



Journal of Law in Society & Levin Center at Wayne Law
2021 Symposium

Opioid Paradigms: How Crisis Can Inform Change

Panel 2 - Opioids and Emerging Justice Reform

Panelists: Professor Valena Beety, Professor Jelani Jefferson-Exum, Brittany Kelly

Moderator: Professor William Ortman

Opening Remarks: Jim Townsend

From Warfare to Wellness: Moving Away from a War on Drugs Perspective

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Nixon's war on drug addicts

From RICHARD SCOTT

Washington, June 17

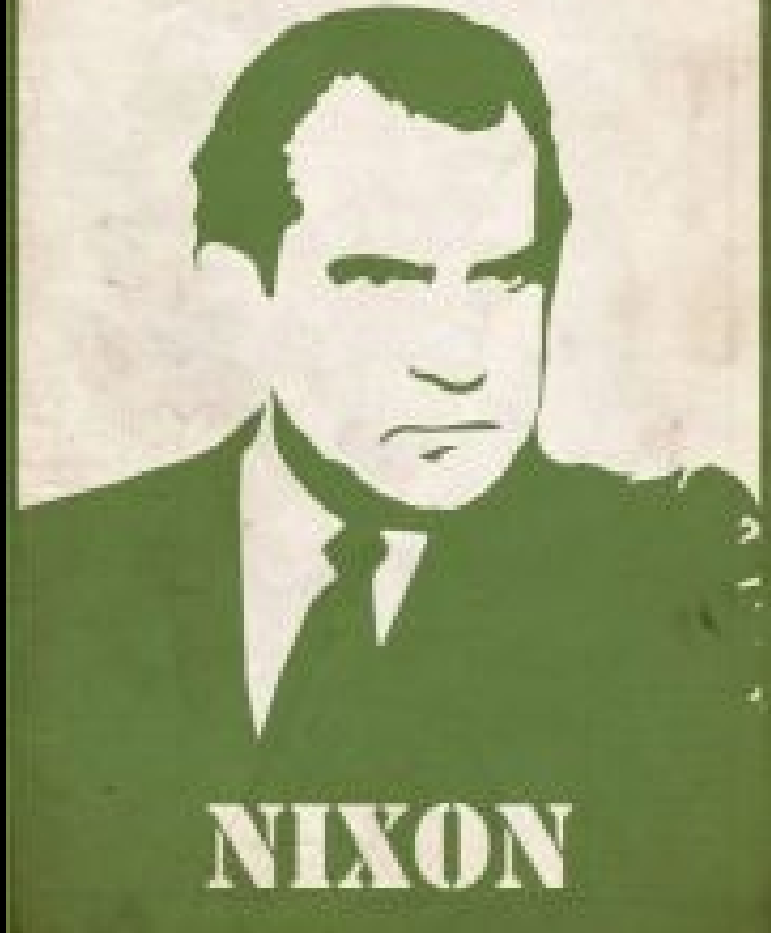
President Nixon told Congress today that the drug problem in the United States had assumed the dimensions of a national emergency. He asked for an additional \$64 millions to provide emergency measures for dealing with it.



