

JUSTICE POLICY INSTITUTE

INCARCERATION GENERATION

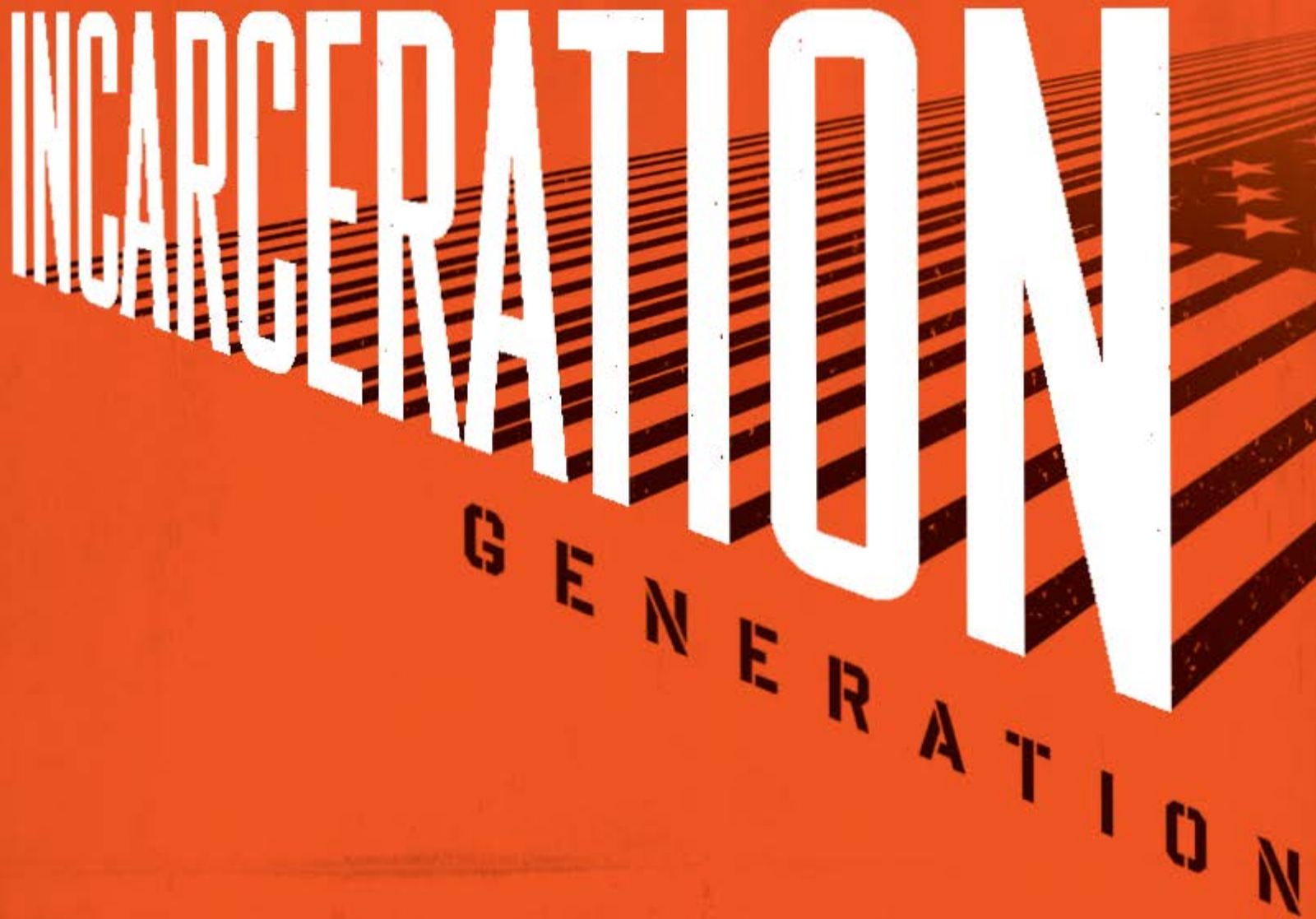


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FOREWORD

Several months ago, I spoke to several hundred high school students in Richmond, Virginia. The audience was primarily black youth from urban schools. The man who introduced me began his remarks by asking a simple question: “How many of you have ever spent time in jail?” A stunning number of black boys rose to their feet. Murmurs could be heard throughout the auditorium as everyone turned to look around them at the young men standing. Another question followed: “How many of you have had a family member who has spent time in prison or jail?” Roughly two-thirds or perhaps three-quarters of the young people were now standing. The murmurs in the audience turned to rumblings, and they started stamping their feet, expressing their pain and anger. Some were shouting out names: “My father, Reginald Johnson.” “My brother, Michael Adams.” “My mother, Charmaine, just got out.” And then the final question: “How many of you know someone, a friend or relative, who has done time?” By now, all the students were standing, stamping their feet and calling out names. The walls shook and then stopped. A silence followed.

In that silence and in those cries lies a truth that we, as a nation, have been unwilling to face.

Millions of Americans have been locked in cages and then, upon release, stripped of basic civil and human rights. Young people living in segregated, ghettoized communities are shuttled from decrepit, underfunded schools to brand new, high tech prisons. Upon release, they’re stripped of the basic civil and human rights supposedly won in the Civil Rights Movement, including the right to vote and to serve on juries, as well as the right to be free from legal discrimination in employment, housing, access to education and public benefits. Millions find themselves trapped in a permanent second-class status—a closed circuit of perpetual marginality—as they cycle from impoverished, jobless ghettos to prison and then back again. People of all races and classes have been impacted by the race to incarcerate. But some communities have been literally decimated—communities defined largely by race and class.

If there is reason to hope that light flickers at the end of this dark tunnel, it is because of the scores of individuals, advocates, grassroots groups, churches, foundations, and organizations—like the Justice Policy Institute—that refuse to give up. For 15 years, JPI has challenged overincarceration and our failed juvenile justice system. They have researched and offered promising alternatives to prison and jail. At the end of the tunnel, they see a system that could actually work. They see a system that actually cares and rehabilitates. They see a system that provides resources that can help communities heal and recover from the brutal system of mass incarceration.

Incarceration Generation is a trip down that tunnel, showing the who, what, why and how of this nation’s 30-year prison boom. The book is an anthology of essays written by experts, advocates, and practitioners in the field of social justice. It reflects an attempt to understand and explain how adults, children, and families have been affected by our nation’s zeal for punishment. It describes the good work that is underway to dismantle the system of mass incarceration efforts to build new, more compassionate alternatives to cages for human beings. In short, this book is like a flashlight, helping to lead us through and out of the dark tunnel of unrelenting punitiveness to a brighter future for us all.

MICHELLE ALEXANDER

**LEGAL SCHOLAR AND AUTHOR OF THE NEW JIM CROW:
MASS INCARCERATION IN THE AGE OF COLORBLINDNESS**

INTRODUCTION

Over the past forty years, the criminal justice confinement complex in the United States has morphed into the largest confinement complex in the world. The U.S. confines its citizens at a much higher rate than any other country with questionable and often devastating outcomes. Despite evidence of its negative impacts, incarceration became and persists as the primary means of “crime control” for four decades and counting. As a result, generations of families have been affected. The lives touched and ruined by the criminal justice system are now stories of disrupted families, under and unemployment, single- and unparented families, locked-down schools and defeatist attitudes. Yet, criminal justice conversations generally do not consider the collateral consequences of mass incarceration policies.

**MANY AMERICANS
HAVE A CURSORY
UNDERSTANDING
OF THE CRIMINAL
JUSTICE SYSTEM.**

The essays in this collection highlight how the persistence of bad policies, ineffective practices and misinformation has played a role in the rise of mass incarceration. In every segment of the criminal justice system from arrest to post-release, the system exacerbates problems it was designed to address. And, among our most vulnerable populations, the punitive nature of criminal justice practices obscures the rights and needs of incarcerated individuals and fails to consider alternatives to incarceration.

Many Americans have a cursory understanding of the criminal justice system that is shaped by prime time television. But the reality described by our essayists and others who have personally experienced the system is vastly different. Many people behind bars today who have not been convicted of their charges languish in jails and detention centers that cost taxpayers billions of dollars annually. The public generally doesn't understand that some prisons regularly release women at midnight to unsafe conditions on the street; these women have to protect themselves from harm until they can find shelter or until daylight. Many people behind bars plead guilty to an offense they did not commit; taking a lighter punishment that comes with a plea bargain is preferable to a wrongful conviction at trial and a harsher sentence. Jail and prison environments often foster and encourage violence and a warped, unhealthy sense of survival that is not conducive to effectively rejoining society after release. The criminal justice system is rife with such injustices and leaves, in its wake, disrupted people, families, and communities at the fringes of society. For many individuals, being a convicted felon makes it extremely difficult to find a job and affordable housing. The conditions and consequences of our incarceration system often propel those on parole back to prison.

The rise in mass incarceration over the past forty years has had negative effects on younger generations and their families, schools, and neighborhoods. We dedicate this book to children and young adults. We hope this book brings to light evidence that our reliance on mass incarceration is unacceptable and counterproductive. Together we must work toward ending the misunderstandings and prejudices inherent in the operations of our criminal justice system. May our efforts help reverse the injustices of our criminal justice system and promote public safety and healthy communities for all.



PEOPLE IN THE

JUSTICE SYSTEM

RACIAL & ETHNIC GROUPS

The issue of racial disparities in the criminal justice system has gained increased attention since the publication of *The New Jim Crow* by Michelle Alexander. Her thesis that “mass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of radicalized social control that functions in a manner strikingly similar to Jim Crow,” has brought new partners to the table and reenergized many who have been working for years to reverse the trend of steadily increasing imprisonment that has disproportionately impacted African Americans. In 2012, black/African American people made up 13 percent of the U.S. population and 38 percent of the jail population. Black/African American people were detained in jail prior to conviction at a rate five times higher than whites and three times higher than Latinos.¹ However, Latino involvement in the criminal justice system is evolving into a serious human rights concern due to immigration policy and controversy. The number of Latino people sentenced to prison increased by 129,000 people between 2000 and 2010—an influx of nearly 13,000 people each year (while the number of whites and blacks remained constant or declined).² Furthermore, spending on immigration enforcement has reached new thresholds with \$18 billion spent in fiscal year 2012.³

However, to talk about a “system” of criminal justice is to simplify the complex interplay of various local, state and national actors—from the cop on the beat, to the prison guard, to the state legislator determining what rights a formerly incarcerated person should have. At each of these points, public servants must consider equality in order to reduce disparities in arrests, detention prior to conviction, incarceration and integration back into society. A better understanding of how incarceration affects generations to come is also important to reduce harm done and ensure people and communities of color are able to thrive and prosper. ■

WE NEED NATIONAL SUPPORT AND STANDARDS FOR PREVENTING YOUTH FROM EVER INTERFACING WITH THE CRIMINAL JUSTICE SYSTEM.

CHILDREN & TEENS

The United States has yet to implement a national strategy for crime prevention among its children and youth. Although these issues are best managed on the local level, we need national support and standards for preventing youth from ever interfacing with the criminal justice system.⁴

Arrests of juveniles for violent and property offenses decreased by 48 percent and 46 percent, respectively, from 1994 to 2003.⁵ However, a “tough on crime” mindset toward youth persists while we shortchange funding for preventive and support services. In 2012, the U.S. Supreme Court ruled in *Miller v. Alabama* that courts could not sentence juveniles to life in prison without the possibility of parole for homicide convictions. That ruling built on the 2010 *Graham v. Florida* case where the Supreme Court ruled against juvenile life without parole sentences for non-homicide convictions. However, too many youth (estimates have ranged up to 250,000 per year⁶) stand trial as adults despite questions regarding their competence to manage their case in adult court.⁷ In 2010, 2,300 youth under age 18 were held in adult correctional facilities, to the peril of their health and future.⁸ Additionally, far too many youth detention facilities are run like adult facilities with high levels of violence and abuse, without sufficient medical treatment and education, stifling the youth’s ability to grow and change while in detention. As rates for offenses committed by youth continue to decline, it is important to celebrate the efforts being made to support youth while continuing to press for improvements in the education, employment and health of all youth. ■

GIRLS & WOMEN

There are approximately 113,000 women behind bars in the United States, but only 32,100 were convicted of a violent offense.⁹ Most of the other 72 percent were convicted of a drug or property offense; however, mass incarceration has resulted in even more women being channeled into a cycle of justice system involvement. The way that women in the criminal justice system are treated is counter to anything one might consider basic human rights. Victims of sex trafficking are arrested for prostitution rather than provided victim services. In many jurisdictions, pregnant mothers are shackled, sometimes even during labor. And the high incidence of mental health problems (including PTSD and addiction disorders) among women who come in contact with the justice system points to the futility of using incarceration to address the serious issues they face. Putting women behind bars creates unique challenges as women are more often caretakers of children than men. These children may be sent to foster care or bounce from relative to relative, missing school and themselves becoming traumatized by the experience of their mothers' incarceration.

Although still the smallest segment, girls comprise the fastest growing population of the justice system. Detention and commitment of girls to correctional facilities went up 98 percent and 88 percent, respectively, from 1991 to 2003 (for boys during this time, the increase was 29 and 23 percent, respectively).¹⁰ Girls are primarily arrested for status offenses, such as running away or underage alcohol use, and technical violations of their probation conditions. They also overwhelmingly have histories of abuse, trauma, mental health problems or other health conditions predating their involvement with the justice system.¹¹ Many girls' actions may be a response to the abusive conditions and situations they grow up in,¹² rather than an anti-social desire to behave badly. However, their treatment by the justice system largely remains insensitive to that fact, and many programs are not structured to effectively handle or treat the outcomes of girls' victimization.¹³ ■

PEOPLE WITH MENTAL ILLNESS

The latest Bureau of Justice Statistics report on mental health, from 2006, showed that over half of people in jail and prison reported a mental health problem. The nation's jails and prisons contain three times more people with serious mental illness than hospitals.¹⁴ Jails and prisons are now called the largest "mental health providers,"¹⁵ with the Los Angeles County Jail labeled the single largest mental health provider in the U.S. for its nearly 15,000 people behind bars.¹⁶

Historically, people with mental health problems were treated, and often institutionalized, in mental hospitals. With the deinstitutionalization of the mental health system, the intended safety net of community based mental health centers did not materialize due to lack of political support and funds. Those with mental illness have the choice to refuse admission to a mental health facility,¹⁷ but they often become targets of policing, especially for "quality of life" offenses related to homelessness or other factors related to their mental health problems. Now, the criminal justice system, rather than the public health system, manages mental health issues.

Addressing the behavior of people with mental health problems through incarceration often harms them due to the conditions of the jails and prisons, including "overcrowding, violence, lack of privacy, lack of meaningful activities, isolation from family and friends, and inadequate health services."¹⁸ Additionally, the lack of trauma-sensitive services and practices can exacerbate the mental health problems of many men and women in jail or prison. Some jurisdictions have correctional staff who use force on people with mental illness in jails and prisons more often than on the general prison population.¹⁹ ■

VICTIMS

Twenty-five years ago, research concluded that "the manner in which the criminal justice personnel approach and treat crime victims within the system can aid in recovery or can add to the trauma of victims."²⁰ A number of recommendations have been made, but the reality is that the criminal justice system still has a long way to go in meaningfully including victims in the criminal justice process. Even routine processes such as setting bail can have tremendous implications for the safety or wellbeing of victims; however, judicial officers continue to make bail decisions without victims' input. This is just one example of how the justice system could better consider victims and their role when making decisions about the case.

The National Crime Victimization Survey, through interviews with victims, estimated that about 5.8 million violent and 17.1 million property victimizations occurred in 2011.²¹ And, in spite of greater police presence in minority communities, African Americans and Latinos are more likely to be victims of violent crime than whites.²² Focusing on reducing the number of people harmed and creating a system that provides justice and safety to all peoples regardless of race, ethnicity, age, sexual orientation or gender, must be a part of reform efforts. ■

RACISM INSTITUTIONALIZED: A LOOK AT THE CRIMINAL JUSTICE SYSTEM

Despite attempts at reforms during the past two decades, institutional racism still plagues the U.S. criminal justice system. From profiling to sentencing, the unequal treatment of people of color is well-documented. In every step within the criminal justice system, from stops and arrests based on racially biased profiles, to police misconduct and the abuse of prosecutorial discretion, to mandatory sentencing and death penalty disparities, there is discrimination that is often not intentional or conscious, but rather institutional in nature.



Race often determines the administration of the criminal justice system in this country; however, implementing the Convention on the Elimination of Racial Discrimination can fix many shortcomings. This international convention addresses both direct and indirect racism by prohibiting laws and practices that have a racially discriminatory impact.

Institutional racism occurs when unwarranted disparate treatment is codified within the structural fabric of social institutions and manifests without the need for a specific person to perpetuate a discriminatory act. The American Bar Association recognized this phenomenon in 1994 in its Summit on Racial and Ethnic Bias in the Justice System as “statutes, rules, policies, procedures, practices, events, conduct and other factors, operating alone or together, that have a disproportionate impact upon one or more persons/people of color.” The Summit concluded that “bias in any of the components of the system reaches into and actually or perceptually, contaminates the system as a whole.” The Summit’s definition was not limited to intentional instances of active bias but extended to passive bias as well, which “has a systemic effect” on the integrity of the administration of justice as a whole.

The unprecedented explosion of incarceration rates in this country underscores the impact of institutional racism. In the U.S., more than two million men and women sit in prison and jail. More than half of this population is black even though African Americans make up only 13 percent of the total U.S. population. Making matters worse, people of color make up 75 percent of all persons incarcerated on drug charges. According to the Department of Justice, 1 in 3 black boys born today will spend time in prison. This astronomical incarceration rate reflects the unconscious institutional and structural policies and practices that characterize the indirect nature of 21st century racism.

Policies and practices as well as legal doctrine reflect this subtle and insidious racism. In 1987, the former Philadelphia District Attorney, Jack McMahon, developed a training video on how to select a jury. In the tape McMahon, who was an assistant DA at the time, directed his rookie prosecutors to circumvent the law by denying certain citizens the chance to serve on a jury while favoring others.

THE UNPRECEDENTED EXPLOSION OF INCARCERATION RATES IN THIS COUNTRY UNDERScores THE IMPACT OF INSTITUTIONAL RACISM.

“[T]he only way to do your best is to get jurors that are as unfair and more likely to convict than anybody else in that room.” McMahon taught that jurors who were especially “bad” included young black women and low-income blacks. Prosecutors had to kick them off of juries without the appearance of violating the law. Appearances mattered because in 1986, in an attempt to introduce more fairness to the criminal justice system, the U.S. Supreme Court had ruled that lawyers could no longer strike potential jurors because of their race. Although McMahon was only one prosecutor in one city, his jury selection training methods were institutionalized throughout his office and, according to him, were “accepted principles” representative of practices of “the wisdom of the ages.” Regardless of whether they disagreed with McMahon’s approach, new prosecutors could be out of a job if they failed to follow the cultural norms. McMahon’s tactics were not isolated to the Philadelphia district attorney’s office. Racism was structurally embedded in prosecutors’ offices throughout the country, possibly impacting the outcome of countless cases.

Other causes of institutional racism can be found in laws that look fair, but actually have a discriminatory impact. The most flagrant example is the long-time disparity in cocaine sentencing. For nearly a quarter of a century, people convicted of crack cocaine offenses were treated more severely than powder cocaine offenders. In what became known as the 100-to-1 quantity ratio, it took 100 times more powder cocaine than crack cocaine to trigger harsh five and ten year mandatory minimum sentences. Although the greatest numbers of documented crack users were white, national drug enforcement and prosecutorial practices resulted in the “war on drugs” being fought almost exclusively in inner city African American communities. In 2007, 82.7 percent of those sentenced federally for crack cocaine offenses were black. Although a 2010 law reduced the 100-to-1 to 18-to-1, the disparity still exists even though there is no medical or scientific evidence that a distinction exists between the two forms of the same drug. What’s clear is that Congress did not intend to discriminate on the basis of race when it differentiated between crack and powder cocaine in 1986 and 1988. But that does not negate or lessen the irrefutable discriminatory impact of the law.

“Three strikes” laws also create institutional racism because blacks are more likely to be profiled, stopped, arrested, prosecuted and convicted than whites who engage in similar criminal activity. Making matters worse, blacks have been subjected to automatic life imprisonment under three strikes laws at disproportionate rates.

The U.S. Supreme Court has compounded the problems resulting from institutional racism because it has been unwilling to tackle the issue. When attorneys in the 1987 case of *McClesky v. Kemp* conclusively demonstrated the double standard of justice in death penalty cases, the Court ruled that Warren McClesky was not entitled to relief even though it did not dispute evidence that race influenced capital sentencing cases in Georgia. Ostensibly, the High Court realized if it sought to remedy racism in the application of the death penalty, it might be constrained to likewise remedy racism at other key stages of the criminal justice process as well. Warren McClesky was executed.

Seven years later, the Supreme Court had the opportunity to consider the key stage of prosecutorial discretion in *U.S. v. Armstrong*. In Los Angeles County, both blacks and whites were arrested on crack cocaine charges. Blacks who were arrested were prosecuted in federal court where they were subject to lengthy mandatory minimum sentences. The whites were prosecuted in state court which had no mandatory sentences. The impact of prosecutorial decisions on sentencing was stark—a maximum of five years if prosecuted in California state court, compared to life without possibility of parole in federal court. Despite the impact of this prosecutorial decision-making, the Supreme Court ruled that defendants could not receive discovery to determine the prosecutor’s motive as to choice of venue, making it impossible to prove racially discriminatory intent.



82.7
PERCENT

In 2007, 82.7 percent of those sentenced federally for crack cocaine offenses were black.



The Court could have rectified disparate treatment in both the *Armstrong* and *McClesky* cases by applying the internationally recognized impact standard, as opposed to limiting itself to proof of discriminatory intent. That standard, codified in the Convention on the Elimination of Racial Discrimination, allows laws and practices that have an invidious discriminatory impact to be actionable, regardless of proof of specific intent, reaching both conscious and unconscious forms of racism. Although the United States ratified this international convention in 1994, it does not create rights directly enforceable in U.S. courts absent implementation of specific legislation.

The long-range implications of what is increasingly becoming the “criminalization of a race” are shuddering. Massive incarceration with lengthy sentences invariably results in the disruption and disintegration of families, destabilization of communities, and diminished life prospects—measures which combine to incarcerate generations, resulting in incalculable damages. Any consideration of the impact of mass incarceration that fails to take into account the role of institutional racism is an insufficient analysis, and any remedy that does not acknowledge the understanding that racism manifests in various forms is deficient.

The Race Convention embodies the world community’s expression that racial and ethnic bias can only be eliminated if we embrace a universal, international standard against discrimination. Guidance from international norms, specifically provisions of the Race Convention affirming the significance of discriminatory impact, could eliminate barriers presented by current domestic law and practice with respect to remedying racism in the criminal justice system. We must challenge our executive, legislative and judicial branches of government to take appropriate measures to ensure that U.S. laws, policies and practices are in conformity with the dictates of this Convention. ■

BIO

ABOUT THE AUTHOR

Nkechi Taifa is a senior policy analyst at the Open Society Foundations and Open Society Policy Center, working to influence federal public policy in support of comprehensive justice reform. Nkechi focuses on issues involving sentencing reform, law enforcement accountability, re-entry of previously incarcerated persons, prison reform, and racial justice. She has

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played a major role in raising visibility of issues involving unequal justice. Nkechi also convenes the Justice Roundtable, a Washington-based advocacy network advancing federal criminal justice policy reforms. Prior to joining the Open Society, Nkechi was the founding director of Howard University School of Law’s award-winning Equal Justice Program, and taught the popular seminar, “Racial Disparities in the Criminal Justice System.” She has also been an adjunct professor at American University Washington College of Law. Nkechi has served as legislative counsel for the American Civil Liberties Union, public policy counsel for the Women’s Legal Defense Fund, and as a staff attorney for the National Prison Project. She has also been in private practice, specializing in the representation of indigent adults and juveniles, as well as employment discrimination law. Nkechi has testified before the U.S. Congress, the United States Sentencing Commission, the Council of the District of Columbia and the American Bar Association Justice Kennedy Commission. She has been published on a variety of issues involving criminal justice and civil and human rights, and has been a consultant to various organizations and projects. Nkechi has served on many different public interest boards, and currently serves as an appointed commissioner on the District of Columbia Commission on Human Rights. Nkechi received her J.D. from George Washington University Law School, and is admitted to practice before the U.S. Supreme Court, U.S. Court of Appeals for the D.C. Circuit, and the D.C. Court of Appeals.




CRIMINAL JUSTICE REFORM FOR IMMIGRATION REFORM



Since the late 1990s, deportation and detention of immigrants has been skyrocketing, thanks in large part to anti-immigrant legislation enacted by Congress in response to the upswing in migration from Mexico after the North American Free Trade Agreement. Immigrant communities have organized to fight back as life in the United States for them increasingly resembles life in a police state. Racism and xenophobia dominate the public and political discourse about migration, and have given rise to a new range of oppressive laws, policies and practices—from the militarization of the border and workplace raids, to the exploding network of immigrant prisons across the country.





This punitive approach to immigration has not only wrought physical violence and material suffering in immigrant communities; it also carries a social message of shame and alienation. If you are an immigrant you are dangerous, you are “illegal,” and you do not have the same rights as your neighbors. Of course, the natural response from those who have been brave enough to challenge this idea has been “We are human, we do not deserve this treatment, we have done nothing wrong,” and finally “*We are not criminals.*”

The problem with “we are not criminals,” however, is that as the criminal justice system expands to bring more and more people of color under its control, and the label “criminal” attaches to a wider and wider range of conduct, immigrants *are* coming into contact with the criminal justice system. States like Arizona are passing laws that criminalize the mere act of being present without documentation. To make matters worse, the federal government—hoping to placate the growing Latino electorate—increasingly justifies the detention and deportation of immigrants on the basis of their contact with the criminal justice system. The Obama administration, in effect taking immigrants rights advocates up on their “we’re not criminals” message, has promised to focus its energies on detaining and deporting “criminal aliens”—a term that conjures images of the bogeyman; but in reality, when U.S. Immigration and Customs Enforcement (ICE) does deport on the basis of a criminal conviction, it is usually for an offense related to substance abuse or mental illness, or a nonviolent property offense.

The larger problem with this focus on so-called “criminal aliens” is the reliance on the criminal justice system, which is itself so fraught with unfairness, abuse and discrimination, to make and enforce decisions about immigration cases. All recent rhetoric about shifting priorities aside, this is not a new problem. Long before the Obama Administration adopted “criminals” as an explicit target for deportation, the immigration system was making the criminal justice system part of its infrastructure. Today, the two systems are intertwined at every level, and at every level the harms perpetrated against poor communities and communities of color by the criminal justice system bleed over into the immigration system.

For decades prior to the “War on Immigrants,” the “War on Drugs” was already decimating communities of color, sending kids to prison for years of their lives and draining public money that could have been better spent on helping youth achieve positive life outcomes. Now, new communities of color—immigrant communities—find themselves targets of those same drug laws, doing time in those same prisons. The difference is that when an immigrant youth finishes his sentence for drug possession, instead of going back home to his family, ICE can pick him up and detain him in immigration prison while they make the case for his deportation, and eventually (after months locked up without the right to a lawyer) send him to a country where he may know no one and may not even speak the language. Laws passed in 1996 provide that conviction of any one of a huge range of offenses subjects any non-citizen to mandatory deportation and (for as long as it takes the government to carry out that deportation) mandatory detention. This means that in many cases, judges do not have any power to look at a person’s individual circumstances to decide whether detention and deportation are fair or necessary.

**WE ARE HUMAN,
WE DO NOT DESERVE
THIS TREATMENT.
WE HAVE DONE
NOTHING WRONG.
WE ARE NOT
CRIMINALS.**

**MAYBE ONE DAY WE
WILL LIVE IN A WORLD
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Immigrants trying to defend against criminal charges that may subject them to deportation face all the same problems as do citizens entangled in the justice system: abysmal indigent defense (many defense attorneys remain oblivious about deportation as a potential consequence of a criminal conviction), pressure to take plea bargains and race-based disparities in sentencing, to name a few. In addition to relying on the substantive criminal law to justify detaining and deporting people, ICE also relies on the actual machinery of law enforcement in the criminal justice system to physically find and pull people into the immigration system. ICE has a whole range of programs like “Secure Communities,” “287(g),” and the “Criminal Alien Program” which put local law enforcement personnel and resources to work finding immigrants to deport.

Finally, ICE relies on the actual physical infrastructure of criminal incarceration—the prisons and jails themselves—to lock up immigrants in its custody. Although immigration detention is technically “civil” detention, ICE contracts with county jails all around the country to house immigrants in the same facilities with those in the custody of the criminal justice system. The horrifying conditions in U.S. prisons and jails are well-documented and the subject of much domestic and international advocacy; by incorporating them into its removal operations, ICE not only causes incredible suffering to the immigrants locked up there but also legitimizes the cruelty and inhumanity of the prison industrial complex.





