

12-2021

The War on Drugs and its Legal Effects on Black Americans

Alexia L. Howard-Mullins
Eastern Washington University

Follow this and additional works at: https://dc.ewu.edu/srcw_2022



Part of the African American Studies Commons, American Politics Commons, Civil Rights and Discrimination Commons, Criminology Commons, Criminology and Criminal Justice Commons, Food and Drug Law Commons, Law and Politics Commons, Law and Race Commons, Law and Society Commons, Legal History Commons, Race and Ethnicity Commons, and the Social Justice Commons

Recommended Citation

Howard-Mullins, Alexia L., "The War on Drugs and its Legal Effects on Black Americans" (2021). *2022 Symposium*. 12.
https://dc.ewu.edu/srcw_2022/12

This Article is brought to you for free and open access by the EWU Student Research and Creative Works Symposium at EWU Digital Commons. It has been accepted for inclusion in 2022 Symposium by an authorized administrator of EWU Digital Commons. For more information, please contact jotto@ewu.edu.

The War on Drugs and its Legal Effects on Black Americans

Alexia L. Howard-Mullins

Eastern Washington University

Abstract

The differences in treatment between Black and white Americans in the past fifty years has been a topic of thought in the minds of political and sociological scholars since the inception of the War on Drugs in 1971. These differences in treatment may lead to discrimination legally, resulting in longer prison sentences and a higher proportion of Black Americans in prison. This study analyzes the results of the War on Drugs that led to disproportionate imprisonment of Black Americans, including mandatory sentencing laws, drug classifications, and discrimination within law enforcement and the legal system. This study will use primary sources to draw a conclusion on how the War on Drugs resulted in consequences for Black Americans and how they relate to prison incarceration rates and sentencing.

The War on Drugs and its Legal Effects on Black Americans

Introduction

The War on Drugs was designed as an official campaign led by the U.S. federal government with the aim of reducing the illicit drug trade in the United States. It included a set of policies that would reduce drug trade and its consumption. While many scholars have theorized about the causes behind the inception of the War on Drugs since it was initially waged by President Richard Nixon in 1971, political and social scientists more recently have been focusing on the effects of the War on Drugs on America, specifically for marginalized groups and underprivileged communities. The inequality resulting from the War on Drugs has led to discourse within American society that is likely connected to the discrimination that Black Americans face in day-to-day life as well as legal matters. There is a connection between the prejudice faced by Black Americans today and the legislation that was put in place regarding drug enforcement over the past fifty years. What is suggested in this paper is that Black Americans have been and still are legally negatively impacted by the effects of the War on Drugs.

In a country where Black people are being unjustly punished and unfairly treated, there must be a question as to why, so that solutions can be developed to mitigate the discrimination they face. Many scholars have traced the legal discrimination faced by Black Americans to the legislation put in place by the War on Drugs campaign, and therefore the following question must be addressed: why has the War on Drugs produced unequal outcomes and resulted in higher rates of incarceration amongst Black Americans since its establishment in 1971?

This paper seeks to address the link between the War on Drugs and the inequity that Black Americans face, with a focus on mandatory minimum sentencing, drug policies, and legal

discrimination. The argument is advanced in through a review of literature and compilation of evidence from primary sources that lead to the conclusion that the unjust outcomes of Black Americans resulted from mandatory minimum sentences, legislative biases, and discrimination in the legal system that came from the War on Drugs campaign.

Background

The War on Drugs was created by President Nixon, who many believe started the campaign as a way to target his political enemies, primarily Black Americans and those that were against the Vietnam War. In an interview with CNN, John Ehrlichman, one of Nixon's main co-conspirators, stated "we knew we couldn't make it illegal to be either against the war or be Black but by getting the public to associate the hippies with Marijuana and the Black people with Heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them" (Baum, 1994). Although it was suspected that the War on Drugs campaign was created to further marginalize minorities, Ehrlichman was the first and only person to speak out about it. He was given greater credibility because of his professional relationship with Nixon during his presidential term and his involvement in the birth of the War on Drugs. Although other scholars have contested this remark, evidence points to the fact that the war has discriminated against Black Americans.

The policies involved in the War on Drugs were intended to discourage the sale, production, and consumption of any illegal psychoactive drugs in the world, with a concentration in the United States regarding the American people. Although it was passed before the official start of the war on drugs, the beginning of the anti-drug campaign in America was the Comprehensive Drug Abuse Prevention and Control Act of 1970. This piece of legislation has had an impact on the American people since its inception because of its categorization of

psychoactive drugs seemingly based on their potential medical uses and addiction potential. However, some drugs, primarily marijuana, were believed by the American population to be misclassified, resulting in the Marijuana Opportunity Reinvestment and Expungement Act of 2020, which decriminalized marijuana federally after decades of protesting and statistics showing that Black Americans were being disproportionately arrested and sentenced for marijuana charges. Individual states also had policy issues related to the War on Drugs, including the “stop and frisk” developed in New York and the “three strikes” felony laws of California that have both shown to roots in racial bias (Mitchell, 2015). The War on Drugs resulted in policy development throughout the United States that had roots in racism because of the discriminatory tone of the War on Drugs itself.

