

# How Plea Bargaining Has Impacted the Criminal Justice System

Dylan Palmer

A thesis presented to the Honors College of Middle Tennessee State University in partial fulfillment of the requirements for graduation from the University Honors College

Spring 2019

How Plea Bargaining Has Impacted the Criminal Justice System

by  
Dylan Palmer

APPROVED:

---

Name of Project Advisor  
List Advisor's Department

---

Name of Chairperson of Project Advisor  
List Chair's Department

---

Name of Second Reader  
List Second Reader's Department

---

Dr. John Vile  
Dean, University Honors College  
**OR (NOT BOTH NAMES)**  
Dr. Philip E. Phillips, Associate Dean  
University Honors College

## Acknowledgments

I'd like to thank Dr. Stickle for being extremely patient with me throughout this process. He always provided support and motivated me to keep striving. I'm thankful for his guidance, and I could not have done it without him.

## Abstract

Plea Bargaining is the primary method of convicting someone in the modern criminal justice system. Plea bargaining or a defendant pleading guilty is rooted throughout U.S. history. The usage of plea bargaining first became widely used in the United States during the prohibition era. In order to cope with the new influx of liquor law violations, the criminal justice system had to turn towards plea bargaining in order to reduce congestion. Following the end of the prohibition era, it was not until the 1970s and '80s did the plea bargain rate once again inflate to near 90%. The new drug-focused criminal justice system led to an increase in the number of offenders, which in turn congested the criminal justice system. Since then, the number of offenders and plea bargain rate have continued to grow to new heights, further reducing the use of jury trials.

## Contents

Abstract.....	3
Introduction.....	5
What is Plea Bargaining?.....	5
II. The Early History of Plea Bargaining (1908-1934).....	8
What was Prohibition.....	9
The Effectiveness of Prohibition .....	10
Ripple Effects of Prohibition .....	12
Plea Bargaining During the Prohibition Era .....	18
How Narcotics Effected Crime and Plea Bargain Rates.....	23
Guilty Plea Rates Post Prohibition Era .....	24
The War on Drugs and Its Effects.....	26
Guilty Plea in the 21 <sup>st</sup> Century.....	29
The Workload on Defense Attorneys .....	32
Sentencing Length and Conviction Type.....	37
IV. Positives and Negatives of Plea Bargaining .....	47
The Role of Guilty Pleas in Today’s Criminal Justice System.....	47
The Positives of a Guilty Plea.....	49
The Negatives of a Guilty Plea .....	54
Summary of the Positives and Negatives Surrounding the Guilty Plea.....	60
Conclusion .....	63
Bibliography .....	67

## Introduction

### What is Plea Bargaining?

Plea Bargaining is when someone is offered a “deal” by the prosecutor that encourages the defendant to plead guilty to a crime versus going to trial. The defender learns of the punishment or sentence they might face if they elect to go to trial and are found guilty of said charges. The prosecutor can instead offer the defendant the opportunity to plead guilty to the charges brought against them, and in return, the charge(s) or severity of punishment could be reduced. Going to trial brings forth the risk of being found guilty and receiving a more severe charge or punishment. The defendant can instead plead guilty, and in return receive the lesser punishment offered by the prosecutor (Devers, 2011).

Throughout U.S. history, multiple standout cases have shaped and modeled how plea bargaining is used today. In *Boykin v. Alabama (1969)*, a man plead guilty to five counts of robbery. The jury found the defendant guilty and sentenced him to death. Upon appeal, the courts recognized that the presiding judge had not asked the defendant if he entered his plea willingly and voluntarily and that the defendant had a right to a jury trial. In *Brady v. United States (1970)*, the defendant initially plead not guilty to his charges, but later changed his plea to guilty because his co-defendant was prepared to testify against Brady. Brady tried to appeal his plea because the death penalty could have been the punishment had the defendant been found guilty. Brady tried to appeal his case on the basis that the death penalty was coercive which forced him to change his plea. The supreme court, however, ruled that the defendant changed his plea due to the co-defendant willing to testify.

The basis of plea bargaining is crucial to the criminal justice system and was put on example in *Santabello v. New York (1971)* where the defendant agreed to the terms of a plea bargain with a prosecutor. The case, however, took longer than expected, and both the prosecutor and defense attorney were replaced. The new prosecutor was not aware of the previous agreement and instead charged the defendant with the maximum penalty. On appeal, the supreme court overturned the sentence on the grounds that due to the necessary nature of plea bargaining, and for justice to be upheld, that any agreement between the prosecutor and defendant should be upheld. The reason these cases are important is because they have changed and impacted how plea bargaining is used today. The prominence of plea bargaining in the modern criminal justice system makes it one of the influential factors in the criminal justice system. It is important to know how plea bargaining has changed over time and what cases made it into what it is today.

A significant component of plea bargaining is the reduction or decreased sentence if the defendant pleads guilty versus going to trial. In *Bordenkircher v. Hayes (1978)* the defendant was charged with forgery which was only an 8-10 year sentence. It was the defendant's third felony offense and if convicted, could be sentenced to life in prison under the Kentucky Habitual Crime Act. The prosecutor argued that if the defendant pleads guilty, the prosecutor would only charge the defendant with the 8-10 year sentence, but if the defendant goes to trial, then the prosecutor would try and seek the life imprisonment punishment. The defendant proceeded to trial where he was found guilty and received his life sentence. On appeal, the argument was that the prosecutor could not threaten a more severe crime or punishment if the defendant elects to pursue a trial rather than pleading guilty. The court ruled that the prosecutor can threaten a more severe punishment and that the system encourages negotiation and that imposing a stiffer sentence is a part of the negotiation process.

Plea Bargaining has been used as a way of conviction in not only the modern criminal justice system but also in older systems as well. An early prominent example of a defendant or person pleading guilty is the Salem Witch Trials of 1692. Supposed “witches” were encouraged to plead guilty or confess in order to live, but any who did not risked being found guilty and face execution. Those that confessed were encouraged to identify other witches, which resulted in a prominent example that plea bargaining can influence innocent individuals into confessing to crimes they did not commit (Meyer, 2017). Plea Bargaining was commonly used in the common law era, but not to the degree of today. The judges during the common law era encouraged defendants who plead guilty to still pursue a trial. Plea bargaining usage became extremely popular during the prohibition era. During this time, an increase in alcohol convictions led to a more congested criminal justice system. The guilty plea percentage rose to nearly 90% during the prohibition era and marked one of the first mass usages of the guilty plea as a means of conviction.

Entering the 1970’s and under the Nixon administration, the “war on drugs” campaign rekindled widespread usage of plea bargaining. The increased focus on curtailing America’s drug problem led to a mass incarceration rate of drug-related offenses which once again led to an increased number of cases that the criminal justice system had to once again process. The increase in offenders leads to the court system being more congested and needing to resort to plea bargaining to quickly resolve cases and reduce the overfilled courts. Since the Nixon administration, drug offenses and guilty plea usage have continued to grow and become even more prominent in the modern criminal justice system. In 2017, 97.2% of all convictions were a result of a guilty plea with drug-related offenses being the most convicted offense at 30.8% (U.S. Sentencing Commission Staff, 2017).



This thesis focuses on the history of plea bargaining in the criminal justice system throughout early U.S. history and leading into the modern day. The focus begins with plea bargaining during the prohibition era, where due to the increase of alcohol-related offenses, plea bargaining had to be used to reduce the congestion in the courts. The focus is once again picked back up in the 1970s under the Nixon administration's "war on drug" campaign and Nancy Reagan's "just say no" campaign in the 1980s. The movement continued into the modern day criminal justice system where the impact of the guilty plea and the usage has made going to a trial made up of one's peers is virtually non-existent.

The defense attorney's in the modern criminal justice system are overworked due to a high caseload. The quickest way to process a case is through the defendant pleading guilty. The defendant can benefit from a guilty plea in the sense that there is the possibility that they will receive a reduced sentence. The criminal justice system, the defendant, and victim both experience the positives and negatives of plea bargaining. The criminal justice system preserves resources but has also reduced citizen's constitutional rights. The defendant receives a reduced sentence but could also experience negative pressure to plead guilty instead of going to trial. The victim is guaranteed a sense of justice in their offender being prosecuted and receiving a form of punishment, but the punishment could be too lax and force the victim to feel re-victimized.

## **II. The Early History of Plea Bargaining (1908-1934)**

## What was Prohibition

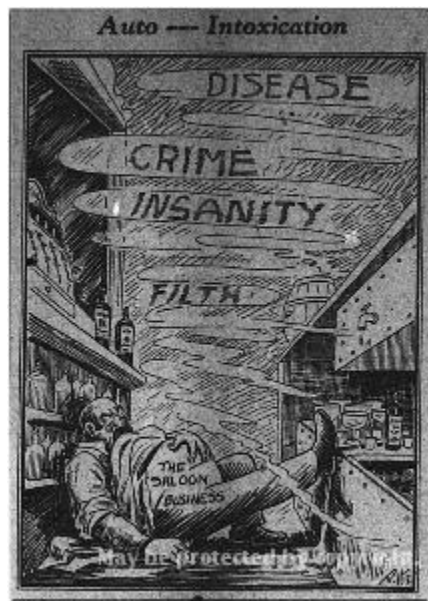
In American history, the term “prohibition” is typically linked to the outlawing of alcohol production during the 1920s. Prohibition was active from 1920 to 1933. Prohibition was first put into place in 1919 by the ratification of the 18<sup>th</sup> amendment. The amendment was ratified on January 16<sup>th</sup>, 1919, but it was not put into effect however until January 16<sup>th</sup>, 1920 (George & Richards). The 18<sup>th</sup> amendment “prohibited the “the manufacture, sale, or transportation of intoxicating liquors.” To enforce and define the language of the 18<sup>th</sup> amendment, the “National Prohibition Act” or “Volstead Act” was created in effect with the 18<sup>th</sup> amendment.

Not every alcohol was outlawed by the Volstead Act. The general rule was that any alcohol that was over “one half of one percent alcohol” was prohibited. There were multiple exceptions as to what was allowed under the Volstead Act. Alcohol could be consumed by someone if it was in the privacy of their home. Alcohol could also be purchased if one had a medical prescription. Alcohol could also be stored in one’s own home. Alcohol could also be made and transported as long as a government permit was possessed. (Hanson, 2016). It was illegal however to make liquor at home, store alcohol in any place beside one’s home, buy or sell liquor recipes, or ship liquor without a license (Hanson, What did Prohibition Prohibit? It Wasn’t Drinking Alcohol, 2016). The Volstead Act created restrictions detailing how alcohol was illegal. Since people still wanted to consume alcohol, despite it being illegal, new “distributors” stepped in to fill the void. Despite consuming alcohol not being illegal, being involved in any format in creating, distributing, or purchasing illegal alcohol placed many people behind bars for an action that was once legal.

## The Effectiveness of Prohibition

Prohibition was established to reduce the ill-effects associated with consuming alcohol during the time. A major thought was that by making it more challenging to access alcohol the public would, therefore, reduce their consumption of alcohol. The pressure of passing the 18<sup>th</sup> amendment gained momentum at the time from groups such as the Anti-Saloon League, Woman's Christian Temperance Union, Prohibition Party and more (Weinhar, 2018). Many of these parties used propaganda or loaded imagery in order to convey a message to the American public.

*Figure 1*



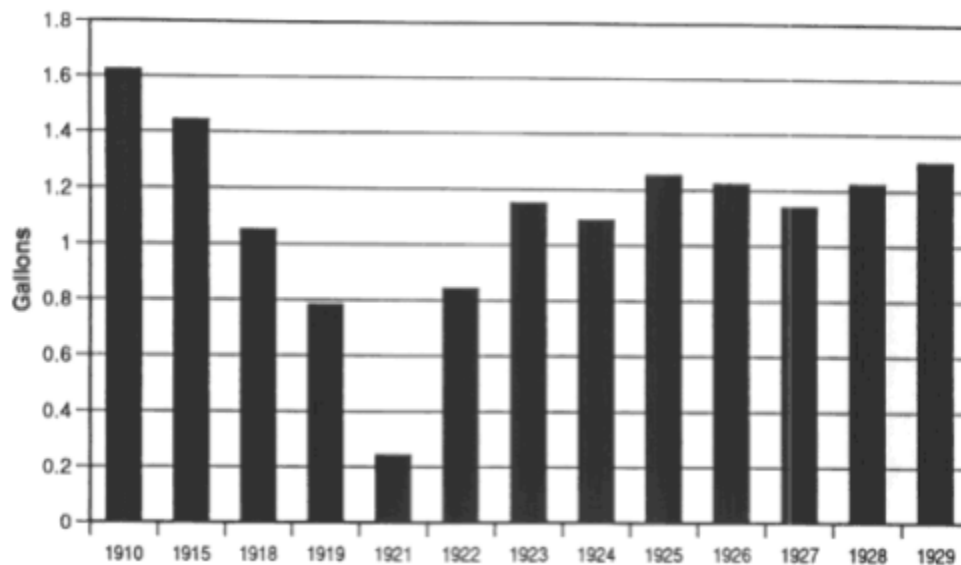
The image above, initially created by the anti-saloon league, illustrates the supposed link between the saloon business and the plagues upon society at that time. The idea behind

prohibition is that if alcohol consumption is reduced, then society as a whole will improve and flourish.

### Alcohol Consumed During Prohibition

Despite prohibition in place, consumers were still able to consume alcohol at a considerate rate. Figure 2 is a graph that displays the alcohol consumption rate by the gallon from 1910-1929.

Figure 2



The graph shows that before prohibition, the average alcohol consumption typically around .3 gallons higher than that of later into prohibition. It is arguable that that prohibition was a success in terms of reducing the alcohol consumed. Alcohol consumption decreased significantly in 1921, one year after prohibition was activated, but then took a sharp turn rising from roughly 0.2 in 1921 to slightly above 0.8 in 1922. The rates post 1921, soon started to

return to pre-prohibition levels (Thorton, 1991). Professor Thorton was not the only researcher that had collected data on prohibition era alcohol consumption. Jeffrey Miron and Jeffrey Zwiebel gauged the true alcohol consumption rate from 1900-1950. Their study concluded that during the start of prohibition, the rate of alcohol consumption dropped severely, and then proceeded to rise to roughly 60-70% of the consumption rate of pre-prohibition years. They also concluded that the consumption rate equaled the level of pre-prohibition years in the decade following the passing of the 21<sup>st</sup> Amendment. The research of Thorton, Miron, and Zwiebel all reflect the same message that prohibition did reduce alcohol consumption, but the effect was not permanent. Soon after the alcohol consumption rate dropped, it quickly rose back and eclipsed the consumption rate of the pre-prohibition era.

## Ripple Effects of Prohibition

Prohibition produced multiple ripple effects. The reduction of alcohol consumption during prohibition was lessened, but the nation did still consume alcohol at a significant rate. The 18<sup>th</sup> amendment forced reputable and licensed alcohol companies to change their tactics, which forced the public to change whom they bought alcohol from. Some company's such as Coors, switched to ceramics, Yuengling started producing ice cream, and Pabst Blue Ribbon started making cheese (Vinton, 2015). Since alcohol production and sale was now mostly illegal, the demand for alcohol created a new opportunity for criminals to be the primary supplier for alcohol. Since the 18<sup>th</sup> Amendment could not change the desires of the citizens, the demand for alcohol was still high. What changed was the legal supply, and this is where criminal gangs and

organizations stepped in to begin supplying the nation's alcohol needs. As a result, many adverse effects rippled across the country.

Alcohol was no longer inspected and produced using "safe" methods and ingredients as before. Before prohibition, alcohol was produced by licensed alcohol breweries. Once the breweries were forced to stop alcohol production, which opened up the opportunity for a new, typically illegal, alcohol producer to meet the demand. A common way for illegal alcohol to be produced was to re-distribute or re-distill already available commercial alcohol (Rothman, 2015). The usage of commercial alcohol soon became dangerous to consume due to the increased effort of anti-drinking forces. In order to stop the re-purposing of commercial alcohol, new ingredients were added that would make commercial alcohol unsafe to drink. The new additives were four parts methanol (wood alcohol), 2.25 parts pyridine bases, 0.5 parts benzene to 100 parts ethyl alcohol (Rothman, 2015). Due to the additives, commercial alcohol was unsafe to consume, but despite this risk, illegal brewers still used the new commercial alcohol in producing their brews. It was estimated that by the end of the prohibition era, more than 10,000 people died due to consuming unsafe alcohol (Blum, 2010).

