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Jail reform must address mental health, substance dependence

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OPINION

A hallucinating inmate caught spitting and urinating on the floor of his cell. A woman wildly smearing fecal matter on her cell walls. These were just two of 47 unstable disturbing accounts detailed in the class-action lawsuit brought by the American Civil Liberties Union against the Maricopa County Sheriff's Office and its former leader, Joe Arpaio, "America's toughest sheriff."

The suit notes a psychiatrist observed "dangerously inadequate" conditions across Maricopa County jails, including feeding inmates contaminated food and keeping mentally ill detainees in solitary confinement.



Jon Haggerty

Arpaio's actions ultimately were repudiated by voters in 2016, but his "tough on crime" policies still appeal to many Americans, including some in the Trump administration. They echo an era when the only solution for crime was total war: mass incarceration, harsh sentences and little distinction between kingpins and users. But the criminal justice literature is clear that a punishment's swiftness and certainty **matter far more** than its length, and that longer sentences actually may induce reoffending. In fact, more recent data suggests that policies to slim incarcerated populations by diverting low-level offenders — better suited for treatment than incarceration — also are effective at reducing overall crime rates.

Still, the problem of mental illness within Arizona's criminal justice system looms. In Pima County, for example, mental illness and substance abuse affect 60 percent of the jail population. Equally troubling is that 80 percent of jail detainees have not been convicted of a crime and are awaiting trial.

Across America, the pre-trial population has driven 99 percent of jail population growth over the past 15 years. Put another way, 99 percent of the jail population increase over the past 15 years was in the detention of citizens who are presumed, under the law, to be innocent. Taxpayers foot that bill. The nationwide costs of jails grew from \$5.7 billion in 1983 to \$22.2 billion in 2011.



Arthur Rizer

The return on investment for these skyrocketing jail costs has been pitiful. Jailing the mentally ill predisposes them to high rates of recidivism and makes them more likely to commit suicide. To address this moral and fiscal crisis, Pima County decided to take action.

Partnering with the MacArthur Foundation's Safety and Justice Challenge, Pima County is expanding its screening of arrestees before their initial court appearance. Before this initiative, financial constraints meant that only a portion of misdemeanor defendants could be vetted for how likely they were to appear in court. A grant from the foundation will allow pretrial services to expand evidence-based screening to all defendants to assess their likelihood to appear.

The county also has implemented behavioral health screenings before a pretrial detainee's initial court appearance. This simple step gives judges safe alternatives to incarceration. Through its plan, and other reform efforts, Pima County aims to save taxpayers more than \$2 million a year and reduce its jail population by 16 percent over the next three years.

State officials share Pima County's desire to reform a spiraling justice system. In March 2016, Arizona Supreme Court Chief Justice Scott Bales issued Administrative Order No. 2016-16, which established the Task Force on Fair Justice for All. The task force's report, issued last fall, listed 65 recommendations for mitigation of fines and fees and alternatives to jail that would ensure a smarter and more effective criminal justice system. Among the recommendations were to consider "the use of specialty courts and other available resources to address a defendant's treatment and service needs, as well as risk to the community," before reflexively incarcerating special needs defendants. It also recommended revising "mental health competency statutes for expediting mental competency proceedings for misdemeanor cases."

The task force highlighted that the uptick in pretrial detention populations has been driven, in part, by the cash bail system. Factors like loss of employment, eviction and increased exposure to negative influences while in jail all likely play a role in why pretrial detention correlates with a higher likelihood to reoffend. For these reasons, the report found that "pre-trial detention should be avoided to the extent possible." Only low-level offenders who meet specific requirements and who have documented behavioral

health issues are considered diversion candidates and, of course, those released for post-booking treatment still face charges.

This approach is effective in that it eschews the macho impulse to “lock ‘em up and throw away the keys.” It focuses on reducing crime by minimizing recidivism and saving the spiraling costs of incarceration at their inception, in local jails. Though it is too often ignored in the criminal justice reform dialogue, treating the mentally ill and drug addicted as patients instead of criminals should be a focal point for reform.

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