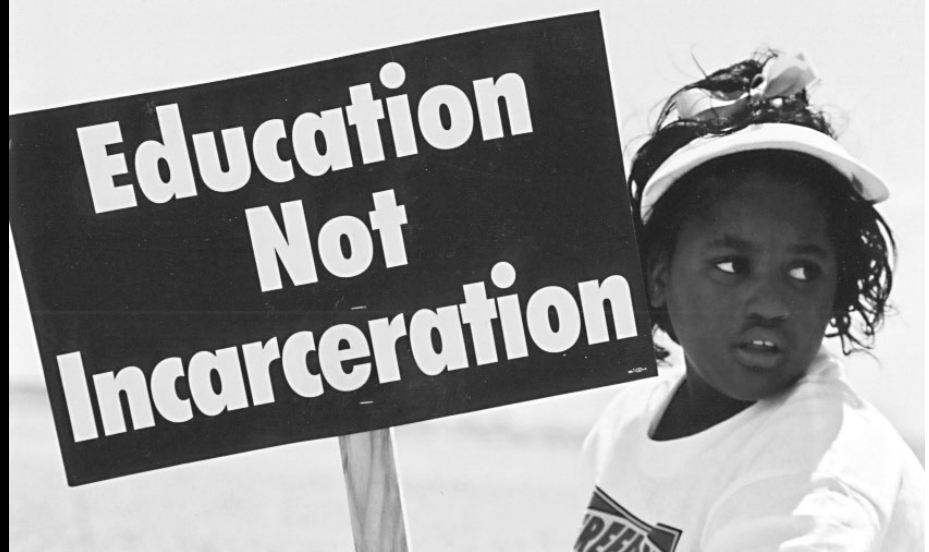


POSITION PAPER: Race and the War on Drugs



WITH OUR HISTORY of racial injustice, the United States cannot and should not tolerate laws that systematically target communities of color. Yet, this is precisely the outcome of the current War on Drugs. Even though drugs remain as available as ever, we are continuing policies that have a devastating effect on African-American and Latino communities. The time has come to reverse course in a disastrous, ineffective, and racist **WAR ON DRUGS.**

Who's Who in the Criminal Justice System

Today, black males have a 29% chance of serving time in prison at some point in their lives, Latino males have a 16% chance, and white males have a 4% chance.¹

Even though whites out-

number blacks five to one and both groups use and sell drugs at similar rates,² African-Americans comprise:

- 35% of those arrested for drug possession;
- 55% of those convicted for drug possession; and
- 74% of those imprisoned for drug possession.³

This skewed enforcement of drug laws has a devastating impact. One in three black men between the ages of 20 and 29 are currently either on probation, parole, or in prison. One in five black men have been convicted of a felony. In seven states, between 80% and 90% of prisoners serving time for drug offenses are black.⁴

The statistics for the Latino population are equally disturbing. Latinos comprise 12.5% of the population⁵ and use and sell drugs less than whites,⁶ yet they accounted for 46% of those charged with a federal drug offense in 1999.⁷

How Did We Get Here?

Historically, people of

color have been a primary target of anti-drug policies and rhetoric. Beginning in the early 1900s, drug warriors invoked the image of black men high on drugs to pass the nation's earliest drug laws.⁸ By 1930, 16 western states prohibited marijuana as a way to target the growing Mexican community that had flooded the U.S. job market.⁹ In 1951, the Boggs Act established stringent narcotics penalties in response to the threat of "communist opium" from Asia.¹⁰ In 1973, with a mandate from the public to "get tough on crime," New York enacted the Rockefeller drug laws, requiring severe prison terms for drug crimes regardless of circumstance. A quarter century later, 94% of all people in prison in New York state on drug charges are black or Latino.¹¹

By the 1980s, the link between minorities, drugs, and crime was firmly cemented in American rhetoric and embodied in President Reagan's revamped "War on Drugs." Media hysteria about an unsubstantiated crack epidemic amongst blacks prompted Congress to pass draconian mandatory minimum sen-

U.S. DRUG POLICIES THROUGHOUT THE YEARS

1870s – After building the railroads, the Chinese were viewed as a glut on the labor market. As anti-Chinese sentiment grew, the San Francisco Opium Ordinance punished opium smokers, the majority of whom were Chinese.

1914 – The Harrison Narcotic Act regulated the manufacture of narcotics. However, law enforcement used the law to arrest physicians for prescribing narcotics.

