

Drug Sentencing in Nevada

Presentation for the Advisory Commission on the
Administration of Justice

June 11, 2020

Overview

- Sentencing Changes Effective on July 1, 2020
- The work of the ACAJ in 2018
 - Data Trends
 - Data Related to Drug Offenses
 - Policy Development
 - Themes Discussed
 - Policy Options
 - Final Report Recommendations
- A review of AB 236

Sentencing Changes Effective on July 1, 2020

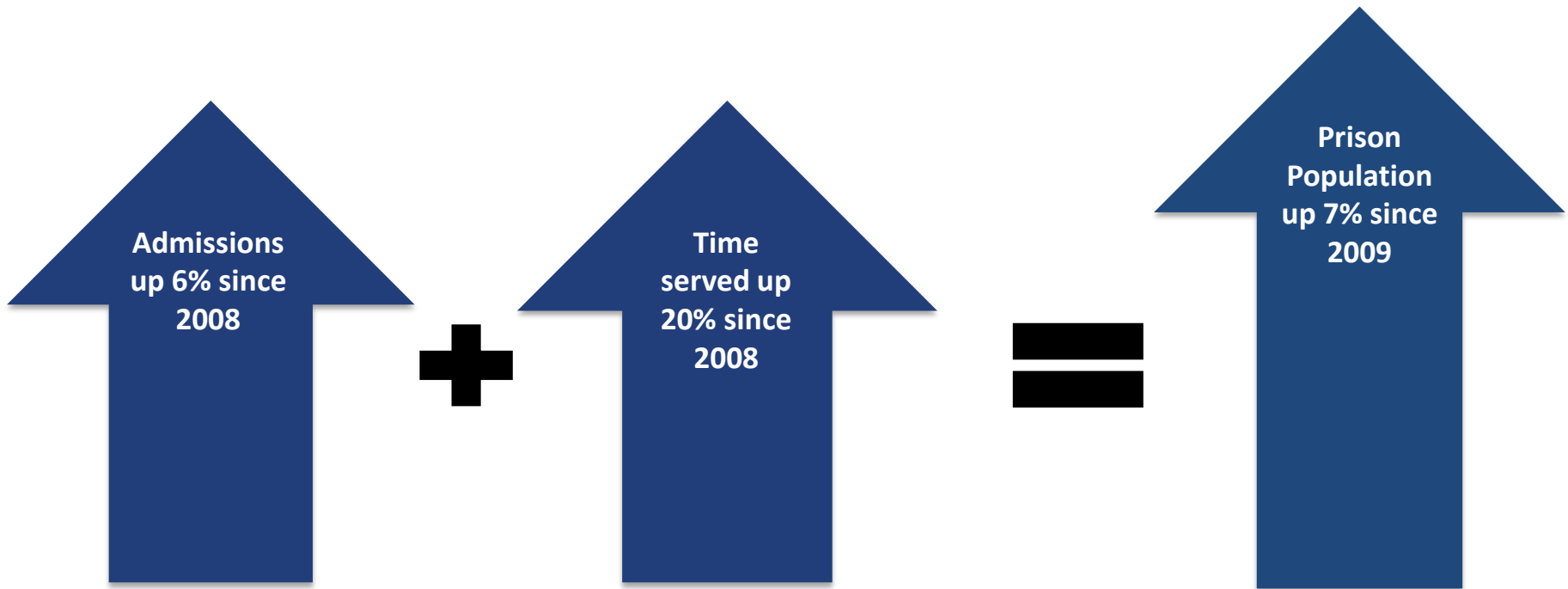
- Establishing a tiered penalty structure for drug possession based on increasing amounts of controlled substances
- Requiring judges to defer sentencing for first and second-time offenders convicted of possession of a controlled substance
- Expanding judicial discretion in sentencing for offenders convicted of a commercial drug offense

Review of Data Trends

Sentencing Ranges for Felonies

Offense Category	Sentence Range	Examples
Category A	25 years to Life with parole	Trafficking of a Controlled Substance, >28g
Category B	1-15 years Wide variance within range Specified for each offense	Trafficking of a Controlled Substance >4g and <28g, Transport/Sale/Exchange of a Controlled Substance
Category C	1-5 years	Conspiracy to Violate Uniformed Controlled Substances Act
Category D	1-4 years	Possession of a Controlled Substance for Sale
Category E	1-4 years Presumptive Probation	Possession (1 st and 2 nd Offense), Under Influence of a Controlled Substance

Overview of Prison Growth Trends



Increase in Admissions

- Prison admissions increased 6% since 2008
 - Growth driven by community supervision failures
- 66% of 2017 admissions were for non-person offenses
 - 3 of top 10 offenses at admission were drug offenses
- Nearly half of 2017 admissions were for Felony B offenses
 - 55% of Felony B admissions were for non-person offenses
- Female prison admissions grew 39% in last decade
 - 70% of 2017 female admissions were for drug and property offenses

