

**DRUG AND DUI OFFENSES  
IN SOUTH DAKOTA**

An Examination  
of the Trends



# DRUG AND DUI OFFENSES IN SOUTH DAKOTA:

An Examination of the Trends



## Introduction

---

South Dakota is currently in a dispute about legalized marijuana use for recreational and medicinal purposes. In this context, it's worth considering how the state handles criminal cases involving drug and DUI offenses.

Measures for Justice (MFJ) recently published county-level criminal justice data for the state of South Dakota that span 2009–2017. A review of our findings suggests that relative to other offenses, South Dakota counties pursue harsher responses to court cases in which the most serious offense was related to drug possession/distribution or driving under the influence (DUI).

The pattern can be seen at multiple points in case processing. This report explores these disparate findings using three Measures: dismissal rates, time to disposition, amount of fees and fines. Year by year, we have found that drug and DUI cases (1) are dismissed at a lower rate in most counties, (2) take longer, on average, to dispose of than other case types, and (3) face some of the highest financial obligations at conviction.

## Case Dismissals

---

***Finding: Drug and DUI offenses fall into the bottom three case types most likely to be dismissed by South Dakota trial courts statewide.***

Looking at the dismissal of criminal cases across South Dakota, we find that lower-level offenses are dismissed less often than more serious offenses. This is true across both offense type and offense severity, although there does appear to be some variation based on county population size.

Year after year, we find a relatively low number of dismissals for drug offenses and DUIs when compared to other offense types. When looking at South Dakota as a whole, DUI offenses

are dismissed the least frequently, followed by criminal traffic and drug offenses. Violent offenses were dismissed the most frequently, followed by property offenses.

As depicted in Figure 1, this pattern appears consistent over time. DUI and drug offenses consistently fall into the bottom three case types dismissed by South Dakota trial courts, while cases involving offenses classified as violent are consistently dismissed most often. While Figure 1 suggests that the variability between case types holds true year after year, it's important to also note the statewide dismissal rate for these offense types appears to be increasing over time, particularly for drug offense types.

Interestingly, when we take a closer look at dismissals by case type, we see a divergence between the most populous counties and counties with fewer residents, particularly related to drug offenses. While drug offenses were dismissed at a lower rate in the state, the same was not true for Minnehaha and Pennington, South Dakota's two most populous counties. For example, in 2017 both counties dismissed drug cases at a rate above the 18.6% state average (25% cases in Minnehaha and 23.7% in Pennington).

The relationship between population size and case dismissals involving DUI charges is less clear.

For 2017, 6.4% of filed cases involving people charged with a DUI offense were dismissed. Similarly to drug offenses, Pennington falls higher, dismissing 7% of these cases. Minnehaha, however, falls below the state average, dismissing just 4% of cases involving DUI charges.

Importantly, the relatively low dismissal rates for drug offenses could be driven by a number of factors. One possible explanation may have to do with diversions. In some instances, individuals may have their case dismissed following the completion of a diversions program. If the original diversion data are overwritten with a dismissal before the data were pulled for MFJ, we may miss it in the administrative data. Figure 3 depicts the rate of diversions and dismissals over time for drug cases in Pennington, Minnehaha, and the state overall. While the rate of dismissals for drug cases exhibits marginal increases over time, the usage of diversion for drug cases has nearly tripled from 2014 to 2017, which suggests a change in how drug cases are being handled in South Dakota.

As illustrated, the state average for case dismissals involving drug charges, as well as those rates specific to Minnehaha and Pennington, all appear to align with the diversion rate. Interestingly, the data suggest a jump in dismissals around 2015, particularly for Pennington County, where the number of cases