PUBLIC ENEMY NUMBER ONE

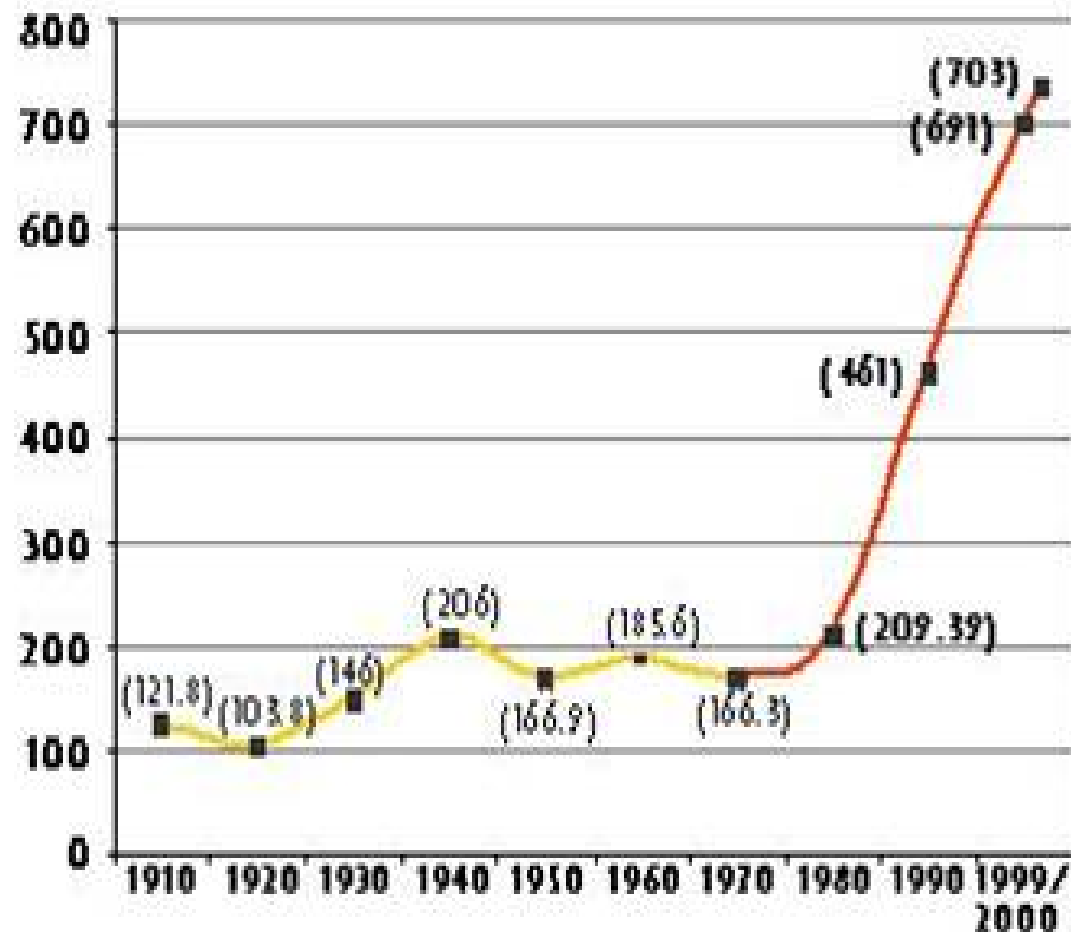
In the
United States

IS DRUG ABUSE

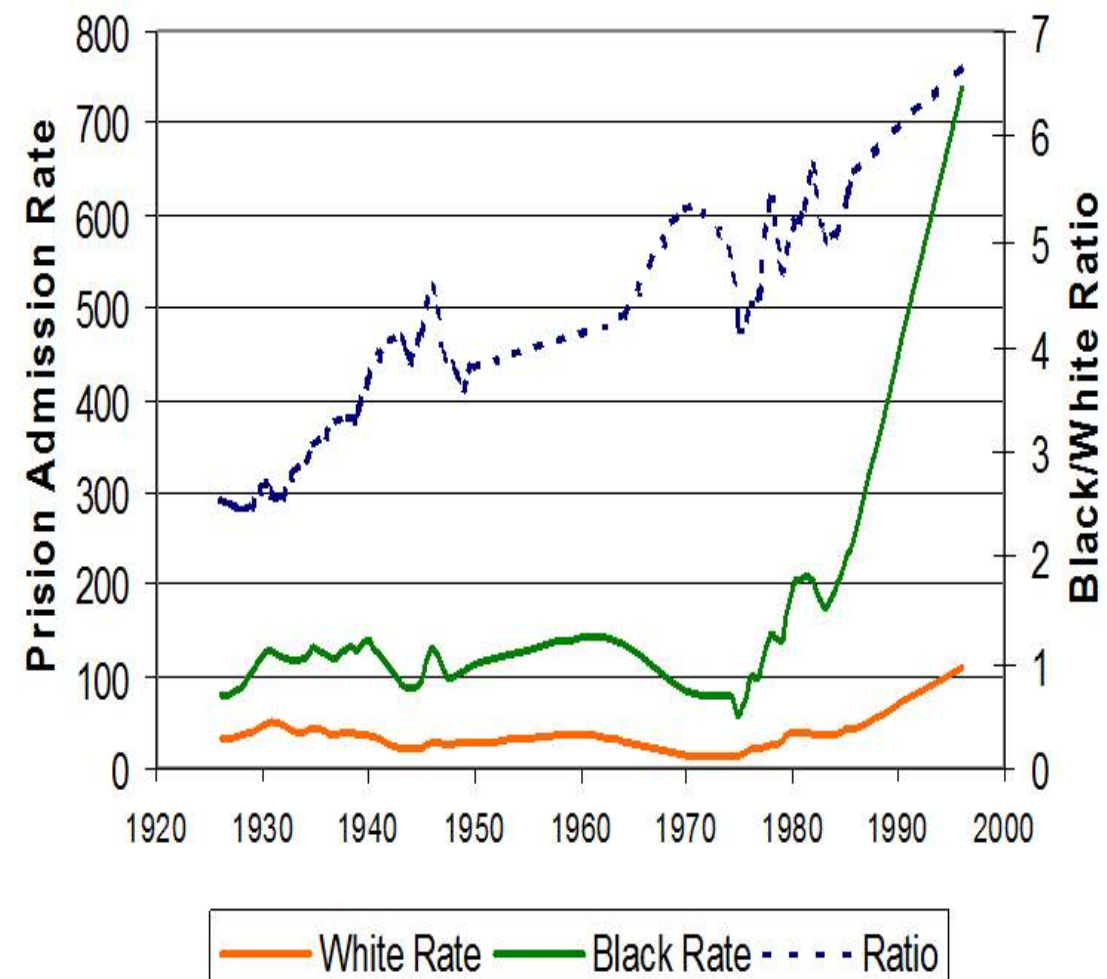


Graph 4: Change in Incarceration Rate, 1910-2000

America's incarceration rate is nearly 7 times what it was at the beginning of the century, and is three times what it was in 1980



