

The War on Drugs and Mass Incarceration in New York:  
The Rockefeller Drug Laws and Quality of Life Policing\*

David F. Weiman  
Department of Economics  
Barnard College, Columbia University  
[dfw5@columbia.edu](mailto:dfw5@columbia.edu)

Christopher Weiss  
Department of Sociology  
Columbia University  
[cw2036@columbia.edu](mailto:cw2036@columbia.edu)

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From the vantage point of the early 1970s, noted criminologists Alfred Blumstein and his colleagues could point to the remarkable stability in the U.S. incarceration rate since 1925, as well as comparable evidence from several other developed industrialized countries (see Figure 1a).<sup>1</sup> Despite the economic, political, and social turbulence over nearly one-half of a century – including the Great Depression, hot and cold wars, and the Civil Rights movement – the U.S. incarceration rate hovered around 107 prisoners per 100,000 people. Generalizing on this comparative historical experience, they regarded the relative size of the prison population as a social norm and hypothesized a “homeostatic” social mechanism that adjusted the severity of punishment for and the very limits of criminal behavior to maintain it. This process of “adaptation,” they argued, would occur on the margins of the criminal justice system, namely for non-violent victimless crimes and less serious offenders, where policy makers and criminal justice authorities could exercise greater discretion. To illustrate their point, they cited the Comprehensive Drug Abuse Prevention Act of 1970, which liberalized the classification of and punishments for drug violations that had contributed to soaring felony drug arrest rates in the 1960s (Peterson 1985; Courtwright 2004).

Recent historical experience, as is well known, has treated the “stability of punishment” hypothesis harshly. Since the mid-1970s but especially during the 1980s and 1990s, the U.S. incarceration soared and according to the most recent estimates has reached 500 inmates per

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<sup>1</sup>The incarceration rate in the U.S. case measures the number of state and federal inmates per 100,000 people. In the original and a follow-up article Blumstein and colleagues presented comparable evidence from Canada and Norway (Blumstein and Cohen 1973; Blumstein, Cohen, and Nagin 1976).

100,000 people or ½% of the total population (see Figure 1b). To explain this “radical departure” from the prior trend, Blumstein and Beck (1999) conducted a simple empirical exercise that decomposed the growth in incarceration rates into two sources: higher rates of criminal offending among the population and more punitive sanctions against criminal offenders. Their results certainly suggested a clear break from the past. In all but one crime category the policy variables accounted for nearly 90% of the increase in incarceration rates (see also Boggess and Bound 1997).

Analyzing changes in state-level incarceration rates over the same time period, Greenberg and West (2001) and Beckett and Western (2001) have corroborated statistically the more decisive impact of “get tough” criminal justice policies and ultimately more conservative “law and order” politics, relative to that of increases in serious violent crime (see also Western 2006, pp. 66-73; Guetzkow 2006). On the policy front, they single out two key innovations, a new regime of determinate sentencing and the war on drugs. Since the mid-1970s state and federal legislation have increasingly curtailed the discretion of judges and parole boards in setting prison sentences and terms and significantly enhanced the likelihood and length of a prison term for a felony conviction. The war on drug policies also operated at the more grassroots or local levels. The aggressive policing and prosecution of less serious drug offenders increased their risk of an arrest and a felony conviction and so of a lengthy prison term under the new harsher sentencing laws.

In this chapter we examine the political economic roots of this new U.S. criminal justice regime, which we term mass incarceration. By mass incarceration we literally refer to the vaster scale of the prison and criminal justice systems, as gauged by the population under some form of

correctional supervision, currently estimated to be 7.1 million people or 3.2% of the total (Glaze and Bonczar 2006). Following Garland (2001), we also underscore the disproportionate reach of the criminal justice system into disadvantaged inner city minority communities, where a prison experience has become more the norm than the exception among less educated young African American and Hispanic men and increasingly women (Pettit and Western 2004; Raphael 2006).

Our empirical analysis focuses on the war on drugs in New York state from the early 1970s to the early 1990s. This case-study approach is motivated by one of our central messages. The dramatic surge in incarceration rates especially among inner city minority populations depended on critical decisions made at the local level – by mayors, police commissioners, and district attorneys and judges – in implementing and hence enforcing the sentencing policies enacted in state and federal capitols. The importance of grassroots rather than higher-order policies explains the significant lag between adoption of the notorious Rockefeller Drug Laws in 1973 and the surge in New York incarceration rates fueled by felony drug convictions and commitments after 1980. Despite our regional focus, we also show that the New York experience follows the national trends at least until the early 1990s, because the state and especially New York City drug policies were forged in the same turbulent political economic crucible as that shaped criminal justice policies nationwide.

We develop these themes in four parts. In the next section we delineate the scope of mass incarceration and demonstrate the impact of a key component, the war on drugs. In section two we review the history of the war on drugs in New York from the adoption of the Rockefeller drug laws in 1973 to its aggressive enforcement by the Koch administration in the 1980s. Section three accounts empirically for the surge in prison commitment rates for drug offenses in

the 1980s through a simple composition. Based on felony processing reports we can track the flows of individuals through the criminal justice system, from an arrest to a prison commitment, and measure the relative contribution of policy changes at the local and higher (i.e., state) level. In the conclusion we track trends in incarceration rate over the longer sweep of U.S. history and propose a modified version of the “stability of punishment” hypothesis. Our alternative view posits the “epochal” stability of the incarceration rate, punctuated by sharp increases fueled by wars on drugs and more fundamentally structural political economic change.

## 1. Mass Incarceration and the War on Drugs

By regime of mass incarceration we are referring to the complex of more punitive criminal justice policies that have been adopted at every level of the criminal justice system and government. It is often characterized by the shift from discretionary to more determinate sentencing structures. Among the earliest examples are sentencing commissions or guidelines and the abolition or reform of parole boards. The former substituted mandated or voluntary sentencing grids that specified a sentence range according to the seriousness of the crime and the offender for the discretion of the sitting judge (Tonry 1996; Travis 2005). The latter likewise replaced the decisions of parole boards with simple formulas for early release based on the accumulation of “good time” credits.

The initial round of reforms in the late 1970s, it should be noted, were not intrinsically punitive. Armed with actual and experimental evidence of racial and class biases or mere arbitrariness on the part of judges and parole boards, advocates were often motivated by genuine concerns over fairness and the very legitimacy of the criminal justice system. Legislation in

Minnesota, for example, ironed out the disparities in sentencing and parole decisions, but also imposed binding resource constraints to control the growth of prison populations (Tonry 1996, esp. ch. 2 as well as D'Alessio and Stolzenberg 1995; Marvel and Moody 1996; and Nicholson-Crotty 2004). Likewise the New York Executive Advisory Committee on Sentencing (1979, pp. vi-xi), proposed sentencing guidelines to replace the current “erratic and unpredictable” system of “indeterminate” sentences, but staunchly opposed “fixed, rigid, mandatory sentencing” that imposed excessively harsh punishments such as the New York Rockefeller drug laws.

By the mid-1990s all states and the federal government had adopted some form of determinate sentencing at both the front- and back-ends of criminal justice system.<sup>2</sup> In the more conservative “get tough on crime” political environment of the 1980s and early 1990s, however, this decisive shift to a more “rigid and mechanical” sentencing regime, based on abstract principles and not individual circumstances, systematically escalated the severity of punishments – expanding the scope of and mandating prison time with longer sentences on felony convictions.<sup>3</sup> Just over one-half of the states (including the District of Columbia) and the federal government had opted for comprehensive reforms, ranging from legislatively mandated sentencing grids to sentencing guidelines and commissions that regulated or monitored judicial

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<sup>2</sup>Our terminology is inspired by Travis (2005, p. 51) and corresponds to policies that influence original sentencing decisions that commit felons to prison as opposed to those that determine when they are released and the length of their terms.

<sup>3</sup>Murakawa (2005), for example, vividly demonstrates the influence of electoral politics in the ratcheting up of federal mandatory minimum sentences on drug violations with every congressional election since 1983. Tonry (1996, p. 79), in turn, shows how the federal sentencing commission, coopted by abstract principles, redrew guidelines to ensure a kind of mathematical consistency between each element of the sentencing grid and new steeper minimum sentences on drug offenses.

decisions (see Table 1). In more piecemeal fashion all states and the federal government had enacted mandatory minimum sentencing laws for repeat offenders or select crimes, most often weapons possessions (76.5%) and drug violations (72.6%). Additionally, nearly half of the states significantly multiplied mandated punishments for repeat offenders through two- or three-strikes laws.

State governments also tightened the reigns over the terms and conditions of prisoner release and parole. Nearly two decades after Maine had abolished its parole board in favor of a mandatory system, an additional 14 (or 30%) of all states had followed suit. Even those that retained some form of discretionary release increasingly relied on formal rules for conditional release, not the decisions of an administrative panel. Consequently, the share of discretionary parole releases fell from 54.8% in 1980 to only 32.3% in 1995, while those on mandatory release increased from 18.4 to 39.0% over the same period (Hughes, Wilson, and Beck 2001, p. 4).

Truth-in-sentencing laws further curbed discretion on early release decisions by requiring offenders especially those convicted of more serious violent crimes to serve a significant percentage, most often 85%, of their sentences. The 1994 federal Crime Act spurred the diffusion of these laws across states (and the 85% standard for violent offenders) by providing funding for the necessary prison expansion. Significantly, the number of states with truth-in-sentencing laws increased sharply from 5 to 31 (or just over 60%) between 1994 and 1996, and most qualified for federal funds by adopting its tougher standard (Ditton and Wilson 1999, pp. 2-3). Finally, over the same period parole officers stepped up their monitoring of prisoners on conditional release and the enforcement of their parole conditions. Ironically, they have wielded

their discretionary authority by more frequently revoking parole on technical violations and returning offenders to prison to serve longer terms on their original commitments.

These policy shifts also occurred at the local level, that is on the front lines of the criminal justice system. City governments, often with state and federal aid, hired additional police and deployed them strategically, en masse and in dedicated units, to “combat” street crime, both the more and less serious kinds. Their aggressive, “proactive” policies targeted “disorderly” neighborhoods and likely suspects who inhabited them through more intensive surveillance stop-and-frisk searches, arrests on minor (misdemeanor) charges, and ultimately undercover operations and sweep operations (see for example Wilson 1985, pp. 66-74; Wilson and Kelling 1982).

The resulting surge in arrests can overwhelm local prosecutors and courts, which in the past had typically responded to bottlenecks by dismissing less serious cases or negotiating pleas to minor charges punishable by fines, probation, or just served time. Responding to political pressures, however, prosecutors and courts also adopted more “get tough” policies. Defendants were more often indicted and convicted on more serious charges and punished more harshly with either jail or prison time in addition to time served during case processing. Higher conviction and prison commitment rates depended on the direct evidence furnished by the police, but also on tougher mandatory sentencing policies that increased the likelihood of plea agreements and an incarceration spell. Even when prosecutors negotiated and judges acceded to plea agreements on lesser felony charges that were punished by probation or time served, these convictions could add up and result in harsher punishments on the second and third strikes.



Our in-depth analysis of mass incarceration focuses on the war on drugs for two reasons. First, this initiative ran the gamut of the entire criminal justice system, and illustrates and in many cases initiated the pivotal “get tough” policy innovations that constituted this new regime. Secondly, the war on drugs is quantitatively important in accounting for the two salient features of mass incarceration, the overall surge in prison rates and the greater prevalence of a prison experience among less educated inner city minority men.

To gauge the impact of local policies, we first chart trends in arrest rates for drug and other crimes from 1975 to 2000. Drug arrests per 100,000 people actually fell over the late 1970s, whether because of greater police leniency as hypothesized by Blumstein and Cohen or more simply fiscal exigencies that depleted law enforcement resources. Beginning in 1981 – several years before the turnaround in local expenditures on police protection and especially personnel – drug arrest rates began to rise and grew at average rate of 4.9% per year until 1997. The striking deviations from simple trend growth, between 1986 and 1994, essentially followed the uneven course of the crack epidemic within and across U.S. cities (Grogger and Willis 2000; Fryer et. al. 2005).

Without incident data on drug violations, it is not possible to ascertain whether local police were responding to a surge in drug crimes over this period. We question this simple interpretation for two reasons. First, as is evident in Figure 2, drug arrest rates grew at a much faster clip than arrests for either property or violent crimes. Between 1981 and 1989, for example, the ratio of drug to violent and property crime arrest rates doubled. Moreover, for the latter two crime types, police arrests simply kept pace with trends in reported incidents. In other words, during the 1980s policing in these cases tended to be more “reactive.”

