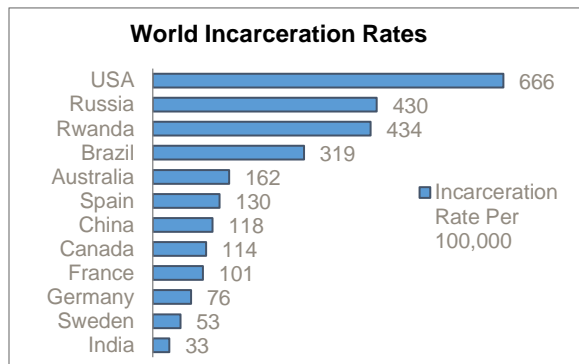


# The Drug War, Mass Incarceration and Race

January 2018



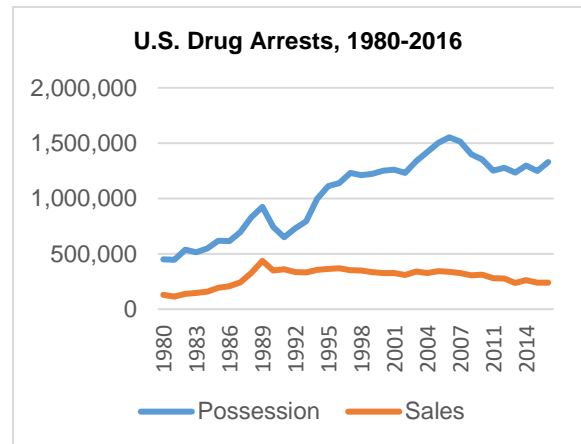
With less than 5 percent of the world's population but nearly 25 percent of its incarcerated population,<sup>1</sup> the United States imprisons more people than any other nation in the world – largely due to the war on drugs. Misguided drug laws and harsh sentencing requirements have produced profoundly 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.<sup>2</sup>



Source: International Centre for Prison Studies, World Prison Brief.<sup>3</sup>

## 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 2016. The vast majority – more than 80 percent – were for possession *only*.<sup>4</sup> At year-end 2015, 15 percent of all people in state prison were incarcerated for a drug law violation – of whom 44,700 were incarcerated for possession alone. Forty-seven percent of people in federal prisons and more than half of the female federal population are incarcerated for drug law violations.<sup>5</sup> Almost 500,000 people are behind bars for a drug law violation on any given night in the United States<sup>6</sup> – ten times the total in 1980.<sup>7</sup>



Source: Federal Bureau of Investigation, Uniform Crime Reports.<sup>8</sup>

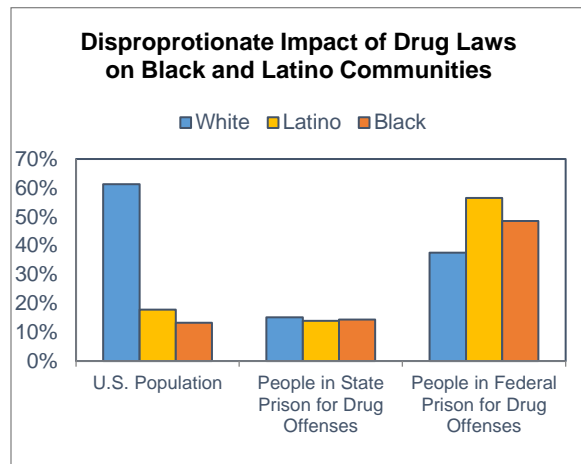
Drug law violations have been the main driver of new admissions to prison for decades. An analysis by Brookings Institution found that there were more than 3 million admissions to prison for drug offenses between 1993 and 2009 in the United States. In each year during that period, more people were admitted to prisons for drug law violations than violent crimes. During that same timeframe, there were more than 30 million drug arrests.<sup>9</sup>

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. Black people comprise 13 percent of the U.S. population,<sup>10</sup> and are consistently documented by the U.S. government to use drugs at similar rates to people of other races.<sup>11</sup> But Black people comprise 29 percent of those arrested for drug law violations,<sup>12</sup> and nearly 40 percent of those incarcerated in state or federal prison for drug law violations.<sup>13</sup>

