

Understanding Growth of Incarceration in Federal Prisons

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In April 2014 the National Research Council's Committee on Law and Justice issued its report on *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. In preparing the report, the NRC commissioned a special study from us to explore trends in U.S. state and federal incarceration rates from 1980 to 2010. Today, in response to the invitation to provide written testimony to the Colson Task Force on Federal Corrections, we offer a summary of our findings on federal incarceration rates and figures that extend the results to 2012.²

Growth in federal incarceration has been breathtaking. Between 1980 and 2000, the federal prison population increased by nearly 500% (from 24,363 to 145,416), and the state prison population increased by over 300% (from 305,458 to 1,248,815). During this period, federal incarceration rates (scaled-up in Figure 1 by a factor of 10 for purposes of comparison) and state rates rose at a similar pace. However, in the 13 years since 2000, state population growth slowed (up only 9%), while the federal system continued its steady growth (up 48%), reaching 215,866 inmates by yearend 2013. Overall, from 1980 to 2013, federal incarceration rates rose from 9 to 61 sentenced inmates per 100,000 U.S. residents.

Sources of growth by crime type and stage

To understand the factors contributing to growth, we have examined trends in the various stages of the federal criminal justice system, from arrest to prosecution, to conviction, to prison commitment and time served. We have focused on five crime types – robbery, fraud, drugs, weapons, and immigration. Combined, these five crimes represented 86% of all sentenced

¹ Opinions or points of view expressed are those of the authors and do not necessarily reflect the official position or policies of the United States Department of Justice.

² In 2012, The Urban Institute completed a report examining growth from 1998 to 2010, using a similar approach but applying it to estimates of growth in numbers of inmates by crime type rather than in incarceration rates by crime type. See Mallik-Kane, K., B. Parthasarathy, and W. Adams, *Examining Growth in the Federal Prison Population, 1998-2010*, Research Report, Urban Institute, Washington, DC, September 2012.

federal inmates in 2012. Half of the remainder was composed of offenders sentenced for possession/trafficking in obscene materials (4.6%) or for racketeering/extortion (2.8%).

Robbery is primarily bank robbery, involving federally insured institutions; fraud includes violations of statutes pertaining to lending/credit institutions, interstate wire/communications, forgery, embezzlement, and counterfeiting; drug offenses typically involve manufacturing, importation, export, distributions or dispensing of controlled substances; weapons offenses concern the manufacturing, importing, possession, receiving and licensing of firearms and cases involving a crime of violence or drug trafficking when committed with a deadly weapon; and immigration offenses primarily include unlawful entry and reentry, with misuse of visas and smuggling representing a much smaller fraction of federal immigration cases.

Federal prison growth reflects the federal government's response to drug crime

By far, the dominant source of growth is the incarceration rate for drug offenses, increasing from 3 per 100,000 adults to 42 in 2012, an increase of more than 10-fold (figure 2). That growth has resulted in drug offenses accounting for more the 50% of all federal prisoners in 2012. Weapons and immigration offenses had comparably large growth, also more than 10-fold, but their growth is less apparent because they started at such low levels in 1980. Incarceration rates for fraud grew considerably (about 227%), but much less than the other three crime types. The growth in rates for robbery was much less, rates rose from 2.9 to a peak of 4.6 per 100,000 adults between 1980 and 2000, but then fell back to 3.0 in 2012.

Growth trends have changed since 2000. The dominant source of growth was among weapons offenders, up 140% (from 5.2 to 12.5 per 100,000 adults) and immigration offenders, up 51% (from 6.5 to 9.8 per 100,000). Fraud showed little change (up 13.9%). With an already high incarceration rate for drug offenses (35 per 100,000 adults), there was still an increase, but it was more modest, up 18% (to 42 per 100,000 adults). Nevertheless, drug offenders still accounted for more than half of all federal prisoners in 2012.

