

DRUG OFFENDER SENTENCING DATA ANALYSIS

Data Collected from FY 2003-2007

(Data provided by Department of Corrections)

Charts and analysis by Sheri Heffelfinger, Research Analyst
Montana Legislative Services Division
for the
Law and Justice Interim Committee
November 8, 2007

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Purpose and scope

One goal of the SJR 24 study of diversion alternatives for chemically dependent and mentally ill offenders is to examine whether Montana should enact sentencing reforms for offenders convicted of drug possession similar to the reform enacted in California in 2000 under Proposition 36. Under Proposition 36, California's mandatory jail and prison sentencing laws were revised to allow first- and second-time nonviolent drug offenders convicted of possession or use, including offenders whose probation or parole was revoked due to a drug possession or use offense, to be sentenced to treatment rather than to jail or prison. Since Proposition 36 was enacted, California's drug possession incarceration rate has fallen 34% and a cost-savings analysis on the beneficial effects of treatment rather than incarceration is showing that the state is saving \$2.50 for every dollar spent on treatment.¹

This report examines one component of drug sentencing reform: the extent to which felony non-violent drug offenders in Montana are being sentenced to prison. However, it is important to keep in mind that while this was a significant issue in California, Montana law already allows judges to impose alternative sentences for drug offenses. (See **Attachment A - Section 45-9-202, Montana Code Annotated.**) Other components of the SJR 24 study that are not included in this examination relate to determining the extent to which non-violent drug possession offenders are being diverted to treatment programs. Another caveat is that this analysis does not address misdemeanor offenses and jail sentences.

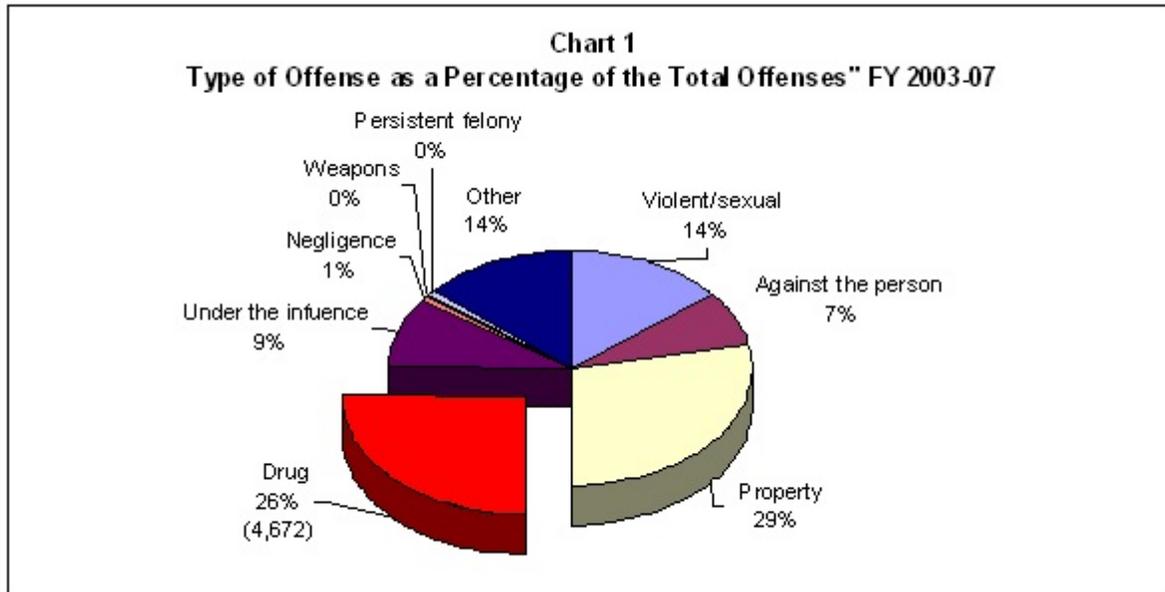
The data included in this analysis covers five years: FY 2003 through FY 2007. This report does not examine drug offenders who have committed violent crimes in the last five years. (See **Attachment B for a list of which crimes are considered violent crimes for purposes of this report.**)

¹ Ehlers and Ziedenberg, "Proposition 36: Five Years Later", Justice Policy Institute, April 2006, pp. 2 and 5.