Similarly, Latinos make up 18 percent of the U.S. population, but comprise 38 percent of people

incarcerated in federal prisons for drug offenses.<sup>14</sup> In 2013, Latinos comprised almost half (47 percent) of all cases in federal courts for drug offenses.<sup>15</sup> National-level data on arrests of people of Latino ethnicity are incomplete. Yet among drug arrest incidents in 2015 in which ethnicity was reported, more than 20 percent of those arrested were Latino.<sup>16</sup> State and local level data show that Latinos are disproportionately arrested and incarcerated for drug possession violations.<sup>17</sup>

**Nearly 80 percent of people in federal prison and almost 60 percent of people in state prison for drug offenses are Black or Latino.<sup>18</sup>**



Sources: U.S. Census Bureau; Bureau of Justice Statistics.<sup>19</sup>

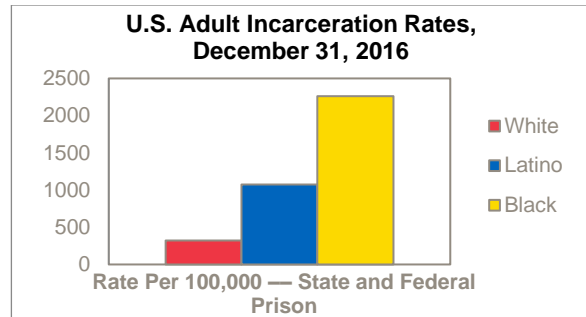
Widely adopted in the 1980s and '90s, mandatory minimum sentencing laws have contributed greatly to the number of people of color behind bars.<sup>20</sup> Research shows that prosecutors are twice as likely to pursue a mandatory minimum sentence for Black people as for white people charged with the same offense.<sup>21</sup> Among people who received a mandatory minimum sentence in 2011, 38 percent were Latino and 31 percent were Black.<sup>22</sup>

### 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.<sup>23</sup>

### 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.<sup>24</sup>



Source: Bureau of Justice Statistics, 2017.<sup>25</sup>

**“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 permanently relegate millions of Americans to second-class status, disproportionately people of color. One in 13 Black people of voting age are denied the right to vote because of laws that disenfranchise people with felony convictions.<sup>26</sup>

### 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.
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.

<sup>1</sup> 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).

<sup>2</sup> Substance Abuse and Mental Health Services Administration, "Results from the 2015 National Survey on Drug Use and Health," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015), Table 1.31B; 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) <http://www.drugpolicy.org/resource/race-class-and-marijuana-arrests-mayor-de-blasios-two-new-yorks-nypds-marijuana-arrest-crus>; California Department of Justice, "Crime in California 2013," (2014).

<sup>3</sup> International Centre for Prison Studies, World Prison Brief, <http://www.prisonstudies.org/world-prison-brief-data> (2015).

<sup>4</sup> Federal Bureau of Investigation, "Crime in the United States, 2015," (Washington, DC: U.S. Department of Justice, 2016). <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/persons-arrested/persons-arrested>

<sup>5</sup> E. Ann Carson, "Prisoners in 2016," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2017). <https://www.bjs.gov/content/pub/pdf/p16.pdf>

<sup>6</sup> *Ibid*; Peter Wagner and Bernadette Rabuy, "Mass Incarceration: The Whole Pie 2017," (Prison Policy Initiative, 2017)

<https://www.prisonpolicy.org/reports/pie2017.html>; Doris James, "Profiles of Jail Inmates, 2002," in *Special Report* (Washington, DC: United States Department of Justice, Bureau of Justice Statistics, 2004)

<http://www.ojp.usdoj.gov/bjs/pub/pdf/pij02.pdf>.

<sup>7</sup> 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*.

<sup>8</sup> Federal Bureau of Investigation, Uniform Crime Reports; Bureau of Justice Statistics, Arrest Data Analysis Tool; Federal Bureau of Investigation, "Crime in the United States, 2016." <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016>; Data obtained through a request to the Federal Bureau of Investigation, Criminal Justice Information Services' Chief Multimedia Productions, Stephen G. Fischer

<sup>9</sup> Jonathan Rothwell, "Drug offenders in American prisons: The critical distinction between stock and flow," (Brookings Institution, 2015)

<http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/11/25-drug-offenders-stock-flow-prisons-rothwell>.

<sup>10</sup> U.S. Census Bureau, Quick Facts (2014)

<http://quickfacts.census.gov/qfd/states/00000.html>.

