

# CASELOAD HIGHLIGHTS

Volume 5 • Number 1

EXAMINING THE WORK OF STATE COURTS

## Drug Crime: The Impact on State Courts

Over the last decade, illegal drug abuse—and its link to other crimes and related social issues—has been a major concern among the American public. Federal, state, and local governments have responded by spending billions of dollars to develop various law enforcement, treatment, and prevention strategies. Rapid increases in drug caseloads not only have had profound effects on state judiciaries, but also underscore the necessity for viable probation and diversion alternatives and the need for judges and court staff to be more cognizant of a range of therapeutic services for drug offenders.

The issue of illicit drug use can be viewed from a criminal justice, social, medical, or mental health context. A clearer understanding of how drug cases affect the state courts comes from examining drug control strategies and their impact on drug use, arrests, budget and resource allocation decisions, correctional policies, and societal attitudes. The analysis that follows centers on felony-level drug offenses and court caseloads because our national drug

control policies have been emphasizing more serious illegal drug involvement.

This examination of the state courts is placed in the broader context of our federal and state drug control strategies in several ways. First, state trial courts are at the center of the criminal justice system and are instrumental in determining

how drug offenders are processed, how they are sentenced, how much time they serve, and how they shape our prison populations. Second, the analysis draws on data from outside the criminal justice system, allowing the issues of drug crime to be assessed from the perspective of public opinion, drug use among the general population, and information

on federal drug control spending. Third, the information presented here spans three decades and has been extracted from numerous state and federal databases or reports. This issue of *Caseload Highlights* blends information from multiple sources in an effort to provide a broader perspective of the impact of drug crime on the work of the state courts.

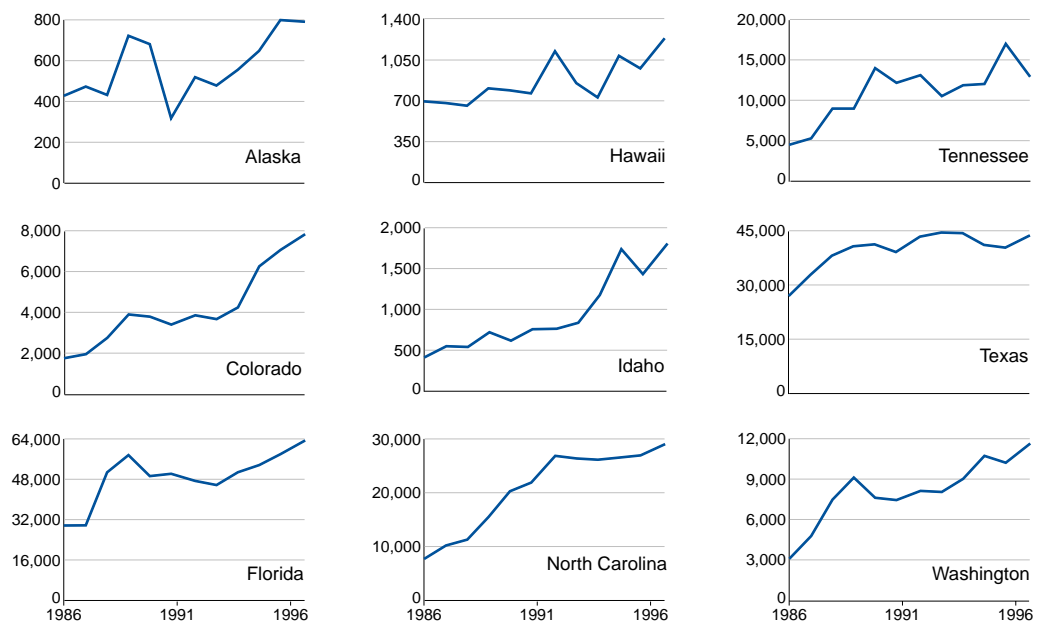
### Felony Drug Caseloads in the State Courts

Among the most basic measures of trial court performance is effective case processing. Case management

is enhanced by knowing something about the *types* of cases that are entering the court. Some of the more

serious criminal case types, such as murder, often require numerous pretrial conferences and motions, jury

#### Felony Drug Filings in Selected States, 1986-1997



## Drug Crime: The Impact on State Courts

### Felony Drug Caseloads in the State Courts, *continued*

trials, and lengthy posttrial proceedings. In contrast, the less serious cases, such as simple drug possession, often are disposed quickly through a plea agreement.

