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Distorted Priorities: Drug Offenders in State Prisons

**By
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Overview

In recent years there has been much debate regarding the means by which the nation's "war on drugs" has been implemented. Since the early 1980s, government officials at all levels have dramatically increased the scale of criminal justice responses for drug offenses through stepped up law enforcement and the enactment and implementation of harsh sentencing policies.

These policy initiatives can be seen most clearly in the increased resources devoted to the drug war. Arrests for drug offenses nearly tripled from 580,900 in 1980 to 1,579,566 by 2000.¹ Nearly 315,000 persons were sentenced in state courts for a drug offense in 1998.² Of these, 42% were sentenced to prison, 26% to jail, and 32% to probation and/or treatment. The number of inmates incarcerated for drug offenses at all levels – state and federal prisons and local jails – has skyrocketed by more than 1,000% from 40,000 in 1980 to 453,000 by 1999. At that point, there were 251,200 drug offenders in state prisons incarcerated at a cost of about \$5 billion annually.³

Critics have contended that there are more effective ways than large-scale incarceration to deal with the problem of drug abuse, and that investing in prevention and treatment would be both more humane and yield better results in terms of reduced crime and drug use. A key aspect of determining the viability of such approaches relates to the profile of incarcerated drug offenders. If the majority of such offenders are low-level actors in the drug trade and using or selling drugs due to their own addiction, then many could potentially be appropriate candidates for treatment and alternative sanctions. A recent national survey conducted by Peter D. Hart Research Associates showed that 76% of respondents favor required mandatory treatment rather than prison for those convicted of drug possession, and 71% favor mandatory treatment and community service for those convicted of selling a small quantity of narcotics.⁴ However, if a substantial portion of drug offenders are major dealers engaged in a lucrative economic undertaking, then there would clearly be less public support for alternative sanctions.

Because of the harshness of federal mandatory sentencing laws and the increased prosecution of drug offenders in federal courts, there has been a good deal of analysis

¹ Federal Bureau of Investigation; *Crime in the United States: Uniform Crime Report, 2000*.

² Durose, M.R., Levin, D.J. & Langan, P.A. (2001). "Felony Sentences in State Courts, 1998." Washington, DC: Bureau of Justice Statistics.

³ This figure is derived by using a conservative estimate of \$20,000 per prisoner annual operating cost.

⁴ *Changing Public Attitudes toward the Criminal Justice System*. February 2002. Peter D. Hart Research Associates, Inc.

conducted in recent years of federal sentencing policy and practice. Data from a report by the Department of Justice documented that more than a third (36%) of federal drug offenders in 1992 were “low-level” offenders, as defined by their current and prior criminal activity.⁵ A later analysis by the U.S. Sentencing Commission found that only 11% of federal drug defendants could be classified as high-level dealers, while 55% were street-level dealers or mules, and 34% were mid-level dealers.⁶

While this information has been useful in federal policy discussions, there has been little comparable analysis conducted of drug offenders in state prison. This group is far more numerous than federal drug offenders – 251,200 in state prison compared to 68,360 in federal prison in 1999⁷ – and so potentially represents a significant cohort for which to consider alternative policy options.

In this report we analyze data from the 1997 Survey of Inmates conducted by the Bureau of Justice Statistics of the Department of Justice and released in 2000,⁸ as well as other government sources, to paint a portrait of drug offenders in state prisons. We use the 1997 dataset because it contains detailed information from the inmate survey, conducted approximately every five years. The results of our analysis are estimates based on the survey data. We are not aware of any factors that would cause a substantial difference in the composition of the current drug offender population in state prisons. Our analysis of different measures of drug offender behavior overall indicates that there is significant potential for diverting many state prison drug offenders from incarceration.

Highlights of the report include the following:

- 58% of drug prisoners – an estimated 124,885 inmates – have no history of violence or high level drug activity.
- Three-quarters of the drug offenders in state prisons have only been convicted of drug and/or non-violent offenses; one-third of the total have only been convicted of drug crimes.
- Four of every five drug prisoners are African-American (56%) and Hispanic (23%), well above their respective rates (13% and 9%) of overall drug use.

⁵ Department of Justice, *An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories*, 1994, p.7. The Department of Justice defined low-level offenders as offenders with “no current or prior violence in their records, no involvement in sophisticated criminal activity and no prior commitment” (p. 2). Sophisticated criminal activity is defined as the acts of an offender who “was a principal figure or prime motivator in the criminal organization or activity, including an individual who acted alone or directed the illicit activities of a criminal organization” (p. 6).

