

A NEW PUBLIC SAFETY FRAMEWORK FOR ARIZONA

Charting a Path Forward

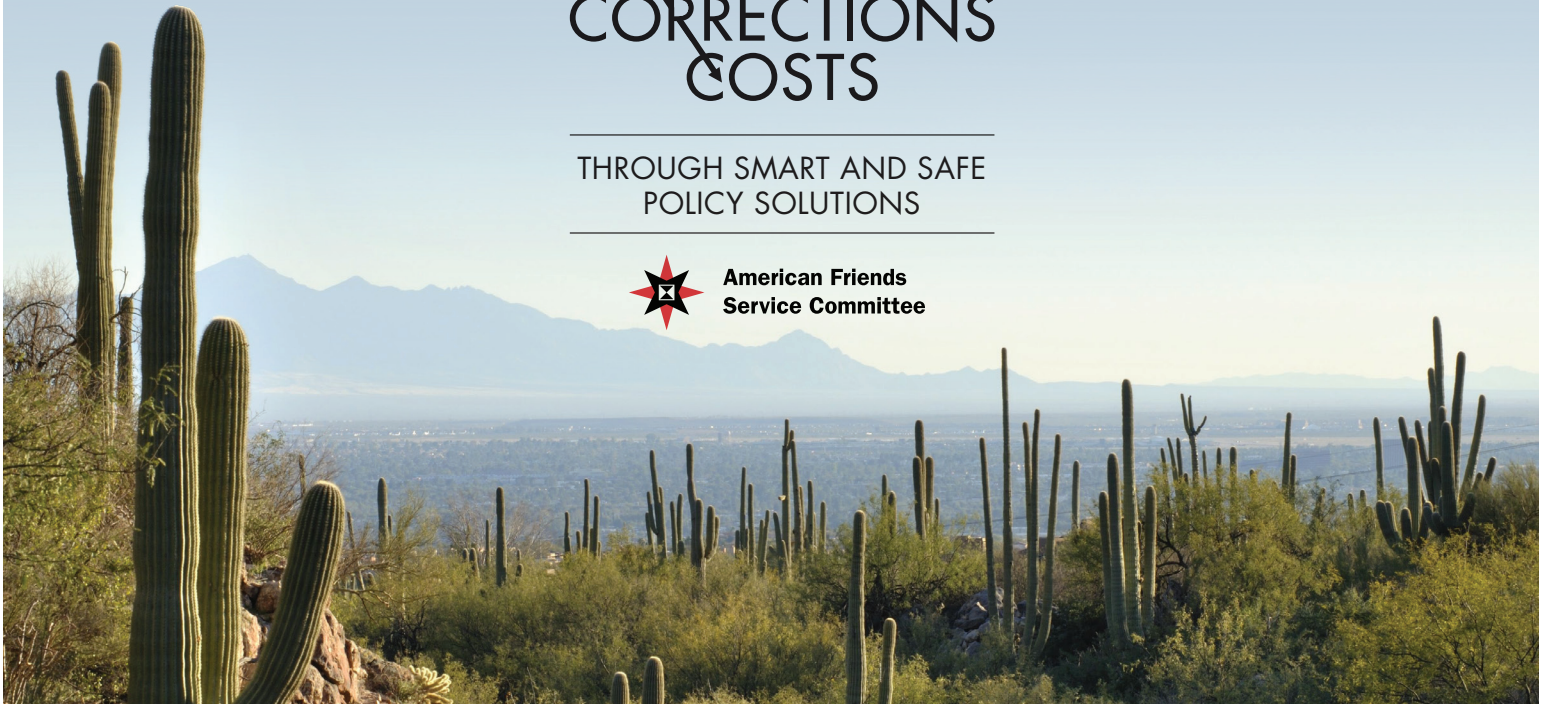
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American Friends Service Committee—Arizona
December 2016

REDUCING CORRECTIONS COSTS

THROUGH SMART AND SAFE
POLICY SOLUTIONS



**American Friends
Service Committee**



This report was made possible by a generous grant from the Public Welfare Foundation.

We offer our deepest thanks to Ana Yáñez-Correa for her support of our work.

AFSC-Arizona would like to thank the following people for their contributions to and review of this report: Rebecca Fealk, Howard Wine, Judy Greene, Drug Policy Alliance of New Mexico, Joel Feinman, Karen Nielsen, and Barry Aarons.

Design by: Melina Chen Lew

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EXECUTIVE SUMMARY

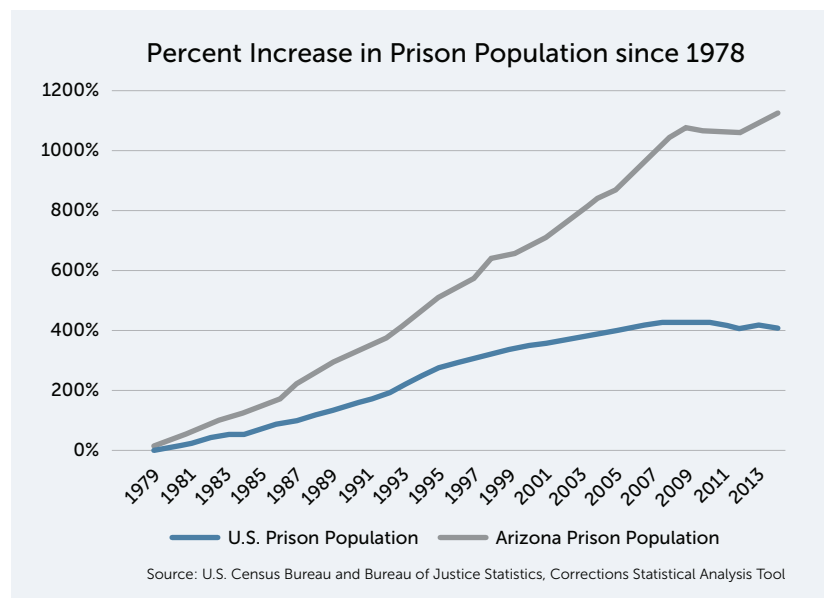
While the majority of states have retooled their criminal sentencing laws in an effort to reduce prison populations, Arizona remains mired in an outdated, punishment-heavy mentality. The current system is extremely costly and is not producing a commensurate reduction in recidivism.

Arizona has the sixth highest incarceration rate in the US, and the highest of western states. While the state's overall population has grown over the past fifteen years, the rate of growth in our prisons has far outpaced Arizona's population growth.

And Arizona's expanding prison system was clearly **not the product of increased crime, which is at historic lows nationwide and in Arizona.**

This growth has been extremely expensive. The Arizona Department of Corrections' budget is now over \$1 billion and makes up 11 percent of the state's general fund. That's an increase of 40 percent in seven years.

Yet **recidivism in Arizona remains extremely high.** Currently, about 49.3 percent of prisoners in Arizona have served time in the past—that is essentially a 50 percent failure rate.



This report identifies key drivers of Arizona’s high incarceration rate, including:

1. Truth-in-Sentencing requiring all prisoners to serve 85 percent of their sentence.
2. Mandatory sentences that require extremely harsh penalties, particularly for those with prior offenses.
3. Technical violations of community supervision.
4. Extremely harsh drug sentences.

Decades of research, an established consensus among criminal justice experts nationwide, and proven examples of successful programs in other states provide a roadmap for Arizona to safely reduce its prison population. Arizona can invest scarce taxpayer dollars in programs and services that cost less and do more to reduce recidivism.

This report provides a comprehensive analysis of the current picture in Arizona, how we got here, and what we can do to move toward more efficient, accountable, and effective responses to crime and social problems like drug abuse and mental illness.

RECOMMENDATIONS

We must begin with a fundamental shift in how we view the purpose of the criminal justice system. The goal of our response to law-breaking should be to solve the problem and address the harm caused. Incarceration as a one-size-fits-all solution is a proven failure and a waste of scarce public monies.

In general, **interventions should be kept outside the criminal justice system to the greatest extent possible**, particularly for those with addictions or mental illness. Any criminal justice related interventions should be calibrated to the level of risk posed by the offender. 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. And, our jails and prisons should have rehabilitation and preparation for reentry as their primary function.

In order to ensure that our criminal justice policies are in keeping with these shared values and goals, we suggest the following metrics to assess any proposed legislation or administrative policies:

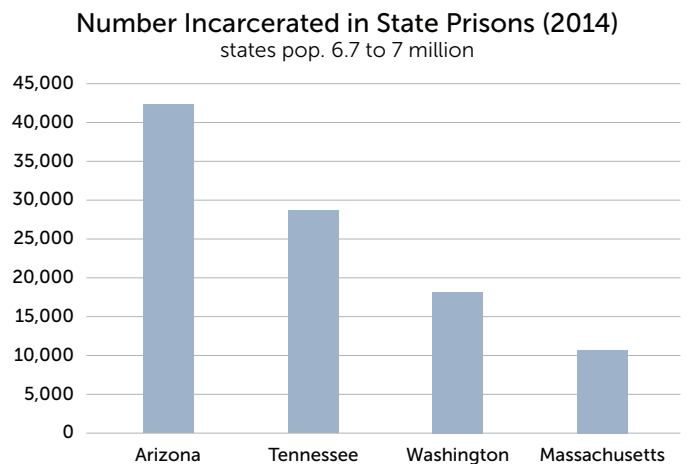
1. **Effectiveness:** All criminal justice policies should be **evidence-based** and proven to reduce crime and recidivism, adequately address harm, and improve safety.
2. **Consistency and Standardization:** Currently, there are successful programs that are in place only in a handful of counties, such as Deferred prosecution programs, specialty courts (such as Drug Courts and Veterans Courts), the Drug Treatment Alternative to Prison program (Pima County). Individuals accused of crime should have the same opportunity to participate in these programs, regardless of where they live. The state should seek to replicate and standardize proven programs and prioritize funding for those that demonstrate a track record of recidivism reduction.
3. **Public Health Approach:** Addiction and mental illness are forms of disease and should not be criminalized. Effective public health approaches include mental health services, drug treatment, and Good Samaritan laws—which prevent people from being charged with drug crimes if they call for help when a person overdoses.
4. **Justice Reinvestment:** Arizona should invest in effective, community-based (non-criminal justice oriented) programs that *prevent* crime, such as drug treatment, job skills training, and education programs. Cost savings from policy reforms that reduce the prison population should be directed toward community-based programs that prevent crime, provide treatment, divert offenders, serve crime survivors, and increase community security.
5. **Re-integration of justice-involved individuals:** The ultimate goal of our response to crime should be to restore people to wholeness, including those with convictions. We must remove barriers to employment, housing, and critical services in order to assist those returning to our communities to live productive and healthy lives.

