

SMART
ON CRIME

A graphic featuring a brown silhouette of the state of Arizona. A blue circular line is drawn around the left side of the state. The text "Arizona Prison Crisis" is overlaid on the right side of the state silhouette.

Arizona Prison Crisis

A Call for Smart on Crime Solutions

May 11, 2004

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About FAMM and the Smart On Crime campaign

The Smart On Crime campaign is a project of Families Against Mandatory Minimums (FAMM). FAMM is a national nonpartisan, nonprofit organization founded in 1991 in response to inflexible and excessive penalties required by mandatory sentencing laws. FAMM promotes sentencing policies that give judges the discretion to distinguish between defendants and sentence them according to their role in the offense, seriousness of the offense and potential for rehabilitation. FAMM's 30,000 members include prisoners and their families, attorneys, judges, criminal justice experts and concerned citizens.

FAMM works with legislators, law enforcement, criminal justice experts, the media and citizens to provide public education and implement cost-effective criminal justice policies that increase judicial discretion while protecting public safety.

About the briefing book

This briefing book is an abridged version of a comprehensive report on sentencing policy in Arizona. The full report contains detailed analysis and documentation of the findings and recommendations set forth in this document, including an appendix on Arizona's criminal code.

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Preface

Incarceration rates are at an all-time high, and state budgets are more constrained than during any period since the beginning of the prison-construction boom in the late 1970s and 1980s. One of the driving forces behind these problems are mandatory minimum sentencing laws passed by the U.S. Congress and many state legislatures that force judges to give lengthy, fixed prison terms to those convicted of specific crimes without concern for mitigating factors such as the degree to which the accused may have been involved in the crime or the potential for rehabilitation. These laws contribute to the explosion in U.S. incarceration, and disproportionately impact low-income families and communities of color.

Now state-level policymakers are scrambling for information and ideas to help them better manage correctional resources. There is a great need for easily accessible, accurate information about sentencing policies and practices and cost-effective sentencing reforms. Families Against Mandatory Minimums (FAMM) is meeting that need through state-by-state briefing books and reports on state sentencing policy that provide “smart-on-crime” responses. These resources provide comprehensive sentencing and correctional policy information for public officials, policymakers, reform advocates, and members of the media.

A key component of our Smart on Crime campaign is state-by-state sentencing and correctional system profiles keyed to critical sentencing reform issues. The goals of these state sentencing and correctional system profiles are:

- To provide concise, up-to-date information about the policies and practices that drive state prison populations and correctional costs.
- To stimulate and facilitate exchange of policy-relevant information about sentencing and correctional policies across states.

- To gather and disseminate information about practical, successful reform strategies.
- To highlight progress toward gaining stronger control over correctional costs and more effective correctional outcomes.

FAMM’s Smart on Crime state-by-state profiles trace the state’s correctional policy history and describe the resulting sentencing and (where relevant) parole structures, identifying the factors and dynamics that underlay or influence prison population trends. Each state profile also characterizes the state’s level of commitment to crime prevention, alternatives to incarceration, community corrections, substance abuse treatment and re-entry programs.

These state profiles chronicle recent criminal justice policy developments that affect correctional reform efforts and analyze gains and set-backs in terms of prison population impacts and fiscal costs. Political leaders that champion positive change are recognized, and successful reform initiatives are celebrated. New proposals or initiatives for change in state sentencing policy are identified, and, wherever possible, information on draft legislation, fiscal notes, and/or legislative testimony is provided.

Despite the “tough-on-crime” environment, the cost of incarceration in a time of fiscal crisis is opening up opportunities for sensible and cost-effective sentencing and corrections reforms under the “smart-on-crime” banner.

For more information on FAMM’s Smart on Crime campaign, please visit www.famm.org.

Executive Summary

Arizona today: too many prisoners, too little money

Arizona has become the incarceration capital of the western United States. With the ninth highest rate of incarceration in the nation, Arizona stands in stark contrast to neighboring states. The rate of prison population growth in 2002 was twice the regional average and the state incarcerates women, Latinos and African Americans at higher rates than its neighbors.

Arizona's high incarceration rate is driven by a rigid mandatory sentencing system that severely restricts judges' discretion in imposing sentences and crowds prisons with non-violent substance abusers. Mandatory and lengthy "enhanced" prison terms are required for a variety of offenses, regardless of the facts in the case or the relative seriousness of the underlying conduct.

Except in cases involving first-time defendants charged with low-level property or drug offenses, the system places all sentencing discretion in the hands of prosecutors who decide what charges to file, whether to seek mandatory sentencing enhancements, whether to offer a plea, what concessions to offer, and whether a particular sentence will be required.

If incarceration were the magic bullet that tough-on-crime advocates claim, Arizona's reliance on imprisonment might be justified on crime-control grounds. Yet the state has the highest index crime rate in the nation and lags behind both neighboring states and the nation as a whole in crime reduction.

While doing little to reduce crime, mandatory sentencing laws and rapid prison expansion have imposed tremendous fiscal and human costs. The current level of corrections spending is inadequate to meet even the costs associated with the current prison population and is straining the state's ability to meet other critical needs.

For example, Arizona ranks 49th among 50 states in per pupil spending for kindergarten to 12th grade education, while state universities doubled tuition to make up for steep budget cuts in 2003. Adequate funds are unavailable for drug courts, substance abuse and mental health treatment and other programs that increase public safety while reducing the need for prison beds.

New permanent prison beds authorized by the legislature are projected to increase annual prison operating costs by over \$60 million. Yet the 3,400 new beds will cover just a *quarter* of the 13,584-bed deficit projected for fiscal year 2008. Arizona would need to add 2,000 beds and increase the corrections budget by nearly \$40 million *every year* just to keep pace with the current rate of growth.

Recently Arizona witnessed the human cost of uncontrolled population growth in a prison system already stretched beyond its capacity. The hostage crisis threw a harsh spotlight on a prison system in crisis, with inexperienced, under-trained security personnel and tightly packed prisons that could again explode in violence. Clearly, Arizona cannot continue down this path.

Mandatory sentencing laws target low-level, non-violent offenders

Under Arizona's mandatory sentencing system, non-violent offenders make up the majority of state prisoners. One in four are serving time for a property offense, one in five for a drug offense and one in 12 for driving under the influence (DUI). The majority of non-violent offenders are serving time for low-level offenses. A handful of non-violent offenses – including DUI, forgery, fraud and theft – are fueling nearly half the growth in the prison population.

The large number of low-level and non-violent offenders behind bars is a product of Arizona's mandatory sentencing laws, which force judges to lock up individuals who commit repeat but petty offenses. Most of these individuals are substance abusers whose crimes are related to addiction and many should be in mandatory treatment and other community-based programs rather than prison.

When applied to non-dangerous offenses, Arizona's sentencing enhancements make little or no distinction between serious and petty offenders. For example, under the repetitive enhancement, an addict with one prior conviction for drug possession caught selling a gram of cocaine faces a sentence that is almost double that of a dealer caught with a kilo of cocaine for the first time.

Such an outcome flies in the face of common sense

and the will of voters, who clearly intended that convictions for drug possession should *not* result in long prison terms. Yet if the enhancement is invoked and the prosecutor can prove the facts, the judge *must* impose an enhanced sentence.

The law prevents judges from imposing mandatory treatment and community-based sanctions on thousands of low-level non-violent offenders, even though these sentences would cost less, reduce recidivism and increase public safety more effectively than prison.

The result is long sentences for non-violent and often low-level offenses. For example, the majority of those admitted to prison for DUI are serving average terms of over three years. Those sentenced to prison for drug possession receive prison sentences of three-and-a-half years on average. And non-violent offenders sentenced with the repeat offender enhancement serve average prison terms longer than those imposed on most violent offenders.

Arizona's "truth-in-sentencing" statute mandating that prisoners serve at least 85 percent of their sentences also appears to weigh most heavily on non-violent offenders. Since the law was implemented in 1994, the average time served for non-violent offenses has increased far faster than the time served by violent and other serious person offenders.

Finally, laws that put the greatest number of non-violent offenders behind bars and account for the greatest growth in the prison population are written in such a way that serious charges can easily be brought against low-level offenders. For example, Arizona's drug laws treat the lowest-level sellers, most of whom are addicts, like drug "kingpins." Because virtually all drug sale offenses, including possession with intent to sell, are given the most serious felony designation aside from murder, addict-sellers can get prison terms longer than most violent offenders.

Where judges have discretion, in sentencing individuals revoked from probation, they help correct the imbalance by imposing the minimum available sentences on low-level sellers. But where prison sentences are set by plea bargains, addict-sellers can get prison terms longer than most violent offenders. As a result, the average sentence for drug sales is longer than the average sentence for assault or weapons charges.

Similarly, forgery and fraud statutes can be used to bring serious charges against petty offenders.

Forgery and fraud are leading contributors to

growth in Arizona's prison population (especially for women) and now account for over a quarter (29.1 percent) of incarcerated property offenders. Unlike theft offenses, charges of forgery, fraud and trafficking in stolen property are not scaled according to monetary value and therefore can be used to bring serious charges against low-level offenders.

Within Arizona, there are sharp disparities in how different jurisdictions use costly prison beds – differences that do not correlate with crime rates. While the courts in most Arizona counties tend to lock up person offenders at similar rates, sentencing patterns vary widely in the use of incarceration for non-violent offenders. Thousands of prison beds could be saved by bringing incarceration rates for non-violent offenders sentenced in Maricopa County and a handful of rural counties in line with the rest of the state.

Pima County locks up violent offenders at higher rates than any other jurisdiction, yet the county's overall incarceration rate falls below the state average because the county targets prison beds to offenders who pose a real danger to the public.

Mandatory sentencing laws severely impact substance abusers, women, and people of color

Substance abusers

Proposition 200 diverts hundreds convicted of first- and second-time drug possession from prison to treatment and saves taxpayers over \$6 million a year. But because the measure applies only to personal drug possession and not low-level drug sales or other drug-related crime, Arizona continues to lock up thousands of non-violent offenders whose substance abuse, from a crime control perspective, would be better addressed by treatment in the community.

Department of Corrections (DOC) data show that non-violent substance abusers make up half of all prisoners and that the overwhelming majority of prisoners have chemical dependencies. Non-violent offenders are more likely to have severe substance abuse problems than violent offenders.

Arizona already has in place cost-effective, community-based programs that could do *more* than incarcerate to prevent further criminal behavior, but mandatory sentencing laws and a lack of funding prevent them from meeting the need. The state's drug courts,

well regarded by criminal justice professionals, enroll just 764 offenders while the state incarcerates over 10,000 non-violent offenders with severe chemical dependencies. A re-entry program for drug offenders established in 2003 has room for just 200 participants although 4,800 could be eligible.

Women

Women are the fastest-growing segment of the prison population yet also commit the least serious offenses by any measure. The number of women behind bars grew 58 percent between 1998 and 2003 and will have doubled by 2008 according to DOC projections. Three-fourths of incarcerated women are serving time for non-violent offenses and over half for low-level offenses.

