

Item 7 Attachment:

PRISON POPULATION TRENDS

(Chapter 1: Prison Population Growth in AZ)

Overall the prison population dropped from 40,431 to 39,896. This is not an across the board drop however, as the percentage of the population listed as violent offenders increased. By category, the largest drop came in the non-violent first offenders category.¹

Comparing Fischer I and II:

As a percentage of the total inmate population:

- 1) Violent offenders increased from 65.4% to 69.1%.
- 2) Non-violent offenders fell from 34.6% to 30.9%.
- 3) Repeat offenders fell from 83.8% to 82.9%.
- 4) First offenders increased from 16.2% to 17.1%.
- 5) Violent and/or repeat offenders increased from 94.2% to 95.1%.
- 6) Non-violent first offenders decreased from 5.8% to 4.9%.

In addition, the raw numbers of inmates in the various categories changed as follows:

- 1) Violent offenders increased by 4.2%, from 26,457 to 27,572.
- 2) Non-violent offenders decreased by 11.8%, from 13,974 to 12,324.
- 3) Repeat offenders decreased by 2.4%, from 33,896 to 33,072.
- 4) First offenders increased by 4.4%, from 6,535 to 6,824.
- 5) Violent and/or repeat offenders fell by 0.4%, from 38,088 to 37,930.
- 6) Non-violent first offenders fell by 16.1%, from 2,343 to 1,966.

The prison population is more violent than before, and there are even fewer of the least serious inmates, non-violent first offenders.

The greatest drop in commitment rates is in the technical probation category, which correlates with the changes in the probation programs implemented by the AOC in the last few years, known as “evidence-based” response.

¹ This is probably made up of two things: first, fewer non-violent first offenders committing crimes and second, fewer of those who do commit crimes being sent to prison, inferring that other options are being used.

Table 7: A.R.S. Sections Showing Increase, Decrease or No Change in the Inmate Population

Offense Type/Change Category	September 30, 2009 Population	March 31, 2011 Population	% Change	Sections Represented
Violent (Increase)	16,137	17,403	7.8%	36
Violent (Decrease)	2,728	2,509	-8.0%	23
Violent (No Change)	35	35	0.0%	6
Violent (Total)	18,891	19,937	5.5%	65
Non-Violent (Increase)	6,563	7,466	13.8%	41
Non-Violent (Decrease)	14,930	12,445	-16.6%	50
Non-Violent (No Change)	38	38	0.0%	10
Non-Violent (Total)	21,540	19,959	-7.3%	101
Increase	22,700	24,869	9.6%	77
Decrease	17,658	14,954	-15.3%	73
No Change	73	73	0.0%	16
Total	40,4313	9,896	-1.3%	166

Inmates represented by 36 A.R.S. sections classified as violent offenses increased in numbers from September 30, 2009 to March 31, 2011 from 16,137 to 17,403, 7.8% increase. In contrast, inmates represented by 23 A.R.S. sections classified as violent offenses decreased from 2,728 to 2,509, 8.0% decrease. A much higher percentage of violent inmates (86.3%) were represented by A.R.S. categories involving an increase than was the case for non-violent inmates (33.8%). Note that there was a net increase in violent inmates (5.5%) and a net decrease in non-violent counterparts (-7.3%). **This data clearly establishes the greater impact of the shortfall on the non-violent portion of the inmate population. The net effect is that the inmate population has become increasingly violent.**

A Closer Look at the Deviation from the Trend

(Chapter 2: Trends in Committing Offenses; Chapter 3: Sources of Commitment Shortfall)

Violent offenses were on a steady upward trend from 1985, peaking in 2009, then declining 15.8%. As a percentage of total commitments violent/sex offenses have risen over the last 4 years, rebalancing the prison population toward violent offenders. Drug possession and property offenses have dominated the deviation from the upward trend. Although property offenses have dropped at a much higher rate than the trends would have suggested, this is due in no small part to the success of the Automobile Theft Authority efforts. Nonetheless, drug possession has decreased by a disproportionately large percentage.

