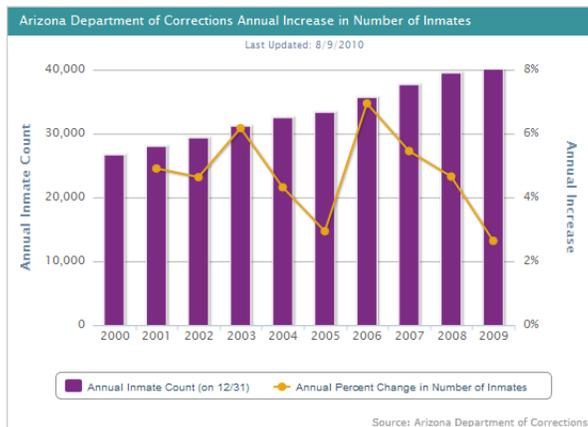


POLICY POINTS

➤ POLICY POINTS BRINGS RELEVANT DATA TO TIMELY PUBLIC POLICY ISSUES IN ARIZONA

Arizona's Sentencing Code: Time for a Change?

Over the past 30 years Arizona, like most states, has pursued sentencing policies that have driven up its prison population to unprecedented levels. From 1979 to 2009, for example, Arizona's total population rose by 150%, while its prison population grew by 1,062%. The cost of incarcerating Arizona's more than 40,000 inmates is approaching \$1 billion annually or about 12% of total state appropriations for 2010, an especially challenging sum for a state mired in recession. Other states across the nation are facing similar problems, as they too emerge from decades of tough criminal codes and soaring prison population increases to face strained budgets and renewed questions about the efficacy of incarceration.



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Arizonans disagree about how the state should punish criminals while preserving public safety and reducing recidivism. But there is little dispute over several key points:

- Arizona has chosen to incarcerate criminals at a higher rate than most states.
- The rate of reported serious crime in Arizona—while ranking near the top of all states—has been flat or falling for most of the past 30 years.
- Recidivism among former prison inmates remains unacceptably high.
- The growth in the state's corrections budget represents a serious drain on Arizona's resources.

Some 30 years since Arizona thoroughly revised its criminal code, there are increasing calls for another reform. This is no surprise. Short of execution, incarceration is the most extreme, expensive, and controversial form of punishment. But cost is not the only complaint made by sentencing reform advocates. They also argue that:

- Imprisonment is too harsh a penalty for many lower-level offenses.
- It offers punishment when the real need is for treatment—especially for drug-users and drunken drivers, who comprise one quarter of the prison population, and mentally ill offenders.
- Persistent high recidivism rates show that incarceration doesn't actually "correct" many inmates.
- Locking up thousands of offenders has grave impacts on families and communities.
- Imprisonment reduces ex-inmates' ability to reintegrate into society.

On the other hand, many criminal justice professionals and other Arizonans do not believe the state's sentencing code requires revision. Most acknowledge the burden of the high cost of imprisonment. But they also argue that:



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Arizona Indicators is an online information resource and analysis tool that centralizes data about the state and its communities. Arizona Indicators presents interactive visualizations, clear data descriptions, and public opinion data in a broad range of content areas.

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- The long-term drop in crime in Arizona and the U.S. shows that imprisonment works.
- Alternative punishments cannot provide the crucial element of “incapacitation” of offenders.
- Just over half of Arizona inmates are currently imprisoned for a violent offense.
- About 29% of inmates are repetitive non-violent offenders.
- Many Arizona inmates currently imprisoned for non-violent crimes actually have documented histories of criminal violence.
- Prison is the only realistic deterrent to crime among the options available today.
- Early-release programs and alternative sentencing pose too great a threat to public safety.
- Despite considerations of cost or recidivism, many Arizonans continue to support imprisonment as the most effective sanction.
- Prison is the only sanction that fulfills the legitimate social need for “retribution”.

Sentencing: A Brief Background

Deciding the punishment of criminals has been a central public policy issue for all societies. Throughout history, offenders have been sentenced to a wide variety of ordeals, including death, mutilation, whipping, branding, confiscation of property, exile or transportation, loss of civil status, forced labor and public shaming. In the 1790s, a group of Philadelphians, reacting against these punishments and against conditions in local jails, began to advocate the use of incarceration instead of punishments directed at the offender’s body. Eastern State Penitentiary opened in 1829 as the first example of the Pennsylvania System, in which inmates lived and worked separately throughout their entire sentence. The Auburn System, in which inmates slept in separate cells but worked together in silence, also arose during this era. The purpose of the penitentiary was to punish and incapacitate offenders, but also to prompt them to reflect upon their waywardness and pursue a process of self-correction.