Maybe one day we will live in a world where the criminal justice system actually creates accountability for social harm, allows for restorative justice and exists as one small part of a larger system that supports true social justice. That day is not today. Right now, what we have is a criminal justice system that, like the immigration system, exists to enable the control and oppression of people of color. As long as that remains the case, there is no fighting for immigration reform without fighting for criminal justice reform. ■

BIO

ABOUT THE AUTHOR

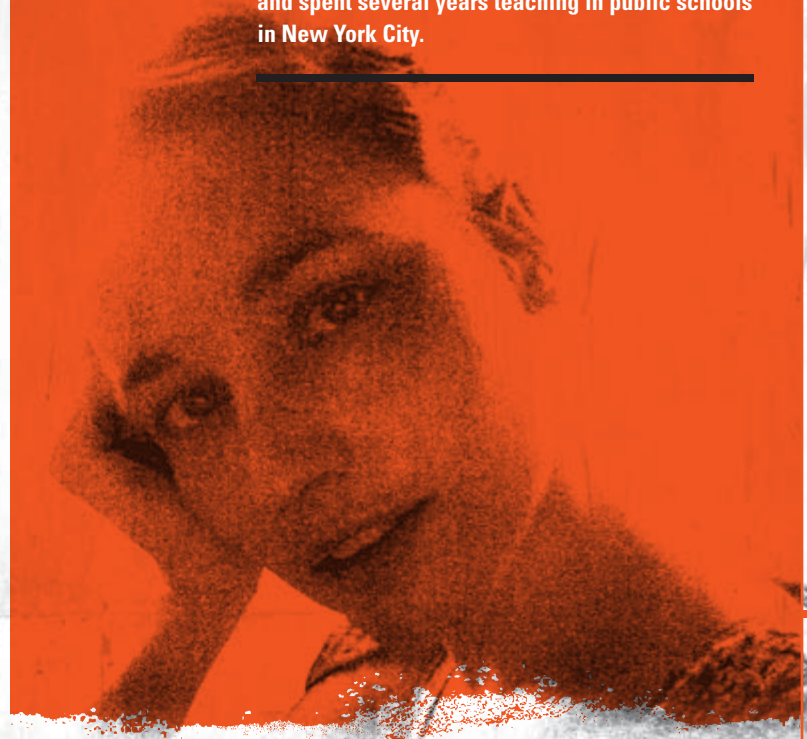
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YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM



Sometimes all it takes is one case to change the course of public opinion and national policy. The “Central Park Jogger” case did just that. On April 19, 1989, a 29-year-old investment banker was raped and left unconscious, and the ensuing “Central Park Jogger” case changed the course of public opinion and national policy. Five teenagers—who later became known as the “Central Park Five”—confessed to police, were convicted in the rape, and served sentences ranging from seven to 11 years. The press inflamed public fears, coining new phrases such as the activity “wilding” where “packs of bloodthirsty teens from the tenements, bursting with boredom and rage, roam the streets getting kicks from an evening of ultra-violence.”²³

As a result of the Central Park Jogger case, prominent and influential individuals, such as political scientist and eventual George W. Bush Administration appointee, John DiIulio, made doom and gloom predictions about the emergence of a “generational wolfpack” of “fatherless, Godless and jobless” youth. According to these observers, this situation was not confined to New York City but was indicative of a national wave of “superpredators.”²⁴

The superpredator phrase stuck and almost every state passed new laws to make it easier to try and sentence youth in the adult criminal justice system during the subsequent decade. Punitive policies also were introduced on a national level, when former U.S. Representative Bill McCollum (R-FL), then chair of the Crime Subcommittee in the House Judiciary Committee, first introduced the “Violent Youth Predator Act of 1996,” and then reintroduced it as the “Violent Juvenile and Repeat Offender Act of 1997.” At a committee oversight hearing on the legislation he said, “Brace yourself for the coming generation of superpredators.”

The roving waves of super-violent youth never materialized. In fact, the juvenile crime rate proceeded to fall for a dozen years to a 30-year low. And the youth in the Central Park Jogger have since been found innocent. This stunning reversal did not garner the same coverage that the original case did, and the myth of exaggerated youth violence still holds.

National and state research and the experience of young people, their parents, and their families give us a concrete picture of how the laws governing the trying, sentencing, and incarceration of youth do not promote public safety.

#1 The overwhelming majority of youth who enter the adult court are not there for serious, violent crimes.

“I never saw any superpredators in my court. What I saw were 14- and 15-year-olds, scared to death.”

JUDGE DAVID A. YOUNG, CIRCUIT COURT FOR BALTIMORE CITY

Estimates range on the number of youth prosecuted in adult court nationally. Some researchers believe that as many as 250,000 youth are prosecuted every year.²⁵ Despite the fact that many of the state laws were intended to prosecute the most serious offenders, most youth who are tried in adult courts are there *no matter how minor their offense*.²⁶ Two states allow prosecutors to charge any 16 year old as an adult for any offense, and eleven automatically prosecute 17 year olds as adults.

#2 Youth who are charged as adults can be held pre-trial in adult jails where they are at risk of assault, abuse, and death.

“Barbaric.”

DC SUPERIOR COURT JUDGE WENDELL GARDNER IN REFERENCE TO PLACING A GIRL IN ISOLATION IN THE DC JAIL²⁷

Federal protections approved by Congress in 1974 and 1980 to protect youth from the dangers of adult jails and lockups do not apply to youth who are prosecuted as adults. The vast majority of states have statutes that require or allow youth prosecuted as adults to be placed in adult jails without federal protections. Currently, most states permit or require youth charged as adults go to an adult jail.²⁸ On any given day, nearly 7,500 young people are in adult jails.²⁹ “State laws that allow for youth under age 18 to be confined in the adult criminal justice system seem to contradict the intent of the federal Juvenile Justice and Delinquency Prevention Act, which, for more than 30 years, has required sight and sound separation when youth are housed in adult lock-ups, as well as speedy removal of youth whenever they are placed in adult jails.”³⁰

This policy places thousands of young people at risk as it is extremely difficult to keep youth safe in adult jails. Jail officials are in a “catch-22” when it comes to young people in their custody. On the one hand, regular contact with adults can result in serious physical and emotional harm to youth. On the other hand, separating youth from adults generally places them in isolation for long periods of time. This equates to solitary confinement and can lead to depression, exacerbate already existing mental health issues, and put youth at risk of suicide. Essentially, this is a no-win situation for jail officials. In fact, the American Jail Association opposes “housing juveniles in any jail unless that facility is specially designed for juvenile detention and staffed with specially trained personnel.”³¹

Recent national research also shows that youth may await trial in adult jails before being sent back to juvenile court by adult court judges for prosecution. In some cases, these youth are not even convicted.³² Instead of adult jail, states and counties could place youth, if they pose a risk to public safety, into juvenile detention facilities where they are more likely to receive developmentally appropriate services, educational programming, and support by trained staff.

#3 Youth sentenced as adults can be placed in adult prisons.

“Youths should not be placed in prison with adults where rape and drugs are the norm.”

DWAYNE BETTS, PRESIDENTIAL APPOINTEE ON THE FEDERAL COORDINATING COUNCIL ON JUVENILE JUSTICE ABOUT HIS EXPERIENCE IN ADULT PRISON

On any given day, approximately 2,700 young people are locked up in adult prisons.³³ Youth in adult prisons are at risk of abuse, sexual assault, suicide and death. Only 1 percent of jail inmates are juveniles, but according to research by the Bureau of Justice Statistics, youth under the age of 18 represented 21 percent of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005, and 13 percent in 2006.³⁴ The National Prison Rape Elimination Commission found that youth incarcerated with adults are probably at the highest risk for sexual abuse of any group of incarcerated persons.³⁵

The National Institute of Corrections, the leading professional association in the field of corrections, has encouraged legislators, executives and their members to review policies and statutes so that young offenders can receive the critical service and supervision they need in an appropriate correctional setting.”³⁶

#4 The decision to send youth to adult court is most often not made by the one person best considered to analyze the merits of the youth’s case—the juvenile court judge.

“I know if James would have went before the judge, the judge could have looked at him individually and he would have been able to assess the risk factors of my brother. There is no doubt in my mind that the judge would have kept him at the juvenile facility...”

NICOLE MIERA, ON HER BROTHER’S DEATH IN JAIL IN COLORADO³⁷

Since the founding of the first juvenile court in Chicago in 1899, youth generally entered the adult court because a juvenile court judged the young person unfit for rehabilitation. Judicial transfer was used in limited circumstances and after a careful deliberation process that included a hearing.

Since the 1990s, juvenile court judges rarely make the decision about whether a youth should be prosecuted in adult court.³⁸ Despite the fact that a juvenile court judge is in the best position to investigate the facts and make an informed decision, state laws have removed authority and discretion from these judges and, instead, require placement of youth in adult court, on the motion of a prosecutor, or through automatic transfer or statutory exclusion provisions.³⁹ These inflexible statutes are based on age and/or category of offense and therefore neither allow for judicial review nor provide discretion for juvenile court judges to keep youth in juvenile court.

#5 These policies disproportionately affect youth of color.

“Our job, in working to achieve fairness and equity, is to sound the alarm about the unjust criminal justice system and demand that our leaders and those in power act now to halt this destructive, unfair treatment of our brothers and sisters, especially of our children.”

JAMES BELL, EXECUTIVE DIRECTOR OF THE HAYWOOD BURNS INSTITUTE

African-American youth overwhelmingly receive harsher treatment than white youth in the juvenile justice system at most stages of case processing. African-American youth make up 30 percent of those arrested while they only represent 17 percent of the overall youth population. At the other extreme end of the system, African-American youth are 62 percent of the youth prosecuted in the adult criminal system and are nine times more likely than white youth to receive an adult prison sentence.⁴⁰

Compared to white youth, Latino youth are 4 percent more likely to be petitioned, 16 percent more likely to be adjudicated delinquent, 28 percent more likely to be detained, and 41 percent more likely to receive an out-of-home placement. The most severe disparities occur for Latino youth tried in the adult system. Latino children are 43 percent more likely than white youth to be waived to the adult system and 40 percent more likely to be admitted to adult prison.⁴¹

Native American youth are more likely to receive the two most severe punishments in juvenile justice systems: out-of-home placement (i.e., incarceration in a state correctional facility) and waiver to the adult system. Compared to white youth, Native American youth are 1.5 times more likely to receive out-of-home placement and are 1.5 times more likely to be waived to the adult criminal system. Nationwide, the average rate of new commitments to adult state prison for Native American youth is 1.84 times that of white youth.⁴²

#6 Girls are affected too, but little is known about them.

"We're not talking about axe murderers. These are mostly runaways, shoplifters and truants. They needed our help, but didn't get it. Most of them don't belong in prison."

MICKEY KRAMER, CHILD ADVOCATE ON GIRLS
IN CONNECTICUT'S PRISON SYSTEM

Very limited data are available on girls in the adult criminal justice system. No recent, comprehensive national research studies have been undertaken that document the impact of the placement of girls in the adult criminal justice system. We cannot adequately address the unique and special needs of girls in the justice system without extensive research, but we can recognize that the adult system puts girls, like boys, at serious risk.

#7 The consequences for prosecuting youth in adult court aren't minor.

"While incarcerated, you have nothing but time to sit back and reflect... It cost me family members, relationships and time that I could've been using to do something productive... I leave everyone with the challenge of exposing younger generations to a better way of living, with opportunities and dreams, rather than exposing children to prison."

MICHAEL KEMP ON HIS EXPERIENCE IN THE JUSTICE SYSTEM
IN THE *WASHINGTON POST* ON MARCH 9, 2012

Youth tried as adults face the same punishments as adults. They can be placed in adult jails pre- and post-trial, sentenced to serve time in adult prisons, or be placed on adult probation with few to no rehabilitative services. Youth also are subject to the same sentencing guidelines as adults except as related to the death penalty and life without parole and may receive mandatory minimum sentences or life without parole.

Approximately 80 percent of youth convicted as adults will be released from prison before their 21st birthday, and 95 percent will be released before their 25th birthday.⁴³ These young people carry the stigma of an adult criminal conviction. They may have difficulty finding a job or getting a college degree to help them turn their lives around. Access to a driver's license may be severely restricted, and in some states, youth may never be able to vote or hold public office. The consequences of an adult conviction aren't minor; they are serious, long-term, and life-threatening.⁴⁴

#8 Transferring youth to the adult criminal justice system does not promote public safety.

"[Y]oung offenders are significantly unlike adults in ways that matter a great deal for effective treatment, appropriate punishment, and delinquency prevention. Society needs a system that understands kids' capacities and limits, and that punishes them in developmentally appropriate ways."

R. LAWRENCE STEINBERG, DIRECTOR OF THE MACARTHUR
FOUNDATION RESEARCH NETWORK

Every study conducted on this issue shows that sending youth to the adult criminal justice system increases the likelihood that they will reoffend. A 2008 Federal Centers for Disease Control and Prevention (CDC) Task Force report found that transferring youth to the adult criminal system increases violence, causes harm to juveniles and threatens public safety.⁴⁵

The CDC task force recommended "against laws or policies facilitating the transfer of juveniles from the juvenile to the adult judicial system." They stated that "to the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good," and "the use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety."

A U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention report mirrored these findings, concluding, "To best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized. Moreover, those who are transferred should be chronic repeat offenders—rather than first-time offenders..."

#9 Assessing the scope of the issue is difficult because of a lack of available data.

"If the goal is to decrease crime, we're not doing a very good job."

REPRESENTATIVE MICHAEL LAWLOR (D-EAST HAVEN), CO-CHAIR OF THE CONNECTICUT STATE JUDICIARY COMMITTEE ON CONNECTICUT'S LAW BEFORE REFORMS

There is no one single, credible, national data source that tracks all the youth prosecuted in adult courts. In a 2011 report, the U.S. Department of Justice's Office of Juvenile Justice & Delinquency Prevention (OJJDP) noted that only 13 states collect any data on youth prosecuted in adult courts. The remainder of states provides no data on the number of transfers/waivers to adult court made by prosecutors, the availability or use of objective criteria for prosecutorial decision-making, or analysis on the exercise of discretion not to send a youth to adult court.⁴⁶

If researchers are not able to really know the magnitude of the impact of these state laws on youth, policymakers lack the information to make informed decisions. There is a need to collect more data so that we can understand just how many youth are affected.

#10 The public should invest its dollars in programs that work.

"Does society want to nourish our youth with continued criminal education or do we want to deter our youth with an opportunity to recover from their mistake?"

VICKY GUNDERSON, PARENT OF A CHILD WHO COMMITTED SUICIDE IN ADULT JAIL⁴⁷

The long-term benefits to society nationwide of returning youth to the jurisdiction of the juvenile court far outweigh any short-term costs because of the reduced youth crime rates and therefore reduced recidivism rates. According to the Urban Institute's senior researcher and economist John Roman, "less crime will mean fewer victims, fewer missed days of work, lower medical bills and maybe most important, less fear and less suffering." Overall, he estimates that returning 16- and 17-year-olds to juvenile court jurisdiction will result in approximately a \$3 savings benefit for the correctional and judicial systems for every \$1 spent.⁴⁸ New research shows that programs, including ones that treat serious, chronic and violent offenders in the juvenile justice system, reduce juvenile crime, and that the public should invest in these instead of the current system.

Finally, the cost of keeping the system as is affects society in ways that cannot be calculated in dollars and cents. No study could calculate the astronomical price tag on the lost opportunities for that young person or to society. What we do have is the testimony of individuals who were given a second chance in the juvenile justice system, rather than prosecution in adult court, and who have achieved success in our society. These include Olympic Gold Medalist Bob Beamon, former U.S. Senator Alan Simpson, D.C. Superior Court Judge Reggie Walton, singer Ella Fitzgerald, and author Claude Brown.⁴⁹ The list could go on, but it will stop if we retain the harsh laws that were passed in the wake of the "superpredator" myth.

13 STATES

In a 2011 report, the OJJDP noted that only 13 states collect data on youth prosecuted in adult courts.

The Opportunity for Change

At the age of 16, I was charged as an adult in the adult criminal justice system. To get to school we had to walk through a tunnel that went through the adult men's prison. One day the facility went on lock down. We were told to turn our backs and close our eyes. But, in jail you learn to never turn your back or close your eyes. That day, we saw a man get stabbed to death.

JABRIERA HANDY⁵⁰

For today's policymakers, there is a new direction that will increase public safety and nurture the successful transition of our youth into adulthood. And, all the new research supports a change in policy direction. State and local policymakers did not have the benefit of this new compelling research on recidivism, competency, adolescent brain development, and effective juvenile justice programs when they were considering changes to their state's laws on trying youth as adults. But research now provides a strong basis for re-examination of and substantial changes to state statutes and policies.

The nation recognizes the need for change, and some states are implementing reforms. Scores of prominent national, state and local organizations are calling for major changes in national and state policy. Youth, their parents, and their families, who have been most affected by these policies, are speaking out, organizing and educating national and state policymakers. A report by the National Conference of State Legislatures, *Juvenile Justice Trends in State Legislation, 2001-2011*, shows trends in juvenile justice state legislation over the past decade reducing the prosecution of youth in adult criminal court.⁵¹

The public strongly supports reform. A national survey released in October of 2011 revealed that Americans reject placement of youth in adult jails and prisons (69 percent) and favor involving youth's families in treatment (86 percent), keeping youth close to home (77 percent), ensuring youth maintain connection with their families (86 percent), individualized determinations by juvenile court judges over automatic prosecution in adult criminal court (76 percent) and requiring the juvenile justice system to reduce racial and ethnic disparities (66 percent).⁵²

On the 100th anniversary of the juvenile court, more than 100 prominent national organizations gathered to recommit to the basic principles of the juvenile court such as:⁵³

- Youth have different needs from those of adults and need adult protection and guidance;
- Youth have constitutional and human rights and need adult involvement to ensure those rights;
- Young people are everyone's responsibility.

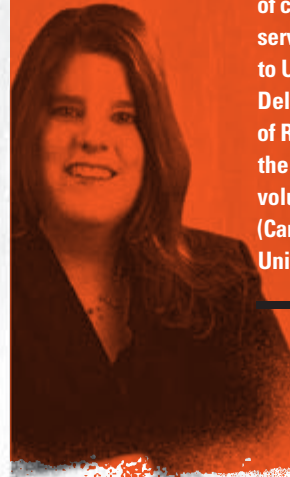
BIO

ABOUT THE AUTHOR

Liz brings more than two decades of experience to the Campaign for Youth Justice (CFYJ), an organization she founded that is dedicated to ending the practice of trying, sentencing and incarcerating children

in the adult criminal justice system. In her capacity at CFYJ, Liz is responsible for overall strategy, management and fundraising. Liz currently serves on the steering committee of the National Juvenile Justice & Delinquency

Prevention Coalition. Prior to starting The Campaign for Youth Justice, Liz served for five years as the Advocacy Director for the Youth Law Center's Building Blocks for Youth Initiative, a project to reduce the over-incarceration and disparate treatment of children of color in the juvenile justice system. Liz previously served as Deputy Chief of Staff and Legislative Director to U.S. Senator Thomas R. Carper during his terms as Delaware's Governor and member of the U.S. House of Representatives. She also served as a lobbyist for the Children's Defense Fund. Liz is a former VISTA volunteer. She holds a B.A. from Dickinson College (Carlisle, P.A.) and an M.A. from the George Washington University (Washington, D.C.).



State statutes that make it easier to try youth as adults have eroded these founding principles and threaten to dismantle the juvenile court's major goal to rehabilitate youth. As a society, are we only going to commit to providing our youth with a jail cell or a prison bed? Or will we commit to reinvesting in our nation's youth through policies, programs, and laws that nurture a successful transition into adulthood and the realization of their full potential? The choice is ours. ■

RIGHTS OF YOUTH IN THE JUSTICE SYSTEM: RECENT DEVELOPMENTS

In recent decades, two major themes have animated the protection of rights of youth in the justice system. The first was the introduction of fairness into juvenile court proceedings. The second was the blossoming of research on adolescent development, which derailed the trend of treating youth like adults, and recast rights in a developmental framework.



Until 1967, when the United States Supreme Court decided *In re Gault*, few people thought of justice for youth in terms of “rights.” *Gault* built upon a 1966 case, *Kent v. United States*, which required states to be fair when they transferred juveniles to adult criminal court for trial and sentencing. The court in *Kent* noted that the juvenile court’s paternalism “was not an invitation to procedural arbitrariness.”

Gault, then, turned a secretive juvenile justice system—that too often punished youth by purporting to help them—into one that had to pay attention to fairness. The Supreme Court said that children were persons under the Constitution’s Fourteenth Amendment. As persons, they could not be deprived of liberty without due process of law. The Court gave juveniles the rights to counsel at trial, to have notice of the charges against them, to confront witnesses and to avoid self-incrimination.

Gault established a set of Constitutional rights. Since then, other youth rights have emerged from state and federal court decisions and from laws that established statutory rights. Constitutional and statutory rights have, in turn, taken on new dimensions in light of recent research.

The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice did seminal work from 1996–2006. The Network’s research demonstrated that adolescence is a period of rapid change characterized by peer influence, lack of future orientation and inattention to risk during a time when teens’ characteristics are not fully formed. In addition, emerging research in neuroscience reinforced the findings of developmental psychology: those parts of the brain that control behavior continue to evolve through adolescence.

The research has provided incontrovertible support for the view that led to the creation of a juvenile court more than a century ago: adolescents are not the same as adults. Legislators and judges—those who define and interpret rights today— have paid close attention to the latest findings, which lawyers for youth have vigorously advanced.

Lawyers for youth fall into two categories: a) those who represent children each day in delinquency courts, as envisioned by *Gault*; and b) public interest lawyers who are legatees of the civil rights movements of the 1960s. The former argue for application of developmentally appropriate rights in juvenile court proceedings. The latter litigate and bring appeals aimed at redefining youth rights.

Lawyers have promoted protection of youth in the justice system since *In re Gault* through three categories of rights: procedural rights to fairness, substantive rights to services and rights to be free from harm. Those three categories apply to four areas:

1. Police interaction with youth;
2. Juvenile court processing;
3. Juvenile court dispositions (sentencing) and juvenile corrections; and
4. Adult court processing and sentencing.

Police Interaction with Youth

Courts have generally treated youth in the same way that they have treated adults when it comes to the way police interact with them. For example, police need the same kind of “probable cause” to initiate search and seizures on the street.

In 2011, however, the Supreme Court declared that teens are different when it comes to confessions and the need to give Miranda warnings. Miranda requires that warnings be given when a suspect is in custody. This is because custody is inherently coercive, and can lead to involuntary and false confessions.

In *J.D.B. v. North Carolina* (2011), the Supreme Court held that the age of the child is relevant to Miranda’s analysis of “custody.” J.D.B. was a 13-year-old who was questioned in a closed room by two police officers and two school administrators. While an adult would have realized that he could leave and decline to answer questions, “a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.” Although the Supreme Court sent the case back to North Carolina for a determination of whether J.D.B. was in custody, that determination will be based on a new rule of the “reasonable adolescent.” The Supreme Court thus reframed youths’ constitutional rights in light of adolescent development research, brain science and common sense.

YOUTH ALSO HAVE RIGHTS TO BE TREATED FAIRLY, REGARDLESS OF THEIR RACE AND ETHNICITY.

Youth also have rights to be treated fairly, regardless of their race and ethnicity. In 1992, Congress amended the Juvenile Justice and Delinquency Prevention Act (JJJPA) of 1974, requiring states that receive JJJPA funding to reduce “disproportionate minority confinement.” The Act was later amended to require states to address “disproportionate minority contact,” which includes decisions by police and others whose decisions disproportionately affect racial and ethnic majorities. The W. Haywood Burns Institute and the Center for Children’s Law and Policy are relatively new organizations that have been working to promote the right to equal protection by working to reduce disproportionate minority contact across the country.

Juvenile Court Processing

Children’s lawyers have paid attention in recent decades to ensuring that juvenile courts treat youth fairly. Advocates have also sought to implement the *Gault*-given right to counsel, to ensure that youth have lawyers who can advance other rights.

In 1995, the American Bar Association Juvenile Justice Center, Youth Law Center and Juvenile Law Center published *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. This report showed the important role of lawyers in protecting the rights of youth at every stage of juvenile court process, from the time of arrest through disposition (sentencing). *A Call for Justice* led, in 1999, to the creation of the National Juvenile Defender Center.

The rights sought by lawyers for youth accused of crime continue to evolve. In general, youth have the same rights at trial as adults, except that they lack a federal constitutional right to bail or to jury trial. Some states have given youth a right to a jury trial in serious cases, and in 2008

the Kansas Supreme Court held that juveniles have a right to a jury trial under the state constitution.

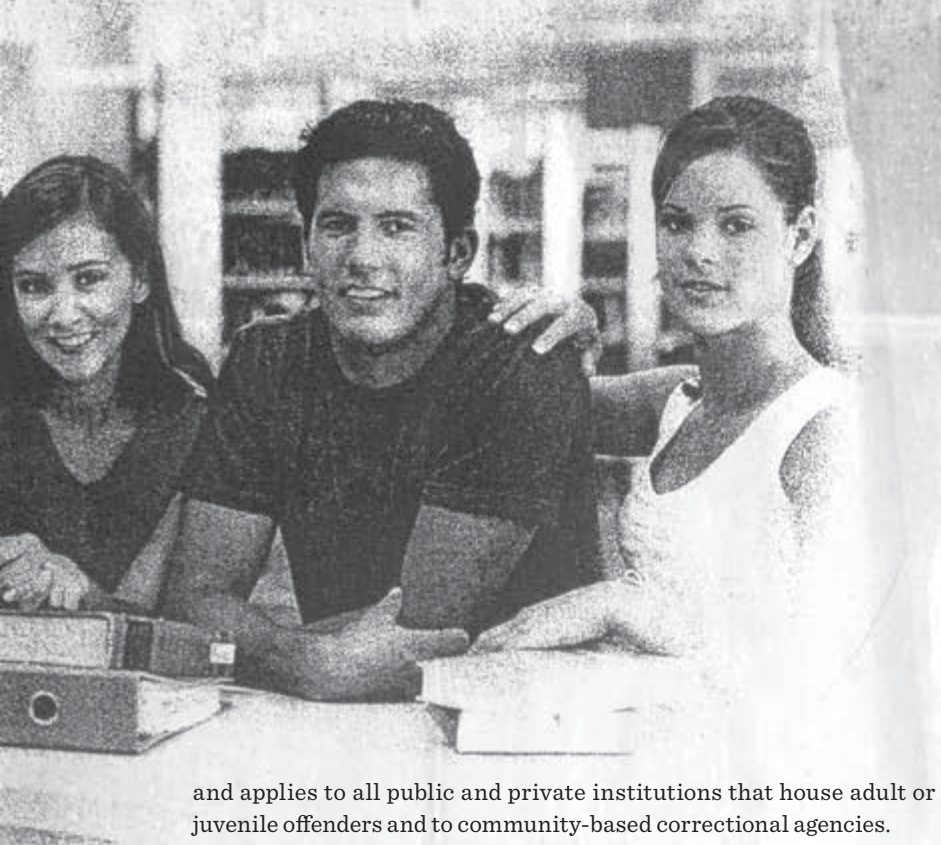
In order to consult with and guide their lawyers, youth must be competent to stand trial. This became even more important in the mid-1990s, as younger and younger teens were tried as adults. The MacArthur Foundation Research Network found that large percentages of younger adolescents, because of developmental immaturity, lacked the capacities to be competent defendants. This is a due process right: it is not fair to try defendants who are unable to appreciate what is happening at trial. In recent years, several states have included “developmental immaturity” in statutes that govern competency to stand trial.

Juvenile Court Dispositions and Juvenile Corrections

In the 1970s, federal courts began to recognize a “right to treatment” for youth who were in juvenile correctional facilities. This right has changed over time, as states from the late 1980s to early 1990s made their juvenile codes less rehabilitative and more about punishment. Even so, organizations like National Center for Youth Law and Juvenile Law Center have relied on the right to treatment to improve conditions of confinement in juvenile detention centers and juvenile correctional facilities. These cases, as well as state laws and regulations, have limited states’ abilities to put youth in isolation or use restraints; have ensured that youth have access to education, in particular special education; have required states to address youth mental health needs; and have given youth the right to be free from harm when they are in state care.

Congress focused on this last right in 2003, when it passed the Prison Rape Elimination Act. The Act seeks to reduce sexual abuse of inmates,





and applies to all public and private institutions that house adult or juvenile offenders and to community-based correctional agencies.

Adult Processing and Sentencing

Since states adopted “get tough” legislation in the late ‘80s and early ‘90s, more attention has been paid to transfer of youth to adult criminal court and to juveniles sentenced as adults. No court has yet held that juveniles have a right not to be tried as adults, although there is some view that juveniles will have more of a right to be tried in juvenile court as a result of the expansive language about adolescence in the Supreme Court’s *J.D.B.* opinion.

The Supreme Court has, however, recently addressed two types of adult sentences of youth: the death penalty and life without parole in non-homicide cases. The Court held both types of sentences unconstitutional.

In 2005, the Court invalidated the death penalty for youth who were under 18 at the time of their crimes. *Roper v. Simmons* declared that research on adolescent development demonstrates that differences between juveniles under 18 and adults are sufficiently clear that juvenile offenders “cannot with reliability be classified among the worst offenders.” Juveniles have a right not to be executed.

Five years later, in *Graham v. Florida*, the Court invalidated a Florida statute that allowed for youth to be sentenced to life without parole in cases in which youth did not kill or intend to kill. The Court again drew on the science of adolescent development and the adolescent brain. As in *Roper*, the Court held that juveniles have a right under the Eighth Amendment’s ban on “cruel and unusual punishment” to be free from sentences of life without parole in non-homicide cases. ■

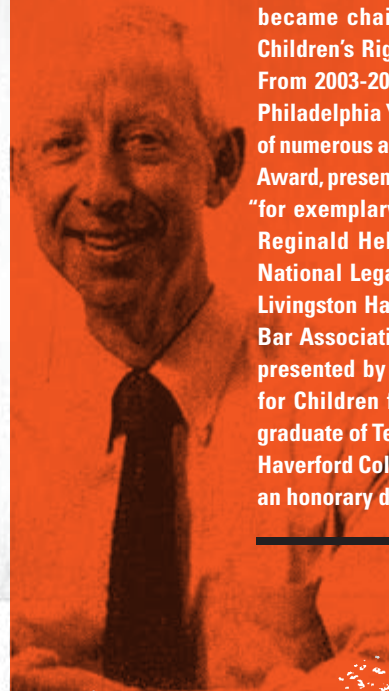
BIO

ABOUT THE AUTHOR

Robert Schwartz co-founded Juvenile Law Center in 1975 and has been its executive director since 1982. In his career at Juvenile Law Center, Robert has represented dependent and delinquent children in

ROBERT SCHWARTZ
EXECUTIVE DIRECTOR
JUVENILE LAW CENTER

Pennsylvania juvenile and appellate courts; brought class-action litigation over institutional conditions and probation functions; testified in Congress before House and Senate committees; and spoken in over 30 states on matters related to children and the law. From 1996-2006, Robert was a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. As part of the Network, he co-edited *Youth on Trial: A Developmental Perspective on Juvenile Justice* (University of Chicago Press: 2000). From 1996-99 he was a gubernatorial appointee to the Pennsylvania Commission on Crime and Delinquency. From 1991 to 2012, he was a gubernatorial appointee to the Commission’s Juvenile Justice and Delinquency Prevention Committee, which is the State Advisory Group that distributes federal funds in Pennsylvania and advises the governor regarding juvenile justice policy. Robert, in 2005, became chair of the Advisory Committee to the Children’s Rights Division of Human Rights Watch. From 2003-2012, Robert chaired the Board of the Philadelphia Youth Network. Robert is the recipient of numerous awards, including the Andrew Hamilton Award, presented by the Philadelphia Bar Association “for exemplary service in the public interest,” the Reginald Heber Smith Award, presented by the National Legal Aid and Defender Association, the Livingston Hall Award, presented by the American Bar Association, and the Stephen M. Cahn Award, presented by the National Association of Counsel for Children for career achievement. Robert is a graduate of Temple University School of Law and of Haverford College, which in 2011 also awarded him an honorary degree.