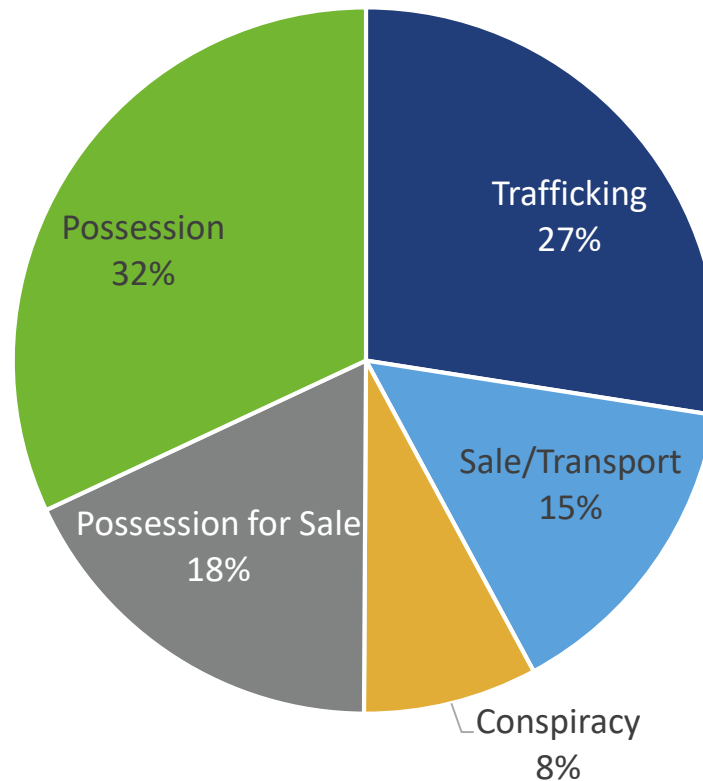
Increase in Time Served

- Minimum and maximum sentence lengths have increased for new prisoners
 - Minimum sentences up 8% for property offenses and 16% for drug offenses
- Only 40% of inmates released at expiration of sentence, with parole rates shifting over the past decade
- Time served for new prisoners increased 31% from 2012 to 2017
 - Up 15% for property offenses and 28% for drug offenses
- Average time served for Felony B offenders increased by 10 months

Data Related to Drug Offenses

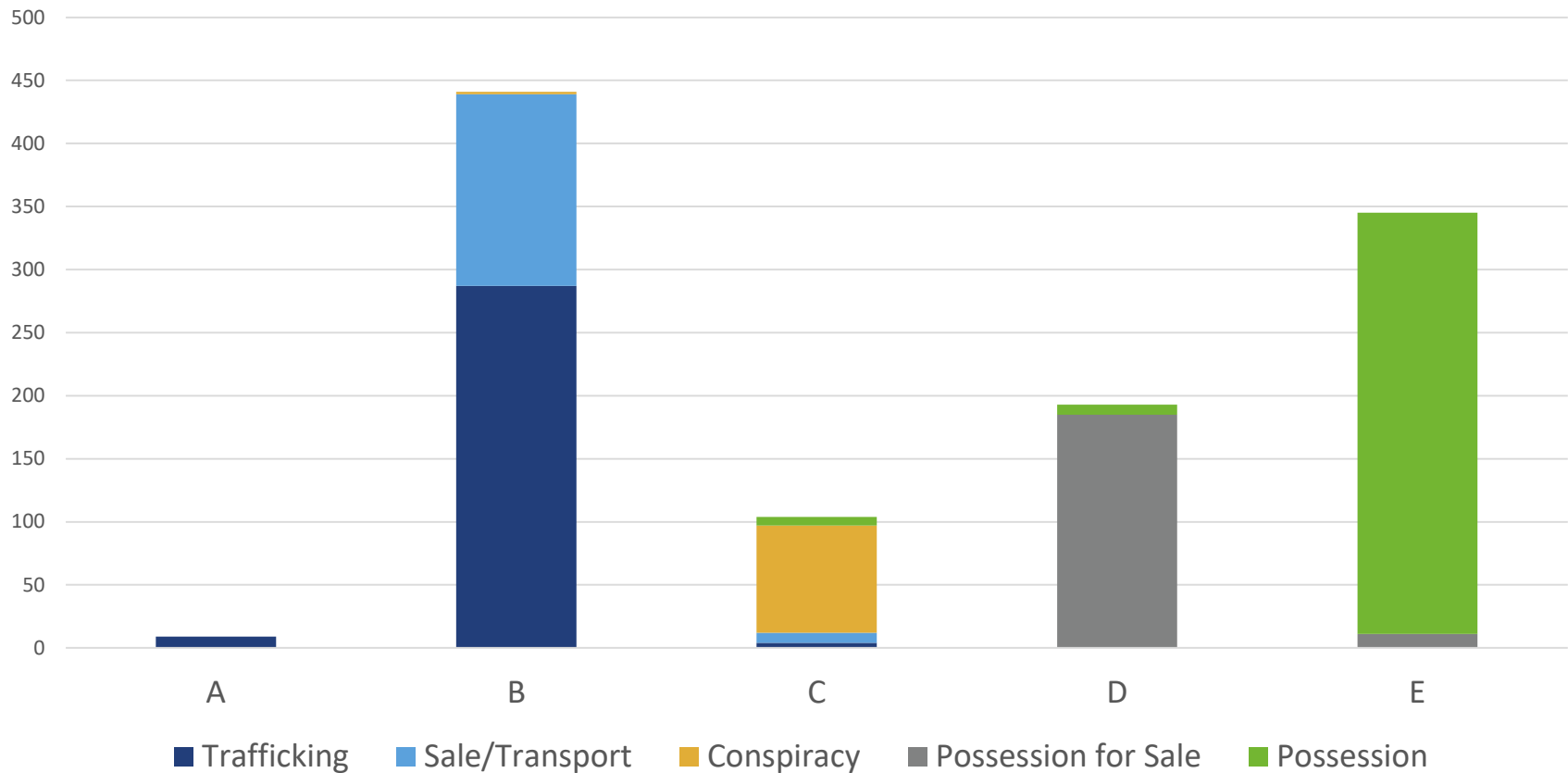
Possession Offenses Make Up Nearly One Third of Drug Admissions