Source: Justice Policy Institute analysis of Bureau of the Census and Bureau of Justice Statistics Data



War on Drugs: Weapon Accuracy Report

- **Bureau of Justice Statistics study (1993)**: “[T]he average sentence imposed for crack trafficking was twice as long as for trafficking in powdered cocaine.”
- **USSC Report, February 1995**:
 - 88.3% of crack cocaine offenders were Black
 - “The 100-to-1 crack cocaine to powder cocaine quantity ratio is a **primary cause** of the growing disparity between sentences for black and white federal defendants.”
- **USSC Report to Congress (2002)**:
 - An “overwhelming majority” of crack offenders were black – 91.4 percent in 1992 and 84.7 percent in 2000.
 - “[T]he average sentence for crack cocaine offenses (118 months) is 44 months – or almost 60 percent – longer than the average sentence for powder cocaine offenses (74 months), in large part due to the effects of the 100-to-1 drug quantity ratio.”

Consequence of the War on Drugs

“This one sentencing rule contributes more to the differences in average sentences between African-American and White offenders than any possible effect of discrimination. **Revising the crack cocaine thresholds would better reduce the gap than any other single policy change**, and it would dramatically improve the fairness of the federal sentencing system.”

* U.S. SENTENCING COMMISSION, FIFTEEN YEARS OF GUIDELINES SENTENCING 132 (2004).

Casualties of the War on Drugs

FIGURE 6A.

Rates of Drug Use and Sales, by Race

At the state level, blacks are about 6.5 times as likely as whites to be incarcerated for drug-related crimes.

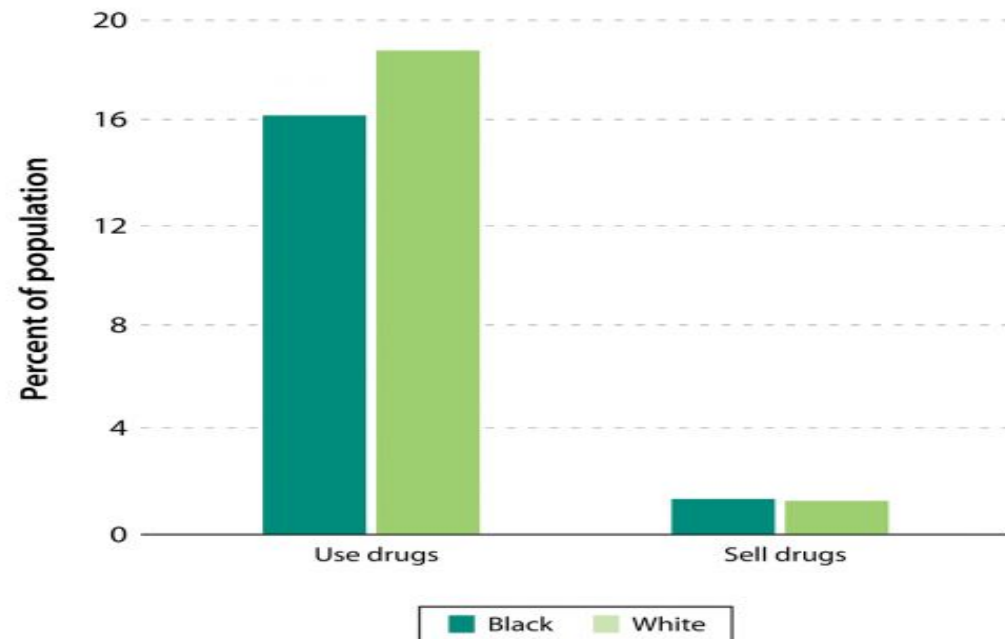
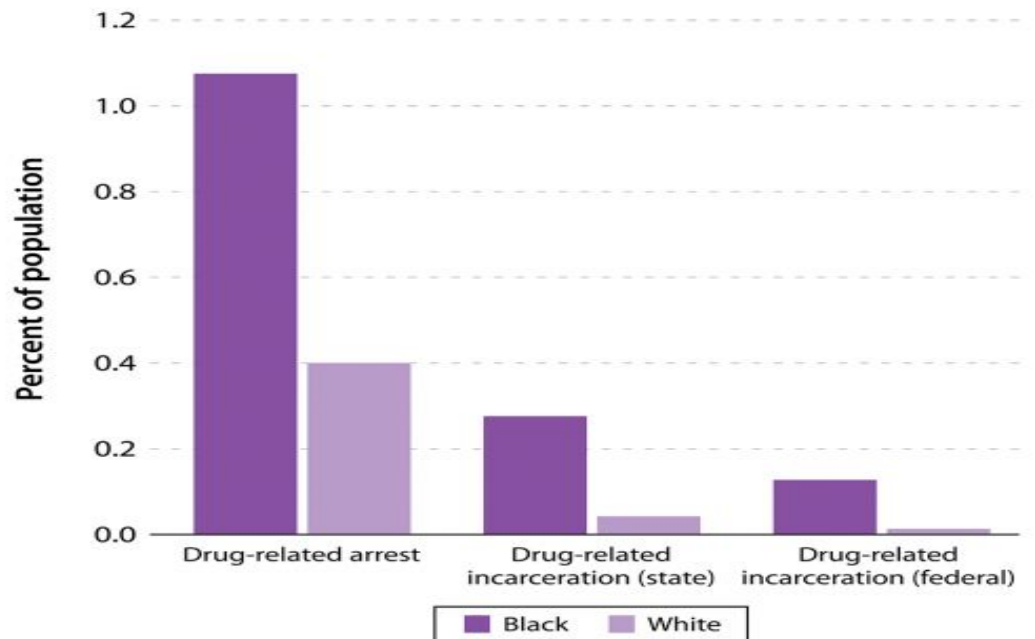