PART I - SENTENCING DATA

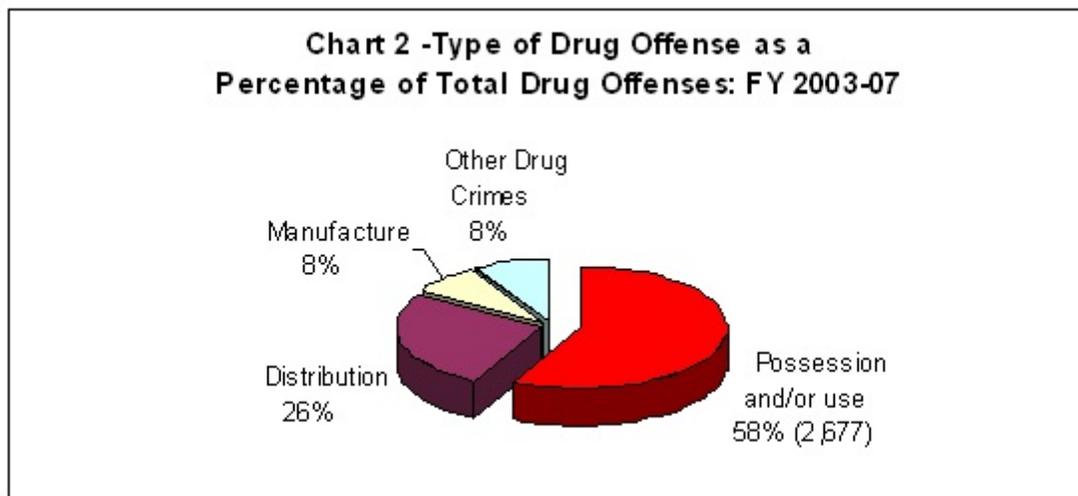
Looking at all crimes and sentences from FY 2003-07:

- 26 % (4,672) of the sentences involved a drug offense.



Looking only at the drug offenses:

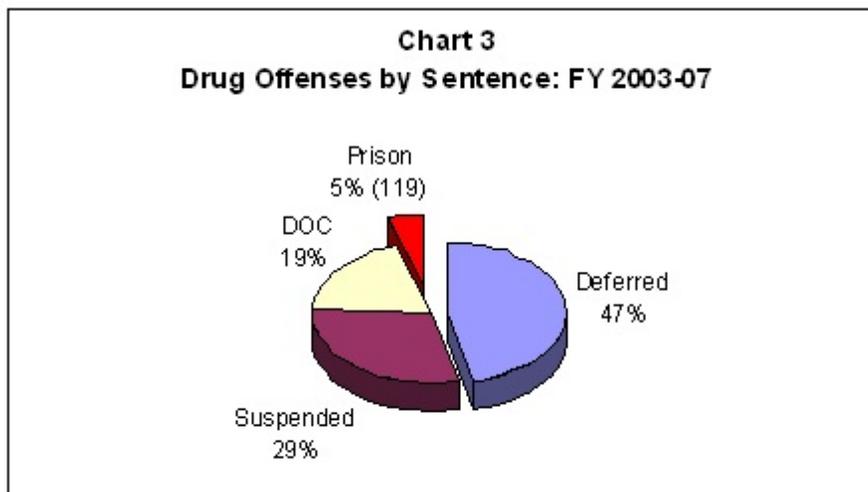
- 58% (2,677) of the sentences for drug offenders were for illegal possession and/or use of a drug.



Looking only at the sentences for illegal possession and/or use of a drug (and NOT counting drug offenders who had committed a violent crime in the last 5 years):

