

## Reclassifying All Drug Possession from a Felony to a Misdemeanor

### What are other states doing?

Twenty (20) states have either never made possession a felony or have reformed their state laws making possession a misdemeanor, otherwise referred to as defelonyization. In the past six years, states like Colorado, Oklahoma, Utah, Connecticut, Alaska, Oregon and California have all reclassified drug possession to a misdemeanor. However, the circumstances under which possession is charged as a misdemeanor varies greatly. For example some states have restrictions based on: criminal history exclusions or habitual offenders, threshold amount, and drug type.

**Table: Urban Institute: Classified Report (October 2018)**

State	Misdemeanor Sentence	Ineligible for Prison	Weight and drug type specified	No criminal history exclusion	Retroactive
Alaska	X	X	X	X	
California	X	X	X		X
Connecticut	X	X	X		
Oklahoma	X	X	X	X	
Utah	X	X	X		
Colorado*	X	X	X		

Sources: Alaska Senate Bill 91 (2016); California Proposition 47 (2014); Connecticut House Bill 7104 (2015); Oklahoma State Question 780 (2016); Utah House Bill 348 (2015); \*added: Colorado House Bill 1263 (2019).

### NM Drug Defelonyization Reforms

**Senate Bill 408 (Sen. Candelaria & Rep. Andrea Romero - 2019)** proposed amendments to the Controlled Substance Act by reclassifying drug possession from a 4<sup>th</sup> degree felony to misdemeanor. The reclassification applies to any controlled substance or controlled substance analog, other than marijuana, listed in Schedules I, II, III, or IV. The existing punishments for a misdemeanor violation remain unchanged, i.e., a fine of not less than \$500 or more than \$1,000 or by imprisonment for a definite term less than one year or both.

In New Mexico, possession of any amount of drugs other than marijuana, including trace amounts detected in paraphernalia, carries a 4<sup>th</sup> degree felony penalty that can result in a prison sentence.

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**60% of active NM voters favor changing New Mexico’s law to make small-scale possession of drugs a misdemeanor, instead of a 4<sup>th</sup> degree felony, which carries steeper penalties.** Source: Third Eye Strategies, Dec. 2017

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## Why Should We Reduce Penalties?

- 1) **Improve Public Safety:** Periods of incarceration, even relatively short ones, can affect a person's ability to secure and maintain employment and housing, as well as fulfill critical family obligations such as parenting and child support. And, when a person can't participate in the workforce risk to recidivate goes up.<sup>i</sup> Evidence has shown that a public health response is more effective than incarceration and that incarcerating people for drug offenses has a questionable impact on public safety.<sup>ii</sup>
- 2) **Save taxpayer money:** Arrests and convictions for drug possession is a significant driver to New Mexico's prison and jail populations and budget. Drug offenses are in the top three categories for new admissions into our state prisons.<sup>iii</sup> According to the Council of State Government's Justice Center 2018 report, "between FY07 and FY17, the number of new felony drug cases opened in New Mexico district courts increased 6 percent, and the number of felony drug cases reopened increased 49 percent.<sup>iv</sup> In the same period, prison admissions for drug offenses increased 13 percent overall and more than doubled for women (an increase of 111 percent).<sup>v</sup>"
- 3) **End the Tragic Long-Term Consequences of a Drug Possession Conviction:** Instead of improving the safety of our communities, our drug laws impose a lifetime of punishment on those convicted. Convictions have a disparate impact on low-income and communities of color. A minor possession conviction subjects an individual to a system of legal discrimination that makes it difficult or impossible to secure employment, housing, or student loans. Even without a conviction, the consequences of an arrest include stigma and humiliation, difficult financial burdens of posting bail and hiring a lawyer, and lost hours at work or school.

## Recommendations for NM Drug Reclassification Reforms:

- Improve data collection in criminal justice system, including race and ethnicity tracking and impact reporting.
- Appropriate more funding to public health, treatment and social supports and reinvest savings from the reclassification into the public health, treatment, and social service systems.
- Continue funding local Law Enforcement Assisted Diversion (LEAD) programs across the state.
- Make the reform retroactive - people who have been convicted of one of the offenses changed by the reform can apply for resentencing or reclassification.
- Enact a defelonization initiative that reclassify some selling- and distribution-related law violations as misdemeanors, i.e. subsistence dealing.
- Consider completely decriminalizing low-level drug possession below a certain threshold (similar to what NM has done with cannabis). There is growing support for drug decriminalization in the U.S. and around the world. Leading medical, public health and human rights groups have endorsed drug decriminalization, including the U.N., World Health Organization, International Red Cross, the American Public Health Association, American Civil Liberties Union, the NAACP and Latino Justice<sup>vi</sup>.

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<sup>i</sup>[https://www.urban.org/sites/default/files/publication/99077/reclassified\\_state\\_drug\\_law\\_reforms\\_to\\_reduce\\_felony\\_convictions\\_and\\_increase\\_second\\_chances.pdf](https://www.urban.org/sites/default/files/publication/99077/reclassified_state_drug_law_reforms_to_reduce_felony_convictions_and_increase_second_chances.pdf)

<sup>ii</sup> "Imprisonment and Crime Rates Fell in 30 States Over 5 Years," Pew Charitable Trusts, September 28, 2015, <http://www.pewtrusts.org/en/multimedia/data-visualizations/2015/imprisonment-crime-rates-fell-in-30-states-over-five-years>.

<sup>iii</sup> NM Sentencing Prison Forecast Report – 2018 (<https://nmsc.unm.edu/reports/2018/new-mexico-prison-population-forecast-fy2019--fy2028.pdf>)

<sup>iv</sup> Administrative Office of the Courts (AOC), New Mexico Judiciary 2007 Annual Report, 2007 Statistical Addendum (Santa Fe, NM: Administrative Office of the Courts, 2008). AOC, New Mexico Judiciary Statistical Addendum to the 2017 Annual Report (Santa Fe, NM: AOC, 2018). Reopened cases include any cases with post-judgement activity, such as probation violations, failure to meet the conditions of the sentence, and any other issues of noncompliance.

<sup>v</sup> NMSC, New Mexico Prison Population Forecast: FY2019–FY2028; NMSC, New Mexico Prison Population Forecast: FY2014–FY2023, (Albuquerque, NM: NMSC, 2013), <https://nmsc.unm.edu/reports/2013/new-mexico-prison-population-forecast-fy-2014-fy2023.pdf>. Prison admissions are reported by fiscal year.

<sup>vi</sup> <http://www.drugpolicy.org/blog/united-nations-and-world-health-organization-call-drug-decriminalization>