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March 5, 2020

## Memorandum

**Date:** Thursday, March 5, 2020  
**To:** Idaho House Judiciary and Rules Committee  
**Cc:** IACDL Legislative Committee  
**From:** C. Tom Arkoosh   
**Re:** HB 469; Mandatory Minimums

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This office represents the Idaho Association of Criminal Defense Lawyers.

Dear Mr. Chairman and Members of the Committee,

Attached, please find *Senate Trafficking Materials on HB 469* and the *Pew Study – More Imprisonment Does Not Reduce State Drug Problems*. We appreciate the opportunity to provide this committee with these materials with anticipation of hearing on House Bill 469. While these materials are much more compelling when given in a live presentation, the Idaho Association of Criminal Defense Lawyers (IACDL) understands that an opportunity to present this type of extensive presentation will not be allocated to us at this time. We welcome an invitation to present this live.

IACDL represents over 400 criminal defense lawyers across the state of Idaho. They oppose House Bill 469, as their position has been, and continues to be, that better justice and community protection is best addressed with mandatory minimum reform.

Idaho ranks 4<sup>th</sup> in the nation for incarceration of individuals convicted of drug crimes and only 45<sup>th</sup> in the nation for drug usage. According to research done related to mandatory minimum sentences, there is no correlation between tough sentences and drug usage. In fact, the opposite is true. State statutes that allow Judges discretion in applying an appropriate sentence are most effective as they lead to more rehabilitative efforts, that have a much greater impact on recidivism.

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# History of Idaho's Trafficking Statute & Mandatory Minimum Prison Sentences



Idaho's Criminal Code  
Generally Favors Judicial  
Discretion in Sentencing—

Mandatory Sentences are very  
**RARE**

# Idaho's Only Crimes with Mandatory Minimum Incarceration of One Year or More

- First Degree Murder
- Repeated sexual abuse of a child
- Drug Trafficking

# Examples of Crimes with Discretionary Sentencing

- Second Degree Murder
- Manslaughter – Voluntary, Involuntary, Vehicular
- Rape
- Lewd and Lascivious Contact with Minor Child
- Sexual Abuse of Minor Child – first offense
- Sexual Battery of a Minor Child
- Possession of Sexually Exploitive Material
- Child Enticement
- Injury to Child
- Video Voyeurism
- Indecent Exposure
- Forcible Sexual Penetration by Use of Foreign Object

# Crimes with Discretionary Sentencing (continued)

- Arson
- Aggravated Battery
- Aggravated Assault
- Assault with Intent to Commit Murder
- Domestic Battery
- Assault or Battery Against Law Enforcement
- Burglary
- Grand Theft
- Perjury
- Forgery
- Insurance Fraud
- Kidnapping

# Crimes with Discretionary Sentencing (continued)

- Prostitution
- Racketeering
- Robbery
- Receiving Stolen Property
- Stalking
- Malicious Harassment
- Cannibalism
- Mayhem
- Manufacturing, Delivering or Possession with Intent to Manufacture or Deliver a Controlled Substance
- Felony Possession of a Controlled Substance



# Crimes with Discretionary Sentencing (continued)

- Threats Against State Officials
- Unlawful Use of a Destructive Device
- Human Trafficking
- Malicious Injury to Property
- Eluding
- Escape
- False Imprisonment
- Counterfeiting
- Poisoning
- Rioting
- Aircraft Hijacking
- Terrorism
- Money Laundering

# Original Rationale for Idaho Code § 37-2732B

Adopted in 1992

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 30, 1992

TIME: 1:35 PM

PLACE: Room 437

PRESENT: Chairman Dwyvingsen, Senators McRoberts, Hartung, Newcomb, Kerrick, Caylor (sitting in for Brooks), Reents, Davis, McDermott and Scanlin

None

ABSENT/  
EXCUSED:

MINUTES:

Senator Scanlin made a motion, seconded by Senator Newcomb, that the minutes of Friday, March 27, 1992, be approved as written. By voice vote, the motion carried.

TRAFFICKING IN CONTROLLED SUBSTANCES

The Committee began hearing testimony on HB718 on Friday, March 27, 1992.

Joe Fillicetti, Ada County Prosecuting Attorney's Office, continued his testimony regarding HB718 which provides mandatory minimum sentences for trafficking controlled substances. He stated that this legislation targets middle- to large-scale drug dealers in Idaho. Drug dealing is an economic decision, weighing probable benefits versus probable detriments. Currently, drug dealing has proved to be very profitable when viewed in terms of actual

Joe Fillicetti, Ada County Prosecuting Attorney's Office, continued his testimony regarding HB718 which provides mandatory minimum sentences for trafficking controlled substances. He stated that this legislation targets middle- to large-scale drug dealers in Idaho. Drug dealing is an economic decision, weighing probable benefits versus probable detriments.

JUDICIARY, RULES & ADMINISTRATION COMMITTEE  
 HEARINGS  
 March 23, 1952  
 Page 2

regard to the means of identification of the actual owner of a seized package of illicit drugs and the presumption of innocence.

Mr. Wenzel, Asst. U. S. Attorney, then spoke to the group, indicating that Idaho is becoming a haven for drug traffickers. He cited instances of infiltration into Postville and the Magic Valley area. He stated that the best aspect of this legislation is that it creates certainty about sentencing, so that the large dealers that if they are caught in jobbers will go to jail. He was asked if the law surrounding Idaho have mandatory minimum sentences, and stated that Nevada has a tough law, so that to obtain the leniency they need, having the discretion it became apparent that plea bargaining is currently a problem, leading to frustration on the part of prosecutors. It was suggested that the bill should be presented that would not allow plea bargaining.

Following Mr. Wenzel's presentation, Mr. Bruce Hestline, representing the American Civil Liberties Union, spoke to the Committee, indicating his doubt that this legislation would help the present situation. It would increase the prison population but would remove the opportunity for judges to use their discretion after consideration of all the information made available to them.

At that time Mr. Joe Fillicetti, the sponsor of the bill, spoke to the Committee. He explained that this legislation would not change any existing law and emphasized that it was aimed at the large traffickers, he explained the problem encountered in providing a more prompt trial, not in the treatment of persons who

CONFIDENTIAL

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anyone who is not a large trafficker. A vote was then had upon the motion to send H 715 to the floor with a 10 year recommendation. Motion carried. Rep. Bureau will carry H 715 on the floor of the House.