This is likely the result of the dramatic fall in technical probation violator commitments and direct commitments. Evidence Based probation programming is likely the largest contributor to the dramatic decrease in the technical probation violator group; the standards starting taking hold in 2008-9 as the new procedures were implemented by AOC.

Direct commitments have deviated from the trend by 24% statewide and by 20% when looking only at Maricopa County.

Again, the largest drop from the expected levels is in the lower class felonies: Class 6 + 28.8% of the shortfall but are only 13% of county commitments, confirming the finding that the prison population is becoming more concentrated on the violent offender category.

Had the trend continued unabated the prison population would be 49,448 instead of 40,181 at the end of 2011-2nd Qtr.

CRIMINAL ALIEN TRENDS

(Chapter 4: Trends in Criminal Alien Commitments)

Criminal alien admissions had been on a general uptrend since the mid-1980's and experienced a steep uptrend in 2007 but recent declines appear to be returning it to the steady uptrend experience prior to 2007. The recent drop in criminal alien admissions is part of the overall downtrend in ADC admissions.

CRIME RATES

(Chapter 5: Crime and Arrest Trends)

In 25 out of 30 crime categories the percentage change was greater in Arizona than nationally.

REPORTED CRIMES 2002-2010

Crime Category	United States	Arizona
Total Part I Crime	-13.0%	-27.7%
Violent Crime	-12.5%	-13.5%
Property Crime	-13.1%	-29.0%
Murder/Non-Negligent Manslaughter	-9.1%	+5.7%
Forcible Rape	-11.0%	+34.6%
Robbery	-12.6%	-13.3%
Aggravated Assault	-12.6%	-17.9%
Burglary	+0.4%	-14.1%
Larceny/Theft	-12.3%	-23.8%
Motor Vehicle Theft	-40.9%	-62.7%

REPORTED CRIMES 2006-2010

Crime Category	United States	Arizona
Total Part I Crime	-9.8%	-22.7%
Violent Crime	-13.2%	-22.4%
Property Crime	-9.3%	-22.7%
Murder/Non-Negligent Manslaughter	-14.8%	-22.2%
Forcible Rape	-10.3%	-9.9%
Robbery	-18.1%	-26.7%
Aggravated Assault	-10.9%	-21.9%
Burglary	-1.6%	-13.6%
Larceny/Theft	-6.6%	-13.3%
Motor Vehicle Theft	-38.5%	-61.9%

PERCENTAGE CHANGE CRIME RATES 2002-2010

Crime Category	United States	Arizona
Total Part I Crime	-18.9%	-38.4%
Violent Crime	-18.4%	-26.4%
Property Crime	-19.0%	-39.6%
Murder/Non-Negligent Manslaughter	-15.2%	-10.0%
Forcible Rape	-17.0%	+14.6%
Robbery	-18.5%	-26.2%
Aggravated Assault	-18.5%	-30.1%
Burglary	-6.4%	-26.9%
Larceny/Theft	-18.2%	-35.1%
Motor Vehicle Theft	-44.8%	-68.3%

PERCENTAGE CHANGE CRIME RATES 2006-2010

Crime Category	United States	Arizona
Total Part I Crime	-12.6%	-25.4%
Violent Crime	-15.8%	-25.2%
Property Crime	-12.1%	-25.5%
Murder/Non-Negligent Manslaughter	-17.4%	-25.0%
Forcible Rape	-13.0%	-13.0%
Robbery	-20.6%	-29.3%
Aggravated Assault	-13.6%	-24.7%
Burglary	-4.6%	-16.7%
Larceny/Theft	-9.5%	-16.4%
Motor Vehicle Theft	-40.3%	-63.2%

Arrests

The drop in prison population began in late 2009; arrests were down from 2008-2010 in 22 of 26 crime categories-evidence that a decline in arrests is driving a decline in prison commitment and prison population.

1985-2010: the average age of newly committed inmates increased by .5 years per calendar years for a 16.2% increase overall with a remarkable uniformity over time. Because arrest rates are substantially higher for the so-called “crime-prone” age categories, we would expect that aging in the general population has been responsible for a portion of the overall drop in arrest rates since 1995. It is also possible that the criminal propensities of various age groups have diminished independently of aging.

