



Opioids and Sentencing Reform

A review of current practices and implications

Agenda



- RTI International
- Purpose and objectives of the Task Force
- Populations affected by the opioid crisis
- Current federal and state approaches to the opioid crisis
- Potential implications of various public health and criminal justice approaches to the opioid crisis

delivering **the promise of science**
for global good



RTI International is an independent, nonprofit research institute dedicated to improving the human condition. We combine scientific rigor and technical expertise in social and laboratory sciences, engineering, and international development to deliver solutions to the critical needs of clients worldwide.



RTI at a Glance

Worldwide Presence and Financial Strength

\$972 M 
FY2017 Revenue

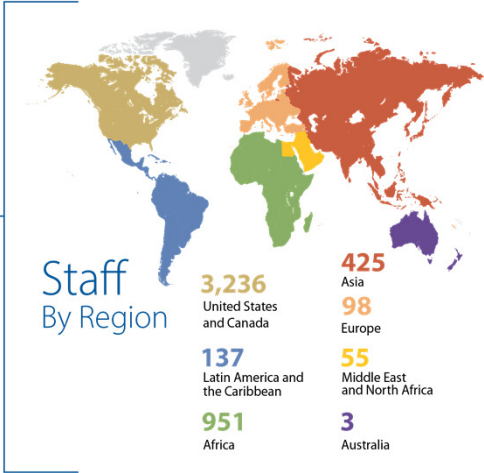
3,852  **1,198** 
Projects Clients
(fiscal year 2017)

12  U.S. Offices	12  International Offices
Research Triangle Park, NC	Abu Dhabi, UAE
Ann Arbor, MI	Barcelona, Spain
Atlanta, GA	Beijing, China
Berkeley, CA	Belfast, Northern Ireland
Chicago, IL	Jakarta, Indonesia
Fort Collins, CO	Kuala Lumpur, Malaysia
Portland, OR	Ljungskile, Sweden
Rockville, MD	Manchester, UK
San Francisco, CA	Nairobi, Kenya
Seattle, WA	New Delhi, India
Waltham, MA	San Salvador, El Salvador
Washington, DC	Toronto, Canada

Diverse Global Workforce

4,905 Staff Members
Worldwide

90  Languages
250  Degree Fields
100  Nationalities



Scientific Stature: As scientists, researchers, and thought leaders, we believe it is essential that we contribute to the advancement of our fields. We strive to communicate the results of our research as a way to improve our understanding of the world and inform decisions that will carry us to a better future.

RTI's Center for Justice, Safety, and Resilience

- One of the world's leading criminal justice research organizations recognized for improving understanding of crime and related problems, operations of law enforcement and criminal justice systems, and activities addressing societal problems
- **Justice** research and evaluation address criminal and delinquent behavior, criminal and juvenile justice, and social justice.
- **Safety** research focuses on policing, forensics and its impact on the justice system, and security.
- **Resilience** evaluation, training, and technical assistance focus on prevention and intervention designed to boost community and individual resilience.

Finding solutions to crime requires

- A deep understanding of root causes
 - Under-resourced neighborhoods and vulnerable communities
 - Lack of education, skills, and opportunities
 - Drug abuse, mental illness, and violence
- A familiarity with the tools to address these causes
 - Law enforcement and criminal justice agencies
 - Government agencies and NGOs that provide services
 - Schools that provide opportunities for prevention
- A multi-disciplinary approach to
 - Define problems
 - Identify solutions
 - Evaluate effectiveness
 - Make recommendations for policy and practice

Primary Clients

- US Department of Justice
 - Bureau of Justice Assistance
 - Bureau of Justice Statistics
 - Drug Enforcement Administration
 - National Institute of Justice
 - Office on Violence Against Women
- US Department of Health and Human Services
 - ACF
 - CDC
 - SAMHSA
- US Department of Defense
 - US Army Medical Research Center
 - Naval Health Research and Materiel Command
- Department of State
 - Bureau of International Narcotics and Law Enforcement Affairs
 - Office to Monitor and Combat Trafficking in Persons (J-TIP)
- State and Local Governments
 - Arizona, District of Columbia, Georgia, North Carolina
 - Durham, NC
- Foundations
 - Arnold Foundation
 - MacArthur Foundation
 - Police Foundation
 - Robert Wood Johnson Foundation

About JSR

- Center for Justice, Safety and Resilience
 - Director: Pamela K. Lattimore, PhD
- 5 Research Programs
 - Courts and Corrections Research Program
 - Drug, Violence, and Delinquency Prevention Program
 - Policing Research Program
 - Transnational Crime and Justice Research Program
 - Violence and Victimization Research Program

