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RETHINKING REHABILITATION

Improving Outcomes for Drug-Addicted Offenders in Utah

RETHINKING REHABILITATION

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INTRODUCTION

In the U.S., drug use and crime are often heavily entangled. Some are arrested on drug possession charges; others may be arrested for crimes committed to fund an addiction. The National Inmate Survey recently revealed that more than half of all state prisoners (58%) and two-thirds (63%) of sentenced jail inmates meet the criteria for drug dependence or abuse. By contrast, about 5% of the general population meets the same criteria.¹ Furthermore, the National Council of Alcoholism and Drug Dependence estimates that 60% of arrested individuals test positive for illegal drugs at the time of arrest.²

Prisons, therefore, often serve as a place of detoxification either through abstinence or treatment. However, prisons are costly to maintain and may not always offer the most effective path for rehabilitating drug offenders. In response, over the past decade, most states have reformed their criminal justice policies to include more funding for treatment and programs to divert addicts away from prison. In 2015, Utah implemented the Justice Reinvestment Initiative, a set of 18 criminal justice reform policies that aim to do just that.

Drug treatment programs provide cost savings to the criminal justice system and reduce recidivism rates.³ Research shows a positive return on investment when resources are invested in treatment programs;⁴ a recent report by the federal Council of Economic Advisers estimated that programs that address prisoners' mental health or substance use problems can save taxpayers up to \$5.27 for every \$1 spent.⁵ Treatment programs have also been shown to reduce overdose deaths after release from prison. One state



KEY FINDINGS OF THIS REPORT

- Investments in drug rehabilitation for offenders can yield significant savings to taxpayers in the long run.
- In 2016, Utah's state prison population rate of 201 per 100,000 state residents was seventh lowest in the nation. However, Utah's local jail incarceration rate of 357 per 100,000 was the 15th highest in the nation.
- From 2014 (the year before Utah's criminal justice reform) to 2016 (most recent year available), Utah's prison population decreased by 12%. At the same time, the jail population increased by 6%.
- The shift from state prisons to local jails appears to be due at least in part to efforts to downgrade drug offenses from felonies to misdemeanors.
- The increasing ratio of jail inmates to state prison inmates raises concerns about drug rehabilitation. Of the 26 county jails in Utah, only 14 have substance abuse programs, and those vary in content and structure.
- The implementation of the Justice Reinvestment Initiative increased state support for substance abuse treatment centers across Utah. As a result, between 2016 to 2017 alone, there was a 21% increase in admissions to substance use treatment for criminal offenders.
- Currently, the only pre-booking diversion programs in Utah are specifically designed for individuals with mental health disorders. In other words, there are no pre-booking diversion programs for individuals with substance use disorders.
- Drug courts are the most commonly used post-booking diversion tool that provide an alternative to incarceration for individuals that demonstrate a high need for substance treatment. There are drug courts in all eight judicial districts in Utah.
- There are two substance abuse treatment programs for men at Utah's state prisons and one for women, all of which use therapeutic communities – an approach shown to reduce recidivism and drug relapse.
- From 2015 to 2017, a statewide recidivism risk and mental health needs screening process implemented in county jails showed that half of inmates required further assessment for a substance use disorder. As of 2018, however, only two counties have continued to use the screening process due to a lack of funding.



WHAT DROVE THE RISE IN IMPRISONMENT?

The U.S. has the highest prison population rate in the world, with more than two million people incarcerated.⁸ Additionally, there are nearly four million people on probation and almost one-million on parole. Beginning in the mid-1970s, the imprisonment rate in the U.S., and Utah, grew dramatically. The most dramatic increases occurred in the 1990s. (See Figure 1.)

Between 1970 and 2008 (the highest point in the U.S.), the U.S. imprisonment rate increased from 96 to 506 per 100,000. Between 1970 and 2005 (the highest point in Utah), the imprisonment rate increased from 46 to 251 per 100,000.

Mandatory minimum sentencing laws require judges to give out at the least the minimum prison sentence for the charges brought against the defendant in the event of a conviction. This reduces the discretion of judges and applies a standard, irrespective of circumstances. Three strikes laws significantly increase prison sentences for people previously convicted of at least two violent crimes or serious felonies and limits the possibility of parole. Truth in sentencing generally reduces the possibility of early release from incarceration.

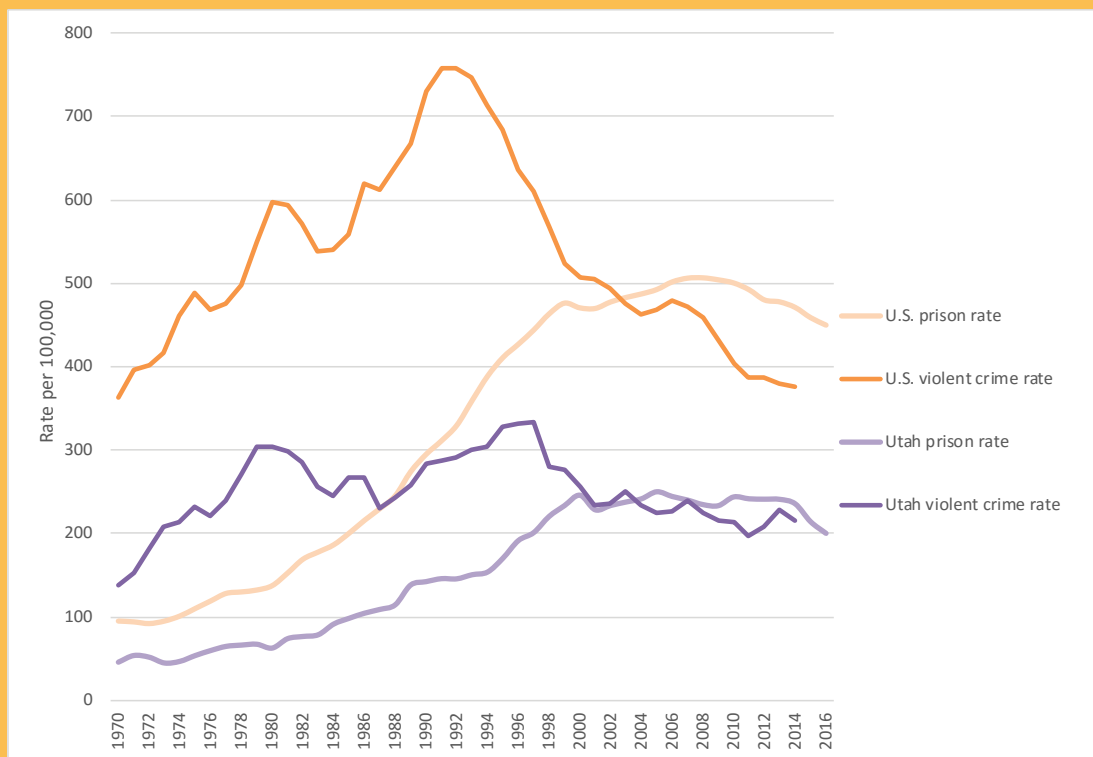
More stringent sentencing policies trended into the 1990s and early 2000s and are often held responsible for high incarceration levels in the U.S. today. Another primary driver of prison population growth since the late 1980s has been an increase in the number of felonies filed overall, and per arrest, by prosecutors. The recession marks a general decline in prison growth as states sought to reduce prison populations and rein in spending.

It should be noted that more aggressive sentencing policies largely reflected public fears about rising crime. From 1970 to 1991, U.S. violent crime rates more than doubled. In Utah, violent crime rates more than doubled between 1970 and 1997. By the late 1990s, violent crime rates began to drop off. However, as of 2016, prison incarceration rates still approximated those of the late 1990s.

