



**Statement of American Civil Liberties Union
Submitted to the 57th Session of the Commission on Narcotic Drugs
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Four decades and trillions of dollars spent on the “War on Drugs” have failed to stem drug supply or demand. Instead, the United States’ prohibitionist policies have resulted in over 40 million arrests—many for minor drug crimes—skyrocketing incarceration rates, consumption of law enforcement resources, countless damaged lives, and a disproportionately devastating impact on communities of color, all in violation of international human rights standards.¹

Due largely to “tough-on-crime” policies fueled by fears about drugs, the U.S. incarcerated population quadrupled in the past 40 years, far surpassing rising population or crime rates.² In 1972, there were 300,000 prisoners in the U.S.; today that number has ballooned to 2.3 million.³ Both in absolute numbers and per capita, America incarcerates more people than any other nation.⁴ With only 5% of the world’s population, the U.S. has 25% of its prisoners,⁵ and an incarceration rate five to ten times that of other Western democracies.⁶ Half of all federal prisoners are incarcerated for drug-related crimes.⁷

The “War on Drugs” manifests itself in the humiliating stops, frisks, and searches of millions of innocent Americans, mostly Black and Latino, as well as degrading and ineffective arrests for drug possession, which often result in lifelong criminal records and harsh collateral consequences affecting eligibility for housing, employment, financial aid, and parental rights, among others.

These aggressive tactics, scorned by many former law enforcement officers,⁸ define the enforcement of marijuana laws. In 2010, police made 889,133 marijuana arrests—300,000 more than arrests for all violent crimes combined—or one every 37 seconds.⁹ Marijuana arrests, like drug arrests generally, are unevenly distributed. Although Blacks and whites use marijuana at comparable rates, Blacks are 3.73 times more likely to be arrested for marijuana possession. In some counties, Blacks are 10, 15, even 30 times more likely to be arrested.¹⁰ More broadly, Blacks represent 12% of drug users, but 38% of those arrested for drug offenses, and 59% of those in state prison for drug offenses.¹¹

Racial disparities also exist in drug sentencing. Despite similar rates of drug use, Blacks are incarcerated on drug charges at a 10 times greater rate than whites.¹² Sentences for Black males are generally nearly 20% longer than those imposed on similarly situated white males, and these disparities increase with the severity of the sentence.¹³

Racial disparities are particularly pronounced in cocaine sentencing. While crack and powder cocaine are two forms of the same drug, until passage of the Fair Sentencing Act (FSA) in 2010, possessing 100 times less the amount of crack as powder cocaine resulted in the same harsh mandatory sentence. Since most people arrested for crack offenses are Black, this sentencing scheme ensured that Blacks served far longer in prison for the same crime; at one point Blacks served almost as much time in prison for nonviolent

crack offenses as whites did for violent crimes.¹⁴ The FSA reduced the disparity to 18:1, but fairness dictates that the ratio should be 1:1. Furthermore, because the FSA is not retroactive, over 8,800 people are still serving extreme sentences for crack cocaine-related offenses based on a racially biased law that Congress has declared unjust.¹⁵

Such harsh and unfair sentencing extends beyond crack cases. Over 3,278 people are serving life sentences without the possibility of parole (LWOP) in the U.S. for nonviolent crimes, almost 80% of them for nonviolent drug offenses, some as minor as possessing a bottle cap smeared with heroin residue, facilitating a \$10 marijuana sale, or sharing LSD at a concert.¹⁶ Such excessive sentences violate human rights law, which has long recognized that punishment must fit the crime.¹⁷ A staggering racial disparity exists in LWOP sentences for nonviolent drug crimes. In the federal system, Blacks are sentenced to LWOP at 20 times the rate of whites.¹⁸ In Louisiana, 91.4% of nonviolent LWOP prisoners are Black.¹⁹

