

Drug Sentencing in Arizona: *A Prescription for Failure*

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Drug Sentencing in Arizona:
A Prescription for Failure

Executive Summary

Like much of the nation, Arizona is in the midst of an opioid epidemic—the latest episode in what is now a pattern of social crises related to drug addiction. Unlike the crack epidemic of the 1980’s and the methamphetamine crisis of the last decade, the dialogue around substance abuse is changing from a punitive approach to a more nuanced understanding of the nature of addiction.

Arizona is at a critical juncture and must closely examine its current approach to drug addiction and assess its effectiveness, costs, and outcomes. Unfortunately, the state does not have a system to collect and aggregate data related to actual sentencing laws—for drug offenses or any other category of crime. As a result, there has been no way to determine how our existing criminal statutes are functioning.

To fill this gap, the American Friends Service Committee Arizona office, in collaboration with the Public Welfare Foundation, conducted a ground-breaking study of actual drug sentencing in Arizona. For the first time, court-level data was gathered on drug arrests, prosecutions, and sentencing practices in Arizona.

The findings are shocking:

- Currently, any amount of drugs, even residue, can result in a charge of “possession.” Conviction for “sales” of drugs, regardless of the amount, is an automatic Class 2 felony. That’s the same as manslaughter, aggravated assault, armed robbery and kidnapping.
- Drug crimes comprise the largest category of offense (21.8%) for which people are incarcerated in the Arizona state prison system. For women, the percentage is even higher (32%).
- Statewide, drug arrests comprised 11.73% of all arrests in 2015.
- Drug cases represent the overwhelming majority of charges filed in Maricopa County, with 45.32% of the charges filed for drug possession.
- There are significant racial disparities in drug sentencing and incarceration in Arizona. Black people are sentenced to 25% longer sentences for drug crimes.
- Arizona is spending a staggering \$588,655 per day to incarcerate people whose most serious charge is a drug offense.
- Under 3% of the state prisoners who have been identified as having “significant substance abuse histories” are receiving drug treatment at any given time.
- Incarceration does not result in people overcoming their addictions, and Arizona’s 49.3% recidivism rate shows that the threat of a harsher sentence for a subsequent conviction does nothing to make people clean and sober.

The data points to one conclusion: **Incarceration as a response to drug addiction is a failed strategy.** It is based on faulty logic and assumptions, namely, that addiction is a personal or moral defect and drug use is a conscious choice to break the law.

The best practice model for addressing drug addiction is to treat it as a chronic disease rather than as willful criminal behavior.

If effective treatment programs were available on demand for every person in the state who needs them, there is no doubt that our prison and jail populations would shrink considerably. Probation officers, attorneys, emergency room nurses and doctors, public health advocates, and people who have battled addiction have expressed a need for treatment based approaches; however, the main impediment is the lack of funding for such services.

The way to correct this problem is to use a **justice reinvestment approach** to sentencing reform and policy change. Cost savings from reductions in the prison population should be directed toward community-based programs that provide treatment, prevent crime, divert offenses, and increase community security.

Arizona is at the tipping point to make real change in drug sentencing. Policy can move toward a public health, evidence-based approach to addressing drug addiction while saving lives, families, and money.

Practical Policy Recommendations:

1. **Require Standardized Data Collection and Analysis:** Develop a standardized data gathering process across counties and courts to collect information on arrests, charging, plea bargaining, use of sentence enhancements, sentencing outcomes, and other related metrics to enhance our collective understanding of the current functioning of our system. This data must be correlated by race, ethnicity, and gender in order to address the serious problem of disparities.
2. **Defelonize Drug Possession:** Incarceration cannot cure addiction. Costly prison beds should be reserved for those who truly pose a threat to public safety, not for people who have a disease. By not imprisoning those with addiction, monetary resources can be used to stop the problem before it spirals into criminal behavior, the erosion of a family, or the loss of life.
3. **Expand Non-Criminal Justice Interventions:** Drug treatment, trauma counseling, and medical care should be the first line of defense against the disease of addiction, not criminal prosecution. Aside from being more effective, one report found that for every dollar spent on substance use disorder treatment saves \$4 in health care costs and \$7 in criminal justice costs.
4. **Restructure Drug Sentences:** An independent, bipartisan review of all of Arizona's current drug sentencing statutes and charging practices is a necessary first step. Such a review should rely on the best practices in addiction medicine and evidence-based approaches in the field to determine a fair, consistent, and effective sentencing scheme for addiction-related offenses.
5. **Utilize Public Health and Harm Reduction Approaches:** Our priority as a state should be to prevent overdose deaths and transmission of communicable diseases like HIV/AIDS and Hepatitis C. Threat of arrest keeps addicts from seeking medical treatment or even calling 911 when someone is overdosing. Best practices like 911 Good Samaritan Laws, Clean Needle Exchange, and Opioid Urgent Care prevent needless deaths and promote health for all.

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Introduction

In June of 2017, Governor Ducey declared a state of emergency in response to Arizona's unrelenting opioid epidemic. The announcement came in the wake of an Arizona Department of Health Services report that demonstrated a steep increase in opioid overdose deaths during the Ducey administration – a rise of 74% since 2013.¹

In his 2017 State of the State, Governor Ducey outlined policies to support people re-entering the community post prison and engage non-profits and health care workers in addressing addiction. He also passed two executive orders specifically relating to drug abuse, one establishing a pilot program for the use of medication to treat addiction (Vivitrol) for people exiting prison, and another increasing reporting of opioid overdoses.

While these steps are important and necessary, it is notable that they are reactive rather than preventive measures. Why not gather information on the number of people seeking treatment rather than waiting until they overdose? Why wait until someone has been convicted of a felony, incarcerated, and released before we offer support and treatment?

For decades in Arizona, the de-facto response to drug use and addiction has been criminalization. Characterizing drug addiction as

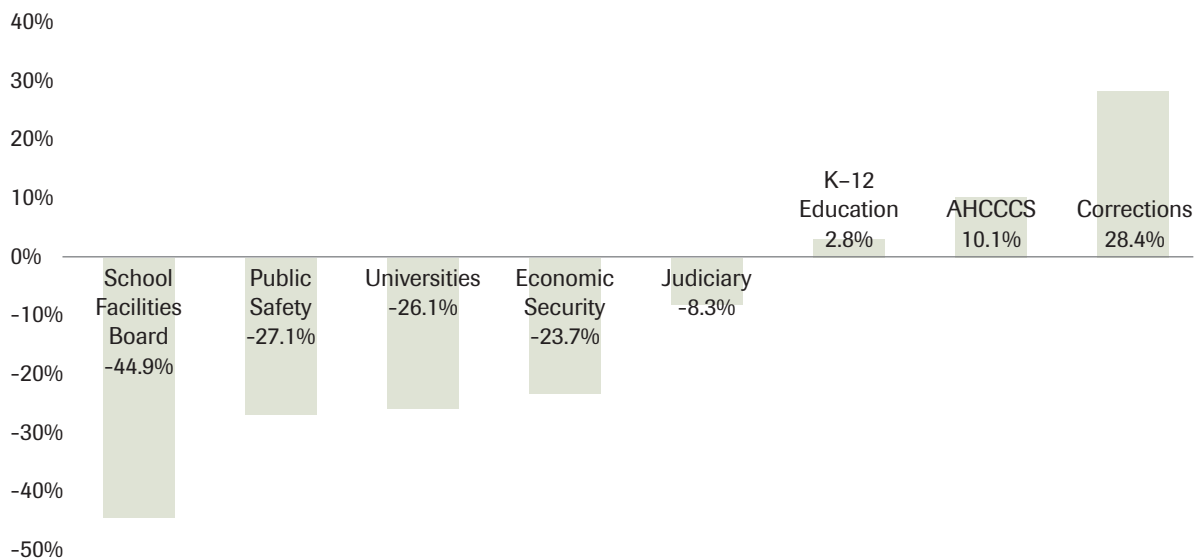
a moral failure and deliberate choice to break the law, Arizona sends people to prison for years for small amounts of drugs. These laws were based on the now-debunked theory of deterrence—the belief that harsh penalties frighten people enough that they will choose not to use drugs. Of course, this is inconsistent with the modern science of addiction, which demonstrates that drug addiction is a chronic illness similar to that of diabetes, cancer, or epilepsy.

The criminalization response prevalent during the “War on Drugs” was one contributing factor to the nation’s soaring incarceration rates. Arizona currently has the 5th highest incarceration rate in the U.S. and the highest of western states.²

Alcohol and drugs are implicated in an estimated 80% of offenses leading to incarceration in the U.S., including domestic violence, driving while intoxicated, property offenses, and public-order offenses.³ In other words, **the vast majority of crime is linked in some way to addiction.**

Nationally, almost three-quarters of state prisoners with mental health problems reported co-occurring substance dependence.⁴ Inmates with mental illness often have additional social and criminogenic needs. Prisoners suffering from mental illness are more likely to have

Arizona State Budget Spending Changes: 2007 to 2017



Source: Arizona State Legislature, Joint Legislative Budget Committee, “Then and Now,” FY 2007-2017 General Fund Spending

experienced homelessness, prior incarceration, and substance abuse than those without mental illness, and, cyclically, these factors common among offenders also predispose them to mental illness.⁵

The Arizona Department of Corrections reports that “77% of inmates assessed at intake have significant substance abuse histories,” yet there were only 866 prisoners enrolled in Addiction Treatment programming in September of 2016.⁶ In other words, just under 3% of the prisoners who need drug treatment are actually receiving it at any given time.

Clearly, incarceration does not cure addiction, and Arizona’s 49.3% recidivism rate shows that the threat of a harsher sentence for a subsequent conviction does nothing to make people clean and sober.

This failure comes at a steep cost. Arizona’s corrections budget has been over \$1 billion since 2012 and is the third top spending item in the state. Meanwhile, funds for prevention and services, such as economic security programs and education have dropped or failed to keep up with costs for inflation.