THE CURRENT PICTURE

While the majority of states are retooling their criminal sentencing laws in an effort to reduce prison populations, Arizona remains mired in an outdated, punishment-heavy mentality. Despite a wealth of research on the effectiveness of cost-efficient alternative approaches, the state legislature has been extremely slow to embrace large-scale sentencing reforms.

Arizona has the sixth highest incarceration rate in the US, and the highest of western states. States with roughly the same population size incarcerate 33 to 75 percent fewer people, and have also seen reduced crime rates.¹

In FY2016, the Arizona state prison population was 42,902—the highest it has ever been.² The average length of a prison stay in Arizona is 8.4 years.³ Nationally, states sentence felony offenders to an average of 4.11 years.⁴



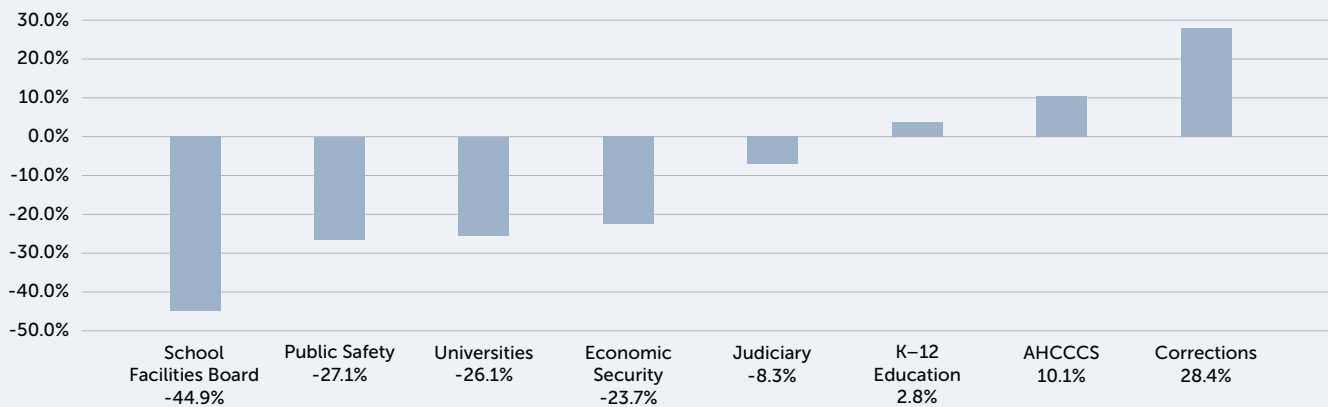
Source: Bureau of Justice Statistics

While the state’s overall population has grown over the past 15 years, the rate of growth in our prisons has far outpaced Arizona’s population growth. And Arizona’s expanding prison system was clearly not the product of increased crime, which is at historic lows nationwide and in Arizona.

	2000	2015	% Change
State Population	5,130,612	6,828,065	33.08
Violent Crime Rate	531.7	410.2	(22.85)
Property Crime Rate	5,297.8	3033.2	(42.74)
Prison Population	26,747	42,611	59.31

Sources: U.S. Census, FBI, Arizona Department of Corrections

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

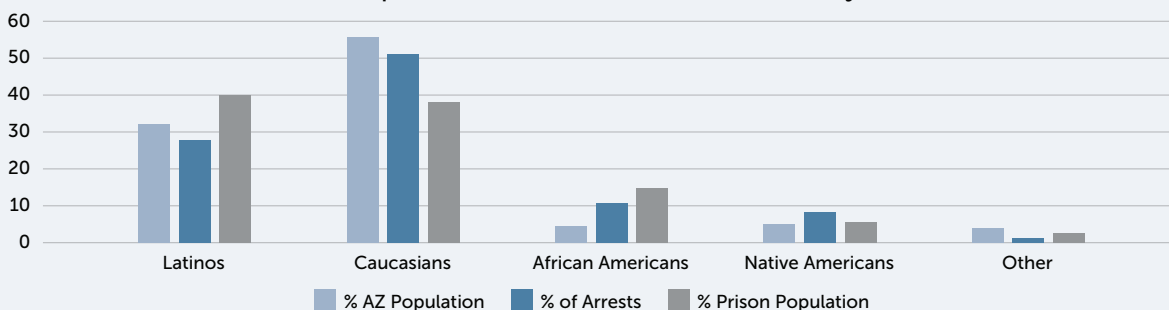
This growth has been extremely expensive. The Arizona Department of Corrections' budget is now over \$1 billion and makes up 11 percent of the state's general fund. That's an increase of 28.4 percent in ten years.⁵ According to the most recent National Association of State Budget Officers report, Arizona ranks fourth highest among all 50 states in the percentage of total general fund expenditures on corrections.⁶

By comparison, spending on economic security in Arizona dropped 23.7 percent since 2007 and spending on K-12 education has gone through hills and valleys, with only a net 2.8 percent increase, according to the Joint Legislative Budget Committee. A report by the Grand Canyon Institute revealed that the state is now spending 60 percent more on prisons than on state colleges and universities.⁸

Moreover, research on prison costs by the Vera Institute of Justice points out that the Arizona prison system actually costs more than the state's taxpayers are told. The \$998.5 million fiscal year 2010 budget did not include at least \$5.5 million in additional expenditures on prison-related costs: capital costs as well as legal claims and judgments carried by the Arizona Department of Administration, and other statewide administrative costs and retiree health care costs could not be tracked in dollar amounts.⁷

Of course, there are more than monetary costs to such policies. People of color are disproportionately⁹ incarcerated in Arizona,¹⁰ despite the fact that the majority of arrests are of white people.¹¹ Latinos now make up the single largest ethnic/racial group in Arizona's prisons at 40 percent. However, these numbers are likely much higher, as each county in Arizona collects information differently and there are often problems with government municipalities accurately recording ethnic identities.¹²

Racial Disparities in Arizona's Criminal Justice System



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

Highest Female State Incarceration Rates

State	Rate (per 100,000)
<i>National Average</i>	<i>58</i>
Oklahoma	142
Idaho	125
Kentucky	108
Arizona	104
Missouri	100

Source: The Sentencing Project

One of the fastest growing prisoner populations is that of women. According to the Sentencing Project, the female prison population is now nearly eight times higher than it was in 1980. Between 1980 and 2014, the number of incarcerated women increased by more than 700 percent, rising from a total of 26,378 in 1980 to 215,332 in 2014. Though many more men are in prison than women, the rate of growth for female imprisonment has outpaced men by more than 50 percent between 1980 and 2014.¹³

Arizona has the fourth highest female incarceration rate in the country, with 104 women behind bars per 100,000 population.¹⁴ In 2015, there were 4,028 women in Arizona prisons—about 9.4 percent of the total prison population.¹⁵

Incarceration impacts families and communities, not just individuals. Nationally, more than 60 percent of women in state prisons have a child under the age of 18.¹⁶ 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. 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 crime.¹⁷

Advocates of harsh sentencing laws are quick to credit Arizona's tough policies, such as Truth-in-Sentencing, for the decline. Yet, crime rates have dropped all across the U.S. over the past two decades. There were a number of periods of declining crime before introduction of the policy, and there have been two periods of increase since. In 2013, the number of violent crimes reported in Arizona was 19.5 percent lower than in

2004, and 20.9 percent lower than the decade high in 2005. Similarly, reported property offenses were 36.4 percent lower in 2013 than in 2004 and 4.4 percent lower than the decade high in 2009.¹⁸

A comprehensive analysis from the Brennan Center for Justice concluded that, "over-harsh criminal justice policies, particularly increased incarceration... were not the main drivers of the crime decline. In fact, the report finds that increased incarceration has been declining in its effectiveness as a crime control tactic for more than 30 years. Its effect on crime rates since 1990 has been limited, and has been non-existent since 2000."¹⁹ And, The Sentencing Project found that the states with the biggest declines in incarceration rates since 2000—New Jersey, New York and California—have seen the most significant drops in crime.²⁰

More concerning is the high recidivism rate in Arizona's prisons. Currently, about 49.3 percent of prisoners in Arizona have served time in the past.²¹ Essentially, recidivism is additional crime committed by those whom the system failed to rehabilitate. This not only a poor return on taxpayer's \$1 billion annual investment, it is an indication of an unacceptable failure of the prison system to ensure public safety.

But this disconnect between high incarceration and high recidivism is not surprising to students of criminology. **The theory that harsh punishment deters crime has been effectively discredited.**²² In fact, it very often reinforces or worsens the problem. Prisons may function as "schools of crime," where prisoners learn more effective crime strategies from each other, and time spent in prison may desensitize many to the threat of future imprisonment.²³

One problem with "deterrence theory" is that it assumes that human beings are rational actors who consider the consequences of their behavior before deciding to commit a crime; however, this is often not the case. A significant number of individuals were abusing alcohol or drugs at the time they were arrested. It is unlikely that they stopped to consider either the certainty or severity of punishment before they committed a crime. This is also true for those who suffer from symptomatic mental illness.