Drug Admissions by Offense Type, 2017



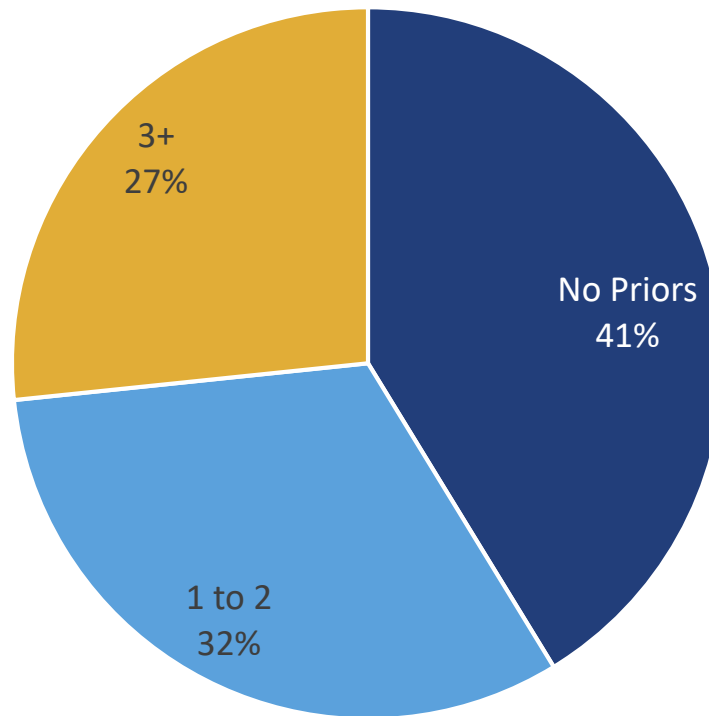
40% of Drug Admissions for Category B Offenses

Drug Admissions by Felony Class and Offense Type, 2017



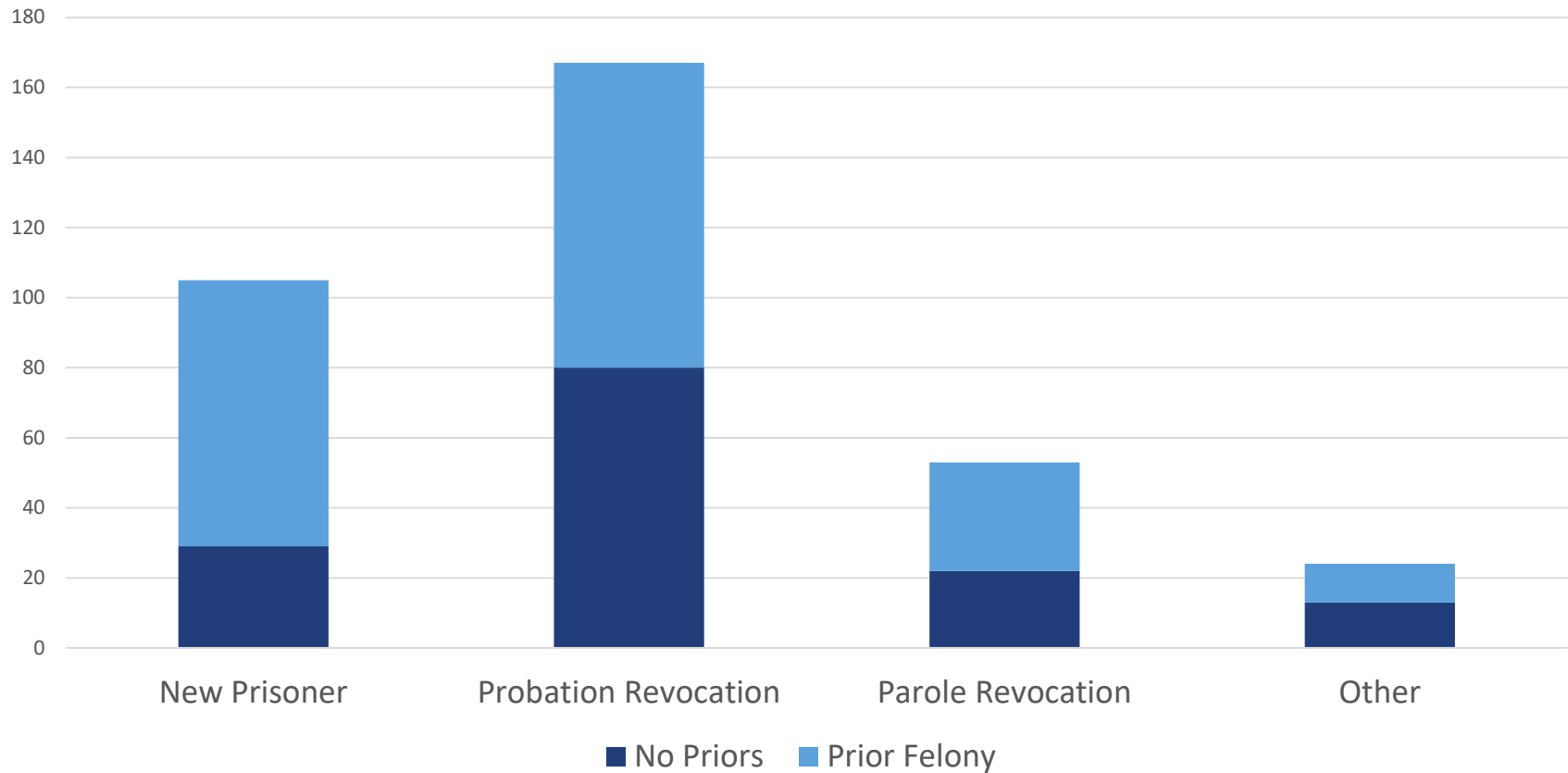
41% of Possession Admissions had No Prior Felony Conviction