Courts and Corrections Research Program

- Identifies “what works” (and doesn’t) in courts and correctional programs through rigorous research and evaluation, including
 - *Multiple multi-site evaluations of programs and initiatives designed to reduce juvenile and adult criminal behavior, including multiple studies of Second Chance Act projects*
 - *Evaluation of the MacArthur Foundation Safety and Justice Challenge*
- Describes and improves understanding of the functions and operations of local, state, and federal justice systems through nationally representative surveys, including
 - *Annual Survey of Probation and Parole Agencies*
 - *National Inmate Survey*
 - *Death in Custody Reporting Act Collection Program*
- Works with criminal justice stakeholders nationwide to identify criminal justice system technology needs

Task Force on Sentencing Reforms for Opioid Drug Convictions

Purpose:

- Study and review cases of inmates who are incarcerated solely for convictions of opioid drug offenses that require active sentences under structured sentencing
- Consider how to identify inmates who would be able to successfully reintegrate into society
- Develop and consider options for modifying existing statutes

Task Force on Sentencing Reforms for Opioid Drug Convictions

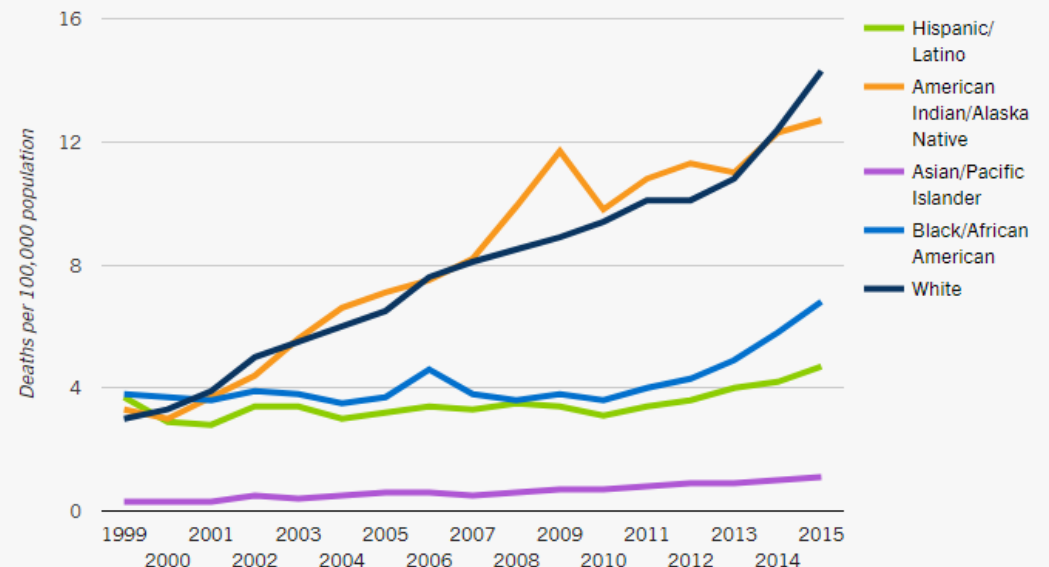
Objectives:

- Study the advisability of reducing sentences imposed under structured sentencing for opioid drug convictions based on the case facts and records of incarcerated inmates.
- Study the potential cost-savings and fiscal impact of an early release process for inmates convicted of opioid drug offenses.
- Identify and consider sentencing options that will help restore the ability of judges to use judgment, logic, and facts when imposing a sentence for a conviction of an opioid drug offense.
- Consider whether the mandatory sentences imposed under structured sentencing for convictions of opioid drug offenses serve as a deterrent.
- Consider options such as reclassifying opioid drug offenses, allowing courts to divert convicted offenders into treatment programs in lieu of imposing a sentence of active time in prison, increasing weight thresholds for trafficking in opioids or changing how quantities are measured, aligning minimum mandatory sentence lengths with those for most other drug offenses.
- Consider establishing a "pardon and parole board" that may recommend pardons and paroles for inmates convicted of opioid drug offenses.

Populations Impacted

- Across the US, there has been a 31% increase year-over-year in emergency room visits due to opioids.
- NC is leading southeastern states in this increase.
- Drug overdoses kill approximately 3 North Carolinians each day.
- For Americans under the age of 50, drug overdoses are the leading cause of death.
- The current opioid crisis has disproportionately affected white Americans across socio-economic classes and geographic areas

Figure 3. Opioid death rate by race, 1999-2015



Source: Centers for Disease Control and Prevention, Multiple Cause of Death Files 1999-2015 on CDC WONDER Online Database. Note: Using age-adjusted rates and the following ICD-10 Codes: T40.0 (Opium), T40.1 (Heroin), T40.2 (Other opioids), T40.3 (Methadone), T40.4 (Other synthetic narcotics), T40.6 (Other and unspecified narcotics). Hispanics / Latinos are included only in the Hispanics / Latinos category.