The deeper implication behind deterrence theories is that people make a choice to willfully engage in criminal behavior because they are inherently “bad people” who do not respect the property or lives of others. This belief justifies their harsh treatment and absolves the larger community from empathizing with those labeled as criminals. It is one of the foundations of our system of retributive justice—you harmed someone, so you shall be harmed in turn.

But what about “incapacitation?” Since sending people to prison prevents them from committing crime in the community for the duration of their prison sentences, it would seem logical that the imposition of longer prison terms would trigger a reduction in the rate of violent crime. But this has not been the case. In “Unlocking America,” a group of distinguished American criminologists point out that the results of harsh policies implemented in many states and counties appears to discredit the incapacitation hypothesis:

More recent estimates based on individual states and counties within states have estimated the crime-reduction impact of prison growth to be much smaller or nonexistent. Research on crime and incarceration does not consistently indicate that the massive use of incarceration has reduced crime rates.

In sum, studies on the impact of incarceration on crime rates come to a range of conclusions that vary from “making crime worse” to “reducing crime a great deal.” Though conclusive evidence is lacking, the bulk of the evidence points to three conclusions: 1) The effect of imprisonment on crime rates, if there is one, is small; 2) If there is an effect, it diminishes as prison populations expand; and 3) The overwhelming and undisputed negative side effects of incarceration far outweigh its potential, unproven benefits.²⁴

Adam Gelb, director of the Public Safety Performance Project for the Pew Charitable Trusts, sums up the situation this way, “There’s a pretty strong consensus in criminology that we are well past the point of diminishing returns.”²⁵

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ROOT CAUSES OF LAW-BREAKING BEHAVIOR

Alcohol and drugs are implicated in an estimated 80 percent of offenses leading to incarceration in the United States such as domestic violence, driving while intoxicated, property offenses, drug offenses, and public-order offenses.²⁶ These crimes can often be linked not to simple use of a substance, but addiction and abuse.

The Arizona Department of Corrections has reported that “77 percent of inmates assessed at intake have significant substance abuse histories,” yet there were only 866 prisoners enrolled in “Addiction Treatment” programming in September of 2016.²⁷ Clearly, incarceration alone does not result in people overcoming their addictions, and the recidivism rate shows that the threat of a harsher sentence for a subsequent conviction does nothing to make people clean and sober.

Another root cause of crime that is inadequately addressed by the current punishment-heavy approach is that of mental illness. Individuals with untreated symptoms of mental disorders are likely to behave in ways that violate social norms or laws. In 2005, the Bureau of Justice Statistics reported that more than half of all prison and jail inmates had a diagnosed mental health problem.²⁸ The Arizona Department of Corrections reports that 26.7 percent of prisoners demonstrated a “low need” for mental health services, and another 26.9 percent have a moderate to acute need for treatment.²⁹

A 2010 report noted that there are three times more seriously mentally ill persons in jails and prisons than in hospitals. Arizona and Nevada have almost 10 times more mentally ill persons in jails and prisons than in hospitals.³⁰

Nationally, almost three-quarters of state prisoners with mental health problems reported co-occurring substance dependence.³¹ Inmates with mental illness often have additional social and criminogenic needs. Prisoners suffering from mental illness are more likely to have 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.³²

Needless to say, prison is possibly the least therapeutic environment for a person with mental illness. The World Health Organization puts it bluntly:

Prisons are bad for mental health: 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, in prisons. The increased risk of suicide in prisons (often related to depression) is, unfortunately, one common manifestation of the cumulative effects of these factors.³³

The criminalization of both addiction and mental illness is clearly a failed strategy. Not only can we not incarcerate the illnesses out of people, such policies are in fact creating more problems than they solve.

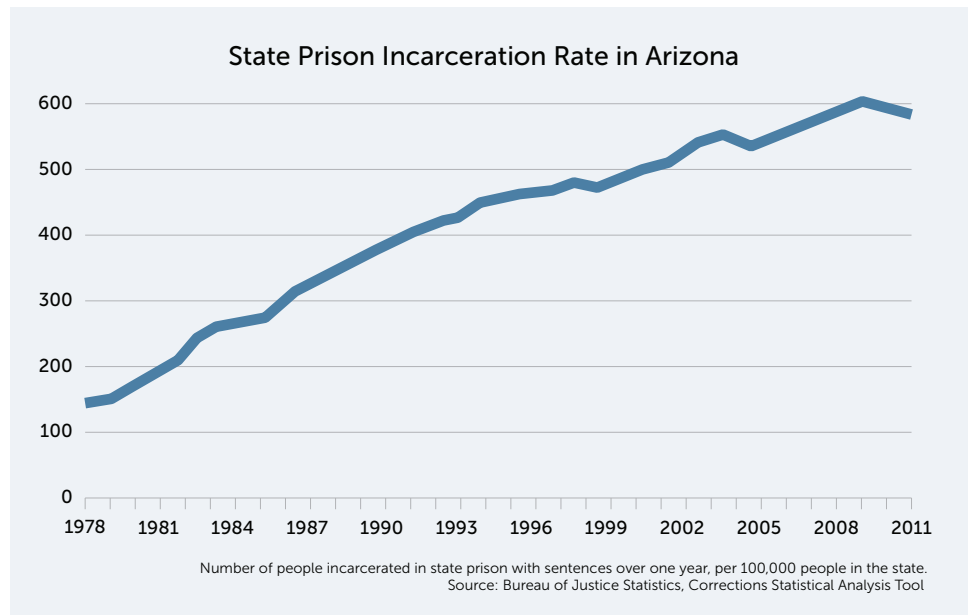
DRIVERS OF ARIZONA'S HIGH INCARCERATION RATE

If the growth in our prisons is largely unrelated to population change or increasing crime, how did Arizona come to be one of the country's top incarcerators? Simply put, prison growth is the result of misguided, deterrence based, state criminal justice policies, a direct outcome of the raft of "tough on crime" legislation that was adopted over the 1990's and early 2000's.

TRUTH-IN-SENTENCING

Arizona is one of three states that require all prisoners, including those convicted of non-violent offenses, to serve 85 percent of their sentence.³⁴ The decision effectively replaced the system of parole, in which individuals were sentenced to a range of prison time and had the opportunity to petition for release on a regular basis by showing good behavior and participation in prison programming.

Federal legislation passed in 1994 entitled "the Violent Crime Control and Law Enforcement Act" or "the Crime Act," aimed to promote tough on crime reform by offering States grants to expand their prison capacity if they imposed Truth-in-Sentencing (TIS) requirements on violent offenders. The Federal TIS Incentive Grant Program was based on a so-called 85 percent rule, meaning that States were to have or pass laws requiring serious violent offenders to serve at least 85 percent of their imposed sentences in prison in order to qualify for the funding.³⁵



By the end of the 1990's, regardless of whether they received Federal TIS grants, most States (42, including the District of Columbia) had implemented some form of TIS activity.³⁶

Of those states, only 10 applied it to both violent and non-violent offenses—exceeding the federal requirement. Six of them (FL, KS, MN, NC, OR, and VA) incorporated TIS within a system of sentencing guidelines. The others, including Arizona, applied it across their existing penal code.³⁷

A 2002 study found that prison sentences for violent offenders increased in every state that passed TIS legislation, although this specific legislation was not the only factor in these increases.³⁸ Truth-in-Sentencing was often adopted as part of a broader set of “tough on crime” laws that were popular during the 1990's, such as mandatory minimums, “Three Strikes and You're Out,” and harsh drug penalties. This combination of get-tough laws, increased prison admissions, and more aggressive policing caused prison populations to spike across the country.

Since 2000, most of those 10 states have enacted reforms that relaxed sentencing requirements under their Truth-in-Sentencing laws for some non-violent offenses—eliminating mandatory minimums; reducing sentence lengths; reinstating parole; and/or allowing judge's discretion for diversion to treatment. This is part of a larger trend of sentencing reform that was influenced both by budget challenges at the state level, and a growing body of research emphasizing the greater effectiveness and cost savings of alternatives to incarceration.

Only three states—Arizona, Florida and Virginia—have completely retained the harsh, across-the-board Truth-in-Sentencing laws enacted back in the mid-1990s. Michael Polakowski, director of the Rombach Institute of Delinquency Crime and Corrections at the University of Arizona, points out one of the pitfalls of this approach: “For all intents and purposes, we have taken away any incentives inmates might have to cooperate with prison officials” and

participate in rehabilitation or educational programs that might have otherwise helped them earn early release.³⁹

Slowing the rate of release from prison also created a bottleneck in the system, causing the incarcerated population to increase exponentially. Since their implementation, there has been no evidence that Truth-in-Sentencing policies reduce crime or prevent recidivism. **Since 1992, the population in the Arizona prison system has increased by 171 percent.** This reflects an increase in the incarceration rate from 393 per 100,000 population to 624 per 100,000.⁴⁰

MANDATORY SENTENCES

In 2004, Families Against Mandatory Minimums published a report that summarized the reasons for over-reliance on incarceration in Arizona.

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.

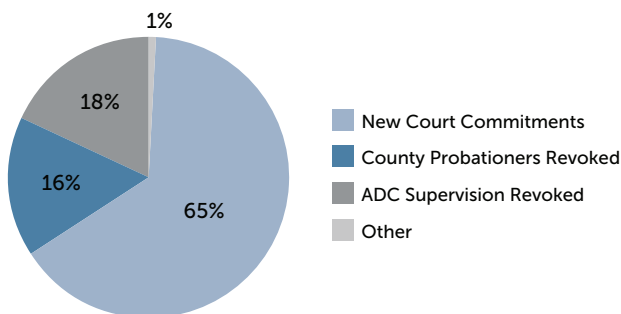
“For all intents and purposes, we have taken away any incentives inmates might have to cooperate with prison officials” and participate in rehabilitation or educational programs that might have otherwise helped them earn early release.

