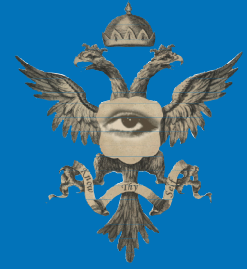


THE BECKLEY FOUNDATION
DRUG POLICY PROGRAMME



THE INCARCERATION OF DRUG OFFENDERS:
An Overview

Dave Bewley-Taylor, Chris Hallam, Rob Allen

MARCH 2009

REPORT SIXTEEN



International Centre
For Prison Studies

THE INCARCERATION OF DRUG OFFENDERS: An Overview

Dave Bewley-Taylor, Chris Hallam, Rob Allen¹

The Beckley Foundation Drug Policy Programme (BFDPP) is an initiative dedicated to providing a rigorous, independent review of the effectiveness of national and international drug policies. The aim of this programme of research and analysis is to assemble and disseminate material that supports the rational consideration of complex drug policy issues, and leads to a more effective management of the widespread use of psychoactive substances in the future. The BFDPP currently chairs the International Drug Policy Consortium (www.idpc.info), a global network of NGOs and professional networks who work together to promote objective debate around national and international drug policies, and provide advice and support to governments in the search for effective policies and programmes.

SUMMARY

In 2005, the Beckley Foundation Drug Policy Programme (BFDPP) published *Incarceration of drug offenders: costs and impacts*. In this briefing paper, we argued that most governments make strong statements about the need to maintain, and often increase, police activity and penal sanctions for drug users. This approach, it was claimed, is based on the idea that strong enforcement, and widespread incarceration, will deter potential users and dealers from becoming involved in the illegal drug market. Now as then, relatively few countries actually follow through on such rhetoric – arrest and incarceration rates for drug users are comparatively low in many countries in relation to the total number of users, and the often quoted maximum sentences are rarely, if ever, used. Nonetheless, penal institutions around the world are becoming increasingly populated by drug offenders. The fact that this has had only a marginal and/or temporary impact upon the scale of the illicit drug market, and also generates many significant financial and collateral costs, has led increasing numbers of observers to regard the situation as constituting a global prison crisis. In its 2007 Annual Report the International Narcotics Control Board felt it necessary to devote a chapter to “The Principle of proportionality and drug-related offences.” Among other things, the Board concluded that governments should consider widening the range of non-custodial options for drug related offences by illicit drug users. While this intervention from the Board is most welcome, it should be recalled that the recommendation was made within an international legal framework where a penal approach is strongly encouraged, particularly by the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The UN drug control system remains ambivalent in its attitude to punitive measures for drugs offences, and continues to invest rhetorical resources in viewing the issue primarily in terms of crime rather than public health. In this year when the High Level Segment to the

Commission on Narcotic Drugs will set the course of international drug policy for at least the next decade, the BFDPP, in partnership with the International Centre for Prison Studies at Kings College London, revisits the topic of the incarceration of drug offenders. Here we provide an overview of some of the available incarceration data from around the world and bring together much contemporary research on the topic. A great deal of the discussion concerns one of the most enthusiastic supporters of incarceration as a drug prevention measure. However, we suggest that the results of policy within the United States should be used as evidence to encourage other member states not to follow this route, and we call for an adjustment of the UN system to make it easier for them to find other ways of managing the problem.

INTRODUCTION

In attempting to reduce the availability of illicit drugs and the levels of use of such drugs, some governments have chosen to pursue law enforcement oriented domestic drug control policies that rely heavily upon incarceration. Such a policy choice is influenced by the desire to incapacitate, provide an element of retribution to and sometimes attempt to rehabilitate offenders. It is also largely underpinned by the concept of deterrence. Consequently, irrespective of its other

¹ Dave Bewley-Taylor is a Senior Lecturer, School of Humanities, Swansea University, UK, associate consultant Beckley Foundation Drug Policy Programme. Chris Hallam is an International Drug Policy Consortium Consultant. Rob Allen is the Director of the International Centre for Prison Studies (ICPS) at Kings College London <http://www.kcl.ac.uk/schools/law/research/icps>

roles, the prospect of time behind bars should discourage would-be offenders from engaging in criminal acts, (what is called *general deterrence*), and discourage the individual offender from re-offending upon release from prison, (a concept described as *specific deterrence*). The effectiveness of specific deterrence is believed to depend upon a number of factors including the *severity*, *certainty* and *immediacy* of legal sanctions. Policy makers are therefore often heard to state that police activity and tougher sentences are needed to deter individuals from becoming involved in drug use or dealing.

Incarceration as a deterrent, therefore, plays an important part in law enforcement strategies that attempt to discourage illicit drug consumption. It can be seen to operate at a number of levels in relation to different categories of drug offenders. First, by increasing the risks, in terms of arrest and imprisonment, faced by both high-level and street-level retail dealers, strategies aim to make illicit drugs scarce and expensive. The intention is to disrupt the market and reduce access to illicit drugs by users. Second, this situation is bolstered by applying sanctions against the drug users themselves should they still wish to procure drugs under these more difficult circumstances. It is hoped that fear of punishment will act as a deterrent by raising the risks, again in terms of arrest and imprisonment, of drug use and thus lead to less illicit use.

AN OVERVIEW OF INCARCERATION RATES

Imprisonment continues to play an important part in the crime policy of every country, but its use varies between different regions and between countries within regions. As Stern noted at the end of the last century, some nations use it lavishly while others use it with considerable parsimony (Stern, 1998). Today over 10 million people are held in penal institutions throughout the world (Walmsley, 2008). As we note in Beckley Foundation Drug Policy Programme Report Five, *Reducing drug-related crime: an overview of the global evidence*, and again in Report Twelve, *Prisons and Drugs: A global review of incarceration, drug use and drug services*, evidence shows that recent years have seen increasing numbers of people arrested for drug related offences being sent to prison. The steepest rise has been in the US, where the increased use of imprisonment as a policy option in general has led one author to give it the title “The Great Incarcerator” (Stern, 1998). Today over half of Federal inmates in the United States are in prison due to a drug charge (West and Sabol, 2008.) Less spectacular rises have also taken place in other nations including many in Europe, Asia, Africa, Oceania and the Americas (Stevens, Trace, Bewley-Taylor, 2005). It has been noted that law enforcement oriented approaches in most of Western Europe have caused persons sentenced for drug law offences to make up an increasing percentage of prison populations (Dunkel and van Zyl Smit, 2001). (See table)

THE UNITED STATES: STILL “THE GREAT INCARCERATOR.”

As one of those nations most explicitly using incarceration as a drug policy tool, data and research from the United States provides many useful insights into the use of the policy option to reduce levels of illicit drug use. In an attempt to reduce drug use and dealing, US administrations have for many years pursued punitive drug control policies; often collectively labelled the “war on drugs.” As we note in The Beckley Foundation Drug Policy Programme Report Three, *Law Enforcement and Supply Reduction*, a central objective of contemporary US drug policy is to reduce the scope and scale of drug markets via supply-side initiatives, particularly tough and uncompromising law enforcement (Roberts, Trace and Klein, 2004). The difficulties in achieving sustained and widespread success in the reduction of both foreign production and the flow of illicit drugs into the country have meant that US policymakers augment the supply-side policies overseas with punitive measures at home.

A key component of this approach has involved the threat of arrest and incarceration. Over the first 70 years of the twentieth century the US incarceration rate was characterized by a relative stability, with approximately 100 per 100,000 citizens suffering imprisonment at a given moment. The following 35 year period has seen a steep rise in this rate, with the figure reaching 491 per 100,000 in 2005. (US Department of Justice, Bureau of Justice Statistics, 2005). More recent data suggests that this has risen still further since then (See table.) This rise has been largely fuelled by policies associated with the “war on drugs”, and has been particularly acute since the early 1980s, when concern about cocaine became prominent. Figures show that drug arrests have more than tripled in the last 25 years, reaching a record of some 1.8 million in 2005 (Mauer & King 2007); in 1980 there were 581,000 drug law arrests, climbing to a total of 1,846,351 in 2005. 81.7% of these arrests were for possession offences, and 42.6% of arrests were for marijuana offences. Of the 450,000 increase in drug arrests during the period 1990-2002, 82% of the growth was for marijuana, with 79% for marijuana possession alone (Boyum & Reuter, 2005). These figures reflect the shifting law enforcement emphasis towards the drug since the early 1990s. The upward trend in arrest rates has been accompanied by a greater increase in the number of drug offence related commitments to state and federal prison. These rose approximately ten-fold between 1980 and 2000 (Boyum & Reuter, 2005). This upward trend can be explained in large part by mandatory sentencing statutes. These were the product of a stepping up of the ‘war on drugs’ during the Reagan presidency. Mandatory minimums at both the state and federal levels lead to people serving a prison sentence after being convicted of possession of relatively small amounts of illegal substances.

It is important to note that arrest and punishment is not the only aspect of US drug policy - drug treatment and drug prevention strategies do have

their place within US domestic policies. Indeed, the US Government spends more on drug prevention and treatment than any other country. Furthermore, recent years have seen an expansion of the drug court movement in which judges oversee the treatment of drug dependent offenders in community based or residential settings as an alternative to short periods of imprisonment. Nonetheless, it is the vigorous pursuit of law enforcement and criminal justice measures that remain dominant. At both the federal and state levels the US domestic “war on drugs” has increasingly relied upon incarceration as a deterrent.