Only a fifth of the states compile and make available data that describe drug case filings in a manner that allows for cross-state comparisons. As shown on the previous page, the 11-year trend for these states is clear: felony drug filings have increased significantly. Of the nine states shown, four have seen an increase of more than 200 percent since 1986. The sheer volume is a challenge for court managers, even if most of the cases do not go to trial. Judges must rule on motions, approve plea agreements, and set sentences. Large and rising case volume often leads to crowded dockets and a swelling of a court's pending caseload. A related concern is the slowing of *civil* case processing, often the result of reassigning judges to the criminal docket in order to satisfy speedy trial requirements.

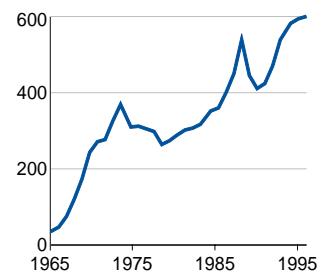
### Drug Arrests by State and Local Law Enforcement Agencies

It is impossible to estimate the total number of drug crimes committed in the United States. Unlike violent or property crimes, which are counted by the number of offenses reported by victims and later counted separately if police make an arrest, drug crimes are counted only when an arrest is made. Consequently, drug *arrest* data—the number of accused drug offenders who have been detected and apprehended—do not measure all illegal drug *activity*. For this reason, using drug arrest data to measure overall drug activity tends to be more speculative than using victimization or reported offense data for estimating other criminal activity.

The Federal Bureau of Investigation (FBI) is responsible for maintaining drug arrest statistics collected by state and local law enforcement agencies across the country. The data displayed to the right track total drug arrests per 100,000 population for the period 1965-1997. The trend line shows that the arrest rate increased rapidly from the mid-1960s until the mid-1970s, then declined somewhat and stabilized in the early 1980s. The rate quickly rose again in the late 1980s, decreased sharply from 1989 to 1991, then increased rapidly through 1997.

The two graphs below show more precisely which crimes (sale vs. possession) and drug

**U.S. Drug Arrest Rate, 1965-1997** (per 100,000 population)

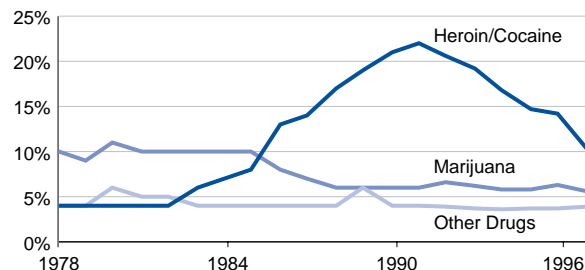


types (heroin/cocaine vs. marijuana) have characterized arrests since 1978. Over most of the 1980s, arrests for drug crimes moved away from offenses involving marijuana and turned to those involving heroin/cocaine (largely powder cocaine and “crack”). In recent years, though, the proportion of arrests involving marijuana has increased, and marijuana-related arrests now account for the majority of arrests for drug possession.