Possession Admissions by Prior Felony Conviction, 2017



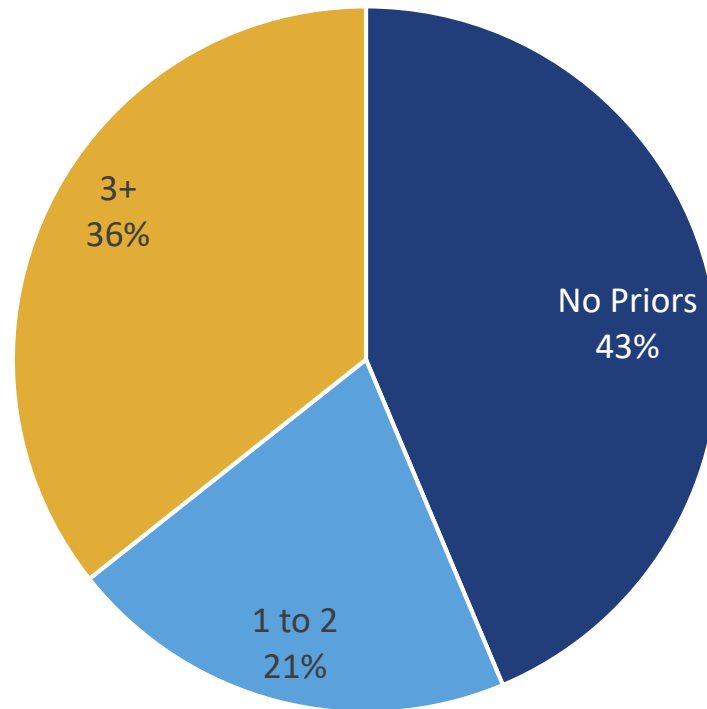
Revocations for Supervision Account for 63% of Possession Admissions

Possession Admissions by Admission Type and Prior Felony Conviction, 2017



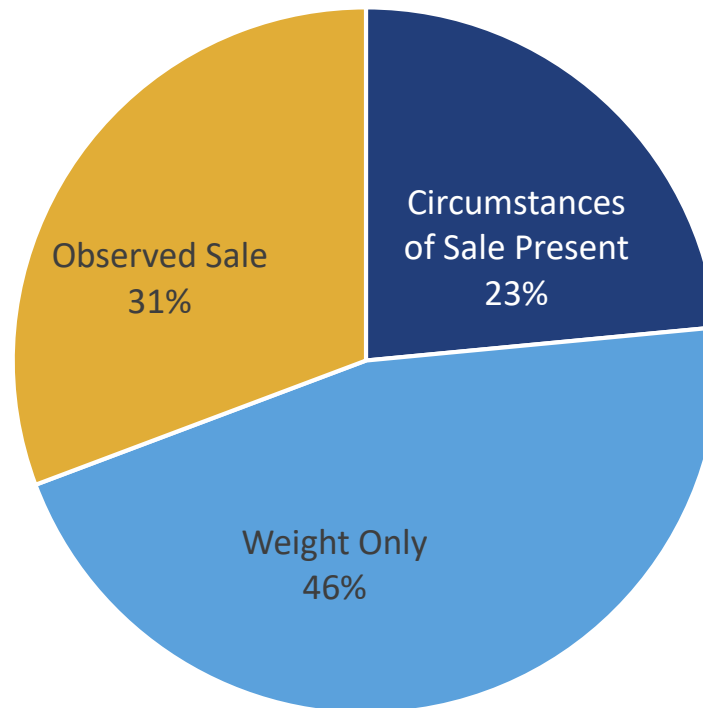
43% of Trafficking Admissions had No Prior Felony Conviction

Trafficking Admissions by Prior Felony Conviction, 2017



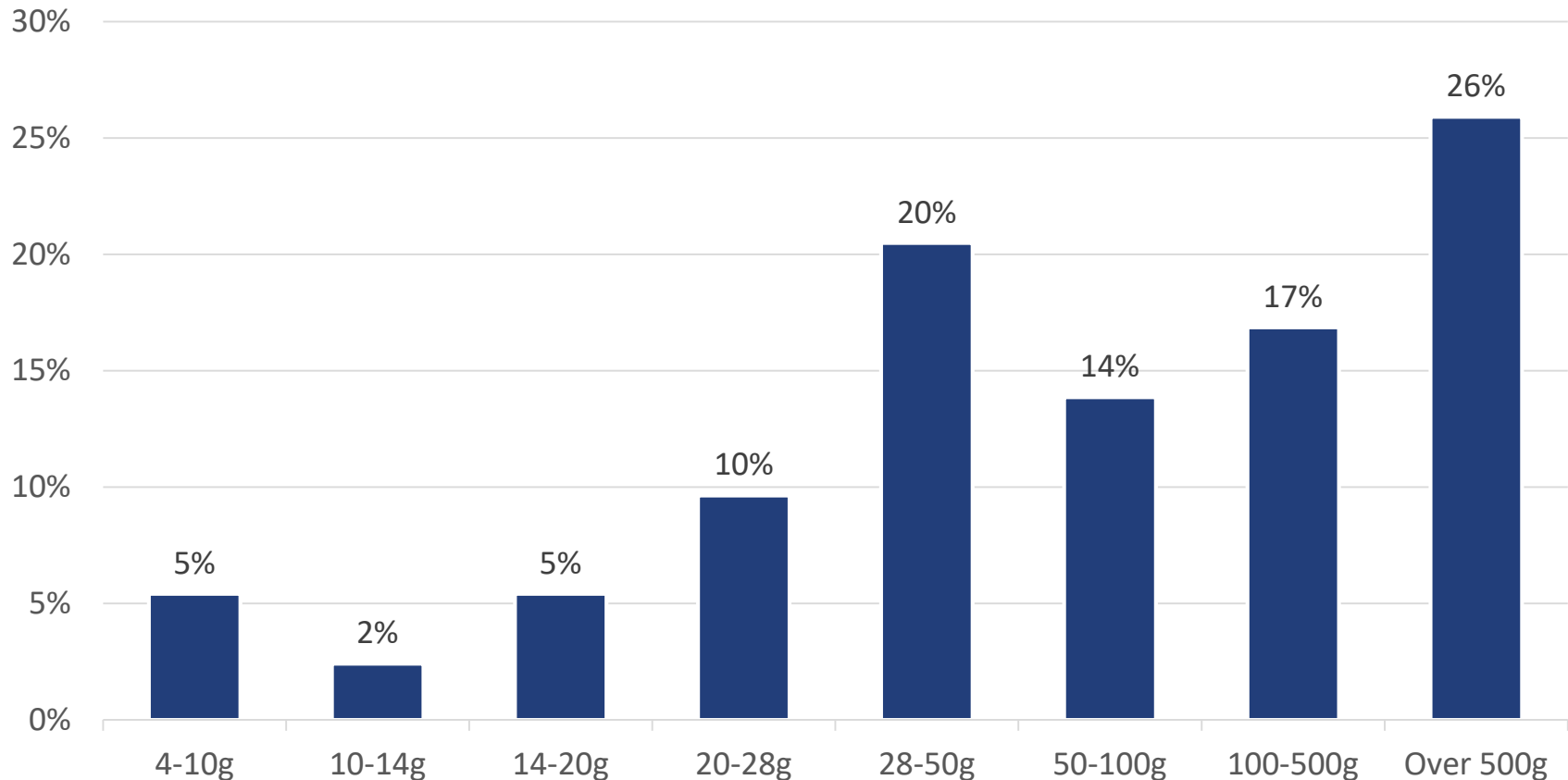
46% of Trafficking Cases Were Charged On Weight Alone