Increasing arrest rates accounted for a third of the total federal prison growth

For the five crime types combined, the federal arrest rate (as measured by the number of suspects in matters concluded by U.S. attorneys per 100,000 adults) rose from 8.1 per 100,000 in 1980 to 55.3 in 2000 and then to 71.2 in 2012 (figure 3). The rise in federal drug arrests occurred almost

entirely in the 1980s, when the rate more than tripled, rising from 5.8 drug suspects per 100,000 adults in 1980 to 18.0 by 1990. The rates remained nearly stable until 2005, when they dropped somewhat from 18.0 to 15.8 in 2012. During this time, the number of suspects in weapons offenses increased considerably, but from a much smaller base; the arrest rate nearly tripled from 1980 to 1990 (from 1.1 to 2.9 per 100,000 adults), doubled again to 6.4 by 2004, and then dropped to 4.6 by 2012.

Arrest rates for immigration violations were flat until 1995 (varying between 2.8 and 5.0 per 100,000) and then jumped to 17.0 per 100,000 between 2004 and 2007, and then jumped again to 38.4 by 2012. Offsetting this dramatic increase, the prosecution rates dropped by over 60%, from 75 per 100 suspects in 2003 to 29 in 2012. Arrest rates for robbery and fraud (excluding tax fraud), traditional crimes falling under federal jurisdiction, have seen little change. Over 30 years, the number of suspects per 100,000 has remained remarkably flat for robbery (averaging 1.3 per 100,000) and fraud (averaging 12.5 per 100,000).

Increasing prison admission rates accounted for nearly a quarter of the total growth

Although we have examined in detail the stages from arrest to prosecution to conviction to sentencing to admissions to prison, their combined effects are reflected in Figure 4. Prison admission rates, as measured by the number of admissions per 100 arrested suspects in cases terminated within the federal system, rose for each of the five crime types between 1980 and 2000. However, admission rates since 2000 have been nearly flat, except for immigration offenses, which dropped sharply from 75 to 24 per 100 arrests by 2012, and weapons offenses, which continued to rise from 39 to 58 per 100 arrests.

Prison admission rates doubled for drug suspects, increasing from 29 admissions per 100 arrests in 1980, to 40 per 100 in 1990, to 58 per 100 by 2000, before leveling off at about 60 per 100 for the next 12 years. This increase in the admission rate, in combination with the rise in the arrest rate for drug offenses, accounts for the nearly 8-fold increase in drug admissions (from 2,763 in 1980 to 22,951 in 2012). Admission rates for the robbery, fraud, and weapons offenses rose during the 1990s, following the implementation of the sentencing guidelines. Our analysis indicates that rising prison admission rates for the five crime types accounted for about 38% of the increase in federal incarceration rates in the 1980s, 53% of the growth in the 1990s, and 26% in the 2000s.

Increasing time served has been the largest contributor to growth since 2000

The final stage is time served in prison, which is measured as a 3-year moving average of the ratio of the prison population to admissions (figure 5). This measure includes time served by prisoners not yet released and those who will never be released. It also includes time served by persons recommitted to prison as parole violators for those sentenced prior to the guidelines or community supervision violators for those sentenced after the guidelines.

The longest time served is for robbery, which reached 6.5 years in 1989, then declined during the early 1990s and then rose to 7.6 years by 2012. While for most offenses the 1987 sentencing guidelines were designed to approximate the time that prisoners actually served under the old laws, the exceptions were for drug offenses and weapons offenses. Drug offenders under the guidelines received longer sentences, requiring them to serve more time before their release. The estimated time served in federal prison for drug offenders rose from 1.7 years in 1987 to 2.3 years by 1990, to 3.4 years by 2000, and to 4.4 years by 2012. A similar trend was experienced by weapons offenders, whose time served from 1.8 years in 1987 to 4.7 years by 2012.