Clearly, age is a factor in crime, as demonstrated by higher arrest rates for younger age groups; aging accounts for 15.5% of the reduction in the arrest rate for all crimes from 1995

to 2010. Age is also a strong factor in recidivism. However, according to the weight of the evidence, age cannot be and is not the only factor at work in crime. There have been often dramatic reductions in arrest rates within-age-groups. Unfortunately, the mechanisms behind these reductions remain unclear. We do know that in addition to age, education, drug use, prior criminal record, and other factors are involved in recidivism, and thus must be involved in general crime patterns as well.

The Impact of Truth in Sentencing

(Chapter 6: Truth-in-Sentencing and Time Served)

It is widely believed that TIS is responsible for a significant increase in the prison populations nationwide based upon the premise that sentences became harsher. Overall, without controlling for the characteristics of the specific offender/offense, TIS inmates serve 19% more time than pre-TIS counterparts. After controlling for those factors the analysis revealed that given identical circumstances TIS inmates serve 10.7% more time than pre-TIS inmates.

This analysis does not include those committed to ADC custody as a condition of probation; in those cases average time served dropped from .49 years for pre-TIS to .38 for TIS, due in large part to the minimum flat time reduction to 4 from 6 months for DUI.

RISK ASSESSMENT

(Chapter 7: Recidivism and Risk Assessment)

One criticism of Fisher I was that it failed to address risk assessment which is the measure of the likelihood that a released prisoner will return to custody for either a new violation or a violation of the terms of the release. After tracking released inmates for “normal” reasons from 1/1/85 to 6/30/11, in 12 offense categories expanding dramatically on the 3 year recidivism studies commonly done in US DOJ studies we found:

- Using the population that we could follow for an entire 25 years revealed a 48.5% recidivism rate;
- TIS cases have a 9.5% higher recidivism rate over three years and 5.6% higher overall than pre-TIS inmates because they have a higher risk profile (more felony priors, two or more felony commitments; more probation violations consisting of new offenses and higher gang affiliation);
- When comparing pre-TIS and TIS cases at the same level of risk over 5 years, the TIS rate is actually 2.6% lower;
- The majority of risk levels show reduction in recidivism rates under TIS over the long term (2%) and the short term. (2.6%);
- Ultra High/Very High Risk TIS offenders as a group have the highest reduction of recidivism over the long run.

Figure 194: Average % Difference in Recidivism Rates by Risk Level, 6 to 360 Months*