Regrettably, the prejudice of the War on Drugs continued after the Nixon administration through the next seven administrations as each president made the War on Drugs a large focus of their presidential campaigns. This was a common theme, with each President following the same harsh guidelines of their predecessor, until the 2020 election in which Presidential Candidate Joe Biden ran on the premise of lightening the War on Drugs, despite his previous attitude about it when he served as the Vice President to President Obama. George Bush’s presidency saw the militarization of the War on Drugs as after-effects of the war in Iraq and Afghanistan. Although his stance on the War on Drugs was the same as his precursor, George W. Bush, Obama signed the Fair Sentencing Act in 2010, which reduced the sentencing disparity between “crack” cocaine and powder cocaine (Cooper, 2018), which originally happened because of the racial bias behind the Comprehensive Drug Abuse Prevention and Control Act of 1970. The Obama administration believed this could help with the implicit and explicit biases involved in drug

sentencing and alleviate some of the claims of legal discrimination posed by activist groups and political scientists.

However, despite certain policy initiatives the War on Drugs campaign has continued with consistency. Called a failure domestically and internationally by state leaders and social justice groups, the crusade has been active for over fifty years. The opioid epidemic has only grown worse as drug enforcement has gotten harsher. To alleviate the burden that drug use and the War on Drugs has created, many legislators and activists have turned to a strategy based on rehabilitation and decriminalization rather than punishment, with funds being put into public health care and treatments for drug users rather than the prison system and law enforcement. Despite his campaign promises, President Biden has done nothing to end the War on Drugs or reduce incarceration rates for drug offenders, effectively being a passive observer in the racial discrimination against Black Americans.

Review of Literature

While the end goal of the War on Drugs remains distant, it has had repercussions on sectors of American society. Since its conception in 1971, the War on Drugs has produced unequal outcomes and higher rates of incarceration for people of color, specifically Black Americans. This issue has been studied in depth by those involved and scholars in the political and social sciences, resulting in a plethora of literature on the history and causes of the War on Drugs, as well as the outcomes regarding enforcement, policy failure, and discrimination. This summary highlights some of the unforeseen consequences of the War on Drugs and goes beyond the effects of the War on Drugs on Black Americans specifically.

History of the War on Drugs

There has been much research done on the War on Drugs and its effects, however, this research is matched by the overwhelming amount of literature that focuses on the reasons behind the creation of the War on Drugs and how it was waged. The War on Drugs was conceived to dishearten drug use and participation in the drug trade by increasing the severity of criminal punishment and decreasing the likelihood of rehabilitation for drug users and lower-level drug dealers (Mitchell and Caudy 2015). The literature also reflects a desperation for the War on Drugs due to the previous failures of other measures intended to decrease the amount of drugs and drug users in America, including the Harrison Act of 1914 (Redford and Powell, 2016). It is suggested throughout the literature that the War on Drugs has resulted in increased arrests for drug charges resulting harsher penalties for all people, with an emphasis on the severity of consequences for people of color (Benson, 2009; Mitchell and Caudy, 2015; Taylor, 2013). The research on the causes of the War on Drugs does not describe the consequences, and the statistics on drug arrests show that it is disproportionately tied to its effect on Black Americans so heavily. It fails to connect the War on Drugs qualitatively with the arrest rate statistics, and therefore creates a gap in which there is no scholarly reasoning.

Enforcement and Implementation

Some literature shows that the enforcement of the War on Drugs creates more problems for drug users because they are no longer protected by the courts, and even when they have committed no crimes against others, they cannot seek legal help because the very act of using drugs is a crime (Block, 2021). Other literature has shown that rates of other criminal activity, including violent and property crimes, has gone up in all socioeconomic areas as drug enforcement has increased (Benson, 2009). An unintended consequence of the heavy focus on

illegal drugs is the diversion of attention from dangerous legal drugs, leading to a society in which the use of dangerous legal drugs is permitted while the use of equally dangerous drugs that are classified as illegal leads to serious ramifications (Johns, 1991). Legal drugs can prove to be just as big of a problem for users, however, they are oftentimes harder to come by because the War on Drugs resulted in prosecution for doctors who overprescribe narcotics, even if they are medically necessary to relieve the pain of a patient (Libby, 2006).

Policy Failure

Although the War on Drugs was the first time the government had labeled its actions against the drug trade aggressively, there have been attempts to regulate the drug trade for over a century that have all failed eventually because they create more problems socioeconomically that then need to be further fixed by other legislation (Redford, 2016). The War on Drugs is a failure because it made assumptions regarding the demand for drugs that are incorrect, and therefore every policy that is created can do nothing in the long run to prevent drug use and the drug trade (O'Malley, 1991). Some scholars attribute policy failures regarding over the past fifty years with the presidential administrations and legislative branches that have refused to support reforms to rectify the inequality resulting from the War on Drugs and the subsequential policies relating to drug enforcement (Sirin, 2011). On the same note, some literature argues that the major policy failure regarding the War on Drugs has happened because the entire basis for the War on Drugs relied upon realism and simple assumptions that resulted in flawed policies (Bobo, 1988).