### [Prohibition's Effect on the Incarceration Rate](#)

Prohibition created a new opportunity for criminal activity. The public still wanted to consume alcoholic beverages, since there were very few legal ways of procuring alcohol, illegal opportunities in creating and distributing alcohol flourished. The increase in criminal activity also leads to an increase in the prison population. Margaret Cahalan and Lee Anne Parsons (1986) of the U.S. Department of Justice, wrote a report focusing on the History of Correction

Statistics in the United States. Using the data provided in the report, multiple illustrations were created to represent the findings.

Figure 3

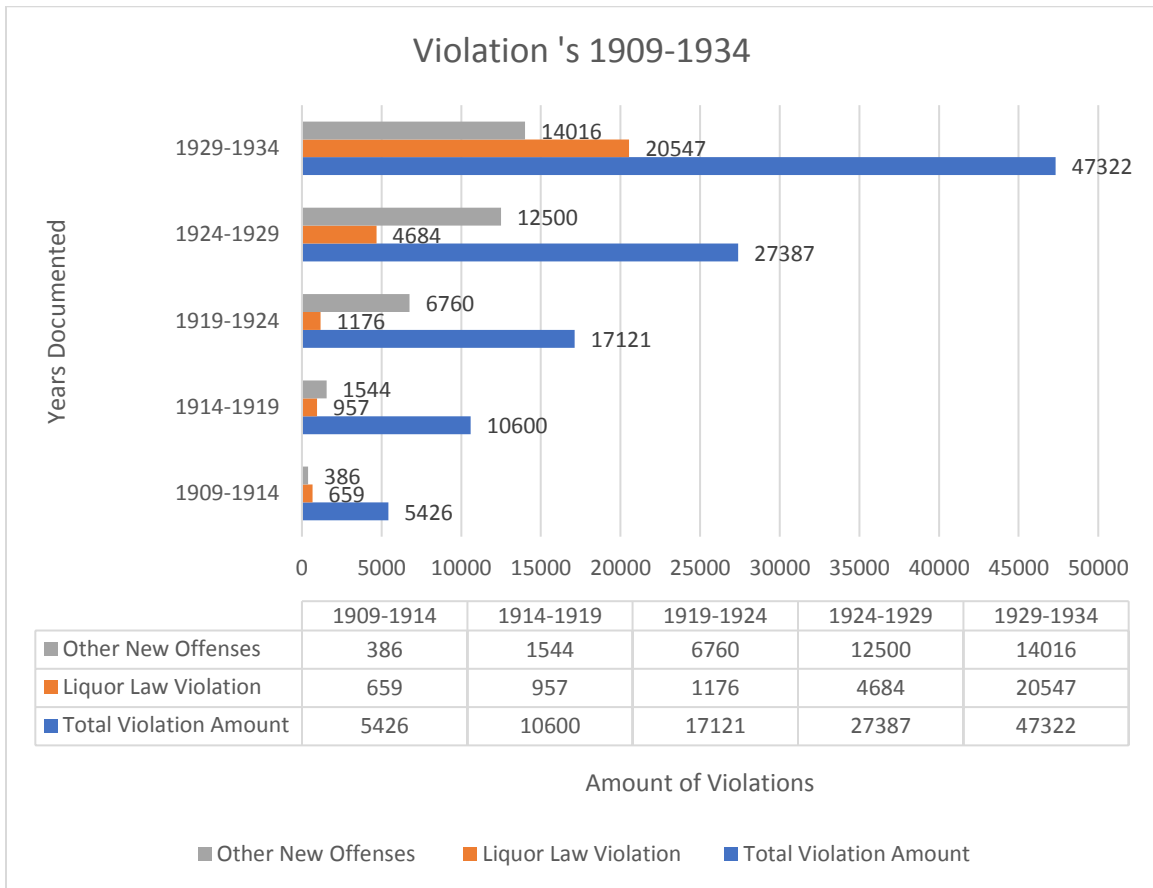
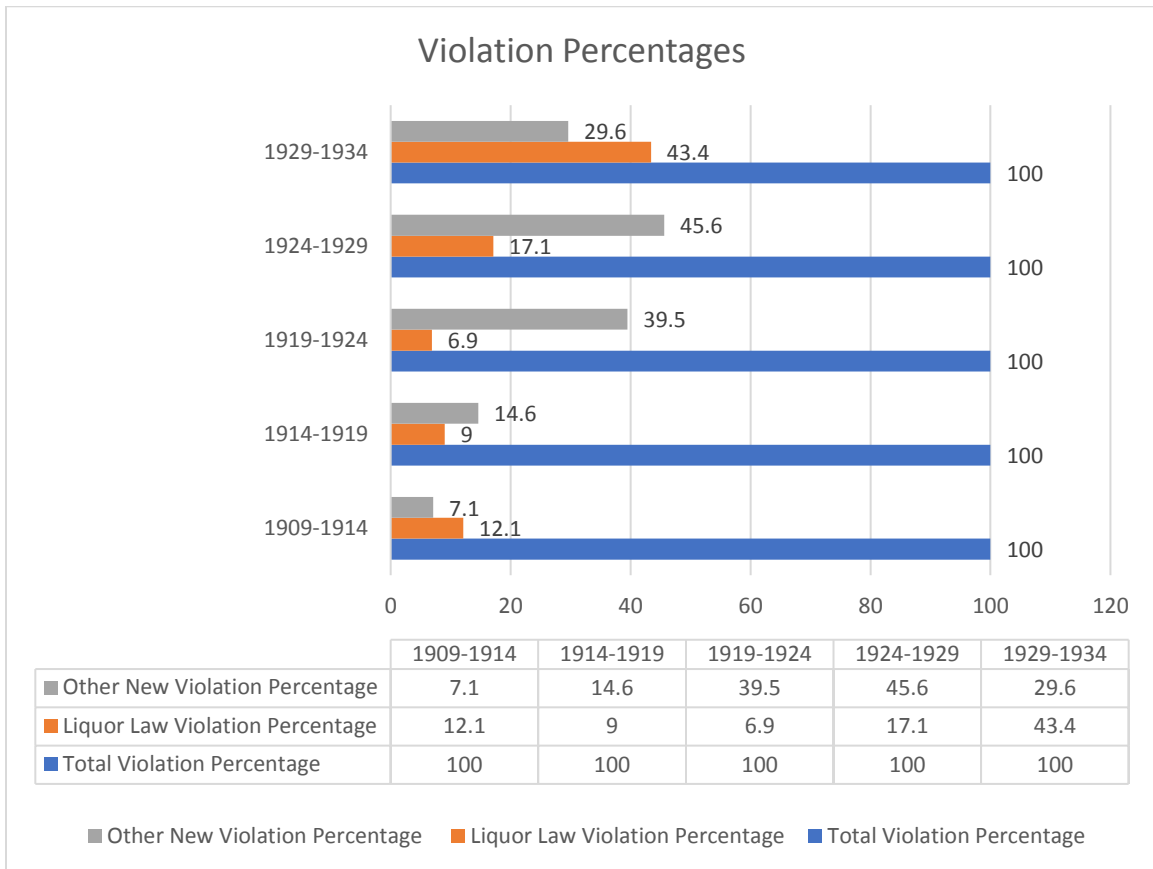




Figure 4



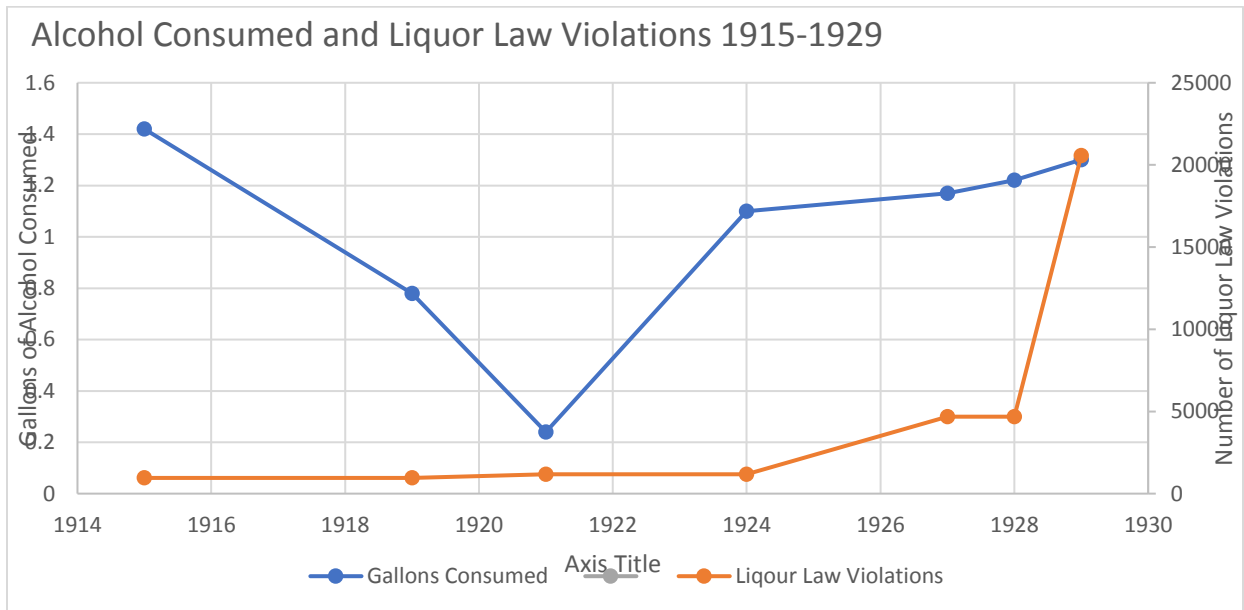
Five years before the start of prohibition in 1920, the total amount of offenders was 10,600. Out of the amount during this year, only 957 of those offenses were from violating a liquor law. Liquor law violations only made up approximately 9% of all offenses from 1914-1919. Once prohibition was active in 1920, the total incarceration rate rose by a substantial margin. From the years 1919-1924, the total offender rate increased by 10,000 offenders to 17,121. Despite the substantial increase in the number of new offenders, only 1,176 of the offenses from 1919-1924 were a result of violating the liquor law(s). This statistic correlates back to the previous graph showing the amount of alcohol consumed per capita. At the start of prohibition, the alcohol

consumption rate was relatively low compared to pre-prohibition years. The low consumption rate likely lead to a low number of liquor violations.

Following the initial five years of prohibition's activation, the number of offenders, the number of liquor law violations, and the percentage of liquor law violations all increased substantially. From 1924-1929, the total amount of offenders grew to 27,387 which is again a 10,000 offender increase from the previous five years or a (46%) increase. The amount of liquor law violations also increased to 4,684 and made up 17.1% of all offenses. The final five years of the prohibition era prove to be the most telling in terms of how prohibition played a role in the incarceration rate. From 1929-1934 the offender number sky-rocketed to 47,322 a 20,000, or a (53%) offender difference from the previous five years. The total number of liquor law violations increased to a staggering 20,547 which was 16,000 more violations than the previous five years. From 1929-1934, liquor violations also made up 43.4% of all offenses in the five-year span. The new percentage rate meant that just liquor violations alone made up almost half of all offenses from 1929-1934. Once again reflecting to the previous graph, the amount of alcohol consumed towards the end of the prohibition era started to rise to almost 60-70% of the pre-prohibition

years. With more people consuming alcohol towards the end of prohibition, the number of liquor violations also increased to a substantial rate.

Figure 5



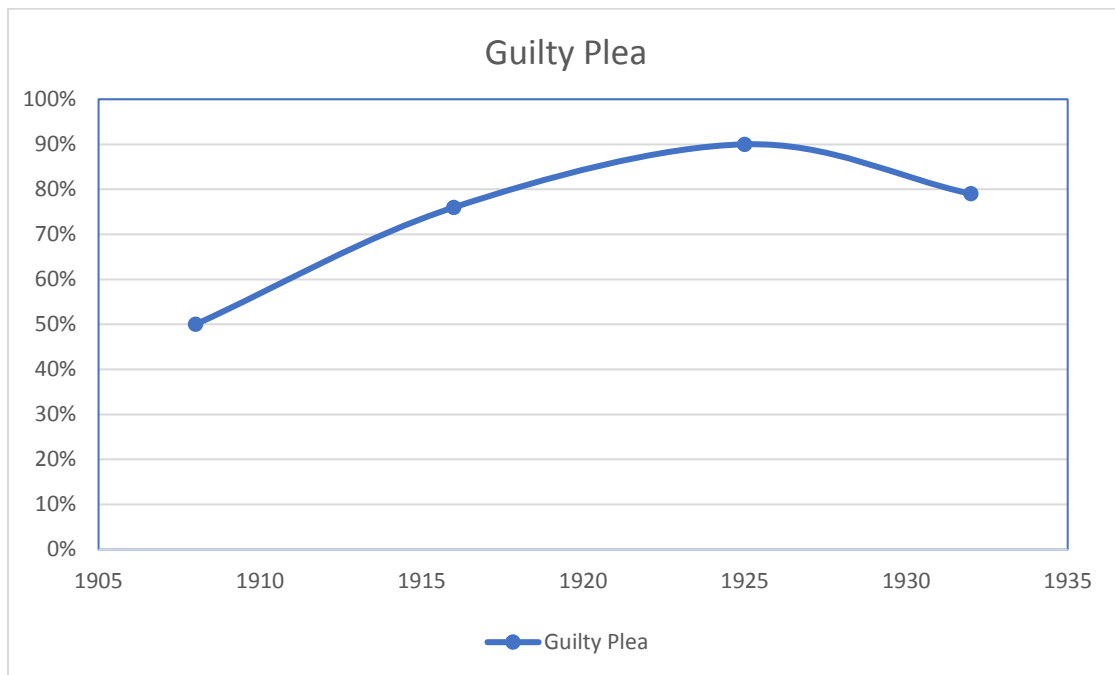
### Plea Bargaining During the Prohibition Era

As discussed previously the laws created by the 18<sup>th</sup> amendment and the Volstead act impacted the number of persons imprisoned. The sudden influx of new criminals who were arrested created a strain on the criminal justice system’s courts. A solution to the increased number of arrestees awaiting trial was to increase the number of guilty pleas versus trying every case in a criminal court (Padgett, 1990).

Before the start of the prohibition era, the guilty plea rate was at a moderate 50%, compared to the higher plea percentage later in the prohibition era. (Alschuler, 1979). In 1916, the rate rose to 76%, but in 1925, during the middle of the prohibition era, the guilty plea rate was roughly 90%. The guilty plea percentage in 1925 is alarming because it is very similar to the high plea rates of today. The court system had to process a more significant number of cases. The court system at the time could have encouraged and possibly influenced some defendants into pleading guilty instead of going to trial in order to reduce the overcrowding of the courts. Alschuler (p.27, 1979) goes on to say "...surveys of the 1920s indicated that increased plea bargaining might have led some defendants to plead guilty although they could not have been convicted at trial." The increased caseload at the time also led to more plea negotiations. In 1926, "78% of all pleas in felony convictions were reduced to a less serious charge" (Alschuler, 1979). In today's court system, guilty pleas are used in a majority of cases. In 2017, 97.2% of all convictions resulted from a guilty plea. Out of all of the offenders that plead guilty, 47.9% received a sentence that was lower than the applicable sentencing guideline range (Schmitt &

Syckes, 2017). A graph has been created using the percentages in the passage above that provide a visual interpretation of the information:

Figure 6



In 1934, following the end of prohibition, the American Law Institute (1934) conducted a study, which collected reports from the years 1908-1934. Utilizing this data, John F. Padgett (1990) created a table that grouped together the amount of liquor and non-liquor cases that ended by a guilty plea and the average sentence length of each type.

