



**Testimony of Marc Mauer,  
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**Drug Users: Problems and  
Opportunities**

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**T**hank you for the opportunity to testify today on the issue of national drug policy. I am Marc Mauer, Executive Director of The Sentencing Project, a national policy research and advocacy organization based in Washington, D.C. Over more than 30 years of program work in criminal justice I have published two books on criminal justice policy, testified before Congress and state legislative bodies, and worked with a broad range of practitioners. My testimony today will focus on the criminal justice response to drug use, and will include recommendations for policy initiatives to promote more constructive outcomes for both individuals and the community.

## **RISE IN DRUG ARRESTS AND INCARCERATION**

As is well documented, the “war on drugs” has had profound consequences for the criminal justice system. In broad terms, it has produced a dramatic escalation in the use of incarceration for people convicted of drug crimes. Whereas in 1980 about 41,000 people were incarcerated in prison or jail for a drug offense, today that figure is 500,000, more than the *entire* incarcerated population in the U.S. in 1980. A range of studies have demonstrated that the vast majority of these persons are not the “kingpins” of the drug trade, but instead are lower-level users and sellers who are easily replaced on the streets.

These figures have been driven by policy decisions that prioritized a supply-reduction approach to substance abuse at the expense of demand-reduction efforts such as investments in prevention and treatment, particularly in low-income communities of color. Within the criminal justice system, the rising numbers of people in prison and jail have been driven by sharp increases in the number of drug arrests, along with increasingly punitive sentencing policies at both the state and federal level.

Over the past two decades the annual number of drug arrests has more than tripled, rising from 581,000 in 1980 to 1.8 million today. While these increases can be seen in virtually all jurisdictions, the discretionary nature of drug-related law enforcement also produces broad variations among cities in the rate of increase and the racial dynamics of these changes.

A recent analysis produced by my organization examined changes in drug arrest rates in 43 major cities over the period 1980-2003. Our study found that drug arrest rates rose in 40 of the 43 cities. Wide variation in the rate of drug arrests across cities existed, even among cities within close proximity of each other. Moreover, unwarranted racial disparity was severe in drug arrests and was not explained by patterns of drug use for the 23-year period.

## **CONSEQUENCES OF DRUG POLICY**

In recent years there have been some encouraging developments that support a more balanced approach to substance abuse. Within the criminal justice system this has been most evident in the expansion of drug courts, now numbering about 2,000 nationally. These courts are premised on the idea of addressing drug abuse primarily through treatment as a first option, and then incarceration only if other alternatives are proven ineffective.

While these developments portend a more rational and compassionate drug policy, they nonetheless fail to address two significant problems. First, despite the proliferation of drug courts, the number of drug offenders in prison has not declined. This suggests either that drug courts have a net-widening effect of bringing in persons to the court system who would not previously have been subject to

prosecution, or that sentencing policies are resulting in increasingly longer stays in prison for those who are sentenced to incarceration.

A second problem is that even to the extent that treatment options are appropriate for many individuals, there are a host of negative consequences that individuals suffer as a result of an arrest or conviction for a drug offense. Let me provide an overview of these consequences and then offer a set of recommendations for promoting more constructive public policy.

The mere fact of a drug arrest, even if it does not result in a conviction, imposes significant barriers to opportunity, and challenges our notion of “innocent until proven guilty.” In 37 states employers may legally ask job applicants about arrest histories even if they do not result in a conviction. The problem raised by this policy is compounded in communities of color. It has been well documented that drug arrest rates for African Americans in particular are disproportionate to their degree of drug use or drug selling. In addition, racial profiling by certain law enforcement agencies unfairly targets people of color for traffic stops, searches, and arrest. The combined effect of these practices is that people of color suffer disproportionately from barriers to employment.

These obstacles, some of which are triggered at the point of arrest, are significantly enhanced for persons convicted of a drug offense. As a result of policies enacted by Congress in recent years, a drug conviction now creates a host of prohibitions on access to public benefits. These include:

- *Welfare benefits and food stamps* – Federal law prohibits anyone convicted of a drug felony from receiving federally-funded cash assistance through the TANF program and food stamps, unless states opt out or modify the ban. Fourteen states bar individuals for life from obtaining assistance, even after completing their sentence, and 22 states have imposed a modified version of the ban.
- *Public housing* – Legislation passed by Congress in 1988 grants public housing authorities the power to deny persons with a drug conviction the right to live in public housing; subsequent legislation adopted in 1996 and 1998 enhanced this power under the “One Strike and You’re Out” Initiative. The ban even extends to persons who themselves have not been engaged in or convicted of a drug offense, but who merely house a person with involvement in drugs. There have been cases, for example, of senior citizens evicted from their homes due to a grandchild smoking marijuana while he was not even on the premises.
- *Student financial aid* – Another barrier to opportunity passed by Congress is the denial of financial aid for higher education for people with drug convictions. The original ban adopted in 1998 applied to anyone with a drug conviction. The ban has since been modified to only apply to a drug offense while receiving financial aid; also, measures have been taken to ease the process of restoring aid. Nevertheless, the ban serves no beneficial public safety or academic purpose that could not otherwise be addressed directly by college administrators.