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.⁴¹

At the time they were introduced, mandatory-sentencing laws were promoted to provide consistency and fairness rather than relying on judges who could interpret the law very differently in different cases. One of the consequences of this shift is that the power of discretion has been taken out of the hands of judges and given instead to prosecutors, providing them enormous leverage in the criminal justice process. Prosecutors decide on what crimes the individual is charged with, and the charges then can trigger mandatory sentences and enhancements.

The incentive is for prosecutors to stack as many charges as possible against the defendant in order to convince them to accept a plea to a lesser charge rather than take their case to trial. Trials are lengthy and expensive. Plea bargains are the “grease in the wheels” of the criminal justice system, ensuring that cases are adjudicated quickly. By bringing a high number of charges against a defendant, the prosecutor can credibly say that if the person were to take their case to trial and lose, they would be facing an extremely long sentence. Thus, the vast majority take the plea that is offered to them. In 2010, **plea bargains accounted for 95.6 percent of all felony criminal convictions in Maricopa County**; only 1.6 percent of felony criminal cases filed went to trial, according to court records.⁴²

Arizona State Prison Admissions, Sept 2016



Arizona Department of Corrections, *Corrections At A Glance*, September 2016

“Sentencing is nearly all done by plea bargaining instead of before a judge in open court,” said Pima County Public Defender Robert Hirsh, “The deal is always driven by the risk of a higher sentence.”⁴³

In the end, mandatory sentencing has had the consequence of creating huge sentencing disparities, rather than eliminating them.

CASE STUDY

“Lindsey” had previous charges of methamphetamine possession from 2004, and had not had a conviction since 2007. She was pulled over by police for going 31MPH in a 25MPH zone. No amount of drugs was stated in the probable cause statement, instead there is just a vague description of, “Meth for sales evident.” She had considered going to trial, but took a plea at the last minute that offered to drop certain charges that would have resulted in more prison time in exchange for a ‘probation tail’ (required time served on county probation after her release from prison). However, because of the sentencing structure for methamphetamine, there was no option except to give her 10 years flat-time in prison.⁴⁴

“Alex” was arrested for having 1.77 grams of meth while driving. According to the court documents, he was delivering the methamphetamine for his dealer as payment for drugs to support his own habit. Although Alex had 1 felony prior (trafficking in stolen property), the conviction was 20 years old. Despite this, he was convicted for 1.77 grams of meth, sentenced to 3 years in prison, and a probation tail of 3 more years.⁴⁵

PRIORS

Arizona has a unique definition of a “prior.” The generally accepted concept of a “prior offense” is a crime for which someone was arrested, tried, and convicted. The logic behind applying harsher penalties for “repeat offenders” was that the person had not learned their lesson from a criminal sentence that had been applied, and subsequently committed a new crime after having been punished for the first.

However, **Arizona currently uses a category of “priors” that is virtually unheard of in American jurisprudence.** The

current statute allows the sentencing court to count up the number of distinct “occasions” on which the defendant committed felony offenses that led to convictions rather than to confirm that the defendant had at least been *convicted* for an earlier offense before committing the offense for which a sentence was now being pronounced.⁴⁶

As a result, **offenses committed on the same day (for which the person has not yet been convicted) can be treated as “priors” at sentencing**, allowing to call for harsher penalties. For example, a person can break into a car, walk down the street and break into another car. Rather than simply being charged with two counts of burglary or theft, the prosecutor can label the first break-in a “prior,” triggering a sentence enhancement.

TECHNICAL VIOLATIONS

“Technical violations” refer to a failure to adhere to the conditions of probation or parole. This can include missing meetings with a probation officer, failure to abstain from drugs or alcohol, or changing residences without approval. They are violations of the terms of one’s probation or release from prison, rather than new crimes.

Currently, **technical violators represent about 34 percent of state prison admissions**—16 percent for violations of Probation and 18 percent for violations of post-prison supervision.⁴⁷

In 2008, the state legislature passed the Safe Communities Act, which encouraged counties to institute a new set of processes in order to reduce revocations. The bill pledged to reinvest the savings generated by diverting people from prison into county probation departments. However, this funding was never allocated and the bill itself was later repealed. To their credit, the Adult Probation Department voluntarily chose to implement many of the recommendations simply because it was good policy to do so. As a result, the number of revocations to prison between 2008 and 2015 decreased by 21.5 percent.⁴⁸

Sadly, it appears that the Arizona Department of Corrections does not have such a program, which likely means that individuals are being sent back to prison for minor infractions. Using Arizona DOC data, the 18 percent of admissions for technical violations, mentioned above, equaled about 812 people in 2016. Multiplied by the reported average per diem

cost of \$64.93, this represents a waste of approximately \$52,723 per day. If we estimate conservatively that these individuals served only six months each, **the total price tag is around \$9,621,947—all for non-criminal infractions.**

HARSH SENTENCES FOR DRUG OFFENSES

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.”⁴⁹

The law has been so successful that many of the proposed drug reforms that have been introduced in other states in recent years are modeled after this law.

However, the law is far from comprehensive. In 2007, voters approved a ballot measure to exclude those charged with possession of methamphetamine from eligibility for Proposition 200 diversion.⁵⁰ And after those first two possession charges, sentences for all drug crimes become extremely harsh.

The chart below illustrates how Arizona’s drug sentences differ from those of neighboring states—both of which are considered politically conservative. The chart compares the “threshold amount”: the minimum amount of a drug that triggers a given criminal charge.

In general, Arizona applies a much longer sentence for lower amounts of both possession and sales. For example, to qualify for a charge of possession for sale of marijuana, an individual would have to have 50lbs of the substance in Texas and 100lbs in Nevada. But possession of just 4lbs in Arizona is enough to charge for this category of “drug sales,” and can result in a minimum sentence of 4 years in prison. Yet, in Nevada, that same charge—triggered by having *25 times more* marijuana—would earn the person just one year of prison time.

Arizona’s drug laws treat the lowest-level sellers, most of whom are addicts, like major players in the drug market.

Three-State Drug Sentencing Comparison

DRUG	OFFENSE	ARIZONA		NEVADA		TEXAS	
		Threshold	Minimum Sentence (years)	Threshold	Minimum Sentence (years)	Threshold	Minimum Sentence (years)
LSD	Possession	—	1.5	—	1	80 units	2
	Possession for sale	50 doses	4	14g	2	80 units	2
Marijuana	Possession	2lbs	2.5	1oz	1	5lbs	2
	Possession for sale	4lbs	4	100lbs	1	50lbs	5
Crack Cocaine	Possession	—	1.5	—	1	4g	2
	Possession for sale	750mg	4	14g	2	200g	5
Powder Cocaine	Possession	—	1.5	—	1	4g	2
	Possession for sale	9g	4	14g	2	200g	5
Heroin	Possession	—	1.5	—	1	4g	5
	Possession for sale	1g	4	14g	2	200g	5
Meth	Possession	—	1.5	—	1	4g	5
	Possession for sale	9g	4	200g	2	200g	5
PCP	Possession	—	1.5	—	1	4g	5
	Possession for sale	4g	4	200g	2	200g	5

Source: Drug Policy Alliance, independent research request, 2013

Many drug offenses, including possession with intent to sell, are Class 2 felonies regardless of the circumstances. **This is just one felony class level below first-degree murder.** Because of this, non-violent addict-sellers can get prison terms longer than some violent offenders.

CASE STUDY

In 1988, Jay Martin Jonas of Bisbee was sentenced to 25 years in prison for selling a marijuana cigarette, for a dollar, to a 14-year-old juvenile delinquent. He got 22 1/2 years more tacked on for agreeing to fence a handgun the boy had stolen. Jonas, then 21, had a prior felony, so the two sentences were imposed consecutively without any possibility of parole.

On appeal, Arizona Supreme Court Justice Robert Corcoran, writing for the majority, noted that Jonas' sentence "is among the harshest in the nation," but he upheld it. In his dissent, Justice Stanley Feldman replied, "Actually, it's the harshest. Arizona is the only state that would or could incarcerate a first-time seller of one marijuana cigarette to twenty-five years in prison without parole to be served consecutively to any other sentence imposed."⁵¹

Drug offenses accounted for the second largest category of arrests in Arizona in 2015. Drug possession cases represented 10.45 percent of all arrests. Of those, 5.99 percent were for marijuana possession. Drug sales arrests were a much smaller percentage of arrests—just 1.28 percent of all cases.⁵²

After arrest, the data shows that drug offenses account for seven out of the ten most charged criminal offenses in Maricopa County, and all are related to possession rather than sales.

The numbers in Arizona's prisons show how those various crimes are treated at sentencing. Drug offenses are the single largest category of crime for which people are serving a prison sentence—21.3 percent. Of those, 7.6 percent are in prison for drug possession, but 13.7 percent are in for sales.⁵⁴

The American Friends Service Committee recently conducted the first ever research survey of drug sentencing in Arizona. Research involved cases where a person was sent to prison for a drug charge in 2015 in Maricopa, Pima, and Yavapai counties. A total of 1,320 Cases were researched (4,039 charges), with 59 removed from the analysis as they were technical violations, not new crimes. This new data sheds light on how Arizona's drug sentencing laws are being

applied and the true impact they are having on the prison population and the state budget.

Our research confirms that **Arizona’s sentencing guidelines set an extremely low threshold amount to qualify as “sales,”** confirming that many people serving prison sentences for selling drugs were likely addicts selling small amounts to support their own habits, not cartel kingpins. In some cases, the arrest and court records did not even include an actual weight or drug amount, instead citing it as “a useable amount.”