Trafficking Admissions in PSI File Review by Indicia of Sale, 2017



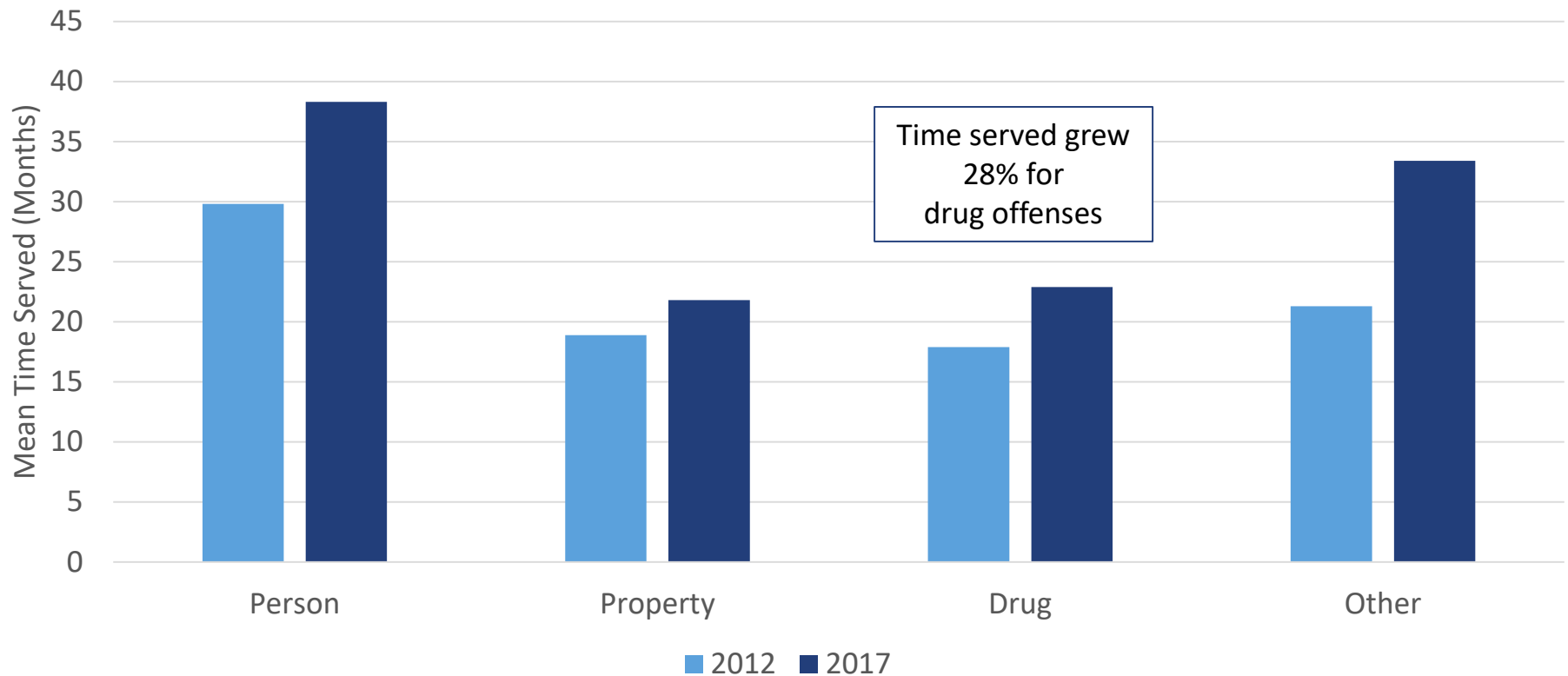
Wide Range of Weights Identified in Felony B Trafficking Cases

Trafficking Admissions in PSI File Review by Weight of Controlled Substance, 2017