Women prisoners are far more likely to suffer from chemical dependency and mental illness than their male counterparts. Three-fourths of women prisoners are assigned the highest possible alcohol and drug needs score, over half are methamphetamine users and one-quarter have serious mental health problems.

People of color

Arizona incarcerates African Americans and Latinos at higher rates than any neighboring state and both groups make up a significantly greater proportion of the prison population than the state population. Although two-thirds of Arizona residents are white, the majority of prisoners are people of color.

The overrepresentation of minorities in prison is particularly pronounced among drug and DUI offenders, with whites comprising just over a third that group. Analysis of leading drug and DUI offenses shows that African Americans and Latinos who are U.S. citizens consistently received longer prison terms than whites with similar prior felony records.

While further research is needed to pinpoint the causes of racial and ethnic disparity in the makeup of Arizona's prison population, these highly disturbing patterns suggest that in Arizona, as elsewhere, communities of color are disproportionately impacted by drug law enforcement.

Smart-on-crime strategies work in other states and enjoy public support

As Arizona considers spending hundreds of millions to expand costly prisons, other states are moving toward smarter, less expensive sentencing and correctional strategies. Since the beginning of the fiscal crisis that has affected most states, policymakers – both Republicans and Democrats – in more than half of the states have introduced major reforms to improve the effectiveness of their sentencing and correctional systems, significantly reducing costs.

At least 18 states rolled back mandatory minimum sentences or restructured other harsh penalties enacted in preceding years to “get tough” on low-level drug offenders or non-violent lawbreakers. Legislators in 15 states have eased prison population pressures with mechanisms to shorten time served in prison, increase the release rate and handle those who violate release conditions without returning them to prison.

Michigan legislators repealed almost all mandatory minimum drug statutes – long cited as among the toughest in the nation – replacing them with drug sentencing guidelines that give discretion back to Michigan judges and the state expected a savings of \$41 million in 2003 alone. Washington legislators enacted a package of reforms that give judges more discretion to divert non-violent drug offenders to treatment, reduce prison sentences for drug trafficking and increase early-release eligibility. As a result, the state expects to save an estimated \$40 million over the next two years, and spend an additional \$8 million on drug treatment.

There is broad public support for the move toward “smart-on-crime” strategies that emphasize prevention and treatment over incarceration for non-violent offenders. Recent national research on preferences about crime and corrections indicates strong support – by a two-to-one margin – for measures that address the causes of crime over strict sentencing. An October 2003 poll of Arizona registered voters found that Arizonans strongly support increased spending for child protective services but oppose a major expansion of the prison system.

Arizona's state system of adult probation is considered highly effective and a national model for ensuring public safety and holding offenders accountable in a community setting. Yet probation is not an option for many thousands of non-violent offenders under Arizona's mandatory sentencing system.

Recommendations

Arizona's sentencing laws are broken, and only a complete revision of them will assure that justice is served and ever-rising prison population does not bankrupt the state. The governor and the legislature should appoint a top-level policy commission to conduct a comprehensive review of the mandatory sentencing laws, determine the causes of the prison overcrowding crisis, and recommend pragmatic reforms to bring the prison population growth under control. Legislators should also take immediate action to ease the prison population crisis. These reforms should:

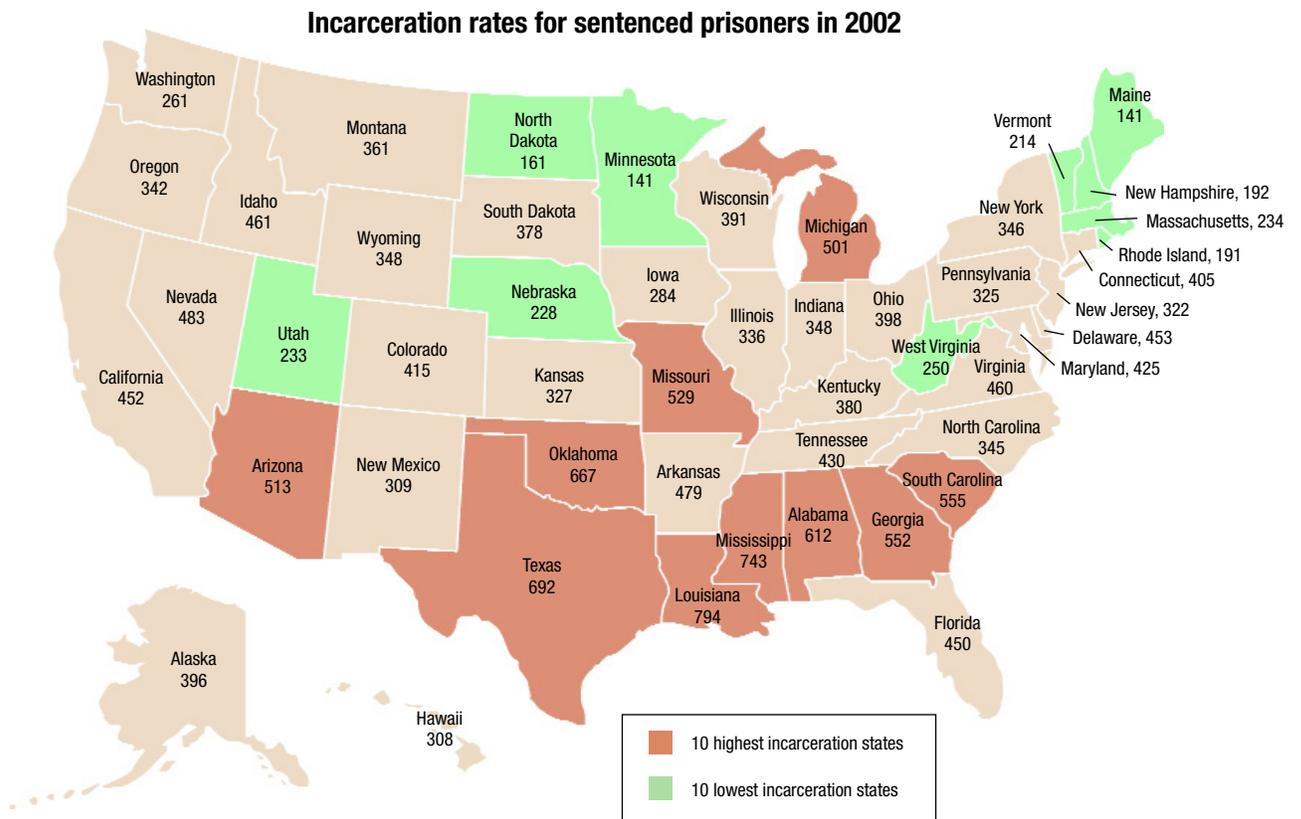
- Give judges the power that prosecutors already enjoy – to set aside mandatory prison sentences and sentence appropriate offenders to treatment rather than prison.
- Initiate a comprehensive study to determine the causes of overrepresentation and sentencing disparity affecting Latinos, African Americans and other people of color.
- Assure that repeat petty offenders are held accountable for their crimes, while reserving long prison sentences for more serious offenders.

- Fund drug courts and make them a sentencing option for *all* non-violent offenders with underlying substance abuse problems.
 - Reclassify low-level drug sales as a Class 4 felony in order to concentrate scarce correctional resources on locking up major drug dealers while providing treatment to addicts who sell small amounts of drugs to fund their habits.
 - Provide alternatives to prison such as residential treatment and DUI courts for those convicted of drunk driving
 - Reclassify low-level property offenses and update the monetary values that define property crime classifications.
 - Re-establish Maricopa County's successful and innovative Women's Treatment Network and replicate the program in other jurisdictions.
 - Allow women prisoners who are non-violent drug abusers early release to re-entry drug court programs.
 - Make probation a sentencing option for more non-violent offenders and make use of effective alternatives, such as drug or mental health treatment, for probation violators.
 - Support county efforts to invest in community-based treatment and provide local jurisdictions financial incentives for using alternatives to incarceration for non-violent offenders.

Arizona today: too many prisoners, too little money

Arizona has become the incarceration capital of the western United States. Mandatory sentencing laws have led to high incarceration rates. Arizona, with the ninth highest rate of incarceration in the nation,

stands in stark contrast to its neighboring states in the western region of the U.S. Weighed on a scale of reliance on incarceration, Arizona falls more in line with the southern states:

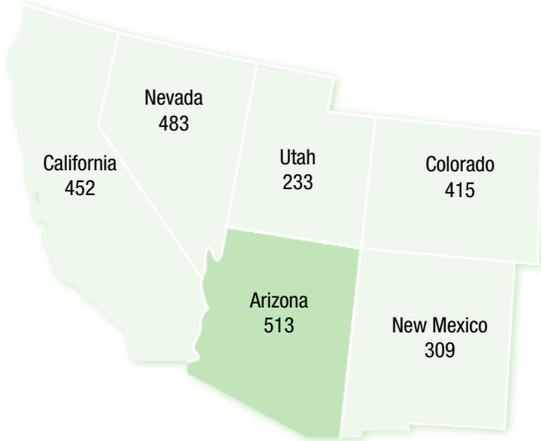


SOURCE: Bureau of Justice Statistics "Prisoners in 2002," July 2003 (rate per 100,000 residents)

Arizona's rate of prison population growth in 2002 was *twice* the regional average. The state tops its neighbors on every critical measure of reliance on

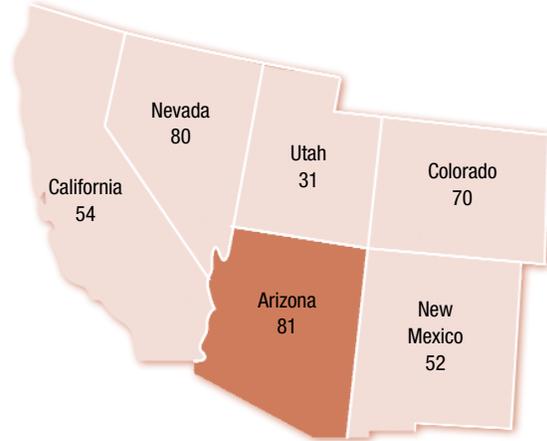
imprisonment, incarcerating women, Latinos and African Americans at higher rates than its neighbors.