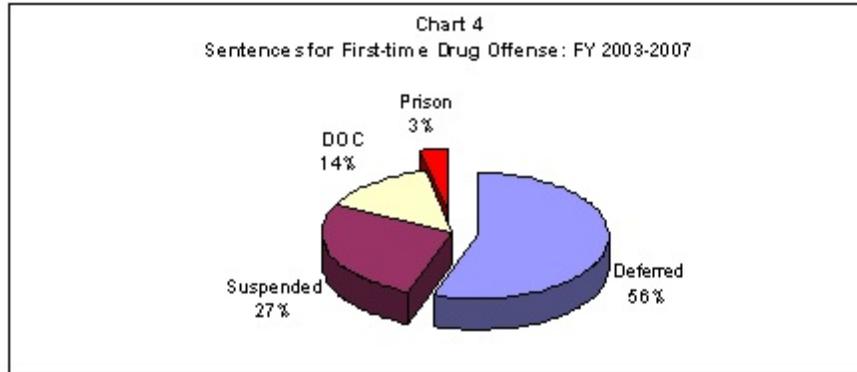
Table 1 Sentencing for Drug Offenses: FY 2003- 2007				
	Sentence			
	Deferred	Suspended	DOC	Prison
First-time drug offense	1,084	526	276	65
<i>no other crime</i>	930	169	50	6
<i>other crime(s) - not violent</i>	153	324	203	48
<i>violent crime over 5 yrs ago</i>	1	33	23	11
Second-time drug offense	27	151	142	43
<i>no other crime</i>	20	72	44	3
<i>other crime(s) - not violent</i>	7	75	94	38
<i>violent crime over 5 yrs ago</i>	0	4	4	2
Three or more drug offenses	2	23	44	11
<i>no other crime</i>	0	4	19	1
<i>other crime(s) - not violent</i>	2	19	25	9
<i>violent crime over 5 yrs ago</i>	0	0	0	1
TOTAL	1,113	700	462	119

- a drug possession and/or use offender was most likely to receive a deferred sentence.
- 5% (119) of the sentences were to prison.

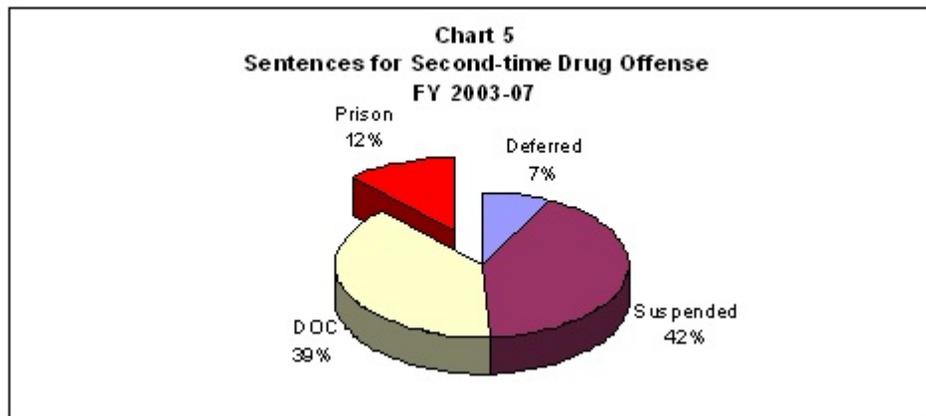


Comparing sentences for first, second, and third illegal possession and/or use offenses:

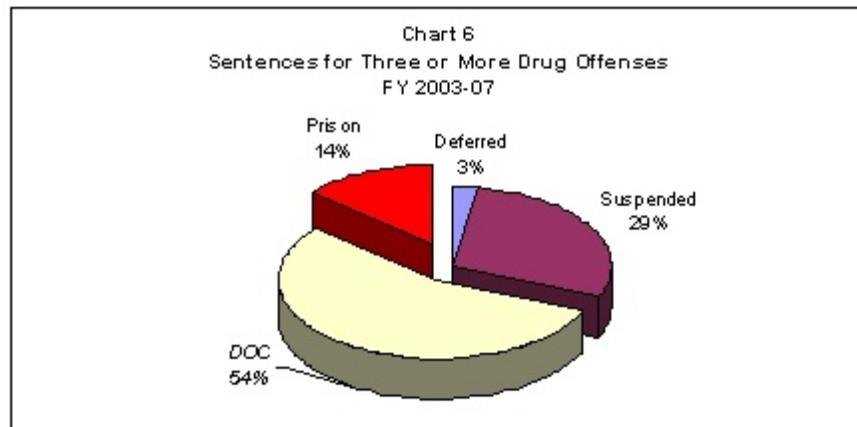
- first-time offenders received mostly deferred sentences, only 3% of the sentences were to prison.



- second-time offenders received more suspended sentences, and 12% went to prison.

