

# **CRIMINAL JUSTICE SYSTEM REFORM**

## **MOVING TO TRANSFORMATION**

NAACP Criminal Justice Reform Committee

CHAMPAIGN COUNTY NAACP  
May 2018

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# Incarcerating America

March 2018

High rates of incarceration in the United States and the great numbers of people held in U.S. prisons and jails result substantially from decisions by policy makers to increase the use and severity of prison sentences. At various times, other factors have contributed as well. The increase in U.S. incarceration rates over the past 40 years is preponderantly the result of increases both in the likelihood of imprisonment and in lengths of prison sentences—with the latter having been the primary cause since 1990. These increases, in turn, are a product of the proliferation in nearly every state and in the federal system of laws and guidelines providing for lengthy prison sentences for drug and violent crimes and repeat offenses, and the enactment in more than half the states and in the federal system of three strikes and truth-in-sentencing laws.<sup>1</sup>

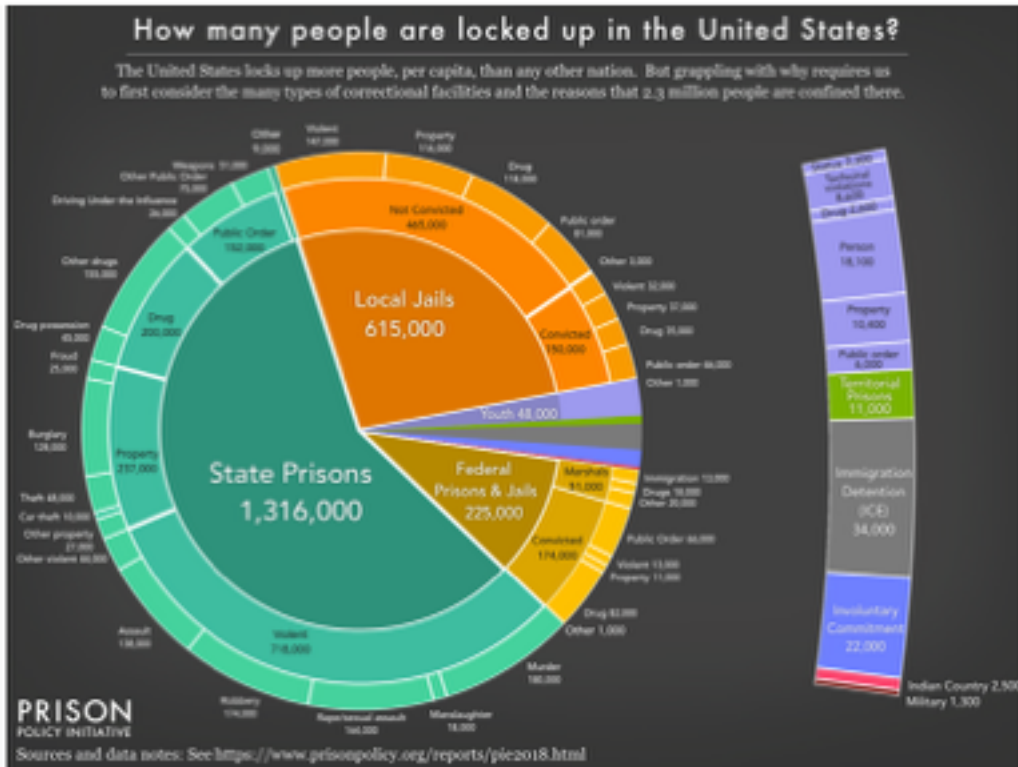
## INTRODUCTION

### The State of Incarceration

What is the Problem? It is widely known that the United States has an incarceration problem. One might say that it is an epidemic. “Epidemic” has a very special and technical medical meaning; however, Rosenberg (2008) says that it can be used more broadly to call attention to a catastrophic condition. He says, “Today, when we refer to an epidemic of traffic fatalities, drug use, or even obesity and adult-onset diabetes, we use the term metaphorically and rhetorically to invoke a sense of urgency and to mobilize collective social action.”<sup>2</sup> In our nation, states, and local communities, we are facing a sense of urgency and a need to mobilize collective social action around incarceration. While the financial costs have become prohibitive in many instances, we are also paying a high price in the loss of human capital. The condition at hand is defined by facts reported in any number of mass incarceration statistics, including those from the Bureau of Justice Statistics, The Sentencing Project, The Prison Policy Initiative, The Brennan Center for Justice, The Charles Koch Institute, and the National Research Council.

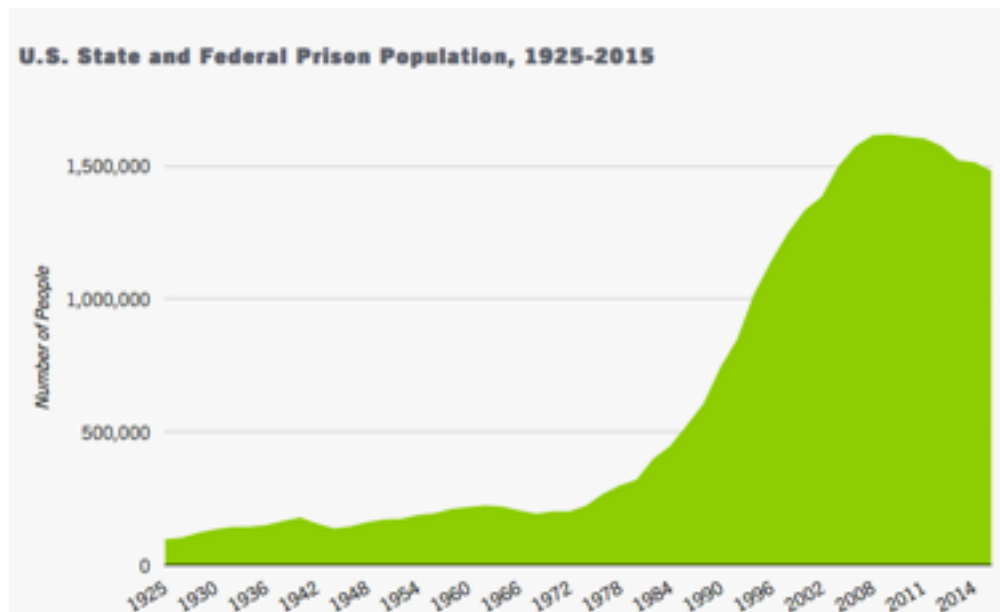
How many people are incarcerated and where are they? According to Prison Policy Initiative, *Mass Incarceration: The Whole Pie* (2018), the American criminal justice system holds more than 2.3 million people. They are held in federal prisons (225,000), state prisons (1,316,000), local jails (615,000), youth detention (48,000) territorial prisons (14,000), and immigration detention (34,000), with an addition 9,300 as military, Indian, and civil commitment detainees.<sup>3</sup> This same report further breaks down the incarcerated population by offense and by convicted/non-convicted inmates (See FIGURE 1).

FIGURE 1<sup>4</sup>



Have there always been large numbers of people incarcerated? No. The situation America finds itself in is not a consequence of slow gradual incarceration increases matched by corresponding

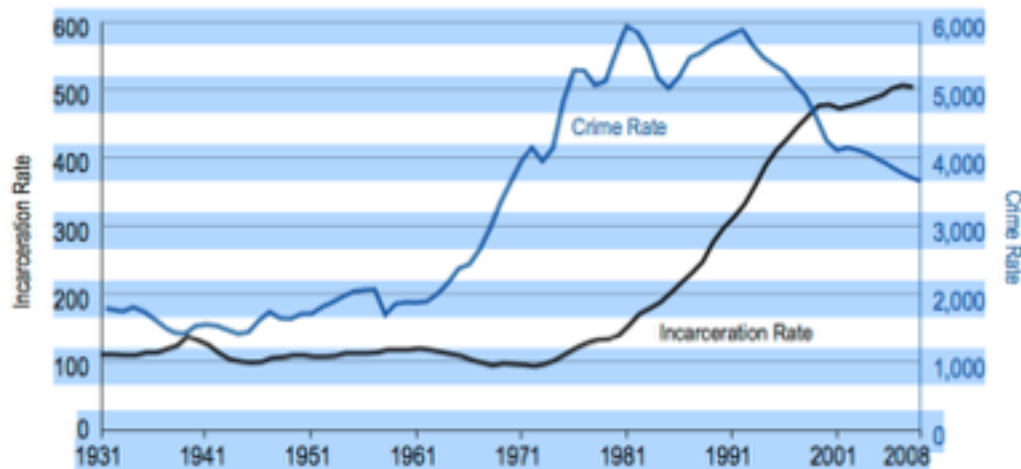
FIGURE 2<sup>5</sup>



increases in crime, but rather a dramatic transition beginning in 1980. FIGURE 2 shows incarcerations in the absolute number of people from 1925 to 2014. Adding the crime rate from 1933-2008 (FIGURE 3), sometimes the incarceration rate paralleled the crime rate; other times it increased as the crime rate declined. In a 2018 Prison Policy Initiative report 1,316,000 people are currently being held in State Prisons, 615,000 in local jails, and 225,000 in Federal Prisons and Jails. The transition to extreme incarceration appears to happen between the late 1960's and early 1970's. 1961-1971 in Figure 3 the point the crime rate begins to increase is where our attention should be focused, it should prompt us to ask what happened. The sentence in the opening paragraph of this report offers an answer: ...the great numbers of people held in U.S. prisons and jails result substantially from decisions by policy makers to increase the use and severity of prison sentences.