But the tide is turning. Recognizing that America's addiction to incarceration is unsustainable, this February the U.S. Senate Judiciary Committee passed a bipartisan bill that would apply the FSA retroactively; decrease mandatory minimums for many drug offenses; and enhance judicial discretion.²⁰ In August 2013, U.S. Attorney General Eric Holder announced policy changes to reduce the number of nonviolent drug offenders serving lengthy sentences, and in December 2013, President Obama commuted the sentences of eight individuals serving life or near-life sentences for crack offenses under the 100:1 sentencing regime.²¹ The Administration is encouraging more commutations for nonviolent drug offenders.²²

There is an even bolder movement in the states. Washington and Colorado legalized marijuana in 2012. 16 states and many more cities have decriminalized marijuana,²³ 20 states and the District of Columbia have legalized medical marijuana,²⁴ and in the next two election cycles additional states may legalize recreational and/or medical marijuana.

This domestic shift is part of a global movement away from harsh punishments for drug use. In December 2013, Uruguay became the first nation to legalize marijuana, and Argentina, Chile, and Mexico are considering relaxing their marijuana laws.²⁵ These countries are following the lead of Portugal, which abolished criminal penalties for drug possession in 2001, with positive results.²⁶ Considering the devastating effects of drug prohibition internationally—over 60,000 people were reportedly killed in drug-related violence in Mexico between 2006 and 2012 alone—these reforms are long overdue.²⁷

The War on Drugs has failed. The international community, led by America's poor example, has spent trillions, arrested and imprisoned millions, and destroyed communities—particularly poor and minority communities—in violation of human rights, with no marked effect on drug availability or use.

It is time to transform global drug policy into one that treats drug use and abuse as a public health problem, not as a criminal justice concern. Therefore, we recommend the legalization and regulation of drug use, possession, production, and distribution. If unobtainable, we urge the removal of civil and criminal penalties for drug use and possession, or at the very least, decriminalization. Until such reform, we recommend police agencies make drug possession arrests a lowest enforcement priority.

¹ ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE* 7 (2013), *available at* <https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf>; Kasia Malinowska-Sempruch & David Holiday,

Open Society Foundations, *Human Rights Groups Push for an End to the War on Drugs* (June 7, 2013), <http://www.opensocietyfoundations.org/voices/human-rights-groups-push-end-war-drugs>.

² ACLU, *A LIVING DEATH: LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES* 32 (2013), available at <https://www.aclu.org/files/assets/111813-lwop-complete-report.pdf>.

³ Working Paper, Bryan Stevenson, *Drug Policy, Criminal Justice and Mass Imprisonment* 2, First Meeting of the Global Commission on Drug Policies, Geneva (Jan. 24-25, 2011), available at http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Com_Bryan_Stevenson.pdf.

⁴ ACLU Fact Sheet, *Mass Incarceration Problems*, https://www.aclu.org/files/assets/massincarceration_problems.pdf.

⁵ SUZANNE M. KIRCHOFF, CONGRESSIONAL RESEARCH SERVICE, *ECONOMIC IMPACTS OF PRISON GROWTH* (Apr. 13, 2010), www.fas.org/sgp/crs/misc/R41177.pdf.

⁶ *A LIVING DEATH*, *supra* note 2, at 32.

⁷ Jesselyn McCurdy & Sarah Solon, *The 1980s Called. They Want Their Mandatory Minimums Back*, ACLU BLOG OF RIGHTS (Sept. 18, 2013), <https://www.aclu.org/blog/criminal-law-reform/1980s-called-they-want-their-mandatory-minimums-back>.

⁸ *Law Enforcement Against Prohibition*, <http://www.leap.cc/>.

⁹ *THE WAR ON MARIJUANA*, *supra* note 1, at 8-9.

¹⁰ *Id.* at 9.

¹¹ *Criminal Justice Fact Sheet*, NAACP, <http://www.naACP.org/pages/criminal-justice-fact-sheet>. These disparities violate the right to be free from racial discrimination, codified in the International Covenant on Civil and Political Rights (ICCPR) and Convention on the Elimination of All Forms of Racial Discrimination (CERD). International Covenant on Civil and Political Rights preamble, arts. 7, 9, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969). The U.S. has ratified both treaties.