In spite of the seriousness of these issues, the skyrocketing costs of incarceration, and legitimate concerns about public safety, it is shocking to learn that **Arizona currently has no aggregate data** on how the state’s criminal sentencing laws are applied. Each county maintains its own records, collects different sets of data, and some jurisdictions have electronic systems while others are still using paper files. Thus, our lawmakers and the taxpayers footing the bill have no idea how many people were sentenced under a given law, for how long, or what the outcomes were. The most frequently cited data on sentencing in Arizona comes from the Arizona Prosecuting Attorneys’ Advisory Council (APAAC) multi-year report, *Prisoners in Arizona*. However, this report relies on internal Arizona Department of Corrections classification data and other administrative information, which is inconsistently gathered and can be misleading. The report does not address the arrest data, charges brought, plea bargain information, mitigating factors, racial or gender demographics, or other details critical to understanding how sentencing laws work.

In an effort to fill this gap, the American Friends Service Committee Arizona office, in collaboration with the Public Welfare Foundation, conducted a ground-breaking study of actual drug sentencing in Arizona. For the first time, court-level data was gathered on drug arrests, prosecutions, and sentencing practices in Arizona.

Information for this research was obtained through public records requests for all court cases of people who were sentenced to prison for a drug crime in Maricopa, Pima and Yavapai counties. Researchers traveled to the court offices in these three counties to collect data directly from their systems and records. Due to the high quantity of cases in Maricopa, those researched cases were a randomized sample of 24.2% of all drug cases in 2015. In addition to this quantitative data, researchers conducted interviews with individuals who interact with the criminal sentencing system and issues of addiction from a variety of perspectives: Treatment providers, court personnel, formerly incarcerated people, medical professionals, and one County Attorney. These interviews are reflected in the “Frontline Perspectives” boxes throughout the report. For more information on the methodology of this research, refer to Appendix 1.

This report exposes the failure of Arizona’s current drug sentencing policies, which result in large numbers of people serving prison time for drug offenses without receiving any meaningful treatment while incarcerated, costing taxpayers millions and doing nothing to reduce recidivism. In addition, there is evidence of disturbing racial disparities in arrests, charging, sentencing and incarceration, as well as a significant impact on women.

Arizona should adopt a **justice reinvestment approach**. This model, which has been applied in numerous states, uses evidence-based approaches to safely reduce prison populations. The funds saved by reducing prison costs can then be re-invested in community-based treatment, education and other programs and services that promote lasting safety.



Drug Criminalization in Arizona

Drug Arrests

The 2015 Arizona Crime report shows that drug-related arrests made up 11.73% of all arrests.⁷ In contradiction to the argument that harsh sentencing is a deterrent, the rate of drug use in Arizona increased from 9.52%⁸ in 2010 to 11.25%⁹ in 2014. Both rates were higher than the national average rates of illicit drug use.^{10 11}

In contrast to media portrayals of law enforcement diligently prosecuting drug cartels with major investigations, the data and anecdotal evidence shows that police are much more likely to arrest those who are the easiest to find. Studies have consistently shown that police target specific, low income, non-white neighborhoods, for drug arrests. Concentrating efforts in a specific neighborhood allows for simpler arrests, using fewer resources and maintaining an atmosphere of safety for those living in more affluent areas.¹²



Ten people's arrests, due to bicycle infractions, resulted in 1.322 grams of drugs being found and sentenced them to a combined total of 26 years in prison.

That amount of drugs is less than the weight of a single penny.

Our research found that **10 arrests that led to drug convictions arose from basic bicycle violations**, such as missing a bike light or failure to stop completely at a stop sign. The subsequent police searches uncovered approximately 1.322 grams of drugs.¹

Clearly these infractions posed no danger to anyone but the arrestee. This points to a practice of using these minor violations as a pretext to target individuals who are likely low-income and easy to visually identify as a possible addict. The total amount of time sentenced for the drug arrests resulting from these bicycle stops was 26 years in prison, which translates over **\$616,185 of tax payers' dollars for incarceration alone.**¹³

Other causes for police intervention included people "looking suspicious" in public areas, homeless individuals searching for food in

dumpsters, or people admitting to drug use while being administered medical treatment. In one case, a man was threatening suicide, and his terrified family naturally called the police to help. When the police arrived, the man was searched and drugs were found on him. He ended up going to prison for 2.5 years.¹⁴

Undercover police operations were also found to be targeting drug users selling small amounts to support their own habits. Forty-three cases in the research involved undercover police, with 69.77% being for small-level sales of drugs (less than the legislative threshold). One case involved a man who was asked by undercover police to purchase on three different occasions, selling a total of 3 grams of drugs. He told the officer he was trying to make money to support his four children. He was sentenced to prison for 33 months.¹⁵

Another case involved a woman who stated in her court hearing that she, "sold drugs to feed her habit." On two occasions, she sold a total of 3.1 grams of methamphetamine to an undercover officer. When she was arrested, she was also found with marijuana. For these two sales and the possession of marijuana, she was sentenced to 10 years in prison, and 2.5 years of a probation tail upon her release from prison. She will not be out of state control until 2028.¹⁶

Defense attorneys report that it is common for police to target people who are homeless or those known to congregate in local parks, knowing that they are likely to sell to the officers if they ask. These patterns indicate that law enforcement is choosing to go after the poorest and lowest-level sellers, rather than large-scale drug dealers, simply because they are easy to find, entrap, and arrest. This strategy does nothing to impact drug trafficking or the availability of drugs on the street.

Drug Prosecutions

Maricopa County is Arizona's largest county, and represents the majority (62.9%) of people sentenced to prison.¹⁷ Drug cases represent the overwhelming majority of charges filed in Maricopa County. Of the ten most charged offenses in the county in 2015, eight were alcohol or drug-related. Furthermore, these charges were for possession, use, or paraphernalia, *not* for sales or trafficking offenses.

¹ Of the 13 drug charges from these interactions, 5 had specific amounts listed, 4 were not stated, 1 was Not Specified (1inch x 1inch baggie) and 3 were labeled "Usable amount of drugs."

Unfortunately, neither Pima nor Yavapai Counties report data on their charging patterns, so it is unknown whether these patterns are consistent across the state.

Mandatory Sentencing

Mandatory sentencing laws require binding prison terms of a particular length for people convicted of certain crimes. Many of these sentences were decided by the Legislature using a “one-size-fits-all” approach that requires the same set penalty for every case. Mandatory sentencing can take several forms. **Mandatory minimums** refer to laws that require a minimum prison sentence length for a given crime that the judge cannot depart from. There are mandatory minimum sentences for drug crimes in Arizona which can fluctuate based on the type of drug, felony class of the crime, and mitigating factors.²⁰ **Mandatory sentence enhancements** are an assortment of laws that allow prosecutors to seek harsher penalties if certain other conditions apply to a given case, essentially a form of “aggravating factors.” Mandatory sentencing provisions eliminate the option for probation or alternatives to incarceration, even for non-violent offenders. Many sentence enhancements greatly increase the length of the mandatory minimum prison terms.

Two of the most commonly applied sentence enhancements are for prior convictions, or “repeat offenders,” and for multiple offenses.

Repetitive Offenders: Those charged with a felony offense who have previously been convicted of one “historical prior” felony, if convicted, are ineligible for probation and face enhanced prison terms. Those previously convicted of two or more “historical priors” are subject to even longer mandatory sentences. Even convictions from other states can be charged as priors.²¹ As defined by statute, a “historical prior” includes:

1. Any felony conviction for an offense committed within the last five years of the current offense;

2. A Class 2 or 3 felony conviction for an offense committed within 10 years of the current offense; or
3. Any conviction for a “dangerous” felony DUI, regardless of when the offense occurred

Multiple Offenses: Those charged with three or more felony drug offenses arising out of separate incidents but consolidated in the same criminal proceeding are ineligible for probation and are subject to longer sentences.

Example: A person charged with selling marijuana to an undercover officer on three different days faces mandatory prison with a presumptive term of five years for the third offense—regardless of the amount of drugs found.

It is the role of the County Attorney (prosecutor) to decide which charges to file, whether to seek mandatory sentence enhancements, whether to offer a plea, and what concessions to offer in a bargain.

A prosecutor must prove the prior for it to be used as a sentencing enhancement. While it is the burden of the state to show its existence, a prior conviction is the only maximum penalty-increasing sentencing enhancement that does not have to be proven to a jury beyond a reasonable doubt.²³ However, if the State fails to prove the prior, the court can still consider it as an aggravating circumstance, thus reaching the same end in extending a person’s prison sentence.²⁴

It should be no surprise that the most common enhancement applied to drug sentencing is the repetitive offender enhancement. For all of the researched charges in this study where an enhancement was put in place by the prosecutor, **95.77% of the enhancements were for priors.**

The chronic nature of the disease of drug addiction means that relapse is not only possible but likely. Symptom recurrence rates

Top 10 Most Charged Criminal Offenses in Maricopa County, 2015¹⁸

Charge Category	Total	Percent of all Charges ¹⁹ (43,538)
Drug Paraphernalia—Possession/Use	7,181	16.49%
Dangerous Drug—Possession/Use	5,022	11.53%
Marijuana—Possession/Use	4,745	10.90%
False Statement to Obtain Benefits	4,407	10.12%
Aggravated DUI—License Suspended/Revoked for DUI	3,429	7.88%
Marijuana Violation	3,312	7.61%
Aggravated Assault with a Deadly Weapon/Dangerous Instrument	3,304	7.59%
Drug Paraphernalia Violation	3,014	6.92%
Narcotic Drug—Possession/Use	2,786	6.40%
Dangerous Drug Violation	2,534	5.82%

are similar to those for other well-characterized chronic medical illnesses such as diabetes, hypertension, and asthma. Unfortunately, when relapse occurs the criminal justice system tends to view it as a refusal on the part of the individual to amend his or her behavior and label it a “repeat offense.”