GANGS AND YOUTH VIOLENCE

The rate of juvenile arrests for violent crime has fallen sharply since the mid-1990s.⁵⁴ Yet public concern about youth crime and street gangs, stirred by sensational media accounts of gang activity, remains high. Simon Hallsworth and David Brotherton describe much youth violence as a sort of “slow riot” by young people whose lives are filled with stress, anxiety and insecurity. Such violence is sparked by anger and resentment among young men who kill each other, often for senseless reasons. Too often this violence is mislabeled as “gang wars.”⁵⁵

Gangs, gang members, and gang activity

The latest FBI National Gang Threat Assessment claims that gang problems are growing, with gang membership increasing by 40 percent in the last two years.⁵⁶ But the National Youth Gang Survey reports that the size and reach of gangs have declined over the past decade.⁵⁷

Experts say that gang members commit crimes at higher rates than non-gang youths, and that quitting a gang results in a sharp reduction in crime—with youths' overall delinquency falling by half after they left the gang.⁵⁸ But it would be wrong to say that gang members commit most crime in the United States. Gang members have a higher rate of delinquency, but most delinquency is committed by youths who are not gang members.

One estimate of gang crime based on law enforcement surveys says it amounts to less than five percent of all crime in the United States.⁵⁹ Research in three gang-problem cities found that gangs were responsible for less than 10 percent of violent crime.⁶⁰

Most gang members join when they are young and quickly outgrow their gang involvement.

During the next year, many thousands of boys and girls will join gangs or form new ones. That's the bad news. The good news: nearly all will outgrow their gang fascination, and most will do so in a year or two. Researchers say that gang members join during early adolescence, and the popularity of gang membership begins to fall after age 14 or 15.⁶¹

It is true that street gangs breed crime and violence. But while some gang members—lacking job opportunities—get involved in illegal drug markets, street gangs do not control these markets. And while street gangs typically are involved in violence, the problem of youth violence involves many more young people who are not gang-related. When violence and drug trafficking are blamed on gangs above and beyond the level of gang activities, “silver bullet” gang suppression tactics will not solve these problems.⁶²

Gang enforcement

Historian Mike Davis has described a massive police gang “sweep” in Los Angeles during the late 1980s: A thousand Los Angeles Police Department patrolmen, backed up by elite tactical squads and a special anti-gang taskforce, fanned out over ten square miles of South Central, arresting 1,453 black youths. Police saturated the streets, rounding up local teenagers at random. Arrestees were forced to “kiss the sidewalk,” or to spread-eagle against police cruisers while officers checked their names against computerized files of gang members. Most youths were charged with trivial offenses—unpaid parking tickets or curfew violations. Hundreds more, uncharged, had their names entered into the electronic gang roster for future surveillance.⁶³

**WHILE STREET GANGS
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WHO ARE NOT
GANG-RELATED.**

Police rarely base their responses to an emerging gang problem on a solid understanding of gang issues or a realistic goal. The thrust of most gang enforcement may be ineffectual, if not counterproductive. Police target gang “leaders” while ignoring the risk that their removal will increase violence by destabilizing the gang. Suppression tactics intended to make youths “think twice” about gang involvement may instead boost the gang’s image and toughen an “us versus them” mindset. Officials may consider incarceration of gang members a measure of success, but prison tends to solidify gang involvement.

Many police departments have formed special “gang units” as a response to an emerging gang threat. But once gang units launch, experts say they often become isolated from the rest of the department, making them ineffective or even leading to corruption.⁶⁴

In 1988, California legislators enacted the Street Terrorism Enforcement and Prevention (STEP) Act, creating sentencing enhancements that apply to “any felony or misdemeanor committed for the benefit of a criminal street gang.” STEP provides that a person will receive a sentence enhancement on top of a normal prison sentence: for low-level felonies, an extra two-to-four years; for more serious felonies, five years; for violent felonies, 10 years.⁶⁵

Civil gang injunctions are legal tools that treat gangs as organizations whose members can be punished for otherwise lawful behaviors. Typically, individuals named in an injunction are prohibited from standing, sitting, walking, driving, gathering or appearing anywhere in public with a suspected gang member.⁶⁶ In 2011, the LAPD was enforcing injunctions against 55 Los Angeles gangs.⁶⁷

Such gang suppression efforts can backfire, undermining deterrence messages by elevating gang status and deepening anger and resentment, leading to increased gang activity.⁶⁸

Comparing public safety strategies

Los Angeles’ decades-long “war on gangs” has cost billions of dollars, yet there are now six times as many gangs and at least double the number of gang members in the Los Angeles region.⁶⁹ And the rate of gang crime in Los Angeles is almost 25 times the rate in New York City. In 2010, the LAPD reported 5,465 gang-related crimes.⁷⁰ That same year, the NYPD reported just 228.⁷¹

Is New York City in denial about the nature and size of its street gang problem? Or is the city still benefiting from policies set 50 years ago that approached the problem of street gangs in ways that avoided the excesses of police suppression in Los Angeles?

During the late 1950s, a serious problem of street gang violence erupted in New York. A pair of Columbia University professors argued that the city should tackle the problem with a range of community empowerment projects to change the “opportunity structures” for disadvantaged youths.⁷²

New York established Mobilization for Youth (MFY) to improve access to education, expand youth employment opportunities, organize neighborhood associations and provide services for those involved in gangs and their families. Five settlement houses coordinated efforts by street workers assigned to more than a dozen neighborhood street gangs. By the late 1960s, the problem had greatly diminished.

Other cities like Chicago and Los Angeles did not adopt the MFY model. Instead, these cities imposed police gang units, civil gang injunctions and tough sentencing enhancements. The problems that plague poor families and give rise to youth violence and street gangs were not addressed, while the “war on gangs” swept millions of young people into the criminal justice system.⁷³

10 PERCENT

Research in three gang-problem cities found that gangs were responsible for less than 10 percent of violent crime.

Evidenced-based practices to reduce youth gangs and crime

Gang involvement disrupts the lives of youth at an age when they should be receiving an education, learning life skills and taking on adult responsibilities. There is no clear solution for preventing youth from joining gangs and participating in gang-sanctioned violence, but evidence-based practices that work with at-risk and delinquent youth—the same youth who often join gangs—do exist.⁷⁴ These evidence-based practices have been tested by careful research and proven to reduce violence and serious crime, with lasting effects over time.

- Multisystemic Therapy (MST) provides intensive services, counseling and training to young people, their families and the larger network of people engaged in young people's lives through schools and the community.
- Functional Family Therapy (FFT) counsels youths and their families over a three to four month period, with specific attention paid to both improving family interaction and addressing the underlying causes of delinquency.
- Multidimensional Treatment Foster Care (MTFC) places delinquent youth with specially trained foster families for six to nine months, while their parents receive intensive counseling and parent training.

These programs target at-risk and seriously delinquent youth, including gang members. They increase public safety while saving money.⁷⁵ Evidence that punitive responses to youth crime do not effectively increase public safety is mounting. Lawmakers and law enforcement should support implementation of evidence-based practices to treat young people who are in conflict with the law.

Peter Greenwood, a nationally recognized expert in the fields of juvenile justice and delinquency prevention, notes that health and human services agencies are best suited to assessing individual risks and needs, and ensuring that treatment plans are carried out. Funding for such programs should be routed through the health and human services system, where they have proved more effective than in the criminal justice system.⁷⁶

BIO

ABOUT THE AUTHOR

JUDITH GREENE
FOUNDER
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Judith Greene is one of the nation's leading criminal justice policy experts whose essays and articles on criminal sentencing issues, police practices, and correctional policy have been published in numerous books, as well as national and international journals. Her work has been cited in countless media stories and investigative reports in outlets including the *Wall Street Journal*, the *New York Times*, and National Public Radio. Judith has over thirty years' experience researching, writing and orchestrating criminal justice reform. She has received a Soros Senior Justice Fellowship from the Open Society Institute, served as a research associate for the RAND Corporation, as a senior research fellow at the University of Minnesota Law School, and as director of the State-Centered Program for the Edna McConnell Clark Foundation. From 1985 to 1993, she was Director of Court Programs at the Vera Institute of Justice.



Helping former gang members reintegrate back into society

Young people caught in the cycle of street gang crime need positive youth development services—counseling, education, job training and jobs. One example is Homeboy Industries, founded by Father Greg Boyle. Homeboy provides employment opportunities to youths who want to leave gang life.⁷⁷ A charter high school, a tattoo removal program, poetry classes and solar panel installation training provide gateway services and four Homeboy businesses serve as job-training sites.

Gang suppression tactics—civil injunctions, harsh police tactics and long prison terms—have not worked. We should invest our tax dollars in prevention and intervention programs that have proven effective. Our goal should be to help all youths at risk of joining street gangs by providing them and their families with the services and opportunities they need to build a brighter, more productive future. ■

**EVERYTHING
HAS CHANGED
FOR THE WORSE,
BUT WE'RE
STILL FIGHTING:
30 YEARS
OF RESISTANCE
INSIDE
WOMEN'S PRISONS**

*The future is not a place
we are going to, it is
something we are creating.
We have a responsibility
to create a better world,
to leave a more hopeful
legacy for future
generations.⁷⁸*

JANE DOROTIK, IMPRISONED IN CALIFORNIA SINCE 2001




The experiences and political strategy of people in women's prisons provides a window into the ways that oppressed communities in our society—communities of color and the hungry, homeless, disabled, impoverished and unemployed of all races—are increasingly vulnerable to imprisonment and premature death in modern society, as well as into means of resistance.

In 1980, there were 12,300 people imprisoned in United States' state and federal women's prisons. That was before the "War on Drugs" became big business and private corporations were allowed a historic toehold into imprisonment through private prison construction and management, increased use of prisoners as a private forced free labor supply, and monopolies on basic goods and services sold to people in prison and their families.⁷⁹ That was before the peak of the war on poverty and the general dismantling of the United States social welfare state, alongside the criminalization of many of the most vulnerable in society through heightened criminalization of conduct related to homelessness and crimes of survival.⁸⁰

According to the Department of Justice's Bureau of Justice Statistics, since 1980 the women's prison population has increased virtually ten-fold, at a rate of increase much greater than among men. Over 113,000 people are now caged in women's prisons throughout the United States. California, with the world's largest women's prisons system alone, imprisons approximately 12,000 people.

Female bodied people are the fastest growing population in prison. Yet because their numbers are lower than those of people in men's prisons, and because of the added element of sex-based discrimination, people in women's prisons are rendered even more invisible. Who is locked up in women's prisons, and how did they come to be caught in the web of the prison industrial complex?

The connection between powerlessness and imprisonment is clear amongst people in women's prisons. Poverty, racism, classism and sexism intersect to make female bodied people of color particularly vulnerable to imprisonment, premature death and fragmentation of their families. According to the Department of Justice, Bureau of Justice Statistics, the majority of people in women's prisons are people of color from socio-economically depressed urban centers. People in women's prisons are on average at the peak of their lives—the vast majority is aged 20-45—yet are rendered surplus workers in our modern service-based, high-tech economy. The majority was unemployed at arrest and has less than a high school education. Reflecting social and political vulnerabilities faced by people in women's prisons, the Department of Justice reports that over 80 percent are the survivors of child abuse, sexual violence and/or intimate partner abuse, most often gone unrecognized or acknowledged by dominant society.



**SINCE 1980
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AMONG MEN.**

In contrast, studies indicate that women of color are “over-arrested, over-indicted, under-defended, and over-sentenced” as compared to white women or men for “crimes” of survival.⁸¹ The Department of Justice reports that roughly 80 percent of people in women’s prisons are serving prison time for nonviolent property, public-order or drug-related offenses. Reflecting the political devaluation of healthcare access for impoverished female-bodied people of color, the women’s prison population is more likely than the general population, or even the men’s prison population, to be HIV positive or infected with Hepatitis C, or to have either symptoms or a diagnosis of mental illness.⁸² Thus impoverished female-bodied people of color are at risk of both imprisonment and premature death through preventable disease. And the Department of Justice Statistics reports that 7 out of 10 people in women’s prisons were primary caregivers for minor children prior to their imprisonment; thus their imprisonment has a devastating impact on their families and communities. It is important to note that not all people in women’s prisons identify as “women” or female. While there is no official count of how many transgender or gender non-conforming people are imprisoned, it is understood that gender non-conforming people face societal discrimination and heightened criminalization, and there are male-identified and/or gender non-conforming, female-bodied people imprisoned in women’s prisons. Society regularly ignores this population and subjects it to significant abuse and gender discrimination while free and imprisoned.⁸³ Imprisonment isolates people in women’s prisons and disenfranchises them from the democratic process. Policies that restrict visitation of people in prison by family and media are regularly unsuccessfully challenged. Rural locations isolate prisons great distances from the urban communities of origin of imprisoned people. In the ultimate act of disenfranchisement, in many states, people in prison permanently lose the right to vote—leaving entire communities of color and impoverished communities of all races unable to access democracy. People in women’s prisons urgently need a public voice within our democracy.

To better explain trends in modern imprisonment, I asked a team of activists inside women’s prisons who have been imprisoned for most or all of the last 30 years to comment on the changes in prison conditions, perceptions of imprisoned people and strategies they have taken to better their lives over this time.⁸⁴ Direct quotations appear below.

7 OUT OF 10 PEOPLE IN WOMEN’S PRISONS WERE PRIMARY CAREGIVERS FOR MINOR CHILDREN PRIOR TO THEIR IMPRISONMENT.

What has changed in prison and policing over the last 30 years?

Prison policy has changed from “rehabilitation” to “warehousing” of “criminals.” A grave inconsistency exists within the system... It all looks good on paper, yet look at “who” is presenting all of this to the “courts.” Have they asked one person that has actually been behind a prison fence for 35 years—three and a half decades—that has lived all the actual changes? Have seen them happen with one’s own eyes, and have felt them with one’s own gut—all of the negativity—from the age of 25 to the age of 60? From respect and caring, to disrespect and non-caring; single cell living to an 8-woman cell; proper medical care/medications to maybe a medical appointment if forceful enough...personal care items limited (toilet paper, tampons, sanitary napkins, cleaning supplies—all limited); culinary area now disgusting (food inadequate for consumption, service rudeness, no adult portions); school programs/work programs nonexistent for inmates. There is no incentive as opposed to in the ‘70s, ‘80s, ‘90s. *Josephine Moore, imprisoned since 1977.*

Inhumane warehousing—it went from housing two women in a cell to eight in that same cell, and your security level status doesn’t seem to matter. They put you wherever they think you can fit and they can get away with—which fits the criteria of warehousing. *Shawn, imprisoned since 1979.*

There have been many changes on many levels over different decades: increased population density, more hostile police attitudes, less education, poor supply distribution, poor food and less court access.... Reduced education/vocation opportunities; increased rewards for engaging in criminal behavior; increased punishments for not engaging in criminal behavior or for engaging in pro-social behavior. *Cindy Oakley, imprisoned since 1991.*

Nothing has improved. It's only getting worse and worse. The lack of upkeep of the buildings/property. The quality of food. The kind of people. Women from 18 to 25 are a big population here now. *Valerie, imprisoned 1991-2011.*

Everything has changed for the worse. Physical and verbal abuse from the staff on the people inside. Guards have become more aggressive and not respecting your rights (mail is thrown away, not giving toilet paper, room search threats, taking property). *Liz, imprisoned since 1995.*

There are more staff, more rules, less privileges. We can't get boxes from family and are now shopping from vendors. Quality of food is down and reduced quantity. What is the worst change? Poor medical care, medical neglect which leads to more medical problems and death. Has anything improved? They have a computer system, but they're not using it well. *Hakim, imprisoned since 1996.*

Just prior to my arrest, all kinds of new tough on crime laws were passed. It seemed like a landslide—from being able to add on years for enhancements, to the three strikes law. And even under our current state prison overcrowding and debt crisis, more laws are being created.... There was a lot of promise for change with California implementing “gender responsive” programs. It is a joke. The assumption underlying the program is that women commit crimes for different reasons than men, and therefore need to be treated differently. They are victims of abuse and need rehabilitation. That they [officials] care is bullshit. Look, the state has been looking for a way to move women to make more room for male prisoners. They come up with this whole victim issue so the public doesn't freak out if women are transferred to smaller, community-based prisons or put on ankle monitors. Every staff member is mandated to take the gender responsive program training. Yet they use the same abusive tactics to keep their female population in line. The correctional officers verbally and emotionally abuse, bully and threaten the women into compliance. Women do not pursue grievances or become involved in activism because



they are afraid of retaliation. The lack of female activism is proof of that. The women do not stand together. We do not even have enough kotex/tampons and toilet paper, but they just accept it. They feel helpless to do anything about it. They are too worried about a room search, or a disciplinary charge as retaliation. It is not uncommon to be called “bitch” or “ho,” or to be told to “shut the fuck up,” by these gender-responsive-trained correctional officers. The prison I am in may end up the only female facility that houses higher security people. It currently operates at approximately 200 percent of design capacity. If the State has its way and converts one of the women's prisons into a men's prison, we will operate at over 200 percent. And there will be no way to separate enemies, or protect people from staff who have harmed them. I have tried to speak to my peers. I've asked them to have family members call prison officials and state representatives. Most aren't doing anything. They are lying on their backs, spreading their legs and their mouths at the same time. But I realize it isn't their fault. They are afraid and stuck in the same cycle of abuse they experienced at home. Except instead of being their family member or significant other beating and raping, it's the California Department of Corrections and Rehabilitation. One positive change is the release of some women lifers. The past governors would regularly overturn the parole suitability decisions for lifers. A lot of the women who have gotten release dates recently were just as suitable for parole under the other governors. I believe part of the reason it's now ok for them to get release dates is because of the overcrowding and economic crisis. These women were kept behind bars because the State had the means to keep them, not because they were a threat. That's disgusting. *Cookie, imprisoned since 1996.*

It has gradually gotten worse: medical is an atrocity; too many mental health patients are in prison; conditions are the worst—the *Plata v. Brown* lawsuit⁸⁵ has been ignored. *Funk, imprisoned since 1998.*

How have perceptions of people in prison changed over the last 30 years?

The “Powers that Be” are more belittling toward us regardless of our upgrade in education, self-help, etc. I believe it’s either black or white; there’s no gray area whatsoever. Meaning they don’t like me simply because I’m incarcerated, and a prisoner—point blank.... So it’s like no matter how productive you become they still perceive you as defiant. *Shawn, imprisoned since 1979.*

Society in general perceives the incarcerated as “less-than,” someone who should forever be banned from society—who would endanger “them” if we should be released. *Cindy Oakley, imprisoned since 1991.*

The perception has changed of how much time people should get for certain crimes. Women are still given way more time for the same crimes when compared to their male counterparts. Addicts are still being treated as criminals, instead of a person with a sickness. *Valerie, imprisoned 1991-2011.*

To the general public, I am a gang member who deserves to die in here. Never mind that I would have done about three years total for my crime were it not for mandatory enhancements; instead I am doing life. Kids today, young adults do not get second chances. They are sentenced to these long terms without hope... Why did the CDC even bother to put that “R” [for “rehabilitation”] for CDCR on their uniform?⁸⁶ Obviously me and all the youth and young adults sentenced like me are beyond rehabilitation. All the three-strikes law⁸⁷ does is double punish. We wouldn’t even punish our children twice for the same incident. So how is it morally applied? And what of the unjustness of the petty theft with a prior three-strikes, or drug possession three-strikes. It is sideways—throwing away a whole segment of society, mostly minority. And where do the children go? Foster care. It is a guarantee: the next generation cycles through the electric fences, iron doors and brick walls of our prison system. In contrast, organizations working with us in here fighting the prison system—Justice Now primarily—learn about me as a person. That changes perceptions. *Cookie, imprisoned since 1996.*

I feel the prejudice of being a “felon.” *Funk, imprisoned since 1998.*

What is one thing people outside should know about prisons today?

It’s a revolving door. I have seen this happen. I do not know what is happening in society—I haven’t been out in decades—yet I do see what women look like when they come through these gates nowadays. A 25 year old woman looks 50 years old and will gladly take this prison abuse because a parole officer is just as bad as a corrections officer and there are no programs in the free world. *Josephine Moore, imprisoned since 1977.*

It’s a cruel, inhumane, slave trade, money making, industry! *Shawn, imprisoned since 1979.*

1) “Inmates” are trained by the departments’ personnel to stay in prison, and to return to prison. 2) We have lost our constitution; it is an empty shell today. *Cindy Oakley, imprisoned since 1991.*

That the penal system wastes a lot of taxpayer monies. *Valerie, imprisoned 1991-2011.*

The system is depressing and breaks you down. *Liz, imprisoned since 1995.*

There is no justice in the system. *Hakim, imprisoned since 1996.*

It is abusive, dehumanizing, and hopeless. It is able to get away with everything. The only time media is allowed in is to make them look good—photo ops. Prisons need to be transparent, so that the realities can be brought to light. If prisons are so professional and concerned with women, why can’t inmates give interviews? Prison officials are afraid that the truth will come out. I was told by a staff member that I should not be allowed to contact the media. She was referring to an article where I was quoted after I wrote a reporter in response to an article he previously published. She felt inmates should not be able to speak on incarceration conditions. That is a common belief among staff. I told her that sounded like concentration camp stuff. *Cookie, imprisoned since 1996.*

[The prison system] is a scary and corrupt, very powerful force. *Funk, imprisoned since 1998.*

THE “POWERS THAT BE” ARE MORE BELITTLING TOWARD US REGARDLESS OF OUR UPGRADE IN EDUCATION, SELF-HELP, ETC.



How would you reduce the prison population in the short term?

Personally, I'd like to see more education and training in communities. Instead of building prisons, the focus should be placed on things like places where people can go once released, where they can have a new start in life. I'm not talking about your average programs. I'm speaking on step-by-step help hands-on training. I believe it would help others to focus on what's right and become more responsible individuals/parents. *Shawn, imprisoned since 1979.*

Open reentry programs combining housing, education and employment. Bring labor-intensive jobs that have gone overseas back here for parolees. Allow in-house treatment for as long as anyone one needs. Eliminate the profit from those who currently take their livelihood from those who are incarcerated. *Cindy Oakley, imprisoned since 1991.*

First, I'd release all of the non-violent three-strikers. With the stipulation that they get therapy, go to programs and do community service for a fixed amount of time, say three years. And behind them, I'd make sure that anyone else who comes to court with a drug charge gets the same sentence. Nearly all the female three-strikers were addicts. *Valerie, imprisoned 1991–2011.*

Some kind of half-way home with funding for education and basic necessities. *Liz, imprisoned since 1995.*

Start with the lifers and use the money saved to open up rehab centers, like half-way houses, and jobs to build communities. *Hakim, imprisoned since 1996.*

We have the solutions. We know what to do. We need to start by deciding we want to get this work of decarceration done. Where there is a will, then, there is a way. Right now there is no real concern for women. It is a play. If there is commitment to releasing "non-violent female offenders" then release them. If the state wants family reunifications, then these "safe" women would not still be behind these walls, their children would not be in foster care or on the verge of adoption. It is easy to imagine what to do to meet people's needs and to enable people to thrive, if one really wants to do it. *Cookie, imprisoned since 1996*

More treatment for substance and alcohol abuse. More community services for domestic violence. Better education system. *Funk, imprisoned since 1998.*

Do prisons create safety?

I feel prison teaches one how to survive while having it hard. It also hardens a person's heart to some degree due to the treatment you receive. No, I don't feel prisons create safety for others. I believe it creates safety for the prisoner because they're well kept away from society's dangers. *Shawn, imprisoned since 1979.*

Prisons do not create safety. They promote violence, domination, self-absorption, gratification of immediate needs only—no concept of ownership, pride, community... They do more harm than good. *Cindy Oakley, imprisoned since 1991.*

No, not at all, they make people worse off, teaching worse things. *Liz, imprisoned since 1995.*

Hell no, they're against it. *Hakim, imprisoned since 1996.*

No! They create an image of safety—a place to "banish the bad guys." Prisons indoctrinate first time offenders and perpetuate abuse cycles. They do not rehabilitate. People parole with no skills and no work, with the added stigma of being a convict that alone pushes them back into crime. *Cookie, imprisoned since 1996.*

NO! How can anyone think prisons create safety? *Funk, imprisoned since 1998.*

BE KIND TO

MANKIND

**Treat each other with self respect; no segregation,
no hatred, no racism, no greed.**

**How can we build a safe, compassionate world
without prisons?**

How can it be fixed? Will it be fixed? I'm an elderly woman still fighting for freedom with a term of life without real possibility of parole.... Can there be change? Yes, if the right people are heard! And come forth! And are not ignored! *Josephine Moore, imprisoned since 1977.*

Be kind to mankind; treat each other with self respect; no segregation, no hatred, no racism, no greed. An endless amount of things need to happen, but first we must all surrender to a higher power... I believe that if everyone did unto others as they want done to themselves, it would play a part in a great start. We need more unity while supporting one another. *Shawn, imprisoned since 1979.*

For society to recognize that we are human beings and that at any moment one of them could be us. Find out the root causes of why a person committed a crime and heal that. That's the whole of it. *Valerie, imprisoned 1991-2011.*

More outside services in order to help—services to help people in need—more people to care. *Liz, imprisoned since 1995.*

Proper, therapeutic rehabilitation. *Hakim, imprisoned since 1996.*

We need transformative justice. We need opportunities to heal from being harmed. We need opportunities for reparation—both so that people who are harmed can heal and so people who have harmed others can grow. We need opportunities where people who have done harms can be supported in changing their behavior and growing [in] understanding, not destroyed or tossed away. And we need to look seriously and critically at what systemic forces are in our communities, politic, economy, and institutions that promote, instigate, perpetuate and cover-up violence and other grave harms. If we could do all this, then we would have a radically different system of justice that would help us be proactive while also addressing harms reactively with opportunity for individual and societal transformation. That would create safety. *Cookie, imprisoned since 1996.*

Better investment in our children—they are our future—education! *Funk, imprisoned since 1998.*



Are there organizing opportunities to make change across prison walls?

