

Arizona Should Defelonize Drug and Paraphernalia Possession

Drug possession accounted for 9.6% of Arizona's prison population in 2019 – over 4,000 people at a cost to the taxpayer of \$291,750.69 per day.¹

Felony prosecutions and prison sentences for small-scale drug possession do not work to reduce drug use. The percentage of Arizonans with a substance use disorder associated with illegal drugs was virtually identical to the national average in 2017-2019 (3.0% versus 2.9%)²; those numbers are essentially unchanged from 2010-2011³ despite Arizona's ongoing punitive policies. Studies show that the threat of a prison sentence does not deter people from using drugs.⁴

Community-Based Drug Treatment does work to reduce drug use and save tax dollars. According to NIDA, “several conservative estimates [show that] **every dollar invested in addiction treatment programs yields a return of between \$4 and \$7** in reduced drug-related crime, criminal justice costs, and theft. When savings related to healthcare are included, total savings can exceed costs by a ratio of 12 to 1.”⁵ Because we know that relapse is part of the road to recovery,⁶ it makes no sense to punish people for relapse and derail their recovery progress by sending them to prison.

Felony prosecutions have worked to inhibit people from becoming productive citizens. One in 13 Arizonans has a felony record,⁷ which carries tremendous collateral consequences, much more so than a misdemeanor. Persons convicted of a felony lose their civil rights, including their right to vote, own a gun, or sit on a jury, face discrimination in the housing and employment markets, and are often denied occupational licenses important for starting a career and supporting a family.⁸ People who have been to prison once are seven times more likely to become homeless than the general population.⁹

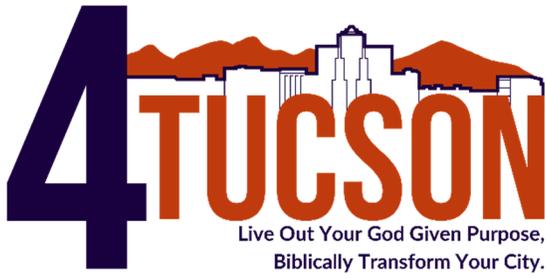
AZ-DOC does not provide the necessary treatment. According to AZ-DOC's own data, **78% of imprisoned people** in Arizona have a moderate to intense **need for substance abuse treatment**,¹⁰ **yet only 1.8% are receiving it.**¹¹ This failure is despite Arizona spending over 1.3 billion on corrections in 2021.¹²

Other States Have Successfully Implemented this Change. Since 2014, five states, including Utah and Oklahoma, have reclassified drug possession from a felony to a misdemeanor. A report on Utah's 2015 law¹³ found that the number of people in prison for drug possession declined by 59% over a four-year period and people spent 105,011 fewer days in prison for drug possession in the two years after the law was passed.

Low-Level, Victimless Crimes should not be Felonies. Historically, felonies are the most serious crimes; when the United States was founded, felonies were violent and theft crimes punishable by death.¹⁴ Applying this designation – which carries so many collateral consequences – to a low-level, victimless drug offense does more harm than good.

Defelonization Can Reduce Inequity in the Justice System. Only 26% of Arizonans believe that “the criminal justice system treats everyone equally.”¹⁵ According to state data, Black people were twice as likely to be arrested for drug possession than other Arizonans in 2019, despite being less likely to have used illegal drugs.¹⁶ The possession of prescription drugs for recreational use is already a misdemeanor, while low-income people “self-medicate” with cheaper illicit drugs that are nearly identical pharmacologically are treated as felons.¹⁷

Arizona Voters are Ready for this Change. In a recent ACLU poll, 83% of American voters, including 82% of Republicans, agree that the “War on Drugs” has failed, and 66% of voters support “eliminating criminal penalties for drug possession and reinvesting drug enforcement resources into treatment and addiction services.” ACLU-AZ polled Maricopa County voters and 62% said “making all drug possession charges lower-level misdemeanors instead of felonies” was important.¹⁸



¹ AZDOC, *Admissions, Releases, Confined Population Fact Sheet* (2019); AZDOC, *FY 2019 Operating Per Capita Cost Report*.