Overall incarceration rates in 2002



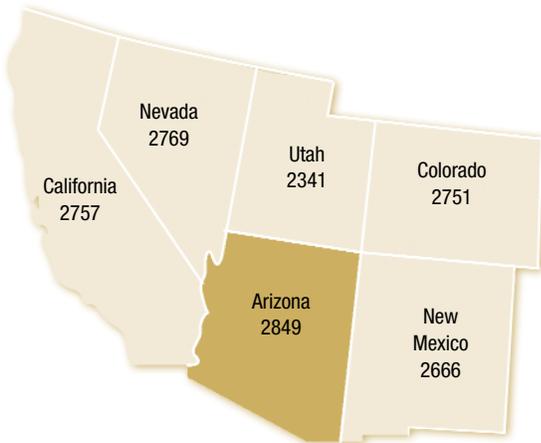
Source: Bureau of Justice Statistics "Prisoners in 2002," July 2003 (rate per 100,000 residents)

Incarceration rates for women in 2002



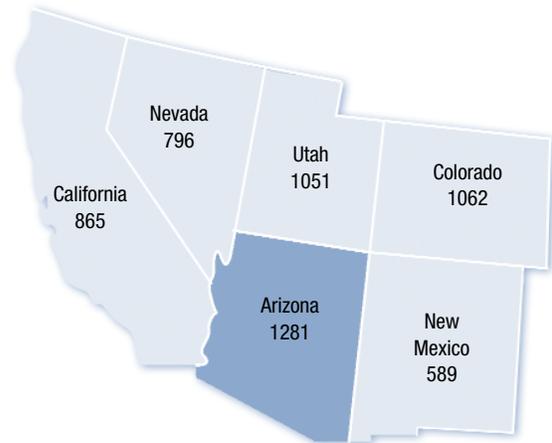
Source: Bureau of Justice Statistics "Prisoners in 2002," July 2003 (rate per 100,000 residents)

Incarceration rates for African Americans in 2001



Source: Sentencing Project "State Rates of Incarceration by Race," 2004 (rate per 100,000 residents).

Incarceration rates for Latinos in 1997



Source: National Center on Institutions and Alternatives "Masking The Divide," May 2001 (rate per 100,000 adult residents)

Mandatory sentencing drives Arizona’s high incarceration rate

Arizona’s criminal code incorporates a determinate sentencing system loaded with mandatory sentencing enhancements that severely restrict judges’ discretion in imposing sentences. Mandatory and lengthy “enhanced” prison terms are required for a variety of offenses, regardless of the facts in the case or the relative seriousness of the underlying conduct.

Mandatory sentencing laws diminish the ability of judges to account for individual differences among defendants. All defendants convicted for the same crime are assumed to be equally culpable, no matter their actual role in the offense. Sentences are pre-packaged with a rigid “one-size-fits-all” approach that ignores their potential for rehabilitation. U.S. Supreme Court Justice Anthony M. Kennedy, an outspoken critic of mandatory minimum sentences, charges that these laws are unnecessary and unwise and unjust. “Our resources are misspent, and punishments too severe, our sentences too long,” he said.

In addition, the 1993 “truth-in-sentencing” law requires all Arizona prisoners to serve 85 percent of their terms. Since the law was implemented, the state prison population has increased by 65 percent, with time served increasing faster for non-violent offenders than violent offenders. Between 1994 and 2003 the average time served for violent offenses grew by just three percent, compared to 60 percent for DUI offenses and 30.2 percent for drug offenses.

Arizona’s criminal code grades all felony offenses into six designated sentencing classifications, in descending order of seriousness, from Class 1 through Class 6. Class 1 is reserved for first- and second-degree murder. Unless imposition of a mandatory sentence enhancement or a stipulation in a plea bargain eliminates probation eligibility, most defendants convicted of Class 2 to 6 felonies are eligible for probation. Arizona has a schedule of presumptive prison sentences that apply to Class 2 to 6 offenses, as shown below.

Under Arizona’s rigid sentencing system prosecu-

tors determine which charges to file, whether to seek mandatory sentencing enhancements, whether to offer a plea, what concessions to offer, and whether a particular sentence will be stipulated in a negotiated plea agreement. Except in cases involving first-time defendants charged with low-level property or drug offenses, Arizona’s rigid felony sentencing structure places virtually all sentencing discretion in the hands of prosecutors.

The most commonly invoked mandatory sentencing enhancement is the repetitive offender enhancement, which makes any defendant charged with a felony offense who has previously been convicted of one or more “historical prior” felonies ineligible for probation and subject to enhanced prison terms.¹ Those previously convicted of two or more “historical prior” felonies are subject to longer mandatory prison sentences.

For example, in the absence of historical prior felonies, a person convicted for theft of property worth \$2,500 (a Class 4 felony) is eligible for probation, or – if sentenced to prison for this offense – faces a presumptive term of 2.5 years. However, if the person was convicted of even a minor felony offense

Felony class	Presumptive prison sentence 1st conviction	Presumptive prison sentence one historical prior	Presumptive prison sentence two historical priors
2	5 years	9.25 years	15.75 years
3	3.5 years	6.5 years	11.25 years
4	2.5 years	4.5 years	10 years
5	1.5 years	2.25 years	5 years
6	1 year	1.75 years	3.75 years

committed three years earlier, and the prosecutor chooses to invoke the repetitive offender enhancement, he or she faces *mandatory* prison with a presumptive sentence of 4.5 years. If convicted of two such prior offenses within the past five years, the defendant faces a presumptive sentence of 10 years.

When an enhancement is invoked and the prosecutor can prove the facts, the judge *must* impose the enhancement. Since the prosecutor may, through plea bargains, dismiss some or all enhancement allegations

¹ As defined by statute, an historical prior includes: any felony conviction for an offense committed within five years of the current offense; a Class 2 or Class 3 felony conviction for an offense committed within 10 years of the current offense; or any conviction for a “dangerous” felony or felony DUI, regardless of when the offense occurred.

many sentences do not include all of the possible enhancements. Other frequently invoked enhancements include those for offenses committed while on probation or parole and those for committing “multiple offenses.” Prosecutors effectively control defendants’ sentences by selecting the initial charges and the sentence enhancements they file and by offering concessions for negotiated guilty pleas.

Mandatory sentencing is especially harsh for drug offenders

Except for those diverted from prison under Proposition 200, the rigid nature of the sentencing laws is especially acute for drug offenders. Arizona’s drug thresholds are relatively low. The threshold for cocaine, for example, mandates that even a first offender convicted of selling nine grams or more of cocaine receive a prison term of at least three years. This sharply restricts use of treatment options for defendants convicted of drug sales – or even possession with intent to sell.

Many states are rethinking the laws that govern sentencing for drug offenses. Before leaving office in 2002, Michigan’s Republican Governor John Engler signed a package of bills into law that repealed that state’s toughest-in-the-nation mandatory drug laws, replacing them with flexible sentencing guidelines. Both the House and Senate voted unanimously to change the laws, after two decades’ experience proved that the harsh sentences had not worked as intended, and had swept up many low-level, non-violent offenders instead of the “kingpins” that legislators’ had hoped to target.

Even *before* this sweeping reform, *probation* was mandatory for an offender convicted of selling nine grams of cocaine.² In fact, Michigan’s guidelines now require probation for a defendant convicted of selling up to 50 grams, unless the person had a very significant prior criminal record (two or more “high severity” prior convictions) or there were serious aggravating factors involved. Even *then*, a Michigan judge is free to choose between placing defendants on probation or sending them to prison. A term of prison is the presumptive sentence only for cases involving sale of 50 grams or more. And, under Michigan’s presump-

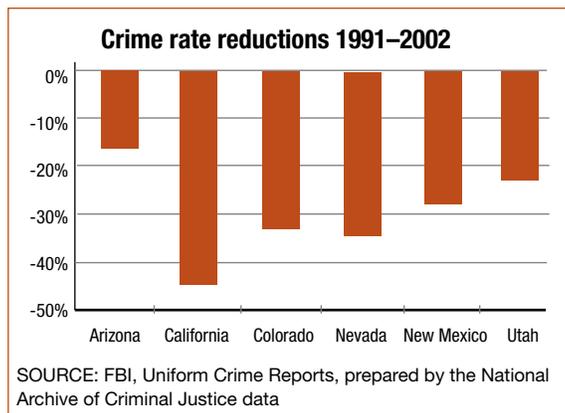
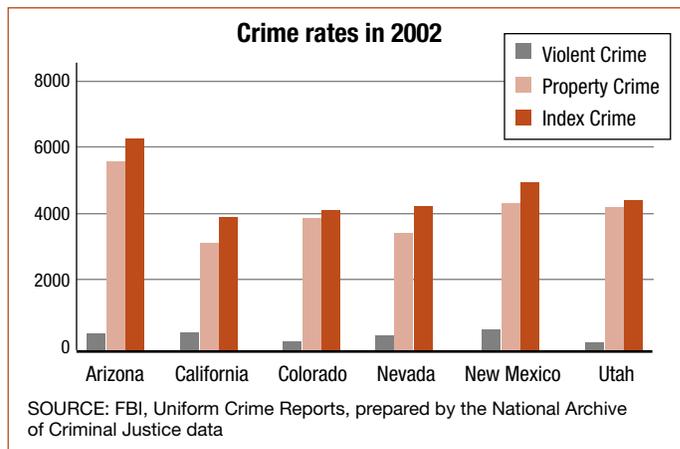
tive guidelines, a judge retains authority to depart from the presumptive sentence in cases where there is a “substantial and compelling reason” for doing so.

Mandatory sentencing doesn’t solve the problem of crime

If incarceration were the magic bullet that tough-on-crime advocates claim, Arizona’s reliance on imprisonment might be justified on crime-control grounds. Yet the state *also* tops its neighbors on index crime rates.

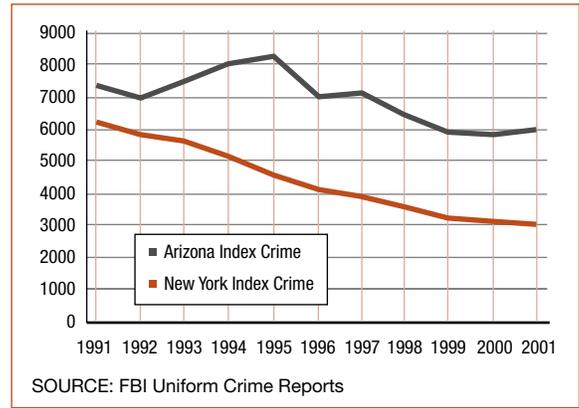
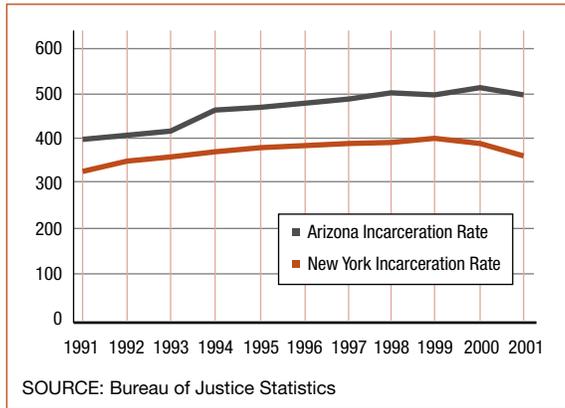
In fact, Arizona’s index crime rate of 6,386 in 2002 topped the nation *as a whole*. In 1991 FBI index crime rates began to decline across the U.S and Arizona’s index crime rate has since declined by 14 percent. But the state’s record pales when compared with the 30 percent decline in the national index crime rate. Arizona also lags behind on this key indicator of crime compared with its neighbor states.