FIGURE 3 <sup>6</sup>

**U.S. UCR Crime Trends and Sentenced Prisoners in Federal and State Institutions per 100,000 Population, 1931–2008**



From 200,000 prisoners in 1972, the prison population has increased to over 1.5 million (over 2.3 million behind bars when jail populations are included). This has been produced not solely by higher crime rates, but also by increased rates of sentencing to prison and increased lengths of stay (Clear, 2007).<sup>7</sup>

There is also a growing concern over the number of women showing up in the incarceration data. In 1965 there were 6,925 women in state prisons and 779 in federal prisons and no data regarding local jail incarcerations. In 2015 those numbers had jumped to 93,360 in state prisons and 11,608 in federal prisons, and still no data for local jails. Corresponding rates jumped from

7.0 per 100,000 in state facilities in 1965 to 57.1 in 2015, and from 0.8 to 7.1 in federal prisons. Data for local jails in 2015 was 60.8 per 100,000.<sup>8</sup>

The epidemic of incarceration becomes even more obvious when these data are placed next to international prison populations (see FIGURE 4). World Prison Brief (2016) reports that the rate of incarceration in the United States was 683 per 100,000 in 2000, 731 in 2010-2011, and 693 in 2014. The United States' incarceration rate is 62 per cent higher than the second highest national incarceration rate of Russia with 439 per 100,000.<sup>9</sup> Canada just to our north imprisons 114 per 100,000 of its citizens.<sup>10</sup> The United States has 5 percent of the world's population and 25 percent of its prisoners. American prisons hold more inmates than Soviet gulags at their peak, and greater proportion of black Americans are imprisoned in the United States than black South Africans under apartheid.<sup>11</sup>

FIGURE 4<sup>12</sup>

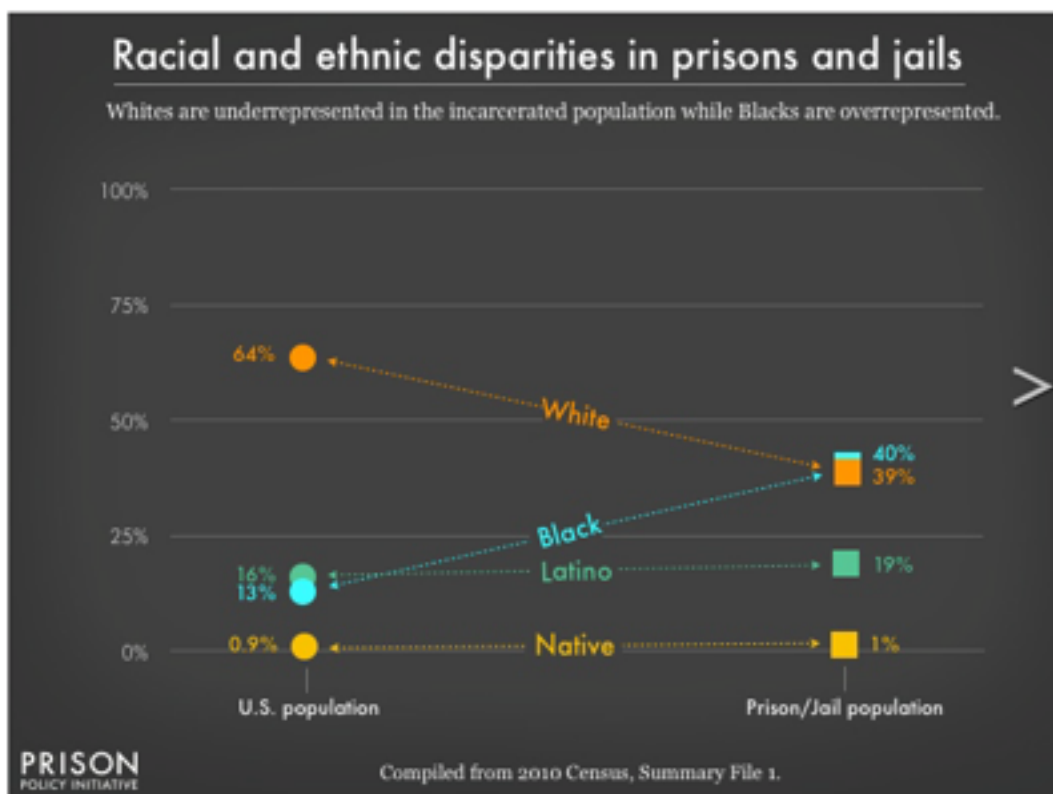


Source: Walmsley, R. (2016). World Prison Brief. London: Institute for Criminal Policy Research. Available online: <http://www.prisonstudies.org/world-prison-brief>

Mass incarceration is complicated. Michelle Alexander's The New Jim Crow: Mass Incarceration in the Age of Colorblindness brought to light the explosion of incarceration beginning in the 1970-1980s, which even with some decline in the crime rate, continues until today.<sup>13</sup> Elizabeth Hinton's book From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America takes us from the well-intentioned but destructive war-on-poverty policies to the building of a war-on-crime that put all of its emphasis on enforcement and punishment.<sup>14</sup> Both of these authors demonstrate how the criminal justice system operates to control African Americans in the same way that the institution of Jim Crow did in its long history from the 1890s to the mid 1960s.

The results of a mechanism of social control of African American people through the criminal justice system, incarceration, is illustrated in FIGURE 5.

FIGURE 5<sup>15</sup>



The criminal justice system plays a dual role in our society. It is expected to be fair and just to both the victim and the accused. It has to navigate a very narrow path in trying to assure “public safety” and bring “justice” to the victim while protecting the “rights” of the accused. Duster (1997) notes that prior to the 1820s, punishment of crime was unpredictable, capricious, and arbitrary; thus a “primary purpose of the criminal law was to limit the abuses of authorities toward the accused.”<sup>16</sup> Quoting social theorist Francesco Carrara, Duster emphasizes the importance of criminal law to protect the accused: “The emergence of legal rights for the accused, protection from the arbitrary and abusive behavior of the courts, was one of the signal accomplishments of the movement to limit the powers of the state, an extraordinary achievement of the Enlightenment.”<sup>17</sup> It seems that this fundamental purpose of the establishment of the justice system of the 1820s has been pushed into the background.

Any informed discussion of criminal justice reform must acknowledge, in addition to the oversized scale and cost of incarceration, the racialized dimension to mass incarceration, the

neglect of certain moral principles of how citizens (victims and offenders) are to be treated in regards to law and order, and the huge social costs, that result when people are taken out of their community and human capital is wasted.

As people are taken out of their community, their removal has significant ripples. The fabric of the community is torn. Two seemingly opposing consequences are in play here. When a young man (more often than not) is arrested and incarcerated, it is like taking a cup of water from a moving river, the volume of rushing water is not affected. Although a hole is created, the vacated space is filled immediately. This image helps to highlight the inability of incarceration to deter other offenders, or to dry up the supply of offenders. Secondly it gives pause to the idea that crime can be explained simply by criminal types. It calls attention to the need to search for a source to the problem that is further up stream. The search must include questioning the social structure.

Clear (2014) says that there are several flaws in the idea that when a person is incarcerated for committing a crime that they can no longer commit crimes, however crimes continue to be committed. Clear notes that crimes are often committed by young men in groups, and when one is removed from the group, and incarcerated the group has an incentive to recruit a replacement. Secondly there is a process of young men (mostly) cycling in and out of prison, and the community. He says a homeostasis is achieved, some are removed and some return, therefore there is not disruption in the commission of crime.<sup>18</sup>

This consequence is referred to later in the report when million dollar blocks are discussed. The million dollar block phenomenon creates a geographic concentration of incarceration and former inmates. It can be implied from Clear's explanation that of the lack of impact on crime by incarceration is a function of this geographic concentration.

Research by Lum, et. al. (2013) likens the racial disparity and recidivism regarding crime and incarcerations to a sentencing differences, and a contagious agent model. They say, "We demonstrate that if incarceration can be spread through a social influence network (a noxious agent), then even relatively small differences in sentencing can result in the large disparities in incarceration rates."<sup>19</sup> So Clear and Lum would suggest that rather than reducing crime and eventually incarceration, incarceration likely has a criminogenic effect in areas where it is concentrated.

## COMMITTEE PURPOSE AND PROCESS

The realities outlined above led the NAACP of Champaign County to establish a committee to study and propose reforms to the criminal justice system. The eight-person committee was charged in January 2017 with developing a plan: “To divert people with behavioral needs from being arrested and placed in jail and to receive necessary services that will permit them to fully function in our community and not be subject to incarceration. In addition, the plan should also address the criminal justice system itself to have fewer individuals incarcerated.”

With so many published reports available detailing mass incarceration, the Criminal Justice Reform Committee concluded that its work could best benefit from, and be guided by these reports. The committee would also turn its attention to local data about incarceration and recidivism. Upon reviewing the relevant information and making personal connections, the committee would prepare a study paper presenting key trends and data and draft a set of reform recommendations. While recognizing the significance of enhanced behavioral health services, these reforms necessarily cast a broader net to focus on a reformed criminal justice system.

The primary audience for the committee report is the NAACP of Champaign County membership and its constituents. The secondary audience is local officials, and organizations with authority and responsibility for criminal justice policy and practices. The goal of the committee is to recommend approaches that will reduce incarcerations and recidivism, and, at the same time, advance racial justice in Champaign County. Through informed collaboration, the two audiences can explore avenues to enhance public safety and justice throughout the community.

The following sections review the origins and dimensions of modern mass incarceration, as well as the costs that mass incarceration has inflicted on African Americans in particular and the nation in general. The last section of the report presents recommendations for reform.