Using the Arizona Department of Corrections’ cited average per diem cost in 2015, we can estimate that **sentencing these low-level, addict-sellers to prison cost the state more than \$14 million.**

Top Ten Most Charged Criminal Offenses Maricopa County, 2015⁵³

Charge	Total
Drug paraphernalia—Possess/Use	7,181
Dangerous Drug—Possess/Use	5,022
Marijuana—Possess/Use	4,745
False Statement to Obtain Benefits	4,407
Aggravated DUI—License Suspended/Rev for DUI	3,429
Marijuana Violation	3,312
Aggravated Assault—Deadly Weapon/Dangerous Instrument	3,304
Drug Paraphernalia Violation	3,014
Narcotic Drug—Possess/Use	2,786
Dangerous Drug Violation	2,534

COLLATERAL CONSEQUENCES

The term “collateral consequences” refers to the **legal sanctions and other restrictions imposed upon people because of their criminal record**, including voter disenfranchisement; severing of parental rights; federal bans on some felons receiving food stamps, Pell Grants, or public housing; and restrictions on professional licensure in a variety of fields. These are over and above any term of incarceration, fines, fees, or supervision was handed down by the courts as punishment for the offense. Indeed, most collateral consequences do not apply until an individual has completed his or her prison sentence. In many cases they can follow the individual for the remainder of their lives.

As a practical matter, every criminal sentence contains the following unwritten term: The law regards you as having a “shattered character.” Therefore, in addition to any incarceration or fine, you are subject to legal restrictions and limitations on your civil rights, conduct, employment, residence, and relationships. For the rest of your life, the United States and any State or locality where you travel or reside may impose, at any time, additional restrictions and limitations they deem warranted. Their power to do so is limited only by their reasonable discretion. They may also require you to pay the expense of these restrictions and limitations.⁵⁵

Some collateral consequences are enshrined in law, some are embedded in administrative codes or policies, and some are what amounts to legal discrimination—people can be denied a job or housing on the basis of a conviction alone. Unlike race, gender, and ethnicity, people with convictions are not a “protected class” under the Civil Rights Act and can therefore be legally discriminated against.

The American Bar Association has identified 886 collateral consequences in the state of Arizona. These include possible exclusion from or denial of professional licenses in such fields as pest management, morticians/embalmer, athletic trainer, insurance, motor vehicle dealer, real estate, security guard, cosmetology, interpreter, firefighter, hazardous waste disposal, and a variety of healthcare-related fields.⁵⁶

Our society has an inconsonant view of people with convictions: On the one hand, our culture claims to value forgiveness and second chances. On the other, the belief that people who

break the law do so because they are fundamentally “bad people” leads us to associate past behavior with future risk. The fear-based crime hysteria of the 1980’s and 90’s, coupled with the advent of the digital age means it is next to impossible for many people to ever be free of their criminal history.

...over 5.85 million people (1 out of 40 adults) were disenfranchised from voting as of 2010. Employment restrictions can also rely on arrests without a conviction and several states provide arrest records in their criminal background records. [The U.S. Bureau of Justice Statistics] estimates that roughly 98 million subjects have records in state criminal history files, and that over 90 percent of these are accessible through automated file searches.⁵⁷

The end result is that our policies and practices essentially guarantee recidivism. Collateral consequences prevent individuals with criminal convictions from doing what we as a society claim we want them to do—rehabilitate themselves, get jobs, and become stable, contributing members of society. ***Collateral consequences set people up to fail.***

For example, a person just released from prison on supervision will likely be required to find housing and a job within a certain period of time. He will also be expected to pay a fee for his supervision, drug testing, and other required activities (drug treatment, anger management, etc.). But because of the felony conviction on his record, he cannot find work. He is unable to pay his fees on time, and is charged a late fee, which he is also unable to pay. After a certain amount of time without finding work or paying his fees, he may be revoked back to prison for violating the terms of his release.

For those without supervision, the struggle to obtain employment and safe, stable housing is just as difficult. Lacking reliable transportation, affordable childcare, and other supports many of us take for granted, the stress can lead to relapse into substance abuse, and a slide back into criminal behavior.

PROVEN STRATEGIES TO REDUCE CRIME AND RECIDIVISM

SUBSTANCE ABUSE: ADOPTING A PUBLIC HEALTH APPROACH

As mentioned above, the vast majority of people involved in the criminal justice system are struggling with addiction. The general 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.⁵⁸

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.”⁵⁹

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, with symptom recurrence rates similar to those for other well-characterized chronic medical illnesses—such as diabetes, hypertension, and asthma—that also have both physiological and behavioral components. 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.

This is not the case. 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.⁶⁰

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.

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.⁶¹

These numbers are borne out in Arizona as well.

“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.”

Annual Cost Comparison, FY2015

	Prison	Jail*	Drug Court*	Drug Treatment	Standard Probation	Intensive Probation
Cost per person, per year	\$23,699 ⁶² (\$64.93/day)	\$32,850 ⁶³ (\$90.00/day)	\$3,796 ⁶⁴	\$3,084 ⁶⁵	\$961 ⁶⁶	\$6,322 ⁶⁷

*Data are for Maricopa County only

The gold standard for drug treatment programs in Arizona is the Drug Treatment Alternative to Prison Program (DTAP) in Pima County. The program places defendants in a residential, therapeutic community treatment system for three years as an alternative to a prison sentence. The DTAP Program begins with three months of inpatient, residential drug treatment followed by wraparound recovery support services managed by a resources specialist, including transitional housing, literacy services, higher education, job training and placement services, and counseling, accompanied by drug testing, probation monitoring and regular court hearings.

A 2013 study found that this intensive program costs an average of \$12,593, almost half of what it costs to incarcerate someone. And the program produces better public safety outcomes—75 percent of participants successfully complete the program, and have a recidivism rate less than half that of offenders who were sent to prison or jail.⁶⁸

EVIDENCE-BASED PRACTICES IN SENTENCING AND CORRECTIONS

Over the past three decades, extensive research by social scientists and criminologists has helped to spur interest in substance abuse treatment and other viable correctional interventions. Using meta-analysis and cost-benefit techniques, researchers have identified many specific interventions that increase public safety while making more effective use of taxpayer dollars.⁶⁹

The National Council of State Legislatures (NCSL) compiled a comprehensive analysis of these approaches and has published guidelines for states to help ensure that their sentencing and corrections policies are in line with the latest research and best practices in the field. The NCSL recommends the following **Seven Principles of Effective State Sentencing and Corrections Policies**:

1. **Sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity.**

- Establish sentences that are commensurate to the harm caused, the effects on the victim and on the community, and the rehabilitative needs of the offender.
- Strive to balance objectives of treating like offenders alike with allowing discretion to select correctional options that meet individual offender needs and contribute to crime reduction.
- Consider whether sentencing and corrections policies adversely or disproportionately affect citizens based on race, income, gender or geography, including, but not limited to, drug crimes.
- Review policies that affect long-term consequences of criminal convictions, including housing and employment opportunities.

2. **Legislatures should convey a clear and purposeful sentencing and corrections rationale. The criminal code should articulate the purpose of sentencing, and related policies and practices should be logical, understandable, and transparent to stakeholders and the public.**

- Provide for agency mission statements that reflect the goal of recidivism reduction and the intended

balance of surveillance, incapacitation, rehabilitation and victim restoration.

- Articulate corresponding requirements of agencies and expectations of courts.
- Include in stated objectives that programs and practices be research-based, and provide appropriate oversight.
- Encourage collaboration among criminal justice, health and human services, and other relevant government agencies with intersecting (not conflicting) missions and goals.
- Include criminal justice system stakeholders in planning and deliberations. Consider a coordinating council or other structured body to facilitate policy development that includes input from a broad array of stakeholders.
- Engage and educate the public by providing meaningful and accurate messages about issues and approaches.

3. **A continuum of sentencing and corrections options should be available, with prison space for the most serious offenders and adequate community programs for diversion and supervision of others.**

- Ensure assessment of offender risk, needs and assets in order to provide appropriate placement, services and requirements.
- Strengthen placement decisions and supervision by encouraging coordinated inter-branch efforts among courts, corrections departments, and state and local supervision agencies.
- Establish policies that consider an offender's risk and criminal history as the basis for sentencing options and program eligibility.
- Provide clear policies for violations of community supervision. Consider administrative remedies and court options for technical violations, and offer incentives for compliance with conditions and requirements.
- Consider time-served requirements and ensure that release mechanisms and policies are clear and complete. Allow incentives for prisoners who complete prescribed programming, treatment or training.
- Provide appropriate levels of supervision and services for all offenders as they reenter the community.