⁶ United States Sentencing Commission, *Cocaine and Federal Sentencing Policy*, 1995, p. 172.

⁷ Beck, A.J. & Harrison, P.M. (2001, August). *Prisoners in 2000*. Washington DC: US Department of Justice, Bureau of Justice Statistics

⁸ U.S. Dept. of Justice, Bureau of Justice Statistics, and U.S. Dept. of Justice, Federal Bureau of Prisons. SURVEY OF INMATES IN STATE AND FEDERAL CORRECTIONAL FACILITIES, 1997 [Computer file]. Compiled by U.S. Dept. of Commerce, Bureau of the Census. ICPSR ed. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 2000.

Drug Offenders in State Prisons

In 1997, state prisons nationally held in custody a total of 216,254 inmates serving a sentence for a drug offense, representing about one-fifth of all prisoners.⁹ In order to analyze the relevant issues regarding sentencing policy and practice, in the following sections we provide a detailed background of the demographics of this group of prisoners. This includes an analysis of the following issues:

- 1) Criminal history of incarcerated drug offenders
- 2) Level of involvement in drug activity
- 3) Substance abuse history
- 4) Community ties
- 5) Racial/Ethnic demographics

1. Criminal History of Incarcerated Drug Offenders

Table 1 provides a breakdown of the criminal history of the 216,254 state prisoners held for a drug offense in 1997. Of the total, 35% have criminal histories that are limited to drug offenses, and 21% of all drug offenders in prison are serving a sentence for a first-time offense. Looking at the total proportions of non-violent offenders, we find that three-quarters of the drug offenders in state prison have been convicted solely of drug and/or non-violent offenses, and less than one quarter have had a previous conviction for a violent offense.

Table 1- Criminal History of State Prison Drug Offenders-1997

<i>Offense History</i>	<i>Number</i>	<i>Percentage Of Total</i>
Drugs/Non-Violent only	161,052	74.4
Current Drugs-No Priors	45,059	20.8
Current Drugs-Prior Drugs Only	31,425	14.5
<i>Subtotal – Drugs Only</i>	76,484	35.3
Current Drugs-Prior Non-Violent	84,568	39.1
Drugs/Prior Violent	46,386	21.5
Drugs/Concurrent Charge¹⁰	8,816	4.1
Total	216,254	100.0

⁹ A significant, but unknown, additional number of prisoners were serving a sentence for a “drug-related” offense, such as a burglary committed to obtain money to buy drugs, but this report focuses solely on those offenders currently serving a sentence for a drug offense.

¹⁰ A small fraction of first time drug offenders also have a concurrent other charge for which they had been sentenced for an equal or shorter period of time. Although included in the overall figures of state drug inmates to reflect accurately how the Bureau of Justice Statistics classifies these individuals, they were omitted from our analysis of offenders with no prior convictions due to the existence of a concurrent charge. Additionally, we make the conservative assumption that the entire 4.1% of this group may have a concurrent violent offense, and therefore do not include any in the non-violent criminal history category.

2. Level of Involvement in Drug Activity

As seen above, approximately three-quarters of inmates currently serving a sentence for a drug offense have no current or prior convictions for a violent offense, and more than a third of the total have been convicted only of drug offenses.¹¹

In order to assess the potential of the drug offender population for diversion from the prison system, a key consideration regards its degree of involvement in drug use or drug selling. That is, to what extent are these offenders users or sellers of drugs, and to the extent they have been involved in selling drugs, at what level have they done so? We analyze this issue in two ways: first, by examining data on the offense of conviction, and second, by analyzing the offender's role in the drug trade.

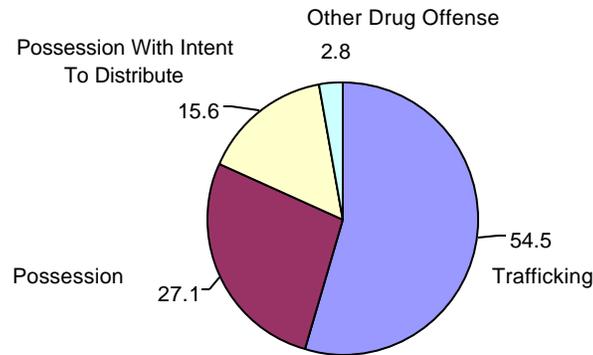
Conviction Offense

As seen in Figure 1, 43% of the drug offenders in state prison have been convicted of drug possession (27% for simple possession and 16% for possession with intent to distribute) and 55% of drug trafficking.¹² Among those whose criminal history is limited to drug offenses, 39% of the convictions are for drug possession, and 59% for drug sales. These figures mirror an analysis of prison admissions data conducted by Human Rights Watch. Examining National Corrections Reporting Program prison admissions data for 1996, Human Rights Watch researchers found that 28% of all drug offenders were admitted to prison for simple possession and 56% for drug sales. In nine of the states analyzed, more than 50% of individuals admitted to prison in 1996 were convicted of a simple possession offense.¹³

