Justice for All?
The Disparate Impact of Mass Incarceration on Black Communities

by

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Introduction

I have always been interested in civil rights; I grew up in a household that was very conscious of the issue and I was raised to believe that all persons are equal and deserve to be treated as such. My father, a civil rights lawyer for decades, instilled in me this world-view from an early age. Yet, I decided to write this thesis only a week before returning to Wesleyan for my senior year. My inspiration came from the summer internship that I had just finished as an intern investigator for the Public Defender Service in Washington, D.C.

The Public Defender Service of DC, also known as PDS, is a federally funded office, the main function of which is to provide competent defense to criminal defendants who can't afford a private lawyer. The right of U.S. citizens to representation in all criminal cases\(^1\) was established in 1963 in the Supreme Court's decision in *Gideon v. Wainwright*. Justice Black wrote in the opinion:

> The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials

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\(^1\) Previously, a defense attorney had been a right only in capital cases.
before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.²

PDS is one of many organizations around the country put in place by the government to uphold this noble ideal. It shares the representation of the District’s indigent defendants with court-approved private lawyers who are compensated pursuant to the Criminal Justice Act. PDS is assigned the "more serious, more complex, resource-intensive, and time-consuming criminal cases and juvenile delinquency cases."³ PDS is recognized as one of, if not the best, public defender offices in the U.S. and serves as a model for the administration of other such offices around the country. The lawyers who work at PDS are talented and dedicated. They put in long hours, and many of them work through the weekends to ensure that their clients receive proper representation. The lawyers are aided in trial preparation by investigators, who gather information and evidence, as well as by law clerks--law students who help with legal preparation for trial. PDS has a number of full-time staff investigators who are assigned to specific trial lawyers. Participants in the Criminal Law Internship Program, generally college students and recent graduates, aid the staff investigators. When I was at PDS, there were about 80 intern investigators. Because it was the summer session, there were more interns than usual, but the Criminal Law Internship Program runs all year long and attracts college and law students from around the country who are either taking time off or earning

college credit for the internship.

My interest in public defense was sparked the previous summer through a conversation with a federal public defender I met and got to know while waiting at my father's office for a ride home from work each afternoon. The federal defender told me about the work he did, mainly capital punishment cases, and explained to me the responsibility of a public defender. I had been sure that I wanted to work in public service, but until then I was unsure in what capacity. The idea of becoming a public defender sounded perfect to me.

When I was back at school in the fall, I noticed an opportunity through Wesleyan's Career Resource Center to participate in a “job shadow” with Wesleyan alumni. One of the opportunities was at the Public Defender Service in D.C. The position entailed shadowing a lawyer during trial, taking notes, and seeing the work of public defenders in action. I applied and was accepted.

I started working at PDS on January 5, 2009. After being rushed through some training procedures, I was taken to court to sit in on a trial and was later introduced to the two Felony I lawyers I was going to shadow. Felony I lawyers are responsible for representing criminal defendants accused of the most serious crimes. In the trial I observed, the PDS client had been accused of sexually assaulting two teen-aged girls, forcing them to perform oral sex.

During the course of the trial, my position evolved from shadow to a member of the defense team. I completed various tasks including taking notes during trial, fetching bottled water for the lawyers, delivering the defendant’s clothes to the courthouse in the mornings, and doing background research on
witnesses. After court was adjourned each day, we would recap and the lawyers would ask my opinion on cross-examinations, sometimes practicing on me for the next government witness.

One day, the lawyers asked me to carry out an investigative task: they wanted me to go to a high school in D.C. where one of the sexual assaults allegedly took place to take pictures inside the building so that they could get a sense of the layout. I was nervous about venturing alone into what I perceived as a dangerous part of the city to take pictures of an alleged crime scene, especially since I hadn't completed the more extensive training that intern investigators are given before entering the field. But the lawyers were pressed for time and needed my help with this task.

I took a cab to the high school, passed through the metal detectors at the school's entrance, introduced myself at the main office, and waited for classes to start so that the hallways would clear out. I completed the assignment without any problem, printed the pictures, and drew a diagram of the school to show the lawyers. The next day, I got to see my work put to use when the lawyers used the information I had gathered in the trial.

My time at PDS flew by and after two weeks it was time for me to return to Wesleyan. The trial wasn't over yet, but I kept in touch with the lawyers and was able to give my input regarding the closing statements. The defendant was found guilty of both sexual assaults. His case had looked like a lost cause from the start, as the evidence against him was staggering, but it proved to be a small victory for PDS, because he was acquitted of some of the smaller charges and
was sentenced to considerably less prison time than the lawyers had anticipated.

My experience during the job shadow had me hooked. Before I left PDS, I turned in my application to come back for the summer. My reservations about being able to stomach working for criminals were calmed during that first experience. I knew that if I could become vested in the fate of an alleged sex offender, I could manage just about anything. This particular client, who was 24 at the time, had grown up without any real family and had been passed around between homeless shelters and foster care until he began engaging in delinquent behavior at a young age. Whether his criminal behavior was internally motivated or a result of his surroundings, he needed the help of the public defender. While I knew that he was guilty and deserved punishment, I had remained committed to his defense because without it, the system would lose its integrity. The truth of his guilt was solidified by the fact that he had received proper representation and was still found guilty. Without a proper defense, his conviction would not have had the same legitimacy.

I found out in February that I had been hired as an intern investigator for the summer and I was ecstatic. The more I thought about taking the job, however, the more nervous I became. It dawned on me that the intern investigator position wasn't as cushy as a job shadow. I would be spending most of my time in what I thought of as the scary neighborhoods of D.C., actually seeking out people who would talk to me about crimes that had been committed in those neighborhoods. My mother, understandably uneasy, implored me to
think very seriously before committing to the position. In the end, I pushed my apprehension to the back of my mind and let myself become excited about spending the summer working to help achieve justice for people who needed it.

I returned to PDS on May 26. There were about 20 other interns in my training class. We all survived a week of intensive training, having information thrown at us for eight hours a day. At the end of the week, we were assigned to lawyers and sent out to start investigating our cases. I was assigned to a Felony I lawyer who had been one of the lawyers I had worked with in January. My assigned lawyer was in trial for the entire first month of the internship, which meant that it was almost completely up to my investigative partner and me to chart the course of our investigations and identify the tasks necessary to complete them. We were a rare case at PDS, as the majority of the intern investigators are assigned to work with staff investigators who direct their investigations, but our lawyer’s investigator was on leave. Toward the beginning of the internship our lawyer informed us that she was entrusting us with the responsibility of heading her investigations ourselves.

My partner and I spent the majority of our time in "the field," which was the term for the alleged crime scenes as well as the neighborhoods where our clients and witnesses lived. Being in the field proved to be the most frustrating part of the job as well as the most rewarding. First, finding witnesses was not easy. Many of the witnesses we sought went to great lengths to avoid involvement in a criminal trial. They knew that if they gave us information, there was a good chance they would be subpoenaed to testify in court. My partner and
I spent weeks trying to find some witnesses, showing up at their houses at random hours and on weekends in an effort to catch them at home. Once we found elusive witnesses, they were under no obligation to talk to us, and as defense investigators, we had to be completely open about our positions and whom we represented.

At times, being in the field was terrifying. My partner and I, both middle class Caucasians, were clearly outsiders. People would stare at us as we drove through the neighborhoods. We were not used to being in crime-ridden areas, and as a result we were constantly on edge. Once, we were interviewing a group of teenage boys outside an apartment building that was the scene of a shooting. During the interview we heard a loud bang from inside the apartment building. All the neighborhood boys dropped to the ground or put their hands over their heads, in case the noise was a gunshot. I remained standing and stared in the direction of the noise, highlighting my outsider status. It turned out that the noise was just a door slamming.

On the whole, however, I enjoyed my interactions with the witnesses I interviewed, who included my clients' family members and friends, the victims and their families, and innocent bystanders. Popular culture has objectified criminals and neighborhoods where crimes are committed and, while these neighborhoods certainly can be dangerous, I found myself more comfortable in them as I became more familiar with them. I also came to appreciate the ordinary humanity of many of the witnesses and the extraordinary challenges they faced.
I also gained much from my interactions with clients, some of whom were in their late teens and early twenties. I was able to engage with them the way I usually interact with people my age. I found myself invested in their fates. I learned that most of the clients I worked for were not psychopathic maniacs; they were people whose lives were shaped by the atmosphere of violence and crime in which they grew up. I realized also that, although our life experiences were different, we shared a common humanity that, in many instances, allowed us to develop rapport and understanding.

Life was invariably harder for my clients than I could have imagined and their contact with the criminal justice system compounded this hardship. Although the Public Defender Service in D.C. is well funded and filled with skilled and dedicated people, indigent defendants remain the underdogs in the system. The prosecution has better funding than PDS and has the enormous resources of the police. Indigent defendants’ financial disadvantage multiplies the obstacles they face. For instance, as I will discuss in Chapter 1, indigent defendants are more likely to await trial behind bars, which throws their lives out of order and can actually increase their likelihood of serving prison time.

While the overwhelming majority of defendants PDS represents are guilty, some are not guilty. Some, though they may have broken the law, have not engaged in contact warranting the full range of charges lodged against them by the prosecution. Throughout the internship, I remained optimistic about the innocence of my clients, though most of them were eventually found guilty. One
client in particular struck me as wrongfully accused. As the investigation progressed, I became increasingly certain that my client was not guilty. He had been in jail for almost six months and his indictment was scheduled for early August. On the day of his scheduled indictment, the government dropped the charges against him. Without the work of PDS, the prosecution might have felt secure pursuing charges against an unrepresented defendant. He might also have been persuaded to take a plea bargain, admitting to a crime he did not commit because of ignorance of his options and fear that he would have lost in court. Cases such as this one are rare, but regardless of the guilt of PDS clients, the integrity of the U.S. justice system relies on proper representation for all.

My work at PDS made me acutely aware of unfairness within the system. I saw people who had grown up surrounded by crime, violence, and addiction and knew no other way of life being punished rather than treated or shown a better way. I saw families ripped apart by the D.C. system of incarceration that sends its prisoners to other states. I saw indigent defendants locked up for months, even years, awaiting trial. I noticed a debilitating lack of resources for convicted felons who had served their time and were looking for a way back into society.

I observed the system’s effect on communities with high levels of crime. I noticed that instead of helping the communities by cutting back on crime, incarceration perpetuated criminal activity. Entire communities lost huge

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4 He will be used as an anecdotal example in chapter two as well. The anecdotal stories about my time at PDS will be described in non-specific terms and I will change the names of my clients for the purpose of confidentiality.
portions of their adult male population. Children, left without fathers, turned to
delinquent behavior and the code of the streets. I learned that the collateral
consequences of mass incarceration disproportionately affected communities of
color.

As I will explain in the following pages, the criminal justice system
disproportionately disadvantages indigent, minority criminal defendants. Much
could be gained from the corrections system, but under present conditions, that
potential is lost.
Chapter One: The Problem

Since 1975, the prison population in the United States has multiplied almost five times over.¹ Today, the United States by a large margin incarcerates more people than any other country. According to the International Centre for Prison Studies, “The United States has the highest prison population rate in the world, 756 per 100,000 of the national population, followed by Russia (629)...”² As of December 2008, there were “more than 9.8 million people held in penal institutions throughout the world... Almost half of these are in the United States (2.29m), Russia (0.89m) or China (1.57m sentenced prisoners).”³ The United States, as of December 2008, had 2,293,157 people behind bars, whereas China had 1,565,771 sentenced prisoners,⁴ despite having four times the population of the United States.

³ Walmsley, Roy, 1.
⁴ The study notes that China may have an additional 850,000 prisoners in administrative detention. If these prisoners are counted, China has 2.4 million prisoners and the world total comes to 10.65 million. Either way, the U.S. and China
This phenomenon is not recent; the U.S. has long housed more prisoners than comparable westernized countries. For instance, in 1983, the U.S.'s incarceration rate of “275 per hundred thousand was about four times higher than in western Europe.”\(^5\) Britain came in second with 87 per hundred thousand in 1983. Since then, the U.S. prison population’s exponential growth has greatly expanded the gap between the U.S. and England. In 2001 the U.S. rate had grown to 686 per hundred thousand while Britain had a rate of 126 per hundred thousand.\(^6\)

The United States’ high prison population results in part from uniquely long sentences:

The mere number of sentences imposed here would not place the United States at the top of the incarceration lists. If lists were compiled based on annual admissions to prison per capita, several European countries would outpace the United States. But American prison stays are much longer, so the total incarceration rate is higher.\(^7\)

The proliferation of mandatory minimum sentences facilitates the U.S.’s preoccupation with lengthy sentences. Mandatory minimums, which exist on both state and federal levels, require judges to impose a minimum sentence on individuals convicted of certain crimes, regardless of the context of the crime. Mandatory minimums extend to many areas of crime, including assault, murder, kidnapping, and white-collar crime, but are most widely known for their

\(^{14}\) Western, Bruce, Punishment and Inequality in America.

\(^{15}\) Western, Bruce, Punishment and Inequality in America 14-15.

application to drug crimes. Mandatory minimums impinge upon judges’ discretion in sentencing, essentially eliminating the role of the circumstances of the crime and the status of the convicted person. When a defendant is found guilty of a certain offense, he or she must automatically receive a minimum sentence. The only room for discretion is in deciding whether the minimum sentence is long enough.

The impact of mandatory minimums is exacerbated because defendants often face multiple charges. Most criminal conduct qualifies for more than one charge, and the sentences for each offense often are to be served consecutively, not concurrently. For instance, if an individual were found guilty in federal court of possessing 50g of crack, he would be assumed to have intent to distribute and therefore would receive a mandatory minimum sentence of ten years in prison. If he were carrying a gun at the time, he would have at least five years added to that sentence. If the defendant brandished the gun during the crack offense, seven years would be added. If the gun were discharged, ten years would be added. A defendant could face 20 years minimum for a victimless crime: the possession of 50g of crack and shooting his gun into the air.

A report by the Sentencing Project highlights a real case that illuminates the excessively lengthy prison stays that result from mandatory minimums:

Weldon Angelos, a 24-year-old music producer with no prior convictions, was sentenced in 2004 for three related marijuana sales of about $350 each. Since he possessed a weapon during the course of these sales, the sentencing judge was obligated to impose harsh

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8 A discussion of the war on drugs and its effect on imprisonment can be found later in this chapter.
consecutive penalties on Angelos, even though he did not use or threaten to use a knife or gun. As a result, Weldon Angelos is now serving a 55-year sentence with no parole in federal prison.9

Mr. Angelos will be in prison until he is 79 years old for selling marijuana and carrying a weapon. While the sale of drugs is illegal, Mr. Angelos’s actions did not result in the death or injury of another person. Fifty-five years for the sale of marijuana and possessing a weapon is indicative of the excessively long punishments that have become a reality in the U.S.

Contrary to popular belief, lengthy sentences are not necessarily more effective than other means of punishment. In fact, a trial judge in Hawaii discovered that immediate, quick punishment for parole violators is much more effective than prolonged, lengthy sentences. Judge Alm instituted a program that put this method of punishment into practice, in an attempt to cut down on parole violations for drug offenders. The program implemented immediate, short jail stays for parole violations. In a New York Times Magazine article on the program, known as Hawaii’s Opportunity Probation with Enforcement (HOPE), Jeffrey Rosen discusses the success of HOPE: “Classical deterrence theory has long held that the threat of a mild punishment imposed reliably and immediately has a much greater deterrent effect than the threat of a severe punishment that is delayed and uncertain.”10 HOPE was immediately effective, and after six months “the rate of positive drug tests fell by 93 percent for HOPE probationers,

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compared with a fall of 14 percent for probationers in a comparison group."\textsuperscript{11}

Programs like HOPE that challenge our reliance on lengthy punishment suggest that our system has fallen out of balance.