**Statement of Purpose**  
**RS01320 - Original HB 718**  
**(1992)**

STATEMENT OF PURPOSE  
RS01320

This bill creates a new class of crime under the Uniform Controlled Substances Act, "Drug Trafficking," which imposes mandatory minimum prison terms and fines for those convicted of dealing large quantities of drugs. The bill targets drugs that create serious problems in Idaho, enumerated as follows: marijuana, cocaine, methamphetamine, opiates, prescription drugs, and

STATEMENT OF PURPOSE  
RS01320

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FISCAL IMPACT

The fiscal impact of this bill would be limited to the increased prison costs for housing drug traffickers sentenced to the custody of the Department of Corrections. An estimate of this impact is as follows:

1. Number of targeted offenders incarcerated under this bill per year (165 offenders/5 years = 33 average) ..33
  2. Annual cost of prison bed per inmate .....\$14,685
- Annual cost of legislation .....\$491,195

STATEMENT OF PURPOSE/FISCAL NOTE

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STATEMENT OF PURPOSE  
RS01120

This bill creates a new class of crime under the Uniform Controlled Substances Act, "Drug Trafficking," which imposes mandatory minimum prison terms and fines for those convicted of dealing large quantities of drugs. The bill targets drugs that create serious problems in Idaho, enumerated as follows: marijuana, cocaine, methamphetamine, immediate precursors to methamphetamine, and heroin. In order to come within the purview of this criminal statute, an individual must possess a sufficient quantity of one of the specified drugs to indicate heavy involvement in the drug trade. Different sentences are established for each substance, depending upon the nature of the drug and the problem that the substance poses for society. Mandatory sentences shall be imposed

... PRODUCTS TO METHAMPHETAMINE  
heroin. In order to come within the purview of this criminal statute, an individual must possess a sufficient quantity of one of the specified drugs to indicate heavy involvement in the drug trade. Different sentences are established for each substance, depending upon the nature of the drug and the problem that the

... sentence is through cooperation with law enforcement.  
This mandatory minimum bill is modeled after several other states which have found it to be extremely helpful in curbing illicit drug traffic.

FISCAL IMPACT

The fiscal impact of this bill would be limited to the increased prison costs for housing drug traffickers sentenced to the custody of the Department of Corrections. An estimate of this impact is as follows:

1. Number of targeted offenders incarcerated under this bill per year (165 offenders/5 years = 33 average) ..33
2. Annual cost of prison bed per inmate .....\$14,695
- Annual cost of legislation .....\$492,155

# But Idaho Code § 37-2732B is Not Applicable to Only Drug Dealers

- I.C. § 37-2732B (“Trafficking”) is not a drug “dealing” statute
- Only requires possession of a certain amount of drugs
- “Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of ...”
  - Includes users, drug addicts, people in possession, “mules”



# DOES NOT REQUIRE:

- Indicators of Dealing
  - Packaging
  - Money
  - Scales
- Actual Dealing or Transporting



# Statement of Purpose

RS01320 - Original HB 718 (1992)

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STATEMENT OF PURPOSE  
ES01320

This bill creates a new class of crime under the Uniform Controlled Substances Act, "Drug Trafficking," which imposes mandatory minimum prison terms and fines for those convicted of dealing large quantities of drugs. The bill targets drugs that create serious problems in Idaho, enumerated as follows: marijuana, cocaine, methamphetamine, immediate precursors to methamphetamine, and heroin. In order to come within the purview of this criminal statute, an individual must possess a sufficient quantity of one of the specified drugs to indicate heavy involvement in the drug trade. Different sentences are established for each substance, depending upon the nature of the drug and the problem that the substance poses for society. Mandatory sentences cannot be reduced or stayed by the courts unless the defendant elects to assist law enforcement in identifying and prosecuting other drug dealers.

This bill is designed to increase the risk of doing business for this targeted class of drug dealers by imposing strict mandatory sentencing and by increasing detection through cooperation. Large scale drug dealers make an economic choice when dealing drugs. The risk of being detected and the likely severity of the sentence are often outweighed by the huge untaxed profits generated by dealing drugs. Currently these traffickers may receive little punishment, especially if first-time offenders. This bill ensures uniformity, consistency and proportionality in sentencing these dealers rarely caught and prosecuted, to identify sources of supply.

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STATEMENT OF PURPOSE/FINAL COPY

(cont.)

# TWO ORIGINAL RATIONALES

Statement of Purpose RS01320

## (1) INVESTIGATE & PROSECUTE

“increase detection through  
cooperation”

*through*

Original I.C. § 37-2732B(8)  
allowed judges to reduce sentence  
when defendant cooperated

## (2) DETERRENCE

“increase the risk of doing  
business”

*because*

“large scale drug dealers make an  
economic choice when dealing  
drugs”

## (1) No Incentive to Cooperate

- *State v. Sarabia*, 125 Idaho 815 (1994) – Statutory mandatory minimums are invalid if a trial judge can reduce the sentence for any reason.
- Idaho Code § 37-2732B(8) Section allowing for cooperation **REPEALED** in 1995 after *Sarabia* case.
- For last 25 years no statutory incentive to cooperate with police or prosecution



## (2) No Deterrence

- Statement of Purpose assumes
  - Dealers “make an economic choice”
  - But addicts don’t
  - And others don’t
    - suggests level of sophistication and knowledge not present
- Experience in federal and state systems do not support deterrent effect
- See Pew Study: imprisonment does not reduce drug problems