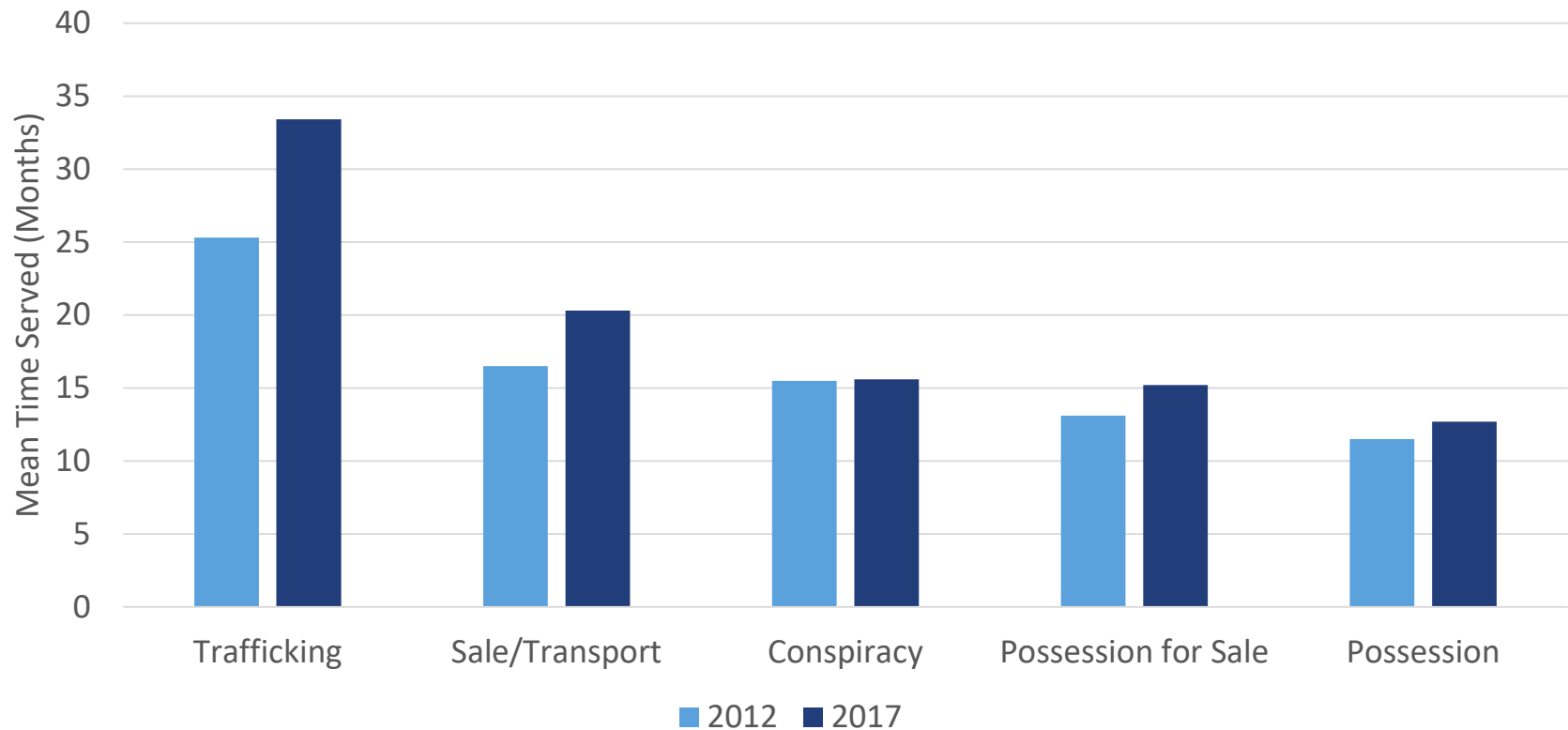
Time Served Up Across All Offense Types

Mean Time Served in Prison and Jail by New Prisoners by Offense Type,
2012 vs. 2017



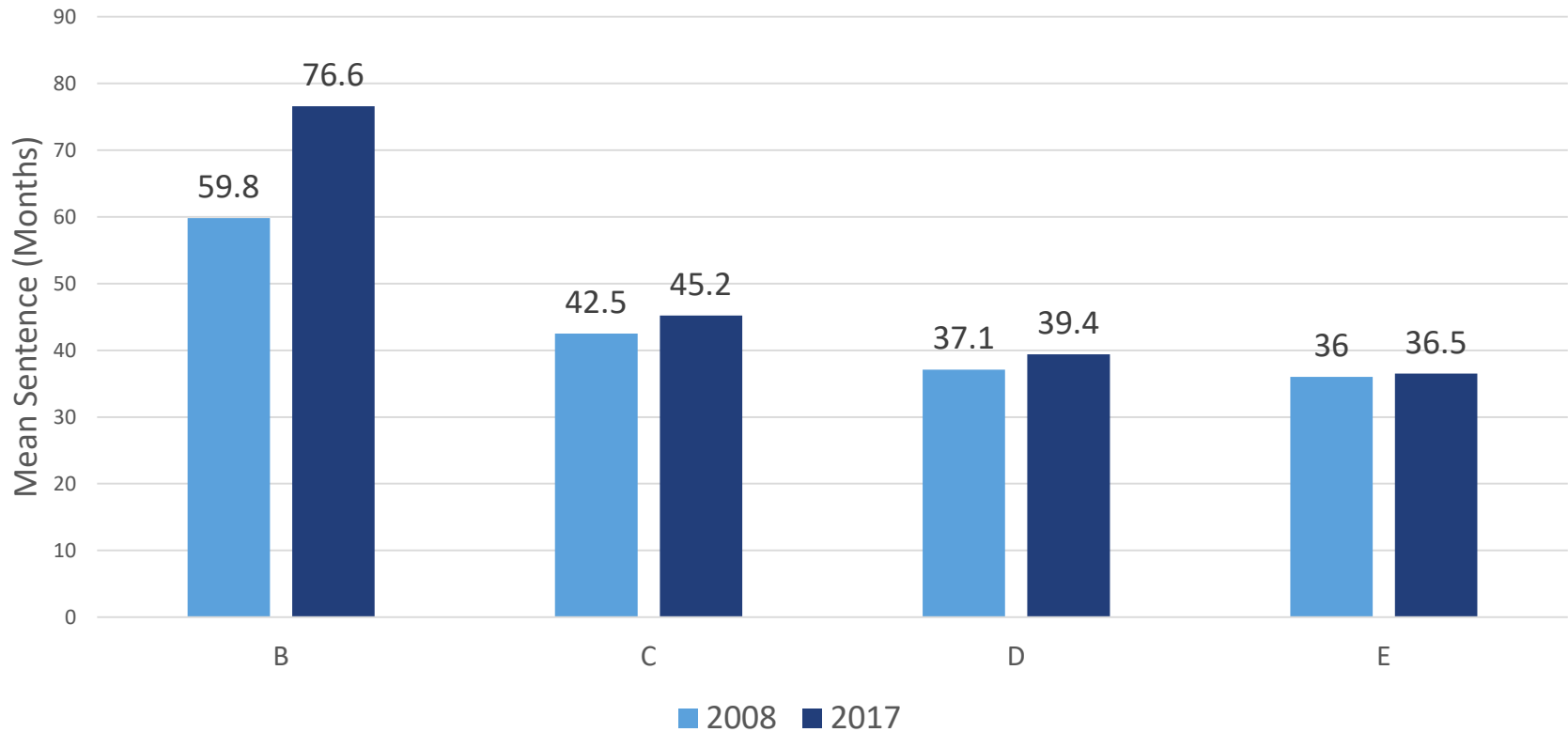
Time Served for Trafficking Increased 32%

