

Drug War

America's war on drugs, now well into its fourth decade, is intimately linked with the rise of mass incarceration. It has shaped how police work is done, who is arrested and incarcerated and for how long, and how we think about illegal drug use. Even as the Obama administration claims to have ended the War on Drugs, we are still seeing its impact in our prisons and on our streets.

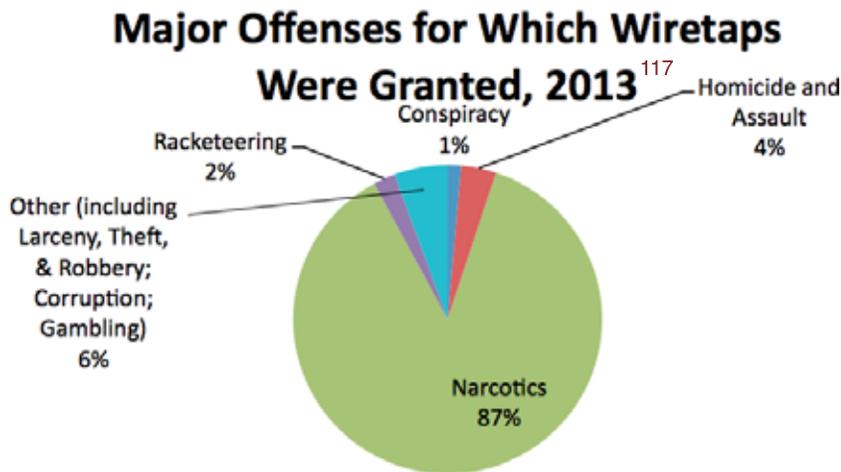
President Nixon officially launched the War on Drugs in 1971¹⁰⁶, as a part of his "southern strategy" to politicize crime in racially coded ways.¹⁰⁷ He backed away from the "root causes" approach of Johnson's Great Society and laid the blame for drug

use on individual moral failings.¹⁰⁸ The opening salvo was a series of laws that increased police power, funding for fighting drugs, and sentences for drug use. Since then, every presidential administration save Carter's has increased the divide between spending on prevention and drug enforcement.¹⁰⁹ President Reagan injected new life into the drug war, but over the decades politicians on both sides of the aisle have tried to show how tough they can be on crime, and drug crime in particular. For a longer discussion of this history, see the timeline on p. 18.

The effect on policing has been extensive and multifaceted. Police have gotten access to military equipment, as described on p. 31, and have been able to seize assets suspected of involvement in a crime, as described on p. 34. They have benefited from expanded means of gathering information—from wiretapping (87% of wiretaps in 2013 were for drug investigations)¹¹⁰ to warrantless searches. Michelle Alexander writes that there is a "virtual drug exception"

to the Fourth Amendment.¹¹¹ In the 1980's, "[City Council] literally declared maybe a quarter to a third of inner city Baltimore off-limits to its residents, and said that if you were loitering in those areas you were subject to arrest and search."¹¹² In Philadelphia¹¹³, New York City¹¹⁴,

and Atlanta¹¹⁵ — to name just a few examples—police have been caught lying on the stand, planting evidence, and falsifying records in order to protect drug informants. The FBI has even determined that, at times, it is appropriate to let innocent people be harmed rather than compromise a drug informant.¹¹⁶ The drug war has put in place overtime incentives for police to make drug arrests instead of more painstaking investigative work. This practice has distorted the system for promoting officers to higher ranks—and, in turn, affected how new officers are trained and supervised.¹¹⁷



¹⁰⁶ <http://www.presidency.ucsb.edu/ws/?pid=3048>

¹⁰⁷ Travis, Western, and Redburn, eds. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council, 2014. p. 166.

¹⁰⁸ <http://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/>

¹⁰⁹ <http://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/>

¹¹⁰ <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/04/14/the-shared-roots-of-the-war-on-drugs-and-the-war-on-terror-in-one-chart/>

¹¹¹ New Jim Crow, p. 60.