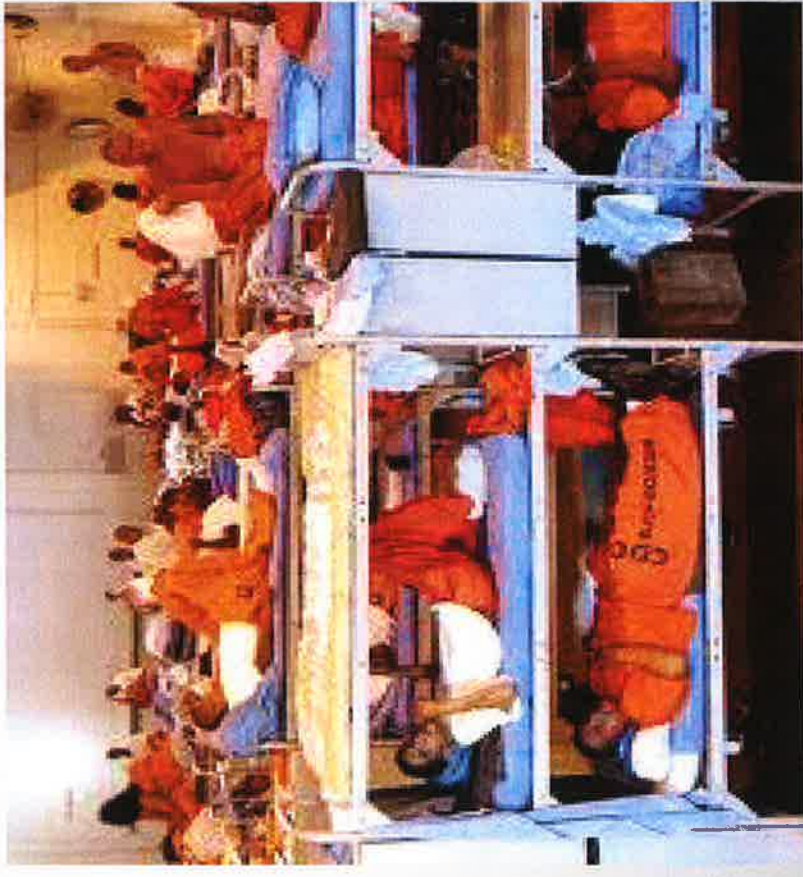


# Actual Consequences

Drug “Trafficking” & Mandatory  
Minimum Prison Sentences

# Consequences of Mandatory Minimum Prison Sentences

- Prison Population
  - U.S.A. with less than 5 percent of the world's population, incarcerates 25 percent of the world's prisoners
  - U.S. prison population grew from 338,000 in 1970 to 2.2 million in 2010
  - Idaho continues to contract with other states to house its own inmates
- IDAHO Justice Reinvestment Initiative
  - Prison beds for the "most violent or greatest risk" offenders
  - Impact on Individuals and Families
    - Rehabilitation for users & addicts?





## STATEMENT OF PURPOSE

RS27654 / H0469

### FISCAL NOTE

Legislation could have a neutral impact to the General Fund or to any other government fund because some criminal cases could increase while some could decrease. Trafficking in heroin cases could go down due to the fact that the amount of heroin is being raised from 2 grams to 5 grams in the bottom tier. Furthermore, the amount of prison time for the middle tier is being dropped from 10 years to 5 and the top tier is being dropped from 15 years to 10. Fentanyl is encountered less than heroin. Adding fentanyl to the statute could increase trafficking cases but any such cost increase cannot be quantified at this time.

**Contact:**

Senator Lakey  
(208) 332-1000  
Representative Greg Chaney  
(208) 332-1000

The **current proposal** statute only addresses those sentences that were already patently unjust, **does nothing to address judicial discretion** when it is called for, and **adds yet another drug** to the list of applicable drugs.

# Any Reform Should Separate Mandatory Minimum Prison Sentences from Drug Trafficking”

- Would not mean dealers will be unpunished
- Judges are free to sentence persons up to the maximum amount provided in the trafficking statute
- Would mean that judges are allowed to judge
- Judges determine the appropriate sentence
- Judges consider the circumstances of the crime, the defendant, etc., & imposes sentence after...
- Review of comprehensive presentence investigation report, (“PSI”), input from prosecutor, crime victim, defense counsel, defendant, etc.



# More Imprisonment Does Not Reduce State Drug Problems

Data show no relationship between prison terms and drug misuse

## Overview

Nearly 300,000 people are held in state and federal prisons in the United States for drug-law violations, up from less than 25,000 in 1980.<sup>1</sup> These offenders served more time than in the past: Those who left state prisons in 2009 had been behind bars an average of 2.2 years, a 36 percent increase over 1990,<sup>2</sup> while prison terms for federal drug offenders jumped 153 percent between 1988 and 2012, from about two to roughly five years.<sup>3</sup>

As the U.S. confronts a growing epidemic of opioid misuse, policymakers and public health officials need a clear understanding of whether, how, and to what degree imprisonment for drug offenses affects the nature and extent of the nation's drug problems. To explore this question, The Pew Charitable Trusts examined publicly available 2014 data from federal and state law enforcement, corrections, and health agencies.<sup>4</sup> The analysis found no statistically significant relationship between state drug imprisonment rates and three indicators of state drug problems: self-reported drug use, drug overdose deaths, and drug arrests.

The findings—which Pew sent to the President's Commission on Combating Drug Addiction and the Opioid Crisis in a letter dated June 19, 2017—reinforce a large body of prior research that cast doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations. The evidence strongly suggests that policymakers should pursue alternative strategies that research shows work better and cost less.

## Sharp rise in federal drug imprisonment yields high cost, low returns

More than three decades ago, Congress responded to the rise of crack cocaine by requiring that more drug offenders go to prison and stay there longer.<sup>5</sup> Largely as a result of those actions, between 1980 and 2015, the number of federal prisoners serving time for drug offenses soared from about 5,000 to 92,000, though changes in drug crime patterns and law enforcement practices also contributed to the growth.<sup>6</sup> Although the share of federal inmates who are drug offenders has declined from its peak of 61 percent in 1994,<sup>7</sup> it was still nearly 50 percent in 2015.<sup>8</sup>

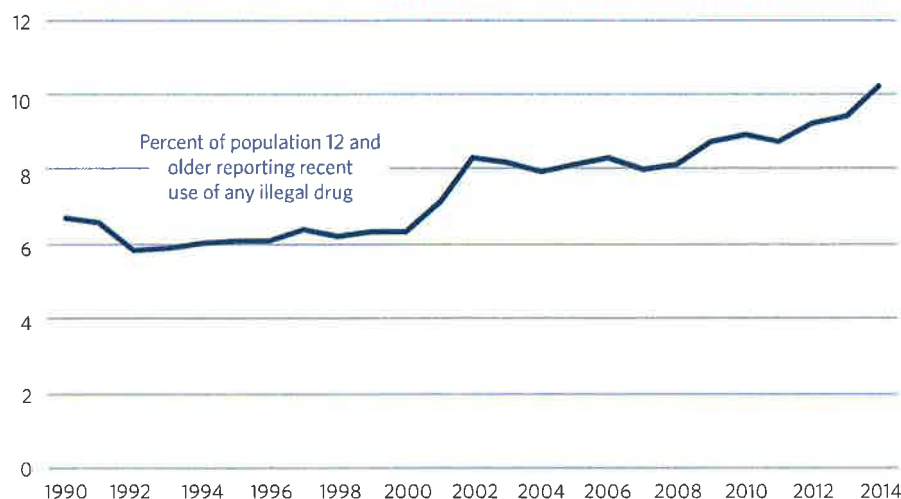
And as the federal prison population soared, spending ballooned 595 percent between 1980 and 2013 without delivering a convincing public safety return.<sup>9</sup> In fact, self-reported use of illegal drugs increased between 1990 and 2014 (see Figure 1), as has the availability of heroin, cocaine, and methamphetamine as indicated by falling prices and a rise in purity.<sup>10</sup> The surge in federal prison spending has also failed to reduce recidivism. The rate of federal drug offenders who leave prison and are placed on community supervision but commit new crimes or violate the conditions of their release has been roughly a third for more than three decades.<sup>11</sup>