Indeed, in 2000 a Human Rights Watch report concluded that drug control policies bore “primary responsibility for the quadrupling of the [US] national prison population since 1980 and a soaring incarceration rate, the highest among western democracies...” (Human Rights Watch, 2000). In that same year, nearly one in four persons imprisoned in the US was imprisoned for a drug offence, with a significant proportion of these individuals being non-violent offenders (Schiraldi, Holman & Beatty, 2000). In 2000, the number of persons behind bars for drug offences was roughly the same as the entire US prison and jail population only twenty years earlier. For comparative purposes, it is noteworthy that at the beginning of the Twenty-First century, there were 100,000 more persons imprisoned in the US for drug offences than the total number of prisoners in the EU, even though the EU had 100 million more citizens than the US (Schiraldi, Holman & Beatty, 2000). Today, almost half a million dealers and users are under incarceration in the US (Caulkins & Reuter, 2006).

There is an extensive body of evidence to show that the costs of such drug laws do not fall equally across all segments of US society. Between 1985 and 1995, for instance, there was an increase of 200 percent in the number of females incarcerated in state and federal institutions, most for non-violent offences. Many commentators agree that much of this was the result of stricter enforcement, increased penalties and mandatory prison sentences for drug offenders (Reichel 2005, Bush-Baskette, 1999, Gray, 2001). Additionally, while punitive US drug policies can be seen to have significantly affected the imprisonment of women in general, the greatest increase in the percentage of inmates incarcerated for drug offences is seen in African American women (Bush-Baskette, 1999).

Figures concerning African-American women reflect the more general finding that it is predominantly minorities arrested for drug selling. By way of example, the year-end figures for 2005 demonstrate that of the 253,300 state prisoners serving sentences for drug offences, 113,500 were black, 51,100 were Hispanic and 72,300 were white. In percentage terms, the figures are, respectively, 44.8%, 20.2% and 28.5%. (Sabol *et al.*, 2008) These may be contrasted with the ethnic make-up of the US population in general, which, according to the CIA World Fact Book, is, by percentage: black 12.85%, Hispanic approximately 15.1% and white 79.96%. (CIA World Fact Book 2009) According to US government statistics in 1990, African-Americans constituted only 15-20% of the

nation’s drug users, but in most urban areas constituted half to two-thirds of those arrested for drug offences (Duster, 1997). This relationship is also reflected with reference to marijuana in particular. African-Americans represent 14% of marijuana users in the general population, but 30% of arrests (King & Mauer, 2005). A similar disproportion can also be seen in the composition of prison sentence statistics (Boyum & Reuter, 2005). In certain specific American states, the disparities can be much greater. New Jersey leads the US in terms of its record of imprisoning non-violent drug offenders. Nearly half of those entering the system in 2003 (the last year for which detailed data exist) were drug law violators, whereas the national average is 31%. Some 62% of incoming prisoners in New Jersey are African American, while for drug law offenders the figure is almost three-quarters (70%). To put these figures into context, African Americans make up about 13% of New Jersey’s population (Kleykamp, M., Rosenfield J.& Scotti R., 2008). A similar pattern is repeated in New York City. The trend toward a law enforcement focus on cannabis is striking, with 353,000 people arrested for possession of small amounts of the drug between 1997 and 2006. Of these arrests, 52% were black, who make up about 26% of the city’s population; 31% were Hispanic (from 27% of the population) and 15% were white (35% of the population) (Levine & Small, 2008).

It is important to note that within these figures young African-American males are a dominant group. According to the US based Sentencing Project, nearly one in three (32%) of Afro-American men between the ages of 20 and 29 were under criminal justice control in 1995. A report by the Building Blocks for Youth Initiative in the year 2000 found that African-American youths were admitted to state public facilities for drug offences at forty-eight times the rate of white youths (Schiraldi, Holman & Beatty, 2000). It has been suggested that the principal explanation for these disparities is probably that retail dealing, especially in open settings, and heavy use of cocaine and heroin are concentrated in poor minority communities (Boyum & Reuter, 2005). The reasons for this are multifaceted and complex, but have much to do with long-term structural changes within the US economy. A loss of manufacturing jobs has led to deteriorating social conditions within many communities and fewer employment opportunities within the legitimate economy. Law enforcement strategies that focus on low-level dealers consequently do much to create racial imbalances within both arrest and incarceration statistics (Duster, 1997). A recent study by the US Justice Policy Institute focused on the county level (a micro-level unit of finance and administration) found that those counties with the highest levels of poverty, unemployment and black and minority ethnicities were also those which sentenced their drug offenders to prison at higher rates. They also recorded that 97% of large population counties have racial disparities in drug law sentencing (Justice Policy Institute, 2007).

A key point of controversy concerning racial disparities and US drug laws is that of mandatory sentencing for offences involving crack and cocaine powder. Under the Anti-Drug Abuse Act of 1986 the sale of

five grams of crack brings a mandatory five-year sentence. Yet, as Human Rights Watch told the UN Commission on Human Rights in 1996, “It takes 100 times more powder cocaine than crack to trigger the same mandatory minimum sentence” (Stern, 1998). This difference turns out to have a racially disparate impact since African-Americans are much more commonly charged federally with crack distribution than with distribution of powder cocaine (Boyum & Reuter, 2005). A growing recognition of the inequities it causes has generated moves towards reform the 1986 legislation including for example from the US Sentencing Commission (Drug Policy Alliance, 2007).

While the US is one of the main exponents of incarceration as a policy tool both in terms of rhetoric and application, many other governments echo US-style rhetoric and logic without actually implementing heavy sanctions in the vast majority of cases. In the UK, for instance, under the 1971 Misuse of Drugs Act (MDA) potential custodial sentences for the possession and supply of illegal drugs range from two years to life. However, of the 104,400 people who committed drug offences under the MDA in the year 2000 only nine percent were imprisoned, and the vast majority of these received sentences of less than one year (Drugscope, 2004).

The International Picture – A Snapshot of the Incarceration of Drug Offenders.

The terms ‘drug offences’ or ‘drug related offences’ cover a variety of activities. The data presented in the table below uses the term to include both offences related on the one hand to the possession, use or consumption of drugs and, on the other, to offences related to the supply, trafficking or production of drugs. This approach is driven by national approaches to the classification of drug offenders, with most countries grouping the two categories together within official statistics. In addition to these groups, most prison systems contain often-large numbers of offenders remanded or sentenced for acquisitive or violent offences arising from drug addiction or trafficking, but reliable data about this is also not available. Nor is it known how many prisoners have committed offences while under the influence of drugs. According to the Corrections Minister in New Zealand, up to 60 per cent of prisoners in that country were affected by alcohol or other drugs at the time of offending but systematic data is not available and therefore this group is not included in the table below.²

The table contains information about countries where reliable data is collected and published. Information about the prison population and incarceration rate is available for over 200 countries and dependent territories, but identifying the proportion of the prison population made up of drug offenders, even when combining both ‘user’ and ‘trafficker’ figures, is possible only for a much smaller range of countries. It is particularly hard to find information about the situation in Africa, Central and South Asia and parts of Latin America and this is reflected in the nations mentioned below.

Country	Total Prison Population ³	Incarceration Rate (per 100,000 of national population) ⁴	Drug Offenders ⁵ as proportion of total prison population ⁶
---------	--------------------------------------	--	---

EUROPE - EUROPEAN UNION (EU)

Belgium	10,002	93	14.3%
Bulgaria	10,271	134	5.6%
Cyprus	671	83	27.5%
Czech Republic	18,901	182	8.0%
Denmark	3,448	63	23.9%
Estonia	3,467	259	9.6%

² Speech by Minister of Corrections to APCCA conference 2006

³ All figures in this column from ICPS World Prison Brief www.prisonstudies.org. Statistics are not necessarily from the same year but represent the most recent figures available.

⁴ *ibid*

⁵ The term drug offender here refers to both trafficking/dealing and possession/use.