¹¹² <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish>

¹¹³ <http://citypaper.net/cover/the-price-of-perjury-the-story-of-one-lying-cop-in-phillys-wild-west-drug-war/>

¹¹⁴ <http://www.drugpolicy.org/news/2011/10/former-nypd-detective-testifies-police-regularly-plant-drugs-innocent-people-meet-arres>

¹¹⁵ <http://www.foxnews.com/story/2007/08/14/drug-war-crimes-kill-incarcerate-innocent/>

¹¹⁶ <http://www.foxnews.com/story/2007/08/14/drug-war-crimes-kill-incarcerate-innocent/>

¹¹⁷ <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish>

¹¹⁸ <http://www.uscourts.gov/statistics-reports/wiretap-report-2013>

A focus on drugs may also be a contributing factor to the nation's declining "clearance rate," the percent of murders that end with an arrest; it now stands at 64.1%, whereas 50 years ago it was over 90%.¹¹⁹

In its early years, the drug war drove exploding incarceration rates. More recently, the drug war has played out very differently in the state and federal prison systems, as indicated by the statistics below. In state prisons, drugs are no longer the leading cause of incarceration¹²⁰, but the effects of the War on Drugs remain. These include policing and prosecution that focus disproportionately on black communities, and tougher sentences that have led to longer prison terms across the board. In federal prison, drug crimes are still the leading cause of incarceration, and

consequently of the aging of America's prison population. "Our federal prisons are starting to resemble nursing homes surrounded with razor wire," says the president and founder of Families Against Mandatory Minimums.¹²¹ Women have also been caught up in the drug wars in unprecedented ways—often forced by husbands or boyfriends to play small roles but then subject to the same harsh penalties. Women arrested for minor drug offenses are also less likely to have information to trade for an easier sentence, and therefore

end up with harsher punishments than the boyfriends and husbands for whom they were working.¹²²

Viewing drugs as a public health problem rather than a criminal one, and acknowledging the connections between drug use and poverty, shows us a different way forward. People use drugs at similar rates across social classes. In fact, poor people may actually use less often. Addiction, however—like other chronic illnesses—affects poor people

disproportionally, since it interacts with increased stress, poorer diets, unstable housing, and other associated factors.¹²³

Furthermore, wealthier people can afford expensive drug treatment programs that are out of reach for poorer people. And contrary to the popular image of drug lords rolling in cash, many street-level

dealers are barely getting by.¹²⁴ Although a body of research now shows that incentivizing people to stop using drugs is much more effective than punishing them, punishment remains our main tool and social approach.¹²⁵

Ending the war on drugs will not solve all of America's mass incarceration problem, but it would be a major step towards solving a Gordian knot of race, poverty, violence, and misspent public dollars.

Carl Hart, Columbia University's first tenured black professor in the sciences, has written a memoir whose title sums up the problems of the drug war: *High Price: A Neuroscientist's Journey of Self-Discovery That Challenges Everything You Know About Drugs and Society*. In the book, Hart combines his life story of growing up black and poor in Miami with the results of his research. He writes,

It is my hope that after reading this book, you will be less likely to think about drugs in magical or evil terms that have no foundation in real evidence. As you will see in these pages, this has led to a situation where there is an unreasonable goal of eliminating illegal drug use at any cost to marginalized groups (p. xii)... Briefly, we're too afraid of these drugs and of what we think they do. Our current drug policies are based largely on fiction and misunderstanding. Pharmacology—or actual drug effects—plays less of a role when policies are devised. (p. 326)

119 <http://www.npr.org/2015/03/30/395069137/open-cases-why-one-third-of-murders-in-america-go-unresolved>

120 BJS Prisoners in 2009, p. 7, table 7. Qtd in Gottschalk p. 128

121 <http://www.washingtonpost.com/sf/national/2015/05/02/the-painful-price-of-aging-in-prison/>