Moreover, there appears to be no direct relationship between incarceration rates and crime rates. During a



² In Michigan, as in Arizona, felony probation can be imposed with a conditional term of up to one year in county jail.

Comparing incarceration rates and index crime rates in Arizona and New York



decade of declining crime rates, states with *larger* increases in use of imprisonment have achieved, on average, *lower* rates of crime reduction than has been the case in states that have relied less on increased use of prison.

Compare Arizona with New York, for example. Bureau of Justice Statistics data indicate that Arizona’s incarceration rate increased 24 percent, from 396 to 492, between 1991 (the year that crime rates peaked nationally) and 2001. And Arizona’s index crime rate fell by 18 percent over the same period. In New York the incarceration rate grew only 11 percent for the same period, while the crime rate fell by 53 percent. (See charts above.)

This is not to say that sending more people to prison has *no* effect. But research indicates that incarceration probably accounts for no more than about 25 percent of the decline in violent crimes. Experts see other factors – demographics, drug abuse patterns, police tactics, employment levels – as having more far-reaching effects on crime rates. While long-term incapacitation strategies have only achieved modest crime reductions, they have incurred huge financial costs for prison expansion.

Proponents of “get tough” policies claim that the expenditures necessary to build and operate an ever-expanding prison system are more than offset by huge savings they attribute to incapacitation. But these claims dissolve under careful scrutiny. In his 1987 monograph on this topic, Edwin Zedlewski estimated that imprisonment of the typical offender costs \$25,000 per year while the social costs “saved” though incapacitation of said offender come to

\$430,000.³ Franklin Zimring, director of the Earl Warren Legal Institute at the University of California, charges that Zedlewski’s estimate of the monetary cost per offense was based on “arbitrary and unjustified assumptions,” and that he had grossly inflated the number of crimes averted through imprisonment. Zimring points out that if Zedlewski’s 187-crimes-averted per-prisoner estimate were correct, “the first 12,000 to 20,000 additional prisoners in California during the 1980s would have driven California’s crime rate down to zero.”⁴

Arizona cannot afford mandatory sentencing

Arizona is one of only eight states where the estimated budget deficit exceeds ten percent of the general fund. Arizona’s fiscal problems could extend well beyond the recent economic downturn, as the state struggles to keep pace with the expected rapid growth in costs for education and health care. As the likelihood of tax reform fades, Arizona will have to choose between these needs and prison costs driven by current sentencing policies.

Arizona would need to add 2,000 beds and increase the corrections budget by nearly \$40 million *every year* just to keep pace with the current rate of growth. Yet it can barely afford to operate its current chronically overcrowded and understaffed prison system. Recent legislative authorization for adding new prison beds

³ Zedlewski, Edwin W. “Making Confinement Decisions.” Washington, D.C.: National Institute of Justice. His calculation was based on an assumption that the typical offender commits an average of 187 crimes per year when not imprisoned, and that the average cost incurred per offense was \$2,300 – accounting for both victim losses and all expenditures entailed in preventing or responding to crime.

⁴ Zimring, Franklin E. and Gordon Hawkins. “Incapacitation: Penal Confinement and the Restraint of Crime.” New York: Oxford University Press. 1995.

will cover just a *quarter* of the 13,584-bed deficit projected for fiscal year 2008.

The current level of corrections spending is inadequate to meet even the costs associated with the current prison population and is straining the state’s ability to meet other critical needs. For example, Arizona ranks 49th among 50 states in per pupil spending for kindergarten to 12th grade education, while state universities doubled tuition to make up for steep budget cuts in 2003. Adequate funds are unavailable for drug courts, substance abuse and mental health treatment and other programs that increase public safety while reducing the need for prison beds.

In 2004, Gov. Janet Napolitano (D) proposed a 9,134-bed expansion of the prison system, an unpopular proposal that newspapers called the governor’s “\$700 million” expansion plan. But the \$700 million

state’s strict truth-in-sentencing requirement, modify mandatory minimum drug sentences, and divert drunk drivers from prison to community treatment and work-release programs.

But reform was not on the agenda when the legislature met in special session to address the overcrowding crisis. Instead, Gov. Napolitano and the Republican legislative leadership ultimately agreed to fund 2,000 new permanent prison beds in the state and another 2,100 temporary beds out-of-state. The addition of 3,400 in-state prison beds, including 1,400 private DUI beds previously authorized by the legislature, is projected to increase correctional costs by more than \$60 million a year.

Recently Arizona witnessed the consequences of uncontrolled population growth in a prison system already stretched beyond its capacity. The hostage

crisis threw a harsh spotlight on the number of inexperienced, under-trained security personnel; the low wage scales that make recruitment of qualified candidates difficult and retention of well-seasoned staff problematic; and the tightly packed prison housing that prevents proper assignment of prisoners according to their security classifications.

Meanwhile the prison population keeps growing.

Population	Operation	Beds	Cost of operation (per prisoner per year)	Total cost of operation (at full occupancy)
Male DUI	Private	1,400	\$18,754	\$26,255,180
Male	Private	1,000	\$18,115	\$18,114,950
Male Level One	Public	500	\$16,614	\$8,306,980
Female Level One	Public	500	\$21,971	\$10,985,500
Total		3,400		\$63,662,610

figure included only the cost of financing and building the new beds – *not* the \$2.6 billion necessary over the next 15 years to operate the beds. While private prison operators say that option will reduce total incarceration costs (a claim disputed by the Arizona Department of Corrections), legislators will still be facing hard choices as prisons eat up a larger and larger portion of the state budget.

Until recently, Arizona policymakers have done little to stem costly prison population growth. After the regular 2003 legislative session adjourned, Republican House speaker Jake Flake (R-Snowflake) expressed concern that mandatory sentences may have taken away too much discretion from judges and appointed a panel of lawmakers to investigate solutions to prison overcrowding. The panel, headed by Rep. Bill Konopnicki (R-Safford), considered proposals to reduce the

Other states find “smart-on-crime” solutions

As Arizona considers spending hundreds of millions to expand costly prisons, other states are moving toward smarter, less expensive sentencing and correctional strategies. Since the beginning of the fiscal crisis that has affected most states, policymakers – both Republicans and Democrats – in more than half of the states have introduced major reforms to improve the effectiveness of their sentencing and correctional systems, significantly reducing costs.

At least 18 states rolled back mandatory minimum sentences or restructured other harsh penalties enacted in preceding years to “get tough” on low-level drug offenders or non-violent lawbreakers. Legislators in 15 states have eased prison population pressures with mechanisms to shorten time served in prison, in-

⁵ Estimates based on cost data from DOC Fiscal Year 2002 report workbook.

crease the release rate and handle those who violate release conditions without returning them to prison.

Michigan legislators repealed almost all mandatory minimum drug statutes – long cited as among the toughest in the nation – replacing them with drug sentencing guidelines that give discretion back to Michigan judges. The Detroit Free Press estimated that Michigan’s reforms produced a cost savings of \$41 million in 2003 alone.

Washington legislators amended sentencing guidelines to give judges more discretion to divert non-violent drug offenders from prison to treatment, and to reduce prison sentences for drug trafficking. Legislators also enacted an increase in early-release eligibility for non-violent, non-sex offenders, increasing time credits off of sentences from one-third to one-half. Washington’s reforms were projected to save an estimated \$40 million over the next two years, with \$8 million of the savings earmarked for drug treatment.

Four specific reform strategies implemented or under consideration in other states offer a road map to smarter, more cost-effective crime control:

- **Establishing a sentencing commission.** A permanent sentencing commission can provide a less politicized deliberative body, staffed and supported by policy experts, for development of pragmatic reforms.

- **Considering development of sentencing guidelines.** Structured sentencing approaches promoting greater consistency in sentencing have been relatively successful in controlling population growth, while retaining more sentencing flexibility for judges. States with presumptive sentencing guidelines keyed to population control have significantly lower rates of incarceration and prison admissions.

- **Using drug treatment instead of prison.** Solid research indicates the cost-benefits of drug treatment over incarceration. A landmark 1997 RAND Corporation study compared the benefits of different law enforcement strategies to treatment for heavy users of cocaine and found that money spent on treatment should reduce serious crimes against both property and persons 10 to 15 times more effectively than incarceration. A U.S. Department of Health and Human Services evaluation of clients in publicly funded treatment programs found that drug use dropped by 41 percent in the year after treatment – while the proportion of clients selling drugs dropped by 78 percent,

and the proportion arrested on *any* charge dropped by 64 percent. Research conducted at the Washington State Institute for Public Policy show that for drug offenders, a dollar invested in imprisonment produces just \$0.37 in crime reduction benefits – while Washington’s drug courts produce \$1.74 in benefits for each dollar of costs.

- **Redirecting monies to reduce violent crime in the long term.** Huge prison budget increases represent a wasteful sacrifice of public safety because they drain resources from other priorities – education, housing, and health care – that are vital to sustaining safe communities and healthy families. Targeted reinvestment of at least a portion of the funds now tied up in warehousing prisoners could be used instead to prevent their incarceration. The most effective crime-control programs involve sending nurses to help improve the health of young mothers and improve the care given to infants and toddlers; targeting “at-risk” youths and their families with therapy geared to motivation and behavioral change, as well as improving their coping and problem-solving skills; and providing a structured, therapeutic foster care environment for teens with serious, chronic patterns of criminal behavior.

The public supports smart-on-crime strategies

There is broad public support for the move toward “smart-on-crime” strategies that emphasize prevention and treatment over incarceration for non-violent offenders. Recent national research on preferences about crime and corrections indicates strong support – by a two to one margin – for measures that address the causes of crime over strict sentencing.⁶

Poll respondents also termed drug abuse a medical problem, preferring counseling and treatment over incarceration for those convicted of drug possession and low-level drug sales. A solid majority favored eliminating mandatory sentencing such as the “three-strikes” law. Asked where legislators facing budget deficits should make cuts, the public has repeatedly put prisons at the top of the list. Statewide polls conducted in California, Maryland and Kentucky produced comparable results.

A statewide poll of registered Arizona voters con-

⁶ Peter D. Hart Research Associates, Inc. “Changing Public Attitudes toward the Criminal Justice System.” February, 2002.

ducted by KAET-TV in October 2003 found similar views on spending priorities: those polled voiced resounding support for increased spending for child protective services (86 percent in favor and 11 percent against) but strongly opposed a plan to expand the prison system by over 9,000 beds (34 percent in favor and 54 percent against). According to pollsters, the results indicate a significant shift from five years ago. At that time, Arizona voters overwhelmingly supported prison building.