Source: The Sentencing Project. (December 2017). [Opioids: Treating an Illness, Ending a War.](#)

Prevention and treatment approaches to lessen the impact of the opioid crisis

- Legislation to expand access to naloxone to individuals with substance use disorder and those around them, first responders, police officers, and pharmacies through “third party prescribing” and/or “Good Samaritan” laws
 - Specific legislation or allocations to support naloxone distribution have been passed in West Virginia, Pennsylvania, Alabama, Idaho and Kentucky.
 - All states have removed some legal barriers to the seeking of emergency medical care and the timely administration of naloxone.
- Limiting prescriptions
 - Massachusetts and eight other states passed legislation limiting the supply of prescription opioids to three to seven days.
- Expanding treatment access
 - New Jersey passed legislation in 2017 which mandates that insurers cover 180 days of treatment without preauthorization

Source: The Sentencing Project. (December 2017). [Opioids: Treating an Illness, Ending a War.](#)

Increasing penalties for use and sale

Louisiana, Kentucky, Maryland and Florida have all passed recent legislation to increase the penalty for opioid-related distribution and/or possession, including increased

- Penalty for repeat offenses of selling heroin from 50 to 99 years in prison.
- Mandatory minimum sentence for a first-time conviction of the heroin from five to 10 years.
- Prison sentences for a first-time heroin sale from 1-5 years to 5-10 years, with delayed parole
- Penalties for fentanyl and other controlled substances.
- Mandatory three-year sentence for possession of four or more grams of fentanyl and a mandatory 15-year sentence for possession of 14 or more grams.

States have also passed legislation to charge individuals who sell heroin, fentanyl, or carfentanil that leads to a fatal overdose with homicide.

Source: The Sentencing Project. (December 2017). [Opioids: Treating an Illness, Ending a War.](#)

Implications of increased sentencing for drug-involved offenders

- No relationship between state drug imprisonment rates and state-level indicators of drug problems, including
 - Self-reported drug use
 - Drug overdose deaths
 - Drug arrests
- The U.S. Sentencing Commission found that approximately half of those sentenced for federal drug crimes in 2009 were lower-level drug offenders.
 - Incarcerating low-level drug offenders does not reduce crime because these offenders are rapidly replaced by others in the community.
 - Reduced prison terms for certain federal drug offenders have not led to higher recidivism rates

Sources: The Pew Charitable Trusts. (March 2018). [More Imprisonment Does Not Reduce State Drug Problems: Data show no relationship between prison terms and drug misuse.](#)

Mark A.R. Kleiman, "Toward (More Nearly) Optimal Sentencing for Drug Offenders," *Criminology & Public Policy* 3, no. 3 (2004): 435–440,

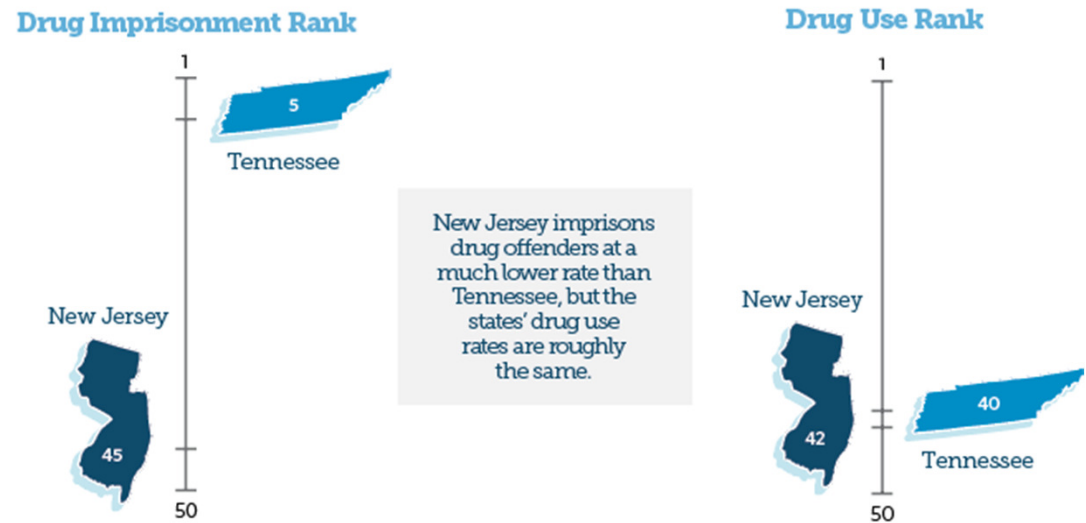
U.S. Sentencing Commission. (n.d.). [Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences.](#)

Drug imprisonment not correlated with drug use, arrests, or overdose deaths

The 50 states have made different policy choices regarding drug penalties, which has led to considerable variation in drug imprisonment rates, yet no impact on self-reported drug use, drug arrest, or overdose deaths.