¹¹ Recidivism data also illustrate that to the extent that released drug offenders are rearrested, this is most likely to be for a non-violent offense. Of the released drug offenders who are rearrested within three years, four out of five are charged with non-violent drug (42%) or property crimes, and one of five for a violent offense. See Langan, P.A. and Levin, D.J. (2002). *Recidivism of Prisoners Released in 1994*. Washington, DC: Bureau of Justice Statistics (p. 9).

¹² A small additional percentage are incarcerated for charges classified as "other drug offense."

¹³ Fellner, J. (2000). *Punishment and Prejudice: Racial Disparities in the War on Drugs*. Washington, DC: Human Rights Watch.

Figure 1- Conviction Offense (%)

This data documents that approximately two-fifths of the drug offender population in state prisons are incarcerated for drug possession charges. But the nature of charging and plea negotiation practices imposes limitations on our understanding of the level of illegal behavior engaged in by this group. Survey data show that just over a third of the offenders incarcerated for drug possession have been convicted of “possession with intent to distribute.” Essentially, this represents a legislative and charging decision that the volume of drugs involved exceeded a legislatively determined quantity considered greater than would be used for personal consumption, despite a lack of direct evidence that the person arrested was engaged in the illegal sale or distribution of drugs.

Unfortunately, the sub-category of possession with intent to distribute is not effective in conveying with any degree of precision the seriousness of the charge. For instance, the range of such cases can be seen in the following examples. Among the lower range cases is Vanessa Wade, 19 years old at the time and with no prior record, who agreed to help her boyfriend sell 22 grams of cocaine; when apprehended, she was sentenced to 23 years for conspiracy to distribute and possession with intent to distribute.¹⁴ At the other extreme are cases such as those in Maryland in which several persons were convicted of possession with intent to distribute after being pulled over on Interstate 95 with 102 grams, 176 grams, and 357 grams of cocaine respectively.¹⁵

Charging and plea negotiation practices also result in cases in which persons convicted of drug possession may have originally been charged with drug trafficking but subsequently agreed to a plea bargain for a possession conviction. For example, a Louisiana man caught with 167 pounds of marijuana and \$6,700 on his person had his

¹⁴ Richardson, L. “A Prisoner’s Plea to a President: A Decade Into Her 23-Year Sentence, a First-Time Offender Pinned Her Hopes On Clinton. Hers is A Case, Advocates Say, of a Pardon that Should Have Been.” *Los Angeles Times*. April 2, 2001.

¹⁵ “4 Drug Cases Settled with Plea Agreements.” *The Baltimore Sun-Harford Edition*. July 9, 1995.

charges dropped from distribution to possession with intent to distribute in exchange for a guilty plea.¹⁶

To the extent these court dynamics are at work, though, we note that it is still unlikely that the group of possession convictions on the whole was engaged in the drug trade at a significant level. Few prosecutors would agree to a plea bargain to possession for a defendant for whom they believed and could prove was responsible for importing, manufacturing, or distributing significant quantities of illegal drugs.

Similarly, the category of drug trafficking, comprising a majority (54.5%) of all drug offenders, incorporates a broad range of drug offender behavior. Within this category would fall both a drug “kingpin” responsible for a multi-million dollar operation and a young woman selling \$10 “rocks” of crack on a street corner to support her drug habit. While both behaviors are clearly illegal, the implications of imprisonment, both on the offender and the drug trade, are clearly distinctly different. It is plausible that the imprisonment of the kingpin would disrupt the drug operation at least temporarily, but there is little evidence that incarceration of lower level sellers produces any significant street impact. As former American Society of Criminology President Alfred Blumstein has noted, “As long as the market demand persists and there is a continued supply of sellers, there should be little effect on drug transactions.”¹⁷

We also note that some of the drug offenders in this survey have been sent back to prison for violating the conditions of their parole. From 1990 to 1998, the number of drug offenders receiving a parole revocation more than doubled, making up more than half of the total increase in parole revocations during this period.¹⁸ Parole revocation for all offenses now represent one-third of prison admissions each year. In 1998, 30% of all (not solely drug) parolees returned to prison were revoked due to a technical violation. In half these cases, this involved drug possession or a failed drug test.¹⁹ While violations of parole need to have consequences, the policy issues involved in additional incarceration of drug using offenders are similar to those for offenders sentenced to prison upon conviction.