Fraud and immigration have significantly shorter sentences to prison; however, time served for both fraud and immigration showed upward trends – with time served for immigration offenses rising significantly during the 1990's and for fraud offenses after 2000. Since 2000, increasing time served has been by far the largest contributor to growth (48%), followed by the increasing arrest rate (26%). If we exclude drug crimes, the growing volume of federal arrests for the other crimes accounts for 78% of the growth and the time-served effect drops to 14%.

Implications for reducing the federal prison population

Any effort at reducing incarceration rates must first focus on drug offenders, due to their contribution to growth and the fact that they account for 50% of the current federal prison population. Reductions may be achieved by reassessing which drug offenders are most appropriate for incarceration and which may be diverted to community supervision and mandatory treatment. However, the high incarceration rates for drug offenders are clearly linked to the 144% increase in time served. Reducing the sentences for drug offenses and returning to the average time served of 3.4 years in 2000 (a 23% drop from current levels) seems reasonable.

Among the stages of the federal criminal justice system, our analysis suggests that the focus should be on two policy aspects, particularly for drug offenders: 1) the decision to commit convicted offenders to prison and 2) the time inmates serve. About half of the growth in federal incarceration rates is linked to policies related to prison commitment and sentence length. Achieving a reduction will require reversing many of the legislated policy changes that contributed to the dramatic rise in incarceration. These include decreasing the use of mandatory-minimum sentences and sentencing enhancements; restoring flexibility in prison release decisions; and reducing the volume of returns to prison.

One important approach to consider would be rethinking, repealing, or at least sunseting the statutory changes that were introduced over the past 30 years. This would include a review of the mandatory-minimum sentences that restrict judicial discretion. The review could well involve an assessment of their effectiveness in achieving their intended deterrent or incapacitative effects.

Our analyses indicate that growth since 1980 is an evolving story of expanding federal jurisdiction, including the emergence of new crimes and new laws. While the sentencing guidelines of 1987 have had a significant impact on prison growth, subsequent adaptations and modifications imposed by recent court decisions (e.g., Booker, 2005) or by new laws (e.g., Fair Sentencing Act of 2010) have had only a modest impact in slowing growth. There is a clear need for major reconsideration of sentence lengths and a significant reduction in the mandatory proportion of the sentences to be served (below the current 87%); absent major changes in sentencing and time served, incarceration rates will continue to grow in response to the increasing numbers of suspects entering the federal system.

Bringing about these changes will require that greater discretion be returned to the judges. Currently, most of the discretion remains with law enforcement and prosecutors in charging and prosecution. For the system to avoid ever increasing rates of incarceration, discretion must be returned to the later stages of the process. Absent changes in sentence length, amounts of time served by crime type can be addressed by relaxing or eliminating the mandated percent of sentence to be served. This involves (1) taking into account the dynamic nature of risk, where inmates, through their good behavior, demonstrate their likelihood of successful return to the community, and (2) returning authority to parole boards or other administrative processes to moderate the impact of other parts of the system on rising prison populations.