Our second piece of contrary evidence tracks the racial composition of arrests in U.S. cities by crime type between 1980 and 2000 (see Figure 3). These data also show sharply divergent trends for drug versus violent and property crimes during the 1980s. The share of African Americans arrested for drug violations jumped from 26.9% in 1980 to 46.0% in 1989. By contrast, blacks were no more likely than whites to be arrested for violent and property crimes over the same period. Indirect evidence, moreover, suggests that at least among adolescents blacks were less likely than their white peers to commit drug violations. Surveys of high school seniors indicate a significant and increasing white-black gap in illegal drug use during the decade, and among a representative sample of adolescents interviewed in 1980 and in 2000 lower income whites reported that they were more likely to have sold drugs than their black peers.<sup>4</sup>

Moving to the next stage of the criminal justice system, Table 2 documents the greater “efficiency” of, or in our terms the more aggressive, prosecution of drug arrests. The first column shows the surge in prison commitment rates for all drug arrests between 1980 and 1996. Those arrested for drug possession or trafficking in 1990, the evidence implies, were 5.4 times more likely to serve time in prison than a decade earlier. Although the prison commitment rate fell by a quarter in 1996, it was still four times higher than at the onset of the war on drugs.

The surge in prison commitment rates conflates the impacts of “get tough” prosecution and sentencing laws. In states with mandatory minimum sentences for drug violations, after all, the successful prosecution of those arrested on felony drug charges will inexorably lead to a prison

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<sup>4</sup>Over this period the percentage of white high school seniors who reported using illegal drugs fell from 54.9% to 37.5%, while the percentage of blacks decline from 40.5% to 17% (see Pastore and Maguire 2005, Table 3.66; Western 2006, p. 41; Fairlie 2002).

term. To distill the effects of these distinct policy levers, we track felony conviction rates per arrest and prison sentence rates per felony conviction for drug trafficking offenses between 1986 and 2000. In the late 1980s both increased by comparable levels and so contributed almost equally to the growth in prison commitment rates during this period from 15.1 to 26.1%. More aggressive prosecution, however, accounts for the continued growth in prison commitment rates to nearly one-third by 2000. During the 1990s felony conviction rates jumped from 53.2% to 77.8%, whereas convicted felons were more likely to receive lighter sentences to jail and even probation.

The steady growth in conviction rates attests to the greater frequency of criminal indictments for those arrested on trafficking violations, as over 90% of the cases were settled by plea agreements not jury trials (see Table 2, column 2). Still, as noted above, prosecutors hands were strengthened by more aggressive policing and tougher sentencing policies. The former provided prosecutors with “higher quality cases,” often bolstered by the direct evidence of police officers pressing the charges. Tougher sentencing policies meanwhile increased the risk of longer mandatory minimum sentence in the case of a trial and conviction, and so made defendants especially first time offenders more likely to accept a plea agreement on lesser charges with less harsh penalties.

The prison sentence columns provide additional evidence on the impacts of “get tough” front- and back-end sentencing policies for drug trafficking convictions. With the diffusion of sentencing guidelines and mandatory minimum sentencing laws during the 1980s, both prison sentences and terms increased and by 1992 averaged 6 and 2 years, respectively. Over the next decade, however, average sentence lengths actually fell to  $4\frac{1}{3}$  years, while the actual time served

grew by 2 months or 8.3%. The spread of truth-in-sentencing laws helps to explain these divergent trends. Their mandates contributed to the sharp increase in time served relative to sentence length, from just over one-third to nearly one-half between 1992 and 2000. In response to these laws, many judges in states where they retained some discretion meted out shorter sentences to compensate.

Over the same time period parole officers have exercised greater discretion to lengthen the average time served in prison per court commitment. With greater frequency they have returned parolees to prison to serve out their terms on technical violations. As a result parole violators accounted for 35.0% of all new admissions in 2000 as compared to only 16.1% in 1980. For drug offenders, this pathway back to prison and a lengthier term has become increasingly more likely since 1980. In studies of 1983 and 1994 release cohorts, for example, the three-year reincarceration rate for drug offenders had increased significantly, from 30.3 to 49.2%, over the observation period. Moreover, nearly one-quarter of the drug offenders in the 1994 cohort, that is one-half of those recidivating, were returned to prison on a parole violation (see Weiman, Stoll, and Bushway 2007, pp. 54-61).

Like Blumstein (1982, 1983), we also find evidence of racial “disproportionality” in the prosecution and sentencing of the war on drugs, which reinforces the racial disparities in drug arrest rates. Among juveniles arrested on drug violations in the early 1990s, for example, African Americans were 37% more likely than their white counterparts to be transferred to adult courts, where they faced tougher sanctions.<sup>5</sup> Around the same time, data on adults in state courts

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<sup>5</sup>Our index of racial disproportionality is variant of the location coefficient, and compares the percentage of blacks among drug defendants transferred to adult courts (81%) with their share of defendants adjudicated in juvenile courts (59%). Once in adult court, juvenile drug defendants

indicate that blacks were disproportionately represented among drug defendants and convictions, relative to their share of drug arrests. Although incarceration rates for African Americans and whites convicted on drug charges were similar in magnitude, blacks were more likely than whites to be sentenced to prison rather than jail and received longer average sentences.<sup>6</sup>

To gauge the cumulative toll of the war on drug policies, we reckon its quantitative impact on the size and racial-ethnic composition of the prison population 1980, that is on the two quantitative dimensions of mass incarceration. Whether measured in terms of the share of the prison population or of new prison admissions, drug offenders contributed significantly to the expansion of the prison system especially from 1983 to 1990 (see Figure 4). Over this period the surge in convicted drug offenders accounted for just over 40% of the growth in state prison population, and by the end of the decade of the 1980s 21.8% of all state prisoners had been convicted and sentenced on a drug violation, as compared to just under 7% in the early 1980s. Viewed alternatively, after this critical phase in the war on drugs, drug offenders would comprise one-third of all new admissions, whether on a new commitment or parole revocation (Raphael and Stoll 2007).

Racial disparities in incarceration rates were relatively large to prior the war on drugs (Langan 1991; Sampson and Lauritsen 1997). Still, during this critical period the cumulative risks of incarceration for blacks more than doubled from 13.4% in 1979 to 29.4% in 1991

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in the early 1990s faced a 70% chance of being convicted and if convicted a 50% chance of being sentenced to prison or jail (Storm, Smith, and Snyder 1998).

<sup>6</sup>Our data come from Reaves and Smith (1995) and Langan and Cohen (1996). We note that the data on felony defendants come from the 75 largest urban counties, whereas the drug arrest data is for all cities. See also Mauer and Huling (1995).

(Bonczar and Beck 1997). In other words, if the past were prologue, cohorts of African Americans born during this regime would face a nearly 30% chance of imprisonment at some point in their life. The lifetime risks of incarceration for whites also increased sharply over the same period, but the levels and the magnitude of the change were significantly less, from 2.5 to 4.4% or by only 75%.

The war on drugs, we maintain, was the proximate cause of this widening racial disparity (Mauer 1999; Tonry 1995). Focusing on new prison admission rather than incarceration rates, Oliver and Yocom (1994) document a sharp increase in the black-white ratio from just under 7 in 1983 to around 10 in 1990 or by more than 40%. What's more, when they investigate the reason, that is offense type, responsible for this abrupt change, they clearly implicate the war on drugs policy. Between 1983 and 1991, the racial disparity in prison sentence rates for drug offenses multiplied by more than four-fold, as opposed to an only two-fold increase in the black-white ratio for violent crimes.

## 2. The War on Drugs in New York: From Rockefeller to Koch

By all accounts New York state was in the vanguard of the war on drugs, at least legislatively. In 1973, three years after Congress had repealed mandatory minimum sentences on drug violations dating from the 1950s, the state legislature adopted its own version of drug law reform mandating steep minimum sentences on the sale and use of "controlled substances" which included narcotics like heroin and cocaine but significantly not marijuana.<sup>7</sup> At the time,

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<sup>7</sup>On the federal drug law reforms, see Peterson (1985) and Murakawa (2005). Like the federal law, the Rockefeller drug law liberalized penalties against marijuana, which was more commonly sold and used by white affluent youth (Rosenblatt 1973, pp. 37-38). Our synopsis of

the Rockefeller laws were considered to be among the “toughest” drug sanctions in the country, a dubious distinction which it still holds today.

The original Rockefeller drug law contained three key reforms. First, through a more refined system of classification, it greatly expanded the scope of felony drug offenses from an “A-1” offense for the sale of one ounce of a narcotic (or possession of two ounces) to class D and E felonies for possession with intent to sell or of drug paraphernalia. Second, it significantly stiffened the penalties on all felony drug offenses but especially on the class A (first through third degree) ones. To take the most extreme case, the law elevated the sale of one ounce of cocaine and heroin from a class C to a class A-1 drug felony offense – equivalent to homicide and first-degree kidnaping and arson – which carried a mandatory minimum sentence of 15-25 years in prison. Finally, to increase the sting of these penalties, the law also sharply curtailed prosecutors’ discretion in negotiating pleas to only those charged with class A felonies and only in exchange for “material evidence.”

The Rockefeller law was not passed in isolation. Immediately on its heels, the legislature also enacted a Second Felony Offender (SFO) or two-strikes law. The law defined a new class of “predicate” felons, who had been convicted but not necessarily incarcerated (in any jurisdiction not only New York state) on a priory felony offense within the past ten years. If found guilty on a second offense, they faced either steep mandatory minimum sentences in cases where a first offender could receive probation, an elevated charge (such as from a class C to

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the Rockefeller laws and its political history are drawn from Rosenblatt and the New York Times reports on the legislation (in articles on 1/5/1973, p. 65; 1/8/1973, p. 109; 2/24/1973, p. 60; 4/5/1973, p. 49; 4/13/1973, p. 1; 4/28/1973, p. 69; 4/30/1973, p. 27; 5/1/1973, p. 86; 5/2/1973, p. 23; 5/3/1973, p. 39; 5/4/1973, pp. 74, 77; 5/9/1973, p. 1; and 8/31/1973, p. 55)

class B offense) and associated steeper penalties, and in some cases both. The original SFO law “largely” and now – after subsequent reforms aimed at violent and juvenile offenders – almost exclusively applies to felony drug violations.

The politics of the Rockefeller laws illustrate the interplay of the countervailing political forces shaping criminal justice policies in the 1970s. As is evident by his seemingly contradictory drug policies during the period, Rockefeller was straddling a tenuous middle ground in an increasingly polarized polity (Barker 2006; Griset 1991, pp. 61-68). Through his budget priorities even after 1973, Rockefeller demonstrated a firm commitment to drug rehabilitation programs and the underlying view that treatment, not incarceration, was the appropriate cure for petty retail drug dealers.

His “rehabilitative ideal” was confronted with the harsh realities of the heroin-violent crime epidemic sweeping through New York City in the early 1970s, seen in the surging homicide rates just prior to the legislation (see Figure 5). Instead of converting to the emerging conventional wisdom that “nothing works,” however, Rockefeller crafted a more “pragmatic” solution, combining sticks – the drug law – aimed at high-level drug dealers and carrots – rehabilitation – for jugglers who sold drugs to feed their habits. According to this view, the two policies were complementary; the former, if successful, would disrupt the supply channels that had undermined the success of the latter by cheaply feeding the habits of drug addicts.

At the same time Rockefeller’s presidential ambitions clearly confronted and accommodated another harsh reality albeit in the political realm, the conservative drift of the Republican party. Through his unwavering support of the drug law along with his tough stance on the Attica uprising and death penalty, he sought to strengthen his conservative “law and order” credentials



for the 1976 Republican nomination campaign, where he expected to face Ronald Reagan who as California governor had pioneered determinate sentencing reform. Closer to home, this political trend translated into powerful Conservative party, which constituted the critical swing votes for drug law. The bill passed the Senate by an overwhelming 41-14 majority on April 27<sup>th</sup>, but was held up in the state Assembly by opposition from Democrats and the Conservatives. Faced with this choice of political bedfellows, Rockefeller with pressure from the Republican assembly leadership opted to compromise with the Conservatives on the plea agreement provision of the law but especially on the SFO law (Griset 1991, p. 61).

Trends in state-level incarceration rates and the share of drug offenders in prison suggest that “pragmatism” trumped politics in the implementation of the Rockefeller laws until 1980 (see Figure 6). Right after the drug law was passed, the incarceration rate reversed its nearly decade-long decline and by 1980 had increased by 70%. Still, over the same period the index crime rate had also swelled by 55%. Moreover, the share of prisoners incarcerated for drug offenses increased marginally, from 11.1% to 12.0% in 1976 and then fell to only 8.6% in 1981.

One plausible explanation for this unexpected turnaround, which is consistent with the experience of other states that had adopted determinate sentencing reforms, is the impact of resource constraints on the criminal justice system, in this case by default not design. Because of budget-tightening after the 1974 fiscal crisis, the New York City police department had sharply cut its force size and shifted its priorities from the drug beat to more serious violent crimes (Corman and Mocan 2000; New York Times, 5/18/1980, WC p. 1; 6/9/1981, p. B1). Still, other evidence – declines in drug-poisoning deaths and homicide rates beginning around 1974 – points

to an alternative explanation – that the heroin epidemic had in fact run its course by 1976 (see Figure 6).