## Penalties do not match roles

Although federal sentencing laws have succeeded in putting some kingpins and other serious drug offenders behind bars, they have also led to lengthy imprisonment for lower-level offenders.<sup>12</sup> The U.S. Sentencing Commission found that in 2009 the most serious traffickers—those defined as “high-level suppliers” or “importers” who rank at the top of the commission’s culpability scale—represented 11 percent of federal drug offenders.<sup>13</sup> In contrast, nearly half of those sentenced for federal drug crimes in 2009 were lower-level actors, such as street dealers, couriers, and mules.<sup>14</sup> Research indicates that the public safety impact of incapacitating these offenders is essentially nullified because they are rapidly replaced.<sup>15</sup>

Figure 1

### More Than 10% of Americans Reported Recent Use of an Illegal Drug Self-reported drug use, 1990-2014



Source: Office of National Drug Control Policy, National Drug Control Strategy: Data Supplement 2016, Table 2, [https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/2016\\_ndcs\\_data\\_supplement\\_20170110.pdf](https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/2016_ndcs_data_supplement_20170110.pdf)

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## Rise in opioid misuse

Lawmakers across the country are trying to address the rise in opioid misuse, which includes prescription drugs and illicitly manufactured heroin and fentanyl. In 2015, more than 33,000 Americans died from an opioid overdose, and heroin-related deaths climbed 20 percent from the previous year, according to the Centers for Disease Control and Prevention.<sup>16</sup> In addition to lost lives and destabilized families and communities, these mortality rates take an extreme economic toll. The costs of opioid misuse totaled \$504 billion in 2015, according to a recent report from the White House Council of Economic Advisers.<sup>17</sup>

Prescription opioids are more widely misused than heroin, and nearly 80 percent of today's heroin users said they previously misused prescription opioids.<sup>18</sup> Changes in the prescription opioid market may have spurred some users to shift to heroin.<sup>19</sup> For example, one study found that in a population of OxyContin users, heroin use nearly doubled within 18 months after the medication was reformulated in 2010 to deter misuse by making it harder to crush the tablets.<sup>20</sup> Heroin also costs less and is easier to acquire than prescription opioids in some communities.<sup>21</sup>

## Drug imprisonment varies widely by state

Although federal courts garner more public attention, most of the nation's criminal justice system is administered by the states, and state laws determine criminal penalties for most drug offenses. But the 50 states have made different policy choices regarding drug penalties, which has led to considerable variation in drug imprisonment rates. (See Figure 2.)

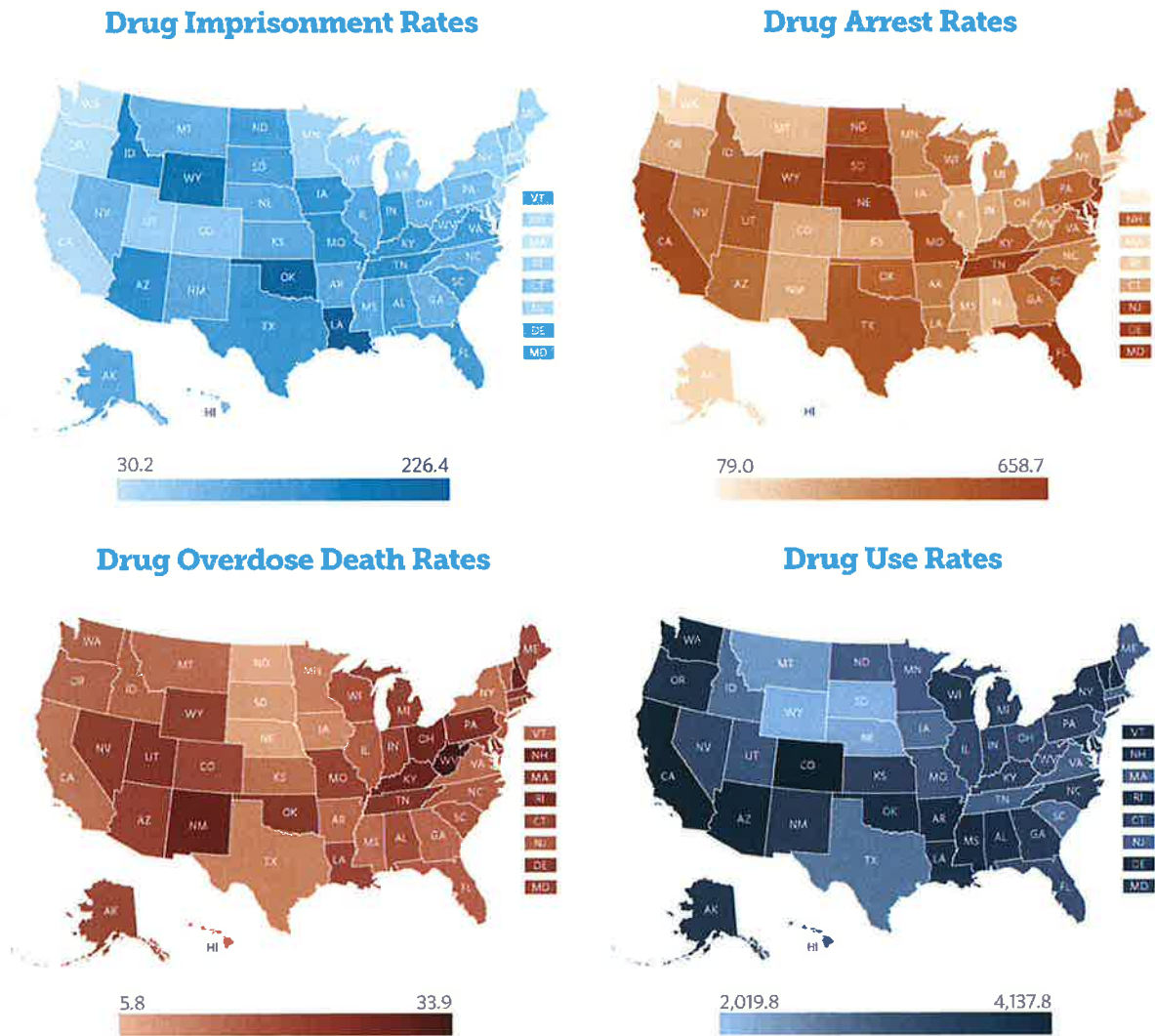
In 2014, Louisiana had the highest drug-offender imprisonment rate in the nation at 226.4 per 100,000 residents, more than twice the rate of 37 other states. In contrast, Massachusetts' drug imprisonment rate was the lowest at 30.2 per 100,000 residents, less than one-seventh Louisiana's. In raw numbers, Louisiana had more drug offenders in prison on the last day of 2014 than every state except California, Florida, Illinois, and Texas, which have much larger populations. The country's second-highest drug imprisonment rate, 213.7 per 100,000 residents, was in Oklahoma and was more than double the rates in two neighboring states, Kansas and Arkansas. (See Table A.1 for more information.)