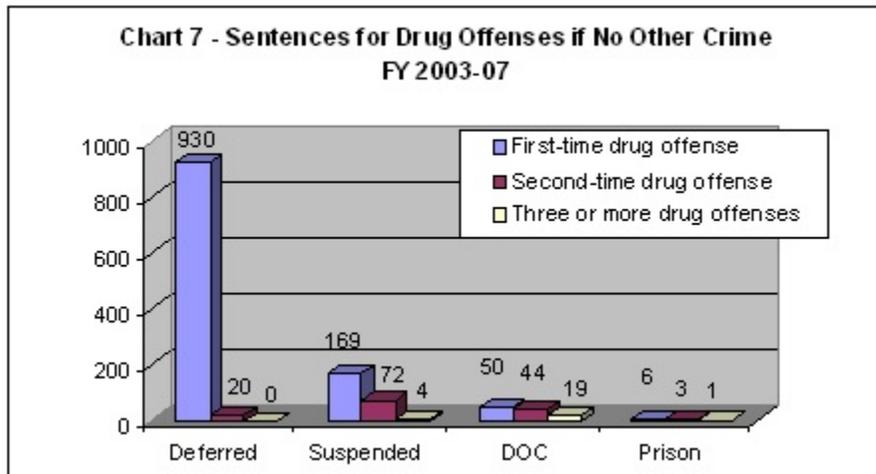


- third-time (or more) offenders received more sentences to the Department of Corrections, and 14% went to prison.

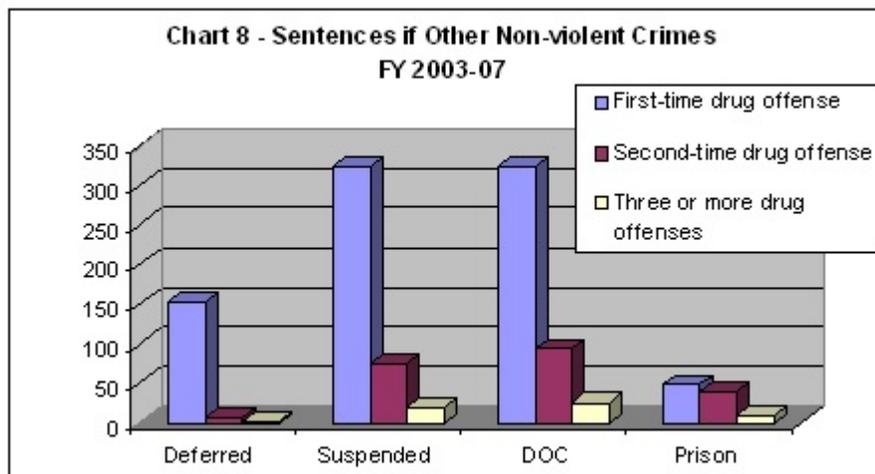


Comparing sentences based on the offender's criminal history:

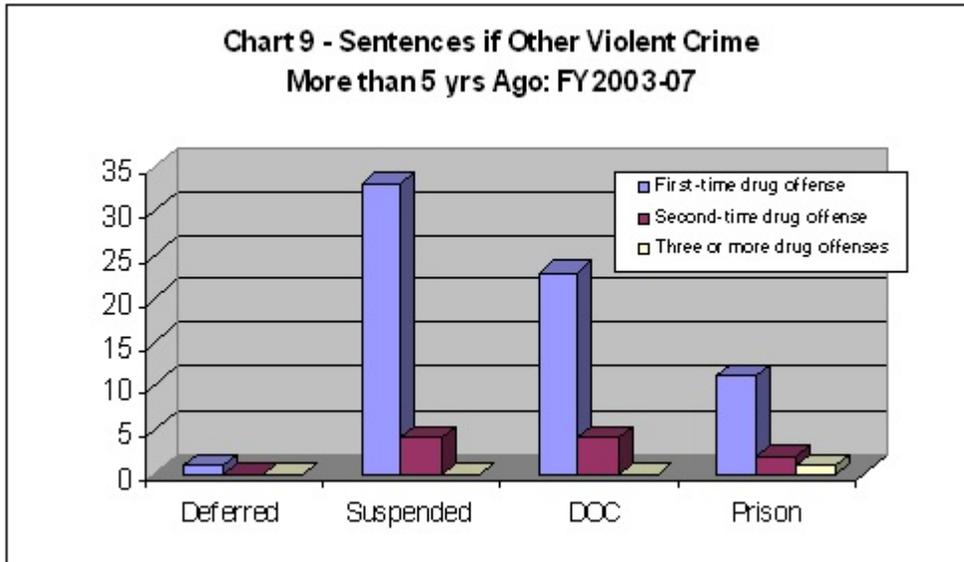
- if no other crime was involved:
 - a first-time offender was most likely to receive a deferred sentence.
 - a second-time offender was most likely to receive a suspended sentence.
 - a third-time (or more) offender was most likely to be sentenced to the Department of Corrections.