¹⁶ Darby, J. “Man Gets 5 Years in Prison in Pot Case.” *The Times-Picayune*. August 22, 2000.

¹⁷ Blumstein, A. “Making Rationality Relevant – The American Society of Criminology 1992 Presidential Address,” *Criminology*, 31, (1), 7.

¹⁸ Beck, A.J. (2000). *Prisoners in 1999*. Washington, DC: Bureau of Justice Statistics (p. 11).

¹⁹ Hughes, T.A. & Beck, A.J. (2001). *Trends in State Parole, 1990-2000*. Washington, DC: Bureau of Justice Statistics (p. 14).

Offender's Role in the Drug Trade

While the offense of conviction provides a certain level of understanding of the criminal involvement of imprisoned drug offenders, the broad categories it covers obscure the many variations within these groups. A more detailed understanding of these distinctions is needed in order to understand the characteristics of drug offenders and to develop appropriate public policy responses.

The best means available of accomplishing this is through an analysis of the role of drug offenders obtained from the Inmate Survey. In the 1997 survey, inmates were asked to provide information regarding their past behavior in respect to drugs (e.g. using or possessing illegal drugs, illegally manufacturing drugs, importing drugs, etc.).²⁰

Table 2 provides a summary of the reported drug-related activities of inmates incarcerated for a drug offense. The figures are most useful for estimating the potential number of high-level drug offenders, since the categories are *not* mutually exclusive. For example, a person who responded that he was engaged in importing drugs into the United States and also used illegal drugs would most appropriately be characterized as being involved at a high level in the drug trade rather than a low level user or seller.

Using this framework, we can identify an upper limit of 28.5% of the drug offenders who reported a level of activity that might constitute a high-level role in the drug economy. This includes the 3.5% of respondents who reported that they were involved in some form of importation of drugs into the United States, 4.4% who were involved in the manufacturing of drugs, 2.8% who laundered money, and 17.8% who distributed drugs to dealers. But because these categories are not mutually exclusive (an inmate could have responded affirmatively both to “illegally manufacturing” drugs and “distributing” drugs, and thus be counted twice for these purposes), this total should be viewed as an upper limit and we can assume that the overall proportion is actually lower. Therefore, a significant proportion of drug offenders in prison – at least 71% -- reported no involvement in actions that could be considered “high-level drug activities.”

Table 2- Inmate's Self-Reported Drug Related Activity

<i>Inmate Reports . . .</i>	<i>% of Inmates</i>
High Level Drug Activity	
Importing or helping others import illegal drugs into the United States	3.5%
Manufacturing, growing or helping others manufacture or grow illegal drugs	4.4%
Laundering drug money	2.8%
Distributing or helping to distribute drugs to dealers	17.8%
Total	28.5%
Low Level Drug Activity	
Selling or helping to sell drugs to others for their use	50.2%
Using or possessing illegal drugs	65.7%

Note: Numbers do not add up to 100% due to a lack of category exclusivity.

²⁰ Inmate self reports represent the standard measure of behavior for these activities utilized by the Department of Justice and other agencies.

This group of 71% of drug offenders not engaged in high level activity represents a potential target group for diversion from prison. In order to refine the analysis, this variable needs to be combined with the previous analysis of criminal histories (Table 1). By doing so, we can assess the proportion of drug offenders with no history of violence (74%) who are also not engaged in high level drug activity. This screens out, for example, a first-time drug offender convicted of importing a plane load of drugs, as well as an offender with “low-level” drug behavior who has previously been convicted of a violent offense.

As seen in Table 3, combining these factors yields an estimated total of 124,885 imprisoned drug offenders who have no history of violence and no involvement in high-level drug activity. This group constitutes 58% of the drug offenders in the 1997 survey, and would represent a higher figure today, based on the rising number of inmates.

Table 3- Non-Violent Drug Offenders with No Reported High-Level Drug Activity

<i>Inmates</i>	<i>Number</i>	<i>Percentage of Total Drug Offenders</i>
Non-Violent Drug Offenders	161,052	74.4
Non-Violent; no high-level drug activity	124,885	57.7

3. Substance Abuse History

An analysis of the backgrounds of drug offenders in prison reveals that substance abuse is a pervasive factor in most of their lives. Two-thirds (68%) of state prisoners incarcerated for a drug offense have used illegal narcotics during the month before their arrest. Forty-one percent were under the influence at the time of their offense and 28% reported that they committed their crime to get money to purchase drugs. As Table 4 demonstrates, the frequency of more problematic use patterns increases with the person's criminal record.