The results of a careful before-after study of the impact of the Rockefeller law in New York City by the Joint Committee on New York Drug Law Evaluation (1977) also corroborates Barker's hypothesis of "pragmatic" politics. Two years into the new legal regime, the number of inmates committed to prison on felony drug offenses had not increased significantly. The reason, the study finds, is that drug arrests, indictments, and convictions in New York City had fallen sharply over the period. Consistent with their almost uniform opposition to the law which they regarded as wasteful if not counter-productive, local criminal justice authorities from the police to judges simply refused to enforce the law, at least against marginal drug offenders. Taking a more pragmatic stance, they did succeed in locking up more serious drug dealers for longer terms, although the evidence on drug markets indicates that this policy of selective incarceration had little impact on supply chains.

Obviously, conditions changed in the 1980s, as convicted drug offenders fueled the rapid growth in the state's prison population and incarceration rate (see Figure 6). Between 1980 and 1988 the share of drug offenders among prison inmates jumped from 9.0% to 25.4%, and by this date drug offenders accounted for 37% of all new prison commitments. We chose this end-date judiciously, because one variable that had not changed by then was the Rockefeller drug law, which was strengthened in 1988 in response to the raging crack epidemic in New York City (Nelson 1992). Strikingly, the revision, which lowered the quantity thresholds to trigger the law's tough sanctions, did not significantly deflect the earlier trends.

The escalation of the war on drugs in New York after 1980, then, depended on policy innovations that increased the number of felony drug arrests and convictions covered by the existing statute, not legislative changes that expanded its scope. More funding from federal and state sources for additional prisons, judges, prosecutors, and police would certainly qualify, but at the end of the day they too required implementation at the local level, that is complementary decisions by local authorities. To identify these changes, we searched through the New York Times over the period 1980 to 1988 for articles that explicitly discussed or simply indicated a shift in drug enforcement policies at the grassroots level.

Consistent with the turning point in the data, our search pinpointed two related developments in 1981, which Governor Hugh Carey laid out his January budget address (New York Times 1/8/1981 p. A1; 1/20/1981, p. 40). The first specified significant state investments in criminal justice capacity at the state and local levels. His budget included more funding for prison construction and state prosecutors, but also for local law enforcement. With state (and later federal) assistance as well burgeoning tax coffers funded by the economic recovery and fiscal reforms, the Koch administration expanded the size of the city's police force by 19% between 1981 and 1988 (Langan 2004; see also Corman and Mocan 2000).

Second and equally important was Carey's announcement of a new joint state-local police initiative to be rolled out at mid-year, which would target more serious drug trafficking offenses "in ... cities where the[ir] incidence ... is most severe." Significantly, at the end of July The Times (7/3/1981, p. A1) reported on the formation of a "new police unit," which would conduct undercover and sweep operations "to battle drugs in public places." In striking contrast to Carey's message, however, the police operation would target the "low-level drug user," who the

police commissioner claimed “has not been treated seriously enough.” When informed of the policy, the Manhattan district attorney pledged his cooperation, but also expressed concerns over the allocation of policing and prosecutors’ resources to misdemeanor drug arrests, typically punishable by a fine or probation. Nonetheless, judging by the frequency of the reporting, the police hierarchy were clearly eager to keep the press informed about the unit’s activities, even though the vast majority of arrests – 70% according to one article – “resulted in non-jail sentences.”<sup>8</sup>

Undeterred by these outcomes, Mayor Koch affirmed his commitment to the program in late August, which he couched in terms of a broader agenda against “quality-of-life” offenses. Anticipating Kelling and Wilson (1982), Koch and his police commissioner articulated the foundations of “broken windows” policing to “retake the streets.” They insisted that targeted operations in neighborhoods rife with disorder and fear – ranging from undercover and sweep arrests of “gamblers, prostitutes, and drug dealers” to merely disbanding loitering gangs – would restore “respect for authority and adherence to law,” as well as “for other people .. [and] other people’s property.” In 1984 and again in 1988 Koch and his new police commissioner Benjamin Ward invoked the same rationale to explain the evolution and escalation of police strategies in response to another heroin and the crack epidemics – Operation Pressure Point and the Tactical Narcotics Teams respectively.

Following the announcement of each initiative, The Times regularly reported on the results – mounting arrests of low-level drug dealers followed by sharp drops in reported crimes, notably

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<sup>8</sup>See New York Times 8/30/1981, p. 179; as well as reports published on 2/27/1981, p. A1; 6/9/1981, p. B1; 7/3/1981, p. A1; 8/9/1981, p. E22; 9/18/1981, p. B3; and 9/20/1981, p. SM29.

robberies and burglaries.<sup>9</sup> Yet, its periodic assessments of these initiatives echoed its conclusions of their predecessor, as well as other studies reported by Wilson (1985). More arrests did translate into more felony convictions and longer prison sentences, especially for the large share of repeat offenders. Because of the overcrowding of prosecutors' offices and the courts or the poor quality of police evidence, the vast majority of arrests were either dismissed or resulted in no jail sentences. Moreover, with the exception of the initial Operation Pressure Point foray into the Lower East Side, subsequent crackdowns had at best transitory effects on the drug trade and more serious crime. Ward readily acknowledged that these concentrated operations would only put a dent into the drug epidemics and associated violent crime, but still justified the expenditure of law enforcement resources and other disruptions on the "broken windows" grounds of reclaiming neighborhoods and calming the complaints and fears of their residents (New York Times 1/20/1984, p. B2)..

This decisive shift from the politics of pragmatism to the politics of disorder and fear, we maintain, explains why the trends in New York and U.S. incarceration rates converge over the period 1980 to 1992 (see Figure 6 and Garland 2001b; Simon 2007). Paralleling national trends, political realignments in New York City forged a new conservative majority that coalesced around a Democratic, not Republican, mayoral candidate, Ed Koch (Mollenkopf 1991, 1991). Like the Reagan majority, Mollenkopf shows, the Koch coalition combined traditional Republicans, who favored his conservative economic and fiscal policies, and traditionally

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<sup>9</sup>See the New York Times articles published on 1/20/1984, p. B2; 2/7/1984, p. A1; 2/17/1984, p. B5; 2/19/1984, p. A7; 2/26/1984, p. A39; 3/5/1984, p. B1; 3/21/1984, p. B6; 4/7/1984, p. 29; 5/14/1984, p. B4; 5/22/1984, p. B4; 1/27/1985, p. A24; 1/18/1986, B1; 7/11/1986, B1; 3/9/1988, p. B3; 5/5/1988. p. B1; 8/31/1988. p. A2 ; 11/16/1988. p. A1; 11/29/1988. p. B1; 12/5/1988, p. A1; 5/31/1989, p. B1; and 8/3/1992, p. A1.

Democratic white working class and middle-class voters, to whom he appealed through his racially laced anti-welfare and law and order rhetoric (Rieder 1985). In turn, under Koch New York City police pioneered many of the aggressive street-level tactics that diffused across other large cities and fueled the surge in drug arrests, convictions, and prison commitments documented in the previous section (see for example New York Times 9/20/1981, p. SM29; 12/15/1982, p. 12/15/1982, p. B1).

A more fundamental diagnosis of Koch's electoral success, in turn, identifies a common national thread, what has been termed the "fall of the the New Deal [Democratic] order" (Fraser and Gerstle 1989). Like Reagan famous reference to the "misery index," Koch's politics of disorder was not mere rhetoric. After all he could point to glaring "exemplars" of a flawed liberal regime, notably the city's fiscal collapse in 1974, the blackout riots in the south Bronx in 1977, and the raging heroin-violent crime epidemic in minority neighborhoods (Mahler 2005; Fuchs 1992; Brecher and Horton 1991).

Like the stagflation crisis, these pivotal events were products of deeper fissures in the city's political economy during the 1970s (Drennan 1991; Bailey and Waldinger 1991; Harris 1950; Kasarda 1995; Jargowsky 1997). Structural economic changes that both magnified and were reinforced by cyclical shocks wracked the city's traditional economic bases. Over the decade, it suffered sharp drops in employment in industrial and other well-paid unionized sectors and a net outmigration of population, especially middle class households, to suburban and more distant locations. With a diminished tax base and retrenchment in state and federal aid, the city government also curtailed its employment and social welfare spending. The net result of these political economic forces was a sharp increase in the levels but also spatial concentration of

joblessness and poverty in minority neighborhoods, precisely the conditions that were conducive to the spread of disorder and crime (Sullivan 1991; Sampson and Raudenbush 1999; Sampson and Wilson 1995).

### 3. Accounting for Mass Incarceration in New York

To gauge the impacts of the Rockefeller drug laws before and after 1980, we analyzed two primary sources: the original data compiled by Joint Committee on New York Drug Law Evaluation (1977) but especially the felony processing reports published by New York States Division of Criminal Justice Services. The latter source tracks the flow of individuals through the state's criminal justice system, from arrests through disposition and, where applicable, sentencing. Starting in 1974 – the year after the Rockefeller law was enacted – we collected data in five-year intervals up to 1994, by which time the Koch version of quality of life policing had been dismantled (New York Times 8/3/1992, p. A1).

Our analysis is presented in two steps. We first document changes the key policy variables determining the flows of individuals through the criminal justice system: total felony arrests, indictment rates per arrest, conviction rates per indictment, and prison sentence rates per conviction. We construe the first three to be grassroots policies, subject to the discretion of local police, prosecutors, and judges. The last one also depends on state sentencing policy. Based on a “growth accounting” model of the type used by Blumstein and Beck (1999), we then identify proximate causes of rising prison admissions rates and assess the relative contribution of grassroots versus state sentencing policies, that is impact of changes in arrests and indictment and conviction rates versus sentencing rates.

Our results offer some surprising insight into the implementation of the Rockefeller Drug Laws and its uneven impact on the criminal justice system. In 1974 there were more than 124,000 felony arrests in the state, 14% of which were drug felonies (see Figure 7). Five years later, the number of felony arrests statewide increased by nearly 11%; however, the number of drug felony arrests actually declined by more than one-third. Moreover, the statewide figures in Figure 7 mask significant regional variation. Over the period the number of felony drug arrests in New York City increased slightly (by 5.4%), while in the rest of the state, felony drug arrests fell by more than 70% (data not shown).

Between 1979 and 1984, we see striking evidence of the New York City “quality of life” policing policy in the doubling of drug felony arrests (from 11,305 to nearly 21,000) and increasing share of drug arrests in total felony arrests statewide. This trend accelerates over the next decade, as the drug felony arrests multiply by more than 250%. By 1994, drug crimes comprise 28% of all felony arrests statewide, up from 14% in 1974.

The evidence on indictment rates presents a similar picture. In 1974 just over one-quarter of felony arrests resulted in indictments, although those arrested on a drug felony were indicted, with at a higher rate of 35.5%. Remarkably, these percentages declined in the first five years under the Rockefeller Laws. In 1979 the corresponding figures were 22.9% for all felonies and 30.7% for drug crimes. By 1984 indictment rates had more or less returned to their 1974 levels. Contrary to our expectations, the likelihood of an indictment conditional on arrest had not changed substantially over the first decade of the Rockefeller regime. After 1984 indictment rates surge, especially for drug felonies. By 1994 more than 1/3 of those arrested on any felony charge and 1/2 of those arrested on a felony drug violation were indicted.



Unlike the first two variables, changes in conviction rates were more immediate. In 1974 conviction rates were almost two-thirds for all felonies and one-half for drug indictments. Five years later conviction rate for all felonies including drug crimes had increased to more than 75%. These rates continued to increase over each phase of our study period so that by 1994 more than 87% of all felony indictments – and 93% of drug-specific felony indictments – resulted in a conviction.

The final step in the pipeline to prison – the sentencing rate – shows a similar pattern of increase following the implementation of the Rockefeller Laws. In 1974, fewer than half (46%) of felony convictions resulted in a sentence of prison or jail. However, five years later, this figure had risen to 62% of convictions. The later years of our examination period show a similar increase, such that by 1994, 71% of felony convictions result in incarceration.

We observe a similar sharp increase in prison sentencing rates for drug felony convictions. In 1974 only slightly more than one-third of drug convictions resulted in prison or jail time, substantially lower than the likelihood of imprisonment for all felonies (35% for drug conviction, 46% for any other conviction). Under the influence of mandatory sentencing regime, the likelihood of incarceration increases by more than half in the late 1970s, to 67% in 1979 and then more gradually to three-quarters by 1994.

Summarized in Table 3, our evidence helps to explain why the Rockefeller law did not have an immediate impact on overall incarceration rate in New York. In the late 1970s both felony drug arrests and indictment rates per arrest fell. Consistent with the findings of the New York City Bar Association study and our narrative account, the local police and local prosecutors

refused to aggressively implement the law, in part because they feared that the court system would be unable to cope with the demands of added arrests.