² Substance Abuse and Mental Health Services Administration (SAMHSA), *Behavioral Health Barometer: Arizona, Volume 6* at 24 (citing data from SAMHSA, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2015–2019).

³ 3.1% of Arizonans and 2.7% of people across the U.S. SAMHSA, *Behavioral Health Barometer, Arizona, 2015* at 14.

⁴ See, e.g., Donald P. Green, Daniel Wink, *Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism Among Drug Offenders*, 48 *Criminology* 357 (May 2010) (“Our results indicate that randomly assigned variations in prison and probation time have no detectable effect on rates of rearrest[, and] suggest that, at least among those facing drug-related charges, incarceration and supervision seem not to deter subsequent criminal behavior.”).

⁵ NIDA, *Principles of Drug Addiction Treatment: A Research-Based Guide (Third Edition) Is drug addiction treatment worth its cost?* (Jan. 2018).

⁶ See, e.g., National Institute on Drug Abuse (NIDA), *Drugs, Brains, and Behavior: The Science of Addiction Treatment and Recovery* (July 10, 2020) (Noting that “relapse is a normal part of recovery” and “doesn’t mean treatment has failed”; 40–60% of people with addiction will relapse).

⁷ Fwd.US, *Arizona’s Imprisonment Crisis: The High Price of Prison Growth* (Sept. 17, 2018).

⁸ This has a negative impact on the entire economy; one report estimated that impact at 0.45 to 0.5 percentage points of U.S. GDP in 2014, or about \$78.1 to \$86.7 billion. See Cherrie Bucknor and Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, Center for Economic and Policy Research (June 2016).

⁹ Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, Prison Policy Initiative (Aug. 2018).

¹⁰ Arizona Department of Corrections, *Admissions, Releases, Confined Population Fact Sheet* (FY2019).

¹¹ 781 people out of 42,415. ADCRR, *Corrections at a Glance* (Jan. 2021).

¹² State Department of Corrections, *FY2021 Appropriations Report*.

¹³ Utah’s law makes only the first two drug possession convictions misdemeanors. The report also demonstrates the need to monitor for unintended consequences; unfortunately parole revocations for drug possession, drug possession arrests, and convictions for possession with intent to distribute (a felony), all increased. However, there is other good news; Utah’s overdose deaths fell significantly from 2015 to 2020, while they rose in the rest of the U.S. U.S. Congress Joint Economic Committee Republicans, Social Capital Project, *The Epidemic Preceding the Pandemic: Will Utah’s Progress Hold?* (Feb. 19, 2021).

¹⁴ See generally *Folajtar v. Att’y Gen. of the U. S.*, 980 F.3d 897, 904–07 (3d Cir. 2020) (discussing the history of English and U.S. law defining felonies as serious crimes punishable by death).

¹⁵ Gallup, *The Arizona We Want: The Decade Ahead* at 66 (2021).

¹⁶ Data from U.S. Census Bureau, QuickFacts Arizona (archived from 2019) and AZ Dept. of Public Safety, *Crime in Arizona 2019* at 75 (2020). For drug use statistics, see NIDA survey (55% of whites 12 and over reported illicit drug use in 2018 versus 46% of Black people; past-year use was virtually identical at 20.8% for Black people and 20.2% for whites).

¹⁷ See, e.g., Mayo Clinic, *Drugs and Supplements: Methamphetamine (Desoxyn)* (2021); NIDA, *Prescription Opioids and Heroin Research Report* (Jan. 2018) (“Prescription opioids and heroin have similar chemical properties and physiological impacts; when administered by the same method (i.e., ingested or injected), there is no real difference for the user.”).

¹⁸ Internal polling prior to 2020 County Attorney race.