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June 19, 2017

The Honorable Chris Christie  
The President's Commission on Combating Drug Addiction and the Opioid Crisis  
The White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500

**RE: The Lack of a Relationship between Drug Imprisonment and Drug Problems**

Dear Governor Christie:

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

As the U.S. faces an escalating opioid epidemic, it is important to understand whether and to what degree high rates of drug imprisonment affect the nature and extent of the nation's drug problems. To explore this question, Pew's public safety performance project compared publicly available data from law enforcement, corrections, and health agencies. Analysis of this data revealed that there is no statistically significant relationship between state drug offender imprisonment rates and three measures of state drug problems: rates of illicit drug use, drug overdose deaths, and drug arrests.

These findings reinforce a large body of prior research that casts doubt on the theory that stiffer prison terms effectively deter drug use, distribution, and other drug-law violations. The evidence strongly suggests that policymakers pursue alternative strategies that research shows will work better and cost taxpayers less. As the Commission studies the opioid epidemic and deliberates potential solutions, we respectfully request that you consider the information presented in this letter.

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<sup>1</sup> For 2015 figures, see E. Ann Carson and Elizabeth Anderson, "Prisoners in 2015," U.S. Department of Justice, Bureau of Justice Statistics (December 2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>. For 1980 figures, see: Tracy L. Snell, "Correctional Populations in the United States, 1993," Bureau of Justice Statistics (October 1995), <https://www.bjs.gov/content/pub/pdf/cpop93bk.pdf>; and University at Albany, *Sourcebook of Criminal Justice Statistics 2003*, Table 6.57, <http://www.albany.edu/sourcebook/pdf/t657.pdf>.

<sup>2</sup> The Pew Charitable Trusts, "Time Served: The High Cost, Low Return on Prison Terms" (June 2012), p. 19, [http://www.pewtrusts.org/~media/assets/2012/06/06/time\\_served\\_report.pdf](http://www.pewtrusts.org/~media/assets/2012/06/06/time_served_report.pdf).

<sup>3</sup> The Pew Charitable Trusts, "Federal Drug Sentencing Laws Bring High Cost, Low Return" (August 2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>.

## 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>4</sup> Changes in drug crime patterns and law enforcement have contributed to this growth, but between 1980 and 2015, the number of federal prisoners serving time for drug offenses soared from about 5,000 to 92,000.<sup>5</sup> Though the share of federal inmates who are drug offenders has declined from a peak of 61 percent in 1994,<sup>6</sup> nearly half of all people in federal prisons in 2015 were there for drug crimes.<sup>7</sup>

As a result, federal prison spending has ballooned, growing 595 percent between 1980 and 2013<sup>8</sup>—without a convincing public safety return. The self-reported use of illegal drugs has, in fact, increased over the long term while heroin, cocaine, and methamphetamine have become more readily available as indicated by falling prices and a rise in purity.<sup>9</sup> The surge in federal prison spending has also failed to reduce recidivism. Nearly a third of drug offenders who leave federal prison and are placed on community supervision commit new crimes or violate the conditions of their release—a rate that has not changed substantially in decades.<sup>10</sup>

### Penalties Do Not Match Roles

While 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 drug offenders.<sup>11</sup>

In a special 2011 report to Congress, the U.S. Sentencing Commission found that in 2009 the highest-level traffickers represented a comparatively small share of federal drug offenders.<sup>12</sup> Those defined as

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<sup>4</sup> Nathan James, “The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options” (Washington: Congressional Research Service, 2014), <https://www.fas.org/sgp/crs/misc/R42937.pdf>; U.S. Sentencing Commission, “Report on Cocaine and Federal Sentencing Policy,” Chapter 6, <http://www.ussc.gov/research/congressional-reports/1995-report-congress-cocaine-and-federal-sentencing-policy>.

<sup>5</sup> Carson and Anderson, “Prisoners in 2015,” <https://www.bjs.gov/content/pub/pdf/p15.pdf>. For 1980 figure, see University at Albany, *Sourcebook of Criminal Justice Statistics 2003*, Table 6.57, <http://www.albany.edu/sourcebook/pdf/t657.pdf>.

<sup>6</sup> University at Albany, *Sourcebook of Criminal Justice Statistics 2003*, Table 6.57, <http://www.albany.edu/sourcebook/pdf/t657.pdf>.