Unfortunately for convicts, the United States has lost sight of the goal of rehabilitation and now focuses overwhelmingly on punishment, leaving little room for effective innovations such as HOPE. Glenn Loury writes in Race, Incarceration, and American Values: "In the 1970s... the corrections system was commonly seen as a way to prepare offenders to rejoin society. Since then, the focus has shifted from rehabilitation to punishment and stayed there."\textsuperscript{12} This shift is clear in the high number of life sentences prescribed as mandatory minimums in federal law.\textsuperscript{13} Life sentences are imposed for certain drug offenses, including repeat arrests for possession with intent to distribute; repeat possession of certain firearms; assorted sexual offenses; having two prior serious felonies; engaging in activity that causes the death of another person, regardless of intent; and “robbery ashore by a pirate,” a mandatory minimum that has been in place since 1790.\textsuperscript{14} Imposing a mandatory life sentence for all of these offenses indicates that Congress is less interested in reforming prisoners than in preventing convicts from rejoining society.

There has been a shift from rehabilitation to punishment on the state level as well. States implement their own mandatory minimums, and although not all

\textsuperscript{11} Rosen, 1.
\textsuperscript{12} Loury, Glenn C. Race, Incarceration, and American Values. (Boston: MIT, 2008) 9.
\textsuperscript{14} See “Federal Mandatory Minimums” Chart, Appendix
states have mandatory minimum sentences, some states require mandatory minimums that are even stricter than the federal guidelines discussed above. Florida in particular is known for its strict mandatory minimums. The Florida system is known as “10-20-Life.” Jeb Bush promised 10-20-Life during his 1998 governor’s campaign and the Florida State Legislature implemented the program in 1999. The regulations are as follows:

Mandates a minimum 10 year prison term for certain felonies, or attempted felonies in which the offender possesses a firearm or destructive device. Mandates a minimum 20-year prison term when the firearm is discharged. Mandates a minimum 25 years to LIFE if someone is injured or killed. Mandates a minimum 3-year prison term for possession of a firearm by a felon. Mandates that the minimum prison term is to be served consecutively to any other term of imprisonment imposed.

Florida’s mandatory minimum for discharging a firearm during a felony is twice as long as the federal mandatory minimum. Similarly, Florida mandates a ten-year minimum for carrying a firearm during certain felonies, whereas the federal regulations mandate that five years be added for possession of a firearm during a violent crime or drug trafficking.

Another sentencing approach that many states have adopted is the “three strikes” policy, which imposes life sentences on individuals convicted of three felonies, regardless of the nature of the felony. The Sentencing Project cites two individuals who took their life sentences, mandated by the “three-strikes” rule, before the U.S. Supreme Court:

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16 “10-20-Life”
In a challenge to the policy that went before the U.S. Supreme Court, two defendants argued that their sentences constituted a form of cruel and unusual punishment. The third strike for one of the defendants involved the theft of three golf clubs from a sporting goods store; the second defendant’s third strike was for the theft of $153 worth of videotapes from a department store. The Court rejected the arguments, deferring to the discretion of the legislature to impose such policies. As a result, the golf club thief is now serving a sentence of 25 years to life and the videotape thief has a sentence of 50 years to life.\(^\text{17}\)

The golf club burglar’s case was *Ewing v. California* and the videotape burglar’s case was *Lockyer v. Andrade*. The court cites Mr. Ewing’s prior criminal record in its decision to uphold the sentence: “His prior strikes were serious felonies including robbery and residential burglary.”\(^\text{18}\) The justices held that life in prison was not a cruel and unusual punishment for stealing golf clubs.

Mr. Andrade, the defendant in *Lockyer v. Andrade* also had a fairly substantial criminal record; he had been convicted of first-degree residential burglary, transportation of marijuana, theft, and violating his parole.\(^\text{19}\) Mr. Andrade admitted that he stole the videotapes in order to fund his heroin addiction, with which he had been struggling since 1977. Because of Mr. Andrade’s prior petty theft charge, the prosecutor opted to charge him with a felony. Andrade was sentenced to two consecutive life terms for two counts of petty theft with a prior conviction. In both of these cases, the defendants had

\(^{19}\) Lockyer, Attorney General of California v. Andrade, Supreme Ct. of the US, 5 March 2003.
spent time in prison and still decided to commit crimes; the supposed deterrent effect of incarceration was not effective for these men. The sentences imposed on these men are cruel and impractical; they put a strain on the state's budget, fail to address the societal issues that fuel crime, and underscore the inability of incarceration to deter crime.

The “three-strikes” policy has contributed to a staggeringly high number of life-sentence prisoners. Nationally, one in 11 prisoners is serving a life sentence. California pioneered the “three-strikes” policy and now has “the highest proportion of life sentences relative to the prison population... where 20% of the prison population is serving a life sentence...” Alabama, Massachusetts, Nevada, and New York are not far behind with one in six prisoners serving life sentences. California, Massachusetts, and New York are all traditionally liberal states. Their tough sentencing policies speak to national trends.

In addition to imposing lengthy sentences, some states have moved away from rehabilitation and toward humiliation in their means of punishment. In 1995 the Alabama Department of Corrections reinstituted a policy that seems out of date and out of place: the chain gang. This decision was part of the movement away from correction and toward punishment, as “humiliation and control, not effectiveness, have always been the goal of such policies.”

One could argue that humiliation and control act as deterrents for crime:

21 Nellis and King 3.
22 Nellis and King 3.
[Alabama's] Prison Commissioner, Ron Jones, who believes prison should be hard, said there were a lot of reasons why he decided to revive chain gangs, but the big one was "deterrence." He said the sight of a man in chains would leave a lasting impression on young people. Repeat offenders, men who have lost respect for the law and overcome their fear of a life behind bars, will rediscover it on the chain gang, said Mr. Jones, a former prison warden.24

Mr. Jones believes that chain gangs foster respect for the law. On the other hand, forced labor in a chain gang could actually perpetuate a prisoner's animosity toward his government—a government that, as Mauer points out, is not interested in helping him, but prefers to humiliate him.25 The chain gang was eventually banished in Alabama when an inmate was shot and killed after he attacked his chain-gang neighbor with a bush axe. The lesson to take away from the chain gang debacle is this: recently, there has been undeniable movement away from corrections toward harsh punishment that can be seen on the state and federal level. In many cases, this movement is misguided and results in humiliation, disenchantment with the law, and tragedy.

Around the same time as the chain gang's resurrection, many states decided to reinstitute striped uniforms for prisoners. Mississippi began the movement in 1995, and other jurisdictions followed suit, including Massachusetts, Missouri, Texas, Indiana, Nebraska, Florida and Maine.26

Again, the striped suits were part of a movement to alienate prisoners:

25 Mauer, Race to Incarcerate 191-192.
Stripes are of a piece with the increasingly popular “no frills” prison movement. The idea is that convicts should have to work for the kinds of amenities -- television, weight rooms, conjugal visits -- that reform-minded penologists introduced a generation ago in response to calls for prisoners' rights. No-frills, which depending on one's definition also encompasses chain gangs (even for women) and boot camps, is a return to a more punitive penal age.\textsuperscript{27}

While many groups have enjoyed increased rights in America in the past few decades,\textsuperscript{28} prisoners have seen steady erosion of their status as a result of the symbiotic relationship between the public's desire to punish and politicians who feed those flames for partisan gain. Dehumanization seems to be the goal and permits further imposition of harsh punishment. This movement has gotten out of control; it has devalued the lives of incarcerated people and it has solidified the United States’ harshly punitive reputation.

The dramatic rise in prison population and the shift away from corrections in the past four decades is the result of various factors, including the media, public opinion, political trends, and legislative changes. Each of the factors is intertwined with the others: the media, for example, affect public opinion, which in turn affects the political world and legislative decision-making.\textsuperscript{29} The result of all these factors is the incarceration of over 2 million people in the U.S., the highest number of life sentences in the history of this country, and, as it works

\textsuperscript{27} Vinciguerra 1.
\textsuperscript{28} For instance, women are much more prominent in the workplace and institutes of higher education than they were forty years ago.
\textsuperscript{29} The relationships between the media, public opinion, and politics can, of course, go any way. I will demonstrate how, in this case, the movement followed the aforementioned trajectory.
out, the perpetual marginalization of non-white racial groups, especially black males.

Causes

Media affects public opinion

Common sense would dictate that prison population and crime rates correlate; when imprisonment is up, crime should be down, and vice versa. In reality, however, imprisonment levels and crime levels for the past forty years haven’t correlated in any comprehensible way. Criminologist Todd Clear writes: “There is a puzzling discontinuity between imprisonment rates, which have increased every year since 1973, and crime rates, which have been up and down during that time and are, today, about what they were in 1970, when the prison population was at its lowest level in a generation.”

30 Even accounting for the dramatic rise of imprisonment for non-violent offenses such as drug offenses, the imprisonment rate does not correlate with the actual crime rate:

The number of violent crimes increased from over nine hundred thousand to 1.36 million from 1980 to 1990. But from 1990 to 2001 the level of violence fell... However, the chances that an arrest would result in prison roughly doubled, from 13 to 28 percent. Time served in prison by violent offenders also increased significantly, from thirty-three months in 1980 to fifty-three months on average by 2001. Because time served and the rate of prison admission both increased, the

incarceration rate for violent crime rose from seventy-six to 208 per hundred thousand, despite the decline in the level of violence.\(^{31}\)

Because imprisonment rates and crime rates are so discontinuous, factors other than objective response to crime rates have evidently contributed to the prison boom.

One undeniable factor is a common perception that crime is out of control. This perception is enforced by the media’s over-presentation of crime. The Center for Media and Public Affairs did a comprehensive study of news content during the 1990s and found that crime was the number one news story for the majority of the decade: “During the past ten years [1990-2000] the networks have offered an astonishing 14,289 crime stories, an average of almost four per day. During the past seven years [1993-2000], since crime coverage began to soar, the annual average has been almost five stories per night.”\(^{32}\)

Coverage of murder in particular spiked during the 90s. From 1990-1992, there was an average of 100 murder stories per year. That average exploded to 511 from 1997-1999.\(^{33}\) Oddly enough, this rise in murder stories on the news coincided with a decreasing homicide rate:

Even as media coverage of murder rose, the real world murder rate was falling steadily. In fact, preliminary Justice Department data for 1999 projects the lowest homicide rate of the decade. The murder rate has fallen 42 percent from 1990 levels, in the face of a seven-fold increase in media attention,  

\(^{31}\) Western, Punishment and Inequality in America 43-44.  
\(^{33}\) “Media at the Millennium,” 4.
from a low of only 80 stories in 1990 to a high of 587 in 1999.\textsuperscript{34}

For people who do not experience crime in their daily lives, the primary resource for gauging the rate of crime is the news. Because news programs are aired, for the most part, on widely available stations, and are shown live, they are generally more accessible and more immediate than newspapers or other sources of current events. The accessibility of news shows means that the selective broadcasting of violent crime reaches high numbers of people. Unfortunately, newspapers aren’t much better than televised news when it comes to responsible representation of crime. \textit{The American Journal of Public Health} looked at how much coverage certain causes of death were afforded in print media as opposed to how much would be expected if coverage coincided with actual incidence. Homicide received seven times the expected print coverage,\textsuperscript{35} again making it seem that murder is a frequent cause of death. In reality, homicide does not even make the top ten causes of death in the general population in the United States.\textsuperscript{36}

Because stories of crime are sensational and interesting—as the success of television crime shows, mystery novels and legal thrillers demonstrates—editors of print and electronic news include disproportionate numbers of stories of gruesome, terrifying crimes to attract viewers and readers. Rarely does the news

\textsuperscript{34}“Media at the Millennium,” 4.
cover less sensational crime, such as car thefts or muggings, which are much more frequent than violent murders or sexual assaults. In the realm of crime, the news distorts reality and creates unease in the general public about the frequency and severity of crime. This concern about crime in turn affects political developments.

/Public opinion affects politics/

Few candidates for public office have lost favor for being too tough on crime. It is an ever-effective campaign strategy to promise to reduce crime by throwing more people in jail for longer periods. According to Bruce Western, the importance of crime in politics started when Barry Goldwater, the Republican presidential nominee in 1964, made crime an issue in his campaign.\(^{37}\) Next, during the 1968 presidential election, crime and opposing methods of how to deal with it became a major issue of contention. Richard Nixon famously ran a “law and order” campaign, based on proposals to build more prisons and get more convictions. Nixon ran ads warning that violent crime would double in the next four years absent serious punitive action.\(^{38}\) Nixon’s opponent, Hubert

\(^{37}\) Western, Punishment and Inequality in America 59.

Humphrey, replied to Nixon’s claim that he would bring order to the U.S. by questioning the viability of achieving law and order solely through punishment:

When a man says that he thinks that the most important thing is to double the rate of convictions... I think that man has lost his sense of values. You’re not going to make this a better America just because you build more jails. What this country needs are more decent neighborhoods, more educated people, better homes... I do not believe that repression alone builds a better society.  

The Nixon-Humphrey race took place during a time of turmoil in the United States. The civil rights movement had produced great expectations among some and enormous fear among others, and with the assassination of both Martin Luther King, Jr. and Robert Kennedy in 1968, the struggle took an ominous turn. Nixon addressed the social disorder caused by desperation over civil rights in an ad called “The First Civil Right.” In it, a male narrator states:

It is time for an honest look at the problem of order in the United States. Dissent is a necessary ingredient of change, but in a system of government that provides for peaceful change, there is no cause that justifies resort to violence. Let us recognize that the first civil right of every American is to be free from domestic violence. So I pledge to you, we shall have order in the United States.  

The American people were swayed by Nixon’s promises and his claims that he could restore order to the United States. What resulted from his stance toward civil unrest, however, was social order through repression. The Nixon

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administration’s method of addressing discontented blacks and their supporters was to throw the problem in jail and to keep it repressed for decades to come.

Crime as a racially charged political issue took center stage during the 1988 election. An ad supporting George H. W. Bush during the 1988 campaign narrated the story of Willie Horton, a black man who was given a life sentence for murder. Horton was convicted in Massachusetts, where the democratic presidential candidate, Michael Dukakis, served as governor. Dukakis supported a furlough program that granted weekend passes to prisoners. After being released on a weekend pass, Horton failed to return and committed assault, armed robbery and rape. The ad blasted Dukakis for his weakness on crime, but it also played on the public fear of black criminals. The ad dehumanized the black man, portraying him as an out-of-control criminal, embodied by Willie Horton. This single example of horrible violence by a black convict was used to fuel the practice of maintaining social order through mass imprisonment—a practice focused on blacks.

The “tough on crime” movement is not confined to the Republican Party. While Republicans have used crime as a national political issue over the past 40 years and secured the mantle as the party that leads in supporting punitive

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approaches to crime, Democrats have joined the conversation and are generally unwilling to question the social benefit of punitive policies:

Although Republican politicians promoted prison expansion and tough new criminal sentences, Democrats also supported an increasingly punitive criminal justice policy... President Clinton’s 1994 Violent Crime Control and Law Enforcement Act... earmarked $9.9 billion for prison construction and added life terms for third-time federal felons.

Michael Lynch suggests that politicians and the general public share the blame for the U.S.’s increasingly punitive corrections policy. Lynch argues that the public puts pressure on policy makers to reduce crime and increase the rate of incarceration, acting on the assumption that lengthy prison stays reduce crime:

When presented with a politician who wants to reduce crime by providing expanded economic opportunities and one who wants to reduce crime using more punitive responses, the public will tend to side with the latter politician. This occurs because of the all-too-common assumption that more punitive penal policies will serve the purpose of reducing crime.

