Elements of Well-Being Affected by Criminalizing the Drug User

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SYNOPSIS

Objective: The authors examine the possible adverse consequences of incarceration on drug offenders, their families, and their communities.

Observations: State and federal policies on drug felons may affect eight elements of personal and community well-being: children and families, access to health benefits, access to housing benefits, access to assistance for higher education, immigration status, employment, eligibility to vote, and drug use or recidivism.

Conclusions: Minorities have a high chance of felony conviction and an increasing lack of access to resources, suggesting that patterns of drug conviction and health disparities may be mutually reinforcing. Large numbers of people sent to prison for drug offenses are now completing their terms and reentering communities. Their reentry will disproportionately affect minority communities. Without resources (education, job opportunities, insurance, health care, housing, and the right to vote) drug abusers face a higher risk of recidivism and increase the burden on their communities.

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Introduction

In 1999 approximately 26.2 million Americans, ages 12 and older, committed an illegal act by using an illicit drug.[1] One prominent feature of U.S. policy for controlling such use is the criminal justice system. Drug admissions to state and federal prisons increased approximately 16-fold between 1983 and 1998, from about 10,000 to almost 167,000.[2] The number of drug offenders in prison increased dramatically after the "War on Drugs" was declared in 1986.

African Americans make up a disproportionate number of those in prison. While the number of white prisoners incarcerated for drug offenses rose by a factor of seven between 1983 and 1998, Hispanic drug admissions increased 18-fold and African American drug admissions increased more than 26-fold (figure 1). Past-month prevalence data in the 1999 National Household Survey indicate that only a slightly higher proportion of African Americans than Hispanics and whites reported current use of illegal drugs (African Americans 7.7%, Hispanics 6.8%, whites 6.6%).

While most drug admissions are African American men, African American and Hispanic women have also been greatly affected. Since 1989 more than 50% of Hispanic women, 40% of African American women, and 30% of white women prisoners entered prison for a primary drug conviction.

Several health disparities that occur among minorities in the general population are evident among prisoners before incarceration and at the time of