<sup>7</sup> Carson and Anderson, “Prisoners in 2015,” <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

<sup>8</sup> The Pew Charitable Trusts, “Federal Prison System Shows Dramatic Long-Term Growth” (February 27, 2015), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/02/federal-prison-system-shows-dramatic-long-term-growth>.

<sup>9</sup> Office of National Drug Control Policy, “National Drug Control Strategy: Data Supplement 2014,” Tables 1 and 2; Tables 66, 67, and 68, [https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/ndcs\\_data\\_supplement\\_2014.pdf](https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/ndcs_data_supplement_2014.pdf). Pew used the 1990-2012 period to capture all available yearly data.

<sup>10</sup> Bureau of Justice Statistics, “Federal Justice Statistics Statistical Tables Series 2005-2012,” “Compendium of Federal Justice Statistics Series 1984-2004,” <http://www.bjs.gov/index.cfm?ty=tp&tid=65>.

<sup>11</sup> The Pew Charitable Trusts, “Federal Drug Sentencing Laws Bring High Cost, Low Return” (August 2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>.

“high-level suppliers” or “importers”—the top function on the culpability scale—represented 11 percent of federal drug offenders.<sup>13</sup> In contrast, those sentenced for relatively minor roles represented the biggest share of federal drug offenders. Nearly half of those sentenced for federal drug crimes in 2009 were lower-level actors, including street dealers, couriers, and mules.<sup>14</sup> Research indicates that the public safety impact of incapacitating these offenders is essentially nullified by their rapid replacement with others.<sup>15</sup>

## RISE IN OPIOID MISUSE

Lawmakers throughout the country are trying to address a nationwide rise in the misuse of opioids, which include prescription drugs and illicitly manufactured heroin and fentanyl. According to the Centers for Disease Control and Prevention, more than 33,000 Americans died from an overdose involving an opioid in 2015.<sup>16</sup> Also that year, heroin deaths alone climbed 20 percent since the previous year.<sup>17</sup> Beyond lost lives and destabilized families and communities, this takes an extreme economic toll. According to a recent study, the estimated economic burden of prescription opioid misuse, overdose, and dependence in 2013 was more than \$78 billion.<sup>18</sup>

Prescription opioids are misused much more widely than heroin,<sup>19</sup> and nearly 80 percent of today’s heroin users said they formerly misused prescription opioids.<sup>20</sup> Changes in the prescription opioid market may have spurred some users to shift to heroin.<sup>21</sup> One study found that in a population of

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<sup>12</sup> U.S. Sentencing Commission, “Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System” (October 2011), Chapter 8, [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter\\_08.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_08.pdf).

<sup>13</sup> Ibid.

<sup>14</sup> U.S. Sentencing Commission, “Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System” (October 2011), Appendix D, Figure D-2, [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Appendix\\_D.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Appendix_D.pdf).

<sup>15</sup> Mark A.R. Kleiman, “Toward (More Nearly) Optimal Sentencing for Drug Offenders,” *Criminology & Public Policy* 3, no. 3 (2004): 435–440, <https://drive.google.com/file/d/0B6taQDF0rdAwYnJNTDU2bDVBNFU/edit>.

<sup>16</sup> The Centers for Disease Control and Prevention, “Opioid Overdose,” accessed on May 15, 2017 at: <https://www.cdc.gov/drugoverdose>.

<sup>17</sup> The Centers for Disease Control and Prevention, “Heroin Overdose Data,” accessed May 19, 2017 at: <https://www.cdc.gov/drugoverdose/data/heroin.html>.

<sup>18</sup> Curtis S. Florence, Chao Zhou, Feijun Luo, and Likang Xu, “The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013,” *Medical Care*, Volume 54, Number 10, October 2016. DOI: 10.1097/MLR.0000000000000625.

<sup>19</sup> Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, “2015 National Survey on Drug Use and Health: Detailed Tables” (2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015.pdf>.

<sup>20</sup> U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, CBHSQ Data Review: Associations of Nonmedical Pain Reliever Use and Initiation of Heroin Use in the United States (August 2013), abstract, <http://www.samhsa.gov/data/sites/default/files/DR006/DR006/nonmedical-pain-reliever-use-2013.htm>.

<sup>21</sup> The Pew Charitable Trusts, “Public Safety Aspects of the Heroin Abuse Epidemic” (July 01, 2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/07/public-safety-aspects-of-the-heroin-abuse-epidemic>.