This isn't as strong as it once was—women have no say so in prison no more, and sure, one can speak, yet are you heard? No! I do know people are trying to help and faith keeps me going along with those real allies fighting for change with us from outside. *Josephine Moore, imprisoned since 1977.*

People in prison find ways to help ourselves. We are not powerless. I became a member, and an executive body chairperson, of the Women's Advisory Council. We fought for better sanitary supplies, quarterly packages, mail and visiting rights, yard access, canteen access. I'm also the co-founder of the organization called U-Turn. We started back in 1993 to deter young juveniles from the life of crime that could lead to jail, institutions, or death. This organization still exists. Also the Long Termers Organization, helping those with life or long terms with paperwork and what you can do to better yourself in these conditions. I'm also a prison hospice volunteer person: we work with Justice Now on compassionate releases—trying to get people dying in prison out so they can die with their families, and I also sit with them till the last moment. *Shawn, imprisoned since 1979.*

I've worked with Justice Now, documenting human rights violations in prisons. Also Just Detention International regarding sex abuse within the prison. Also, written my own efforts to stop/ban smoking within the prison, and to require the use of headphones for radios and TVs indoors. *Cindy Oakley, imprisoned since 1991.*

I am an activist for juveniles serving life without the possibility of parole and women's rights. I created a prisoner organization for people sentenced to long sentences as juveniles. I also have worked with Justice Now, Human Rights Watch and California Coalition for Women Prisoners. *Liz, imprisoned since 1995.*

I have been part of activist efforts challenging prison conditions and imprisonment with California Coalition for Women Prisoners, Justice Now, Legal Services for Prisoners with Children and Brown Boi Project. *Hakim, imprisoned since 1996.*

I am a board member of Justice Now. They/we don't give up. We make coalitions with other organizations across prison walls. We push policy agendas. We never compromise our mission—challenging imprisonment. Custody hates when free Justice Now members come to the prison for visits. *Cookie, imprisoned since 1996.*

I write legal/civil action lawsuits around medical neglect. I organize with the California Coalition for Women Prisoners. *Funk, imprisoned since 1998.*

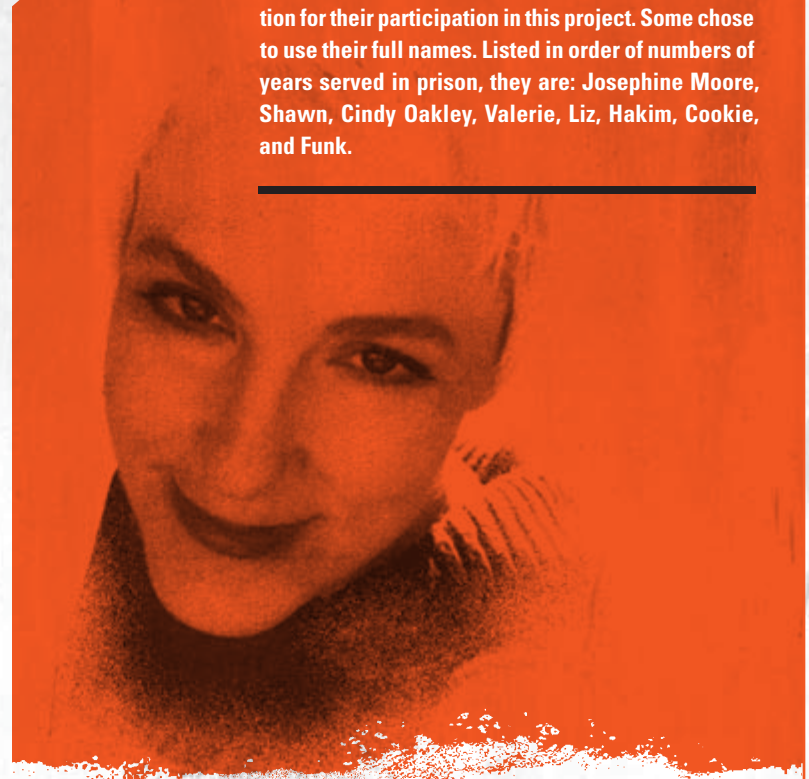
BIO

ABOUT THE AUTHOR

Cynthia Chandler is a human rights attorney, prison industrial complex abolitionist, and the co-founder of Justice Now, a human rights organization that partners with women in prison and local communities

CYNTHIA CHANDLER
IN PARTNERSHIP WITH
IMPRISONED ACTIVISTS
JUSTICE NOW

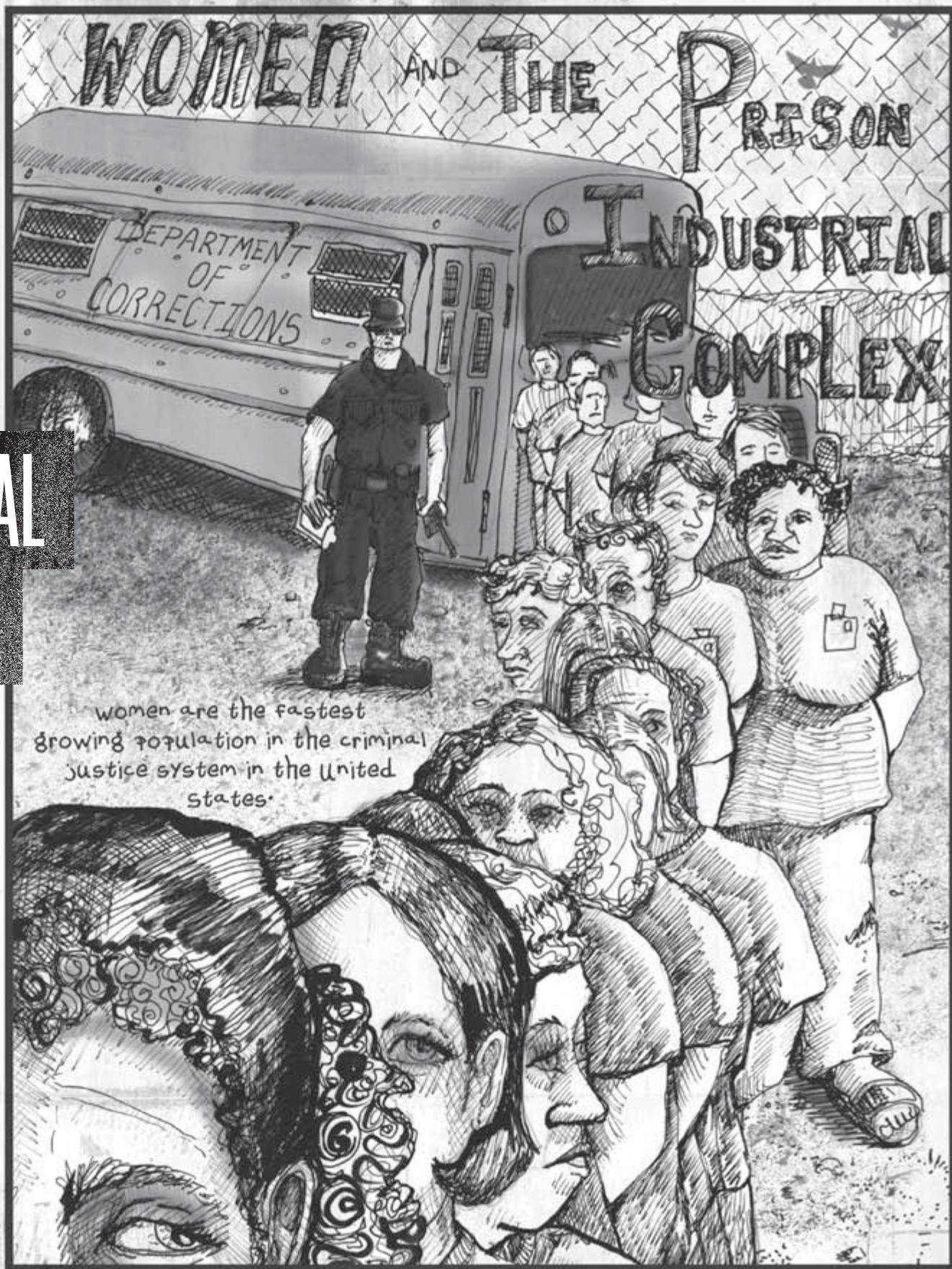
in building a safe, compassionate world without prisons. In the development and writing of this 30-year overview of women's imprisonment in the United States, Cynthia collaborated with a team of eight imprisoned activists who regularly organize with Justice Now. Some of the team chose to be acknowledged with shortened names or pseudonyms to prevent retaliation for their participation in this project. Some chose to use their full names. Listed in order of numbers of years served in prison, they are: Josephine Moore, Shawn, Cindy Oakley, Valerie, Liz, Hakim, Cookie, and Funk.



Conclusion

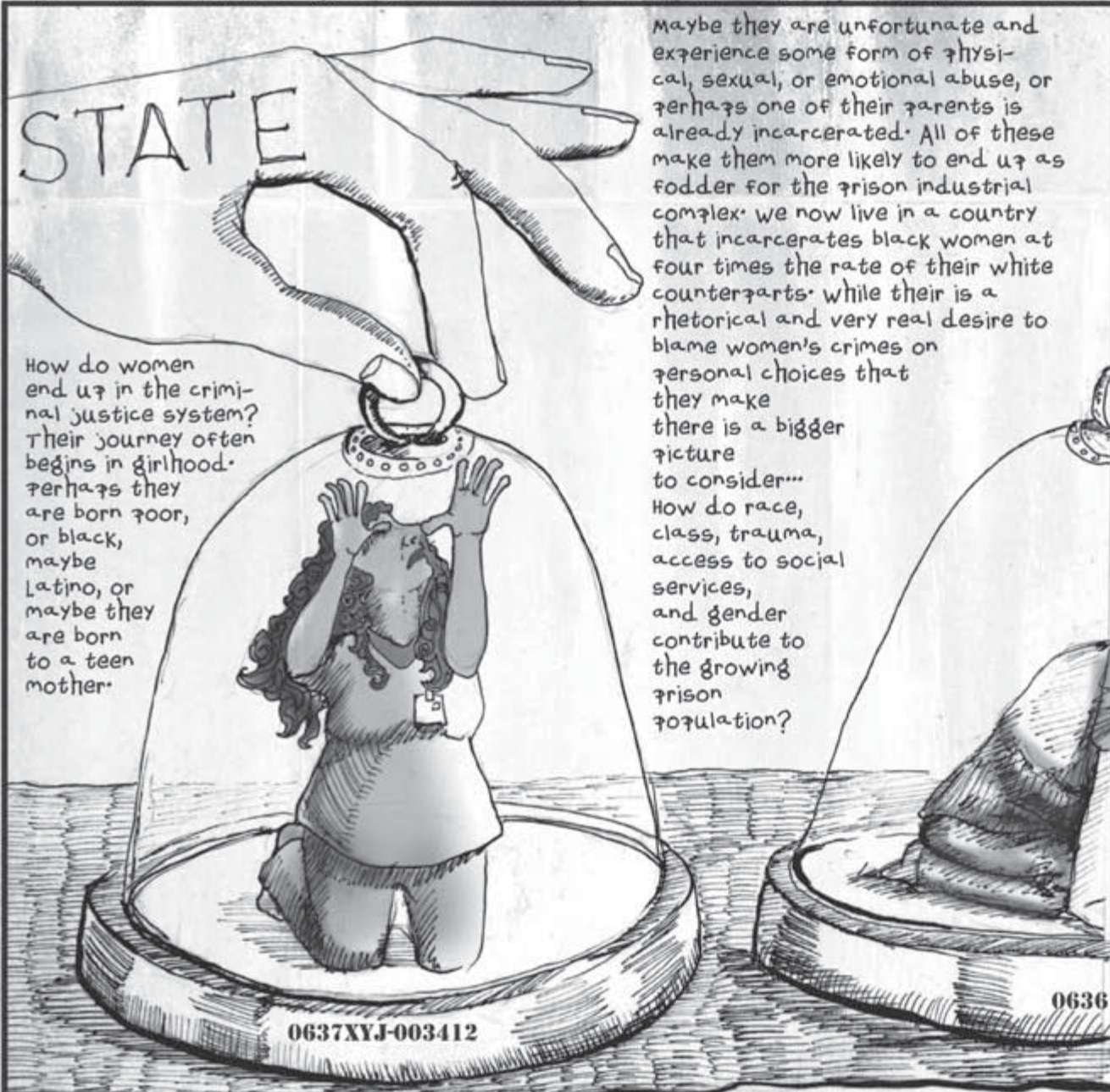
Reflecting the disenfranchised, devalued status of people in women's prisons—rarely are people in women's prisons asked to serve as experts on imprisonment or their own experience. This team's collective testimony raises common themes of urgent relevance to actors wishing to build a more just society. Moreover, their resiliency, hope and activism in the face of adversity challenge those of us who are free to join them in reshaping the political direction of the United States. ■

WOMEN IN THE PRISON INDUSTRIAL COMPLEX



1.

women who are victims of gender entrapment experience poverty and violence in their private lives;

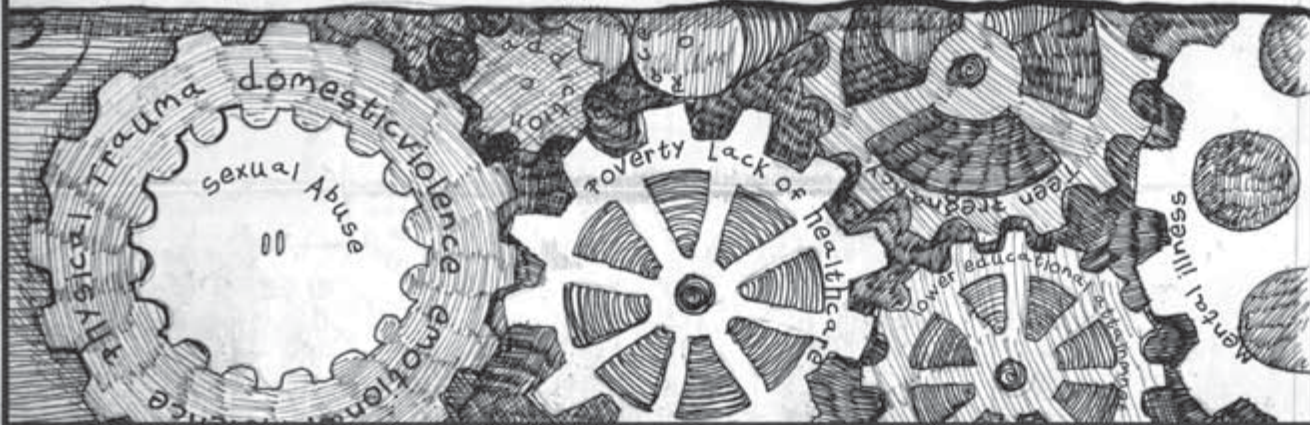


How do women end up in the criminal justice system? Their journey often begins in girlhood. Perhaps they are born poor, or black, maybe Latino, or maybe they are born to a teen mother.

Maybe they are unfortunate and experience some form of physical, sexual, or emotional abuse, or perhaps one of their parents is already incarcerated. All of these make them more likely to end up as fodder for the prison industrial complex. We now live in a country that incarcerates black women at four times the rate of their white counterparts. While there is a rhetorical and very real desire to blame women's crimes on personal choices that they make there is a bigger picture to consider... How do race, class, trauma, access to social services, and gender contribute to the growing prison population?

they are often publicly punished by the state for becoming ensnared in a tangle of social conditions over which they have no control.

Jails and prisons are designed to break human beings, to convert the population into specimens in a zoo - obedient to our keepers, but dangerous to each other. A.D.



2



3

once women are arrested their lives are destroyed. while for some women it may be the first chance they have

had to get access to healthcare, mental health services, dental care, and substance abuse treatment, the after effects of prison are devastating & long-lasting.

Almost 2/3 of women in prison are mothers.

The Adoption and Safe Families Act allows the state to terminate parental rights if a child has been in foster care 15 out of the last 22 months.

Spending time in prison and/or receiving a felony conviction makes getting a job much more difficult. If women are convicted felons and under community supervision they often have little or no access to food stamps, public housing, or social services. They also receive little or no job training, or training in fields that are low paying. This means that making a "living wage" is nearly impossible. Women with children are especially penalized. They often prioritize the need for child care and family reunification over employment.

I lost my parental rights while I was in prison.

FELON

patriarchy

After 44 months I was released. I was labeled a felon for life.

No one would hire me. I had no where to live.

POVERTY

YOU WANT ME TO DO WHAT?!

Eventually I was arrested again and sent back to prison.

I sold my body to survive on the streets. I did drugs to survive the trauma I endured at the hands of countless men and the police. No one would help me.

4

If we could divert the money our country is pouring into the prison industrial complex to provide more social services to vulnerable populations, legislate laws to end violence against women, support outreach services, shelters, counseling, protection, and education that would be the beginning of turning the tide in favor of a more just and humane solution to crime and punishment.

Most women are incarcerated for non-violent offenses. Community treatment options, access to mental and physical health care, substance abuse counseling, safe and dependable child care, trauma intervention and treatment, and economic support would reduce recidivism by a large margin among women who have been incarcerated.

We must work to abolish prescribed gender roles, and racism. We need to recognize the resilience and wisdom that women possess when they are safe and feel like productive members of our communities.

Finally we need desperately to understand and examine the role of racism, heteronormativity, and poverty in our current models of punishment and social control. Women of color, sexual minorities, and poor people are doubly punished by our system. If we could work to take down the prison industrial complex it would improve public safety and make our communities more livable for everyone, especially women and children.



[W]omen prisoners are twice marginalized, invisible in the "free" world by virtue of their incarceration, and largely overlooked even by prison activists by virtue of their gender... Challenging the hyperinvisibility of women prisoners is central to effective activist and academic work around issues of imprisonment...

Angela Davis (1999)

**HOW DO WOMEN
END UP IN THE
CRIMINAL JUSTICE
SYSTEM? THEIR
JOURNEY OFTEN
BEGINS IN GIRLHOOD.
PERHAPS THEY
ARE BORN POOR,
OR BLACK, MAYBE
LATINO OR MAYBE
THEY ARE BORN TO
A TEEN MOTHER.**

BIO

ABOUT THE AUTHOR

RACHEL MARIE-CRANE WILLIAMS

ASSOCIATE PROFESSOR,
UNIVERSITY OF IOWA

Rachel Marie-Crane Williams, is an artist and teacher currently employed as an associate professor at the University of Iowa. She has a joint appointment between the School of Art and Art History (Intermedia)

and Gender Women's and Sexuality Studies. She is originally from North Carolina (the Eastern Coastal Plain), but she has lived in Iowa since 1998, and taught at The University of Iowa since 1999. Her work as a researcher and creative scholar has always been focused on women's issues, community, art, and people who are incarcerated. She earned a B.F.A. in Painting and Drawing from East Carolina University and an M.F.A. (Studio Art) and a Ph.D. (Art Education) from Florida State University.



American alternative/single creator comics and graphic novels have been at the heart of her creative scholarship for the past few years. Her graphic scholarship has been published by the Jane Addams Hull House Museum, the Journal of Cultural Research in Art Education, and the International Journal of Comic Art. Her current projects include a graphic novel about the Detroit Race Riots of 1943, a mini comic about police brutality, and *The Prison Chronicles*, a series of stories about working in women's prisons.

While Rachel is an artist she is also an academic scholar. Her traditional scholarship has been focused on women in prison. She has worked with incarcerated women since 1994. The prisons where she has conducted research include the Monroe County Jail in Key West, Florida, Jefferson Correctional Institution in Florida, Taycheedah Correctional Institution in Wisconsin, Deerlodge Correctional Institution in Montana, the State Training School in Eldora, Iowa, the Iowa Juvenile Home in Toledo, Iowa, the Iowa Correctional Institution for Women in Mitchellville, Iowa and HMP Holloway in London, England. She has visited and toured numerous other correctional institutions in the U.S. In 2010, she enrolled in the Inside-Out Prison Education Program through Temple University (www.insideoutcenter.org). Her scholarship has been published by the Journal of Correctional Education, The Journal of Arts Management, Law, and Society, the Journal of Art Education, and Visual Arts Research. She is also the Co-Editor of the Marilyn Zurmuehlen Working Papers. Rachel teaches courses about comics and sequential art, women's studies, intermedia, feminist research methods, and civic engagement. Her work can be explored at <http://redmaggie.org>.

INCARCERATION AND SERIOUS MENTAL ILLNESS

Today, a frequently expressed concern is that jails and prisons have become the nation's largest mental institutions. But how this shameful outcome came to be and what general lessons we can draw about our soaring incarceration rates are less commonly discussed. As with other populations vulnerable to criminal confinement, people who have serious mental illness have been stereotyped as dangerous, morally weak, and limited in their capacity (or their right) to participate in the social mainstream.



And although their essential issue is a disability—such as schizophrenia or bipolar disorder—and not criminal conduct, for decades the routine practice was to incarcerate people with serious mental illness in state psychiatric hospitals. Similar to the recent boom in constructing jails and prisons, during the late 1800s and into the mid twentieth century, states across the country built huge, fortress-like mental asylums. These were generally located far from population centers and designed as isolated, self-contained communities. Depending upon one's perspective, they either offered people with serious mental illness a safe haven from the stresses of society, or they offered society protection from the purported dangers of mental illness.

By the 1950s, well over half a million Americans with mental illness were segregated within these state institutions, the largest of which (Pilgrim State Hospital outside of New York City) housed almost 14,000 patients and was listed in the *Guinness Book of World Records* as the world's biggest hospital. Most people who were admitted to state hospitals in this era were ultimately consigned to “back-wards,” custodial settings for those who were classified as unresponsive to treatment. On these wards, they had little hope beyond a lifetime of institutional confinement.

Over the decades, the individuals warehoused in state hospitals were subjected to indiscriminate seclusion and physical restraint and harmful treatments, including lobotomies (brain surgery), electric shock therapy, and medications with horrible side effects. For the “crime” of having a disability, these individuals also suffered the devastating effects of loss of freedom and other basic rights. Their social identities became little more than case numbers in massive public systems. And when they died, thousands of these individuals were buried in unmarked graves on the grounds of the hospital.

**APPROPRIATE
COMMUNITY
SERVICES WOULD
COST LESS THAN
INCARCERATION
AND INSTITUTIONAL
CONFINEMENT.**

To fully appreciate the parallels between people with serious mental illness and other groups now vulnerable to incarceration in criminal justice settings, it is important to understand the common denominator: all are degraded populations without a significant political voice, and who are seen as risks to society and burdens on the public coffer. The desire to segregate people regarded as “hopelessly insane” while spending as little as possible was among the primary reasons for creative psychiatric backwords. In the 1950s, when the nation's state hospital population was at its peak, the average expenditure per patient day of care was \$2.70. Nevertheless, because of the sheer size of these institutions, states spent lots of money in the aggregate on maintaining their psychiatric hospitals. Across the nation, state hospitals were often the largest employers in town (Pilgrim State Hospital, for instance, at one time employed over 4,000 staff members), and although the people they served may have lacked political power, the political importance of the institution itself could be very strong. In a real sense, state hospitals achieved the status of important industries whose impact was felt on local economies and in state politics. This industry was constructed around the premise that state custody of large numbers of people with serious mental illness was necessary.

Beginning in the 1960s, a number of factors converged to bring changes to this institutional culture. The expense to states of supporting their massive institutions became prohibitive (in New York as elsewhere, mental health had become the largest state agency, accounting for about one-third of the entire state budget). New federal programs—Medicaid and Medicare—offered states the opportunity to shift significant costs borne by their mental health systems if people were transferred to nursing homes and similar settings. New antipsychotic drugs that held the promise of dramatic improvements in clinical symptoms came on the market. And an outgrowth of the mounting civil rights movement began to critically examine the legal basis for trampling the liberties of people with mental disabilities.

Capping this picture, in the Community Mental Health Services Act of 1963, Congress laid out a vision of an ambitious new approach to mental healthcare, whereby clinics and services located in the community would offer a whole array of innovative services that would allow people with serious mental illness to live successfully outside of state hospitals. Deinstitutionalization and services in least restrictive settings became the hallmarks of public mental health across the nation. The promise was that state funds that had been invested in institutional warehousing would follow people into the community to support these goals and that state psychiatric hospitals would serve a transitional role as new models were implemented.

From a strictly numerical perspective, deinstitutionalization was a huge success. By 2002, the number of the nation's state hospital beds had fallen to 10 percent of the 560,000 beds in 1955, and this figure continues to drop. States now spend more on community services than on psychiatric hospital care. And many individuals with serious mental illness now live successfully, integrated within their communities.

Much has changed, except for one very key factor: notwithstanding the ambitions of deinstitutionalization, people with serious mental illnesses remain stigmatized socially and politically. The promise to fulfill the aspirations of the community mental health movement quickly faded. Despite some pockets of success, too few innovative services and supports to promote community living ever materialized. Instead, assembly-line discharges to private for-profit institutions, other marginal living arrangements or sometimes even to the streets allowed hospitals to rapidly downsize. States diverted funds intended for community mental health to initiatives (such as road building) that had far more political importance. And reminiscent of the political power once associated with state hospitals, the nursing home industry and other congregate-care businesses have emerged as players with state and federal legislators.

Lacking access to essential services and basic supports, people with serious mental illness became vulnerable to arrest, often for minor infractions associated with unemployment, homelessness or their untreated disabilities. For a variety of reasons (notably that state hospitals often discharged people to living arrangements located where

crime and drug use were rampant), substance abuse problems became commonplace, adding yet another risk factor for arrest. Once in custody, people with serious mental illness often have a very hard time complying with institutional rules, resulting in longer periods of incarceration than their criminal charges would normally incur. All told, these factors have culminated in today's shamefully high representation of people with serious mental illness in the nation's jails and prisons, estimated at between 200,000 to 300,000.

A simplistic view of this scenario is that people with serious mental illness who are now incarcerated or at risk of incarceration need once again to be confined in hospitals or other institutions. Some people question the deinstitutionalization movement and the capacity of people with serious mental illness to live in the community. The scientific evidence is quite different. As recent reports by the U.S. Surgeon General, a presidential commission on mental health and other sources document, a broad selection of evidence-based services and supports could fulfill the vision of successful community living for most people with serious mental illness, but the political will to make these services available continues to be lacking. In short, the widespread incarceration of people with serious mental illness is a symptom of neglect, not of the actual capacities of the individual or of our knowledge of the tools this population needs to be successful. Appropriate community services would cost less than incarceration and institutional confinement. To make such a rational investment, though, would require going up against the industries—governmental and private—and the political interests that benefit from the status quo.



200,000-
300,000

**Estimated number of people with serious mental illness
in the nation's jails.**



The Americans with Disabilities Act (ADA) offers an enormously important tool in challenging this reality. Enacted by Congress in 1990, the ADA is a civil rights law designed to promote the integration of people with disabilities—including serious mental illnesses—within the community mainstream. In its landmark *Olmstead* decision of 1999, the U.S. Supreme Court held that the unwarranted institutional confinement of people with serious mental illnesses is a form of discrimination under the ADA. These legal tools are now being used to challenge the various factors that put people with serious mental illness needlessly at risk of incarceration and that prolong their confinement in jails, prisons and other segregating institutions.

While the full impact of the ADA is still unfolding, the story behind the shameful incarceration rates of people with serious mental illness holds critical lessons for many disenfranchised populations that are vulnerable to incarceration. Essential is an understanding of what happens to devalued, socially powerless groups and how politics and financial interests can trump good public policies, the rational use of government funds and the basic rights of fellow citizens. ■

BIO

ABOUT THE AUTHOR

Robert Bernstein, Ph.D., is a psychologist with a strong interest in ensuring meaningful community participation and promoting the consumer voice within mental health systems, particularly for individuals who are marginalized or neglected by public systems.

ROBERT BERNSTEIN
PRESIDENT & EXECUTIVE
DIRECTOR, BAZELON CENTER
FOR MENTAL HEALTH LAW

For 19 years prior to his appointment to this post, Bob was the architect and director of one of the nation's oldest and largest mental health and aging programs. NSO-Older Adult Services in Detroit, Michigan, featured an innovative system that blended in-home services and advocacy to support older adults with persistent mental illnesses in integrated community settings. In addition to his work with that trail-blazing program, he also ran a private practice where he specialized in treating children and adolescents.

Bob is a leader in the field of mental health policy and advocacy. He has published several important papers and served as an expert in litigation concerning such areas as conditions in psychiatric institutions, the use of seclusion and restraint, community mental health, older adult needs, and fair housing. He also contributed to the preparation of the 1999 Surgeon General's Report on Mental Health and the President's New Freedom Commission on Mental Health.



VICTIMS**NEED JUST
JUSTICE**

At the core of crime victimization are two common results: loss and trauma. Loss, by its very nature, is a reflection of something taken that cannot be restored. Losses from crime, of course, can be quite profound. Human perpetrators may cause the loss of life, of physical control (i.e., injury), of emotional control (e.g., post traumatic stress disorder), financial control and even the loss of innocence. Even the most basic property crimes, where the loss of property is covered by insurance, can result in the loss of trust in people or a community.

Trauma is a reaction to loss. Our bodies and minds respond to something unexpected and out of our control that challenges our resilience. While crime statistically is happening every second of every day, for the person experiencing victimization, the harm might be quite unique and new. Those who advocate for victims know better than to try to define for the individuals the impact of the loss in their lives. They are allowed to do that for themselves. That is, until the justice system gets involved.

When victims enter the criminal justice process formally, which typically starts by a crime being reported to police by them or someone else, cultural values, centuries of legal tradition and human dynamics combine to start to define for victims the impact of their loss and the associated trauma.

Added to that, the system is called the Justice System and victims naturally believe that the pursuit of justice is at the heart of criminal justice. But the system emphasizes legal processes protecting the accused over victims' needs.

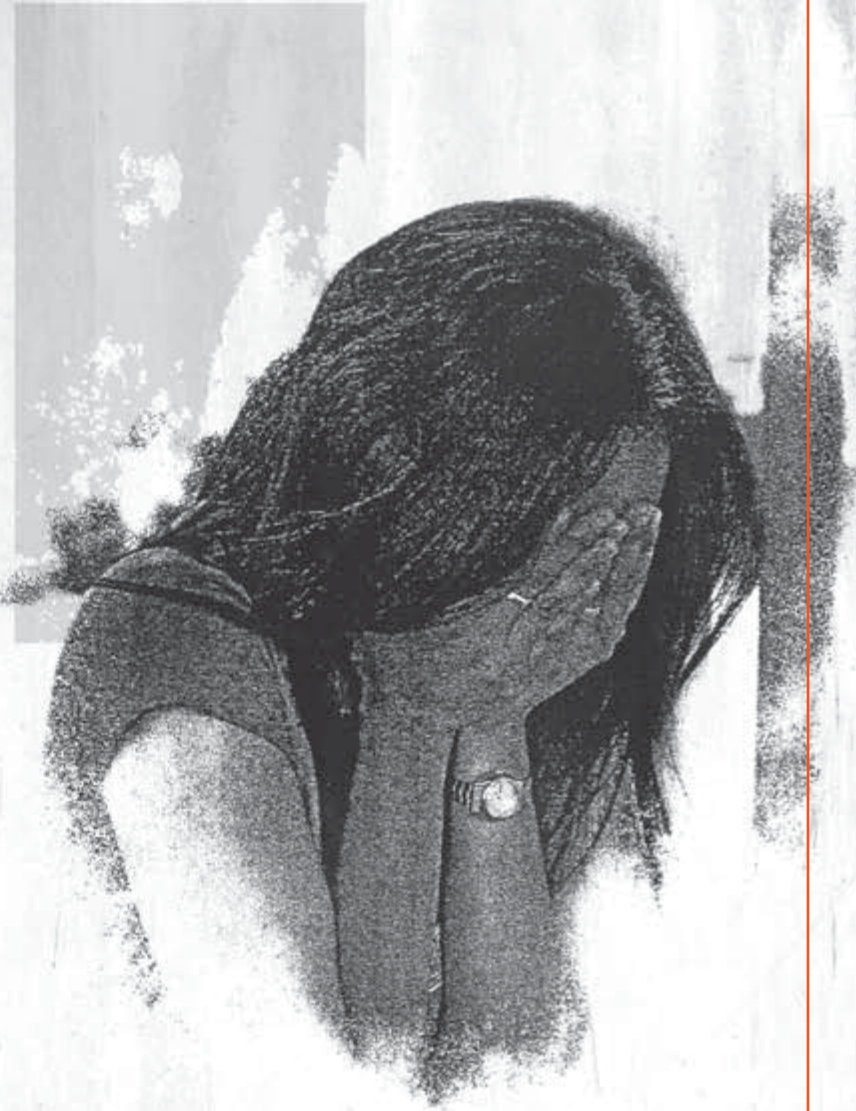
So those who are harmed by others find themselves propelled into a complex procedural system where the definition of justice seems more about adherence to rules (i.e., due process) than righting a wrong or holding someone accountable. The system and society will place a price or cost on a crime, even while survivors have deep-seated beliefs that their loved one or personal injury is priceless and irreplaceable.