But the science of addiction demonstrates that this is the wrong approach. Successful treatment for addiction typically requires continual evaluation and modification as appropriate, similar to the approach taken for other chronic diseases. For example, when a patient is receiving active treatment for hypertension and symptoms decrease, treatment is deemed successful, even though symptoms may recur when treatment is discontinued. For the addicted individual, lapses to drug abuse do not indicate failure—rather, they signify that treatment needs to be reinstated or adjusted, or that alternate treatment is needed.²⁵

Yet the criminal justice approach to relapse is to impose harsher punishments, often leading to increased prison time.

An alternate interpretation is that “repeat offenses” are also an indication of the failure of the criminal justice system to do its job. At what point will the Department of Corrections and other criminal justice actors be held accountable for the dismal failure that is represented by Arizona’s 50% recidivism rate? While individuals are responsible for changing their behavior, is there not also a collective responsibility of government, agencies, and society as a whole for how we respond to social problems like addiction?

Arizona’s mandatory sentencing provisions diminish the ability of judges to tailor sentences to the individual or their circumstances. When an enhancement is invoked by the prosecutor and can be proven by the facts, the judge must impose the enhancement.

Plea Bargains

The prosecutor can offer the defendant a “plea bargain,” in which the person agrees to plead guilty to a lesser offense and/or shorter sentence, instead of taking the case to trial and being heard by a jury. The trial process can be tedious and expensive, and a single case can take years to complete. Plea bargaining allows high volumes of cases to be resolved quickly.

Information from the Arizona Administrative Office of the Courts states that only 2.49% of all felony cases went to trial in 2015.²⁷ This is echoed in our research: only 2.85% of the drug cases in this study involved trials.

If a person decides to invoke their right to a trial and is found guilty, our research showed that they are likely to be given a much longer

sentence than a person who accepted a plea. For people convicted of drug crimes, there was a **96.01% increase in time sentenced to prison for people who went to trial**. Disparities remain even when factors are kept consistent between people, charges, and their criminal history.

Our researched cases demonstrated that people charged with transportation of marijuana who had no prior felony convictions had their sentence double on average when they went to trial versus taking a plea. For methamphetamine possession, *a trial case increased the length of time sentenced to prison by 141%*.

Unfortunately, these factors provide an incentive for prosecutors to use their discretion to bring as many charges against a defendant as possible to convince them to take the plea. For example, a person being charged with drug sales may also face charges for drug possession, drug trafficking (because they were driving at the time of arrest), and drug paraphernalia. The “plea deal” may offer to drop the additional charges if the individual pleads guilty to just the sales charge, but all charges will be alleged if the case goes to trial. The prosecutor can make a credible threat that if the defendant goes to court and loses, they are facing a serious sentence.

One criminal charge frequently applied in this way is A.R.S §13-3415 “Possession of Drug Paraphernalia.” Paraphernalia charges can include items like a lighter or matches, individual syringes, pipes, rolling papers, the plastic bag holding the drugs, etc. One researched case saw three separate charges for a single drug possession case because the person had a straw, some foil, and a lighter.²⁸ Drug paraphernalia is a Class 6 felony, carries a mandatory minimum sentence of six months prison time for someone with a prior felony. Of the 959 charges of drug paraphernalia from this study, only 11.05% were found guilty.

The research found that on average, **people who took pleas ended up serving time for only one out of every three crimes for which they were charged**. This indicates a negotiation strategy used by prosecutors to compel a plea agreement. The Arizona Prosecuting Attorneys’ Advisory Council (APAAC) describes it this way:

A prosecutor may, in the course of a plea negotiation, confront a defendant with the possibility of a more severe penalty if he refuses to deal. In *Bordenkircher v. Hayes*, 434 U.S. 357, 98 S.Ct. 663 (1978), the court held that the Due Process Clause of the Fourteenth Amendment was not violated when a state prosecutor carried out a threat made during plea negotiations to re-indict the accused on more serious charges if he did not plead guilty to the original charge.²⁹

Geographic Disparities

Interestingly, our research found a strong correlation between geography and number of charges in Arizona. Yavapai County has a higher average number of charges per case, with 6.10 per person compared to 2.54 and 3.04 in Maricopa and Pima, respectively. Yavapai also sends people to prison for longer sentences, with 4.22 years being the average compared to 2.46 years from Maricopa and 2.57 years from Pima.

Ostensibly, this is linked to the fact that Yavapai, a much smaller county than Maricopa, has fewer cases to contend with and more time to devote to the process. By contrast, the larger counties with higher caseloads are more likely to simply apply the minimum number of charges to convince the defendant to take a plea and move the case on through the system.

It is a phenomenon that is not unique to Arizona. A 2016 analysis published in the New York Times revealed that, “Just a decade ago, people in rural, suburban and urban areas were all about equally likely to go to prison. But now people in small counties are about 50% more likely to go to prison than people in populous counties.”³⁰ The study confirmed that this divide is not related to different rates of crime, which decreased in all areas. Instead, it is clearly the result of policies and procedures related to arrests, prosecution, and charging for crimes, as well as aggressive monitoring of individuals on probation and high rates of re-incarceration for probation violations.³¹

This disparity highlights a fundamental failure of mandatory sentencing. While sentences may be pre-determined, the tremendous discretion wielded by prosecutors allows for charges to be applied differently in different counties, undermining the stated goal of removing bias in the system. Arizonans rightly expect people to be treated the same in the criminal justice system regardless of where they live. The fact that rural Arizonans may be treated more harshly than their urban counterparts is cause for concern.

AFSC Drug Research 2015 Data by County

	Number of people charged	Number of charges	Avg. Charges per person	Avg. Years prison sentence
Maricopa	669	1699	2.54	2.46
Pima	447	1358	3.04	2.57
Yavapai	145	885	6.10	4.22

Drug Incarceration

Arizona has the 5th highest incarceration rate in the United States.³² Statistics from the Arizona Department of Corrections (ADC) show 21.8% of those in prison in 2016 were serving time for a drug related crime as their *most serious* charge. That is more than any other crime.

Top 10 Commitment Offenses in Arizona Prisons, 2016³³

Offense Category	Percent of AZ Prison Population
1. Drug Offense	21.8%
2. Assault	12.8%
3. Robbery	8.4%
4. Burglary/Criminal Trespass	7.6%
5. Murder	7.1%
6. Sex Offense	6.2%
7. Weapons Offense	4.4%
8. Auto Theft	4.2%
9. DUI	4.1%
10. Child Molestation	4.0%

ADC offers a further breakdown of the population incarcerated for drug offenses:

People Incarcerated for Drug Offenses in Arizona, 2016³⁴

Offense	Number of Prisoners	Percent of drug offenses
Possession		
Marijuana	205	2.2%
Methamphetamine	2,049	21.9%
Other	969	10.3%
Trafficking		
Marijuana	1,918	20.5%
Methamphetamine	2,780	29.7%
Other	1,448	15.4%
Total ADC Drug Offenses		
Marijuana	2,123	22.7%
Methamphetamine	4,829	51.5%
Other	2,417	25.8%
TOTAL	9,369	

With the estimated 2015 per diem of \$64.93 a day to house a person in prison, **Arizona is spending \$588,655 per day to house people whose worst crime is a drug offense.**

Women and Drug Incarceration

Arizona has the fourth highest female incarceration rate in the country, with 104 women behind bars per 100,000 population.³⁵ In 2015, there were 4,028 women in Arizona prisons, about 9.4% of the total prison population.³⁶ This mirrors a national trend. Between 1980 and 2014, the number of incarcerated women in the U.S. increased by more than 700%, rising from a total of 26,378 in 1980 to 215,332 in 2014.³⁷ This rate of growth outpaced the increase in incarceration of men by 50%.³⁸

A full **32% of women incarcerated in Arizona were sentenced for drug crimes**—the largest offense category by far.

Women are particularly vulnerable to opioid use and addiction. According to the American Society of Addiction Medicine, women are more likely to have chronic pain, be prescribed pain relievers, be prescribed higher doses, and use pain relievers for longer periods than men. Women may become dependent on prescription pain relievers more quickly than men. And prescription pain reliever overdose deaths for women increased more than 400% between 1999 and 2010, while heroin overdoses for women tripled between 2010 and 2013.³⁹

The data on opioid use and overdose deaths being collected by the Arizona Department of Health Services under Governor Ducey's Executive Order sadly reflects these trends. Of the 851 possible opioid overdoses reported between June 15 and July 13 of 2017, **40% were women.**⁴⁰

There are critical factors unique to women that may explain these disturbing trends. First, women have higher rates of mental disorders. Research at Oxford found women are approximately 75% more likely than men to report a recent episode of depression and 60% more likely to report an anxiety disorder. Secondly, women are found to experience trauma, discrimination, and stressful life experiences at higher rates than men. Roughly half of all women report some experience of trauma, which correlates with a higher likelihood of drug abuse.⁴¹

Unfortunately, gender differences also result in a treatment gap for women. Women typically wait longer to acquire treatment because of their role as caregivers, particularly as mothers. Sometimes the barriers are logistical, such as having no one to watch the children during a multi-day stay in detox. Other times custody is the issue—women do not seek treatment out of fear of losing custody of their children.⁴² Treatment must be tailored to address these unique issues and made accessible for women.

Frontline Perspective: Proposition 200

“If it is a first or second drug charge, you are placed on probation. But there are a lot of people who will relapse during their period of probation—if you read the science on addiction that’s to be expected. I have had two maybe three times where a client relapsed and the prosecutor petitions to revoke their probation, but I was able to convince a prosecutor to agree to keep them on the program... two to three times out of hundreds of cases.”