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>22</sup> Heroin also costs less and is not as difficult to acquire in some communities as prescription opioids.<sup>23</sup>

## **DRUG IMPRISONMENT VARIES WIDELY BY STATE**

While the federal courts garner much public attention, the bulk of the nation's criminal justice system is administered by states, and state laws determine criminal penalties for most drug offenses. The 50 states have made different policy choices regarding drug penalties, resulting in drug imprisonment rates that vary considerably.

In 2014, Louisiana had the highest drug-offender imprisonment rate in the nation, with 226.4 drug offenders in prison per 100,000 residents. Louisiana's rate was more than twice the rate of 37 other states. In contrast, Massachusetts's drug imprisonment rate was the lowest at 30.2 drug offenders in prison per 100,000 residents, less than one-seventh Louisiana's rate. In raw numbers, Louisiana had more drug offenders in prison on the last day of 2014 than all but four much larger states—California, Florida, Illinois, and Texas. Meanwhile, the rate of drug imprisonment in Oklahoma was more than double two of its neighboring states, Kansas and Arkansas. (See the table below for more information.)

## **NO RELATIONSHIP BETWEEN DRUG IMPRISONMENT RATES AND STATES' DRUG PROBLEMS**

One of the primary reasons for sentencing an offender to prison is deterrence—conveying the message that the cost of losing one's freedom is not worth whatever one gains from committing a crime. If imprisonment is an effective deterrent to drug use and crime, then, all other things being equal, the use of prison for drug offenses should be linked to the societal problems that arise from drugs. The theory of deterrence would suggest, for instance, that states with higher rates of imprisonment for drug offenses would experience lower rates of drug use among their residents.

To test whether this theory is supported by data, Pew compared state drug offender imprisonment rates with three important measures of state drug problems: self-reported drug use rates (excluding marijuana), drug arrest rates, and drug overdose death rates. The analysis found no statistically significant relationship between drug imprisonment and those indicators. In other words, higher rates of drug imprisonment did not translate into lower rates of drug use, lower drug arrests, or lower overdose deaths. These results hold even with statistical controls applied for standard demographic variables, including the percentage of the population with bachelor's degrees, the unemployment rate, the percentage of the population that is non-White, and median household income.

Some associations (though not causal relationships) did emerge among the demographic control variables:

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<sup>22</sup> Theodore J. Cicero, Matthew S. Ellis, and Hilary L. Surratt, "Effect of Abuse-Deterrent Formulation of OxyContin," *New England Journal of Medicine* (July 12, 2012): 187–189, <http://www.nejm.org/doi/pdf/10.1056/NEJMc1204141>.

<sup>23</sup> Nora D. Volkow, "America's Addiction to Opioids: Heroin and Prescription Drug Abuse," testimony to Senate Caucus on International Narcotics Control (May 14, 2014), <https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2016/americas-addiction-to-opioids-heroin-prescription-drug-abuse>.

- The higher a state’s population with a bachelor’s degree, the lower the drug imprisonment rate;
- The higher a state’s non-White population, the higher the drug imprisonment rate; and
- The higher a state’s unemployment rate, the lower the drug imprisonment rate.

State pairings offer illustrative examples. For instance, Tennessee imprisons drug offenders at a rate more than three times greater than New Jersey, but the illicit drug use rate in the two states is virtually the same. Conversely, Indiana and Iowa have nearly identical rates of drug imprisonment, but Indiana ranks 27<sup>th</sup> among states in its rate of illicit drug use and 18<sup>th</sup> in drug overdose deaths while Iowa ranks 44<sup>th</sup> and 47<sup>th</sup> respectively.

### 2014 Drug Imprisonment and Drug Use Indicators by State

State	Drug Imprisonment			Drug Use Indicators		
	Drug Prisoner Count	Drug Imprisonment Rate	State Drug Imprisonment Rates Ranked	Overdose Death Rate (Rank)	Drug Arrest Rate (Rank)	Adult Illicit Drug Use Rate (Rank)
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	111.0	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)