Yet the justice system, whether criminal or civil, works to put a tangible price on everything. That can start pretrial criminally where in many areas, unless there is a valid threat assessment prospect, an arbitrary bail amount is intended to reflect the "price" of the crime of which someone is accused.

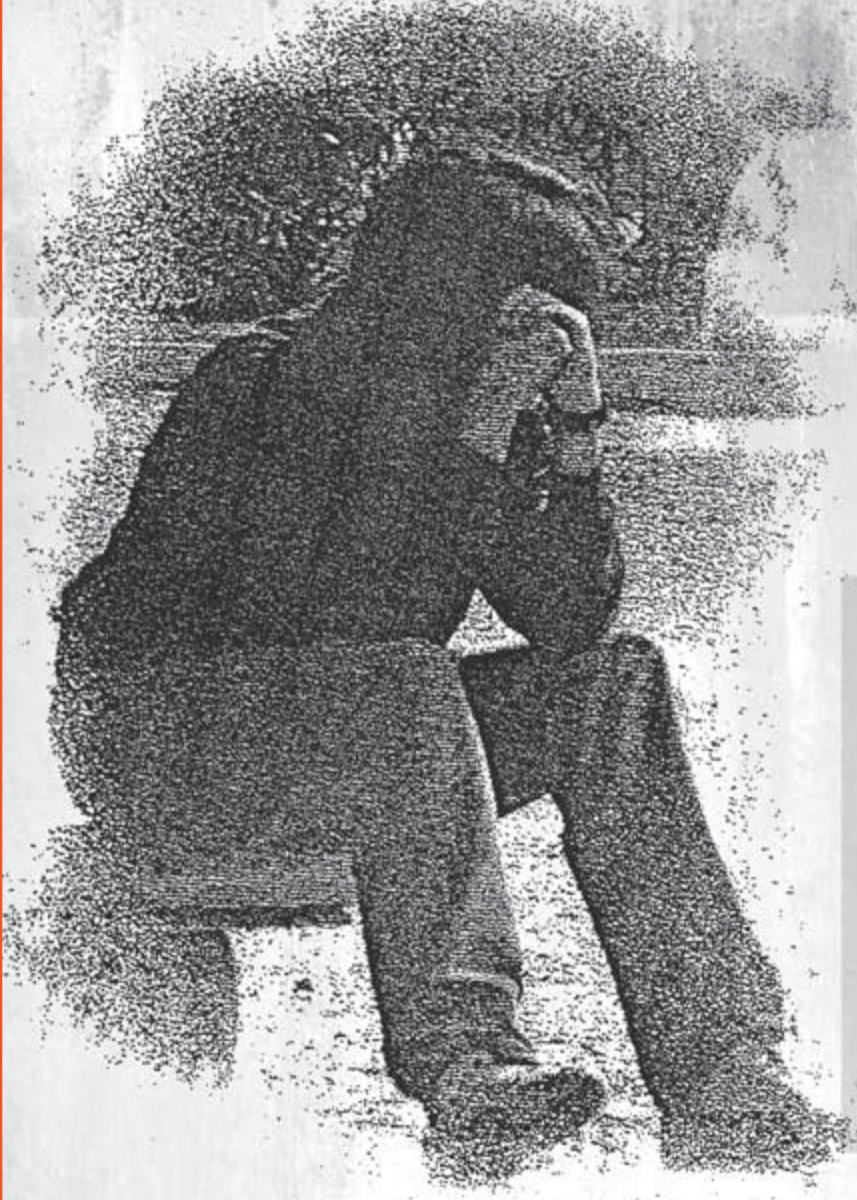
In the process of legal proceedings, there will be plea negotiations—most cases are settled this way—and if those aren't agreed, there will be a trial. If conviction results, once again, there will be a 'price' placed on the conviction.

Most often in the course of criminal justice, the deepest cost to the convict is loss of personal liberty through incarceration. On the rarest of occasions, it is the price of convict's own life. In any case, the main tool of the criminal justice system is incarceration where sentences seem to victims and survivors almost as arbitrary as bail amounts.

A variety of factors like how the crime was committed, whether there was premeditation and whether the perpetrator has a record, set the price. Those factors and others don't speak to the worth of the actual loss, as in the precious life that was taken through murder. Only recently have survivors been able to discuss the loss from the crime through a victim impact statement. If a statement is made, it is brief, at the very end of trial proceedings near sentencing and after a conviction.



Incarceration has become the primary default penalty in the U.S. justice process. Extended detainment can benefit victims, survivors and society by removing dangerous perpetrators from the community. If fear and prevention of further harm is in view, custody of a perpetrator has tangible value to citizens and the community.



CENTURIES OF LEGAL TRADITION AND HUMAN DYNAMICS COMBINE TO START TO DEFINE FOR VICTIMS THE IMPACT OF THEIR LOSS AND THE ASSOCIATED TRAUMA.

Yet the expense of housing prisoners is becoming more scrutinized in today's economic milieu. And the financial, emotional and social impact that one individual can create from one horrific act can expand well beyond the standard costs of incarceration.

This example might seem extreme, but the events of September 11, 2011, show that nineteen individuals can wreak such havoc resulting in nearly 3,000 deaths, tens of thousands of injuries, billions of dollars in damage and untold numbers emotionally devastated. While the impact of that one event was uniquely profound, the same results appear to scale as roughly every thirty-two minutes someone is murdered in the United States.

Beyond the profound losses created, just speaking plainly, isolating dangerous people from society has real fiscal benefit in protecting communities from more harm.

Yet, in dealing with victims on a regular basis, I find that most say they would welcome reforms in the justice process. Sometimes it is framed in "our system is broken," while other times it is just a conclusion that even getting an investigation, prosecution and conviction doesn't provide any meaningful sense of justice.

Using the hammer of incarceration to beat down so many law violation nails can do two things that don't serve victims in the slightest. One way victims suffer from over-incarceration is that it can diminish the meaningfulness of a consequence for serious harm. Survivors find themselves confused by prison sentences that are mere ranges for literally hundreds of different types of losses from crime.

A second outcome of burgeoning prison populations resulting from the incarceration default is its effective distraction from other useful forms of remediation and restitution that might better serve those enduring the harm. If society believes the *only* serious response to a criminal conviction is prison, then the *only* serious response felt by everyone in the system is serious prison time.

When lawmakers, prosecutors and the community believe incarceration offers the only answer, they fail to consider other, and possibly better, options. Criminals create loss and to the extent that such a loss can be restored or even an attempt at restitution, those creating the harm should be held responsible to acknowledge the harm they've created by appropriate recompense.

Many in the system and many yet to experience it recognize the need for reforms. But a story might make it more tangible to those who want to see reforms defined and implemented. One woman I assisted had two wandering drug addicts break into her home while she was away, steal valuables and then commit arson to cover up their crime. She arrived home to discover her house was a total loss and her stolen valuables were fenced to fund a drug habit. Not being of great means, the homeowner had let her insurance lapse because of economic realities and now was left homeless. The male and female couple were eventually arrested, convicted and sentenced to prison.

The woman lamented to me that her perpetrators now had free housing, food and medical care provided to them while she was left with nothing. She didn't qualify for crime victim compensation as she was not physically harmed. She had only lost property. She acknowledged that most people in the justice process were quite sympathetic to her plight and equally paralyzed to do anything beyond getting the most prison time possible for the criminals. Her question was, rightly but simply, "Is this just?"

I asked her, "What would you like to see happen?"

"I would like for those two to get jobs and pay me back for my house and my personal property. They get four years in prison for this, will be out, and I STILL won't have a house."

Adding up all the parts provides a sense of only a tangible sum of this one crime. A key asset, a house, is destroyed. Two convicts have to be housed and fed for four years. The victim will now struggle for survival, probably to end up supported in some way with taxpayer-funded social services.

Reforms in the criminal justice system are sorely needed. Current economic pressures drive many proposals for change. No doubt these can't be ignored. Prisons are expensive and the negative impact from unnecessary incarceration can't be underestimated both financially and socially.

BIO

ABOUT THE AUTHOR

Will Marling is an Ohio native who earned his undergraduate degree in 1986. He went on to complete graduate and post-graduate degrees, 1989 and 1997 respectively, with spiritual, anthropological and cultural frameworks. His formal introduction into the world of victim assistance and crisis intervention began in 1990 when he started working with local law enforcement in Columbus, Ohio, serving officers and the community. In 2000, he was trained by the National Organization for Victim Assistance® (NOVA) and brought that added dimension of development to his skill set and experience base in responding to people in crisis. Beyond deploying to local incidents, his praxis has been informed as a responder to a variety of national and international events that included violent crimes, human error and natural disasters. Will was appointed as executive director for NOVA, Alexandria, V.A., in July 2007. Since that time, he has been contributing leadership to the organization while also promoting the concept of victim relations nationally. In the field of victim assistance, Will has a focus as a Certified Identity Theft Risk Management Specialist™.

WILL MARLING
EXECUTIVE DIRECTOR
NATIONAL ORGANIZATION
FOR VICTIM ASSISTANCE



At the same time, this nation needs leadership that recognizes that the costs for failing to bring reform go well beyond reducing inappropriate incarceration rates. The Preamble to the United States Constitution articulates, "We the People of the United States, in Order to form a more perfect Union, establish Justice...".

Just Justice is as the core of this Union. Reforms in our justice system must focus on justice for all, including the victims. ■



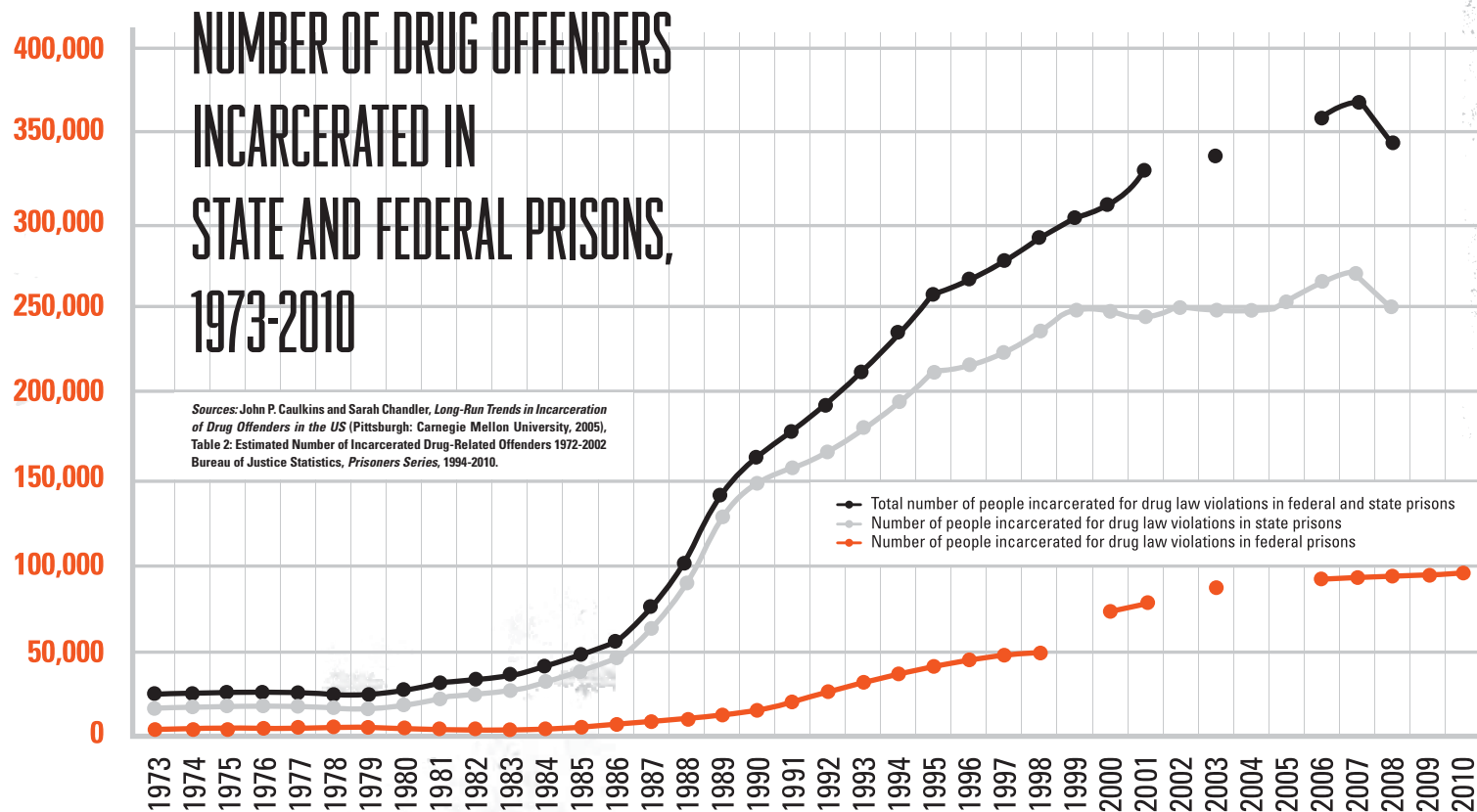
THE CRIMINAL

JUSTICE SYSTEM

DRUG POLICIES

In July 2000, while still a project of the Center on Juvenile and Criminal Justice, the Justice Policy Institute issued its first report on drug policy and incarceration: *Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States*. With graphs and charts showing the explosion in drug arrests and incarceration and the disproportionate impact on African Americans and Latinos, the report starkly laid out the terrible price that the “War on Drugs” was exacting within the nation’s communities. Over a decade later, propelled by the work of the Drug Policy Alliance and many others, the country appears to be approaching a tipping point. The 2012 elections revealed a public shift in opinion toward decriminalizing marijuana, with Colorado and Washington State voters supporting legislation to handle marijuana through regulation and taxes, instead of the criminal justice system. Massachusetts voters also voted in support of the use of medical marijuana in their state.⁸⁸

Meanwhile, arrests for marijuana possession accounted for 43 percent of all arrest for drug charges in 2011.⁸⁹ Data from the U.S. Bureau of Justice Statistics shows that while arrests in the United States for most offenses have been steadily declining over the past 20 years, between 1980 and 2009 the arrest rate for drug possession or use more than doubled in the United States.⁹⁰ There were 80 percent more arrests for drug possession or use in 2010 than in 1990. Lest anyone think officers were primarily focused on reducing the number of drug dealers, state and local law enforcement made four times as many arrests for drug possession or use in 2010 as they did for drug sale or manufacture.⁹¹ While the public and policymakers begin to realize the societal and fiscal implications of failed drug policy, the end of the “War on Drugs” could signal the end of mass incarceration. ■



POLICING

Since 1992, the number of sworn law enforcement officers has increased over 25 percent in the United States, to more than 765,000 officers. Police protection spending per capita has increased 78 percent from 1982 to 2007 *after adjusting for inflation*.⁹² While there are many reasons for the increased number of police, expanded federal funding for law enforcement, particularly in the 1990s, has been a significant driver. This federal funding has been popular for financing drug task forces in many jurisdictions. With federal agencies measuring success in their programs by the number of arrests, rather than increased public safety, it's not surprising that drug-related arrests have skyrocketed.

While police do provide an invaluable component of public safety, cities and counties must take caution in the policing practices they adopt. Some practices, such as New York City's infamous "stop and frisk," contribute to racial discrimination. According to the New York Civil Liberties Union, "black and Latino residents made up close to 90 percent of people stopped" from 2002 through 2011. "Stop and frisk" practices cause blacks and Latinos to be disproportionately stopped not only in their own neighborhoods but in predominantly white neighborhoods as well.⁹³ With economic conditions squeezing state and local budgets, it's time for policymakers to take a hard look at how we police and what laws our police officers must enforce. ■



PRETRIAL

The pretrial process, from arrest to resolution of a charge, is a complex, bifurcated process that often separates those who have financial resources from those who have not. Although a few jurisdictions, such as the District of Columbia, have generally eliminated the use of money from their pretrial process, most states and jurisdictions have a system where people accused of an offense and arrested must put up a sum of money in order to be released from jail while awaiting trial. While those of upper middle class and higher may not be detrimentally impacted by this practice if they can afford to post their bond, research reveals that many people remain behind bars while awaiting trial simply because they cannot afford to post the bond amount. Tax-payers foot the bill for these jails stays. The amount of these bonds places a large burden on those with fewer means, even if they can hire a for-profit commercial bail bondsman to post a promissory note on their behalf.

For-profit bail bondsmen cause people who are arrested (not convicted at this point) to give up money in order to obtain their freedom from jail while awaiting trial. Fees paid to for-profit bail bondsmen are nonrefundable, even if the charges are dropped or the client is found not guilty. For-profit bail bondsmen also play a huge role in the criminal justice system due to their legal ability to put their clients back into jail at any point and for any reason during the pretrial process, even if the client has fairly paid his fees to the bondsman. Additionally, the for-profit bail bonding industry has proven to be a formidable power in pushing pro-arrest and pro-incarceration policies through affiliations with legislative councils and lobbying of political figures. ■

PROBLEM SOLVING SPECIALTY COURTS

A number of diversion courts have sprung up across the judicial landscape over the past decades as jurisdictions have sought another way to address cases with a clear public health or social welfare issue attached. These courts include mental health courts, prostitution courts, drug courts and family courts, among others. While efforts to reduce the criminal records of people who successfully complete diversion court programs are notable, it is also important to remember that specialty courts are not the solution to ending mass incarceration. Diversion courts sometimes serve as a first step to addressing the needs of people already involved in the criminal justice system; however, these programs should not excuse a continued reliance on the criminal justice system to resolve these public health problems. Rather, we should channel resources into resolving the social and/or public health problems prior to the criminal justice system ever getting involved to eliminate the number of people impacted by arrest and conviction histories, along with the long lasting impact of criminal justice involvement. ■

SENTENCING

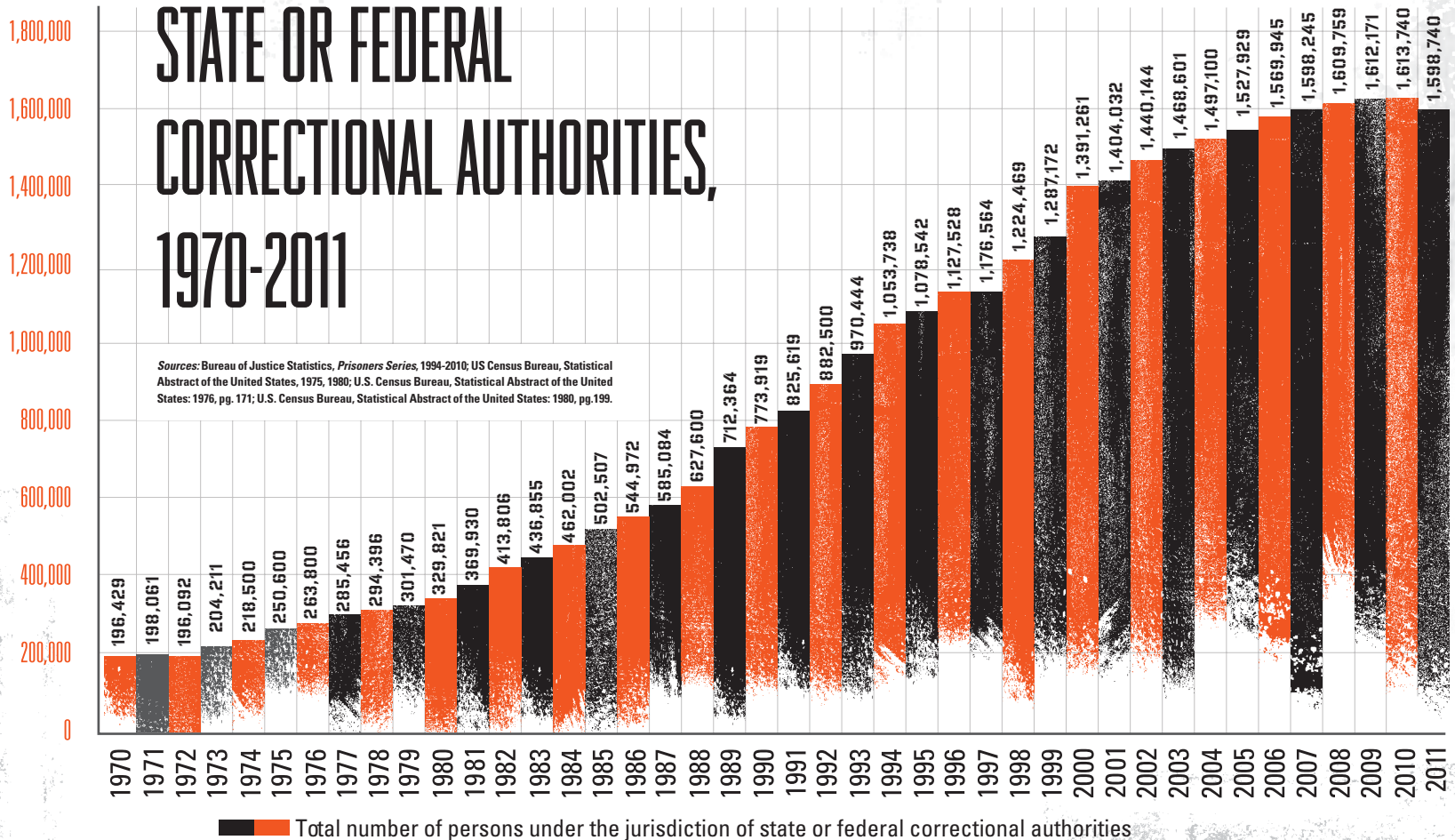
Sentencing is the determination of how long and onerous a convicted offender's punishment will be. As shifts in philosophies towards crime reduction occurred in the 1970s and 1980s, the nature of sentencing changed and contributed to the increase in incarceration and prison populations.⁹⁴ The length of sentences grew longer, and between 1990 and 2006, sentence lengths increase by 36 percent.⁹⁵ Mandatory minimums gained popularity as the solution to the "War on Drugs," without evidence of their effectiveness. Now, years of research show that mandatory minimums are not effective and cost more than alternatives to incarceration, such as substance abuse treatment for those convicted of drug crimes.⁹⁶ Voters are demonstrating a desire to shift from these policies, as seen in California during the November 2012 vote on Proposition 36. Over two-thirds of voters agreed to change California's "three-strikes" law so that courts cannot apply a "25-to-life" sentence if the third offense is a misdemeanor.⁹⁷ Reform in sentencing practices could free up dollars for more effective rehabilitation and lessen the adverse impacts of incarceration on families and communities in the United States. ■

INCARCERATION

With the presumption that a "tough on crime" perspective would reduce crime, officials across the United States put deterrence and incapacitation theories to the test. They failed. The use of incarceration as a crime-control practice has skyrocketed since 1970; and the rate of incarceration per 100,000 people increased 700 percent from 1972 to 2011.⁹⁸ An average of 107 per 100,000 adults was incarcerated from 1930 through 1975,⁹⁹ but, by 2008, 754 per 100,000 adults were behind bars.¹⁰⁰ However, researchers have noted that "only 12 percent of the increase in incarceration rates was the result of more offenses being committed," which likely resulted from better reporting of domestic assaults. The remaining 88 percent of the increase in incarceration is due to "imposing more sanctions, incarcerating more offenders, and increasing time served."¹⁰¹

Meanwhile, those people who are targeted for incarceration (through surveillance and arrest practices) have suffered the lifelong impacts of incarceration for years after completing their sentence and paying restitution, through employment challenges, denied voting privileges, reduced access to adequate housing and many other collateral impacts resulting from the prison experience. When considering how to increase public safety, it's important to note that research shows that imprisonment does not decrease the chance someone will reoffend once released and may actually increase a person's inclination to engage in a criminal offense.¹⁰² Researchers have estimated the tipping point where incarceration is no longer effective in a state, and likely harmful, to be at a rate of 325–492 per 100,000; in 2010,¹⁰³ 35 states had incarceration rates within or above this range.¹⁰⁴ Meanwhile, research shows that crime is not the only factor determining public safety: employment, health, family stability and other factors are also integral parts of a safe and productive society. ■

TOTAL NUMBER OF PERSONS UNDER THE JURISDICTION OF STATE OR FEDERAL CORRECTIONAL AUTHORITIES, 1970-2011

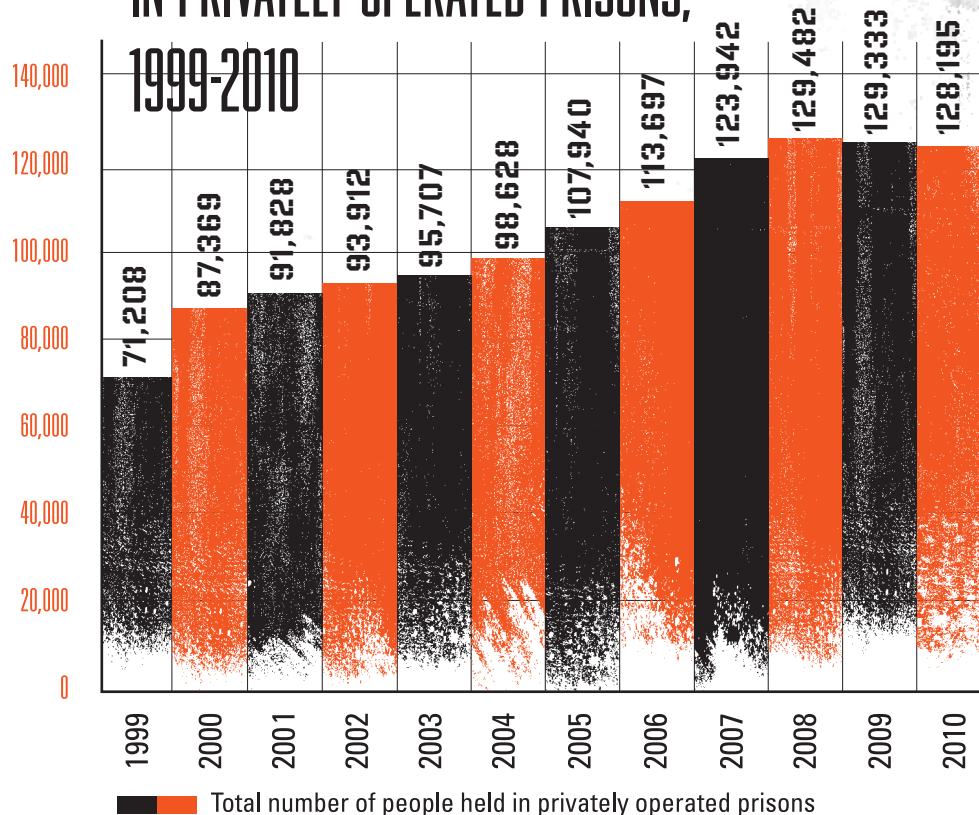


PRIVATE PRISONS

At a time when many policymakers should be looking at criminal and juvenile justice reforms to safely shrink the size of the U.S. prison population, private prison companies have an incentive in preserving the current approach to criminal justice and increasing the use of incarceration. While private prison companies may try to present themselves as simply meeting existing “demand” for prison beds and responding to current “market” trends, they, in fact, have worked hard over the past 30 years to create markets for their product. As revenues of private prison companies have grown, the companies have had more resources to build political power and promote policies that increase their bottom line and in turn lead to higher rates of incarceration. ■



NUMBER OF PEOPLE HELD IN PRIVATELY OPERATED PRISONS,



Source: USDOJ, Bureau of Justice Statistics, "Prisoners in 2009," Appendix Table 19: Number of state or federal prisoners in private facilities, December 31, 2000-2009; USDOJ, Bureau of Justice Statistics, "Prisoners in 2010," Appendix Table 20: State and federal prisoners in private facilities, by jurisdiction, December 31, 2000, 2009, and 2010.

PAROLE

Release on parole allows an incarcerated person to return to his or her community prior to sentence completion due to good behavior and on the promise of complying with conditions for release. In 2010, 494,249 people left prison under conditional release.¹⁰⁵ However, success upon release from prison depends on having support structures in place to facilitate a smooth return to society. People released from prison onto parole may not be able to access the assistance they need to get basic provisions or may not be able to reasonably meet the conditions of their parole. Consequently, a number of people are returning to prison due to a parole violation. In 2010, 231,917 of the people sentenced and admitted to state and federal prisons returned to prison due to a parole violation.¹⁰⁶ In addition to building the supportive networks and services needed for those released on parole, research on parole violations should also be a priority so that meaningful changes can be made to reduce violations and to handle violations through more effective practices. ■

RE-ENTRY

The rise of incarceration brings an increased number of formerly incarcerated people re-entering their cities and communities. Prisons release over 650,000 people—more than 10,000 people per week—each year.¹⁰⁷ After going through the criminal justice system and spending weeks or years behind bars, these people face tremendous challenges in establishing a life of normalcy, let alone productivity, once they leave prison. They generally have been incarcerated in facilities structured for their detainment and punishment, not their rehabilitation or healing. It took 30 years after mass incarceration began to pass legislation in 2008 to provide assistance to people re-entering society after incarceration. Still, those re-entering society face immense difficulty in obtaining employment, safe and stable housing, voting rights and many other basic provisions. ■

THOSE RE-ENTERING SOCIETY FACE IMMENSE DIFFICULTY IN OBTAINING EMPLOYMENT, SAFE AND STABLE HOUSING, VOTING RIGHTS AND MANY OTHER BASIC PROVISIONS.

INCARCERATION AND ECONOMIC INEQUALITY

The relationship between economic status and incarceration is complex: poverty is connected with involvement in the criminal justice system and mass incarceration is connected with a rise in U.S. poverty. Estimates suggest that poverty would have decreased by over 20 percent from 1980 through 2004 had mass incarceration not occurred.¹⁰⁸ Even when considering that the poverty level artificially declines due to incarcerated people being excluded from the count, the economic impact of mass incarceration on poverty rates still stands out. Studies also show that mass incarceration has disproportionately impacted those of lower education, social status and income. The negative impacts of incarceration are not limited to the people coming out of prison, in terms of employability, adequate access to housing and more; their children are also more likely to grow up in poverty and have fewer opportunities to attain economic well-being in their lifetime.¹⁰⁹ ■

**MORE THAN
NUMBERS:
HOW THE WAR
ON DRUGS
FUELS MASS
INCARCERATION**

We've all heard the statistics: the United States has 5 percent of the world's population but 25 percent of the world's prisoners—one in 100 Americans is behind bars. For black men between the ages of 20 and 34, the figure is one in 9.¹¹⁰ America's addiction to incarceration has driven these statistics, shining a spotlight on the way in which we dehumanize those who suffer from addiction or lack of access to legitimate economic opportunities.