– Jared Keenan, Yavapai County Public Defender

Sentences for Drug Possession

Arizona has a strangely contradictory approach to drug crimes. In 1996, Arizona voters passed the “Drug Medicalization, Prevention and Control Act,” also known as Proposition 200, which mandated that first and second-time drug possession offenses be diverted from prison into probation and treatment. The Arizona Supreme Court reported that the law saved the state more than \$2.5 million in its first fiscal year. Arizona Appellate Court Judge, Rudy Gerber, lauded the program, saying, “As it turns out, [the law] is doing more to reduce crime than any other state program, and saving taxpayer dollars at the same time.”⁴³

The law has been so successful that many of the proposed drug reforms introduced in other states in recent years are modeled after it. It is often cited by Arizona prosecutors to support their claim that “you have to work really hard to go to prison in Arizona.”

However, the law is far from comprehensive. In 2007, voters approved Proposition 301, “Probation for Methamphetamine Offenses Act,” to exclude those charged with possession of methamphetamine from eligibility for Proposition 200 diversion.⁴⁴ Individuals found in possession of methamphetamines can and do go to prison for a first or second drug offense. This is reflected clearly in the data from ADC above. Of all possession offenses for which people are incarcerated in Arizona, those imprisoned for possession of methamphetamine are the largest category by far (21.9%).

Even for those fortunate enough to be diverted through Proposition 200, a third conviction of drug possession results in extremely harsh sentencing. Simple drug possession convictions can range anywhere from a Class 6 felony, the lowest level, to a Class 4, with a minimum prison sentence of six years if convicted at trial.

Any amount of drugs on a person can trigger a charge for



possession. In place of a specific measurement, the term “usable” was frequently used in police reports collected for this study. This can include drug residue inside a pipe, baggie, or other paraphernalia. A 1970 Arizona Supreme Court case upheld “usable” for convicting people for as little as 0.00036 grams of a drug.⁴⁵ Individuals can even be charged with “internal possession,” where they admit to using within the last 72 hours and have a positive urinary analysis test.

In 33.57% of all possession charges in this study, “usable” possession charges in this study, “usable” was the only description of the quantity of drugs found. Another 51.42% of the cases studied had possession charges for under 2.5 grams—less than the weight of a U.S. penny.

Sentences for Drug Sales

While there are guidelines that explain the amount of drugs that can trigger a charge of “drug sales” in Arizona, this threshold only applies if the defendant has no prior criminal convictions. If the person does have prior convictions, they can be charged with sales of a drug for selling or attempting to sell *any* amount of drugs.

Our research found over one-quarter of cases where a sales charge was brought for a sale of *less* than the legislative threshold.

Narcotic or methamphetamine drug sales are Class 2 felonies regardless of the amount of drug or circumstances. This is just under the felony level of first degree murder. Marijuana sales fall between Class 2 and Class 4, depending on the amount sold. Because of this, non-violent addict-sellers can get prison terms longer than individuals convicted of violent offenses.

A person with a drug addiction may sell drugs in order to support their habit and prevent withdrawal symptoms. If they are caught selling, even if it is a small amount and addiction is apparent, they are

treated the same as a professional drug trafficker. A conviction for drug sales increases the mandatory minimum sentence from simple possession by more than two fold, to four years.

The research found that this was even more drastic for people with even one previous conviction. On average, prison time for marijuana possession was 1.25 years, but for sales it jumped to 3.75 years. For narcotics, possession was 2.67 years, and sales was 5.31 years, and for methamphetamines possession was 2.65 years while sales resulted in 5.65 years behind bars. See Appendix 2 for details.

Racial Disparities

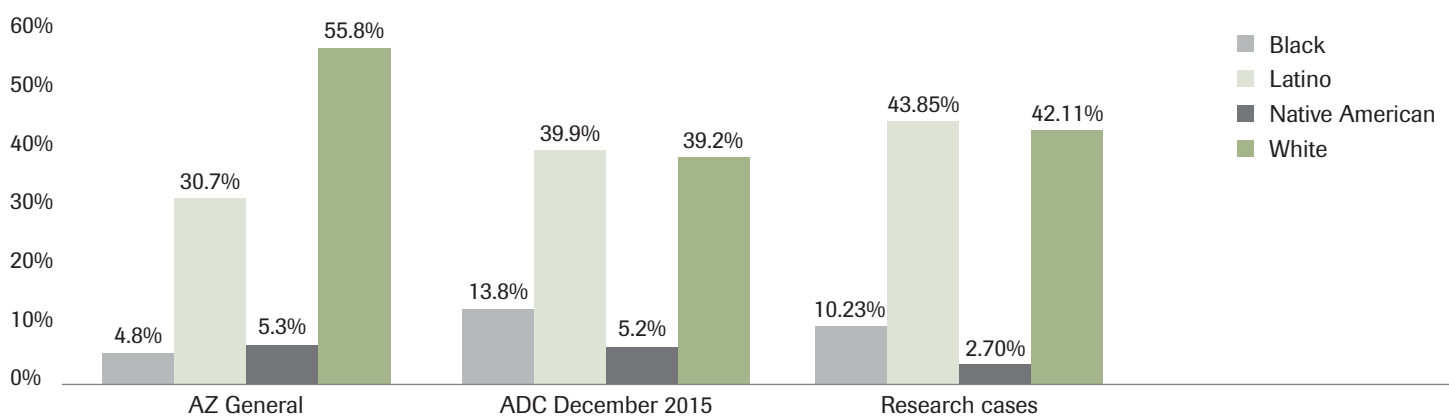
The Arizona Department of Corrections (ADC) releases monthly reports entitled *Corrections at a Glance*, that includes “Ethnic Distribution.” Comparing this to U.S. Census Bureau data from 2015, Latino and Black people are overrepresented in Arizona state prisons.

Yet when it comes to sentencing, very little research has been conducted on racial disparities. The Arizona Prosecuting Attorneys’ Advisory Council (APAAC) *Prisoners in Arizona* reports offer no data correlating with race or ethnicity, not even mentioning the word “race.”⁴⁶ Not tracking racial information prevents identification of biases or discrimination within the system.

In Arizona, Black people make up only 4.8%⁴⁷ of the total general population, but 11.5% of those arrested⁴⁸, and 13.8% of the ADC population⁴⁹ This data cannot be analyzed the same way for whites and Latinos, as the *Crime in Arizona* report from which arrest data is gleaned does not distinguish between white-Hispanics and non-white-Hispanics.

This is an ongoing problem for understanding the influence of the criminal justice system on the Latino community.⁵⁰ For the purposes of this report, the classification of Latino for a person is used as a

Population by Race/Ethnicity



Source: U.S. Census Bureau and Arizona Department of Corrections

stand-alone racial label, as it is within the ADC. From this we can compare the number of Latinos population identified in Census data, 30.7%, with those in prison, 39.9%.

The research showed serious disparities in sentence lengths for the same charges between racial groups, as well as in the sentencing results compared to number of charges filed.

Racial Disparities in Charging Drug Possession

Possession is the lowest of drug charges, and the one most linked to addiction. Understanding existing racial biases in this is critical, especially when the theory behind mandatory minimum sentencing is supposed to reduce a prejudice sentence.

The data collected is consistent with other national study findings, that Blacks are sentenced to prison at a higher rate for possession of drugs. This is true across the board, for marijuana, methamphetamine, and narcotics. The chart below explains this in detail.

Marijuana Possession			
	Number of Possession Charges	Number of Guilty/Plea to Other	Percent Guilty/Plea to Other
Black	28	13	46.33%
Latino	62	19	30.65%
Native American	11	4	36.36%
White	93	24	25.81%
Dangerous Drug Possession			
	Number of Possession Charges	Number of Guilty/Plea to Other	Percent Guilty/Plea to Other
Black	57	49	85.96%
Latino	182	145	79.67%
Native American	31	20	64.51%
White	372	306	82.26%
Narcotics Possession			
	Number of Possession Charges	Number of Guilty/Plea to Other	Percent Guilty/Plea to Other
Black	41	26	63.41%
Latino	104	61	58.65%
Native American	7	4	57.14%
White	137	69	50.36%

From the research, we see that people of color go to prison at a higher rate for possession of drugs, with Black people having the highest rate in every area. This is especially concerning, as the Black population is actually underrepresented in this study as compared to the 2015 ADC population.

Racial Disparities in Sentence Lengths

Sentencing codes in Arizona are extremely complex and intricate, and actual sentences can be influenced by a myriad of different factors, one of the most critical being the intentions of the prosecutor. This makes it challenging to provide a broad analysis of sentencing between races. In the following graphs, variables were isolated to show the closest comparison. These are results for people who had no other peripheral crimes (i.e. DUI, Theft, Forgery, etc.) and were charged only with drug crimes.

Average Prison Sentence (months) Methamphetamine Possession, with Prior Convictions	
Black	33.29
Latino – U.S. Citizen	30.67
Latino Non-U.S. Citizen	24
Native American	25.89
White	32.55
Average Prison Sentence (months) Marijuana Sales, No Prior Convictions	
Black	43
Latino – U.S. Citizen	29.66
Latino Non-U.S. Citizen	21.27
Native American	18 ⁱⁱ
White	27.75

Clearly, more data and further analysis is critical in order to investigate the cause of these disparities and to determine what possible policy or procedural changes are needed to ensure that all Arizonans are treated equally under the law.

Crack vs. Powder:

One sentencing difference that is frequently held up as both demonstrating outright bias in its intention as well as its impacts is the variance between penalties for Crack vs. Powder Cocaine.

In the 1990's when the crack epidemic was at its height and tough-on-crime sentencing was politically popular, the federal government and many states, including Arizona, introduced so-called "zero

ⁱⁱ This was the single charge for a Native American in this category. There is likely a greater disparity. Further research is needed.

tolerance laws” promoting harsh sentencing for drug crimes. Many of these laws allowed for lower thresholds and/or longer sentences for crack cocaine than for the powder form of the drug.

