

Maximum Penalties for Drug Offenses in States with Life Without Parole Sentences

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversory Dispo?	
Alabama	LWOP ¹	Yes ²	LWOP ³	No ⁴	LWOP based on priors requires only one prior Class A felony. ⁵ Class A felony defined to include “all drug trafficking,”	No	In effect, no, because countable priors have a MM and there can be no suspension of	Also LWOP for “trafficking,” which includes possession, of threshold quantities, e.g., 1,000 pounds or more of marijuana, 56 g or more heroin, ⁷ 10

¹ Ala. Stat. §§13A-5-9(c)(4) (LWOP for habitual felon with Class A felony), 13A-12-231 (defining some drug trafficking crimes as Class A felonies).

² Ala. Stat. §13A-5-9(c)(4).

³ Ala. Stat. §§13A-5-9(c)(4) (LWOP for habitual felon with Class A felony), 13A-12-231 (defining trafficking in cannabis as Class A felony).

⁴ *Maye v. State*, 472 So. 2d 688 (Ala. Crim. App. 1985); *McClaren v. State*, 500 So. 2d 1325 (Ala. Crim. App. 1986). Nevertheless, it appears that prosecutors have not always informed the sentencing court of the defendant’s full criminal history as part of plea bargaining. See *Jones v. White*, 992 F.2d 1548, 1569 & n.24 (11th Cir. 1993).

⁵ Ala. Stat. § 13A-5-9(c)(4).

⁷ [FYI] In *Wilson v. State*, 830 So. 2d 765 (Ala. Crim. App. 2001), the court of appeals held that LWOP for a first-time offender and drug addict who sold 96 grams of morphine to an undercover agent, partially on credit, and shared the proceeds from the neighbor from whom she got the morphine was “grossly disproportionate” and violated the guarantee against cruel and unusual punishment under the state constitution).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					which in turn includes possession of threshold amount (e.g., 1 kg of marijuana, 4 grams of heroin, 28 grams of cocaine), which carries MM of 3 years and no probation or suspension permitted. ⁶		adjudicati on of guilty or probation.	kilos or more cocaine. ⁸
Arizona	Life with Parole ⁹	N/A	Life with Parole ¹⁰					
Arkansas	Life with	N/A	Life with					

⁶ Ala. Stat. § 13A-12-231 (defining trafficking to include possession of specified triggering quantities).

⁸ Ala. Stat. § 13A-12-231 (defining trafficking to include possession of specified quantities; LWOP for highest triggering quantity).

⁹ Ariz. Stat. §13-3410.

¹⁰ *Id.*

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
	Parole ¹¹		Parole ¹²					
California	9 Years ¹³	N/A	4 Years ¹⁴					
Colorado	64 Years ¹⁵	N/A	64 Years ¹⁶					
Connecticut	Life with Parole ¹⁷	N/A	25 Years ¹⁸					
Delaware	LWOP ¹⁹	Yes ²⁰	LWOP ²¹	Yes ²²	Requires two prior felonies, from list of	No	Yes ²⁶	

¹¹ Ark. Code Ann. §§ 5-4-401(a)(1), 5-4-501(a)(1)-(2), (b)(1)-(2), 5-64-440(c) (trafficking a controlled substance is a Class Y felony).

¹² Ark. Code Ann. §§ 5-4-401(a)(1), 5-4-501(a)(1)-(2), (b)(1)-(2), 5-64-440(c) (trafficking marijuana, a schedule VI substance, is a Class Y felony).

¹³ Cal. Health & Safety Code § 11352(b).

¹⁴ Cal. Health & Safety Code § 11360(a).

¹⁵ 2013 Colo. Legis. Serv. Ch. 333 (S.B. 13-250) *amending* Colo. Rev. Stat. Ann. §§ 18-1.3-401.5 (defining drug felony levels and imprisonment), 18-1.3-801 (habitual criminal penalty for level 1 drug felony with three prior felony convictions is sixty-four years imprisonment).

¹⁶ 2013 Colo. Legis. Serv. Ch. 333 (S.B. 13-250) *amending* Colo. Rev. Stat. Ann. §§18-1.3-401.5, 18-1.3-801, 18-18-406(b)(iii)(a) (dispensing marijuana is a level 1 drug felony at certain aggregate amounts).

¹⁷ Conn. Gen. Stat. Ann. § 21a-278(a).

¹⁸ Conn. Gen. Stat. Ann. § 21a-278(b).

¹⁹ Del. Code Ann. tit. 11, § 4214 (b)(LWOP for habitual criminal with specifically enumerated drug felony).

²⁰ Del. Code Ann. tit. 11, § 4214 (b)

²¹ Del. Code Ann. tit. 11, § 4214 (b)(LWOP for habitual criminal with specifically enumerated drug felony), 16, §§ 4752 (1)(Possession with intent to manufacture or deliver a Tier 4 quantity controlled substance), 4751C(2)(Tier 4 quantity of Marijuana is four kilograms or more).