Discrimination

Unfortunately, Black Americans and people of color have been a target of police and law enforcement agencies decades before the War on Drugs was waged, however, the War on Drugs has escalated the discrimination against Black Americans in particular and resulted in the

targeting of Black men, women, and children by officers of the law for accusations of violating certain laws or statutes (Taylor, 2013). There has been much research into the racial stereotypes associated with Black Americans and the typecasting that occurs by law enforcement officials resulting in implicit bias (Mitchell, 2015). As a result of the War on Drugs, there has been a link created between race and criminal activity rooted in stereotypes that threatens the legitimacy of the legal system and the promise of the American Dream (Bobo, 2006). On a similar note, the literature is conclusive that the War on Drugs has been used to discriminate against poor communities and Black Americans, even though the rates of use of drugs are similar between people of color and white Americans (Alexander, 2010). That leads to the question why? Why has the War on Drugs produced unequal outcomes and resulted in higher rates of incarceration amongst Black Americans since its establishment in 1971? The evidence below demonstrates that the unequal outcomes produced in the War on Drugs have been a consequence of mandatory sentencing laws, drug classifications and policies, and discrimination within law enforcement and the legal system.

Evidence

Sentencing Reform Act of 1984 and Mandatory Minimum Sentences

President Reagan, who gave credence to Nixon's War on Drugs, developed his crusade against the drug epidemic in the United States after Nancy Reagan, his wife, made an impassioned plea to the nation on the radio about the drug epidemic in the 1980s. This resulted in the Sentencing Reform Act of 1984 that created the USSC and mandatory minimum sentencing guidelines where first time, low-level, nonviolent drug offenders were mass incarcerated. These guidelines, which were intended to end disparities, in turn has contributed to the mass incarceration of people of color because crimes that are predominately committed by people of color carry

harsher minimum sentences, and often the courts of the United States tend to follow minimum sentence guidelines more so with Black Americans than with white Americans who commit the same drug crimes. According to a study done by the Sentencing Project, “blacks make up 12 percent of the U.S. population, yet they are 74 percent of prisoners serving time on drug charges. The Sentencing Project...argues that the mandatory minimum sentences and stepped-up enforcement that began with the 1980’s ‘War on Drugs’ have fallen disproportionately on blacks and women” (Black Men and the Criminal Justice System, 1996). Essentially, this study by the Sentencing Project found that the proportion of Black Americans, especially black men, is significantly higher than to be expected considering the portion of the general population that Black Americans make up. Ultimately, because of the War on Drugs’ creation of mandatory minimum sentences, the Black American prison population has been steadily increasing since its enactment in the 1970s.

Mandatory minimum sentences have such an impact on the Black community because they make it more probable that Black Americans who are arrested for drug crimes are sentenced and serve time in prison. Concerning drug offenses, mandatory minimum sentencing laws “have made it increasingly likely that those convicted of drug offenses are sentenced to prison and that those incarcerated receive long prison terms” (Spohn, 2015). As shown in statistics by the American Civil Liberties Union (2020), Black Americans are almost four times more likely than white Americans to be arrested for drug possession or use, so they are disproportionately affected by mandatory minimum sentencing laws associated with drug crimes. In turn, the mandatory minimum sentences result in a higher rate of incarceration and higher proportion of Black Americans than white Americans in penitentiaries at any given time.

Powder Cocaine vs. Cocaine Base Sentencing Disparity in the Anti-Drug Abuse Act of 1986

While the War on Drugs was in full swing, President Reagan announced that much more work needed to be done, as the illegal sale and use of crack-cocaine posed a new threat to societal and human well-being, and he vowed to implement more stringent drug sentencing laws. For example, the Anti-Drug Abuse Act of 1986 was a result of hysteria created by the death of a basketball star erroneously reported by the media as ‘death by crack’. Congressional awareness amplified by media reporting created a legislative response in the form of the Federal Anti-Drug Abuse Act of 1986 (ADAA). This Federal Anti-Drug Abuse Act of 1986 intends to prevent the manufacturing, distribution, and use of illegal drugs, which are noble goals in theory, however, it was passed without Senate committee hearings, recommendations from the judiciary, or input from law enforcement agencies. This act was a departure from previous sentencing laws as it created mandatory minimum sentences based on the quantity of the controlled or counterfeit substance. The sentencing in powder cocaine and “crack” cocaine illustrates this point. Although powder cocaine and “crack”, or cocaine base, are the same drug, powder cocaine was done by the upper and middle class, the majority of which who were white, and cocaine base was most often used by those in the inner-city or urban environments that were at or below the poverty line, the majority of which who were African Americans. There were several parts of the distinction between powder cocaine and cocaine base that had roots in prejudice, including the length of minimum sentences and the quantity needed in order to be charged and have to serve a mandatory minimum sentence.