4. **Sentencing and corrections policies should be resource-sensitive as they affect cost, correctional populations and public safety. States should be able to effectively measure costs and benefits.**
 - Consider how state-level policies affect state and local correctional populations, costs, and state-local fiscal partnerships.
 - Target resources to make the best use of incapacitation, interventions and community supervision.
 - Partner with and consider incentives to local jurisdictions as part of adequately funded and accountable community programs and services.
 - Take into account how funding reductions to prison services or to state or local supervision programs affect short-term operations and long-term program benefits.
 - Consider the appropriate role of private industry in providing correctional services, and leverage resources and expertise of nonprofit, faith-based and other community organizations.
5. **Justice information should be a foundation for effective, data-driven state sentencing and corrections policies.**
 - Build legislative and executive capacity to consider the fiscal impacts of policy actions (or inaction).
 - Provide a framework for data collection, analysis and technology improvements that support and fulfill information needs.
 - Facilitate and require research and evaluation of programs and practices. Use measurements and information to hold systems and offenders accountable, with a focus on and expectation of reducing recidivism and increasing public safety.
 - Measure successes as well as failures, and use information and data to develop policy and make budget decisions.
 - Build justice information systems that allow inter-governmental sharing of critical case and client information. Pair with policies that enable appropriate information exchange at key discretion points.
6. **Sentencing and corrections policies should reflect current circumstances and needs.**
 - Review and consider whether policies of a different era should sunset or be modernized.
 - Allow adaptations to the criminal code to reflect current needs, standards and values.
 - Provide for policy updates that allow use of new technologies and ways to supervise offenders and protect the public.
 - Consider whether some criminal offenses warrant redefinition or reclassification, and examine proposals for new crimes or sentences in the context of whether the current criminal code is adequate.
 - Ensure that victims' rights are enforceable, and that services for victims are reviewed and refined in line with current policies, technologies and needs.
7. **Strategies to reduce crime and victimization should involve prevention, treatment, health, labor and other state policies; they also should tap federal, academic and private resources and expertise.**
 - Consider investments in education and juvenile justice systems as part of efforts to reduce crime.
 - Consider as part of crime prevention the needs of and the opportunity for services to children and families of incarcerated offenders.
 - Connect health, employment and other related agencies to those providing correctional supervision, reentry services and prevention programs at state and local levels.⁷⁰

MEETING THE NEEDS OF CRIME SURVIVORS

Being the victim of crime can be a deeply traumatic experience. Even crime that involves no direct contact between the two parties, such as theft, can leave the harmed party feeling vulnerable and unsafe. Victims and survivors suffer financially when their money or jewelry is taken, when their property is damaged, when their medical insurances does not cover all expenses, and when they must pay funeral costs.

The primary victim is not the only one who is impacted. The emotional injuries of victimization have both immediate and long-term effects on victims, their loved ones, friends and neighbors. High rates of crime undermine the social fabric of entire communities. Crime is associated with elevated rates of fear of strangers and general alienation from participation in community life.⁷¹ This erosion of the community cohesiveness in turn makes the community more vulnerable to crime.

Unfortunately, their **experience with the criminal justice system often compounds the trauma experienced by crime survivors.**

Perhaps the most agonizing experience for victims involves dealing with the criminal justice system if and when an offender is apprehended. At this level, the crime is considered to have been committed against the state, and victims become witnesses to the crimes. This procedure is very difficult for the crime victim to understand and come to terms with, because in the victim's mind, he or she is the one who has suffered emotionally, physically, psychologically and financially. At this stage of the process, a victim can sometimes feel that he or she is losing complete control because he or she is not directly involved in the prosecution or sentencing of the offender.⁷²

The victim's rights movement in the U.S. has made great strides in highlighting these concerns and advocating for better representation of the voices of crime survivors in the criminal justice process. This movement has helped states enact a set of laws that require that victims have certain information, protections, and a limited role in the criminal justice process.

In addition, many of the "tough on crime" policies that led to the sharp increase in incarceration, such as mandatory

minimum sentences and three strikes laws, have been publicly supported by crime victims who believed that the system was not holding offenders accountable. These policies were promoted as effective responses to punish “habitual offenders” and as deterrents to future crime. However well-intentioned, the evidence is now clear that these types of laws not only have swelled prison populations and drained state resources, they have also failed to deliver victims their promise of safety and “closure.”

A ground-breaking national survey of crime victims revealed that, contrary to the claims of proponents of tough-on-crime policy, survivors of crime do not favor harsh sentencing laws. The National Survey on Victims’ Views found that the overwhelming majority of crime victims believe that **the criminal justice system relies too heavily on incarceration, and strongly prefer investments in prevention and treatment to more spending on prisons and jails.**⁷³

- **Six in 10** victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people in prison for as long as possible.
- By a margin of **3 to 1**, victims prefer holding people accountable through options beyond just prison, such as rehabilitation, mental health treatment, drug treatment, community supervision, or community service.⁷⁴
- By a margin of **2 to 1**, victims prefer more investment in community supervision, such as probation and parole, to more investment in prisons and jails.⁷⁵

If these results seem surprising, it is likely due to the misrepresentation and misunderstanding of the majority of victims in the U.S. The public face of the victim’s rights movement tends to be fairly homogenous—generally white, middle-class women. In reality, national data shows that

African-Americans are more likely to be victims of crime than any other demographic group.

While African-Americans accounted for 13 percent of the U.S. population in 2005, they were victims in nearly half of all homicides.⁷⁶ Native Americans experience a per capita rate of violence twice that of the U.S. resident population.⁷⁷ In 2005, 18 percent of households headed by Latinos experienced one or more crimes, compared to 13 percent of non-Hispanics.⁷⁸

Unfortunately, Arizona specific victimization data only accounts for ethnicity rather than race. The percentage of Hispanics reporting any type of victimization was about 29.4 percent, while the percentage of non-Hispanics was 30.8 percent. The data does not break down Non-Hispanic into white, Black, Native American, or other. Thus we do not know the extent of victimization for these groups in Arizona.⁷⁹

However, a breakdown of the numbers by type of victimization is illuminating: Hispanics are more likely to experience violent crime, property crime, and hate crime than non-Hispanics.

And, as noted above, communities of color are disproportionately represented in the criminal justice system.

Perhaps unsurprisingly, research shows that incarcerated people have above-average rates of childhood victimization, particularly women.

At least half of incarcerated women in prison have experienced at least one traumatic event in their lifetime. Rates reported by men are lower by comparison but significant nonetheless. Childhood abuse is reported by 25 percent to 50 percent of incarcerated women and by 6 percent to 24 percent of their male counterparts.⁸⁰

Percentage of Respondents Reporting Crime Victimization by Type

	Any Victimization	Violent Crime	Property Crime	Identity Theft	Hate Crime
Hispanic	29.4%	7.3%	13.3%	13.1%	3.8%
Non-Hispanic	30.8%	5.3%	11.5%	19.3%	3.6%

Source: Arizona Criminal Justice Commission, 2013 Crime Victimization Survey

A study by U.S. Department of Justice found that 86 percent of women in jail reported having experienced sexual violence in their lifetime, 77 percent reported partner violence, and 60 percent reported violence from a parent or guardian.⁸¹

In many cases, it is the trauma of victimization that sets off a chain of events leading to crime and incarceration. There are countless examples of victims of childhood violence who lack access to support services and eventually turn to drugs to dull their trauma. For many, their addiction leads them to crime and incarceration. Research shows a strong correlation between victimization and substance abuse: at least two-thirds of patients in drug abuse treatment centers say they were physically or sexually abused as children.⁸²

CASE STUDY

“Sarah” was 22 years old at the time of her sentencing for drug sales. The court documents addressed a very pivotal mitigating factor: the fact that her drug use began following a violent rape in December 2013. Included in the sentencing memo was a letter written by a woman in a rape victim support group Sarah attended, which said, “Sarah was brutally attacked and violently raped for hours...then blindfolded and kidnapped by a neighbor in broad daylight on Christmas Eve 2013... [she was] found naked, unconscious, barely breathing and choking on blood from internal bleeding in her lungs... left in a public park to die.”

Sarah suffered from severe depression, and even the probation officer who interviewed her for the presentence report indicated that they felt probation was a more appropriate sentence considering the fact that her drug use was an obvious attempt to deal with trauma through self-medication. At the time, she was on probation for a drug charge that occurred five months earlier, but this new charge caused that to be revoked, and she was sentenced to 3.5 years in prison.⁸³

Unfortunately, **the adversarial nature of the U.S. criminal justice system fosters the categorization of individuals into “good” victims and “bad” perpetrators, leaving little room for the reality that, in many cases, they are the same individuals or members of the same families.**

RESTORATIVE JUSTICE

While the reforms fostered by the victim’s rights movement have addressed the issue of information about and participation in the prosecution of criminal cases, and substantially increased the amount of federal funding for victims’ compensation, there is one fundamental need articulated by victims that has been systematically overlooked: Emotional restoration and healing.

Surveys of crime survivors reveal that they see emotional reconciliation to be much more important than financial reparations.⁸⁴ This is because the principal impact of victimization (beyond any actual physical injury) is emotional trauma. Victims feel fundamentally unsafe, bewildered by the randomness of the act, or may blame themselves for what occurred. They want to know, “Why did this happen to me?,” “Could it happen again?” They want the person who caused the harm to know how they feel, and take responsibility for what they have done. And, they want the opportunity to forgive, which is one of the most profound acts of healing.⁸⁵

However, there is little to no opportunity for such questions to be addressed within the current criminal justice system. The punishment based system of American jurisprudence means that such an admission of guilt will likely result in a harsh sentence. The general definition of justice is either monetary compensation or punishment for the responsible party, neither of which addresses the emotional needs of the harmed.

This is a result of the origins of our modern jurisprudence system being grounded in a monarchical society. In ancient times, crime was a private matter between the two parties and their respective families or clans, and was resolved through direct payment to the aggrieved or through a vendetta or blood feud. As power in Europe became consolidated under

monarchy, crime moved from being an offense against an individual or family to an *offense against the crown*. Today, crime is considered an offense against the state, and it is the state which prosecutes the defendant. Put in this context, the emphasis on punishment makes more sense—the theory being that the state needs to impose order on its citizens in the interest of the larger concept of public safety. However, this does little or nothing to address the harm suffered by either party.

Restorative Justice provides a fundamentally different approach to the problem of crime and victimization, emphasizing repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, although other approaches are available when that is impossible. This can lead to transformation of people, relationships and communities.

The foundational principles of restorative justice are:

- a. Crime causes harm; justice should focus on repairing that harm.
- b. The people most affected by the crime should be able to participate in its resolution.
- c. The responsibility of the government is to maintain order, the responsibility of the community is to build peace.