## **RECOMMENDATIONS FOR CONSTRUCTIVE PUBLIC POLICY**

With growing bipartisan support for sentencing reform and reentry issues both at the state and federal level, now is an appropriate time to review federal criminal justice policies from a perspective of effectiveness and meeting the goals of the broader community. Such a review should focus on sentencing and drug policies that have been counterproductive in addressing substance abuse as well as the collateral penalties that have hindered successful reentry for many persons convicted of a drug offense.

### **Sentencing reform for crack cocaine offenses**

The ineffective and racially disproportionate impact of federal crack cocaine sentencing policies is now widely understood, and has resulted in a significant decision by the U.S. Sentencing Commission to reduce guideline penalties for crack offenses in 2007, and to make these changes apply retroactively. Even with these modifications, though, federal judges are still unduly restricted by the mandatory minimum sentences triggered by low drug quantities for crack cocaine offenses. By repealing the mandatory sentence requirement for possession cases and raising the quantity threshold for drug sales cases to the level of powder cocaine, we would shift law enforcement resources to a more appropriate focus on higher level drug cases, while reducing unnecessarily lengthy incarceration and racial disparity.

### **Expand the use of alternatives to incarceration in the federal court system**

Sentencing in the federal courts has been excessively punitive, and even more so than in many state systems. This is the result not only of the mandatory penalties imposed by Congress, but by the relative lack of options for alternatives to incarceration as well as the overly restrictive nature of the federal sentencing

guidelines. The U.S. Sentencing Commission is now engaged in a process of exploring the expansion of alternatives. Such an examination should include consideration of diverting substance abusing defendants into treatment programs rather than prison, revision of the sentencing guidelines to encourage the use of alternatives to incarceration in a greater range of cases, and expansion of the criteria for the “safety valve” in order to permit judges to deviate from the mandatory sentencing penalties when justified by considerations of fairness and public safety.

**Shift allocation of resources away from interdiction and enforcement, and toward evidence-based prevention and early intervention substance abuse programming.**

The federal government’s “war on drugs” has generally allocated two-thirds of funds annually to law enforcement and incarceration, and just one-third to prevention and treatment initiatives. This allocation has remained steady through both Democratic and Republican administrations, and is largely mirrored at the state level as well. A range of research evidence suggests that investments in high-quality treatment approaches to substance abuse are more cost-effective than expanded incarceration. The federal government should engage in an analysis of the public safety benefits of various strategies to address drug abuse, and allocate funding priorities based on evidence-based programming.

**Repeal the federal welfare and food stamp ban**

Federal restrictions on access to public benefits run counter to the growing support for reentry programming, as evidenced most notably by the passage of the Second Chance Act in 2008. People with felony convictions who are living in the community and require temporary financial assistance in a difficult economic climate should be able to access supportive services that can increase the prospects of remaining crime-free. The negative consequences of current policy affect not only

people released from prison, but the children they are caring for as well, who suffer from the loss of economic support.

### **Eliminate blanket denials of access to public housing**

Clearly, public housing officials have the obligation to provide decent and safe residences, but blanket denials of access to housing unfairly apply to persons who would not pose significant risks to public safety. Congress should amend public housing restrictions to require housing authorities to adopt fair and balanced admission and eviction policies that take into account individual circumstances and the impact of eviction on the individual and his or her family. Moreover, individuals should not be denied tenancy based solely upon the familial relationship of a tenant to a person convicted of a criminal offense. Persons with a history of substance abuse should be encouraged to remain in recovery and become integrated into community life.

### **Repeal the federal ban on student loan funds**

College students who violate the law are subject to penalties, including expulsion, by their academic institutions. Depending on the circumstances, this may be appropriate, but that is a matter best handled by the institution on a case-by-case basis. The federal ban on providing financial aid to students with drug convictions runs counter to the societal interest in promoting higher education. If an academic institution believes that a student convicted of an offense, whether a drug offense or otherwise, should remain in school, then that student should be subject to all benefits and obligations that apply to any student. While recent changes in the law represent movement toward a more rational policy, there is no justification for federal intervention into what should be solely a decision by an academic institution.

**Enhance educational programs in prison by repealing the ban on Pell grants**

In 1994 Congress voted to eliminate the right of prisoners pursuing higher education to receive Pell grants. Prior to the ban, people in prison accounted for less than 1 percent of all Pell grant funds awarded nationally. Following the ban, the number of college programs in prison declined dramatically. A wealth of research over time has demonstrated that education is associated with lowered rates of recidivism. In order to enhance both reentry and public safety efforts, Congress should reinstate the Pell grant program for prisoners.

**CONCLUSION**

The “war on drugs” has contributed to the unprecedented rise of the prison population in the United States, while producing few public safety benefits. Policies that have created this dynamic have produced a counterproductive cycle of spending and investments, whereby funds for expanded incarceration drain resources for prevention and treatment approaches.

As a result of new openings in the political climate for reentry programming and treatment initiatives, policymakers now have an opportunity to address substance abuse in a more compassionate and cost-effective manner. With a new administration taking office in 2009, this is an appropriate moment to both reexamine the ineffective sentencing policies of recent years and to build on the successes of community-based treatment strategies.



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