Lynch argues that there is a serious lack of communication between the general public and politicians, which leads to misguided “tough on crime” policies. The general public assumes that politicians rely on the advice of expert researchers and teams to come up with policy, when in reality this may not be the case:

The problem is that the public acts on faith: faith that their elected leaders will do the right thing and will either read research or consult with researchers who

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43 Higher advocacy of the death penalty, for instance
44 The exceptions to this trend will be discussed in chapter three
45 Western, *Punishment and Inequality in America* 61.
have studied a particular problem. Because they are acting on faith, they do not exert any energy toward finding out whether the policies their elected officials have set into place are actually producing the desired effect. In a democracy, government can only be effective when the citizens are informed.\textsuperscript{47}

The general public and politicians affect each other's actions and opinions, but don't communicate in a way that encourages innovation and effective policymaking. While crime naturally produces the desire for retribution, the government is supposed to serve as a check on the public's passionate feelings. In the realm of crime, politicians find it more effective to play on people's desire for vengeance through the implementation of punitive, and sometimes ineffective, methods. The racial disparity that goes hand in hand with this country's punitive politics does not concern the general public greatly because of the dehumanization of the black man that has been played upon by some political agendas.

\textit{Disparate Impact on Black Males}

African Americans have been repressed throughout the majority of U.S. history by government and social practices. Harsh sentencing practices and the reduction of prisoners' rights continue that repression. The dehumanization of blacks as a means of social control discussed earlier has created a disturbing imbalance in the prison population:

\textsuperscript{47} Lynch, \textit{Big Prisons, Big Dreams} 43.
Incarceration is highly concentrated... Nine out of ten prison inmates are male, most are under the age of forty, African Americans are seven times more likely than whites to be in prison, and nearly all prisoners lack any education beyond high school... 30 percent of black noncollege men will go to prison at some time in their lives.  

According to Marc Mauer, executive director of the Sentencing Project: "A black boy born in 2001 stood a 32 percent chance of being imprisoned at some point in his life, compared to a 17 percent chance for a Hispanic boy and a 6 percent chance for a white boy." A chart of jail incarceration rates by race and ethnicity put out by the Justice Department shows that, although blacks have always been overrepresented in jail, the increase of blacks in jail has been exponential over the past 18 years, whereas the number of white and Hispanic prisoners has been much more controlled.

In the courtroom, both the victim’s race and the defendant’s race can affect the severity of a sentence. A person found guilty of murdering a white victim in states that practice the death penalty is more likely to be sentenced to death than if the victim is black: "The race of both victim and offender has a significant impact on the determination of a sentence of death as opposed to life in prison... Murder defendants charged with killing whites faced a 4.3 times greater chance of receiving death than those charged with killing blacks." The defendant’s race is also a factor in the administration of the death penalty. A

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49 Mauer, Race to Incarcerate 137.
50 See Appendix, “Jail Incarceration rates by race and ethnicity, 1990-2008.”
51 Mauer, Race to Incarcerate 143.
study of the death penalty in Philadelphia by Baldus and colleagues found that “black defendants in Philadelphia face odds of receiving a death sentence in a penalty trial that are 9.3 times higher than the odds faced by nonblack defendants with comparable levels of culpability.” A research report using the Baldus data concluded that a person’s perceived level of black features also dictated his likelihood of being sentenced to death: “Defendants whose appearance was perceived as more stereotypically Black were more likely to receive a death sentence than defendants whose appearance was perceived as less stereotypically Black...” This finding reveals a huge disparity between the value placed on the lives of whites and the value placed on the lives of blacks. Racism in administering the death penalty is an irreversible, unforgivable mistake.

The defendant’s race is likely to have an impact on sentencing severity in non-death penalty cases as well. Blacks have been hit hard by the rise in life sentences that followed the “three-strikes” movement discussed earlier. The Sentencing Project found that “two-thirds of people with life sentences (66.4%) are nonwhite, reaching as high as 83.7% of the life sentenced population in the state of New York.” Race affects sentencing in misdemeanor cases as well. A study done by the New York State Division of Criminal Justice Services found that between 1990 and 1992, “minorities were sentenced to jail considerably

54 Nellis and King 3.
more often than whites; minorities were sentenced to probation considerably less often than whites...”

The analysis states that “the most disturbing finding is that minorities were sentenced to jail considerably more often than comparably situated whites throughout New York State.”

When convicts are sent to jail for misdemeanors and property offenses, they face greater challenges in turning their lives around or even maintaining their present course, putting them at a huge disadvantage compared to those given probation or community service.

The conclusion that race is a factor in sentencing confirms an inherent racism within the court system and the country in general.

The war on drugs, which is commonly used to explain much of the prison boom, has also greatly and disparately affected black males. Drug offenders make up a stunning percentage of the prison population: “In the federal system, three out of five prisoners by 1997 were drug offenders... In 1996, state drug offenders averaged just over two years in prison, compared to eleven years for murderers. In federal prison the same year, the average time for drug offenders was forty months.”

Many of the people incarcerated for drug offenses are drug users, not necessarily drug dealers or drug kingpins. The late U.S. Senator Edward Kennedy recognized this reality in his statement during a hearing by the

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56 Nelson, James xii.
57 Chapter Two discusses the effect on children when parents are incarcerated compared to parents who are on probation. Generally, children have higher self-esteem, are less likely to become delinquent, and less likely to develop mental illness when a parent is on probation, rather than incarcerated.
58 Western, Punishment and Inequality in America 12-13.
Senate Subcommittee on Crime and Drugs of the Senate Judiciary Committee held on February 12, 2008 to address the crack-cocaine disparity: “The low amount of the drugs needed to trigger the harsh sentences means that these sentences are not limited to high-level drug dealers: As the Sentencing Commission reported in 2005, only 15% of the defendants were high-level dealers. The overwhelming majority of those convicted were low-level offenders...”59 The majority of people arrested for drug offenses, especially crack offenses, are people who would benefit greatly from treatment instead of, or in addition to incarceration. Drug offenders also have a high rate of recidivism, both because of the lack of treatment and because of parole violations: “Many drug offenders who were admitted to prison in the 1990s were parolees readmitted not for new offenses, but for violating the conditions of their parole... In the 1990s, parole revocation doubled for drug offenders, increasing the number of people reentering prison and not convicted of new crimes.”60 The high number of arrests for drug offenses contributes greatly to overcrowding in U.S. prisons.

Drug offenses tend to carry harsh mandatory minimum sentences. These sentences are not consistent across different types of drugs, which has disproportionately affected black males. The federal mandatory minimum sentence for a drug crime is triggered when the crime involves between 500 g and

59 Federal Cocaine Sentencing Laws: Reforming the 100-to-1 Crackpowder Disparity: Hearing Before the Subcommittee on Crime and Drugs of the Committee on the Judiciary, United States Senate, One Hundred Tenth Congress, Second Session, February 12, 2008, 179.
60 Western, Punishment and Inequality in America 44.
5 kg of cocaine, or 5g-50 g of crack, a disparity of 100-1. A person found with 5g of crack and a person found with 500g of cocaine and convicted in federal court would both receive a mandatory minimum of five years in prison. The Senate voted unanimously to reduce this disparity to 18-1, but the bill is yet to come before the House.

The huge difference between the small amount of crack one must possess in order to trigger a mandatory minimum and the much larger amount of cocaine one must possess has led to higher incarceration rates of blacks because black males are more often convicted of crack offenses. Former U.S. Senator and now Vice President Joe Biden recognized this disparate impact during a hearing on crack-cocaine sentencing in 2008: “The past 21 years has also revealed that the dramatically harsher crack penalties have disproportionately impacted on inner-city communities, the African-African community: 82 percent of those convicted of crack offenses in 2006 were African-Americans.” In a statement made during the same hearing, Hon. A.J. Kramer, a Federal Defender for D.C., noted that

61 Crack is a chemically processed form of freebase cocaine that can be smoked. Crack offers a quicker, but shorter-lived high than powder cocaine. Because of crack’s intense and short highs, it is believed to be more addictive than powder cocaine.
62 See Families Against Mandatory Minimums “Federal Mandatory Minimums” Chart in Appendix
63 All of these scenarios deal with federal mandatory minimums, which apply only to those convicted in federal court. Individual states have their own mandatory minimums, which will be discussed later.
65 Federal Cocaine Sentencing Laws : Reforming the 100-to-1 Crackpowder Disparity, 3.
82% of the federal crack cocaine defendants his office represents are African American.66

Arrests for drug offenses have always involved more blacks than whites, so inevitably the boom in incarceration for drug offenses has more profoundly affected blacks:

In the early 1970s, blacks were about twice as likely as whites to be arrested for a drug offense. The great growth in drug arrest rates through the 1980s had a large effect on African Americans. At the height of the drug war in 1989, [drug] arrest rates for blacks had climbed to 1,460 per hundred thousand compared to 365 for whites. Throughout the 1990s, drug arrest rates remained at these historically high levels.67

These figures are astounding, but could be explained by the assumption that African Americans use more drugs than whites. This, however, is not the case. In fact, high-school aged whites have been shown to use drugs more often than blacks of the same age group. The Monitoring the Future National Survey on Drug Use compiled data from 1975 through 2000 and found that “African American [high school] seniors have consistently shown lower usage rates on most drugs, licit and illicit, than White seniors; this also is true at the lower grade levels where little dropping out of school has yet occurred.”68 In adult populations, whites and blacks are reportedly similar in their overall drug use. The National Survey on Drug Use and Health found that in 2007 9.5% of the

66 Federal Cocaine Sentencing Laws : Reforming the 100-to-1 Crackpowder Disparity, 182.
67 Western, Punishment and Inequality in America 46.
black or African American population used illicit drugs while 8.2% of the white population used illicit drugs. 69 While the percentage of blacks that use drugs is higher, the difference is not enough to justify drug arrest rates of 1,460 per hundred thousand for blacks versus 365 per hundred thousand for whites. The incarceration rather than treatment of drug offenders, the overrepresentation of blacks as convicted drug offenders, and the sentencing disparity between crack and cocaine have all had negative impacts on the black community.

Another way in which economically disadvantaged defendants, many of whom are minorities, are placed at a disadvantage is the bail system. Alexis de Tocqueville’s Democracy in America, first published in 1835, notes the upper class’ inherent advantage in the system:

American civil and criminal law recognizes only two courses of action: prison or bail. The first step in this procedure is to obtain bail money from the defendant or, on his refusal, to imprison him. After that, they examine the validity of the accusation and the seriousness of the charges. Clearly such a legislative procedure disadvantages the poor and favors only the wealthy. The poor man cannot always find the money for bail, even in a civil matter. If he is obliged to await justice from prison, his enforced constraint soon reduces him to a wretched state... Could there be any legislation more aristocratic than that? 70

Not much has changed since Tocqueville's assessment. Analysis done by the Office of Justice Systems in the state of New York showed that “minorities were

69 “Results from the 2007 National Survey on Drug Use and Health: National Findings, Figure 2.9 Past Month Illicit Drug Use among Persons Aged 12 or Older, by Race/Ethnicity: 2007,” Department of Health and Human Services, Sept. 2008. Web. 2 Apr. 2010.
detained in jail more often than whites, and whites were released on bail more often than minorities... At least some of the disparities in jail custody were due to differences in the abilities of whites and minorities to make bail.”

Being held in custody awaiting trial may not seem like a big hindrance, but defendants, especially indigent defendants who are assigned to overworked public defenders, can spend several months or even years awaiting trial.

National Public Radio did a multi-part series on the bail system and recounted the stories of several inmates who were sitting in jail, unable to post bail: “They are here because they can't make bail — sometimes as little as $50. Some will wait behind bars for as long as a year before their cases make it to court. And it will cost taxpayers $9 billion this year to house them.”

One inmate, Doug Currington, was unable to post his $150 bail and had been in jail for 75 days as of January 21, 2010. While sitting in jail, Currington had lost everything: his job, his car, and his apartment. What's worse is that his stay in jail greatly increases the chance that he will receive prison time: “Several defense lawyers in Lubbock said that in their experience, if Currington could get out, go to rehab and pay restitution, he would very likely get probation. Prosecutors are offering him five years in prison.” Currington’s inability to post bail could ruin the next five years of his life.

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71 Nelson, James vi.
73 Sullivan, “Bail Burden.”
74 Sullivan, “Bail Burden.”
In some cases, prosecutors decide not to indict after holding someone in jail for a long period of time. Although having one's charges dropped is the ideal outcome after being arrested, the wretchedness that Tocqueville mentions becomes a factor for the people who spend large amounts of time in jail awaiting trial. These inmates become acquainted with actual criminals, lose faith in the system, and are more likely to develop criminal tendencies. Many of the clients I worked for at the D.C. Public Defender Service had been in jail for months when I was working on their cases and wouldn't go to trial for several months after I left to go back to school.

The NAACP Legal Defense Fund did a study of indigent defendants’ time spent in jail awaiting trial in Mississippi and found that the range of jail time varies greatly: “The average indigent in the sample drawn spends 135 days in a county jail prior to the resolution of the case, but there is a great deal of variation in this figure among indigents... Approximately 13 percent of the sample spent over one year in county jail,”75 but that minorities are more likely to be held in jail awaiting trial: “Minorities are 19 percent less likely to get out of jail than their non-minority counterparts...”76 Once put in jail, the length of the pre-trial jail stay is enhanced by race: “Minorities average 156 days in jail, while non-minorities average 93 days.”77 All of the prisoners in this study were considered indigent,

76 Brooking and Blakely, 22.
77 Brooking and Blakely, 20.
revealing that even controlling for economic factors, minorities are still
disparately impacted by the bail system.

Time spent in jail awaiting trial is as debilitating as time served after
conviction. Worse still, when charges are not filed or defendants are found not
guilty and sent out into the world, they are not given access to the resources open
to criminal defendants who are found guilty, spend time in prison, and then are
released. Released convicts have access to a wide array of resources, such as job
counseling, drug rehabilitation, and the expertise of social workers. For instance,
the office of Offender Rehabilitation, a section of the Public Defender Service in
D.C., provides many services for convicts who have been released from prison.
The office of Offender Rehabilitation publishes directories of resources for
released convicts. It also provides special services to clients who have recently
been released from prison. Offender Rehabilitation does not, however, provide
these services to individuals who have spent months or years in jail, but do not
serve prison time. This void is not due to a lack of desire to help every client that
comes through the Public Defender Service, but rather to a lack of resources.
Besty Biben, the director of Offender Rehabilitation, laments the fact that
Offender Rehabilitation is not able to offer follow-up resources for individuals
who are not indicted or who are found not guilty, but has yet to receive sufficient
funds to fully provide for the large number of clients who are convicted.\textsuperscript{78}

It is particularly hard for people released from jail after being incarcerated
for several months or even years to re-assimilate into the outside world. The

\textsuperscript{78} Biben, Betsy. Personal interview. 26 Oct. 2009.
Legal Defense Fund study mentioned earlier cites some of the impacts of being held in jail awaiting trial: “An employed inmate loses income while in jail, and an unemployed inmate loses valuable time that may be used to search for gainful employment. In addition, there can be equally undue spillover effects for an inmate’s family, such as missed child support payments.”

The released prisoner has spent a long period of unproductive time, not earning any income and most likely losing money trying to stay in touch with loved ones.

Many of my clients spent large amounts of money in jail calling their family members or girlfriends. The cost of making a phone call from a jail can be as high as five times that of a pay phone. Inmates can set up money accounts to pay for their phone calls, or they can call their family members collect, which costs more. However, depositing money into inmate’s account is also expensive.

In the District of Columbia, to deposit money into an inmate's account, a loved one has three options: online, by telephone, or via walk-in cash payment. For online deposits the processing fee is $3.95, telephone and walk-in deposit fees are $5.95. Being in jail awaiting trial not only prevents inmates from earning money, but staying in touch with loved ones costs money on a daily basis, effectively putting the prisoner in debt, alienating him from his family and making it even harder for him to get back on his feet.

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79 Brooking and Blakely, 3.
There are alternatives to keeping defendants in jail who cannot afford bail. Pretrial release is one of these alternatives and most frequently applies to people accused of nonviolent crimes such as theft. Defendants are released from custody while awaiting trial and are monitored through ankle bracelets, regular check-ups either in person or on the phone, and drug testing. Pretrial release allows defendants to keep their jobs, maintain their relationships, and pay their bills. It also saves the government a lot of money: “[Broward County, Florida’s] pretrial program costs about $7 a day per inmate. Jail costs $115 a day, says Kristina Gulick, who runs the pretrial program.”