“Lawmakers across the country are trying to address the rise in opioid misuse, which includes prescription drugs and illicitly manufactured heroin and fentanyl. In 2015, more than 33,000 Americans died from an opioid overdose, and heroin-related deaths climbed 20 percent from the previous year, according to the Centers for Disease Control and Prevention.”

Figure 2

## Drug Imprisonment Not Correlated With Drug Use, Arrests, or Overdose Deaths

4 measures of drug problems by state



Note: All rates are per 100,000 residents.

Source: Pew's analysis of 2014 data from 48 state corrections departments, the federal Bureau of Justice Statistics National Corrections Reporting Program (for California and Maine), the Federal Bureau of Prisons, the Centers for Disease Control and Prevention, the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program, and the Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health. See the "Data and methodology" section for more information.

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## No relationship between drug imprisonment rates and states' drug problems

One primary reason for sentencing an offender to prison is deterrence—conveying the message that losing one's freedom is not worth whatever one gains from committing a crime. If imprisonment were an effective deterrent to drug use and crime, then, all other things being equal, the extent to which a state sends drug offenders to prison should be correlated with certain drug-related problems in that state. The theory of deterrence would suggest, for instance, that states with higher rates of drug imprisonment would experience lower rates of drug use among their residents.

To test this, Pew compared state drug imprisonment rates with three important measures of drug problems—self-reported drug use (excluding marijuana), drug arrest, and overdose death—and found no statistically significant relationship between drug imprisonment and these indicators. In other words, higher rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.

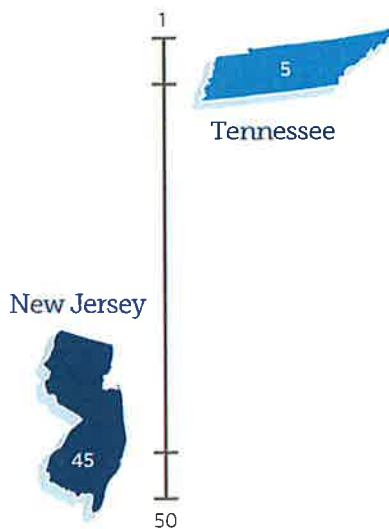
State pairings offer illustrative examples. For instance, Tennessee imprisons drug offenders at more than three times the rate of New Jersey, but the states' rates of self-reported drug use are virtually the same. (See Figure 3.) Conversely, Indiana and Iowa have nearly identical rates of drug imprisonment, but Indiana ranks 27th among states in self-reported drug use and 18th in overdose deaths compared with 44th and 47th, respectively, for Iowa.

Figure 3

### Aggressive Approach to Drug Crimes Yields No Drug Misuse Benefit

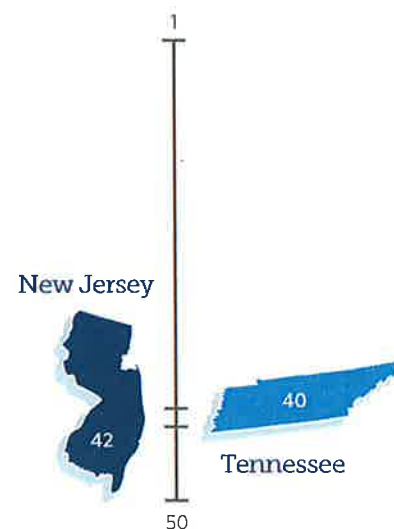
Drug use and imprisonment rankings for Tennessee and New Jersey

#### Drug Imprisonment Rank



New Jersey imprisons drug offenders at a much lower rate than Tennessee, but the states' drug use rates are roughly the same.

#### Drug Use Rank



Source: Pew's analysis of 2014 data from the states of New Jersey and Tennessee, the federal Bureau of Justice Statistics National Corrections Reporting Program, the Federal Bureau of Prisons, the Centers for Disease Control and Prevention, the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program, and the Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health

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If imprisonment were an effective deterrent to drug use and crime, then, all other things being equal, the extent to which a state sends drug offenders to prison should be correlated with certain drug-related problems in that state.”

The results hold even when controlling for standard demographic variables, including the percentage of the population with bachelor's degrees, the unemployment rate, the percentage of the population that is nonwhite, and median household income. (See the “Data and methodology” section for more information.)

Some associations (though not causal relationships) did emerge among the demographic variables. The larger the share of a state's population that:

- Has a bachelor's degree, the lower the drug imprisonment rate.
- Is not white, the higher the drug imprisonment rate.
- Is unemployed, the lower the drug imprisonment rate.

## Effective policies for curtailing drug misuse

The absence of any relationship between states' rates of drug imprisonment and drug problems suggests that expanding imprisonment is not likely to be an effective national drug control and prevention strategy. The state-level analysis reaffirms the findings of previous research demonstrating that imprisonment rates have scant association with the nature and extent of the harm arising from illicit drug use. For example, a 2014 National Research Council report found that mandatory minimum sentences for drug and other offenders “have few, if any, deterrent effects.”<sup>22</sup> The finding was based, in part, on decades of observation that when street-level drug dealers are apprehended and incarcerated they are quickly and easily replaced.

On the other hand, reduced prison terms for certain federal drug offenders have not led to higher recidivism rates. In 2007, the Sentencing Commission retroactively cut the sentences of thousands of crack cocaine offenders, and a seven-year follow-up study found no increase in recidivism among offenders whose sentences were shortened compared with those whose were not.<sup>23</sup> In 2010, Congress followed the commission's actions with a broader statutory decrease in penalties for crack cocaine offenders.<sup>24</sup>

These and other research findings suggest that the most effective response to drug misuse is a combination of law enforcement to curtail trafficking and prevent the emergence of new markets; alternative sentencing to divert nonviolent drug offenders from costly imprisonment; treatment to reduce dependency and recidivism; and prevention efforts that can identify individuals at high risk for substance use disorders.



