



All Talk and No Action: Arizona's Mandatory Drug Sentencing

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Key Points

- Many mandatory minimum sentencing laws, particularly for drug offenses, were created to address problems of drug use, abuse, and drug-related criminal offenses.
- For drug distribution, Arizona's drug offenders stay in prison an average of four to five years. The national average for a distribution offense is 15 months.
- Mandatory prison schemes can be triggered in a number of ways, primarily by quantity of drug or multiple offenses. Arizona's threshold drug amounts that trigger mandatory drug sentencing are low.
- Prison may be appropriate for some drug offenders, but often, Arizona judges' hands are tied in trying to make a determination on an appropriate sentence due to mandatory sentencing laws.
- "Safety valve" is an exception to mandatory sentencing whereby courts can bring about individualized justice in instances where the court deems a mandatory sentence to be inappropriate.

Introduction

Drug use affects millions of people, with more than 23 million people over the age of 12 in the U.S. addicted to drugs or alcohol ([Gallus Detox Centers](#)). Arizona has some of the strictest drug laws in the country, including mandatory prison sentencing. Politicians and tough-on-crime state prosecutors claim that mandatory prison sentencing for certain drug offenses helps to reduce crime and drug use. But are they really working? Research shows that sentencing drug offenders to mandatory prison time does not reduce crime or drug use—it can actually make both worse. Prisons continue to become overpopulated with drug offenders who are better served with treatment than incarceration.

This paper will provide a brief overview of Arizona's often confusing drug sentencing laws, discussing threshold amounts that trigger mandatory prison sentencing for drug offenses in Arizona, reasons why they are not working, and will overview what other states are doing instead. It will conclude by recommending actions for state lawmakers to begin to reverse the negative social and fiscal impact of Arizona's prison sentencing for drug offenses.

Mandatory Minimum Sentencing Laws

Throughout the nation and in federal courts, sentencing generally happens in a couple of ways: (1) a judge utilizes sentencing charts, schemes, or guidelines in imposing a sentence that allows her to consider a host of factors and circumstances specific to the particular defendant, or (2) mandatory prison sentencing laws dictate sentencing ranges or a set minimum the judge must impose. Sentencing guidelines are just that—*guidelines* that allow judicial discretion and individualized sentencing. Mandatory minimums limit judicial discretion in the name of across-the-board sentencing for certain crimes, irrespective of the individualized circumstances that make up every criminal offense.

Mandatory minimum sentencing laws are laws Congress or state legislatures enact that require judges to sentence offenders to a specified minimum prison term for a specific crime ([Criminal Justice Policy Foundation](#); [FAMM](#)). Many states have these kinds of laws, and Arizona is no exception ([Arizona Revised Statutes](#)). While Arizona does not have "mandatory minimum guidelines," it utilizes statutes that dictate a sentencing range depending on the offender's crime and prior felony conviction status. Often these statutes require a sentence of imprisonment regardless of the specific individualized circumstances of a defendant. Arizona defines "threshold amounts" of drugs in A.R.S. § 13-3401(36). An individual who possesses an amount of unlawful drugs that exceeds the threshold amount in weight is ineligible for probation, even for a first offense. For instance, possessing two or more pounds of marijuana, even for a first-time felony conviction, will result in a mandatory prison sentence. The court only has the ability to exercise discretion within the range of prison sentences dictated by statute and cannot impose a

sentence other than incarceration, even if the circumstances may warrant a deviation.

Many mandatory minimum sentencing laws, particularly for drug offenses, were created to address the growing problem of drug use, abuse, and drug-related criminal offenses (Kleiman, 436). Such laws often depend on the type of drug and the amount or weight of the drug involved in an offense (Criminal Justice Policy Foundation; FAMM). For instance, under Arizona law, a person with a prior conviction who is subsequently convicted of selling nine grams of cocaine faces a minimum sentence of four years in the Arizona Department of Corrections (ADC) (Arizona Revised Statutes).