Pretrial release also cuts down on jail overcrowding, which enhances inmates’ quality of life and again saves the state money:

Three years ago, the Broward County jail was so full, a judge called the conditions unconstitutional. Instead of building a new $70 million jail as they had proposed, county commissioners voted to expand pretrial release, letting more inmates out on supervised release. Within a year, the jail population plunged, so much so that the sheriff closed an entire wing. It saved taxpayers $20 million a year.

Unfortunately for inmates and taxpayers alike, pretrial release faces serious roadblocks to expansion. Bail bondsmen have lobbied against expanding pretrial release and in at least one case succeeded in cutting back on its use, pushing through an ordinance in Broward County that “strictly limits who can qualify for

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83 Sullivan, “Bondsman Lobby.”
84 Sullivan, “Bondsman Lobby.”
pretrial release and cuts the program back by several hundred defendants.” The obstacles facing pretrial release are yet another instance of infringement upon economically disadvantaged and minority prisoners’ rights.

The issue of indigent criminal defendants who spend months or even years in jail because of their inability to post bail, but who are then found not-guilty or who are not indicted gets lost among the many other problems within the criminal justice system. It is a problem that deserves attention because it can ruin or greatly hinder the life of a person who is innocent in the eyes of the law. This issue affects only those who live in poverty, and within the economically disadvantaged community, minorities are affected more than their white counterparts.

Reflection

In sum, the U.S. has experienced a significant increase in prison population since the 1970s. Our society has become increasingly punitive, a result of the media’s influence on public perception of crime, the public’s influence on policymakers, and the misunderstanding or neglect of research on effective punishment. The U.S.’s preoccupation with punishment has led to astonishingly long sentences and humiliating prison practices. Prisoners’ rights have diminished and the focus of corrections has shifted to dehumanization and humiliation of the prisoner, which is manifested in events such as the reinstitution of the chain gang. This prison boom has disproportionately affected

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85 Sullivan, “Bondsman Lobby.”
black males; they are incarcerated in much higher numbers and tend to receive harsher sentences than any other racial group. This trend was fueled in part by a fearful reaction to the civil rights movement, during which the existing racial hierarchy was challenged and weakened. That reaction was then exploited by politicians who promised to restore order through punishment. This oppression has continued; imprisoning black males has become a means to impose order on a group that has been historically marginalized. The media and certain politicians are responsible for the dehumanization of black males, greatly reducing public outcry at the disparate impact that the criminal justice system has on these individuals.

This injustice affects black males and their families in profound ways that cannot be measured by prison population or sentence length. The loss of a family member can have debilitating effects on the structure of a family, children’s futures and prisoners themselves. These collateral consequences of mass incarceration will be discussed in detail in the next chapter.
Chapter Two: Collateral Consequences

The effects of high levels of incarceration extend beyond prisoners to their families and communities. Many of the men incarcerated are fathers, including about three quarters of incarcerated minority men. The incarceration of parents has devastating mental, social, and financial effects on the rest of the family and these effects spread to neighborhoods and communities. This chapter will explore how mass incarceration affects poor and predominantly black communities.

Families

Atticus Finch: You know, I’d hoped to get through life without a case of this kind, but John Taylor pointed at me and said, “You’re It.”
Jack Finch: Let this cup pass from you, eh?

Atticus Finch: Right. But do you think I could face my children otherwise?²

In this passage, Harper Lee’s iconic literary figure, Atticus Finch, who embodies both an ideal father figure and a fair-minded civil rights hero, puts into words the mutually enforcing relationship between parents and children: Atticus’ children motivate him to act in a way that encourages and invites admiration and emulation. He understands that fathers have the responsibility and the privilege to teach their children the morals by which to live their lives. There is no better example of this exchange than the relationship between Atticus, Scout, and Jem in Harper Lee’s To Kill a Mockingbird, as Atticus instills within his children the ability and the desire to stand up for what they believe to be right and, in return, the children inspire Atticus to live up to what he teaches.

In the United States today, the informal social control that arises from the parent-child, especially father-child, relationship is lost in the poor communities wracked by crime. In these communities, the father-child relationship is an informal predictor of each participant’s likelihood of being incarcerated. For the father’s part, men who have engaged in criminal activity in the past are less likely to keep up their criminal activity after the birth of their children. For children, an incarcerated parent increases their likelihood of eventually being incarcerated themselves and can have devastating effects on their mental health. When fathers are incarcerated, it becomes extremely difficult for the families to stay intact or even in contact.

Edin, Nelson, and Paranal, who specialize in family studies, have found that men are less likely to engage in criminal behavior when they have a child to care for. Through “verbatim transcripts of repeated in-depth interviews of roughly three hundred unskilled and semiskilled low-income noncustodial fathers” the authors discovered this social control: “The men we interviewed tend to value the ties to their children above all other social bonds that could potentially link them to institutions of informal social control. As a result, fatherhood in and of itself can prove a powerful turning point that leads men away from crime and toward a more mainstream trajectory.” This study found a strong deterrent to criminal behavior that transcends law and punishment and originates from a paternal instinct.

The father-child relationship benefits children as well. A child’s likelihood of engaging in delinquent behavior is greater if he or she has a parent in prison:

Parental imprisonment during childhood was a strong predictor of antisocial-delinquent outcomes throughout the life course... For example, of boys separated [from parents] because of parental imprisonment, 65 percent were convicted between ages 19 and 32, compared with 21 percent of boys with no history of parental imprisonment or separation...  

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4 Edin, Nelson, Paranal, 53.
Criminal behavior is thus socially passed on from generation to generation, creating communities that cannot escape the grips of crime. Incarceration, which is meant to stop crime, “can become a self-sustaining system,” actually perpetuating crime.

Aside from its effect on future delinquency, parental incarceration affects children in more subtle ways. For instance, children whose mothers are imprisoned tend to demonstrate lower academic performance: “Of children of jailed mothers, 70 percent had below-average academic performance, compared with 17 percent of children whose mothers were on probation...” The presence of a parent in the household has also been found to affect the child’s self-image: “Of children with jailed mothers, 59 percent were rated as having low self-esteem, compared to 22 percent of children whose mothers were on probation.” Both groups of children represented in these statistics have mothers who have been convicted of crimes, but the maternal presence at home, even if on probation, greatly affects the child’s school performance and mental health. The presence of a parent is the significant variable, not the parent’s behavior. While these statistics deal with mothers, in reality fathers are much more likely to be imprisoned; as of 1997, 5% of the male population of the United States was under correctional supervision, whereas 1% of the female population was under correctional supervision. In that same year, 9% of the black population was imprisoned.

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6 Clear, Todd R, "The Effects of High Imprisonment on Communities" 109.
7 Murray and Farrington 159.
8 Murray and Farrington 156.
under correctional supervision, 2% of the white population was under supervision, and over 1% of other races were under supervision.\textsuperscript{10}

The final link in the chain of familial informal social control is marriage.

According to Western, Lopoo and McLanahan:

\begin{quote}
Marriage itself can contribute substantially to desistance from crime... Strong marital bonds help routinize prosocial behavior and draw men out of the same-sex peer networks that form the social context for criminal offending... Men who remain unmarried or unattached to stable households are likely to continue their criminal involvement.\textsuperscript{11}
\end{quote}

This form of social control is also lost when fathers are sent to prison.

Incarcerated fathers are much less likely to marry the mother of their child and are much less likely to cohabit with either the mother of their child or the child upon release. Edin, Nelsin, and Paranal write:

\begin{quote}
For [the fathers we interviewed], the event of incarceration proved devastating to their ties with their children and their children’s mothers. Virtually none of the fathers reported that their child’s mother had “stayed” with them through the period of incarceration; in virtually every case, the mother broke off the relationship or became involved with another man.\textsuperscript{12}
\end{quote}

In fact, incarceration makes men 20 to 40 percent less likely to eventually live with or marry the mother of their child.\textsuperscript{13}

\begin{footnotes}
\item[12] Edin, Nelson, and Paranal, 56.
\end{footnotes}
As an investigator for the Public Defender Service in Washington, D.C. (PDS), I witnessed anecdotally the positive effect that a strong relationship can have on criminal defendants. One of my clients, whom I will call James, was in a very serious relationship that seemed to be on its way to marriage at the time of his arrest. James and his girlfriend, both 18 years old, had been together for several years. While James was in jail awaiting trial, his girlfriend found out that she was pregnant. James and his girlfriend spoke by telephone multiple times a day, a habit that arguably kept James out of further trouble. The time spent on the phone kept James in touch with the outside world and prevented him from forming strong relationships with his fellow inmates. While exposure to other criminals’ effect on recidivism has not been studied widely, in 2004 Chen and Shapiro found that tough prison conditions can actually heighten an inmates’ likelihood of recidivism. Economists Chen and Shapiro looked at inmates who were assigned similar risk scores, but were housed in different levels of security: “Our findings suggest that... harsher prison conditions cause higher rates of post-release criminal behavior. By exploiting discontinuities in the assignment of inmates to different security levels, we isolate the component of this effect that results directly from prison conditions.”

James' attachment to his girlfriend may well have shielded him from learning criminal behavior from his fellow prisoners.

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On the day of James’s scheduled indictment, seven months after the alleged crime took place, the charges against him were dropped. Throughout the investigation, I became increasingly sure that he had simply been in the wrong place at the wrong time, and apparently when it came to securing an indictment, the prosecution agreed. It is unclear whether James’ relationship is what kept him from engaging in criminal behavior, but his desire to be there for his girlfriend and future child were evident.

In the District of Columbia, as I and many others involved with criminal defendants have found, it is particularly difficult for incarcerated fathers to keep in touch with the mothers of their children and the children themselves. The District of Columbia closed its prison facility in 2001 and since then has turned its convicted felons over to the Federal Bureau of Prisons. Once in the federal system, inmates are sent to prison locations around the country:

The Federal Bureau of Prisons (BOP) is assigned authority for DC Code Offenders sentenced to prison terms longer than one year. BOP places DC prisoners in various prisons located around the country... BOP attempts to place each prisoner in the ‘least restrictive facility for which s/he qualifies’ within 500 miles of the residence where the individual is expected to be released. Some prisons are managed and operated by the Federal Bureau of Prison system. BOP also contracts with private security companies to detain DC Code Offenders. The Rivers Correctional Institution, in Winton, North Carolina is a commonly used private prison for DC Code Offenders under contract with BOP.¹⁵

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Removal of up to 500 miles from the place where inmates expect to be released can seriously impede any family’s ability to stay in touch with their incarcerated loved ones. The Public Defender Service in D.C.’s clientele base comes from poverty, meaning that they do not have the financial means to travel to visit prisons up to 500 miles away. Even staying in touch by telephone is expensive. For instance, in Virginia, prisoners are allowed to use the phone for 20 minutes a day, with a $2.40 connection fee and an additional fee of $0.43 per minute.\textsuperscript{16} The cost of phone calls from prison varies from state to state: “Virginia charges $8.85 for a 15-minute collect interstate call from prison... In Florida the same call would cost $1.82, and in New York, $2.30. At the other end of the scale, 10 states charge $17 or more for a 15-minute collect interstate call.”\textsuperscript{17} The distance between prisoners and their family members becomes unconquerable when the family comes from poverty.

One case I worked on as an investigator for PDS involved a witness whose brother had been convicted in D.C. a year earlier and was serving time in New Jersey. The brother, whom I will call John, had a toddler-age son who was living with John’s mother, the child’s grandmother. The family had not visited John because they did not have the financial means to travel to New Jersey. As a result, the toddler had not seen his father for a full year and was, of course, unable to communicate with him through the telephone or letters, as the rest of the family did. John was less than twenty years old, and this was his first child.

\textsuperscript{17} Xanthe
Thus, John’s relationship with his first child was severely hindered and the potential for a mutually reinforcing relationship was lost to both.

There are several steps that could be taken by the government or social services to address these problems. First, families should receive financial or transportation aid to visit their loved ones. A few non-profit organizations provide cheap or free transportation to the families of inmates moved from D.C. to West Virginia or North Carolina—the Directory of Resources compiled by PDS lists three programs:

- Rivers Correctional Institution in Winton, North Carolina, offers free roundtrip bus transportation from Washington, DC to Rivers every Thursday, Friday, Saturday, Sunday and federal holidays. Van or bus trips to Alderson, WVA the 3rd weekend of every month. (No trips in January or February due to weather). Bus leaves on Friday mornings, returns Saturday afternoon. Cost: $25 adults, $20 children 10 and under.
- Monthly van (10 passenger) trips to Hazelton, WVA and Danbury, Connecticut. To Danbury: Van leaves Saturday and returns on Sunday. Cost: $45 adults, $25 children, includes overnight motel stay. To Hazelton, WVA: Leaves Saturday AM and returns Saturday PM (no overnight stay) Cost: $30 adults, $15 children.\(^{18}\)

These three opportunities are a start for making access to inmates easier for families who struggle financially, but even these programs are considerably restrictive. They provide transportation to the prisons very infrequently and the only trip that goes more than once a month is the bus to North Carolina. The van to Alderson, WVA doesn’t make the trip for two consecutive months,

\(^{18}\) Bess, 113-114.
meaning families can only see their inmate relatives ten times each year. The bus to North Carolina is the only free transportation. Though the vans provide cheap transportation, families struggling to eat and pay the rent might not be able to afford between $15 and $45 for each person.

In addition to subsidized transportation, prisons could provide more hours for visitation by the immediate family. According to the Federal Bureau of Prisons website, though most prisons are generally able to provide more, an inmate is only legally guaranteed four hours of visiting time per month. The website goes on to say: “The Warden can decide to restrict the length of visits or the number of people who can visit at once, to avoid overcrowding in the visiting room. Sometimes the prison may have to limit visiting per inmate to one day on a weekend, because it is the most popular time to visit.” Considering the difficulty that many families face in traveling to visit their loved ones in prison, the Federal Bureau of Prisons should provide more flexible visiting rights and ensure adequate facilities to accommodate visitors. If the government provided funding for transportation to and accommodation at prison facilities and the Federal Bureau of Prisons expanded the visiting hours, especially for those with young children, the family ties that suppress recidivism and decrease young peoples’ likelihood of being incarcerated could be cultivated.

Upon their release from prison, fathers face even more barriers to rebuilding familial relationships. Convicted felons are often denied access to

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20 Visiting Hours and General Information.
certain social services, such as public housing and food stamps, making it hard for them to unite with their families and contribute to their families’ well being. First, there is a federal ban on admission to public housing for people who are subject to lifetime sex offender registration. This ban of course comforts the public and keeps dangerous criminals out of certain communities, but sex offender registry is far-reaching. For instance, in many states the sentence for statutory rape, which is “sexual contact between a younger and older person... the difference in age can be as little as two years,”\textsuperscript{21} includes sex offender registration. In Missouri, statutory rape offenders can only petition to have their name removed from the registry ten years after their conviction.\textsuperscript{22} According to a legislative handbook published by the Justice Department:

\begin{quote}
The Federal law requires a minimum 10-year registration for a person convicted of ‘a criminal offense against a victim who is a minor.’ A series of clauses in the Federal law further defines ‘a criminal offense against a victim who is a minor.’ State statutory rape offenses would appear to be covered under two of the clauses set forth in the Federal law. Thus, it appears that statutory rape offenses should be covered under State sex offender registration laws to comply with Federal law.\textsuperscript{23}
\end{quote}

In many states, juvenile sex offenders are required to register:

\begin{quote}
Despite the lack of definitive answers regarding the juvenile sex offender population... juveniles are
\end{quote}

\textsuperscript{21} Zilney, Laura J., and Lisa A. Zilney. Reconsidering Sex Crimes and Offenders: Prosecution or Persecution? (Santa Barbara: Praeger, 2009) 82-83.
forced into many of the same legislative rules as adult sexual offenders, such as registration and community notification in more than half the states that utilize these laws. This means succumbing to the stigma of a ‘sexual offender’ label for an act they may have committed when they were 12 or 13 years of age.\footnote{Zilney and Zilney, 32.}

The exclusion from public housing for registered sex offenders is far reaching and leaves many ex-cons homeless and is, in effect, a continuation of the convict’s ostracism from society, which both delays his recovery and underscores the reality that punishment doesn’t end with completion of one’s sentence.