²² Del. Code Ann. tit. 11, § 4215(b).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					<p>specifically named felonies, “under the laws of this State, or any other state.”²³</p> <p>List of priors includes “aggravated possession” of 10 g cocaine, 2 g heroin, 10 g meth, 1.5 kg marijuana.²⁴ (“Aggravated” only due to the amount.)</p>			

²⁶ There was a suggestion in one case that a successfully completed diversionary sentence (boot camp) would not result in a countable conviction. *State v. Hicks*, 2010 Del. Super. LEXIS 342 (Del. Super. Ct. Aug. 17, 2010). But I could not find any other support for this. Delaware’s boot camp diversion expressly requires a judgment of conviction with deferred sentencing only. Del. Code tit. 11, § 6705.

²³ Del. Code Ann. tit. 11 § 4214(b).

²⁴ Del. Code Ann. tit. 16 § 4755.

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					Must be classified as a felony in the convicting jurisdiction at the time of the prior conviction. ²⁵			
Florida	LWOP ²⁷	Yes ²⁸	LWOP ²⁹		If convicted of any first degree	Yes ³³	Yes ³⁴	[Mandatory]F irst degree

²⁵ An offense classified as a felony in another state, but classified as a misdemeanor in Delaware, counts. An offense that was classified in Delaware as a felony at the time of the prior conviction, but has since been reclassified as a misdemeanor in Delaware, counts.

²⁷ Fla. Stat. §893.135(2) [this looks like a mistake. I think it should be Fla. Stat. § 893.135(1), which describes the drug offenses subject to LWOP not based on priors, which is the mandatory LWOP in Florida for drug offenses. The life sentence for habitual felony offender referred to in a note below with respect to marijuana offenses is not mandatory. Just to be clear.]

²⁸ *Id.*

²⁹ Fla. Stat. §§893.135(1) (trafficking in cannabis is 1st degree felony; mandatory minimum of 15 years for first-time offender and the offense involved 10,000 pounds or more of cannabis), 775.084(4)(a)(1) (life sentence for habitual felony offender who commits 1st degree felony); 944.275(4)(b) (life sentenced prisoners must serve natural life).

³³ Fla. Stat. § 775.084(2).

³⁴ Fla. Stat. § 775.084(2).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
		But only for LWOP <u>not based on priors</u> , which is the statute cited in the footnote above. If based on priors, judge may decide sentencing as habitual offender is not “necessary for the protection of the			felony (which includes drug trafficking), penalty is LWOP if two prior convictions for two or more felonies, but only one of the two priors can be related to the purchase or possession of a controlled substance. ³⁰ Offense classified as misdemeanor in other states count if same			felony “trafficking,” defined to mean distributing manufacturing, or possessing 150 kg of cocaine, 30 kg or more of any mixture or substance containing heroine, morphine or hydrocodone, 30 kg or more flunitrazepam. ³⁵

³⁰ Fla. Stat. § 775.084(1)-(2).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
		public.” (See next columns.)			as felony under Florida law. ³¹ However, “if the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender . . .,” court is not required to sentence D as a habitual offender, and “the court shall			

³⁵ Fla. Stat. § 893.135(1)(b)-(c); *id.* § 944.275(4)(b) (life sentenced prisoners must serve natural life).

³¹ *O’Neill v. State*, 684 So. 2d 720 (Fla. 1996).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					provide written reasons.” ³²			
Georgia	LWOP ³⁶	No	40 Years ³⁷	Yes	Re: LWOP for repeat drug trafficking offense, requires only one prior conviction for drug trafficking, which could be for PWID of less than one gram of solid Schedule I or II substance. ³⁸	No	No. Prior cannot be diversion ary dispositio n as a first-time offender. ⁴⁰	

³² Fla. Stat. § 775.084(3)(a)(6).

³⁶ Ga. Stat. §16-13-30(d) (for second or successive conviction for trafficking in controlled substances, judge may impose life).

³⁷ Ga. Stat. §16-13-32.4(b)(2).

³⁸ Ga. Stat. § 16-13-30(d).

⁴⁰ *Headspeth v. State*, 597 S.E.2d 503 (Ga. Ct. App. 2004).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					<p>Re: LWOP for fourth felony, “felony” means a felony under Georgia law or any offense that if committed in Georgia, would be a felony (so presumably would capture misdemeanors in other states, though did not find any cases expressly saying so)</p> <p>For both, possession of less than one gram of solid</p>			

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					Schedule I or Schedule II substance is a countable prior felony. ³⁹			
Hawaii	Life with Parole ⁴¹	N/A	Life with Parole ⁴²					
Idaho	LWOP ⁴³	No	LWOP ⁴⁴	Yes	Requires two prior felonies. Countable prior felony drug “trafficking”		In effect, no , as felony diversion ary dispositio	

³⁹ Ga. Stat. § 17-10-7(b.1) (must serve maximum term without parole for fourth felony); § 16-13-30 (PWID of less than one gram of solid Schedule I or II substance is a felony)

⁴¹ Haw. Rev. Stat. §§ 706-606.5 (1)(c)(life with parole for repeat offender with Class A felony), § 712-1240.7(2)(methamphetamine trafficking in the 1st degree is a Class A felony).