Sources: Bureau of Justice Statistics, Correctional Statistical Analysis Tool (CSAT) – Prisoners; U.S. Department of Justice Federal Bureau of Investigation, Uniform Crime Reporting Statistics; “The Growth of Incarceration in the United States: Exploring Causes and Consequences,” www.nap.edu/read/18613/chapter/2; Pfaff, John F., *The Causes of Growth in Prison Admissions and Populations*.

The imprisonment rate started growing dramatically in the mid-1970s.

Figure 1: Imprisonment Rate per 100,000 in the U.S. and Utah from 1970-2016



Source: Bureau of Justice Statistics, Correctional Statistical Analysis Tool (CSAT) – Prisoners. U.S. Department of Justice Federal Bureau of Investigation, Uniform Crime Reporting Statistics.

found a 61% decrease in post-incarceration deaths and a total 12% reduction in overdose deaths in the state’s general population after implementing a program that screens all inmates for opioid use disorder and provides medications for addiction treatment.⁶

This report explains efforts to address addiction within the context of the justice system and explores alternative approaches for people struggling with substance use disorders.⁷ It also sets forth policy guidance for future action.

BACKGROUND

The 1970s are frequently identified as a pivotal moment in the U.S., when penal philosophy shifted to more punitive policies – most notably for drug offenders.⁹ Across all levels of government, punishment for drug offenses was extended in length and expanded in scope. Prison time was increasingly required for lesser offenses; time served for violent crimes and repeat offenders was increased; and drug crimes were more severely policed and punished. Increased punishment continued into the 1980s and 1990s, as most state legislatures enacted laws mandating lengthy prison sentences for drug offenses. They are often referred to as mandatory minimums, “three strikes and you’re out” and “truth in sentencing” laws. (See the sidebar on page 2.)

The growth of the U.S. prison system has had major fiscal impacts, as state and local governments fund the bulk of corrections-related activity. In 2015, state governments funded 31.1% and local governments funded 51.2% of total justice system expenditures in the U.S., while the federal government accounted for only 17.7%.¹⁰

In 2018, nearly \$360 million of Utah taxpayer dollars funded the state Department of Corrections alone.¹¹ The cost has consistently trended upward during the past decade – and it is on track to increase another \$542 million during the next 20 years.¹² A key cost driver is the increasing prison population.

One common measure for states to understand where the money is going is the average cost per inmate. In 2015, Utah’s average cost per inmate was \$22,119, compared to the U.S. average of \$33,274.¹³ However, this number primarily reflects the number of corrections officers per inmate and their average salary.¹⁴ In other words, states



PRISON OR JAIL?

Jails are managed and operated by local jurisdictions and serve as the catch-all for individuals involved with the criminal justice system. There are several reasons why inmates may be held in local jails, including:

- Some are held there until bail is posted or trial takes place.
- Some are serving misdemeanor sentences.
- Some are serving time for technical violations while on probation or parole.
- Some are serving prison sentences as part of a contract with the state.
- Some have a felony sentence and are serving as a condition of probation.

Typically, jails are designed to hold inmates for shorter periods of time, often for one year or less. Prisons, by contrast, are operated by state governments, the Federal Bureau of Prisons and in some states, private businesses. They are meant to hold inmates convicted of more serious crimes, typically felonies. Prisons are therefore designed to accommodate long-term incarceration and typically have more resources and programs. Jails typically have a more transient population and are less equipped to provide long-term programming.

Source: Bureau of Justice Statistics.

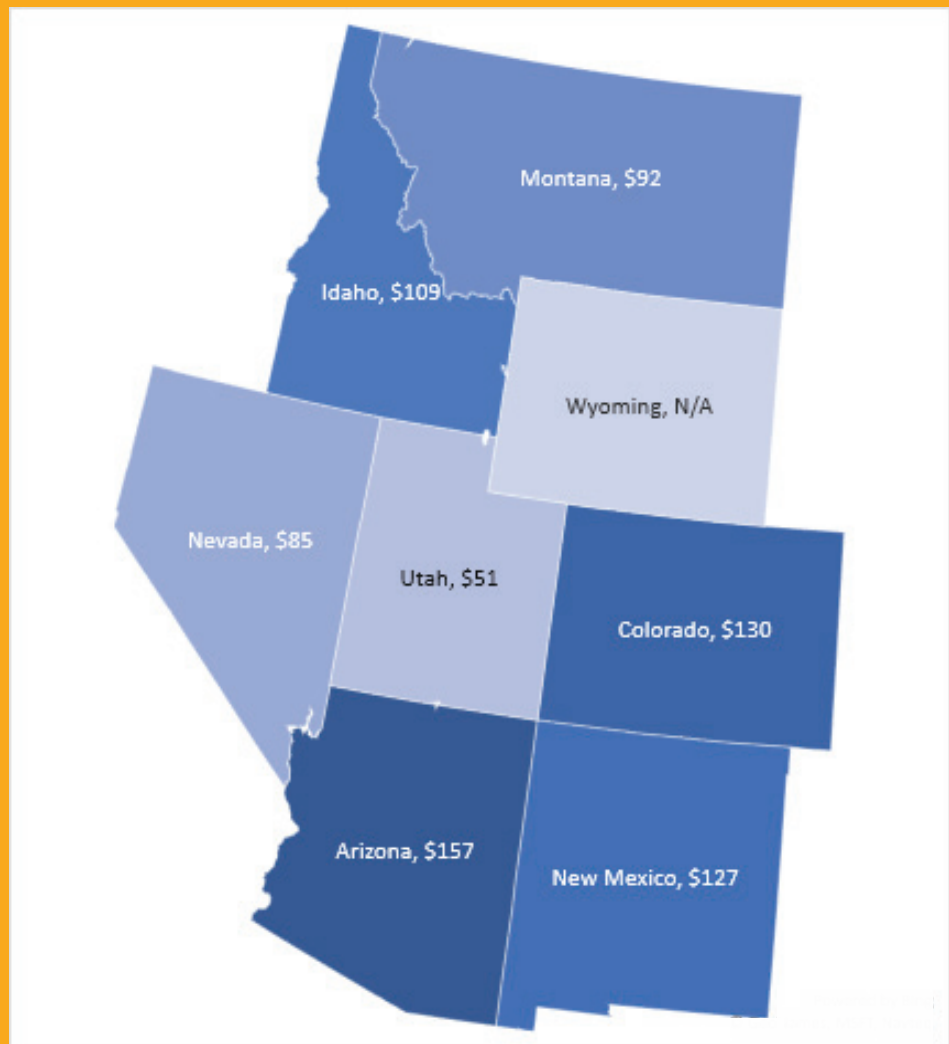
with higher average salaries for corrections employees, and a higher officer-to-inmate staffing ratio, generally have higher per-inmate costs. In 2016, Utah’s Department of Corrections had a shortage of 142 correctional officers.¹⁵ Additionally, Utah’s annual mean wage for correctional officers and jailers is lower than the national average.¹⁶

Another measure of state prison spending is per capita spending. In 2015, Utah’s per capita state prison spending was \$51, the lowest in the nation. This is compared to Alaska, which spent the highest in nation at \$429 per capita. In fact, from 2010 to 2015, Utah’s state prison spending decreased from \$53 to \$51 per capita.¹⁷ Among Mountain States, Arizona had the highest spending per capita, more than three times the amount in Utah. (See Figure 2.)

Despite more punitive policies and spending growth, recidivism and drug abuse in the U.S. continues to plague society. From 2010 to 2016, drug overdose deaths increased in 47 of 50 states—Utah included.¹⁸ From 2000 to 2015, prescription opioid deaths in Utah increased from 60 to 281 people.¹⁹ Additionally, from 2004 to 2011

Utah’s 2015 per capita spending is the lowest in the nation, and one-third of the highest among Mountain States.

Figure 2: Mountain State Prison Spending per Capita, 2015



Sources: Vera Institute of Justice, *The Price of Prisons*. U.S. Census Bureau, *American FactFinder*.