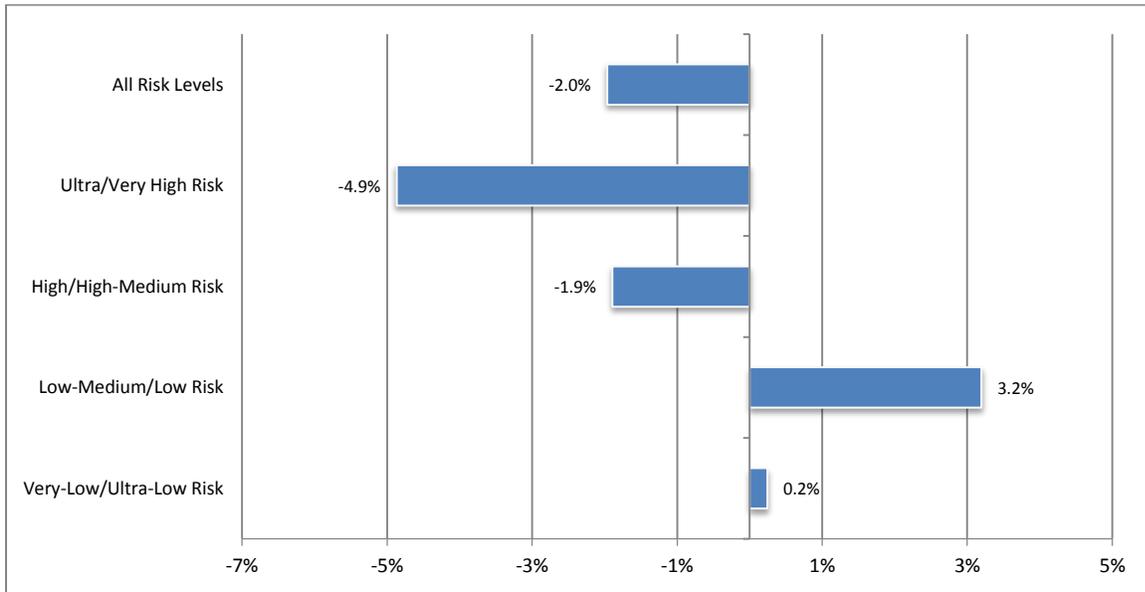
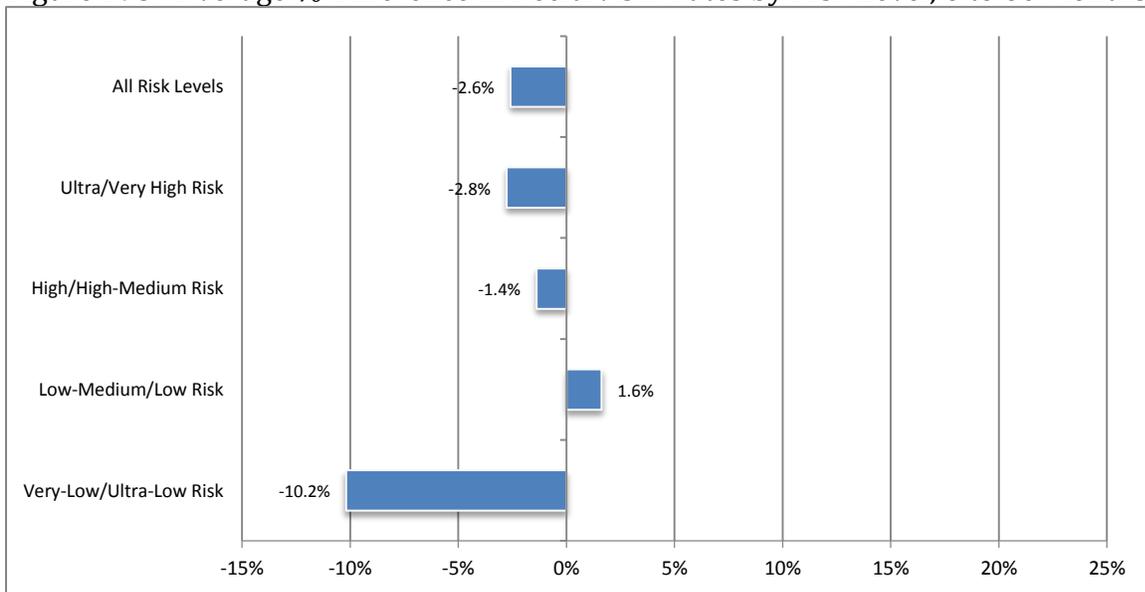


Figure 195: Average % Difference in Recidivism Rates by Risk Level, 6 to 60 Months*



INCAPACITATION

(Chapter 8: The Goal of Incapacitation)

Prevention of crime by incapacitating the potential criminal, i.e., imprisonment, is a goal of the criminal justice system. Using recidivism data for the five years following release we find:

Summary Findings Comparing Pre-TIS with TIS

TIS releases recorded 3.6% less future time served per 1,000 releases

Controlling for risk-related differences:

TIS releases recorded a 0.4% lower number of new felonies per 1,000 releases

TIS releases recorded a 5.0% lower number of new felonies per 1,000 years of street time

[NOTE: the report goes on to make some comparisons based upon type of crime that is too detailed to go into here.]

Recidivism By Category

(Chapter 9: Recidivism and Major Sub-Populations)

Violent offenders record the highest violent recidivism rates.

