Reversing harmful policies from the War on Drugs

2022 KyPolicy Conference
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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
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<th>Pre-1970</th>
<th>1970s</th>
<th>1980s and 1990s</th>
<th>2000s to today</th>
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<td>- In Kentucky, the incarceration population &lt; 3000 people until the 1970s</td>
<td>- Uniform Controlled Substances Act adopted in 1970</td>
<td>- Birth of “Zero Tolerance” and “Just Say No” rhetoric</td>
<td>- In 2020, an estimated 450,000 people were incarcerated in local jails, youth detention centers, or state and federal prison for a drug offense</td>
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<td>- Until 70s, no major prison construction had occurred in Kentucky for three decades</td>
<td>- War on Drugs officially launched in 1971</td>
<td>- Several key pieces of federal legislation, such as Anti-Drug Abuse Act passed in 1986 and 1994 Crime Bill</td>
<td>- 46% of the over 144,000 people incarcerated in federal prison were for drug sentences</td>
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<td>- No people incarcerated under the department of corrections authority in county jails.</td>
<td>- States began criminalizing cannabis</td>
<td>- New harsh criminalization laws including expansion of Persistent Felony Offender laws implemented in 1974</td>
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<td>- Kentucky implemented new Penal Code</td>
<td>- Incarceration for nonviolent drug offenses alone went from 50,000 to 400,000 between 1980 and 1997</td>
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<td>- New harsh criminalization laws including expansion of Persistent Felony Offender laws implemented in 1974</td>
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<td>- By 1976 the state had opened three new minimum security prisons</td>
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“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
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