Mean Time Served in Prison and Jail for New Prisoners by Drug Offense Type,
2012 vs. 2017



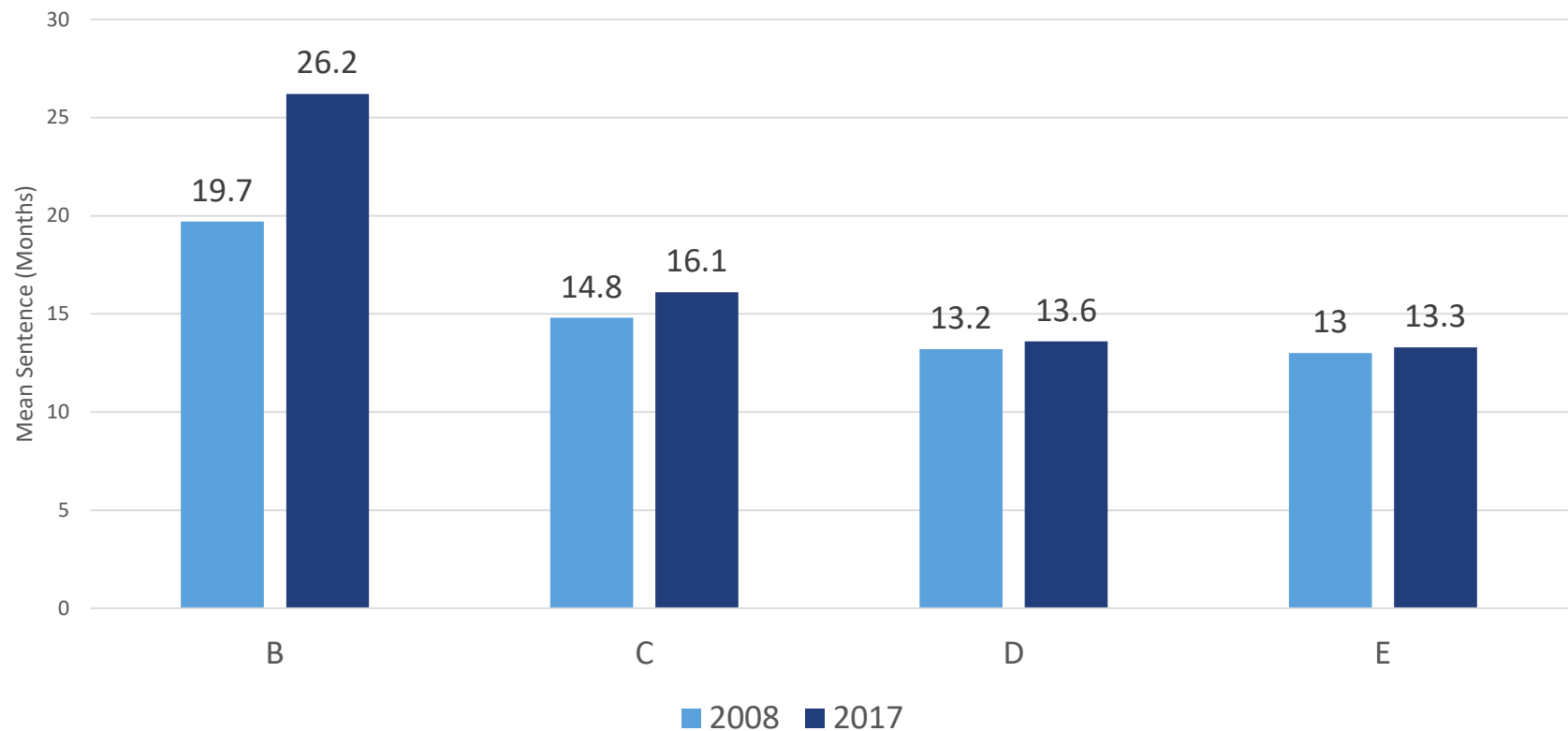
Maximum Sentences for Felony B increased by 16 months

Mean Maximum Sentence For New Prisoner Drug Admissions by Felony Class, 2008 vs. 2017



Minimum Sentences for Drug Offenses Increased by 16%

Mean Minimum Sentence For New Prisoner Drug Admission by Felony Class,
2008 vs. 2017