When Congress created mandatory minimum sentences, there was much debate over the length of time for a minimum sentence as well as which substances should carry a minimum sentence. As a response to the stereotyping of crack cocaine as a “Black” drug, “Congress

enacted a five-year mandatory minimum penalty for simple possession of five grams or more of cocaine base. Cocaine base was the only controlled substance for which a mandatory minimum attached to simple possession. For all other controlled substances, including powder cocaine, the statutory maximum sentence for simple possession was no more than three years imprisonment” (Didwania, 2020). There is a large difference between a five-year maximum and a three-year minimum, which was brought upon by the bias that cocaine base was a “Black” drug, while powdered cocaine was glamorized by those in media and seen as an upper-class alternative. The disparity in sentencing resulted in increased rates of Black Americans being imprisoned for possession of less amounts of the same drug in different forms.

The incarceration of Black Americans due to mandatory minimum sentences for cocaine base also increased due to the 100:1 rule’s association with sentencing, which said that a person needed to possess one hundred times the quantity of powder cocaine in order to trigger the same mandatory minimum as cocaine base. “Because the majority of people convicted of possessing powder cocaine are White and the majority of people convicted of possessing cocaine base are Black, the 100:1 rule generated massive racial disparity in incarceration for federal drug offenses” (Didwania, 2020). Crack cocaine, or cocaine base, was predominantly seen as used by Black Americans, where powder cocaine was more expensive and therefore mostly used by middle- or upper-class Americans who were primarily white. The prison rates because of the disparity in sentencing resulted in many more Black Americans being locked up for carrying the same or less than the amount of the same drug in a different form.

Mandatory Minimum Sentencing and Power of Prosecutors

Apart from the disparity in mandatory minimum sentencing convictions, this process also enhances the power of prosecutors while compelling judges to hand over a minimum prison

sentence. The ADAA also shifted discretion from judges to prosecutors. Depending on the charges they bring against the plaintiff, the sentences vary. Prosecutors are supposed to act in the best interest of justice for the plaintiff, which in drug crimes is usually the state or federal government, however, often times they use their considerable power and influence to push the defense into pleading guilty or plea bargaining, which in turn earns the defendant the mandatory minimum sentence associated with the drug crime they supposedly committed. More often than not, in cases of drug crimes, the defendant who is pushed into a guilty plea is Black, while white Americans are able to receive more leniency from the prosecution and the court. “The U.S. Sentencing Commission detected notable differences in prosecutorial decisions to seek sentence enhancements for certain federal offenses...depending on the race of the defendant” (Lu, 2007). In this study of U.S. Attorney’s, it was found that despite the best efforts of the legal system, it is more likely that prosecutors will push for harsher sentences for Black Americans than white Americans who are convicted of the same crime.

Since the mid-1990s, mandatory minimum sentences have been criticized across the country for being unconstitutional and discriminatory, with the largest example being the disparity of sentencing between those who are charged with possession of powder cocaine and those who are charged with possession of cocaine base. “Current equal protection doctrine leads courts to ignore troubling evidence that the crack cocaine sentences are so severe at least in part because, unlike the powder cocaine penalties, they are imposed almost exclusively on black defendants” (Sklansky, 1995). Mandatory minimum sentencing laws have led to higher rates of incarceration, given more power to prosecutors and as a result of the stereotypes placed on crack cocaine and powder cocaine, and have created more severe punishments for Black Americans beyond those imposed on white Americans.

Legislative and Policy Bias

Implicit bias carried by those in the legislative branch has resulted in discriminatory policies and drug scheduling largely based around prejudice toward Black Americans and stereotyping of drug use. In a study done by Coker, it was found that “the War on Drugs’ policies that focus on the supply-side enforcement against low-level dealers in inner city areas account for a significant amount of racial disparity (Coker, 2003). As this study shows, the policies created by legislators surrounding the War on Drugs have resulted in conflict in lower income and inner-city areas due the large police presence required to carry out the demands of the legislative branch. There is a higher rate of arrests in inner-city areas because of the large police presence due to policies focused on drug suppliers, and although there may be more crime in these area pockets, there is a discriminatory association between Black Americans and drug use that comes from the original policies and is reflected in the policing that occurs in these areas.

Even when the War on Drugs policies were being enacted, legislators implemented stereotypes associated with Black Americans in order to increase the number of Black Americans in prison for drug offenses. Felson explains that “policy makers associated race-neutral language with minority groups, which offered Whites opposed to racial reform a unique opportunity to express their hostility toward Blacks and Black progress without being exposed to the charge of racism” (Felson, 2020). In the 1970s when the War on Drugs was put into motion, the legislators behind the plans used the racial divide of the American people to further their agenda of imprisoning Black Americans on a massive scale. From the 1970s to the present, legislative and policy decisions have not been able to bridge the racial divide.