The barrier to public housing reaches beyond sex offenders, extending to individuals accused of more common offenses such as drug felonies and violent crimes. According to a handbook compiled by the American Bar Association and the Public Defender Service of D.C., the exclusion of felons or even people simply accused of a crime from public housing is rampant: “Permissive exclusions by public housing agencies are allowed in other cases involving drug-related criminal activity and violent criminal activity. With the use of the word ‘activity’ a person can be denied admittance for illegal activity whether or not a conviction resulted.”\footnote{“Internal Exile: Collateral Consequences of Conviction.” Washington, DC: American Bar Association Commission on Effective Criminal Sanctions and the Public Defender Service, Jan. 2009. Web. 5 Dec. 2009, 39.} Even though public housing providers are given the opportunity to opt out of banning individuals convicted of drug or violent crimes, the housing units actually tend to be stricter than the federal guidelines suggest:

Many of the policies that housing authorities or private landlords use to exclude people with conviction records are overly restrictive, effectively

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denying housing to people who pose no threat to the public, tenants or property. Oftentimes the policies are based on a misunderstanding of federal law, or on the landlord placing a premium on ease of administration, believing that it’s easier to “just say no” to all people with conviction records than to perform individualized analyses of their applications.\textsuperscript{26}

In an interview, Betsy Biben, Director of Offender Rehabilitation at the Public Defender Service in D.C., explained that the barrier between convicted felons and public housing keeps fathers from rejoining their families once released from prison. Ms. Biben recounted how many of her clients are forced to live in shelters or on the streets when they get out of prison because they had lived in public housing before their arrests and are now banned from returning to their homes. Ms. Biben also confirmed the observation that the administration of public housing very rarely chooses to override the ban for individuals convicted of drug offenses or violent crimes.\textsuperscript{27}

The exclusion of convicts from public housing makes it difficult for families torn apart by parental imprisonment to reconnect. According to Ms. Biben, “If you’re convicted for drug distribution, any kind of drug sales and any kind of violence... even if your family lives in public housing, you’re not allowed to live in public housing... We have clients living in shelters. Because of their conviction they can't live at home with their families.”\textsuperscript{28} The separation of families is thus perpetuated after release.

\textsuperscript{26} “Improving Housing Opportunities for Individuals with Conviction Records.” Legal Action Center. Web. 3 Apr. 2010.
\textsuperscript{27} Biben, Betsy. Personal interview. 26 Oct. 2009.
\textsuperscript{28} Biben, Betsy. Personal interview. 26 Oct. 2009.
It is understandable that the Housing Authority and others who oversee public housing would want to work toward keeping law-abiding tenants safe. Steps need to be taken, however, to ensure that housing restrictions do not leave released felons, who have completed their sentences, homeless. Perhaps extended halfway houses could serve as housing for released felons and their families. When felons are released from prison and are prohibited from rejoining their housing projects, they should have the option to live in designated housing projects equipped to handle their special circumstances. The project would have to accommodate the family as well, in order to begin the reunification process. These housing complexes would not be a continuation of their sentence, because residency would be optional. At the same time, people ineligible for general public housing would have a place to go.

Individuals convicted of felony drug crimes can also lose their access to food stamps. In the D.C. metropolitan area, the city of Washington, D.C. has opted out of this restriction, but Maryland and Virginia have not:

There is a federal lifetime ban from Temporary Assistance to Needy Families and food stamps due to a felony drug conviction. 21 U.S.C. 862a(a). Under the federal statute individual states have been given the authority to opt out of or otherwise modify the ban, including limiting the length of time of the ban or linking the ban to addiction treatment. The District of Columbia opted out of the drug conviction ban. The Commonwealth of Virginia did not opt out. The State of Maryland made the ability to obtain benefits dependent on drug treatment.29

Because some felons do not have access to food stamps and are often in financial

debt, they must rely on their relatives to help them eat. Once released from prison, the felony fathers put extra strain on their families’ finances.

Although Maryland allows people convicted of drug felonies to maintain their access to food stamps if they complete drug treatment, most people who qualify for food stamps can’t afford to seek drug treatment or pay for drug rehabilitation programs. Furthermore, there is often no tangible proof of the completion of rehabilitation. One solution to this problem is the adoption of administrative certificates of rehabilitation, which would consist of a state recognition that convicted criminals have earned the restoration of their rights through the demonstration of good behavior and good character. However, these certificates have not been universally implemented in the United States.

According to a study released by the American Bar Association, the availability and effectiveness of administrative certificates of rehabilitation is small:

Six states offer administrative ‘certificates of rehabilitation’ that may restore some or all of the legal rights and privileges lost as a result of conviction, and in some cases evidence good character. New York’s certificates have the most far-reaching legal effect, but both Illinois and Connecticut have recently enacted certificate programs of their own to facilitate offender reentry. California, Nevada, and New Jersey also offer certificates of rehabilitation, but they appear to have little operational usefulness.  

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Maryland does not issue certificates, which makes it harder for drug offenders to prove they have undergone treatment and should have their rights to food stamps restored. These offenders are a drain on their families financially, especially given the high unemployment of ex-offenders.

Communities

The negative effects of mass incarceration tend to be concentrated in certain communities, meaning that not only are fathers missing from individual families, but also that male role models are absent from entire communities. Especially in Washington, D.C., high incarceration greatly affects certain communities:

The great prevalence of incarceration in high-crime neighborhoods is probably most extreme in Washington, D.C. Donald Braman observes the experiences of Londa, a twenty-two-year-old mother of three living in the heart of the District. In the two-block radius of Londa's residence, Braman counted sixty-four arrests for drug possession and distribution over to course of a year. During that period, 120 men living within that two-block radius were admitted to the D.C. correctional system.31

The communities most affected by this phenomenon are economically disadvantaged and predominantly black. Blacks are seven times more likely to be

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incarcerated than whites\textsuperscript{32} and “black children (7.0 percent) are nearly nine times more likely than white children (0.8 percent) to have a parent in a state or federal prison.”\textsuperscript{33} This means that paternal imprisonment tends to be concentrated in poor, predominantly black communities:

Because housing in the United States is economically and racially segregated, incarceration that concentrates by socioeconomic status and race also concentrates by location. Some neighborhoods have dominant numbers of residents either on their way to prison, in prison, or recently released. Sections of Washington, D.C. have been estimated to have one in five adult males behind bars on any given day. In Cleveland and Baltimore, there are neighborhoods with more than 18 percent of the males missing because they are behind bars... A study in Tallahassee, Florida, interviewed over 100 people in two poor, almost exclusively black neighborhoods, and every resident reported having had a family member in prison during the previous five years.\textsuperscript{34}

This concentration makes paternal imprisonment a community-wide problem, throwing an already disadvantaged community into perpetual cycles of crime and isolating it socially and politically.

Incarceration is supposed to reduce crime through the incapacitation of criminals as well as the deterrence of future criminal behavior. It has become increasingly clear, however, that increasing the rate of incarceration does not necessarily decrease crime levels. Criminologist Michael Lynch conducted a study comparing the change in crime levels and the change in incarceration levels from 1973-2003 and found:

\textsuperscript{32} Mauer, Marc. Race to Incarcerate (New York: New, 2006) 139.
\textsuperscript{33} Murray and Farrington, 137.
(1) The rise in incarceration by itself for the time period under investigation was slightly more likely to produce a CEE [crime enhancing effect] than a CSE [crime suppressing effect] effect; (2) an above-average rise in imprisonment for this period (by more than 6.8 percent) was more likely to produce a CEE than a CSE effect; (3) a rise in incarceration less than the mean for this period was no more likely to produce a CEE than a CSE, although the average CEE in these cases exceeds the average CSE. In sum, the long-term trend in imprisonment does not, by itself, appear to cause a reduction in crime. Indeed, over the period examined, where imprisonment rose continually, crime was more likely to rise than fall even when the magnitude of the change in imprisonment is considered.\textsuperscript{35}

In fact, once the incarceration level in a community reaches a certain level, it can actually breed crime rather than stop it. As Todd Clear writes: “At low levels, incarceration is unrelated to crime or has a small impact on it. At higher levels of incarceration, crime tends to go up as the number of people removed for prison increases.”\textsuperscript{36} In this situation, incarceration only satisfies a societal need for vengeance.

Mass incarceration creates a perpetual cycle of crime in economically disadvantaged, black neighborhoods. In these communities, the relationship between civilians and the police is already precarious, and once incarceration reaches the point where it breeds more crime, that relationship deteriorates further. Large cities, and in particular Washington, D.C., don’t allocate sufficient resources to law enforcement in these neighborhoods. As a result, police are unable to deal with the high levels of violent crime. Especially in the

\textsuperscript{35} Lynch, Michael J. \textit{Big Prisons, Big Dreams: Crime and the Failure of America's Penal Systems} (New Brunswick: Rutgers UP, 2007) 179.

\textsuperscript{36} Clear, \textit{Imprisoning Communities} 162.
case of non-violent crime, such as burglary, civilians are forced to protect
themselves and their possessions because they cannot rely on the police.

According to The Washington Post, citizens in crime-ridden, poor, black
neighborhoods can't count on the police to respond to crimes that are not violent in nature:

On busy nights, when officers are tied up with time-consuming violent crimes, callers in many of [crime-ridden] areas -- such as Congress Heights and Washington Highlands in Southeast Washington and Trinidad in Northeast -- can wait five to eight hours for police to respond to non-life-threatening but serious calls such as missing person reports and burglaries. The longest waits are often in the department's 7th District, which encompasses much of far Southeast Washington. It is the poorest of the city's police precincts and is about 91 percent black, according to U.S. Census figures. Callers in the 5th District, which includes many lower-income, high-crime neighborhoods on its eastern boundaries in Northeast Washington and is about 90 percent black, also routinely wait hours for police to respond to calls. By contrast, the 2nd District, which includes Georgetown and other neighborhoods west of Rock Creek Park, is 88 percent white and is the wealthiest district in the city, residents generally receive prompt service, waiting 30 minutes or less for police to respond to calls that sometimes take eight hours in other districts.37

Undoubtedly the police have a difficult job keeping up with the high rates of crime in D.C., but the inferior treatment given to poor black neighborhoods inevitably leads to hard feelings on the part of the citizens of these neighborhoods. Police seem no longer to serve and protect but rather to arrest and thus pull people out of the community. Because of the dangerous conditions

in these neighborhoods due in part to slow police response, outsiders avoid these neighborhoods. On the other hand, because of the negative attitude toward the police that develops from tense relations, the citizens of these communities become suspicious of outsiders, effectively isolating the neighborhood.

While working at PDS, I spent a lot of time in the poor, black, high crime neighborhoods of D.C. Without fail, every time I entered the neighborhood in my aging, inconspicuous Honda Civic, I received more stares than my comfort level permitted. Feelings of unease accompanied the thought of returning to the crime-ridden neighborhoods every day, not because I necessarily feared for my safety (though I was nervous at times) but because having everyone stare at me and wonder what I was doing there and who of their friends and family I was looking for, made me profoundly uncomfortable.

The fact that I was there to help the people of the community by providing local criminal defendants with a competent defense didn't ease the stigma I felt as an outsider. Often when I approached a group of people to ask questions, the group would disperse before I could even explain who I was or what I wanted. One time, after successfully cornering one of my clients' best friends, I asked him why he was so reluctant to admit his identity to me. He responded that I looked like a cop. The investigators were told to dress down and on a regular day I wore jean shorts, a t-shirt, and sneakers. I was twenty-one at the time, I didn't carry a weapon, a badge, or a flashlight, and I didn't drive around in a police car or a vehicle that resembled an undercover police car. The simple fact that I was white and that I didn't belong in the neighborhood made my client's best friend, as well
as many of the people I interacted with, assume that I was a policewoman or some other enforcement agent—and that I should be avoided.

The adversity that people in these neighborhoods felt toward outsiders contributed to the conviction of their friends and families. Because I and other investigators working for the defense had so much trouble finding witnesses and convincing people to talk to us, we often weren’t able to procure the amount of evidence and statements that we would have liked. Locating and speaking with key witnesses took up most of the intern investigators’ time, but witnesses would frequently go to great lengths to avoid investigators, and often we couldn't find them before the trial started. The Public Defender Service of D.C. is unique because it is federally funded and therefore able to develop an impressively strong investigative division with full-time staff investigators and dozens of intern investigators. Most public defenders' offices do not have the financial means to conduct such in-depth investigation, making the development of a strong or even competent defense38 much harder.

Further exacerbating the isolation of communities affected by mass incarceration is the suppression of convicted felons’ political voices. Convicted felons are often denied the right to vote, even after completing their sentences: "In 48 states and the District of Columbia, all incarcerated persons are ineligible to vote. In addition, 35 states prohibit parolees from voting, 31 states do not allow felony probationers to vote, and in 14 states, a felony conviction can lead to the

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38 The rights to a defense attorney for all was established in 1963 through the Supreme Court’s decision in *Gideon v. Wainwright*, but many public defender’s offices around the country are under-funded and therefore unable to allocate the resources and energy necessary to properly represent their clients.
loss of voting rights for life.” According to the American Bar Association Commission on Effective Criminal Sanctions: “The power of the states to deny the right to vote because of conviction of a crime is expressly recognized in the Fourteenth Amendment. U.S. Const. amend. XIV, § 2. See generally Richardson v. Ramirez, 418 U.S. 24 (1974); Johnson v. Governor of Florida, 405 F. 3d 1214 (11th Cir., 2005).” As a result of this exercise of state power, 5.3 million people were disenfranchised in November of 2004.

Disenfranchisement for felony conviction affects blacks more than other racial groups. In a study of Atlanta’s population, Mauer and King found that “black males are eleven times more likely to be disenfranchised than non-black males.” This disenfranchisement concentrates in predominantly black neighborhoods, significantly reducing their political clout: “In one [Atlanta] neighborhood... more than a quarter (27.1%) of black males are disenfranchised. In another... one of every five (10.8%) is ineligible to vote.” There is bitter irony in the fact that blacks, who were institutionally disenfranchised for the majority of the history of the U.S. and who still face significant obstacles to voting are legally blocked from participating in the democratic process in disproportionately high numbers.

40 Internal Exile:Collateral Consequences of Conviction, 15.
42 King and Mauer, 11.
43 King and Mauer, 10.
The general public might write off the disenfranchisement of convicted felons on the assumption that “criminals” wouldn’t be interested in participating in the electoral process. In reality, prison can be an experience that fosters interest in politics. In their chapter “Lost Voices: The Civic and Political Views of Disenfranchised Felons,” Uggen and Manza cite Malcom X as an example of the politically stimulative effect of incarceration. The political awakening of Malcolm X is an extreme example that occurred at a politically tumultuous time in U.S. history, but Uggen and Manza found, through interviews, that prison can still heighten prisoners’ interest in politics in the 21st century: “Many of the inmates we spoke with told us that their time in prison made them more interested in political issues.”44 Uggen and Manza describe a prison in which the housing units held their own mock-election during the 2000 presidential election.45 The irony of individuals who are banned from voting, some banned for life from participating in the democratic process, organizing their own mock-election is both heartbreaking and heartwarming. It also serves to underscore the reality that disenfranchisement of felons is a significant punishment. Men who come from communities that are affected by mass-incarceration could theoretically come back from prison more politically aware and interested. They could then inspire their communities to engage in activism, or at least to participate in elections, somewhat alleviating their isolation. One might argue

45 Uggen and Manza. 182-183.
that disenfranchised ex-convicts could still be politically active, but
disenfranchisement remains a powerful deterrent to political engagement. As a
college student who lives in one state for the majority of the year, but votes
absentee in a different state, I am aware of the frustration that comes from
promoting political issues or working to elect a candidate and not being able
actually to participate in the voting process.