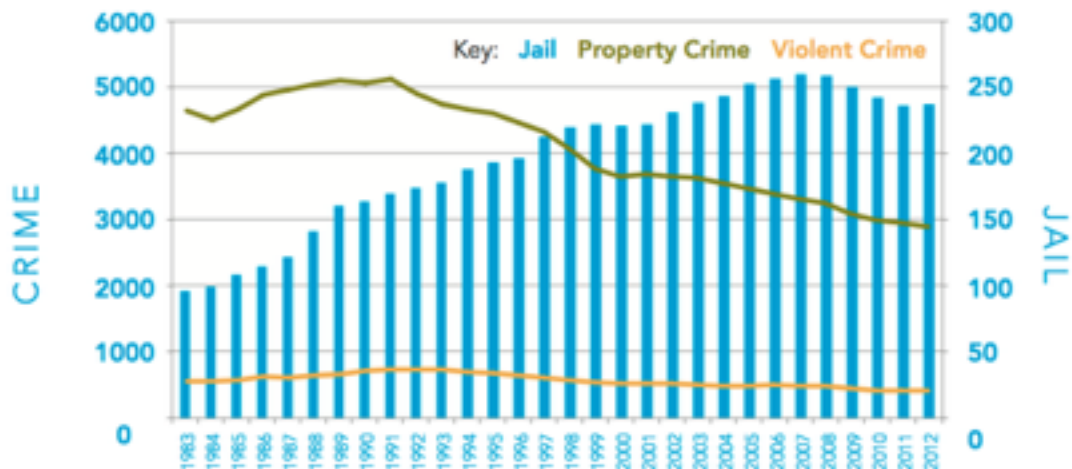
## PATH OF MASS INCARCERATION

Incarceration is defined as the state of being confined in prison. Synonyms for incarceration are: imprisonment, internment, confinement, detention, custody, captivity, restraint. Mass incarceration is a term used by historians and sociologists to describe the substantial increase in the number of incarcerated people in United States prisons over the past forty years.<sup>20</sup> While the arrest and incarceration of those who break the law is an expected function of society, the situation we face as a result of mass incarceration is extreme, and the human and economic cost too high.

Figures 2 and 3 together illustrate the national trends in mass incarceration. These Figures (above p. 2 and p. 3) report crime rates and incarceration rates beginning in 1925 and 1931. Each captures crime and punishment trends in America before they began their steady ascent. Figure 6 (Below) displays both the increase and subsequent decline of crime and punishment. As we learn the history, we discover four periods that explain the evolution of mass incarceration: the dormant period; the period of political awakening, the punishment imperative period, and the period of declining crime and punishment.

FIGURE 6<sup>21</sup>

### Crime and Jail rates per 100,00



Source: For jail rates, see Craig A. Perkins, James J. Stephan, and Allen J. Beck, *Jails and Jail Inmates: 1993-94*. (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1995)

**Period One: Dormant Period.** As Figure 6 illustrates, from 1931 to 1961, crime and incarceration were low and stable, not varying much from year to year. Also, there was not much public concern about either one.

**Period Two: Political Awakening.** During this period (1961-1971), crime became identified as a political issue by both political parties. It began with Barry Goldwater and George Wallace and continued with Lyndon Johnson and Richard Nixon. At the time these campaigns chose to focus on crime, incarcerations were still low and crime was just beginning to inch up. Incarcerations were hovering around 100 per 100,000 people, and crimes around a little less than 200 per 100,000 people.

Loo & Grimes (2004) reviewed multiple public opinion polls citing crime as the number one domestic problem in the 1960s. They concluded that the media, public officials, and pollsters shaped the prevailing view of crime as the number one domestic issue. This occurred by fanning a hyper fear of crime, and creating a “moral panic” about it. The analysis of Loo & Grimes “supports a hypotheses of an elite engineered moral panic.”<sup>22</sup> Moral panic is defined as “instances in which the public, the media, and the state are disproportionately aroused about a putative problem.” Neither actual crime nor public opinion were driving forces behind the political campaigns that favored a tough-on-crime approach.

Beckett (1997) published the results of an extensive study of public opinion polls and survey data on crime. She, too, found that public concern about crime and later, drug use, was associated with political initiatives and media coverage rather than incidents of crime.<sup>23</sup> If rising crime data were not the motivation for the focus on crime, why were crime-related issues constructed as problems stemming from insufficient punishment and control? Beckett’s work traces the emergence and application of this ideology; she concludes that the discourse on law and order was initially mobilized by southern officials in their effort to discredit the civil rights movement.<sup>24</sup> We must remember that the 1960s were not far removed from the era of the Negro Problem stereotype, which posited that African Americans possessed a racial trait for crime, and punishment was the best recourse.

**Period Three: Punishment Imperative.** By 1971, reported crimes and the crime rate were skyrocketing. The third period began when “tough on crime” and “war on crime” ideologies and policies began to emerge in the practice of criminal justice. It overlaps with the second period because the rhetoric of the fight against crime from the 1964 and 1968 Presidential Campaigns was worked out, matured, and delivered. New policies followed after the elections were settled.

There were two competing ideologies in play about the cause(s) and punishment of crime. One was articulated in the 1967 report, *The Challenge of Crime in a Free Society*.<sup>25</sup> Its first recommendation was directed at the root causes of crime: slums and ghettos, inadequate education, and the lack of jobs and opportunities for each American. Then the Omnibus Crime Control and Safe Streets Act of 1968 was passed. It reflected the competing ideology, championed by James Q. Wilson and Ernest van den Hagg, which located the cause of crime in individual responsibility and favored beefed-up police agencies and the expanded use of incarceration as the primary way to fight crime.<sup>26</sup> Because crime was traditionally thought of as a local issue, the federal government focused on equipping local law enforcement agencies. Here the punishment imperative policies were born.

The aggressive war on crime gave us a criminal justice system that featured military-style weapons made available to police agencies, more arrests, more cases processed, and more incarcerations. Policies and practices were not simply punitive, but over time they became more and more harsh, and directly led to forty years of increasing incarceration. The policies in question reversed standard practices, replacing them with new ones that fit the punishment philosophy. One such shift was from indeterminate sentencing to determinate sentencing. Discretion was removed from the sentencing process and replaced with specific determined sentences, and release time was tied to statutory prescription. Other policies that hastened the growing prison population were: mandatory sentencing, three strikes, and truth in sentencing.

**Period Four: Declining Crime and Punishment.** Crime rates begin to decline after 1992. This was the highest year for violent crime incidents: 1,923,270, with a 757.5 rate per 100,000 population (compared with 364,220 reported incidents for a rate of 190.6 per 100,000 in 1964), as reported in the FBI Uniform Crime Report. The decline occurred across the board. For example, reports of property crime had reached 12,505,900 for a rate of 4,902.7 per 100,000; the following year (1993) that rate dropped to 4,737.7. However, as the crime rate rapidly declined, incarceration rates continued to climb and did not react to the crime rate until 2008. This raises again the question of how much incarceration levels are driven by crime.<sup>27</sup>

It is essential to understand the role of politics in the mass incarceration crisis. Prior to the civil rights era of the 1960s, federal intervention was the only source of protection and justice that African Americans could expect. In creating the President's Committee on Civil Rights (1946), President Truman hoped to introduce federal law and order policies at the levels of state and local law enforcement. He wanted to reign in police abuse, institute more police training, increase professionalization, and pass antilynching and anti-conspiracy measures.<sup>28</sup> His legislative vision was far greater than his ability to make it a reality. By the time of Goldwater and Wallace, an emerging direction turned Truman's law and order views upside down. Intended to appeal to white, especially southern, voters this approach was designed to work against African Americans.

Clear and Frost (2014), Flamm (2005), and Beckett (1997) basically agree that today's mass incarceration was set in motion by a politically charged ideology of "Tough on Crime and Law and Order." Flamm recounts a conversation that President Lyndon Johnson had with advisers during a series of riots in New York City in 1964, "This one issue (riots) could destroy us in the campaign.... Every night of rioting costs us the support of thousands."<sup>29</sup> Further he said, "I think the... abuse of law and order in this country, the total disregard for it, the mounting crime rate is going to be another issue (after foreign policy), at least I'm going to make it one...."<sup>30</sup>

In launching his 1965 "war on crime," President Johnson acknowledged that crime is fed by social conditions as well as individuals prone to commit them: "Stability and order have little meaning and small advantage to those who exist in poverty, hopelessness, and despair. The long-run solution to this view of crime is jobs, education and hope. This is a goal to which this

country is now committed. But we should remember that not all crime is committed by those who are impoverished or those denied equal opportunity. In any event, we cannot postpone our responsibilities to act against crimes committed today.<sup>31</sup> Johnson was poised to give “new priority” to fight crime with new methods and “institutions of law enforcement.” He targeted the police, the courts, and the correctional agencies to function more like social agencies than a vanguard against an advancing enemy.

Nevertheless, a harsher, retributive approach to criminal justice emerged and eventually won out: “[C]riminal behavior was not considered a deviation from the norm, but rather a rational choice by self-serving actors who were taking advantage of opportunities in contexts where sufficient controls and disincentives for crime were weak or nonexistent. State efforts at retribution, incapacitation and the management of risk would effectively curtail such self-serving, opportunistic behaviors.”<sup>32</sup> Crime fighting policies were designed to get violators off of the street, placed in prisons, or jails, given long sentences, and kept there. Clear and Frost (2014) called these practices the punitive imperative.<sup>33</sup>

President Johnson began a War on Poverty that became a War on Crime. Richard Nixon (1968) and Ronald Reagan (1982) commingled race with crime as a major part of their presidential campaigns and administrations and promoted crime fighting policies.<sup>34</sup> This political legacy was long-lived: “Fear of crime continued to provide political opportunities for candidates and office-holders even after crime rates began to fall. The responses of politicians, policy makers, and other public figures to rising crime rates were political choices not determined by the direction in which the crime rate was moving.”<sup>35</sup>

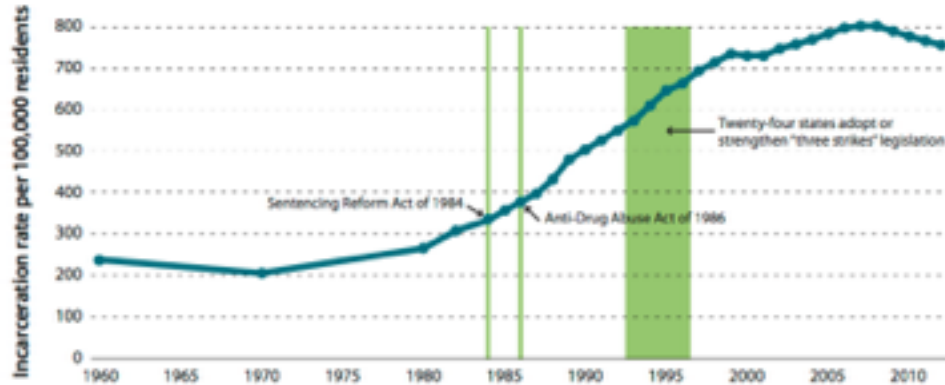
The fear of crime as a driving anti-crime force depended on who was the victim.<sup>36</sup> That is, when the real victims were African Americans, there was little interest in law and order; but when the perceived victims were white, the cry for law and order was loud. Attention to these issues was thus more racially and politically motivated than a genuine concern for justice or public safety.