⁴² Haw. Rev. Stat. §§ 706-606.5 (1)(c)(life with parole for repeat offender with Class A felony) 706-606.5 (1)(commercial promotion or distribution of marijuana in the 1st degree is a Class A felony).

⁴³ Idaho Stat. §§19-2514 (person convicted for third time of felony may be sentenced to life), 19-2513 (providing judge with discretion to include an indeterminate, parole-eligible portion of sentence).

⁴⁴ Idaho Stat. §§19-2514 (person convicted for third time of felony may be sentenced to life), 37-2732B(a)(1) (designating trafficking in marijuana as felony).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					defined to include possession of as little as 28 g cocaine, 28 g meth, 2 g heroin, 1 lb. marijuana. ⁴⁵ Must be felony under the law of the state in which convicted.		ns end up as misdemeanors, so there is a conviction , but it doesn't count because it is now a misdemeanor. ⁴⁶	
Illinois	Life with Parole ⁴⁷	N/A	Life with Parole ⁴⁸					

⁴⁵ Idaho Stat. § 37-2732B.

⁴⁶ Idaho Stat. § 19-2604.

⁴⁷ 720 Ill. Comp. Stat. Ann. 570/401(a) (manufacturing or delivering various controlled substances); 730 Ill. Comp. Stat. Ann. 5/5-4.5-95(a)(5) (natural life imprisonment for habitual criminal upon Class X felony conviction with two prior convictions), 5/5-8-1(d)(1)(parole and mandatory supervised release for natural life imprisonment).

⁴⁸ 730 Ill. Comp. Stat. Ann. 5/5-4.5-95(a)(5) (natural life imprisonment for habitual criminal upon Class X felony conviction with two prior convictions), 5/5-8-1(d)(1); 720 Ill. Comp. Stat. Ann. 550/5 (Class X felony for manufacture or delivery of cannabis exceeding five kilograms).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
Indiana	50 Years ⁴⁹	N/A	12 Years ⁵⁰					
Iowa	150 Years ⁵¹	N/A	150 Years ⁵²					
Kansas	34 Years ⁵³	N/A	34 Years ⁵⁴					
Kentucky	Life with Parole ⁵⁵	N/A	Life with Parole ⁵⁶					
Louisiana	LWOP ⁵⁷	Yes ⁵⁸	LWOP ⁶⁰	Yes ⁶¹	Requires two	No.	In effect,	

⁴⁹ Ind. Code Ann. §§ 35-48-4-1(d) (Level 2 felony for dealing in at least twenty-eight grams of cocaine), 35-50-2-8(i) (maximum twenty year sentence enhancement for habitual offender upon level 1 through 4 felony conviction with two prior unrelated felonies).

⁵⁰ Ind. Code Ann. §§ 35-48-4-10(c) (Level 5 felony for dealing in at least 10 pounds of marijuana,) 35-50-2-8(i) (maximum six year sentence enhancement for habitual offender upon level 5 or 6 felony conviction with two prior unrelated felonies).

⁵¹ Iowa Code Ann. §§ 124.401(1)(a)(defining some drug manufacturing and delivery crimes as class B felonies subject to maximum of 50 years imprisonment), 124.411(1) (upon second and subsequent drug convictions, sentencing may be enhanced up to three times the allowable term).

⁵² Iowa Code Ann. §§ 124.401(1)(a) (marijuana manufacturing and delivery exceeding one thousand kilograms subject to maximum 50 year sentence), 124.411(1) (upon second and subsequent drug convictions, sentencing may be enhanced up to three times the allowable term).

⁵³ Kan. Stat. Ann. §§ 21-5703(b)(3) (defining drug severity level 1 felony for unlawful manufacturing of controlled substances), 21-6805 (e) (drug offense sentencing grid with sentence enhancement for prior convictions of unlawful manufacturing of controlled substances).

⁵⁴ Kan. Stat. Ann. §§ 21-5703(b)(2), 21-6805(e).

⁵⁵ Ky. Rev. Stat. Ann. §§ 218A.1432(2) (Class A felony for second and subsequent conviction of manufacturing methamphetamine), 532.080(6)-(7)(maximum life imprisonment for first degree persistent felony offender with Class A or B felony upon third felony conviction).

⁵⁶ Ky. Rev. Stat. Ann. §§ 218A.1421(4)(b) (Class B felony for trafficking in five or more pounds of marijuana), 532.080(6)-(7) (maximum life imprisonment for first degree persistent felony offender with Class A or B felony upon third felony conviction).

⁵⁷ La. Stat. §§15:529.1(A)(3)(b) (imposing LWOP for third drug felony punishable by ten years or more), 40:966(b) (authorizing sentences of greater than ten years for various drug offenses, including marijuana trafficking).