⁶ All figures for European countries in this column are taken from the Council of Europe SPACE statistics 2006 unless otherwise stated. http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/Statistics_SPACE_I/List_Space_I.asp

Finland	3,370	64	15.2%
France	59,655	96	13.6% of those serving sentences at January 2008 ⁷
Germany	73,203	89	14.9%
Ireland	3,653	81	14.4%
Italy	55,057	92	29.4%
Latvia	6,548	288	9.2%
Lithuania	7,866	234	4.6%
Luxembourg	745	155	42.1%
Malta	387	95	28.1%
Netherlands	16,416	100	18.9%
Portugal	10,830	102	27.3%
Romania	26,350	123	3.3%
Slovenia	1,317	65	10.9%
Spain	73,787	160	27.4%
Sweden	6,770	74	23% of those entering prison ⁸
UK: England and Wales	82,240	151	15.5% ⁹
UK: Northern Ireland	1,459	82	6.1%
UK: Scotland	7,602	146	14.4%

EUROPE - NON EU

Albania	5,041	159	9.9%
Azerbaijan	19,559	229	24.9%
Croatia	4,127	93	17.5%
Georgia	18,170	415	3.8%
Iceland	140	44	26.7%
Moldova	8,130	227	3.4%
Monaco	36	105	6.7%
Norway	3,276	69	29.1%
Russian Federation	887,723	626	9.3%
Serbia	8,978	122	10.7%
FYRO Macedonia	2,200	107	13.4%
Turkey	101,100	142	5.5%
Ukraine	149,690	323	14.7%

7 Pénitentiaire en Chiffres. Direction de l'administration pénitentiaire au 1er janvier 2008 <http://www.justice.gouv.fr/index.php?rubrique=10036&ssrubrique=10041&article=15623>

8 Information and statistics about The Swedish Prison and Probation Service 2008 http://www.kriminalvarden.se/templates/KVV_InfoMaterialListing_4022.aspx

9 Population in custody monthly tables December 2008 England and Wales

AMERICAS

Argentina	60,621	154	23% of federal ¹⁰ prisoners
Bolivia	7,682	82	35% drug trafficking ¹¹
Canada	38,348	116	4.5% of those receiving prison sentences ¹²
Chile	51,428	306	14.6% ¹³
Colombia	70,451	151	19% ¹⁴
Ecuador	17,065	126	34% ¹⁵
Mexico	222,671	207	51% of sentenced federal prisoners ¹⁶
Peru	41,745	146	25.2% drug trafficking ¹⁷
USA	2,293,000	756	19.5 % sentenced state prisoners (2005) 53% federal sentenced prisoners in (2007) ¹⁸

AFRICA

South Africa	163,676	334	2.1% ¹⁹
Asia and Oceania			
Australia	27,615	129	10% ²⁰
Japan	81,255	63	20.6% of those entering prison in 2006 ²¹
Malaysia	50,303	192	24% ²²
New Zealand	7,887	185	10% ²³
Singapore	11,768	267	20% ²⁴
Thailand	166,388	257	58% ²⁵
Vietnam	92,153	107	32% ²⁶

10 Ministry of Justice Statistics bulletin <http://www.justice.gov.uk/docs/population-in-custody-december08.pdf>

11 Dirección Nacional de Política Criminal, *Sistema Nacional de Estadísticas sobre Ejecución de la Pena – SNEEP – 2004* www.ine.gov.bo/indice/visualizador.aspx?ah=PC3090405.HTM

12 Cases in adult criminal court by type of sentence; total convicted cases, prison, conditional sentence, probation, by province and territory 2005/6 Statistics Canada <http://www40.statecan.gc.ca/101/cst01/legal22a-eng.htm>

13 Gendarmería de Chile in Table 12 in Dammer and Zuniga Prisons : problems and challenges for the Americas OAS/FLACSO 2008 http://www.flacso.cl/flacso/documentos/rss2008_4_ingles.pdf

14 Augusto Perez Gomez et al, Fracciones atribuibles en las relaciones entre crimen y drogas en Colombia: Informe final del proyecto financiado por el Ministerio del Interior y de Justicia de Colombia, la Dirección Nacional de Estupefacientes y la CICAD/OEA; y la cooperación del Inpec, Bogotá, February 2008

15 Official release from the Ministry of Justice and Human Rights: www.minjusticia-ddhh.gov.ec/index.php?option=com_content&task=view&id=89&Itemid=1

16 Instituto Nacional de Estadística y Geografía, *Estadísticas judiciales en materia penal*: www.inegi.org.mx

17 Quoted in Dammer and Zuniga Prisons: problems and challenges for the Americas OAS/FLACSO 2008 p66 http://www.flacso.cl/flacso/documentos/rss2008_4_ingles.pdf

18 Prisoners in 2007 By Heather C. West and William J. Sabol, Ph.D. Bureau of Justice Statistics Bulletin

19 Inmates per crime category 31/12/08 Department of Correctional Services <http://www.dcs.gov.za/WebStatistics/>

20 Australian Bureau of Statistics Prisoners in Australia 2008 <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4517.0Main%20Features%2008?opendocument&tabname=Summary&prodno=4517.0&issue=2008&num=&view>

21 <http://www.moj.go.jp/ENGLISH/CB/cb-01.html>

22 Situational analysis of illicit drug issues and responses in the Asia-Pacific region

Madonna Devaney, Gary Reid and Simon Baldwin / Australian National Council on Drugs

23 Provoost D The Cumulative Effect Uncovering the contributing factors behind the rising prison population Justice Strategic Policy Unity July 2008 <http://www.police.govt.nz/events/2008/research-symposium/papers-posters/Provoost%20D,%20The%20Cumulative%20Effect%20-%20Uncovering%20the%20contributing%20factors%20behind%20the%20increasing%20prison%20pop.ppt#313,1>, The Cumulative Effect: Uncovering the contributing factors behind the increasing prison population

24 <http://www.apcca.org/Pubs/26th/26th%20APCCA%20Conference%20Report.pdf>

25 http://www.correct.go.th/eng/Stat/statistic.htm#_Prison_Population_breakdown_by%20Type_1

26 <http://www.apcca.org/Pubs/26th/26th%20APCCA%20Conference%20Report.pdf>

The table above enables some comparisons to be made although counting rules may differ between countries, the periods covered by the data vary and the proportions of drug users reported for some of the countries refer to the flow of offenders into prison during the course of a year rather than the stock of prisoners on any one day. Nonetheless, the data is likely to illustrate different enforcement policies applied in different countries rather than simply different levels of prevalence.

Europe

Here the differences between countries are most systematically shown among states in the Council of Europe where in 2006 the percentage of sentenced prisoners whose main offence was a drug offence ranged from 42% in Luxembourg to 3.3% in Romania, with more than 10% in France, Germany, England and Wales, Spain, Portugal and the Netherlands.

The differences are likely to reflect in part differences in legislation or in the enforcement of legislation relating to drugs. Spain and Italy, and more recently, Portugal and Luxembourg, for example, do not consider possession of drugs for personal use as a crime. Other countries, such as The Netherlands, Germany and the Czech Republic maintain guidelines for the police, public prosecution or courts to avoid imposing a punishment – or small fines – if the amount is insignificant or for personal consumption.²⁷

Of the countries where comparison is possible, drug offences accounted for a higher proportion of sentenced prisoners in 2006 than 2005 in 19 countries and a smaller proportion in 16 countries. High increases were noticeable in this period in some countries of Eastern Europe, such as Bulgaria from 2% to 6%.²⁸

The countries with the largest proportion of drug offenders also have the largest proportion of foreign national prisoners. With the exception of Iceland and Azerbaijan, all of the countries whose prison population comprised 20% or more drug offenders comprise 20% or more foreign national prisoners.

In most countries, the proportion of drug offenders among the women's prison population is higher than the men's. For instance, in Spain specific drug-related offences (trafficking and supply) are classified as crimes against public health. The proportion of male prisoners sentenced under this legislation is 26% whereas 48% of women are sentenced for public health offences.²⁹ The latter figure rises to 60% for 'Gypsies,' who account for at least 25% of the female prison population.³⁰ The over-representation of minority groups is a feature in other European countries as well.

Methodological differences, and the incomplete nature of national data sets, make the compilation and comparison of EU statistics, in terms of arrests and incarceration, rather difficult. Nonetheless, figures show that over the period 1997-2005 the number of reports³¹ of drug law offences increased in most EU countries (EMCDDA, 2004, Aebi et al, 2003, EMCDDA, 2007). In most EU Member States, the majority of reported drug law offences relate to drug use or possession for use (EMCDDA, 2007).

Indeed, it is estimated that approximately 50% of prisoners in the EU have had a history of drug use throughout their lives (Dolan et al, 2007). The European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) reports that regardless of the offence that led to imprisonment, data available from a variety of studies continue to point to an over-representation of drug users in European prisons compared to the general population. The Monitoring Centre lists a number of surveys carried out between 2001 and 2006, which show that the proportion of prisoners who report having ever used an illicit drug varies greatly between prison populations, detention centres and countries, from a third or less (Bulgaria, Hungary, Romania) to above 50% in most studies, and up to 84% in a women's prison in England and Wales. Cannabis remains the illicit drug most frequently reported by prisoners, with

27 Illicit drug use in the EU: legislative approaches, EMCDDA thematic papers, Lisbon 2005, ISBN 92-9168-215-2.

28 Council of Europe Space Statistics 2006 http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/Rapport%20SPACE%20I_2006_Dec.pdf

29 Monthly prison statistics (November 2008), Dirección General de Instituciones Penitenciarias: www.mir.es/INSTPEN/INSTPENI/Gestion/Estadisticas_mensuales/2008/11/

30 El Informe Barañi (2001) quoted in Intervención sobre Drogas en Centros Penitenciarios Delegación del Gobierno para el Plan Nacional sobre Drogas www.pnsd.msc.es/Categoria2/publica/pdf/IntervCCPP.pdf

31 As noted by the EMCDDA the term "reports" (of drug law offences such as use, possession, dealing, trafficking, etc) is a broad one reflecting not only differences in national legislations but also the different ways in which laws are applied, enforced and recorded.