**Law enforcement strategies.** A 2014 report by the Police Executive Research Forum found that law enforcement agencies in several states are collaborating with other stakeholders to develop alternative approaches to drug offenders, such as diverting those with substance use disorders into treatment.<sup>25</sup> Another model involves harm-reduction strategies, such as training law enforcement officers in overdose prevention and community policing in neighborhoods with emerging heroin markets.<sup>26</sup> These interventions include collaborating with community organizations to dismantle open-air street markets by, among other things, telling drug dealers face to face that they will probably face punishment if they continue to sell drugs.<sup>27</sup> When offered options and assistance, many dealers accept; drug offenses in targeted jurisdictions have dropped by as much as 55 percent.<sup>28</sup>

**Alternative sentencing strategies.** Over the past 10 years, many states have revised their drug penalties and reduced their prison populations without seeing an increase in crime rates. In 2010, as part of a larger reform effort, South Carolina expanded probation and parole opportunities for people convicted of drug offenses.<sup>29</sup> The state's reform bill passed unanimously in the Senate and by a vote of 97 to 4 in the House of Representatives.<sup>30</sup> Since the legislation was enacted, South Carolina's prison population has decreased by 14 percent, and people convicted of violent offenses now make up a larger proportion of the state's inmates.<sup>31</sup> In addition, the violent crime rate dropped by 16 percent between 2010 and 2015.<sup>32</sup>

Michigan, New York, and Rhode Island also significantly decreased drug sentences, with Michigan and Rhode Island rolling back mandatory minimum penalties for drug offenses.<sup>33</sup> Each of these states reduced their prison populations and their crime rates.<sup>34</sup> More recently, Mississippi, Alaska, and Maryland have changed their drug sentencing and related policies, including revising mandatory minimums, reducing sentencing ranges, and establishing presumptive probation for certain offenses.<sup>35</sup> And in the 2016 election, 58 percent of Oklahoma voters approved a ballot measure that converted drug possession from a felony to a misdemeanor.<sup>36</sup>

Although lengthy prison sentences for drug offenders have shown a poor return on taxpayer investment, alternatives such as drug courts and stronger community supervision have proved more effective. A systematic review of drug courts in 30 states concluded that a combination of comprehensive services and individualized care is an effective way to treat offenders with serious addictions.<sup>37</sup> Meanwhile, supervision strategies that provide swift, certain, and graduated sanctions for violations and rewards for compliance have been shown to reduce recidivism and costs.<sup>38</sup> Texas, Georgia, North Carolina, and South Carolina have saved hundreds of millions of dollars by taking alternative approaches.<sup>39</sup>



The absence of any relationship between states' rates of drug imprisonment and drug problems suggests that expanding drug imprisonment is not likely to be an effective national drug control and prevention strategy."

**Treatment strategies.** An estimated 22 million Americans needed substance use treatment in 2015, but only about 1 in 10 received it.<sup>40</sup> Medication-assisted treatment (MAT)—a combination of psychosocial therapy and U.S. Food and Drug Administration (FDA)-approved medication—is the most effective intervention to treat opioid use disorder.<sup>41</sup> Yet only 23 percent of publicly funded treatment programs report offering any FDA-approved medications, and fewer than half of private sector facilities report doing so.<sup>42</sup>

Many states and localities are expanding drug treatment programs to address opioid misuse. In March 2015, Kentucky enacted a law eliminating barriers to treatment in county jails and providing funds for evidence-based behavioral health or medication-assisted treatment for inmates with an opioid use disorder.<sup>43</sup> It also allows local health departments to establish needle exchange sites, increases access to naloxone (a prescription drug shown to counter the effects of an opioid overdose), and supports individuals recovering from an overdose by connecting them to treatment services and prohibiting their possible prosecution for drug possession.<sup>44</sup>

**Prevention strategies.** Several evidence-based approaches are available to help patients and medical providers ensure appropriate use of prescribed opioids. One, a patient review and restriction (PRR) program, identifies individuals at risk for prescription misuse and ensures that they receive controlled substance prescriptions only from designated pharmacies and prescribers.<sup>45</sup> Another approach is prescription drug monitoring programs (PDMPs), state-based electronic databases of controlled substance prescriptions dispensed by pharmacies and prescribers. PDMPs allow prescribers, pharmacists, and other authorized stakeholders to monitor patients' controlled substance prescriptions and enable states to track prescribing practices and population-level drug use trends.<sup>46</sup>

## Public supports alternatives for drug offenses

Across demographic groups and political parties, U.S. voters strongly support a range of major changes in how the states and federal government punish people who commit drug offenses. A nationwide telephone survey of 1,200 registered voters, conducted for Pew in 2016 by the Mellman Group and Public Opinion Strategies, found that nearly 80 percent favor ending mandatory minimum sentences for drug offenses.<sup>47</sup> By wide margins, voters also backed other reforms that would reduce the federal prison population. More than 8 in 10 favored permitting federal prisoners to cut their time behind bars by up to 30 percent by participating in drug treatment and job training programs that are shown to decrease recidivism. Sixty-one percent believed prisons hold too many drug offenders and that more prison space should be dedicated to "people who have committed acts of violence or terrorism."

A minority of voters backed tough prison terms for drug offenses. Twenty percent said drug couriers or mules should receive a 10-year minimum sentence, and 25 percent said drug dealers who sold illegal substances on the street deserved a minimum 10-year term. In addition, 34 percent believed that drug offenders "belong behind bars," and 22 percent thought sentences for people convicted of federal drug offenses were "too lenient."<sup>48</sup>



Across demographic groups and political parties, U.S. voters strongly support a range of major changes in how the states and the federal government punish people who commit drug offenses."

In addition, public opinion polls in four states, also conducted for Pew by the Mellman Group and Public Opinion Strategies between February 2015 and March 2017, reveal significant and broad political support for reducing prison sentences for nonviolent offenders and reinvesting the savings in alternatives, including drug treatment.

- **Maryland.**<sup>49</sup>

- 75 percent agreed that imposing longer prison terms “is the wrong way to break the cycle of crime and addiction” and that a “more effective strategy is to put drug-addicted offenders into treatment programs and community supervision and to hold them accountable with community service or short stays in jail if they continue to use drugs or fail to go to treatment.”
- More than 8 in 10 (83 percent) favored giving judges more discretion in deciding sentences for drug offenses.
- 86 percent supported “allowing nonviolent offenders to earn additional time off of their prison term for completing substance abuse and mental health treatment programs while in prison.”

- **Utah.**<sup>50</sup>

- 73 percent of state voters—including 74 percent of Republicans, 73 percent of independents, and 71 percent of Democrats—favored a bipartisan commission’s recommendation to reclassify simple drug possession from a felony to a misdemeanor.
- 70 percent believed that “prison is not the best place for people who are addicted to drugs. Requiring offenders to get treatment and increasing community supervision rather than sending them to prison will more effectively stop the cycle of addiction and make our communities safer.”
- 85 percent expressed support for “shorter prison sentences for inmates who complete rehabilitative substance abuse and mental health treatment programs while in prison.”