The law and order ideology gave rise to policies, practices, and the building of a legal infrastructure to address crime and punishment (see Figure 7). These were the fundamental building blocks for today’s mass incarceration. The direction that the expanded institution took was guided by, broadly speaking, different philosophies of the cause of criminal behavior: One view saw, the social environment with family, peers, and social values fostering behavior. The presence or absence of these elements could lead to productive or non-productive behavior.

FIGURE 7<sup>37</sup>

### Incarceration Rate in the United States, 1960–2012

Federal policies, such as the Sentencing Reform Act, and state policies, such as “three strikes” legislation, were major contributing factors to the 222 percent increase in the incarceration rate between 1980 and 2012.



Sources: Austin et al. 2000; Cahalan 1996; personal communication with E. Ann Carson, Bureau of Justice Statistics, January 24, 2014; Census Bureau 2001; Glaze 2010, 2011; Glaze and Herberman 2013; Raphael and Stol 2013; Sabol, Coughlin, and Harrison 2007; Sabol, West, and Cooper 2010; authors' calculations.  
 Note: Incarceration rate refers to the total number of inmates in custody of local jails, state and federal prisons, and privately operated facilities within that year per 100,000 U.S. residents. The three events highlighted in this figure are examples of the many policy changes that are believed to have influenced the incarceration rate since the 1980s. For more details, see the technical appendix.



The other view placed the cause of criminal behavior squarely on the shoulders of the person. The cause was the lack of personal responsibility, or a criminal type. This world view signaled the form that policy and practice took. Generally the tough on crime view which eventually won out led to harsher punishments. Crime fighting policies were designed to get violators off of the street, placed in prisons, or jails, given long sentences, and kept there. Clear and Frost (2014) called these practices the punitive imperative.<sup>38</sup>

In launching his “war on crime” President Johnson prefaced his plan with this understanding of the causes and blueprint to fight crime.

It has been said that the fault lies in poor living conditions, limited education, and the denial of opportunity. Plainly, laws are less likely to command the respect of those forced to live at the margins of our society. Stability and order have little meaning and small advantage to those who exist in poverty, hopelessness, and despair. The long-run solution to the view of crime is jobs, education and hope. This is a goal to which this country is now committed. But we should remember that not all crime is committed by those who are impoverished or those denied equal opportunity. In any event, we cannot postpone our responsibilities to act against crimes committed today.<sup>39</sup>

Here President Johnson acknowledges that crime is fed by social conditions as well as individuals prone to commit them. Johnson in 1965 was poised to give “new priority” to fight crime with new methods and “institutions of law enforcement.” He targeted the police, the courts, and the correctional agencies to function more as social agencies rather than a vanguard against an advancing evil enemy.

However, a series of policies and practices followed that were not simply punitive, but over time became more and more harsh, and led directly to forty years of increasing incarceration. Some of the policies in question reversed standard practices; other new ones fit the punishment philosophy.

## TOOLS OF INCARCERATION

John Pfaff has called into question the “standard story” of why the incarceration rate is so high. It is a mistake, he says, to consider the criminal justice system a system, for there is no “coherent entity with defined goals” and objectives.<sup>40</sup> Not only would a system have goals and outcomes, but each component would have a rational and recognized purpose in relation to the other parts. Prison Policy Initiative likewise asserts that we do not have a single monolithic system. Instead, we have a federal system, 50 state systems, and thousands of local government systems. Sometimes these systems work together, although often they do not. Looking at just the national picture can obscure the importance of state and local policy decisions.<sup>41</sup>

Alfred Blumstein of Carnegie-Mellon University presents a slightly different assessment of the system. He suggests that there is a criminal justice system, but “no one person is in charge of it.” Many different people have influence and authority over specific aspects of the system, and they can be disconnected from each other. For example there are legislators who decide what is a crime and what penalties should be attached to it. There are police charged with making arrests and judges who pass sentences. And there are prosecutors who decide what cases to bring, what charges to call for, and what sentences to agree to in plea bargains.<sup>42</sup>

Clearly, incarceration involves a complex mix of ideologies, legislative entities, policies, practices, and personnel. As figure 7 illustrates, public policy changes regarding crime control have been followed by increased incarcerations. There are multiple points along an incarceration chain where incarcerations are initiated, implemented, and sustained. Below we review three of those points: prosecutors, fines and fees, and jails.

Prosecutors. A Brennan Institute report describes the role of the prosecutor and their influence on judges: “The reality is that prosecutors play a unique and immensely powerful role in the criminal justice system. They decide who gets charged, and most importantly, with what crime, and what plea bargains to accept and reject. Sentencing recommendations from prosecutors carry immense weight with judges.”<sup>43</sup> Because the prosecutor is the gate keeper, institutional admissions can be traced back to prosecutors.

Pfaff argues: “...at least since the early 1990s the primary engine of prison growth has been an increased willingness on the part of prosecutors to file felony charges.”<sup>44</sup> By giving prosecutors bigger hammers to wield during the plea bargaining process, tougher sentencing laws may enable prosecutors to extract guilty pleas more quickly from defendants, “More defendants plead out, rather than risking a more serious charge or a trial.” In this way, the possibility of a case dismissal or misdemeanor conviction is erased.

Noting that reducing mass incarceration will require a multi-pronged approach, Angela J. Davis of American University’s Washington College of law, says that given their position in the criminal justice system, with “vast discretion and power,” prosecutors are uniquely situated to have the greatest impact.<sup>45</sup> Importantly Davis says the prosecutor can bring a charge or charges

or not. The prosecutor only needs to meet the low standard of probable cause to bring charges, and it is easy to “pile on” charges. Davis argues that prosecutors have an ethical duty to correct injustices in the criminal justice system. She suggest expanding diversion options and the use of clemency power to do so.

John Chisholm, the District Attorney in Milwaukee County, Wisconsin has heard these claims, agrees with them and because of his experience, especially with the racial disparity in cases charged, has developed a program based on an evidence-driven public health model and early diversion. The public health model answers the question, what is the best way to keep a community healthy? To this end, Chisholm says, the prosecutor has to do more than process cases.

Chisholm now administers an assessment that divides defendants into two groups, based on history of offenses. Those with a low score are offered a diversion, which, if successfully completed, leaves them without a criminal record. Those with high scores are offered a more intense form of post-arrest supervision and deferred prosecution. These defendants must complete a drug-treatment program or other educational program. They will still have a criminal record, but like the other group, they will not spend time in jail.<sup>46</sup> Chisholm has shifted his focus as a prosecutor from prosecuting cases to reducing the jail population and helping to build a healthy community.

The high profile case of Meek Mill is an illustration of a district attorney taking initiative to change sentencing practices that could keep nonviolent citizens out of prison while allowing them to restore their lives without sacrificing public safety. Meek Mill is a case in point. It involves a rapper who has gained some notoriety for his music, for his encounter(s) with the legal system, and for with drawing from the May 18, 2018 White House summit on prison reform. The Brennan Center points out that the Mill story is all to common. It began in 2008 with a gun possession conviction in Philadelphia. The District Attorney Larry Krasner suspects that the it was an unjust conviction. Mill served time, but was returned to prison for parole violation. Subsequent to Mill’s return to prison, Krasner submitted a memo to not just rethink the Mill situation, but to make sweeping changes to sentencing, parole, and probation across the board. He requested to; Shorten probation/parole sentences; Avoid using prison for minor (“technical”) parole or probation violations, and; Decline to charge someone with violating parole or probation due to marijuana use (one of the very things that landed Mill back in prison). The Brennan Center says, Probation and parole should be designed to get people back on track – not ensure they end up back in jail.<sup>47</sup>

Fines and Fees. A 2012 *New York Times* story of an Alabama woman, Gina Ray, illustrates how fines and fees simply add to the misery of an arrest. She was fined \$179 for speeding, but when the ticket had the wrong date, she failed to appear in court and her license was revoked. The next time she was pulled over, she didn’t have a license, and the sum of her fees came to more than \$1,500. A probation company took over the process, and determined that she would be jailed for failing to pay. Ray was charged for each day she was behind bars. By the time the story ran, she



owed over \$3,000.<sup>48</sup> The Supreme Court has repeatedly affirmed that individuals may not be jailed solely because of their inability to pay fines, fees, and court costs. Money-bail systems that do not account sufficiently for a defendant's ability to pay cannot satisfy due process.<sup>49</sup>

African Americans are all too familiar with the use of fines and fees. Because of one phrase in the 13th Amendment abolishing slavery —“except as a punishment for crime,” Southern states intentionally established vagrancy laws and made arrests for minor offenses in order to bolster the practice of convict leasing. Convict leasing supplied labor to any employers willing to pay the detainees' fines and fees. This practice continued up to 1954.<sup>50</sup>