These policies were justified through sensational media coverage of “crack fiends” and racially-charged images of inner city neighborhoods ravaged by drug crime and babies born addicted to the drug. These disparities contributed to higher rates of incarceration among Black communities, particularly at the federal level where it was found that Black people served virtually as much time in prison for non-violent drug offenses as whites did for violent offenses.⁵¹

As a result, in 2010, Congress passed the Fair Sentencing Act (FSA), which reduced the sentencing disparity between offenses for crack and powder cocaine. And in 2011 the U.S. Sentencing Commission made the law retroactive, allowing over 12,000 people—85% of whom are Black—to have their sentences for crack cocaine offenses reviewed by a federal judge and possibly reduced. **In Arizona, we still have a 12:1 disparity in crack vs. powder cocaine sentencing.** In other words, it takes 12 times as much powder cocaine as crack cocaine to receive the same sentence. Nine grams of powder cocaine or 750 milligrams of cocaine base trigger five-year prison terms for sales offenses.

Racial Disparities in Number of Charges

Our research indicated that people of color, specifically Black people, frequently had fewer charges but received longer prison sentences. The chart below is for all crimes, including the peripheral crimes that people are charged with in association with drug crimes (i.e. robbery, forgery, DUI, etc.). **Black people are likely to serve more prison time for fewer charges.**

All Charges Racial Disparities ⁱⁱⁱ			
	Avg. Number of charges	Avg. Months sentenced to prison	Months per charge
Black	2.74	43.76	15.97
Latino	2.75	32.71	11.89
White	3.56	42.01	11.80

While this research did include all charges (including non-drug crimes) in a case, one might assume that this variation was based on the severity of the crime. Therefore, we also ran the results while isolating the information to drug charges only.

Even when isolating drug crimes, the pattern persisted, showing that Black people are given fewer charges, but are sentenced to more months in prison per drug charge. **Overall, Black people are sentenced to 25% longer for drug crimes in Arizona.**

Drug Only Charges: Racial Disparities			
	Avg. Number of charges	Avg. Months sentenced to prison	Months per charge
Black	2.59	40.58	15.66
Latino	2.58	32.15	12.46
White	3.33	40.96	12.30

These racial disparities are very concerning. People of color in Arizona do not commit more crime than their white neighbors, but they are sent to prison at a higher rate and for longer amounts of time. More data and study of these and other factors are needed to determine whether there is inherent bias in the criminal justice system and how to address it to ensure fairness and impartiality.

ⁱⁱⁱ Native American numbers were excluded from this chart due to the small sample size in the research. Further study is needed.



Conclusions

This research provides only a snapshot of drug sentencing in Arizona, and further study is needed. It is critically important for state agencies and sentencing courts at all levels to collect consistent data in order for government actors, agency personnel, and the public to have an accurate picture of the effectiveness, cost, and outcomes of our criminal justice system. However, this research indicates critical problems related to drug sentencing in Arizona.

Cost

The researched sample is a small representation of those sentenced to prison for drug and drug-related crimes in Arizona. Nevertheless, together, the 1,261 cases represent an astounding **3,947 years of prison time and over \$93.5 million in prison spending**. This price tag does not include the cost of police, county jail processing and housing, court staff, county attorneys, or public defenders for judicial proceedings.

The Arizona Department of Corrections' budget is now over \$1 billion and makes up 11% of the state's general fund. That's an increase of 40% in seven years.⁵² According to the most recent National Association of State Budget Officers report, Arizona ranks fourth highest among all 50 states in the percentage of total general fund expenditures on corrections.⁵³

By comparison, spending on economic security in Arizona dropped 23.7% since 2007 and spending on K-12 education has gone through hills and valleys, with only a net 2.8% increase, according to the Joint Legislative Budget Committee. A report by the Grand Canyon Institute revealed that the state is now spending 60% more on prisons than on state colleges and universities.⁵⁴

Decades of research and experience in the field shows that drug treatment is a far more effective and less costly intervention than incarceration. A 2013 study published in *Crime & Delinquency* found that diverting substance-abusing state prisoners to community-based treatment programs rather than prison could reduce crime rates and save the criminal justice system billions of dollars relative to current levels. The savings are driven by immediate reductions in the cost of incarceration and by subsequent reductions in the number of crimes committed by successfully-treated diverted offenders, which leads to fewer re-arrests and re-incarcerations. The criminal justice costs savings account for the extra cost of treating diverted offenders in the community.⁵⁵

These findings are borne out in Arizona as well:

	Cost per person, per year
Prison	\$24,229 ⁵⁶ (Average \$66.38/day)
Jail*	\$32,985 ⁵⁷ (\$90.37/day)
Drug Court*	\$3,309 ⁵⁸
Drug Treatment	\$3,085 ⁵⁹
Standard Probation*	\$1,919.90 ⁶⁰ (\$5.26/day)
Intensive Probation*	\$7,442.35 ⁶¹ (\$20.39/day)

*Data for Maricopa County only

Impacts

The actual expenditure in corrections is only a fraction of what Arizona's high incarceration really costs.

Arizona has the fourth highest female incarceration rate in the country, with 104 women behind bars per 100,000 population.⁶² In 2015, there were 4,028 women in Arizona prisons—about 9.4% of the total prison population.⁶³ **A full 32% of female prisoners were sentenced for drug crimes.**

Nationally, more than 60% of women in state prisons have a child under the age of 18.⁶⁴ There are close to 100,000 minor children with imprisoned parents on any given day in Arizona. Tens of thousands more currently have a parent on probation. Children of incarcerated parents are among the most vulnerable populations. Incarceration of one or both parents leads children to become wards of the state, placed in the foster care system and dependent on other safety net programs. Often impoverished, they are at high risk for neglect and abuse, academic and behavioral problems, delinquency, and substance abuse. If unattended, these problems can lead to intergenerational patterns of incarceration.⁶⁵

Criminal convictions come with a host of "collateral consequences" that make it extremely difficult to become or remain self-sufficient.

Barriers to housing, employment, professional licensure, education, public assistance, voting, and other critical programs and services essentially set people up to fail, contributing to Arizona's high recidivism rate. It is impossible to accurately calculate the lost wages, loss of potential tax revenue, decreased buying power, impact on home ownership and property values, and myriad other financial burdens posed by having such a high percentage of Arizona's population as a permanent underclass.

These negative impacts are endured disproportionately by communities of color. As discussed above, people of color are disproportionately⁶⁶ incarcerated in Arizona,⁶⁷ despite the fact that the majority of arrests are of white people.⁶⁸ **Latinos now make up the single largest ethnic/racial group in Arizona's prisons at 40%.**

And evidence gathered through this research indicates that people of color receive harsher penalties for the same drug crimes as their White counterparts:

- Black people are sentenced to prison at a higher rate for possession of drugs than any other racial or ethnic group.
- Black people serve longer sentences for the same crimes compared to whites.
- Latinos are the largest ethnic category of incarcerated individuals in Arizona prisons, representing 40% of prisoners (compared to about 35% of the state population).

Effectiveness

Incarceration as a response to drug addiction is a failed strategy. The Pew Charitable Trust's Public Safety Performance Project recently released a study that revealed that **high incarceration rates for drug crimes do not reduce drug use or drug related crime.** Pew compared state drug offender imprisonment rates with three important measures of state drug problems: self-reported drug use rates (excluding marijuana), drug arrest rates, and drug overdose death rates. The analysis found no statistically significant relationship between drug imprisonment and those indicators. In other words, **higher rates of drug imprisonment did not translate into lower rates of drug use, lower drug arrests, or lower overdose deaths.**⁶⁹

The study looked at all 50 states, and the findings with regard to Arizona were striking. Arizona has the **5th highest rate of drug incarceration** in the country, the **15th highest rate of overdose deaths** and the **3rd highest rate of adult drug use.** The data soundly disproves the theory that harsh sentences will deter drug use.

The belief that people will "get clean" while incarcerated is also unfounded. Only 1.70% of people in Arizona's prisons in December 2015 were receiving addiction services, despite 75% being assessed as having significant substance abuse histories.⁷¹ Rehabilitative programming of virtually any kind is extremely limited in the Arizona Department of Corrections. Many people who are incarcerated are barred from participation in such programs due to their security classification, length of sentence, or even geographical location (prisons in rural areas have difficulty providing access to treatment services).

Even as the amount of money funneled into the corrections budget has increased by more than 28% in the last decade, services for rehabilitation have not been the priority. In December 2016, 1.79% of those in state prisons are obtaining addiction treatment, raising only slightly since the previous year.⁷² When drug crimes make up the biggest chunk of prison commitments, and almost 50% of people return to prison, it is obvious the system is not working.

There is also evidence that the experience of incarceration results in worse outcomes for people with substance abuse issues. There are factors in many prisons that have negative effects on mental health, including: overcrowding, various forms of violence, enforced solitude or conversely, lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects (work, relationships, etc.), and inadequate health services, especially mental health services. The increased risk of suicide in prisons (often related to depression) is, unfortunately, one common manifestation of the cumulative effects of these factors.⁷³

Simply put, **criminalization of drug addiction is a failed strategy.** It is based on faulty logic and assumptions, namely, that addiction is a personal or moral defect and drug use is a conscious choice to break the law.

2014 Drug Imprisonment and Drug Use Indicators by State⁷⁰

	Drug Imprisonment			Drug Use Indicators		
	Drug prisoner Count	Drug incarceration rate	Drug incarceration rate ranked	Overdose death rate (rank)	Drug Arrest Rate (rank)	Adult Illicit Drug Use Rate (Rank)
Arizona	9,483	140.9	6	18.0 (15)	440.8 (21)	3,933.7 (3)

Adopting a Public Health Approach

The clear majority of people involved in the criminal justice system are struggling with addiction. The consensus from doctors and addiction counselors is that punishment is ineffective in addressing this issue. According to research that tracks individuals in treatment over extended periods, most people who get into and remain in treatment stop using drugs, decrease their criminal activity and improve their occupational, social, and psychological functioning.⁷⁴

The best practice model for addressing drug addiction is to treat it as a chronic disease rather than as willful criminal behavior. In a groundbreaking report on addiction, the U.S. Surgeon General stated, “It’s time to change how we view addiction. Not as a moral failing but as a chronic illness that must be treated with skill, urgency and compassion. The way we address this crisis is a test for America.”⁷⁵

This fundamental difference in how the behavior is viewed leads to strikingly different approaches, with significantly different outcomes. The most critical piece of this public health approach is understanding the nature of relapse.