lifetime prevalence levels of up to 78%. Although estimates of lifetime use of other substances can be very low in some prisons (down to 1%), some studies report lifetime prevalence levels of 50–60 % for heroin, amphetamines or cocaine among prisoners. The most damaging forms of drug use may also be concentrated among prisoners, with some studies reporting that more than a third of those surveyed have ever injected drugs. Overall, the EMCDDA estimates that more than 400,000 people with past or current experience of illicit drug use pass through EU prisons every year. And among these, there will be a considerable number of problem drug users.³² A recent review undertaken in the UK estimated that between a third and a half of new receptions to prison are estimated to be problem drug users (equivalent to between 45,000 and 65,000 prisoners in England and Wales).³³

Asia

Many countries in Asia have a zero tolerance approach to drug use as well as trafficking, resulting in long minimum prison sentences and in several countries the death penalty is mandatory for trafficking. Possession of certain quantities is deemed to signify trafficking. Reliable data is difficult to obtain for some countries such as China where in addition to prisons run by the ministry of justice, administrative detention and re-education through labour institutions have been established which include many drug users.³⁴

Indonesian drug laws prescribe the death penalty for narcotics trafficking and up to 20 years in prison for marijuana offenses. Simple possession results in prison terms of one to five years. Recent research suggests that, as in other parts of the world, the drug trade flourishes inside some Indonesian prisons (MacDougall, 2008.) In the Philippines, the law prescribes the death penalty for drug traffickers caught with at least 0.3 ounce of opium, morphine, heroin, cocaine, marijuana resin, or at least .17 ounces of marijuana. The Philippine government has imposed a moratorium on the death penalty, but drug offenders are still punished harshly if caught – the minimum sentence is 12 years in prison for possession of .17 ounces of illegal drugs.

As in Europe, women appear to be over-represented among drug offenders in prison. Drug offenders constitute about 22% (14,847) of Japan's male prison population and 35% (1,410) of its female prison population.³⁵

In some countries alongside a tough approach to trafficking, an approach based on rehabilitation and treatment has been introduced either within a prison setting or in other institutions. Thailand's prison population after a very rapid rise fell sharply between 2003 and 2007. This was in part due to the enforcement of a new law on the rehabilitation of drug addicts which treats them as patients rather than criminals. According to the Ministry of Justice up to 20% of drug related offenders have been diverted from prison each year,³⁶ but there have been questions raised about the type of treatment available with Human Rights Watch calling on the government to end punitive treatment of drug abusers.³⁷ Forced counselling and military style drill are reportedly used in treatment settings.

Americas

As the table shows, in Canada the proportion of drug offenders in prison is much lower than in the US although the number of drug users is high. The federal government report that "most inmates in Canada's penitentiaries – eight out of ten – have substance abuse problems."³⁸ Prior to a recent change of government, Canadian drug policy had been moving away from the drug prohibition strategy it shared with the U.S. towards a more European based harm reduction model. Nonetheless, Canada still currently focuses far fewer resources on criminal enforcement than the U.S., with 70% of Canada's counter narcotics budget spent on demand reduction.³⁹

32 <http://www.emcdda.europa.eu/stats08/duptab0>

33 Reducing Drug Use, Reducing Reoffending UKDPC 2008 http://www.ukdpc.org.uk/resources/RDURR_Main_Summary.pdf

34 See ICPS International Experience in Reform of Penal Management Systems http://www.kcl.ac.uk/depsta/law/research/icps/downloads/International_Experience.pdf

35 <http://www.apcca.org/Pubs/26th/26th%20APCCA%20Conference%20Report.pdf>

36 Speech by Mr Wanchai Rouanavong at the Opening of the 9th ICPA Conference October 2007.

37 Press release November 12th 2008 <http://www.hrw.org/en/news/2008/11/12/thailand-new-anti-drug-campaign-risks-abuses>

38 <http://www.publicsafety.gc.ca/prg/cor/acc/f17-eng.aspx>

39 <http://www.drugpolicy.org/global/drugpolicyby/northamerica/canada/>

The US approach is traditionally reflected in much of Latin America where there is a significant variation in the proportion of the prison population detained for specific drug-related offences. Unsurprisingly the highest proportions are to be found in the Andean region: Bolivia, Ecuador, Colombia and Peru. As in several other parts of the world there are also significant gender differences in Latin America, with drug-related offences featuring much more significantly amongst women prisoners. Almost 12% of prisoners in the Argentine federal system are women. More than 60% of them are detained for drugs offences. A 2008 census of Ecuador's prisoners found that 70% of women prisoners were detained for drug-related offences.⁴⁰

Since that time there have been significant measures to reduce the prison population in Ecuador, including early release for certain categories of drug offender, particularly women who have acted as drug 'mules.' Article 364 of the new constitution forbids the criminalisation of addictions. It is unclear what impact this may have on offences of possession and supply of drugs.

This represents a trend towards more liberal attitudes to recreational drug use in Latin America. In part prison overcrowding has helped to soften policies on drug use, with Colombia, Mexico and Argentina moving to decriminalise small-scale possession for personal use while retaining harsh penalties for production and supply (Barrionuevo, 2009).

Oceania

Some countries in this region have moved away from harsh laws and penalties. In Australia in particular the official response to drug possession and use is primarily a civil procedure. In terms of prison demographics, the New Zealand Ministry of Justice has recently found that manufacturing, importing and selling Class A and B drugs are major contributors to prison growth.⁴¹ Similarly, in Australia the majority of drug offenders, that is to say those categorized as having their most serious offence as an illicit drug offence, were serving time due to import-export, dealing-trafficking and manufacture-cultivation offences rather than "possession and/or use."⁴² Meanwhile levels of drug use among prisoners are also high in Australia with almost 60% of prisoners reporting a history of injecting drug use in 2004.⁴³ Penalties for possession or use of, or trafficking in illegal drugs in Pacific countries such as Papua New Guinea and the Solomon Islands are severe, and convicted offenders can expect long jail sentences and heavy fines. Data for these countries is not available however.

Africa

Although one fifth of the world's population lives in Africa and more than a quarter of all countries in the world are in Africa, the continent is, by far, the least documented region in terms of data and information on crime and drugs. Many African Governments are unable to supply information on the situation of drugs and crime in their country, including information requested by international drug and crime control treaties. Not surprisingly data on drugs and imprisonment are scarce in respect of African countries. UNODC have estimated that the proportion of drug users in the prison population in the 1990's ranged from 90% in Namibia to 3% in Nigeria with drug related convictions in the early 2000's ranging from 3.3% in Ethiopia to 56% in Mauritius- but there are questions about the reliability of the data.⁴⁴

40 Official release from the Ministry of Justice and Human Rights: www.minjusticia-ddhh.gov.ec/index.php?option=com_content&task=view&id=89&Itemid=1

41 Provoost D above

42 Australian Bureau of Statistics, Prisoners in 2008 [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/86E255C8FD635DE6CA25751B0014692E/\\$File/45170do024_2008.xls](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/86E255C8FD635DE6CA25751B0014692E/$File/45170do024_2008.xls)

43 Statistics on Drug Use in Australia 2006 Australian Institute for Health and Welfare

44 Rey Chad Abdool Reducing HIV/AIDS infection in prisons. Paper to CESCO Conference Nairobi August 2005

BENEFITS OF INCARCERATION

Having presented an overview of the scale and demographic make-up of incarceration of drug offenders in the USA, we now move on to attempt to assess the potential drug prevention benefits of such a policy. Discussion examines the specific elements of incapacitation, rehabilitation and deterrence, and attempts to assess the overall impact of incarceration on reducing levels of illicit drug use.

INCAPACITATION

There is some evidence to suggest that domestic enforcement could reduce drug consumption by directly lowering demand. Put simply, if drug users are incarcerated they are not contributing to the illicit drug market outside of prison. Additionally, since most drug sellers are also users, the incapacitation of sellers could reduce the number of active buyers (Boyum & Reuter, 2005), although it should be noted that wholesale suppliers and importers who are the powerful players in the market are rarely drug users. It is, however, difficult to find a correlation between trends in incarceration and a reduction of the market since research suggests that the US states with higher rates of drug related incarceration experienced higher not lower rates of drug use (Justice Policy Institute, 2000). Such discussions also ignore the existence of sizeable markets within many prisons worldwide. For example, a 2003 report estimated that 12%-60% of inmates housed in European prisons had used drugs during incarceration (ECMDDA, 2003). A more recent German study found that 75% of imprisoned injection drug users continued to inject in prison (Stark, *et al*, 2006).

REHABILITATION

A large-scale review of research on imprisonment carried out for the Canadian government found that offenders who were imprisoned were no less likely to reoffend than those given community sentences. Furthermore, those given longer sentences were more likely to go back to crime (Stevens, Trace, Bewley-Taylor, 2005). Indeed, it is virtually universally accepted that imprisonment in itself does not have a reformatory effect, but that certain kinds of treatment programme can have a significant effect in reducing offending behaviour among certain groups of individuals (Dunbar and Langdon, 2002). This obviously has particular relevance to drug users. Comparisons of US studies of a wide range of community based programmes and in-prison treatment programmes including methadone maintenance treatment and substance abuse education reveal similar success rates (Prendergast, Podus, Chang & Urada, 2002, Pearson & Lipton, 1999). It is crucial to note, however, that some studies show that similarities in success rates only apply to in-prison therapeutic communities for which aftercare after imprisonment is a very important component of success (Inciardi, Martin, Butzin, Hooper & Harrison, 1997). On the other hand, Welsh (2007) found

that treatment in a Prison Therapeutic Community significantly reduced recidivism even where community aftercare was absent. It did not, however, reduce “drug relapse”. It should also be noted that therapeutic communities are not generally available in prisons. In most cases, diversion from prison into community based treatment is likely to provide greater treatment benefits than imprisonment. For example, the Drug Treatment Alternative to Prisons programme in New York found that only 26% of offenders diverted into treatment were reconvicted, compared to 47% of comparable offenders who were sent to prison (National Center on Addiction and Substance Abuse, 2003). It would seem, therefore, that imprisonment presents an opportunity for effective rehabilitation of drug addicts, but that equally successful treatment can be delivered more easily, and cheaply, outside of prison.

