

THE FEDERAL PRISON POPULATION: A STATISTICAL ANALYSIS

In anticipation of Congressional consideration of revisions to federal sentencing policy, the following analysis provides an overview of the current federal prison population and sentencing trends of recent years. Overall, this analysis demonstrates that the federal prison population has reached record levels, that a high proportion of prisoners are non-violent drug offenders, and that racial disparities in sentencing and the proportion of lower-level drug offenders are increasing.

Recent testimony by the Department of Justice before the United States Sentencing Commission has stated that “approximately two-thirds of all federal prisoners are in prison for violent crimes or had a prior criminal record before being incarcerated.”¹ As seen below, conflating those persons convicted of a violent crime – only 13% of federal prisoners – with those having a prior record, including low-level drug crimes, distorts the portrait of the current prison population and the implications for sentencing reform. Overall, nearly three-fourths (72.1%) of federal prisoners are serving time for a non-violent offense and have no history of violence.

Data for this analysis is taken from various reports of the Bureau of Justice Statistics, United States Sentencing Commission, and an analysis of the Survey of Inmates in State and Federal Correctional Facilities.

Substantial Growth of the Federal Prison Population

- As of 2003, 161,673 persons were held in federal prisons, an increase of 81% from 1995.
- The federal prison population has increased at nearly three times the rate of state prisons since 1995, 7.7% vs. 2.7%.

Composition of the Federal Prison Population – Mostly Non-Violent

- More than half (55%) of federal prisoners are serving time for a drug offense, and 13% for a violent offense.
- Nearly three-fourths (72.1%) of the population are non-violent offenders with no history of violence.
- One-third (34.4%) are first-time, non-violent offenders.
- More than half (55.7%) of persons sentenced for a drug offense in 2002 fell into the lowest criminal history category (Category 1) of the sentencing guidelines, and in 87% of cases no weapon was involved.

¹ Statement of Christopher A. Wray, Assistant Attorney General, U.S. Department of Justice, before the United States Sentencing Commission, November 17, 2004.

Time Served in Prison for Drug Offenses Increasing

- From 1992 to 2002, the average time served in prison for a drug offense increased by 31% from 32.7 months to 42.9 months.

Drug Policies Produce Disparate Sentences

- Since full implementation of the federal sentencing guidelines in 1989 disparity in sentencing between African Americans and whites has increased.
- African American drug offenders have a 20% greater chance of being sentenced to prison than white drug offenders, and Hispanics a 40% greater chance.
- African Americans receive longer prison terms for drug offenses than whites. In 2002, the average prison term of 105 months for African Americans was 69% longer than the average of 62 months for whites.

Growing Racial Disparities in Time Served in Prison

- Between 1994 and 2002, the average time served by African Americans for a drug offense increased by 73%, compared to an increase of 28% for white drug offenders.
- In 1994, African Americans served an average of 33.1 months for a drug offense; this grew to 57.2 months by 2002.
- Time served for drug offenses for whites increased from 29.1 months in 1994 to 37.2 months in 2002.
- African Americans now serve virtually as much time in prison for a drug offense (57.2 months) as whites do for a violent offense (58.8 months).

Proportion of Low-Level Crack and Cocaine Offenders Increasing

- The majority of persons sentenced for both crack and powder cocaine offenses in 2000 were convicted of low-level functions in the drug trade. More than half (59.9%) of powder cocaine offenders were either street-level dealers or couriers/mules, while two-thirds (66.5%) of crack cocaine offenders fell into these categories.
- The proportion of low-level offenders has been increasing in recent years. Low-level powder cocaine offenders rose from 38.1% in 1995 to 59.9% in 2000, while low-level crack cocaine offenders increased from 48.4% to 66.5% in this period.

Crack/Cocaine Sentencing Policy Key to Drug Disparities

- 81.4% of crack cocaine defendants in 2002 were African American, while about two-thirds of crack cocaine users in the general population are white or Hispanic.
- The average sentence for a crack cocaine offense in 2002 (119 months) was more than three years greater than for powder cocaine (78 months).
- Recent reform proposals of the crack/cocaine mandatory sentencing laws would cut in half the difference (from 34.2 months to 16.4 months) in time served in prison for drug trafficking between African Americans and whites.

Recommendations

- Congress should undertake a comprehensive assessment of the structure and goals of federal sentencing policy, with a particular emphasis on the effects of mandatory sentencing, the proportionality of drug offender sentencing, and the impact of the growth of long-term incarceration on the federal prison system.
- Congress should implement modifications to the federal sentencing guidelines that directly address the growing number of non-violent offenders in the federal prison system.
- Congress should take into consideration the abundance of research indicating the cost-effectiveness of treatment for drug abuse rather than incarceration and introduce legislation that provides ample use of alternatives to incarceration, as is the case in many states.
- Congress should adopt the recommendations of the United States Sentencing Commission and remove the 100:1 sentencing disparity between crack and powder cocaine.

Data Sources: Analysis of the *Survey of Inmates in State and Federal Correctional Facilities, 1997* by The Sentencing Project; Bureau of Justice Statistics, *Prisoners in 2003* (2004), *Compendium of Federal Justice Statistics, 2002* (2004), *Compendium of Federal Justice Statistics, 1994* (1998); United States Sentencing Commission, *2002 Sourcebook of Federal Sentencing Statistics* (2003), *Cocaine and Federal Sentencing Policy* (2002), *Fifteen Years of Guidelines Sentencing* (2004).