Figure 1. Trends in state and federal incarceration rates

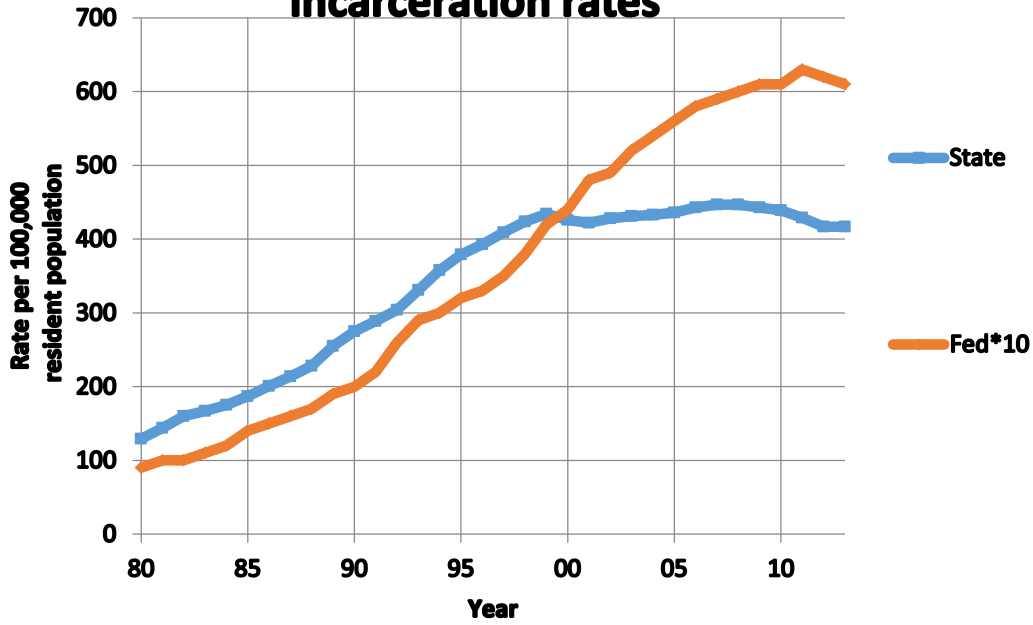


Figure 2. Federal incarceration rate by crime type

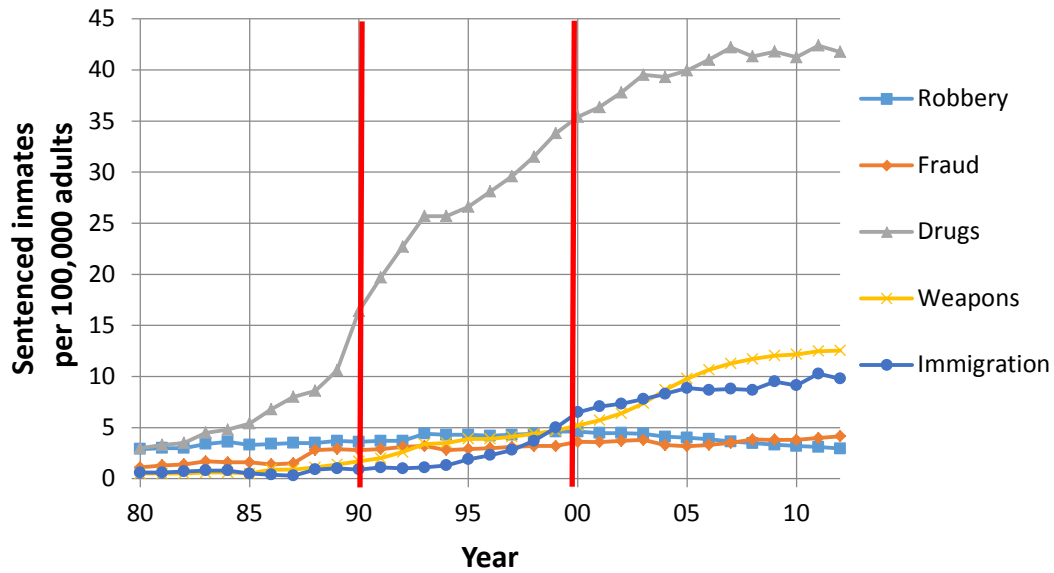


Figure 3. Federal arrest rate: suspects per 100,000 adults