DETERRENCE

Impacts on Drug Dealers

In their 2005 study, Boyum and Reuter conclude that US domestic enforcement, particularly low-level enforcement, does have an impact on levels of illicit drug use. This has much to do with the fact that the risks of incarceration are distributed over much smaller quantities of drugs for street level retail dealers. For example, a retailer handling a gram of cocaine faces a prison sentence that might be one-quarter of that faced by a high-level dealer handling 1000 grams. Boyum and Reuter suggest that about 90% of the retail price of cocaine and heroin represents price mark-ups within the US. This figure reflects an economic reaction, or market distortion, to the risks faced by dealers in terms of arrest and imprisonment. An increase in the price of the illicit drug subsequently has an impact on prevalence rates because some users are unwilling to pay the high prices. The 90% mark-up would seem to suggest a high risk factor. Indeed, a RAND study of the District of Columbia estimated that in 1988 street dealers faced about a 22% probability of imprisonment in the course of a year’s selling and that given the expected amount of time served, they spent around one-third of their selling careers in prison. At first glance one-third of a career in prison does seem to make drug dealing a high risk pursuit. However, closer inspection reveals that the risk per sale may actually be small. A seller who works only two days per week may make 1,000 transactions a year. The imprisonment risk per transaction in the 1988 study could therefore be calculated to be only about 1 in 4,500. By that measure each transaction would be a great deal less risky than for example burglary or robbery with expected cell-years per dollar earned being low relative to property crimes (Boyum & Reuter, 2005).

It is also possible to assess risk in terms of aggregate figures. American users consume an estimated 300 tons of pure cocaine a year. If sold in 0.2 gram units the volume would involve 1.5 billion transactions. This would generate fewer than 1000 prison sentences, or less than a 1 in 15,000 risk of imprisonment per sale (Boyum &

Reuter, 2005). When viewed like this incarceration does not appear to offer a great deal as a general deterrent to street-level retail dealers and certainly not to high-level dealers who have the means to better insulate themselves from the risk of arrest and imprisonment. While the risks faced by retail dealers, in terms of expected prison time per gram, are greater than for high level dealers, it seems likely that the potential profits to be made from inflated street prices will ensure a steady supply of street-level drug dealers; particularly in economically deprived inner city communities. The Canadian government report mentioned above also suggests that incarceration as a specific deterrence is far from effective. From a socio-cultural perspective, the effectiveness of both specific and general deterrence may also be undermined by the fact that many young criminals see prison time as a rite of passage (Gray, 2001).

We need also to consider the deterrent effect of the market distortion and price markups mentioned above. There is general agreement that US domestic drug enforcement policies, including incarceration, has an impact upon user rates by keeping drug prices much higher than they would otherwise be. One study has found support for this argument. Subjecting the evidence to what they term a “rigorous empirical analysis”, Kuziemko and Levitt (2004) find “some evidence that harsher punishments for drug offenders are associated with higher drug prices.” In summary, these authors suggest that a tripling of incarcerations for drug offences may have led to a 12% to 14% increase in the retail price of cocaine between 1985 and 1996. For any such estimate to be produced naturally involves a highly speculative methodology, and the authors acknowledge that their data, while “the best available, are of questionable quality.” They also observe that, even if their calculations are accurate, the enormous injections of funds into a project of mass incarceration is unlikely to have been a cost-effective policy for the public purse. Commenting on this research and basing their calculations on its figures, Caulkins and Reuter state that to achieve this “modest increase in cocaine prices, it cost an extra \$6 billion a year just for incarceration” (Caulkins and Reuter, 2006).

Most other studies to look at this question conclude that it is not evident that massive increases in enforcement, particularly incarceration, in the US over the past 20 years or so have had the desired impact on prices (Boyum & Reuter, 2005). Although, as we have noted, incarceration for drug law violators has increased dramatically, prices of cocaine and heroin have been in decline according to most widely accepted measures (See Figure 1). It is likely that such a trend reduces the impact of market distortion upon many illicit drug users. Indeed, at the macro level it is possible to observe that while the US is consistently one of the biggest incarcerators in the world it retains among the highest drug use prevalence figures.

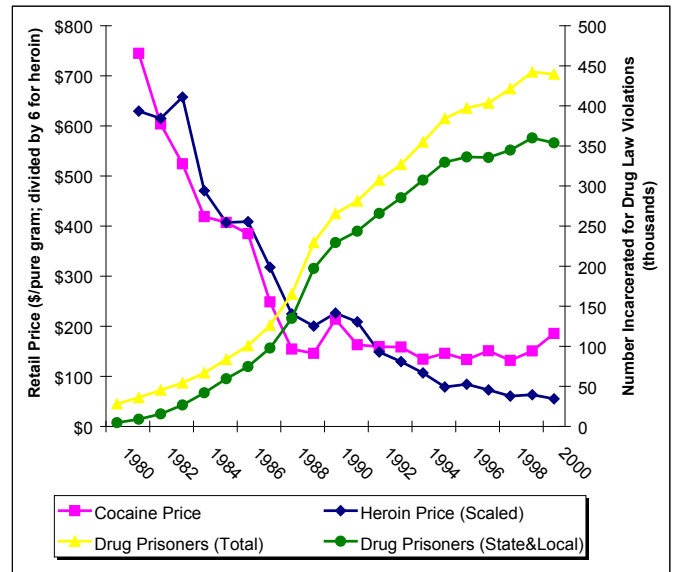


Figure 1. US Drug Prices and Incarceration of Drug Law Violators (Reuter, 2004)*

Impacts on Drug Users

Aggregate data suggests that in the 1999 the risk of being arrested for marijuana possession, conditional on using the drug in the previous year, was about 3%. For cocaine the figure goes up to 6% (Boyum & Reuter, 2005). It would seem that in terms of general deterrence these figures are not especially high.

A 2004 study comparing marijuana use in Amsterdam and San Francisco goes further in suggesting that relative risks of punishment make no difference on levels of use. Despite the significantly different law enforcement regimes in these cities, the research found remarkable similarities in drug use patterns (Reinarman, Cohen & Kaal, 2004). Recent research on marijuana use within the US also offers some further interesting insights into how the perception of risk might impact use. Figures show that from 1990 to 2002, daily use of marijuana by high school seniors nearly tripled from 2.2% to 6%. The current level of 6% is the same as the level in 1975. It has been suggested that the rapid increase in low-level arrests, many of which result in dismissals or misdemeanour convictions, reinforces a perception that a person can “get away with it” (King & Mauer, 2005).

While risk and perceptions of risk may impact the behaviour of some user groups, research literature points to the fact that punishment does generally have a severely limited impact upon deterring all types of illicit drug use, especially with regard to addicted drug users. In line with the findings concerning specific deterrence cited above, a review of available evidence in 1988 revealed that two-thirds or more of arrested drug users return to heroin/cocaine use and their diverse

* A more recent version of this graph can be found in Caulkins and Reuter, 2006.

criminal patterns within three months after release from detention (Bertram *et al*, 1996). Moreover, Jeffrey Fagen's study of thousands of drug offenders found not only that punishment failed to deter but also that "the probability of rearrest increased with the length of the sentence." "Findings from a number of studies," Patricia Erikson concluded in 1990, "consistently indicate that the perceived certainty and severity of punishment are insignificant factors in deterring use" (Bertram, *et al* 1996).

For problematic drug users, it is perhaps not surprising that the threat of punishment will have a limited effect. Many suffer from other serious problems and it can be argued that being punished is not an over-riding concern for them. For example, according to the US government's Alcohol, Drug Abuse and Mental Health Administration, 53% of drug users have a diagnosable mental disorder. Many hard-core users in inner cities already lead such high-risk lives on the streets that prison is not perceived as a much riskier or more threatening alternative (Bertram, *et al*, 1996).

Indications that punishment as a deterrent has limited utility are bolstered by research suggesting that factors other than arrest and incarceration have led heavy drug users to quit. Evidence suggests, for example, that many users have been led to control or give up their drug use because the toll on personal relationships and home and work lives was too high and the rewards for quitting were attractive (Bertram *et al*, 1996). One early study exploring the reasons why heroin addicts stopped drug use found that not one of the adult men and women mentioned concern about punishment as the reason for their first attempt to stop using heroin, and only 13% of the juvenile users did. Drug-related physical or family problems, the desire to change a life pattern, or the expense of maintaining a habit were much more commonly cited reasons (Brown *et al*, 1971). The latter variable fits in with the idea that inflating drug prices through increasing risks to dealers can impact prevalence rates. It does little, however, to suggest that the threat of incarceration will deter individuals from drug use. A 1991 study revealed a similar relationship between heavy cocaine users and motivations leading to the cessation of use. The fear of arrest was well below other factors including health problems, financial difficulties, problems at work and pressure from spouse or lover (Waldorf, Reinerman & Murphy, 1991). Looking beyond the US context, it is interesting to note that a recent study in the UK (Reuter and Stevens, 2008) has fashion and popular culture as the first on its list of factors which influence levels of drug use, and is "quite pessimistic" that law enforcement measures, or even drug policy interventions more broadly, can reduce drug use in general. In support of this belief, the study points to the great upturn in the use of cannabis in societies from Finland to Australia that took place in the 1990s; the range of countries involved embraced policy-positions from the tough to the liberal, yet none of them seemed to make much difference, leading these authors to conclude that global popular culture played an important, if unspecified, role in this wave of youthful drug use.