Table 4 - Drug Abuse Indicators

<i>Offense History</i>	<i>Total (%)</i>	<i>No Prior Conviction (%)</i>	<i>Prior Conviction (%)</i>
Drug use in the Month Prior to Offense	68	52	73
Under the Influence of Drugs at the Time of Offense	41	28	45
Committed Crime to Obtain Money for Drugs	28	20	31
Ever Been Fired From a Job Due to Alcohol or Drug Abuse	20	10	23

As drug problems become more severe, it is also likely that there will be increased contact with the criminal justice system. However, data from the Inmate Survey show that only 34% of those with a prior conviction have ever participated in a treatment program while under supervision. For those who have previously been on probation or parole, only 21% had been in treatment while under supervision. Given that a sentence to probation or parole offers an opportunity to provide services that may reduce the likelihood of reoffending, these figures suggest that shifts in resources could prove beneficial over time.

Treatment patterns play a direct role in understanding the process by which drug offenders are sentenced to prison. As we have previously seen, three-quarters of the drug offenders in prison have no history of violence, but a substantial majority (53.6% of the 74.4%) have had prior drug or non-violent convictions. Thus, while some drug offenders have been sentenced to prison only after repeated convictions for drug offenses, from a policy perspective one needs to examine whether appropriate resources had been devoted to treatment alternatives or other offender services and supervision on these prior occasions.

4. Community Ties

A final area of inquiry concerns the background characteristics of drug offenders. We have already seen that there are a substantial number of low-level offenders filling the nation's prisons. An approach to this level of drug abuse that emphasizes law enforcement and incarceration over prevention and treatment inevitably will result in excessive use of imprisonment. Further analysis illustrates that increasing incarceration for drug offenders can also prove deleterious to the network of informal personal bonds that exists in communities and neighborhoods.

Of our sample of inmates, 61% had a job or business during the month before their arrest. Of those respondents who answered in the affirmative, 78% (or 48% of the full sample) were employed full-time, with a median monthly income of approximately \$1050. This profile reports a startlingly different tale than common perceptions of drug offenders. Prior to their incarceration, drug offenders were for the most part employed, residing in private living quarters, and earning a wage.

Drug offenders in state prison have violated drug laws, but these figures illustrate that in many respects removing them from circulation for significant periods of time removes their positive contributions as well as their negative ones. As such, the decision to imprison them carries with it a set of varied consequences, particularly for non-violent offenders. Incarceration interrupts their drug activities, but also removes their labor power and skill sets, their human capital. The removal of large numbers of fathers, mothers, siblings, and neighbors from a community serves to undercut that neighborhood's ability to exercise informal social control. Essentially, bonds between neighbors and the networks of social capital that emerge via face-to-face interaction are eroded when a community becomes one of high mobility with large numbers of people entering and returning from prison each year. Ironically, recent scholarship in the field suggests that this social breakdown may actually counteract any incapacitating effects of prison by weakening social bonds.²¹

Table 5 - Inmate Employment History

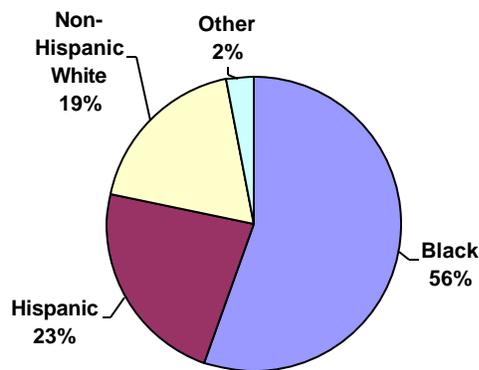
<i>Inmate Reports . . .</i>	<i>% of Inmates</i>
Had a Job or Business During the Month Prior to Arrest	60.6
If Yes, was this Employment Full-Time	78.4
<i>Median Monthly Income of Inmate</i>	<i>\$1050</i>

²¹ Rose, D.R. & Clear, T.R. (1998). "Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory." *Criminology*, 36, (3), 441-479.

5. Racial/Ethnic Demographics

While drug use and abuse cut across racial and ethnic categories, the impact of punitive drug policies has fallen disproportionately on low-income communities of color. The end result of this can be clearly seen in the significant racial and ethnic disparities among state prisoners incarcerated for a drug offense. As seen in Figure 2, four of every five drug prisoners are racial and ethnic minorities-- 56% black and 23% Hispanic.