⁵⁸ La. Stat. §§15:529.1(A)(3)(b).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
		BUT court has discretion to depart from the sentence required by the Habitual Offender Law if it finds that LWOP is unconstitutionally excessive. ⁵⁹			prior felonies, defined as most drug trafficking offenses (no quantity trigger) as well as simple possession offenses punishable for ten years or more (e.g., possession of any amount of Schedule I drug, which includes heroin and ecstasy). ⁶²		no because a diversionary disposition is not available for any countable prior.	

⁶⁰ *Id.*

⁶¹ La. Stat. § 15:529.1(A).

⁵⁹ See, e.g., *State v. Sims*, 123 So. 3d 806, 814 (La. App. 4 Cir. 2013).

⁶² La. Stat. § 40:966(C)-(D).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
Maine	10 Years ⁶³	N/A	10 Years ⁶⁴					
Maryland	40 Years ⁶⁵	N/A	5 Years ⁶⁶					
Massachusetts	20 Years ⁶⁷	N/A	15 Years ⁶⁸					
Michigan	LWOP ⁶⁹	Yes ⁷⁰	30 Years ⁷¹	Yes	Requires only	No	In effect,	

⁶³ Me. Rev. Stat. tit. 17-A, §§ 1103(A) (trafficking a schedule W drug is a Class B crime), 1252(A) (10 year maximum for Class B Crime).

⁶⁴ Me. Rev. Stat. tit. 17-A, §§ 1103(A) (trafficking twenty or more pounds of marijuana is a Class B crime), 1252(A) (10 year maximum for Class B Crime).

⁶⁵ Md. Code Ann., Crim. Law §§ 5-608(d)(1) (forty year mandatory minimum sentence for fourth time offender of various narcotics-based crimes), 5-905(a)(1) (doubles sentence authorized for repeat drug offenders).

⁶⁶ Md. Code Ann., Crim. Law §§ 5-612(c)(1) (five year mandatory minimum sentence for manufacture or distribution of fifty or more pounds of marijuana), 5-905(a)(1) (doubles sentence authorized for repeat drug offenders).

⁶⁷ Mass. Gen. Laws Ann. ch. 94C, § 32E(c)(4) (maximum twenty years imprisonment for trafficking heroine).

⁶⁸ Mass. Gen. Laws Ann. ch. 94C, § 32E(c)(4) (maximum fifteen years imprisonment for trafficking marijuana).

⁶⁹ Mich. Comp. Laws Ann. §§ 333.7401(2)(a)(i)-(iv) (narcotic drug manufacturing and delivery penalties ranging from less than twenty years to life imprisonment),

333.7413(1)(a)-(b) (mandatory life sentence for second and subsequent conviction for violation of 333.7401(2)(a)(ii) or (iii)).

⁷⁰ Mich. Comp. Laws Ann. § 333.7413(1).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					<p>one prior conviction for trafficking or possession.⁷²</p> <p>Prior can be for trafficking or possession of as little as 50 grams of a Schedule 1 or 2 substance.⁷³</p>		<p>no, but it's only because diversion is not available for any of the countable prior conviction s.</p> <p>[Otherwis e, a diversion ary dispositio</p>	

⁷¹ Mich. Comp. Laws Ann. §§ 333.7401(2)(d) (maximum fifteen year sentence for marijuana manufacture or delivery exceeding forty-five kilograms), 333.7413(2) (sentence doubled for various second and subsequent drug convictions).

⁷² Mich. Comp. Laws Ann. § 333.7413(1)(a)-(b) (mandatory life sentence for second and subsequent conviction for violation of 333.7401(2)(a)(ii) or (iii)).

⁷³ Mich. Comp. Laws. Ann. §§ 333.7401(2)(a)(iii), 333.7403(2)(a)(iii).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
							n is not a conviction for purpose of enhancements for priors. ^{74]}	
Minnesota	40 Years ⁷⁵	N/A	40 Years ⁷⁶					
Mississippi	LWOP ⁷⁷	Yes ⁷⁸	LWOP ⁷⁹					D must be 21 or older. LWOP for manufacturing or distributing, during any 12 consecutive

⁷⁴ Mich. Comp. Laws Ann. § 333.7411(1).

⁷⁵ Minn. Stat. Ann. § 152.021 (forty year sentence for second of subsequent conviction of selling various drugs in aggregate amounts).

⁷⁶ *Id.*

⁷⁷ Miss. Code. Ann. § 41-29-139(f) (mandatory LWOP for drug manufacture or distribution in aggregate amounts).

⁷⁸ *Id.*

⁷⁹ *Id.*

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
								month period, 10 pounds or more marijuana, 2 ounces heroin, two or more ounces cocaine or any mixture containing cocaine, or 100 dosage units morphine (inc. Demerol and Dilaudid) or oxycodone or ecstasy. ⁸⁰
Missouri	LWOP ⁸¹	No	LWOP ⁸²					Trafficking in 30 g or more

⁸⁰ Miss. Code Ann. § 41-29-139.

