

Federal Prisons at a Crossroads

The number of people incarcerated in federal prisons has declined substantially in recent years. In fact, while most states enacted reforms to reduce their prison populations over the past decade, the federal prison system has downsized at twice the nationwide rate. But recently enacted policy changes at the Department of Justice (DOJ) and certain Congressional proposals appear poised to reverse this progress.

Congress, the United States Sentencing Commission (USSC), and the DOJ reduced the federal prison population by reforming sentencing laws, revising sentencing guidelines, and modifying charging directives, respectively. But the DOJ's budget proposal for 2018 forecasts a 2% increase in the federal prison population.¹ The policy changes contributing to this reversal include:

- Attorney General Jeff Sessions' directive instructing federal prosecutors to increase their reliance on mandatory minimum sentences for low-level drug convictions.²
- The Attorney General's instruction to federal prosecutors to increasingly pursue criminal convictions for immigration law violations and his memorandum paving the way for greater use of private prisons.³
- Congressional proposals to create new mandatory minimum sentences or increase existing ones for a range of drug, immigration, and violent crimes.⁴

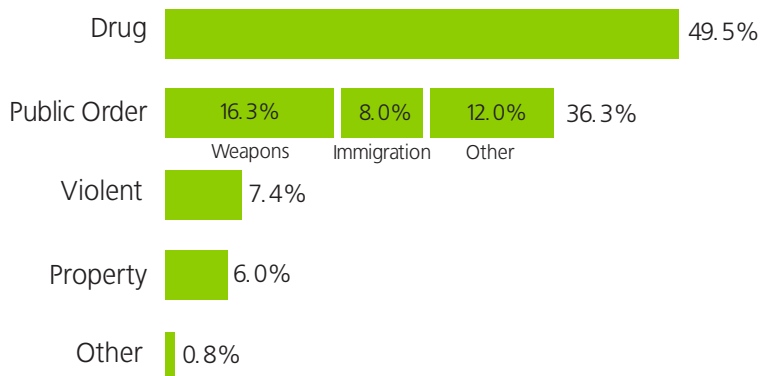
These policy shifts run counter to research and practice on effective crime policy. This brief explains why increasing the use and length of prison terms for people with drug convictions in particular—who account for half of the federal prison population—will produce little public safety benefit while carrying heavy fiscal, social, and human costs.⁵ Experience with criminal justice policy changes at the federal and state levels shows it is possible to substantially cut reliance on prisons without any adverse effects on public safety.

I. OVERVIEW OF THE FEDERAL PRISON POPULATION

The federal prison system has grown to become the largest in the country. In 1980, federal prisons held 24,000 people.⁶ By 2016, 192,000 men and women were incarcerated in federal prisons, comprising about 13% of the total U.S. prison population.⁷

The federal system is unique, in comparison to states, for imprisoning a large number of people for non-violent convictions.⁸ This is due in part to the jurisdictional focus of federal criminal courts, which has largely been on white-collar crime, bank robbery, large-scale drug and weapons distribution, and immigration law violations.

Federal Prison Population by Offense, 2015



Source: Carson, E. A. & Anderson, E. (2016). *Prisoners in 2015*. United States Department of Justice, Bureau of Justice Statistics.

Half of the federal prison population is serving time for a drug offense. In contrast, more than half of the population in state prisons is serving time for a violent crime.⁹

Many people who receive federal drug sentences are in the **lower levels of the drug trade, were not caught with weapons or have limited criminal histories.**

To the extent that the federal criminal justice system historically prosecuted drug crimes, this was primarily focused on large-scale drug rings. But in recent decades it has shifted from this mission. Many people who receive federal drug sentences are in the lower levels of the drug trade, were not caught with weapons or have limited criminal histories. Specifically:

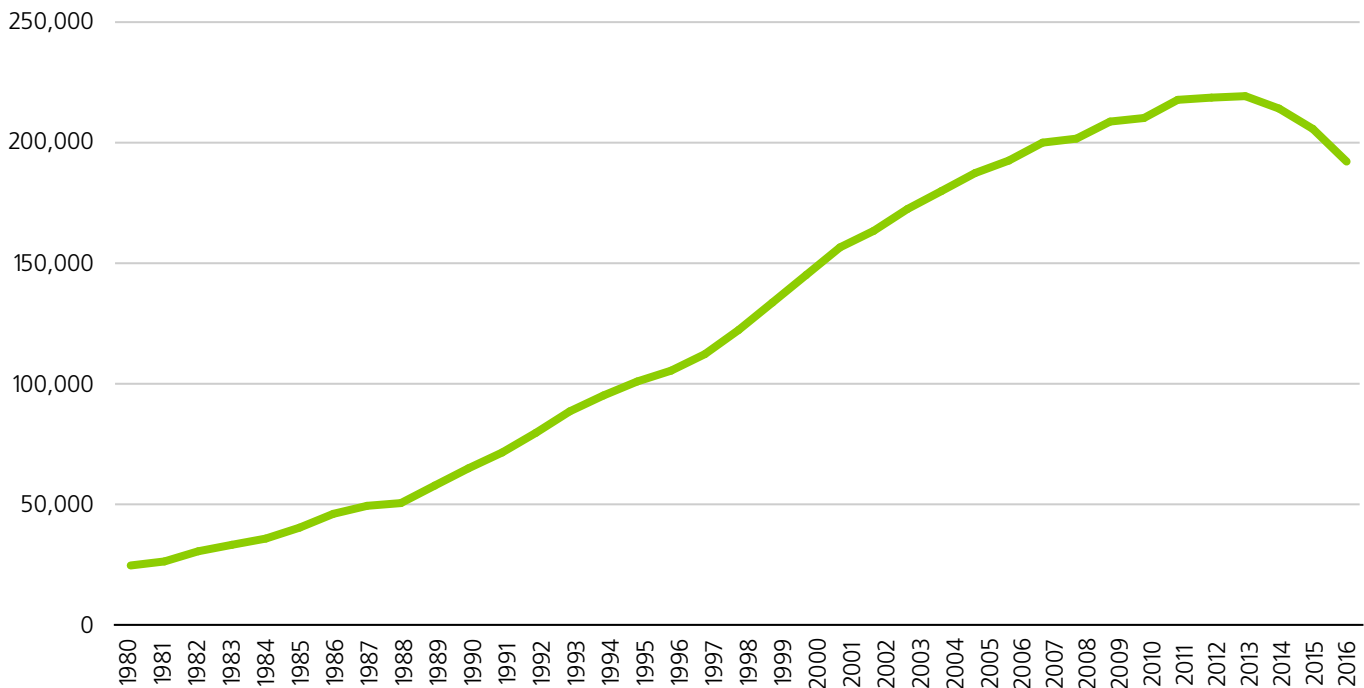
- Nearly half (48%) of individuals receiving a federal drug sentence in 2009 were at or below the level of “street-level dealers,” which is defined as selling less than one ounce of drugs.¹⁰

- No weapon was involved in 82% of the cases in which someone received a federal sentence for a drug offense in 2016.¹¹
- Half (50%) of those who received a federal sentence for a drug offense in 2016 had either no previous term of imprisonment or minimal criminal histories.¹²

Federal courts have been obligated to impose stiff mandatory sentences on these defendants despite their low levels of engagement in the drug trade. This can be seen from both the average and extreme sentences being served by those in federal prisons:

- People serving a federal prison term for a drug offense were serving an average of 11.3 years in 2012.¹³
- Almost half (49%) of the 3,861 individuals serving a federal life-without-parole sentence in 2016 were convicted of a drug crime.¹⁴

Federal Prison Population, 1980-2016



Source: Federal Bureau of Prisons. https://www.bop.gov/about/statistics/population_statistics.jsp#old_pops

II. THE RECENT DOWNSIZING OF THE FEDERAL PRISON POPULATION

Several recent reforms have scaled back the federal prison population, without harming public safety. The population in the custody of the Bureau of Prisons reached a peak in 2013, with 219,000 people.¹⁵ By 2016, this figure had declined by 12.5%, reaching 192,000. This was about twice the average nationwide rate of decarceration.¹⁶