Drug Scheduling Under the Controlled Substances Act of 1970

The War on Drugs resulted in the Controlled Substances Act (CSA) of 1970 that classified drugs into schedules depending on their potential for abuse and medical potential. However, the drugs that were typically used by Black Americans were placed in higher categories than those used by white Americans, resulting in harsher penalties for Black Americans when arrested for drug crimes. The case of marijuana illustrates the impact. Although marijuana was used by white Americans of younger generations in 1971 when the War on Drugs campaign officially started, it was primarily seen as a drug that was grown, sold, and used by minorities, specifically Black Americans. Therefore, it was an easily calculated move to schedule marijuana as a higher risk because of its association with black people, regardless of the potential medicinal properties and the low risk of addiction. “When the anti-drug campaigners began to call for [marijuana’s] ban, the federal government and states preferred to spell it with an ‘h’ rather than the English ‘j’ because those who thought it should be criminalized believed that racial bias would help them win the campaign alleging that marijuana was a bad social epidemic” (Reid, 2020). Since the beginning of the ban on marijuana, and the classification of it as a Schedule I drug, there has been racist undertones. The ban on marijuana before the Controlled Substance Act and the subsequent high classification of it has led to massive arrests of minorities and longer prison sentences. According to a study by Reid, “there are more arrests for marijuana possession every year than for all violent crimes combined” (Reid, 2020). The proportion of Black Americans in prison is significantly increased because of the penalties associated with being caught with marijuana, especially previous to the Obama Administration’s resentencing initiatives.

Federally, the impact of classifying marijuana as a Schedule I drug has resulted in many Black Americans in federal penitentiaries serving longer sentences than those convicted of violent

crimes. In recent years, many states have decriminalized or legalized marijuana sales for medical or recreational purposes and “the federal refusal to adjust the schedule of marijuana has resulted in a state patchwork quilt of differing and even conflicting rules to fill the gap” (Klieger, 2017). Where most states have relaxed on marijuana penalties, the federal government has kept their stance and disproportionately sentenced Black Americans to long sentences due to marijuana being a Schedule I drug on the same level as heroin. Those that argue for reversing or repealing the Controlled Substances Act have conducted studies that show that “police enforcement of laws banning recreational cannabis use have a disparate impact on racial and ethnic minorities” (Larkin Jr., 2020). Until the laws change regarding the classification of marijuana, the police and legal system have to treat it as a Schedule I drug, meaning that anyone who is caught with marijuana in a state that has not legalized marijuana is sentenced the same as someone caught with any other Schedule I substance. Although minorities are not the only group using marijuana, unfortunately they are disproportionately caught with the drug and sentenced harshly rather than being let go with a warning or the option of probation.

Stereotyping and Discrimination in the Justice System and Law Enforcement

Discrimination in the United States justice system has resulted in unfair outcomes legally for Black people in American due to prejudice carried by judges, law enforcement, and attorneys that results in higher rates of incarceration. In every step of the legal system, Black Americans are at a disadvantage because of conscious and subconscious biases carried by those that are meant to ensure justice. In an example of this, Kovera’s study showed that “prosecutors are more likely to charge Black than White juvenile offenders as adults under some circumstances, depriving them of the more lenient and rehabilitation-based treatments they would receive in the juvenile justice system” (Kovera, 2019). By charging Black juveniles as adults, it is more likely

they will serve time in jail or prison rather than the more fitting community service punishments that are often given to white juvenile drug offenders. As a result, there are more young Black Americans incarcerated for drug offenses than white minors with the same charges, simply because Black minors are more likely to be viewed as criminals who need to be punished while white minors are more likely to be seen as kids who made a mistake.

Discrimination reaches beyond the courts to officers who patrol the streets and are tasked with keeping the entire population safe. Police officers oftentimes carry bias because of stereotypes, and their positions of power result in higher levels of investigation into Black Americans. “When investigating illegal behavior ranging in severity from relatively minor to more severe, police officers are more likely to be lenient and use less force with White than with Black offenders” (Kovera, 2019). This means that Black Americans who are suspected of crimes are more likely to be arrested and prosecuted than their white counterparts for the same crimes, especially when it comes to drug offenses that have been stereotyped as “Black crimes”. This bias toward Black Americans continues further than leniency versus punishment all the way to the suspicion phase, in which “police officers are more likely to stop African Americans for traffic stops and, once stopped, they are more likely to search the vehicles of African Americans” (Coker, 2003). Therefore, if a Black American were to have an illegal substance in their car, they are more likely to be caught with it than a white American because they are more likely to be suspected in the first place.

The suspicion of Black Americans goes deeper than being pulled over or having a car searched; because African Americans are often stereotyped as drug users or involved in the drug trade, it is often easier to carry out a search and seizure or gather a warrant against a Black American than a white American. “Courts and police officers apply a lower threshold to the

issuance of search warrants when the targets are African Americans or when the target resides in a ‘high crime’ (non-white) area” (Coker, 2003). When the potential criminal is Black, it is easier to obtain a warrant for searches or arrest than it would be if they were white, showing that discrimination goes deeper in law enforcement than simple vehicle stops by law enforcement. Overall, discrimination is part of the American justice system, from the courts to law enforcement, and results in higher rates of incarceration for Black Americans.