I know this firsthand; I grew up visiting my own dad in prison. He suffered from both conditions: the need to make money along with skill at an entrepreneurial endeavor (despite violating America's drug laws), as well as, a 30-plus year heroin addiction that led to an HIV diagnosis as it does for so many. My mom often recalls a judge who pondered aloud whether my dad used drugs because he sold them, or vice versa. While he was alive, and since his passing almost six years ago, we've often wondered that ourselves.

My family isn't alone in wondering which came first, the chicken or the egg, or if any of it was worth it. My dad cost taxpayers like you and me hundreds of thousands of dollars in incarceration and healthcare costs, which could have been averted had he ever had access to comprehensive drug treatment that met his needs and capability. Unfortunately, there is a dearth of treatment opportunities outside the criminal justice system; our system criminalizes people who struggle with drug misuse or addiction instead. This approach leads individuals away from proven treatment methods and into prisons, jails and drug courts. Meanwhile, as many as 20 million Americans each year do not receive the substance abuse treatment for alcohol and other drugs that they need,¹¹¹ and more than 26,000 people die annually from accidental drug overdose.¹¹²

In the more than 40 years that America has been fighting the failed war on drugs, we've wasted more than a trillion dollars, with few signs that these efforts have been successful. As cartels grow increasingly powerful and lives are lost in tragic ways, even our long time drug war allies, like Colombia and Mexico, have reassessed this effort and implored the United States to reframe our approach.

How did we get to this point? On any given night, more than 500,000 Americans are behind bars for a drug law violation¹¹³—10 times the number in 1980.¹¹⁴ In 2010, 18 percent of people in state prisons and more than 50 percent of people in federal prison were serving a sentence for a drug law violation.¹¹⁵ More than a quarter of women and 17.2 percent of men in state prison are incarcerated for a drug law violation.¹¹⁶ In fact, in the last three decades, the adult arrest rate for drug law violations increased by 138 percent.¹¹⁷ And in 2011, there were more than 1.5 million drug arrests in the United States—80 percent of which were for simple possession alone.¹¹⁸

A myriad of mechanisms have led us to this grave dishonor of leading the world in incarceration. Misguided drug laws and draconian sentencing requirements have produced profoundly unequal outcomes for communities of color. Racially biased policing and the erosion of judicial discretion through mandatory minimum sentencing have led to disparate rates of incarceration and sentence lengths for people of color. And the never-ending cycling in and out of prison can be attributed to the barriers to successful re-entry, that have been cemented by unnecessarily harsh laws targeting drug users and sellers.

Although rates of drug use and selling are comparable across racial lines, African Americans and Latinos are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than whites. Instances of racial profiling in traffic stops and the disproportionate policing of urban communities have led to the arrest and funneling of more people of color into the criminal justice system. From 1980 to 2007, African Americans have been arrested for drug violations nationwide at rates 2.8 to 5.5 times higher than white arrest rates.¹¹⁹ African Americans comprise 13 percent of the U.S. population,¹²⁰ and report using drugs at similar rates to people of other races,¹²¹ but make up 31 percent of those arrested for drug law violations¹²² and more than 50 percent of those incarcerated in state prison for drug law violations.¹²³ In fact, African Americans have a 20 percent greater chance of being sentenced to prison than white drug defendants.¹²⁴

Mandatory minimum sentencing laws for drug convictions only consider the type of drug, weight of drug, and prior convictions of the individual when determining prison terms. Initially enacted to limit disproportionate racial sentencing in Southern courts, mandatory sentencing guidelines force judges to assign unjust sentences to low-level first time drug offenders that are disproportionate to their committed offenses. Sadly, individuals can typically only secure sentence reductions by acting as an informant.

The cruel and unusual severity of minimum drug sentencing requirements raises questions surrounding their constitutionality and abuses of Eighth Amendment rights.¹²⁵ Mandatory minimum sentencing—such as sentences above 20 years doled out under the 100:1 crack cocaine federal sentencing disparity, which led to African Americans accounting for 80 percent of federal cases despite only accounting for one-third of users—have contributed significantly to prison overpopulation and the increasing number of people of color behind bars. Before mandatory minimums, the average federal drug sentence was 11 percent longer for blacks than for whites. After mandatory minimums were instituted in 1986, federal drug sentences were 49 percent higher for African Americans.¹²⁶

Punishment for a drug law violation is not solely meted out by the criminal justice system, though. Policies denying child custody, voting rights, employment, business loans, trade licensing, student aid and even public housing and other public assistance to people with criminal convictions perpetuate the punishment. Many of these policies only impact people who have been convicted of drug crimes—those convicted of other types of offenses, even violent ones, are not subject to the same types of collateral consequences. The lifelong penalties and exclusions that follow a drug conviction have created a permanent second-class status for millions of Americans.

Even if a person does not face jail or prison time, a drug conviction record—particularly a felony record—can create a lifetime of barriers to achieving success. And, as with drug law enforcement, these barriers fall disproportionately on individuals and communities of color. It was this early understanding that led drug policy experts to call the drug war the “new Jim Crow”, inspiring Michelle Alexander’s eye-opening book of the same name. The biases those with the criminal label encounter, as Alexander explains, contribute to the perpetuation of criminality as a means of survival due to lack of available opportunity. Lack of opportunity coupled with the label of criminality for low level offenses creates little room for positive lifestyle changes, which in turn solidify perceptions of a racialized criminal minority in the public consciousness.

Mass incarceration has major implications for American democracy. Nationally, an estimated 5.3 million Americans are denied the right to vote because of laws that disenfranchise people with felony convictions. The implications for the black community are even more shocking: one out of every 13 black people of voting age in the U.S. cannot vote because of felony disenfranchisement.¹²⁷

Families like mine have been devastated by mass incarceration. More than half of incarcerated people are parents of minor children, including

5.3 MILLION

Estimated number of Americans that are denied the right to vote because of laws that disenfranchise them with felony convictions.



more than 120,000 mothers and 1.1 million fathers. Two-thirds of these parents are incarcerated for nonviolent offenses, most of which are drug law violations.¹²⁸ As many as 2.7 million children (one in every 28) are growing up in U.S. households in which one or more parents are incarcerated.¹²⁹ The impact on children from communities of color is much greater—3.8 percent of African American children had a parent incarcerated for a drug law violation in 2008, compared to one percent of Latino children and 0.3 percent of white children.¹³⁰ Moreover, research estimates that having an incarcerated parent makes a child six times more likely than children whose parents are free to become criminally involved or to be imprisoned at some time in their life.¹³¹

Paradoxically, a recent study based on a national survey of youth found that black adolescents “were less likely than whites to have engaged in drug use or drug selling, but were more likely to have been arrested. Racial disparities in adolescent arrests appear to result from differential treatment of minority youths and to have long-term negative effects on the lives of affected African American youths.”¹³²

Given my background, it is by the grace of God that my only arrest has been for protesting our country’s unjust drug laws.

BIO

ABOUT THE AUTHOR

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NATIONAL AFFAIRS

Jasmine L. Tyler is the deputy director of national affairs for the Drug Policy Alliance and is based in Washington, D.C. She advocates for policies that reduce racial disparities in the criminal justice system, increase access to social and health services, and treat people who use drugs with dignity. Jasmine’s work has included grassroots and grassroots organizing across the political spectrum, public speaking, and media appearances. She is one of the leaders of the Crack the Disparity Coalition, which works to equalize the penalties for crack and powder cocaine. Her work led directly to federal crack cocaine sentencing reform in 2010, including the first elimination of a mandatory minimum penalty since the 1970s. Her writing has appeared in the *Los Angeles Times*, the *Economist*, *Huffington Post* and other national media outlets. Prior to joining DPA, Jasmine worked as research director for the Justice Policy Institute. She has also worked as a sentencing advocate collaborating with public defenders in Washington, D.C. and Fairfax, V.A. She received a B.S. from James Madison University and an M.A. from Brown University, both in sociology.



The United States has dug itself into a hole. In order to get out, we have to seriously consider decriminalization of personal drug possession, which would remove a major cause of arrest and incarceration of nonviolent people, primarily people of color. We must also eliminate policies that result in disproportionate incarceration rates by rolling back harsh mandatory minimum sentences that unfairly affect people of color and by repealing sentencing disparities. And finally, we have to make sure that we prepare people to return to our communities and give them the chance to engage positively with society by ending the use of policies that exclude people with a record of arrest or conviction from key rights and opportunities. It’s time to stop digging. ■

POLICING AND INEFFECTIVE PRACTICE IN THE MIDST OF THE DRUG WAR

In 1829, Sir Robert Peel, known as the father of policing, created the Metropolitan Police of England. According to Peel, the real key for policing was “the police are the people and the people are the police.” Peel believed that prevention of crime could be accomplished without intruding into the lives of citizens. When Peel established the Metropolitan Police, his most effective public safety tool was foot patrol, known then and now as a “beat.”



James Q. Wilson and George Kelling's article, "Broken Windows: The Police and Neighborhood Safety" called for a "return to the nineteenth-century style of policing in which police maintained a presence in the community by walking beats, getting to know citizens, and establishing the feeling of public safety and trust." As many police agencies of today attempt to return to these practices, getting officers out of the impersonalized cars and on the "beat," there exists one enormous barrier known as the "drug war."

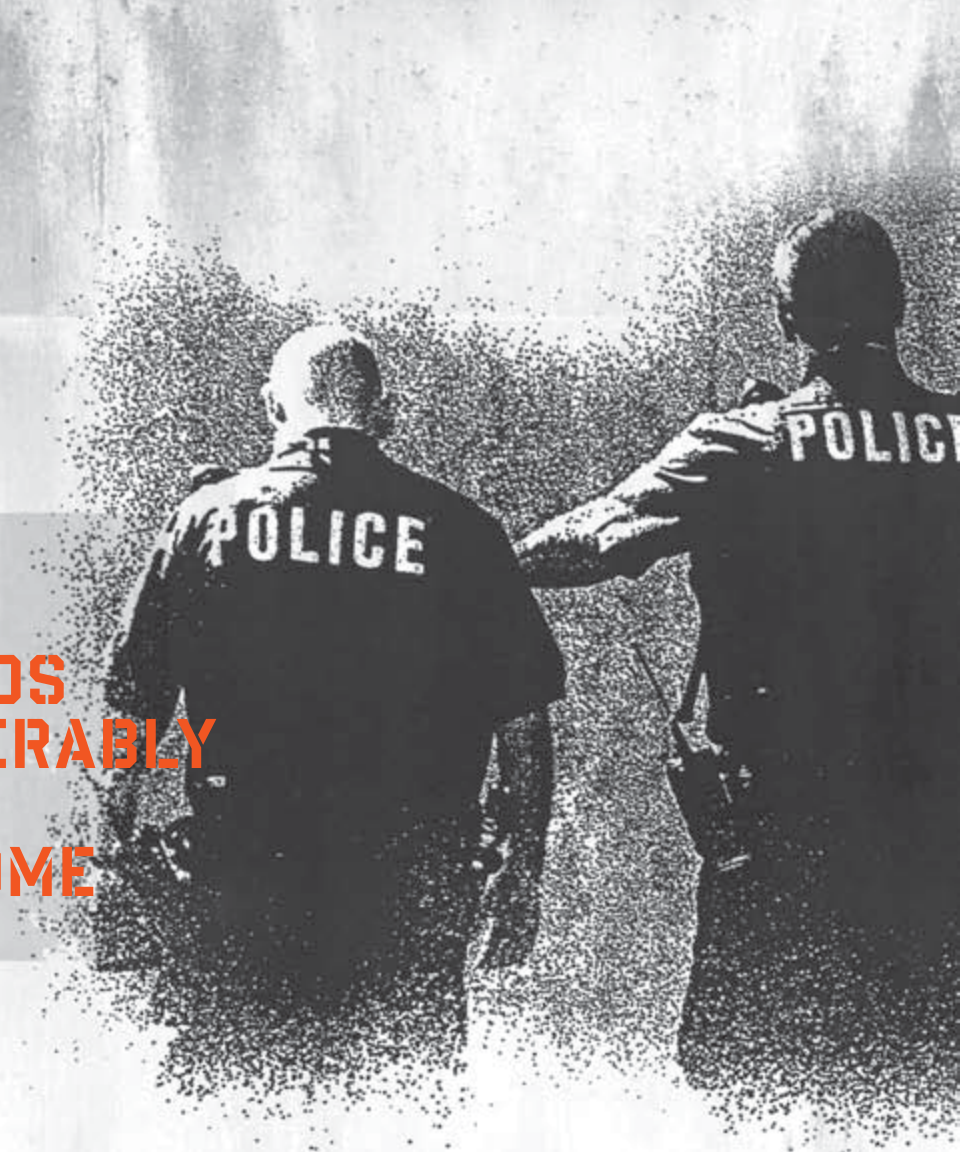
What exactly did Baltimore police Major (Bunny) Colvin, in the HBO series "The Wire" mean when he said, "the drug war ruined this job"? Anyone adequately versed in sound policing principles, including Peel, will expound upon the importance of public trust for success in public safety. What Major Colvin meant is that the drug war is responsible for the erosion of the public's trust in policing. It has put the police against the very citizens they have sworn to protect (an "us versus them" mentality and culture). In the eyes of many police officers, the drug war has categorized a great number of citizens as criminals. In the eyes of many citizens, mainly the poor of urban America, the police have become an occupying force and foe.

In the 1970s at the beginning of what we refer to as the "War on Drugs," enforcing the nation's drug laws was the primary responsibility of the federal government since the passing of the 1914 Harrison Narcotics Act. It was President Nixon who bribed local law enforcement with federal funds, introducing them to "the all out offensive on drugs." As it is today, the primary enforcement of our "get tough" drug laws was isolated to poor communities of color resulting in a significant rise in drug related arrests. In four decades, our prison population has ballooned from a half million to 2.3 million prisoners, primarily due to drug related arrests. Blacks, 13.5 percent of the nation's population, use and sell drugs at virtually the same rate as whites; however, blacks are 37 percent of those arrested for drug crimes.

Disparate enforcement isn't the only reason for mistrust in policing. Corruption, mistreatment, brutality and the trampling of constitutional rights are a few others. As police feel the political and internal pressure to over enforce our drug laws, they search people and their affects without warrants and without lawful consent. In doing so, they disrespect, belittle and sometimes physically abuse people. Property is seized with no charges placed, in direct violation of the Fifth Amendment (the right to due process). Many have complained that all the police care about in their communities is drug enforcement and that they respond slowly to and make light of crimes of violence, such as domestic violence. Because of this level of mistrust and loss of respect, many crimes of violence (rapes, robberies, assaults, etc.) go unreported.

According to Peel, when individuals have mistrust and little or no respect towards the police, they will ignore the requests or demands of officers. This can lead to an officer having to use force in order to gain control of a situation, which can also lead to arrests, serious injuries, and even death.

I suggest a not-so-new strategy, one that my grandparents quickly adopted in 1933 when the United States ended alcohol prohibition in order to reduce corruption, violent crime and cost. I believe that if we end today's drug prohibition, our neighborhoods would be considerably safer and police could truly become one with the community. Relationships and trust would take hold and true public safety would blossom.



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In 1936, twenty-two years after passage of the Harrison Narcotics Act, an outstanding police authority had reached the same conclusion as I have. August Vollmer, former chief of police in Berkeley, California, former professor of police administration at the Universities of Chicago and California, author of a leading textbook on police science, and past president of the International Association of Chiefs of Police wrote:

Stringent laws, vigorous prosecution, and imprisonment of addicts and peddlers have proved not only useless and enormously expensive as means of correcting this evil, but they are also unjustifiably and unbelievably cruel in their application to the unfortunate drug victims. Repression has driven this vice underground and produced the narcotic smugglers and supply agents, who have grown wealthy out of this evil practice and who, by devious methods, have stimulated traffic in drugs. Finally, and not the least of the evils associated with repression, the helpless addict has been forced to resort to crime in order to get money for the drug which is absolutely indispensable for his comfortable existence....

Drug addiction, like prostitution and like liquor, is not a police problem; it never has been and never can be solved by policemen. It is first and last a medical problem, and if there is a solution it will be discovered not by policemen, but by scientific and competently trained medical experts whose sole objective will be the reduction and possible eradication of this devastating appetite. There should be intelligent treatment of the incurables in outpatient clinics, hospitalization of those not too far gone.

Over time, before I ever heard of Sir Robert Peel and Chief August Vollmer, these became my views. Maybe if we taught this type of policing history within the walls of our many police academies, we could end the most destructive public policy in this country since slavery. ■



**DRUG ADDICTION,
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BIO

ABOUT THE AUTHOR

Over his 33-year career, Neill Franklin watched hardworking and dedicated fellow cops die in the line of fire enforcing policies that don't do any good. After 23 years with the Maryland State Police, includ-

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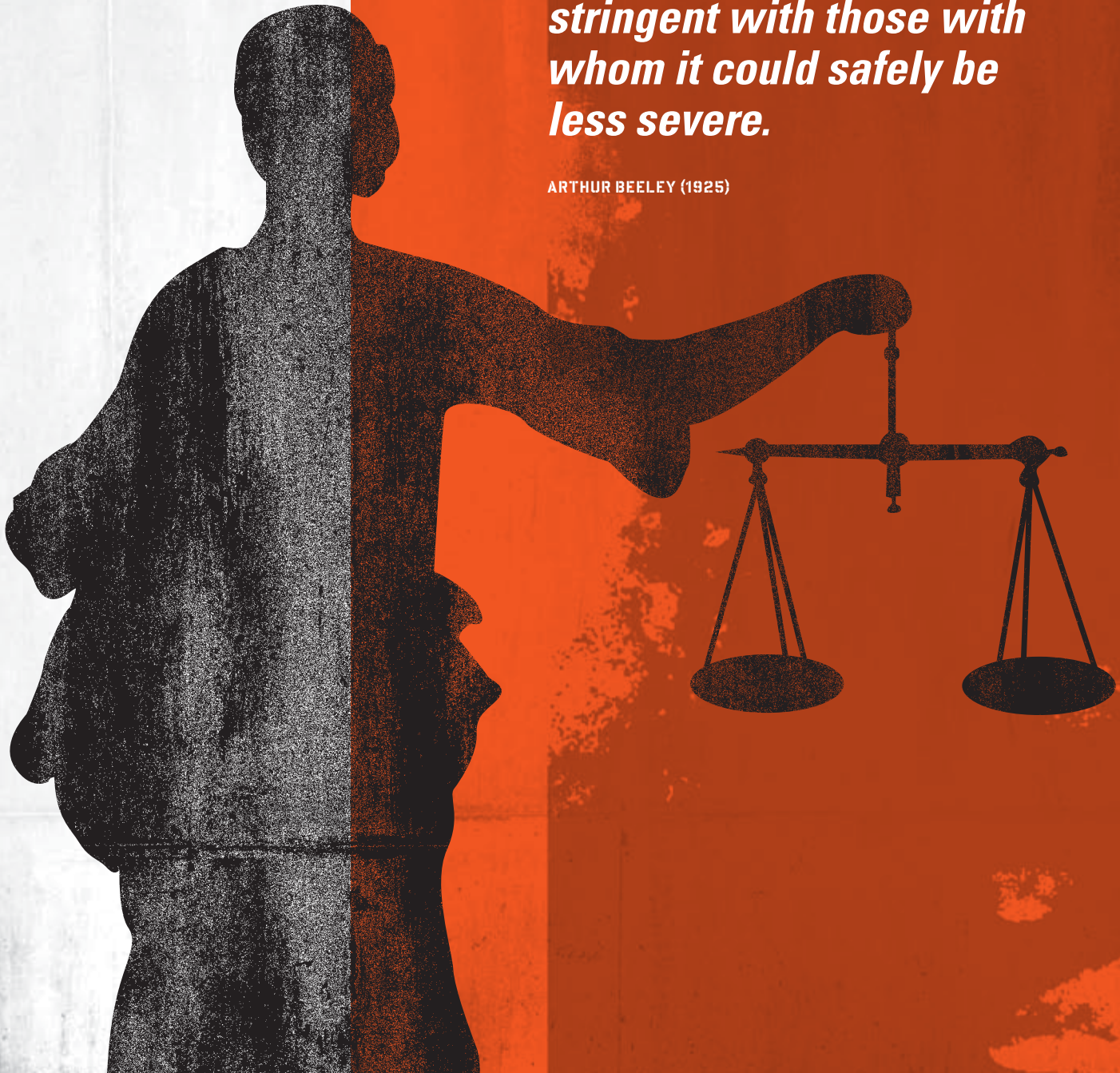
ing as an undercover narc and as the head trainer for drug enforcement, Neill was recruited by the Baltimore Police Department to reorganize its education and training division. He now leads LEAP as the organization's executive director.



PRETRIAL JUSTICE

The present (bail) system neither guarantees security to society nor safeguards to the rights of the accused. It is lax with those with whom it should be stringent and stringent with those with whom it could safely be less severe.

ARTHUR BEELEY (1925)



Most people believe our jails are full of criminals who are being punished for their crimes, but the facts show us a surprisingly different picture. As you read this, two out of every three prisoners in America's jails haven't been convicted of a crime but are in jail simply because they cannot afford to pay their bail as set by the court. Ironically, many of them won't be sentenced to jail or prison when their case concludes, yet U.S. taxpayers pay an estimated \$9 billion dollars every year to keep them in jail while they are "presumed innocent." To make matters even worse, studies have repeatedly shown that if someone is in jail when their case is settled, they are several times more likely to receive a jail or prison sentence than they would if they were free at the time of their trial. Those jailed before their trial cannot help their lawyers with their defense, keep their jobs or care for their families, thus incurring significant additional costs to our communities. We have a nation of jails and prisons full of people who, from the very start of their case, are disadvantaged and treated differently, not because they are dangerous or even deserve strict punishment for their misdeeds but rather because of their inability to raise cash. Tragically, Arthur Beeley's assessment of pretrial justice in the U.S, written 85 years ago, still rings true today.

Why?

Let's look at the purpose of bail. Legally, bail is intended to make sure someone who is arrested shows up for court when he/she is supposed to. In the past thirty years or so, the law has been changed in most states to include protection of the community from further crime as an additional purpose of bail. Bail is not supposed to be a punishment; it is actually a protection against being punished before trial which we have enjoyed in this country since the passage of the Bill of Rights. Culturally however, bail is often seen as "the price of crime." The media and popular sentiment seem to support the notion that even the accusation of crime comes with a price—a "debt to society," if you will. The money paid by those who can afford it, however, does not go to victims of crime, pay for court costs or fines, or in any way benefit the community. These dollars go into the pockets of commercial bail bondsmen in most cases. Bail bondsmen keep the money they're paid regardless of whether the person arrested shows up in court or even if they commit new crimes. This puzzling system of commercial bail bonding started in San Francisco at the turn of the past century by the notorious McDonough brothers, felons who started collecting non-refundable fees in exchange for the release of their cronies and other wealthy clients. History suggests they accomplished this through the widespread use of bribes to the police, courts and other public officials. Their enterprise was so profitable that it soon spread across the nation. It remains today, mired in corruption and scandal, as the predominant form of pretrial release used in the U.S.

But as if this wasn't enough, it is not only the *use* of money to determine pretrial release but *how* we arrive upon the amount of money we charge for freedom that fills our jails with people who have not been convicted. Most courts set bail according to the charge via a "bail schedule," i.e., everyone accused of a particular crime is charged the same amount of bail. This is done regardless of the risk—or lack of risk—posed by those arrested. So, in essence, a professional thief, who has cash in his pocket, quickly purchases his release only to return to the streets without monitoring or accountable supervision, while the first-time defendant, who has no cash, remains in jail at taxpayer expense. The use of these "bail schedules" persists, despite Supreme Court decisions and state laws requiring that bail must be set based upon the *individual* characteristics of each defendant. The use of fixed bail amounts as prescribed in these bail schedules contributes, more than any other factor, to the crowding of our nation's jails without regard for the safety of our communities or for equal justice.

Why hasn't someone tried to reform pretrial justice?

In the early 1960s, a philanthropist in New York City, Albert Schweitzer, commissioned a study of the jails in the city. He was shocked to learn that MOST of the prisoners there were being held simply because they couldn't pay their bail bond, usually of a \$100 or less. This discovery led to a social experiment known as the Manhattan Bail Project. Pretrial justice reformers believed that most of those who were arrested and had ties to the community would show up for court—regardless of whether they paid for their freedom to a private bail bondsman. The project proved to be an enormous success and soon came to the attention of then-Attorney General Robert F. Kennedy. At the historic National Conference on Bail and Criminal Justice that Kennedy convened in 1964, he described our national bail practices as "not only cruel, but completely illogical". Kennedy went on to say that "One factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money."

ONE FACTOR DETERMINES WHETHER A DEFENDANT STAYS IN JAIL BEFORE HE COMES TO TRIAL. THAT FACTOR IS NOT GUILT OR INNOCENCE. IT IS NOT THE NATURE OF THE CRIME. IT IS NOT THE CHARACTER OF THE DEFENDANT. THAT FACTOR IS, SIMPLY, MONEY.

As a result of the Attorney General's call for reform, Congress passed the Bail Reform Act of 1966 which called for the pretrial release of defendants on the "least restrictive conditions" needed to assure appearance in court. State legislatures soon followed suit and pretrial services programs soon sprang up across the country. Our federal court system implemented pretrial services programs as well, establishing a model for states to follow. These programs screen defendants to identify their strengths and risks and recommend the "least restrictive" conditions of release without regard to the financial standing of the defendant. Unlike the use of money bonds, these conditions hold the defendant accountable so as to minimize failure to appear in court as well as criminal behaviors while on release. Other western nations carefully watched what was happening with pretrial justice reform in the U.S. and bail-bonding for profit was soon abolished in countries across the globe—with the sole exceptions of the Philippines and the U.S.

If we "reformed" pretrial justice in the 1960s, why are things still such a mess?

The answer is most likely rooted in our belief that our current system of relying upon money to determine who is released and who is held, somehow works. As noted previously, a quick look at who is in jail, and why, soon dispels any notion that our cash-based system is safe, fair or effective. Another answer is the indisputable fact that the tiny, but influential bail bond for-profit industry wants to protect its livelihood. To a large extent, they have succeeded. The bail bonding for-profit industry has repeatedly attacked reform efforts such as pretrial services programs, while pandering to the public's fear of crime. The industry aggressively supports the election of officials who support their profit-taking, while they lobby legislatures to restrict judicial discretion in making bail decisions. Despite concrete evidence to the contrary, they portray the for-profit bail system as in the public's best interests while they characterize reform as "welfare for criminals." Ironically, only bondsmen fare well in a system that discriminates against the poor regardless of risk, while favoring "successful" criminals who have the cash needed for their unfettered release.



What can be done?

The advent of “evidence based practices” has brought with it new tools to help judges make safe and fair pretrial release decisions. Validated pretrial risk schemes, similar to the tools insurance companies use to measure risk, are now available to measure the likelihood of each defendant’s appearance in court as well as their likelihood of re-offending—regardless of their socio-economic status. Coupled with the accountable and transparent supervision of those released, these tools can help ensure community safety while dramatically reducing needless pretrial AND post-conviction incarceration. Just as importantly, these tools can help build justice systems in which decisions are based upon risk rather than cash. The results of such systems include enormous jail cost-savings while putting an end to the practice of “guilty until proven rich” for the majority of those arrested in this country. As we learned with the stalled pretrial reforms of the 1960s, best practices, data or even the law will not change the administration of pretrial justice. The public must demand the use of “evidence based” principles to guide criminal justice policies—an idea that has recently garnered bi-partisan support in the area of sentencing. We must abolish bail schedules and replace them with empirically-driven risk assessments for each defendant who comes before the court. And finally, pretrial release decisions must be based upon the principles of fairness, effectiveness and community safety without concern for the dollars the accused can raise or for an industry that depends upon crime for its very existence. ■

BIO

ABOUT THE AUTHOR

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Timothy J. Murray is the Executive Director of PJI. He has worked as a criminal justice practitioner at the local, state and federal levels for 40 years. His extensive pretrial justice experience includes management and executive positions with the pretrial services systems in Washington, D.C., and Miami-Dade County, Florida. While in Miami, he was the principal architect and administrator of the nation’s first drug court. He went on to serve with the U.S. Department of Justice as first director of the Drug Court Program Office.

Following that appointment, Tim held the positions of Director of Policy and Planning and Director of Program Development at the Bureau of Justice Assistance. He completed his federal service as part of the start-up team for the Transportation Security Administration, now part of the U.S. Department of Homeland Security. He was selected as PJI’s executive director in 2006. He has provided technical assistance to hundreds of programs and organizations, nationally and internationally. He is a lifetime member of the National Association of Pretrial Services Agencies and is the proud recipient of the Association’s most prestigious honor, the Ennis J. Olgiati Award. He also serves as the executive director for the Institute for Justice Planning, a subsidiary of PJI providing planning support to jurisdictions engaged in criminal justice system reform.



“SPECIALTY COURTS” AND THE SPECIAL PROBLEMS THEY POSE

America’s courts handle civil and criminal cases. Civil courts handle all kinds of cases, except when the state or federal government prosecutes someone for the alleged commission of a crime. A criminal court handles criminal prosecutions, sometimes divided into different level courts for felonies and misdemeanors. In criminal court, a person faces criminal accusations that can result in criminal penalties and life-altering sanctions, such as deportation, revocation of professional and trade licenses and the loss of many other rights.



A case may end with a pretrial dismissal of charges and the accused is released, or a guilty plea after which the accused is sentenced. Alternatively, there may be a trial of the case before a judge or, in most serious cases, before a jury. The court may find the accused not guilty or guilty, after which the judge will impose a sentence that can include lengthy imprisonment.