Figure 2- Racial and Ethnic Breakdown of Drug Offenders in State Prison-1997



In some states, sentencing data provide an even starker racial disparity among those convicted of drug crimes. For example, the state of Maryland reports that during the period 1996-2001, 81% of individuals sentenced for a drug offense were black and 64% of all sentences for black offenders were for drug violations.²² These racial proportions are in sharp contrast to the demographic profile of drug users nationally. Data from the 1997 National Household Survey on Drug Abuse indicate that African Americans constituted 13% of monthly drug users and Hispanics, 9%. Whites, one-fifth of the drug offenders in state prisons, comprise 74% of monthly drug users. These disparities raise a set of questions regarding the orientation of national drug policy. Primary among them are the law enforcement and sentencing practices that contribute to such over-representation of people of color incarcerated for drug offenses. While it is possible that part of the disparity results from differential rates of selling drugs, as opposed to use or possession (there are no reliable data on the racial and ethnic composition of drug sellers), at least one Justice Department study of drug transactions in six cities found that “respondents were most likely to report using a main source who was

²² Bierie, D., Farrell, J., Locust, G. and Connelly, M. (2002). *Sentencing Demographics in Maryland, 1996-2001*. Maryland State Commission on Criminal Sentencing Policy.

of their own racial or ethnic background.”²³ Therefore, if the majority of drug users are white, this study suggests that their sellers are more likely to be white as well.

The racial disparities do not suggest that the impact of drug use and abuse is identical in all communities. Moreover, there appear to be significant differences in the ways in which white and African-American communities experience drug use. For example, despite the fact that most evidence indicates that African-Americans do not use drugs to any significantly greater degree than their white counterparts, the drug trade is more visible in many African-American communities, giving the impression of higher levels of drug use.²⁴ That heightened level of visibility leads to a misperception of the degree of drug use and dependency in minority and low-income neighborhoods. A recent study published in the *American Journal of Public Health* found that although minority communities had a higher score on drug sales indicators, meaning that the drug trade was more visible than in white neighborhoods, those same neighborhoods had lower scores on drug use and drug dependency.²⁵ Thus, using visible drug sales and the resultant disorder as a proxy for drug use risks overestimating the prevalence of drug use in minority communities and underestimating its ubiquity in white neighborhoods.

Nevertheless, despite lower drug use and dependency rates in minority communities than commonly perceived, there can be little debate that low-income communities have suffered considerable harm, including high rates of violence, resulting from the dynamics of the drug trade. Much of this is related to the nature of drug transactions and the ready availability of illegal guns in many neighborhoods. Thus, it is important to identify why communities experience the drug trade so differently; as well as to address the seeming paradox that exists between the lower rates of drug use in minority communities and the higher degree of damage.

Sociologist Jeanette Covington suggests that “resource deprivation” causes minority neighborhoods to suffer more intensely from the drug trade.²⁶ By virtue of living in a low-income neighborhood, residents have limited access to vital resources such as jobs and training; the lack of a stable job means that the effects of a drug habit are far more devastating to an individual’s financial status. Low-income drug users are also forced to rely upon public treatment programs in which they must compete for a limited amount of space, rather than having access to private programs which many middle-class users can afford.²⁷ Covington suggests that because limited resources create a profound effect on how minority neighborhoods experience drug use an institutional response to this problem should ideally address this lack of resources through more extensive treatment, education, job training, housing, legal aid, help with childcare, and funds for

²³ K. Jack Riley, *Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities*, National Institute of Justice, December 1997, p. 1.

²⁴ Saxe, L., Kadushin, C., Beveridge, A., Livert, D., Tighe, E., Rindskopf, D., Ford, J., and Brodsky, A. (2001). “The Visibility of Illicit Drugs: Implications for Community-Based Drug Control Strategies.” *American Journal of Public Health*, 91, (12), 1987-1994.

²⁵ *Ibid.*, 1990.

²⁶ Covington, J. (1997). “The Social Construction of the Minority Drug Problem.” *Social Justice*, 24, (4), 117-147.

²⁷ *Ibid.*, 139-40.

economic development.²⁸ But the primary policy response to these harms, a dramatic escalation of prosecutions and imprisonment, has fallen far short by neglecting to focus on strengthening family and community institutions that can address these problems in a more pro-active manner.

²⁸ Ibid., 140.

Conclusion: Towards A More Effective Drug Policy

As this report has documented, 58% of the persons currently incarcerated in state prisons for drug offenses – an estimated 124,885 persons -- are non-violent and not engaged in high level drug activity. They represent a pool of appropriate candidates for diversion to treatment programs or some other type of community-based sanctions.