Analysis

The War on Drugs has incidentally created several policy initiatives in efforts to counteract the irreparable damage that it has done to minority communities, especially communities made up of Black Americans. One such effort was the Fair Sentencing Act of 2010, in which the quantity disparity between crack and powder cocaine was reduced from 100:1 to 18:1 (“Fair Sentencing Act”, 2012), meaning that a person who previously had to possess 100 times as much powder cocaine to trigger the same sentence as someone holding crack cocaine now only must have 18 times as much powder cocaine to receive the same sentence. This initiative also did away with the mandatory minimum sentence for simple possession of cocaine base, which was previously the only drug that had a mandatory minimum for simple possession. Less than a decade after the Fair Sentencing Act was passed, the First Step Act was signed into law. This act gave some flexibility to mandatory minimum guidelines regarding drug offenses and provided those who had been convicted with nonviolent drug crimes a way to potentially shorten their sentence (“The First Step Act – What Is It and How Does It Affect the Justice System?”, 2021). The First Step Act was built upon the Clemency Initiative of 2014 that had similar goals on a smaller scale. The program was partially curated by President Obama, and unfortunately ended when Obama left office. It focused on reducing sentences of those convicted of non-violent drug offenses who

were serving time in a federal prison based on their conduct in prison as well as the amount of time they already served on their sentence (“Obama Administration Clemency Initiative, 2021). Although these legislative initiatives are progressive, they are nowhere near as reparative to the Black community as they were made to seem.

Although there is still much to be done to counter the discrimination toward minorities that has occurred as a result of the War on Drugs, there have been steps in the right direction made by individual states via decriminalization and legalization of drugs. Since 1973, states have been taking the initiative to decriminalize marijuana, with more than half of U.S. states taking further steps to legalize marijuana for recreational or medical use (Siff, 2014). Federally, marijuana is still illegal, however, the Rohrabacher-Farr amendment prohibits the federal Department of Justice from interfering with state laws regarding medical marijuana, meaning that the federal government cannot attempt to overrule a state’s decision to legalize medical cannabis. This does not protect the state’s right to legalize recreational marijuana, however, there has not been major pushback from the federal government regarding a state’s right to legalize cannabis for recreational use. Unfortunately, this amendment must be renewed each fiscal year in order to remain relevant, and the federal Department of Justice has tried to use loopholes in the amendment to continue to prosecute individuals who use marijuana for medical reasons (Schroeder, 2018). Despite problems with the amendment, it has roots in the fight to legalize cannabis and will most likely be used in the future to defend those in the legal cannabis industry, although it does nothing for those who are already in prison on drug charges.

The question for many scholars now is what can be done for those who are already in federal and state prisons for drug offenses, as well as those who will be convicted of drug offenses in the future. Those involved in social justice efforts have placed an emphasis on going

back to the main goals of the United States criminal justice system: retribution, rehabilitation, deterrence, and incapacitation. Currently, there is a larger focus on incapacitation and retribution than deterrence or rehabilitation in drug crimes, resulting in the exponential rates of incarceration seen in the United States over the past fifty years (Mackenzie, 2001). Although there are benefits to incapacitation and retribution in the form of public safety, there is something to be said about the advantages of rehabilitation and specific deterrence for drug offenders. Many offenders would benefit from a rehabilitation-style punishment based on specific deterrence rather than the retribution that comes with a mandatory minimum sentence, and a focus on rehabilitation could reduce rates of recidivism and give offenders a better chance at life after conviction. Another change to the justice system that could reduce the prison populations of drug offenders and create new opportunities for those who are currently serving time is a focus on clemency rather than harsh sentences for first-time offenders and those with addiction problems. Oftentimes, mandatory minimum sentences are given out by judges who do not feel the defendant deserved a harsh penalty, but they were forced to do so because the law stated as such (Schiendlin, 2021). An attention on clemency could give low-level drug offenders a chance to reintegrate with society sooner rather than later, and reduce drug incarceration rates in ways that the current stress on incapacitation and retribution cannot. Overall, there are ways that the United States can attempt to fix the criminal justice system for drug offenders that would help to alleviate the pressures on prisons and those in prison if the Department of Justice were willing.

Conclusion

The above evidence demonstrates the legal ramifications created by the War on Drugs and amplified by mandatory minimum sentencing, legislative and policy bias, and discrimination in the legal system. Black Americans were targeted from the very beginning of the War on Drugs

campaign, both through prejudice and unfairness in legislation, and that has created further problems for the Black community. Mandatory minimum sentences regarding drug policies have resulted in higher rates of incarceration for Black Americans than white Americans due to the racial bias built into the system. This has been further exacerbated by prosecutors and police officers who use their prejudice to charge and convict Black Americans more often than white Americans who commit the same or similar crimes. Drug scheduling has helped the legal system to discriminate against Black Americans since the Controlled Substances Act of 1970 that had a basis in racism and labeled drugs predominately used by minorities as more dangerous than drugs that were seen as used by white Americans. The stereotyping of certain drugs had a trickle-down effect, in which Black Americans were seen as more likely to be drug users and dangerous than white Americans, even though reports would suggest drug use rates are similar between the two groups. Since the inception of the War on Drugs, Black Americans have received unequal sentences and legal outcomes due to mandatory minimum sentences, drug policy and legislative discrimination, and prejudice in the judicial system as well as law enforcement.