1930 – By 1915, over 500,000 Mexicans had flooded the U.S. border and job market, bringing marijuana with them. In response to growing anti-Mexican sentiment, by 1930, 16 western states had prohibited the sale or possession of marijuana.

1951 – America was warned that the real menace was not communist troops, but rather communist opium. In response, the U.S. quickly passed the Boggs Act, establishing the most stringent narcotics penalties in U.S. history.

1970 – Civil asset forfeiture laws allow police to seize “guilty” property from ➤

tencing laws against crack cocaine. Penalties against powder cocaine – the same drug but typically associated with white users – remained relatively light. Even though most crack users and dealers are white, this “crack equals black” formula distorted prosecutions. By 2001, over 80% of federal crack defendants were black.¹²

- Possession of 500 grams of POWDER cocaine results in a 5-year prison term.
- Possession of 5 grams of CRACK cocaine results in a 5-year prison term.¹³

Law enforcement practices fuel racial inequalities in the criminal justice system. Over the years, the Drug Enforcement Administration (DEA) has helped train police to profile highway travelers for potential drug couriers.¹⁴ This profile is based on associating people of color with crime, creating a phenomenon known as “driving while black or brown.” In Maryland, for instance, although only 21% of drivers along a stretch of Interstate 95 are minorities including blacks, Latinos, Asians, and others, 80% of those who are pulled over and searched are people of color.¹⁵ In California, between 80% and 90% of all motorists arrested by law enforcement officials since 1991 have been members of minority groups.¹⁶ These statistics are not the product of chance, but of purpose and can be found throughout the country.

But racial profiling is not just limited to our highways. In

1998, 51,000 people were selected for body searches ranging from hand frisks to strip-searches by immigration officials at customs checkpoints. 96% of those searches yielded nothing; two-thirds of the people selected were black or Latino.¹⁷

On the streets of our cities, young minorities are routinely stopped for *Terry* frisks, named after a Supreme Court ruling stating that police do not need a warrant or even probable cause to stop and search individuals as long as there exists a reasonable cause for suspicion. In New York City, between 1998 and 1999, the police recorded 45,000 such stops, 35,000 of which yielded nothing. Two-thirds of the people selected were black and Latino.¹⁸

A very clear incentive exists for police departments to engage in racial profiling. Civil asset forfeiture laws allow police to seize and sell property without proving its guilt and keep a portion of the assets for themselves. In fact, police departments are now dependent on forfeiture revenues in order to match funds for federal grants and for regular operational costs, including the salaries of the very police officers that are responsible for the seizures.¹⁹ By targeting minority communities whose voices and political power are marginalized, law enforcement agencies can exploit the power of forfeiture without many Americans ever learning of the practice.

In addition to these practices, overzealous local prosecutors and judges with minimal discretion in the sentencing process exacerbate the situation.

Texas, for instance, has seen many racial exploits related to the War on Drugs. In the rural town of Tulia in 1999, 12% of the adult male African-American population was arrested on drug charges based solely on the word of an undercover officer who offered no hard evidence. In 2000, 15% of young black males in the town of Hearne were arrested in a drug sweep based solely on the word of an informant who had agreed to implicate targeted individuals. All of these men were innocent. Just one year later, dozens of Mexicans and Mexican-Americans were arrested in what has been dubbed as the “Dallas Sheetrock Scandal.” Tests later showed that some of drugs in question were really ground-up sheet-rock, planted by informants.²⁰

Women and Children

Women as mothers, girlfriends, wives, and individuals are especially vulnerable to drug war injustices. Many women are coerced into the drug trade by a boyfriend or husband, often play only a small role, but then receive the same harsh prison terms. Between 1986 and 1996, the number of women incarcerated for drug offenses increased 888%.²¹ Overwhelmingly, most of these women come from poor backgrounds: 80% of imprisoned women report incomes of less than \$2000 in the year before the arrest.²²

Minority women are especially targeted by drug war policies while pregnant or parenting. Black women during pregnancy, for instance, are 10 times more

likely to be drug tested or reported to child welfare agencies than white women. Before this practice was struck down by the Supreme Court, one public hospital in South Carolina selectively drug tested pregnant black women and reported positive tests to police who then arrested them, forcing many to give birth in shackles before taking them to jail.²³