We're getting drug dealers off the streets, what a great idea, right? That's the theory. However, an addicted defendant who sells a portion of his "fix" to another person in order to buy his next "fix," faces the same penalties as a large-scale drug dealer who saturates the community with his product. The problem is twofold: (1) Arizona's mandatory drug sentencing is not working to increase public safety and deter drug dealing or use, and (2) "these laws take away from a judge the traditional and proper authority to account for the actual circumstances of the crime and the characteristics of the individual defendant when imposing a sentence (Criminal Justice Policy Foundation; FAMM).

What's Happening in Arizona?

Arizona had the fourth highest imprisonment rate in the country in 2016 (Fwd.us, 3). The Arizona prison population

has grown by more than 15,000 people since 2000. This has led ADC's annual spending to increase by \$280 million as of 2019 (Fwd.us, 4, 7).

Figure 1 shows Arizona's prison facilities, their designed capacity, and their current inmate population

Proposition 301 was passed in 2006 and allows judges to sentence offenders to prison for a first or second conviction for possession of "dangerous drugs," which includes methamphetamine. Before Proposition 301, judges could only sentence offenders who committed such offenses to probation and drug treatment programs (Fwd.us, 12). Since passage of Proposition 301, the Arizona Legislature enacted mandatory drug sentencing schemes in 2009 (for narcotic drugs), 2010 (for marijuana), and 2011 (for dangerous drugs). Proposition 301 likely contributed to the increase in the prison sentences for drug offenses in Arizona.

Nationally, 69 percent of people incarcerated for drug offenses are convicted of more serious drug crimes—trafficking, distribution, and possession with intent to sell. In Arizona, 67 percent of people sent to prison for drug offenses were convicted of simple possession (Fwd.us, 14). Some of these individuals have likely "pleaded down" to possession from drug dealing and are not first-time offenders, but it does not account for such a wide gap in Arizona compared to the rest of the country. For drug distribution, in 2017 Arizona's drug offenders stayed in prison an average of four to five years, depending on whether the offense involved a "dangerous" or "narcotic" drug. The national

average for a distribution offense in 2012 was 15 months (15). With more than 14,000 people sentenced to prison annually in Arizona, the increase in average length of stay alone costs taxpayers an additional \$175 million per year (16).

Threshold Drug Amounts
First- and (often) second-time drug offenders below the designated threshold amounts do not serve prison time; they receive probation. But mandatory prison schemes can be triggered in a number of ways, primarily by quantity of drug or multiple offenses. Arizona's threshold drug

Figure 1.

FACILITY	RATED CAPACITY	TEMPORARY CAPACITY	OPERATING CAPACITY	POPULATION
Douglas	1,435	343	1,778	1,766
Eyman	3,976	1,610	5,586	5,609
Florence	3,440	645	4,085	3,781
Lewis	5,104	850	5,974	5,637
Perryville	4,214	0	4,250	4,222
Phoenix	552	160	720	552
Safford	1,453	160	1,613	1,411
Tucson	4,605	467	5,098	4,998
Winslow	1,626	40	1,666	1,263
Yuma	4,350	420	4,770	4,506
Private Prisons	7,900	638	8,538	8,284
PRISON TOTAL	38,655	5,333	44,078	42,029
COMMUNITY SUPERVISION OFFENDERS			5,377	
ADC TOTAL			47,406	

Source: Arizona Department of Corrections, 2.

Figure 2.

DRUG	THRESHOLD AMOUNT
Amphetamine & Methamphetamine	9 grams (including in liquid suspension)
Cocaine	9 grams (powder form) – 750 milligrams (rock form)
LSD	1/2 milliliter (liquid form) – 50 dosage units (blotter form)
Marijuana	2 pounds
PCP	4 grams or 50 milliliters

Source: [Arizona Revised Statutes](#); [Arizona Supreme Court, 4](#).

Figure 3. Marijuana-related offense sentencing ranges for two or more offenses.