The disenfranchisement of convicted felons diminishes the community’s
potential to become politically engaged and calls into question the morality of
disenfranchisement. Although the rate of participation in U.S. elections is
relatively low, if the United States were to take away a different group’s right to
vote, such as individuals who paid their taxes late, there is little doubt that there
would be massive uproar among the general population. Because society has so
demonized “criminals,” there is little concern over the disenfranchisement of 5.3
million ex-convicts.

Disenfranchisement also takes a toll on an individual’s sense of citizenship
and sense of worth. The government has decided that certain individuals’ votes
don’t count, which violates our society’s central tenet that all men and women
are created equal. Plainly, punishment is central to our corrections system, but
that punishment should not extend past completion of one’s sentence. While
some states restore the right to vote at an individual’s release from prison, 35
percent of disenfranchised felons have completed their sentences.\footnote{Uggen and Manza, 194.} This statistic
calls into question whether convicted felons can ever escape punishment, or if punishment becomes, for some, a lifelong social and psychological burden.

Persistent crime, a lack of faith in the police and government, and the disenfranchisement and political silencing of the community result in the community’s isolation from the rest of society. In this isolation, community members, especially younger ones, are unaware of possibilities outside of the crime and poverty that they experience. This isolation also leads to acceptance of the poor conditions in which the community members live. During my time in Southeast Washington, D.C., one of the conditions that I found most striking was the prevalence and acceptance of premature death through violence.

While working as an investigator, the crime scenes I visited were almost always housing projects. In these complexes, which house astounding numbers of people, there were often groups of teenagers hanging around, and often one or two of those teenagers would be wearing t-shirts with a photograph of a peer’s face and the message along the lines of “RIP (an individual’s name), you will be missed.” From these t-shirts and from the conversations I had with teenagers about other young peoples’ murders, I got the sense that premature death is approached with regret, but also with acceptance. A conversation with the sister of a decedent in one of my murder cases solidified this belief.

During my investigation for a client accused of murdering a 20-year-old black man, the lawyer I worked for asked me to take a statement from the decedent's sister. This task was among the worst I was given; I dreaded asking a girl, whose brother my client had allegedly murdered, probing questions about
her brother's death. When my partner and I built up the courage to go talk to her, we introduced ourselves and asked if she would be willing to speak with us. She seemed somewhat annoyed at our presence, but didn't slam the door in our faces or reprimand us for working for a “murderer” as I had imagined. She answered all of our questions in a solemn yet cooperative manner, despite the fact that she was under no obligation to speak with us. I asked her repeatedly if she understood who we worked for and she assured me that she understood completely. Little by little it became clear that death by murder is a phenomenon that occurs with such regularity in her neighborhood that, though she was upset over the loss of her brother, she had resigned herself to the reality that it happens.47

The charges against my client in that case were dropped two weeks later, and his innocence might help to explain her ambivalence toward our investigation, but when I asked her if she knew who killed her brother, she told me quite plainly that word on the street was that my client had killed him. I don't pretend to fully understand this resignation to premature death by murder and I'm sure that part of it is due to the fact that different people react to tragedy in different ways, but the heightened presence of premature death is certainly a reality in crime-ridden neighborhoods. Homicide has become the leading cause

47 Another factor in her cooperation could have been her friendship with our client, which again brings up issues of the acceptance of violence between acquaintances.
of death for blacks ages 15 to 24\textsuperscript{48} and the isolation of crime-ridden neighborhoods has led, at least in part, to the acceptance of this phenomenon.

\textbf{Reflection}

Proponents of incarceration believe that it deters people from committing crimes and disables them from committing more crimes while they are incarcerated. In reality, excessive incarceration has contributed to the crime problem instead of solving it. Incarceration blocks powerful means of social control, including familial bonds between parent and child as well as father and mother. The imprisonment of parents has a detrimental effect on their children’s futures. Because men are incarcerated at higher numbers than women, the problem manifests itself the most in paternal absence.

Incarceration tends to be concentrated in poor and predominantly black neighborhoods, meaning that instead of just one family missing its father, entire communities lack an adult male presence. The high incarceration of fathers puts an enormous strain on the rest of the family, both while the father is behind bars and after his release. Ex-convicts are denied certain rights and when the denial of those rights extends to a large number of community members, it devastates the entire community. These communities become isolated, left to deal with persistent crime, poverty, and human tragedy on their own.

The state of these communities is not only an unforgivable violation of civil rights, but it is also an indication that the current system does not work. In

order to make corrections effective, legislators should take note of the desperate state of criminal defendants and their communities. In order to fix neighborhoods wracked by crime and mass incarceration, community-based efforts combined with top-down reform need to be undertaken to break this cycle.
Chapter Three: Progress

There are three levels on which the problems within the criminal justice system and these problems’ disparate impact on black males need to be addressed. First, grassroots movements are necessary in order to guide black males away from crime. A program on this level would provide social services to parents and children to ensure that high-risk children are given extra support and encouraged to stay away from crime. Second, there needs to be comprehensive legislative reform addressing the sentencing disparities and other problematic practices within the system. Problems that have a clear, tangible solution such as the crack cocaine sentencing disparity as well as more complicated and deep-rooted problems such as the over-prosecution of black males for crimes that are committed equally amongst different races should be addressed by legislative reform. Finally, there needs to be internal reform within the prison facilities for people already in the system. Some prisons have rehabilitative programs open to inmates to speed up their reintegration into society. Rehabilitative practices within the system would cut back on recidivism, diminishing the prevalence of repeat offenders and the passing on of criminal tendencies to subsequent generations.
This chapter will focus on efforts being made in each of these ways. The efforts stem from community organizers to policymakers to college students and include widely successful programs as well as changes that are still in the planning stages. This chapter is meant to instill in the reader a sense of optimism about the future of black males and the U.S. criminal justice system, but also to highlight the amount of work still to be done to rectify the deep-rooted inequalities explored in previous chapters. Although the efforts discussed in this chapter are only the beginning, they do provide a ray of hope and a source of encouragement to continue the work repairing and renewing the system until its problems have been addressed. This work will not be finished until prisoners are treated as citizens with equal rights; until the system that is supposed to uphold justice does not consistently marginalize and dehumanize one racial group; until children no longer grow up thinking they are bound for prison; and until the American system becomes a model of success.

Community Solutions

Harlem Children’s Zone

One organization that has enjoyed great success in addressing the cycle of crime is the Harlem Children’s Zone (HCZ). HCZ, presided over by the energetic and charismatic Geoffrey Canada, began in the 1970s as a truancy prevention organization called Rheedlen and has now blossomed into the Harlem Children’s Zone, an all-encompassing program geared to ensure that Harlem children make it to college. The program includes parenting workshops that start before the
child is even born, a pre-kindergarten program, charter schools, and health
initiatives.\(^1\) HCZ has produced positive results in the children it works with and
has been singled out by President Obama as a model for implementing similar
programs throughout the country. HCZ’s goal is not explicitly to keep black
males out of prison, but to provide them with the skills and encouragement to
avoid delinquency, finish high school and go on to college. Geoffrey Canada
refers to this as the “saving-kid business,”\(^2\) in which each and every child in the
Harlem Children’s Zone’s 96-block radius, not just the gifted or motivated ones,
is given a high quality education from a very young age.\(^3\) Canada hopes that the
children in his program will “contaminate” the rest of the community, changing
the cultural climate to one of optimism filled with expectations of success.\(^4\)

The Harlem Children’s Zone Project, launched in 1997, now affects the
lives of thousands of children in Harlem. It “targets a specific geographic area in
Central Harlem with a comprehensive range of services. The Zone Project today
covers 100 blocks and aims to serve over 10,000 children by 2011.”\(^5\) HCZ has
enjoyed great success and has been praised as one of the country’s most
successful charity organizations. This success is due in part to the charity’s
comprehensive nature; it offers services and workshops from before a child is
born through high school:

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\(^3\) Tough, 163.
\(^4\) Tough, 124-125.
There are asthma prevention plans and fresh produce deliveries; dental, medical and psychiatric care; after-school arts and music; tenant-ownership schemes and early childhood education; tae kwan do and dance, weight training and sports; and foster care prevention and charter schools. It adds up to about 20 programs using more than 1,500 staff members and reaching about 8,200 young people out of 11,300 in the zone.\(^6\)

The goal of the program is to make it impossible for Harlem kids to slip through the cracks. It also focuses on closing the achievement gap between poor, minority children, and their white middle class counterparts. HCZ pursues this goal through engaging Harlem youth from infancy, as there are no discernible cognitive gaps between the children of high school dropouts and college graduates at age one, but by two and three, the differences become sizeable.\(^7\)

Much of the organization’s focus is on education, which takes place in the Promise Academy Charter schools. The schools include grades K-10 and hope to eventually expand to twelfth grade. The charter schools are highly involved, keeping children in school for extended days and longer school years, lasting until early August.\(^8\) The idea behind the zone is to reach children early in life and to continue their development until they enter college.

The success of this system is evident amongst the Promise Academy elementary school children, many of whom have been involved with HCZ since infancy. In 2009, 93 percent of third grade students in New York City were on or

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\(^7\) Tough, p. 191

above grade level in math\textsuperscript{9}, compared to Promise Academy in which 100 percent of the third grade students scored “on or above grade level in math.”\textsuperscript{10} Reading scores were also higher than the city average. 68.8 percent of grades three through eight in New York City scored on or above grade level.\textsuperscript{11} At Promise Academy, 86 percent of third graders scored on or above grade level in reading.\textsuperscript{12} Even the middle school students, who did not receive the benefits of HCZ from infancy, make great improvements at Promise Academy:

Math test scores of the typical sixth-grader entering the charter school leap 35 percentage points in a few years. In middle school, Promise Academy students, who are largely African American, score as high as white students in the city in math. In a neighborhood with low high school graduation rates, about 550 alumni of the after-school program will be in college come fall.\textsuperscript{13}

The high number of graduates of the program who will go on to college is indicative of the program’s success in steering Harlem youth away from drugs and crime and toward a future that they might not have imagined before becoming involved with HCZ. That African American students score as high as white students in the same city demonstrates that the only thing standing in the way of African American children’s success is a lack of resources and attention.

\textsuperscript{9}“Students Statewide Show Steady, Measured Gains on Math Tests Across All Grade Levels.” New York: New York State Education Department, Office of Communications. The University of the State of New York, 1 June 2009. Web. 3 Apr. 2010.
\textsuperscript{10}Tough, 279-280.
\textsuperscript{12}Tough, 279-280.
\textsuperscript{13}Shulman, 2.
The success of HCZ has garnered it a great deal of attention from prominent political figures. The program received a visit from Susan Rice, the United States ambassador to the United Nations\textsuperscript{14} and from President Obama, who has decided to apply the HCZ model to twenty other U.S. cities:

President Obama, who has been praising the Harlem charity since he announced his presidential bid, is working to export the group's approach to other parts of the country. He has proposed spending $10-million in the 2010 fiscal year on planning grants to help nonprofit groups create what he calls ‘Promise Neighborhoods’ in 20 cities — a budget request that is now working its way through Congress.\textsuperscript{15}

This plan, if successful, would be a major step forward for poor, minority neighborhoods, but there are some doubts as to the plausibility of this plan.

One concern over President Obama’s plan is that the program will not be as effective when implemented in other areas. The Harlem program, as mentioned earlier, is run by Geoffrey Canada, who “was named one of ‘America’s Best Leaders’ by U.S. News and World Report”\textsuperscript{16} in 2005. Canada’s commitment to helping every kid in Harlem is what propelled HCZ to such large-scale success. During the Zone’s first couple of years, Canada went through many staff members and policy changes, trying to get the results he dreamed of. Paul Tough, an editor of \textit{The New York Times Magazine}, followed Canada for years while he built the Zone and wrote a book about the experience. He acknowledges Canada’s unique talents: “It may be true that only someone with


\textsuperscript{16} "About Geoffrey Canada." Harlem Children's Zone.
Geoffrey Canada’s particular training, personal background, and dedication could have built the first Harlem Children’s Zone... It seems unlikely that anyone else could have won over so many financial backers before he had much in the way of measurable results.”\(^{17}\) Tough is convinced, however, that Canada’s model coincides with research on poverty and the achievement gap: “A slew of recent studies by economists, sociologists, psychologists, and neuroscientists... all of which independently points, as I read it, toward a set of solutions very much like the ones Geoffrey Canada has chosen to follow,”\(^{18}\) and thus, he believes, it will be successful in other areas and under different circumstances.

Replication of the Zone might also face financial obstacles. One of the keys to the Zone’s success is that it offers incentives to parents’ participation in the form of gift certificates, meals, and cash prizes.\(^{19}\) The programs themselves are extremely expensive to run: “The $1.2 million a year that the Harlem Children’s Zone spends on Baby College\(^ {20}\) works out to be about $3,000 per graduating parent... The generous budget is an important part of Baby College’s success.”\(^ {21}\) The Zone has a substantial budget, with many wealthy businessmen contributing to the organization’s funding. For example:

The Zone quadrupled in size during the years that [Paul Tough] spent reporting in Harlem, growing from twenty-four blocks to sixty blocks to ninety-seven blocks; the final stage, known as the northern expansion, opened in 2007, funded by a $25 million grant from

\(^{17}\) Tough, 282.  
\(^{18}\) Tough, 282.  
\(^{19}\) Tough, 14 and 94.  
\(^{20}\) Baby College is the nine-class parenting workshop open to expecting parents and parents with children up to age 3 (Tough, 58).  
\(^{21}\) Tough, 94.
Hank Greenberg, a former insurance-company CEO, and a matching grant from Stan Druckenmiller.\textsuperscript{22}

Attempts to recreate the zone in other cities might not enjoy such generous financial backing. President Obama, as mentioned earlier, has set aside $10 million for implementing the programs in other cities in 2010, but this number is much smaller than the Zone’s operating cost, as the Zone’s budget is around $58 million.\textsuperscript{23}

Regardless of its success in others parts of the country, HCZ has been extremely successful in steering Harlem youth away from crime.\textsuperscript{24} The Harlem Children’s Zone addresses mass imprisonment on a community level. It works with parents and children to change the lives of Harlem youth who are at risk of incarceration. HCZ treats the problem from its true root: the crime-ridden neighborhoods that breed the cycle of imprisonment discussed in chapter two.

\textbf{Legislative Reform}

\textit{Sentencing Reform}

No real change has taken place on the legislative level in recent years to address problems within the criminal justice system. This delay on the part of Congress is not surprising, as the world of politics is notoriously slow at getting things done. However, dialogue regarding overpopulation in prison has begun in

\begin{footnotes}
\textsuperscript{22} Tough, 261.
\textsuperscript{23} Tough, 10.
\textsuperscript{24} This accomplishment is not to be taken lightly. The harsh conditions for black youth in Harlem have been chronicled in autobiographies such as \textit{Manchild in the Promised Land} and \textit{The Autobiography of Malcolm X}. Geoffrey Canada also wrote a book chronicling the violence he encountered during his childhood in the Bronx called \textit{Fist, Stick, Knife, Gun}.
\end{footnotes}
the Senate. In 2007, the Sentencing Commission, which suggests sentencing guidelines to Congress, was successful in lowering the sentencing guideline for crack offenses: “U.S. Sentencing Commission proffered an amendment, which was unopposed by Congress and went into effect on Nov. 1, 2007, to lower guideline sentence recommendations by two levels, saving defendants approximately 16 months of prison time.”\textsuperscript{25} The sentence reduction for crack cocaine is retroactive, meaning it was applied to people already in prison for crack cocaine convictions, lowering the amount of time they will serve. This decision affects a huge number of prisoners: “The practical effect of that vote is to make up to 19,500 currently incarcerated individuals eligible for early release over the next three decades, after a judicial review in each case.”\textsuperscript{26} While the change made by the Sentencing Commission was a small step in rectifying the crack-cocaine sentencing disparity, it affected a large number of prisoners and brought the issue to the attention of the legislative branch. As noted in Chapter 1, the Senate very recently passed legislation to reduce the crack-cocaine sentencing disparity from 100-1 to 18-1. This change is yet to go into effect, but is a clear step forward.