⁸¹ Mo. Stat. §195.222.

⁸² Mo. Stat. §195.222(7)(2).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
								heroin, 150 g or more cocaine, 8 g crack, 500 mg LSD (mixture or substance), 30 g PCP, 30 kg marijuana, 30 g meth, 30 g ecstasy,
Montana	Life with Parole ⁸³	N/A	Life with Parole ⁸⁴					
Nebraska	Life with Parole ⁸⁵	N/A	60 Years ⁸⁶					

⁸³ Mont. Code Ann. § 45-9-101(3)(a)

⁸⁴ Mont. Code Ann. § 45-9-101(4)

⁸⁵ Neb. Rev. Stat. §§ 28-416(7) (defining manufacture or delivery of cocaine exceeding 140 grams as a Class IB felony), 28-105 (maximum of life imprisonment for class IB felonies).

⁸⁶ Neb. Rev. Stat. §§ 28-416(12) (defining possession of five pounds or more of marijuana as a Class IV felony), 28-105 (maximum of life imprisonment for class IV felonies), 29-2221(1) (maximum of sixty years imprisonment for habitual criminal upon third felony conviction).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
Nevada	LWOP ⁸⁷	No	LWOP ⁸⁸	Yes ⁸⁹	Requires three prior convictions, “whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony.”	No. But court has discretion to dismiss the habitual offender count, and can consider remoten	Yes, but court has discretion to dismiss the habitual offender count.	

⁸⁷ Nev. Stat. §207.010(b)(1). Under subsection (b)(2), the court is permitted to dismiss the habitual offender count “when the prior offenses are stale or trivial, or in other circumstances where an adjudication of habitual criminality would not serve the purposes of the statute or the interests of justice.” *Sessions v. State*, 789 P.2d 1242 (Nev. 1990); see *Tanksley v. State*, 946 P.2d 148, 152 (Nev. 1997) (“Adjudication of a defendant as a habitual criminal is subject to the broadest kind of judicial discretion.” (internal quotation marks omitted)); Nev. Stat. § 207.010(b)(2).

⁸⁸ Nev. Stat. § 207.010(b)(1).

⁸⁹ Nev. Stat. § 207.010(b)(2).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
						ess as a factor. ⁹⁰		
New Hampshire	Life with Parole ⁹¹	N/A	40 Years ⁹²					
New Jersey	Life with Parole ⁹³	N/A	Life with Parole ⁹⁴					
New Mexico	26 Years ⁹⁵	N/A	26 Years ⁹⁶					
New York	25 Years ⁹⁷	N/A	25 Years ⁹⁸					

⁹⁰ Nev. Stat. § 207.010(b)(2); *Sessions v. State*, 789 P.2d 1242 (Nev. 1990).

⁹¹ N.H. Rev. Stat. Ann. § 318-B:26(a)(1)-(4) (maximum life imprisonment for second or subsequent manufacture of specific drugs various amounts).

⁹² N.H. Rev. Stat. Ann. § 318-B:26(b)(6) (maximum forty years imprisonment for second or subsequent manufacture of marijuana in five pounds or more).

⁹³ N.J. Stat. Ann. §§ 2C:35-5(b)(1) (first degree crime for manufacture of heroin at specified amount), 2C:43-6(f) (second and subsequent convictions for drug manufacturing crimes are subject to extended term), 2C:43-7(c) (extended term of life imprisonment for first degree crime under § 2C:43-6(f)).

⁹⁴ N.J. Stat. Ann. §§ 2C:35-5(b)(10)(a) (first degree crime for manufacture of marijuana exceeding twenty five pounds), 2C:43-6(f) (second and subsequent convictions for drug manufacturing crimes are subject to extended term), 2C:43-7(c) (extended term of life imprisonment for first degree crime under § 2C:43-6(f)).

⁹⁵ N.M. Stat. Ann. §§ 30-31-20 (B)(2) (first degree felony for second or subsequent conviction for various manufacture and distribution drug offenses), 31-18-15 (A)(3) (eighteen years imprisonment for first degree felony), 31-18-17 (C)(eight year sentence increase for habitual criminal with three or more prior felony convictions).

⁹⁶ N.M. Stat. Ann. §§ 30-31-20(B)(2) (first degree felony for second or subsequent conviction for manufacture of schedules I through V controlled substances), 30-31-6 (C)(10) (marijuana is a schedule I substance), 31-18-17 (C) (eight year sentence increase for habitual criminal with three or more prior felony convictions).

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					Serious?	Remoteness Limit?	Diversio nary Dispo?	
North Carolina	23.5 Years ⁹⁹	N/A	18.5 Years ¹⁰⁰					
North Dakota	Life with Parole ¹⁰¹	N/A	20 Years ¹⁰²					
Ohio	11 Years ¹⁰³	N/A	8 Years ¹⁰⁴					
Oklahoma	Life with Parole ¹⁰⁵	N/A	Life with Parole ¹⁰⁶					

⁹⁷ N.Y. Penal Law §§ 220.75 (first degree manufacture of methamphetamine is a class B felony), 70.10 (Class A-I felony for persistent felony offender with third non-violent felony conviction), 70.00 (twenty five year maximum imprisonment for Class A-I felony conviction).