(years for which national data are available), drug-related emergency department visits increased for all major substances of abuse. Emergency room department visits for opiates/opioids nearly tripled.²⁰ In 2018, the Pew Charitable Trusts found that there is no statistically significant relationship between state drug imprisonment rates and three separate indicators of state drug problems: self-reported drug use, drug overdose deaths and drug arrests.²¹ In other words, states with higher rates of imprisonment for drug offenses do not yield lower rates of drug use, drug arrests or overdose deaths.²²

Recidivism rates are also high. The Bureau of Justice Statistics found that five out of six state prisoners (83%) nationally were re-arrested at least once from 2005 to 2014.²³ Within Utah, nearly half (46%) of the inmates released from state prisons return within three years.²⁴

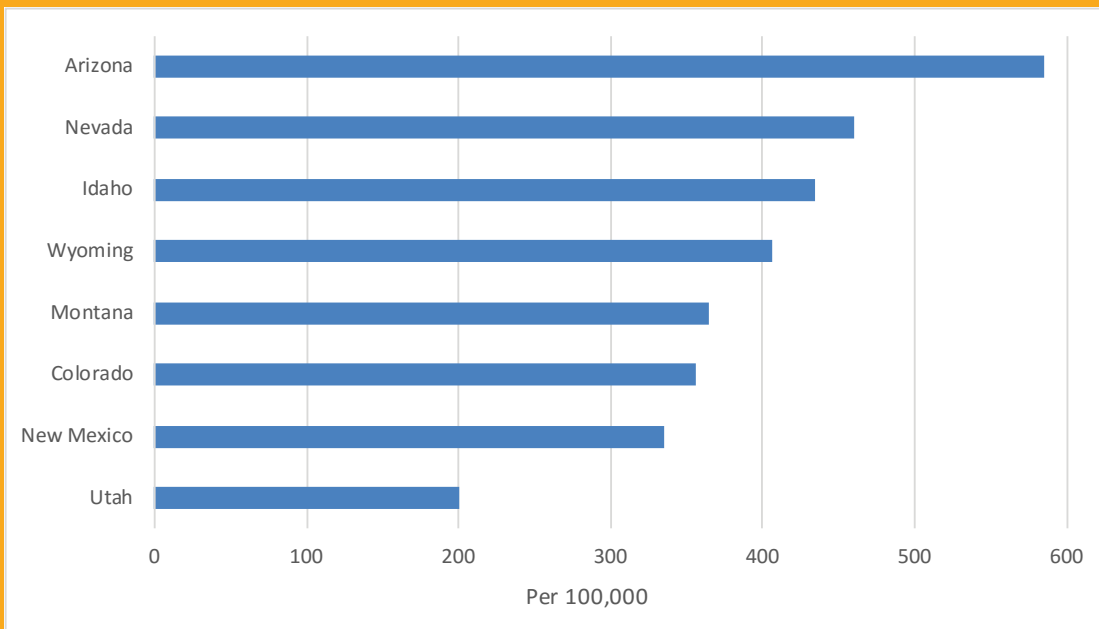
UTAH'S INCARCERATION LANDSCAPE

There are two state prisons in Utah. The Utah State Prison in Draper houses up to 4,500 offenders, both male and female. The Central Utah Correctional Facility in Gunnison houses up to 1,600 male inmates. As of September 2018, there were 6,636 prisoners in Utah, with a total operational capacity of 7,191.²⁵ This equates to more than 90% of capacity. Some prisoners are confined in jails as part of a contract between the state and counties.

In 2016, Utah's state prison incarceration rate of 201 per 100,000 was the seventh lowest in the nation. Maine had the lowest rate with 137 per 100,000 and Louisiana had the highest with 760 people imprisoned per 100,000.²⁶ Such figures are to some degree reflective of violent crime rates. For instance, Maine was ranked 50th in terms of violent crime in 2017, while Louisiana was ranked fourth. Utah, meanwhile, was ranked 39th.²⁷ Among Mountain States, Utah had the lowest incarceration rate in 2016. New Mexico was second lowest with a rate of 335 per 100,000, and Arizona was the highest at 585 per 100,000. (See Figure 3.)

Utah has the lowest prison incarceration rates among the Mountain States.

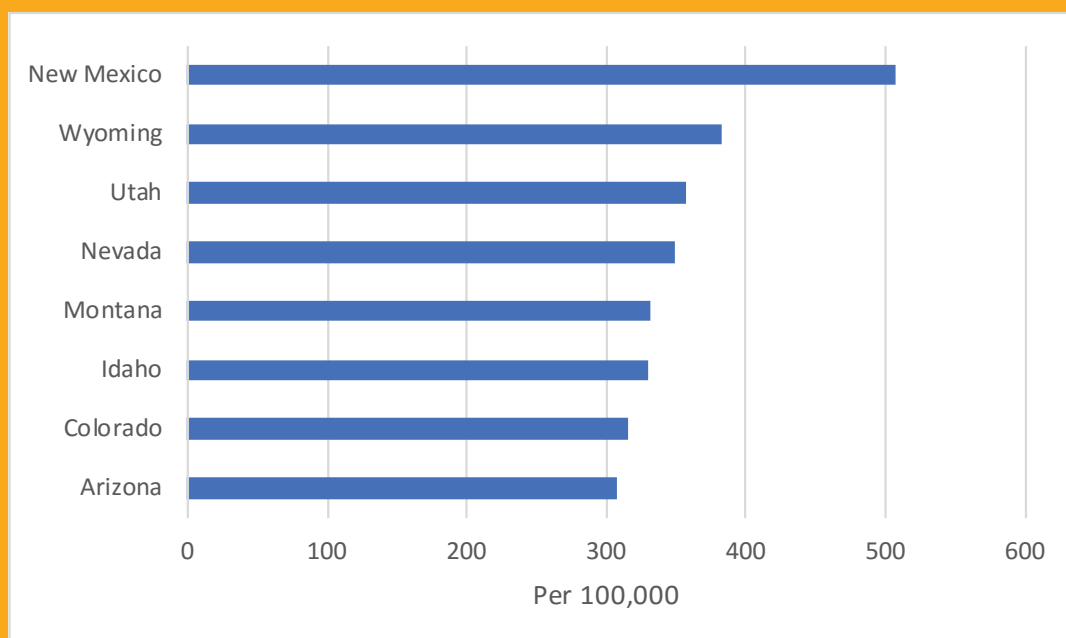
Figure 3: Prison Incarceration Rate by Mountain State per 100,000, 2016



Source: U.S. Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT) – Prisoners. See Appendix A for all states.

Utah's jail incarceration rate is the third highest among Mountain States.

Figure 4: Jail Incarceration Rate by Mountain State per 100,000, 2015.



Source: Vera Institute of Justice, Jail Incarceration Trends. See Appendix B for all states.

While Utah's prison incarceration rate is one of the lowest in the nation, from 2004 to 2014 Utah's prison population increased 18%.²⁸ Without changes, the Pew Charitable Trusts projected a 37% increase in the state's prison population by 2034. In partnership with Utah's Commission on Criminal and Juvenile Justice, Pew provided technical assistance to unearth possible causes of Utah's prison population growth.

In 2013, Pew found that seven of the top 10 offenses that sent someone to prison were nonviolent. Utah sentenced more offenders to prison for drug possession than any other crime.²⁹ Pew also found that prison time served rose for all offenses. Another key factor in Utah's prison population growth was technical violations from individuals on probation and parole. The findings from this study served as the impetus for Utah's 2015 criminal justice reforms (discussed below).

While Utah's prison rate is relatively low, the picture looks much different when it comes to the jail incarceration rate. Among the 50 states, Utah had the 15th highest jail incarceration rate. Among the Mountain States, Utah has the third highest at 357 per 100,000.³⁰ New Mexico has the highest at 506 per 100,000, and Arizona has the lowest at 308 per 100,000.³¹ (See Figure 4.)