References

- Alexander, Michelle. 2010. "The War on Drugs and the New Jim Crow." *Race, Poverty & the Environment* 17, no. 1 (Spring 2010): 75-77. <https://www.jstor.org/stable/41554723>
- American Civil Liberties Union. "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform." 2020. *ACLU Research Report*.
- Bagley, Bruce Michael. 1988. "U.S. Foreign Policy and the War on Drugs: Analysis of a Policy Failure." *Journal of Interamerican Studies and World Affairs* 30, no. 2/3 (Summer-Autumn 1988): 189-212. <https://www.jstor.org/stable/165986>
- Baum, Dan. Interview with John Erlichman. *Harper's Magazine*. 1994.
- Benson, Bruce L. 2009. "Escalating the War on Drugs: Causes and Unintended Consequences." *Stanford Law & Policy Review* 20, no. 2: 293-357. <https://search-ebscohost-com.ezproxy.library.ewu.edu/login.aspx?direct=true&db=lgh&AN=44304482&site=ehost-live&scope=site>.
- "Black Men and the Criminal Justice System." 1996. *Society* 33, no. 5: 3-4. <https://search-ebscohost-com.ezproxy.library.ewu.edu/login.aspx?direct=true&db=sih&AN=9607073868&site=ehost-live&scope=site>.
- Block, Walter E. and Alan G. Futerman. 2021. "The Harmful Addiction to the War on Drugs." *Touro Law Review* 37, no. 1: 1-9. <https://search-ebscohost-com.ezproxy.library.ewu.edu/login.aspx?direct=true&db=lgh&AN=151533492&site=ehost-live&scope=site>.

- Bobo, Lawrence D. and Victor Thompson. 2006. "Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System." *Social Research* 73, no. 2 (Summer 2006): 445-472. <https://www.jstor.org/stable/40971832>
- Coker, Donna. 2003. "Foreword: Addressing the Real World of Racial Injustice in the Criminal Justice System." *Journal of Criminal Law & Criminology* 93, no. 4: 827-879. doi: 10.2307/3491323
- Cooper, James M. 2018. "The United States, Mexico, and the War on Drugs in the Trump Administration." *California Western School of Law Review* 25, no. 1: 235-300. <https://scholarlycommons.law.cwsl.edu/fs/239>
- Didwania, Stephanie Holmes. 2020. "Mandatory Minimum Entrenchment and the Controlled Substances Act." *Ohio State Journal of Criminal Law* 18, no. 1: 25-59. <https://search-ebscohost-com.ezproxy.library.ewu.edu/login.aspx?direct=true&db=sih&AN=149082693&site=ehost-live&scope=site>.
- "Fair Sentencing Act." American Civil Liberties Union. June 21, 2012. <https://www.aclu.org/issues/criminal-law-reform/drug-law-reform/fair-sentencing-act>.
- Felson, Richard B. and Andrew T. Krajewski. 2020. "Did Mass Incarceration Lead to the Disproportionate Admission of Minorities and Marginal Offenders?" *Criminology & Public Policy* 19, no. 4: 1209-1229. doi: 10.1111/1745-9133.12521
- Johns, Christina. 1991. "The War on Drugs: Why the Administration Continues to Pursue a Policy of Criminalization and Enforcement." *Social Justice* 18, no. 4: 147-165. <https://www.jstor.org/stable/29766647>

- Klieger, Sarah B., Abraham Gutman, Leslie Allen, Rosalie Liccardo Pacula, Jennifer K. Ibrahim, and Scott Burris. 2017. "Mapping Medical Marijuana: State Laws Regulating Patients, Product Safety, Supply Chains and Dispensaries." *Addiction* 112, no. 12: 2206-2216. doi:10.1111/add.13910
- Kovera, Margaret Bull. 2019. "Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions." *Journal of Social Issues* 75, no. 4: 1139-1164. doi: 10.1111/josi.12355
- Larkin Jr., Paul J. 2020. "Reconsidering Federal Marijuana Regulation." *Ohio State Journal of Criminal Law* 18, no. 1: 99-150. <https://search-ebscohost-com.ezproxy.library.ewu.edu/login.aspx?direct=true&db=sih&AN=149082695&site=ehost-live&scope=site>.
- Libby, Ronald T. 2006. "Treating Doctors as Drug Dealers: The Drug Enforcement Administration's War on Prescription Painkillers." *The Independent Review* 10, no. 4 (Spring 2006): 511-545. <https://www.jstor.org/stable/24562251>
- Lu, Lynn D. 2007. "Prosecutorial Discretion and Racial Disparities in Federal Sentencing: Some Views of Former U.S. Attorneys." *Federal Sentencing Reporter* 19, no. 3: 192-201. <https://www.jstor.org/stable/10.1525/fsr.2007.19.3.192>
- Mackenzie, Doris Layton. 2001. "Sentencing and Corrections in the 21st Century: Setting the Stage for the Future." *University of Maryland Evaluation Research Group*. <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/189106-2.pdf>
- Mitchell, Oimarrh and Michael S. Caudy. 2015. "Examining Racial Disparities in Drug Arrests." *JQ: Justice Quarterly* 32, no. 2 (2015): 288-313. <https://doi.org/10.1080/07418825.2012.761721>