The reduction in the federal prison population was achieved through changes in sentencing law, sentencing guidelines, and prosecutorial charging policies.¹⁷ In particular:

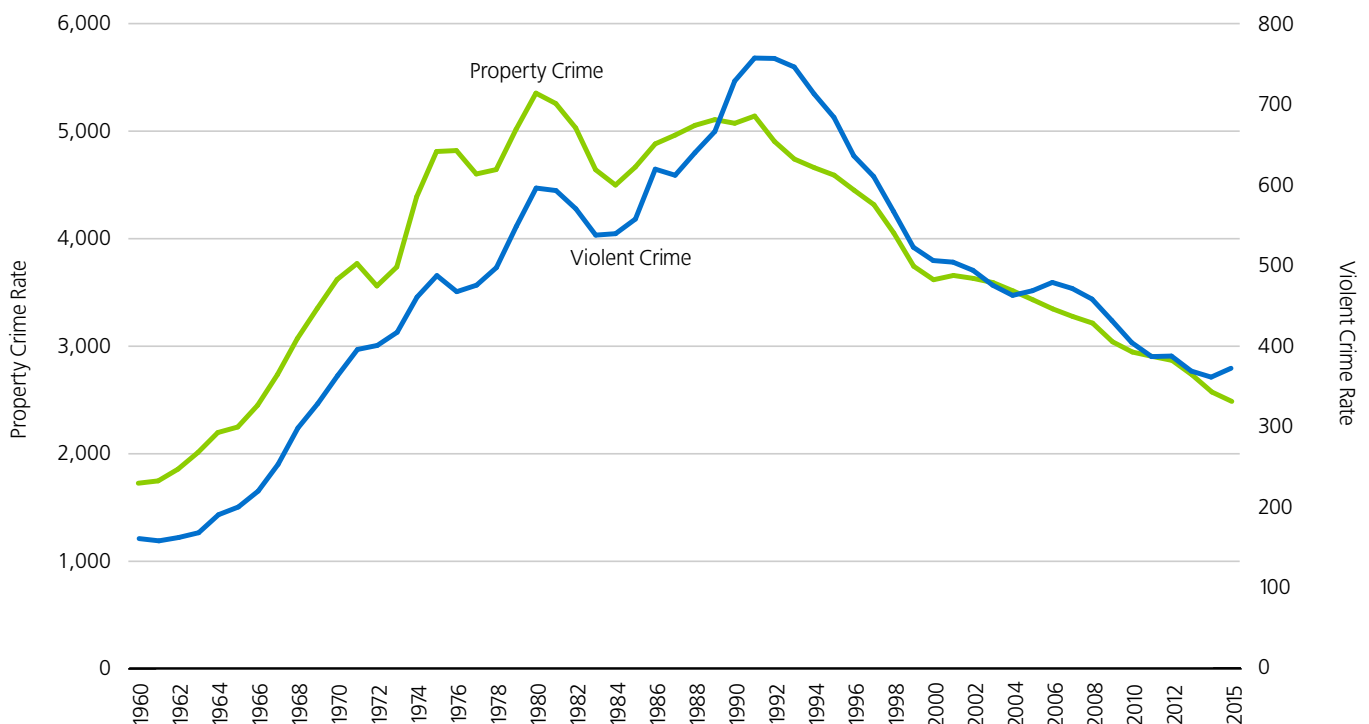
- In 2007, the USSC reduced the sentencing guidelines used by judges for many crack cocaine convictions and applied this change retroactively, enabling sentence reductions for those already imprisoned.¹⁸
- Congress passed the Fair Sentencing Act (FSA) in 2010, which reduced the sentencing disparity between crack and powder cocaine

By 2016, the federal prison population had declined by 12.5% — **twice the average nationwide rate of decarceration.**

by shortening sentences for certain crack cocaine offenses and eliminated the five-year mandatory-minimum sentence for simple possession of crack cocaine.¹⁹ The USSC revised its sentencing guidelines following the FSA and in 2011 applied the reduced crack cocaine guidelines retroactively.²⁰