The chronic nature of the disease of drug addiction means that relapse is not only possible but likely. Unfortunately, when relapse occurs many deem treatment a failure or view it as a refusal on the part of the individual to amend his or her behavior.

Successful treatment for addiction typically requires continual evaluation and modification as appropriate, similar to the approach taken for other chronic diseases such as diabetes, hypertension, and asthma. For example, when a patient is receiving active treatment for hypertension and symptoms decrease, treatment is deemed successful, even though symptoms may recur when treatment is discontinued. For the addicted individual, lapses to drug abuse do not indicate failure—rather, they signify that treatment needs to be reinstated or adjusted, or that alternate treatment is needed.⁷⁶

Yet the criminal justice model approach to relapse is to award harsher punishments, often leading to increased prison time. This is not only counter-productive, it is a needless waste of scarce budget dollars.

Arizona is at the tipping point to make real change in drug sentencing. Policy can move toward a public health, evidence-based approach to addressing drug addiction while saving lives, families, and money. These changes will prevent the trauma of incarceration as well as the collateral consequences of a felony conviction, such as employment and housing discrimination.

Frontline Perspective

“I would like to see more individual treatment plans and more ... options for those who don’t have health insurance at all, let alone good insurance... let’s implement some new life skills, let’s talk about what’s paining you? How was your family life growing up? What traumas have you gone through? If you don’t find that stuff out and work through it, you’re basically returning a person back into the same environment, and expecting them to succeed now that they don’t have drugs in their system.”

– Anonymous Interviewee, Person with Addiction History

Practical Policy Recommendations

During his State of the State address in January 2017, Arizona Governor Doug Ducey made multiple references to the need to address recidivism and addiction. As of this writing, Ducey has announced two Executive Orders which target aspects of drug abuse; *Establishing Substance Abuse Program for Individuals Exiting Prison*, and *Enhanced Surveillance Advisory*.⁷⁷ In declaring the opioid epidemic a health emergency, the Governor is moving toward a treatment based approach.

While these are important steps forward, they are not enough to truly address the nature and impacts of substance abuse and addiction in Arizona. The greatest cost savings and public safety outcomes are generated by diverting people from incarceration, instead of waiting for them to be convicted and incarcerated before providing them with help.

The best practices in the field recommend providing treatment *outside* the realm of the criminal justice system wherever possible. Any criminal-justice related interventions should be calibrated to the level of risk posed by the person. Individuals should be placed on the least restrictive forms of supervision possible for as short a time as necessary. Incarceration should be reserved for those who truly pose an immediate threat to public safety.

If effective treatment programs were available on demand for every person in the state who needs them, there is no doubt that our prison and jail populations would shrink considerably. Probation officers, attorneys, emergency room nurses and doctors, public health advocates, and former drug users have expressed a need for treatment based approaches, but the main impediment in many cases is the lack of funding for such services.

The way to correct this problem is to use a **justice reinvestment approach** to sentencing reform and policy change. Cost savings from reductions in the prison population should be directed toward community-based programs that provide treatment, prevent crime, divert offenses, and increase community security.

The following is an outline of options for Arizona that can increase safety, address addiction and reduce the prison population:

1. Require Standardized Data Collection and Analysis

The current lack of consistent, aggregate data on arrests, prosecutions, and incarceration for drug offenses (or any other offense, for that matter) is unacceptable. As it stands, no one knows how well the State's criminal policies are performing, or what their impacts or true costs might be. This leaves lawmakers, community leaders, agency heads, and other stakeholders without any foundation on which to base proposed policy changes or new legislation.

Criminal justice systems actors—including the Arizona Criminal Justice Commission, the Administrative Office of the Courts, prosecuting attorneys and defense attorneys—should work together to develop a standardized data gathering process across Counties and courts to collect information on arrests, charging, plea bargaining, use of sentence enhancements, sentencing outcomes, and other related metrics to enhance our collective understanding of the current functioning of our system.

Aside from data used to prosecute, a standardized data collection must include information on demographics, particularly gender, race, and ethnic data, to address the serious problem of disparities.

2. Defelonize Drug Possession

No matter how many times a person is found in possession of drugs, sending them to prison is a waste of money and likely only to increase their chance of recidivism. Incarceration does not address addiction and the experience can produce trauma for the individual, worsening their dependency. Costly prison beds should be reserved for those who truly pose a threat to public safety, not for people who have a disease. By not imprisoning those with addiction, monetary resources can be used to stop the problem before it spirals into criminal behavior, the erosion of a family, or the loss of life. In recent years, several states have moved to decriminalize drug possession, including Utah, South Carolina, and most recently, Oregon.

In one year in Pima County, 60.39% of people were charged with possession for 2.5 grams or less of a drug. We can assume these are likely individuals struggling with an addiction. Seventy-six percent of these individuals went to prison for their possession, not probation or treatment. They were sentenced collectively to 352 years in prison, meaning that this **one county, in just one year cost taxpayers over \$8.3 million to incarcerate people charged with low-level possession.**

Imagine how many treatment beds, counselors, medications, and other services Pima County could provide with an investment of \$8.3 million each year—and how much more that investment would do to actually address the disease of addiction.

3. Expand Non-Criminal Justice Interventions

What has been termed the “treatment gap” is rampant in the U.S. and Arizona for those who want to treat their addiction. In 2013, an estimated 22.7 million Americans (8.6%) needed treatment for an alcohol or drug addiction, but only about 2.5 million people (0.9%) received treatment at a specialized facility.⁷⁸

Frontline Perspective: Drug Addiction Treatment

“You have addiction, you have mental illness, then you have co-occurring [morbidities]. Like with methamphetamine, you might have methamphetamine psychosis, but as soon as they’re off the methamphetamine they’re not psychotic. It was the drug that was pushing it. So you have to get an assessment, get them into treatment, let the professionals do those assessments and out.”

– John Morris, Chief Adult Probation Officer, Yavapai County

Drug treatment, trauma counseling, and medical care should be the first line of defense against the disease of addiction, not state surveillance or incarceration. Aside from being more effective, one report found that for every dollar spent on substance use disorder treatment saves \$4 in health care costs and \$7 in criminal justice costs.⁷⁹ Types of drug treatment vary, and like any other health issue, different treatments work for different people. The following programs have been recommended by the U.S. Surgeon General as proven options for reducing addiction without criminalizing the individual:

Medical Monitoring: This can include hospitalization for withdrawal symptoms and pharmacotherapy services such as Methadone, Vivitrol, or Suboxone—medications used to treat withdrawal symptoms and reduce relapse. Remaining under supervision and monitoring for medication use is key, and people must be able to receive these services without the fear of later prosecution or incarceration to ensure recovery and safety.

Residential Treatment: This is an option for acute addiction and for those who need to be removed from a negative environment and obtain intensive inpatient treatment. Current programs exist, but are expensive and have long waiting lists. Increasing the number of programs and requiring implementation of evidence based practices, such as behavioral therapies, counseling, and mental health screenings, is vital.

Intensive Outpatient Services: Outpatient services allow people to maintain their lives, keeping their job or taking care of a family, while being supported in recovery. Individualized treatment plans are essential. People using drugs are often self-medicating due to past trauma, can suffer from co-occurring disorders, and/or have severe medical needs. Individualized treatment can address the spectrum of a person’s needs to move toward recovery without a damaging interruption in their life.

4. Restructure Drug Sentences

To be charged with possession of drugs in Arizona, a person can have any amount of drugs, including nothing more than residue. Individuals can even be charged with “internal possession,” if they admit to using within the last 72 hours and have a positive urinary analysis test. The same criteria applies to be charged with sales of drugs. As long as there is evidence of a sale, even if it is a small

amount to support a person’s addiction, regardless of the amount, is an automatic Class 2 Felony—the same as manslaughter, aggravated assault, kidnapping, and armed robbery. Arizona drug thresholds are some of the broadest in the U.S., including states with similar populations and factors such as proximity to the U.S./Mexico border.

It is impossible to punish addiction out of a person. The application of sentence enhancements, particularly for people with prior convictions related to addiction is inappropriate and counter-productive. And the fact that the most common enhancement for a prior is to eliminate the option of probation—where the individual is most likely to receive meaningful treatment and support—is a cruel irony.

The nature of addiction dictates that people are likely to relapse. Treating a relapse as a willful repeat offense instead of a symptom of a chronic health condition simply criminalizes behavior over which people have little control. Our sentencing guidelines must reflect the latest scientific understanding of the nature of drug addiction to truly address the problem and reduce recidivism.

Far from stemming drug use or making communities safer, these overly harsh laws have served to clog our prisons with drug addicts, deny them meaningful treatment while incarcerated, and then release them with a felony conviction that bars them from meaningful employment, safe housing, or other critical services.



Poisoning vs. Drug Overdose vs. Motor Vehicle Deaths: Arizona Residents, 2004–2014



Source: Arizona Department of Health Services

An independent, bipartisan review of all of Arizona’s current drug sentencing statutes and charging practices is a necessary first step. Such a review should rely on the best practices in addiction medicine and evidence-based approaches in the field to determine a fair, consistent, and effective sentencing scheme for addiction-related offenses.