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	97.0	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)
Oregon	1,470	37.0	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: This table uses 2014 data collected from 48 states, the 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. The data in the first three columns show the drug prisoner count, drug imprisonment rate per 100,000 residents, and drug imprisonment state rankings for adult inmates serving time in state and federal prisons for drug offenses. The data in columns four through six show the overdose death rate, drug arrest rate, and adult illicit drug use rate per 100,000 residents. The adult illicit drug use rate excludes marijuana. 2014 UCR data had the following limitations: No 2014 arrest data were received from the New York City Police Department; Illinois arrest counts reported are for Chicago and Rockford only as limited arrest data were received from the state UCR program; limited arrest data were available for Alabama, and, as such, Alabama state arrest data were utilized. New Hampshire and Utah’s drug prisoner counts include drug and alcohol offenses.*

## Data and Methodology

Pew's 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 both 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. Drug inmates were considered those whose "most serious" or "controlling" offense was for a drug crime, including all drugs and all levels of drug offenses (e.g. ranging from possession to trafficking). Correctional facilities in Washington, D.C., 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>24</sup> were not included.

Drug usage rates were reported by the National Survey on Drug Use and Health (NSDUH), an annual survey involving interviews with randomly selected individuals aged 12 and older. The survey is sponsored by the Substance Abuse and Mental Health Services Administration (SAMHSA), an agency in the U.S. Department of Health and Human Services (DHHS). This analysis utilized 2013-2014 NSDUH data for adults aged 18 or older, comprising approximately 96,000 individuals. For this analysis, 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 are available on drug treatment admissions and unmet drug treatment need by state, but they were not included in the analysis because the availability of drug treatment is dependent on a wide 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 there was a relationship between drug imprisonment rates and state drug problems, Pew performed a simple regression test. The statistical model isolated the correlation between state drug problems and state 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 non-White, 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 measures of state drug problems.

*The document was reviewed by Jonathan Caulkins of Carnegie Mellon University, Peter Reuter of the University of Maryland College Park, and Sally Satel of the American Enterprise Institute. Although the*

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<sup>24</sup> According to one estimate, about 150,000 people were held in local jails on drug charges in 2015; about 70 percent of them were not convicted but were being held pending trial; see Prison Policy Initiative, "Mass Incarceration: The Whole Pie 2017" (March 14, 2017), <https://www.prisonpolicy.org/reports/pie2017.html>.

reviewers provided many constructive comments and suggestions, they were not asked to endorse the conclusions or recommendations.

## EFFECTIVE POLICIES FOR CURTAILING DRUG MISUSE

The absence of any relationship between state 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. Taken together with a large volume of previous research, the state-level analysis demonstrates that imprisonment rates have little to no association with the nature and extent of the harm that arises from illicit drug use. A 2014 National Research Council report, for example, found that mandatory minimum sentences for drug and other offenders “have few, if any, deterrent effects.”<sup>25</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, targeted reductions in prison terms for certain federal drug offenders have not led to higher recidivism rates. In 2007, the Sentencing Commission retroactively reduced the sentences of thousands of crack cocaine offenders.<sup>26</sup> A follow-up study on the effects of this change found no evidence of increased recidivism among offenders who received sentence reductions compared with those who did not.<sup>27</sup> In 2010, Congress followed the Sentencing Commission’s actions with a broader statutory reduction in penalties for crack cocaine offenders.<sup>28</sup>

The most effective response to the growth in opioid misuse, research suggests, is a combination of law enforcement to curtail trafficking and halt 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 developing 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 different

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<sup>25</sup> National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: The National Academies Press, 2014), <http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>. For specific reference, see p. 347 in this link: <https://www.nap.edu/read/18613/chapter/15#347>.

<sup>26</sup> U.S. Sentencing Commission, “U.S. Sentencing Commission Votes Unanimously to Apply Amendment Retroactively for Crack Cocaine Offenses” (Dec. 11, 2007), <http://www.ussc.gov/about/news/press-releases/december-11-2007>.

<sup>27</sup> Kim Steven Hunt and Andrew Peterson, “Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment” (May 2014), U.S. Sentencing Commission, [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527\\_Recidivism\\_2007\\_Crack\\_Cocaine\\_Amendment.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf).