This analysis does not suggest that drug abuse is not a problem in many homes and communities, but rather that the nature of the response produced by the “war on drugs” has been overly punitive and costly, and has diverted attention and resources from potentially more constructive approaches. As we have seen, incarceration costs for the 251,200 drug offenders in state prison currently total about \$5 billion annually; research has shown that this is not the most cost effective manner in which to treat drug addiction. The California Department of Alcohol and Drug Programs concluded that every dollar spent on treatment for substance abuse saves the state seven dollars via reduced crime and health costs.²⁹ RAND analysts found the expenditure of \$1 million to expand mandatory minimum sentencing for drug offenders would reduce national drug consumption by 13 kilograms, while using that same money to expand drug treatment to heavy users would diminish consumption nationally by 100 kilograms.³⁰ Moreover, some evidence is beginning to surface demonstrating that prison may actually have a criminogenic effect on drug users. Recent research conducted by criminologists Cassia Spohn and David Holleran concluded that those sentenced to prison have higher recidivism rates, and reoffend more quickly, than those sentenced to probation.³¹

These outcomes are the result of several dynamics. First has been the engagement of the “war on drugs” primarily as a criminal justice problem, as evidenced by federal drug control allocations that establish two-thirds of funds for law enforcement and incarceration, and just one-third for prevention and treatment approaches. This has resulted in a two-tiered “war,” in which middle income communities with resources can address their drug problems privately as a health issue, while low-income neighborhoods are essentially consigned to criminal justice mechanisms. The racial and ethnic implications of these priorities are clear as well; as we have documented, 79% of drug offenders in state prison are African American or Latino.³²

The means by which these outcomes are produced result from a mix of policy and practice decisions. Law enforcement priorities have in many cases targeted drug problems primarily in low-income communities. Once defendants enter the criminal justice system, they are faced with the vast array of mandatory sentencing provisions that

²⁹ State of California Department of Alcohol and Drug Programs. (1994). *Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment*. Sacramento, CA: State of California Department of Alcohol and Drug Programs. (p. 89).

³⁰ Caulkins, J.P. (1997). *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?* Santa Monica, CA: RAND Corporation.

³¹ Spohn, C. and Holleran, D. (2002). “The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders.” *Criminology*, 40, (2), 329-357.

³² A more recent racial and ethnic breakdown for 1999 is reported as 80% African American and Latino; see BJS *Prisoners in 2000*.

have served to increase the scale of punishment substantially. While there are no reliable data to document the proportion of drug offender inmates who were sentenced under such laws, virtually every state now has some form of mandatory sentencing, most often applied to drug offenses. Even in cases in which these provisions are not employed, the lengthier sentences that they hold out are likely to escalate the amount of punishment imposed, primarily by increasing the prosecution's power in the plea bargaining process, which resolves most cases.

Alternative options to prison for drug offenders clearly exist. The most widespread of these in recent years have been the treatment and counseling made available through the several hundred drug courts now operating in jurisdictions around the country. While their program models are varied and the evaluation research is still in its early stages, the initial results from these programs are encouraging.

The Drug Court Clearinghouse and Technical Assistance Project, funded by the Department of Justice, has catalogued the experience of these programs over their first decade of existence in the 1990s. Their conclusion is that "drug court programs are experiencing a significant reduction in recidivism among participants," citing rates that range from 5-28%, in comparison to recidivism rates in the range of 50% for non-drug court drug possession defendants. Similarly, they report that drug use among drug court participants is "substantially reduced and significantly lower than that reported for non-drug court defendants."³³ Stephen Belenko, in a meta-analysis of drug court evaluations, found lower rearrest rates for drug court program participants both during and after treatment.³⁴

Drug court programs have even been successful for users with a long drug abuse history and a series of incarcerations. A study conducted in California demonstrated that more than seven in ten drug court participants had been using drugs for five or more years and most had been incarcerated within the two years prior to their enrollment.³⁵ A number of the participants suffered from problems that included unemployment, limited education, and strained familial relations. Despite these apparent obstacles to success, an analysis of those who graduated from drug courts during the study period concluded that the drug court participants were arrested at a rate 85% below individuals who had just entered the program during that same period. Additionally, those who graduated had a conviction rate 77% below those entering the program and an incarceration rate that was

³³ Drug Court Clearinghouse and Technical Assistance Project, *Looking at a Decade of Drug Courts*, Revised 1999. Available online <<http://www.american.edu/spa/justice/publications/decade1.htm#Effect>>

³⁴ Belenko, S. (2001). *Research on Drug Courts: A Critical Review 2001 Update*. The National Center on Addiction and Substance Abuse at Columbia University. The numerous programs studied produced a divergent range of results, with rearrest rates as low as 5% and as high as 40%. There is a significant variance among different drug court operations in regard to sanctions and services. This variety makes settling on a universally accepted figure as to the efficacy of such drug programs difficult. Although inter-program comparison may not be feasible due to the variety of offerings, virtually all evaluations demonstrated a lower recidivism rate for those sentenced to drug courts than those in a control group. See Belenko for an in depth discussion of the complexities inherent in evaluating drug court programs.