\textit{Jim Webb}

One politician who has put his dissatisfaction with the system into action is U.S. Senator Jim Webb (D-VA). In 2008, Webb took on the daunting task of


\textsuperscript{26} "Crack/Cocaine Sentencing Disparity."
reforming the U.S. criminal justice system. This decision by Webb is a major political landmark for the issue because he has effectively broken the mold of unilaterally “tough on crime” politicians to address what he sees as a major problem in this country.

Webb’s aggressive approach to criminal justice reform as well as his tough-guy persona—Webb served as a combat Marine in Vietnam, 27 served as Secretary of the Navy under Ronald Reagan, and is strongly pro-guns—insulate him from accusations of being soft on crime. Instead of attacking Webb’s politics, the legislature and the country will have to consider the problems Webb has highlighted within the system.

Webb’s decision to take on the criminal justice system is particularly brave because he is a freshman senator from one of the most punitive states in the country. Virginia currently teeters between its long history as a red state and a potential future as a blue state. Virginia has two democratic senators (Jim Webb and Mark Warner) and came out strongly for Obama in the 2008 presidential election. Virginia, however, also elected a republican governor (Bob McDonnell) in November of 2009 after eight years of democratic governors (Mark Warner and Tim Kaine). 28

The state’s support of Bob McDonnell might be a sign to Webb that Virginia does not want its politicians pioneering criminal justice reform; McDonnell’s stance on crime is far from consistent with Webb’s proposals. According to McDonnell’s website, his plan for addressing crime includes

28 Virginia only allows governors to serve one four-year term at a time.
“cracking down on career drug dealers by proposing tougher mandatory minimum sentences for repeat offenders... [and] requiring juveniles charged with repeat violent felonies to be tried as adults in circuit court.”

Both of these proposals would increase the prison population, as nonviolent drug offenses account for much of the national prison population and adults receive harsher sentences than juveniles.

Virginia’s support of McDonnell is not a surprise: “Virginia abolished parole in 1995, and it trails only Texas in the number of people it has executed.”

Virginia enjoys a relatively low crime rate; as of 2007, Virginia ranked “12th nationally for lowest [property crime] in the country... [and] 10th lowest in the nation” for violent crime. Some of Webb’s political opponents of course attribute this relatively controlled crime rate to the punitive measures in place in Virginia: “Scott Leake, a GOP strategist in Virginia, said there is a reason Virgionians enjoy low crime rates. ‘[It's] because of the policies we've already put in place,’ he said. ‘If Senator Webb were to try to roll some of that back, I think he would have a fight on his hands.’”

Webb has also faced opposition from the drug enforcement sector, since his overhaul calls for a reduction in the imprisonment of drug offenders. While his personality and reputation make

him the right man to open discussion of the broken criminal justice system, he
still has to answer to the Virginia voters, and if he is unable to secure a second
term in 2012, his legislation will die.

Despite the risks associated with addressing the criminal justice system,
Webb is dedicated to reformation of what he calls “America’s broken criminal
justice system.”34 The senator’s website blasts the current system:

America's criminal justice system has deteriorated to
the point that it is a national disgrace. Its irregularities
and inequities cut against the notion that we are a
society founded on fundamental fairness. Our failure
to address this problem has caused the nation's
prisons to burst their seams with massive
overcrowding, even as our neighborhoods have
become more dangerous. We are wasting billions of
dollars and diminishing millions of lives.35

Webb began his mission by introducing the National Criminal Justice
Commission Act of 2009 in March 2009. The Act, if passed, would create a
commission for the purpose of reviewing the current criminal justice system over
an 18-month period. The commission would then propose reforms “designed to
improve public safety, cost effectiveness, and fairness at all levels of the criminal
justice system.”36 Webb cites the U.S.’s high imprisonment rate, the prison
population boom, the incarceration of mentally ill individuals, the prevalence of
gang violence, and the lack of effective re-entry programs as rationale for his
proposed overhaul.37 A substitute version of Webb’s bill has been reported to the

35 "Criminal Justice & Law Enforcement."
36 "Criminal Justice & Law Enforcement."
37 "Criminal Justice & Law Enforcement."
Senate floor for action. Criticism of Webb’s efforts include the observation that his proposal is unrealistically ambitious and that even if the National Criminal Justice Commission were formed, passing any proposed reforms would be a slow process if it were to happen at all.

Despite the proposal’s uncertain future, Webb deserves praise and respect for his emergence as a political pioneer in the field of criminal justice. He has effectively broken the mold of “tough on crime” politicians, exposing the issue to more open, comfortable debate. As a result of his political fearlessness, the country may be on its way toward top-down reform that could radically transform our society for the better.

**Reform Within Prisons**

*Earned Time*

Earned time is a policy shift that has already positively affected thousands of prisoners across the country. Through earned time, prisoners can participate in rehabilitative programs or work within the corrections facilities to shorten their prison stays. This policy has been fueled, in part, by the financial crisis; a clear indication that the country has better use for the money currently funneled into prisons. Research demonstrates that earned time both saves states money and has potentially rehabilitative effects on inmates.

Prisons are a huge money-eating force in this country, and the cost has only gone up as sentences increase. According to a study done by the VERA Institute of Justice, in 2008, “states spent an estimated $47 billion of general
funds on corrections, an increase of 303 percent since 1988.” Now that states have less money to spend in general, lawmakers have been inspired to rethink the economic soundness of mass incarceration. States have begun to recognize that long sentences for non-violent offenders are no longer a reasonable, economically sound solution to crime and are moving toward more progressive methods.

According to a report by the National Conference of State Legislatures, at least 31 states have implemented earned time programs. Earned time is a reward system for participation in certain programs that can include vocational training, education, rehabilitation, and work: “In at least 21 states, inmates can earn time off their sentences by participating in or completing educational courses... At least 18 states provide earned time for work... vocational programming in at least 16 states... [and] rehabilitative programs in at least 14 states... including substance abuse and mental health treatment.” Time earned varies by state, but on average prisoners are “credited less than one day for each day of participation in a program.” The amount of earned time awarded also depends on prisoners’ parole eligibility: prisoners who are not eligible for parole earn less time than those who are eligible. Earned time is not a drastic move away from the crime control model in place; it does

40 Lawrence, 1-2.
41 Lawrence, 2.
42 Lawrence, 2.
not enact a dramatic decrease in inmates’ sentences, but it does provide prisoners with incentive to engage in rehabilitative activities.

The earned time policy is primarily focused on cutting the cost of the prison system, but has farther-reaching effects that save money and benefit society in a larger way. For example, earned time programs have been found to either maintain or reduce recidivism rates. In Washington State, the recidivism rate was about 3.5 percent lower among prisoners granted earned time and in Kansas, parole revocations went down by 45 percent among earned time participants. Through earned time, the government invests money in re-entry programs and receives a significant payoff from money saved by cutting prison stays and by lowering the chances that earned time participants will commit more crimes. A study done by the Washington State Institute for Public Policy found that in Washington State, the benefits of earned time outweigh the costs and that recidivism decreases for most offenders given earned time:

We conducted a cost-benefit analysis to calculate a bottom line for these opposing effects. On the benefit side, we estimate $15,359 in benefits per offender from: (1) reduced three-year recidivism, (2) lowered prison costs from the reduced sentence, and (3) increased labor market earnings. On the cost side, we estimate $8,179 in costs per offender due to the increase in crimes during the 63-day period of reduced incapacitation. Thus, the bottom line estimate is $1.88 in benefits per dollar of cost. We also checked the uncertainty of this estimate; we find

43 Lawrence, 5.
44 Lawrence, 6.
that benefits are likely to exceed costs 91 percent of the time.\textsuperscript{45}

These statistics demonstrate that rehabilitation is truly effective, as it both reduces recidivism and saves the government money.

The financial crisis has become a motivating factor in the implementation of earned time and other money-saving prison initiatives. California, which spends approximately 11\% of its budget, or $8 billion, on corrections,\textsuperscript{46} is looking to earned time to address its prison overcrowding as well as its economic woes. As a part of California’s new efforts, inmates can reduce their prison stay by six weeks per year through participation in GED, rehabilitative, and vocational programs.\textsuperscript{47} On a day-to-day basis, inmates can shorten their sentences by participating in firefighter training programs and working in “an institution firehouse.”\textsuperscript{48} The new efforts will also, in some cases, retroactively apply time spent in jail awaiting trial to the completion of one’s sentence.\textsuperscript{49} California also plans to release more low-level offenders with reduced supervision from parole officers, in an attempt to cut back on incarceration for minor parole violations.\textsuperscript{50}

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\textsuperscript{48} “CDCR Implements Public Safety Reforms to Parole Supervision, Expanded Incentive Credits for Inmates.”

\textsuperscript{49} “CDCR Implements Public Safety Reforms to Parole Supervision, Expanded Incentive Credits for Inmates.”

\textsuperscript{50} Archibold
\end{flushright}

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California is not the only state looking to cut back on corrections expenditures. Virginia’s new governor, Bob McDonnell has vowed to close the state’s budget gap without raising taxes. In order to achieve this goal, lawmakers implemented new policies that will purportedly save the state $3.5 million per year by “keeping those charged with small-time crimes and probations out of jail.”\[^{51}\]

The new legislation “will direct prosecutors not to seek jail time for some misdemeanor charges,”\[^{52}\] which will cut back on prison overcrowding, but, as the article points out, will also eliminate the need for court-appointed defense attorneys in many misdemeanor trials. This new policy will undoubtedly adversely affect indigent criminal defendants, as they will be forced to appear in court without representation if they cannot afford to hire a private lawyer: “opponents said cutting the use of court-appointed defense attorneys would do a disservice to poor defendants, who may not realize that even a minor drunk-in-public charge will leave a permanent blot on their record.”\[^{53}\] While rewarding prisoners for participation in rehabilitative programs and cutting back on prison overcrowding are steps in the right direction, eliminating the right to a defense attorney in misdemeanor cases will only strengthen the obstacles faced by indigent defendants.

Earned time and similar policies are not revolutionary changes in the criminal justice system. The positive effect that programs such as earned time


\[^{52}\] Flook

\[^{53}\] Flook
have both on recidivism and the cost of corrections is important, but their effects
do not reach a huge number of prisoners. These programs must be implemented
throughout the United States prison system in order for them to have a profound
effect on prisoners’ rights and rehabilitation.

It seems that the financial crisis might widen the use of policies such as
earned time, as states look to cut the cost of corrections and address prison
overcrowding. The desire to save money on corrections, however, can also
negatively affect criminal defendants. The fiscal crisis may spur innovative
thinking and the adoption of effective policies, advancing efforts based on
humanitarian concerns. At the same time, state governments must be careful not
to violate the rights of the accused when cutting the cost of corrections.

Center for Prison Education

College-in-prison programs are another way in which positive changes can
be made within corrections institutions. Students at Wesleyan University have
taken an interest in the prisoner’s plight, and in the spring of 2009 they proposed
and were awarded a two-year pilot program for the Center for Prison Education
(CPE). CPE provides inmates at the Cheshire Correctional Institution in
Connecticut with the chance at a college education. This program is indirectly
rehabilitative, as it provides prisoners with college experience that at their release
could be useful for finding jobs. More importantly, it places value on the lives of
prisoners, which is a step toward restoring the rights of the incarcerated.
Russell Perkins ’09, who has been tutoring in Cheshire prison since his freshman year at Wesleyan, founded the program. Perkins recalls how he became invested in the prison education movement:

My involvement came from an experiential level... Since my freshman year I and another [College of Letters] student have been visiting [Cheshire prison] once a week to facilitate a philosophy workshop. We did that all through college. I really just found the conversations that we had about philosophy, about the same texts we read in [College of Letters] to be some of the most exciting I encountered at Wesleyan. So it was really just from my personal interaction with these guys and the notion of doing college in this space that really caught me.54

Perkins facilitated the philosophy seminar through a campus group called the Wesleyan Prisoner Resource and Education Project (WesPREP), founded in 2004. WesPREP sent students to Cheshire to lead not-for-credit seminars on a voluntary basis. Perkins recalls that up to 30 students participated in WesPREP during any given semester.

The Center for Prison Education takes WesPREP’s concept of education in prison a few steps further. CPE launched a two-year pilot program in the fall of 2009. Nineteen students were chosen out of 120 applicants to take two college courses per semester, essentially earning a Wesleyan degree at half the rate of an on-campus Wesleyan student. The CPE courses are taught by Wesleyan professors, who take on the prison classes on top of their on-campus classes. They are awarded a $5,000 stipend for each class, which Perkins regards as very important for the integrity of the program: “That was another thing that was

really important for us—that they be compensated for their work—so that they really are encouraged to take their teaching in prison as seriously as any other teaching gig.”

The grading standard is the same as in any Wesleyan course, with exceptions made for the limited access prisoners have to computers and library books. All of the incarcerated students have Wesleyan transcripts, which Perkins hopes will help the students find jobs upon release from prison.

The funding for the program comes from the Bard Prison Initiative (BPI). BPI was established after the funding for college-in-prison programs was cut in 1995, and it now “offers college inside three long-term, maximum-security prisons and two transitional medium-security prisons. Between these five prison campuses the Initiative now enrolls nearly 200 women and men fulltime in a rigorous and diverse liberal arts curriculum, offering both associate and bachelor degrees.” BPI became involved in Wesleyan’s Center for Prison Education at Perkins’s request: “Early on in my process of founding CPE, I made contact with the director of BPI and we met... At the end of it he said, ‘If you can really get Wesleyan to take this on, we can provide the seed funding.’” The grant from BPI fully funds the two-year pilot program. If the program continues, BPI will fund half of the third and fourth years of the program. The funding for CPE will always come from sources outside Wesleyan in order to ensure that CPE does

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56 For example, students are allowed to turn in hand-written assignment, whereas on-campus students are required to type most assignments.
57 The incarcerated students are allowed to check books out of Wesleyan’s Olin library, but, of course, they have to request the books from prison and wait for their delivery.
not infringe upon the welfare of on-campus students: “Wesleyan's investment in [incarcerated] students will never be at the expense of students on campus.”

The Center for Prison Education provides a truly unique opportunity to its students, who otherwise would not have access to a college education: “Out of 120 [applicants for the program], 118 had never been to college and the majority of them had only graduated from high school because they were incarcerated.”

According to Perkins, most of the students in the program received their high school diplomas through Cheshire's or another prison's GED program. In an assignment for the English 130 class, one of the students writes of his decision to drop out of high school as a teenager and the regret he now feels in an assignment for the English 130 class: “I was now driving and had decided that the decision to quit school and pursue a semblance of adulthood had made me a man; though peering back I can now see clearly that I was not.”

The high number of applicants and the high instance of in-prison GED completion shows that prisoners value the opportunity to continue their education.

The program did not take sentence length into account when evaluating applicants, which produced some criticism of the program. It seems to some that CPE is wasting resources on prisoners who might never see the light of day. The only factors taken into account when selecting the freshman class were two essays and an interview. Perkins explains this decision: “In the application

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Note: The students who had already completed a college degree were disqualified from participating in CPE.
process we realized how impossible it would be for us to try and assess who deserved a place, so we just kind of scrapped any attempt to determine admission based on who deserves it and really just looked at academic promise.” Perkins adds that Wesleyan is not in the business of reducing recidivism, but rather providing quality education to its students.

