•			
SOUTH DAKOTA					•	•	
UTAH							
VERMONT							•
WASHINGTON							•
WEST VIRGINIA							

NOTE: Each dot indicates when a particular type of reform is addressed in legislation. Since a bill may address multiple types of reform, a dot does not necessarily indicate a discrete piece of legislation.

EXPANDING ACCESS	EXPANDING OR STRENGTHENING COMMUNITY CORRECTIONS					AMELIORATING COLLATERAL CONSEQUENCES	
EXPANDING ACCESS TO EARLY RELEASE MECHANISMS	INCREASES DEFERRED PROSECUTION OPPORTUNITIES	EXPANDS COMMUNITY-BASED SENTENCING OPTIONS	INCREASES USE OF INCENTIVES	EXPANDS DRUG COURT AVAILABILITY	EXPANDS AVAILABILITY OF DRUG TREATMENT PROGRAMS	EXPANDS OPTIONS FOR SEALING OR EXPUNGING CRIMINAL RECORDS	LIMITS RESTRICTIONS ON STATE BENEFITS AND LICENSES
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^a See endnote 17.

ENDNOTES

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- 12 The list below is not exhaustive. In particular, it does not include reform legislation which may affect those arrested for drug offenses but is not directed specifically at those types of offenses.
- 13 Although Massachusetts H 3818 mitigates certain mandatory penalties, it also creates a new "violent" habitual offender category attached to more than 40 qualifying felonies that renders those convicted of them ineligible for parole, sentence reductions for good time, or work release. The widened scope of the revised habitual offender law may lead to a significant increase in the number of offenders subject to mandatory sentences. For information regarding the effect of H 3818 (2012), see the Prisoners' Legal Services of Massachusetts' memorandum on "Three Strikes" Legislation, <http://www.plsma.org/wp-content/uploads/2012/07/1001-3-Strikes-Protocol.pdf> (accessed April 1, 2014).
- 14 Ibid.
- 15 Though the previous ban was not technically considered a mandatory minimum sentence, since offenders could still earn up to a 20 percent sentence reduction for good behavior, it may be considered so in its effect since it barred judges from deviating from the sentencing guideline range in those specified cases. Prior to the passage of HB 3194, there were 21 drug offenses for which a downward departure or probation sentence was unavailable on a second-or-subsequent offense. The Oregon Commission on Public Safety concluded that this restriction would continue to be a major contributor towards prison population growth into the future. Commission on Public Safety, *Report to the Governor*, (December 17, 2012, convened by Executive Order No. 12-08), 17, <http://www.oregon.gov/CJC/Documents/CPS%202012/FinalCommissionReport12.17.12.pdf> (accessed April 14, 2014).
- 16 See for example, Elizabeth K. Drake and Robert Barnoski, *Increasing Earned Release From Prison: Impacts of 2003 Law on Recidivism and Criminal Justice Costs* (Olympia: Washington State Institute for Public Policy, Document No. 08-11-1201, 2008); also, see Carolina Guzman, Barry Krisberg and Chris Tsukida, *Accelerated release: A literature review* (Oakland, CA: National Council on Crime and Delinquency, 2008), http://www.nccdglobal.org/sites/default/files/publication_pdf/focus-literature-review.pdf (accessed April 11, 2014); James Austin, "Reducing America's Correctional Populations: A Strategic Plan," *Justice Research and Policy*, 12, (2010), 9-40.
- 17 HB 4920 was tie-barred to another piece of drug law reform that does not fit easily in the report as structured. This law, [Michigan HB 4919 \(2010\)](#), makes individuals sentenced to lifetime probation under previous drug penalty provisions eligible for early discharge from probation. Specifically targeted are two classes of individuals sentenced to lifetime probation according to the law as it existed before March 1, 2003: 1) individuals convicted of manufacturing, creating, delivering, or possessing with intent to manufacture, create or deliver less than 50 grams of a Schedule 1 or 2 narcotic or cocaine and 2) individuals convicted of possession of 25 to 50 grams of the same controlled substances. Under the 2010 law, if these individuals have served five or more years on probation, a probation officer may recommend that the court discharge the individual from probation. If no recommendation is forthcoming, the offender can petition the court for resentencing and discharge.
- 18 Michael Pinard, "An Integrated Perspective On The Collateral Consequences Of Criminal Convictions And Reentry Issues Faced By Formerly Incarcerated Individuals," *Boston University Law Review* 86 (2006), 623, 634-6; also, see Nora Demleitner, 1999, 154.
- 19 Ibid.
- 20 Nora Demleitner, 1999, 154-158.
- 21 Intensive incarceration refers to a highly structured, tightly controlled incarceration program, similar to a boot camp program. It also frequently incorporates drug treatment, educational classes, and therapy.
- 22 For information regarding the 1980 prison population, see Paige Harrison, *Prisoners in Custody of State or Federal Correctional Authorities, 1977-98* (Washington, DC: BJS, 2000), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2080> (accessed April 11, 2014). For information regarding the 2012 federal prison population and its portion of drug offenders, see E. Ann Carson and Daniela Golinelli, 2013, Appendix Table 11.
- 23 *Fair Sentencing Act of 2010*, Pub. L. 111-220, 124 Stat. 2372.
- 24 Eric Holder, Remarks at the Annual Meeting of the American Bar Association's House of Delegates (speech delivered Monday, August 12, 2013 in San Francisco, CA), <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html> (accessed March 17, 2014); also, see Testimony by Attorney General Eric H. Holder (speech delivered before the U.S. Sentencing Commission on March 13, 2014 in Washington DC), <http://www.justice.gov/opa/pr/2014/March/14-ag-263.html> (accessed March 26, 2014). For information about the U.S. Sentencing Commission's guideline amendment, see news release "U.S. Sentencing Commission Votes To Reduce Trafficking Sentences," http://www.ussc.gov/Legislative_and_Public_Affairs/Newsroom/Press_Releases/20140410_Press_Release.pdf. If Congress does not object, the new amendment will go into effect November 1, 2014.
- 25 *Smarter Sentencing Act of 2013*, S. 1410.
- 26 Website of Dick Durbin, U.S. Senator for Illinois, "Durbin and Lee Introduce Smarter Sentencing Act," <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=be68ad86-a0a4-4486-853f-f8ef7b99e736> (accessed March 26, 2014).

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