Just over one in six released offenders (17.5%) will eventually return to ADC custody with a new conviction for a violent felony, including sex crimes. Of the 59.8% who will return with a new felony within 30 years, 29.3% will return with a new violent felony. Although significantly less than the 44.9% of released offenders with a history of felony violence, the first offender portion of incoming inmates is richer in violent offenders than is the repeat offender portion. Most non-violent offenders receive probation for a first felony conviction, unlike violent offenders. The net effect of this pattern is that those leaving prison are more likely to be violent than those coming back in.

Repeat violent offenders (those with violent priors) record the highest, followed by violent repeat offenders (those with no violent priors) recidivism rates; 94% of non-violent first offenders have low risks of recidivism. The highest violent recidivism rates are recorded by offenders sentenced pursuant to the “offense committed while released from confinement” statute. It is of interest that repetitive offenders commit new violent offenses at virtually the same rate as dangerous offenders.

After 30 years of follow-up, less than 10% (9.5%) of non-violent first offenders will commit a violent felony that will return them to ADC custody.

Ortega response:

Setting the record straight on sentencing in Arizona

In his October 9, 2011 article (“Arizona prison sentences among toughest for many crimes”), reporter Bob Ortega presents a one-sided view of Arizona’s sentencing laws and corrections system. His thesis is that Arizona’s sentencing regime is too harsh, does not improve public safety, and creates high incarceration costs and overcrowded prisons.

The article is dominated with citations from numerous “experts,” “leaders in other states,” “criminologists,” defense attorneys, and others who are critical of Arizona’s sentencing laws. All of their statements are accepted at face value, with no attempt to verify their accuracy or validity.

Not a single practicing prosecutor or crime victim is quoted in the entire article. The sole voice defending Arizona’s current sentencing laws is a staff attorney at the Arizona Prosecuting Attorneys’ Advisory Council (Kim MacEachern), and she is allowed one brief statement -- this, despite her multiple, lengthy e-mail responses to Ortega’s questions.

(Ortega did leave a message with the switchboard operator at the Maricopa County Attorney’s Office asking about the Morton Berger case. He did not respond to follow up calls from the PIO, seeking additional information and offering him an interview with County Attorney Bill Montgomery.)

Ortega cites several court cases to support his thesis, but omits key details which either disprove or contradict his position. There is no mention of readily available data about the public safety and cost saving benefits of Arizona’s sentencing laws. Ortega is also either unaware or unwilling to acknowledge that many of the examples of sentencing reforms in other states were adopted in Arizona years ago.

Below is a list of misleading or erroneous statements in the article and the actual facts:

FROM THE ARTICLE:

“[Other states have] diverted non-violent offenders into drug- or alcohol-treatment programs, increased tightly supervised probation, and took other steps that experts say save money while helping cut the likelihood that convicts reoffend.”

THE FACTS:

- Throughout the article, Ortega ignores the fact that Arizona has been doing the same thing for years – offering diversion programs to 6,000 defendants and treatment to 4,000 substance abusers in the last year alone – and reaping the same benefits enjoyed by other states who have adopted similar approaches.
- Not until the very last paragraph of his story does Ortega acknowledge the existence and benefits of diversion programs that Arizona voters enacted 15 years ago.

FROM THE ARTICLE:

“We incarcerate 40,000 people; Washington has a slightly larger population than Arizona and it has 18,000 prisoners, says Rep. Cecil Ash, a Mesa Republican and sentencing-reform advocate. “Bottom line, we’re spending a huge amount of money when we have better alternatives.”

THE FACTS:

- According to the Pew Report, “One in 31” (March 2009) – Washington State has 165,725 people currently engaged in the correctional population. This number is comprised of all people on state and federal probation + those on parole + people in prison, or jail. The same report indicates Arizona has 144,221 people in those same categories -- so we actually have fewer people in our correctional system than Washington.

- That works out to be 1 in 30 adults under correctional control in Washington, while Arizona has 1 in 33 adults under correctional control.
- Comparing Washington and Arizona is highly misleading. True, the two states have roughly equal populations, but their criminal profiles are completely different. Arizona's southern border with Mexico and nexus of interstate highways make it a magnet for drug trafficking, human smuggling, identity theft, and other serious crimes associated with illegal immigration. Washington doesn't even come close in experiencing these problems.