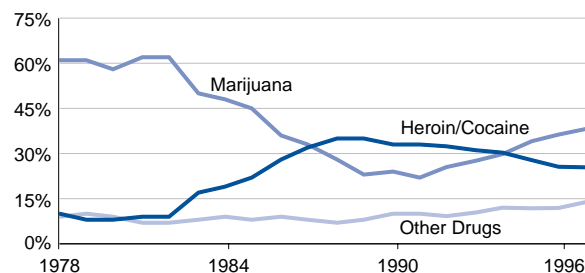
Increases in drug arrests, like arrests for prostitution and gambling, can occur by allocating more law enforcement resources to investigate and apprehend persons engaged in such activities. An increase in drug arrest rates also may reflect a rise in drug use, a change in the way drugs are marketed and sold, or a shift in public attitudes toward further reducing drug-related crime. In the next section, we take a closer look at drug use trends and public opinion.

### Composition of Drug Arrests, 1978-1997

#### Selling/Manufacturing



#### Possession



Source: FBI Uniform Crime Reports, 1978-1997.

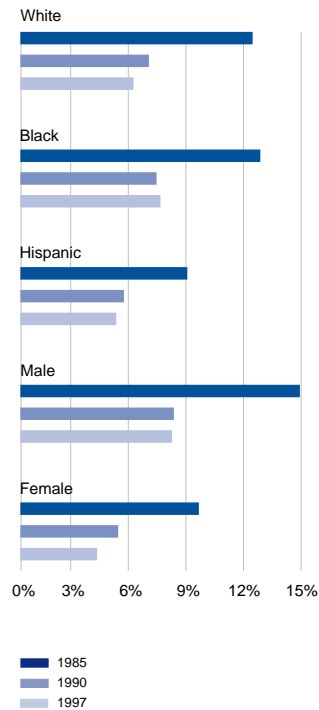
## Drug Use Trends

One of the most widely used sources for estimating drug use comes from the National Institute of Drug Abuse (NIDA) and the Substance Abuse and Mental Health Services Administration (SAMHSA). These groups jointly sponsor the National Household Survey on Drug Abuse, which interviews individuals age 12 years and older about their drug use habits. According to preliminary figures from a survey conducted in August 1998, an estimated 13.9 million people reported using an illicit drug within the past month, down from the roughly 25 million who reported usage in 1979.

The trend lines below show that estimated monthly usage has declined for both cocaine and marijuana. During the last six years, monthly drug

use edged up slightly, largely as a result of use by 12- to 17-year-olds and, to a lesser extent, 18- to 25-year-olds. These latest increases appear more closely connected to marijuana use than to cocaine or other drug use. These findings among young people are consistent with the *Monitoring the Future* study, a nationwide independent survey of 8th, 10th, and 12th graders. The bar chart shows that from 1985 to 1997, declining rates of reported drug use within the past month are consistent across racial and gender categories. In 1997, men reported the highest rate of monthly drug use at 8.5 percent. African-Americans reported 7.5 percent, whites 6.4 percent, and Hispanics 5.9 percent; women reported the lowest rate at 4.5 percent.

