

The Drug War, Mass Incarceration and Race

February 2014



With less than 5 percent of the world's population but nearly 25 percent of its incarcerated population¹, the United States imprisons more people than any other nation in the world – largely due to the war on drugs. Misguided drug laws and harsh sentencing requirements have produced profoundly unequal outcomes for people of color. Although rates of drug use and sales are similar across racial and ethnic lines, blacks and Latinos are far more likely to be criminalized than whites.²



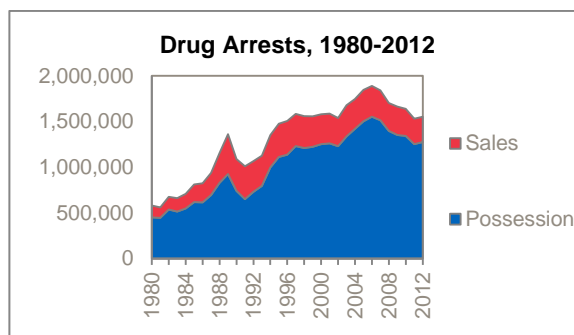
Source: Roy Walmsley, *World Population List, 10th ed.*³

The Drug War Drives Mass Incarceration and Racial Disparities in U.S. Judicial Systems

There were more than 1.5 million drug arrests in the U.S. in 2012. The vast majority – more than 80 percent – were for possession *only*.⁴ At year-end 2011, more than 16 percent of all people in state prison were incarcerated for a drug law violation – of whom roughly 55,000 were incarcerated for possession alone.⁵ More than 50 percent of people in federal prisons are incarcerated for drug law violations. About 500,000 Americans are behind bars on any given night for a drug law violation⁶ – ten times the total in 1980.⁷

People of color experience discrimination at every stage of the judicial system and are more likely to be stopped, searched, arrested, convicted, harshly

sentenced and saddled with a lifelong criminal record. This is particularly the case for drug law violations.



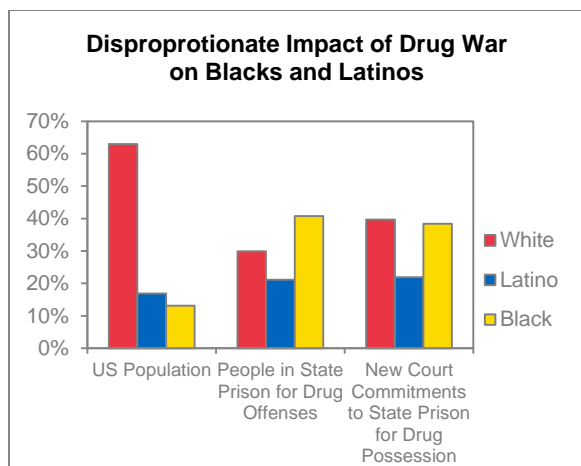
Source: Federal Bureau of Investigation, *Uniform Crime Reports*.⁸

Blacks comprise 13 percent of the U.S. population,⁹ and are consistently documented by the U.S. government to use drugs at similar rates to people of other races.¹⁰ But blacks comprise nearly one-third (31 percent) of those arrested for drug law violations¹¹ – and more than 40 percent of those incarcerated in state or federal prison for drug law violations.¹²

Widely adopted in the 1980s and '90s, mandatory minimum sentencing laws have contributed greatly to the number of people of color behind bars.¹³ A recent study found that prosecutors are twice as likely to pursue a mandatory minimum sentence for blacks as for whites charged with the same offense.¹⁴



Source: Carson and Golinelli, *Bureau of Justice Statistics, 2013*.¹⁵



Sources: U.S. Census Bureau; Bureau of Justice Statistics¹⁶

Mass Incarceration Destroys Families

2.7 million children are growing up in U.S. households in which one or more parents are incarcerated. Two-thirds of these parents are incarcerated for nonviolent offenses, primarily drug offenses. One in nine black children has an incarcerated parent, compared to one in 28 Latino children and one in 57 white children.¹⁷

Collateral Consequences of Mass Incarceration

Punishment for a drug law violation is not only meted out by the criminal justice system, but is also perpetuated by policies denying child custody, voting rights, employment, business loans, licensing, student aid, public housing and other public assistance to people with criminal convictions. Criminal records often result in deportation of legal residents or denial of entry for noncitizens trying to visit the U.S. Even if a person does not face jail or prison time, a drug conviction often imposes a lifelong ban on many aspects of social, economic and political life.¹⁸

“Nothing has contributed more to the systematic mass incarceration of people of color in the United States than the War on Drugs.”