Figure 7

City/District	<u>Guilty Plea %</u>		<u>Average Trial length (Days)</u>		Average Filings per Judge
	All Cases	Liquor Cases	Non Liquor cases		
Northern California	93.6/3.635	96.6/3.691	87.9/3.609		843
Colorado	76.8/1.575	748/1.374	79.8/2.184		522
Connecticut	98.8/.600	98.7/.611	99.4/.500		156
Northern Illinois	91.1/1.749	76.9/.667	9195.1/3.055		1159
Kansas	86.5/1.638	81.4/2.611	86.9/1.514		220
Eastern Louisiana	88.6/1.408	90.7/1.797	86.7/1.136		1429
Massachusetts	95.7/2.277	96.5/2.268	93/2.293		428
Eastern Michigan	87.0/1.478	91.7/1.505	83.9/1.468		1071
Southern New York	90.94.510	96.6/3.905	82.74.646		1494
Western North Carolina	57.2/.520	56.4/.506	61/.596		384
Northern Ohio	94.6/1.748	96.6/1.477	92.9/1.851		506
Southern Ohio	92.2/1.599	96/1.566	83.51.616		436
Southern West Virginia	97.9/1.098	98/1.118	97.3/1.000		2408

The table above provides a breakdown of guilty pleas that are a direct result of liquor cases. Out of the 13 districts, 8 had a higher liquor plea rate than non-liquor pleas. Many of the plea rates are at an extremely high percentage that is similar to rates of today. 8 of the 13 districts had a plea rate of over 90%. The average guilty plea rate for all liquor cases out of the 13 districts/states is 88.6%, and the average trial length is 1.782 days. The average guilty plea rate for all non-liquor cases is 86.9% and the average trial length is 1.959. In total there is a small difference between liquor and non-liquor cases from this time era. Liquor cases have a marginally larger plea percentage while also having a shorter trial period. While the disparity is minimal, liquor cases ended in a higher plea percentage but received the shorter trial (Padgett, 1990).

Prohibition likely had a significant impact on both the volume of cases and the methods used for processing those cases, plea bargaining. Prohibition and its laws, led to an increase and impacted the volume of cases and to compensate for the increase in cases, the court system had to start primarily focusing on using guilty pleas to resolve its cases quickly. The 18<sup>th</sup> amendment did not directly have the effect that the government was looking for. Alcohol consumption did decrease, but by the end of the prohibition era, the consumption rate was nearing pre-prohibition years. The amount of alcohol-related offenses increased, alcohol-related offenses made up nearly half of all offenses, and the number of guilty pleas increased exponentially. Michael Lerner (2011, p.1) best sums up the prohibition era

“the growth of the illegal liquor trade under Prohibition made criminals of millions of Americans. As the decade progressed, courtrooms and jails overflowed, and the legal system failed to keep up. Many defendants in prohibition cases waited over a year to be brought to trial. As the backlog of cases increased, the judicial system turned to the "plea bargain" to clear hundreds of cases at a time, making it a common practice in American jurisprudence for the first time.”

Following the end of the prohibition era, due to previous liquor laws being redacted, liquor laws were no longer the primary reason for arrests. Despite a lessened docket, the usage of plea bargaining/ guilty pleas did not subside; instead, the practice started to flourish as the country moved from alcohol prohibition to a drug focused system and the necessity of handling a large volume of cases continued.

## How Narcotics Effected Crime and Plea Bargain Rates

Before prohibition and the 18<sup>th</sup> amendment, the Harrison Narcotics Act (1914) was passed. The Harrison Narcotics Act (1914) imposed a “special tax on all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes” (Public Acts of the Sixty-Third Congress of the United States, 1914). If someone elects to deal in opium or cocoa products without a paying the imposed tax, then that individual will be dealing with the products in an illegal manner The Act was vaguely worded, and no longer allowed doctors to prescribe opium or coca if it was believed that the doctor could be supporting the patients “addiction” instead of prescribing the products for an affliction or disease. Because of this, multiple doctor’s and their patients were targeted by police and imprisoned for previously legal acts (Lesser, 2014). The Harrison Narcotics Act created a new drug-using “criminal class” that resulted in a significant increase in the number of criminals the justice system now had to endure (King, 1953).

The Harrison Narcotics Act was passed five years before the 18<sup>th</sup> amendment and six years before the Prohibition Act was put into effect. The number of violations as a result of the new drug act can be seen in figure 3. In the “other new offenses” category, the narcotics drug act is included along with the White Slave Traffic Act and the National Motor Vehicle Theft Act. While three laws are being combined into one category, the results are still useful. Starting in 1914 until 1929, the three combined laws had more violations than that of the liquor law or prohibition. It was not until 1929-1934 that liquor violations outnumbered the other “new” offenses, and even then, it was only by a 6,000 violation increase (Cahalan & Parsons, 1986). The Harrison Narcotics Act was one of the first key laws, besides 18<sup>th</sup> amendment, that outlawed

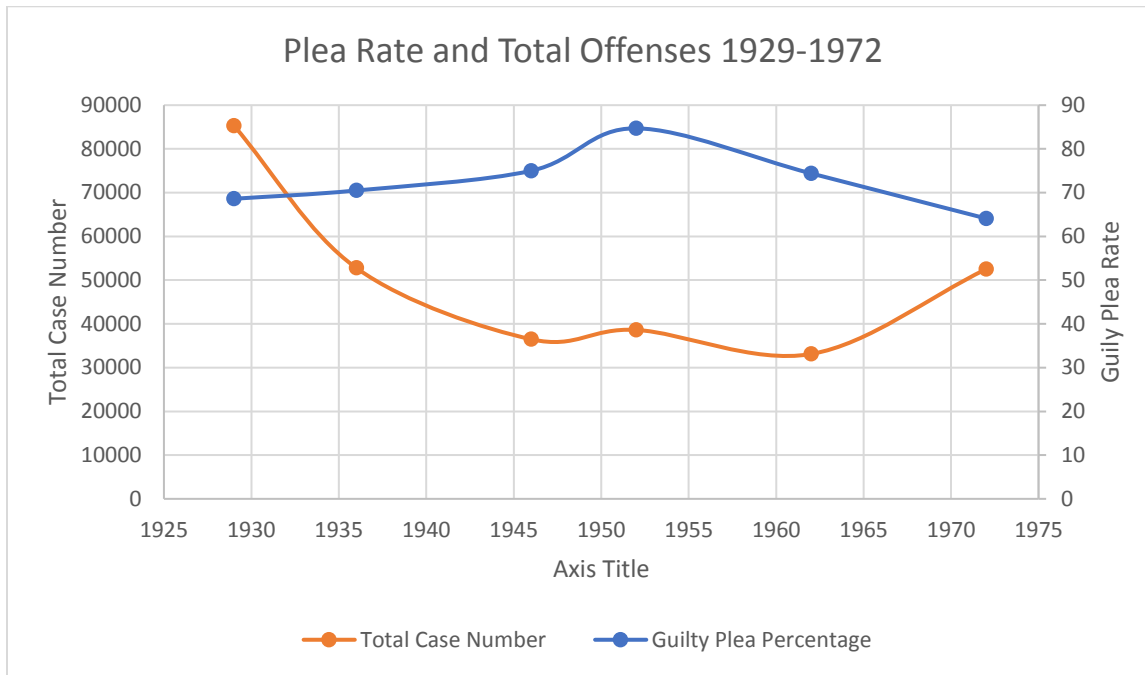


a widely used drug/substance, which in turn could have led to an increase in the offender population in the criminal justice system.

### Guilty Plea Rates Post Prohibition Era

Once the 18<sup>th</sup> amendment was ended by the 21<sup>st</sup> amendment, the primary cause for conviction, alcohol offenses, was gone. Alcohol violations still occurred the post-prohibition era, but they soon declined compared to the prohibition years. However, despite a major reduction in the number of cases and offenders crowding the justice system, the guilty plea rate did not decrease. Following the end of the prohibition era in 1934, the guilty plea rate steadily increased over time. As Michael Finkelstein's *A Statistical Analysis of Guilty Plea Practices in the Federal Courts* (1975) documents the guilty plea rate from 1908-1974 as documented by multiple government reports. Using the data from Finklestein's work, a chart has been created to illustrate the guilty plea rate (blue line) and the total amount of case numbers (orange line):

Figure 8



Using the data provided by Finkelstein, the guilty plea rate peaks in 1952 at 84.7%, but then starts to decline into the 1970s. The total amount of cases is at its highest in 1929, during the prohibition era, and declines continuously until 1962, where the number of cases starts to increase. The data shows a significant disparity between the number of cases and the guilty plea percentage. In the prohibition era, the large case number also resulted in a high guilty plea rate (68.6%). Once the prohibition era ended, the number of cases started to decrease, yet the guilty plea rate continued to climb. It was not until the mid to late 1960s, did the guilty plea rate start to resemble pre-prohibition rates. This information is highly useful in representing how despite the decrease in cases, the criminal justice system still primarily utilized guilty pleas in place of a trial for conviction.

## The War on Drugs and Its Effects

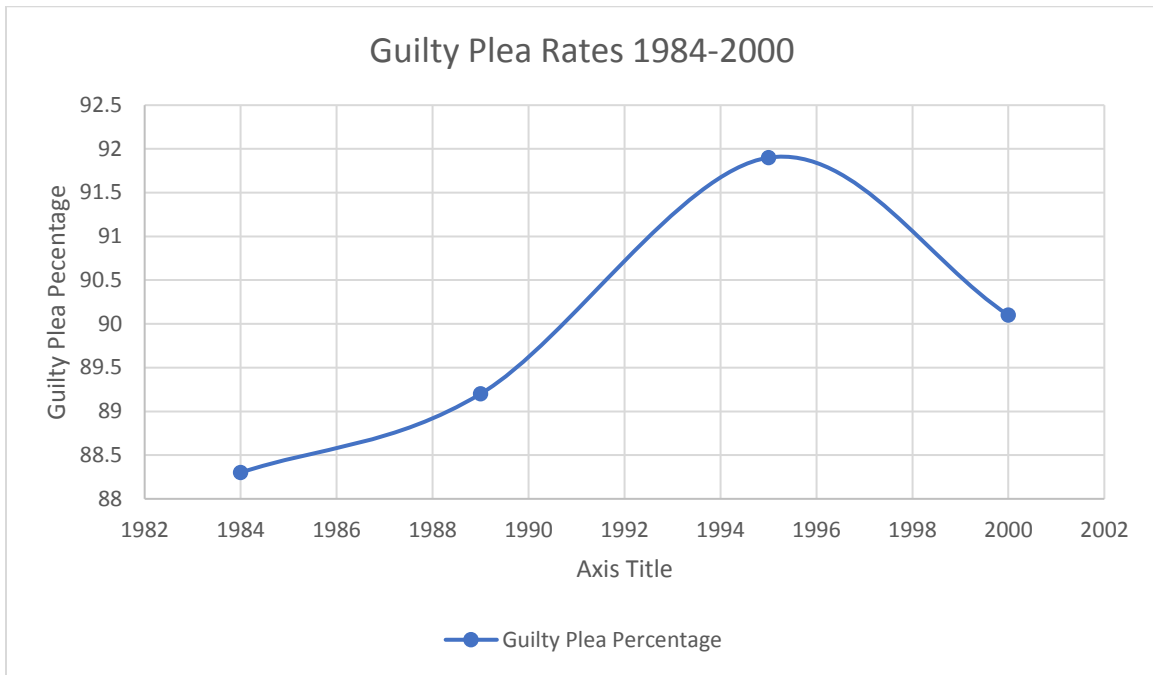
After the prohibition era, the United States saw multiple changes in drug policy and legislation. As mentioned previously, the Harrison Narcotics Act was put into place in 1914, and which focused on controlling cocaine and opium transportation and distribution. Following the end of the prohibition era, in 1937 the Marijuana Tax Act was put in place, which made possession of marijuana illegal. The Boggs Act (1951), set mandatory minimums on federal drug charges. The Narcotic Control Act (1956), further increased the policy of the Boggs Act and increased the mandatory minimum sentences to five years for a first offense and ten years for each subsequent drug offense (McCurdy, 2013). These policies and legislation set the stage and created the foundation for the start of the “war on drugs” campaign in the 1970s.

In 1971, President Richard Nixon declared a “war on drugs” and made drugs “public enemy number one” (Benson, 2015). The need for a “war” on the drug issue in America stemmed from an increase in recreational use in the 1960s (Benson, 2015). To better combat the drug issue in America, President Nixon created multiple drug-focused agencies such as the Drug Enforcement Agency (DEA) and the Special Action Office for Drug Abuse Prevention (SAODAP). Nixon’s drug war was the spark for what was to come in the 1980s with the Reagan administration. First Lady Nancy Reagan created a new “just say no” campaign that doubled down on the efforts of the drug-focused criminal justice system (Benson, 2015). With the increased focus on curtailing the drug problem in America, the criminal justice system would soon see a dramatic increase in the amount of guilty pleas used in the court system, that stem from the drug war.

Since President Nixon started the war on drugs campaign, the “drug war era” was also started, and evolved under the Reagan administration in the 1980s. Since then, the criminal justice system has started to change and an increased effort to stop the drug issue in America resulted in significant and highly increased arrest rates. In 1980, 50,000 people were arrested for drug-related offenses, however, in 1997, that number skyrockets to over 400,000 arrests (A Brief History of the Drug War, 2019). A U.S. Department of Justice report (Snyder, 2011), detailing how crime has changed since 1980, details just how severe or more focused the drug issue in America has become. In 1980, a little over 200 per 100,000 people were arrested for simple drug possession charges. In the year 2000, this number doubled to over 400 per 100,000. From 1980-1989, the drug arrest rate increased by 89%. On top of this, from 1980-1989, the arrest rate for drug sale/manufacturing increased by 210% (Snyder, 2011).

The war on drugs saw the arrest population skyrocket for drug-related offenses. Using data reports provided by the Federal Sentencing Commission, that detailed crime statistics, multiple charts have been created using reports from 1984,1989,1995, and 2000.

Figure 9



The plea rate from the start of the “war on drugs” to the late 1990s, the plea bargain rate has grown exponentially. Previously, the plea rate in 1972 sat at 64.1%. Following the increased efforts of the Reagan administration, the plea rate in 1984 rose to 88.3%. The end of Reagan's presidential term in 1989 saw the plea rate increase to 89.2% and finally in 2000, the beginning of a new century, the plea rate rose to 90.8%.