The most common examples of this approach are victim-offender mediation programs and “Circles,” which are similar to victim-offender mediation, but differ in that they involve not only the offender and victim, but also their family members, community members, and government representatives.⁸⁶

The adversarial nature of the U.S. criminal justice system fosters the categorization of individuals into “good” victims and “bad” perpetrators, leaving little room for the reality that, in many cases, *they are the same individuals or members of the same families.*

The benefits of this approach are proven:

- It substantially reduces repeat offending for some offenders
- It reduces repeat offending more than prison for adults and youth
- It doubles (or more) the number of offenders diverted from prison
- When used as a diversion tactic, it reduces the costs of criminal justice
- It provides both victims and offenders with more satisfaction that justice had been done than the retributive criminal justice process
- It reduces victims’ post-traumatic stress symptoms and the related costs
- It reduces victims’ desire for violent revenge against their offenders⁸⁷

RE-DEFINING SAFETY

Crime rates, prison populations, and recidivism are three very flawed measures of something that is deeply important to all Arizonans: Safety. Increasingly, a new analysis is emerging that emphasizes community safety is more than the absence of crime—it is the presence of other social factors that make people feel secure on many levels.

In “Unlocking America,” a panel of esteemed criminologists assert that we must think more broadly:

... if incarceration were the key to a safer society, cities and states with exceptionally high incarceration rates (e.g., Baltimore, Washington, D.C., Louisiana, Texas, and Oklahoma) would be the safest—not the most dangerous—places to live. **What makes a place safe are social and economic factors that deliver a high quality of life as measured by good education, strong families, informal social controls, viable networks, and opportunities for stable, meaningful, and well-paid work.** (emphasis added)

How “safe” is someone who lives paycheck to paycheck and has no access to healthcare for a serious medical condition? How “safe” are children who don’t have enough to eat or stable housing?

A more challenging question is: Can we create real “safety” when we punish people by placing them in correctional institutions which are, themselves, inherently unsafe? There is a growing awareness that, even beyond the abuse and violence that many (if not most) prisoners experience, incarceration in and of itself is a form of violence that produces trauma.⁸⁸

Given that at least 95% of prisoners will eventually be released,⁸⁹ the way they are treated while incarcerated has a direct impact on not just their safety or that of their families, but of entire neighborhoods and communities.

Increasingly, research aimed at violence and crime prevention is focusing on the importance of the overall well-being of a community—where safety means good health, not just protection from physical harm.

One reason for the failure of our current approach is that it views crime as The Problem, instead of the symptom of a larger problem or problems. As noted, among the root causes of crime are things like drug addiction, early childhood trauma, and mental illness. **Crime doesn't just undermine safety—it is the product of a lack of safety.**

According to Ronald Davis, director of the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS), "The greatest deterrent to crime and violence is not a community saturated with cops—it is a neighborhood alive with residents. The concept is that a healthy community would be, in fact, a safe community."⁹⁰

Yet the public resources that are needed to provide this larger level of safety are currently devoted to the massive expenditure of prisons. As noted above, Arizona spends far more on corrections than services to the poor and disabled, higher education, and other programs. Budget decisions like these demonstrate a set of priorities on the part of state government that must be re-examined. In light of the clear evidence that investment in prevention pays dividends while high rates of incarceration waste money and do not reduce recidivism, it is time for Arizona to pursue a justice reinvestment agenda.

Justice reinvestment is a data-driven approach to corrections policy that seeks to cut spending and reinvest savings in practices that have been empirically shown to improve safety and hold offenders accountable.⁹¹ In 2005, Justice Reinvestment was developed as a public safety mechanism to downsize prison populations and budgets and re-allocate

savings to leverage other public and private resources for reinvestment in minority communities disproportionately harmed by the system and culture of harsh punishment. Initially, it sought to capitalize on the nascent shift away from "tough on crime" sentiment by highlighting the trade-offs between primarily punitive (and expensive) prison spending and prospective public safety investments in local community-building institutions and services.

The American Friends Service Committee recommends that elected officials, administrators, and leaders from across the political spectrum here in Arizona work together to reject the failed and wasteful policies of the past and embrace the proven, effective, and efficient models now in use in many other states.

To that end, we offer the following framework which, in addition to the research provided in this report, can serve as a guide for a thoughtful and comprehensive re-examination of our current responses to crime, violence, and public health problems such as drug addiction and mental illness.

ELEMENTS OF A NEW PUBLIC SAFETY FRAMEWORK

We must begin with a common understanding of the purpose of the criminal justice system. The goal of our response to law-breaking should be to solve the problem and address the harm caused. This means we listen to the voices of crime survivors and address their needs to the fullest extent possible, even those that may seem outside the scope of the traditional criminal justice system (job assistance, child care, etc.).

But we should seek to restore those who commit crime to wholeness as well. By addressing the trauma they have experienced and assisting them in overcoming addiction or treating a mental illness, we can break the cycle of violence and truly reduce recidivism. This begins with the belief in the inherent worth and dignity of all people and the assumption that everyone is capable of change. We must resist the urge to label those who commit crime as “less than” or dehumanize them. This includes ensuring that they are given every opportunity to reintegrate into society after their sentence is served.

We must seek to strike a balance between demanding individual accountability for those who commit crime and acknowledging our collective responsibility to create the kind of society that fosters safety for all.

The majority of our resources—both monetary and in terms of personnel—should be invested in community-based programs that prevent crime: Substance abuse treatment, mental health, trauma-informed care, accessible medical treatment, and other core human services. These types of investments have proven to have the greatest return in terms of public safety.

In general, **interventions should be kept outside the criminal justice system to the greatest extent possible**, particularly for those with addictions or mental illness. Any criminal-justice related interventions should be calibrated to the level of risk posed by the offender. Individuals should be placed on the least restrictive forms of supervision possible for as short a time as necessary.

We must resist the current trend toward replacing one form of custody and control with another in the name of “reform.” Alternatives to incarceration such as electronic monitoring should be determined by the actual risk and need of the individual rather than as a blanket requirement.

Incarceration should be reserved for those who truly pose an immediate threat to public safety. And our jails and prisons should have rehabilitation and preparation for reentry as their primary function.

In order to ensure that our criminal justice policies are in keeping with these shared values and goals, we suggest the following metrics to assess any proposed legislation or administrative policies:

1. **Effectiveness:** All criminal justice policies should be evidence-based and proven to reduce crime and recidivism, adequately address harm, and improve safety.
 - a. All criminal justice agencies or subcontractors must collect and make available to the public consistent data on costs, outcomes, and impacts, and be held accountable for failures to deliver on progress toward established goals.
 - b. Any proposed legislation should be required to demonstrate its adherence to the best practices in the field.
 - c. State funding should be tied to performance and outcomes.
2. **Consistency and Standardization:** Currently, there are successful programs that are in place only in a handful of counties, such as Deferred prosecution programs, specialty courts (such as Drug Courts and Veterans Courts), the Drug Treatment Alternative to Prison program (Pima County). Individuals accused of crime should have the same opportunity to participate in these programs, regardless of where they live. The state should seek to replicate and standardize proven programs and prioritize funding for those that demonstrate a track record of recidivism reduction.
3. **Public Health Approach:** Addiction and mental illness are forms of disease and should not be criminalized. Effective public health approaches include mental health services, drug treatment, and Good Samaritan laws—which prevent people from being charged with drug crimes if they call for help when a person overdoses.
4. **Justice Reinvestment:** Arizona should invest in effective, community-based (non-criminal justice oriented) programs that prevent crime, such as drug treatment, job skills training, and education programs. Cost savings from policy reforms that reduce the prison population should be directed toward community-based programs that prevent crime, provide treatment, divert offenders, serve crime survivors, and increase community security.
5. **Re-integration of justice-involved individuals:** The ultimate goal of our response to crime should be to restore people to wholeness, including those with convictions. We must remove barriers to employment, housing, and critical services in order to assist those returning to our communities to live productive and healthy lives.