OFFENSE*	QUANTITY	FELONY CLASS	UNDER THRESHOLD AMOUNT	THRESHOLD AMOUNT & OVER
Possession or use	Less than 2 pounds	6	--	--
	2-4 pounds	5	.5 to 2.5	.5 to 5
	4 pounds or more	4	1.1 to 3.7	1.1 to 6.2
Possession for sale	Less than 2 pounds	4	1.1 to 3.7	1.1 to 6.2
	2-4 pounds	3	1.8 to 8.7	1.8 to 11.2
	4 pounds or more	2	3 to 12.5	3 to 15
Production	Less than 2 pounds	5	.5 to 2.5	.5 to 5
	2-4 pounds	4	1.1 to 3.7	1.1 to 6.2
	4 pounds or more	3	1.8 to 8.7	1.8 to 11.2
Transportation for sale	Less than 2 pounds	3	1.8 to 8.7	1.8 to 11.2
	2 pounds or more	2	3 to 12.5	3 to 15

*Probation may be available for those defendants below the threshold amount for a second offense.

Source: [Arizona Revised Statutes](#); [Arizona Supreme Court, 5](#).

amounts that trigger mandatory drug sentencing are low. See **Figure 2**.

As a result, mandatory drug sentencing sweeps broadly. Though designed to target drug dealers, to reduce the amount of drugs on the streets, and to effectively combat the negative social consequences of drug abuse, it often captures drug users, because there are no alternatives to sentencing in Arizona for offenses that trigger a mandatory minimum. It does not matter that many of these people are better candidates for alternatives to incarceration, like drug court, diversion programs, or probation.

Marijuana, opioid, and methamphetamine offenses are among those drug offenses most often prosecuted. See **Figure 3**.

Opioids are designated a narcotic drug per A.R.S. § 13-3401. Narcotic drugs include heroin and prescription drugs including codeine, oxycodone, and morphine. See **Figure 4**.

The methamphetamine family of drugs falls under the category of dangerous drugs per ARS 13-3401. See **Figure 5**.

Mandatory Drug Sentencing is Not Working

Mandatory drug sentencing has not worked in Arizona to increase public safety as intended. Drug availability and use in Arizona have not decreased, prison populations continue to be much higher than national averages, and recidivism rates remain steady.

Locking people up for drug crimes does not necessarily reduce the availability of drugs in the community. Arizonans are still using drugs at alarming rates.

Between 2006 and 2016, Arizona hospital visits resulting from drug abuse doubled from 25,091 to 51,203, and the rate at which amphetamines were mentioned as a cause of the visit doubled, while the mention of opiates as a cause of the visit more than tripled ([Arizona Department of Health Services](#)).

Figure 4. Opioid-related offense sentencing ranges for two or more offenses.

OFFENSE*	FELONY CLASS	UNDER THRESHOLD AMOUNT	THRESHOLD AMOUNT & OVER
Possess or use**	4	1.1 to 3.7	1.1 to 6.2
Possess for sale	2	3 to 12.5	3 to 15
Possess materials for manufacturing**	3	1.8 to 8.7	1.8 to 11.2
Manufacture	2	3 to 12.5	3 to 15
Administer to another	2	3 to 12.5	3 to 15
Obtain administration by deceit**	3	1.8 to 8.7	1.8 to 11.2
Transport for sale	2	3 to 12.5	3 to 15

*Probation may also be available for those defendants below the threshold amount for a second offense.

**Probation eligible for first offense.

Source: [Arizona Revised Statutes](#); [Arizona Supreme Court, 5](#).

Figure 5. Methamphetamine-related offense sentencing ranges for two or more offenses.

OFFENSE*	FELONY CLASS	UNDER THRESHOLD AMOUNT	THRESHOLD AMOUNT & OVER	INVOLVED METH	PRIOR INVOLVED METH
Possess or use	4	1.1 to 3.7	1.1 to 6.2	--	--
Possess for sale	2	3 to 12.5	3 to 15	5 to 15	10 to 20
Possess materials for manufacturing (not meth)	3	1.8 to 8.7	1.8 to 11.2	--	10 to 20
Possess materials for manufacturing (involved meth)	2	3 to 12.5	3 to 15	5 to 15	10 to 20
Manufacture	2	3 to 12.5	3 to 15	5 to 15	10 to 20
Administer to another	2	3 to 12.5	3 to 15	--	--
Obtain administration by deceit	3	1.8 to 8.7	1.8 to 11.2	--	--
Transport for sale	2	3 to 12.5	3 to 15	5 to 15	10 to 20

*Probation may be available for those defendants below the threshold amount for a second offense that did not involve methamphetamine.

