

**50-STATE SURVEY
OF DRUG STATUTES**

DRUG SCHEDULES

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- Based on Federal Controlled Substances Act Implemented in 1970
- Major Update Occurred in 1994
- Five Schedules based on Accepted Medical Use and Potential for Abuse
- In 1970, South Dakota adopted this system with the exception of combining Schedules IV and V

SCHEDULE I

Schedule I drugs, substances, or chemicals are defined as controlled substances with no currently accepted medical use and a high potential for abuse.

Examples: Heroin, LSD, Marijuana, Ecstasy

SCHEDULE II

Schedule II drugs, substances, or chemicals are defined as controlled substances with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous.

Examples: Cocaine, Meth, Pain Relievers (Vicodin, OxyContin, Fentanyl),
ADHD Medications (Adderall and Ritalin)

SCHEDULE III

Schedule III drugs, substances, or chemicals are defined as controlled substances with a moderate to low potential for physical and psychological dependence. Schedule III drugs abuse potential is less than Schedule I and Schedule II drugs, but more than Schedule IV.

Examples: Tylenol with 90mg codeine, Ketamine, Anabolic Steroids, Testosterone

SCHEDULE IV

Schedule IV drugs, substances, or chemicals are defined as drugs with a low potential for abuse and low risk of dependence.

*Examples: Anxiety Medications (Xanax, Valium),
Sleep Aids (Ambien), Pain Relievers (Tramadol)*

SCHEDULE V

Schedule V drugs, substances, or chemicals are defined as controlled substances with lower potential for abuse than Schedule IV and consist of preparations containing limited quantities of certain narcotics. Schedule V drugs are generally used for antidiarrheal, antitussive, and analgesic purposes.

Examples: Cough Medicine with less than 200 milligrams of codeine (Robitussin AC), Diarrhea Medication (Lomotil, Motofen), Nerve Pain Medications (Lyrica), Constipation Medication (Parepectolin)

SCHEDULE VI

Some states have classified marijuana in "Schedule VI" or have exempted marijuana from Schedule I and create a separate criminal penalty.

SIMPLE POSSESSION STATUTES

TYPES OF SIMPLE POSSESSION STATUTES



Traditional (15 States)



Tiered (4 States)



Simplified Felony (19 States)



Simplified Misdemeanor (11 States)



Threshold



Drug Felonies and Misdemeanors (Colorado)

TRADITIONAL

Weight	Meth or Cocaine	Schedule I or II	Schedule III	Schedule IV or V
<2g	0-6 Years	0-6 Years	0-12 Months*	0-12 Months*
2-28g	3-10 Years (2-10g)	3-10 Years	0-6 Years	0-12 Months*
28-200g	5-20 Years (10-200g)	5-20 Years	3-10 Years	0-6 Years
200-400g	Intent to Distribute	Intent to Distribute	5-20 Years	3-10 Years
400-800g	Intent to Distribute	Intent to Distribute	Intent to Distribute	5-20 Years

TIERED

Tier	Possession Crime	Sentence
1st Degree	Possession of Cocaine or Meth >50g Possession of Heroin >25g Possession of Other Narcotics >500g	0-30 Years
2nd Degree	Possession of Cocaine or Meth >25g Possession of Heroin >6g Possession of Other Narcotics >50g	0-25 Years
3rd Degree	Possession of Narcotics 2x >10g within 90 Days of Each Other Possession of Heroin 2x >3g within 90 Days of Each Other	0-20 Years
4th Degree	Possession of Hallucinogens	0-15 Years
5th Degree*	Possession of Schedule I-V Controlled Substance	0-5 Years

SIMPLIFIED FELONY

Simple Possession	Intent to Distribute
0-2 Years (Felony)	3 Years to Life (depending on quantity)

SIMPLIFIED MISDEMEANOR

Simple Possession	Intent to Distribute
0-12 Months (Misdemeanor)	3 Years to Life (depending on quantity)

THRESHOLD

Form of Controlled Substance	Amount Allowed
Plant Form	3 Oz
Liquid Form	3/10g
Power/Crystalline Form	3g
Pill or Capsule Form	3g
"Crack" Cocaine	5/10g
LSD	3/10g

Schedule I or II Narcotic (Felony)	Schedule I, II Non- Narcotic and III (Felony)	Schedule IV (Felony)	Schedule V (Misdemeanor)
0-7 Years	0-5 Years	0-2 Years	0-1 Year

DRUG FELONIES AND MISDEMEANORS

Level	Presumptive Range	Period of Parole
Drug Felony 1	8-32 Years	3 Years
Drug Felony 2	4-8 Years	2 Years
Drug Felony 3	2-4 Years	1 Year
Drug Felony 4	½-1 Year	1 Year

Schedule I or II	Schedule III, IV or V
6-12 Months (Felony)	6-18 Months (Misdemeanor)