Historically, the public and policymakers have largely paid attention to growing trends in state and federal prisons to evaluate the impact of criminal justice policies. This approach however, limits the scope of the criminal justice system and ignores a significant aspect of incarceration trends. Using prison population trends as a proxy for all incarceration data can misrepresent the entire imprisonment picture. This issue is discussed later in the report in more detail.

Utah's 2015 Reforms

In 2006, the U.S. Bureau of Justice Assistance launched the Justice Reinvestment Initiative. The initiative is a public-private partnership between the U.S. Justice Department's Bureau of Justice Assistance, the Pew Charitable Trusts, the Council of State Governments Justice Center, and the Crime and Justice Institute. The partnership aligns efforts to provide technical, financial and policy assistance to states looking to reform their criminal justice system.³² The core strategy of the initiative is to find data-driven solutions that reduce corrections and related criminal justice spending, and subsequently reinvest those savings into evidence-based practices that improve public safety and reduce long-term corrections spending. Since 2007, Utah and 34 other states have reformed their criminal justice systems with assistance from the Justice Reinvestment Initiative.³³ Utah undertook its key reforms in 2015.

Utah's initiative addressed five main categories of concern, which included 18 policy reforms. Those five categories are:

- Prioritize prison space for serious and violent offenders.
- Implement comprehensive re-entry planning and treatment services.
- Strengthen probation and parole supervision.
- Support local corrections systems.
- Ensure oversight and accountability in the criminal justice system.

The policy reforms are designed primarily to decrease the number of individuals incarcerated for drug offenses (or other nonviolent offenders) that have addiction and mental health issues, and instead fund greater access to treatment.³⁴



FEDERAL CRIMINAL JUSTICE REFORMS: THE FIRST STEP ACT

The Federal Bureau of Prisons incarcerates about 182,000 inmates. The majority (84%) are held in federal prisons; 11% of inmates are in privately managed facilities and the remaining 5% are in other types of facilities. Nearly half (46%) of all federal inmates are in prison for drug offenses. Federal prison expenditures cost taxpayers nearly \$7 billion a year, up significantly from \$970 million in 1980, adjusted for inflation. Yet there have been few significant measures to reform the criminal justice system at the federal level. For instance, the 2008 Second Chance Act allocated \$362 million to help people re-integrate into society after prison release and the 2010 Fair Sentencing Act reduced the disparity in punishment for crack and powder cocaine.

The First Step Act of 2018, if passed, would more thoroughly reform prison and sentencing policies. This includes several provisions designed to enhance quality of life for current inmates and for individuals upon release. For instance, the act would provide for greater access to incarceration-based programming and training, implement a risk and needs assessment system, and grant all returning citizens identification cards. The First Step Act also takes specific action to address inmates with substance use disorders by requiring the Bureau of Prisons to report the availability and capacity of evidence-based treatment programs for heroin and opioid abuse. The act also calls for numerous improvements to data collection. For instance, the Bureau of Justice Statistics, in partnership with the Bureau of Prisons, would be required to publish the number of prisoners in a substance use treatment program, the number of prisoners being treated for a substance use disorder and the number of prisoners receiving medication-assisted treatment while in prison.

The act would also reduce mandatory minimum sentences for nonviolent drug offenses, would give judges more discretion to deviate from mandatory minimums for nonviolent drug offenders, applies the Fair Sentencing Act of 2010 retroactively, eliminates the "stacking" provision (which adds years onto a sentence if a firearm is found on the person charged during the crime committed) and eliminates the "three strikes" law.

Sources: U.S. Department of Justice Federal Bureau of Prisons, Prison Fellowship, The Pew Charitable Trusts, U.S. Congress S.2795 First Step Act, Brennan Center for Justice.

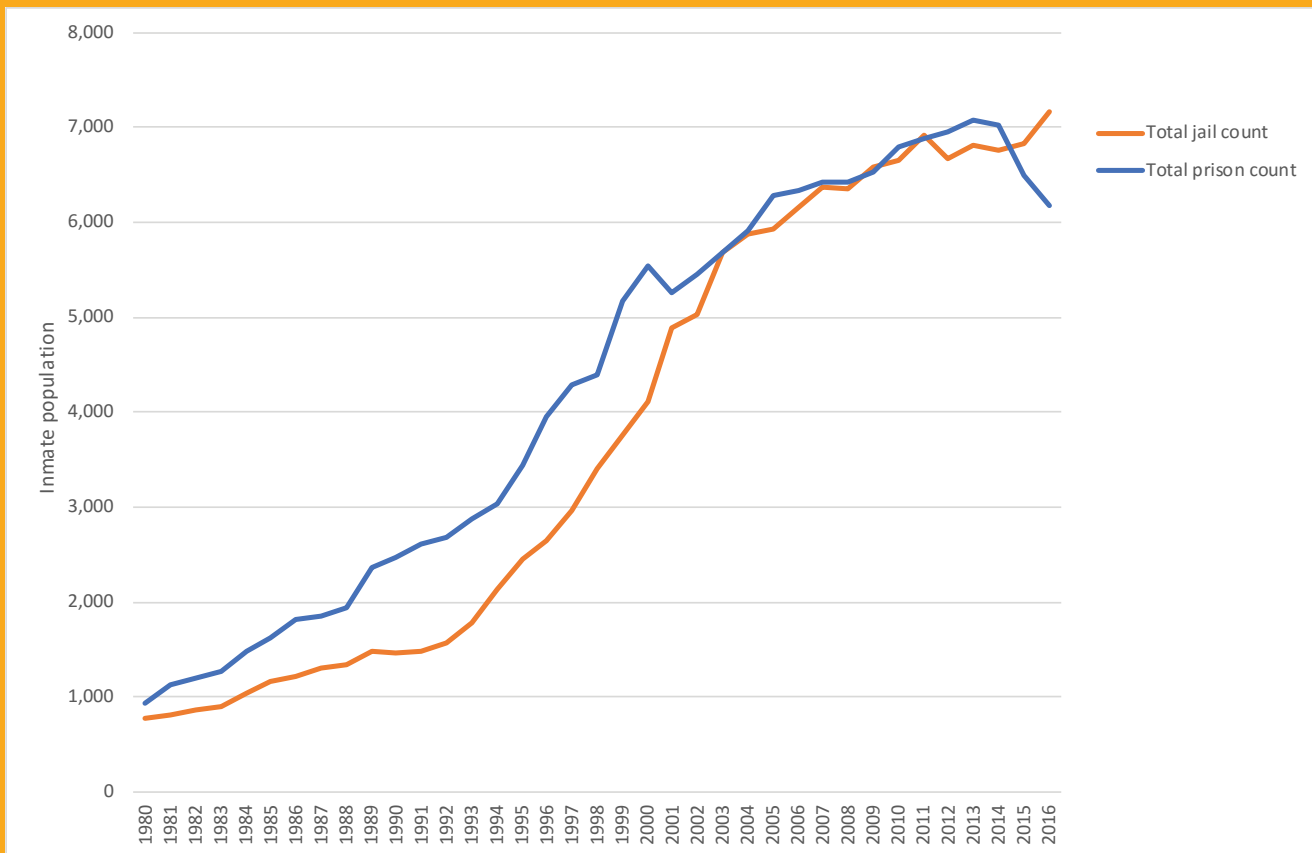
Drug Possession Offense Changes. One of the principle mechanisms to reduce Utah’s prison population and time served, specifically for nonviolent offenders, modified penalties for certain drug possession charges. For instance, certain possession felonies were reduced to misdemeanors. Likewise, certain misdemeanors were reduced to infractions. (See sidebar on page 9 for more information.)

The reforms appear to be having the intended effects. The Utah Commission on Criminal & Juvenile Justice 2017 report indicates felony drug possession case filings are down significantly since the reforms, from 42% of all drug possession case filings in 2014 (the year before reform) to 14% in 2017. At the same time, there was an increase in class A and class B misdemeanors, from 10% to 34% and 48% to 52%, respectively, of all drug possession case filings.