FIGURE 6B.

Rates of Drug-Related Criminal Justice Measures, by Race



Source: BLS n.d.c; Carson 2015; Census Bureau n.d.; FBI 2015; authors' calculations.

How Should We Address Opioid Addiction?

AMERICAN
PSYCHIATRIC
ASSOCIATION



58%

of Americans
favor treatment

67%

of Democrats
favor treatment

51%

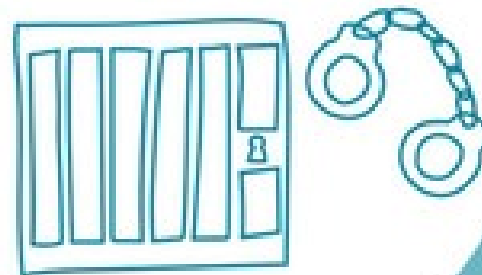
of Republicans
favor treatment

TREATMENT



or

PUNISHMENT



26%

of Americans
favor punishment

18%

of Democrats
favor punishment

34%

of Republicans
favor punishment



- “Inequitable treatment has its roots in the correctional eras that came before it: each one building on the last and leading to the prison landscape we face today.”

- - Vera, [Reimagining Prison Web Report](#)

Black Americans are overrepresented in prison

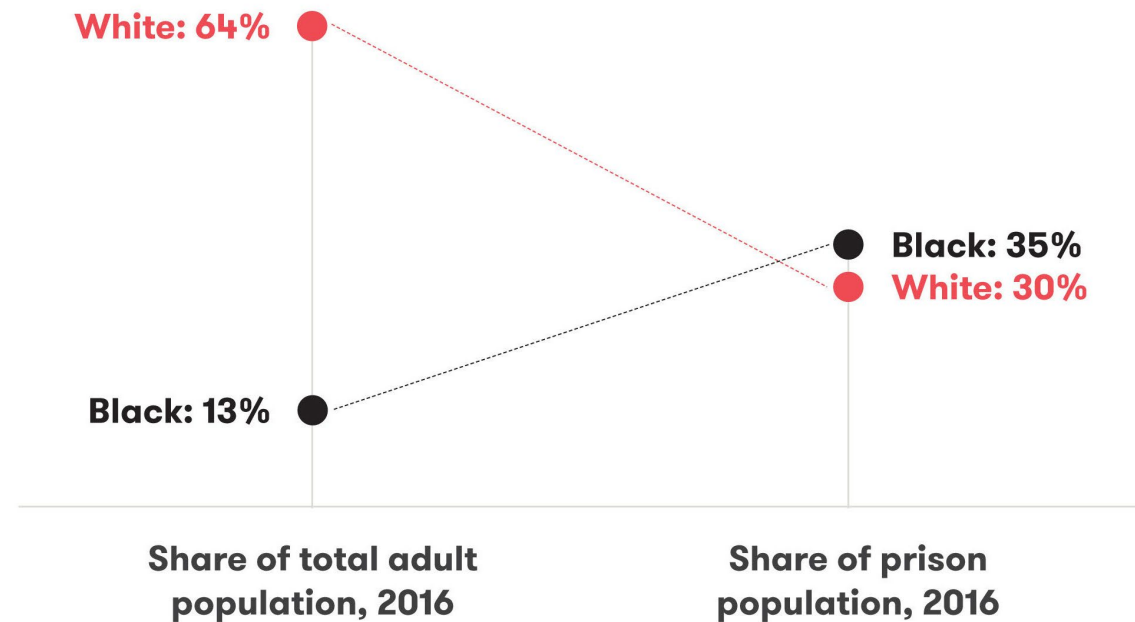


Figure adapted from John Gramlich, “The Gap Between the Number of Blacks and Whites in Prison in Shrinking,” Pew Research Center, January 12, 2018 [Chart: “Blacks and Hispanics are Overrepresented in U.S. Prisons”], <https://perma.cc/8CSW-LG8E>. Data Source: Bureau of Justice Statistics. Pew Research Center bears no responsibility for the analyses or interpretations of the data presented here. The opinions expressed herein, including any implications for policy, are those of the author and not of Pew Research Center.