³⁵ Drug Court Partnership. *Drug Court Partnership Act of 1988, Chapter 1007, Statutes of 1998 Final Report*. The California Department of Alcohol and Drug Programs and the Judicial Council of California, Administrative Office of the Courts.

83% less. Results also showed an increase in individuals receiving a high-school education, getting housing, and maintaining or regaining custody of their children. For the period studied, due to diversion and a decreased need for prison and jail space, researchers concluded that the state saved \$43 million.

Other approaches to drug issues that rely on options other than incarceration include the drug offender diversion initiatives approved by voters in Arizona and California in recent years. The Arizona act, for example, requires that offenders convicted of a first or second-time possession charge be sentenced to probation and drug treatment, with earmarked state funds to support the treatment services. An evaluation conducted by the Arizona Supreme Court concluded that 62% of the 2,719 probationers assigned to the program complied with treatment requirements as of June 1999 and that the state saved an estimated \$6.7 million in prison costs averted as a result of the measure.³⁶

While there is great concern about the harm caused by drug abuse in society, programs and policies that offer viable and non-punitive options for appropriate offenders have generally been embraced by both courts and communities. As this report has shown, the potential for expansion of these approaches, given the composition of drug offenders in state prisons, is quite substantial. Policymakers and communities would be well served by a broad national dialogue on the means by which national drug policy can be redirected in these more constructive ways.

³⁶ Supreme Court, State of Arizona, *Drug Treatment and Education Fund, Annual Report Fiscal Year 1999*, November 2001, p. 3.

Methodology

The data used for this analysis are from the 1997 Survey of Inmates in State Correctional Facilities (SISCF), conducted approximately every five to six years by the Bureau of the Census for the Bureau of Justice Statistics. A sample of 14,285 inmates is drawn through a two-stage selection. The first stage is the selection of the facilities to be included, drawn from the universe of 1,409 state prisons. Facilities were stratified by region and ordered by gender, facility type, security level, and population. A total of 275 facilities were chosen. The second stage involved sampling the inmates from the 275 sampled prisons. BJS uses data from these surveys to derive estimates for the total prison population.

There are two types of errors that can occur when one uses a sample to create estimates. The first is *nonsampling error*, those that are related to difficulties inherent in conducting a survey such as nonresponse or a misunderstanding of the questions by the respondent. The second error is *sampling error*, those that can occur when a sample is used to generalize to a total population, and will vary based on the size of the population.

Appendix Table A below, adapted from the Bureau of Justice Statistics, provides the reader with a reference point as to the range of variance around our estimates that can be credited to sampling error.

Appendix Table A³⁷
Standard Errors of the Estimated Percentages, State Prison Inmates, 1997

Estimated %

<i>Base</i>	<i>98 or 2</i>	<i>90 or 10</i>	<i>80 or 20</i>	<i>70 or 30</i>	<i>60 or 40</i>	<i>50</i>
5,000	2.21	4.73	6.31	7.23	7.73	7.89
20,000	1.10	2.37	3.15	3.61	3.86	3.94
50,000	0.70	1.50	2.00	2.29	2.44	2.49
100,000	0.49	1.06	1.41	1.62	1.73	1.76
200,000	0.35	0.75	1.00	1.14	1.22	1.25
1,060,000	0.15	0.33	0.43	0.50	0.53	0.54

As the table above demonstrates, the smaller the base of the estimate, the larger the standard errors and the less precise the estimate. Therefore, it is always ideal to have the largest estimate possible. In the case of this study, there are two primary figures to be concerned with: the base of 216,254, which represents the total drug offender sample, and 1,059,607, which represents the weighted total sample of all state prison inmates.

³⁷ Adapted from Table 4.A1. (Standard Errors of the Estimated Percentages, State Prison Inmates, 1997). Bureau of Justice Statistics. *Correctional Populations in the United States, 1997*. Washington, DC: Bureau of Justice Statistics. (p. 67).