Regardless of CPE’s interest in rehabilitation, college-in-prison programs have been shown to reduce recidivism. In December 2001, the Journal of Correctional Education published a six-year study done at the Hampden County Correctional Center in Massachusetts. The study examined recidivism rates of inmates who participated in the prison’s college program versus the recidivism rates of comparable inmates who did not participate. The study found that “an inmate who completes at least one college course while incarcerated at [Hampden County Correctional Center] is 21.9% less likely to recidivate to our facility 5 years after release, than a comparable inmate who does not avail herself or himself of such courses.”63 Hampden’s program is distinct from Wesleyan’s; there are more classes and seats open to prisoners, so the prisoners who did not complete a course while in prison were truly uninterested in doing so. CPE, on the other hand, had to turn away a hundred people because there weren’t enough seats, which raises questions of CPE’s true effectiveness in Cheshire.

CPE’s unfortunately small size reflects its status as a pilot program. As of now, the program is only guaranteed to go on for two years. However, if the

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program is re-approved at the end of the two-year pilot, the plan is to admit another class of 19 people, increasing the total student body to 38 prisoners. CPE is also interested in expanding its efforts to the local women’s prison, York Correctional Institute. As of right now, the program does not reach many prisoners, and so it has a very small effect on recidivism. Despite CPE’s limited scope, it stands for something larger.

The true value of CPE in the movement toward reestablishing prisoners’ rights is the value that it places on the lives and minds of incarcerated individuals. Wesleyan allocates resources for use by convicted criminals, deeming them worthy of the attention of a prestigious liberal arts college. CPE is a step toward the re-humanization of prisoners because it exposes the intellectual richness that exists within prison walls. It also demonstrates an unrecognized facet of incarcerated individuals: that criminals aren’t unilaterally focused on crime. Rather, they thirst for knowledge and the chance to ponder and discuss historical texts, real world issues, and their own personal histories.

The Center for Prison Education and programs like it are shining stars in the fight for prisoners’ quality of life. Not only does CPE serve as a rehabilitative program for inmates who will eventually be released, it also restores a sense of self-worth to its participants. CPE allows prisoners to spend their time learning about Literature and Sociology, rather than learning how to become better criminals.
Conclusion

The prison boom over the past forty years is an undeniable phenomenon that has had devastating impacts on certain aspects of American life. This boom is not necessarily related to a reduction in crime, but is very definitely related to the deterioration of certain communities. The rise in incarceration has had a disparate impact on black males, their families, and their communities. Black males are incarcerated at disproportionately high numbers because of a coincidence of factors. These factors include sentencing disparities that place harsher sentences on offenses for which blacks are prosecuted more frequently, as well as an inherent racism in the judicial system that results in a higher likelihood of incarceration for blacks who commit misdemeanor offenses and a higher likelihood that black defendants in capital cases will be sentenced to death.

High numbers of black males are affected by and participate in cycles of violence and crime that are perpetuated by failures within the corrections system as well as collateral consequences of high levels of incarceration. There is a lack of effective rehabilitative and re-entry programs available to felons while they are incarcerated as well as upon their release. In fact, life is much harder for a
recently released felon than for a person simply trying to assimilate to a new location, as felons are denied many of their rights, including the right to vote and the right to many social services.

Prisoners, their families, and their communities suffer the ill effects of this denial of rights, which is, in effect, continued punishment. The community and family members suffer further financial strain as they try to compensate for the felon’s lack of social and financial support. Families are torn apart and have trouble reuniting upon a felon’s release because of barriers to cohabitation. Entire communities are left with diminished political clout. The disenfranchisement of entire communities means that the problems that plague these communities will very likely not be addressed, because they will lack political backing. Politicians will be less willing to support the wishes of communities that are unable to offer them political support. The denial of voting rights also affects a person’s self-worth, his sense of citizenship, and his dedication to his country.

Change is necessary on multiple levels in order to address the disparities in incarceration and the state of communities affected by mass incarceration. Community efforts must be undertaken to compensate for the lack of male role models. Children must be monitored closely, encouraged to stay in school, bombarded with opportunities to learn and succeed, and be taught that there is a future outside the community and the cycle of crime that they witness on a daily basis.
On a policy level, steps need to be taken to foster the family relationship through government subsidized visiting programs and the elimination of barriers to communication between family members. Also, policy change must be enacted to address the sentencing disparities. If a sentencing policy disproportionately affects one racial group, that policy needs to be re-examined and fixed. The government must also crack down on the entrance of personal biases in the system, taking steps to ensure that judges remain race-neutral in their sentencing decisions, and taking steps to keep racial prejudice out of jury deliberations.

Finally, rehabilitation must play a greater part in the corrections system. Programs such as earned time show that the money invested in rehabilitation saves the state money in the long run, as participants leave prison sooner and are less likely to come back. Rehabilitation is a necessary component of corrections, and can be the determinant factor in a convict’s success after release from prison, but it is lacking in the United States system.

There are efforts being made on each of these levels; there are certainly many more efforts and programs working toward these goals than discussed in chapter three. These small-scale efforts are important because they allow for experimental implementation of methods to solve the problems within the system. The successful institutional efforts, such as earned time, demonstrate to the public that there are feasible alternatives to the problematic practices that resulted in mass incarceration. They show the public that prisoners can benefit from rehabilitation and support and that this benefit extends to society through
saving money and reducing the likelihood that those released from prison will commit more crimes. Successful community efforts demonstrate to politicians that these areas are worth investments of time and energy because change can be made; communities can be saved. All of these successes help to garner public support for well-meaning politicians to adopt enlightened legislation to address the problems surrounding the criminal justice system. Hopefully the accumulation of these small-scale successes will lead to comprehensive reform, such as that suggested by Jim Webb.

Without larger changes, however, the cycles of crime and violence in poor, black neighborhoods will continue and expand. The United States will perpetually pour money into prisons, even though that money could be put to more effective crime-control methods. Most importantly, without drastic reform, true racial equality will never be achieved. One of the foundational beliefs of our society, that all people are equal, will continue to be an elusive ideal rather than reality.
WORKS CITED


Burke, Lisa O., and James E. Vivian. "The Effect of College Programming on Recidivism Rates and the Hampden County House of Correction: A 5-


Federal Cocaine Sentencing Laws: Reforming the 100-to-1 Crackpowder Disparity: Hearing Before the Subcommittee on Crime and Drugs of the Committee on the Judiciary, United States Senate, One Hundred Tenth Congress, Second Session, February 12, 2008.


“Improving Housing Opportunities for Individuals with Conviction Records.” Legal Action Center. Web. 3 Apr. 2010.


“Results from the 2007 National Survey on Drug Use and Health: National Findings, Figure 2.9 Past Month Illicit Drug Use among Persons Aged 12 or Older, by Race/Ethnicity: 2007,” Department of Health and Human Services, Sept. 2008. Web. 2 Apr. 2010.


## APPENDIX

Selections from a Federal Mandatory Minimums Chart


### FEDERAL MANDATORY MINIMUMS

This list includes all federal (not state) sentencing laws that require the judge to give the offender a mandatory minimum prison term. Laws that require the judge to impose only a minimum fine or period of supervised release are not included in this list. The crimes charged most frequently today (i.e., drug crimes, gun offenses) are presented first, followed by statutes that are used less frequently. This list is effective as of July 30, 2009.

<table>
<thead>
<tr>
<th>STATUTE &amp; U.S. SENTENCING GUIDELINES PROVISION</th>
<th>DESCRIPTION OF CRIME</th>
<th>YEAR CREATED</th>
<th>MINIMUM PRISON SENTENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 USC §§ 841(a), 841(b)(1)(A), § 2D1.1</td>
<td>Drug trafficking</td>
<td>1986</td>
<td>10 years*</td>
</tr>
<tr>
<td>+ 1 kg heroin</td>
<td>Involves: &amp; producing, manufacturing, distributing, or possessing with intent to distribute, no death or serious bodily injury results</td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 5 kg cocaine</td>
<td>2d offenses: manufacturing, distributing, or possessing with intent to distribute; no death or serious bodily injury results</td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 50 g crack</td>
<td>3d offenses: manufacturing, distributing, or possessing with intent to distribute; death or serious bodily injury results</td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 100 g PCP (pure) or 1 kg PCP (mix)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 10 g LSD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 1,000 kg marijuana or 10,000 marijuana plants</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 50 g crack (pure) or 500 g crack</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>+ 5 g heroin (pure) or 50 g heroin (mix)</td>
<td></td>
<td></td>
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</tbody>
</table>

*These mandatory sentences also apply to attempts and conspiracies (charged as a violation of 21 U.S.C. § 846 or 21 U.S.C. § 963) to commit these drug offenses.

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<table>
<thead>
<tr>
<th>STATUTE &amp; U.S. SENTENCING GUIDELINES PROVISION</th>
<th>DESCRIPTION OF CRIME</th>
<th>YEAR CREATED</th>
<th>MINIMUM PRISON SENTENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DRUG TRAFFICKING, cont.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 USC § 841(a), § 841(b)(1)(C), § 2D1.1</td>
<td>2nd and any subsequent offense; manufacturing, distributing, or possessing with intent to distribute any Schedule 1 or 2 drug; (A) 1 g or more of heroin, and deaths or serious bodily injury results from the use</td>
<td>1988</td>
<td>10 years*</td>
</tr>
<tr>
<td>21 USC § 844(a); § 2D1.2</td>
<td>1st offense; simple possession of 5 gm or crack</td>
<td>1988</td>
<td>5 years*</td>
</tr>
<tr>
<td></td>
<td>2nd offense; simple possession of 3 gm or crack</td>
<td>1988</td>
<td>5 years*</td>
</tr>
<tr>
<td></td>
<td>3rd and all subsequent offenses; simple possession of 3 gm of crack</td>
<td>1988</td>
<td>15 days*</td>
</tr>
<tr>
<td></td>
<td>2nd offense; simple possession (other than crack)</td>
<td>1988</td>
<td>90 days*</td>
</tr>
<tr>
<td></td>
<td>3rd and all subsequent offenses; simple possession (other than crack)</td>
<td>1988</td>
<td></td>
</tr>
<tr>
<td>21 USC § 846, §§ 2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D1.14, 2D1.15, 2D1.16</td>
<td>Attempt and conspiracy to commit any drug trafficking or possession offense</td>
<td>1988</td>
<td>Mandatory minimum for the underlying offense is imposed</td>
</tr>
<tr>
<td>21 USC § 848 (a); § 2D1.5</td>
<td>1st offense; continuing criminal enterprise (CCE)</td>
<td>1988</td>
<td>20 years*</td>
</tr>
<tr>
<td></td>
<td>2nd and all subsequent convictions; CCE</td>
<td>1988</td>
<td>30 years*</td>
</tr>
<tr>
<td>21 USC § 848(b); § 2D1.5</td>
<td>Acting as principal administrator, organizer, or leader (&quot;kingpin&quot;) of CCE</td>
<td>1988</td>
<td>10 years*</td>
</tr>
<tr>
<td>21 USC § 848(b); § 2A1.1</td>
<td>Engaged in a CCE and intentionally kills an individual or law enforcement officer</td>
<td>1988</td>
<td>20 years*</td>
</tr>
<tr>
<td>21 USC § 859(a); § 2D1.2</td>
<td>1st offense; distribution to persons under the age of 21 years</td>
<td>1986</td>
<td>1 year or the minimum required by 21 U.S.C. § 841(b), whichever is longer*</td>
</tr>
<tr>
<td>21 USC § 859(b); § 2D1.2</td>
<td>2nd and subsequent offenses; distribution to persons under the age of 21 years</td>
<td>1986</td>
<td>1 year or the minimum required by 21 U.S.C. § 841(b), whichever is longer*</td>
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<th>MINIMUM PRISON SENTENCE</th>
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</thead>
<tbody>
<tr>
<td><strong>DRUG TRAFFICKING, cont.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 USC § 866(a); § 2D1.2</td>
<td>1st offense; distribution of a controlled substance near a school or similar facility</td>
<td>1986</td>
<td>1 year or the minimum required by 21 U.S.C. § 841(b), whichever is longer*</td>
</tr>
<tr>
<td>21 USC § 866(b); § 2D1.2</td>
<td>2nd offense; distribution of a controlled substance near a school or similar facility</td>
<td>1984</td>
<td>3 years or the minimum required by 21 U.S.C. § 841(b), whichever is longer* The minimum required by 21 U.S.C. § 841(b)(1)(A)</td>
</tr>
<tr>
<td>21 USC § 866(c); § 2D1.2</td>
<td>3rd offense; distribution of a controlled substance near a school or similar facility</td>
<td>1986</td>
<td>The minimum required by 21 U.S.C. § 841(b)(1)(A)</td>
</tr>
<tr>
<td>21 USC § 866(b); § 2D1.2</td>
<td>Employment or use of persons under 18 years of age in drug operations</td>
<td>1986</td>
<td>The minimum required by 21 U.S.C. § 841(b)(1)(A)</td>
</tr>
<tr>
<td>21 USC § 866(b); § 2D1.2</td>
<td>1st offense; knowingly and intentionally employing or using a person under 18 years of age in drug operations</td>
<td>1986</td>
<td>1 year*</td>
</tr>
<tr>
<td>21 USC § 866(c); § 2D1.2</td>
<td>2nd and subsequent offenses; knowingly and intentionally employing or using a person under 18 years of age in drug operations</td>
<td>1986</td>
<td>1 year*</td>
</tr>
<tr>
<td>21 USC § 866(e); § 2D1.2</td>
<td>1st offense; knowingly and intentionally employing or using a person under 18 years of age in drug operations</td>
<td>1986</td>
<td>The minimum required by 21 U.S.C. § 841(b)(1)(A)</td>
</tr>
<tr>
<td>21 USC § 866(f); § 2D1.2</td>
<td>Knowingly or intentionally distributing a controlled substance to a pregnant individual</td>
<td>1986</td>
<td>The minimum required by 21 U.S.C. § 841(b)(1)(A)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STATUTE &amp; U.S. SENTENCING GUIDELINES PROVISION</th>
<th>DESCRIPTION OF CRIME</th>
<th>YEAR CREATED</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>GUNS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.4</td>
<td>1st offense; using or carrying a firearm during a crime of violence or drug trafficking crime</td>
<td>1985</td>
<td>5 years, added to sentence for underlying crime</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.5</td>
<td>1st offense; transacting a firearm during a crime of violence or drug trafficking crime</td>
<td>1985</td>
<td>7 years, added to sentence for underlying crime</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.6</td>
<td>1st offense; discharging a firearm during a crime of violence or drug trafficking crime</td>
<td>1985</td>
<td>10 years, added to sentence for underlying crime</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.7</td>
<td>1st offense; firearm is a short-barreled rifle, short-barreled shotgun</td>
<td>1985</td>
<td>10 years, added to sentence for underlying crime</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.8</td>
<td>1st offense; firearm is a machinegun or destructive device or the firearm is equipped with a silencer or muffler</td>
<td>1985</td>
<td>30 years, added to sentence for underlying crime</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.9</td>
<td>2nd or subsequent conviction under § 924(c)(1)(A)</td>
<td>1968</td>
<td>25 years, added to sentence for underlying crime</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.10</td>
<td>2nd or subsequent conviction under § 924(c)(1)(A) and firearm is a machinegun or destructive device or the firearm is equipped with a silencer or muffler</td>
<td>1968</td>
<td>Life</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.11</td>
<td>Possession or use of armor piercing ammunition during a crime of violence or drug trafficking crime</td>
<td>2005</td>
<td>15 years, added to sentence for underlying crime</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.12</td>
<td>Possession of a firearm or ammunition by a fugitive or addic who has 3 convictions for violent felonies or drug offenses (Armed Career Criminal Act, or ACCA)</td>
<td>1985</td>
<td>15 years</td>
</tr>
<tr>
<td>18 USC § 924(c)(1); § 2D2.13</td>
<td>Possession of a firearm during violent crime or drug trafficking</td>
<td>1984</td>
<td>5 years, added to sentence for underlying crime</td>
</tr>
</tbody>
</table>
Yeomans

Bureau of Justice Statistics Graph