Source: [Arizona Revised Statutes](#); [Arizona Supreme Court, 5](#).

Drug offenders are often non-violent repeat offenders. Organized crime groups and leaders—those actually responsible for the prolific availability of drugs in communities and who are the big picture targets for this mandatory minimum sentencing scheme—can and do easily replace addicts, low-level distributors, and transporters who are caught and mandatorily imprisoned ([Fwd.us, 16](#); [Kleiman, 437](#)). Addicts are a perfect prey population for this task.

Since 2000, the number of people sent to prison for drug possession is up 142 percent, and those imprisoned for drug distribution is up 66 percent ([Fwd.us, 10-11](#)). Moreover, and likely as a result, 78 percent of all people currently in Arizona's prisons have moderate or intensive substance abuse needs. **But only 3 percent are receiving any kind of treatment (11).**

Prison may also increase the chances that drug offenders will commit future crimes. The Arizona Prosecuting Attorneys' Advisory Council (APAAC) released a study of the 405,149 Arizona offenders released between January 1, 1985, and June 30, 2017 ([Lott and Wang](#)). It showed that non-violent repeat offenders of all backgrounds but with the most serious criminal history (147,826 offenders) had a recidivism rate of 47.3 percent six years after incarceration; for non-violent first-time offenders with the most serious criminal history (174,065), it was 34.9 percent ([Lott and Wang, 90](#)). For offenders whose most serious offense during that timeframe was a drug offense, their recidivism rate averaged 25.3 percent a year after incarceration and increased each and every year. By year six, it averaged 46.8 percent ([92](#)). Based on these figures, more prison time is not reducing offender recidivism.

Nor is prison effectively deterring drug abuse, as drug dealing remains a popular reason for imprisonment. From 1985 to 2017, 27 percent of Arizona prisoners were in prison for drug trafficking or possession offenses ([Lott and Wang, 96](#)). The Pew Charitable Trusts has found no statistically significant relationship between imprisonment for drug offenses and rates of illicit use or overdose deaths ([Pew Charitable Trusts, 5](#)). Pew tested the drug deterrence theory, that is, “states with higher rates of drug imprisonment would experience lower rates of drug use among their residents” when drug offenders were locked up ([5](#)). They tested the theory by comparing state imprisonment rates with self-reported drug use, drug arrests, and overdose death rates. But higher imprisonment rates did not create lower rates of drug use, arrests, or overdose deaths ([5](#)).

The claims that mandatory drug sentencing will rid the streets of dangerous drug dealers, will get a handle on community drug addictions, and will increase public safety are just that—*claims*. In most cases, the opposite appears to be true. The most comprehensive study on the efficacy of large-scale incarceration policies was conducted by the National Research Council of the National Academies (NRC), which concluded that policies directed at low-level, non-violent offenders can have a negative impact on crime ([National Research Council, 131, 146-150, 155](#)). Drug sentencing laws have made prisons unnecessarily full, often over capacity, with offenders who should not be in prison or should not be in prison for as long as they remain there. Currently, Arizona’s prison facilities are over capacity. Non-violent drug offenders take up precious bed space that, from a community safety standard, should be used for dangerous criminals. Prison may be appropriate for some drug offenders, but most of the time, Arizona judges’ hands are tied in trying to make a determination on an appropriate sentence due to mandatory sentencing laws.

What Other States Are Doing: Texas—A Case Study

From 2008 to 2016, 35 states simultaneously cut both their crime and imprisonment rates ([Gelb and Denney](#)). Texas, for example, had a 16 percent reduction in its imprisonment rate while crime rates dropped 29 percent ([Gelb and](#)

[Denney](#)). Arizona during that time period saw a 25 percent reduction in crime but a 2 percent increase in its prison population.