The Utah Commission on Criminal and Juvenile Justice cautions that a “felony bubble” may emerge as a result of one aspect of the change: Some felony drug possession charges were lowered to misdemeanors for the first two or three convictions but raised to a felony thereafter. If enough offenders repeat, a spike of felony charges will emerge to reflect their recidivism.³⁵ However, while the total prison population has decreased, likely as a result of felony charges reduced to misdemeanors, the total jail population has increased. (See Figure 5.)

As Utah’s total prison population began to decrease in 2014, the total jail count increased and surpassed the prison count.

Figure 5: Total Number of People Incarcerated in Utah Prisons and Jails, 1980-2016



Sources: The Sentencing Project, Vera Institute for Justice, National Institute of Justice, National Institute of Corrections.

Although this report does not examine all possible drivers of jail growth, the point where total jail population and prison population intersect is notable. It appears that the shift from felony charges to misdemeanors has landed more people in jail rather than prison, shifting incarceration growth from a state-level problem to a county-level problem.

From 2014 (the year before reform) to 2016 (most recent year available), the prison population decreased by 12%. At the same time, the jail population increased by 6%. In fact, since 1980, Utah's jail population has only been larger than the prison population on five occasions, two of which occurred in 2015 and 2016 and were significantly higher than the other three occasions. For instance, in 2009, Utah's jail population was 0.98% greater than the prison population. In 2016, Utah's jail population was 16% larger than the prison population.

It should be noted that a growing jail population can also be costly to the cities and counties that pay for jail services, often with the tax revenue needed to support other local public services.

Because jails are dispersed among numerous county and local governments, the aggregate jail incarceration growth tends to be overlooked. However, while relying on Utah's prison population as a metric for reform yields positive results, it does not measure comprehensive change across Utah's entire criminal justice system. Additionally, Utah's jail and prison populations are somewhat integrated.

The state's Department of Corrections rents beds from county jails to house low-risk individuals that otherwise would have served their time in prison. In Utah, 26 of the 29 counties operate jails. Of the 26, 21 contract jail beds to the state.³⁶ One county jail in 2017 contracted *all* its beds to the state.³⁷ In fact, nearly 20% of all jail beds are available for contracting.

This relationship is critical, because the interplay between state and county criminal justice systems can determine what kind of rehabilitation treatment prisoners with substance use disorders receive – if any.

However, it is important to note that implementation of the Justice Reinvestment Initiative increased state support for substance abuse treatment centers across the state. As such, from 2016 to 2017 alone, there was a 21% increase in admissions to substance use treatment for individuals involved with the criminal justice system.³⁸ They may be individuals who are compelled to undergo treatment as part of their sentencing, as part of probation or parole requirements, or via drug court.³⁹



FELONY AND MISDEMEANOR PUNISHMENTS IN UTAH

There are four degrees of felony charges. A capital offense can result in life in prison (with or without parole) or execution. A first-degree felony can result in five years to life in prison; a second-degree felony can result in one to 15 years in prison and; a third-degree felony can result in zero to five years in prison. There are three classes of misdemeanors. Class A can result in up to one year in jail; class B can result in up to six months in jail; and class C can result in up to 90 days in jail.

Utah's 2015 reforms modified a third-degree felony for certain drug possession charges to a class A misdemeanor for the first two convictions and a third-degree felony for the third conviction. The reform also modified a class B misdemeanor for certain drug possession charges, which maintained a class B misdemeanor for the first two convictions but increased the punishment to a class A on the third conviction, and a third-degree felony for fourth and subsequent charges.

Sources: Utah Courts, Utah Commission on Criminal & Juvenile Justice.

Incarceration-Based Treatment Programs

Prison-based substance use disorder treatment programs are effective to varying degrees at reducing recidivism and drug relapse. One research synthesis of 74 evaluation studies nationally found differences in the effectiveness of general types of incarceration-based drug treatment programs. The review found therapeutic community programs had moderate reductions in both criminal recidivism and drug relapse; counseling programs reduced recidivism, but not drug relapse; narcotic maintenance programs significantly reduced drug relapse but not recidivism; and boot camps had negligible effects on both measures.⁴⁰

Utah's Prison Programs. When inmates first enter Utah's prison system, they undergo Case Action Planning, an initial assessment that evaluates each inmate's educational, programmatic and treatment needs. There are two substance abuse treatment programs for men at Utah's state prisons and one for women, all of which use therapeutic communities.

The Con-Quest program is for males only and is held at the Draper prison. The program is an inpatient substance abuse treatment program which can care for 200 residents. For inmates to qualify for full completion of the program, they must participate for a minimum of 12 months, but the program can run up to 18 months. Research conducted by the Utah Department of Corrections found that those who completed the program had a recidivism rate of about one-third of those who leave the prison without completing the program.⁴¹

The other program for males only is at the Gunnison prison. It has enough spaces for 288 inmates. This program typically takes between 12 and 13 months to complete. The Utah Department of Corrections found similar success regarding recidivism as with the Con-Quest program.

The Ex-Cell program at the Draper prison provides treatment for 70 female inmates and is also based on the therapeutic community model. The program is designed to help women overcome substance abuse issues and resolve trauma from physical and emotional abuse, which often underlie criminal behavior among women.⁴² Research results from this program found that graduates of this program are about 30% less likely to return to prison than inmates who do not participate.

It should be noted that Utah's prison-based substance use treatment programs are voluntary, suggesting participants may already be motivated to end their drug use.

Utah's Jail-Based Programs. In 2015, a statewide risk and needs screening process was implemented in county jails. From 2015 to 2017, nearly 62,000 individuals completed a screening. Of those, 67% were identified as having a moderate to high risk of reoffending, with nearly half (49%) needing further assessment for a substance use disorder and 40% needing a mental health assessment.⁴³ As of 2018, however, only two counties have continued to use the screening process due to a lack of funding.⁴⁴

Of the 26 county jails across Utah, only 14 have a substance use program and they vary in content and structure.⁴⁵ For instance, some programs address relapse prevention. Others provide substance education, which covers many broad topics such as warning signs of addiction, information about how substance affect the mind and

Of the 26 county jails across Utah, only 14 have substance use programs, and those vary in content and structure.

body, consequences of using drugs, and how and why they can be abused. It is unclear to what extent the available programs are evidence-based, how many inmates participate (or for how long) and to what extent they are effective at reducing drug use or recidivism rates.

Until 2018, jail medical policies had minimal oversight from the Utah Legislature. In response to several high-profile jail deaths in 2016, Utah passed legislation that requires the Department of Corrections and county jails to report to the state Commission on Criminal and Juvenile Justice regarding in-custody deaths and alcohol and substance abuse treatment policies.⁴⁶ As a result, the Utah Substance Use and Mental Health Advisory Council was formed to study substance use treatment in Utah's county jails. Utah county jails reported a total of 71 inmate deaths from 2013 to 2017,⁴⁷ more than half of which (54%) were suicides. The council also found substantial treatment gaps in county jails.

Generally speaking, county jails do not offer the same kinds of programs or services that prisons do. This is primarily due to more limited county resources and the shorter periods inmates spend incarcerated in jails, which are often too brief for effective treatment programs.⁴⁸ The council found that only 16 of Utah's 26 county jails reported that they have protocols in place for treating inmates experiencing withdrawal symptoms from the use of any substances. Additionally, only 10 have protocols in place for using medication-assisted treatment for withdrawal symptoms. Medication-assisted treatment is an evidence-based practice that can minimize risk for fatalities as a result of extreme withdrawal symptoms. In fact, only three jails reported utilization of medication-assisted treatment.

ALTERNATIVES TO INCARCERATION-BASED MODELS

The two primary perspectives on how to mitigate drug use include a criminal justice model and a public health model. The criminal justice perspective views drug use as a crime and uses punishment to deter individuals from using. The public health perspective treats drug use as a public health problem that prioritizes treatment as opposed to punishment. Neither is inaccurate. Abuse of controlled substances is both a crime and a public health hazard.