**Percent of Population Using Any Illicit Drug in the Past Month, by Race and Gender, 1985, 1990, and 1997**

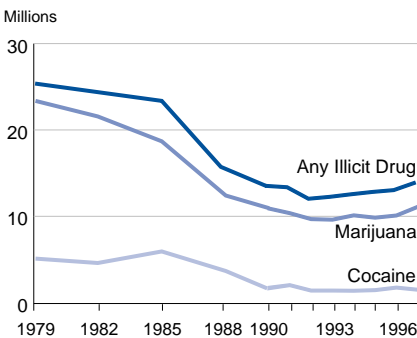


## Public Opinion

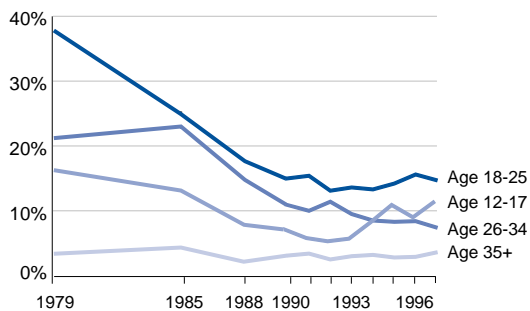
Over the past 18 years, the Gallup organization has polled individuals in an attempt to determine “what problems facing the nation were perceived to be most important.” The charts to the right represent the more common problems cited over time, including drugs, the economy, crime, health care, and the federal deficit. The most visible peak, during September 1989, represents the point at which 63 percent of the public responded that drugs were the most important problem facing the nation. This highpoint was accompanied by low percentages for other “problems” that could have been offered as answers (noting, for example, the valley in the economy chart). The peak also shows that the public perceives drugs as a specific and distinct problem, separate from the general response of “crime.”

As the percentage of people who perceived drugs as the number one problem began to fall during the early 1990s, concerns over the economy began to take precedence. By the mid-1990s, the most important problems cited were the economy, crime, and, to a lesser extent, health care and the federal deficit.

**Estimated Number of Persons Age 12 and Older Using Drugs in the Past Month, 1979-1997**



**Percent of Population Using Any Illicit Drugs in the Past Month, 1979-1997**



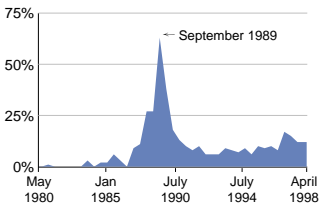
Source: National Household Survey on Drug Abuse, National Institute on Drug Abuse (NIDA).

# Drug Crime: The Impact on State Courts

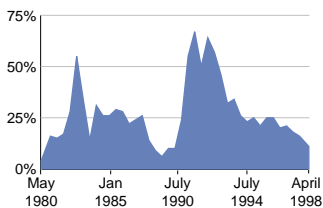
## Public Opinion, continued

### Public Perception of the Most Important Problems Facing the Nation, 1980-1998

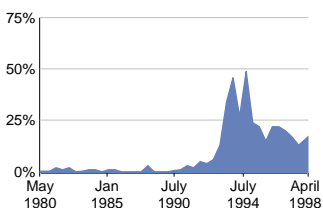
#### Drugs



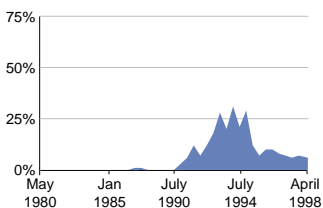
#### Economy/Unemployment/Jobs



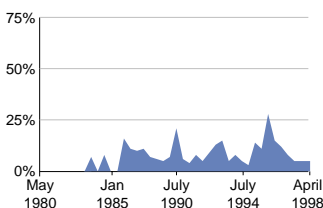
#### Crime



#### Health Care



#### Federal Budget Deficit



Note: Data are for 40 polls requested by CNN or *USA TODAY* regardless of the polling dates. For this reason, the date scale does not represent exact increments over time.

Source: The Gallup Polls, 1980-1998.

The most intense period of the public's concern over drugs coincides with the period in which the "war on drugs" was at its height. In the 1990s, concern about crime has risen at a time when mandatory sentencing, increased incarceration rates, three-strikes provisions, and gun control laws have been proposed or passed. Many observers note, however, that public opinion can be swayed through media reporting or political attention. Regardless of how beliefs are formed, opinion polls do seem to reflect the attitudes, feelings, and experiences of citizens for a specific period in time. As seen here, specific concern with "drugs" was consistently low through the first half of the 1990s, though polling results from the past two years show that concern has edged up slightly.