Fig. 1. CASES DISMISSED BY CASES' MOST SERIOUS OFFENSE, 2009-2017

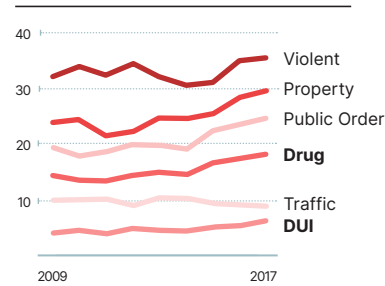


Fig. 2. DRUG AND DUI DISMISSALS BY POPULOUS COUNTIES, 2017

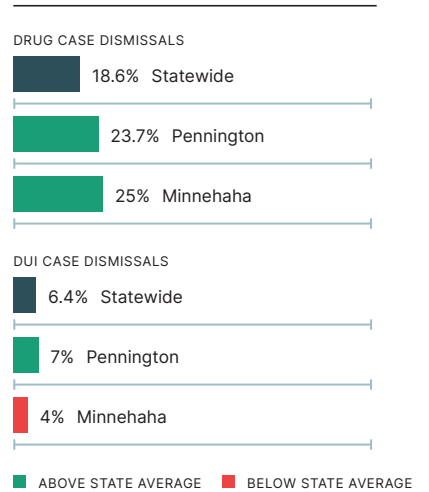
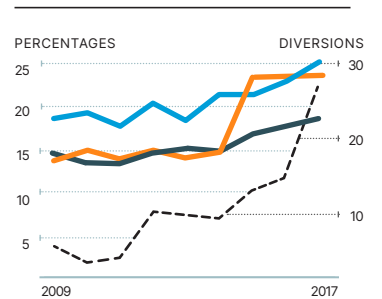


Fig. 3. COMPARISON: DRUG CHARGE DISMISSALS VS. DIVERSIONS, 2009-2017



Comparison of percentage of cases dismissed where the most serious charge was a drug charge, between Pennington, Minnehaha, and the State average, with rates of drug case diversions over time.



dismissed increased approximately 9% from 2014. Around this same time, Pennington County implemented several diversion programs and specialty court programs, including their Young Adult Diversion program and their drug court program, lending further support for the idea that dismissal rates are shaped, in part, by diversion rates.

### Time to Disposition

**Finding: Felony drug offense cases take the longest of all case types to be disposed of.**

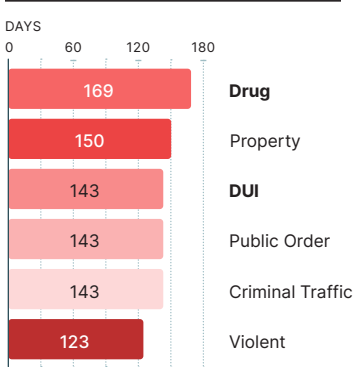
When we take a look at the time to disposition for felony cases in South Dakota, we find that while the median number of days between case filing and case closure is increasing for all offense types, cases in which the most serious charge was a drug offense take the longest to dispose of. Unlike case dismissal patterns, this trend appears independent of population size, appearing in counties with both large and small populations.

As shown in Figure 4, for the years 2009–2017, the statewide median time to disposition for felony offenses involving a drug offense was 169 days, followed by property offenses (150 days) and DUI offenses (143 days) and compared to a median time of 123 days for violent offenses.

We do not see an association between population size and the length of time between case filing and case disposition. In both the most and least populous counties, drug offense cases take the most time to be disposed. For example, from 2009–2017 in the state’s two most populous counties, Minnehaha and Pennington, the median time was 207 and 188 days, respectively, for the disposition of cases in which the most serious charge was a drug-related offense. This is significantly higher than the amount of days required to dispose of other offense types, such as property offenses (Minnehaha=183 days; Pennington=159 days), DUI offenses (175 and 134 days, respectively) and violent offenses (146 and 86 days, respectively).

Similar patterns exist when we turn to the state’s least populated jurisdictions, such as Jones and Sully counties. With a population of only 740, between 2009 and 2017 Jones County processed a total of 26 cases in which drug offenses were the most serious charge. Of these cases, the median time to disposition was 242 days, with the quickest resolution coming in 35 days. In contrast, of the 17 cases in which property offenses were the most

Fig. 4. AVERAGE MEDIAN TIME TO DISPOSITION FOR FELONIES, 2009–2017



serious charge, the median time to disposition was 179 days, with the quickest resolution coming in 9 days.

One possible explanation for elongated times to disposition for felony drug cases might, again, be related to diversion practices in the state. Since cases that are diverted may not be officially closed until the successful, or unsuccessful completion of the diversionary program and its requirements, diversion cases may take longer to dispose of. As referenced in *Figure 3*, the rate of deferred drug cases has been increasing over time, and as a result of the longer life of a diversion case, this may explain why drug cases in South Dakota take longer to dispose of compared to cases with non-drug offenses.

## Fees and Fines

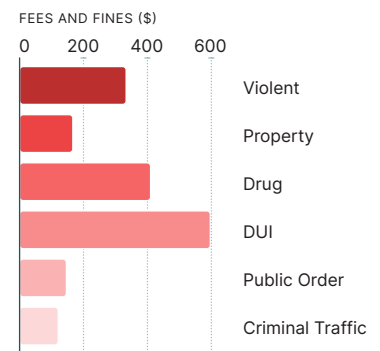
**Finding:** *The highest amount of fees and fines are consistently assessed to people whose top charge was DUI offense, followed by drug offense.*

The highest amount of fines and fees are consistently assessed to people whose top charge was a DUI offense, followed by those whose top charge was a drug offense. Similar to the patterns reflected by our Cases Dismissed Measure, our analysis suggests slight variation related to county population size; however, further investigation is needed to determine what role, if any, population size might play in shaping these trends.