*Drug Policy: Rural Prosecutions, Strategies
and Reforms*

Valena Beety

Professor, Arizona State University Sandra Day O'Connor College of Law

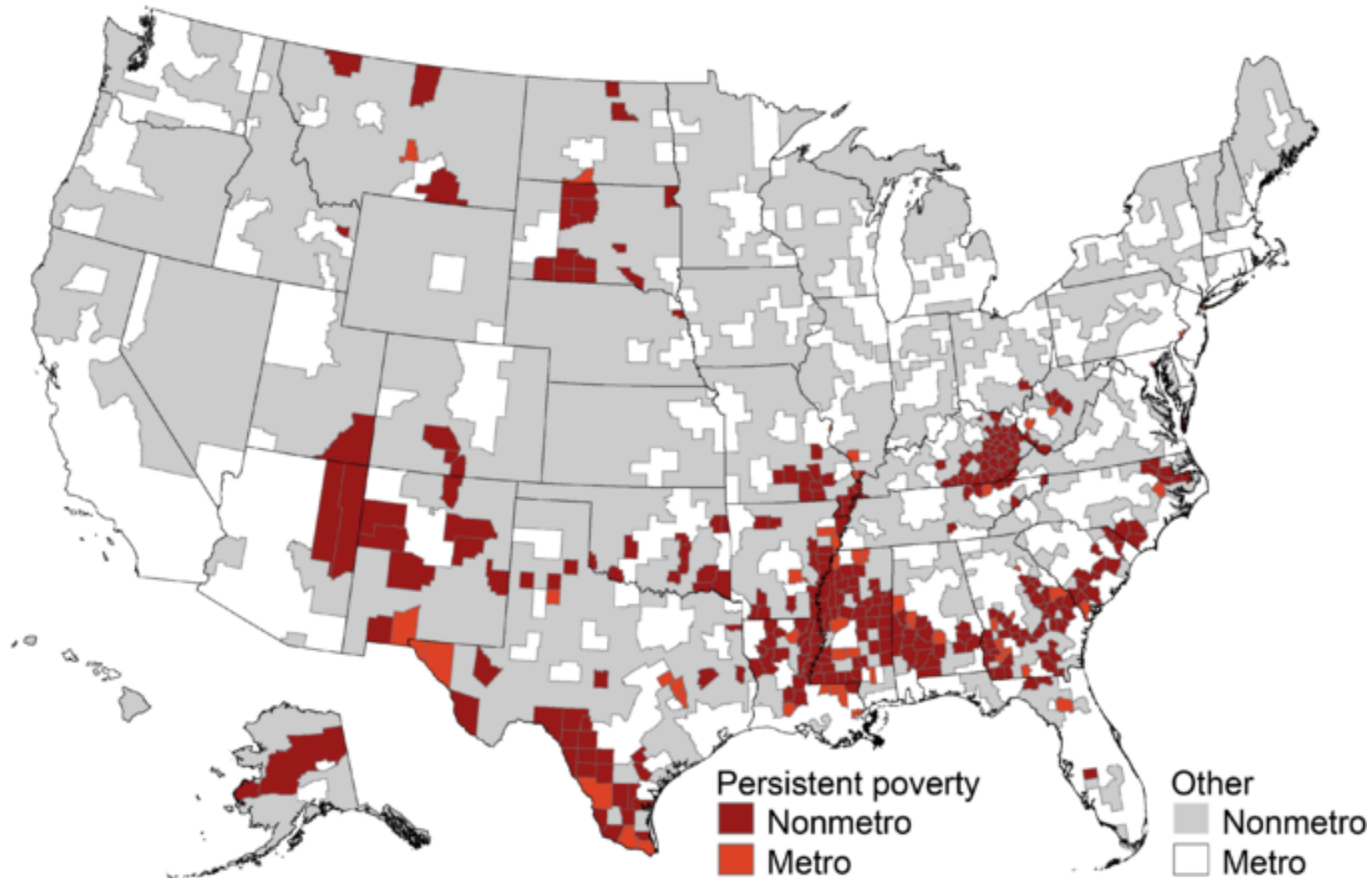
Deputy Director, Academy for Justice



What is “rural”?



Persistent poverty counties, 2015 edition



Persistent poverty counties are those where 20 percent or more of county residents were poor, measured by the 1980, 1990, 2000 censuses, and the 2007-11 American Community Survey.

Note that county boundaries are drawn for the persistent poverty counties only.

Source: USDA, Economic Research Service using data from U.S. Census Bureau.

"In nearly every instance, nonmetropolitan poverty rates are higher for each racial and ethnic group and age category."