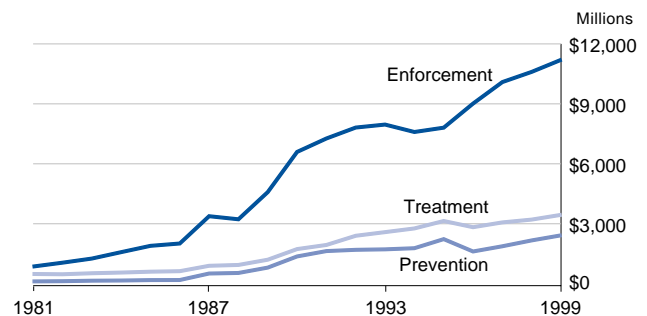
The "war on drugs" is clearly intended to increase the amount of public resources directed at reducing illicit drug use, enforcing criminal sanctions, and punishing convicted offenders. Law-makers keep a close eye on public attitudes when developing legislative agendas—and the focus on drugs and crime is no exception.

## National Drug Control Budget

Governmental institutions have responded to the drug abuse problem by allocating billions of dollars in the area of law enforcement, treatment, and prevention. Since 1981, the level of funding has risen dramatically: federal dollars have increased roughly 1,200 percent for law enforcement; 600 percent for treatment; and 2,000 percent for prevention. As with other measures examined, drug control expenditures increased most rapidly during the "drug war" years of the late 1980s. Moreover, a full two-thirds of the total budget is now earmarked for law enforcement spending.

The state judiciaries feel the effect of increases in the federal drug control budget through increases in drug arrests and state court drug caseloads. While police can measure performance in terms of arrest statistics, one measure of court performance is how the courts respond to law enforcement's achievements. Staying current with drug caseloads is an ongoing challenge because the budgets of state and local courts seldom keep pace with increases in the volume of work entering the courts.

### Federal Drug Control Budget, 1981-1999



Source: "National Drug Control Strategy Budget Summary," The White House, Office of National Drug Control Policy (ONDCP), 1994. Drug Control Funding tables 1996-1999 requested, ONDCP's WEB site.

## The Emergence of Drug Courts

The rise in felony drug caseloads has forced the courts to look for alternative means of case resolution. One response is drug courts. Drug courts are usually special courts dedicated to resolving cases involving nonviolent, drug-addicted offenders through an extensive program of supervision and treatment. Typically, judges work with prosecutors and defense counsel, together with assigned treatment providers or other third parties, to develop a pre-trial diversion plan.

According to Columbia University's National Center on Addiction and Substance Abuse, the drug court model usually entails:

- judicial supervision of structured community-based treatment;
- timely identification of defendants in need of treatment and referral to treatment as soon as possible after arrest;
- regular status hearings before the judicial officer to monitor treatment progress and program compliance;
- increased defendant accountability through a series of graduated sanctions and rewards; and
- mandatory periodic drug testing.

The first drug court was established in 1989 by the Dade County (Miami, Florida) Circuit Court. During the last decade, local drug courts have been or are being established in 48 states as well as in the District of Columbia, Puerto Rico, Guam, and a number of Native American Tribal Courts. As of June 1, 1998, there were over 425 drug courts in the planning or operational stage of development.

A major review conducted by the National Center on Addiction and Substance Abuse of 30 separate drug court studies stated that drug courts can effectively reduce rearrest rates and ongoing drug abuse. According to the study, 60 percent of those who enter drug court programs are still in treatment after one year, and 50 percent graduated from the programs. One survey found 10 percent of urine tests for those enrolled in drug court programs were positive, compared with 31 percent for defendants under only supervised probation.

The Columbia University program reported that the most common problems confronting drug courts relate to conflicts between prosecutors and defense attorneys over responses to relapse or noncompliance with

treatment. In addition, differences of opinion sometimes arise between treatment providers and the drug court judge or drug court staff over information flow and treatment decisions. No completed drug court evaluations have included a comprehensive analysis of costs and benefits. The general consensus from the limited evaluations completed, however, is that drug courts generate savings in jail costs, especially for pretrial detention. The Federal Drug Court Program Office estimates that the average annual cost per participant is \$1,200 to \$3,000 depending on the range of services provided. In contrast, incarceration of drug-using offenders costs between \$20,000 and \$50,000 per year, and the capital cost of building a prison cell can be as much as \$80,000 (National Association of Drug Court Professionals, 1998).