Low-Level Trafficking Sentences Longer than Assault, Battery

Offense	2017 New Prisoner Admissions	Mean Minimum Sentence (Months)	Mean Maximum Sentence (Months)
Trafficking of a Controlled Substance, Schedule 1, Felony B Offense*	225	29.1	85.6
Burglary	201	21.7	67.6
DUI	140	22.3	66.5
Robbery	119	35.9	103.2
Attempted Burglary	111	15.3	42.2
Assault with a Deadly Weapon	100	18	53.1
Possession of a Controlled Substance, Schedules 1-4, 1st Offense	86	13.4	36.9
Ex Felon/Prohibited Person in Possession of a Firearm	79	19	52.6
Battery Causing Substantial Harm	76	17.4	47.7
Possession of a Stolen Vehicle	75	16.6	45.8

Key Takeaways

- Possession accounted for nearly one third of Drug admissions
 - 41% had no prior felony conviction
- 40% of drug admissions were for Felony B Offenses
 - Trafficking and Sale/Transport of a controlled substance
- Wide Range of conduct in Felony B Trafficking cases
 - 46% of cases reviewed were charged on weight alone
- Time served increased 28% for all drug offenses
- Average Max Sentence for Felony B offenders increased by 16 months

ACAJ Policy Development

Sentencing Themes Discussed

- The impact of a having a felony conviction on one's record
- Incarceration and effective behavioral health treatment
- The impact of incarceration on rates of recidivism
- Front-end alternatives to arrest and incarceration
- Are current punishments narrowly defined and proportional to criminal conduct?

Drug Specific Themes

- Are current weight thresholds targeting drug traffickers?
- Should intent to sell be relevant to the punishment?
- At what amount is weight alone indicia of sale?
- Different drugs have different impacts, should the state have different penalties and thresholds for different substances?
- Lack of judicial discretion in sentencing for individuals with low weights

Existing Drug Sentencing Laws

Conduct for Schedule I, II substances			
	Weight	Conviction	Penalty
Possession	<4g	1 st or 2 nd	Category E – 1-4 years, presumptive probation
		3 rd or subsequent, or if offender has previously been convicted 2+ times in aggregate of any violation of the law related to controlled substances	Category D – 1-4 years
Trafficking	≥4g but <14g	Any conviction	Category B felony, 1-6 years
	≥14g but <28g	Any conviction	Category B felony, 2-15 years
	≥28g	Any conviction	Category A felony, Life or 25 years, parole eligibility at 10 years

Possession - Policy Options

	Option 1	Option 2	Option 3
<p>First and second conviction:</p> <p>Cat E Felony 1 – 4 yrs.</p> <p>Presumptive probation, excluding offenders who previously failed treatment, are on supervision, or have previously been revoked</p>	<p>All convictions:</p> <p>Misdemeanor Up to 6 mo. jail</p>	<p>First three convictions:</p> <p>Misdemeanor Up to 6 mo. jail</p>	<p>First two convictions:</p> <p>Misdemeanor Up to 6 mo. jail</p>
			<p>3th and 4th conviction:</p> <p>Gross Misdemeanor Up to 1 yr. in jail</p>
<p>3rd and subsequent:</p> <p>Cat D Felony 1 – 4 yrs.</p>		<p>4th or subsequent:</p> <p>Gross Misdemeanor Up to 1 yr. jail</p>	<p>5th or subsequent:</p> <p>Cat. D Felony 1 – 4 yrs.</p>

Trafficking – Policy Options

	Current Statute	Option 1	Option 2	Option 3
Trafficking of Schedule I substances (except marijuana) (453.3385)	4-14g Cat. B 1-6 yrs. *Not Probation Eligible	28-100g w/ conduct evincing sale or manufacturing Cat B 1-10 yrs.	56-100g Cat B 1-10 yrs.	Eliminate the prohibition on probation and specialty court eligibility and retain current weight breakdowns
	14-28g Cat. B 2-15 yrs. *Not Probation Eligible	100-400g w/ conduct evincing sale or manufacturing Cat B 2-20 yrs.	100-300g Cat B 2-15 yrs.	
	≥28g Cat. A 25 yrs. or Life *Not Probation Eligible	400g+ w/ conduct evincing sale or manufacturing Cat B 3-20 yrs. *Not Probation Eligible	300g+ Cat B 2-20 yrs. *Not Probation Eligible	

ACAJ Final Report Recommendations

- Reclassify simple possession of a controlled substance from a felony to a misdemeanor for the first and second offense
 - Retaining the Category E felony classification for a third and subsequent possession conviction.
- Increase trafficking weights to distinguish drug sellers from drug traffickers, and require evidence of intent to sell or manufacture
 - Require evidence of intent to sell or manufacture
- Increase judicial discretion in sentencing for commercial drug offenses

AB236 Tiered Penalty Structure

Conduct for Schedule I and II substances	In Effect July 1, 2020		
	Weight	Conviction	Felony Class and Penalty
Possession	<14g	1 st or 2 nd	Category E felony – Mandatory deferral
		3 rd or subsequent	Category D felony – 1-4 years
	≥14g but <28g	Any conviction	Category C felony – 1-6 years
	≥28g but <42g	Any conviction	Category B felony – 1-10 years
	≥42g but <100g	Any conviction	Category B felony – 2-15 years
Trafficking	≥100g but <400g	Any conviction	Category B felony, 2-20 years
	≥400g	Any conviction	Category A felony, 10 years-Life or 25 years, parole eligibility at 10 years

AB236 Additional Changes

- Reclassify a first offense of Sale/Transport of a Controlled Substance from Felony B (1-6 years) to Felony C (1-5 years)
- Expands probation eligibility to second and third-time offenders convicted of Sale/Transport of a Controlled Substance
- Expands probation eligibility for offenders convicted of Possession of a Controlled Substance for Sale

Questions?

Contact

- Contact information

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