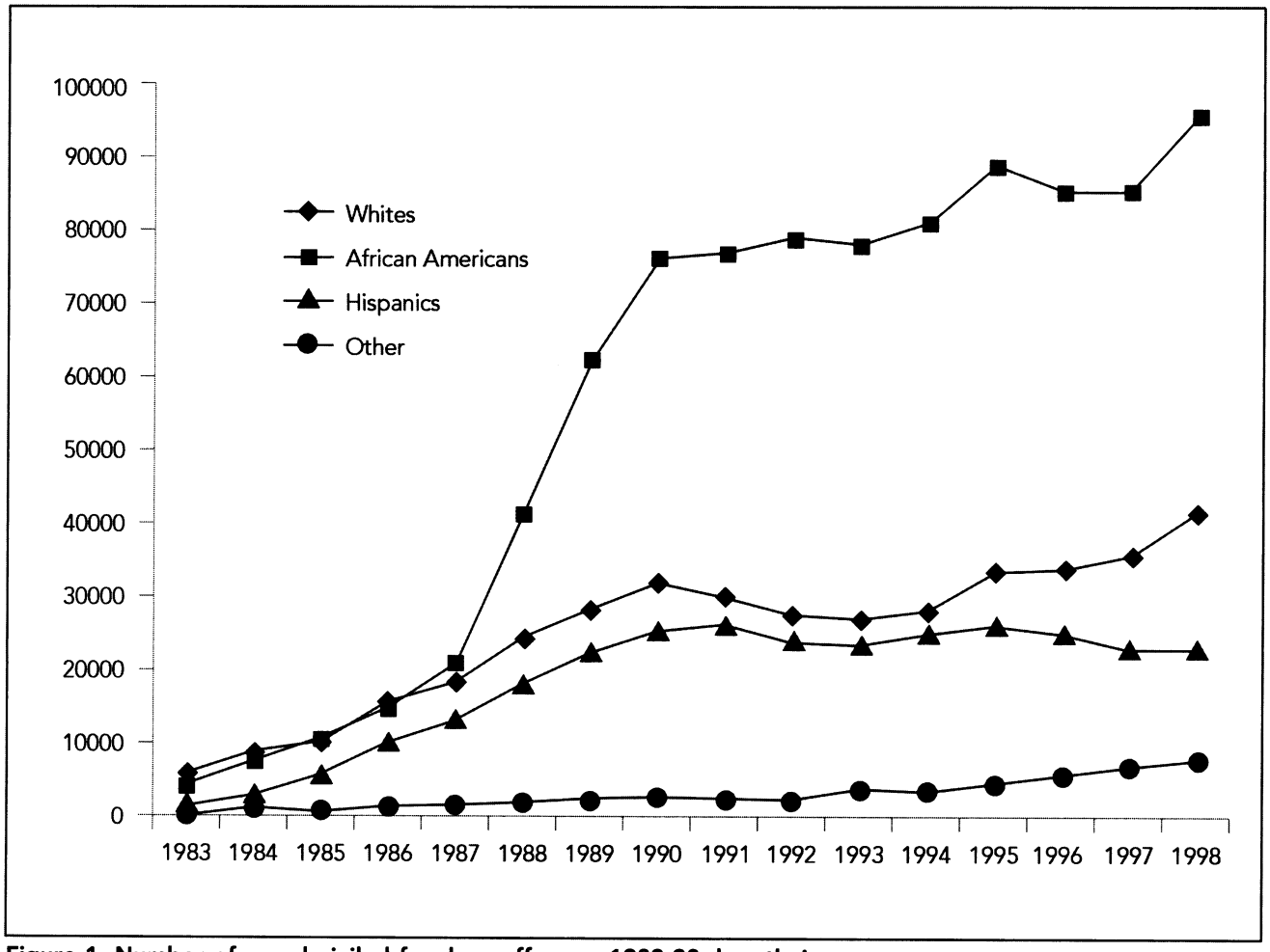

Figure 1. Number of people jailed for drug offenses, 1983-98, by ethnic group

Source: Bureau of Justice Statistics, National Corrections Reporting Program. Washington: Dept. of Justice (US); 1983-1998. Available from: National Archive of Criminal Justice Data, Inter-university Consortium for Political and Social Research, Univ. of Michigan: URL: http://www.icpsr.umich.edu/NACJD/archive.html.

release. In 1999 the AIDS rate among African Americans was more than nine times that of whites (84.2 versus 9.0 per 100,000) and almost four times greater for Hispanics than whites (34.6 versus 9.0).[3] Among inmates released in 1997, about 2.5% had HIV/AIDS infection and nearly 30% were infected with hepatitis C or tuberculosis.[4] Minorities are disproportionately affected by hepatitis C, asthma, diabetes, and hypertension. Prisoners bear a disproportionate burden of health problems, including mental health, substance abuse, and communicable diseases.[5] It is estimated that 25%-30% of federal or state inmates suffer from a physical condition or mental health problem.[6] These health disparities are likely to reflect cumulative socioeconomic disadvantages, including lack of education and access to health care.[7]

Eight elements of personal and community well-being are affected by federal and state policies to drug felons: children and families, access to health benefits, access to housing benefits, access to higher education assistance, immigration status, employment, eligibility to vote, and drug use and/or recidivism.

The Elements of Well-Being Affected by Criminalization Policies

Children and Families. In 1999 an estimated 721,500 state and federal prisoners were parents to an estimated 1.5 million children younger than 18.[8] Hispanic children were three times as likely as white children and African American children nine times as likely to have a parent in prison. More than 90% of fathers and 28% of mothers in state prison reported that at least one of their children was in the care of the child's other parent. Mothers in state prisons were much more likely than fathers to report that at least one of their children was in the care of the child's grandparent (53% versus 13%), with another relative (26% versus 5%), or in foster care (10% versus 2%).[8] In 19 states parental rights may be terminated if it can be shown that a felony conviction suggests a lack of fitness to serve as a caregiver for the child.[9]

Access to Health Benefits. Convicted felons are ineligible to receive any federal benefits for one year if convicted of a drug possession offense or for five years if convicted of a trafficking offense. (Approximately two-thirds of prisoners convicted of drug offenses are convicted of trafficking offenses.) In addition, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires that, unless states implement opposing legislation, anyone with a drug conviction for conduct after August 22, 1996, is permanently barred from receiving Temporary Assistance to Needy Families (TANF) and food stamps.[10] In at least one state (Missouri), criminal conviction serves as grounds for insurance cancellation.

Access to Housing Benefits. In 1996 the Congress enacted the "One Strike and You're Out" law (P.L. 104-120, Sec. 9), which allows federal housing authorities to consider drug and alcohol abuse and convictions by people and their family members when making decisions to evict them from or deny access to federally subsidized housing. The law was written relatively reasonably in that factors such as rehabilitation and the need for drug treatment are emphasized. Unfortunately, the law is often less reasonably applied, leading to additional hardship for the families of drug offenders.