<sup>28</sup> U.S. Sentencing Commission, “U.S. Sentencing Commission Reports on Impact of Fair Sentencing Act of 2010” (August 3, 2015), [http://www.ussc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/press-releases/20150803\\_Press\\_Release.pdf](http://www.ussc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/press-releases/20150803_Press_Release.pdf).

approaches, such as diverting offenders with substance use disorders into treatment.<sup>29</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>30</sup> Drug market interventions include dismantling open-air street markets through police collaboration with community organizations—a strategy that directly targets drug dealers through face-to-face meetings.<sup>31</sup> During these meetings, drug dealers are informed of a heightened risk of punishment if they continue to distribute illicit drugs. When offered options and assistance, many dealers accept; drug offenses in targeted jurisdictions have dropped by as much as 55 percent.<sup>32</sup>

Alternative sentencing strategies. Over the past 10 years, states have been shifting their approach. In fact, many have revised their drug penalty statutes 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>33</sup> South Carolina’s reform bill passed unanimously in the Senate and 97-4 in the House of Representatives.<sup>34</sup> Since the legislation was enacted, the state 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>35</sup> At the same time, the state’s violent crime rate dropped by 16 percent between 2010 and 2015.<sup>36</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>37</sup> Each of these states reduced both their prison populations and their crime rates.<sup>38</sup> More recently, Mississippi, Alaska, and Maryland have changed their drug sentencing

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<sup>29</sup> Police Executive Research Forum, “New Challenges for Police: A Heroin Epidemic and Changing Attitudes Toward Marijuana” (August 2014), [http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series\\_2/a%20heroin%20epidemic%20and%20changing%20attitudes%20toward%20marijuana.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series_2/a%20heroin%20epidemic%20and%20changing%20attitudes%20toward%20marijuana.pdf).

<sup>30</sup> Jonathan P. Caulkins and Peter Reuter, “Towards a Harm-Reduction Approach to Enforcement,” *Safer Communities* 8 (January 2009): 9–23, <http://www.ukdpc.org.uk/wp-content/uploads/Article%20-%20Safer%20Communities%20Special%20Issue%20Law%20enforcement%20to%20reduce%20drug%20harms.pdf>.

The authors assess tactics used by law enforcement in the United Kingdom.

<sup>31</sup> Nicholas Corsaro et al., “The Impact of Drug Market Pulling Levers Policing on Neighborhood Violence,” *Criminology & Public Policy*, volume 11, no. 2 (2012), <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9133.2012.00798.x/pdf>.

<sup>32</sup> National Network for Safe Communities, “Drug Market Intervention,” <https://nnscommunities.org/our-work/strategy/drug-market-intervention>.

<sup>33</sup> The Pew Charitable Trusts, “South Carolina’s Public Safety Reform” (June 2010), [http://www.pewtrusts.org/~media/assets/2010/06/10/pspp\\_south\\_carolina\\_brief.pdf](http://www.pewtrusts.org/~media/assets/2010/06/10/pspp_south_carolina_brief.pdf).

<sup>34</sup> Ibid.

<sup>35</sup> Bryan P. Stirling, “South Carolina’s Prison System: Report to the Sentencing Reform Oversight Committee,” South Carolina Department of Corrections (Nov. 28, 2016).

<sup>36</sup> Federal Bureau of Investigation, Uniform Crime Reports; see “Crime in the United States, 2010,” Table 5, <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl05.xls>; and “Crime in the United States, 2015,” Table 5, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-5>.

<sup>37</sup> Families Against Mandatory Minimums, “Recent State-Level Reforms to Mandatory Minimums Laws” (May 2017), <http://famm.org/wp-content/uploads/2017/05/Recent-State-Reforms-May-2017.pdf>.

<sup>38</sup> The Pew Charitable Trusts, “National Imprisonment and Crime Rates Continue to Fall” (December 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>. For a discussion of the complex relationship between imprisonment and crime, see The Pew

practices and related policies; those changes included revising mandatory minimums, reducing sentencing ranges, and establishing presumptive probation for certain offenses.<sup>39</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>40</sup>

While lengthy prison sentences for drug offenders have shown a poor return on taxpayer investment, alternatives such as drug courts and stronger community supervision have proven 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>41</sup> Meanwhile, supervision strategies that provide swift, certain, and graduated sanctions have demonstrated a reduction in both recidivism and costs.<sup>42</sup> Texas, Georgia, North Carolina, and South Carolina have saved hundreds of millions of taxpayer dollars by taking this approach.<sup>43</sup>

Treatment strategies. Of the estimated 22 million Americans in need of substance use treatment in 2015, only about one in 10 received it.<sup>44</sup> Medication-assisted treatment (MAT)—a combination of psychosocial therapy and U.S. Food and Drug Administration-approved medication—is the most effective intervention to treat opioid use disorder.<sup>45</sup> Yet, only 23 percent of publicly-funded treatment programs report offering any FDA-approved medications to treat substance use disorders, and fewer than half of private sector facilities report using these medications.<sup>46</sup>

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Charitable Trusts, “Q & A: Weighing Imprisonment and Crime” (February 10, 2015),

<http://www.pewtrusts.org/en/research-and-analysis/q-and-a/2014/09/weighing-imprisonment-and-crime>.