The effects drug war policies have on children are devastating. Today, 1.6 million children have a father in prison and 200,000 children have a mother in prison. Black children are nearly 9 times more likely, and Latino children 3 times more likely to have a parent in prison than white children.²⁴ Children, too, are trapped within the criminal justice system. Though youth of all races use and sell drugs at similar rates, minority youth represent 60% to 75% of drug arrests today. In fact, black youth are incarcerated 25 times the rate of white youth; Latino youth, 13 times the rate of their white counterparts.²⁵

Collateral Consequences

The War on Drugs does more than fill our prisons. Drug war policies permeate every facet of life, including health, welfare, education, housing, and voting. The constant emphasis on punishment exacts a high price from minority populations and traps them in a vicious cycle of incarceration, addiction, and helplessness with little compassion or assistance from the government.

Today, HIV/AIDS is one of the leading causes of death for

► citizens who have not been convicted of, or even charged with, a crime.

1973 – New York passed the Rockefeller Drug Laws, some of the harshest drug penalties in the U.S. As a result, blacks and Latinos currently comprise about 94% of the drug offenders in New York state prisons.

1982 – President Ronald Reagan launched the “War on Drugs,” a political campaign to gain voter support by “getting tough on drugs.”

1984 – The Sentencing Reform Act removes judges’ discretion in the sentencing process.

1986-1988 – The Anti-Drug Abuse Act imposes harsh sentences for crack cocaine possession, while powder cocaine remains a lower offense. Additionally, a “one-strike” law allows public housing officials to evict residents if drugs are found anywhere on the premise, even if the residents are unaware of the drug use or try to stop it.

1996 – The Welfare Reform Act imposes a lifetime ban on welfare benefits – including food stamps, housing, and job training – to those with a drug conviction.

1998 – Amendments to the Higher Education Act of 1965 bar federal financial aid to students with a drug conviction.

blacks and Latinos aged 25 to 44. Nearly half of AIDS cases among blacks and Latinos are related to dirty needles,²⁶ while 59% of AIDS cases in children result from a parent using an infected needle.²⁷ Instead of implementing harm reduction policies like needle exchanges that prevent the spread of AIDS, the federal government blocks funding for such measures and states like New Jersey arrest anyone attempting to provide clean injection equipment.

In 2000, government estimates placed the number of drug users requiring treatment at 4.7 million but only 16.6% of this group received treatment.²⁸ Over the past 8 years, treatment has comprised barely 20% of the total drug control budget, while domestic law enforcement represents more than 50% of the budget.²⁹

In areas of welfare and education, punitive drug war policies deny government aid to those looking to improve their lives

after a drug conviction. The 1996 Welfare Reform Act imposed a lifetime ban on welfare assistance to anyone convicted of a drug felony. This ban has endangered the ability of low-income parents and their children to meet their basic needs, including shelter, food, job training, education, and drug treatment.³⁰ The 1998 amendments to the Higher Education Act deny or delay federal financial aid to anyone convicted of a drug offense. Meanwhile, there are five times as many black men in prison as in four-year colleges and universities. As with the Welfare Reform Act, no other offense, not even murder or rape, results in the loss of aid.³¹

In 2002, the Supreme Court ruled that public housing authorities could evict an entire family if someone in the household or a guest used drugs, even if the others knew nothing about it or tried to stop it.³² These innocent people can now lose their homes as well

as their housing assistance, effectively rendering them homeless in communities where affordable housing is scarce.

In most states, the very people affected by these policies are the ones without a political voice. Due to felony disenfranchisement laws, an individual who is convicted of a felony can lose his or her right to vote, and in some states, the disenfranchisement is permanent. Across the nation, 13% of all adult black men have lost their right to vote, with rates reaching a staggering 40% of adult black men in some states.³³

Conclusion

These are the grim realities of the War on Drugs. They are staged on a battlefield where the heaviest casualties are people of color. Instead of continuing these destructive policies that ultimately tear the fabric of our society, it is time to rethink and reassess the effectiveness and purpose of our current drug policies.

About the DPLP

The ACLU Drug Policy Litigation Project (DPLP) conducts the only national litigation program addressing civil rights and civil liberties violations arising from the War on Drugs. To learn more about the DPLP or find out about employment and internship opportunities, please visit our website at www.aclu.org/drugpolicy or email us dplp@aclu.org.

Footnotes

To see a complete list of sources, go to www.aclu.org/drugpolicy and click on "Publications."

About the ACLU

The American Civil Liberties Union is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

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Published May 2003.
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