122 <https://www.aclu.org/sites/default/files/FilesPDFs/ACF4F34.pdf>

123 Hart, p. 272

124 http://www.huffingtonpost.com/2014/02/27/south-carolina-drug-war_n_4809299.html

125 Hart, p. 272-3

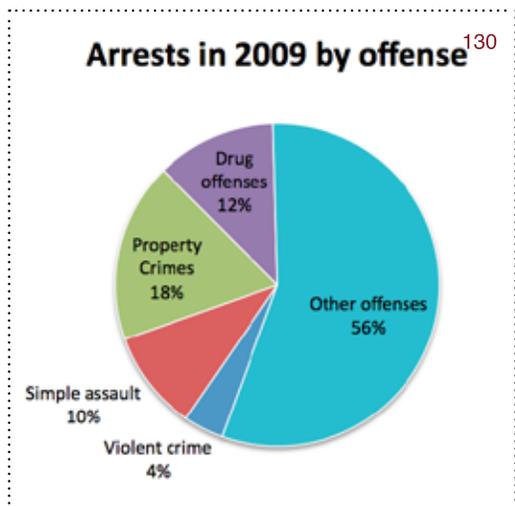
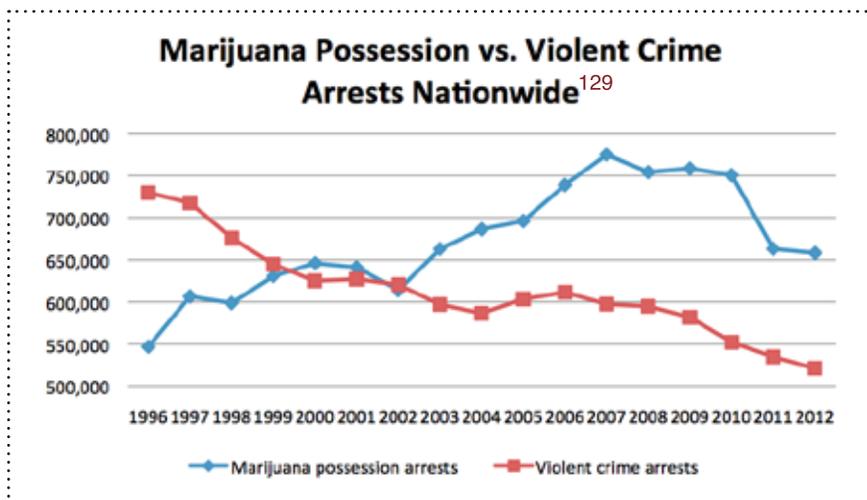
Facts and Figures

Arrests:

• From 2001 to 2010, police made more than 8.2 million marijuana arrests nationwide, almost 90% of which were for possession alone. In 2011, there were more arrests for marijuana possession than for all violent crimes put together.¹²⁶

• As of 2005, African Americans represented 12% of the country's drug-using population but more than 1/3 of those arrested for drug crimes and nearly half of those sentenced to prison for drug offenses.¹²⁷

• The ACLU has found that a black person is 3.73 times as likely as a white person to be arrested for marijuana use, despite equal rates of usage.¹²⁸



were convicted of drug offenses. At the end of fiscal 2013 (the most recent available data), 98,200 people (51% of the federal prison population) were imprisoned for possession, trafficking, or other drug crimes.¹³²

• Between 1986-1996, the number of women incarcerated for drug offenses jumped 888%.¹³³

Incarceration Rates:

• State Prison: People sentenced for drug crimes comprised 16% (210,200) of the total state prison population in 2012.¹³¹

• Federal Prison: Between 2001 and 2013, more than half of people serving sentences greater than a year in federal prisons

Sample Partner Organizations:

- Drug Policy Alliance
- ACLU
- Students for Sensible Drug Policy
- Legal Action Center
- Sentencing Project