- Brown & Schafft, *Rural People and Communities in the 21st Century: Resilience and Transformation*

Table 8.1 Economic and Educational Attainment Status of U.S. Racial and Ethnic Groups by Metropolitan Status, 2015

	Metro						Nonmetro					
	All	White	Black	Indian	Asian	Hispanic	All	White	Black	Indian	Asian	Hispanic
Economic Status												
Poverty Rate												
total	15.0	12.1	26.1	25.4	12.5	24.0	18.1	15.8	36.3	33.2	16.8	28.4
under 18	21.1	16.4	37.1	32.5	12.8	32.0	25.6	22.1	50.3	41.2	16.9	36.1
65+	9.2	7.6	17.2	16.5	13.3	19.1	10.4	9.3	25.0	21.9	11.1	20.5
Median Income	60,542	64,801	40,267	43,841	81,208	47,583	45,295	47,621	26,420	32,174	54,073	37,693
Educational Attainment												
< HS	13.0	10.9	15.3	20.6	14.0	34.7	15.3	13.8	25.3	21.3	16.2	41.1
HS Grad	26.3	26.5	30.5	29.4	15.1	26.9	36.2	36.3	38.3	25.1	22.6	28.9
Some College	29.0	29.2	33.8	34.3	19.1	23.7	30.0	30.4	26.6	33.0	24.2	21.4
Bachelor's +	31.8	33.5	20.5	15.7	51.8	14.6	18.5	19.5	9.6	10.5	37.0	8.6

Source: U.S. Census 2011–2015 American Community Survey 3-Year Estimates, Tables S1501, DP02, DP03. Educational attainment data for population 25 and older

I. PEOPLE OF COLOR IN RURAL CRIMINAL COURTS

- Lack of funding for courtroom players (prosecutors, defense attorneys) = captured system
- Rural communities of color are impacted by the opioid crisis and punished



Rural communities of color and the opioid crisis



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Native American Overdose Deaths Surge Since Opioid Epidemic

By ASSOCIATED PRESS • MAR 15, 2018

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Overdose deaths in Native American communities have skyrocketed in the time the opioid epidemic has swept the U.S. and federal officials are looking for solutions.

Native Americans and Alaska Natives saw a fivefold increase in overdose deaths between 1999 and 2015, Dr. Michael Toedt told the U.S. Senate Committee on Indian Affairs on Wednesday.

Centers for Disease Control and Prevention figures indicate the increase in that period was higher for Native Americans than any other group, jumping to roughly 22 deaths for every 100,000 people in metropolitan areas and nearly 20 for every 100,000 people in non-metropolitan areas.

I. RESPONSE TO OPIOID CRISIS

“If you choose to sell heroin, you’re killing people and you’re murdering people. You’re just as dead from a shot of heroin as if someone puts a bullet in you.”

Lycoming County Coroner Charles Kiessling, Head of the Coroners Association in PA.



