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Reversing harmful policies from the War on Drugs

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RESEARCH THAT WORKS FOR KENTUCKY



War on Drugs, Defined

Theory/What Was Presented

- A federal campaign officially launched in 1971 by the Nixon Administration
- Goals
 - End the drug trade
 - Protect (White) children and families

Reality

- Set of policies that foreseeably enabled the mass expansion of incarceration in the United States
- Makes and enshrines racism
- Does not actually reduce drug distribution or use

Incarceration and the War on Drugs

A Concise History

Pre-1970

- In Kentucky, the incarceration population < 3000 people until the 1970s
- Until 70s, no major prison construction had occurred in Kentucky for three decades
- No people incarcerated under the department of corrections authority in county jails.

1970s

- Uniform Controlled Substances Act adopted in 1970
- War on Drugs officially launched in 1971
- States began criminalizing cannabis
- Kentucky implemented new Penal Code
- New harsh criminalization laws including expansion of Persistent Felony Offender laws implemented in 1974
- By 1976 the state had opened three new minimum security prisons

1980s and 1990s

- Birth of “Zero Tolerance” and “Just Say No” rhetoric
- Several key pieces of federal legislation, such as Anti-Drug Abuse Act passed in 1986 and 1994 Crime Bill
- Incarceration for nonviolent drug offenses alone went from 50,000 to 400,000 between 1980 and 1997

2000s to today

- In 2020, an estimated 450,000 people were incarcerated in local jails, youth detention centers, or state and federal prison for a drug offense
- 46% of the over 144,000 people incarcerated in federal prison were for drug sentences

The War on Drugs

A Legacy of Destruction

“Several years into the federal “war on drugs” the signs of failure are everywhere: in beleaguered courts and swelling prison populations; in ever-increasing volumes of drugs penetrating the nation's borders; in the reversal, just this year, of a downward trend in the number of Americans using illicit drugs; and in the gross incapacity of the nation's drug treatment “system” to meet the growing demand for care.”

-Health Affairs, 1993



Why the War on Drugs Doesn't Address SUD and Overdoses

- KY has been one of the states hit hardest by the opioid overdose crisis despite criminal bills
- Drug criminal penalties don't deter people from using drugs
- Criminalizing drug use has many negative public health effects
- Myth-busting: Harsh penalties aimed at punishing traffickers/drug “kingpins” rarely do so

War on Drugs: Enshrining both Racism and Multiracial Class Poverty

- Black Kyians: 8% of the statewide population, 21% of Kentucky's prison population.
- War on Drugs was largely targeted at Black and Latino communities
 - 2014 data shows the ratio of arrests for drug possession in Kentucky was close to a 4 to 1 ratio of Black to White arrests
- Forced entry searches by police emerged from SWAT tactics targeted at Black activists, but were legally enshrined for drugs
- Incarceration = poor health outcomes and reduced life expectancy, greater financial instability and hardship, poorer mental health and higher rates of substance use and overdosing.
 - “Second-class citizenship” from having a criminal record

Current Incarceration State of the Looking Back Since HB 4

- HB 463 was the last major attempt at reform in KY
- Some provisions targeted drug users/penalties
- Projected 3,000 fewer people would be incarcerated and the state would save \$422 million over 10 years
- However, today there are over 30,000 people incarcerated in Kentucky's jails and state prisons
- The DOC enacted budget from the General Fund for 2022 is **\$626 million** — a 72% increase from 2010 in actual terms.
- General Assembly has enacted 8 pieces of legislation since 2011 that increase the criminalization of drugs

REPORT

In Decade Since Major Criminal Justice Reform, the Kentucky General Assembly Has Passed Six Times as Many Laws Increasing Incarceration as Decreasing It

What should we do?

- Reduce/eliminate criminal penalties for drugs (i.e. legalizing cannabis) and increase expungement opportunities for people with records
- Weaken/remove punitive sentencing practices that emerged from the War on Drugs, such as PFO
- Eliminate other punitive policies tied to drugs, including:
 - Probation and parole revocations
 - Punishing parents + pregnant people/removing children from homes
- Expand treatment opportunities for people who need it
- Expand alternative sentencing and pretrial diversion
- Expand the social safety net – healthcare, housing, childcare, wages
- Advocates: continue reexamining myths about drug use

2022 Criminal Justice Legislation

- HB 215 – Fentanyl Bill (Bad!)
- Expungement Bills
 - SB 33
 - HB 218
- Pretrial diversion – recommendations from PEW
- Defelonizing possession
- Persistent Felony Offender
- Cannabis legalization bills