Here is a snapshot of the convict leasing practice: In 1902 and 1903, the only period for which a complete prisoner ledger survives for Jefferson County, Birmingham, AL, local officials prosecuted more than 3,000 misdemeanor cases, the great majority of them yielding a convict to work in a Sloss-Sheffield mine. One of those convicts was John Clarke, a black miner convicted of “gaming” on April 11, 1903. Unable to pay, he ended up at the Sloss-Sheffield mines. Working off the fine would take 10 days. Fees for the sheriff, the county clerk and even the witnesses who testified in the case required that Mr. Clarke serve an additional 104 days in the mines. Jefferson County records show Sloss-Sheffield acquired him at a rate of \$9 a month. One month and three days later, he was dead, crushed by “falling rock,” according to the Alabama Board of Inspectors of Convicts, the agency that monitored the system. <sup>51</sup>

Today fines and fees, known as Legal Financial Obligations (LFO), or Criminal Justice Obligations (CJO), have resurfaced in the evolving criminal justice landscape. [Fines and fees are amounts assessed to penalize an individual or organization for violating a provision of law or rule following conviction or other adjudicatory decision by a judicial officer. **Fines** are defined as amounts charged for the performance of a particular court service; these are specified by an authority at a fixed amount and disbursed to a governmental entity. They do not advance the traditional purposes of the criminal justice system. **Fees** are often authorized by state legislatures as a means to generate revenue to fund courts or other government functions without raising taxes. In many jurisdictions, court costs and surcharges fund the agencies responsible for imposing fees and fines on individuals.<sup>52</sup>

Several critics see fines, fees, and even bail as imposing extra hardship on pretrial detainees and possibly being unconstitutional.<sup>53</sup> The 2017 United States Commission on Civil Rights report notes that at the founding of America, the model of debtors prisons was rejected in favor of incarceration. At the time, incarceration, which held the promise of probation, was viewed as an opportunity to reflect upon and repent for one's actions. Many judges felt that fines and fees were ineffective; they were too low for the wealthy, and the poor could not pay them.<sup>54</sup> However, according to Harris and colleagues (2010), “monetary sanctions were integral to systems of criminal justice, debt bondage, and racial domination in the American South for decades.”<sup>55</sup> Then in the 1980s, fines and fees were introduced as a mechanism to fight crime.

LFOs are being called into question as costly and as contributors to the growth of incarceration. The Criminal Justice Policy Program at Harvard Law School says: “Unchecked, these policies drive mass incarceration.” According to their 2016 report: “Excessive fees and fines needlessly enmesh poor people in the criminal justice system by spawning arrests, court proceedings, periods of incarceration, and other modes of supervision for those who lack the ability to pay. Criminal justice debt also contributes to mass incarceration by destabilizing people living at the economic margins and by impeding reentry of formerly incarcerated people who face impossible economic burdens, leading to cycles of poverty and imprisonment.”<sup>56</sup>

Whereas the early architects of the nation’s criminal justice system rejected fines and fees, the broken window theory, as interpreted by present-day law enforcement agents, gave rise to the use of citations that carried a fine.<sup>57</sup> Attached to low-level unwanted behavior, the citation was seen as a way to punish the wrong doer, deter further crimes, and maintain social order. Consequently, by the 1980s, fines became a preferred sanction for municipal violations. In the face of shrinking budgets, states and municipalities applied a business model to prisons and jails. That is, they were expected to produce revenue and pay “their own way.” Martin and Still (2017) quoting Wacquant (2009), reports that criminal justice budgets grew nationwide from \$35 billion dollars in 1980 to \$130 billion in 1997, multiplying almost four times in seventeen years.<sup>58</sup>

Criminal justice costs have been passed on to “users” in the form of new and increased LFOs while being more vigorously and aggressively collected.<sup>59</sup> The strategy is obvious: “It’s very easy for jurisdictions to pass the cost on to the offender . . . No one wants to raise taxes on the public. Politicians—it’s the last thing they want to do.”<sup>60</sup> The city finance director of Ferguson, Missouri explicitly urged both the police chief and the city manager to write more tickets in order to fill municipal coffers. In other words, the system in Ferguson sought to extract income for the county and state from some of its most disenfranchised citizens, often through unconstitutional stops and arrests.<sup>61</sup>

A 2015 Department of Justice study, after the death of Michael Brown, found that one of the many complaints from citizens of Ferguson, Missouri was about LFOs. The DOJ was concerned with, “Ferguson’s policing strategy built around writing tickets, and assessing fines and fees, to feed the city budget.” The resulting practices violated people’s rights and were racially discriminatory. To their credit, a number of the police officers objected to being collection agents, though more emphasis was placed on their issuing citations to bring in revenue. In 2011, \$1.38 million or 12.46% of the city’s general budget of \$11,070,000 came from fines and fees. By 2015, the proportion of fines and fees had grown to \$3,090,000, or 23.30% of the general budget of \$13,260,000.<sup>62</sup> The Ferguson city budget grew 19.78%, while fines and fees more than doubled.

A 2017 study of bail, fines and fees by the Vera Institute of Justice shows that in New Orleans, the cost to city government outstripped the revenue produced by user fees. Criminal justice agencies collected \$4.5 million from individuals and their families in conjunction with two aspects of the user-funded system—\$1.7 million in bail and bond fees and \$2.8 million in

conviction fines and fees. During the same period, the City of New Orleans spent \$6.4 million detaining people who were jailed solely because they could not pay the assessed amounts. In other words, the city spent \$1.9 million more than criminal justice agencies reaped.<sup>63</sup> On any given day, the 70% of people detained in local jails who are awaiting trial,<sup>64</sup> represent both a potential revenue pool for cities, and an expense.

LFO's are a burden to reentry in multiple ways, adding another layer of penalties to the implications of incarceration.<sup>65</sup> When unpaid, as many of them are, LFO's are entered on a person's credit report and can cause that person to be denied a mortgage, loan, or lease. A person may not be able to acquire a driver's license, thus restricting transportation options. The consequence of not having reliable transportation can be severe, none more so than not being able to keep court-ordered appointments. These practices must be reformed if the population under criminal supervision is to be reduced and restored.

Jails. How do jails contribute to the nation's incarceration dilemma? The Vera Institute of Justice clarifies the difference between prisons and jails as follows: prisons are "the state or federal institutions where most of those convicted of crimes and given a sentence of imprisonment are sent;" jails are "locally run facilities, primarily holding people arrested, but not yet convicted, and are the place where most people land immediately following arrest."<sup>66</sup>

Figure 1 (above p. 3) illustrates which facilities are holding the incarcerated. More people are incarcerated in local jails and/or state prisons than in federal prisons, suggesting that efforts to reduce incarcerations should be targeted at the local level. As we learned from the "Get-Tough-On-Crime" movement of the 1960s, street crime is basically the responsibility of local authorities not the federal government. The Prison Policy Initiative says that on any given day in their 2018 report, there were 615,000 persons incarcerated in local jails and 1,361,000 held in state prisons.

The jails' contribution to mass incarceration cannot be understood from a one day snapshot, but instead from the "churn" or revolving door: that is, how many people pass through the nation's 3000 jails in a year.<sup>67</sup> The annual churn number has been estimated at 11.3 million admissions. This measurement is important, because on any given day, 465,000 detainees out of 615,000 detainees or 70% have not been convicted.<sup>68</sup> While some will make bail within a couple of hours of being arrested, others without the means to make bail will be retained until their trial. The build up of jail detainees results from fines and fees, not convictions, and this pattern compromises the original purpose of jails:<sup>69</sup> "Intended to house only those deemed to be a danger to society or a flight risk before trial, jails have become massive warehouses primarily for those too poor to post even low bail or too sick for existing community resources to manage. Most jail inmates—three out of five people—are legally presumed innocent, awaiting trial or resolution of their cases through plea negotiation in facilities that are often overcrowded, noisy, and chaotic."<sup>70</sup> Although the primary purpose of jail is to detain persons for trial, there is little evidence that most of these people present a flight risk.

The 11 million admissions to our jails are not unique individual admissions. New York City, for example, could account for 10,000 jail admissions. From among those 10,000 admissions, 473 people had been admitted 18 times or more, amounting to more than 300,000 days in jail. 85% of these were charged with a misdemeanor or violation, 21% had serious mental illness, while 99.4% had a substance-use problem. A similar pattern was found in Chicago.<sup>71</sup> Most pre-trial detainees are held for nonviolent and minor offenses: "...nearly 75 percent of the population of both sentenced offenders and pretrial detainees are in jail for nonviolent traffic, property, drug, or public order offenses. In New York City, nearly 50 percent of cases which resulted in some jail time were for misdemeanors or lesser charges. In Los Angeles County, a study of the jail system in 2008 by the Vera Institute of Justice found that the single largest group booked into the jail consisted of people charged with traffic and vehicular offenses."<sup>72</sup>

Figure 5 (above p. 5) shows the racial disparity of the jail landscape. African Americans account for 40% of the prison and jail population while making up 13.2% of the national population. Whites account for 39% of the jail population and 64% of the national population. However, on a local level the minority numbers can easily be exceeded. For example, a 2012 Vera Institute study reports the jail population of Riker's Island. Of 12,287 inmates, 57% were African American, 33% Latino, and 7% White despite the fact that African Americans make up 24.5%, Latinos 27% and whites 35% of the city of New York..<sup>73</sup>

As discussed above, jails have become the handmaiden of LFO's. Efforts to reduce the jail population and curtail recidivism must occur in the context of LFO's. Neither the threat nor the actual experience of incarceration has acted as a deterrent for repeat offenders. In light of this information, we ask ourselves how either public safety or justice are being served. We cannot continue to employ the same ineffective practices which yield us little, but must instead begin to think of new strategies to promote public safety and justice.

## CONSEQUENCES OF MASS INCARCERATION

Financial Costs. The price tag for mass incarceration is high and complicated. As a panel hosted by the Hamilton Project begins by saying, “Crime and high rates of incarceration impose tremendous costs on society, with lasting negative effects on individuals, families, and communities. These high costs highlight the need for both effective crime-prevention strategies and smart sentencing policies, in addition to strategies for reaching at-risk youths.”<sup>74</sup> Annual cost estimations range from \$80 billion to one trillion dollars, depending on which costs are included in the total.