The federal legislative and executive branches have made clear their continued support of drug court initiatives. Congress allocated over \$30 million to 180 jurisdictions for planning, implementing, or enhancing drug courts in 1997, with similar levels of funding slated through 2000.

## Drug Convictions and Dispositions in State Courts

It is estimated that roughly 870,000 felony convictions occurred in state trial courts in 1994, the latest year for which data are available.

Thirty-one percent of these convictions were for felony drug trafficking (including sale and manufacturing) or possession offenses. Drug trafficking constituted the single largest conviction category, while convictions for felony possession ranked third behind larceny. The bar chart on the following page shows the number of felony drug convictions versus other felony offense types, while the table below shows trafficking and possession convictions since 1990.

### Estimated Number of Felony Drug Convictions, 1994 (most serious offense at conviction)

	Possession	Sale/ Trafficking
1990	106,253	168,360
1992	109,426	170,806
1994	108,815	165,430
Change 1990-94	2.4%	-1.7%

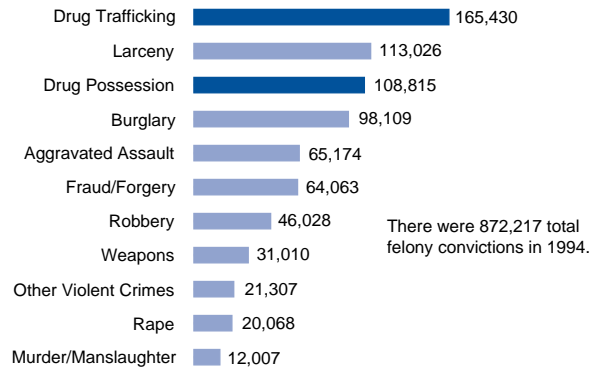
Source: Felony Sentences in State Courts, 1994. U.S. Department of Justice, Bureau of Justice Statistics.

According to figures from the Bureau of Justice Statistics (BJS) and the FBI, the probability that a felony drug arrest will result in a felony conviction is relatively high. This likelihood has increased during the 1990s: an estimated 50 percent of arrests

# Drug Crime: The Impact on State Courts

## Drug Convictions and Dispositions in State Courts, *continued*

### Estimated Number of Felony Convictions in State Courts, 1994

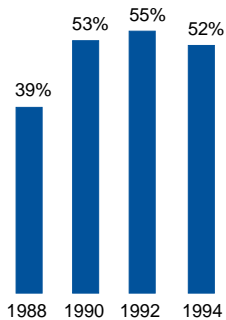


Note: An estimated 127,180 convictions classified as "other offenses" are not assigned a bar in this graphic.

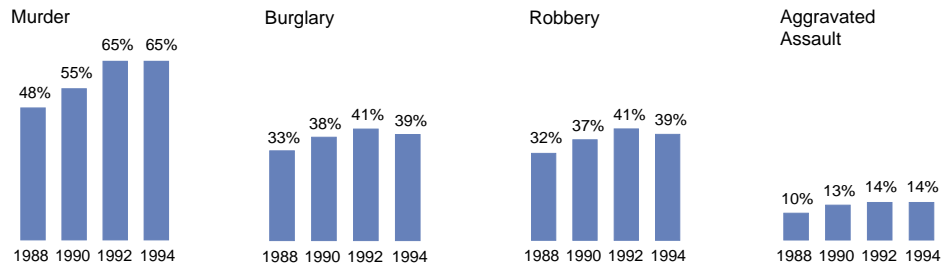
### Method of Case Disposal, 1994

	Guilty Plea	Trial	
		Jury	Bench
Drug Possession	94%	1%	5%
Fraud/Forgery	91	5	4
Weapons	90	5	5
Drug Trafficking	90	4	6
Larceny	90	4	6
Burglary	89	6	5
Robbery	85	10	5
Aggravated Assault	82	11	7
Other Violent	78	15	7
Rape	75	19	6
Murder/Manslaughter	58	35	7
All Offenses	90%	5%	5%