“The drug war gives everybody permission to do anything. It gives cops permission to stop anybody, to go in anyone’s pockets, to manufacture any lie when they get to district court.”¹³⁴

- David Simon, former police reporter in Baltimore, creator of *The Wire*

¹²⁶ <http://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html>

¹²⁷ Gottschalk, p. 127

¹²⁸ <https://www.aclu.org/criminal-law-reform/war-marijuana-black-and-white-report>

¹²⁹ <http://www.drugwarfacts.org/cms/Marijuana#Total>

¹³⁰ <http://www.nij.gov/journals/270/pages/criminal-records.aspx>

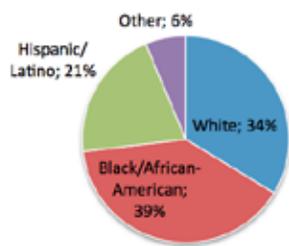
¹³¹ BJS, Prisoners in 2013, p. 15

¹³² BJS, Prisoners in 2013, p. 16

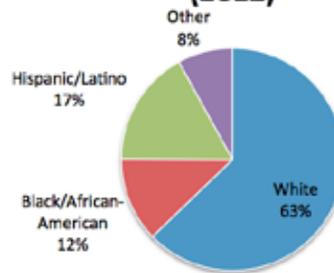
¹³³ <https://www.aclu.org/sites/default/files/FilesPDFs/ACF4F34.pdf>

¹³⁴ <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish>

Prison Population for whom Drug or Public Order Violations are the Most Serious Offenses, by Race and Hispanic Origin (Dec. 31, 2013)



U.S. Population by Race and Hispanic Origin (2012)



American Violet

The 2008 movie *American Violet* dramatizes a drug bust that occurred in Hearne, TX in 2000. It focuses on Regina Kelly, a single mother of four, who was among 27 people wrongfully arrested on drug charges on the testimony of a confidential informant. With the help of the ACLU, Kelly was able to defend herself and have the charges—which were proved baseless—dropped. Her cellmate in the county jail, Emma Faye Stewart, was less lucky; unable to pay bail, she plead guilty—to a crime she did not commit—in order to return to take care of her children. Even though charges were dropped, her guilty plea remained on the record. She is unable to receive food stamps, public housing, or federal education grants, and she only recently got back her right to vote (two years after the end of probation). She owed the court \$1800 in fines and fees, which she was dunned to pay despite barely scraping by on her minimum-wage job.¹³⁵ In an interview, Kelly says the movie’s portrayal of her circumstances was 98% accurate.¹³⁶

What’s Working: Don’t Arrest The Small Fry

In South Carolina, US Attorney Bill Nettles is trying out a new approach to reducing drug crime. He identifies drug sellers and builds the evidence to arrest and prosecute them, and does so in the case of high-level actors. In the case of lower-level dealers, his team recruits other key stakeholders—family, community, and religious leaders—and involves them in confronting the accused with the evidence. The identified person has a choice: face prosecution or participate in a pilot program that helps with job placement, and that provides education, drug counseling, and transportation access. If a program participant fails to meet certain standards, or if police get a complaint from the community about a participant, that person is arrested. In North Charleston, the first city where the program was implemented (and, at the time, America’s seventh-deadliest city), 50% of those who went into the program successfully turned their lives around—without costing the US Attorney’s office any extra money. The greater success has been improving police-community relations dramatically. The effort has been expanded to three other South Carolina cities, and other states are watching eagerly to see how expansion goes before contemplating their own versions.¹³⁷

¹³⁵ <http://www.pbs.org/wgbh/pages/frontline/shows/plea/four/stewart.html>

¹³⁶ <http://womenandhollywood.com/2009/04/17/interview-with-regina-kelly-the-woman-behind-american-violet/>

¹³⁷ http://www.huffingtonpost.com/2014/02/27/south-carolina-drug-war_n_4809299.html