FROM THE ARTICLE:

“One big reason for the high rate [of incarceration] across the country, and especially in Arizona, is a series of ‘tough on crime’ and ‘truth in sentencing’ measures that lawmakers began adopting in the 1970s and continue to enact. Those laws have sent more people to prison for longer periods of time.”

THE FACTS:

- This is a gross mischaracterization of the actual impact of these reforms. Truth in Sentencing laws actually reduced the length of presumptive sentences, while increasing the actual time served from roughly 50% to 85%. Prior to these reforms, defendants were sentenced to longer prison terms, but released after serving less of their sentence. Currently, defendants are sentenced to shorter terms, but required to serve more of the sentence. The net effect is that actual time served hasn't varied significantly pre- and post-reforms.

FROM THE ARTICLE:

“Despite a high incarceration rate, Arizona also has had some of the highest crime rates in the country.”

THE FACTS:

- This represents a perfect example of how statistics can be selectively cited to fit a particular point of view. Three days after his article on sentencing reform, Ortega authored a story with the headline: “Arizona eclipses U.S. in 10 year crime dip, analysis says.” In it he offers exactly the opposite characterization of Arizona's crime rate compared to the nation as a whole, noting that “[Arizona's] 32.4% decrease in reported crime easily outpaced the 18.9% nationwide drop over the same period.”

FROM THE ARTICLE:

“Arizona's murder rate rose last year, and...rape has risen over the last decade, even though both those rates have fallen nationally.”

THE FACTS:

- The one year change in the number of murders is highly misleading and not indicative of a rising crime rate. Murder accounts for less than 1% of all violent crime in Arizona so it is a poor proxy for the State's overall crime rate. That said, while the number of murders did in fact rise from 324 in 2009 to 354 in 2010, the figure has remained fairly steady over the last decade. More importantly, the “murder rate” has actually declined over the past decade as the State's population has exploded – from 7.07 per 100,000 in 2000 to 6.39 per 100,000 in 2010.
- Ortega does not cite a source for the purported increase in rape over the last decade, but his figures contradict the FBI's Uniform Crime Report (UCR). In 2000, there were 1,576 rapes reported in Arizona. In 2010 there were 1,557. Not only has the actual number declined, the State's population has soared 24% over the decade – so the rate of rape has actually fallen over the last decade, not risen.

- In his subsequent 10/12 article on Arizona's crime rate, Ortega quotes the director of the National Crime Victims Research and Treatment Center, who states that "the jump in reported rapes doesn't necessarily mean there has actually been an increase in rapes."

FROM THE ARTICLE:

"The state's auditor general projects that those contracts [for up to 5,000 more private prison beds] will cost an additional \$585 million over the next five years. And if further planned expansions to add 1,500 more prison beds go ahead, those would add nearly \$400 million more in spending over the next five years, according to the auditor general."

THE FACTS:

- The auditor general's report is based on historical trends in prison population growth that have not materialized. When the report was authored (September 2010), growth was projected at 114 inmates *per month*. The actual net increase for *all of FY 2010* has been 65 inmates – that's right, 65 for the entire fiscal year.

FROM THE ARTICLE:

"Those kinds of mounting costs have led leaders in other states [like Texas] to push for sentencing reforms..."

THE FACTS:

- Texas is repeatedly cited throughout the article as an example of a state that retreated from tough sentencing laws due to "mounting costs" of incarceration. In fact, Texas has made no significant changes to its sentencing regime in favor of leniency. Mandatory minimums for violent and dangerous felonies are still in place and Texas actually enacted more truth-in-sentencing provisions as recently as 2009.

FROM THE ARTICLE:

"Rep. Jerry Madden, who spearheaded a series of bills in [Texas] that diverted people from prisons into...drug-treatment programs..."

THE FACTS:

- Texas followed Arizona's example in this regard, adopting a diversion program similar to the Maricopa TASC diversion program, which was named a model program by the National Association of Pretrial Services Agencies in 2010.

FROM THE ARTICLE:

"Texas scrapped plans to spend \$523 million on new prisons in 2008 and 2009 and saved \$36 million a year it had been paying to house prisoners in county jails."