### Percent of Felony Drug Arrests Resulting in Felony Convictions, 1988-1994



### Percent of Felony Arrests Resulting in Felony Convictions for Other Offenses



result in conviction. The conviction rate for other felony offense types (murder, burglary, robbery, and aggravated assault) also increased during the same time period, but to a lesser degree. The likelihood that arrests for felony drug offenses will result in convictions is second only to arrests for murder.

Given the heavy caseload and high conviction rate for felony drug crimes, the mode of conviction is a critical factor relating to the ability of courts to clear drug cases. The percentage of guilty pleas in felony cases is the highest for drug possession cases (94 percent), but guilty

pleas also occur in the vast majority of drug trafficking cases (90 percent). Trials are seldom conducted in drug cases—jury trials dispose of only 1 percent of the drug possession cases and 4 percent of the drug trafficking cases.

In 1994, defendants convicted of a felony drug offense were most likely to receive a period of incarceration (69 percent) rather than straight probation (31 percent). Distinguishing between drug trafficking and possession affected this split only slightly, although trafficking convictions were more likely to result in prison sentences than possession convictions.

### Sentence Types in Felony Drug Conviction Cases, 1994

	Total	Incarceration		
		Prison	Jail	Probation
Drug Trafficking	71%	48%	23%	29%
Drug Possession	66	34	32	34
All Drug Offenses	69	42	27	31
All Felony Offenses	71%	45%	26%	29%

## Sentencing and Time Served

Much attention is focused on the length of prison sentences and the amount of time an offender actually serves. The responsibility of fixing sentences resides with a judge or jury, while the responsibility of administering the sentence usually rests with a correctional or other supervising authority. This situation is changing for a growing number of states that have adopted truth-in-sentencing policies. In these states, early release on parole or the accrual of good-time credit has been substantially limited. This trend has important consequences for state trial court judges: judges may now be required to adjust their past sentencing practices to account for the changes in time served, some must now consider a set of structured

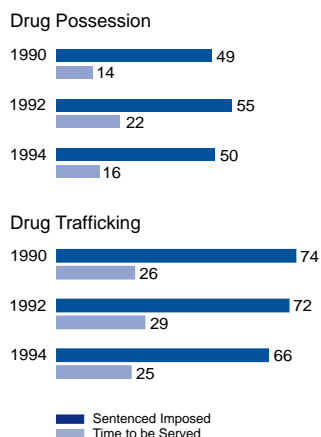
### Percent of Sentence Expected to be Served for Offenders Sentenced in 1994\*

Offense	Percent Served
Rape .....	55%
Weapons .....	51
Aggravated Assault .....	49
Murder/Manslaughter .....	47
Robbery .....	46
Larceny .....	41
Burglary .....	39
Drug Trafficking .....	38
Fraud/Forgery .....	35
Drug Possession .....	32

\* Figures are based on the assumption that felons sentenced in 1994 will serve about the same percentage of their sentence as prisoners released in 1994. Inmates with life sentences are excluded from this analysis.

Source: Felony Sentences in State Courts, 1994. U.S. Department of Justice, Bureau of Justice Statistics.

### Average Prison Sentences and Estimated Time to be Served in State Prison, 1990-1994 (in months)



sentencing guidelines or follow newly prescribed statutory sentencing ranges, and others may have their discretion limited by the passing of mandatory sentencing provisions.

A measure used when discussing truth-in-sentencing is the amount of time served as a proportion of the sentence imposed. The bar chart above shows imposed sentences and estimated time to be served for felony drug offenses in 1990, 1992, and 1994. After increasing in 1992, both sentence lengths and time served amounts returned to 1990 levels for drug possession cases. Average sentences have decreased for drug trafficking, but the time expected to be served for trafficking in 1994 was roughly the same as in 1990.