In the prohibition era, the court system had a large arrest rate, but from a minor offense. The minor alcohol offense would result in many people pleading guilty in order to speed up the process of going through the court system. A guilty plea was quick, efficient, still produced the same result as a trial conviction, and saved the court system resources. The guilty plea rate towards the end of the prohibition era reached close to 90%. Following the 21<sup>st</sup> amendment, the

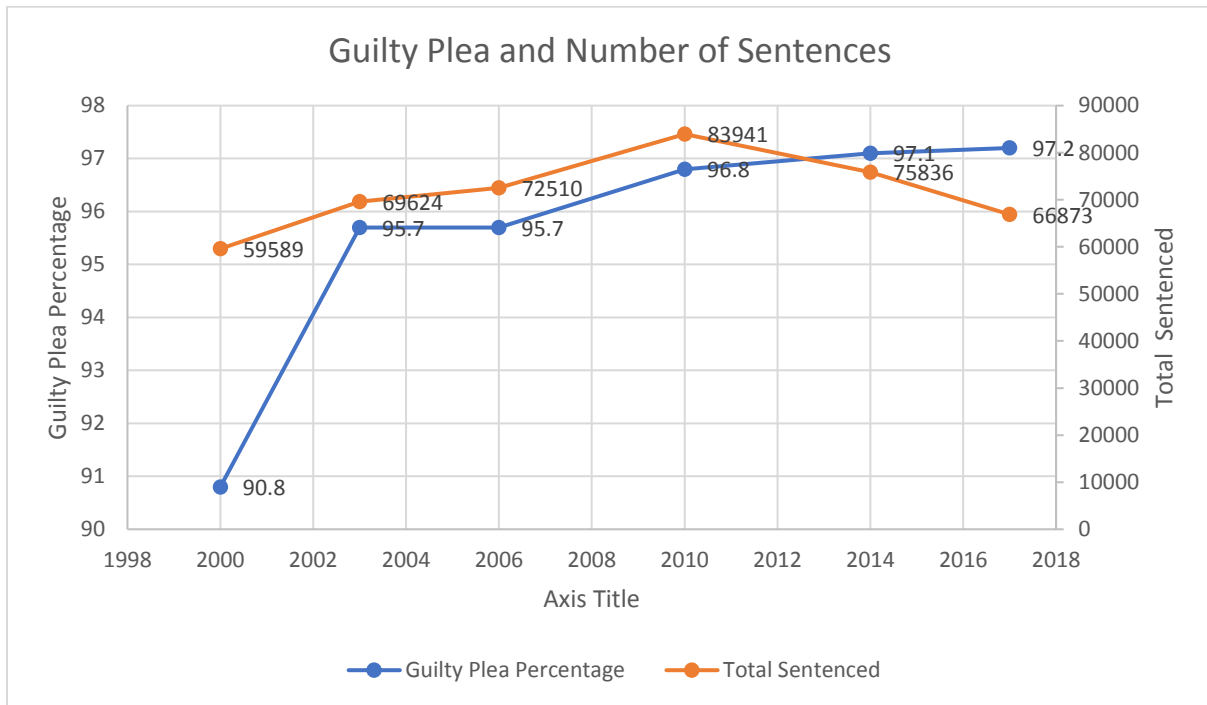
guilty plea rate dipped slightly, but the number of arrests being made dramatically reduced due to the lack of a significant primary targeted, illegal substance. The nation did not have a primary illegal substance to focus on again until the “war on drugs.” With the country redoubling its efforts on the drug issue in America, the court system once again had a largely used illegal substance(s), that typically produced a low sentencing punishment. The easiest way to resolve the cases, just like in the prohibition era, was to get the offenders to plead guilty instead of going to trial. The result of which produced an extremely high guilty plea rate that has yet to descend, due to the criminal justice system still focusing its efforts on curtailing the drug problem in America 30 years after the “war on drugs,” and has continued into the 21<sup>st</sup> century.

## **Guilty Plea in the 21<sup>st</sup> Century**

Starting in the prohibition era, guilty pleas has been the primary way to convict someone. The heavy usage of guilty pleas has continued into current times. By the end of the 1990s and the start of the 2000s, the guilty plea rate neared 90% (U.S. Sentencing Commission Staff, 2000). Since 2000, the guilty plea rate has increased despite fluctuation in the number of offenders sentenced by year. With the information provided by the Federal Sentencing Commission fiscal

year crime reports, I have composed a graph that illustrates the guilty plea percentage and the total amount of offenders sentenced in each respective year.

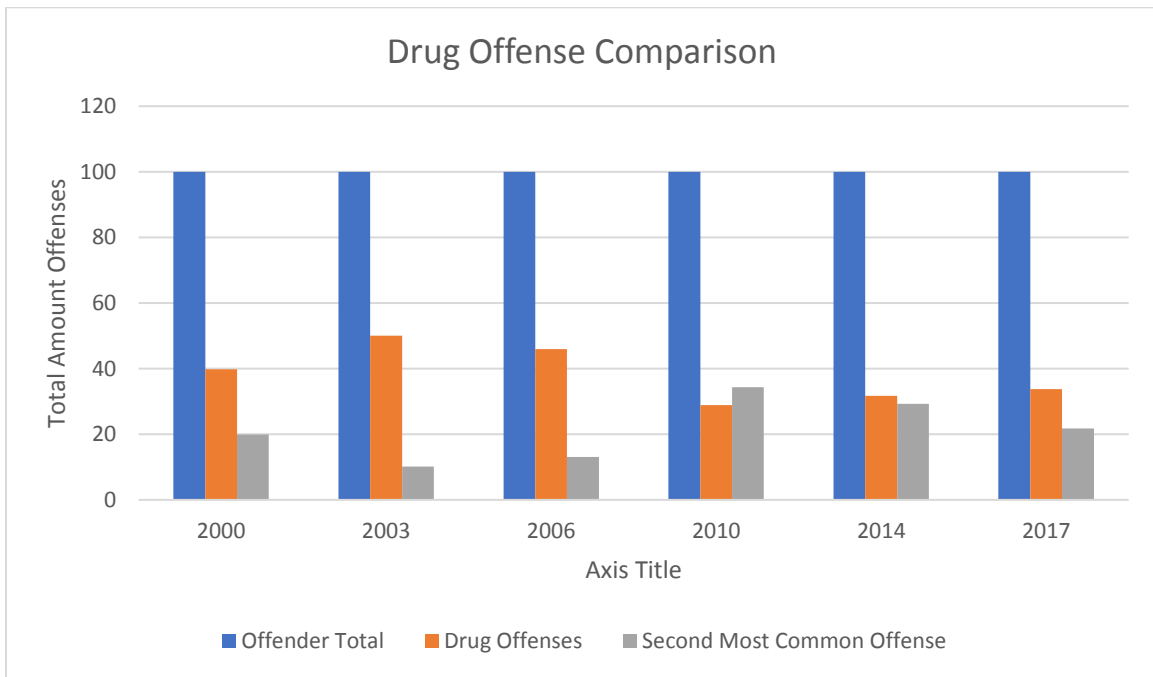
Figure 10



Since 2000, the guilty plea percentage has risen to 97.2% in 2017. The plea rate has grown over time, but unlike previous years, the total amount of offenders sentenced has fluctuated and in more recent years, has started to decrease. The plea rate is alarming because it has grown to the point of making a trial almost non-existent in the modern criminal justice system. In fact, a trial of one's peers only occurs in 2.8% of all criminal cases in the U.S.

The usage of a guilty plea has been on the rise ever since the 1980s, primarily due to the increased focus of drug control. Since 2000, drug-related offenses have made up a vast majority of convictions of convictions:

Figure 11



Using the reports of the U.S. Sentencing Commission drug-related sentences have made up a majority of convictions in the years documented (2000, 2003, 2006, 2010, 2014, and 2017). The only time when this was not the case was in 2010 when immigration was the leading cause for sentencing. In the chart above, the 'Next Highest Offense' category documents the second most documented reason (not specific) for sentencing that individual sentencing year. Of all the documented years, only 2010 had an offense that was not drug-related, that was the primary



reason for sentences that year. Drug-related offenses are and have been the largest single category of convictions since 2000. Convicted drug-related offenses are primarily the result of the offender choosing to plead guilty instead of going to trial. In 2003, out of the 24,857 drug trafficking convictions, 95.4% was as a result of a guilty plea (Staff, U.S. Sentencing Commission, 2003). In the most recently recorded year (2017), there were 19,043 drug trafficking convictions, with 97.4% because of a guilty plea. The usage of a guilty plea is highly used throughout the modern criminal justice system and is the primary way to convict an offender for a drug-related offense.

### The Workload on Defense Attorneys

While guilty pleas are the primary reason for convictions in the modern criminal justice era, other factors can impact if an offender chooses to plead guilty, such as the defense attorney. When a defendant is charged with a serious offense, which could be a felony or a misdemeanor that could result in imprisonment, the defendant is allowed a defense attorney or public defender (*Gideon v. Wainwright* 372 U.S. 335, 1963). In some cases, the type of defense attorney a defendant has could affect if a defendant chooses to plead guilty or go to trial. In today's criminal justice system, public defenders represent a large number of offenders. A public defender is a defense attorney that is provided to indigent offenders who cannot afford to hire a private defense attorney.

In 2007, the U.S. Department of Justice released a report that documented the public defenders in today's criminal justice system. The study found some concerning results regarding the public defenders in the U.S.:

- Misdemeanor and ordinance violations accounted for the largest share (43%) of cases received by public defender programs.
- Fifteen state programs exceeded the maximum recommended number of felony and misdemeanor cases per attorney.
- Among the 17 states that had a state public defender program in 1999, criminal caseloads increased by 20% overall from 1999 to 2007.
- The study found that in 2007, there were 15,026 public defenders and 5,572,450 cases received. Using these numbers, that would make each public defender represent 370 people in a given year.

The information received from the report goes to show how busy and overworked public defenders are in today's criminal justice system. An article written by the New York Times in 2017, a defense attorney in Louisiana had 194 felony cases to try and defend. It was also reported that a mid to high-level felony case requires 40-70 hours of work from the defense attorney to properly review and defend the case (Oppel & Patel, 2019). In order for the defense attorney to properly perform his job, he would have to work over 10,000 hours, yet there are only 8,760 hours in 1-full year. Another way of looking at this problem is if the attorney cited above worked 40 hours per week for 50 weeks of the year he would only be able to spend an average of 10 hours per felony case. Public defenders are especially overworked in today's system because a vast majority of defendants are indigent and require a public defender for

counsel. In order to best combat the high caseload for defense attorney's the easiest solution is to get their clients to plead guilty.

If an attorney can get their client to plead guilty, then they can speed up the process of defending a client, the case is resolved quicker, and it reduces the load placed on the defense attorney. A chart was created that details the relationship between the type of defense attorney (defconsl) and the conviction type (newcntvn) from the 2003 U.S. Sentencing Commission data reports.

Using SPSS Statistics Viewer, the two variables DEFCONSL and NEWCNVTN are analyzed to determine if there is a relationship between the two variables. Both variables are nominal, so a Chi-Square Test was used to measure a relationship. A cross-tabulation option was used in addition to the Chi-Square Test so that the percentages of the data can be observed. By using the crosstabulation method, a table was created detailing the numeric break-down of how many cases each type of defense attorney handled and the number of cases that ended either in a trial or a plea deal.

Figure 12

Chi-Square Tests			
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	97.253 <sup>a</sup>	5	.000
Likelihood Ratio	95.896	5	.000
Linear-by-Linear Association	.808	1	.369
N of Valid Cases	36884		

a. 1 cells (8.3%) have expected count less than 5. The minimum expected count is 2.48.

The most important part of any test is testing the significance. The significance is used to determine if the test is valid or not. In the chi-square test, the significance can be found under the “Asymptotic Significance” tab, the closer to .00, the more significant the results. In this test, the significance is .000 which means that the test is significant.

Figure 13

**defconsl \* newcnvtn Crosstabulation**

			Newcnvtn		Total
			Plea	Trial	
defconsl	Privately retained counsel	Count	6462	325	6787
		% within defconsl	95.2%	4.8%	100.0%
		% within newcnvtn	18.1%	26.0%	18.4%
	Court-appointed counsel	Count	14848	554	15402
		% within defconsl	96.4%	3.6%	100.0%
		% within newcnvtn	41.7%	44.2%	41.8%
	Federal public defender	Count	13701	343	14044
		% within defconsl	97.6%	2.4%	100.0%
		% within newcnvtn	38.5%	27.4%	38.1%
	Defendant represented self	Count	340	24	364
		% within defconsl	93.4%	6.6%	100.0%
		% within newcnvtn	1.0%	1.9%	1.0%
	Waived rights to counsel	Count	212	2	214
		% within defconsl	99.1%	0.9%	100.0%
		% within newcnvtn	0.6%	0.2%	0.6%
	Other	Count	69	4	73
		% within defconsl	94.5%	5.5%	100.0%
		% within newcnvtn	0.2%	0.3%	0.2%
Total		Count	35632	1252	36884
		% within defconsl	96.6%	3.4%	100.0%

% within newcnvtn	100.0%	100.0%	100.0%
-------------------	--------	--------	--------

The first set of data from the crosstabulation table involves privately retained counsel. Privately retained counsel handled a total of 6,787 cases. Of the total cases, 95.2% (6,462) ended in a plea deal, and 4.8% (325) ended in a trial. Federal public defenders handled 14,044 total cases. Of the total amount of caseloads, 97.6% (13,701) of cases ended in a plea-bargain, and 2.4% (343) of cases ended in a trial. Comparing the data as a result of the cross-tabulation test, federal public defenders handled 7,257 more than privately retained counsel. Privately retained counsel had 2.4% more of their cases go to trial compared to federal public defenders. What this shows is that public defenders and a private defense attorney each have a guilty plea rate of 95% or higher. The public defender does have a higher plea rate, but only by roughly 2%. Despite the differential in the amount of caseload by the different type of defense attorney, they all use guilty pleas as the primary way to settle their cases. There is minimal difference in the type of defense attorney and if their client pleads guilty to a crime versus going to trial. A public defender has the highest percentage of clients pleading guilty, while the privately retained council has the lowest percentage of clients pleading guilty. While there is a difference between each type of defense attorney, the difference is minimal with public defenders having 97.6% of clients pleading guilty, and privately retained council were having 95.2% of their clients pleading guilty.

## Sentencing Length and Conviction Type

A possible factor in getting defendants to plead guilty is the opportunity to receive a reduced sentence. In many cases, in order to get the defendant to plead guilty, a prosecutor will offer a deal of sorts or reduce the sentence/charges against a defendant if they plead guilty. This idea runs along the same thought process as before in that it reduces the number of offenders the court system has to process, and it reduces how long someone is incarcerated since the defendant decided to plead guilty. SPSS data software was used to measure the raw criminal statistics publicly provided by the Federal Sentencing Commission. The test being run in this instance is to measure the relationship between sentence length (Sensplt) and how the offender was convicted (Disposit). The importance of running this test is to determine if there is a significant difference in the offender's sentence length based off how the offender was convicted e.g., guilty plea or trial conviction.

*Figure 14*

### ANOVA

sensplt					
	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	32161197.544	5	6432239.509	1265.211	.000
Within Groups	315930336.142	62143	5083.925		
Total	348091533.686	62148			

The most important aspect of the table is to determine if the test and two variables compared are statically significant. This is important because if the test results are significant, the more valid the results will be. Examining the second table, the variable titled "Sig." determines the

significance. The closer to .00 the more significant the data is. Since the significance is .000, the test is considered significant.

### 2003 Data

Figure 15

	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
0	2	2.5000	.70711	.50000	-3.8531	8.8531	2.00	3.00
1	59217	48.4446	59.22172	.24336	47.9676	48.9216	.03	2160.00
2	16	18.6975	19.57284	4.89321	8.2679	29.1271	1.00	64.00
3	2785	157.1513	195.38623	3.70238	149.8916	164.4110	.03	4860.00
4	93	113.9625	127.23236	13.19338	87.7593	140.1657	.66	600.00
5	36	153.8342	115.98257	19.33043	114.5913	193.0770	12.03	471.00
Total	62149	53.4659	74.83989	.30020	52.8775	54.0543	.03	4860.00

The descriptive statistics ran in the second table breaks down the individual numbers by conviction type and the subsequent sentence length. There are five variables that breakdown how the offender was convicted. The Federal Sentencing Commission has broken down the variables as follows:

- 0 = No Imprisonment
- 1 = Guilty Plea
- 2 = Nolo Contendere
- 3 = Jury Trial
- 4 = Trial by Judge or Bench Trial
- 5 = Guilty Plea and Trial (>1 Count)

Using the information above, categories 1 and 3 are the most pertinent to the subject matter. The average sentence length for someone who pleads guilty is 48 months (4 years). The average sentence length for being convicted by jury trial is 157 months (13.08 years). The difference between the two is that on average, someone who is convicted by a jury trial receives a 9.08 year longer sentence than someone who is convicted by pleading guilty. The minimum sentence for someone who pleads guilty is .03 months, which is less than one full day (21.9 hours). The maximum sentence for someone who pleads guilty is 2160 months (180 years). The minimum sentence for someone who is convicted by a jury trial is .03 months. The maximum sentence for someone who is convicted by a jury trial is 4860 months (405 years). When comparing the two variables, both guilty plea and jury trial have the same minimum sentence of .03 months. In contrast, however, there is a 224.1 year increased maximum sentence applied to a case where someone was convicted by a jury trial. Guilty pleas and jury trials make up 62,002 (99.76%) methods for conviction. The other methods combined make up the remaining 147 (.24%) convictions. Multiple graphics have been made to illustrate the descriptive results.