A closer look at Arizona

To better understand the use of incarceration in Arizona, Families Against Mandatory Minimums (FAMM) requested data on both the standing prison population and prison admissions from the state Department of Corrections (DOC). Dr. Daryl Fischer, research manager at DOC, generously provided two data files: a snapshot of Arizona’s standing prison population on August 31, 2003, and a file of new court commitments to DOC (including persons sentenced directly to prison or revoked from probation but not those revoked from parole) between December 2002 and November 2003.⁷

The authors also interviewed more than 30 Arizona criminal justice and other professionals, including judges, court staff, defense attorneys, former prosecutors, probation officers, treatment providers, legal scholars, academics and researchers. Finally, the authors reviewed academic and other research on Arizona’s criminal justice system as well as agency reports and websites.

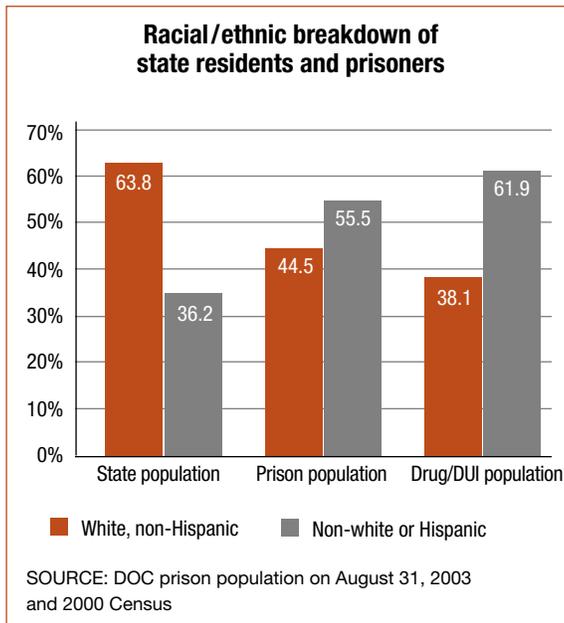
Who fills Arizona prisons?

The majority of Arizona prisoners (55.2 percent) are serving time for non-violent, non-sex offenses.⁸ Fewer than one in five were convicted of crimes involving victim injuries (18.4 percent) or use of firearms (14.1 percent). Over half of non-person offenders were convicted of low-level felonies (Class 4, 5 or 6).

A handful of non-violent offenses fueled nearly half of the recent growth in Arizona’s prisons. Between June 30, 1998, and June 30, 2003, the number of prisoners increased by 6,238 (25.3 percent). In that period, the number incarcerated for forgery/fraud grew by 1,212 (120 percent), the number incarcerated for driving under the influence (DUI) grew by 824 (47 percent) and the number incarcerated for theft grew by 678 (28.3 percent).

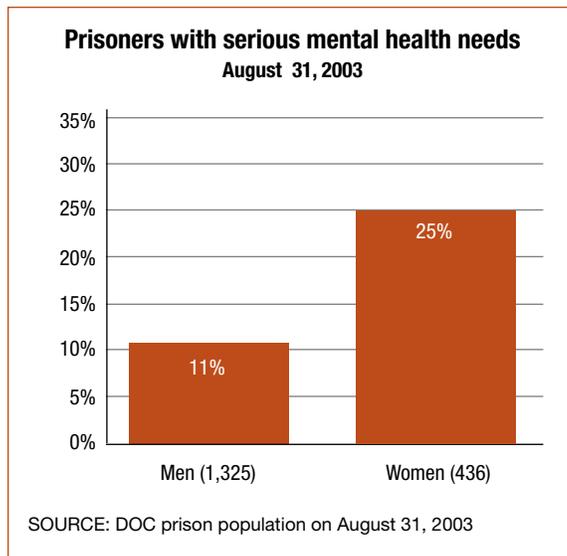
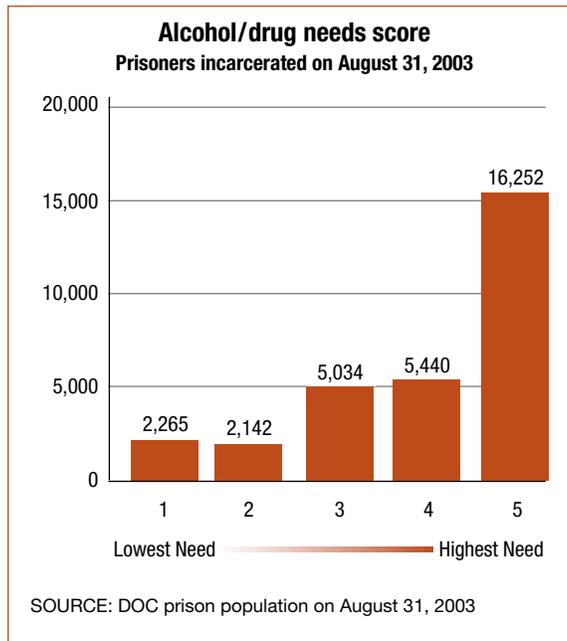
Over half (52.9 percent) of those admitted to prison in fiscal year 2003 were revoked from probation or parole. Of these, the overwhelming majority (84.9 percent) were revoked for failing to comply with conditions of supervision and not for new criminal convictions.

Although two-thirds of Arizona residents are white, the majority of prisoners are people of color. Whites made up just under half (44.5 percent) of all



⁷ Except where noted, findings concerning the current prison population are based on the August 31, 2003 standing population data file. Except where noted, findings concerning new commitments to prison and average prison sentences are based on the December 2002 to November 2003 new court commitments data file.

⁸ DOC uses the term “person offender” to describe individuals convicted of violent or sex offenses, and “non-person offender” to describe those convicted of drug, DUI, property and public order offenses. This document uses the more familiar term “non-violent” interchangeably with “non-person.”



prisoners, followed by Latinos (35.6 percent), African Americans (13.4 percent), Native Americans (5 percent) and Asian or other (1.6 percent). African Americans, who make up just 3.1 percent of the state population, were heavily overrepresented in Arizona prisons, as were Latinos, who make up 25.3 percent of the general population.

The overwhelming majority of Arizona prisoners are substance abusers and the problem is most acute among non-violent offenders. Among prisoners incarcerated on August 31, 2003:

- Over half scored at the highest level for alcohol and drug needs

- 85 percent were classified with serious substance problems (a score of three or higher)
- 60 percent of men and 80 percent of women used one or more controlled substances
- More than a quarter of men were narcotics users
- Over half of women were methamphetamine users
- A third of men and one in five women were heavy alcohol users
- Non-violent offenders were more likely to have severe substance abuse problems than violent offenders.

Some 11.3 percent of male prisoners and 24.7 percent of female prisoners, 3,875 in total, have serious mental health problems. Prisoners incarcerated for property and public order offenses were most likely to have significant mental health needs (14.2 percent and 14.9 percent respectively). Three in five prisoners with serious mental health problems were also assigned the top alcohol and drug needs score.

Women are the fastest-growing segment of the state prison population. Between 1998 and 2003, the female prison population grew by 58 percent. By June 30, 2008, DOC projects that the number of women prisoners will grow by another 60 percent, reaching 4,194 or 10.4 percent of the total population.

One-size-fits-all mandatory sentencing laws put too many low-level offenders behind bars for too long

The most commonly invoked mandatory sentencing provision is the repetitive offender enhancement. When applied to non-dangerous offenses, the enhancement makes no distinction between those whose criminal records include serious (even violent) felonies and those whose records include only petty offenses. A major drug dealer with no felony record caught with a kilo of cocaine faces a presumptive sentence of five years and a minimum of three years. But a drug addict previously convicted of drug possession and subsequently charged with selling a gram of cocaine faces a presumptive sentence of 9.25 years and a minimum of 4.5 years.

The law prevents judges from imposing mandatory treatment and community-based sanctions on thousands of low-level non-violent offenders, even though these sentences would cost less, reduce recidivism and increase public safety more effectively than prison. The repeat-offender enhancement also applies to *any* prior felony, including convictions voters have said should *not* be punished with incarceration and con-

victions unrelated to the current offense. For example:

- Voters twice passed Proposition 200 so those convicted of first- and second-time drug possession would not go to prison. But a Prop 200 prior conviction can make an enhanced prison term mandatory for any subsequent felony offense, no matter how minor. With a single prior Prop 200 conviction, theft of \$1,000 – which might normally result in probation and jail time – can become a repeat offense requiring no less than a year in prison.
- First-time felony DUI offenders are usually placed on probation after serving four months in prison. But those who have historical prior felony convictions face minimum mandatory prison terms of 2.25 years (one historical prior) or six years (two historical priors), even if the prior convictions are minor and have nothing to do with drunk driving.

Non-person offenders sentenced with the repeat offender enhancement serve more time than most violent offenders, even for relatively minor crimes. Between December 2002 and November 2003, the average sentence for 1,602 people committed to prison by the courts for theft as a first offense was 2.7 years. But the average more than doubled to 6.3 years for 273 individuals convicted of theft with one historical prior felony conviction, and tripled to 9.8 years for 21 individuals convicted of theft with two historical priors – longer than the average sentence for kidnapping (8.5 years).

Despite Proposition 200, non-violent substance abusers make up half of Arizona's prisoners

Proposition 200 diverts hundreds convicted of first- and second-time drug possession from prison to treatment and saves taxpayers over \$6 million a year. But because the measure applies only to personal drug possession and not low-level drug sales or other drug-related crime, Arizona continues to lock up thousands of non-violent offenders whose substance abuse, from a crime-control perspective, would be better addressed by treatment in the community.

On August 31, 2003, Arizona prisons held 10,330 non-person offenders who scored at the highest possible alcohol and drug need level. An additional 5,379 prisoners serving time for non-person offenses had serious substance abuse problems.

Arizona already has in place cost-effective, commu-

nity-based programs that could do *more* than incarceration to prevent further criminal behavior, but the programs are currently too small and underfunded to meet the need. Criminal justice professionals who work with Arizona drug courts overwhelmingly believe that they can hold many chemically dependent offenders accountable and reduce recidivism more cost-effectively than the prison system. On July 31, 2003, however, only 764 offenders were enrolled in the state's drug courts – one for every 13 incarcerated non-person offenders with severe substance abuse problems.

Arizona also has a program approved by the legislature in 2003 that permits 90-day early release into a transition network for all drug offenders not convicted of violent crimes, sexual abuse or arson. While legislative summaries indicated that 4,800 prisoners could qualify for release, the program's first-year funding created room for only 200 prisoners and the program has yet to be implemented.

Drug offenders receive disproportionately harsh sentences

Drug offenders fill nearly one in five prison beds. More prisoners are incarcerated for drug sales than for any other offense, even though many are low-level addict-dealers. And while the total number incarcerated for drug possession has declined, those sentenced to prison serve substantial terms.

Arizona's laws treat low-level addict sellers like drug "kingpins." Class 2 is the highest class assigned to any felony other than murder. Yet the sale of drugs other than marijuana is considered a Class 2 felony, regardless of the amount of drugs involved, the role of the defendant in the transaction or whether the defendant actually sold the drugs or was simply in possession of them.