⁹⁸ N.Y. Penal Law §§ 221.55 (first degree criminal sale of marijuana is a class C felony), 70.10 (Class A-I felony for persistent felony offender with third non-violent felony conviction), 70.00 (twenty five year maximum imprisonment for Class A-I felony conviction).

⁹⁹ N.C. Gen. Stat. Ann. § 90-95(h)(3b)(c) (trafficking in over 400 grams of methamphetamine is a Class C felony with a maximum 23.5 year sentence).

¹⁰⁰ N.C. Gen. Stat. Ann. § 90-95 (h)(1)(d) (trafficking in over 10,000 pounds of marijuana is a Class D felony with a maximum 18.5 year sentence).

¹⁰¹ N.D. Cent. Code Ann. §§ 19-03.1-23(1)(a) (defining manufacture or delivery of methamphetamine as a Class A felony), 12.1-32-09(2)(a) (life imprisonment for habitual offender with a Class A felony conviction and two Class C or higher prior felony convictions).

¹⁰² N.D. Cent. Code Ann. §§ 19-03.1-23(1)(b) (defining manufacture or delivery of marijuana as a Class B felony), 12.1-32-09(2)(a) (maximum twenty years for habitual offender with a Class B felony conviction and two Class C or higher prior felony convictions).

¹⁰³ Ohio Rev. Code Ann. §§ 2925.03 (C)(4)(g) (trafficking in over 100 grams of cocaine is a first degree felony), 2929.14 (A)(1) (maximum of eleven years for a first degree felony).

¹⁰⁴ Ohio Rev. Code Ann. §§ 2925.03 (C)(3)(g) (trafficking in over 40 kilograms of marijuana is a second degree felony), 2929.14 (A)(2) (maximum of eight years for a second degree felony).

¹⁰⁵ Okla. Stat. Ann. tit. 63, § 2-401(B)(1) (maximum life imprisonment for manufacturing or distributing schedule I or II narcotic drugs).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
Oregon	20 Years ¹⁰⁷	N/A	10 Years ¹⁰⁸					
Pennsylvania	30 Years ¹⁰⁹	N/A	20 Years ¹¹⁰					
Rhode Island	Life with Parole ¹¹¹	N/A	Life with Parole ¹¹²					

¹⁰⁶ Okla. Stat. Ann. tit. 63, §§ 2-401(B)(2) (maximum life imprisonment for manufacturing or distributing schedule I through IV controlled substances), 2-204 (C)(12) (marijuana is a schedule I substance).

¹⁰⁷ Or. Rev. Stat. Ann. §§ 475.752 (1)(a) (manufacture or delivery of a schedule I controlled substance is a Class A felony), 161.605(1) (twenty years imprisonment for a class A felony).

¹⁰⁸ Or. Rev. Stat. Ann. §§ 475.856(2) (manufacture of marijuana is a Class B felony), 161.605(1) (ten years imprisonment for a class B felony).

¹⁰⁹ 35 Pa. Stat. Ann. §§ 780-113 (a)(30), (f)(1) (maximum fifteen years imprisonment for manufacture or delivery of schedule I or II narcotic drug), 780-115 (a) (doubled sentence upon second or subsequent convictions under § 780-113(a)(30)).

¹¹⁰ 35 Pa. Stat. Ann. §§ 780-113 (a)(30), (f)(1.1) (maximum ten years imprisonment for manufacture or delivery of over 1,000 pounds of marijuana), 780-115 (a) (doubled sentence upon second or subsequent convictions under § 780-113(a)(30)).

¹¹¹ R.I. Gen. Laws Ann. § 21-28-4.01(a)(2) (maximum life imprisonment for manufacture or delivery of schedule I or II controlled substances).

¹¹² R.I. Gen. Laws Ann. §§ 21-28-4.01.2(a)(3)(5),(b) (maximum life imprisonment for possession, manufacture, or sale of more than five kilograms of marijuana).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
South Carolina	LWOP ¹¹³	Yes ¹¹⁴	LWOP ¹¹⁵	Yes	Requires two prior convictions for a “serious offense,” defined to include possession of as little as 10 g cocaine, crack, or methamphetamine, 4 g heroin, or 100 ecstasy pills. ¹¹⁶	No. ¹¹⁷	“Conviction” means “any conviction, guilty plea, or plea of nolo contendere.” ¹¹⁸	

¹¹³ S.C. Code Ann. §§ 17-25-45(B)(1), (C)(2)(a)-(b) (LWOP for third conviction of serious offense including trafficking controlled substances), 44-53-370(e) (defining trafficking controlled substances with various aggregate amounts and penalties).

¹¹⁴ S.C. Code Ann. § 17-25-45(B).