COSTS OF INCARCERATION

Having examined the potential benefits of incarceration, the next section of the report examines the costs of this policy choice. Here we explore the issue of cost in terms of both financial and varied collateral impacts.

Financial Costs

The financial cost associated with a focus on law enforcement and incarceration within the US is high. Moreover, the methodology by means of which annual spending is calculated is subject to dispute, and has been modified since 2003. At the time of writing of Beckley Briefing Paper Number Seven, US Federal spending on drug control in 2002 totaled \$18.822 billion, over half of which was spent on domestic law enforcement. The figures for annual drug control funding now include "only those expenditures aimed at reducing drug use", instead of including, as previously, expenditures "associated with the consequences of drug use". The result of this "restructuring" is that the drug control budget appears greatly reduced; for example, the 2002 budget mentioned above, which was \$18.822 billion, now stands at \$10.781 billion. Significantly, the primary changes affecting the total derive from criminal justice expenses; the costs of incarceration and prosecution of drug law offenders are no longer included in the drug control budget. This has the effect of making the proportion spent on treatment appear close to that spent on enforcement, whereas the large imbalance in favour of the latter was fully apparent under the former mode of calculation. (Common Sense for Drug Policy, 2003) According to present methodology, drug control expenditure for 2006, the latest year for which final spending data are available, was \$13,844.1 billion (Bureau of Justice Statistics, 2008).

According to the calculations of Harvard Economist Jeffrey Miron (Miron, 2008), the sum of \$12.3 billion was spent keeping State and Federal drug law offenders in prison in 2006. Such figures reflect the fact that large-scale incarceration is an expensive policy option. Put another way, it was calculated that in the early 1990s the cost of a prison place per year was more than the cost of tuition, room and board at Harvard. It has also been estimated that in 1996 the cost of a life sentence for a prisoner in California was \$1.5 million (Stern, 1998). High costs are not unique to the US. Research shows that north of the border, Canadian correctional services expenditures totalled almost \$3 billion in 2005/6. Custodial services made up 71% of this total, community supervision 14%, headquarters and central services 14% and Parole boards, 2%. If police and court costs are included, the figure exceeds \$10 billion. The cost of incarcerating a Federal male prisoner was \$87,665 per annum, with female prisoners around twice the cost (PrisonJusticeCa, 2008.) Meanwhile, the UK spends proportionately more on law and order than any of the other states within the Organization for Economic Cooperation and Development, including the US. Much of that investment goes into incarceration with the annual cost of keeping an individual in prison being £37,500 in 2008. Furthermore, research by the UK based Centre for Crime and

Justice Studies found that “when you consider the impact on families and wider society, the estimated annual cost of imprisonment for an individual rise by almost a third to nearly £50,000 (Solomon, 2008.) A high level of spending on incarceration naturally generates opportunity costs to other areas of public expenditure. For example, research shows that in California and New York prison expenditure outstripped the budgets for higher education during the mid-1990s (Schiraldi, Holman & Beatty, 2000). In the US as a whole between 1987 and 1995 spending on corrections rose by 30%. On elementary and secondary education spending fell by 1.2% and on higher education by 18.2% (Stern, 1998). By 1999 many states in the US were spending more on building prisons than colleges (Irwin, Schiraldi & Ziedenberg, 1999). The American sociologist, Elliot Currie concluded in 1993 that funds for prisons were diverted from parts of the public sector that educate, train, socialize, treat, house and nurture the population, especially the children of the poor (Currie, 1994).

Collateral Costs

The wider costs produced by spending on prisons rather than schools and colleges are far from straightforward to calculate. It is likely that the diversion of funds to prisons has a deleterious impact upon many aspects of American society. It may even contribute to the creation of social conditions that lead some people to use illicit drugs. These social conditions, moreover, are overwhelmingly concentrated in demographic groups already afflicted by economic and social disadvantage.

The influential work of criminologist David Garland has relevance here; Garland uses the term “mass-imprisonment” (Garland, 2001) to describe the rates of incarceration which have developed in the US over recent decades, leading to a situation in which poor and ethnic minority citizens are much more likely to be imprisoned by the state than was ever the case in the past. In this formulation, the effects of high rates of imprisonment go beyond the individual and affect members of entire demographic groups, membership of which has become strongly predictive of criminality and incarceration. As observed by Mary Pattillo *et al*: “...the criminal justice system has become a fixture in the passage to adulthood for minority youth with little economic opportunity.” (Pattillo *et al* 2006)

As noted above, race is a major component within US incarceration trends relating to drug policy. It is difficult to consider the issue without including a racial element, particularly with regard to crack. It remains a matter of debate whether or not tougher penalties for crack offences deliberately target minorities. What is important here, however, is that current US drug policies, not just those relating to crack, do have a disproportionate impact on minority groups. Western and Wildeman (2009) calculate that if white males were incarcerated at an equivalent rate as their black counterparts, there would be over 6 million people in America’s prisons and jails, and 5% of the working-age male population would be locked up. This is particularly so for low-

income African-Americans, and those with low levels of educational attainment. The result, as noted above, is high levels of incarceration among such groups. This reality has a negative impact upon wider race-class relations within the US (Currie, 1994) and as such must be seen as a considerable though immeasurable collateral cost.

The high proportion of individuals from minority groups in prison also means that such groups suffer more from the collateral costs that affect all communities and families touched by incarceration. For example, imprisonment disrupts family units often leaving one-parent or no-parent families. A 2002 study in New York revealed that since 1980 an estimated 124,000 children in that state have had at least one parent imprisoned on a drug charge. Data from a 1997 survey produced estimates showing that 58% of those in New York’s prisons were parents of children under the age of eighteen, with a higher number of women (64%) reporting children than men (58%) (Human Rights Watch, 2002.) Such a situation may contribute to criminality and problematic drug use among children who are forced to live with relatives, foster parents or in official institutions. It can also generate social security costs due to the removal of a family breadwinner and the costs associated with foster care for children. Further social security costs may be generated if an ex-prisoner cannot find employment due to the stigma of a prison record, in addition to the lost earnings and taxes that ensue. It is likely that the effects of prison-stigma and “spoiled identity” (Goffman, 1990) have been rendered more acute by the exigencies of the post-9/11 climate, in which security checks are intensive and pervasive (Love, 2005). The 1996 changes to federal welfare legislation have resulted in extreme hardship for many former prisoners. Section 115 of the Act imposes a lifetime ban on cash benefits and food stamps to anyone convicted of a state or federal felony offence for selling or possessing drugs. No other type of offence results in withdrawal of social welfare. Women and their children suffer the most severe consequences of this legislation; though states are able to opt of its provisions, as of 2006 there were 15 states enforcing them to the full extent of the law (Mauer & King, 2007). In addition, many ex-prisoners are unable to obtain healthcare insurance, and thus denied access to healthcare services (Williams, N.H. 2007) All of the negative effects tend to be amplified by their spatial concentration, with particular neighbourhoods feeling the effects with a specific intensity (Pattillo *et al* 2006).

Evidence also exists to suggest that mass incarceration as practiced in the US can have a deleterious impact upon informal social controls that exist within communities. Research in the US correlating community crime rates to imprisonment rates found that crime tended to fall with mild increases in imprisonment rates. This was due to offenders being taken out of the community. Crucially, however, the research suggested that when the rate of imprisonment reaches “mass” levels the criminal justice system starts to weaken processes of informal social control (Clear, Rose, Waring & Scully, 2003; Western & Wildeman 2009).

It has been argued that mandatory minimums and the associated increase in incarceration of non-violent offenders generate a further collateral cost; in this case by damaging the reputation and functioning of the US criminal justice system. Sentencing statutes that result in low-level drug offenders serving longer sentences than bank robbers, kidnappers and other violent offenders (including in some cases rapists and murders) undermine the notion of proportionality and fairness of the law (Bertram *et al*, 1996, Gray, 2001). Studies of state prisons often show that a majority of incarcerated drug offenders have no documented history of criminal violence. Research reveals that most state inmates are dealers, but probably from the low end of the supply chain. Most have prior convictions but few show any indication of involvement in violent crime. It is possible to conclude, therefore, that their cells would be better utilized holding more violent offenders (Boyum & Reuter, 2005). Evidence suggests that the image of the US criminal justice system is further tarnished by the inefficiencies caused by an overburdening of the system; much of which can be attributed to drug law violators. A conference of judicial leaders as long ago as 1989 noted, “The overload causes backlog, the backlog feeds delay, delay along with the lack of jail and prison space imperils rights to timely consideration, undermines deterrence and breeds contempt for the law” (Gray, 2001).