Access to Assistance for Higher Education. The recently enacted Higher Education Act makes people with drug possession convictions ineligible for federal student aid for one year after one conviction, for two years after a second conviction, and indefinitely after a third conviction. An offender convicted of selling drugs is ineligible for federal student assistance for two years after one conviction and indefinitely after a second. A provision is included that reinstates eligibility if the student completes a drug rehabilitation program that meets criteria set by the Secretary of Health and Human Services and passes two unannounced urine tests.

The intent to extend punishment for past drug offenses into all aspects of life is clear. It seems illogical to discourage a person from seeking the benefits of higher education, especially given the negative correlation between education and drug use.

Immigration Status. More than 84,000 people born outside the United States are incarcerated in U.S. prisons. Most are from Western Hemisphere countries. The Immigration and Naturalization Service (INS) has long had the authority to deport immigrants considered to be "aggravated felons," but it has deported only small numbers of immigrants for such offenses. The Illegal Immigration Reform and Immigration Responsibility Act of 1996 was significant in that it precluded judicial review of INS decisions. Since its passage, the INS has aggressively increased its rate of criminal removals (61,093 in 2000), with drug felonies making up 41% of such cases.[11] Such policies disproportionately affect Hispanic and Asian communities.

Employment. Felons are disqualified from serving in the military, holding a government job, or obtaining various permits and licenses. Surprisingly, analysis by Kling suggests that felony convictions may not significantly diminish earnings potential beyond the first year after prison exit (except in cases involving white-collar crimes), partly because the employment opportunities these people faced were poor before they went to prison.[12] Kling's pre-post analysis, however, did not take into account the possibility that incarceration frequently occurs during a period of career/work history development that may be crucial for moving into the workplace. Regardless of the effect of incarceration on employment options, lack of options reduces access to health benefits and related care.

Eligibility to Vote. In 32 states felons are not eligible to vote while on parole. Approximately 3.9 million people were temporarily or permanently disenfranchised in 1998; 1.4 million of them were African American men (13% of all African American men in the United States).[13] This lack of voter eligibility diminishes the political power of minority communities and reduces their voice in the call for educational, vocational, and health resources.

Drug Use and Recidivism. There is no evidence to suggest that incarceration reduces illegal drug use after release; it is unclear to what extent the threat of arrest serves as a deterrent. Once a person is caught up in the criminal justice system, the probability of reentering prison increases significantly, creating a vicious cycle of continuous displacement from the community and decreased life opportunities.

Discussion

Access to health care is essential, not only for the health and well-being of individuals with health problems and alcohol and substance abuse needs, but also for the health and well-being of their families and ultimately the nation's communities. The potential social and economic costs are far-reaching consequences of barriers to care. These barriers include the inability to obtain health insurance, the inability to pay for health care, and the lack of awareness of where to access health care. People without health benefits become sicker and have to seek care through expensive emergency room visits; they may continue to abuse alcohol and drugs and risk reincarceration.[2,14] Family members may also contract the communicable diseases because of proximity to those infected. Ultimately, communities will bear the economic costs.

The federal government has steadily increased sanctions and penalties applied to drug felons in a manner consistent with a view of drug use as a moral problem rather than an illness. These sanctions disproportionately and cumulatively affect minority communities. While the effects of these policies are difficult to measure directly, it is easy to make the case that these sanctions serve to weaken social cohesion in minority communities, exacerbating the multigenerational circumstances that fostered drug use in the first place.

Patterns of drug conviction and health disparities appear to be mutually reinforcing, as minorities have a high chance of felony conviction and less access to resources. Many people sent to prison for drug offenses are now completing their terms and reentering communities. Their reentry will disproportionately affect minority communities. Given their lack of resources (education, job opportunities, access to insurance, health care, housing, and the right to vote), drug abusers face a higher risk of recidivism, increasing the burden on their communities.

We recommend that availability of drug treatment be substantially increased, particularly in minority communities, so that care may be accessed before use leads to arrest. At the same time, if incarceration policies are to continue, drug courts and related judicial mechanisms that emphasize treatment before incarceration—and rehabilitation over punishment—should be dramatically increased. Sufficient resources need to be provided to expand treatment capacity so that ex-offenders do not squeeze other participants out of treatment. If current incarceration policies continue, in-prison treatment with community-linked aftercare is also recommended. In addition, educational and vocational programs should be considered.

Substance use problems associated with incarceration are not restricted to African Americans or Hispanic Americans. American Indians and Native Hawaiians have experienced identical problems. Dealing with this public health problem with criminal justice solutions risks rending the social fabric of many more vulnerable communities. At a minimum, we should recognize the chronic nature of this problem, the inequities inherent in the criminal justice response, and the dangers of this short-sighted course.

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