During the course of the past two decades, “specialty courts” have risen within criminal courts. But just what are specialty courts? How do they differ from a typical criminal court? What opportunities do they offer and what challenges do they present?

Typically, a specialty court is thought of as a therapeutic approach to address the underlying problem that led to a person’s arrest. In the best case, specialty courts offer the accused an opportunity to obtain treatment as an alternative to prosecution. But that is not always the case. Thus, in any discussion of specialty courts, it is critical to understand exactly the purpose of the court. For example, some courts that are denoted as “domestic violence courts” or “gun courts” are not really therapeutic courts at all. In some jurisdictions, they are merely fast track traditional criminal courts that simply lump all persons charged with the same kind of crime together. They do not offer treatment, they do not offer diversion out of the criminal justice system and they do not necessarily mitigate punishment in any way. Still others, such as re-entry courts or veteran courts, attempt to provide social services to certain population segments, such as ex-offenders or military veterans.

If a court truly offers the accused an opportunity to obtain treatment in lieu of punishment, then it may appropriately be called a “problem-solving court.” This particular kind of specialty court can provide significant benefits to an accused person who has an underlying problem, such as anger management control, addiction or substance abuse issues or mental health impairments. These courts initially developed as an innovative means of treating underlying pathologies and offering individuals willing to address those conditions an opportunity to avoid serious punishment, usually long terms of imprisonment. But problem-solving courts do not all operate the same way. Increasingly, there is concern that participation in these courts may come at too high a cost to society and the individual; the value of a particular problem-solving court depends on how it operates.



Among the first, and certainly the most predominant, of these problem-solving courts are drug courts. The first drug court was established in Dade County, Fla., in 1989. Today, the United States has more than 2,500 drug courts, and the numbers continue to rise. There are also more than 1,200 other problem-solving courts that are not drug courts. The original idea behind these courts was to leverage the power of the court (that is, the threat to impose punishment, usually imprisonment) to induce a person to address the underlying problem that led to the criminal charge. The idea was to get the person into a treatment program and for the court to closely monitor progress and provide encouragement for compliance and sanctions for non-compliance. Drug courts offered the hope of dealing with the explosion of arrests and convictions that were the direct consequence of the nation’s “War on Drugs” that began in the 1970s and has contributed to mass incarceration in the United States. No country on earth imprisons more of its people than the United States—some 2.3 million as of early 2011. The United States also has the highest rate of incarceration in the world, about one in 100 adults at any given time. And, by far, the most common cause of imprisonment is violation of the nation’s drug laws.

In their pure form, drug courts provide a great opportunity for an accused person to receive treatment and thereby avoid conviction and punishment. This is possible when people can access treatment before they plead guilty or give up other rights to contest the charge. Unfortunately, at least with respect to drug courts, that is not often the case.

Most drug courts now condition treatment upon the entry of a guilty plea and waiver of all rights to contest the legality of the police conduct that led to the arrest. In these situations, even if individuals successfully complete the treatment regimen and avoid imprisonment, they will still be saddled with a criminal conviction. Worse, if they cannot successfully complete treatment, which is not uncommon for people who suffer from the disease of addiction, they may face penalties that are even severer than if they simply plead guilty without treatment. And, of course, they will have given up any opportunity to contest their guilt.

There are other concerns as well. Sometimes an accused person must decide whether to enter a problem-solving court immediately upon first appearance in court. There may be inadequate time to consult with an attorney, and certainly not enough time for the attorney to fully investigate the case and provide the best advice. Even worse, in some places the accused person must make a decision before the state provides an attorney. This practice is inconsistent with fairness and fundamental constitutional rights.

In many situations, the criteria for admission are not transparent, or they may be structured in a way that forecloses treatment for those with the greatest need. For example, when individuals with prior criminal

records are automatically disqualified from participating in a problem-solving court, the treatment option is denied to those who may derive the most benefit and who face the harshest penalties. Sadly, because poorer, minority-dominated communities have higher arrest and conviction rates, automatic disqualifiers amplify racial disparity in the nation’s criminal justice system. It does not make a lot of sense to invest in treatment alternatives and then provide them only to those who are most likely to succeed, and may well have addressed their underlying problem without the court’s intervention.

So, when one looks at the nation’s specialty courts, it is imperative to ask some basic questions: Are they true problem-solving courts, or does a given court just aggregate certain types of alleged offenders without offering meaningful alternatives to criminal prosecution? Are the criteria for admission transparent, reasonable and inclusive? Does participation require that an accused person sacrifice basic rights as the price of admission? If individuals try the treatment approach and fail, will they suffer a harsher fate than if they did not try it in the first place?

Beyond these questions, especially when considering the nation’s massive problem with substance abuse, it is vital to ask whether a criminal justice approach is the best alternative. After nearly three decades of the “War

**1/1000
ADULTS**

**Rate of incarceration for adults in the United States
at any given time. The highest rate in the world.**



on Drugs,” and the resulting massive incarceration it has produced, the use of controlled substances has not abated. A 2009 survey by the Substance Abuse and Mental Health Services Administration revealed that 21.8 million people reported using illicit drugs. Nearly 8 million said they needed treatment. But with 1.6 million annual arrests for drug offenses and just 55,000 people entering drug courts annually, the numbers just do not add up.

There is no doubt that problem-solving specialty courts help many people. They have saved lives. They have saved thousands of prison years. But they are not solving the drug problem. They are too few and they are too flawed. While problem-solving courts may offer an effective and compassionate means of aiding those with mental health afflictions and other pathologies, they are not the answer to America’s substance abuse problem. Drug offenders are our sons and daughters, our brothers and sisters, our parents, our colleagues, and our neighbors. They are not inherently criminal. A serious national conversation about addressing drug use and addiction not as a criminal problem, but as a medical problem, is long overdue. It is imperative that society ask the hard question: Rather than spend billions on enforcement, prosecution, incarceration, and even on drug courts, wouldn’t it be better to spend that money on prevention and treatment? ■

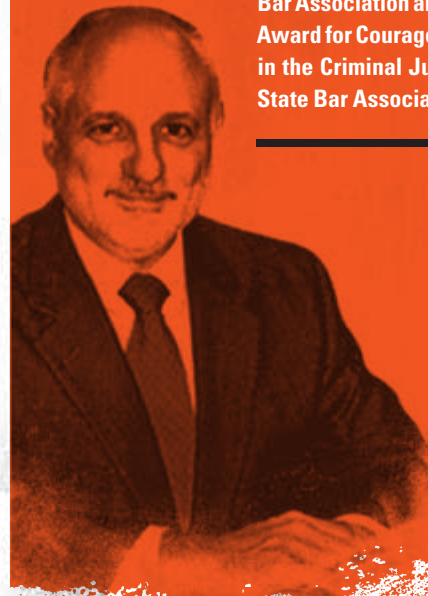
BIO

ABOUT THE AUTHOR

NORMAN REIMER
EXECUTIVE DIRECTOR
NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS

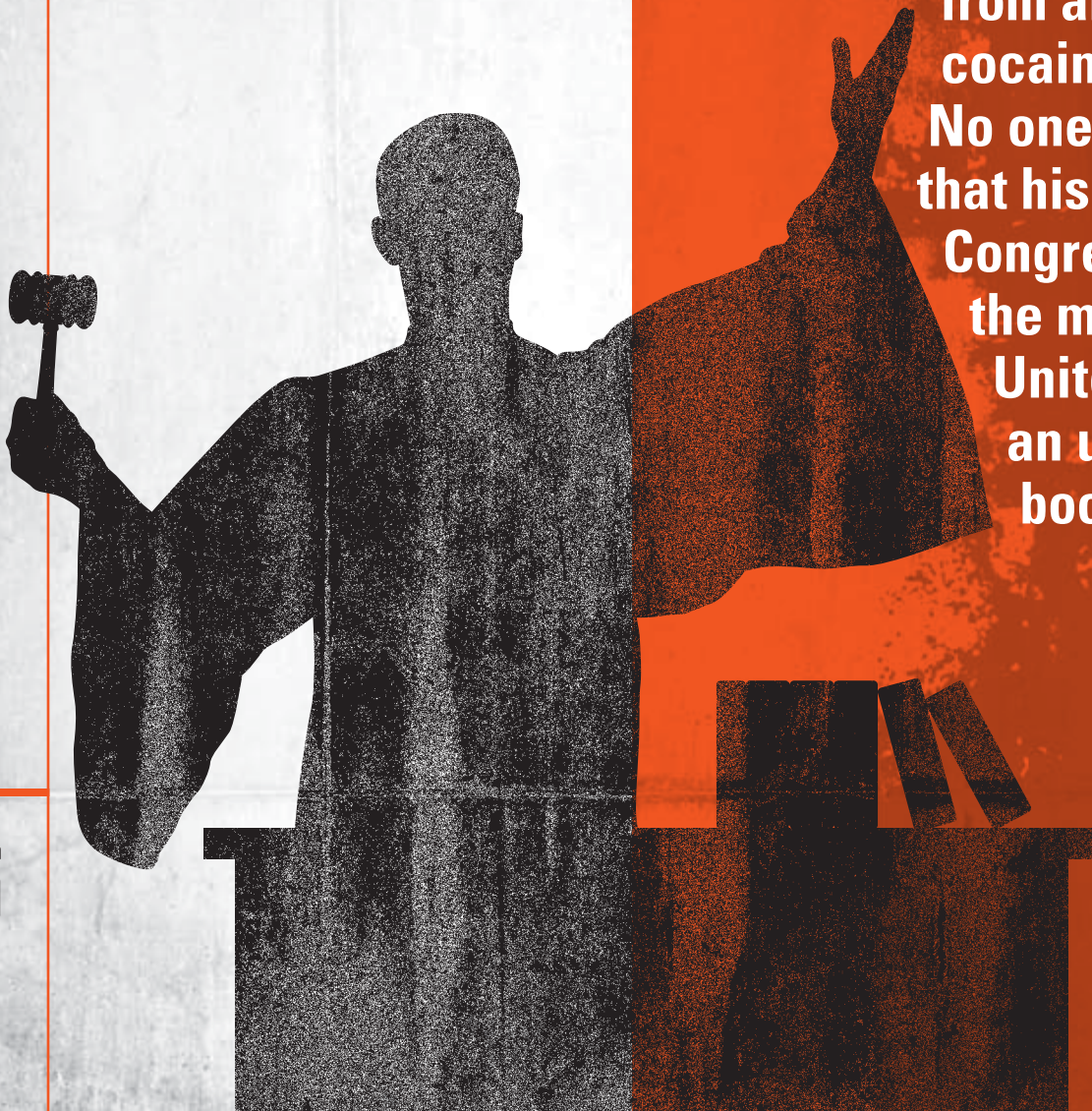
Norman L. Reimer is the executive director of the National Association of Criminal Defense Lawyers (NACDL). NACDL is the preeminent organization in the United States advancing the mission of the nation’s criminal defense bar to ensure justice and due process for all and to advocate for rational and humane criminal justice policies. As executive director, Norman leads a professional staff based in Washington, D.C., serving NACDL’s approximately 10,000 direct members and 90 local, state and international affiliate organizations with up to 40,000 members.

He earned both his undergraduate and juris doctor degrees at New York University. Norman is a recipient of the prestigious Champion of Indigent Defense Award, presented by the National Association of Criminal Defense Lawyers in 2003 and the Gideon Award presented by the New York State Association of Criminal Defense Lawyers in 2002. In 2005, Norman and the New York County Lawyers’ Association were honored by the New York City Council for their dedication to expanding access to justice to all persons without regard to economic status. In 2007, Norman received the Robert Louis Cohen Award for Professional Excellence from the New York Criminal Bar Association and the David S. Michaels Memorial Award for Courageous Efforts in Promoting Integrity in the Criminal Justice System from the New York State Bar Association.



WINNING THE SENTENCING REFORM GAME

It all started because of basketball. Len Bias was supposed to be the next Michael Jordan. He was a star player for the University of Maryland and the first-round draft pick of the Boston Celtics. His celebration of these achievements led to his death from an overdose of powder cocaine on June 19, 1986. No one could have predicted that his death would inspire Congress to create some of the most unjust laws in the United States, leading to an unprecedented prison boom in America.




How sentencing laws created our prison crisis

Bias' death gave Congress the perfect opportunity to act on the plague of cocaine and violence sweeping America's urban areas. Drug kingpins and major dealers had to be stopped and deterred from drug dealing with long mandatory minimum sentences—required prison terms of 5, 10, 15, 20 years or even life, which judges could not decrease, no matter the circumstances of the case or the uniqueness of the offender. Only months before an election, it was a popular, “tough on crime” message. Within weeks, Congress wrote and passed legislation for mandatory minimum sentences for all the major drug crimes within the federal criminal justice system, with little research or consultation with experts on drug abuse or trafficking.

The type and amount of drugs the person possesses alone trigger mandatory minimum drug sentences in the federal system. For example, five grams of methamphetamine earns an offender a five-year sentence. Factors such as his role, level of responsibility, financial gain from the crime or reasons for committing it (e.g., drug addiction or financial hardship) are irrelevant. Before mandatory minimums, a judge sentenced each person individually and could consider all these facts. After mandatory minimums, the minimum sentence depends only on the charge—which prosecutors decide. Mandatory minimum sentences effectively transfer sentencing power from judges to prosecutors. Today, there are over 170 mandatory minimums in the federal code, mostly for drug, gun, immigration, child pornography and sex offenses.

In the 1980s, Congress also authorized a set of binding U.S. sentencing guidelines that defined sentence ranges for all federal criminal cases. Judges were required to follow these rules and could not go above or below the sentences they called for, except in rare circumstances. Congress also abolished parole and required that all federal prisoners serve at least 85 percent of their sentences.

Many states followed the federal government's lead, creating mandatory minimum sentences and sentencing guidelines for violations of their own state laws, particularly for drug, gun, violent and sex crimes.



**IT WILL TAKE PLAYERS
ON ALL SIDES OF THE
AISLE WORKING
TOGETHER TO WIN
THE SENTENCING
REFORM GAME.**

What happened next was not surprising: mandatory minimum prison sentences and guideline systems meant more people were sent to prison, many for longer than necessary, filling prisons and increasing costs. In the 1980s, the federal prison population more than doubled, from 24,000 to 58,000. By 2012, it held almost 220,000 prisoners—37 percent more than it was designed to hold. Half of them are drug offenders, and over 75,000 of them serve mandatory minimum sentences. The federal prison budget ballooned from \$540 million in 1980 to a projected \$6.79 billion in 2011. Prison growth in the states has been just as explosive. Some states now spend more on prisons than they do on education and have literally run out of room to house offenders. Nationwide, taxpayers pay over \$60 billion annually on prisons.

Despite the folly and unsustainability of this system, mandatory minimum sentencing laws persist, 25 years after Len Bias' overdose took his final breaths.

The best defense is a good offense

In 1991, I learned that my brother, a first-time, nonviolent offender convicted of growing marijuana, would serve a mandatory minimum sentence of five years in federal prison, a sentence the judge opposed. I founded Families Against Mandatory Minimums (FAMM) and began what has become a 21-year crusade to reform these unjust laws. As of 2012, FAMM's successes have benefited over 175,000 people, but much work remains to be done.

THE SAFETY VALVE

By the 1990s, many low-level, first-time, nonviolent offenders—particularly those who were girlfriends or wives of drug dealers—were receiving harsh mandatory minimum sentences. Before 1994, the only way out of a mandatory minimum was to give “substantial assistance”—or “snitch” on others—to the prosecutor. If the person was too small a player in the offense to have valuable information to exchange for a shorter sentence, he was simply out of luck.

In 1994, at FAMM’s urging, Congress created a new exception to mandatory minimum drug sentences, the “safety valve.” This reform allows federal drug offenders to be sentenced below the mandatory minimum sentence if (1) the offense was nonviolent, (2) the person did not play a leadership role in the offense, (3) the person did not possess or use a gun, (4) the person has a very minor criminal history, and (5) the person gives the prosecution any information they have pertaining to the crime. As of 2012, the safety valve has benefited over 79,000 federal drug offenders.

While safety valves do not eliminate mandatory minimums, they can carve out generous exceptions and narrow their coverage considerably. FAMM continues to urge Congress and state legislatures to pass safety valves for all crimes carrying mandatory minimum sentences.

**MANY
LOW-LEVEL,
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HARSH
MANDATORY
MINIMUM
SENTENCES.**

UNITED STATES V. BOOKER

In 2005, the U.S. Supreme Court issued a decision in *United States v. Booker*, finding that the U.S. sentencing guidelines violated the Constitution. The Court’s solution was to make the guidelines advisory instead of mandatory. After *Booker*, judges still must consider the guidelines, but they can deviate from the sentences they call for whenever it is necessary to reach a fair punishment. *Booker*, in which FAMM participated, lets federal judges do what they do best: tailor sentences to the unique crimes and individuals standing before them. Unfortunately, it did not affect the mandatory sentencing statute at all, only the sentencing guidelines. Prosecutors and some members of Congress argue that the guidelines should be mandatory once again. FAMM opposes this. Mandatory sentencing guidelines, just like mandatory minimum sentences, deprive judges of the flexibility and power they need to make punishments fit in each case.

CRACK COCAINE REFORMS

Until 2010, federal law required much stiffer mandatory minimum sentences for crack cocaine crimes than for powder cocaine offenses, despite the fact that the two drugs are the same. Only five grams of crack cocaine triggered a five-year mandatory minimum sentence; it took 500 grams of powder cocaine to garner the same term. More than 80 percent of those convicted of federal crack offenses were African American; those convicted for powder cocaine crimes tended to be white or Latino, despite similar patterns of drug usage among all races. This racial disparity, along with the unjustified difference between the drugs at sentencing, led to a minor guideline reform in 2007. It lowered federal crack sentences by an average of 15 months and was applied retroactively to give even bigger sentence reductions to 16,500 crack offenders who were already in prison.

In 2010, under relentless pressure from FAMM and other groups, Congress passed the Fair Sentencing Act, further narrowing the sentencing gap between crack and powder cocaine. The new law also repealed the five-year mandatory minimum sentence for simple possession of crack cocaine—the first repeal of a federal mandatory minimum since 1970. Three thousand federal offenders will benefit from the Fair Sentencing Act's reforms each year. Further reforms lowered crack sentencing guidelines and were applied retroactively, making over 12,000 federal prisoners eligible for sentence reductions averaging 36 months. The 2007 and 2010 crack sentencing reforms could save taxpayers over two billion dollars.

STATE REFORMS

Across the country, states as varied as Michigan, New York, New Jersey, Rhode Island, South Carolina, Massachusetts, Texas, and Minnesota have slowly begun repealing or scaling back their own mandatory minimum sentencing schemes. Reforms include creating safety valves, repealing mandatory minimums for nonviolent crimes, increasing parole eligibility and creating drug court programs as an alternative to prison for offenders who need drug treatment. The 2008 recession produced severe budget shortfalls and deficits for many states, forcing governors and lawmakers to reassess whether mandatory minimum sentences are a wise policy.

The best offense is a good defense

While progress has been made, total victory remains elusive. Many lawmakers still believe it is good politics to be “tough on crime” rather than using sentences that are fair, individualized and “smart on crime.” High-profile crimes are a magnet for mandatory minimum sentences, and today there are many of them: illegal immigration, identity theft, child pornography possession, white collar offenses and sex offenses. For FAMM, this means we continually work to oppose new mandatory minimum sentences as well as repeal old ones.

Finding new teammates—and new hope

Bringing more advocates—particularly conservative ones—into the fight is essential for reforming mandatory minimum laws. Mandatory minimum reform is not a “liberal” or a “conservative” issue. It is an issue that affects millions of American families and taxpayers. The last 30 years have proven that mandatory minimums cost more—both in dollars and in human lives—than they are worth. It will take players on all sides of the aisle working together to win the sentencing reform game. ■

BIO

ABOUT THE AUTHOR

Julie Stewart is the president and founder of FAMM (Families Against Mandatory Minimums), a nonprofit, nonpartisan organization fighting for fair and proportionate sentencing laws that allow judicial discretion while maintaining public safety.

JULIE STEWART

PRESIDENT
FAMILIES AGAINST
MANDATORY MINIMUMS

In 1990, Julie was working as public affairs director at the Cato Institute when she became aware of mandatory sentencing laws. Her brother had been arrested for growing marijuana in Washington State, had pled guilty, and—though this was his first offense—had been sentenced by a judge to five years in federal prison without parole. The judge criticized the punishment as too harsh, but proceeded with the sentence because the mandatory minimum law left him no choice.

Julie is an effective and passionate advocate for FAMM and sentencing reform. She has testified multiple times before Congress and the U.S. Sentencing Commission about mandatory sentences and prison overcrowding. She has debated and discussed mandatory minimum sentences on many national television networks, including Fox News, ABC News, CBS News, CNN News, NBC News, PBS News, MTV, and on numerous radio and local television programs throughout the country. In 2012, Julie appeared in *The House I Live In*, an award-winning documentary film about the drug war.

Julie's work to reform mandatory sentencing laws has been honored with many awards including the Thomas Szasz Award for Outstanding Contributions to the Cause of Civil Liberties, the Champion of Justice Award from the National Association of Criminal Defense Lawyers, the Leadership for a Changing World award from the Ford Foundation, and the Citizen Activist Award from the Gleitsman Foundation.



FROM THE PLAYGROUND TO PRISON:

UNDERSTANDING AND CURING AMERICA'S ADDICTION TO OVER-INCARCERATION

"Prisoners are persons whom most of us would rather not think about. Banished from everyday sight, they exist in a world that only dimly enters our awareness. They are members of a 'total' institution that controls their daily existence in a way that few of us can imagine...It is thus easy to think of prisoners as members of a separate netherworld driven by demands, ordered by its own customs, ruled by those whose claim to power rests of ray necessity. Nothing can change the fact, however, that the society that these prisoners inhabit is our own. Prisons may exist on the margins of society, but no act of will can sever them from the body politic."



When prisoners emerge from the shadows to press a constitutional claim, they invoke no alien set of principles drawn from a distant culture. Rather, they speak the language of the charter upon which all of us rely to hold official power accountable. They ask us to acknowledge that power exercised in the shadows must be restrained at least as diligently as power that acts in the sunlight.

O'LONE V. ESTATE OF SHABAZZ, DISSENTING OPINION OF THE U.S. SUPREME COURT JUSTICE BRENNAN WRITING FOR HIMSELF AND THREE OTHER JUSTICES.¹³³

It is well to recall these words of Justice Brennan at the current hour of history, in which America leads the world in the placement of people within prison, and the prison population in America has tripled since 1987. There are presently over two million people in America's prisons—representing one out of every 100 citizens.¹³⁴ How did the country which has touted itself as the leader of the “free world” come to incarcerate so many of its citizens? While the writer was asked to ponder and indicate events that have taken place over the past 30 years that may help the younger generations understand circumstances that have driven America's incarceration binge, it would be useful to go back a little more than 40 years ago to 1968 in order to paint a clear picture of why so many Americans, and particularly minority American citizens, are confined within prisons—both state and federal—throughout the United States today.

We should first consider four important events that took place within 1968 that have led to a greater governmental policy emphasis being placed upon expanding the function of the police and prisons, rather than redress and correction of violations of civil liberties and human rights more than at any prior point in American history: 1) The assassination of Reverend Dr. Martin Luther King, Jr. and the unprecedented rioting in over 100 American cities (mainly involving African American youth and the urban poor) that transpired in the aftermath; 2) The decision of the U.S. Supreme Court in the landmark case of *Terry v. Ohio*,¹³⁵ which changed the legal standard of “probable cause” (the legal basis for police interference with the liberty of an American citizen from the formation of the nation until 1968), to a more permissive standard for police detention and questioning of citizens called “reasonable suspicion;” 3) The assassination of former U.S. Senator and Attorney General Robert Kennedy; and 4) The election of President Richard Nixon on a platform demanding a governmental policy return to “law and order.” These four events reflect a nation steeped

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1968: AFRICAN-
AMERICAN YOUTH.**

deeply in turmoil and profoundly perplexed regarding its commitment, enshrined within the Preamble to the U.S. Constitution, to move confidently toward insuring “domestic tranquility” and forming “a more perfect union.” By the end of 1968, there was very little national appetite, much less national will, for a robust and transparent debate pertaining to the causes and solution of the social strife then existent in America; but yet there existed great national resolve to register a firm and swift response to the symptoms of the problems illustrated in the display of social unrest and “lawlessness”—themes Richard Nixon hammered at in his campaign for President.

Shortly after the 1968 Presidential election, President Nixon soon sent a major legislative proposal to Congress that became enacted into law as the “Organized Crime Control and Safe Street Act of 1968.” This new catalog of federal law brought sweeping change and new tools to the arsenal of law enforcement, such as provisions for “no-knock” police entry into the homes of persons suspected of crime, pretrial detention without the possibility of release on bail and domestic “wire-tapping” the telephone conversations of Americans—a practice previously reserved in the law exclusively for investigation of cases of espionage involving foreigners. Though the last major overhaul of the Federal Criminal Code prior to 1968 transpired about 20 years earlier in 1948, President Nixon followed up on the still-wet ink of his 1968 “Safe Streets Act” with another sweeping legislative proposal that Congress enacted into law in 1970 as the “Comprehensive Crime Control and Drug Abuse Act.” The 1970 law targeted the supposed massive drug abuse of heroin and cocaine in America; however the legislative history contained in the U.S. Congressional News and Administrative Reports under Public Law—98–473 reflects dissent from enactment of the 1970 federal drug law from four congressmen: Hon. Robert Kastenmeir, Hon. Robert Drinan, Hon. John Conyers and Hon. Abner Mikva. These dissenting congressmen objected that there was no evidence of any massive drug problem in America concerning cocaine and heroin, versus evidence that American college students on various campuses were using marijuana and LSD. They said this new law was not only unwarranted but without factual support for a heroin and cocaine epidemic in America at that time, and urged that it would fill the nation’s prisons with “poachers and prostitutes” rather than major drug “pushers and pimps.” After the enactment of both these laws, federal money steadily flowed from 1968 to the present to

states for focusing efforts on controlling “street crime,” “drug offenders” and “violent offenders.”¹³⁶ Though many commentators describe the “War on Drugs” as beginning in the 1980s,¹³⁷ America’s “Drug War” more accurately began in 1968 and 1970 even though this “war” began before the claimed epidemic and crisis that it purported to resolve.

Fast-forwarding into America of 2011, one might ask: what does the “playground” have to do with “prison”? To answer this question, we must first look to the glaring and sadly, increasing racial disparity of who is arrested and cast into prison in America since 1968: African-American youth! Though it is widely documented by credible researchers that white and black Americans use drugs at equal rates, African American drug users and offenders are incarcerated at 10 times the rate of white drug users and offenders. Moreover, the Pew Charitable Trust reports that as of 2008, one white man out of 106 of 18 years or older was incarcerated; in contrast, one black male out of 15 that was 18 years and older was incarcerated.¹³⁸ It is important to understand that the Civil Rights movement of the 1960s had a different face of protest in the rural south, in contrast with cities and “ghettoes” in the north. While Dr. Martin Luther King Jr.’s movement in the deep south of America involved children, youth and students, mostly African American,¹³⁹ in the protest against racial discrimination and legal segregation; northern cities saw a more militant spirit of protest. The historic 1968 riots in 100 American cities involving thousands of black youth had a huge impact.¹⁴⁰ Consequently, the “War on Drugs” and “War on Crime” have taken a very heavy toll, in terms of incarceration, upon African-American males more than any other segment in society. Law Professor Anthony C. Thompson notes:

1/15
BLACK MALES

In 2008, one black male out of 15 that was 18 years and older was incarcerated.



The last two decades of the twentieth century witnessed an unprecedented increase in the number of people incarcerated in the United States. By 2001, approximately two million men and women resided in state and federal prisons and jails. Although other communities of color suffered the effects of this increased incarceration (as described later in this work), this dramatic rise in incarceration had a particularly catastrophic impact on African American communities. African Americans represent roughly 13 percent of the general U.S. population. But African American men and women make up 46.3 percent of those imprisoned in state and federal jurisdictions by 2000.

Young men and women of color were literally swept into the criminal justice system at alarming rates, a development that often deprived families and communities of the precise individuals who, under the right circumstances, would have been more productive members of the communities.¹⁴¹

BIO

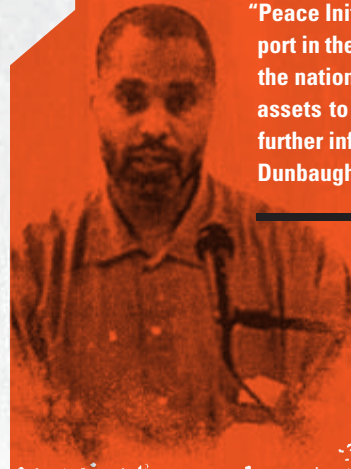
ABOUT THE AUTHOR

The writer is a founding member and director of the Extra Legalese Group, Inc. (ELG)—the first “think-tank” incorporated in the state of Maryland by incarcerated American citizens. ELG’s directors—all

**ROBERT T.
“MANCHILD” MORGAN**
EXTRA LEGALESE GROUP

incarcerated citizens at present with upwards 175 years confinement experience are Ronald Ellis, Dwight Davis-Bey, Vincent T. Greco, Larry Bratt, Rashid Salih (aka Russell

Bacon) and Robert T. “Manchild” Morgan. ELG has designed an anti-violence campaign entitled the “Peace Initiative” that has garnered substantial support in the communities of Maryland and throughout the nation and seeks to convince gangs to become assets to the community, rather than threats. For further information regarding ELG, contact Frank M. Dunbaugh, Esquire (410) 974-0555.



How can public safety be served by reversing the over-use of imprisonment?