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- 1 Grand Canyon Institute, Press Release, "Arizona Spends Too Much Incarcerating, Too Little on Personnel, Drug Treatment, Transition Services, and Higher Education," February 1, 2016.
 - 2 Hunting, Dan, "Arizona's Incarcerated Population: Fiscal Implications of Imprisoned and Jailed Populations," Morrison Institute for Public Policy, November 2015.
 - 3 Arizona Department of Corrections, "Admissions, Releases, Confined Population Fact Sheet, FY2016"
 - 4 Bureau of Justice Statistics, "Felony Sentences in State Courts, 2006—Statistical Tables," December 2009, NCJ 226846.
 - 5 Arizona State Legislature, Joint Legislative Budget Committee, "Then and Now," FY 2007–2017 General Fund Spending.
 - 6 National Association of State Budget Officers, "State Expenditure Report: Examining Fiscal 2014–2016 State Spending," 2016
 - 7 Vera Institute of Justice. (2012) Factsheet: *The Price of Prisons: Arizona*. New York City. Online at <http://www.vera.org/download?file=3477/the-price-of-prisons-40-fact-sheets-updated.pdf>
 - 8 Grand Canyon Institute, Press Release, "Arizona Spends Too Much Incarcerating, Too Little on Personnel, Drug Treatment, Transition Services, and Higher Education," February 1, 2016
 - 9 U.S. Census 2015, QuickFacts. <http://www.census.gov/quickfacts/table/PST045215/04>
 - 10 Arizona Department of Corrections, Corrections at a Glance, June 2016.
 - 11 Arizona Department of Public Safety, Crime in Arizona 2015
 - 12 Epler-Epstien, Sarah. "We don't know how many Latinos are affected by the criminal justice system," October 17, 2016. <http://www.urban.org/urban-wire/we-dont-know-how-many-latinos-are-affected-criminal-justice-system>
 - 13 "Fact Sheet: Incarcerated Women and Girls," The Sentencing Project. Accessed on November 28, 2016: <http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>
 - 14 Ibid.
 - 15 Arizona Department of Corrections, "Admissions, Releases, Confined Population Fact Sheet," FY2016.
 - 16 "Fact Sheet: Incarcerated Women and Girls," The Sentencing Project. Accessed on November 28, 2016: <http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>
 - 17 KARE Family Center, "Children of Incarcerated Parents," <http://www.starsmp.org/pages/incarcerated.php>
 - 18 Greene, Judy. "Bucking the Trend and Paying the Price" Justice Strategies, UNPUBLISHED, 2013.
 - 19 Roeder, Oliver et al, "What Caused the Crime Decline?" *Brennan Center for Justice*, February 12, 2015
 - 20 Mauer, Marc and Nazgol Ghandnoosh "Fewer Prisoners, Less Crime: A Tale of Three States, The Sentencing Project, July 23, 2014.
 - 21 Arizona Department of Corrections, Corrections at a Glance, June 2016.
 - 22 Nagin Daniel S. et al, "Imprisonment and Reoffending," *Crime and Justice*, Vol. 38, No. 1 (2009).
 - 23 National Institute of Justice, "Five Things About Deterrence," Accessed on 11/29/16 at: <http://nij.gov/five-things/pages/deterrence.aspx>
 - 24 Austin, James et al. 2007. "Unlocking America." Washington, DC: The JFA Institute.
 - 25 Machelor, Patty "On prisons, Arizona stays tough," *Arizona Daily Star*, June 27, 2015
 - 26 National Council on Alcoholism and Drug Dependence (NCADD), "Alcohol, Drugs, and Crime," June 27, 2015
 - 27 Arizona Department of Corrections, "Corrections at a Glance," September 2016
 - 28 Bureau of Justice Statistics, Special Report, *Mental Health Problems of Prison and Jail Inmates*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Washington, DC (2006).
 - 29 Arizona Department of Corrections, "Admissions, Releases, Confined Population Fact Sheet," FY2016.
 - 30 Torrey, E Fuller, MD et al, "More Mentally Ill Persons are in Jails and Prisons than Hospitals: A Survey of the States," Treatment Advocacy Center and National Sheriffs Association, May 2010.
 - 31 Kim, KiDeuk et al, "The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System," Urban Institute, March 2015
 - 32 Ibid.
 - 33 World Health Organization, Information Sheet: "Mental Health and Prisons." Accessed online 11/21/16 at: http://www.who.int/mental_health/policy/mh_in_prison.pdf
 - 34 Arizona Revised Statutes, § 41-1604.07
 - 35 Rosich, Katherine J. and Kamala Mallik Kane, "Truth in Sentencing and State Sentencing Practices," National Institute for Justice, NIJ Journal Issue 252, NCJ 208706
 - 36 Ibid.
 - 37 Greene, Judy (personal communication, October 13, 2015).
 - 38 Rosich, Katherine J. and Kamala Mallik Kane, "Truth in Sentencing and State Sentencing Practices," National Institute for Justice, NIJ Journal Issue 252, NCJ 208706
 - 39 Machelor, Patty "On Prisons, Arizona Stays Tough," *Arizona Daily Star*, June 27, 2015
 - 40 Hunting, Dan "Arizona's Incarcerated Population: Fiscal Implications of Imprisoned and Jailed Populations," Arizona State University Morrison Institute for Public Policy, November 2015.
 - 41 Greene, Judith, et al. "Arizona Prison Crisis: A Call for Smart on Crime Solutions." Washington DC: Families Against Mandatory Minimums. May 2004.
 - 42 Ortega, Bob. "Arizona Prison Sentences Among the Toughest for Many Crimes," Arizona Republic, October 9, 2011.
 - 43 Ibid
 - 44 American Friends Service Committee, Arizona. Original research on drug sentencing in Arizona. Forthcoming, 2017.
 - 45 Ibid
 - 46 Arizona Revised Statutes, §13-703

- 47 Arizona Department of Corrections, "Corrections at a Glance," September 2016
- 48 Arizona Adult Probation, "Safer Communities Report FY2015," Administrative Office of the Courts, 2015.
- 49 Arizona Supreme Court, "Proposition 200 Working, Saving Money, Says Arizona Supreme Court," Summer 1999.
- 50 Arizona Revised Statutes, §13-901.01
- 51 Ortega, Bob. "Arizona Prison Sentences Among the Toughest for Many Crimes," *Arizona Republic*, October 9, 2011.
- 52 Arizona Department of Public Safety, "Crime in Arizona 2015" Accessed on November 28, 2016 at: http://www.azdps.gov/About/Reports/docs/Crime_in_Arizona_2015.pdf
- 53 Maricopa County Superior Court, Annual Report, Fiscal Year 2015
- 54 Arizona Department of Corrections, "Corrections at a Glance," September 2016
- 55 Chin, Gabriel "Jack," "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," UC Davis Legal Research Paper Series, #308. August 2012.
- 56 American Bar Association, National Inventory of Collateral Consequences of Conviction, Arizona. Online: <http://www.abacollateralconsequences.org/search/?jurisdiction=8>
- 57 Sohoni, Tracy, "The Effect of Collateral Consequence Laws on State Rates of Return to Prison." Paper submitted to the U.S. Department of Justice in July 2014.
- 58 National Institute on Drug Abuse, "Principles of Drug Addiction Treatment: A Research-Based Guide," 3rd Ed. December 2012
- 59 U.S. Department of Health and Human Services, press release: "Surgeon General Issues Landmark Report on Alcohol, Drugs, and Health," November 17, 2016.
- 60 National Institute on Drug Abuse, "Principles of Drug Addiction Treatment: A Research-Based Guide," 3rd Ed. December 2012
- 61 Zarkin, Gary A., et al., "Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders From State Prison," Updated July 15, 2015. <http://cad.sagepub.com/content/61/6/829>
- 62 Arizona Department of Corrections, "FY2015 Operating Per Capita Cost Report," December 17, 2015
- 63 Cassidy, Megan "Phoenix Looks for Ways to Save on Jail Costs as its Tab from Maricopa County Keeps Rising," *Arizona Republic*, April 17, 2016
- 64 Maricopa County Adult Probation Department, "Annual Report: FY2015."
- 65 Arizona Department of Health Services, Division of Behavioral Health Services, "Annual Report on Substance Abuse Treatment Programs, Fiscal Year 2015." December 31, 2015
- 66 Arizona Adult Probation, Annual Report, FY2015
- 67 Ibid.
- 68 Pima County Attorney's Office, "Drug Alternative to Prison (DTAP)," <http://www.pcao.pima.gov/dtap.aspx>
- 69 Judith A. Greene. (2011) *Turning the Corner: Opportunities for Effective Sentencing and Correctional Practices in Arizona*. Phoenix, AZ: Arizona Attorneys for Criminal Justice.
- 70 National Council of State Legislatures, "Principles of Effective State Sentencing and Corrections Policy: A Report of the NCSL Sentencing and Corrections Working Group," August, 2011
- 71 Herman, S. and M. Waul. *Repairing the Harm: A New Vision for Crime Victim Compensation in America*. (Washington, DC: National Center for Victims of Crime, 2004).
- 72 National Center for Victims of Crime, "Trauma of Victimization," <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/trauma-of-victimization#interaction>
- 73 Alliance for Safety and Justice, "Crime Survivors Speak: The First-Ever National Survey of Victim's Views on Safety and Justice, 2016
- 74 Ibid.
- 75 Ibid.
- 76 National Institute of Justice. September 2004. *When Violence Hits Home: How Economics and Neighborhood Play a Role*. Washington, DC: U.S. Department of Justice.
- 77 Bureau of Justice Statistics. February 1999. *American Indians and Crime*. Washington, DC: U.S. Department of Justice.
- 78 Bureau of Justice Statistics. April 2007. *Crime and the Nation's Households*, 2005. Washington, DC: U.S. Department of Justice.
- 79 Arizona Criminal Justice Commission "The 2013 Arizona Crime Victimization Survey" http://www.azcjc.gov/acjc.web/pubs/home/azcvcs_finalreport_final.pdf
- 80 Wolff, Nancy et al, "Patterns of Victimization Among Male and Female Inmates: Evidence of an Enduring Legacy," National Institute of Health, Published in final edited form as: *Violence Vict.* 2009 ; 24(4): 469–484
- 81 Shannon M. Lynch et al., *Women's Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2012), 32
- 82 National Institute of Drug Abuse. <http://archives.drugabuse.gov/about/welcome/aboutdrugabuse/magnitude/>.
- 83 American Friends Service Committee, Arizona. Original research on drug sentencing in Arizona. Forthcoming, 2017.
- 84 Strang, Heather et al, "Repairing the Harm: Victims and Restorative Justice," *Utah Law Review*, No. 1, 2003
- 85 Ibid.
- 86 Center for Justice and Reconciliation, "Tutorial: Introduction to Restorative Justice," Accessed on November 21, 2016 at: <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/>
- 87 Sherman, LW and Strang, H "Restorative Justice: The Evidence." London: The Smith Institute, 2007.
- 88 DeVeaux, Mika'il "The Trauma of the Incarceration Experience," *Harvard Civil Rights Civil Liberties Law Review*, Vol. 48
- 89 Hughes, Timothy and Doris James Wilson, "Reentry Trends in the United States," Bureau of Justice Statistics, April 14, 2004
- 90 Schweig, Sarah, "Healthy Communities May Make Safe Communities: Public Health Approaches to Violence Prevention," *National Institute of Justice Journal*, No. 273
- 91 Vera Institute of Justice, Justice Reinvestment Initiative, webpage: <https://www.vera.org/projects/justice-reinvestment-initiative> accessed on December 5, 2016



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