¹¹⁵ S.C. Code Ann. §§ 17-25-45(B)(1), (C)(2)(a)-(b) (LWOP for third conviction of serious offense including trafficking controlled substances), 44-53-370(e)(1) (defining trafficking marijuana with various aggregate amounts).

¹¹⁶ S.C. Code Ann. § 17-25-45(B)(1), (C)(2)(a)-(b); *id.* § 44-53-370(e)(2), (e)(3), (e)(8); *id.* § 44-53-375(C)(1).

¹¹⁷ *State v. Rogers*, 602 S.E.2d 910 (S.C. Ct. App. 2004).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
South Dakota	50 Years ¹¹⁹	N/A	50 Years ¹²⁰					
Tennessee	60 Years ¹²¹	N/A	60 Years ¹²²					
Texas	Life with Parole ¹²³	N/A	99 Years ¹²⁴					
Utah	Life with Parole ¹²⁵	N/A	15 Years ¹²⁶					

¹¹⁸ S.C. Code Ann. § 17-25-45(3).

¹¹⁹ S.D. Codified Laws §§ 22-42-6 (Class 3 felony to possess more than ten pounds of marijuana), 22-7-8.1 (sentence moves up two felony levels upon fourth non-violent felony conviction), 22-6-1(4) (maximum fifty years imprisonment for class 1 felony conviction).

¹²⁰ S.D. Codified Laws §§ 22-42-7 (Class 3 felony to distribute more than one pound of marijuana), 22-7-8.1 (sentence moves up two felony levels upon fourth non-violent felony conviction), 22-6-1(4) (maximum fifty years imprisonment for class 1 felony conviction).

¹²¹ Tenn. Code Ann. §§ 39-17-417(j)(1) (Class A felony for manufacture, delivery, or sale of 150 grams or more of heroine), 40-35-108 (a)(2) (career offender with fourth Class A felony conviction is sentenced under Range III), 40-35-112 (c)(1) (maximum 60 years imprisonment with Range III Class A felony conviction).

¹²² Tenn. Code Ann. §§ 39-17-417(j)(13A) (Class A felony for manufacture, delivery, or sale of 300 pounds or more of marijuana), 40-35-108 (a)(2) (career offender with fourth Class A felony conviction is sentenced under Range III), 40-35-112 (c)(1) (maximum 60 years imprisonment with Range III Class A felony conviction).

¹²³ Tex. Health & Safety Code Ann. § 481.112(e) (maximum life imprisonment for manufacture or delivery of penalty group 1 drugs)

¹²⁴ Tex. Health & Safety Code Ann. § 481.120 (b)(6) (maximum 99 years imprisonment for manufacture or delivery of marijuana exceeding 2,000 pounds).

¹²⁵ Utah Code Ann. §§ 58-37-8(1)(a),(b)(i) (first degree felony upon second and subsequent convictions for manufacture or production of schedule I or II controlled substances), 76-3-203(1) (maximum life imprisonment for first degree felony).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
Vermont	Life with Parole ¹²⁷	N/A	Life with Parole ¹²⁸					
Virginia	Life with Parole ¹²⁹	N/A	Life with Parole ¹³⁰					
Washington	20 Years ¹³¹	N/A	10 Years ¹³²					
West Virginia	Life with Parole ¹³³	N/A	Life with Parole ¹³⁴					

¹²⁶ Utah Code Ann. §§ 58-37-8(2)(a)(i), (b)(i) (second degree felony for possession of 100 pounds or more of marijuana), 76-3-203(2) (maximum fifteen years imprisonment for second degree felony).

¹²⁷ Vt. Stat. Ann. tit. 18, § 4231(c)(1) (maximum 30 years imprisonment for trafficking in cocaine at 150 grams or more), tit. 13, § 1 (offenses with maximum sentences exceeding 2 years are considered felonies), Vt. Stat. Ann. tit. 13, § 11 (life imprisonment for offender upon fourth or subsequent felony conviction).

¹²⁸ Vt. Stat. Ann. tit. 18, § 4230(c) (maximum 30 years imprisonment for trafficking in marijuana at 50 pounds or more), tit. 13, § 1 (offenses with maximum sentences exceeding 2 years are considered felonies), Vt. Stat. Ann. tit. 13, § 11 (life imprisonment for offender upon fourth or subsequent felony conviction).

¹²⁹ Va. Code Ann. § 18.2-248(H)(5) (maximum life imprisonment for manufacture, sale, or distribution of 100 grams of methamphetamine).

¹³⁰ Va. Code Ann. §§ 18.2-248(H)(5),(5) (maximum life imprisonment for manufacture, sale, or distribution of 100 kilograms of marijuana).

¹³¹ Wash. Rev. Code Ann. §§ 69.50.401(1), (2)(a) (maximum 10 years imprisonment for Class B felony of manufacture or delivery of schedule I or II narcotic drugs), 69.50.408(1) (sentence doubled for various drug offenses upon second or subsequent convictions).

