



# **THROWING AWAY THE KEY:**

## **Debunking APAAC's 2010 Report on Arizona's Prison Population**

**November 2, 2011**

### **Background**

On March 30, 2010, the Arizona Prosecuting Attorney's Advisory Council (APAAC) released a report entitled "Prisoners in Arizona, A Profile of the Inmate Population." APAAC and numerous high-profile prosecutors have portrayed the report as providing definitive empirical data regarding the risk level of inmates in Arizona prisons. The report makes the shocking assertion that "the vast majority of current inmates are violent or repeat offenders (94.2%)."<sup>1</sup> It then goes on to credit Arizona's extremely high incarceration rate (6<sup>th</sup> highest in the nation) with the recent drop in crime rates.

The report was released at a strategic and critical time. Over the last few years, many states have responded to crippling budget crises by enacting sensible sentencing reforms to reduce their prison populations and save millions in taxpayer dollars. For a year prior to the release of the report, an Ad Hoc legislative committee had been holding hearings on the potential for sentencing reform in Arizona. It is unsurprising that the state's prosecutors would see such efforts as deeply concerning.

The report was released primarily to state legislators and various actors in the state's criminal justice system. Press releases and promo materials touted the report as incontrovertible evidence that Arizona's criminal justice system was working exactly as intended and well worth the \$1 billion-a-year price tag. Take for example, this excerpt from a press release issued by Pima County Attorney Barbara LaWall:

"This report is the most in-depth profile of the Arizona prison population ever attempted," said Pima County Attorney Barbara LaWall, who serves on the Council. "Its findings come at a critical time, as Arizona faces the most severe budget crisis in the 98-year history of our state. It is in our best interests to ensure that the significance of this report is fully understood."

And, in fact, APAAC's report has been used to justify blocking any significant changes to current sentencing law in Arizona, based on the assumption that the report demonstrates that "the right people are in prison and the system works." For good measure, the report subtly employs the tried-and-true "Willie Horton" scare tactic, proven to deter legislators from considering reforms: The specter of becoming a target for angry voters frightened by the prospect of paroled criminals roaming the streets.

While all of this may make for good political theatre, the major findings of the report are overstated and, in some cases, outright incorrect. In addition to the obvious bias of the organization that commissioned the research, the report has numerous methodological flaws that make its conclusions deeply suspect.

### **Data Source**

First, it is important to understand that this report is entirely based on information gathered from the Arizona Department of Corrections, not from sentencing courts. This is significant, because the Arizona Department of Corrections (ADC) uses broad categories to classify prisoners based on a set of criteria that may make sense for correctional administrators, but does not provide all the pertinent information about the individual case (aggravating/mitigating factors, plea bargains, etc.). It also gives no indication of which state statutes were violated, making it hard to extrapolate on the relevance of APAAC's report to Arizona's criminal sentencing policies.

It may surprise the average Arizonan to know that there currently is no centralized system to collect actual sentencing data from the various county superior courts. Much information about how sentencing laws are applied is not even computerized, but instead is still kept in paper files. In other words, lawmakers and the people of Arizona really have no idea how the hundreds of sentencing laws on the books are actually working. No one knows how many people were sentenced statewide under a given statute last year, or for how long, or how much it cost. Yet, legislators continue to pass "tough" laws, under the assumption that they are making us safer.

### Analysis

So while the APAAC report purports to prove that our laws are working, it does not (cannot) incorporate any actual sentencing data. Instead, it relies on the Department of Corrections' interpretation of a person's sentence. It also takes great liberties with the data in order to concoct a shockingly high number of "repeat and violent offenders" in custody.

It begins with the conflation of "repeat" and "violent"—two categories that reflect a very different class of criminal. The fact that most petty criminals and drug addicts have a number of arrests and convictions on their records does not make these low-level offenders dangerous—it merely indicates that our system has failed to rehabilitate or address the root of their criminal behavior. This category is fundamentally flawed because it treats all adult felony convictions the same, giving the false impression that anyone with a prior adult felony conviction must be dangerous. Consequently, this category treats those with homicide priors the same as those convicted of possession of drug paraphernalia.

APAAC's report artificially inflates the number of people it classifies as "dangerous, violent, or sexual offenders" by including prior convictions offense types that are not considered dangerous or violent under state statutes. For example, the Report states that 83.8% of those in custody were "repeat offenders," leading many to assume that all of these individuals had prior adult felony convictions. That however, is not the case. This category includes "both juvenile and adult felonies." (Report at 32). Consequently, individuals who have no prior adult felony convictions and never spent a day in detention are considered "repeat offenders" in the report if they had the misfortune of being adjudicated for a juvenile offense such as punching a fellow student in the nose during a schoolyard fight, throwing a frozen hot pocket at another family member or being a passenger in a stolen car.