5. Utilize Public Health and Harm Reduction Approaches

In Arizona, the number of deaths involving heroin continues to rise and has more than doubled since 2010. Drug overdoses overall are a higher rate of deaths in the state than motor vehicle accidents.⁸⁰

The Arizona Department of Health Services recorded 955 deaths from drugs in 2015⁸¹, but this number is likely conservative. Drug overdoses can be mislabeled as heart failure, acute respiratory failure, suicide, and more. If a family decides not to have an autopsy, the toxicology report will not be done to list drugs as the catalyst for death. For these reasons, we can assume that the rate of drug overdose deaths is higher.

The rhetoric around drug use being a choice allows public health issues, such as the rise of Hepatitis C or HIV/AIDS from drug use, to be seen as a justified consequence of drug use. This is dangerous for all people in Arizona, not just drug users. These are highly contagious, communicable diseases whose spread can be greatly reduced through basic public health approaches to drug addiction, such as the implementation of Good Samaritan Laws, clean needle exchanges, supervised injection facilities, or opioid urgent care centers.

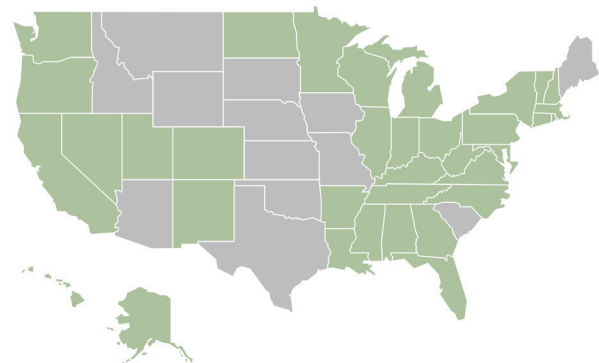
911 Good Samaritan Laws: 911 Good Samaritan Laws exempt people who call 911 for help during a drug overdose from arrest and prosecution of drug possession crimes. At the time of this report, 37 states and the District of Columbia have passed 911 Good Samaritan Drug Laws.⁸²

This law saves lives. 911 Good Samaritan laws have been supported by police and emergency medical technicians (EMTs), as they are often the first to respond to overdose emergencies.⁸³

Clean Needle Exchanges: Also known as syringe access, these laws allow for people or organizations to provide those who use an intravenous drug with sterile needles without fear of arrest or punishment. Implementation of such programs has occurred in various states and cities, from all political ideologies.

Opioid Urgent Care: Using the same process as general urgent care centers, the opioid urgent care model allows those who want addiction treatment rapid access to treatment, counseling, and healthcare resources. Targeted marketing is needed to draw in the affected populations, but the structure can be integrated into the general healthcare model over time, evolving addiction treatment into a norm and not a taboo.

States with 911 Good Samaritan Laws



Source: National Conference of State Legislatures 2017

Frontline Perspective: Good Samaritan Laws

“The only time I’ve seen that come into effect is when I was doing an EMS rotation. . . when we got there we saw the woman wasn’t breathing. She didn’t have a pulse and we determined it was from an opiate overdose. And the man in the house with her, who was the one who called 911, said he delayed in calling because he had a warrant out for his arrest and he was scared what would happen to him. And, so, it was probably too late for her, but if he had called sooner it might have been fine.”

- Dr. Melody Glenn, Emergency Medicine Physician

Frontline Policy: Clean Needle Exchanges

Following a dramatic 1480% increase in HIV infections in 2015, then Governor of Indiana, Mike Pence passed Executive Order 15-05, implementing a 30-day clean needle exchange program. Other programs under the order included educational outreach and the suspension of criminal punishments. Since its implementation, the number of new cases of HIV tied to the Scott County outbreak has fallen significantly. At the peak of the outbreak in 2015, 22 new cases were reported in one week, and Scott County saw nearly 180 cases as of late August 2015. Between November 2015 and Dec. 16, 2016, only 31 cases were confirmed. The program has been so successful, the Indiana legislature passed House Bill 1438 to extend the program until July 21st, 2021.

Source: Indiana State Department of Health

Frontline Policy: Opioids Urgent Care

Buckhead Urgent Care in Atlanta began opioid focused care in June 2016. The facility offers medical services for withdrawal symptoms, links to medications like Suboxone and Vivitrol, for addiction treatment, and links to counseling. Massachusetts Department of Public Health launched an Opioid urgent care in October 2016 to build addiction treatment into the general continuum of healthcare.

For more information, visit urgentcareatlanta.com/buckhead-opioid-addiction-treatment.

Appendix 1: Methodology

This research was completed to provide context to drug sentencing in Arizona. To date there has not been an intensive study on drug sentencing, the financial impact of overzealous drug laws and prison sentencing, and the biases that exist for drug sentencing in Arizona. Considering that Arizona maintains some of the lowest threshold amounts needed to charge a person for possession of a drug—any amount over zero—and lower than similar states for sales, there needs to be a critical look at these laws and their impact.

Population

The data set for this study was taken from court cases from Maricopa, Pima, and Yavapai counties where a person was charged with a drug crime and sentenced to the Department of Corrections for at least one drug crime. These cases were restricted to January 1, 2015 to December 31, 2015. Any cases where a person was sentenced to a misdemeanor, alternative programs such as drug court, or county probation only were excluded. The exclusion of these scenarios was purposeful, as evaluation was focused on prison sentencing for drug involved crimes.

Maricopa and Pima counties were chosen because they are the two most populated counties in Arizona. In December 2015, 76.1% of the committed population in the Arizona Department of Corrections consisted of people from Maricopa and Pima. Conversely, Yavapai only made up 4.4% of the incarcerated population.⁸⁴ By including both major metropolitan areas and a rural county, an analysis of the variations in policy interpretation and implementation are compared.

The number of cases from Maricopa was arranged into a sample size. Of the 2,927 drug cases in Maricopa in 2015, data was collected for 705, about 24.1%. This sample was a randomized selection to create a representative sample. The margin of error for this sample is 3.3%

There are other non-drug criminal activities recorded in this data set. It is not uncommon for people to commit other crimes to obtain money or goods that can be exchanged for drugs, such as robbery or petty theft, to feed an addiction. In an effort for transparency, all charges were recorded to provide a context for the systemic issues that the criminalization of drug addiction causes. The entire data set can be accessed at afscarizona.org/issues/publications-reports/. The names and identifying information of all people in these cases were removed to protect their privacy.

Sample

	All Researched Entries		Non-Technical Violation Entries	
	CASES	CHARGES	CASES	CHARGES
Maricopa	705 ^[1]	1733	669	1697
Pima	459	1377	447	1354
Yavapai	156	929	145	866

^[1] Random sample of the 2,927 drug cases in Maricopa in 2015 (or 24.2%). The margin of error for this sample is +/- 3.3%

Data Collection

The cases for this study were obtained through the Arizona Public Records Act, A.R.S. § 39-121 *et seq.* Records were requested from the County Attorneys of Maricopa, Pima, and Yavapai counties by the American Friends Service Committee - Arizona office, asking for the following:

- A. Each case number where a person was sentenced to prison for drug conviction
- B. All counts a person was charged with under the case number
- C. Result of each count (i.e. guilty, not guilty, dismissed, etc.)
- D. Amount of drugs that were found in order to charge the person with drug offense(s)
- E. Format of court determining decisions (Jury trial, Plea Agreement etc.)
- F. Race categories
- G. Ethnic categories
- H. Age categories
- I. Gender categories
- J. Citizenship Status
- K. Sentencing amount in months
- L. The enhancements, if any, that were used in sentencing, specifically referring to:
 - a. ARS 13-703
 - b. ARS 13-704
 - c. ARS 13-705
 - d. ARS 13-706
 - e. ARS 13-707
 - f. ARS 13-708
 - g. ARS 13-709
 - h. ARS 13-3419
- M. The priors, if any, that were used in sentencing, including
 - a. Juvenile record priors
 - b. Counts where person was found guilty
 - c. Counts that did not lead to felony conviction
 - d. Counts that did not lead to misdemeanor convictions
- N. If the use of a Plea Agreement, Enhancement, or Prior Record caused a person to be ineligible for probation services

Despite the fact that many of these characteristics are pivotal the length a person is sentenced to prison, the majority of this information is not collected by county attorney offices, public defenders, or courts. The inconsistency between counties for their data collection concerning. While sentencing laws are determined by the state, there appears to be different interpretations between counties.

No county recorded the amount of drugs a person was arrested for, type of enhancements used in sentencing (if any), priors identified in sentencing (if any), or the probation eligibility status, and many variables were recorded by only one county. Therefore, to collect all the information needed to provide a thorough analysis, researchers used public access information through each counties' Superior Court, reviewed digital files, and pulled court case files when necessary to answer all variables required. Data collection occurred from July to September 2016.

Semi-structured interviews were used in order strengthen, expand, and clarify quantitative findings. Eight interviews were conducted with key actors including, prosecutor and public defenders offices, people in recovery, treatment and prevention organizations, and adult probation. Quotes from these interviews are included in the "Front-line Perspectives" boxes. Three basic questions undergirded the research. These were:

1. What are the options available outside of prison?
2. How do participants think addiction should be managed?
3. Does sending people grappling with substance addiction to prison increase public safety?

Interviewees were informed that the research was part of a larger project with AFSC, which would be published and could be used to support legislative recommendations.

Interviews were separated into two categories based on interviewee affiliation. Interviews with people working within the criminal justice system—such as public defenders, prosecutors, or probation—were asked a subset of questions that focused on charging and sentencing dynamics. Interviews with service providers, and people in recovery were asked to discuss the landscape of addiction and effective responses to substance abuse that increase public safety.