In the late 1800s, the “indeterminate” sentencing system began gaining popularity in the United States. This system was driven in part by the notion that many or most criminals could be rehabilitated, but that this “correction” required an individualized program tailored to each inmate. State legislatures granted judges authority to impose sentences within a broad range of options. Beyond setting these boundaries, however, legislatures left sentencing decisions to prosecutors, judges, corrections officials, probation officers and other “experts.” Once sentenced, an offender’s actual length of punishment could be determined by probation officers and/or parole boards, again seeking to tailor their decisions to each individual case.

Beginning in the 1970s, however, increasing doubts arose about the indeterminate approach, driven by such factors as the rise in crime, a series of prison riots, sentence disparities and a growing disillusionment with rehabilitation. An ad hoc coalition was formed between civil libertarians seeking certain and consistent punishment—though matched with treatment—and conservatives who wanted to remove judicial discretion and get tough on crime.

continued...

Violent Crime Rate per 100,000 Inhabitants, 1990–2009

Last Updated: 8/9/2010



Despite such reservations, a recent report from the New York research institute Vera Institute for Justice confirms that many states are rethinking their sentencing practices. Vera identified the three major national trends as reduction in offense severity and sentence length; strengthening alternatives to incarceration; and reduction in prison terms. At the same time, though, the report notes that several state legislatures have also targeted certain categories of offenders for heightened punishment, particularly sex offenders, violent offenders, and repeat offenders. A few states have gone beyond piecemeal changes and established sentencing bodies to review codes and make recommendations for broad revisions.

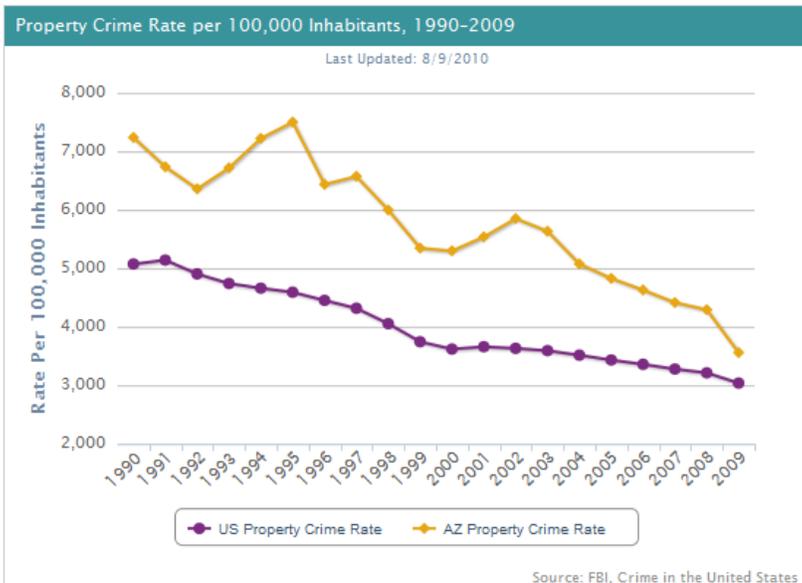
Those seeking revisions in Arizona’s code usually advocate some version of the following steps:

- Reduction or elimination of mandatory-minimum sentences and a restoration of judicial discretion
- Diversion of low-level drug offenders into treatment programs rather than prison
- Greater use of alternatives to incarceration that keep offenders in their communities
- Reduction or elimination of sentencing enhancements for defendants with prior drug-use or other non-violent offenses
- Creation of a more flexible range of non-prison sanctions for probation and parole violators
- Renewed investment in rehabilitative programs for prison inmates
- Restoration of some form of extended parole supervision
- Greater availability of early release for certain low-level inmates, seriously ill and geriatric inmates
- Development of community resources, in close cooperation with the corrections department, to ease reentry of returning inmates

Sentencing: A Brief Background (Continued)

By 1990, determinate sentencing, in which offenders received fixed terms often set by legislators rather than judges, was dominant. By 1991, mandatory minimums existed in 46 states.

Another widespread sentencing development was “truth in sentencing” statutes. These provided federal grants for prison construction to states that made violent offenders served at least 85% of their sentences behind bars. Arizona adopted a version that extended the requirement to non-violent offenders as well. On the other hand, Arizona voters in 1996 approved a ballot measure that diverts offenders convicted of first- and second-time drug possession from prison to treatment. Still, Arizona today continues to incarcerate offenders at a higher rate than most other states.



Should these or other reforms be enacted by the Legislature? In the past several years, at least two special legislative committees have heard testimony from both sides on this issue—one, chaired by Rep. Cecil Ash, continues to do so. In addition, warnings have periodically been issued that budget pressures will force large early releases of inmates or other drastic measures unless relief is found. Clearly, the future of criminal sentencing in Arizona is an issue that impacts the state’s budget, public safety, administration of justice, economy, and overall quality of life. It is an issue that, at the very least, demands a robust public dialogue.