



# 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.**

## 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



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 of Drug Use and Health.

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The stated intent of many DIH laws is to prevent overdoses by removing predatory drug sellers from the streets, holding manufacturers and “kingpins” accountable, and deterring future sales.<sup>11</sup> In practice, however, they often serve to criminalize the family and friends of the decedent<sup>12</sup> – people who may struggle with substance use themselves – and there is no evidence that drug-induced homicide prosecutions reduce overdose deaths.<sup>13</sup> In contrast, there is evidence that such prosecutions often have significant negative unintended consequences, such as eroding the efficacy of critical Good Samaritan laws and deterring people from calling 911 when witnessing an overdose.<sup>14</sup> Approaches to the overdose crisis that are grounded in public health, rather than criminal enforcement, have been met with greater success and provide a more humane response to these tragic cases.

## CONCERNS REGARDING DRUG-INDUCED HOMICIDE PROSECUTIONS

As noted, drug-induced homicide prosecutions raise a number of serious concerns, including that they do not alleviate the risk of fatal overdoses; are ineffective as a deterrent to drug use, drug sales, and overdose deaths; can be legally problematic and consume significant resources; often target friends and family members; and worsen racial disparities in the system. This section discusses these concerns in greater detail.

### A. DIH Prosecutions Can Exacerbate the Risk of Fatal Overdoses

There is no empirical evidence that DIH prosecutions save lives. Analyses of drug-induced homicide practices in jurisdictions in New Jersey, Tennessee, North Carolina, Illinois, Louisiana, and New York, found that despite dramatic growth in drug-induced homicide prosecutions, all of the jurisdictions experienced significant increases in overdose deaths, ranging from 7.6% to 20.1% in a single year.<sup>15</sup>

It is not surprising that DIH prosecutions are associated with an increase in the risk of fatal overdoses. Urgent medical attention, often including the administration of naloxone, is essential for reversing overdoses.<sup>16</sup> And often the greatest barrier to urgent medical attention is fear of arrest and prosecution. The most common reason people cite for not seeking medical attention

<sup>11</sup> Phillips, K. (2020), *From Overdose to Crime Scene: The Incompatibility of Drug-Induced Homicide Statutes with Due Process*, Duke Law Journal, 70, 659-704, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4049&context=dj>.

<sup>12</sup> Walker, J. (2017), *Prosecutors Treat Opioid Overdoses as Homicides, Snagging Friends, Relatives*, The Wall Street Journal, <https://www.wsj.com/articles/prosecutors-treat-opioid-overdoses-as-homicides-snagging-friends-relatives-1513538404>.

<sup>13</sup> Drug Policy Alliance, *supra* note 10 at 40.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Chimbar, L. and Moleta, Y. (2018), *Naloxone Effectiveness: A Systematic Review*, Journal of Addictions Nursing, <https://pubmed.ncbi.nlm.nih.gov/30180002/>.

***“I need the friends and roommates and cousins and dorm mates, I need them calling 911 immediately and I need that message to be clear. I need them to be reassured that I’m not going to throw a homicide charge against them for doing so.”***

— PIMA COUNTY (TUCSON, AZ) COUNTY ATTORNEY LAURA CONOVER

For all of these reasons, utilizing prosecutorial power to pursue these charges is misguided and may lead to further harm among individuals and communities hit hardest by the overdose epidemic.

## B. DIH Prosecutions Do Not Reduce Drug Sales and Use

Four decades after the start of the “War on Drugs” and the ensuing escalation of criminal penalties for drug use and sales, there is no empirical evidence that harsher punishment reduces the supply of, or demand for, drugs.<sup>29</sup> In fact, a recent 50-state survey found that higher rates of incarceration for drug crimes did not translate into lower rates of drug use, arrests, or overdose deaths.<sup>30</sup> Additionally, the Office for National Drug Control Policy (ONDCP) determined that despite increased consequences, the rate of use of illegal drugs has continued to rise, from 6.7% of Americans age 12 and older in 1990 to 9.2% in 2012.<sup>31</sup> Indeed, it is well established that the harms caused by the drug war and mass incarceration<sup>32</sup> ultimately fuel the underlying drivers of substance use – including social isolation, lack of economic opportunities, trauma, mental health issues, high-stress environments, and family instability. And while DIH laws increase the potential penalties and prison sentences that drug sellers face, the research clearly shows that piling on incarceration does not improve public safety.<sup>33</sup>

## C. DIH Laws Are Rarely Employed Against High-Level “Kingspins” and Large-Scale Sellers

DIH laws are premised on the theory that they will reduce supply by incarcerating and eliminating entrepreneurial drug sellers or “kingpins.”<sup>34</sup> In Vermont, for example, legislators explicitly stated in legislation authorizing drug-induced homicide prosecutions that the provision was not intended to be directed at small-scale sellers and users.<sup>35</sup> In practice, however, DIH laws have almost exclusively been used to prosecute and imprison low-level dealers or friends and family of the deceased.

<sup>29</sup> Pew Charitable Trusts (2017), *Letter to The President’s Commission on Combating Drug Addiction and the Opioid Crisis RE: The Lack of a Relationship between Drug Imprisonment and Drug Problems*, <https://www.pewtrusts.org/-/media/assets/2017/06/the-lack-of-a-relationship-between-drug-imprisonment-and-drug-problems.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> Drug Policy Alliance, *supra* note 10 at 39.

<sup>32</sup> Nosrati, E. et al. (2019), *Economic decline, incarceration, and mortality from drug use disorders in the USA between 1983 and 2014: an observational analysis*, *Lancet Public Health*, 4, 326-333, <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2819%2930104-5>.

<sup>33</sup> Stemen, D. (2017), *The Prison Paradox: More Incarceration Will Not Make Us Safer*, Vera Institute of Justice, [https://www.vera.org/downloads/publications/for-the-record-prison-paradox\\_02.pdf](https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf).

<sup>34</sup> Knight, J.H. (2004), *The First Hit’s Free... Or Is It? Criminal Liability for Drug-Induced Death in New Jersey*, *Seton Hall Law Review*, 34, 1327-1352, <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1263&context=shlr>.

<sup>35</sup> Drug Policy Alliance, *supra* note 10, at 9.

***“It is this individual look at the facts and circumstances of each case and individual accused of a crime that, we believe, creates the best opportunity for justice for victims, the public, and the defendant, and enhances the credibility of the criminal legal system’s response to the more nuanced approach to drugs demanded in this day and age.”***