From the data on conviction and prison sentencing rates, moreover, we find additional support for our “pragmatic” view on Rockefeller’s policy. Armed with this more powerful sentencing instrument, police and prosecutors devote their admittedly more limited resources to tracking down, arresting, and prosecuting more serious drug offenders. In turn, we observe a 50% increase in conviction rates from one-half to three-quarters over the period, and a greater likelihood of incarceration and in particular a prison commitment for those convicted of drug crimes. Probation, by contrast, was far less common used in this period.

Finally, after 1979 we see the clear impact of the Koch administration quality of life policing strategy which targeted less serious offenders including low-level drug traffickers and users. Drug arrests doubled over the next five years, and again over the decade 1984 to 1994 with the adoption of the more targeted Operation Pressure Point and Tactical Narcotics Teams strategies. Local prosecutors were more gradually assimilated into this new harsher regime. Indictment and conviction rates remained unchanged in the early 1980s, but then increased significantly over the subsequent decade. Taken together, our estimates imply the likelihood of a prison commitment conditional on an arrest nearly doubled between 1984 and 1994, from 18% to 35%. Our evidence also shows the importance of predicate or second felony offender laws on the growth of the prison population, as they comprised an increasing share of the arrest pool.

Our growth accounting analysis (in Table 4) provides an alternative way of viewing the cumulative impact of these different components on aggregate flow of prison commitments over the decade 1984 to 1994. The upper panels of the table replicate the data presented in Table 2.

Given the 1984 arrests levels, we then project the number of prison admissions, if those charged had been subject to the 1994 indictment, conviction, and incarceration rates. This procedure yields an expected number of 8,238 incarcerated persons, which is nearly twice the observed total of 4,274. We also estimate the number of prison admissions that would result if we subjected 1984 arrestees to 1984 rates except for the 1994 indictment rate. This change would result in 50% more people in jail or prison than the observed value. Conversely, if we subject the 1994 arrest pool to the 1984 rates of indictment, conviction, and prison sentencing, the prison admissions would be halved.

#### 4. Epochal Change and the Relative Stability of Punishment

To underscore the pivotal role of war on drugs policies in explaining the onset this new regime of mass incarceration, we take a more historical perspective and track trends in U.S. incarceration rates over the century before 1980. For this we must rely on the more comprehensive enumeration of the prison population by the census bureau, which includes those institutionalized in jails and reformatories. Still, thanks to Margaret Cahalan (1979, see also Cahalan et al 1986), we have a consistent series over this broad sweep of history, which matches up well with the Bureau of Justice data for the modern (post-1930) period. Over this one-half century, these data also evidence the relative stability of incarceration rates including the sharp 1960s dip, albeit around a slightly higher expected level (compare Figure 12 with Figure 1a).

As Cahalan observes, these historical statistics call into question the very empirical foundations of Blumstein and Cohen's original stability of punishment hypothesis. From this perspective, the initial surge in incarceration rates before 1940 corresponds to an abrupt

transition from an earlier lower plateau, not a “homeostatic” adjustment from a transitory trough. In response to Cahalan, however, Blumstein and Moitra (1980) qualify, not reject, the original hypothesis. They insist on the relative stability of punishment over extended periods of “relative social stability” – around 40 years according to these data – punctuated by abrupt increases brought about by structural economic, social, and political shifts. In particular, they emphasize the impact of World War I in accelerating geographical mobility and urbanization, which in turn led to an increased reliance of formal social control in large urban centers rather than the more informal mechanisms within rural communities.

We are sympathetic with this alternative “epochal” view on the stability of punishment. Indeed, in light of the historical experience, it is tempting to read the recent run-up in incarceration rates as evidence of yet another transition period to a new even higher plateau. Of course, such a conclusion is premature until we accumulate more evidence on the relative stability of incarceration rates after 1998 when they began to level off. We are also skeptical of the Blumstein-Moitra explanation of the inter-war transition, in part because it ignores the acceleration in rural-urban migration and the spatial concentration of the population in urban areas after the Great Depression of the 1890s, almost three decades before the 1920s jump in incarceration rates. Additionally, it cannot readily explain the uneven regional trends in incarceration rates between 1910 and 1940, such as the sluggish growth in or declining incarceration rates in “receiving” regions like the Northeast and West and accelerating rates in “sending” regions like the South.

We can, however, point to a common proximate cause of accelerating incarceration rates beginning in the early 1920s and early 1980s, the war on drugs. Again, with the historical data

compiled by Cahalan, we can track the percentage of inmates incarcerated on “moral” offenses between 1910 and 1980, where this quaint historical term roughly translates into the modern categories of public order and drug crimes (see Figure 13). Between 1910 and 1923 the share of prisoners convicted on “moral” offenses jumped from 5.5 to 17.3%, an almost parallel increase to the surge in imprisoned drug offenders over the 1980s. After peaking in 1940 at 25.6% (or 18.4% using the narrower definition), it declined steadily until the 1970s and especially 1980s. During the earlier episode the largest source of growth in this inmate category was “liquor law” and “drunkenness” violations; the former, more serious felony charge increased around 9-fold over the 30 year period. In the more recent episode, of course, the main culprit was drug law violations.

Many studies have delineated the striking similarities between the legal wars against alcohol and drugs, notably their focus on the social regulation of disadvantaged urban minorities – eastern and southern European immigrants in the 1920s and blacks and Hispanics in the 1980s – as well as their impact on the spread of lethal gang-gun violence (see for example Levine and Reinerman 1991; Musto 1999). We briefly mention other historical parallels that strengthen the case for our epochal perspective on mass incarceration. These decades also witnessed profound technological, structural economic, and institutional changes that increased the demands for skilled relative to unskilled labor and economic inequality (Gordon 2006; Goldin and Katz 1998). And in response to mounting concerns over social “disorder,” the political tide shifted in a more conservative direction (see Goldin 1994 for example). Strikingly, these very political economic factors also contributed significantly to the surge in incarceration rates since 1980.

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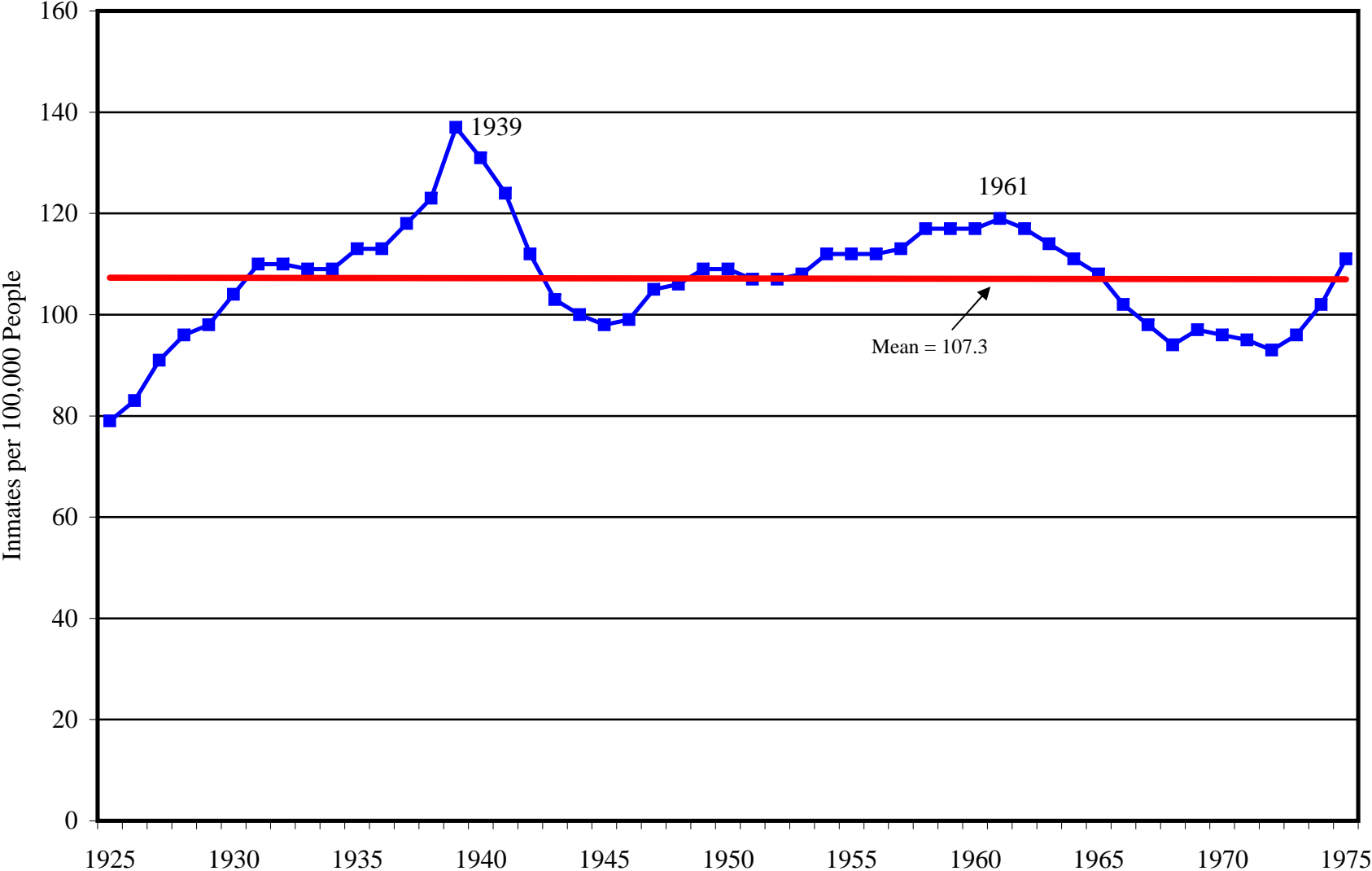
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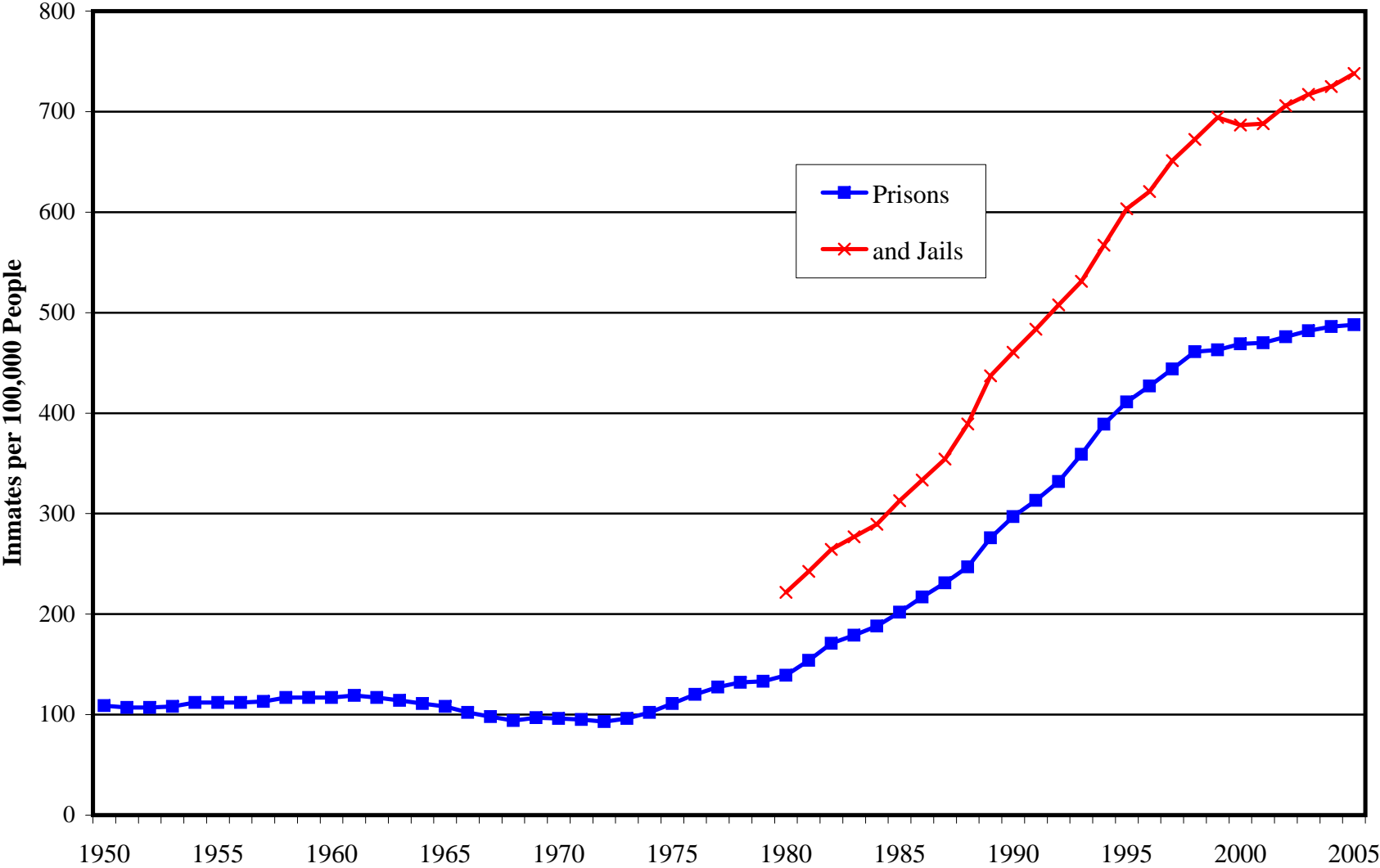
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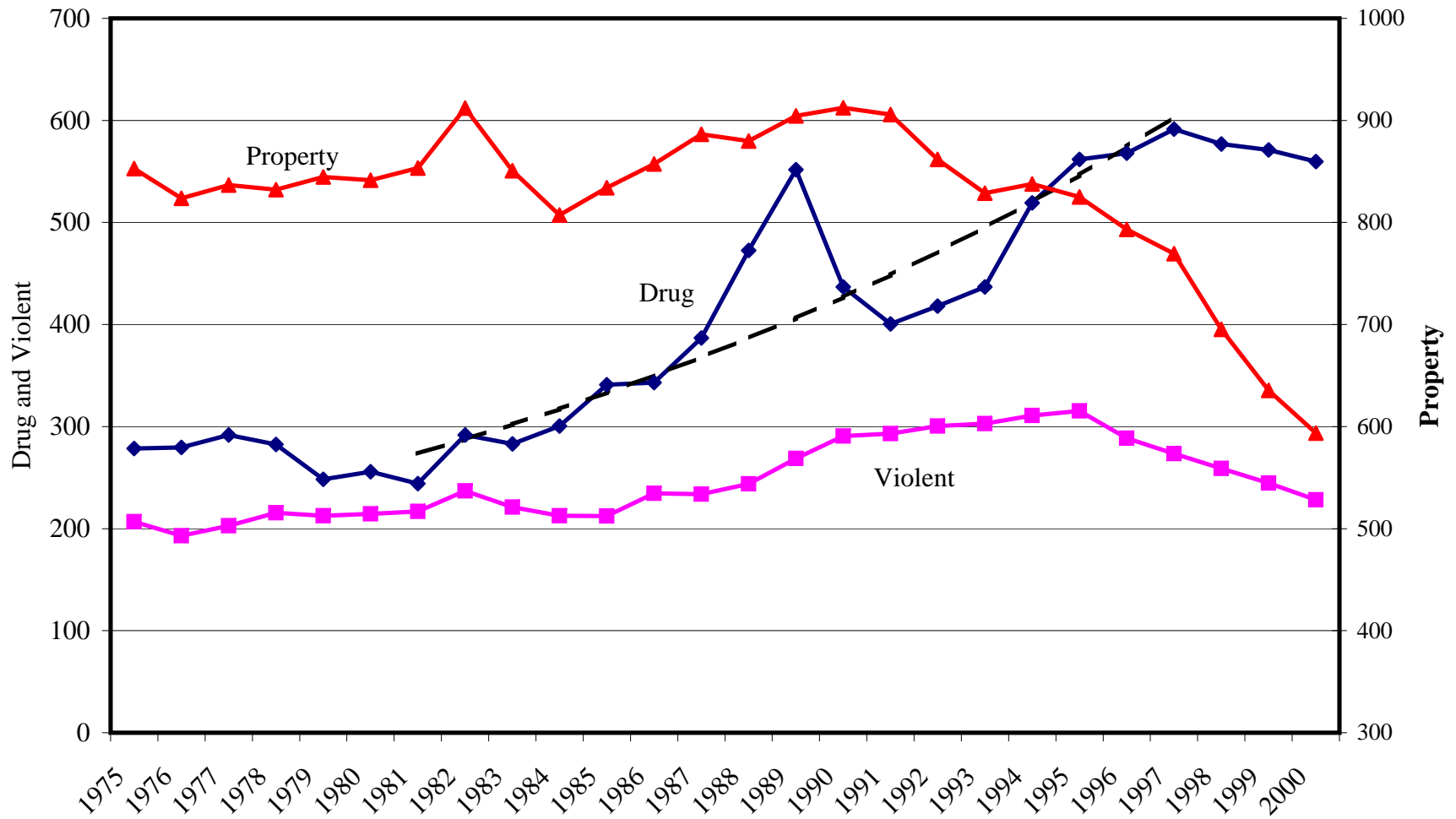
**Figure 1a**  
**Prison and Total Incarceration Rates, 1925-1975**