- if the offender had a history of other crimes, but they were not violent crimes.
 - a first-time offender was more likely to receive a suspended sentence.
 - a second-time or third-time (or more) offender was more likely to receive a sentence to the Department of Corrections.

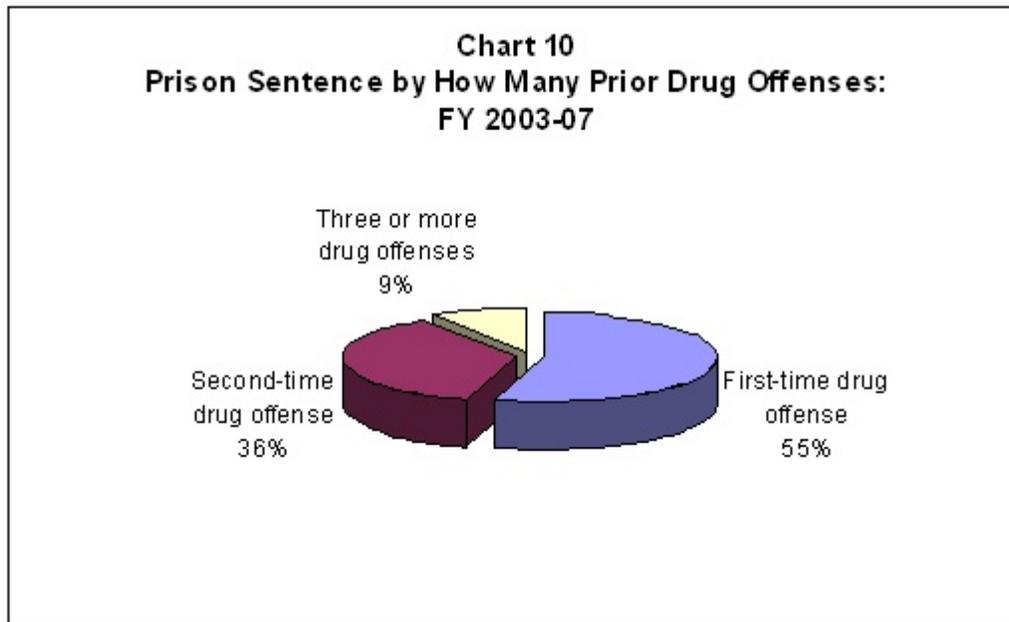


- if the offender had committed a violent crime, but not within the last five years:
 - a first-time offender was more likely to receive a suspended sentence.
 - a second-time offender was more likely to receive a suspended sentence or a sentence to the Department of Corrections.
 - a third-time offender was more likely to be sentenced to prison.