<sup>39</sup> The Pew Charitable Trusts, “33 States Reform Criminal Justice Policies Through Justice Reinvestment” (November 16, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/11/33-states-reform-criminal-justice-policies-through-justice-reinvestment>.

<sup>40</sup> Sean Murphy, “Voters Provide Momentum to More Criminal Justice Changes,” Associated Press, (November 12, 2016), <https://www.apnews.com/34dff70081024d8fb452c0a463378580>.

<sup>41</sup> Ojmarrh Mitchell et al., “Drug Courts’ Effects on Criminal Offending for Juveniles and Adults” (Feb. 2, 2012), <https://www.campbellcollaboration.org/library/drug-courts-effects-on-criminal-offending.html>.

<sup>42</sup> Angela Hawken and Mark Kleiman, “Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE” (Dec. 2, 2009), National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

<sup>43</sup> Marc Levin, “The Texas Model: Adult Corrections Reform: Lower Crime, Lower Costs” (2011), Texas Public Policy Foundation. Retrieved from <http://www.texaspolicy.com/library/doclib/2011-09-PB44-TexasModel-AdultCorrections-CEJ-MarcLevin.pdf>; Samantha Harvell, Jeremy Welsh-Loveman, Hanna Love, Julia Durnan, Josh Eisenstat, Laura Golian, Eddie Mohr, Elizabeth Pelletier, Julie Samuels, Chelsea Thomson, and Margaret Ulle, “Reforming Sentencing and Corrections Policy,” Urban Institute (December 2016),

[http://www.urban.org/sites/default/files/publication/86691/reforming\\_sentencing\\_and\\_corrections\\_policy\\_1.pdf](http://www.urban.org/sites/default/files/publication/86691/reforming_sentencing_and_corrections_policy_1.pdf).

<sup>44</sup> Substance Abuse and Mental Health Services Administration, “Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health” (September 2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2015/NSDUH-FFR1-2015/NSDUH-FFR1-2015.pdf>.

<sup>45</sup> The Pew Charitable Trusts, “The Case for Medication-Assisted Treatment” (February 01, 2017), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2017/02/the-case-for-medication-assisted-treatment>.

<sup>46</sup> Hannah K. Knudsen, Paul M. Roman, and Carrie B. Oser, “Facilitating Factors and Barriers to the Use of Medications in Publicly Funded Addiction Treatment Organizations,” *Journal of Addiction Medicine*, 4, no. 2 (2010): 99–107, <https://www.ncbi.nlm.nih.gov/pubmed/20835350>; Hannah K. Knudsen, Amanda J. Abraham, and Paul M.

Many states and localities are expanding drug treatment programs to address opioid misuse. In March 2015, Kentucky enacted a law that eliminates barriers to treatment in county jails and provides funding for evidence-based behavioral health or medication-assisted treatment for inmates with an opioid use disorder.<sup>47</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 connects those who recover from an overdose to treatment services while prohibiting criminal prosecution for drug possession.<sup>48</sup>

Prevention strategies. One approach to encourage the safe use of opioids is a patient review and restriction (PRR) program, which identifies patients who are at risk for prescription drug misuse and ensures that they receive controlled substance prescriptions only from designated pharmacies and prescribers.<sup>49</sup> Another is a prescription drug monitoring program (PDMP), a state-based electronic database that contains information on controlled substance prescriptions dispensed by pharmacies and prescribers; PDMPs allow prescribers and pharmacists, as well as others authorized to access the data, to monitor controlled substance use by patients and provide states a tool to track the prescribing practices of medical practitioners and population-level drug use trends.<sup>50</sup>

## **PUBLIC SUPPORTS ALTERNATIVE STRATEGIES FOR DRUG OFFENSES**

U.S. voters spanning demographic groups and political parties strongly support a range of major changes in how the states and the federal government punish those who have committed 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>51</sup>

By wide margins, the poll showed, voters 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.” Only 20 percent of respondents thought lower-level drug offenders should receive a 10-year minimum sentence. Support for these positions was strong across party affiliation, political ideology, and regions of the country.