Research suggests that significant collateral costs of incarceration also exist with regard to health issues; particularly surrounding blood borne infections like HIV/AIDS and Hepatitis C. Relative to national general populations prisoners have much higher levels of drug use, especially injecting. Risk of exposure to this practice can also be greatly increased upon incarceration (Hunt, Trace, Bewley-Taylor, 2004, Dolan *et al*, 2007). It is significant that the AIDS rate is six times higher in state and federal prisons than in the US general population with 20%-26% of people living with HIV/AIDS in the US having spent time in the correctional system. The often frequent transfer of inmates between facilities can result in limited opportunities for adequate treatment. Furthermore, US authorities, unlike some in European countries, do not make sterile syringes available within the prison system (Kantor, 2003). As we note in Beckley Foundation Drug Policy Programme Briefing Paper Number Two (*Drug Policy and the HIV Pandemic in Russia and the Ukraine*) prisons are one of the chief centres of HIV infection within Russia. A report on seven prisons there found that 43% of inmates were injecting and that a worryingly high proportion (13%) had been initiated into injecting while in prison. The HIV infection in Russian prisons is currently 42.1 per 1,000 (4%). As these figures indicate, this is an extremely high-risk environment which led a 2004 UNDP report to describe Russian prisons as “HIV incubators” (Klein, Roberts & Trace, 2004).

In a recent and wide-ranging review of the evidence relating to HIV/AIDS and prisons, Jürgens R, Ball A & Verster A (2009) state unequivocally that, “The high prevalence of HIV and drug dependence among prisoners, combined with the sharing of injecting

drug equipment, make prisons a high-risk environment for the transmission of HIV. Ultimately, this contributes to HIV epidemics in the communities to which prisoners return on their release.” The authors then outline a comprehensive package of interventions which countries should, in line with UN guidance, provide to their incarcerated populations. These include: needle & syringe programmes, bleach and decontamination strategies, Opiate Substitution Therapy and other forms of treatment including drug-free units, HIV/AIDS education, counselling, condom provision and measures for the prevention of rape, sexual violence and coercion. While some countries do provide such in prison services, including harm reduction interventions (Cook and Kanaef, 2008), coverage remains limited and of variable quality.

It is also noteworthy that recent studies (Story, Murad, Roberts, Verheyen & Hayward 2007) in the UK have found high rates of drug-resistant infectious tuberculosis in prisoners, drug users and homeless people in London, adding another deadly pathogen to the mix.

The health effects of mass incarceration are not limited to the spread of infections, but embrace a wide range of conditions. Many prisoners suffer from mental health problems, which are often undiagnosed; from chronic conditions such as diabetes and hypertension; poor oral health is widespread. Overcrowding and lack of resources mean that often prisoners’ health problems are aggravated rather than alleviated by imprisonment (Commission on Safety and Abuse in America’s Prisons, 2006). In addition, longer sentences have resulted in increasing numbers of older people in prison, with their associated disease profile of Alzheimer’s disease, respiratory and heart conditions, arthritis, etc.). While prevalent in US society, these conditions are especially concentrated in the aging prison population (Anno, Graham, Lawrence and Shansky 2004). One study conducted in the UK found that, even where the making of “*healthy choices*” by prisoners was actively promoted as a policy objective, the prison environment rendered these objectives harder to achieve. As the authors put it: “Despite policy support for prison as a healthy setting, prison continues to restrict the ability of prisoners to make healthy choices and in some cases actively obstructs prisoners from making the healthy choices they wish to make” (Condon *et al*, 2008).

CONCLUSIONS

A review of the evidence suggests that high rates of incarceration of drug users can have some impact on levels of drug use and problems. This can result from the temporary incapacitation of users, the increased access to treatment, or the deterrent effect. On this last point, sustained and comprehensive enforcement action, including incarceration, increases the risks to a potential user or dealer, and can raise the price of the drug. However, the impacts that have been

observed on the overall scale of drug markets are at best marginal, and certainly have not led to a significant or lasting undermining of the market in any country. Moreover,

- Fear of arrest and sanctions is not a major factor in an individual's decision on whether to use or deal drugs.
- There is little correlation between incarceration rates and drug use prevalence in particular countries or cities.
- The impact of enforcement action on prices is much less powerful than other market factors.

Given the significant costs of incarceration as a way of reducing drug problems, (in budget terms, but also in terms of the negative impact on community relations, social cohesion and public health), it is hard to justify a drug policy approach that prioritises widespread arrest and harsh penalties for drug users on grounds of effectiveness. In relation to the US, this has led some experts to ask if the country would really be "worse off if it contented itself with 250,000 rather than 500,000 drug prisoners?" (Caulkins and Reuter, 2006.) Indeed, some national governments are shifting emphasis away from incarcerating drug offenders, a trend that in some parts of the world is reflected in incarceration figures. Yet, a UN treaty system that privileges the obligatory status of penal sanctions certainly "creates obstacles to the search for a better balance between protection and repression." (Jelsma, 2008.) Furthermore, while the INCB should be applauded for its discussion of proportionality, its failure to highlight examples of disproportionately harsh penalties towards drug offenders only helps to perpetuate the system (IDPC, 2008). At the 10 year review of current UN drug policy in March 2008, the Executive Director of the UN Office on Drugs and Crime acknowledged that enforcement oriented policies like those upon which the international system is currently based have produced a range of 'unintended consequences.' The harms and costs associated with the widespread incarceration of drug offenders could certainly be added to this list, and encouraging the application of evidence-based policy would go a long way to achieving a more sensible and humane use of these resources.

REFERENCES

- Aebi, M. F., et al (2003). *European Sourcebook of Crime and Criminal Justice Statistics* (Second Edition), Strasbourg, Council of Europe.
- Anno, B.J, Graham, C., Lawrence, J.E. and Shansky, R. (2004) *Correctional health care: Addressing the needs of elderly, chronically ill, and terminally ill inmates*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.
- Barrionuevo, A., (2009), Softer Policy on Drugs is Debated in Argentina, *The New York Times*, February 19.
- Bertram, E., Blachman, M., Sharpe, K., & Andreas, P. (1966). *Drug War Politics: The Price of Denial*. Berkeley, Los Angeles, London, University of California Press.
- Boyum, D., & Reuter, P., (2005). *An Analytic Assessment of US Drug Policy*. Washington, DC, The AEI Press.
- Brown, B. S., Gauvey, S. K., Meyers, M. B., & Stark, S. D. (1971). "In their Own Words: Addicts' Reasons for Initiating and Withdrawing from Heroin," *International Journal of the Addictions* 6 (4) 639-642.
- Bureau of Justice Statistics, (1997). *US Department of Justice, Prisoners in 1996* Washington DC: US Department of Justice.
- Bureau of Justice Statistics, (2008) , US Department of Justice, Drug Control Budget. Washington DC: US Department of Justice <http://www.ojp.usdoj.gov/bjs/dcf/dcb.htm> Last accessed 3 February 2009.
- Bush-Baskette, S. R., "The 'War on Drugs.' A War Against Women?" in Cook, S., & Davies, S., (Eds) (1999). *Harsh Punishment: International Experiences of Women's Imprisonment*. Boston, Northeastern University Press.
- Caulkins, J.P. & Reuter, P. *Reorienting US Drug Policy* (2006) Issues in Science and Technology Fall 2006 Available at: <http://www.issues.org/23.1/caulkins.html> Last accessed 26.02.09.
- Central Intelligence Agency World Fact Book (2009) <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> Last accessed 26.02.09.
- Clear, T.R., Rose, D.R., Waring, E., & Scully, K. (2003). Coercive mobility and Crime; A Preliminary Examination of Concentrated Incarceration and Social Disorganization. *Justice Quarterly*, 20 (1), 33-64.