– Michelle Alexander, *The New Jim Crow* (2010).

Such exclusions create a permanent second-class status for millions of Americans, and, like drug war enforcement itself, fall disproportionately on people of color. Nearly eight percent of black people of voting age are denied the right to vote because of laws that disenfranchise people with felony convictions.¹⁹

Policy Recommendations

1. Decriminalize drug possession, removing a major cause of arrest and incarceration of primarily people of color, helping more people receive drug treatment and redirecting law enforcement resources to prevent serious and violent crime.
2. Eliminate policies that result in disproportionate arrest and incarceration rates by changing police practices, rolling back harsh mandatory minimum sentences, and repealing sentencing disparities.²⁰
3. End policies that exclude people with a record of arrest or conviction from key rights and opportunities. These include barriers to voting, employment, public housing and other public assistance, loans, financial aid and child custody.

¹ Roy Walmsley, *World Population List, 10th Ed.* (London: International Centre for Prison Studies, 2013).

² Substance Abuse and Mental Health Services Administration, "Results from the 2012 National Survey on Drug Use and Health," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013), Table 1.24B; Jamie Fellner, *Decades of Disparity: Drug Arrests and Race in the United States* (Human Rights Watch, 2009); Meghana Kakade et al., "Adolescent Substance Use and Other Illegal Behaviors and Racial Disparities in Criminal Justice System Involvement: Findings from a U.S. National Survey," *American Journal of Public Health* 102, no. 7 (2012). While national arrest data by ethnicity are not collected, state-level data show that Latinos are disproportionately arrested for drug offenses. California Department of Justice, "Crime in California 2012," (2013); Harry Levine, Loren Siegel, and Gabriel Sayegh, "One Million Police Hours: Making 440,000 Marijuana Possession Arrests in New York City, 2002-2012," (New York: Drug Policy Alliance, 2013).

³ Roy Walmsley, *World Population List, 10th Ed.*

⁴ Federal Bureau of Investigation, "Crime in the United States, 2012," (Washington, DC: U.S. Department of Justice, 2013).

⁵ E. Ann Carson and Daniela Golinelli, "Prisoners in 2012: Trends in Admissions and Releases, 1991-2012," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2013), Table 3.

⁶ E. Ann Carson and William J. Sabol, "Prisoners in 2011," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2012).

⁷ Peter Reuter, "Why Has Us Drug Policy Changed So Little over 30 Years?," *Crime and Justice* 42, no. 1 (2013).

⁸ Federal Bureau of Investigation, Uniform Crime Reports; Bureau of Justice Statistics, Arrest Data Analysis Tool.

⁹ Sonya Rastogi et al., "The Black Population: 2010," (U.S. Census Bureau, 2011).

¹⁰ "Results from the 2012 National Survey on Drug Use and Health," Table 1.24B.

¹¹ Federal Bureau of Investigation, "Crime in the United States, 2012."

¹² Bureau of Justice Statistics, Federal Justice Statistics Program; E. Ann Carson and Daniela Golinelli, "Prisoners in 2012 - Advance Counts," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2013).

¹³ Barbara S. Meierhoefer, *The General Effect of Mandatory Minimum Prison Terms* (Washington: Federal Judicial Center, 1992), 20; Marc Mauer, "The Impact of Mandatory Minimum Penalties in Federal Sentencing," *Judicature* 94(2010).

¹⁴ Sonja B Starr and Marit Rehani, "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker," *Yale Law Journal* 123, no. 1 (2013).

¹⁵ E. Ann Carson and Daniela Golinelli, "Prisoners in 2012: Trends in Admissions and Releases, 1991-2012," Table 18.

¹⁶ *Ibid.*, Table 8.

¹⁷ B. Western and B. Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Pew Charitable Trusts, 2010), 4.

¹⁸ Meda Chesney-Lind and Marc Mauer, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (The New Press, 2011).

¹⁹ Christopher Uggen et al., "State-Level Estimates of Felon Disenfranchisement in the United States, 2010," (Washington, DC: The Sentencing Project, 2012).

²⁰ The federal government recently indicated its intention to undertake some of these reforms. Eric Holder, "Memorandum to United States Attorneys: Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases," (Washington, D.C.: Office of the Attorney General, United States Department of Justice, 2013).