Sentences were longer for drug sales than for many violent crimes. The average sentence imposed for drug sales (4.3 years, including marijuana sales), was longer than the average sentence imposed for assault (four years) or weapons charges (3.8 years) and the same as the average sentence for arson.

Analysis of sentencing patterns shows penalties for drug sales often do not fit the crime: An analysis of sentencing patterns for offenders revoked from probation found that, when given the option, judges were most likely to impose *minimum* sentences on those convicted of selling drugs other than marijuana – a strong indication that many low-level sellers did not merit the long

presumptive sentences assigned to Class 2 and Class 3 felony convictions.⁹ By contrast, offenders revoked from probation for Class 2 and Class 3 assaults were about half as likely to receive minimum sentences.

Prison is mandatory for sale of relatively small amounts of drugs in Arizona. Prison is required for first offenders convicted of drug sales of amounts above Arizona’s statutory thresholds – as little as 750 milligrams of “crack” cocaine, one gram of heroin or nine grams of methamphetamine or cocaine in powder form. In other states sale of the same amounts could result in less costly alternative sanctions, drug courts and treatment. Under Michigan’s sentencing guidelines, probation is presumptive for first-time offenders convicted of selling up to 50 grams of a controlled substance.

Many convicted for personal drug possession do hard time. Those incarcerated for personal drug possession receive substantial sentences, averaging 3.1 years for all drugs and 3.6 years for drugs other than marijuana (a Class 4 felony). In comparison, those sentenced for Class 4 assault received prison terms averaging 3.2 years.

Cost of drug sentencing					
Offense	Drug	Commitments	Average sentence (years)	Average cost of incarceration	Total cost of incarceration
Sale	Marijuana	325	3.3	\$51,583	\$16,764,598
Sale	Dangerous drugs	473	4.5	\$71,785	\$33,954,409
Sale	Narcotic drugs	477	4.8	\$75,543	\$36,034,008
Possession	Marijuana	185	2.3	\$35,917	\$6,644,691
Possession	Dangerous drugs	399	3.3	\$52,062	\$20,772,937
Possession	Narcotic drugs	364	3.9	\$61,471	\$22,375,350
Other		275	2.8	\$44,237	\$12,165,269
Total		2498			\$148,711,262

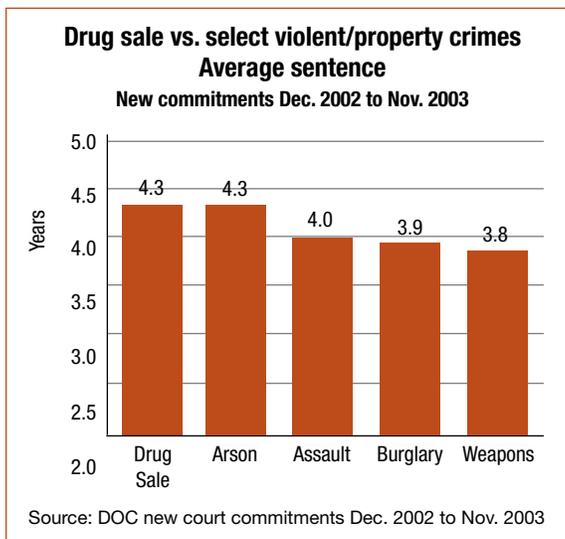
SOURCE: DOC new court commitments Dec. 2002 to Nov. 2003

DUI offenders serve long terms, driving prison growth

DUI offenders fill one in 12 prison beds and their number is growing at twice the rate of the prison population as a whole. Between June 30, 1998, and June 30, 2003, the number of incarcerated DUI offenders grew by 47 percent to 2,577, while the total prison population grew by 25.3 percent.

Most incarcerated DUI offenders spend years, not months, behind bars. In 1995, Arizona lawmakers “got tough” on felony DUI, requiring that offenders serve four months in prison as a condition of probation. But those incarcerated as a condition of probation make up just 10 percent of DUI prisoners. The overwhelming majority are serving substantial prison sentences – 3.3 years on average.

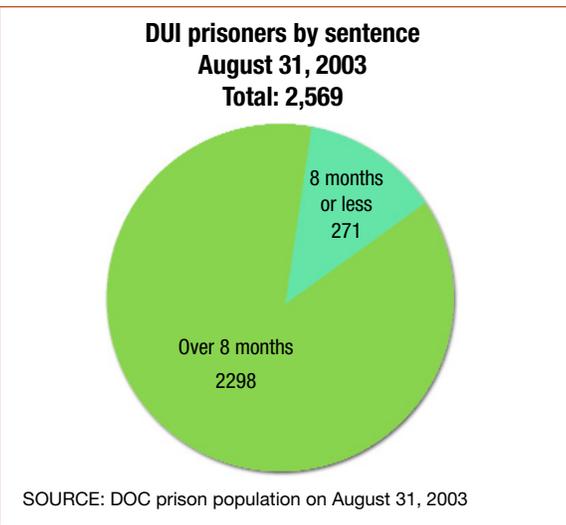
DUI offenders revoked from probation receive longer average prison sentences than most property offenders and even some violent offenders; those sentenced directly to prison serve even more time. A third of DUI offenders committed to prison for over eight months were revoked from probation and serving average terms of 2.5 years – longer than the sentences of offenders revoked for forgery (1.8 years), theft (two years), assault (2.1 years), weapons charges (2.2 years) or burglary (2.4 years). The remaining two-thirds were sentenced directly to prison without the option of probation for an average of 3.7 years – lower than the comparable average for assault (5.2 years) and



⁹ While judges have little role in the sentencing of defendants who accept plea agreements requiring a prison sentence, they have much broader latitude in sentencing individuals revoked from probation (within the range established by the felony class in question). As a consequence, sentences imposed on offenders revoked from probation provide a useful window onto what sentences judges believe fit the crimes and individuals offenders they see before them.

burglary (4.7 years), but slightly higher than forgery (3.6 years) and drug possession (3.6 years).

Individuals convicted of felony DUI are not necessarily habitual drunk drivers. A third drunk driving incident within five years can trigger a felony DUI charge but so can any drunk driving incident that occurs while the defendant's license or privilege to drive is suspended, canceled or revoked. For example, a person whose license was suspended for failure to pay a speeding ticket or other fine related to a moving violation is guilty of felony DUI the first time he or she drives drunk.



Arizona laws impose long prison terms on petty property offenders, who are disproportionately women and substance abusers

Incarcerated property offenders are more likely to be substance-addicted, to be women and to have been revoked from probation than the prison population as a whole.

- Half of men (50.3 percent) and three-fourths of women (74.8 percent) incarcerated for property offenses scored at the highest level in terms of their alcohol and drug needs.
- Offenders sentenced to prison for theft, forgery and fraud are much more likely to be probation violators (40.5 percent, 40.6 percent and 38.6 percent, respectively) than new commitments as a whole (31.4 percent).

- Women, who account for 8.5 percent of all prisoners, made up a much greater proportion of those incarcerated for forgery and fraud (27.4 percent and 19 percent, respectively).

Criminal justice professionals say that many incarcerated property offenders are substance abusers that commit petty property crimes to fund their habits. While they pose relatively little risk to public safety, their addictions often make them unable to comply with the conditions of probation. This is especially true of women offenders, who are more likely to be both non-violent and chemically-dependent than men.

Individuals sentenced for simple theft (not including motor vehicles) and other minor property crimes serve substantial prison terms at great cost to taxpayers. For example, on average the state will spend roughly \$20,000 to lock up a single offender convicted of stealing between \$250 and \$1,000; nearly \$40,000 for crimes of \$1,000 to \$2,000 in value; and over \$50,000 for crimes of \$2,000 to \$3,000 in value.¹⁰

Forgery and fraud are leading contributors to growth in Arizona's prison population (especially for women) and now account for over a quarter (29.1 percent) of incarcerated property offenders. This is a consequence, in part, of the fact that charges of forgery, fraud and trafficking in stolen property – unlike theft – have no monetary values attached and can be used to bring serious charges against low-level offenders. For example:

- If someone steals \$500 by forging a check, what would otherwise be a Class 6 theft becomes Class 4 for forgery, resulting in a presumptive sentence of 2.5 years for a first-offender and a mandatory term of *at least* 2.25 years with one historical prior.

Measure of public risk/offense seriousness	Women	Men
Non-person offense	78 %	53.1 %
Violent offense	20.7 %	35.6 %
Sex offense	1.2 %	11.3 %
Low-level offense (Class 4, 5 or 6)	48.8 %	37.7 %
Revoked from probation	27.6 %	15.5 %
Offense involved victim injury	One in 10	One in five
Offenses involved firearm	One in 25	One in seven
Proportion of drug offenders sentenced for personal possession rather than sale	34.1 %	28.1 %

SOURCE: DOC Prison Population on August 31, 2003

¹⁰ The felony class of a simple theft is determined by the monetary value of the property or services stolen.

- Trafficking in stolen property makes possession of *any* amount of stolen property a Class 3 felony if done “recklessly” (i.e. with knowledge or reason to have knowledge), resulting in a presumptive sentence of 3.5 years for a first-offender and a mandatory term of *at least* 3.5 years with one historical prior.
- Fraudulent schemes and artifices makes use of deception to secure *any* amount of goods or services a Class 2 felony, resulting in a presumptive sentence of five years for a first-offender and a mandatory term of *at least* 4.5 years with one historical prior.

Convictions for forgery, fraudulent schemes and artifices, and trafficking in stolen property carry prison terms averaging 3.3 years, 5.8 years and 5.4 years, respectively, and currently cost the state at least \$36 million in prison operations.

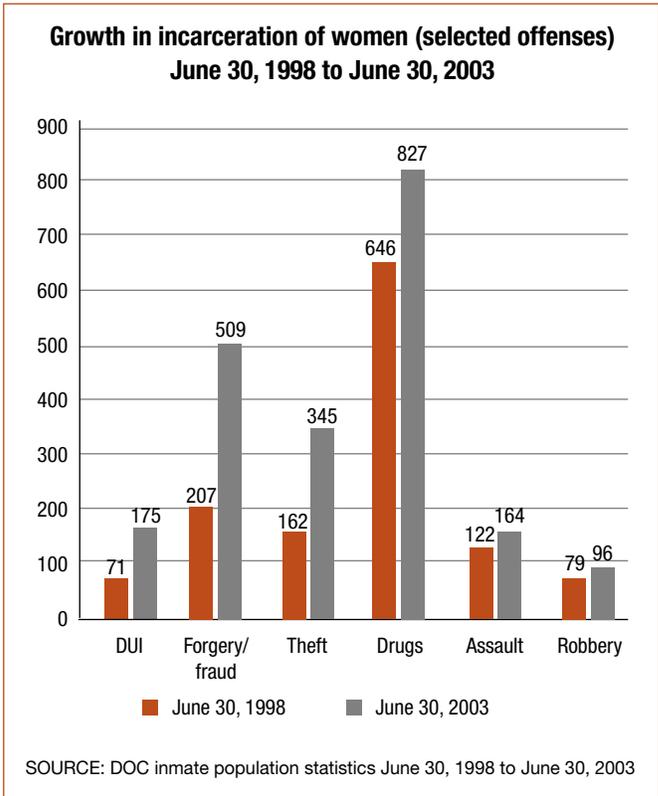
Women are the fastest growing segment of the prison population and are less likely to have been convicted of serious violent offenses

The overwhelming majority of women are incarcerated for non-person offenses and most are incarcerated for non-serious offenses. Of 2,651 women incarcerated in Arizona on August 31, 2003, over three-fourths were convicted of non-person offenses. Property and drug offenders made up two-thirds of women prisoners (37.5 percent and 31.4 percent, respectively).