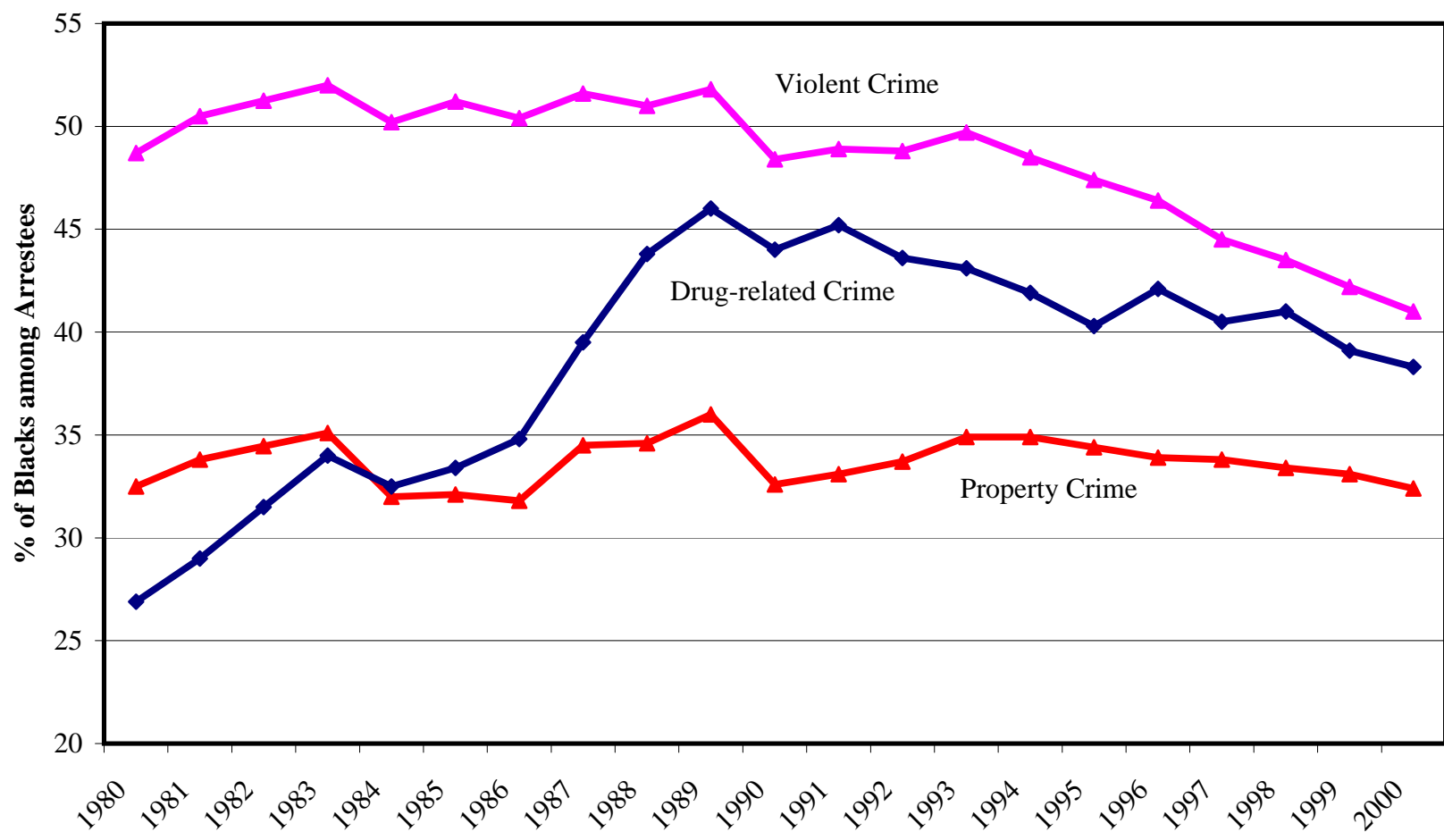
**Figure 1b**  
**Prison and Total Incarceration Rates, 1950-2005**