Research participants from Prosecutor's Office, Public Defender's Office, or Adult Probation were asked the following questions:

1. What does the opioid epidemic look like in Yavapai county? Who do you see dealing with opioid addiction in Yavapai County? (age, socio-economic status, racial dynamics)?
2. What sentencing options are available outside of prison, for people with charges related to their addiction?
3. How do you think drug possession cases, where addiction is a driving factor, should be handled? What would you like to see?
4. Our state recidivism rate hovers around 50%. This number is taken from the ADC monthly data that notes that 49.5% of people currently incarcerated had a prior ADC term. This same population demographics set also notes that 75% of people currently incarcerated in Arizona's prisons have a history of significant substance abuse- yet of the more than 33,000 people enrolled in ADC programming, only a total of 725 people are

X mark indicates County collected the information requested by AFSC			
Requested Information from Records Request	Maricopa	Pima	Yavapai
A. Each case number where a person was found guilty of a drug crime and was sentenced to prison for this conviction	X	X	X
B. All counts a person was charged with under each case number			X
C. Result of each count (i.e. guilty, not guilty, dismissed, etc.)			X
D. Amount of drugs that were found in order to charge the person with said offense(s)			
E. Format of court determining decisions (Jury trial, Plea Agreement etc.)	X	X	X
F. Race categories	Each county recorded this, but they were recorded as a single factor, i.e. a person was recorded as Hispanic only. This causes unlevelled data, as someone can identify as a Black-Hispanic, White-Hispanic, etc.		
G. Ethnic categories			
H. Age categories	AGE		DOB
I. Gender categories	X		X
J. Citizenship Status	X		
K. Sentencing amount in months	X	X	X
L. The enhancements, if any, that were used in sentencing			
M. The priors, if any, that were used in sentencing			
N. If the use of a Plea Agreement, Enhancement, or Prior Record caused a person to be ineligible for probation services			

receiving Addiction Treatment. Given this data from the Arizona Department of Corrections, do you think sending people struggling with addiction to prison is an effective public safety response? Does it solve the problem? If yes, why? If not, what is the resolution?

5. Yavapai County prosecutors bring more charges per case than Maricopa and Pima counties, who average 2.79 charges per case. Yavapai county averages 5.97 charges per case. What is your analysis of finding/charging discrepancy?
6. Drug abuse and addiction are widely regarded as forms of mental illness. Do you agree? Why/Why not? Do you believe drug abuse/addiction should be treated as a mental illness instead of or in partnership with criminal justice options? Do you have suggestions for how this might look in Yavapai county?

Medical professionals and people in recovery were asked following questions:

1. What does the opioid epidemic look like in Yavapai county? Who do you see dealing with opioid addiction in Yavapai County? (age, socio-economic status, touchy but- racial dynamics)?
2. Did you know that 75% of people incarcerated in Arizona have a history of significant substance addiction and that only 725 people total receive addiction treatment? Additionally, Arizona Department of Corrections says that 50% of people currently incarcerated have served a prior ADC term (so recidivism rate hovers around 50%). Given this ADC data, do you think prison works in treating addiction? Are there other options available?
3. How do you think crimes related to addiction should be handled?
4. Do you think opioid addiction is a public safety issue?
5. What do you think works?
6. What would you like to see available- as a professional managing this issue- as a person in recovery?

Research Codes

Drug Amounts: Drug amounts were generally listed in police reports from the initial arrest, although sometimes it was necessary to go into court transcripts. Weight was converted to grams if in any other metric (i.e. 4 pounds = 1814.37 grams). However, there were many cases where either, 1) no weight amount was specified, or 2) no information on the amount of drugs was in the case file. The following coding sequence was developed to maintain consistency:

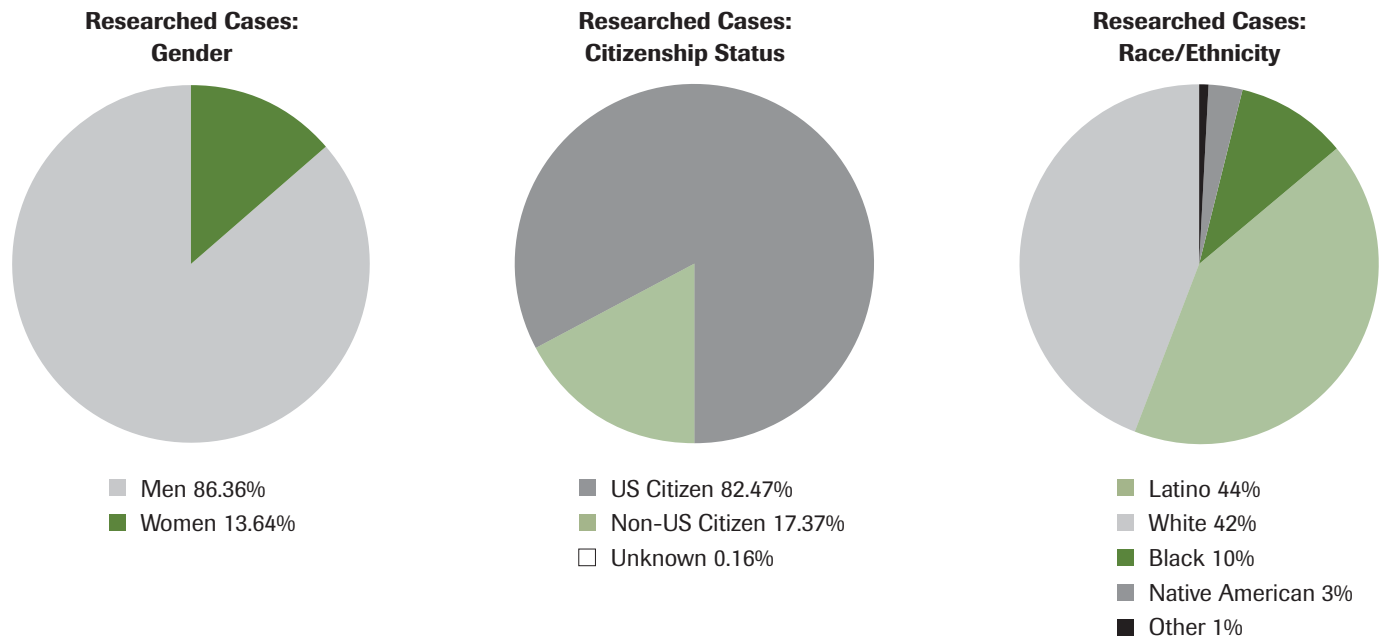
Racial Identity: While researchers did their best in recording racial identity, there were challenges. In Pima, there was no public court document that regularly identified a person's race. In Yavapai, multiple police reports were pre-filled with multiple race/ethnic information, making it unclear. To maintain consistency, researchers were instructed to use DOC data as a cross reference. If there was a difference in the two areas, DOC data was used.

Format for trial: Recorded as the type of format for sentencing. i.e., if someone started a jury trial, then decided to take a plea, their format for sentencing was recorded as "Plea Agreement"

Sentencing Length: Recorded the amount of months at the time of sentencing from the Sentencing court documents. If a person appealed and obtained a reduced sentence that was not recorded.

CODING IN RESEARCH	DEFINITION	NUMBER WITH CODE
Weight in grams:	Exact amount listed in report in grams, often converted from pounds or ounces.	1264
Not Stated:	No information on amount of drugs was in the case file.	210
Not Specified:	Drug amount was indicated in the case file, but not in a specific weight. Examples include; baggie of marijuana, bindle of meth, small amount of drugs, etc.	443
"Usable":	Language used in police reports to justify drug use and create a criminal charge.	85
Admitted to drug use/ Dirty Urinary Analysis:	No amount of drugs were required to be seen to file a charge if a person admitted to using drugs in the county in the last 72 hours and provided a positive urine sample.	21
Unknown:	Researcher error in entering the data, so no amount was recorded.	12
Total Drug charges		2035

Appendix 2: Charts and Graphs



Difference in Prison Sentences: Plea Deals vs. Trial Sentencing				
Charge	Priors	Avg. Months sentenced Plea	Avg. Months sentenced Trial	Percent Increase in sentence when Trial
Marijuana Possession	Yes	14.55	16.5	13.40%
	No	15	n/a	n/a
Marijuana Sales	Yes	29.67	119.25	301.92%
	No	24.21	34.29	41.64%
Marijuana Transport	Yes	43.13	111	157.36%
	No	22.06	45	103.99%
Methamphetamine Possession	Yes	31.23	75.38	141.37%
	No	23.11	12*	-48.07%
Methamphetamine Sales	Yes	68.28	163	138.72%
	No	53.11	60*	12.97%
Methamphetamine Transport	Yes	58.53	126	115.27%
	No	53.25	n/a	n/a
Narcotic Possession	Yes	28.82	111.5	286.88%
	No	28.9	n/a	n/a
Narcotic Sales	Yes	47.20	153.5	225.21%
	No	33.92	n/a	n/a
Narcotic Transport	Yes	55.14	189	242.76%
	No	38.4	n/a	n/a

*Only one trial case in study, further research is needed.

Pima County Possession Charges			
	Pima County Possession Charges	Total Time Sentenced to Prison (months)	Average Time Sentenced to Prison (months)
Total Possession Charges	457	6406	22.09
Charges less than 2.5 grams of drug	276	4224	20.11
Guilty	210	4224	20.11
African American	26	617	24.68
Latino	60	1174	19.57
Native American	8	105	13.13
White	114	2283	20.02

Average Sentencing Length: Drug Possession vs. Drug Sales			
	Priors	Average Sentence for Possession	Average Sentence for Sales
Marijuana	Yes	15.37	45
	No	15	25.56
Methamphetamines	Yes	31.79	67.75
	No	24.06	49.56
Narcotics	Yes	32.06	63.76
	No	28.9	36.16

Possession Charges: Amounts less than 2.5 Grams and Sentencing Result				
	All Charges	Guilty	Plead to Other charge	Percent resulting in prison time
All charges studied	3917	1635	178	46.29%
Possession Only Charges	1146	738	11	65.36%
Possession charges for <1 gram*	366	271	3	74.86%
Possession charges for <2.5 grams*	472	351	4	75.21%

*includes "Usable" and UA/Admitted

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