Progressive social change in America has always been the result of strategic collaboration between concerned citizens of all colors, creeds and walks of life. The problem of over-incarceration is not simply a “black” or “minority” problem: it is an American problem and will require an American solution. Efforts inside prison, particularly involving prisoner “think-tanks” like the Extra Legalese Group, Inc.,¹⁴² prisoner religious organizations of all denominations, and yes, even street organizations that society denominates as “gangs,” coordinating with outside “think-tanks” and concerned citizens, will have to innovate programs and pathways to demonstrate to the public that over incarceration undermines rather than strengthens public safety. Money spent on confinement, as the social researchers agree, needs to be devoted to addressing and solving the social problems that lead to incarceration in the first place. This will curtail the pipe-line from the playground to prison and insure that the correctional institutions will prepare more prisoners for a brighter future than the current criminal justice policy will allow. ■

THE EVOLUTION OF PRISON PRIVATIZATION IN THE UNITED STATES

The origins of the modern private prison industry can be traced to the brutal exploitation of prisoners during the convict lease system of the late 1800s and early 1900s. Under the convict lease system, which arose in the Southern states during the Reconstruction era, private companies leased prisoners and used their labor to generate profit. Leased prisoners were held in company-owned prison work camps that had high mortality rates due to forced labor in logging, railroad and mining operations.



The convict lease system was phased out by the 1920s, in part due to public awareness of terrible abuses, including prisoner deaths, in for-profit prison work camps. The practice of allowing private companies to incarcerate people for the purpose of generating profit remained dormant for over half a century.

Then, beginning in the 1970s after Nixon declared “war” on crime, followed quickly by the “War on Drugs,” a series of progressively harsh sentencing laws were enacted—including mandatory minimums for drug-related offenses, truth-in-sentencing laws that require prisoners to serve most of their prison terms and three-strikes laws. During the same time period, parole was abolished in the federal prison system. As a result, the U.S. prison population began to grow, leading to a dramatic increase from 1980 (501,886 people in prison and jail) to the mid-2000s (2.2 million people in prison and jail).

A similar parallel occurred in the 1990s with the detainee population of the Immigration and Naturalization Service (now Immigration and Customs Enforcement) as the number of immigrants in detention increased following the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Such tough-on-crime criminal justice and immigration policies, and the resulting increase in prison, jail and immigrant detainee populations, created a need for additional correctional bed space. Consequently, a number of companies were formed to capitalize on incarcerating people for profit, and the modern private prison industry was born.

Corrections Corporation of America (CCA), the nation’s largest private prison firm, was co-founded in Nashville, Tenn., in 1983 by Doctor Crants, Tom Beasley (a former chairman of the Tennessee Republican Party) and T. Don Hutto, a former Arkansas corrections commissioner. The company had strong political connections, including with then-Tennessee governor and current U.S. Senator Lamar Alexander.

CCA’s closest competitor, Wackenhut Corrections Corp. (now known as the GEO Group), was established in Boca Raton, Florida, in 1984 as a subsidiary of the Wackenhut Corporation, a security firm founded by George Wackenhut, a former FBI agent. The company’s website describes GEO’s CEO, George C. Zoley as “one of the pioneers in the private corrections industry.” Both CCA and GEO Group are publicly traded on the New York Stock Exchange.

Over the next two decades, a number of other companies entered the corrections market to obtain a slice of the profitable private prison industry pie, including U.S. Corrections Corporation, Esmore Correctional Corp. (later renamed Correctional Services Corporation), Cornell Companies, Civigenics, Community Education Centers (CEC), Management and Training Corporation (MTC), LaSalle Corrections, Emerald Companies and the Bobby Ross Group.

The private prison industry grew quickly, from 71,208 state and federal prisoners held in privately-operated facilities in 1999 to a high of 129,482 in 2009—an 82 percent increase. This growth in the use of private prisons coincided with the drastic increase in the nation’s prison and jail populations due to the “War on Drugs,” tough-on-crime legislation and more punitive immigration policies.

Yet the industry also contracted during the same period, with smaller companies being acquired by larger firms and others going out of business. CCA bought out U.S. Corrections, Concept, Inc., and Corrections Partners, Inc., while the GEO Group acquired Abraxas, Correctional Services Corporation and Cornell Companies, and CEC acquired Civigenics. The consolidation of the private prison industry resulted in reduced competition and moved the market towards a monopoly model. The top four companies (CCA, GEO, MTC and CEC) currently hold over 92 percent of the private prison market.



THE PRIVATE PRISON INDUSTRY RELIES ON HIGH INCARCERATION RATES IN ORDER TO GENERATE PROFIT...

Private prison companies claim they can achieve cost savings through competition, greater efficiency and lower operating costs. However, most credible studies have found that prison privatization results in few or no cost savings when all relevant factors are considered. For example, a 2001 report by the U.S. Department of Justice's Bureau of Justice Assistance concluded that "the cost benefits of [prison] privatization have not materialized to the extent promised by the private sector." Rather, the success of private prison companies can be attributed to the industry's extensive use of lobbying, campaign donations and hiring former public officials and policymakers—the latter referred to as the "revolving door" between the public and private sectors—in order to grease the private prison contracting process.

Private prison companies also have been accused of influencing criminal justice policy by promoting harsher sentencing and immigration laws that result in increased prison and immigrant detainee populations. Both GEO Group and CCA have been members of the American Legislative Exchange Council (ALEC), an organization that brings state lawmakers and corporate officials together to draft model bills that are then introduced in state legislatures.

CCA officials participated in ALEC's Criminal Justice Task Force (later its Public Safety and Elections Task Force) in the 1990s when ALEC produced model sentencing bills such as truth-in-sentencing and three-strikes; further, CCA was reportedly involved when ALEC produced model illegal immigration legislation that was introduced in a number of states, including, notably, in Arizona as SB 1070. CCA and GEO Group are no longer members of ALEC.

According to the most recent data from the U.S. Bureau of Justice Statistics, 128,195 state and federal prisoners were housed in privately-operated facilities as of year-end 2010, or 8 percent of the total state and federal prison population. This does not include juvenile offenders, immigrant detainees or pretrial detainees held in private detention facilities. System-wide prison privatization was proposed in Arizona in 2009 but withdrawn the following year, while the state senate of Florida narrowly rejected a legislative attempt to privatize 27 state prisons in South Florida in 2012.

For 2011, CCA reported gross revenue of \$1.7 billion with \$162.5 million in net income; the company operates 66 correctional facilities with approximately 91,000 beds in 20 states, the District of Columbia and Puerto Rico. TransCor, a CCA subsidiary, provides prisoner transportation services nationwide.



GEO Group's 2011 gross revenue was \$1.6 billion with \$78 million in net income. GEO operates 65 correctional facilities in the U.S. with around 66,000 beds, and also manages prisons in the U.K., Australia and South Africa. GEO Group acquired Cornell Companies in 2010 and BI, Inc.—one of the nation's largest providers of electronic monitoring for people under correctional supervision—in 2011. The company also includes a prisoner transport service, GEO Transport, and GEO Care, a subsidiary that provides community corrections, re-entry, and medical and mental health services, including psychiatric hospitals.

The private prison industry relies on high incarceration rates in order to generate profit; thus, sentencing reform and other criminal justice policies that reduce the level of mass incarceration in the United States pose a threat to the industry's business model and bottom line. As noted in CCA's 2010 annual report:

The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them.

BIO

ABOUT THE AUTHOR

Alex Friedmann serves as associate editor of Prison Legal News (www.prisonlegalnews.org), a monthly publication that covers criminal justice-related issues and a project of the Human Rights Defense Center. He is also president of the Private Corrections Institute (www.privateci.org), a non-profit citizen watchdog group that opposes the privatization of correctional services.

**ALEX
FRIEDMANN**
PRISON LEGAL NEWS

A former prisoner, he served 10 years behind bars, including six at a CCA-operated prison in Tennessee, prior to his release in 1999.



Due to the economic downturn in the U.S. beginning in 2008, a number of states began taking steps to reduce their prison populations and, consequently, their spending on corrections. This has had a negative impact on the private prison industry as states have closed prisons, withdrawn prisoners from out-of-state privately-operated facilities and otherwise cut corrections spending in an effort to reduce budget deficits. Nationwide, the state prison population declined slightly in 2010 for the first time in four decades.

Thus, private prison companies have increasingly turned to the federal government, as the federal prison population continues to grow and immigration detention remains highly profitable. Around 42 percent of GEO Group's 2011 revenue came from federal agencies, while that same year CCA obtained 43 percent of its revenue from federal contracts. ■

RELEASE ON PAROLE

Across the nation, tens of thousands of individuals are released from our nations' prisons and jails every year to enter some form of post incarceration supervision. Parole is an integral piece of the criminal justice system (police, prosecution, probation, prison and parole). Sometimes confused with probation, which allows an individual to remain in the community instead of being sentenced to jail or prison, parole is that portion of a sentence that is served after having been released.



The actual release mechanism varies from state to state and individual county jurisdictions. Some individuals are released through the discretionary decisions of a parole board, while others get released at pre-determined timeframes in accordance with their original sentence, or at times set by law.

Regardless the method, these individuals get released from institutions to serve the remainder of their sentences back in our communities. In most cases, they return to the same communities from which they came, back to the same neighborhoods and families.

The common denominator for the purpose of this essay is that all of these individuals come out under the supervision of a governmental agency. Whether they are called parole officers or parole agents, the parole representatives are usually law enforcement officers charged with maintaining public safety by enforcing conditions of parole. Some conditions apply to everyone under parole supervision (such as, do not possess a weapon and do not leave the state without permission); special conditions apply to individual offenders as circumstances require (such as attend mental health counseling or wear an electronic monitoring device). All parolees receive a parole certificate, which is a contract between themselves and the agencies granting and supervising their parole. These certificates/contracts form the basis for monitoring the behaviors of the parolees in the community and holding them accountable for any failures.

In the past 25 years, with the rise in the prison populations due to mandatory minimums, increases in legislatively defined crimes, and longer terms of incarceration within the United States, the number of parolees under supervision has exploded by over 250 percent from 277,438 in 1985 to 825,000 in 2010.

Parole agencies tried to respond to the increase in various ways, but with their primary mission of ensuring public safety, many saw fit to hold parolees strictly accountable for their behaviors and used the process of parole revocation for what are known as technical parole violations, to return parolees to prison in great numbers. In some states, the number of returning parolees for these technical violations (not the commission of new criminal offenses) amount to over 33 percent of all admissions to their state prison systems.

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When parole operates effectively, it provides a balanced mix of obligations and opportunities for the parolee. Parole officers have been described as “social workers with guns” as parole is responsible for both ensuring public safety and providing successful and sustainable reintegration for all offenders.

Parole agencies depend on the cooperation and partnership of the communities they serve in the implementation of their mission. While they must cooperate with all other law enforcement entities and criminal justice system partners in their efforts to ensure public safety, sustainable reintegration depends on community collaborations.

Effective communication within the communities most impacted by the arrest, conviction and eventual return of offenders, is critical to the success of each individual parolee and to the overall outcomes of the parole agency. Parole agencies must develop and maintain partnerships with the faith-based community, charities, advocacy groups, local businesses and not-for-profit service providers. It is also important to have working knowledge of, and relationships with, the local governmental agencies that provide service and support to citizens of the state such as: Labor One-Stop Centers, Health and Human Services, Welfare and Social Services, Federally Qualified Health Centers, U.S. Veterans Administration and Social Security Administration locations.

Once released from jail or prison and placed on parole, parolees lose access to the life support services they received as inmates, and resume the social contract of the duties and responsibilities of being a citizen of their respective state. In some cases, the parolee was never fully integrated into the social fabric of their community prior to their entry into the criminal justice system, and they never fully understood they were part of or responsible to a community. Parole acts as a natural transition for the return to, and understanding of, the community. The collective responsibility that we all share must be affirmed and steps taken, even small ones, to allow for that reality to become known.

This transition, known as re-entry, or reintegration, is a process and occurs over time. The actual event of being released is but the first step. Care and preparation for each release must be taken. The actual humanness of each offender must be recognized, with individual factors pertaining to them alone being considered.

The return to the community is not just opening the door and letting the parolee free. It should involve multiple decisions and reviews within the mechanisms of the release process before that release event occurs.

Parolees must obtain approval of a viable residence, hopefully with family support. Local police, prosecutors and victims must be notified within detailed time frames. Agencies must review the specific risk and needs assessments of each parolee and determine any individual

250
PERCENT

The number of parolees under supervision has exploded by over 250 percent from 277,438 in 1985 to 825,000 in 2010.

BIO

ABOUT THE AUTHOR

Lenny Ward currently serves as director of the Division of Parole & Community Programs for the New Jersey State Parole Board (NJSPB). He oversees almost 400 law enforcement officers and command staff within

the Division of Parole and manages over \$37 million dollars in contracted services that provide direct support to more than 15,000 parolees under supervision in New Jersey. Lenny came into state service in 1990 and has served in multiple capacities within the Department of Law & Public Safety, the Department of Transportation and the Department of Corrections.

LENNY WARD

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Lenny graduated from Jersey City State College in 1973, attended Brooklyn Law School, and received a master's degree in public administration from Fairleigh Dickinson University in 1997.

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(special) conditions of parole, with relevant referrals to services ready for implementation. Basic forms of identification must be renewed, and limitations imposed on each parolee as a result of their sentence must be understood and explained. These limitations, collectively known as collateral sanctions, vary within jurisdictions. They restrict the ability of parolees in particular, and released offenders in general, from certain benefits and privileges afforded citizens not convicted of any criminal offense.

Those duties and responsibilities are not one sided, as the obligations and opportunities mentioned above also fall upon each state. We have a collective obligation to ensure that each parolee is treated with the respect and compassion of every other citizen in the community and provided the same opportunities allowed by law to succeed.

Parole has the unique ability to directly impact the lives of the parolee and their families, as well as helping the neighborhoods and communities in which they reside become safer.

For those of you reading this essay who are interested in a career in law enforcement and truly want to make a difference in your community, start thinking seriously about becoming a "social worker with a gun." ■

LIFE AFTER INCARCERATION: RE-ENTRY SERVICES AND POLICIES



After serving nearly two decades of my life incarcerated in America's penal system, freedom was finally a reality, or at least that is what I thought. While incarcerated, I was among the elite company of men who were thought to be leaders behind the wall. Little did I know, society as a whole cared very little about people like me. Society builds prisons to put us away and keep us locked up. It seemed like society did not expect us to ever return to our communities. There were no programs or any real assistance in place to facilitate this type of transition.

I compared my experience to that of a returning soldier. After having spent many years on the front line of battle, the Army takes him from the front line of the battlefield without any debriefing or re-socialization and brings him back to his hometown and drops him off on a street corner and expects him to function as a normal person. How realistic is that? Not realistic at all. How could the soldier be expected to lead a normal life? His only way of living for the past several years was by living in an environment of killing to keep from being killed. Something similar happened to me. I was incarcerated in 1975 and released in 1994. Because of the nature of my crime (armed robbery), I was not eligible for work release or any other type(s) of programs that would have prepared me for release.

While in prison, I realized early that I could become a better person and I set about the business of doing just that. Because of this realization, I made sure that no matter what, life would become better for me and those people that I would come in contact with. Education and real lifestyle changes became the order of the day. I spent most of my time learning and assisting young men coming in and out of the prisons throughout the country. (Even though I was a state prisoner, I found myself traveling all across the country from prison to prison.) Many of these young men recidivated many times and some even returned with the big “L” (a life sentence).

Unbeknownst to me there were not any programs designed to assist men coming back into the communities. Recidivism was the order of the day. Once aware of the situation, I vowed that if I could ever make it to the other side (out of prison), I would never return as a convicted person.

After being released from prison and having time to reflect on my journey, it was clear that if not for my faith in the Creator, the desire not go back and my support network, I would probably be another recidivism statistic. It was true, there were no other resources set up to assist with my transition back into the community. In fact, everything was designed for me to fail.

I realized that part of my contribution to the society to which I was returning, would be to help shine a positive and productive light on the issue of re-entry.


Currently, I work as a case manager/job developer with an organization that provides job readiness training to men returning back to the community.

OFTEN, WHEN MEN SHOW UP TO OUR PROGRAM, THEY ARE TRULY TIRED OF THEIR PAST LIFESTYLE. THEY WELCOME THE CHANGE AND OPPORTUNITY TO DO SOMETHING DIFFERENT.

The re-entry process actually begins while an individual is still incarcerated. Once a person realizes that the lifestyle that they were leading was not beneficial, they begin to make conscious and unconscious decisions to change. Their entire belief system is challenged and proved to be faulty because of their current situation and the many similar situations from their past.

Often, when men show up to our program, they are truly tired of their past lifestyle. They welcome the change and opportunity to do something different.

Thanks to President George W. Bush, the Second Chance Act was initiated in 2004. The Department of Labor awarded federal funding to the Jericho Program in Baltimore, M.D., along with 29 other sites around the country, to provide job readiness and employment opportunities for formerly incarcerated men and women. Until the Second Chance Act was passed, no real efforts were being put forward to assist this population of people on a national governmental level.



SOCIETY BUILDS PRISONS TO PUT US AWAY AND KEEP US LOCKED UP. IT SEEMED LIKE SOCIETY DID NOT EXPECT US TO EVER RETURN TO OUR COMMUNITIES. THERE WERE NO PROGRAMS OR ANY REAL ASSISTANCE IN PLACE TO FACILITATE THIS TYPE OF TRANSITION.

In the beginning of 2005, I had the opportunity to become a part of the Jericho staff as the mentoring coordinator, and later, trainer for the job readiness component. The Jericho program grew rapidly in name recognition and successful outcomes. In 2008, President Bush visited the Jericho program. He wanted to get a first-hand impression about how the program was working. I was appointed as the staff person who would have the most interaction with the President. This was a very exciting time and opportunity for Jericho, the staff and the men who were participating in the job readiness training component. During the visit, I had the opportunity to speak with the President about the Second Chance Act. He shared the story about how this law came to be. He said, while Governor of Texas, he was touring an area that had been struck by a hurricane. At the time of this visit, a man walked up to him. Bush thought that this man was going to give him a hard time about what he was not doing as governor. Instead, the man offered him some advice. The man used the analogy of a wall. He said that you can repair the crack in the wall and it will eventually split again. You can repeatedly repair it, but until you fix the foundation, the wall will continue to crack. The way to address the problem of recidivism is to make funds available to the local faith-based institutions. As individuals return to their communities, they look for assistance. Faith-based institutions are a natural and abundant foundation. The Second Chance Act was born.

The Second Chance Act had some shortcomings. It only catered to nonviolent offenders who had been released as recently as six months before or less. The funding did not provide services for individuals with violent offenses or anyone who had been home longer than six months. However, with the Second Chance Act and other federal funding, Jericho was able to provide services to more than 1,000 men returning to the community from incarceration. In addition to the federal funding, Jericho was later awarded a grant through Open Society Institute. This funding provided services for returning home men who resided in the city of Baltimore Empowerment Zones, that had been home longer than six months and who had violent charges. As a result, Jericho was able to provide services to more than 150 individuals over a three-year period.

Because of these funding streams, Jericho was able to get involved in advocacy work. This allowed us to continue to remove barriers and assist the population of men (who might have been ignored), to restore dignity, honor and a sense of pride.

This is just a small service being provided for an almost bigger than life problem. There is much work left to be completed and this is just a glimpse into the world of prison re-entry. Many of the men who are incarcerated have realized that they can be a part of the solution and not a continuous part of the problem.



Two of my dear friends have passed away since beginning on this journey. Both of them were serving life sentences. One of them was released through the court system after serving more than 27 years of his life in prison. After his release, he went on to establish a viable program that still exists to this day. His work continuously impacts the lives of our youth in a positive way. My other friend was not so fortunate. He passed away in prison after serving 35 years on a parole-eligible life sentence. This individual was instrumental in raising the awareness of and bringing together victims/victim families and perpetrators face-to-face to talk about the impact that the crime played in their lives and help bring closure to an unpleasant chapter in their lives.

It is imperative that we all make meaningful and significant contributions to our society. What will your contribution(s) be? ■

BIO

ABOUT THE AUTHOR

GREG CARPENTER

FORMERLY INCARCERATED
COMMUNITY ADVOCATE

Greg Carpenter has resided in Baltimore for more than 16 years. He has been involved with re-entry work for more than 30 years, 12 of those years were spent working with men while he was incarcerated. He spent approximately 20 years in prisons from Maryland, California and Georgia prior to being released in 1994. He currently holds an Associate's of Arts degree in general studies from Essex Community College in Maryland and a Paralegal Certification from Southern Career Institute in Maryland. He was also certified as an Offender Workforce Development Specialist (OWDS) Instructor in 2008. He completed his bachelor's degree in management science at Coppin State University in 2011.

Greg has been employed with Jericho Re-Entry in Baltimore for the past six years in many capacities. Jericho, a program of the Episcopal Community Services of Maryland, provides job readiness training for men re-entering society after periods of incarceration. He is also co-founder of Re-Entry Consortium, a non-profit that focuses on technical support for faith-based and community-based organizations. Greg served on the Governor's Re-Entry Task Force under Gov. Martin O'Malley in 2012. He is an advocate for re-entry and has testified in Annapolis on numerous occasions in support of legislation that impacts the re-entry population including ban the box and voting rights.

MASS INCARCERATION AND ECONOMIC INEQUALITY

Where there is poverty, crime is not far behind. When America's poorest inner-city neighborhoods lost factory jobs and fell into disorder through the 1960s and 1970s, the murder rate doubled, and politicians launched a war on crime and then on drugs. The following decades saw millions of drug arrests and tough new criminal penalties that ultimately produced the largest penal system in the world. By 2009, America's prisons and jails locked up around 2.3 million people, around 750 per 100,000 of the U.S. population.



Crime and imprisonment are entangled in the fabric of American poverty. The American penal system grew fastest among those whose economic opportunities had declined the most. At the end of the 1990s, African American men were nearly twice as likely to go to prison as to graduate college with a four-year degree. Around 22 percent of those men would be imprisoned at some point in their lives, while only 12 percent would finish college. White men of the same age lived in a different world: 32 percent would graduate with a college degree and 3 percent would go to prison.

Incarceration rates have grown highest among young African American men with little schooling. If we consider black men under age forty with only a high school education, one in five was in prison or jail by 2008. If they had dropped out of school, there was a 60 percent chance they'd go to prison at some time in their lives. In short, for black male high school dropouts, serving prison time had become a normal part of life. Sociologists called this pattern of imprisonment "mass incarceration," describing the penal confinement of entire social groups.

Though mass incarceration was concentrated among the poor, this is only half the story. The modern penal system was erected on the rough landscape of American social inequality, but it grew so large that it came to deepen the ditch of disadvantage. By reducing economic opportunities and destabilizing family life, the penal system came to add to the poverty that helped create mass incarceration in the first place.

With little schooling, involvement in crime, and often little history of regular employment, the incarcerated would have extremely poor economic opportunities, even without prison time. Add to this a criminal record, and formerly incarcerated men and women are doubly disadvantaged.

Employers are reluctant to take on workers with criminal records, so formerly incarcerated people are often out of work, or in very low wage jobs. Perhaps the clearest evidence of the economic effects of a criminal record comes from a number of field experiments, or "audit studies," that examine hiring by employers. A recent audit study sent out a number of professional job applicants—called testers—to over 1,000 entry-level positions throughout New York City. The testers were given false resumes with equivalent schooling and work experience, wore similar clothing, and were trained to respond similarly in job interviews. The only difference was that some were randomly instructed to indicate that they had a criminal record on their job application. White testers who reported a criminal record were only half as likely to receive call-backs or job offers as testers not indicating a criminal history. For black testers, reporting a criminal record reduced job offers and call-backs by two-thirds.

In addition to the stigma of a criminal record in the job market, people with felony convictions often have less access to social programs that can improve economic opportunities. Felony drug offenders are denied housing, education and welfare benefits. Criminal stigma and exclusion from social programs combine to make the formerly incarcerated something less than full members of society. To be young, black, and unschooled today is to risk a felony conviction, prison time and life of second-class citizenship.

The effects of the penal system also ripple through family life. Former prisoners with children are unlikely to get married. If they are married, they face high risks of divorce or separation. The turbulent social and economic prospects of men and women involved in the penal system may also diminish the life chances of their children.

There are currently about 7 million children with a parent involved in the criminal justice system—in prison or under community supervision. Just as the risk of imprisonment is highest for African Americans and the poor, racial and class inequalities mark children's risk of having a parent in prison. Recent research indicates that the fathers of about 25 percent of African American children born in 1990 have spent time in prison. If those fathers had dropped out of high school, paternal incarceration rises to over 50 percent. The racial disparity is striking. One in four black children is at risk of experiencing the incarceration of a parent compared to one in 30 white children. The inequality produced by mass incarceration is thus evident also among the children of the incarcerated.

A growing body of research shows the negative effects of parents' incarceration on children. Young children with parents in prison have shown more antisocial behavior and less school readiness than children whose parents are not incarcerated. Even when compared to those whose fathers are otherwise absent, five-year-old children (particularly boys) with a father in prison exhibit more rule-breaking and aggression. Research on older children suggests paternal imprisonment is associated with dropping out of school, unemployment and delinquency. While children with incarcerated parents may be individually disadvantaged, the racial and economic disparities in incarceration also contribute to racial and economic inequality in the prospects of children. In this way, mass incarceration is implicated in the reproduction of inequality from one generation to the next.

Although there is a lot of evidence for the negative effects of incarceration on economic opportunities and family life, the penal system also contributes positively to public safety, at least in the short run. Locking up dangerous criminals does reduce crime. And serious crime greatly burdens poor communities. Whatever the long-run costs of incarceration for those who go to prison, the penal system has also improved public safety.

However, research on incarceration's social and economic effects suggests that prisons may not improve safety in poor communities by as much as we think. Crime may be reduced a little in the short-run, but if the system undermines economic opportunities and disrupts family life, the causes of crime in low-income neighborhoods are exacerbated. Indeed, because of the mounting social costs of incarceration, the benefits of prison may have reached a vanishing point. In the decade since 2000, crime rates have fallen only slightly despite a large increase in the prison population. Sixty percent of state inmates are re-arrested within three years of prison release. Recidivism rates were unmoved by a fourfold increase in incarceration rates since the 1970s.

The collateral economic and social consequences of mass incarceration suggest that public safety cannot come at the cost of fairness and diminished opportunity. Because desistance from crime is closely tied to economic and family stability, public safety and the successful social and economic reintegration of those committing crimes are mutually reinforcing goals. Public safety, in this perspective, is built less on the exclusionary force of punishment and more on the stability of jobs and domestic life for communities in which both crime and incarceration are concentrated. ■

ONE FOUR

Black children is at risk of experiencing the incarceration of a parent compared to one in 30 white children.

BIO

ABOUT THE AUTHORS

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Bruce Western is Professor of Sociology and Director of the Malcolm Wiener Center for Social Policy at the Harvard Kennedy School of Government. Western received his B.A. in government from the University of Queensland, Australia, and his M.A. and Ph.D. in sociology from the University of California, Los Angeles. Before moving to Harvard, he taught at Princeton University from 1993 to 2007. Bruce was a Guggenheim Fellow in 2005, and a Jean Monnet Fellow with the European University Institute between 1995 and 1996, and is an elected fellow of the American Academy of Arts and Sciences. He received the James F. Short Jr. Distinguished article award in 2006 for his article "Black-White Wage Inequality, Employment Rates, and Incarceration." His book *Punishment and Inequality in America* won the 2007 Albert J. Reiss Award from the Crime Law and Deviance Section of the American Sociological Association and the 2008 Michael J. Hindelang Award for the most outstanding contribution to research on criminology from the American Society of Criminology. He is currently co-chair of a task force on the challenge of mass incarceration for the American Academy of Arts and Sciences and has served on the council of the American Sociological Association.

Catherine Sirois is Project Coordinator of the Prison Studies Project and a research assistant at Harvard Kennedy School's Malcolm Wiener Center for Social Policy. She graduated from Harvard College in 2010 with a B.A. in Sociology.



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- 85 *Plata v. Brown* is a class action lawsuit challenging the constitutionality of the deficient level of physical healthcare in all of California state prisons.

ENDNOTES

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140 To gain an excellent understanding of the Civil Rights movement in America, this writer encourages youthful and older readers alike to review the trilogy of books written by author Taylor Branch on the Civil Rights Movement: 1) "Parting the Waters", "Pillars of Fire", and "On Canaan's Edge."

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142 The writer is a founding member and Director of the Extra Legalese Group, Inc. (ELG)—the First "think-tank" incorporated in the State of Maryland by incarcerated American citizens. ELG's Directors—all incarcerated citizens at present with upwards 175 years confinement experience, are: Ronald Ellis, Dwight Davis-Bey, Vincent T. Greco, Larry Bratt, Rashid Salih (aka Russell Bacon) and Robert T. "Manchild" Morgan. ELG has designed an anti-violence campaign entitled the "Peace Initiative" that has garnered substantial support in the communities of Maryland and though out the Nation and seeks to convince gangs to become assets to the community, rather than threats. For further information regarding ELG, contact Frank M. Dunbaugh, Esquire (410) 974-0555 or frankdunbaugh@verizon.net.

ACKNOWLEDGEMENTS

The Justice Policy Institute (JPI) would like to thank all the contributors whose insight and passion helped make this book a reality. Their words provide fresh insights and compelling evidence for changes we must make to our criminal justice system.

We realize that we could not make this project happen without our supporters, friends, partners, and past and present JPI staff and interns, including those who aided in concept, editing and support:

Tara Andrews

Jason Fenster

Jason Zeidenberg

Tracy Velázquez

Fuszion

Michelle Alexander

Amanda Petteruti

David Y. Lee

Melissa Neal, DrPH

None of JPI's work would be possible without the ongoing support from the MacArthur Foundation, Public Welfare Foundation, Open Society Institute - Baltimore, and the Open Society Foundations.

We would finally like to send a message of motivation and healing to the Incarceration Generation. Here's to ending an era of the "in-justice" system as we currently know it.

About the Justice Policy Institute

JPI has worked tirelessly to reform the criminal justice system as a national 501(c)3 nonprofit in Washington, D.C. Our mission is to reduce the use of incarceration and the justice system and promote policies that improve the well-being of all people and communities. We envision a society with safe, equitable and healthy communities, just and effective solutions to social problems, and alternatives to incarceration that promote positive life outcomes.

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Published in the United States by the Justice Policy Institute, 2013.

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ISBN 978-0-9892928-0-1

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