- **Oklahoma.**<sup>51</sup>

- 84 percent of respondents believed prison sentences for nonviolent offenders should be shortened and that the resulting savings should be reinvested in probation, parole, and substance abuse and mental health treatment.
- 86 percent favored allowing people on probation or parole the chance to reduce their supervision periods by engaging in good behavior or participating in substance abuse or mental health treatment programs.
- Support for both of these reforms spanned political parties and demographic groups.

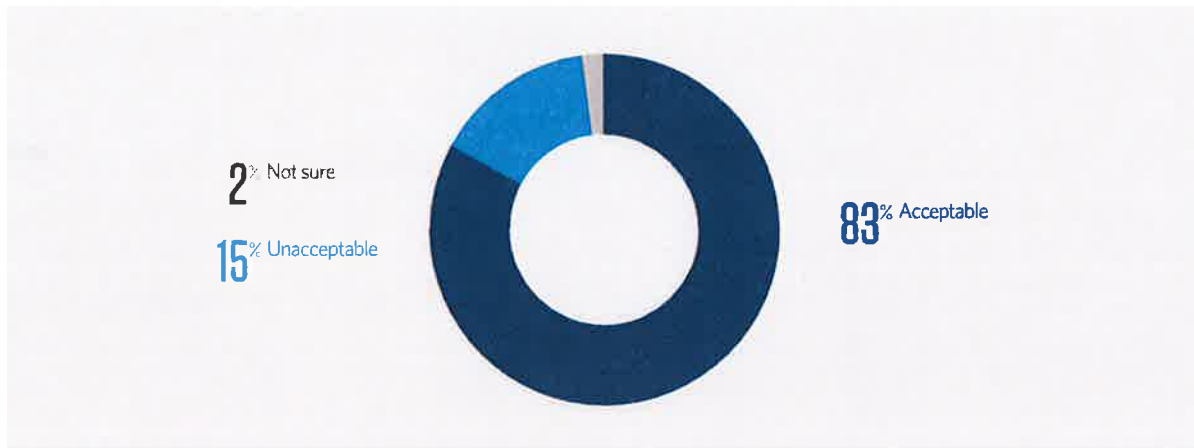
- **Louisiana.**<sup>52</sup>

- Nearly two-thirds of Louisiana voters (63 percent)—including 54 percent of Republicans, 66 percent of independents, and 69 percent of Democrats—approved of a proposal to reduce penalties for lower-level drug offenses while keeping long sentences for higher-level drug dealers.
- 83 percent favored a proposal to cut prison sentences for nonviolent crimes and use the resulting savings for “stronger probation and parole and more substance abuse and mental health treatment for offenders.” (See Figure 4.) Consensus was broadly bipartisan for this question as well, with backing from 80 percent of Republicans, 82 percent of independents, and 87 percent of Democrats. (See Figure 5.)

Figure 4

## Most Louisianans Favor Cutting Prison Sentences for Nonviolent Crimes

Strong support for investing in probation, parole, and substance misuse treatment



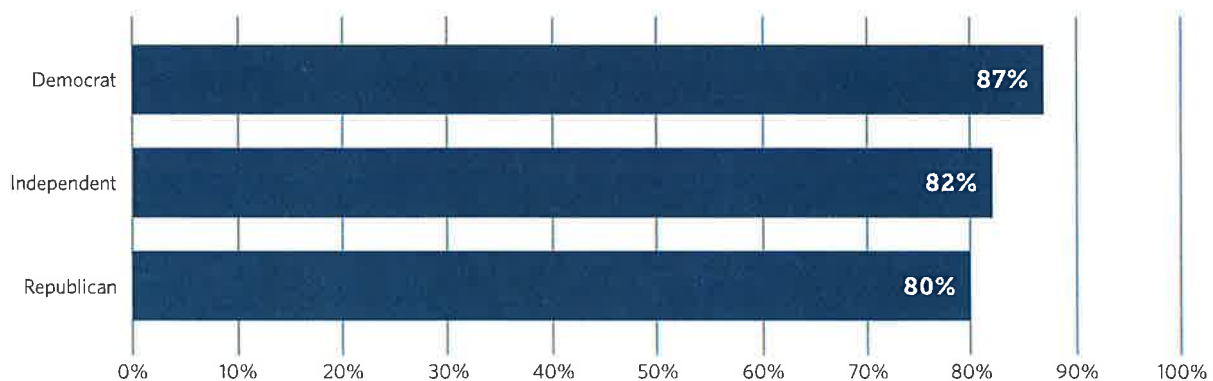
Source: A telephone survey of 600 voters representing the likely 2018 Louisiana electorate conducted for The Pew Charitable Trusts by the Mellman Group and Public Opinion Strategies between March 27 and 30, 2017. Voters were asked: "One proposal is to shorten prison sentences for nonviolent offenders and [use] the money saved to pay for stronger probation and parole and more substance abuse and mental health treatment for offenders. Would you find this proposal generally acceptable or generally unacceptable?"

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Figure 5

## Support for Louisiana Reform Was Broadly Bipartisan

Voters across party lines backed cutting prison terms for nonviolent offenders



Source: A telephone survey of 600 voters representing the likely 2018 Louisiana electorate conducted for The Pew Charitable Trusts by the Mellman Group and Public Opinion Strategies between March 27 and 30, 2017. Voters were asked: "One proposal is to shorten prison sentences for nonviolent offenders and [use] the money saved to pay for stronger probation and parole and more substance abuse and mental health treatment for offenders. Would you find this proposal generally acceptable or generally unacceptable?"

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## Conclusion

Although no amount of policy analysis can resolve disagreements about how much punishment drug offenses deserve, research does make clear that some strategies for reducing drug use and crime are more effective than others and that imprisonment ranks near the bottom of that list. And surveys have found strong public support for changing how states and the federal government respond to drug crimes.

Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime.

## Data and methodology

This analysis used imprisonment data collected from state corrections departments, the Bureau of Justice Statistics National Corrections Reporting Program (for California and Maine only), and the Federal Bureau of Prisons. Imprisonment data included offenders in state and federal facilities; federal drug offenders were assigned to state counts based on the location of the federal district court in which they were sentenced. Inmates were considered “drug offenders” if their “most serious” or “controlling” offense was for a drug crime, including all drugs and all levels of drug offenses (ranging from possession to trafficking). Correctional facilities in the District of Columbia were not included in the analysis. Federal offenders in community corrections, military, and foreign facilities and local jail inmates (up to 70 percent of whom are being held pending trial<sup>53</sup>) also were not included.