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 on Drug Use and Health

© 2018 The Pew Charitable Trusts

Source: The Pew Charitable Trusts. (March 2018). [More Imprisonment Does Not Reduce State Drug Problems: Data show no relationship between prison terms and drug misuse.](#)

Identify and consider sentencing options that will help restore the ability of judges to use judgment, logic, and facts when imposing a sentence for a conviction of an opioid drug offense.

Mandatory sentences have the effect of transferring sentencing power from judges to prosecutors.

States that have passed recent legislation laws relaxing mandatory minimums include:

- California
- Georgia
- Iowa
- Maryland
- Minnesota
- North Dakota
- Oklahoma
- South Carolina

Elements of these legislative changes include:

- Reductions due to mitigating factors (e.g., a weapon was not involved, no prior felony conviction).
- Nonviolent offenders may be considered for parole after serving 50% of their sentence.
- Allows incarcerated offenders to apply for retroactive consideration.
- Removes mandatory minimum sentences for repeat low-level offenders

Oklahoma
H 1518 (2015)

Authorizes the court to depart from certain nonviolent mandatory minimum sentences when the minimum is not necessary for the protection of the public and imposition would result in substantial injustice to the defendant; or when the minimum is not necessary for the protection of the public and the defendant is eligible for an alternative sentence program based on a risk and needs assessment.

Source: The Sentencing Project. (December 2017). [Opioids: Treating an Illness, Ending a War.](#)

Costs and Safety

US Sentencing Commission Report and Recommendations

- The skyrocketing federal prison population led to
 - Prisons that are less safe for guards and inmates
 - Obstacles to successful reentry programming
 - Less funding for law enforcement, prosecutors, crime prevention programs, crime victim services, and other priorities.
- The Commission examined the costs and safety impacts of reducing sentences for crack cocaine offenders and found that drug offenders serving slightly less time are no more likely to commit new crimes.
- Courts also must consider these same public safety factors in deciding whether to reduce sentences.

Source: U.S. Sentencing Commission. (n.d.). [Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences.](#)

Cost implications

- In Washington, the state received an estimated **\$0.37 in public safety benefits for every \$1** invested in the incarceration of drug offenders in 2001 (Washington State Institute for Public Policy, 2003)
- In New York, the state received about **\$0.29 in benefits for every \$1** of cost associated with the incarceration of drug offenders released in 2005 (Lengyel, 2006). NY could save about \$60,000 for every individual charged with a second felony drug offense diverted from prison into community-based treatment (Legal Action Center).
- For every million dollars spent, substance abuse treatment would reduce serious crimes about 15 times more than incarceration (Caulkins et al., 1997).
- North Carolina reported significant savings partly because it has closed 11 prisons since passing its JRI legislation (facility closures and conversions account for \$123 million of total savings).

Sources: The Urban Institute. (December 2016). [Reforming Sentencing and Corrections Policy The Experience of Justice Reinvestment Initiative States.](#)

Przybylski, Roger K. (December 2009). [Correctional and Sentencing Reform for Drug Offenders Research Findings on Selected Key Issues](#)

Prevention and Treatment Policy Change Considerations

- Discrimination among opioids is very important. 10 oz of fentanyl is much different than 10 oz of heroin.
- Emphasis on treatment and diversion to treatment (instead of punishment), encouraging medically assisted treatment prior to release, and linking offenders to treatments (and continuing Medically Assisted Treatment) post release.
- Opioid dependence is prevalent among jail populations as well
 - 12% report using opioids regularly
 - Medically Assisted Treatment and Opiate Use Disorder medications are lacking in jail settings
- Addiction is a disease, punishment for a disease does not work, and might do more harm than good.
- Any policy change should take effect in conjunction with a research infrastructure to evaluate such change.

Criminal justice system innovations to address the opioid crisis

- Law enforcement to reduce drug trafficking and prevent the new markets
- Alternative sentencing to divert nonviolent drug offenders from imprisonment
- Treatment to reduce dependency and recidivism
- Prevention efforts to identify individuals at high risk for substance use disorders.
- Expanding probation and parole opportunities for people convicted of drug offenses.
- Significantly decreased drug sentences
- Roll back mandatory minimum penalties for drug offenses
- Sanctioning grids that promote community-based alternatives to incarceration.
- Expansion of drug courts.
- State legislation/regulation to decouple felony convictions and eligibility for business/occupational licenses, where appropriate.

Source: The President's Commission on Combating Drug Addiction and the Opioid Crisis. (November 2017). [Final Report.](#)

delivering **the promise of science**
for global good



Duren Banks
Director, Courts and Corrections Research Program
Center for Justice, Safety and Resilience

durenbanks@rti.org
(919) 541-8026