In contrast with Arizona, Texas has very few mandatory minimums, particularly for first-time offenders. Each category of felony or misdemeanor conviction carries wide ranges of punishments that allow a judge (or a jury) to determine the punishment rather than a statutorily proscribed prison sentence and length ([Texas Penal Code](#)). **Figure 6** shows the general ranges for each offense tier.

Additionally, for almost every offense (including some forms of murder), judges are allowed to deviate from the broad sentencing ranges in **Figure 6** and defer adjudication

of the offense. In essence, this means the defendant is placed on community supervision for a specified period of time in lieu of prison. If the defendant successfully completes her time on deferred adjudication, then the judge will dismiss the charges.

Judges, pursuant to Texas Penal Code Title Three, Section

12.44, are also allowed to punish state jail offenses (essentially a Class 4 Felony) as Class A misdemeanors “if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such punishment would best serve the ends of justice.”

Habitual offender statutes in Texas generally raise the instant offenses category by one (for example a third-degree felony becomes a second-degree felony) if the defendant was previously convicted of a felony. However, even then, judges can mostly defer adjudication in these instances if the facts of the case warrant so.

Texas’ drug sentencing system is not without issue ([Cohen](#)); however a lack of mandatory minimum sentences and providing judges with broader discretion in sentencing have not negatively affected public safety and have allowed Texas to avoid billions of dollars in corrections spending.

Recommendations for Arizona Lawmakers

Arizona lawmakers have options for how to deal with the future of Arizona’s mandatory drug sentencing. To avoid

Figure 6. Texas Sentencing Ranges by Offense Tier.

OFFENSE TIER	IMPRISONMENT	FINE
Capital Felony	Life without parole to death	N/A
First Degree Felony	5 years to life	≤ \$10,000
Second Degree Felony	2 years to 20 years	≤ \$10,000
Third Degree Felony	2 years to 10 years	≤ \$10,000
State Jail Felony	180 days to 2 years	≤ \$10,000
Class A Misdemeanor	≤ 1 year	≤ \$4,000
Class B Misdemeanor	≤ 180 days	≤ \$2,000
Class C Misdemeanor	N/A	≤ \$500

Source: [Cohen, 1](#).

exacerbating the problems that mandatory drug sentencing schemes have created, lawmakers must stop advocating for new mandatory drug sentencing laws. Nor should they support laws increasing or expanding existing mandatory sentencing schemes. While every option available in other states is not necessarily appropriate for Arizona, some are, including “safety valve” and de-felonizing marijuana possession.

Safety Valve

Safety valve, also known as the Arizona Judicial Discretion Act (H.B. 2245), is a mechanism that revives the role of judicial discretion in sentencing. It is an exception to mandatory sentencing whereby courts can bring about individualized justice in instances where the court deems a mandatory sentence to be inappropriate. If a defendant meets the qualifications for safety valve, a judge *may* make findings on the record that the mandatory prison sentence will result in an injustice to the defendant and that a sentence outside the mandatory range poses no safety risk to the community.

With such findings the court may sentence the defendant outside the ranges prescribed by the mandatory sentencing scheme ([FAMM](#)). Nothing about safety valve forces the hand of the judiciary—it operates as just one more option in a judge’s toolbox when they preside over cases and defendants for whom mandatory sentencing has no individual or societal benefit.

De-Felonizing Marijuana Possession for Lower Amounts.

Other states have de-felonized marijuana possession entirely below a certain amount—typically about four ounces, or what’s known as a “usable amount.” The idea is that these offenders are found with small amounts because they are using it for themselves, not distributing. States that have de-felonized marijuana possession made the conduct a misdemeanor or petty offense. As such, the offense is disposed of through citations that include fines, treatment, and community service rather than prison time. It’s a cost-effective policy choice for a population of users where prison is a likely unnecessary remedy. ★

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