The Report also tries to paint the picture that a majority of those in custody are violent offenders, stating that "...52.6% of inmates are currently committed for one or more violent offenses" (Report at 2). This category is deceptive: it includes *any case where there was an injury* (Report at 27). Hence, this includes situations where the injuries were unintentional and unrelated to the underlying crime. For example if a police officer sprained his finger while arresting a defendant for forgery, that defendant would be classified as a "violent offender"

under this Report, lumped into the same category as an individual who was convicted of premeditated murder.

The Report further seeks to foment fear of those in custody by stating that “9,260 or 22.9% of inmates are suspected or validated members of prison and street gangs.” (Report at 3). The criteria for inclusion of individuals in this category are seriously flawed. Again, the report combines two separate categories in order to artificially inflate the numbers. Prison gangs are fundamentally different from criminal street gangs, and most often have no relevance outside of the prison environment. Those who are validated by ADC as being bona fide gang members are placed in a “Security Threat Group” (STG) while in ADC. This is an entirely administrative designation, based on the Department’s assessment of the threat to the security of the *institution*, not the public. Furthermore, ADC’s system for determining gang affiliation is often nothing but conjecture, oftentimes based on nothing more than a misinterpreted tattoo. It is an internal, administrative process and has no legal relevance whatsoever.

The Report also places great emphasis on sex offenses. As stated at page 27 of the Report: “...4,898 or 23.0% (of inmates have been convicted) for at least one sex or *sex-related offense*.” (Emphasis added). This category, however, includes individuals who were never charged with a sex offense. For example, if an intake officer at DOC speculates that a defendant forged a check so he could buy pornography, that individual could be considered to have the requisite underlying “sexual involvement” or “sexual motivation” to be labeled a sex offender under the criteria of this Report.

The Drug Trafficking category also is inflated. The report states that 62.3% of non-violent first time offenders were “drug traffickers” (Report at page 2). This category, however, makes no differentiation regarding the nature of the “trafficking offenses,” treating those inmates who are high level members of drug cartels the same as addicted individuals who are taking an undercover police officer to somebody to purchase drugs and then begging the buyer for “a piece of the rock” so they can sustain their addiction. In addition, the criteria, once again, allows inclusion of individuals who were never convicted of sale of drugs.

### **Faulty Conclusions**

All of this “fuzzy math” is used to support two primary conclusions: (1) that everybody in prison is dangerous and deserves to be there; and (2) that Arizona’s high incarceration rate is responsible for the recent drop in crime. These spurious conclusions then are used to bolster APAAC’s real agenda—undermining the movement for meaningful sentencing reform in Arizona. It is worth examining the preponderance of evidence that contradicts each of these conclusions.

First, let’s unpack the claim that “the right people are in prison and the system works.” Dr. Darrell Fischer, the individual with whom APAAC contracted to write the report, was the statistician for the Arizona Department of Corrections for many years. In that capacity, he was responsible for developing a tool to assess the level of risk each individual poses to the community in order to determine which prisoners could be released early. According to this backup data to the APAAC report, this risk assessment tool identifies thousands of individuals in DOC who could be released with little or no risk to the community.

Likewise, The Arizona Supreme Court’s initiative for Evidence Based Practices (EBP) in sentencing has indicated that many more offenders can be safely placed on less restrictive forms of probation rather than sentenced to prison. “EBP is a body of research done through meta-analysis (a study of studies) that has provided tools and techniques that have been proven

to be effective at reducing recidivism. These tools and techniques allow probation officers to determine risk and criminogenic characteristics of probationers and place them in appropriate supervision levels and programs.”<sup>ii</sup>

Perhaps the most outrageous claim in the APAAC report is that Arizona’s high incarceration rate is responsible for the recent drop in crime. This conclusion is challenged in a recent report entitled, “Unlocking America,” authored by a distinguished group of criminologists. They assert that,

More recent estimates based on individual states and counties within states have estimated the crime-reduction impact of prison growth to be much smaller or nonexistent. Research on crime and incarceration does not consistently indicate that the massive use of incarceration has reduced crime rates.