<sup>11</sup> Substance Abuse and Mental Health Services Administration, "Results from the 2014 National Survey on Drug Use and Health: Detailed Tables," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015), Table 1.19B.

<sup>12</sup> Federal Bureau of Investigation, "Crime in the United States, 2015," Table 49A. <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-49>

<sup>13</sup> Bureau of Justice Statistics, Federal Justice Statistics Program; Carson, "Prisoners in 2014; Sam Taxy, Julie Samuels, and William Adams, "Drug Offenders in Federal Prison: Estimates of Characteristics Based on Linked Data," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2015) <http://www.bjs.gov/fjsrcl/>.

<sup>14</sup> Carson, E. Ann. "Crime in the United States, 2015." Appendix Table 5. U.S. Department of Justice, Bureau of Justice Statistics. 2015. <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

<sup>15</sup> United States Sentencing Commission, Interactive Sourcebook (isb.uscc.gov) (2013 Datafile, USSCFY2013).

<sup>16</sup> Federal Bureau of Investigation, "Crime in the United States, 2015," Table 21A.

<sup>17</sup> See, for example, Harry Levine and Loren Siegel, "80 Marijuana Possession Arrests a Day is More of the Same: NYPD daily marijuana possession arrest numbers are the same under de Blasio and Bratton as they were under Bloomberg and Kelly," (Marijuana Arrest Research Project, 2014) <http://marijuana-arrests.com/docs/MORE-OF-THE-SAME--NYC-Marijuana-Arrests-June2014.pdf>; 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); Harry G. Levine, Jon B. Gettman, and Loren Siegel, *240,000 Marijuana Arrests: Costs, Consequences, and Racial Disparities of Possession Arrests in Washington, 1986-2010* (Marijuana Arrest Research Project, 2012); Harry G. Levine, Jon B. Gettman, and Loren Siegel, *210,000 Marijuana Possession Arrests in Colorado, 1986-2010* (Marijuana Arrest Research Project, 2012); Harry G. Levine, Jon B. Gettman, and Loren Siegel, *Arresting Latinos for Marijuana in California Possession Arrests in 33 Cities, 2006-08* (Drug Policy Alliance and William C. Velasquez Institute, 2010); Beckett K et al., "Drug use, possession arrests, and the question of race: lessons from Seattle," *Soc. Probl.* 52(2005).; Marijuana Arrest Research Project and Drug Policy Alliance, "Unjust and Constitutional: 60,000 Jim Crow Marijuana Arrests in Mayor de Blasio's New York, The NYPD's Racially-Targeted Enforcement of Marijuana Possession Continues, 2014 – 2016" [https://www.drugpolicy.org/sites/default/files/Marijuana-Arrests-NYC--Unjust-Unconstitutional--July2017\\_2.pdf](https://www.drugpolicy.org/sites/default/files/Marijuana-Arrests-NYC--Unjust-Unconstitutional--July2017_2.pdf)

<sup>18</sup> Bureau of Justice Statistics, "Federal Justice Statistics Program," <http://www.bjs.gov/fjsrcl/>; E. Ann Carson, "Prisoners in 2016," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2017). <https://www.bjs.gov/content/pub/pdf/p16.pdf>

<sup>19</sup> E. Ann Carson, "Prisoners in 2016," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2017). <https://www.bjs.gov/content/pub/pdf/p16.pdf>; "Quick Facts," United States Census Bureau <https://www.census.gov/quickfacts/fact/table/US/PST045216>

<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> United States Sentencing Commission, "Quick Facts: Mandatory Minimum Penalties," [http://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Mandatory\\_Minimum\\_Penalties.pdf](http://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Mandatory_Minimum_Penalties.pdf).

<sup>23</sup> Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Pew Charitable Trusts, 2010), 4.

<sup>24</sup> Meda Chesney-Lind and Marc Mauer, *Invisible punishment: The collateral consequences of mass imprisonment* (The New Press, 2011).

<sup>25</sup> Carson, E. Ann. "Prisoners in 2015." Appendix Table 5. U.S. Department of Justice, Bureau of Justice Statistics. 2016. <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

<sup>26</sup> Christopher Uggen et al., "6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement in the United States, 2016," (Washington, DC: The Sentencing Project) <http://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/> (2012). <http://www.sentencingproject.org/publications/felony-disenfranchisement-laws-in-the-united-states/>