Figure 16

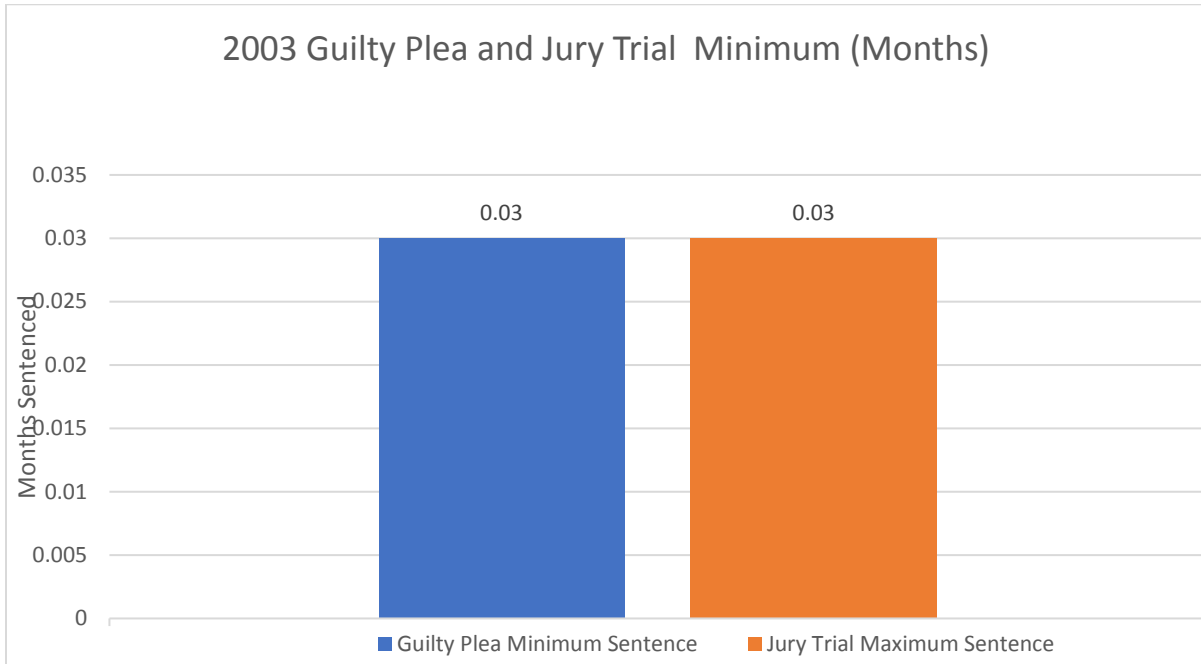


Figure 16

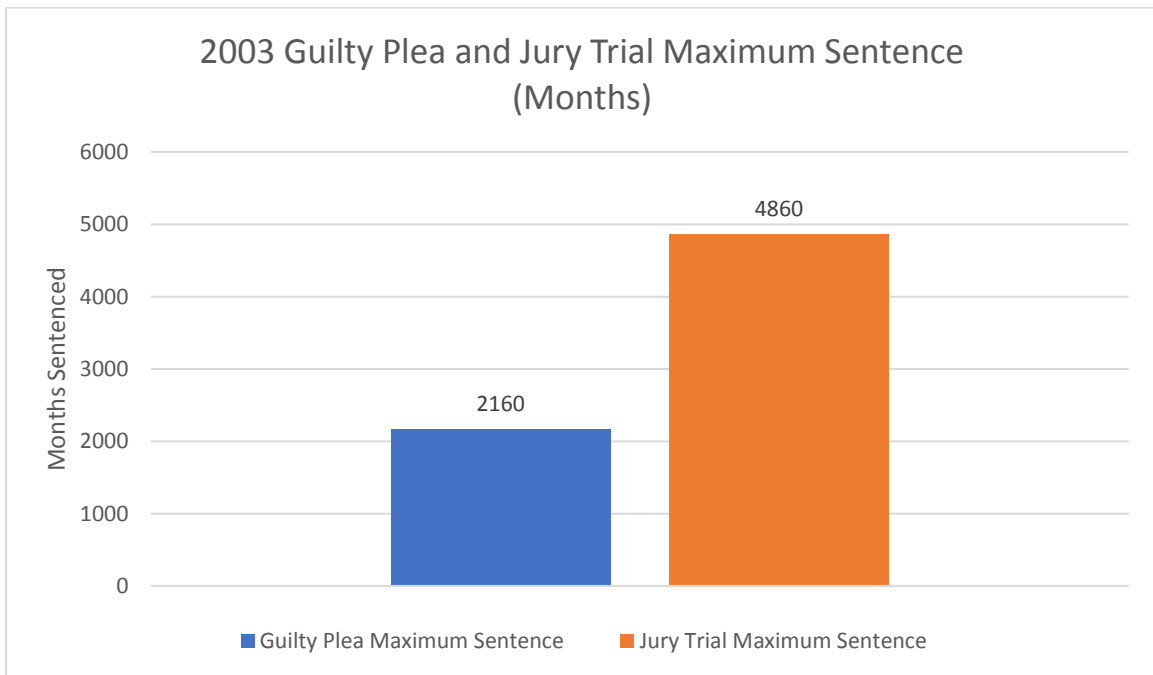


Figure 17

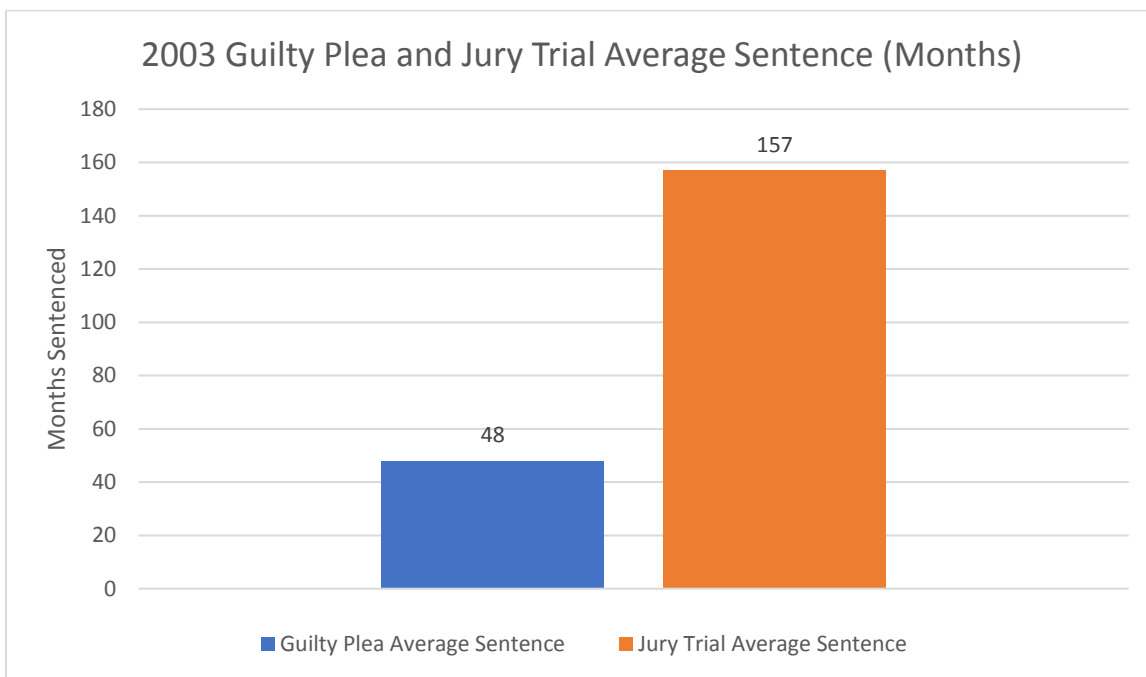
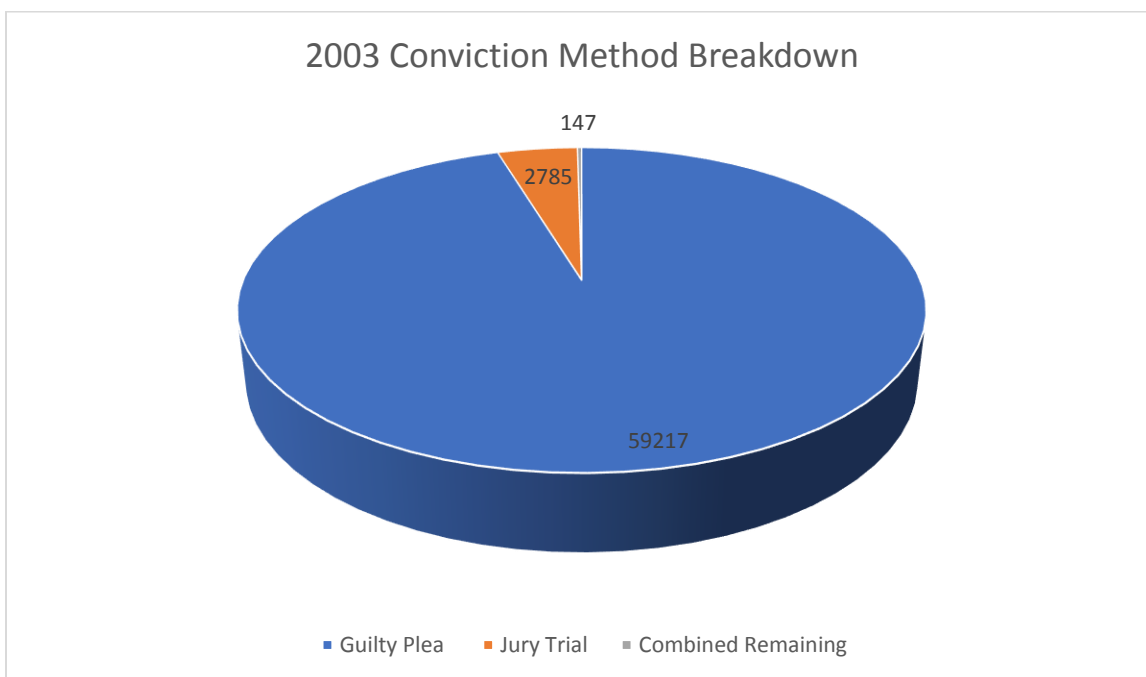


Figure 18



## 2010 Data

Running the same test on the 2010 data, the two results produced is the significance between the two variables, and the descriptive, detailed relationship of sentence length (Sensplt) and how the offender was convicted (Disposit).

Figure 19

### ANOVA

SENSPLT					
	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	25370149.754	4	6342537.438	1241.352	.000
Within Groups	304779666.355	59651	5109.381		
Total	330149816.109	59655			

Once again, the most important result of running the test is to see if the result is significant. In the variable titled “Sig.” the significance of the test is shown. The closer to .00 the more statistically significant or valid the test results are. The significance of the second test on the 2010 data is statically significant with the significance being .000 as shown in the chart.

Figure 20

### Descriptives

SENSPLT								
	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
1	57809	46.54	62.502	.260	46.03	47.05	0	2400

2	33	53.22	106.925	18.613	15.31	91.13	0	600
3	1740	166.47	187.399	4.493	157.66	175.28	0	2280
4	54	154.64	567.143	77.178	-.16	309.44	4	4200
5	20	205.40	157.008	35.108	131.92	278.88	10	470
Total	59656	50.19	74.393	.305	49.59	50.79	0	4200

Figure 13

In the descriptive statistics above, there was a total of 59,656 cases reported to the Federal Sentencing Commission. Out of the total amount, guilty pleas (category 1) represented 57,809 of the cases reported. Jury trials (category 3) represented 1,740 cases out of the total amount. When the two variables are combined, they represent 59,549 cases of the total amount. Between guilty plea convictions and jury trial convictions, only 107 cases were convicted by a different method. Guilty Pleas and Jury Trials make up 98.8% of all methods for conviction, while the other methods make up the remaining .18% methods for conviction. Multiple illustrations have been created to visually represent the data created by the test. The minimum sentence of both guilty pleas and jury trials has been excluded due to the minimum sentence being 0 months.