The U.S. predominantly functions under the criminal justice model, but most states have implemented policies that incorporate more treatment for inmates and open the way for prison diversion options. The diversion strategies take place during different phases of interaction with law enforcement, but all aim to keep people from being incarcerated and instead focus on treatment.

Pre-Booking Diversion

Pre-booking diversion programs are designed to steer arrestees (or potential arrestees) with substance use disorders toward community-based treatment services before they even enter the criminal justice system. Being involved with the criminal justice system can have lasting impacts beyond the immediate consequences of imprisonment, including difficulties with employment, housing, loans, voting rights, emotional trauma, criminal inculturation, and strains on family, friends and communities.⁴⁹

Several frameworks exist to divert an offender before arrest. Health and social service organizations or police officers may work to connect individuals with services to avoid arrest entirely.

For individuals requiring immediate assistance, some communities have opiate response teams, or mobile crisis intervention teams. This type of assistance gets indi-

viduals immediate treatment from health care or social service providers, particularly in the event of an opioid overdose or a mental health crisis.⁵⁰ These programs can also be significant for individuals with substance use disorders. The National Institute on Drug Abuse found around 25% of those with serious mental illnesses also have substance use disorders.⁵¹

Another kind of diversion involves active outreach from law enforcement. Individuals are identified by law enforcement but are engaged by treatment experts who actively contact them and help motivate them to engage in treatment services. For instance, in 2015 the Arlington police department in Massachusetts created the Arlington Outreach Initiative. The police department hired a public health clinician to actively reach out to individuals that had previously overdosed.⁵²

On the other end of diversion spectrum are self-referral programs. Individuals with a substance use disorder can initiate engagement with law enforcement without fear of arrest, and law enforcement agents can make immediate treatment referrals to the individuals. The officers dispose of any drugs on participants at the time without charging them with crimes, direct them to the local hospitals and guide them through the rehabilitation process.⁵³ In Gloucester, Massachusetts in 2015, the ANGEL program was created under this framework. In the first full year of the program, 160 of the 367 participants (43%) went to treatment based on a referral.⁵⁴ Similarly, some communities have implemented a program known as Safe Stations. This program allows individuals to visit local fire stations to get immediately connected to support services.

Another type of pre-booking diversion is initiated by law enforcement. Perhaps one of the most prominent pre-booking diversion models is Law Enforcement Assisted Diversion (LEAD).⁵⁵ Dozens of jurisdictions across the country have implemented LEAD, and some states have provided funding to assist local jurisdictions in implementing the program. Police officers in the LEAD program divert individuals to community-based interventions for law violations that otherwise may not have occurred had their behavioral needs been met. One evaluation of LEAD found that participants were 60% less likely to be arrested after entry to the program.⁵⁶

Another recent example is the Stop, Triage, Engage, Educate and Rehabilitate (STEER) program in Montgomery County, Maryland. The STEER program uses a risk-need screening tool to assess individuals' need in the field, usually during calls for service, community-based encounters or crisis responses. In the first full year of the program, 56% of those screened agreed to participate in treatment.⁵⁷

There are also prearrest diversion programs initiated by law enforcement that issue civil citations rather than make arrests or issue notices to appear in court. If individuals complete the requirements of the civil citation, the offense is never referred to court and does not appear on individuals' records.⁵⁸

Post-Booking Diversion

Post-booking diversion programs are designed to divert individuals away from the criminal justice system after they have been arrested and booked with charges. The most commonly known and used post-booking diversion tool is known as “drug court.” Drug courts provide an opportunity for eligible offenders to participate in treatment and rehabilitation programs instead of traditional sanctions, such as imprisonment.

Drug courts function by incorporating a multidisciplinary approach that includes community and criminal justice stakeholders. Judges oversee participants' progress, providing rewards for compliance and sanctions for non-compliance. Successful completion can lead to case dismissal, while recidivism can lead to expulsion

Since 1989, more than 2,500 drug court programs have arisen across the U.S.

from the program, which typically places the individual back on the traditional criminal justice system trajectory.

Drug courts can vary in target population, program design and service resources. However, there are some key components for any comprehensive drug court program: utilization of screening tools to assess participants risks and needs; judicial leadership and oversight; participant monitoring and screening typically through drug testing; the use of sanctions and incentives; and treatment and rehabilitation services that include medication assisted treatment, especially with opioid use disorders. The main differences in drug court programs across Utah are eligibility criteria, the point at which cases are diverted from prosecution, and program outcomes.

The drug court model has been used in the U.S. for nearly three decades. Since 1989, more than 2,500 drug court programs have arisen across the U.S. In Utah, Salt Lake City established the state's first drug court program in 1996, and the model has spread. There are drug courts in all eight judicial districts in Utah.

A research review by the U.S. Office of National Drug Control Policy found that drug courts reduce recidivism rates by up to 35%, compared to cases that were prosecuted in a traditional setting.⁵⁹ The most comprehensive review of drug courts nationwide found drug court participants reported less drug use, were less likely to test positive for drug use and were less likely to relapse.⁶⁰ One study even linked drug courts with increasing public safety through decreases in burglary, property and robbery rates.⁶¹

However, a few possible pitfalls can arise if drug courts operate too rigidly. For instance, if a participant has a single setback and fails a drug test, that may lead to ouster from the drug court program and into a prison sentence, even though the participant and the public might be better served by further treatment. Often, the attitudes and discretion of judges can be the deciding factor. It should be noted, however, that in Utah it is against best practice to remove someone from drug court because of continued substance abuse if the person is otherwise compliant with treatment and supervision conditions.⁶²

In some cases, the eligibility criteria for drug court may be too limiting. Traditionally, offenders are eligible for drug court only if they have nonviolent drug offenses. Utah's best practices for drug courts, however, state that those charged with non-drug offenses or drug dealing and those with violent histories are not automatically excluded from participation in drug court.⁶³ This is significant because there is a strong relationship between individuals with substance use disorders and property crimes. For instance, in Utah, 26% of individuals arrested for property crimes were screened with a high need for substance use treatment. Remarkably, this is higher than the percentage (20%) arrested for drug offenses.⁶⁴

Statewide evaluation research for Utah's drug courts is limited. In 2015, the Office of the Utah State Auditor found that there is insufficient data to complete a comprehensive evaluation of the effectiveness of Utah's drug courts.⁶⁵ In 2016, Utah received a grant from the Bureau of Justice Assistance to contract with the National Center for State Courts to develop performance measures, conduct a process evaluation and conduct an outcome evaluation. The study chose six counties to evaluate. Of the 705 participants, 58% graduated from the drug court program.⁶⁶



OTHER DIVERSION MODELS

In the U.S., alternatives to incarceration primarily rely on the criminal justice system as a main point of contact for most diversion programs. However, this is not the case for all diversion models. There are additional philosophies rooted in the public health approach to individuals with substance use disorders: decriminalization and harm-reduction strategies.

Decriminalization in the U.S. is most known for state laws that have decriminalized (or legalized) the personal use and possession of marijuana.⁶⁷ Some nations have taken it a step further and decriminalized all drug use and personal possession to reframe addiction as a public health issue and encourage treatment. In some instances, harm-reduction strategies are incorporated as part of decriminalization. Harm reduction is a viewpoint that accepts that drug use is a part of society and strategies should try to minimize the consequences of use.

Often, harm reduction strategies include safe injection sites or needle exchange programs. More publicly-accepted harm reduction strategies in the U.S. include Good Samaritan laws and naloxone distribution.

Good Samaritan laws provide individuals some protection from possession charges if they call emergency services in the event of an overdose. Naloxone can prevent a fatal overdose death from occurring if administered during an overdose. The extent and use of these two strategies vary by state. The implementation of more experimental harm reduction strategies, such as safe injection sites, have not yet been approved by state or federal law in the U.S.