**Figure 2**  
**Arrest Rates for Drug, Violent, and Property Crimes**  
(per 100,000 people)

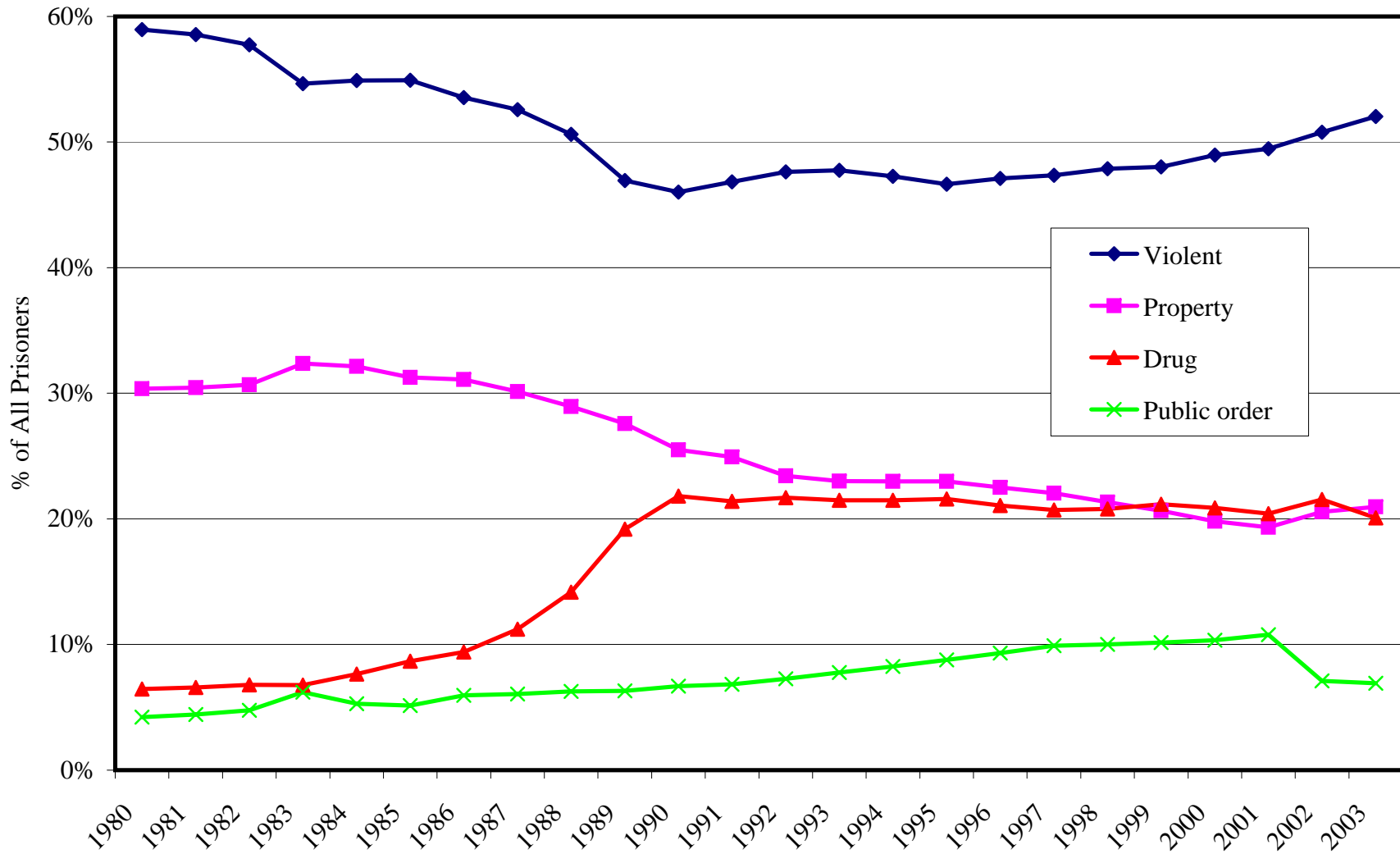


**Figure 3**  
**Percentage of Blacks Arrested for Major Crimes in U.S. Cities, 1980 - 2000**

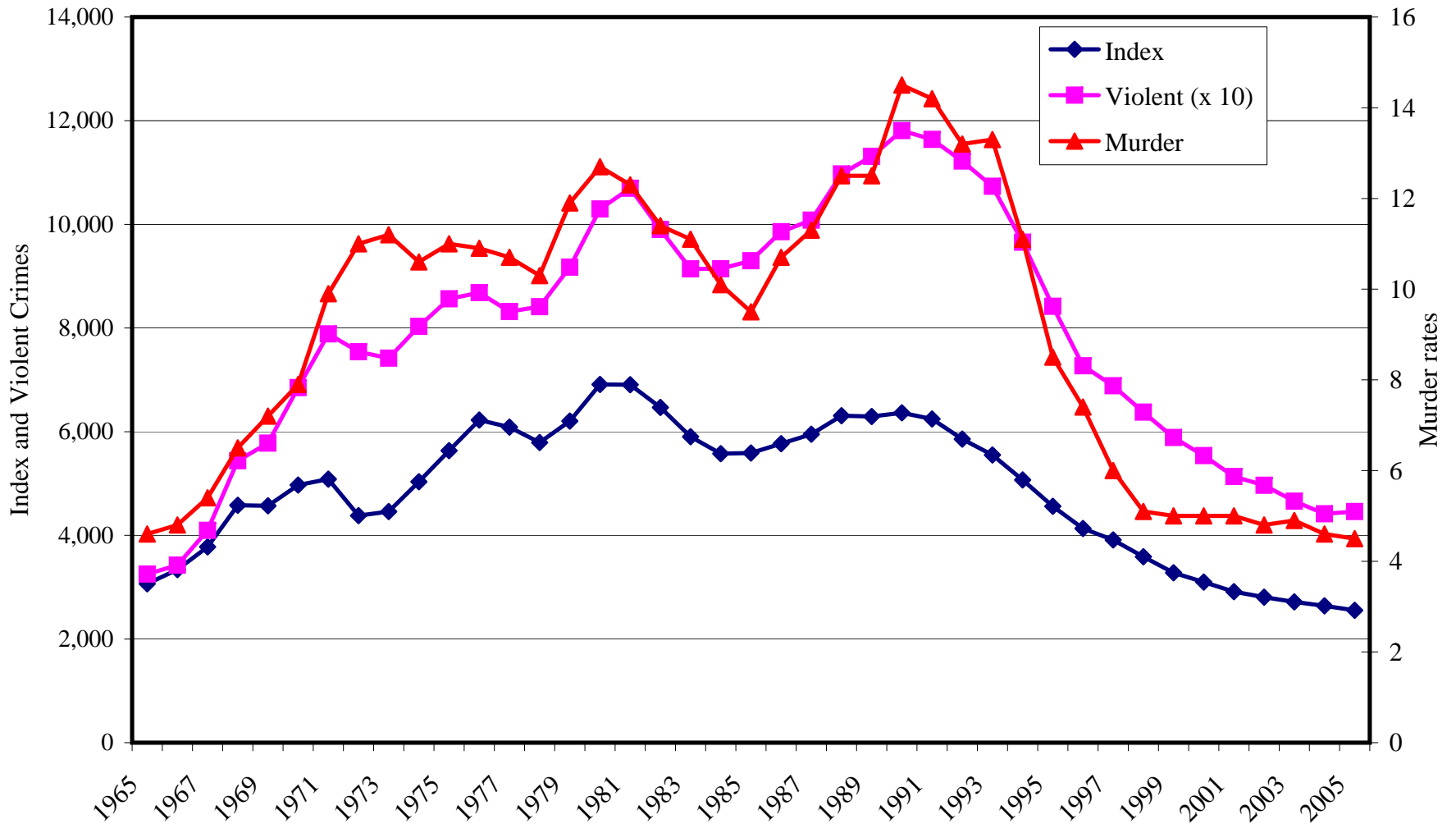


Source: Patore and McGuire (2006) and earlier years.