- Cook, C., and N., Kanaef, (2008), *Global State of Harm Reduction 2008: Mapping the Response to drug-related HIV and hepatitis C epidemics*, International Harm Reduction Association.
- Common Sense for Drug Policy, (2003) Revising the Federal Drug Control Budget Report: Changing Methodology to Hide the Cost of the Drug War? <http://www.csdp.org/research/ondcpenron.pdf> Last accessed 3 February 2009.
- Currie, E., (1994) *Reckoning: Drugs, The Cities and the American Future*. New York, Hill and Wang.
- Dolan, K., Merghati Khoei, E., Brentari, C., & Stevens, A., (2007) *Prisons and Drugs: A global review of incarceration, drug use and drug services*, Beckley Foundation Drug Policy Programme, Report Twelve.
- Drug Policy Alliance, (2007), Legislative Proposals for the reform of the Crack/Cocaine Disparity, http://www.drugpolicy.org/library/factsheets/raceandthedr/crack_cocaine.cfm Last accessed 06.03.09.
- Drugscope, (2004). FAQs. Drug Laws. www.drugscope.org.uk
- Dunbar, I. & Langdon, A., "Justifications and Purposes of Imprisonment" in Jewkes, Y. J. & Letherby, G., (Eds) (2002). *Criminology: A Reader*. London, Thousand Oaks, New Delhi, Sage Publications.
- Dunkel, F., & van Zyl Smit, D. (2001) Conclusion. In van Zyl Smit, D., & Dunkel, F., (Eds) *Imprisonment Today and Tomorrow*, (Second Edition). The Hague, Kluwer International.
- Duster, T., (1997). "Pattern, Purpose, and Race in the Drug War: The Crisis of Credibility in Criminal Justice," in Reinerman, C., & Levine, H. J., (Eds) *Crack in America: Demon Drugs and Social Justice*. Berkeley, Los Angeles, London, University of California Press.
- EMCDDA, (1999). Annual Report 2004. *State of the Drugs Problem in the European Union*. Lisboa. Portugal: European Monitoring Centre for Drugs and Drug Addiction.
- EMCDDA, (2003). Annual Report 2003. *State of the Drugs Problem in the European Union and Norway*. Lisboa. Portugal: European Monitoring Centre for Drugs and Drug Addiction.
- EMCDDA, (2004). Annual Report 2004. *State of the Drugs Problem in the European Union and Norway*. Lisboa. Portugal: European Monitoring Centre for Drugs and Drug Addiction.
- EMCDDA, (2007). Annual Report 2007. *State of the Drugs Problem in the European Union and Norway*. Lisboa. Portugal:
- European Monitoring Centre for Drugs and Drug Addiction.
- Garland, D. (2001) "The Meaning of Mass Imprisonment", in Garland, D. (Ed) *Mass Imprisonment: Social Causes and Consequences* Sage, 2001.
- Goffman, E., (1990) "Stigma: Notes of the Management of Spoiled Identity," Penguin 1990.
- Gray, J. P., (2001). *Why Our Drug Laws Have Failed and What We Can DO About It: A Judicial Indictment of the War on Drugs*. Philadelphia, Temple University Press.
- Human Rights Watch, (2000) *Punishment and Prejudice: Racial Disparities in the War on Drugs*, New York.
- Human Rights Watch, (2002) *Collateral Casualties: Children of Incarcerated Drug Offenders in New York*. Volume 4, Number 3 (G). New York.
- Hunt, N., Trace, M., & Bewley-Taylor, D. (2004). *Reducing Drug Related Harms to Health: An Overview of the Global Evidence*, The Beckley Foundation Drug Policy Programme, Report Four.
- IDPC (International Drug Policy Consortium) (2008), Response to the 2007 Annual Report of the International Narcotics Control Board, http://www.idpc.info/php-bin/documents/IDPC_Response2INCB_AnnRpt07_EN.pdf Last accessed 07.03.09.
- Inciardi, J.A., Martin, S.S., Butzin, C.A., Hooper, R.M., & Harrison, L.D. (1997). An effective model of prison-based treatment for drug-involved offenders. *Journal of Drug Issues*, 27(2), 261-278.
- Irwin, J., Schiraldi, V., & Ziedenberg, J., (1999). *America's One Million Nonviolent Prisoners*. Washington DC, San Francisco, Justice Policy Institute.
- Jelsma, M., (2008), *The current state of drug policy debate. Trends in the last decade in the European Union and United Nations*, Support text for the First Meeting of the Latin American Commission on Drugs and Democracy, Rio de Janeiro, April 30.
- Jürgens, R., Ball, A. & Verster, A. (2009) *Interventions to Reduce HIV Transmission Related to Injecting Drug Use in Prisons*. The Lancet Infectious Diseases, Volume 9, Issue 1, Pages 57 - 66, January 2009.
- Justice Policy Institute (2007) "The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties" December.

- Kantor, E. (2003). HIV Transmission and Prevention in Prisons. HIVInSite. <http://hivinsite.ucsf.edu/InSite?page=kb-07&doc=kb-07-04-13>
- King, R. S., & Mauer, M., (2005) *The War on Marijuana: The Transformation of the War on Drugs in the 1990s*. Washington DC, The Sentencing Project.
- Klein, A., Roberts, M., & Trace, M. (2004) *Drug Policy and the HIV Pandemic in Russia and the Ukraine*. The Beckley Foundation Drug Policy Programme, Drugscope, Briefing Paper Number Two.
- Levine, H.G. & Peterson-Small, D. (2008) *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City 1997-2007* New York Civil Liberties Union.
- Love, M.C. (2005) *Relief from the Collateral Consequences of a Criminal Conviction: A State by State Resource Guide* Open Society Institute.
- MacCoun R.J. & Reuter, P., (2001). *Drug War Heresies: Learning from Other Vices, Times and Places*. Cambridge, New York, Oakleigh, Madrid, Cape Town, Cambridge University Press.
- MacDougall, J. M., (2008), Prison cum Hostel? A political economy of drugs thrives inside one of Indonesia's most notorious prisons, *Inside Indonesia*, <http://www.insideindonesia.org/content/view/1103/29> Last accessed 06.03.09.
- Mauer, M. & King, R.S. (2007) *A 25-Year Quagmire: The War on Drugs and Its Impact on American Society* The Sentencing Project, Washington.
- National Center on Addiction and Substance Abuse (2003). Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program. ACASA White Paper. New York: National Center on Addiction and Substance Abuse, Columbia University.
- National Crime Prevention Centre, (1998) *Incarceration in Canada*, Government of Canada.
- ONDCP, (2002). *Office of National Drug Control Policy, National Drug Control Strategy: FY 2003, Budget Summary*. Washington, DC: Office of the President.
- Pattillo, M., Weiman, D. & Western, B. (2006) *Imprisoning America: The Social Effects of Mass Incarceration*.
- Pearson, F.S., & Lipton, D.S. (1999). A meta-analytic review of the effectiveness of corrections-based treatments for drug abuse. *The Prison Journal*, 79(4), 384-410.
- Prendergast, M.L., Podus, D., Chang, E., & Urada, D. (2002). The effectiveness of drug abuse treatment: a meta-analysis of comparison group studies. *Drug and Alcohol Dependence*, 67(1), 53-72.
- PrisonJusticeCa, Facts and Statistics http://www.prisonjustice.ca/politics/facts_stats.html last accessed 09.02.09.
- Reichel, P. L., (2005). *Comparative Criminal Justice Systems*. New Jersey, Pearson/Prentice Hall.
- Reinarman, C., Cohen, P.D.A., & Kaal, H.L. (2004). The Limited Relevance of Drug Policy: Cannabis in Amsterdam and San Francisco. *American Journal of Public Health*, 94.
- Reuter, P. (2004). How much drug enforcement is enough? Presentation at 15th International Conference on Reducing Drug Related Harms, International Harm Reduction Association, Melbourne, Australia, April 2004.
- Reuter, P. & Stevens, A. (2008) *Assessing UK Drug Policy from a Crime-Control Perspective* Criminology and Criminal Justice, 2008 Volume 8, 461.
- Roberts, M., Trace, M., & Klein, A. (2004) *Law Enforcement and Supply Reduction*, The Beckley Foundation Drug Policy Programme, Drugscope, Report Three.
- Schiraldi, V., Holman, B., & Beatty, P., (2000). *Poor Prescription: The Cost of Imprisoning Drug Offenders in the United States*. Washington DC, San Francisco, Justice Policy Institute. <http://www.drugpolicy.org/docUploads/PoorPrescription.pdf>
- Soloman, E., 'Investing in incarceration makes no economic sense,' *The Guardian*, Wednesday 7 May. <http://www.guardian.co.uk/society/2008/may/07/prisonsandprobation.socialprogrammes/print> Last accessed 08.02.09.
- Stark, K., Herrmann, U., Ehrhardt, S., & Bienzle, U. (2006). A syringe exchange programme in prison as prevention strategy against HIV infection and hepatitis B and C in Berlin, Germany *Epidemiology and Infection*, 134(4), 814-819.
- Stern, V., (1998). *A Sin Against the Future: Imprisonment in the World*, London, Penguin Books.
- Stevens, A., Trace, M., & Bewley-Taylor, D., (2005) *Reducing drug-related crime: an overview of the global evidence*. The Beckley Foundation Drug Policy Programme, Report Five.

Story, A., Murad, S., Roberts, W., Verheyen, M., and Hayward, A.C. for the London Tuberculosis Nurses Network (2007) *Tuberculosis in London: the importance of homelessness, problem drug use and prison* Thorax BMJ 2007;62:667-671.

Waldorf, D., Reinarman, C., & Murphy, S. (1991). *Cocaine Changes: The Experience of Using and Quitting*. Philadelphia, Temple University Press.

Walmsley, R., (2008). *World Prison Population List*, London, England, UK: Home Office Research, Development and Statistics Directorate.

Wayne N. Welsh (2007) *A Multisite Evaluation of Prison-Based Therapeutic Community Drug Treatment* *Criminal Justice and Behaviour*, Nov 2007; vol. 34: pp. 1481 - 1498.

West, H. C. & Sabol, W. J., (2008), *Prisoners in 2007*. Bureau of Justice Statistics Bulletin, <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf> Last accessed 06.03.09.

Western, B. & Wildeman, C. (2009) The Black Family and Mass Incarceration, *Annals of the American Academy of Political and Social Science*, Sage Online.
<http://ann.sagepub.com/cgi/reprint/621/1/221> Last accessed 09.02.09.

Williams, Natasha H. (2007) *Prison Health and the Health of the Public: Ties That Bind* *Journal of Correctional Healthcare*, Volume 13 number 2, April 2007 80-92.