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graph TD; A[Rural POC face part-time prosecutors and court appointed defense attorneys captured by the court] --> B[Rural POC also suffer in the opioid crisis – and are more likely to be charged with heightened crimes like Drug-Induced Homicide]; B --> C[Reinforces an established system of pleas]; C --> A;
```

Rural POC face part-time prosecutors and court appointed defense attorneys captured by the court

Rural POC also suffer in the opioid crisis – and are more likely to be charged with heightened crimes like Drug-Induced Homicide

Reinforces an established system of pleas

Prosecutor Initiatives



1. Partnering with Pre-Arrest and Prevention Programs



2. Decision on Whether to Prosecute





**Baltimore City State's
Attorney Marilyn
Mosby dismisses 1,000+
cases during pandemic**

3. Sentencing Review



Wayne Law Alumni Wall of Fame

September 23, 2019

SHARE



Wayne Law inducted five new members in to the Alumni Wall of Fame ceremony Wednesday, Sept. 18. Inductees were: Hon. Dorothy (posthumous), Tyrone Fahner '68, Hon. Elizabeth Gleicher '71, Valerie Newman '92.

Sentencing Integrity Units

4. Post-Conviction Drug Courts as Reentry



Why It's Time to Abandon Drug Courts

By **Miriam Krinsky** and **Leo Beletsky** | March 5, 2021



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FAIR AND JUST PROSECUTION

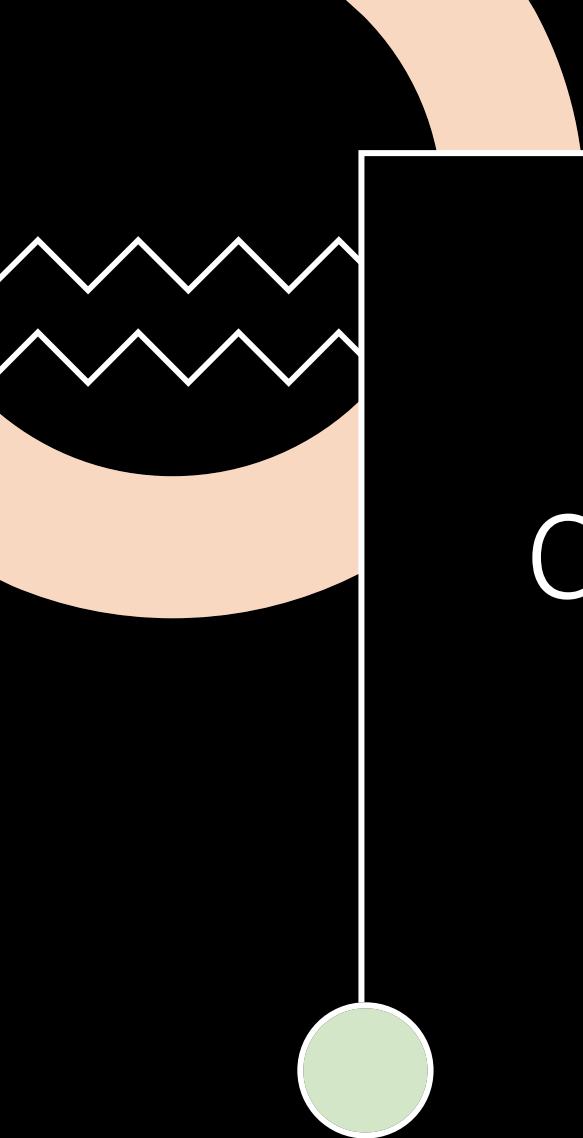
Promoting justice through leadership and innovation

**ISSUES AT
A GLANCE**

**Reconciling Drug Courts, Decarceration,
and Harm Reduction**

Thank you!
Valena.beety@asu.edu





Community Level Intervention Strategies to Confront the Criminalization of Substance Use Disorder

Cross-Sector Collaboration Along the Sequential
Intercept Model Applying Critical Race Theory


Brittany Kelly J.D., M.S.W., L.S.W.
Associate Director, Hall Center for Law and Health
IU Robert H. McKinney School of Law

Part One: The Criminalization of Substance Use Disorder in the US


Substance Use Disorder (SUD) is a medical diagnosis¹

An estimated one half of all people in prison meet the criteria for SUD²

Someone enters the criminal justice system based on an allegation of drug possession for personal use *every 25 seconds*³



What is “Critical Race Theory”⁴




“How does the law construct race?”

“How has the law protected racism and upheld racial hierarchies?”

“How does the law reproduce racial inequality?”

“How can the law be used to dismantle race, racism, and racial inequality?”



Criminalization of
Substance Use
Disorder
Disproportionately
Experienced by the
Black Community

Over their lifetime, white people are more likely than Black people to use illegal drugs⁵

However, Black adults are more than 2.5x as likely as white adults to be arrested for drug possession and 4x as likely to be arrested on charges of marijuana possession⁶

Black people are more than 10x as likely as white people to be in jail and 6x as likely to be in prison⁷

+

- - The Opioid Use Disorder Epidemic Brings a Shift in Public Perception and Response

- Along with the white community, Black men and women have also experienced the toll of this epidemic⁸
- It has been portrayed as a problem experienced most severely by the white population⁹
- Responses to the opioid use disorder epidemic:
 - 2017: National public health emergency declared¹⁰
 - 2018: First Step Act brings more access to treatment¹¹
- Contrast these responses with the harsh sentencing penalties of the War on Drugs when drug use was associated with the Black community¹²

Legalization and Decriminalization of Substances is Slow-Moving

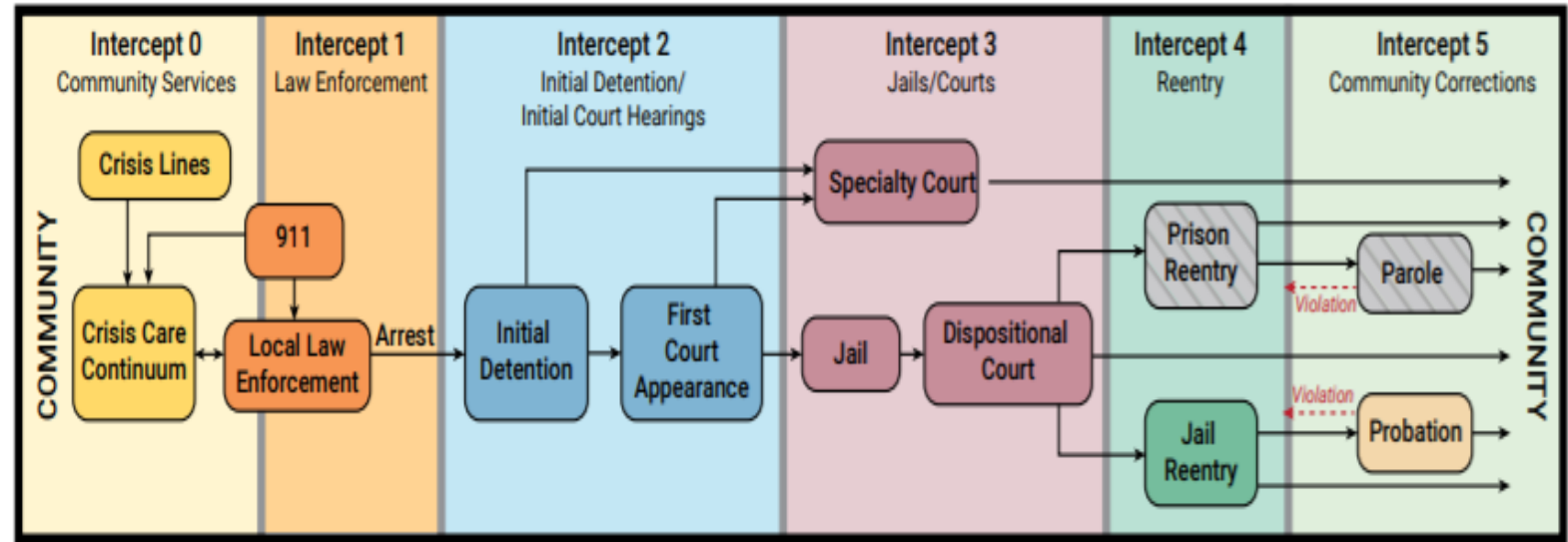
Many advocates across multiple disciplines agree that decriminalization and legalization of drugs is necessary¹³

Currently, no drugs are decriminalized at the federal level and the only federal decriminalization efforts have been around marijuana¹⁴

Part Two:


The Sequential Intercept Model and Cross-Sector Collaboration as Tools for Community-Level Intervention

What is the Sequential Intercept Model



Abreu, D., Parker, T. W., Noether, C. D., Steadman, H. J., & Case, B. (2017). Revising the paradigm for jail diversion for people with mental and substance use disorders: Intercept 0. *Behavioral Sciences & the Law*, 35(5-6), 380-395. <https://doi.org/10.1002/bsl.2300>
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The Sequential Intercept Model (SIM) details how individuals with mental health and substance use disorders may encounter the criminal justice system and transition within it.¹⁵




Why Focus on Intercepts 0, 1, & 2

When programs and initiatives focus on addressing the underlying reasons a person came into contact with the criminal justice in the first place, overall community safety and a reduction in recidivism is achieved.¹⁶

\$\$\$: Research shows that when only ten percent of people were diverted to treatment rather than incarceration, \$4.8 billion dollars were saved.¹⁷ Every dollar invested on drug treatment returns twelve dollars in savings that translates directly to a reduction in crime and health care costs.¹⁸

The collateral consequences that follow a person with a substance use disorder related conviction, long after their sentence is served, are numerous.¹⁹



Those with substance use disorder related convictions were found to be the second most likely group to be rearrested, second only to property related crimes.²⁰

What is Cross-Sector Collaboration

Cross-sector collaboration acknowledges that in order to solve complex problems, we must bring together various stakeholders to craft equally complex solutions²¹

Sectors include nonprofit, government, philanthropic, business²²

Collaboration is key²³

Include the community in the solution: tackles power dynamics and allows for a co-designed solution²⁴

Cross-Sector Collaboration Builds Recovery Capital

Many people experiencing substance use disorder lack support from family and friends and are living in poverty²⁵

“Recovery Capital,” is the assets available to a person in recovery that ultimately help them succeed²⁶

A community is uniquely situated to provide both social and legal supports that build up a person’s recovery capital²⁷

Part Three

Examples of Cross- Sector
Collaboration along the
Sequential Intercept
Model

Intercept 0

Medical Legal Partnership (MLP) with a focus on
SUD



In Indiana, this is called Project CLeAR²⁸

Allows for legal
solutions to
common
barriers
experienced by
a person living
with SUD²⁹

Erodes distrust
of the legal
system³⁰

Fights the
stigma of
addiction³¹

Prevents
relapse³²

Intercept 2

The Bail Project

- America's cash bail system disproportionately harms people of color³³
- Pretrial detention can lead to loss of employment, housing, or immigration status³⁴
- Those detained pretrial are more likely to plead guilty, convicted more often, and more likely to be sent to prison³⁵
- "Community Release with Support" Model³⁶
- Relies on partnerships with community resources to get people back to court³⁷

A Michigan Success Story

Lack of a driver's license can directly affect a person's ability to access recovery services³⁸

In debt-based suspension states, driver's licenses are often suspended for reasons unrelated to public safety, including unpaid fines and fees³⁹

Suspensions are disproportionately experienced by the Black community⁴⁰

In 2020, Michigan passed HB 5846 which prohibits suspension of driver's licenses for reasons not related to dangerous driving.⁴¹



Takeaways: Something for Everyone

Know	Know the resources in your community
Broker	Broker those resources to people experiencing SUD
Break down	Break down silos in your community
Collect	Collect data to inform larger legislative change
Apply	Apply a CRT lens and always ask those four critical questions

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Thank You!

Feel free to contact me with comments or
questions at bjglaze@iu.edu