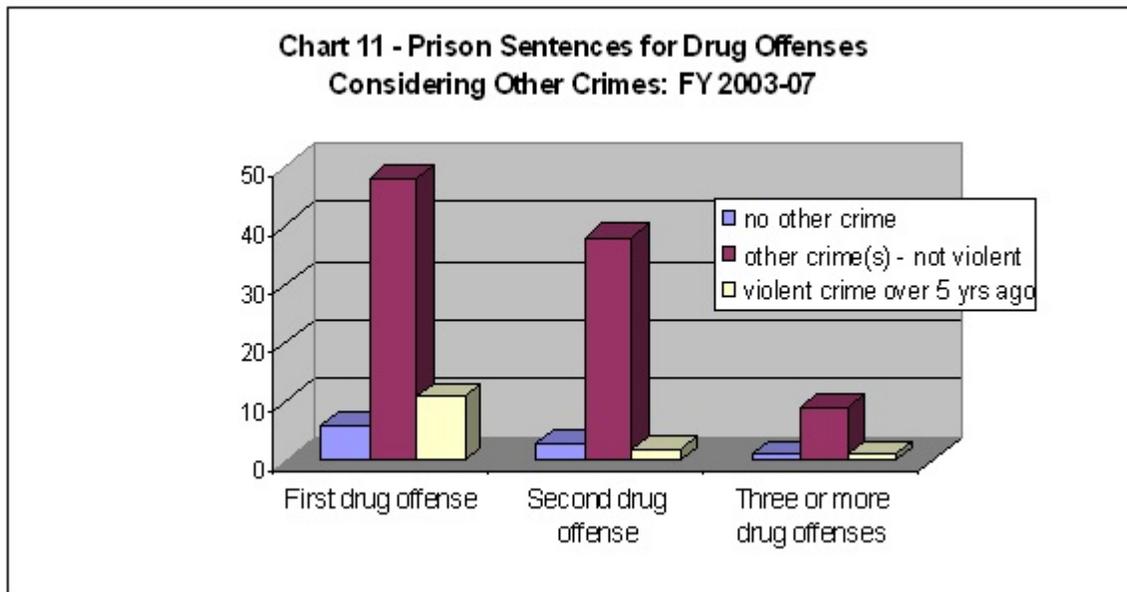


Looking at drug offenders who are sentenced to prison:

- most are first-time offenders.



- most have also committed another nonviolent crime.



Conclusion -- Part I Sentencing Data

Based on this data, drug sentencing reform using an approach similar to Proposition 36 in California, which allowed alternative sentencing for first- and second-time drug possession offenders, would not have a significant impact on Montana's prison population. The most frequent sentence given to drug possession offenders is a deferred sentence. Additionally, even when other crimes were involved, the most common sentence was either a suspended sentence or a sentence to the Department of Corrections.

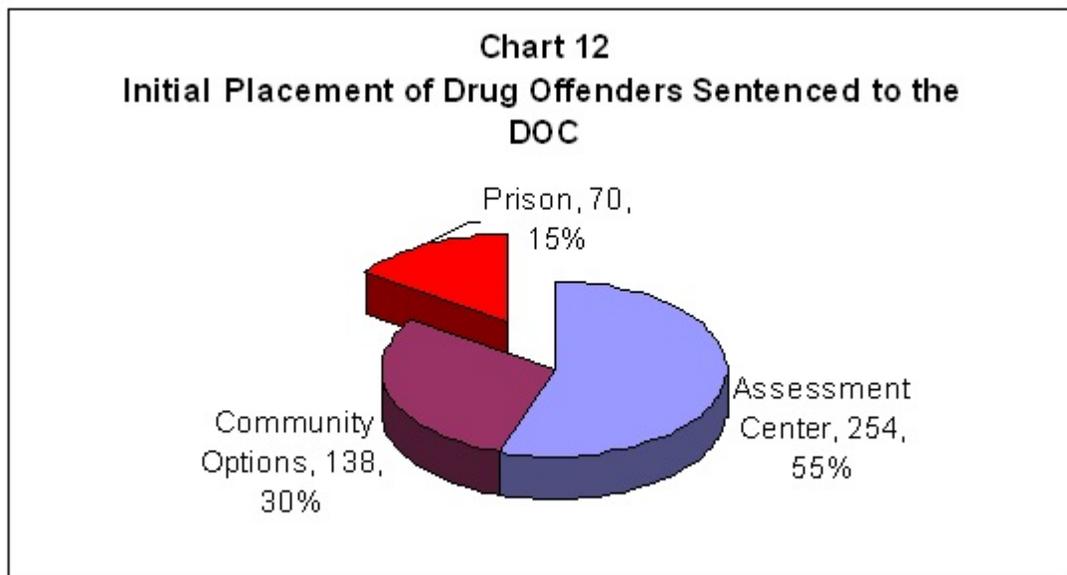
Nevertheless, some drug offenders were sentenced to prison: 5%, or 119 over 5 years. Of those, 65 were sentences for first-time drug offenders. However, of these, only 6 had not committed any other crime. The largest number of these offenders, 48, had committed one or more other nonviolent crimes. Thus, any further study or sentencing reform effort would be most effective if targeted at first-time drug offenders who had committed other nonviolent crimes.

PART II - PLACEMENT BY DEPARTMENT OF CORRECTIONS

Looking at the drug offenders sentenced to the Department of Corrections:

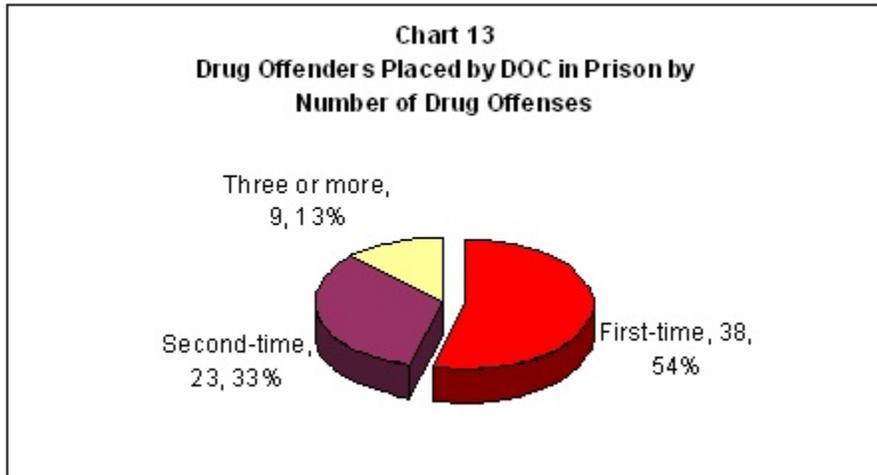
	Assessment Center	Community Options	Prison	TOTAL
First-time drug offense	158	80	38	276
no other crime	38	11	1	50
other crime(s) - not violent	112	67	24	203
violent crime over 5 yrs old	8	2	13	23
Second-time drug offense	76	43	23	142
no other crime	23	15	6	44
other crime(s) - not violent	52	26	16	94
violent crime over 5 yrs old	1	2	1	4
Three or more drug offenses	20	15	9	44
no other crime	7	8	4	19
other crime(s) - not violent	13	7	5	25
violent crime over 5 yrs old	0	0	0	0
TOTAL	254	138	70	462

- most were initially placed in an assessment center, but 15% (70) were placed directly in prison.



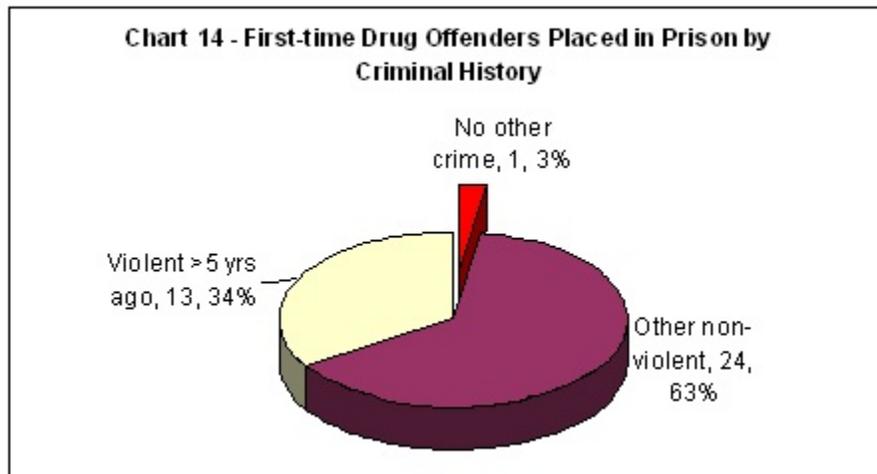
Looking at those placed in prison:

- most were first-time drug offenders.



- of those first-time drug offenders:

-- only 1 had committed no other crime, 24 had committed another nonviolent crime.



Conclusion: Part II - Placement by Department of Corrections

The Department of Corrections is placing drug possession offenders directly into prison (15% or 70 over 5 years).

Most of these drug possession offenders were first-time offenders. However, most (24) also committed other nonviolent crimes.

Therefore, further study or potential revisions targeting drug possession offenders being placed directly to prison should focus on first-time drug offenders who have committed other nonviolent crimes, though the number of offenders who would be affected by potential reforms would be small.

PART III - WHAT NEXT?

If the committee decides to look further at treatment alternatives for drug offenders, the next step is to look at how many offenders are being sentenced to and placed in treatment programs and the effectiveness of these programs.

Unless the committee directs otherwise, further study would not include an examination of misdemeanor drug offenses or jail sentences.

ATTACHMENT A

45-9-202. Alternative sentencing authority. (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or \$1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of corrections based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the department of corrections of not less than \$50 a month to be deposited in the account established in 46-23-1031;

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years.

ATTACHMENT B

For purposes of this report, violent crimes included:

- Homicide
- Sexual intercourse w/o consent
- Sexual assault
- Robbery
- Aggravated assault
- Assault w/ weapon
- Partner/family member assault
- Assault on a minor
- Assault on a peace officer
- Other violent/sexual assault (e.g. kidnaping)