**Figure 4**  
**Distribution of State Prisoners by Most Serious Offense**

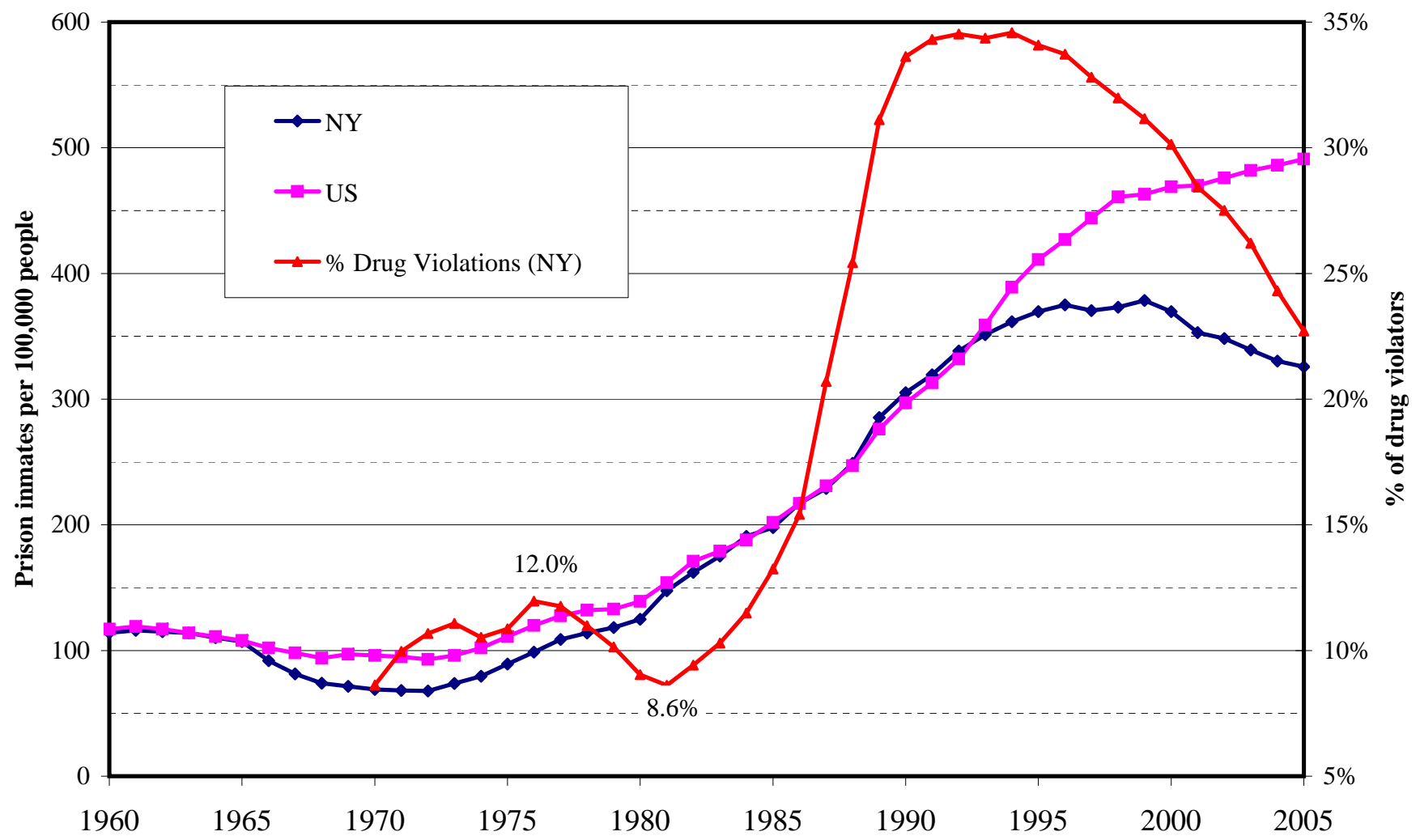


**Figure 5**  
**Crime Rates in New York State, 1960 to 2005**  
(per 100,000 people)

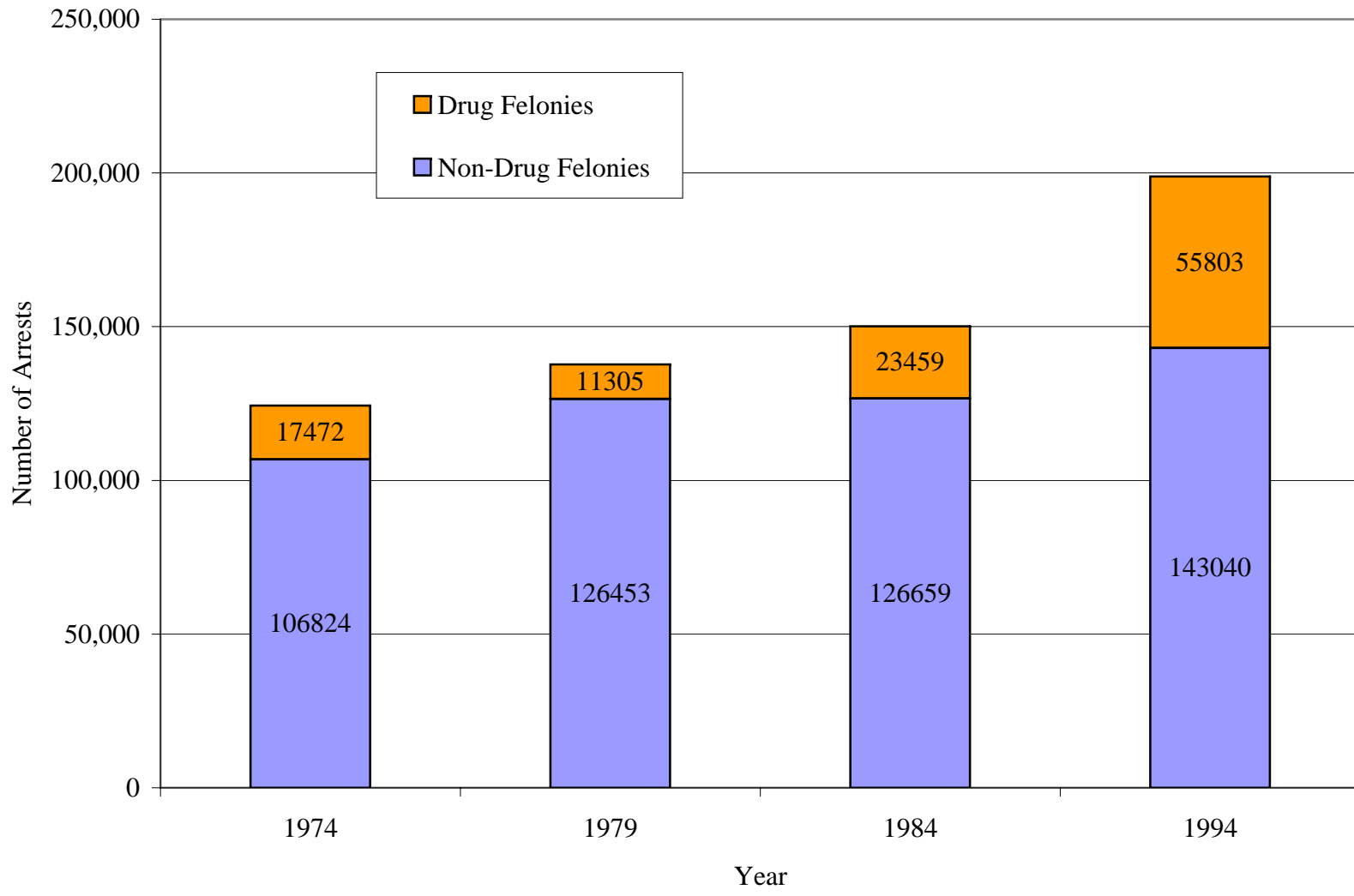




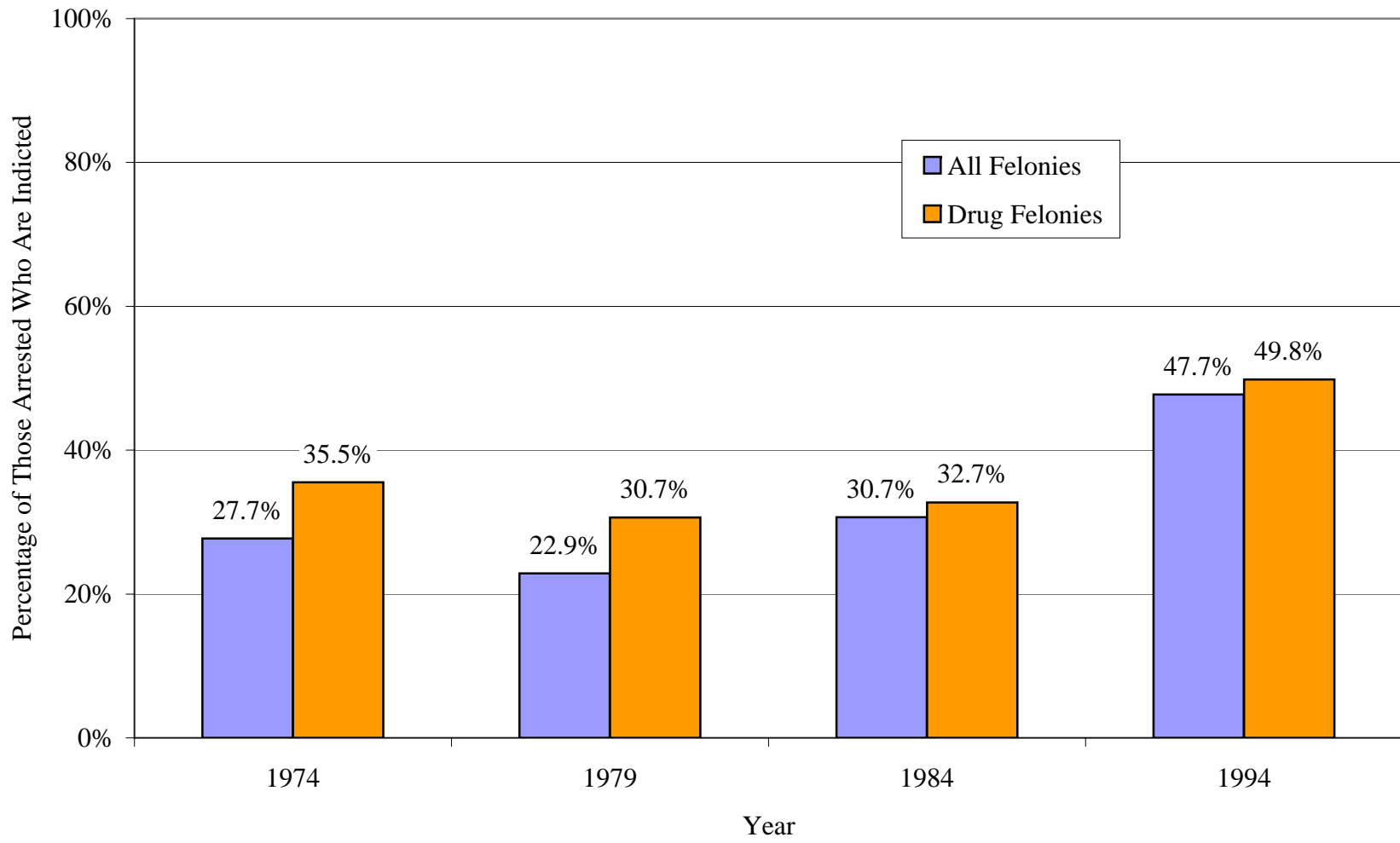
**Figure 6**  
**New York State and U.S. Incarceration Rates, 1960 to 2005**



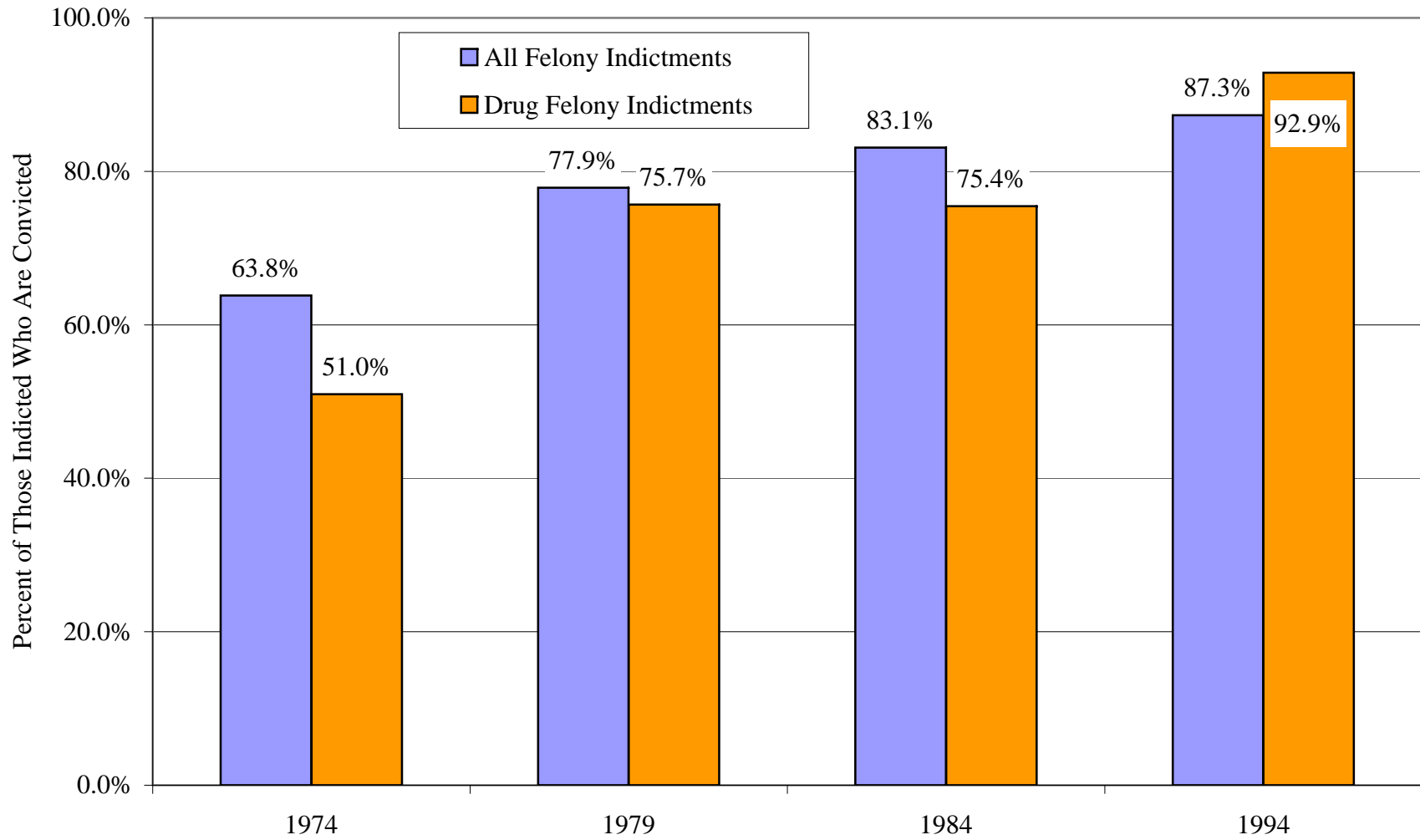
**Figure 7**  
**Felony Arrests, New York State**



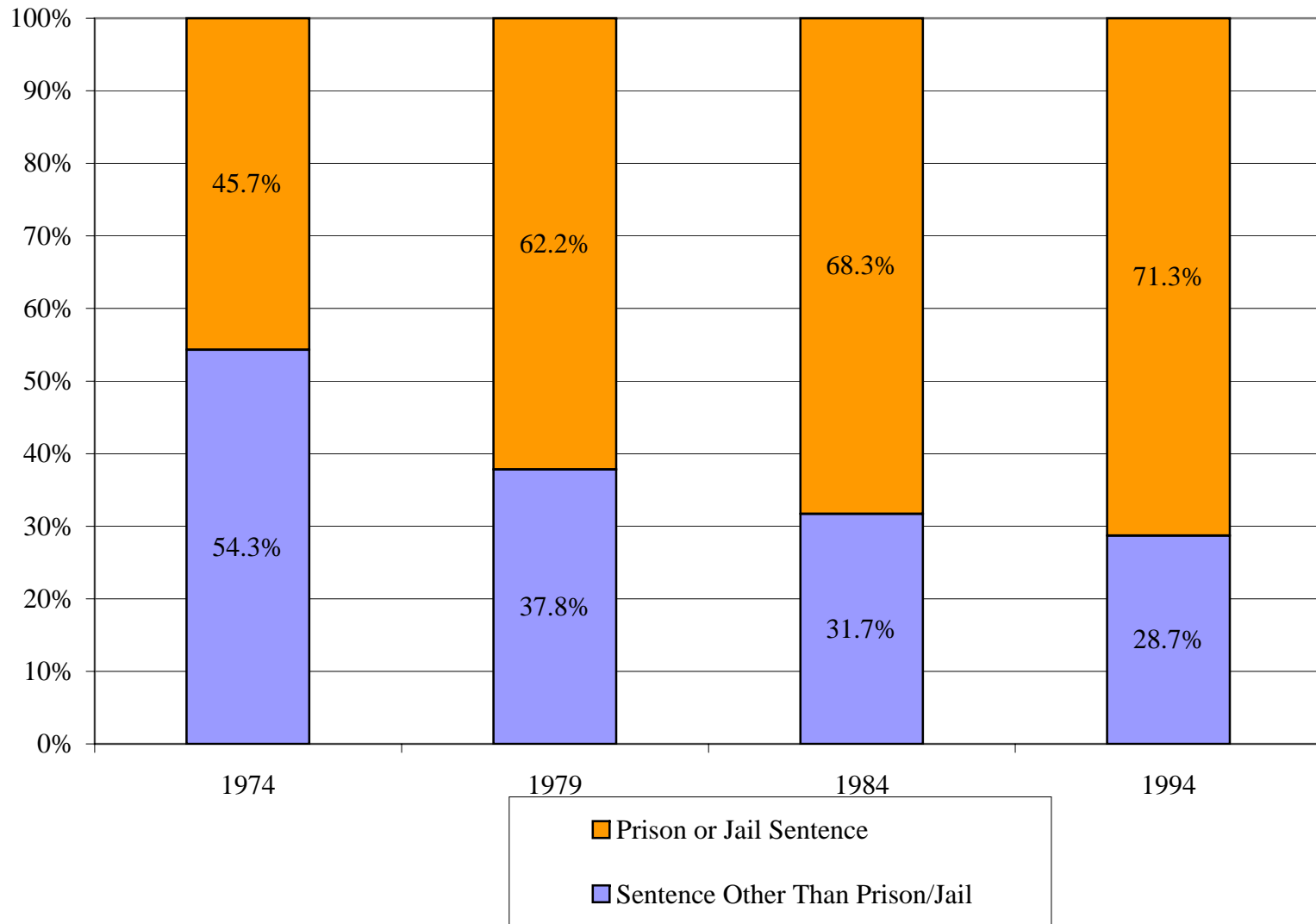
**Figure 8**  
**Likelihood of Indictment, Conditional on Arrest**



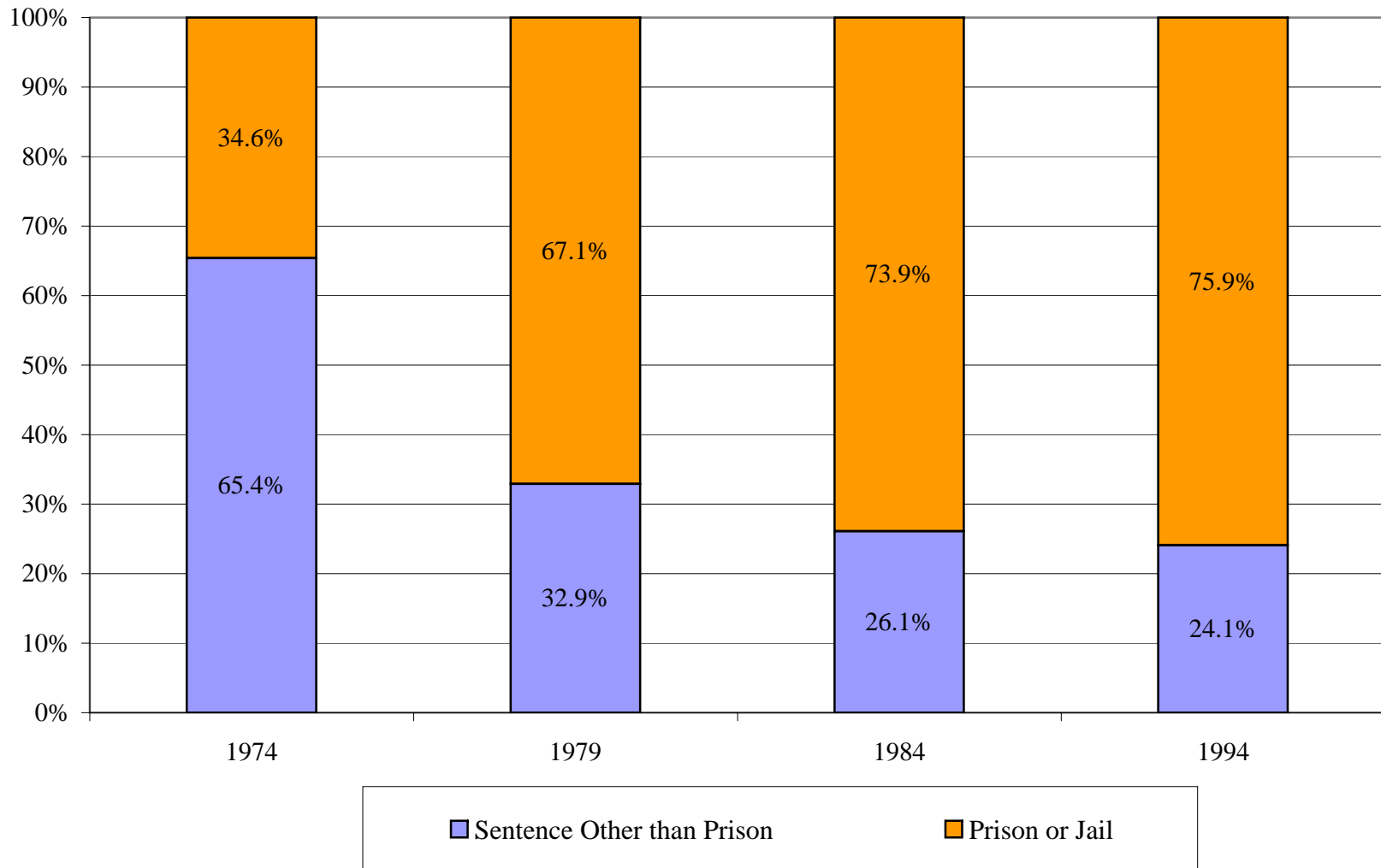
**Figure 9**  
**Likelihood of Conviction, Conditional on Indictment**