¹³² Wash. Rev. Code Ann. §§ 69.50.401(2)(c) (maximum five years imprisonment for Class C felony of manufacture or delivery of schedule I or II controlled substances), 69.50.204(c)(22) (marijuana is a schedule I controlled substance), 69.50.408(1) (sentence doubled for various drug offenses upon second or subsequent convictions).

¹³³ W. Va. Code Ann. §§ 60A-4-401(a)(i) (maximum fifteen years imprisonment for manufacture or delivery of schedule I or II narcotic drugs), 61-11-18 (c) (life with parole upon third conviction of crime “punishable in a penitentiary”)

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
Wisconsin	LWOP ¹³⁵	Yes ¹³⁶	29 Years ¹³⁷	Yes	Requires two prior convictions for a “serious felony,” defined to include certain specified drug offenses and “a crime at any	No	Yes ¹⁴³	

¹³⁴ W. Va. Code Ann. §§ 60A-4-401(a)(i) (maximum five years imprisonment for manufacture or delivery of schedule I, II or III controlled substance), 60A-2-204 (d)(19) (marijuana is a schedule I controlled substance), 61-11-18 (c) (life with parole upon third conviction of crime “punishable in a penitentiary”).

¹³⁵ Wis. Stat. §§939.62(2m) (mandating LWOP for “persistent repeaters,” based on commission of at least three “serious felonies,” and defining “serious felonies” to include various violations of Chapter 961, Uniform Controlled Substances Act).

¹³⁶ *Id.*

¹³⁷ Wis. Stat. §§939.50(3)(e) (setting maximum penalty for Class E felony as fifteen years), 961.41(1)(h)(5) (defining high-volume marijuana trafficking offenses as Class E felonies), 961.46 (adding five years to maximum for distribution to minor), 961.48(1)(b) (adding four years for repeat offense), 961.49(4m) (adding five years for distribution in certain protected places).

¹⁴³ Wis. Stat. § 939.62(2m)(b)(bm) (“[I]t is immaterial that the sentence for the previous conviction was stayed, withheld or suspended, or that the actor was pardoned, unless the pardon was granted on the ground of innocence.”).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					time under federal law or the law of any other state “that is comparable to a [specified] crime.” ¹³⁸ Least serious specified offenses include manufacture or distribution of “more than 40 grams” cocaine or crack; ¹³⁹ PWID of “more than 50 grams”			

¹³⁸ Wis. Stat. § 939.62(2m).

¹³⁹ Wis. Stat. § 961.41(1)(cm)

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
					cocaine, crack, heroin, meth, or ecstasy; ¹⁴⁰ and possessing listed materials (e.g., pseudophedrine or iodine) with the intent to manufacture meth. ¹⁴¹ Misdemeanors punishable by more than one year in other jurisdictions are counted. ¹⁴²			

¹⁴⁰ Wis. Stat. § 961.41(1m).

¹⁴¹ Wis. Stat. § 961.65.

¹⁴² Wis. Stat. § 939.62(3)(b) (“[F]elony means a crime which under the laws of that jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or penitentiary for one year or more. Misdemeanor means a crime which does not carry a prescribed maximum penalty to constitute it a felony and includes crimes punishable only by a fine.”).

State	Max Penalty for Drug Only Offender	LWOP Mandatory ?	Max Penalty for Marijuana Only Offender	Prosecutor Has Discretion To Invoke ?	If Based on Priors			If Not Based on Priors
					Serious?	Remoteness Limit?	Diversio nary Dispo?	
Wyoming	40 Years ¹⁴⁴	N/A	20 Years ¹⁴⁵					
D.C.	60 Years ¹⁴⁶	N/A	10 Years ¹⁴⁷					

¹⁴⁴ Wyo. Stat. Ann. §§ 35-7-1031(a)(i) (maximum twenty years imprisonment for manufacture or delivery of methamphetamine or other schedule I and II narcotic drugs), 35-7-1038(a) (sentence doubled upon second or subsequent conviction for various drug crimes).

¹⁴⁵ Wyo. Stat. Ann. §§ 35-7-1031(a)(ii) (maximum ten years imprisonment for manufacture or delivery of other schedule I and II controlled substances), 35-7-1014(d)(xiii) (marijuana is a schedule 1 controlled substance), 35-7-1038(a) (sentence doubled upon second or subsequent conviction for various drug offenses).

¹⁴⁶ D.C. Code §§ 48-904.01(a)(2)(A) (maximum thirty years imprisonment for manufacture or distribution of schedule I and II narcotic or abusive drugs), 48-904.08(a) (sentence doubled upon second or subsequent conviction for various drug crimes).

¹⁴⁷ D.C. Code §§ 48-904.01(a)(2)(B) (maximum five years imprisonment for manufacture or distribution of schedule I, II, or III controlled substances), 48-902.08(a)(6) (cannabis designated as schedule III substance), 48-904.08(a) (sentence doubled upon second or subsequent conviction for various drug crimes).