

DRAFT:¹ Review Of Those States’ Laws Which Provide Misdemeanor Penalties For Simple Possession of Drugs Other Than Marijuana.

NB: Survey Does not Encompass Possession with Intent to Distribute Offenses.

STATE	Crime change between 1994 and 2012	SIMPLE POSSESSION PENALTIES	OTHER NOTES OF INTEREST
California	-48%	<ul style="list-style-type: none"> • One-year maximum misdemeanor: heroin, cocaine powder and base, hallucinogens. MJ, peyote and some other similar substances receive lower or civil penalty. (check) <ul style="list-style-type: none"> ○ Misdemeanor penalty available only to offenders who are not registered sex offenders and for those who do not have priors for specified serious or violent crimes such as murder and certain sex and gun crimes. ○ 2nd time drug offenders receive escalating fines only. • Defendants who do not qualify for misdemeanor treatment may be charged with wobblers or felony statutes depending on the drug and the amount at issue. 	<ul style="list-style-type: none"> • Major reforms enacted by popular initiative Prop. 47 in November 2014. • Possession for sale is felony offense. • Retroactive relief is available even if already been convicted and have served a sentence. Relief is reduction of charge and whatever civil relief allowed, like expungement. Not available if defendant has any serious or violent convictions.
Colorado	-44%	<ul style="list-style-type: none"> • Misdemeanor for any amount of Schedule III, IV, or V drug, other than flunitrazepam or ketamine. • Wobbler for some quantities of possession and unenumerated transfer of Schedule I and II drugs. Allows for change of felony to misdemeanor based upon the successful completion of community based sentence. <ul style="list-style-type: none"> ○ Wobbler available even if defendant goes to trial. ○ This can happen 2x. ○ Quantities: 4 grams or less, except 2 grams or less when substance is meth or heroin. ○ Exclusions are priors for crimes of violence or ineligibility for probation. 	<ul style="list-style-type: none"> • Major drug classification and sentencing reforms enacted in 2013. SB 13-250 removed drug crimes from the state’s general felony scheme and created a 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. • “Exhaustion of remedies” requirement for certain drug offenders before prison can be imposed.
Delaware	-20%	6-month misdemeanor maximum if less than 5 g cocaine or meth, less than 2.5g of MDMA or LSD, less than 1 gram heroin and no aggravating factor	<ul style="list-style-type: none"> • Major overhaul of drug reforms In 2011, through HB 19, which repealed much of the existing drug code.

¹ MG: Please don’t rely on this draft as a reliable nor necessarily complete description of states’ laws. This was a ‘quick and dirty’ survey. I surveyed these states’ laws because they had been previously identified as those states which had misdemeanor provisions for possession of controlled substances.

		BUT 1 year misdemeanor maximum if aggravating factor present. Prior within 5 years is an aggravating factor e.g..	<ul style="list-style-type: none"> Classifications distinguish between possession, aggravated possession and drug dealing. Penalties within those classifications use a tier structure related to quantity. Also, 1st time offenders subject to felony classification may also be eligible for diversion program and avoid conviction if successful. First offenders who have not previously convicted of drug possession offense nor participated can get dismissal after minimum 18 months probation, pay fees, 6 mo. DL revocation, 20 CWS, 16 hour drug rehab, any other terms.
Idaho		One year maximum misdemeanor term for Schedules I (other than narcotics and LSD), III, IV, V, or VI, and less than 3 ounces of marijuana.	
Iowa	-31%	<ul style="list-style-type: none"> One-year maximum misdemeanor term for first offenses. <ul style="list-style-type: none"> A second conviction is an “aggravated” misdemeanor: <ul style="list-style-type: none"> Possible fine of between \$625 and \$6,250 and one year in jail, or No fine and up to two years in prison. Possession with intent to distribute certain hallucinogens and cathinone is also an aggravated misdemeanor. 	Any or all part of a sentence can be suspended upon terms determined by the court, including active participation in drug treatment, rehab or education program.
Maine	-20%	<ul style="list-style-type: none"> 364-day maximum misdemeanor term if cocaine powder weighs less than 14 grams, cocaine base less than 4 grams, and marijuana unless over 2.5 oz. Possession of heroin and meth are felony offenses. 	
Massachusetts	-42%	<ul style="list-style-type: none"> 2 year maximum misdemeanor sentence for possession of a class A substance (heroin, morphine, GHB, ketamine); second offense is a felony. 1-year maximum misdemeanor for class B substance (cocaine, crack, LSD, oxycodone, ecstasy, hydrochloride, amphetamine, methamphetamine); second offense is the two year maximum penalty. Both levels of misdemeanors require the mandatory loss of driver’s license for one year. 	Offenders without prior drug-related convictions or felonies are entitled to probation (no jail time). If offender successfully completes probation for this offense, record will automatically be sealed (except from law enforcement).
Mississippi	- 36%	Wobbler (felony/misdemeanor) for less than one-tenth of a gram (or one dosage unit) of cocaine, heroin meth may be charged as a misdemeanor or a felony.	