THE FACTS:

- Arizona has also "scrapped plans" to build more prisons due to the slower rate of inmate population growth. In fact, the Arizona Department of Corrections is currently seeing a net outflow of prisoners. Ortega himself wrote a subsequent article about the current calls to cancel plans to contract for additional prison beds.

FROM THE ARTICLE:

“Prosecutors are really driving that engine, because they decide which charges will be filed and which ones won’t be.”

THE FACTS:

- It is the criminal, not the prosecutor, who decides which crime to commit and thus, which charge he or she will ultimately be indicted on.
- To suggest that prosecutors have unchecked power and authority ignores the fact that prosecutors are the only actors in the criminal justice system who are held directly accountable by the citizens. If the public truly believes its prosecutors are over-reaching, they can vote for a new County (or District) Attorney with more acceptable charging policies.

FROM THE ARTICLE:

“[Phoenix teacher and convicted child pornography possessor Milton] Berger took his chances at trial because the plea bargain he was offered – 40 years with no parole – would essentially have been a life sentence.”

THE FACTS:

- Berger was offered and rejected a plea agreement that would have sent him to prison for 17 – 24 years followed by lifetime sex offender probation.
- Berger was convicted on 20 counts of possession of child pornography. Police actually found thousands of child porn images on Berger’s computer and in photo binders in his home. These were extremely graphic and included photos and movies of children being tortured and being forced to engage in sex acts with adults and animals. Berger minimized his actions and claimed he was “just collecting” these images.

FROM THE ARTICLE:

“In the last fiscal year, plea bargains accounted for 95.6% of all felony criminal convictions in Maricopa County; only 1.6% of felony criminal cases filed went to trial.”

THE FACTS:

- Arizona’s percentage of plea agreements is roughly the same as other state prosecutorial agencies and the nation as a whole.
- Ortega misinterprets the statistic. The 95.6% figure includes defendants who pled guilty as charged without any type of “bargain.” When these defendants are removed, the percentage of true plea bargains drops to roughly 85%, which is also in line with the comparable national figure.

FROM THE ARTICLE:

“Sentencing is nearly all done by plea bargaining instead of before a judge in open court.”

THE FACTS:

- False. All plea bargains must be approved by a judge in open court. Judges also have the discretion to accept or reject any plea deal, as well as the discretion to impose a different sentence than the one stipulated in the agreement.

FROM THE ARTICLE:

“The [plea] deal is always driven by the risk of a higher sentence.”

THE FACTS:

- Plea deals are driven by multiple factors, including a prosecutor’s interest in securing a just outcome; the public’s interest in preserving public safety; the victim’s interest in avoiding the stress and trauma of going to trial; the State’s interest in avoiding the costs of a lengthy criminal proceeding. A defendant’s interest in avoiding a higher sentence is just one factor.

FROM THE ARTICLE:

“In 2009, William Johnson was charged in Maricopa County with felony shoplifting. To avoid a sentence of 10 years at trial, he agreed to plead guilty and received three years in prison for stealing a \$3 bottle of wine. The plea bargain was considerably longer than the norm for similar crimes in most states, say defense attorneys.

THE FACTS:

- This summary of William Johnson’s case leaves out the fact that Johnson had four prior felony convictions, 29 misdemeanor convictions, two parole violations and multiple probation revocations. Johnson’s pre-sentence report recommended prison because he continued to commit crimes despite numerous opportunities for probation and substance abuse treatment.

FROM THE ARTICLE:

“Mississippi...released more than 3,000 prisoners on parole an average of 13 months sooner, saving more than \$40 million...Its crime rate fell nearly 7 percent.”

THE FACTS:

- The reported cost savings are initial figures – recidivism among the paroled prisoners hasn’t yet been studied, so it’s possible the cost saving is much less or even non-existent.
- The nearly 7 percent drop in crime rate since 2008 pales in comparison to Arizona’s 32.4% drop in crime in the last decade, and is even less impressive compared to Mississippi’s 8% drop in sheer number of crimes since 2000. More importantly, Arizona did not release any prisoners and saw a greater drop in crime.