Drug use rates were reported by the National Survey on Drug Use and Health (NSDUH), an annual survey of randomly selected individuals 12 and older, sponsored by the Substance Abuse and Mental Health Services Administration, an agency in the U.S. Department of Health and Human Services. This analysis utilized 2013-14 NSDUH data for adults 18 or older, comprising approximately 96,000 individuals. For this brief, illicit drug use rates excluded marijuana, which has been legalized for medicinal and recreational use in several states.

Overdose death rates came from the Centers for Disease Control and Prevention and the FBI’s Uniform Crime Reporting Program (UCR) reported drug arrest rates. The state-level drug arrest rates include marijuana since UCR data is not broken out by drug type.

Unless otherwise noted, all data are from 2014, the most recent year for which complete data are available for each of the four measures. Data on drug treatment admissions and unmet drug treatment need by state were excluded because the availability of drug treatment depends on a range of factors (including state funding levels) that make such data a relatively poor indicator of the extent of a state’s drug problems.

To measure whether a relationship exists between drug imprisonment rates and state drug problems, Pew performed a simple regression test. The statistical model isolated the correlation between states’ drug problems and drug offender imprisonment rates and controlled for standard demographic variables, including the percentage of the population with bachelor’s degrees, the unemployment rate, the percentage of the population that is nonwhite, and median household income in each respective state. Demographic data were drawn from the U.S. Census Bureau, and unemployment and income data were derived from the U.S. Bureau of Labor Statistics. The analysis did not draw conclusions about causality between state drug imprisonment rates and the aforementioned indicators of state drug problems.

The 2016 nationwide poll cited in this report captures findings from a telephone survey of 1,200 registered voters conducted for Pew by The Mellman Group and Public Opinion Strategies between Jan. 13 and 19, 2016, that included cellphones and landlines randomly selected from official voter lists. The margin of error for the survey was plus or minus 2.8 percent at the 95 percent confidence level and higher for subgroups.

The four state polls also capture findings of telephone surveys—also conducted by the Mellman Group and Public Opinion Strategies—of 600 likely voters per state, which similarly included cellphones and landlines selected from official voter lists. Each survey had a margin of error of plus or minus 4.0 percent at the 95 percent confidence level and higher for subgroups. The field dates for the state surveys were Feb. 16-19, 2015, for Utah; Feb. 17-21, 2016, for Maryland; March 6-10, 2017, for Oklahoma; and March 27-30, 2017, for Louisiana.

## Appendix

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

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

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State	Drug imprisonment			Overdose death rate (rank)	Drug arrest rate (rank)	Adult illicit drug use rate (rank)
	Prisoner count	Rate	Rank by rate			
Alaska	720	97.7	22	16.8 (21)	157.3 (47)	3,454.8 (15)
Nebraska	1,830	97.3	23	6.6 (49)	635.9 (2)	2,190.0 (48)
Mississippi	2,904	97	24	11.2 (43)	299.2 (33)	3,668.6 (9)
Arkansas	2,858	96.3	25	12.0 (37)	376.5 (27)	3,583.7 (11)
North Carolina	8,984	90.3	26	13.7 (30)	348.9 (29)	3,253.2 (21)
Montana	890	86.9	27	12.2 (36)	215.4 (43)	2,255.5 (47)
Georgia	8,429	83.5	28	11.9 (38)	422.1 (25)	3,327.2 (20)
Nevada	2,293	80.8	29	19.2 (12)	440.6 (22)	3,033.6 (28)
Ohio	9,193	79.3	30	23.7 (5)	313.4 (32)	3,014.7 (30)
Pennsylvania	9,255	72.4	31	21.4 (7)	448.8 (19)	3,131.5 (23)
Hawaii	998	70.3	32	11.1 (44)	79.0 (50)	2,790.1 (37)
Delaware	657	70.2	33	20.2 (9)	658.7 (1)	3,687.0 (6)
Maryland	3,998	66.9	34	17.9 (16)	632.2 (5)	3,394.1 (17)
Connecticut	2,388	66.4	35	17.3 (20)	276.0 (37)	3,085.2 (26)
Vermont	363	57.9	36	13.2 (31)	105.5 (49)	3,761.3 (5)
Colorado	3,005	56.1	37	16.8 (22)	249.8 (40)	4,137.8 (1)
Rhode Island	540	51.2	38	23.4 (6)	181.3 (45)	3,680.8 (7)
Utah	1,486	50.5	39	20.5 (8)	497.1 (14)	2,892.5 (33)
Wisconsin	2,899	50.4	40	14.8 (26)	431.7 (24)	3,342.4 (19)
New York	9,919	50.2	41	11.6 (41)	297.7 (34)	3,369.7 (18)
Michigan	4,944	49.9	42	17.8 (17)	338.7 (30)	3,108.1 (25)
Maine	643	48.3	43	16.2 (24)	436.2 (23)	2,800.7 (36)
Minnesota	2,542	46.6	44	9.5 (46)	350.9 (28)	2,778.6 (38)
New Jersey	3,864	43.2	45	14.0 (28)	589.8 (9)	2,699.8 (42)
New Hampshire	573	43.2	46	25.2 (3)	469.1 (16)	3,677.3 (8)
California	15,983	41.2	47	11.7 (40)	590.4 (8)	3,996.5 (2)

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State	Drug imprisonment			Overdose death rate (rank)	Drug arrest rate (rank)	Adult illicit drug use rate (rank)
	Prisoner count	Rate	Rank by rate			
Oregon	1,470	37	48	13.1 (34)	281.2 (36)	3,502.4 (14)
Washington	2,422	34.3	49	13.9 (29)	157.3 (46)	3,808.8 (4)
Massachusetts	2,039	30.2	50	19.1 (13)	155.9 (48)	2,740.8 (39)

Notes: All rates are per 100,000 residents. The first three columns reflect adult inmates serving time in state and federal prisons for drug offenses. The adult illicit drug use rate excludes marijuana. New Hampshire and Utah's drug prisoner counts include drug and alcohol offenses. Uniform Crime Reporting arrest data limitations included: No 2014 data from the New York City Police Department; Illinois counts are for Chicago and Rockford only; UCR had limited data for Alabama so publicly available data provided by the state were used instead.

Sources: Pew's analysis of 2014 data from 48 states, the federal Bureau of Justice Statistics National Corrections Reporting Program (for California and Maine only), the Federal Bureau of Prisons, the Centers for Disease Control and Prevention, the Federal Bureau of Investigation's Uniform Crime Reporting Program, and the Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health

## External reviewers

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