Incarcerated women were also much less likely to be convicted of an offense involving injuries or use of firearms, more likely to be convicted of a low-level offense and nearly twice as likely to have been revoked from probation.

A handful of non-violent offenses accounted for 85.8 percent of the growth in the number of women behind bars. Between 1998 and 2003, the number of offenders incarcerated for forgery and fraud grew by 145 percent and accounted for nearly a *third* of all growth; for theft the population grew by 113 percent; for DUI the population rose by 146 percent; and for drugs the number of offenders grew by 28 percent.

Women prisoners were far more likely to suffer from chemical dependency and mental illness than their male counterparts. Three-fourths of women prisoners were assigned the highest possible alcohol-



and drug needs score, including 87.5 percent of drug offenders, 86.9 percent of DUI offenders and 74.8 percent of property offenders.

Over half of incarcerated women (53.3 percent) were methamphetamine users. The proportion of methamphetamine users was even greater among women sentenced for drug and property offenses – 63.3 percent and 59 percent respectively – indicating that addiction to methamphetamine has driven hundreds of these women into low-level drug and property crimes.

A quarter of female prisoners (24.7 percent) had serious mental health problems, twice the rate for male prisoners.

Too few on probation, too many in prison for technical violations

Probation in Arizona is tough and it works. The state’s system of adult probation is considered highly effective and a national model for ensuring public safety and holding offenders accountable in a community setting. The probation program is successful because manageable caseloads allow effective supervision and strict conditions hold probationers accountable. Intensive supervision is available for those who require

it and short jail terms are used to enforce compliance and impose additional punishment.

Although probation can provide more accountability than a prison sentence, it is not an option for many non-violent offenders. Probationers must maintain employment, participate in treatment and counseling as ordered, and pay fines, fees and restitution. In short, probation can do more to hold offenders accountable than a prison sentence. Yet despite the cost-effectiveness of Arizona’s probation system, mandatory sentencing laws bar Arizona judges from using it as a sentencing option for thousands of non-violent offenders.

Those revoked from probation are among the least dangerous and least serious offenders in the prison system and were more likely to have substance abuse and mental health problems than the population as a whole:

- Among 4,067 offenders revoked to prison from probation between December 2002 and November 2003, three-fourths (76.5 percent) were on probation for non-person offenses and the same proportion were on probation for low-level offenses.

- The overwhelming majority of probation revocations (81 percent) resulted from technical violations rather than new criminal convictions. The proportion of revocations for technical violations was even higher for parolees (91.4 percent).

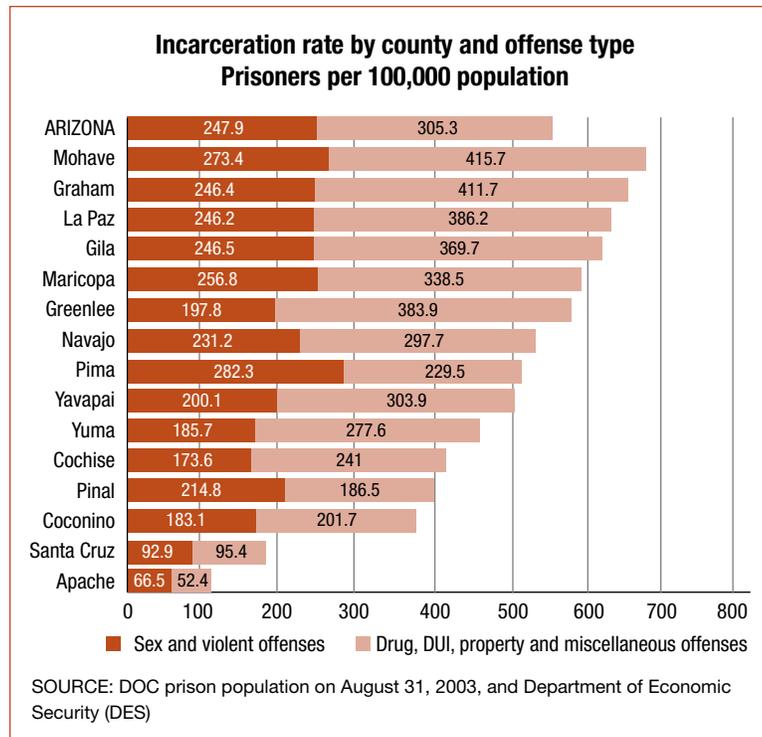
- Most of those revoked from probation had severe chemical dependencies (58.7 percent) and a significant number had serious mental health problems (14.5 percent).

Yet offenders revoked from probation received substantial prison terms. Between December 2002 and November 2003, average sentences ranged from 1.3 years for Class 6 felonies (over 40 percent of the total) to 4.8 years for Class 2 felonies. The impact of revocations on the prison population could be reduced significantly if more community-based programs and services were available to address the substance abuse and mental health problems of probationers and parolees.

Geographic disparity in use of incarceration is significant and is exacerbated by funding mechanisms that encourage use of prison over local alternatives

Incarceration rates vary widely by jurisdiction and do not correlate with crime rates or whether a county is predominately urban or rural:

- Three of four counties with the lowest incarceration rates are predominately rural (Apache, Coconino, Pinal and Santa Cruz), but so are all four counties with the highest incarceration rates (Gila, Graham, La Paz and Mohave).
- Among the state’s major urban counties, Maricopa’s incarceration rate rose above the state average while Pima’s rate fell below.
- The four counties with the highest index crime rates split, with Maricopa and Mohave incarcerating at



above-average rates while Pima and Coconino incarcerated at below-average rates.

- The four counties with the lowest index crime rates also split, with Graham and Greenlee incarcerating at above-average rates while Apache and Santa Cruz incarcerated at below-average rates.

Variation in incarceration rates was due primarily

to incarceration for non-violent offenses. Excluding Apache County and Santa Cruz County, which had incarceration rates far below the state average, incarceration rates for violent and sex offenders were relatively consistent across counties, with a 63 percent difference between the counties with the highest (Pima County) and lowest (Cochise County) violent and sex offender incarceration rates. In contrast, incarceration rates for non-violent offenses (drug, DUI, property and public order crimes) varied widely across counties, with the top rate (Mohave County) 123 percent higher than the lowest (Pinal County).

An analysis of Arizona’s major urban counties found no correlation between crime and incarceration rates. Instead, it found significant differences in the use of incarceration, with Pima County concentrating limited state criminal justice resources (i.e. prison beds) on violent offenders, whom the county incarcerated at more than twice the rate of property offenders, while Maricopa filled state prison beds with nearly as many property offenders as violent offenders.

While many factors likely contribute to geographic disparity in use of incarceration, research by sociologists Michael Polkowski and Michael Gottfredson indicates that funding mechanisms play a role. The current system of criminal justice funding encourages local jurisdictions to sentence offenders to prison and lets the state pick up the tab, rather than spend limited county funds on cost-effective alternatives.

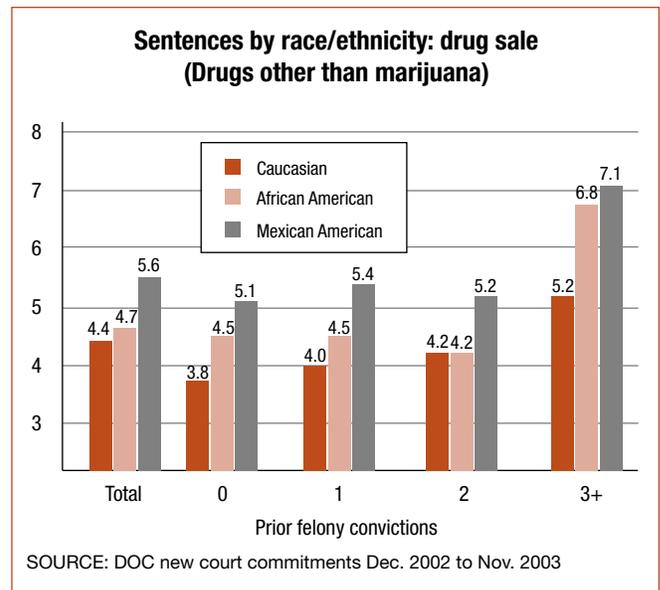
Minorities are overrepresented among prisoners and receive longer sentences for drug and DUI offenses

Latinos and African Americans are overrepresented among prisoners as a whole. This is particularly pronounced among drug and DUI offenders. African Americans made up 18.7 percent of drug prisoners and Latinos 38 percent, while whites made up 39.1 percent. Native Americans made up 17.9 percent of DUI prisoners and Latinos 39.6 percent, while whites comprised 36 percent. Analysis of leading drug and DUI offenses shows that African Americans and Latinos who are U.S. citizens consistently received longer sentences than whites with similar

prior felony records.

Mexican Americans (the DOC designation for Latinos who are U.S. citizens) and African Americans received significantly longer sentences for drug sales than whites with the same number of prior felony convictions.¹¹ Mexican Americans received longer average sentences than whites (4.7 years and 4.4 years, respectively), even though Mexican Americans had, on average, fewer prior felonies (1.6 and two, respectively). African Americans, who received the longest sentences (5.6 years, on average), also had the greatest number of prior felonies (2.6, on average). But after controlling for the number of prior felonies, African Americans consistently received sentences 12 to 23 months longer than whites, while Mexican Americans received sentences up to 19 months longer than whites.

Mexican Americans and African Americans received significantly longer sentences for drug possession than whites with the same number of prior felony convictions. Mexican Americans received significantly longer average sentences than whites (3.7 years and 3.1 years, respectively) for possession of drugs other than marijuana despite the fact that Mexican Americans had roughly the same average number of prior felonies (2.5 and 2.4, respectively). African Americans, who received the longest prison terms (4.7 years, on average), also had the greatest average number of prior felonies (3.3). But after controlling for prior felonies, African Americans received sentences



¹¹ Analysis includes all sales of drugs other than marijuana.

16 to 21 months longer than whites, while Mexican Americans received sentences two to nine months longer than whites.