Figure 21

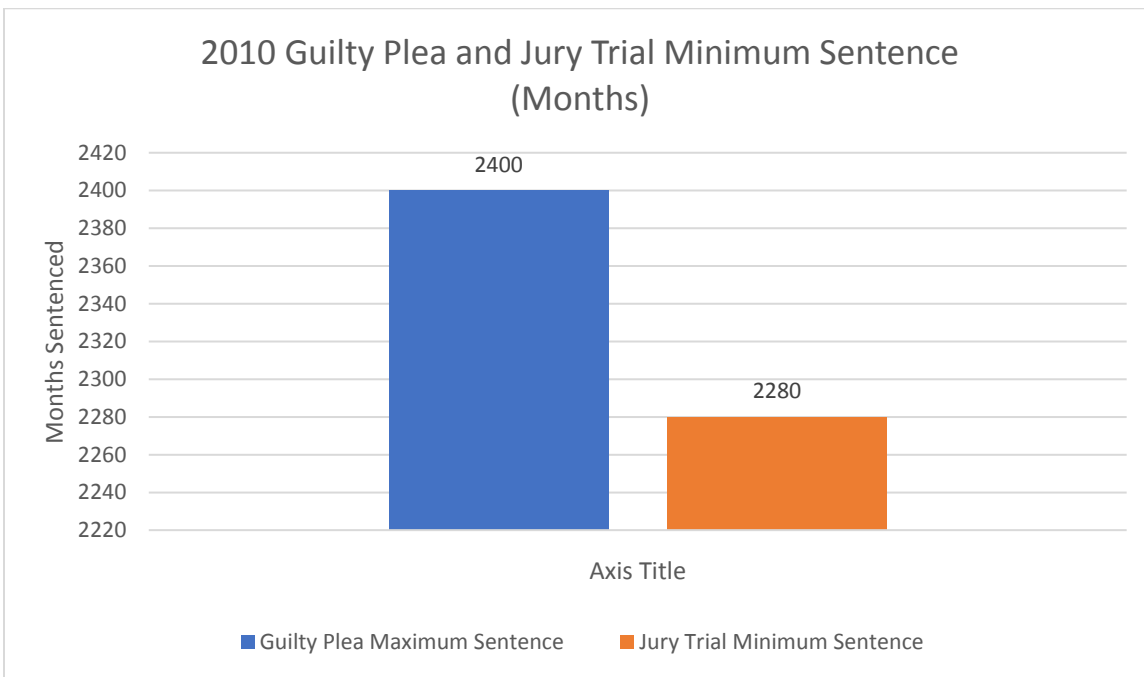


Figure 22

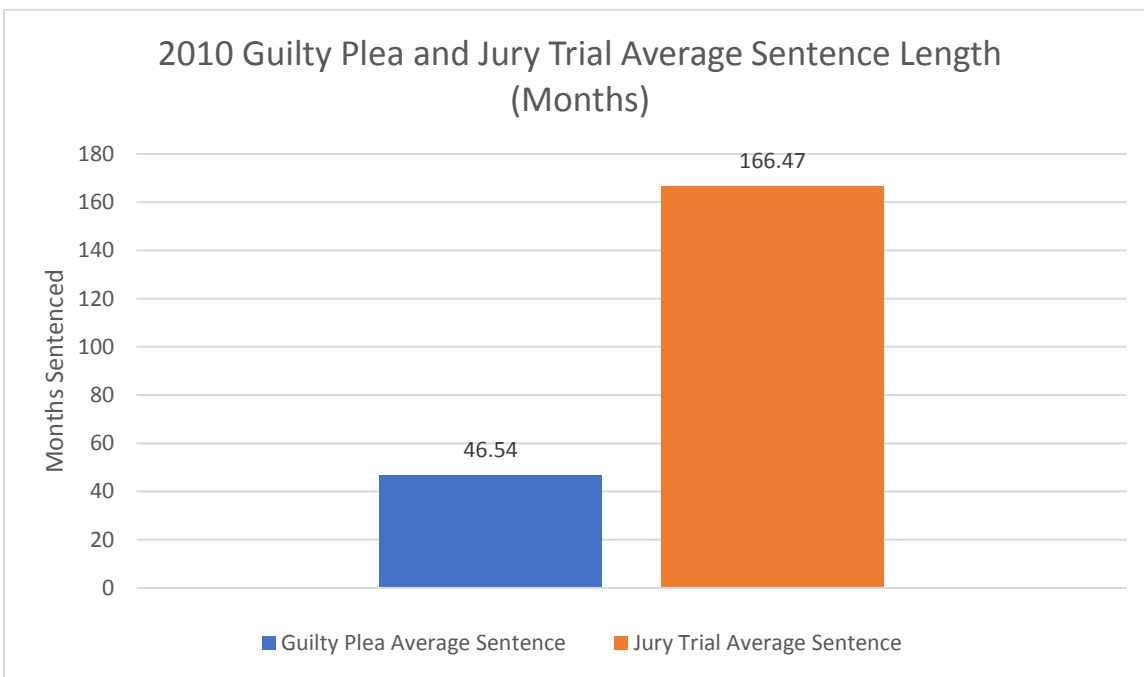
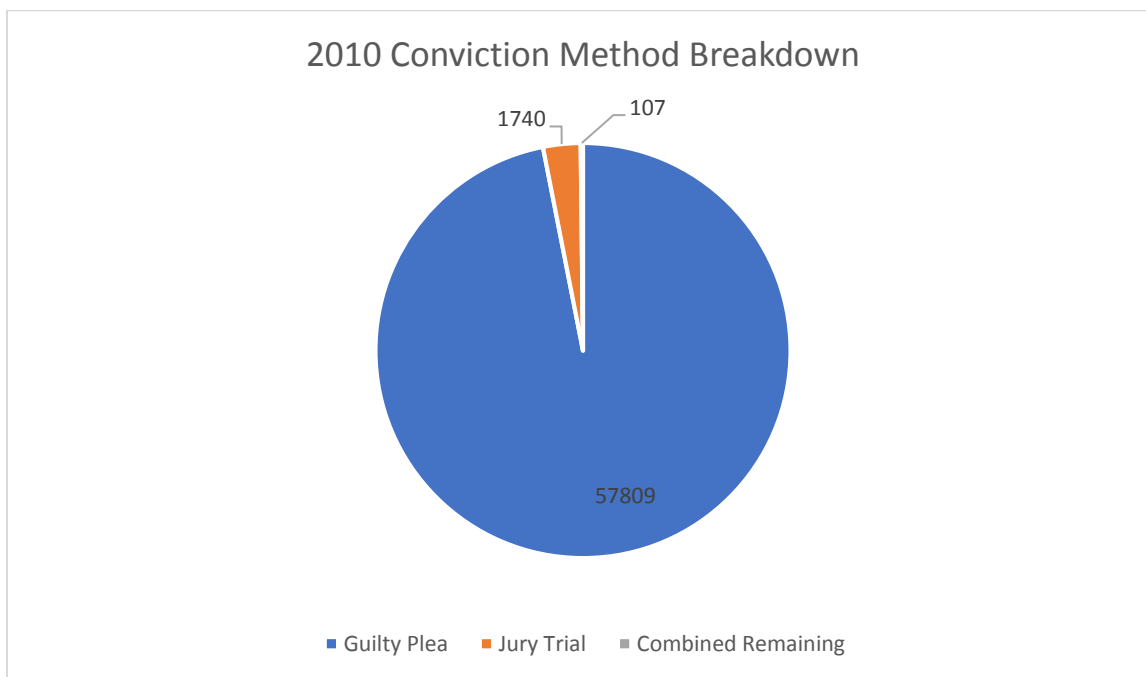


Figure 23



In the 2010 data set, the average sentence length of someone who pleads guilty was 46.54 months (3.87 years). The average sentence length for someone who was convicted by a jury trial is 166.47 months (13.87 years). The difference is that someone who is convicted by jury trial receives on average a ten year longer sentence than someone who pleads guilty. The minimum sentence given to someone who pleads guilty was 0 months. The maximum sentence for someone who pleads guilty is 2400 months (200 years). The minimum sentence for someone who is convicted by jury trial is 0 months. The maximum sentence for someone who is convicted by jury trial is 2280 months (190 years). When comparing the two variables, both had a minimum sentence of 0 months. However, the maximum sentence issued to someone who pleads guilty is ten years longer than jury trial maximum sentence.

In 2003, the average sentence length for someone who pleads guilty was 48.44 months. The average length of someone who pleads guilty in 2010 was 46.54 months. The difference is that in 2003, the criminal convicted by plea bargaining received a 1.9 month longer sentence than someone in 2010. In 2003, a person convicted by a jury trial received on average a 157.15-month sentence. In 2010, someone convicted by a jury trial received on average a 166.47-month sentence. The difference is that someone convicted by a jury trial in 2010 received a 9.32 month longer sentence than someone in 2003.

## **IV. Positives and Negatives of Plea Bargaining**

### **The Role of Guilty Pleas in Today's Criminal Justice System**

In the modern criminal justice system, a guilty plea is the primary way for someone to be convicted. In 2017 alone, 97.2% of all convictions were a result of a guilty plea (Schmitt & Syckes, 2017). Most people that are arrested for a crime will never go through an actual criminal trial. In 2017, there were 20,421 immigration convictions and 19,043 drug trafficking convictions. These two offenses were the most convicted offenses in 2017. Out of the total amount of immigration offenses, 20,310 (99.5%) were a result of a guilty plea. Only 111 (0.5%) of immigration cases actually were convicted by going to trial. In the second highest convicted offense, drug trafficking, 18,552 (97.4%) was because of a guilty plea. Only 491 (2.6%) on drug trafficking convictions was a result of going to trial (U.S. Sentencing Commission Staff, 2017). The usage of a trial in today's criminal justice system is minimum, and even the most high profile cases, such as murder only went to trial 22.2% in 2017.



Figure 24

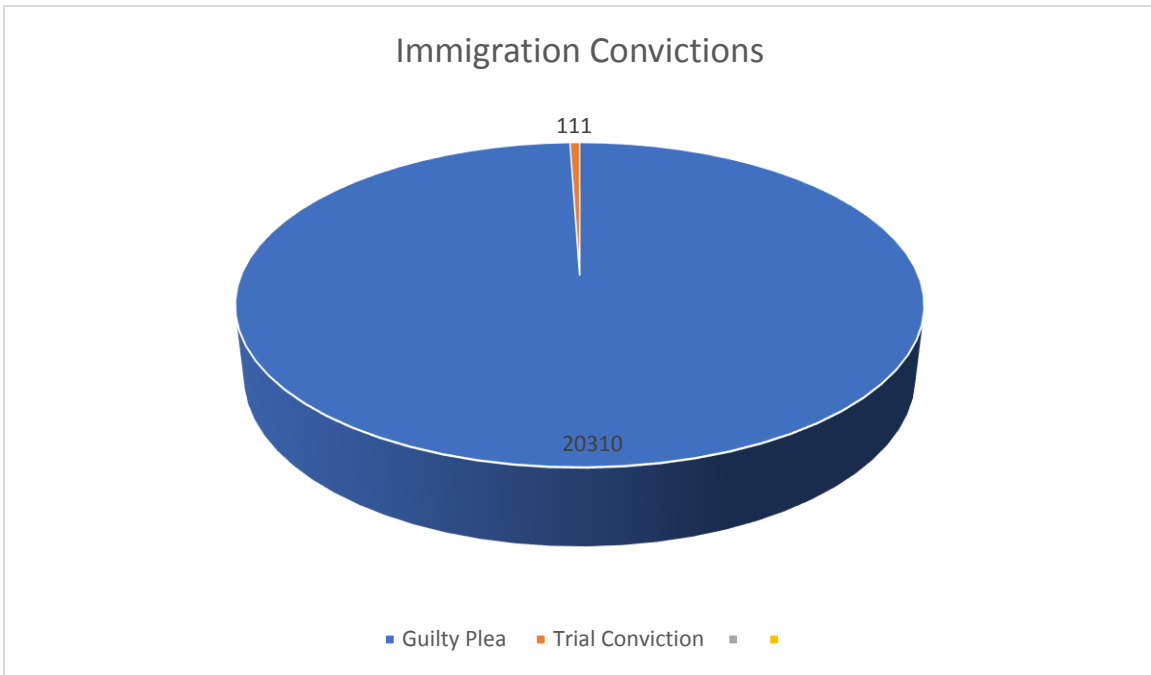
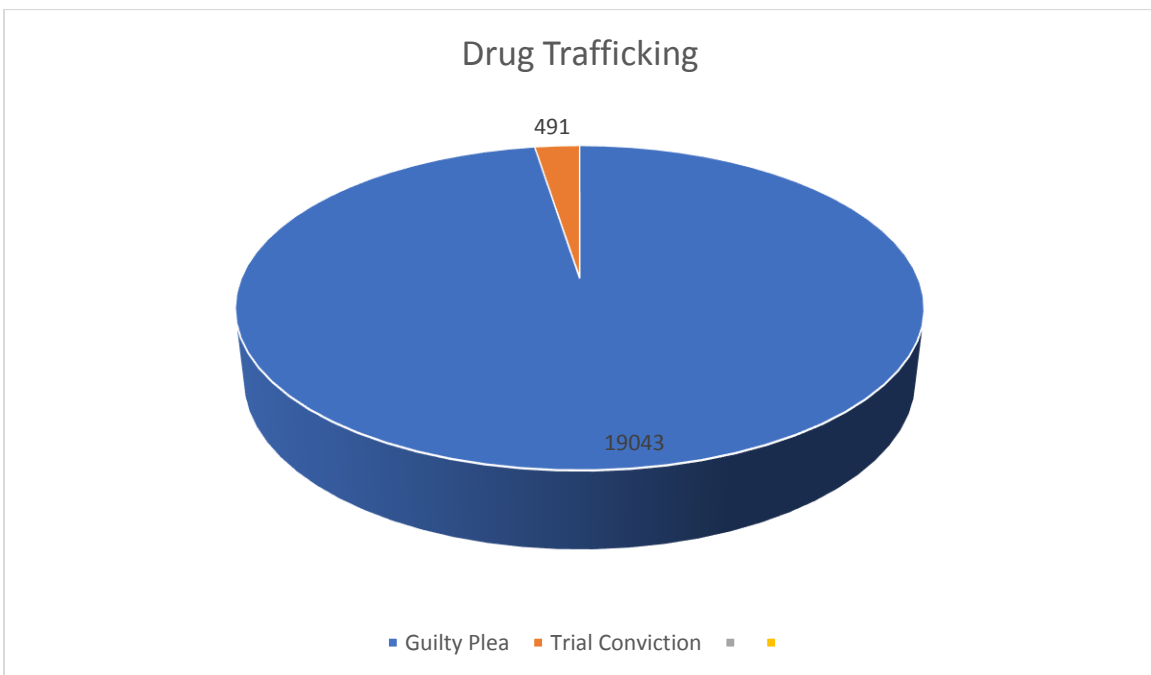


Figure 25



The guilty plea has been a staple in the criminal justice system and has significantly impacted how the court system operates. The guilty plea is a key factor in how criminals are convicted for their crimes, but despite a guilty plea guaranteeing a conviction, it has received some negative criticism. Douglas Smith (1987) explains multiple viewpoints regarding guilty plea in his journal *The Plea Bargaining Controversy*. A negative outlook surrounding the guilty plea is the worry that defendants could be coerced by legal officials to plead guilty unless they wish to receive a harsher punishment if they choose to go to trial. While some point out that the guilty plea can negatively influence the defendant's decision, the guilty plea can also assist the defendant. In the scenario where a defendant is factually guilty, and there is a very significant chance that the defendant would be convicted if they go to trial, pleading guilty can assist the defendant. The issue with a guilty plea is that those that go to trial can receive a harsher punishment, but if the defendant pleads guilty, they will instead receive a lesser punishment, which benefits the defendant (Smith, 1987). There are multiple negatives and positives surrounding the guilty plea, with each making an argument as to what degree the guilty plea impacts the criminal justice system.

### The Positives of a Guilty Plea

The guilty plea plays a prominent role in how people today, are convicted in the criminal justice system. As mentioned before, the guilty plea can for some, be positive and help those who would be convicted at trial. The guilty plea offers multiple advantages to the three parties involved in any case: the criminal justice system, the offender, and the victim.

## Positives of a Guilty Plea: The Criminal Justice System

The criminal justice system in 2017, had to sentence 66,873 cases. There are too many cases in the criminal justice system in order for all to go and be decided upon by trial. In New York City, residents in the Bronx wait an average of 827 days for their case to be heard by a jury trial (Vega, 2016). The criminal justice system does not have the resources to hear every single case by a jury trial. The time to wait for a jury trial would continue to grow, and make defendants wait an even more extended period in order for their case to be concluded. Not only would the courts be severely overcrowded, but it would also cost the taxpayer's more money if every case were decided by trial. A study done by RAND ( Priscillia Hunt, James M. Anderson, Jessica Saunders, 2016), calculated how much it costs to settle different types of crimes by going to trial, the study found that:

the national average costs to taxpayers for judicial/legal services per reported crime are likely around the following (in 2010 dollars): \$22,000–\$44,000 (homicide), \$2000–\$5000 (rape and sexual assault), \$600–\$1300 (robbery), \$800–\$2100 (aggravated assault), \$200–\$600 (burglary), \$300–\$600 (larceny/theft), and \$200–\$400 (motor vehicle theft). At a state-level, the costs of crime are 50 % to 70 % more or less than these national averages depending on the crime type and state (p.231).

Using the statistics provided through the study, in 2017 alone, there were 72 federal murder convictions. If all 72 homicide cases were to go to trial, it would cost \$3,168,000. The government preserves resources when defendants choose to plead guilty instead of going to trial.

Not only does the criminal justice system preserve resources when a defendant pleads guilty, but a defense attorney also benefits. A defense attorney can represent hundreds of clients at any given time. A defense attorney can, however, reduce their caseload if a client chooses to

plead guilty. A defense attorney's job is to represent their clients in court, but if the defense attorney thinks that their client would be convicted if they go to trial, then they can suggest to their client that the option of pleading guilty would give their client the best outcome, while also reducing the defense attorney's caseload.

When a defendant is awaiting trial, they are often in the local jail unless they can post bail. If a defendant is waiting in the local jail until trial, then it costs the local government over the jail resources. In 2014, in Tennessee, the average per day cost to house one inmate was approximately \$53.92 (Claflin, 2016). As of February 2019, there were 30,962 people being housed in local jails (Tennessee Department of Correction Decision Support: Research & Planning, 2019), and as of February 2019, there were 21,891 people being housed in state prisons (Tennessee Department of Correction Decision Support: Research & Planning, 2019). Combining the jail and prison population, with the average per-day housing price, it cost \$2,849,833.76 per day to house inmates in Tennessee jails and prisons. If a defendant chooses to plead guilty, and their punishment is given sooner and reduced, then they do not have to be housed for a longer period, and it preserves the state or government's resources.

### Positives of a Guilty Plea: The Offender

The defendant ultimately must be the one to decide if they want to plead guilty or go to trial. Despite a guilty plea guaranteeing that the defendant is convicted of a crime, a guilty plea can in many ways assist the defendant. A primary reason for a defendant to plead guilty is that in most cases, the defendant will receive a reduced sentence if they plead guilty rather than if they are convicted by going to trial. Using the data from 2010, the average sentence of someone who

pleads guilty was 46.54 months, while the average sentence of someone who went to trial was 166.47 months. Defendants who choose to plead guilty on average serve a ten year shorter sentence than someone who is convicted in front of a jury trial. The defendant in this case typically receives a shortened sentence, and they reduce the amount of time they will be imprisoned.