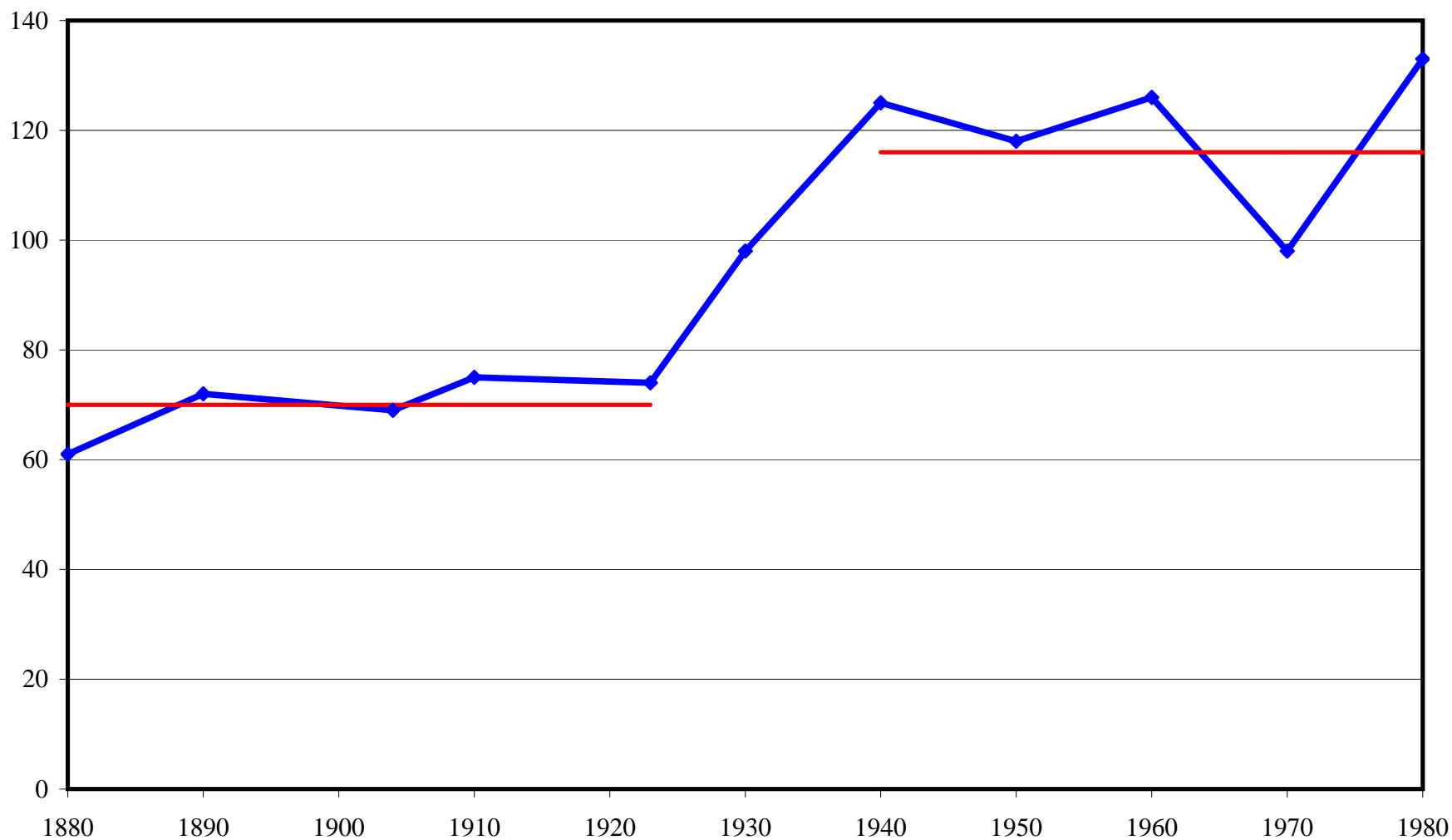
**Figure 10**  
**Prison Sentence, Conditional on Conviction - All Felonies**



**Figure 11**  
**Prison Sentence, Conditional on Conviction - Drug Felonies**



**Figure 12**  
**U.S. Incarceration Rate, 1880 to 1980**  
(Prison and Reformatory Inmates per 100,000 people)



**Figure 13**  
**Share of Inmates Incarcerated for "Moral" Crimes, 1923 to 1980**

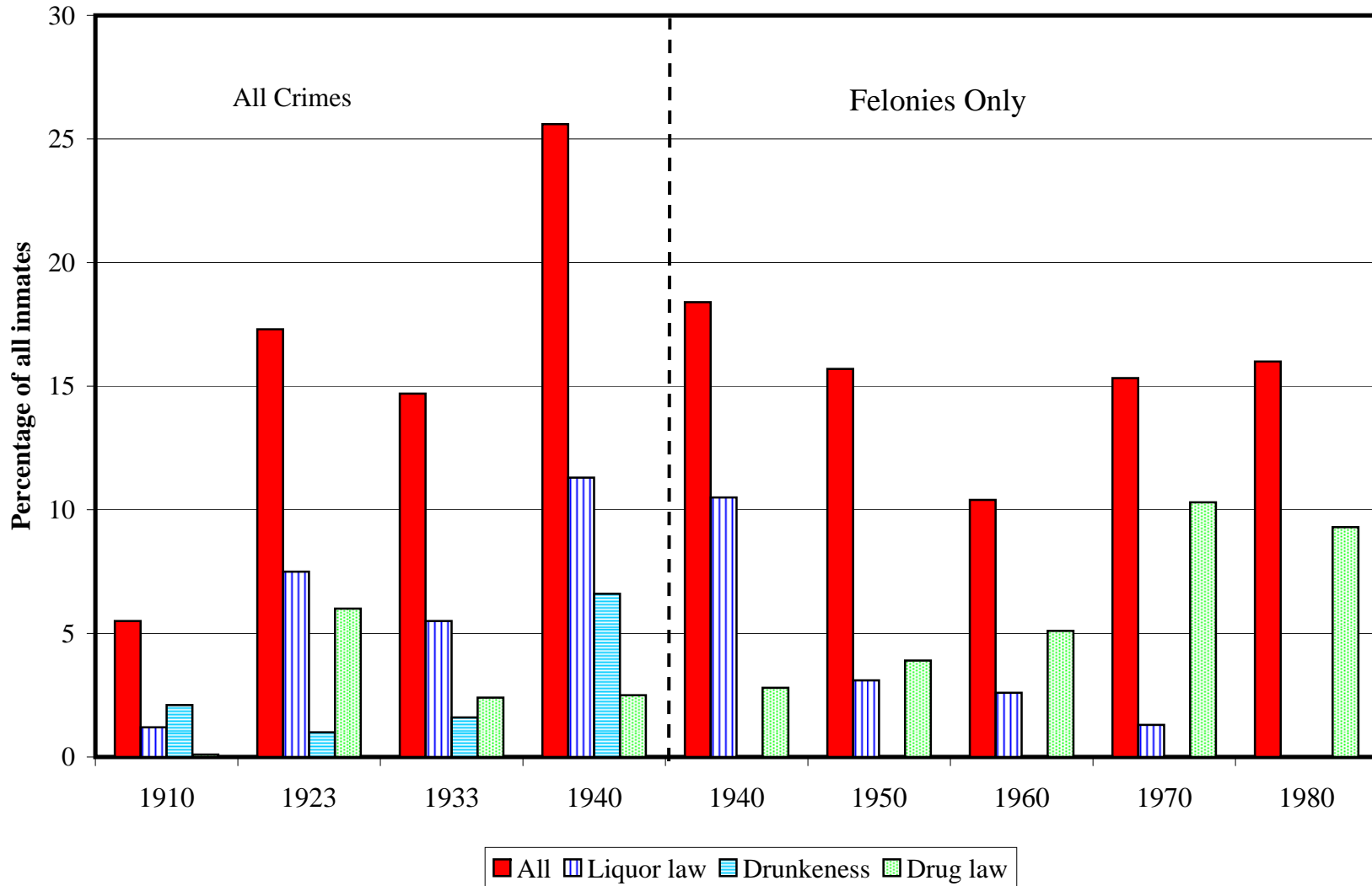




Table 1  
State Sentencing Structures as of 1996

	No.	%
<b>Front-End Reforms</b>		
Determinate Sentencing	14	27.5%
<b>Sentencing Guidelines</b>		
Presumptive	10	19.6%
Voluntary/Advisory	7	13.7%
Sentencing Commissions	19	37.3%
<b>Mandatory Minimums</b>		
Drug violations	37	72.5%
Weapons possession	39	76.5%
Repeat/Habitual	40	78.4%
Two- or Three-Strikes	24	47.1%
<b>Back-End Reforms</b>		
<b>Parole</b>		
Abolished parole	15	29.4%
Good Time	48	94.1%
Supervision	50	98.0%
Truth-in-Sentencing	31	60.8%

Notes: The columns report the number and percentage of jurisdictions including the District of Columbia that had adopted the designated type of sentencing reform by 1996.  
Source: USBJA (1998)

Table 2  
 Prosecution and Sentencing of Drug Trafficking Violations in the U.S.

	Convictions		Sentence to (%)		Prison Sentence (months)			% Black 1 Offense	
	Rate	% Pleas	Prison	Jail	Sentence	Term	% Served		
1986	41.1%		36.8%						
1988	38.9%		40.8%		66	20	30		
1990	53.2%		49.0%						
1992	54.9%	93.4%	48.0%	27.0%	72	24	34	55	75
1996	65.9%	92.3%	39.5%	33.4%	55	23	42	56	72
2000	77.8%	95.7%	41.0%	28.0%	52	26	49	55	72

Notes: The conviction rate measures the ratio of convictions to arrests; the % pleas equals the share of convictions on plea agreements. Percentage served is the ratio of the actual term to sentence.

Sources: Langan and Cohen (1996, pp. 61, 599-61); Langan (1996, p. 1).

Brown, Langan, and Levin (1999, pp. 4-5); Durose and Langan (2003, p. 5).

Table 3  
Flows of Drug Felonies through the New York Criminal Justice System

	<b>1974</b>	<b>1979</b>	<b>1984</b>	<b>1994</b>
Number of Arrests	17,472	11,305	23,459	55,803
Indictment/Arrest	35.5%	30.7%	32.7%	49.8%
Convicted/Indictment	51.0%	75.7%	75.4%	92.9%
Sentence/Conviction				
<i>Prison/Jail</i>	34.6%	67.1%	73.9%	75.9%
<i>Probation</i>	53.8%	28.1%	24.0%	13.3%
<i>Any</i>	88.4%	95.2%	97.9%	99.5%
Number in Jail or Prison	1,096	1,759	4,274	19,595
Percent Arrested in Prison	6.3%	15.6%	18.2%	35.1%

Table 4  
Accounting for Prison Commitments on Drug Felony  
Arrests in New York State

	<b>1984</b>	<b>1994</b>
Number of Arrests	23,459	55,803
Indictment/Arrest	32.7%	49.8%
Convicted/Indictment	75.4%	92.9%
Sentence/Conviction		
<i>Prison</i>	73.9%	75.9%
<i>Probation</i>	24.0%	13.3%
<i>Any</i>	97.9%	99.5%
Number in Jail	4,274	19,595
Percent Arrested in Prison	18.2%	35.1%
1984 Arrests, 1994 Rates (all)	8,238	
% of 1984 Total	192.7%	
1984 Arrests & Rates, 94 Indictment Rate	6,510	
% of 1984 Total	152.3%	
1994 Arrests, 1984 Rates (all)		10,168
% of 1994 Total		51.9%
94 Arrest & Rates, 84 Indictment Rate		12,867
% of 1994 Total		65.7%