Mexican Americans and African Americans received longer sentences for DUI than whites with the same number of prior convictions. African Americans and Mexican Americans sentenced to over eight months in prison for Class 4 DUI had fewer prior felonies on average (1.6 and 1.4, respectively) than

their white counterparts (1.8). Yet African Americans and Mexican Americans received longer sentences, averaging 3.6 years and 3.8 years, respectively, than whites whose sentences averaged 3.4 years. After controlling for prior felonies, African Americans and Mexican Americans consistently received longer sentences than whites.

Recommendations

It has been many years since Arizona's policymakers thoroughly reviewed the overall workings of the sentencing and correctional system. Arizona's rigid sentencing structure has a lock on an increasing share of the state budget, and taxpayers are paying the price of spiraling correctional costs. The criminal code itself, more than a quarter-century old, is due for a complete overhaul.

Establish a policy commission

Arizona needs a permanent top-level policy commission, staffed and supported by criminal justice experts, to conduct a comprehensive review of the mandatory sentencing laws, to determine the causes of Arizona's prison overcrowding crisis, and to recommend pragmatic reforms that can bring prison population growth under control.

A policy commission should include a mix of government officials and public members, tapped for their experience and expertise in criminal law, corrections, judicial administration, substance abuse treatment and community programs, as well as members from the community and legislature. The process should entail detailed analysis of criminal case processing as well as sentencing policies and practices. With adequate data drawn from the courts and correctional systems, modeling tools can aid development of concrete policy proposals and can also give policymakers accurate predictions of the fiscal impact of any proposed legislation or policy innovations.

Immediate actions

Until the needed policy commission and staff are put in place to assure more effective and efficient use of Arizona's limited correctional resources, the state's policymakers should abstain from planning further prison bed expansion. In the meantime, many concrete steps could be taken now to reduce prison population pressures and improve the correctional system:

1. Return discretion to judges.

Judges should have more discretion to fit the punishment to the crime, to consider the role of the defendant in the crime, and have the option, where appropriate, to sentence to drug courts, treatment and other alternatives to prison. Other states have moved in this direction. Michigan repealed almost all of its drug mandatory minimums, while both Connecticut and Maine created provisions for judges to set aside mandatory sentences in the interest of justice.

At a minimum, judges should have discretion in sentencing offenders whose prior record includes only low-level and non-dangerous offenses. This could be accomplished by limiting the use of the repeat-offender enhancement to those whose prior convictions include serious (Class 2 or Class 3) or dangerous felonies.

2. Implement cost-effective programs for non-violent, chemically dependent offenders.

Other states have begun shifting resources from locking up substance abusers to placing them in court-supervised treatment. Washington is making effective

use of drug courts to fight addiction while reducing correctional costs. New Mexico also recently launched an initiative that provides for early release of women drug offenders to re-entry drug court programs.

Arizona policymakers could take similar steps. By diverting just one in five non-person offenders with severe chemical dependencies, the state could save 2,000 beds and \$40 million in correctional costs – enough to fund more than 4,000 drug court slots and still net over \$20 million for deficit reduction. If just half of 2,425 non-person offenders who had severe chemical dependencies and were within six months of their projected release date were released to re-entry treatment programs, over 1,000 beds and \$20 million in correctional costs would be saved.

Drug courts should be fully funded and made available as a sentencing option for non-violent offenders who have underlying substance abuse problems and would benefit from court-supervised treatment. Many more individuals could be successfully diverted from prison if funds were available for additional treatment slots and court personnel for the more time-intensive drug court process. Drug court programs should also be established in the nine counties where none currently exist, with adequate funding and technical assistance to help rural counties secure treatment resources.

The early-release-to-transition program for drug offenders adopted by the legislature in 2003 should be fully funded and expanded to include substance abusers convicted of DUI, property and other non-person offenses. The early release provision should also be extended to 180 days, as proposed in the original bill.

3. Reduce penalties for low-level drug offenses.

Many states have taken steps to reduce current harsh penalties for drug offenses and divert low-level offenders from prison. In addition to Michigan and Washington, Indiana has authorized judges to sentence those who sell drugs to support a habit to treatment rather than prison; New Mexico has restored discretion to judges in deciding whether to impose what was a mandatory sentencing enhancement for repeat drug offenders; and Kansas has reduced the presumptive sentence for third-time drug possession to 20 months, roughly half the average sentence for drug possession in Arizona.

Arizona could reduce costs and improve outcomes

by reducing penalties for low-level drug sales, increasing the drug threshold amounts that trigger mandatory prison for first offenders and restoring discretion to judges in sentencing those convicted of personal drug possession who are ineligible for diversion under Proposition 200.

Low-level drug sales should be sentenced as a Class 4 felony in order to concentrate scarce correctional resources on locking up major drug dealers while providing treatment to addicts who sell small amounts of drugs to fund their habits. The projected impact of the reform is a savings of *at least* 400 beds and \$8 million annually, and would likely be much greater.

Raising drug threshold amounts would make probation an option for drug addicts convicted of low-level drug sales, thus making them eligible for drug courts, treatment and other community programs. Raising the threshold amount for crack cocaine to the threshold for powder might also reduce racial disparity in sentencing.

Prior Prop 200 convictions should not trigger mandatory enhanced sentences, and judges should have the discretion to sentence those convicted of personal drug possession and ineligible for Prop 200 to residential treatment or shorter prison terms. These reforms could save hundreds of prison beds and millions annually by reducing the number of substance abusers serving long mandatory sentences as a result of convictions for drug possession.

4. Reclassify low-level property offenses and encourage community-based alternatives.

Reclassification of low-level property offenses would save hundreds of prison beds and millions of taxpayer dollars. If a portion of the funds were shifted to treatment and programs that are proven to reduce recidivism, the reform would do *more* to prevent further criminal behavior than present policies.

One proposal advanced by Rep. Konopnicki's committee would reduce the use of costly prison beds for those convicted of thefts involving small amounts of money and designate many of the lowest-level (Class 6) property and public order offenses as misdemeanors. By updating the monetary values used to classify what are currently Class 4, 5 and 6 thefts, the reform is projected to save 544 prison beds and over \$10 million in corrections costs.

Adding criminal trespass, joyriding and possession of forgery tools to the list of Class 6 felonies desig-

nated as misdemeanors would save an estimated additional 449 prison beds and \$8 million in annual correctional costs.

Forgery, fraudulent schemes and artifices and trafficking in stolen property should be re-classified based on the monetary values involved in the offense to make sentences more proportionate.

5. Expand use of DUI court and other alternatives to incarceration for DUI offenders and limit use of mandatory enhancements to habitual drunk drivers.

Research shows mandatory minimum sentences for DUI offenders have been ineffective at reducing drunk driving. Strategies implemented in other states and Maricopa County show more promise.

Montana legislators enacted a measure that provides residential treatment as an alternative to prison for drunk drivers and expect to save the state \$3 million a year. Arizona has over eight times the total number of prisoners as Montana and could save far more.

Maricopa County's DUI courts are rated a success by criminal justice professionals, particularly the Spanish-language DUI court. The DUI courts could be expanded in Maricopa and replicated elsewhere, as could the use of electronic bracelets that detect alcohol use by DUI court participants in their first months on the program.

Currently, defendants charged with felony DUI can receive mandatory enhanced prison terms because of prior convictions that have nothing to do with drunk driving. Reserving longer sentences for those with prior felony DUI convictions could restore probation eligibility to many prison-bound offenders without jeopardizing public safety.

6. Reduce the number of women prisoners and the negative impact of their incarceration on families and communities.

Most of the women in Arizona prisoners are the ideal candidates for diversion and/or early release programs. Most are serving time for non-violent and low-level offenses. They have substance abuse and mental health needs better addressed in treatment and community setting and diverting them from prison would have additional benefits for families and communities.

Arizona should re-establish Maricopa County's successful Women's Treatment Network (WTN) and

replicate the program in other jurisdictions. In the late 1990s, Maricopa County ran a program that combined a gender-specific approach to probation with substance abuse treatment services. Although highly effective, WTN ended due to the lack of funding. If implemented statewide, the program could significantly reduce the number of women revoked from probation. Since the average sentence for women revoked from probation was two years, reducing the numbers by just 25 percent could save more than 100 prison beds and \$2 million in corrections costs.

The state should offer early release to women sentenced for non-violent offenses and willing to participate in re-entry drug court programs. In 2001, New Mexico's legislature began to let women convicted of non-violent, drug-related offenses apply for early re-entry to a drug court program once they were within 18 months of release eligibility. On August 31, 2003, Arizona prisons held 475 women serving time for drug offenses who were within 18 months of their projected release date. If half were released to a drug court program, the state would have saved over 200 beds and \$5 million in correctional costs.

7. Increase use of community-based sanctions and reduce prison terms for probation violators.

More resources should be made available to prevent unnecessary revocations and reduce use of long prison sentences for technical violators. By increasing the availability of drug treatment and mental health services, the state could reduce the number of technical violations and improve outcomes for probationers and parolees. The impact could be greatest in rural areas, where there is a shortage of drug treatment slots and an even larger gap in mental health resources

8. Provide support and incentives to counties using non-prison alternatives.

The state should fully support county efforts to invest in community-based alternatives that will ultimately reduce state corrections costs, and give local jurisdictions a financial incentive to reduce the use of incarceration for offenders who do not pose a major risk to the community. For example, the state could save 188 prison beds – \$3.5 million annually – if Mohave County brought its incarceration rate for non-person offenders (415.7 per 100,000 population) in line with the state average (305.3). The state could save an addi-

tional 1,127 beds – \$22 million annually – if Maricopa County reduced its incarceration rate for non-person offenders by 10 percent, from 338.5 per 100,000 population down to the state average. Such savings would be enough to fund effective alternatives and reduce the burden on both state and county taxpayers.

9. Study overrepresentation of African Americans and Latinos.

Arizona incarcerates African Americans and Latinos at higher rates than any neighboring state and both groups make up a significantly greater proportion of the prison population than the state population. Further, there appears to be significant disparity in the sentencing of African American and Latino DUI and drug offenders compared to whites with similar prior records. Given these facts, in addition to the proposed reforms to drug and DUI laws, more study is urgently needed to determine the causes of overrepresentation and sentencing disparity affecting African Americans and Latinos as well as other people of color in the state.



About FAMM and the Smart on Crime campaign

The Smart on Crime campaign is a project of Families Against Mandatory Minimums (FAMM). FAMM is a national non-partisan, non-profit organization founded in 1991 in response to inflexible and excessive penalties required by mandatory sentencing laws. FAMM promotes sentencing policies that give judges the discretion to distinguish between defendants and sentence them according to their role in the offense, seriousness of the offense and potential for rehabilitation. FAMM's 35,000 members include prisoners and their families, attorneys, judges, criminal justice experts and concerned citizens.

FAMM works with legislators, law enforcement, criminal justice experts, the media and citizens to provide public education and implement cost-effective criminal justice policies that increase judicial discretion while protecting public safety. FAMM provides support to policy makers concerned about the high fiscal and human costs of mandatory minimums sentencing and related policies.

**For more information on the Smart On Crime
campaign, please visit www.famm.org.**

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