According to a 1986 Bureau of Justice report, felony defendants could wait up to 7 ½ months for a jury trial (Gaskins, 1990). A guilty plea is a solution to waiting in that it reduced the amount of time someone must wait to be heard by a jury trial. If a defendant pleads guilty, they reduce the amount of time that they will potentially serve in jail waiting just to be heard. A defendant that pleads guilty might also not have to be incarcerated. Depending on the circumstances present, some defendant's might be able to skip being imprisoned if they plead guilty, and instead serve time in different ways through probation, community service, etc. (Douglas Young, Rachel Porter, Gail A. Caputo, 1999). A defendant also has the opportunity to have the charges brought against them altered or reduced based upon if they are cooperative and plead guilty instead of going to trial. The prosecutor has the ability to alter what charges are brought against a defendant. If a charge is altered to a less serious crime, then the penalty might also be reduced, and the defendant could serve less time because of the less serious charge (Colquitt, 2001).

If a defendant hires a private defense attorney, the cost of going to trial can cost the defendant thousands of dollars. If a defendant is charged with just a misdemeanor, they can typically expect to pay a flat fee of \$1000-\$3000. If a defendant is going to trial for a felony, the cost can increase to \$5,000-\$8,000, and if the defendant is being charged for a murder charge, the minimum payment can reach \$10,000 (LaMance, 2018). Despite a defense attorney charging

a flat fee, they can also charge an hourly fee depending on the circumstances surrounding the case. Some attorneys can charge up to \$700 an hour on top of a flat fee charge. Despite a private attorney being hired, it does not guarantee the defendant being found not guilty when they go to trial. The defendant could rack up over \$10,000 in legal fees and still be found guilty by trial. A defendant could instead choose to plead guilty, not have to pay as many attorney fees and serve less time imprisoned.

### Positives of a Guilty Plea: The Victim

The third primary party in any guilty plea is the victim. The victim is not directly tied to the guilty plea, in that they have little say to what the defendant could plea to or what charges/penalties can be brought against the defendant. The victim can be consulted prior to the plea agreement being presented to the defendant, in South Carolina Code § 16-3-1535 (A)(4) “submit an oral or written victim impact statement, or both, for consideration by the summary court judge at the disposition proceeding.” The victim of a crime can benefit from a guilty plea in more ways than one. When a defendant pleads guilty to a crime, the victim is guaranteed some form of retribution because their offender is receiving a form of punishment. While a defendant might not be charged with as serious of an offense, if they plead guilty the defendant will still face some form of punishment for the crime they have committed.

A victim of a crime can in some instances be compensated for what they suffered. According to the National Center for Victims of Crime (2012), victims can be compensated in a variety of ways by the state the crime occurred in. Victims will typically be compensated for medical and dental expenses, counseling costs, funeral or burial expenses, and lost wages or support. The amount of compensation a victim can receive depends on what exactly the victim

must endure. Some states might compensate a victim for travel to medical appointments and court costs. The state could also cover the cost of a crime scene clean up. Each case is different, but the victim is generally compensated in some manner for the suffering. A victim of a crime can be compensated even if no arrest or conviction is made but receiving compensation can be easier with a conviction.

## The Negatives of a Guilty Plea

The decision for a defendant to plead guilty to a crime can be difficult. While there are multiple reasons for someone to want to plead guilty versus going to trial, there are some negatives that are associated with accepting a guilty plea. Not only can a guilty plea negatively affect the defendant, but the victims and sometimes the system itself can also be impacted by the defendant pleading guilty.

### Negatives of the Guilty Plea: The Criminal Justice System

For the most part, the criminal justice system benefits from a defendant pleading guilty. If a defendant pleads guilty, the time for a verdict to be reached is reduced, a conviction is guaranteed, resources are preserved, and the criminal justice system does not have to be responsible for the defendant for a longer time period. Despite the positives, there are multiple negatives that can come with a defendant accepting a guilty plea, such as reducing the effectiveness of the 6<sup>th</sup> amendment. The 6<sup>th</sup> amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be

informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense (U.S. Constitution. Amendment (VI)).

The rights that are altered because of a guilty plea cancel out much of the legal doctrine of the 6<sup>th</sup> amendment. When a guilty plea is used to convict someone, the criminal justice system no longer offers the defendant a jury trial and witnesses cannot be challenged or brought to the defense of the defendant. Much of the 6<sup>th</sup> amendment is to protect the defendant, but the criminal justice system is supposed to uphold citizen's rights, but when a guilty plea or a plea agreement is offered to the defendant, their constitutional rights are no longer in play. In order for a defendant to accept bargain or deal by the prosecution and plead guilty to a crime, then they willingly must waive their right to a jury trial, and the ability to challenge or bring forth witnesses.

A defendant pleading guilty to a crime is more efficient than the defendant's case being tried by a jury or bench trial. The guilty plea is efficient as long as all parties allow the plea or negotiation to be accepted. If both the prosecution and the defendant agree to the terms of the plea agreement, the only party that can stop or negate a guilty plea is the court itself. The judge presiding over a case has to authorize or accept a guilty plea, acting on the court's behalf, but they also have the ability to reject a plea, or the terms agreed to between the two parties (Turner, 2006). If a judge rejects a plea negotiation or the terms settled between the two parties, then the negotiation must be reworked in order for the plea to be accepted. The judge presiding over a case does not get involved in the actual negotiation, but their ability to reject a guilty plea or the terms could force a continuation of the trial and spend even more resources on all party's behalf.



A possible side effect of guilty pleas is that the investigation and police work could potentially be diminished or lacking due to the lack of substantial evidence needed in a guilty plea. Per the 6<sup>th</sup> amendment, a defendant is allowed to challenge and present witnesses in court, but this right only exists if the defendant's case is tried by going to trial. On top of this, the prosecution must find the defendant guilty "beyond a reasonable doubt" (Dripps, 1987). A part of finding someone guilty at trial is bringing forth factual evidence to support one sides argument. Evidence can only be brought forth at trial if the police have done their job, and properly investigated the scene and collected any possible evidence. In the case of a guilty plea, there is no trial; therefore the prosecution does not need to bring forth evidence, collected by the police, in order to convince the jury or judge, that the defendant is guilty. The prosecution only needs to make a convincing enough argument to make the defendant want to accept the conditions of the plea agreement and plead guilty. Due to less evidence being needed for a guilty plea, the worry is that police would not investigate a crime to the fullest extent since they know the need for evidence is lessened.

### Negatives of the Guilty Plea: The Offender

A guilty plea can in more way than one, negatively impact a defendant. A guilty plea is typically thought of being beneficial to a defendant, in large part due to the reduced sentence that the defendant receives rather than the possible harsher punishment if convicted by trial. A significant downside for a defendant who pleads guilty is the fact that the defendant waives a majority of their rights. As mentioned previously, the 6<sup>th</sup> amendment guarantees that a defendant receives a fair and speedy trial, a jury made up of peers, and the ability to challenge and present witnesses. When a defendant pleads guilty, they waive their constitutional rights. The defendant

also waives their right to appeal the conviction. If convicted by a jury or bench trial, a defendant may appeal the conviction. If the defendant pleads guilty instead of going to trial, they waive their right to a trial and also the right to appeal the conviction. The defendant has multiple 6<sup>th</sup> amendment rights taken away when they agree to plead guilty.

The defendant chooses as to whether or not they wish to plead guilty or go to trial. While the defendant ultimately makes the decision, there is a possibility that they could be influenced by external forces. A primary factor in possibly influencing a defendant's decision to go to trial or plead guilty is the disparity between the different punishments the defendant could receive based on how the defendant is convicted. In a report released by the National Association of Criminal Defense Lawyers (2018), the report focuses on the coercive nature of today's criminal justice system. The report's main argument is that "there is ample evidence that federal criminal defendants are being coerced to plead guilty because the penalty for exercising their constitutional rights is simply too high to risk. (p.5)" The argument is supported in the disparity between the trial punishment and the punishment of pleading guilty. The main worry is that the wide-gap between the two punishments could be coercing defendants into pleading guilty out of fear of being convicted at trial and receiving a harsher punishment.

Defendants are not only possibly being coerced due to the punishment differences, but also due to a general lack of communication. In *Perez-Lastor v. Immigration and Naturalization Service* 2000, Mr. Perez-Lastor, who was from Guatemala, was in a case with the Bureau of Immigration Affairs. The defendant struggled to understand the court's questions and was forced to answer and reply to the court by using a translator. Despite the use of a translator, the defendant struggled to comprehend the court's questions, due to the lack of communication and language barrier. The court later went back and reversed Mr. Lastor's sentence (deportation) by

claiming that “better translation would have made a difference in the outcome of hearing (p.3)” (Chang, 2008). Defendants that have a language barrier could struggle in communication and understanding of the questions being asked, and in doing so possibly struggle or not understand what they agreed to if they plead guilty to a crime.

Not only do people with language barriers possibly not understand the scope that they agree to when they plead guilty, but people with a disability, or being affected to where they are not a full mental clarity, could also suffer. In 1988, Charlie Vaughn pleaded guilty that he, being a part of a group, raped and murdered a 78-year-old woman. Vaughn, however, showed signs of not fully understanding the situation in that he could remember the names of the people he was with and he was confused as to what charge he was pleading to (Cohen, Kean, & Blachman, 2018). Vaughn could not read and write, and the judge never bothered to acquire confirmation of Vaughn’s mental state. Vaughn was convicted by guilty plea and sentenced to life in prison. Twenty years later, one of the members admitted to committing the crime alone, yet Charlie Vaughn is still imprisoned for a crime he did not commit because of his mental disability (Cohen, Kean, & Blachman, 2018).

### Negatives of the Guilty Plea: The Victim

When a defendant elects to plead guilty to a crime instead of going to trial, the victim of the crime can be negatively affected by the defendant’s decision. As previously mentioned, a victim has little to no input in what offer or agreement the prosecution plans to offer the defendant. In South Carolina, the victim is allowed to submit a verbal or written statement that the judge can review before sentencing. In most cases, the victim is typically informed of the terms of involved in the guilty plea, the date, time, and place of the hearing where the guilty plea

will be heard. The victim is also allowed to be present when the guilty plea is presented to the court (Welling, 1987). The prosecutor has no legal binding to associate with the victim and gain their approval before submitting their offer to the defendant. While some prosecutors might take the victim's opinion into account when devising the agreement for the defendant, the prosecutor can still submit an offer to the defendant even if they do not have the victim's approval.

The victim might also suffer from the defendant pleading guilty if the defendant receives a lesser charge or sentence because they plead guilty instead of pursuing a trial. The victim could suffer or feel as if they did not receive an actual level of "justice" or that the defendant did not receive the sentence that they deserved. An example of this can be seen in the case of Jacob Anderson who in 2016 was accused of rape at a fraternity party. Anderson accepted a plea deal in which he pleads guilty to a sexual assault charge. Anderson did not have to serve any time in jail, nor register as a sex offender. Anderson was sentenced to three years' probation and pay a fine of \$400 (Rosenburg & Phillips, 2018).

A victim can also suffer a "second victimization" if the defendant receives a lesser sentence due to accepting a guilty plea (Kennard, 1989). The defendant can suffer in this format because they have a general lack of interaction in bringing their offender to justice. The victim can feel hopeless due to the lack of support from the criminal justice system due to reducing the punishment and charge because of the defendant pleading guilty. The criminal justice system depends on the victim to report when a crime has been committed and be cooperative in the prosecution trying to convict the offender (Kennard, 1989). A study done by Rebecca Campbell and Sheela Raja (1999), focused on what ways rape victims experience a "re-victimization." In the study, eighty-one percent of study participants believed that the legal system's treatment of rape victims is psychologically detrimental (Campbell & Raja, 1999). The punishment and

sentence brought against offenders because they plead guilty can result in victims of crimes suffering because the original charge or higher severity punishment was not tried due to the defendant pleading guilty instead of going to trial.

## Summary of the Positives and Negatives Surrounding the Guilty Plea

When a defendant chooses to accept a plea deal instead of going to trial, the criminal justice system, the defendant, and the victim, all are affected — the criminal justice system benefits when a defendant pleads guilty because it preserves resources. The criminal justice system must spend a significant amount of money for a case to be heard in trial. If a case is instead settled through a guilty plea, then resources can instead be preserved. The criminal justice system is extremely overcrowded. When a defendant pleads guilty to a crime, it reduces the number of cases the system must process. A large number of cases in the criminal justice system could leave felony defendants waiting up to 7 ½ months for a jury trial (Gaskins, 1990). A defendant can instead plead guilty and reduce the amount of time that they would wait just to go to trial. It is costly for a defendant to hire a defense attorney to defend them in court. Depending on the severity of the charge, the experience of the defense attorney, and the rates of the defense attorney, a defendant could pay upwards of \$10,000 of legal fees for representation. The criminal justice system can also suffer when a defendant pleads guilty instead of going to trial. When a defendant pleads guilty, they willingly waive their 6<sup>th</sup> amendment rights. The purpose of the criminal justice system and the government is to uphold and protect citizen's constitutional rights, but a guilty plea directly challenges and reduces the importance of the 6<sup>th</sup> amendment when a defendant pleads guilty. When both the prosecution and the defendant agree

to the terms of pleading guilty, the judge has the ability to accept or reject the terms agreed upon. If the judge rejects the agreed upon terms, then more resources must be used in order to restructure the agreement so that it satisfies the court. A by-product of someone being convicted by pleading guilty versus by trial is the lack of evidence presented to convict someone. If a case goes to trial, a higher degree of factual evidence is needed versus if the defendant chooses to plead guilty instead.

When a defendant pleads guilty, they can experience both positive and negative side effects. A defendant can receive a reduced sentence from pleading guilty versus going to trial, while also having the possibility of their charges being reduced as well. A defendant will spend less money on legal fees if they plead guilty due to the amount of time and energy their attorney must spend in defending or building their case. A defendant can, however, experience negative effects if they plead guilty. When a defendant chooses to plead guilty, they waive their 6<sup>th</sup> amendment rights. The defendant can no longer appeal their conviction, have no possibility of being found innocent by a jury of peers, cannot bring witnesses or evidence in their defense, cannot challenge the evidence presented against them, and in some cases, the defendant might even know what the evidence against them is. Due to the lack of factual evidence needed, a defendant's case might not be adequately investigated because the defendant elected to plead guilty instead of going to trial. The defendant could also feel pressured or coerced in pleading guilty. The pressure from a prosecutor, defense attorney, or the court system as a whole could negatively influence the defendant in choosing to plead guilty. A defendant might be swayed to choose to plead guilty versus going to trial, if there is a large discrepancy between the severity of the two punishments, and a lack of or improper communication might lead a defendant into making a decision that they do not entirely comprehend.

The third party affected by a guilty plea is the victim of the crime that was committed. When an offender chooses to plead guilty, the victim is guaranteed some form of justice for their suffering. While the charge or punishment might not be to the degree or severity the victim would prefer, their offender is still receiving punishment for a crime they committed. Despite a victim being guaranteed some form of retribution when their offender pleads guilty, the victim could have preferred their offender going to trial instead. A victim generally has no legal foothold in deciding what factors will be used in negotiating a plea arrangement with the defendant. The victim could feel revictimized due to a lack of involvement in the process and might also suffer from the reduced punishment their offender receives.

## Conclusion

Since before the United States became its own nation, plea bargaining, or the guilty plea has impacted the criminal justice system. During the Prohibition Era, the 18<sup>th</sup> amendment outlawed the transportation and distribution of intoxicating liquors. The newly outlawed alcohol drinks did not keep citizens from purchasing illegally produced or bootlegged alcohol. With the illegal alcohol business booming, the amount of alcohol-related offenses also increased. Towards the end of the prohibition era (1929-1934), alcohol-related offenses (20,547) made up almost half of all convictions reported(47,322). The increase in alcohol-related offenses put more pressure on the criminal justice system to quickly process offenders as to relieve congestion. The solution was to utilize plea bargaining. Offenders were pleading guilty instead of going to trial, and by 1925, the guilty plea percentage had reached 90%. Primarily focusing on using guilty pleas as the main way for conviction, the criminal justice system was able to relieve the pressure of the added cases as a result of prohibition.