DRUG OFFENSE STATISTICS

ARRESTS BY STATE, 2017

State	Drug Offense Arrests	Total Arrests	Drug % of Arrests	Rank	2017 Population	% Relative to Population	Rank
CA	212,025	1,093,363	19.39%	4	39,399,349	0.54%	14
CO	16,626	234,409	7.09%	47	5,615,902	0.30%	36
IA	9,645	94,485	10.21%	37	3,143,637	0.31%	34
ID	8,432	51,686	16.31%	18	1,718,904	0.49%	19
KS	9,594	61,144	15.69%	21	2,910,689	0.33%	32
MN	19,281	143,702	13.42%	29	5,568,155	0.35%	29
MO	39,979	228,042	17.53%	10	6,108,612	0.65%	6
MT	2,872	30,824	9.32%	38	1,053,090	0.27%	37
ND	5,646	39,944	14.13%	24	755,176	0.75%	3
NE	843	5,708	14.77%	23	1,917,575	0.04%	50
SD	8,900	63,625	13.99%	26	873,286	1.02%	1
WI	30,781	252,142	12.21%	33	5,792,051	0.53%	15
WY	4,612	27,914	16.52%	16	578,934	0.80%	2

2019 DRUG IMPRISONMENT NUMBERS

State	Possession	Sale	% of Inmates	Current
CA	1,193	4,325	4.30%	Jun-18
IA	15,961		26.27%	Dec-18
IN	1,535	5,060	24.5%	Aug-19
KS	2,105		21.1%	Aug-19
MN	1,110	711	18.52%	Jul-18
MO	6,242		19.70%	Aug-19
ND	176	286	27.26%	Dec-18
NE	848		15.26%	Jun-19
SD	1,055	180	32.97%	Aug-19
UT	2,279	3,053	21.1%	Aug-19
WI	2,500		11.2%	Dec-18

Table A.1
Drug Imprisonment and Drug Use Indicators by State, 2014

State	Drug Imprisonment			Overdose death rate (rank)	Drug arrest rate (rank)	Adult illicit drug use rate (rank)
	Prisoner count	Rate	Rank by rate			
Louisiana	10,527	226.4	1	16.7 (23)	380.5 (26)	3,508.4 (13)
Oklahoma	8,286	213.7	2	20.0 (10)	457.0 (17)	3,623.5 (10)
Wyoming	1,050	179.7	3	18.7 (14)	592.1 (7)	2,019.8 (50)
Idaho	2,464	150.8	4	13.0 (35)	453.3 (18)	2,575.0 (45)
Tennessee	9,280	141.7	5	19.4 (11)	633.5 (4)	2,711.3 (40)
Arizona	9,483	140.9	6	18.0 (15)	440.8 (21)	3,933.7 (3)
Missouri	8,229	135.7	7	17.6 (19)	552.4 (11)	2,848.0 (34)
Iowa	4,080	131.3	8	8.5 (47)	293.4 (35)	2,602.9 (44)
Indiana	8,647	131.1	9	17.8 (18)	245.1 (41)	3,070.5 (27)
Kentucky	5,514	124.9	10	24.4 (4)	490.4 (15)	3,118.6 (24)
Texas	33,304	123.5	11	9.6 (45)	503.3 (13)	2,548.8 (46)
Florida	23,804	119.7	12	13.2 (32)	614.2 (6)	3,022.4 (29)
South Carolina	5,721	118.4	13	14.5 (27)	552.9 (10)	2,643.3 (43)
North Dakota	835	112.9	14	5.8 (50)	541.5 (12)	2,800.9 (35)
Virginia	9,380	112.7	15	11.8 (39)	444.2 (20)	2,709.2 (41)
Alabama	5,381	111	16	14.9 (25)	205.0 (44)	3,556.1 (12)
South Dakota	944	110.6	17	7.4 (48)	633.6 (3)	2,022.4 (49)
New Mexico	2,101	100.7	18	26.2 (2)	265.1 (38)	3,408.7 (16)
Illinois	12,711	98.7	19	13.2 (33)	228.9 (42)	2,972.3 (31)
Kansas	2,851	98.2	20	11.4 (42)	264.4 (39)	3,209.7 (22)
West Virginia	1,809	97.8	21	33.9 (1)	323.9 (31)	2,929.1 (32)
Alaska	720	97.7	22	16.8 (21)	157.3 (47)	3,454.8 (15)
Nebraska	1,830	97.3	23	6.6 (49)	635.9 (2)	2,190.0 (48)
Mississippi	2,904	97	24	11.2 (43)	299.2 (33)	3,668.6 (9)

POSSESSION BY INGESTION

SD INGESTION STATUTES

22-42-5.1. Unauthorized ingestion of controlled drug or substance as felony. No person may knowingly ingest a controlled drug or substance or have a controlled drug or substance in an altered state in the body unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section for a substance in Schedules I or II is a Class 5 felony. A violation of this section for a substance in Schedules III or IV is a Class 6 felony.

Source: SL 2013, ch 101, § 54.

22-42-15. Ingesting substance, except alcoholic beverages, for the purpose of becoming intoxicated as misdemeanor--Venue for violation. Any person who intentionally ingests, inhales, or otherwise takes into the body any substance, except alcoholic beverages as defined in § 35-1-1, for purposes of becoming intoxicated, unless such substance is prescribed by a practitioner of the medical arts lawfully practicing within the scope of the practitioner's practice, is guilty of a Class 1 misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the substance was detected in the body of the accused.

Source: SL 1981, ch 182, § 1; SL 1982, ch 180; SL 2001, ch 117, § 1.

STATE PENALTIES FOR INGESTION

- Included in Simple Possession Statute - Usually Misdemeanor
- Prosecuted Under Separate Statute - Misdemeanor
 - *Neighboring States Have Adopted This Model*
- Prosecuted Under Public Intoxication
- Georgia – Metabolites in the Blood Prove Possession in the Past
- Kansas – Drugs in System + Corroboration
- Drug Use is Not a Crime



QUESTIONS