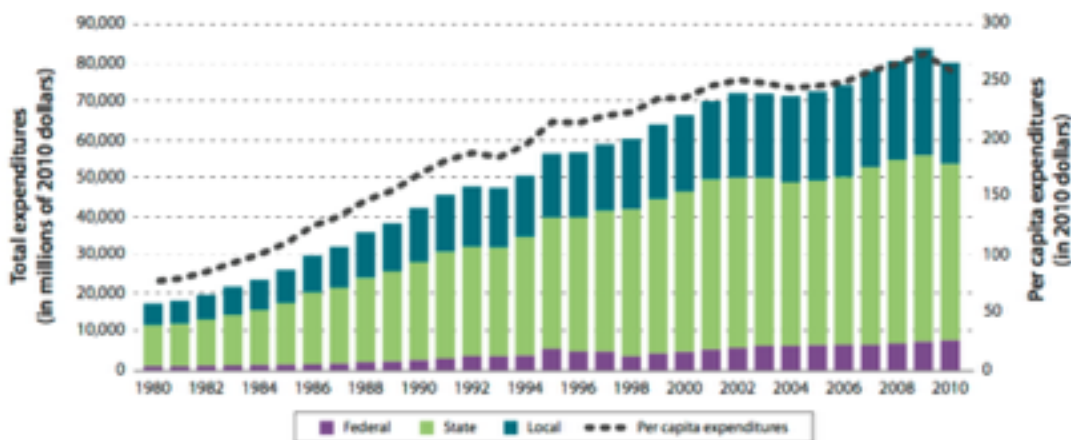
The baseline figure (80 billion in 2010) derives from correctional agencies’ administrative and operational expenses; these fund the supervision, confinement, and rehabilitation of adults and juveniles convicted of offenses against the law, and the confinement of persons awaiting trial and adjudication (Kyckelhahn, and Martin (2013)).<sup>75</sup> When the cost of police protection and judicial and legal services are added, the figure at least doubles. When social costs—those absorbed by children, families, and communities—are added the total skyrockets to unimaginable heights. Yet cost-benefit analyses reveal alternatives to incarceration that reduce crime, keep the public safe, and result in fair and equal justice.<sup>76</sup>

A 2014 Hamilton Project report charts the direct costs of incarceration (see Figure 7). In 2010, the annual cost of incarceration was \$80 billion, up from \$17 billion in 1980. The per capita costs rose from \$77 in 1980 to \$260 in 2010. The share of those costs borne by states was 57%, by local governments 33%, and by the federal government 10%.

FIGURE 8<sup>77</sup>

### Total Corrections Expenditures by Level of Government and Per Capita Expenditures, 1980–2010

In real terms, total corrections expenditures today are more than 350 percent higher than they were in 1980, while per capita expenditures increased nearly 250 percent over the same period.



Sources: Bauer 2003a, 2003b; Census Bureau 2001, 2011, 2013; Gifford 2001; Hughes 2006, 2007; Hughes and Perry 2005; Perry 2005, 2006; Kyckelhahn 2013a, 2012b, 2012c; Kyckelhahn and Martin 2013; authors' calculations.  
 Note: The dollar figures are adjusted to 2010 dollars using the CPI-U-RS (Consumer Price Index Research Series Using Current Methods). Population estimates for each year are taken from the Census Bureau's estimates for July 1 of that year. The figure includes only direct expenditures so as not to double count the value of intergovernmental grants. For more details, see the technical appendix.

for police protection, judicial services, and legal services are factored in, the annual costs are estimated to total \$261 billion.<sup>78</sup>

The Prison Policy Initiative examined seventeen hidden costs of mass incarceration that were not figured into the Hamilton Project study. The Prison Policy analysis found that the annual baseline costs rise to at least \$182 billion, broken down by big contributors as follows: public correction agencies (\$80.7 billion), judicial and legal costs (\$29.0 billion), policing (\$63.2 billion), civil forfeiture (\$4.5 billion), bail fees (\$1.4 billion), and costs to families (\$2.9 billion). Since only costs of \$1 billion or more were included in this tally,<sup>79</sup> we can confidently say that these total costs are underestimated.

McLaughlin, *et al.* (2016)<sup>80</sup> found that the costs of incarceration extends beyond those usually incurred by government spending. Additional costs were incurred by the incarcerated person, their families, children, and communities. Furman (2016) figured lost wages for the incarcerated contributed to a free fall into poverty for the family.<sup>81</sup> Total costs can run from \$500 billion to \$1 trillion. Figure 9 illustrates how those costs most of which are carried by the incarcerated person and their families, children, and communities are distributed.

FIGURE 9<sup>82</sup>

*The Aggregate Burden of Incarceration*

Cost	\$ (Billions)	\$ excluding jail (Billions)
To correctional institutions	91.1	65.9
To incarcerated persons	392.6	200.4
To families, children, and communities	531.0	247.7
<b>Total</b>	<b>1,014.7</b>	<b>514.0</b>

*Note.* The sum of the individual costs does not match the total because of rounding.

When measured against the benefit to public safety and justice, the costs of incarceration adds insult to injury. There are less costly, more beneficial interventions than punishment. Furman (see Figure 10) reviewed a small number of studies that looked at the cost-benefit of criminal justice policies and practices.<sup>83</sup> Of these studies, 83% found policing to have a positive impact in reducing crime while 100% found education to be a cost-effective means of reducing crime. Expanding economic opportunity is also a cost-effective crime reduction and prevention measure, “given that many of those placed behind bars are young men 15 to 30 years old, who lose out on labor skills and see their opportunities start plummeting.”<sup>84</sup> Michael Helfand (2017) compared the costs of juvenile incarceration to the benefits of rehabilitation and education in Illinois. The lifetime cost to society for detention of a high-risk youth was \$3.8 million, while the

investment in education, after-school programs, and job training was \$1 million. Thus, society would garner a savings of \$2.8 million to be reinvested.<sup>85</sup>

FIGURE 10<sup>86</sup>

**Tally of Cost-Benefit Analyses of Criminal Justice Policy:  
Evidence from Economics Literature**

	Number of Studies	Consider Indirect or Collateral Consequences	Percent of Studies
			Cost-Effective Policy
Police	6	17%	83%
Incarceration	7	43%	29%
Sentencing	5	40%	20%
Education	9	67%	100%

Note: Estimates are derived from economics studies that focus on the United States and conduct cost-benefit analyses. The studies differ in policy setting, outcomes, time frame and methodological approaches. Conclusions about the cost-effectiveness of policies are taken from the analysis and expertise of the authors in each study.

Further, the Ella Baker Center for Human Rights released a report in 2015 which looks more deeply into the truly hidden costs of incarceration. These are costs suffered by the incarcerated individual, the families, the children and the communities. Because a loved one becomes incarcerated, families can face financial ruin. The Center recommends restructuring the criminal justice system and reinvesting the cost savings, such that the money saved from reduced incarceration flows into programs and services proven to reduce crime and recidivism. Figure 11 provides a list of programs nominated, by persons with direct experience with the criminal justice system, as investment priorities in place of mass incarceration.<sup>87</sup>

FIGURE 11

Top Priorities for Community Reinvestment	
Education	86%
Job training, job creation & job placement	72%
Affordable housing	69%
Alternatives to incarceration	64%
Drug and alcohol programs	60%
Social Services for families	54%
After school & youth programs	52%
Mental health programs	51%
Health care	48%

*\*Respondents identified their top three priorities*

Newkirk II (2018) reviews Bruce Western's new book *Homeward: Life in the year after prison* in which he reveals that life after prison seems to continue to punish. He followed 122 people from 2012-2014 for a year after their release from Massachusetts Department of Corrections facilities around Boston. It is a tale of "poor outcome"; recidivism, poverty, dependence on government benefits, and family support, unemployment, homelessness and drug usage. Western says that many of the people incarcerated are those less capable of making large changes in their lives. This lack of capacity is most visible in the area of physical health. These are poor people suffering from high rates of obesity, diabetes, kidney failure, asthma, as well as undiagnosed or poorly managed mental health.

Also Western says that, incarceration is punishment that worsens both physical and mental health for the incarcerated individual and the family. Further he says, "Instead of finding root causes for chaos, violence, and instability, every wrong is attributed to individual agency—even when agency is eroded by health problems. 'The fundamental thing about the criminal-justice system is that it's a blaming system,' Western told me. "But the health-care system attends to causes and physical and mental vulnerability. If we want to do that, then we can't be involved in a blaming system."<sup>88</sup> Our modern criminal justice system has refused to understand where violation is a function of the person, where it is a function of the social environment, or where the two feed into each other.

We can be more thoughtful and forward-looking about how we invest our crime-fighting resources. Needed reform should be looked at not just as savings because crime, and the need to address lawlessness will not simply disappear. Putting our money to better use should drive reform or more appropriately transformation. It should adhere to Beckett's frame of "balanced needs", with goals of less incarcerations, reduced crime, less expense where possible, greater public safety and increased justice. Exemplars of "balanced needs" would be policies that address poverty, and other social problems as well as people's needs for protection.<sup>89</sup> Christian Henrichson of the Vera Institute notes that the overwhelming prison population, and the 2008 recession forced nearly every state, irrespective of political leadership, to engage in cost cutting. This is the time to reexamine our fiscal priorities and embrace new research findings, which suggest alternative and more effective ways of addressing crime.<sup>90</sup> Even without a recession this remains true ten years later.