*Figure 5* shows the median fees and fines by the most serious conviction offense type for the years 2009–2017. Remarkably, the median fines and fees assessed to DUI offenses was \$600, nearly \$200 more than the median fines and fees assessed to drug offenses, which carried the second highest median amount of fees and fines.

When we look at the percentages over time, we find that Minnehaha County, the state’s most populous county, falls among those with the lowest assessed fines and fees for cases involving DUIs in each cohort of data. South Dakota’s second most populous county, Pennington, also fell on the low end relative to the rest of the state. Conversely, Sanborn County, with a population of 2,344<sup>1</sup>, experienced the highest median amount of fines for DUI offenses year after year. In this same time period, the median amount of fees and fines assessed to people convicted with a DUI offense in Sanborn County was \$1,034, compared to the state median of \$600.

*Fig. 5. AVERAGE MEDIAN FEES AND FINES BY MOST SERIOUS CONVICTION OFFENSE, 2009–2017*



<sup>1</sup> United States Census Bureau. *Population Estimates, July 1, 2019. (V2019).*

## Context to Consider

---

It should be noted that the present report is limited in two critical ways. First, the case-level data used to populate our Measures were obtained from the South Dakota Court Administrator's Office (SDCAO). As such, we're looking only at cases falling under SDCAO jurisdiction. This is especially important in South Dakota where tribal territories make up a sizable proportion of the state and maintain jurisdiction over the prosecution of cases involving Native Americans on these lands. Thus, the legal experience of individuals across several counties may not be accounted for in this report; specifically, in Oglala Lakota, Buffalo, Jackson, Ziebach, and Buffalo Counties.

Moreover, among the data we do have available, certain critical variables are missing. Notably, race data is missing for approximately half of the people whose cases were moving through South Dakota courts between 2009 and 2017. This gap in race information means that the variable did not meet MFJ's reliability threshold for use on the Portal and, as such, we are unable to filter any of the state's Measures by race. This data gap will make it difficult for policy makers to track the possible disparate impacts on equity of any changes South Dakota makes to how cases involving drug offenses move through the legal system.

## What Now?

---

This report has outlined a number of future research directions that MFJ intends to explore. The data presented here suggest drug diversion programs may be leading to a greater number of case dismissals, particularly in the state's most populous counties. Further investigation is needed to understand the impact that high rates of successful diversions have on system resources.

Further, the length of time between case filing and closing appears to be increasing for all offense types but is particularly lengthy for drug offenses. This is an important point of exploration as we might expect extended case processing time to negatively impact people involved with these cases, as well as system practitioners who too often face time and resource obstacles. However, this trend might be driven by least harm practices, like the increased use of diversion programs, or perhaps effective client advocacy. Future research should further examine what is driving the rise in case processing times in South Dakota.

Finally, understanding the financial penalties associated with criminal charges is an area of particular importance as evidence suggests fines and fees do little to increase public safety and often impede rehabilitative efforts at the individual level<sup>2</sup>. Moreover, when these penalties disproportionately fall to poor people<sup>3</sup>, they compound the impacts of other system-imposed threats to housing, education, and employment. Understanding the administration of monetary sanctions is critical at a time when criminal justice researchers and practitioners alike are calling for renewed examinations into the impact of our practices within and across our communities.

For more information on MFJ's South Dakota data, visit [measuresforjustice.org/portal/SD](https://measuresforjustice.org/portal/SD), where you can find the full list of Measures aggregated by five-year cohorts.

**Measures for Justice** (MFJ) is an independent, nonprofit organization that aims to measure how local criminal justice systems across the country are delivering basic services. Nearly every public institution or resource in the United States—our schools, our hospitals, our water supply—is accountable to a system of performance measurement. But the criminal justice system lags behind. This results in policies, practices, and routine decision making without the necessary information to ensure success.

MFJ Contributors to this report include:  
 Shelby Davis, Senior Data Outreach Manager  
 Nathan LeMahieu, Senior Research Associate

This report was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails.

<sup>2</sup> See for example: Menendez et al. November 21, 2019. *The Steep Costs of Criminal Justice Fees and Fines*. Report prepared for the Brennan Center for Justice.

<sup>3</sup> See for example: Foster, L. November 2020. *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*; and, Shapiro, J. May 19, 2014. NPR. *As Court Fees Rise, The Poor Are Paying The Price*.