Following the end of the prohibition era, multiple drug and narcotic laws (Harrison Narcotics Act, Marijuana Tax Act, Boggs Act, and the Narcotics Control Act) were passed that further impacted and set the stage for the 1970s. Under the Nixon Administration, the “war on drugs” era began and re-kindled the widespread usage of plea bargaining. Following Nixon was Ronald Reagan in the 1980s and Nancy Reagan’s famous “just say no” campaign which increased the focus on curtailing America’s drug problem. The result of the two campaigns was once again a highly congested criminal justice system that needed to once again focus on getting offenders to plead guilty in order to relieve overcrowded courts. From 1980 to 1989, the guilty plea percentage had an 89% increase. In 1984, the guilty plea percentage set at 88.3% but soon



rose to 91.9% in 1995. The Nixon and Reagan Administrations started the increased focus in drug control, but it was not until the late '90s and early 2000's where drug incarcerations took off. In the year 2000, 400 out of every 100,000 people were arrested for a drug-related offense, the manufacturing of illegal narcotics manufacturing rose 210%, and 90.1% of all convictions was because of a guilty plea.

In the modern criminal justice era, drug-related offenses are still one of the primary offenses committed. In 2017, 33.8% of all convictions was a drug-related offense, and the guilty plea rate being 97.4% of all drug-related offenses convicted due to the defendant pleading guilty. With more cases being placed in the Criminal Justice system, defense attorneys kept getting more clients added for them to represent. Public defender's on average could have up to 370 cases they have to defend each year. The high caseload on defense attorney's leads to defense attorney's using guilty pleas more often. In 2003, a public defender resolved 97.6% of his conviction by a plea deal, with privately retained council resolving 95.2% of their convictions by a plea deal. No matter the type of defense attorney, guilty pleas are the primary way of their clients being convicted with less than 5% ever actually going to trial.

With defense attorney's overworked, they don't have time to properly defend each individual case, so they primarily use guilty pleas. The widespread usage of guilty pleas has removed the importance of the 6<sup>th</sup> amendment. The 6<sup>th</sup> amendment guarantees the right to a trial of one's peers, challenge witnesses against you, and bring witnesses in your defense. The 6<sup>th</sup> amendment loses its power when someone elects to plead guilty due to the fact that the defendant must voluntarily waive their 6<sup>th</sup> amendment rights. While the defendant must waive their rights, many can face pressure or be influenced by outside forces. The difference in sentencing severity between a jury trial and pleading guilty could sway some to plead guilty out of fear of receiving

a harsher penalty. Some defendants lack the understanding or face some mental barrier in properly understanding that they agree to plead guilty to a crime. A defendant pleading guilty or accepting a plea bargain can also negatively impact the victim of crimes as well.

When a defendant pleads guilty, there is the possibility that they are receiving a less severe charge or punishment than had they gone to trial and been convicted. This can leave the victims of crimes feeling slighted by the criminal justice system. The victim has little to not say as to what terms or deal the prosecutor will offer their offender, and in most cases, the victim's opinion has no effect as to what deal their offender is offered. In cases where the victim feels like their offender did not receive a proper punishment for the crime they committed, the victim can suffer a "second victimization" where they might psychologically suffer their experience a second time.

Plea bargaining is a staple in the modern criminal justice system. It is the primary way for convicting someone and has made the jury trial practically non-existent. Defendants are pleading guilty to crimes at a rate nearing almost 100%. The increase in arrests places more strain on the criminal justice system to process each case through the entire system. Plea bargaining has to be utilized at such a high rate because if it were not then the criminal justice system would become even more congested than it already is. Plea bargaining has nullified the constitutional power of the 6<sup>th</sup> amendment and made it practically worthless. Defendants face pressure from the entire criminal justice system to plead guilty instead of pursuing their constitutional right of a jury trial. Jury trials are becoming obsolete because the risk of possibly being found guilty and receiving a more severe punishment does not outweigh the decision just to plead guilty and receive the reduced sentence offered by the prosecutor. The criminal justice system has arm barred defendants into a situation where there are no "good" options. Plea bargaining can be a valuable

tool in the criminal justice system. I do however fear that if the criminal justice system continues down the current trajectory, then our constitutional right and our right to exercise those rights will become obsolete.

## Bibliography

Priscillia Hunt, James M. Anderson, Jessica Saunders. (2016, August 25). *The Price of Justice:*

*New National and State-Level Estimates of the Judicial and Legal Costs of Crime to*

*Taxpayers*. Retrieved from Rand.org:

[https://www.rand.org/pubs/external\\_publications/EP66592.html](https://www.rand.org/pubs/external_publications/EP66592.html)

*A Brief History of the Drug War*. (2019). Retrieved from Drugpolicy.org:

<http://www.drugpolicy.org/issues/brief-history-drug-war>

Alschuler, A. W. (1979). Plea Bargaining and Its History . *Law and Society Review* , 25-38.

Argument in Support of the Recommendation of the Committee on Reform in Procedure of the

Oklahoma Bar Association. (1912). *Journal of the American Institute of Criminal Law*

*and Criminology* 3(1), 101-103.

Benson, T. (2015, April 24). *The Real Reason We Started the War on Drugs*. Retrieved from

Archive Attention: <https://archive.attn.com/stories/1503/war-on-drugs-real-reason>

Blackstone. (1844). Book the Fourth: Of Public Wrongs. In Blackstone, *Commentaries on the*

*Laws of England : In Four Books; with an Analysis of the Work (21st ed.)* (p. 329).

Blum, D. (2010, February 19). *The Chemist's War he little-told story of how the U.S. government*

*poisoned alcohol during Prohibition with deadly consequences*. Retrieved from

Slate.com: [https://slate.com/technology/2010/02/the-little-told-story-of-how-the-u-s-](https://slate.com/technology/2010/02/the-little-told-story-of-how-the-u-s-government-poisoned-alcohol-during-prohibition.html)

[government-poisoned-alcohol-during-prohibition.html](https://slate.com/technology/2010/02/the-little-told-story-of-how-the-u-s-government-poisoned-alcohol-during-prohibition.html)

Bordenkircher v. Hayes, 434 US 357 (1978).

Boykin v. Alabama, 395 U.S. 238 (1969).

Brady v. United States, 397 US 742 (1970).

Burton, T. I. (2016, January 1). *The Darker Side of Prohibition*. Retrieved from JSTOR Daily :  
<https://daily.jstor.org/darker-side-prohibition/>

Cahalan, M. W., & Parsons, L. (1986). *Historical Corrections Statistics in the United States, 1850-1984*. Rockville: Westat Inc.

Campbell, R., & Raja, S. (1999). *Secondary Victimization of Rape Victims: Insights from Mental Health Professionals Who Treat Survivors of Violence*. Chicago: Violence and Victims, V. 14 (3).

Chang, A. R. (2008). Lost in Interpretation: The Problem of Plea Bargains and Court Interpretation for Non-EnglishSpeaking Defendants. *Washington University Law Review* , 445-480.

Claflin, T. (2016, February 04). *County Jails Shoulder Cost of Housing State Inmates* . Retrieved from Tennessean.com: <https://www.tennessean.com/story/opinion/2016/02/04/county-jails-shoulder-cost-housing-state-inmates/79709958/>

Cohen, M., Kean, R., & Blachman, A. (2018, December 21). *Mental disabilities cast doubt on defendants' guilty pleas*. Retrieved from [injusticewatch.org](http://injusticewatch.org):  
<https://www.injusticewatch.org/interactives/trading-away-justice/arkansas.html>

Colquitt, J. A. (2001). *Ad Hoc Plea Bargaining* . Tulane Law Review .

Craddock, A., Timrots, A., & Collins, J. J. (1994). *Fact Sheet: Drug-Related Crime*. U.S. Department of Justice.

Devers, L. (2011). *Plea and Charge Bargaining* . Arlington, VA: Bureau of Justice Assistance; U.S. Department of Justice .

Douglas Young, Rachel Porter, Gail A. Caputo. (1999). *Alternative to Incarceration Programs for Felony Offenders in New York City* . New York: Vera Institute of Justice .

Dripps, D. A. (1987). The Constitutional Status of the Reasonable Doubt Rule. *California Law Review* , 1665- 1718.

Finkelstein, M. O. (1975, December). A Statistical Analysis of Guilty Plea Practices in the Federal Courts. *Harvard Law Review*, Vol. 89, No. 2, pp. 293-315.

Funaro, S. (2009). *Plea-bargaining in Capital Murder Cases: Is it fair to victims?* Retrieved from legalzoom.com: <https://www.legalzoom.com/articles/plea-bargaining-in-capital-murder-cases-is-it-fair-to-victims>

George, R. P., & Richards, D. (n.d.). *Amendment XVIII Prohibition of Liquor* . Retrieved from National Constitution Center: <https://constitutioncenter.org/interactive-constitution/amendments/amendment-xviii>

Gideon v. Wainwright , 372 U.S. 335 (U.S. Supreme Court 1963).

Hanson, D. J. (2016, January 19). *What did Prohibition Prohibit? It Wasn't Drinking Alcohol*. Retrieved from Alcohol Problems and Solutions : <https://www.alcoholproblemsandsolutions.org/what-did-prohibition-prohibit-it-wasnt-drinking-alcohol/>

Hanson, D. J. (2019). *Negative Effects of Prohibition: Do You Know These 17?* Retrieved from Alcohol Problems and Solutions : <https://www.alcoholproblemsandsolutions.org/effects-of-prohibition/>

History.com Editors . (2017, May 31). *War on Drugs*. Retrieved from History.com: <https://www.history.com/topics/crime/the-war-on-drugs>

John M. Walker, J. (2016, 02 29). *The Role of Precedent in the United States: How Do Precedents Lose Their Binding Effect?* Retrieved from Stanford Law School: <https://cgc.law.stanford.edu/commentaries/15-john-walker/>

Kennard, K. L. (1989). The Victim's Veto: A Way to Increase Victim Impact on Criminal Case. *California Law Review*, 41-453.

King, R. B. (1953). The Narcotics Bureau And The Harrison Act: Jailing The Healers And The Sick. *Yale Law Journal*, 784-787.

LaMance, K. (2018, 02 20). *What are the Costs Associated with Hiring a Criminal Defense Lawyer?* Retrieved from legalmatch.com: <https://www.legalmatch.com/law-library/article/how-much-will-a-criminal-defense-lawyer-cost.html>

Langton, L., & Farole, D. (2010). *State Public Defender Programs, 2007*. Bureau of Justice Statistics.

Lerner, M. (2011). *Prohibition Unintended Consequences* . Retrieved from PBS: <http://www.pbs.org/kenburns/prohibition/unintended-consequences/>

Lerner, M. (2011). *Prohibition Unintended Consequences* . Retrieved from [www.pbs.org](http://www.pbs.org): <http://www.pbs.org/kenburns/prohibition/unintended-consequences/>

Lesser, J. (2014, December 16). *Today is the 100th Anniversary of the Harrison Narcotics Tax Act*. Retrieved from drugpolicy.org: <http://www.drugpolicy.org/blog/today-100th-anniversary-harrison-narcotics-tax-act>

Library, W. P. (1917, 01 13). *Auto-Intoxication*. American Issue Publishing Company .

McCurdy, J. (2013). *Reevaluating the Effectiveness of Federal Mandatory Minimum*. ACLU Washington Legislative Office.

Meyer, J. F. (2017, August 30). *Plea bargaining*. Retrieved from Britannica.com: <https://www.britannica.com/topic/plea-bargaining>

Miron, J. A., & Zwiebel, J. (1991, May). *Alcohol Consumption During Prohibition* . Retrieved from The National Bureau of Economic Research : <https://www.nber.org/papers/w3675>

Oppel, R. A., & Patel, J. K. (2019, January 31). *One Lawyer, 194 Felony Cases, and No Time*. Retrieved from New York Times: <https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html>

Padgett, J. F. (1990). Plea Bargaining and Prohibition in the Federal Courts, 1908-1934. *Law & Society Review, Vol. 24, No. 2, Longitudinal Studies of Trial Courts (1990),*, 2-39.

Public Acts of the SixtyThird Congress of the United States. (1914). *Harrison Narcotics Tax Act, 1914*.

Rosenburg, E., & Phillips, K. (2018, December 11). *Accused of rape, former Baylor fraternity president gets no jail time after plea deal*. Retrieved from The Washington Post : [https://www.washingtonpost.com/education/2018/12/11/accused-rape-former-frat-president-gets-no-jail-time-after-plea-deal-da/?noredirect=on&utm\\_term=.366bf2baf6cd](https://www.washingtonpost.com/education/2018/12/11/accused-rape-former-frat-president-gets-no-jail-time-after-plea-deal-da/?noredirect=on&utm_term=.366bf2baf6cd)



- Rothman, L. (2015, January 14). *The History of Poisoned Alcohol Includes an Unlikely Culprit: The U.S. Government*. Retrieved from TIME.com: <http://time.com/3665643/deadly-drinking/>
- Sacco, L. N. (2014). *Drug Enforcement in the United States: History, Policy, and Trends* . Congressional Research Service .
- Santabello v. New York, 404 US 257 (1971).
- Schmitt, G. R., & Syckes, C. (2017). *Overview of Federal Criminal Cases*. United States Sentencing Commission.
- Serena, K. (2017, September 21). *10,000 People Died Because The Government Poisoned Alcohol During Prohibition*. Retrieved from All That is Interesting : <https://allthatsinteresting.com/prohibition-government-poisoning>
- Smith, D. (1987). The Plea Bargaining Controversy. *Journal of Criminal Law and Criminology*, 949-968.
- Snyder, H. N. (2011). *Arrest in the United States, 1980-2009*. U.S. Department of Justice .
- Staff, U.S. Sentencing Commission. (2003). *U.S. Sentencing Commission 2003*. U.S. Sentencing Commission.
- Staff, U.S. Sentencing Commission. (2010). *U.S. Sentencing Commission 2010*. U.S. Sentencing Commission.
- Staff, U.S. Sentencing Commission. (2014). *U.S. Sentencing Commission 2014*. U.S. Sentencing Commission.

Tennessee Department of Correction Decision Support: Research & Planning. (2019). *Tennessee Jail Summary Report*. Tennessee Department of Correction.

Tennessee Department of Correction Decision Support: Research & Planning. (2019). *Tennessee Felon Population Update*. Tennessee Department of Corrections .

The RobbinsCollection. (n.d.). *The Common Law and Civil Law Traditions*.

Thorton, M. (1991, July 17). *Cato Institute Policy Analysis No. 157: Alcohol Prohibition Was a Failure*. Retrieved from Cato Institute: <https://object.cato.org/pubs/pas/pa157.pdf>

Turner, J. I. (2006). Judicial Participation in Plea Negotiations: A Comparative View. *The American Journal of Comparative Law*, Vol. 54, No. 1 , 199-267.

U.S. Constitution. Amendment (VI).

U.S. Sentencing Commission Staff. (1990). *UNITED STATES SENTENCING COMMISSION 1990 Annual Report*. United States Sentencing Commission .

U.S. Sentencing Commission Staff. (1995). *U.S. Sentencing Commission 1995*. U.S. Sentencing Commission.

U.S. Sentencing Commission Staff. (2000). *U. S. Sentencing Commission 2000 Annual Report* . United States Sentencing Commission.

U.S. Sentencing Commission Staff. (2006). *U.S. Sentencing Commission 2006*. U.S. Sentencing Commission.

U.S. Sentencing Commission Staff. (2017). *U.S. Sentencing Commission 2017*. U.S. Sentencing Commission.

Vega, T. (2016, May 10). *Court delays in the Bronx have defendants waiting years, suit claims.*

Retrieved from CNN Money : <https://money.cnn.com/2016/05/10/news/bronx-court-lawsuit/index.html>

Vinton, K. (2015, November 23). *How Breweries Like Coors, Yuengling And Anheuser-Busch*

*Survived Prohibition.* Retrieved from Forbes.com:

<https://www.forbes.com/sites/katevinton/2015/11/04/how-breweries-like-coors-yuengling-and-anheuser-busch-survived-prohibition/#3b37670dfabd>

Weinhar, B. (2018). *Associated Organizations* . Retrieved from Westerville Public Library :

<http://www.westervillelibrary.org/associated-organizations>

Welling, S. N. (1987). Victim Participation in Plea Bargains. *Washington University Law*

*Review*, 301-356.