Mental Health. Subramanian (2015) says, "Among the many disadvantaged people in jails, the largest group by far is people with a mental illness. Jails have been described as the 'treatment of last resort' for those who are mentally ill and as 'de facto mental hospitals'...." In the general population, 3.2% of men and 4.9 % women are estimated to suffer with mental illness; however, in the jail population, 14.5% of men and 31% of women suffer from serious mental illness such as bipolar disorder, schizophrenia, and major depression.<sup>91</sup>

Significantly, Subrananian reports that 83% of jail inmates do not receive mental health care upon admission. The jail atmosphere with constant noise, bright lights, and threats of violence only exaggerates many inmates' mental health issues. This suggest that many inmates could have



avoided incarceration or been diverted, if mental health treatment has been available to them. An even more disturbing picture regarding inmates and mental illness emerges from Travis' (2014) report. He states that 64% of all jail inmates, 54 % of state prisoners, and 45% of federal prisoners have mental health concerns.<sup>92</sup>

Community Effects and Social Costs. The incarceration of an individual has ripple effects upon that person's family and community. When incarcerations are mapped onto city neighborhoods, correlations emerge with respect to location, race, age, gender and human capital. Consequentially, it can be shown geographically where high rates of incarceration occur and where they do not.<sup>93</sup> Cooper and Lagalia-Hollon paired their map of high-incarceration Chicago neighborhoods with the amount of money spent to incarcerate individuals and concluded: "We hand out harsh sentences for all types of offenses. We give these sentences, overwhelmingly, to Chicagoans who live in our segregated, low-income neighborhoods on the west and south sides. This amounts to a war on neighborhoods."<sup>94</sup> They found in Chicago that most urban residents with felony convictions come from and return to a small number of neighborhoods. Over a 5 year period from 2005-2009, there were: 851 blocks with over 1 million dollars committed to prison sentences with 121 committed to prison sentences for non-violent drug offenses." True sentences are harsh, and they also tend to be concentrated in certain areas of cities, sometimes amounting to millions of dollars spent on the incarceration of citizens from those neighborhoods.

Mapping is a process of tracking the occurrence of a social event on to a map; in this case incarcerations on to a city map. Mapping can not only tell us the location of crimes and arrests, but it can also be a tool of intervention to reduce these, attack root causes of crime, and to aid returning citizens upon release. Diane Orson, NPR staff writer for "Urban Life in the 21st Century," describes how the mapping of million dollar blocks in Brownsville, Brooklyn, New York helped bring about change in that community.<sup>95</sup> When officials looked at maps from a decade ago, they also saw resources that could be applied to resolving the problem. The city of Brooklyn and the state of New York then reached out to partner with local organizations and strengthen their efforts. Another innovation growing out of mapping is the Council of State Government's approach to crime, incarceration, and public safety through Justice Reinvestment. They have proposed investments in effective law enforcement strategies, and expanded access to drug treatments.<sup>96</sup>

Clear (2008) reviewed studies that assessed the impact of incarceration on the community. These studies show how communities of concentrated incarceration suffer at the hands of the penal system. Social networks are important to families and communities: "they are crucial to quality of life, forming the basis for social support, providing access to goods and services, and structuring the limits of a person's lifelong long-term opportunities and short-term problem solving."<sup>97</sup> A study by Braman (2007) found that families of an incarcerated person break apart, economic resources are strained, parental involvement with children is disrupted, and family members experience social isolation.<sup>98</sup>

To better understand the unintended consequences of incarceration on those left behind, Braman (2007) employed a more sharply focused microscope than mapping, namely personal interviews. Over the course of three years Braman interviewed 200 inmates and families of inmates in Washington, D. C. Interviewees described in their own words what life was like after a family member’s incarceration. A 12-year-old African-American girl described, for example, the arrest of her father and his removal from the home. After witnessing the arrest, she began, by her own account, “hanging out more, drinking, and skipping school.” When she became old enough to hold a job, she lacked an education, and she engaged in prostitution so she could help support the household. Eventually, she and her grandmother were evicted. Her life spiraled downward even more, and she lost her way.

In interview after interview, Braman finds that the social networks individuals rely on to handle hard times, are overtaxed. Social relationships that supply important social capital devolve to the point where they are more burden than help. Social norms likewise get turned upside down due to shame and stigma. Shame and stigma foster a social silence that negatively alters family relationships, as well as relationships with neighbors and co-workers. Family members may even deny the incarcerated. Thus, family and community bonds become severely weakened.

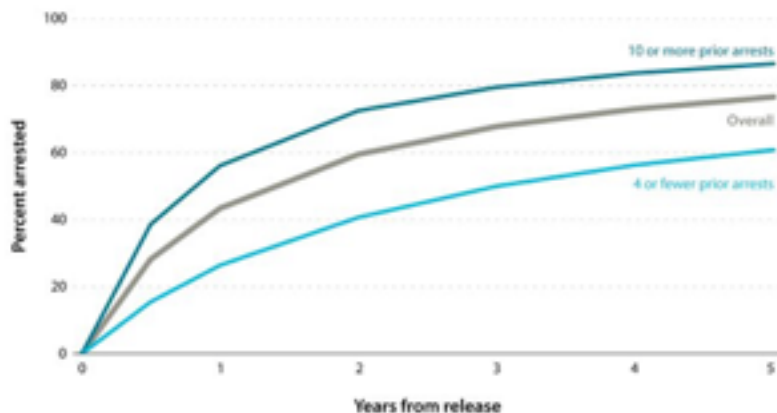
Eventually the incarcerated person is released, and reentry into the community is not seamless. At least 95% of all state prisoners will be released from prison at some point; nearly 80% will be released to parole supervision.<sup>99</sup> According to a study by the Bureau of Justice Statistics (BJS), within three years of release, Blacks were more likely than Whites to be rearrested (72.9% versus 62.7%), re-convicted (51.1% versus 43.3%), returned to prison with a new prison sentence (28.5% versus 22.6%), and returned to prison with or without a new prison sentence (54.2% versus 49.9%).<sup>100</sup>

Two things plague the newly released individual (Shanzenbach, et.al. 2016): Recidivism and death.<sup>101</sup> Mortality rates among recently released individuals is much higher than in the incarcerated population. In the first two weeks the mortality rates is 49 deaths per 100,000, falling to 17 per 100,000 in the following two weeks. This compares to 4 per 100,000 in the incarcerated population.

Figure 12

**Recidivism of Prisoners, by Prior Arrest History**

Of all released prisoners, 43 percent are rearrested within the first year following release.



Source: BJS 2014b.  
Note: Data are reported for state prisoners released in 2005.

Secondly in that same study it was reported ( Figure 12) that Five years post release 77% of former prisoners are returned to prison, however for those with four or less prior arrest 60% are returned, and for those with ten or more prior arrest 84% are returned. Recidivism is tied to the number of prior arrest and the number of years past release. A summary statement is individuals with less criminal history are less likely to recidivate.

More specifically a United States Sentencing Commission (2016) study of 25,431 offenders including 4,664 women, all U.S. citizens who were released from federal prison in 2005 and followed for eight years, found rates of recidivism for Blacks 59.1%, Hispanics 49.1%, and whites 41.1% and others 49.4 however it is the characteristics of recidivism that are of interest to reformers.<sup>102</sup> The Commission reported, not surprisingly, younger offenders recidivated at significantly higher rates than older offenders, offenders with more extensive criminal histories recidivated at significantly higher rates than offenders with lesser criminal histories, and lower education was associated with higher rates of recidivism, and conversely higher education lower rates of recidivism.<sup>103</sup> Both of these studies highlight just how precarious it can be to try and regain a normal life.

Ewald and Uggen (2012) have called our attention to “The Collateral Effects of Imprisonment on Prisoners, their Families, and Communities.”<sup>104</sup> Restrictions on the rights and privileges of people convicted of criminal offenses extend across the political, economic, social, and domestic spectrum. The American Bar Association has inventoried more than one hundred relevant statutes.<sup>105</sup> The restrictions include a federal ban on the purchase of a firearm, exclusion from federal grand or petit juries, inability to serve in the military, the withdrawal of federal benefits, disqualification for student loans, work assistance, educational tax credits, and some health care benefits.

Restoration of civil rights for persons released from prison should be a priority for both philosophical and practical reasons. At a meeting in 1865 of the Massachusetts Anti-Slavery Society in Boston Frederick Douglass said, “I have had but one idea for the last three years, to present to the American people, and the phraseology in which I clothe it is the old abolition phraseology. I am for the ‘immediate, unconditional, and universal’ enfranchisement of the black man, in every State in the Union.”<sup>106</sup> Douglass’ words are meant for all marginalized people. Today that is especially true of imprisoned and formerly imprisoned Citizens. Persons are marginalized by race, gender, and ethnicity, and once they become an ex-felon they are further marginalized.

Emmitt Sanders describes a history of voter suppression of incarcerated citizens going as far back as 1792. In 1844 the state of New Jersey “ excluded free blacks from the electoral realm” in its state constitution. Mississippi in 1898 found it could not discriminate against the negro person, but it could discriminate against a characteristic of the “negro race.” Lawlessness was racialized and that became the “characteristic” on which discrimination was based. This paved the way to deny the franchise to those with felony convictions, Black or White. Also Sanders

says that in effect the current status of incarceration and disenfranchisement in the communities of people of color removes them from the political process.<sup>107</sup> Restore the franchise.

In a recent column, “What interest is served by disenfranchising felons?” George Will seems to have caught the spirit of Douglass’ message. He calls for reinstatement of voting rights in favor of 21st century incarcerated citizens. He reports on the preliminary results of an uncontrolled study of the 1.6 million disenfranchised ex-felons in Florida: “Recidivism among Florida’s released felons has been approximately 30% for the five years 2011-2015. Of the 1,952 persons whose civil rights were restored, five committed new offenses, a recidivism rate of 0.4%. This sample is skewed by self-selection—over-representation of those who had the financial resources, and tenacity to navigate the complex restoration process that each year serves a few hundred of the 1.6 million. Still, the recidivism numbers are suggestive.” Returning the vote to ex-felons not only recognizes their basic citizenship, but also contributes to reducing recidivism and hence the number of incarcerated persons.<sup>108</sup> This right to vote should also be extended to those imprisoned.