¹² *Drug Sentencing and Penalties*, ACLU, <https://www.aclu.org/criminal-law-reform/drug-sentencing-and-penalties>; U.S. DEP'T OF HEALTH & HUMAN SERVICES, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION, *RESULTS FROM THE 2012 NATIONAL SURVEY ON DRUG USE AND HEALTH* (Sept. 2013), available at <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/NationalFindings/NSDUHresults2012.htm>.

¹³ *A LIVING DEATH*, *supra* note 2, at 30.

¹⁴ *Fair Sentencing Act*, ACLU, <https://www.aclu.org/fair-sentencing-act>.

¹⁵ *Safety Valves*, FAMM, <http://famm.org/mandatory-sentencing/state-and-federal/us-congress/safety-valves/>.

¹⁶ *A LIVING DEATH*, *supra* note 2, at 2, 4, 23.

¹⁷ ICCPR; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment preamble, art. 16, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85. The U.S. has ratified both.

¹⁸ *A LIVING DEATH*, *supra* note 2, at 6.

¹⁹ *Id.* at 6.

²⁰ FAMM, *Safety Valves*, <http://famm.org/mandatory-sentencing/state-and-federal/us-congress/safety-valves/>.

²¹ Charlie Savage, *Justice Dept. Seeks to Curtail Stiff Drug Sentences*, N.Y. TIMES (Aug. 12, 2013), available at http://www.nytimes.com/2013/08/12/us/justice-dept-seeks-to-curtail-stiff-drug-sentences.html?_r=1&; Charlie Savage, *Obama Commutes Sentences for 8 in Crack Cocaine Cases*, N.Y. TIMES (Dec. 19, 2013), available at http://www.nytimes.com/2013/12/20/us/obama-commuting-sentences-in-crack-cocaine-cases.html?_r=0.

²² Jacob Sullum, *DOJ Promises More Commutations But Despite 9,000 Petitions Needs Help Finding People to Free*, FORBES (Jan. 30, 2014), available at <http://www.forbes.com/sites/jacobsullum/2014/01/30/doj-promises-more-commutations-but-despite-9000-petitions-needs-help-finding-people-to-free/>.

²³ *States That Have Decriminalized*, NORML, <http://norml.org/aboutmarijuana/item/states-that-have-decriminalized>.

²⁴ Hamilah Abdullah, *Up in Smoke: The Obama Administration's Pot Politics Problem*, CNN (Feb. 5, 2014), available at <http://www.cnn.com/2014/02/04/politics/pot-politics/>.

²⁵ *Uruguay's president nominated for Nobel Peace Prize for legalizing marijuana*, RT (Feb. 6, 2014), available at <http://rt.com/news/uruguay-nobel-mujica-marijuana-849/>; Simeon Tegel, *Uruguay's Neighbors Now Considering Legalization of Pot*, GLOBAL POST (Dec. 24, 2013), available at <http://www.globalpost.com/dispatch/news/regions/americas/131222/latin-america-uruguay-argentina-marijuana-legalization>; Dave Graham, *Prominent Mexicans urge government to decriminalize marijuana*, REUTERS (Sept. 25, 2013), available at <http://www.reuters.com/article/2013/09/26/us-mexico-drugs-idUSBRE98O19A20130926>.

²⁶ Maia Szalvatiz, *Drugs in Portugal: Did Decriminalization Work*, TIME MAGAZINE (Apr. 26, 2009), available at <http://content.time.com/time/health/article/0,8599,1893946,00.html>.

²⁷ Mariano Castillo, *Report: Mexican Security Forces Responsible for Disappearances*, CNN (Feb. 21, 2013), available at <http://edition.cnn.com/2013/02/21/world/americas/mexico-human-rights>.