

The Drug War, Mass Incarceration and Race

June 2015

We are
the Drug
Policy
Alliance.

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, Black and Latino people are far more likely to be criminalized than white people.²



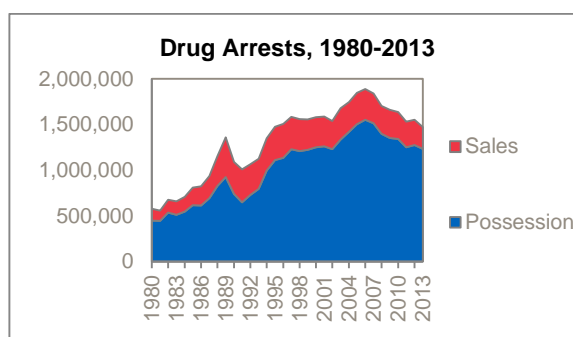
Source: International Centre for Prison Studies, World Prison Brief.³

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 2013. The vast majority – more than 80 percent – were for possession *only*.⁴ At year-end 2012, 16 percent of all people in state prison were incarcerated for a drug law violation – of whom nearly 50,000 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

Black people 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 Black people comprise 30 percent of those arrested for drug law violations¹¹ – and nearly 40 percent of those incarcerated in state or federal prison for drug law violations.¹²

Similarly, Latinos make up 17 percent of the U.S. population, but comprise 20 percent of people in state prisons for drug offenses, and 37 percent of people incarcerated in federal prisons for drug offenses.¹³ In 2013, Latinos comprised almost half (47 percent) of all cases in federal courts for drug offenses.¹⁴

In total, approximately 57 percent people incarcerated in state prisons, and 77 percent of people incarcerated in federal prisons for drug offenses are Black or Latino, compared to 30 percent of the U.S. population.¹⁵

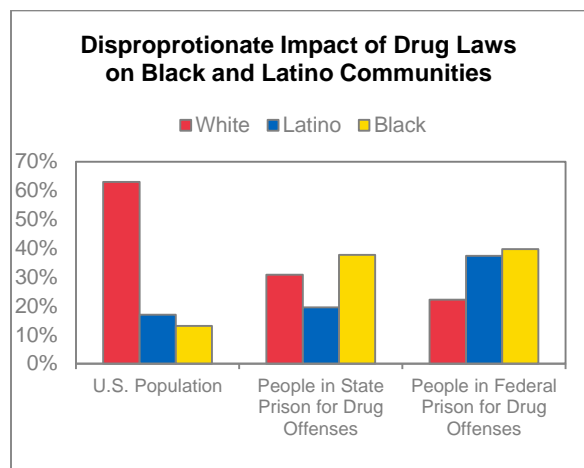
Widely adopted in the 1980s and '90s, mandatory minimum sentencing laws have contributed greatly to the number of people of color behind bars.¹⁶ Research shows that prosecutors are twice as likely to pursue a

mandatory minimum sentence for Black people as for white people charged with the same offense.¹⁷ Among people who received a mandatory minimum sentence in 2011, 38 percent were Latino and 31 percent were Black.¹⁸

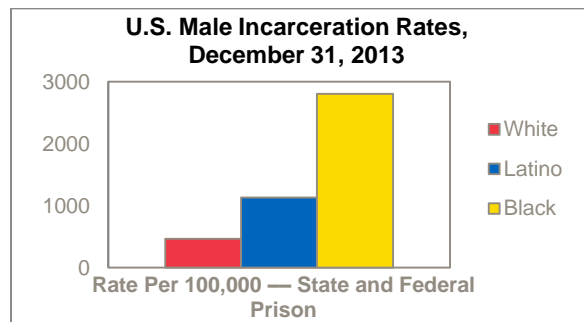
Nearly 80 percent of people in federal prison and 60 percent of people in state prison for drug offenses are Black or Latino.¹⁹

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, including a substantial proportion who are incarcerated for drug law violations. One in nine Black children has an incarcerated parent, compared to one in 28 Latino children and one in 57 white children.²⁰



Sources: U.S. Census Bureau; Bureau of Justice Statistics.²¹



Source: Bureau of Justice Statistics, 2014.²²

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.²³

“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.²⁴

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.²⁵
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); National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: The National Academies Press, 2014).

² Substance Abuse and Mental Health Services Administration, "Results from the 2013 National Survey on Drug Use and Health," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014), Table 1.19B; 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 systematically collected and are therefore

incomplete, state-level data show that Latinos are disproportionately arrested for drug offenses. Drug Policy Alliance and Marijuana Arrest Research Project, "Race, Class and Marijuana Arrests in Mayor De Blasio's Two New Yorks: The N.Y.P.D.'S Marijuana Arrest Crusade Continues in 2014," (2014); California Department of Justice, "Crime in California 2013," (2014).

³ International Centre for Prison Studies, World Prison Brief, <http://www.prisonstudies.org/world-prison-brief> (2014).

⁴ Federal Bureau of Investigation, "Crime in the United States, 2013," (Washington, DC: U.S. Department of Justice, 2014).

⁵ E. Ann Carson, "Prisoners in 2013," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2014), Tables 13 & 14.

⁶ Ibid., Tables 14 & 15; The Sentencing Project, "Trends in U.S. Corrections," (2013).

⁷ Peter Reuter, "Why Has Us Drug Policy Changed So Little over 30 Years?," *Crime and Justice* 42, no. 1 (2013); National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*.

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

⁹ U.S. Census Bureau, Quick Facts (2014) <http://quickfacts.census.gov/qfd/states/00000.html>.

¹⁰ Substance Abuse and Mental Health Services Administration, "Results from the 2013 National Survey on Drug Use and Health," Table 1.19B.

¹¹ Federal Bureau of Investigation, "Crime in the United States, 2013," Table 43.

¹² Bureau of Justice Statistics, Federal Justice Statistics Program; Carson, "Prisoners in 2013," Table 14.

¹³ Bureau of Justice Statistics, Federal Justice Statistics Program; *ibid.*

¹⁴ United States Sentencing Commission, Interactive Sourcebook (isb.ussc.gov) (2013 Datafile, USSCFY2013).

¹⁵ Carson, "Prisoners in 2013," Table 14; Bureau of Justice Statistics, "Federal Justice Statistics Program," <http://www.bjs.gov/fjsrcl>.

¹⁶ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. 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).

¹⁷ 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).

¹⁸ United States Sentencing Commission, "Quick Facts: Mandatory Minimum Penalties,"

http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Mandatory_Minimum_Penalties.pdf.

¹⁹ 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 8.

²⁰ Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Pew Charitable Trusts, 2010), 4.

²¹ Carson, "Prisoners in 2013," Table 14; Bureau of Justice Statistics, "Federal Justice Statistics Program".

²² Carson, "Prisoners in 2013," Table 8.

²³ Meda Chesney-Lind and Marc Mauer, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (The New Press, 2011).

²⁴ Christopher Uggen et al., "State-Level Estimates of Felon Disenfranchisement in the United States, 2010," (Washington, DC: The Sentencing Project, 2012).

²⁵ 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).