In sum, studies on the impact of incarceration on crime rates come to a range of conclusions that vary from “making crime worse” to “reducing crime a great deal.” Though conclusive evidence is lacking, the bulk of the evidence points to three conclusions: (1) The effect of imprisonment on crime rates, if there is one, is small; (2) If there is an effect, it diminishes as prison populations expand; and (3) The overwhelming and undisputed negative side effects of incarceration far outweigh its potential, unproven benefits.<sup>iii</sup>

The recent experiences of a number of states also stand in stark contrast to APAAC’s claim. Severe budget crises have led many states to reduce costs by reducing prison populations. Since 2005, the number of states with declining prison population levels has grown steadily – from 9 in 2006, 14 in 2007, 19 in 2008, to 24 in 2009. Many of these states saw dramatic decreases in crime as they reduced their prison populations.

In Kansas the violent crime rate fell by 3 percent, while property crime dropped 16 percent. While prison population levels spiraled downward in Michigan, crime rates also fell – with a reduction in violent crime of 11 percent between 2006 and 2008, and a 9 percent reduction in property crime. In New Jersey, the rate of violent crime dropped by 21 percent, while property crime fell by 23 percent. The state of New York has set national records for both crime reduction and prison downscaling. FBI crime data show that by 2008, violent crime had fallen by 32 percent since 1999, and property crime fell by 26 percent.<sup>iv</sup> Compared to these states, Arizona’s rate of violent crime reduction of 9.5 percent seems quite modest.

It is also worth noting that Arizona’s crime rate is still above the national median in each of the seven types of crime measured in the FBI crime index: Murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. In October of 2011, the Arizona Republic reported:

“The analysis shows that, recently, Arizona’s rates of murder, rape and aggravated assault have increased. Arizona’s rate of rape, after falling for four straight years, shot up 31.9 percent from 2008 to last year. That jump led the rate to climb by 10.4 percent over the decade, even as the national rate fell by 14.1 percent.”<sup>v</sup>

### **What’s At Stake**

It is fairly self-evident that an association of prosecutors, whose financial well-being is tied to criminal convictions, would view the prison downsizing trend as a threat to their self-interest. But for the average Arizona taxpayer, the benefits are clear. Arizona spent over \$1

billion on prisons in 2011. The Department of Corrections has the third largest operating budget in the state, and eats up 11% of the state's General Fund. As the budget crisis has spurred crippling cuts to health care, education, and social welfare programs, the Department of Corrections was the only budget that saw an *increase*.

A study published by the Center for Economic and Policy Research proposes that alternatives to incarceration for low-level offenders could restore millions of dollars to cash-strapped states:

A reduction by one-half in the incarceration rate for non-violent offenders (who now make up over 60 percent of the prison and jail population) would lower the overall incarceration rate to the level reached in 1993 (which was already high by historical standards). This would also lower correctional expenditures by \$16.9 billion per year, with the large majority of these savings accruing to state and local governments. These projected savings would amount to almost one-fourth of total corrections budgets. The extensive research on incarceration and crime suggests that these budgetary savings could be achieved without any appreciable deterioration in public safety.<sup>vi</sup>

It is ironic that APAAC cites Arizona's high recidivism rate in its quest to maintain the status quo. If anything, the number of people returning to prison shows that the system is utterly broken. Our prisons are supposedly part of a department of *correction*, but it is clear that they have well short of the goal of helping offenders overcome their addictions or to learn ways to get along in society. The return on taxpayers' billion-dollar annual investment is a 40-60% failure rate.

Arizona continues to face a set of difficult choices as the economic crisis persists. Each year, the state Legislature is confronted with the task of shaving millions from the budget, pitting vulnerable populations against each other in a race to the bottom. The taxpayers of this state deserve solid information about the reasonable options available, not scare tactics and pseudoscience. The prison downsizing experience of 24 states, including very conservative states like Mississippi and Texas, offers us reasonable alternatives grounded in proven techniques and reliable research. Arizona can't afford not to consider these reforms.

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<sup>i</sup> Fischer, Darryl, "Prisoners in Arizona, A Profile of the Inmate Population." March, 2010. Arizona Prosecuting Attorneys Advisory Council.

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<sup>ii</sup> Arizona Supreme Court, Adult Probation Services, “Evidence Based Practice.”

<http://www.azcourts.gov/apsd/EvidenceBasedPractice.aspx>

<sup>iii</sup> Austin, James et al. 2007. “Unlocking America.” Washington, DC: The JFA Institute.

<sup>iv</sup> Greene, Judith “Turning the Corner: Opportunities for Effective Sentencing and Correctional Practices in Arizona.” January 2011. Arizona Attorneys for Criminal Justice.

<sup>v</sup> Ortega, Bob, “Arizona eclipses US in 10-year crime dip, analysis says,” *Arizona Republic*, October 12, 2011

<sup>vi</sup> Schmitt, John, Kris Warner, and Sarika Gupta. “The High Budgetary Cost of Incarceration.” Washington DC: Center for Economic and Policy Research. June 2010.