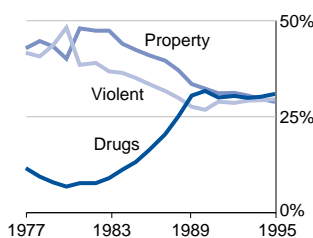
## Court Commitments and Corrections

Increased attention to drug crime has had pronounced consequences for corrections. In the early 1980s, less than 10 percent of new court commitments to prison were for a drug offense. From 1989 to 1995, drug offenders comprised about one-third of all new commitments to prison. The percentage of commitments peaked in 1990, the same time the proportion of drug arrests was highest for offenses involving cocaine and heroin.

### Number of Prisoners in State Custody for Drug Offenses, 1980-1996

Year	Prisoners	Yearly Increase
1980	19,000	
1981	21,700	14%
1982	25,300	17
1983	26,600	5
1984	31,700	19
1985	38,900	23
1986	45,400	17
1987	57,900	28
1988	79,100	37
1989	120,100	52
1990	148,600	24
1991	155,200	4
1992	172,300	11
1993	183,200	6
1994	202,600	11
1995	225,000	11
1996	237,600	6

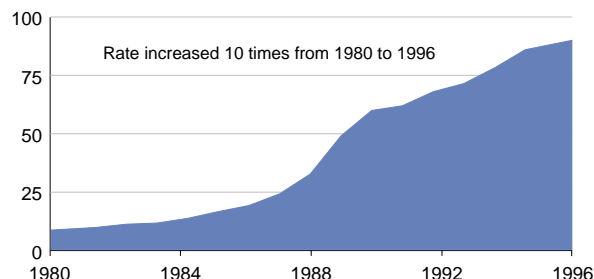
### Composition of New Court Commitments to State Prisons by Crime Type, 1977-1995



As new commitments for drug offenses have risen, it is not surprising to see large increases in the number of state prisoners serving sen-

tences for drug offenses. State prisoners per 100,000 population serving time for drug offenses increased from 8.4 in 1980 to 89.6 in 1996. The table above shows how the number of incarcerated drug offenders grew from 19,000 to 237,600 over the same time period. Almost all drug offenders sentenced to prison eventually will be released, and in most cases, they will have served less than two years.

### Prisoners in State Custody Sentenced for Drug Offenses, 1980-1996 (rate per 100,000 persons)



Source: Corrections Populations in the United States, 1992, 1995, National Corrections Reporting Program, 1980-1996. U.S. Department of Justice, Bureau of Justice Statistics.

## Conclusion

The state criminal court system is an important institution in the nation's response to drug crime. This analysis shows how budget and policy changes in one area of the justice system clearly affect other components of the system.

The key criminal justice measures available in the area of drug crime—drug arrests, court caseloads, drug control budgets, and correctional populations—all confirm steep rises

during the 1980s, followed by a short subsidence in the early 1990s. The most important finding, however, is that all of these measures have turned upward again, and in most instances, to a level that surpasses the previous “drug war” surge of the mid- and late 1980s. These trends are the result of both previous and more recent policy changes at both federal and state levels.

The preceding pages are limited to describing and

assessing the nation's drug problem from a criminal justice perspective and, even more specifically, from the courts' perspective. Data from non-criminal justice sources, such as drug-related emergency room incidents, the incidence of drug-exposed infants, drug-related AIDS cases, and drug-related vehicular accidents all provide different perspectives concerning illicit drug use. Evaluation and research that hope to ex-

plain the impact of national drug control strategies must ultimately be concerned with both justice and non-justice system measures. In this sense, much work still needs to be done. However, regardless of the analytical perspectives and methods used to study illicit drugs, the judicial branch will continue to play a critical role in administering our broader drug control policies.



# CASELOAD HIGHLIGHTS

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