- “Obama Administration Clemency Initiative.” The United States Department of Justice. January 12, 2021. <https://www.justice.gov/archives/pardon/obama-administration-clemency-initiative>.
- O’Malley, Pat and Stephen Mugford. 1991. “The Demand for Intoxicating Commodities: Implications for the War on Drugs.” *Social Justice* 18, no. 4 (Winter 1991): 49-75. <http://www.jstor.org/stable/29766642>
- Redford, Audrey and Benjamin Powell. 2016. “Dynamics of Intervention in the War on Drugs: The Buildup to the Harrison Act of 1914.” *Independent Review* 20, no. 4: 509-530. <https://search-ebscohost-com.ezproxy.library.ewu.edu/login.aspx?direct=true&db=lgh&AN=113741726&site=ehost-live&scope=site>.
- Reid, Melanie. 2020. “Goodbye Marijuana Schedule I – Welcome to a Post-Legalization World.” *Ohio State Journal of Criminal Law* 18, no. 1: 169-209. <https://search-ebscohost-com.ezproxy.library.ewu.edu/login.aspx?direct=true&db=sih&AN=149082697&site=ehost-live&scope=site>.
- Scheindlin, Shira A. 2021. “Perspective: I Sentenced Criminals to Hundreds More Years than I Wanted To. I Had No Choice.” The Washington Post. <https://www.washingtonpost.com/posteverything/wp/2017/02/17/i-sentenced-criminals-to-hundreds-more-years-than-i-wanted-to-i-had-no-choice/>.
- Schroeder, Michael. “The Rohrabacker-Farr Amendment: Medical Cannabis Protection.” *CannaCon*. Green Owl Media. January 26, 2018. <https://cannacon.org/medical-cannabis-protection-rohrabacher-farr-amendment/>.

Sirin, Cigdem V. 2011. "From Nixon's War on Drugs to Obama's Drug Policies Today:

Presidential Progress in Addressing Racial Injustices and Disparities." *Race, Gender &*

Class 18, no. 3/4 (2011): 82-99. <http://www.jstor.org/stable/43496834>

Sklansky, David A. 1995. "Cocaine, Race, and Equal Protection." *Stanford Law Review* 47, no.

6: 1283-1322. <https://www.jstor.org/stable/1229193>

Slff, Stephen. "The Illegalization of Marijuana: A Brief History." *Origins*. Ohio State University.

May 2014. <https://origins.osu.edu/article/illegalization-marijuana-brief->

[history?language_content_entity=en](https://origins.osu.edu/article/illegalization-marijuana-brief-history?language_content_entity=en).

Spohn, Cassia. 2015. "Race, Crime, and Punishment in the Twentieth and Twenty-First

Centuries." *Crime and Justice* 44, no. 1: 49-97.

<https://www.jstor.org/stable/10.1086/681550>

Taylor, Clarence. 2013. "Introduction: African Americans, Police Brutality, and the U.S.

Criminal Justice System." *The Journal of African American History* 98, no. 2 (Spring

2013): 200-204. <https://doi.org/10.5323/jafriamerhist.98.2.0200>.

"The First Step Act – What Is It and How Does It Affect the Justice System?" First Step

Alliance. October 17, 2021. <https://www.firststepalliance.org/post/the-first-step-act-what-it-is->

[and-how-does-it-affect-the-justice-](https://www.firststepalliance.org/post/the-first-step-act-what-it-is-and-how-does-it-affect-the-justice-)

[system?gclid=CjwKCAjwxOCRBhA8EiwA0X8hi_aU0n66Fp-](https://www.firststepalliance.org/post/the-first-step-act-what-it-is-and-how-does-it-affect-the-justice-system?gclid=CjwKCAjwxOCRBhA8EiwA0X8hi_aU0n66Fp-)

[PiTjsNPpbDv4sOKClg3kKsR6Y3iRjOOYac4e8nCvLXxoCy4gQAvD_BwE](https://www.firststepalliance.org/post/the-first-step-act-what-it-is-and-how-does-it-affect-the-justice-system?gclid=CjwKCAjwxOCRBhA8EiwA0X8hi_aU0n66Fp-PiTjsNPpbDv4sOKClg3kKsR6Y3iRjOOYac4e8nCvLXxoCy4gQAvD_BwE).