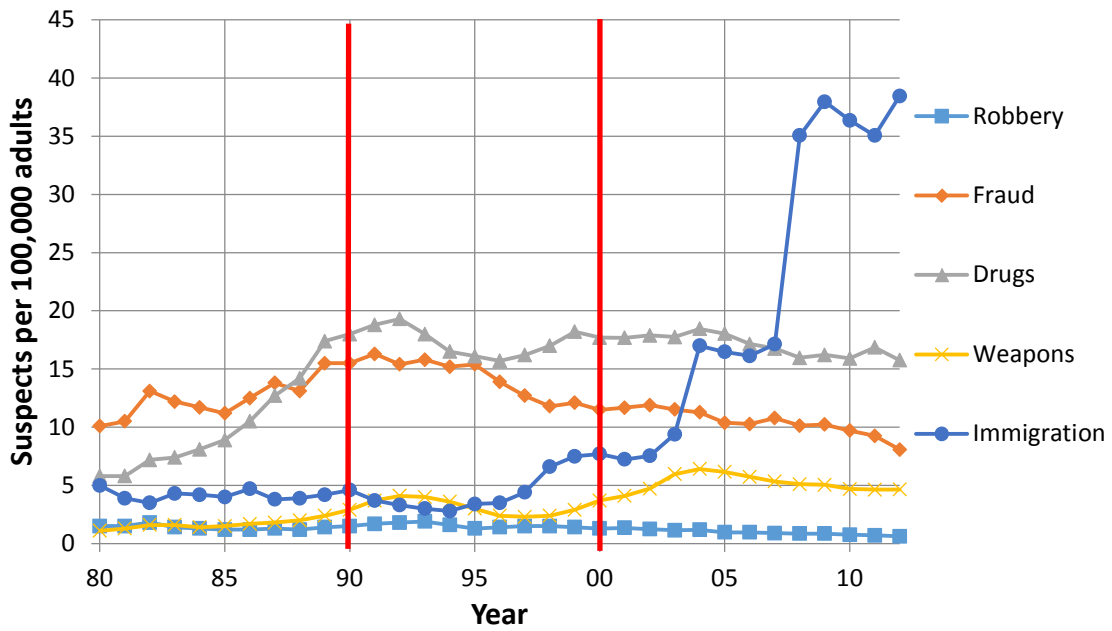


Figure 4. Federal admission rate: number admitted to prison per 100 suspects

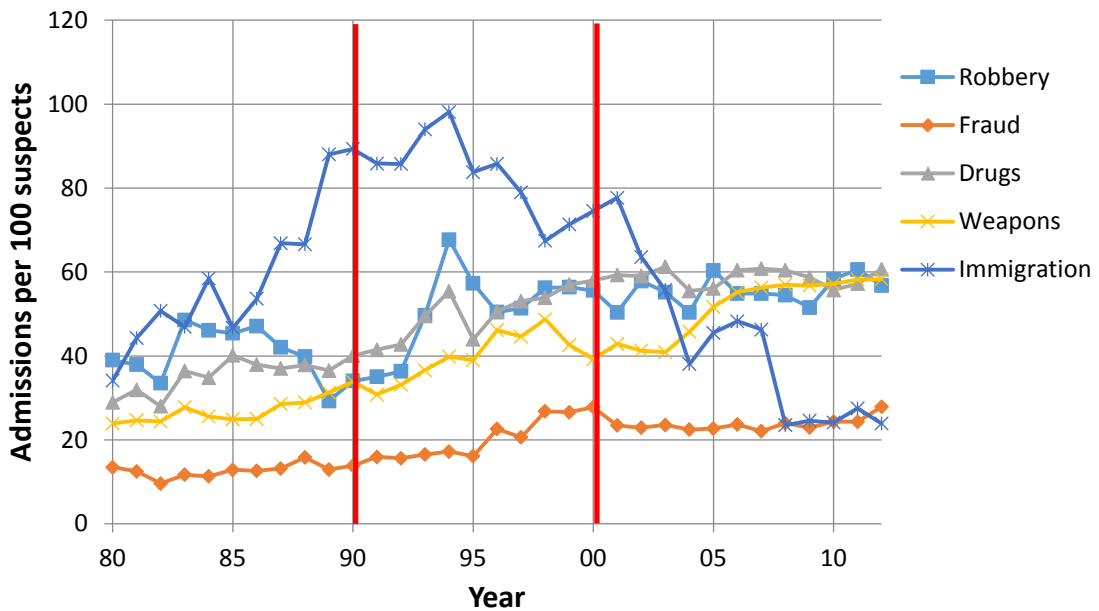


Figure 5. Estimated time served in Federal prison