New York	-54%	Misdemeanor depending on quantity: e.g. a mix containing narcotics if it weighs less than ½ ounce, concentrated cannabis less than ¼ ounce, cocaine less than 500 mg., ketamine less than 1000 mg.	Offenses classified as: (1) concerning paraphernalia, (2) possession of drug, (3) sale and (4) manufacture.
Pennsylvania	-23%	One year maximum misdemeanor penalty for less than 1 gram of opiates and synthetic opiates incl heroin. Subsequent offenses can result in felony terms up to three years.	<ul style="list-style-type: none"> • New law SB 100 allows low-level drug felons to serve intermediate punishment even when mandatory sentence otherwise applies. Allows residential facility, house arrest, and/or intensive supervision, and allows the prosecutor to waive offender eligibility requirements, such as no history of violence. If the prosecutor makes such a waiver, the victim gets notice and opportunity to be heard. Judges have discretion to refuse. • A court may place a person on probation without verdict if the person pleads to any nonviolent offense, has no prior, has multiple charges/cases, and the person <u>proves</u> he is drug dependent. Discharge and dismissal of case after successful completion.
South Carolina	-27%	<ul style="list-style-type: none"> • Three year misdemeanor term for cocaine. • Two year maximum misdemeanor for any narcotic drug in Schedules I(b)- (c) and II (such as heroin) or LSD. <ul style="list-style-type: none"> ○ For a second offense, the offender is guilty of a felony. • One year maximum for any other substance in Schedules I - V. No increase in classification terms for subsequent offenses • 30 day maximum misdemeanor penalties for up to 28 g of marijuana or 10 g hashish. • BUT more than 1 g cocaine, 4 g opium, 4 g morphine, 2 grains heroin, 28 g marijuana, 10 grams hashish, 50 microgr. LSD, fifteen tabs/capsules of MDMA, e.g., is prima facie evidence of intent to distribute (felony). 	<ul style="list-style-type: none"> • When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the required assessment. • Deferred prosecution and dismissal (w/o adjudication of guilt) is available for those not previously convicted and for those who did had have this opportunity. • Persons charged with the offense of possession of marijuana or hashish may be permitted to enter a pretrial intervention program.

Tennessee	-22%	One year maximum misdemeanor term for first and second possessions of controlled substances. Third and subsequent convictions are class E felonies, and incur a fine of up to \$3,000, at least one year (and up to six years) in prison, or both.	
Vermont	-22%	One year misdemeanor penalties for less than 2 grams of Ecstasy, 2.5 grams cocaine or meth., 200 mg heroin, 100 mg LSD. With respect to any other depressant, stimulant, or narcotic drug, quantity must be less than 100 times a benchmark unlawful dosage.	
West Virginia	+ 6%	Misdemeanor allowing conditional discharge for first offense or confinement in jail not less than ninety days nor more than six months jail term.	Conditional discharge for first drug-related offense without entering a judgment of guilt. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 408. After six months after probation expires person can seek court order to expunge.
Wisconsin	-31%	Misdemeanor for first offense involving MJ, cocaine, methamphetamine and LSD. Possession of Heroin or other opioids is a felony. Not sure about methamphetamine. All other Schedule I or II CDS, or a Schedule III, IV, or V CDS is a misdemeanor. Penalties include a fine of between \$500 and \$10,000, between 30 days and nine months in jail, or both.	Conditional discharge allowed for first offense.
Wyoming	-42%	One year maximum misdemeanor for first and second possessions of: (A) in plant form, no more than three (3) ounces; (B) in liquid form, no more than three-tenths (3/10) of a gram; (C) in powder or crystalline form, no more than three (3) grams; (D) in pill or capsule form, no more than three (3) grams; (E) in the form of cocaine-based "crack" cocaine, no more than five-tenths (5/10) of a gram; (F) for LSD, no more than three-tenths (3/10) of a gram.	Conditional discharge allowed as of 7/2015 for first offenders.