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Roman, “Adoption and Implementation of Medications in Addiction Treatment Programs,” *Journal of Addiction Medicine*, 5, no. 1 (2011): 21–7, <http://www.ncbi.nlm.nih.gov/pubmed/21359109>.

<sup>47</sup> Kentucky State Legislature, S.B. 192 (2015), <http://www.lrc.ky.gov/record/15RS/SB192.htm>.

<sup>48</sup>Ibid.

<sup>49</sup> The Pew Charitable Trusts, “Using Patient Review and Restriction Programs to Protect Patients at Risk of Opioid Misuse and Abuse” (July 28, 2015), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/07/using-patient-review-and-restriction-programs-to-protect-patients-at-risk-of-opioid-misuse-and-abuse>.

<sup>50</sup> The Pew Charitable Trusts, “Prescription Drug Monitoring Programs” (December 15, 2016), <http://www.pewtrusts.org/en/research-and-analysis/reports/2016/12/prescription-drug-monitoring-programs>.

<sup>51</sup> The Pew Charitable Trusts, “Voters Want Big Changes in Federal Sentencing, Prison System” (February 12, 2016), <http://www.pewtrusts.org/en/research-and-analysis/analysis/2016/02/12/voters-want-changes-in-federal-sentencing-prison-system>.

A series of state-level public opinion polls<sup>52</sup> reveal significant and broad political support for reducing prison sentences for nonviolent offenders and reinvesting the savings in alternatives, including drug treatment. The polls, also conducted for Pew by the Mellman Group and Public Opinion Strategies, each surveyed 600 likely voters by phone.

- **Maryland (February 2016):** Three-quarters of respondents (75 percent) thought 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 eight in ten (83 percent) favored giving judges more discretion in deciding sentences for drug offenses. Eighty-six 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 (February 2015):** Nearly three-quarters of Utah voters (73 percent) favored a bipartisan commission’s recommendation to reclassify simple drug possession as a misdemeanor instead of as a felony; support spanned party lines with 74 percent of Republicans, 73 percent of Independents, and 71 percent of Democrats supporting the change. Seventy percent of respondents 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.” Eighty-five percent expressed support for “shorter prison sentences for inmates who complete rehabilitative substance abuse and mental health treatment programs while in prison.”
- **Oklahoma (March 2017):** Eighty-four 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. A supermajority of Oklahoma voters (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 (March 2017):** Nearly two-thirds of Louisiana voters (63 percent) approved of a proposal to reduce penalties for lower-level drug offenses while keeping long sentences for higher-level drug dealers. Support spanned partisan lines with 54 percent of Republicans, 66 percent of Independents, and 69 percent of Democrats supporting the plan. A large majority of respondents (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.” Consensus was broadly bipartisan here as well with backing from 80 percent of Republicans, 82 percent of Independents, and 87 percent of Democrats.

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<sup>52</sup> More information is available upon request.

## MAXIMIZING PUBLIC SAFETY

Beyond the benefit of controlling or deterring crime, some Americans believe that imprisoning drug offenders is a matter of retribution—or teaching the wrong-doers a lesson. This view stems from the idea that some measure of punishment is warranted to express society’s disapproval of the behavior. This is a values-driven argument, and no amount of research or policy analysis can resolve disagreements over how much punishment those convicted of drug crimes deserve from this moral perspective.

What research does make clear is that some ways of reducing drug use and crime are more effective than others—and that imprisonment ranks near the bottom of the list. Putting more drug offenders behind bars—for longer periods of time—has not yielded a convincing public safety return. What it has generated, without doubt, is an enormous cost for taxpayers.

With limited public safety budgets, this can amount to a zero sum proposition: dollars spent in one area are unavailable for others. More imprisonment for drug offenders means more funds siphoned away from programs, practices, and policies that have been proven to reduce drug use and crime. And that is a net loss for public safety.

We hope that this analysis and information is helpful to you and the Commission and its important deliberations. If you have questions about these findings or would like more information, please contact JC Hendrickson of Pew’s Department of Government Relations at [jhendrickson@pewtrusts.org](mailto:jhendrickson@pewtrusts.org) or 202-540-6546.

Sincerely,



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