Source: Yale Journal of Biology and Medicine, Journal of the American Bar Foundation Law & Social Inquiry, U.S. Department of Justice Drug Enforcement Administration Diversion Control Division.

In addition to local drug courts, there is also a diversion program through the U.S. district court in Utah. The Utah Alternatives to Conviction Track is a post-guilty diversion program. There are no set criteria for participants to qualify. However, there are two different tracks outlined to provide guidance as to who may qualify. Individuals enter guilty pleas and upon completion of the program their charges are either dismissed or their sentences are reduced without imprisonment. If participants fail to complete the program, they proceed to sentencing based upon the charges for which they entered a guilty plea.

The most prominent Utah-based example of a post-booking diversion program is Operation Rio Grande, a three-phase plan to improve public safety in the Rio Grande area of Salt Lake City. The plan was launched in August 2017, with the first part of the phase geared towards aggressively apprehending individuals in the area. The idea is to utilize jail bed space for individuals that commit more serious crimes, while providing assessment and community-based treatment services for those with substance abuse and mental health needs. The operation intended to utilize increased funding from Medicaid expansion. However, the Medicaid expansion approved in 2017 was limited in scope and required stringent eligibility requirements, which may have inhibited the success of the diversion tactic. Utah voters' passing of full Medicaid expansion as outlined by the Affordable Care Act may have a positive impact on the continued progress and success of the substance use programs associated with Operation Rio Grande.

LOOKING AHEAD

As the outcomes of Utah's criminal justice system reforms continue to unfold there are several areas that policymakers and stakeholders may want to give additional attention.

Growing Jail Population

Using the prison population as the primary metric to understand the scope of incarceration in Utah is tempting. However, it does not provide a complete picture of the criminal justice system. In fact, using the prison population as a proxy for all incarceration can obscure reality. Since the start of Utah's criminal justice reforms, the jail population has increased as the prison population decreased. Considering the potential for disparate levels of drug rehabilitation treatment, this trend demands attention.

Pre-Booking Diversion Programs

There may be opportunities for Utah to divert individuals with substance use disorders away from the criminal justice system before they even enter it. Currently, the only pre-booking diversion programs in Utah are specifically designed for indi-

viduals with mental health disorders. As local jurisdictions nationwide continue to implement pre-booking programs, this approach deserves careful analysis to determine what works and where there may be pitfalls.

Drug Court Evaluations

To date, there is no statewide system for evaluating the success of Utah's drug courts. Having a birds-eye view of Utah's drug courts could help identify differences in outcomes and gaps in treatment services.

Recovery Support Services

As part of helping offenders maintain sobriety, the Utah State Division of Substance Abuse and Mental Health requires the provision of recovery support services within the public behavioral health treatment system. This includes a host of wrap-around services to help participants get employment, clothing, GED certification and housing, among other needs. However, the funding available to provide these services is limited, particularly for housing needs.⁶⁸ Not only is affordable housing difficult to come by, but a criminal record can impose additional difficulty. Exploring opportunities to expand housing opportunities for recovering addicts with criminal records may reduce barriers to rehabilitation.

Incarceration-Based Treatment Services

Demand for treatment services is high and space is not always available at the time of need, or with enough time to complete a program. Treatment services are most effective when individuals complete and graduate from a full program, which typically lasts 12 to 18 months. However, Utah's criminal justice reforms made several changes to sentencing guidelines and time served policies. By reducing penalties for certain drug offenses, sentencing guidelines were shortened. Policy reforms also expanded the definition of jail time as time that can be credited against a prison sentence. Additionally, an earned time credit program provides for at least four months reduction in time served if an inmate successfully completes the top priority in their Case Action Plan.

While these initiatives reduce overall time served, in some cases they can prevent inmates from completing and graduating from treatment programs based on time constraints. The Utah Department of Corrections aims to admit individuals into treatment programs closer to their release dates, as research shows better results when the successes of the program can be carried over into the community.

While this report includes discussion of alternatives to incarceration, it should be remembered that incarceration-based treatment is a key component of rehabilitating individuals with substance use disorders. Treatment services remain essential to recovery and therefore treatment gaps within both prisons and jails may require additional attention.

County Jail Screening Tool

Accessing treatment services in jails may also be difficult for several reasons. To begin with, services are not available at all Utah jails. Furthermore, scaling programs to meet the need is a challenge; the 2015 statewide screening tool revealed that about half of all offenders require further assessment for substance use disorders. However, because Utah's criminal justice reform did not provide continual funding for the screening tool for county jails, only two counties continue to use the screening tool. Continual implementation of the screening tool statewide would provide up-to-date accurate data. In fact, the Utah Substance Use and Mental Health Advisory Council recommends that all inmates in Utah county jails undergo evidence-based physical, behavioral health and suicide screenings prior to booking.⁶⁹

Transparency Tool for Community-Based Treatment

One of the difficulties with placing individuals in community-based treatment is an inability to track available spaces in treatment programs across the state. Utah is currently looking into implementing a platform to track all available treatment spaces. The tool would also serve as a transparency tool for public and private providers to search availability by space, treatment program and type of payment accepted. This would be particularly important for physical health providers that need to make referrals to patients for substance abuse and mental health treatment. The goal is to link physical and mental health providers and create a real-time, statewide behavioral health network. The greatest impediment is the cost of implementing the tool and counting on private providers to adopt the practice.⁷⁰

Medicaid Expansion

As part of Utah's 2018 ballot initiatives, Utahns voted for full Medicaid expansion as outlined by the Affordable Care Act. The expansion is anticipated to expand access to health care to additional 150,000 individuals, some of whom may have a criminal justice system history. This expansion could provide additional funding for substance use disorder treatment programs.

CONCLUSION

Drug use and crime in the U.S. have a complex relationship. The same is true in Utah, where nearly half of all inmates in jail screen high for needing further assessment for substance use disorders. Drug treatment programs show positive results in reducing recidivism rates and improving public health.

In 2015, Utah implemented sweeping criminal justice reforms to reduce the state's prison population, and increased funding for substance use disorder treatment programs. While the full effects of the reforms are still unfolding, the total state prison population has seen a noticeable decrease. However, at the same time, the total local jail population has increased, perhaps shifting the burden of rehabilitation. This shift can have significant consequences on the rehabilitation prospects for inmates in county jails, and the fiscal picture for local jurisdictions that operate and manage them. Although the benefits of Utah's criminal justice reform include more robust investments in rehabilitation, relying solely on the state's prison population as the measure for Utah's criminal justice system may obscure the scope of the need.