- In 2014, the USSC voted to reduce the sentencing guidelines for most drug crimes and applied this amendment retroactively.
- During the second term of the Obama administration federal prosecutors pursued fewer drug cases and Attorney General Eric Holder’s 2013 charging directive, part of the Smart on Crime Initiative, helped to reduce the proportion of federal drug cases carrying a mandatory minimum sentence.²¹

Property and Violent Crime Rates, 1960-2015



Source: FBI Uniform Crime Reports

- President Barack Obama also commuted federal drug sentences for 1,700 individuals.²² Notably, over 500 people who were serving life sentences received sentence commutations.

While the historic crime drop was not unique to the United States, **the United States stands apart in its striking prison build-up during this period.**

These reforms reflect a changing political climate for criminal justice policy produced in part by the historic drop in crime rates. Nationwide rates of property and violent crimes have fallen by half since reaching their peak levels in 1991.

Researchers have shown that while this historic crime drop was not unique to the United States, the United States stands apart in its striking prison build-up during this period. Specifically:

- Between 1988 and 2004, the United States was among 26 countries that experienced comparable reductions in crimes such as assault and personal theft.²³ But countries that implemented more punitive carceral or policing policies, such as the United States and, to a lesser scale the United Kingdom, did not experience sharper crime reductions than those that did not.
- Though Canada has had a much lower homicide rate and incarceration rate than the United States, changes in the two countries' homicide rates have "tracked each other very closely" since the 1960s.²⁴ Yet unlike the United States, the drop in Canada's homicide rate has occurred alongside only modest growth in its incarceration rate.²⁵

Studies have also demonstrated that recent efforts to reduce prison sentences and downsize the prison population have not harmed public safety. For example:

- In 2014, the USSC determined that individuals who had served reduced federal drug sentences following a 2007 reform did not have higher recidivism rates than their counterparts who had served longer sentences.²⁶
- States have also shown that making dramatic cuts in incarceration levels is not at odds with the goal of improving public safety. New Jersey, New York, and California have been national leaders in decarceration—downsizing their prison populations by over 25%—while often outperforming the nationwide crime drop.²⁷

III. UPENDING REFORMS DESPITE RESEARCH AND EVIDENCE OF SUCCESS

Amidst this context, violent crime rates have begun to increase in certain cities and a growing number of Americans have been dying from opioid-related overdoses, especially in suburban and rural areas.²⁸ Yet increasing already harsh federal sentences runs counter to research on effective crime and substance abuse policy.

As criminologists and many policymakers have cautioned, ratcheting up already punitive policies, in this case largely for non-violent offenses, is ineffective and harmful.²⁹ Given the United States' excessively high rate of incarceration, many people now entering the system are in the lower- and middle-levels of a drug operation. Incarcerating these individuals often results in their being replaced by other sellers willing to fill their roles, and does nothing to address the substance abuse problems that users, and sometimes the sellers themselves, struggle with. Increasing prison terms for these individuals also has a limited deterrent effect since most people do not expect to be apprehended for a crime, are not familiar with relevant legal penalties, or criminally offend with their judgment compromised by substance abuse or mental health problems.

The "War on Drugs" has failed to reduce drug use over the past three decades.

Reviewing decades of research, the authors of a comprehensive 2014 National Research Council report explain that the best available data suggest “the successive iterations of the war on drugs... are unlikely to have markedly or clearly reduced drug crime over the past three decades.”³⁰ Reflecting more broadly on current levels of incarceration and crime, they conclude:

Given the small crime prevention effects of long prison sentences and the possibly high financial, social, and human costs of incarceration, federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States.³¹

Crime rates remain near 40-year lows and areas with rising crime and substance abuse problems require more effective policies than tougher sentences that have limited effect while causing great harm. This would include expanding access to community-based drug treatment programs and mental health services, as well as prison-based rehabilitative programs and subsequent re-entry services.³²

ENDNOTES

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