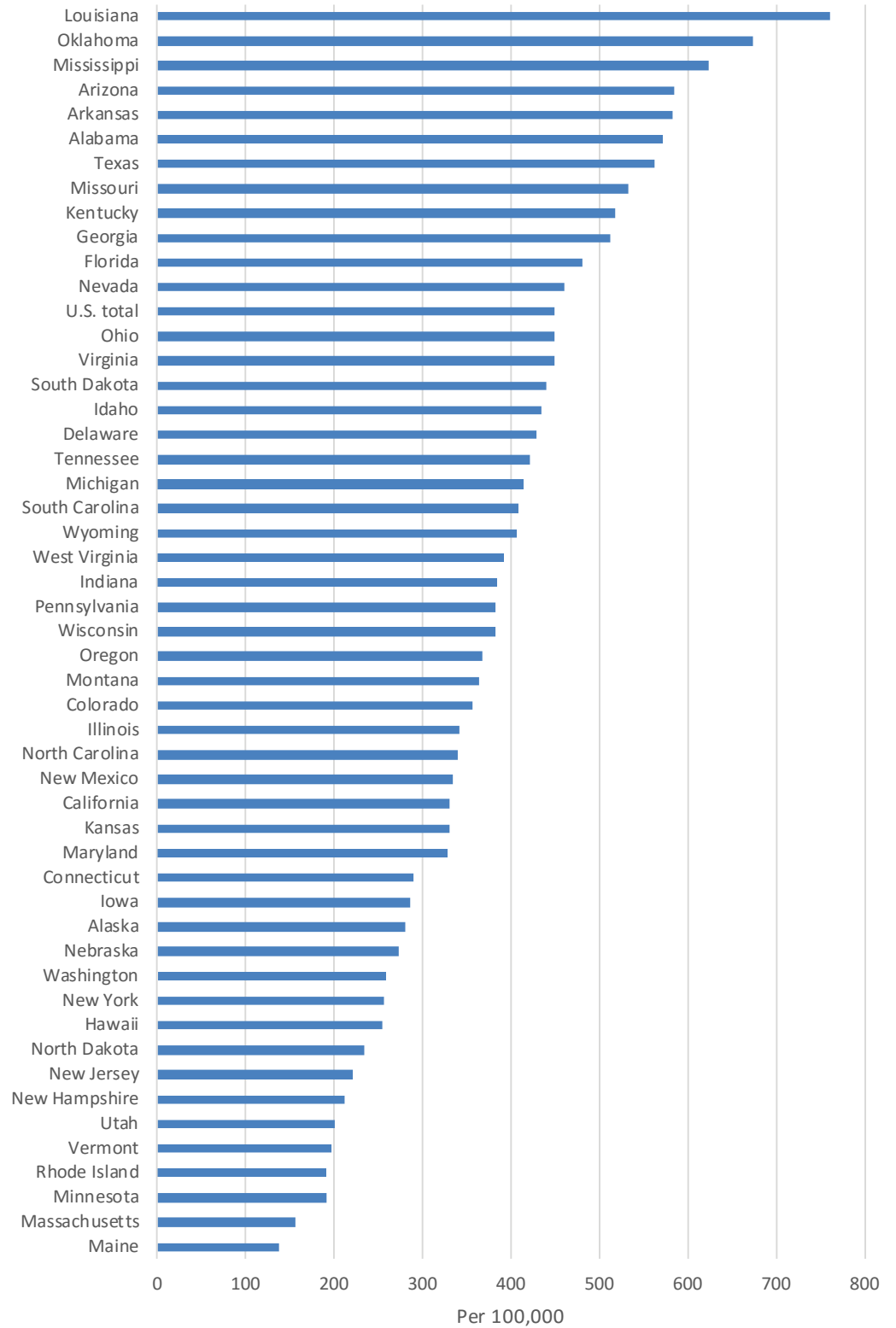
Examining Utah's prison population in conjunction with more granular local metrics can provide a far more comprehensive understanding of Utah's criminal justice system and help to identify gaps in incarceration-based and community-based treatment services. If the goal of reform is to increase access to drug treatment programs, the interplay between local county jails and state prisons will be a necessary component for providing adequate treatment resources.

With these concerns in mind, Utah Foundation offers the following guidance for policymakers:

- Given the potential return on investment from high-quality programs for drug offenders, state and local governments should continue to work to leverage robust and effective rehabilitation programs.
- The increasing ratio of local jail inmates to state prison inmates deserves close examination to ensure that the shift does not diminish the prospects for drug rehabilitation among offenders.

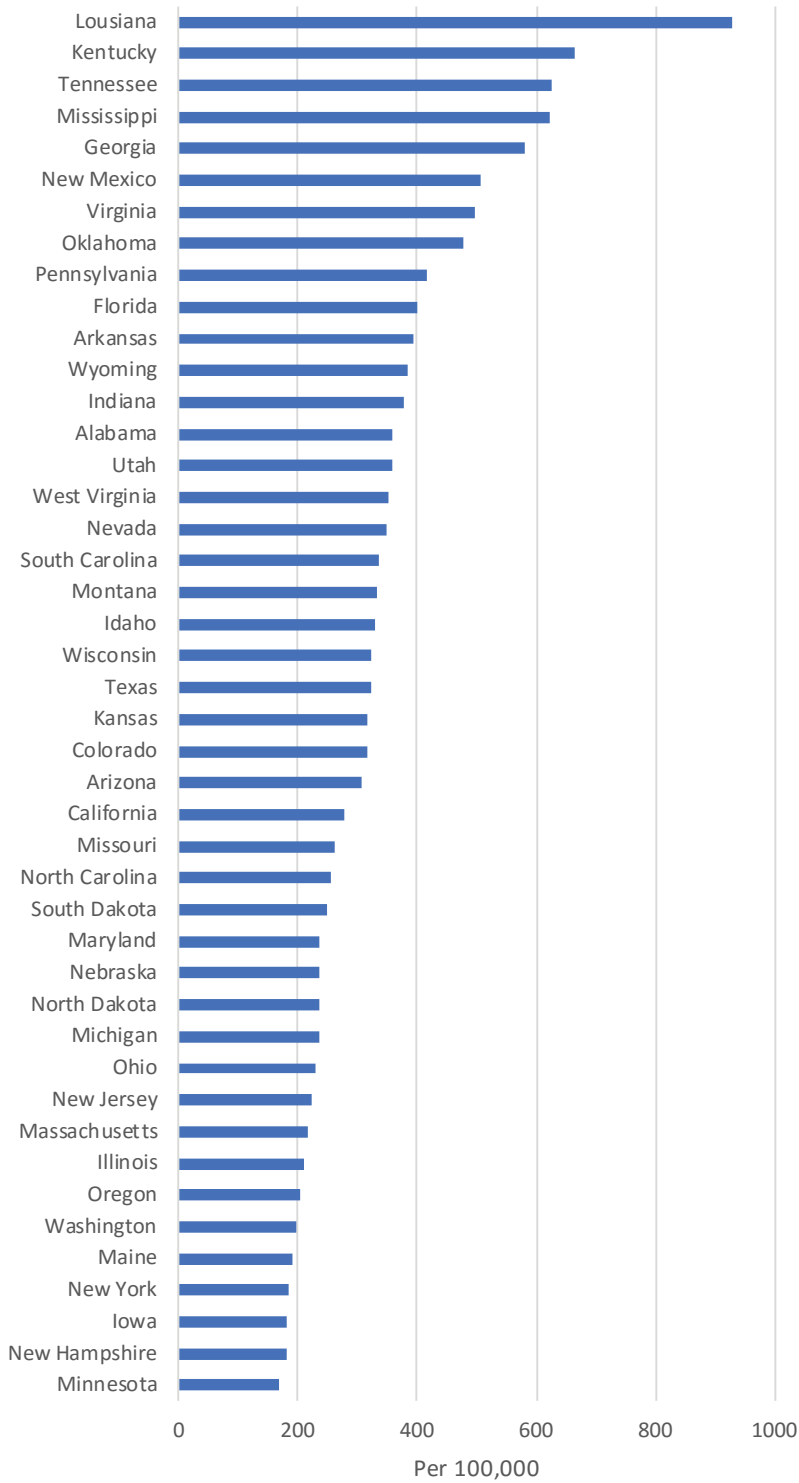
- State and local officials should work to provide a continuum of rehabilitation services across the criminal justice system at both the state and local levels.
- Policymakers should closely monitor the unfolding experiences of local jurisdictions in other states experimenting with pre-booking diversion programs to determine their potential and identify possible pitfalls to be avoided.
- Policymakers should also create a system for evaluating the performance of Utah's drug courts on a comprehensive basis, with an eye toward identifying successes that can be replicated and weaknesses to be avoided.
- State and local officials should consider continuing to support a risk and needs screening process in county jails.

APPENDIX A: Prison Incarceration Rate by State per 100,000, 2016



Source: Bureau of Justice Statistics, *National Prisoner Statistics Program*.

APPENDIX B: Jail Incarceration Rate by State, 2015



Source: Vera Institute of Justice, *Jail Incarceration Rate per 100,000*. Data for Alaska, Connecticut, Delaware, Hawaii, Rhode Island, Vermont are not available.

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