In Illinois, a statewide coalition of public officials and organizations has joined in an effort to pass legislation that will expand voter access and education in Illinois jails and assist those being released from prison with voter registration. At present, Illinois citizens awaiting trial in jail have the right to vote, yet they often do not receive the information and encouragement necessary to exercise their right. According to the ACLU, “Many of the 20,000 people who are being detained before their trials do not have access to vote. Of the almost 4 million people who have a past felony conviction in the state, many do not know that they are eligible to vote.”<sup>109</sup>

Securing employment is the most significant factor in preventing incarceration and recidivism, yet in some instances, persons are denied employment or housing simply because they have an arrest record. Indeed, many young African American men are facing a life of unemployment and imprisonment. Their social networks suffer, as they gravitate to others who engage in risky behaviors and have done time. The lack of both educational and training opportunities and mental health services for those incarcerated means that they return to their home community ill-equipped for a fresh start. Mature mentors can help fill the void and guide younger adults toward productive paths, but in the final analysis we need a new system. One that is not so quick to criminalize it’s citizens, and then punish them continuously. We are in need of system whose goal is public safety, and socially healthy individuals, and communities

Racial Disparity. The incarceration epidemic assumes an even more horrifying face when the data are reviewed by race. Racial disparity is displayed to two ways: The first is the incarceration percentage of African American, Whites, and Hispanics independent of each other in comparison to their percentage in the general population, the second is the gap between African Americans and other races to whites in the prison population. The NAACP, whose purpose is to advocate for racial justice, cannot ignore the enormous racial imbalance within the criminal justice system.

As reported by the Prison Policy Initiative, Blacks make up 13% of the U.S. population but 40% of its prison and jail population, while Whites make up 64% of the U.S. population and 39% of its prison and jail population. Latinos and Native Americans make up the remaining 21% of those incarcerated (See Figure 5).<sup>110</sup> Further, the lifetime likelihood of Black men born in 2001 being imprisoned is 1 in 3, for Latino men that likelihood is 1 in 6, as compared to 1 in 17 for White men. See also Walker (2013).<sup>111</sup>

The Sentencing Project: Research and Advocacy for Reform submitted a report to the United Nations on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance.<sup>112</sup> This data drawn from the Bureau of Justice Statistics paints a comprehensive picture of racial disparity throughout the whole criminal justice process. It begins with policing and continues to reentry and recidivism. This report underscores the pervasiveness of racial disparity in the system. Just one example, 56% of 277,000 people incarcerated for drug offenses in 2016 were Hispanic and African American. These two groups make up only 29% of the general population.

An example of a recommendation from the above report is the elimination of mandatory minimum sentences. The recommendation reads: Eliminate mandatory minimum sentences. The United States should eliminate mandatory minimum sentences. Judges should be allowed to consider individual case characteristics when sentencing a defendant in every case. Mandatory sentences do not eliminate discretion in the courtroom—they simply shift it from judges to prosecutors, thereby reducing transparency in decision making.

Still further the Pew Research Center has released a study of the Bureau of Justice Statistics, and they determined that the gap between Black, Hispanic, and White incarcerations is decreasing.<sup>113</sup> The report states that in general incarceration for all three groups has been decreasing since 2009 (The BJS report includes the decade from 2006-2016.). It is possible to draw a link between this report and a decrease in crime and subsequent decrease in incarceration illustrated in Figure 6. The crime rate began to decrease as early as 1992, but incarcerations did not begin to decrease until 2008. The Pew study highlights the decreasing number of incarcerations and the closing of the gap between African Americans, Hispanics, and Whites. In the absence of further study the closing of the of incarcerations between Whites and the two minority groups may be a result of the changing crime and incarceration rates.

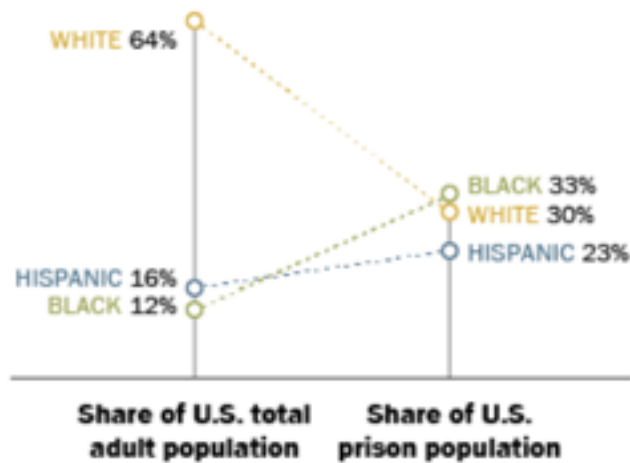
The Pew study also reports the two aspects of disparity, the percentage of Blacks, Whites, and Hispanics incarcerated compared to their percentage of the general population, and the racial disparity, the comparison of each group in the incarcerated population to each other (See Figure 12).

The pattern of these results is similar to Figure 5 with whites being 64% of the general population, blacks 12% and hispanics 16% (in this figure hispanics have surpassed blacks). The percent of incarcerations have narrowed.

Figure 13

### Blacks and Hispanics are overrepresented in U.S. prisons

Total U.S. adult population and U.S. prison population by race and Hispanic origin, 2016



Note: Whites and blacks include only those who are single-race, not Hispanic. Hispanics are of any race. Prison population is defined as inmates sentenced to more than a year in federal or state prison.

Source: Bureau of Justice Statistics.

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The good news is more noticeable in Figure 13. Here the incarcerated population has declined for all groups held in federal and state prison from 2009 to 2016. For Blacks and Whites the decrease is drastic and for Hispanics less so. At the end of 2016, federal and state prisons in the United States held about 486,900 inmates who were black and 439,800 who were white – a difference of 47,100, according to BJS. In 2009, by comparison, there were 584,800 blacks and 490,000 whites – a difference of 94,800. (This analysis counts only inmates sentenced to more than a year.) The decline in the Black-White gap between 2009 and 2016 was driven by a 17% decrease in the number of Black inmates during that span, compared to a 10% decrease in the number of White inmates (from 2006-2016 the decrease in the number of White prisoners is

13.27% and for Blacks 17.51%).<sup>114</sup> The gap between White and Hispanic imprisonment also narrowed between 2009 and 2016, due to the decrease in the number of white prisoners rather than a decrease in Hispanic prisoners, Hispanic inmates remained essentially flat.<sup>115</sup>

Figure 14

### Racial and ethnic gaps shrink in U.S. prison population

*Sentenced federal and state prisoners by race and Hispanic origin, 2009–2016*



2009 '10 '11 '12 '13 '14 '15 '16

Note: Whites and blacks include only those who are single-race, not Hispanic. Hispanics are of any race. Prison population is defined as inmates sentenced to more than a year in federal or state prison.

Source: Bureau of Justice Statistics.

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Although this is welcomed news the disparity continues to exist. It is important that we better understand just how closing the gap happened, can it be sustained, and can it be replicated throughout the criminal justice and prison system. In addition further study may find that there are practices at the federal and state prison level that have implications for reducing local jail populations. The above gains may prove difficult to hold on to in the era of Attorney General Jeff sessions. Sadie Gurman a Justice Department reporter for the Wall Street Journal reported that

Attorney General Sessions “is directing federal prosecutors to pursue the most serious charges possible against the vast majority of suspects, a reversal of Obama-era policies that is sure to send more people to prison and for much longer terms.”<sup>116</sup>

Illinois ranks 29th in state imprisonment rate with 360 per 100,000 population, compared to Louisiana which ranks first with 776 per 100,000, more than double that of Illinois. But when the state numbers are examined by racial disparity, Illinois ranks ninth with 8.8 Blacks to Whites imprisoned; New Jersey ranks first in this category with 12.2 Blacks to Whites imprisoned.<sup>117</sup>

Racial disparity in criminal justice is neither new nor accidental. The 1890 census reported that there were 82,329 prisoners in America, of that number 24,277 were African Americans or thirty percent of the “criminal” population, although they were only 12% of the general population. An explanation of this condition was given in *Race Traits and Tendencies of the American Negro*, by Fredrick L. Hoffman (1896). By Hoffman’s own account, his work was scientific evidence of the Negro’s inferiority to Whites, and was meant to serve as information for understanding the “Negro Problem” in the urban north. The title may tell the whole story; Hoffman asserted that Negroes possessed a racial trait of criminality. Hoffman was not alone in this effort. An earlier contributor to these theories was Nathan Shaler, a Harvard University professor of paleontology.

The period following the Civil War—post-war Reconstruction and Jim Crow—turned slavery into the “Negro Problem.” Much effort was spent on proving the Negro inferior to Whites, and justifying inhumane treatment. Frederick Douglass employed the phrase “having assumed our inferiority.”<sup>118</sup> In the Negro Problem era, the question debated was, “having assumed inferiority,” what is to be done with the inferior person among us? Black inferiority and criminal pathology justified harsh treatment, and even illegal lynchings for black law breakers. In a 1897 review of *Race Traits*, we read: “The main conclusion of the work is that the Negro race in America is deteriorating physically and morally in such manner as to point to ulterior extinction, and that this decline is due to ‘race traits’ rather than to conditions and circumstances of life.”<sup>119</sup> Hoffman and others discouraged any approach to crime that favored social changes.

According to Muhammad (2010), the census served as the data base of social science for scientific racism. The 1870, 1880, and 1890 census reports ushered in a racial data revolution that became the linchpin of an emerging white supremacist discourse on saving the nation through the acceptance of black death and self destruction. Muhammed writes, “using new data from the 1870, 1880, and 1890 U.S. census reports, the earliest demographic studies to measure the full scale of black life in freedom, these post-emancipation writers helped to create the racial knowledge necessary to shape the future of race relations.” Existing knowledge would be transformed by new social scientific theories of race and society.<sup>120</sup>

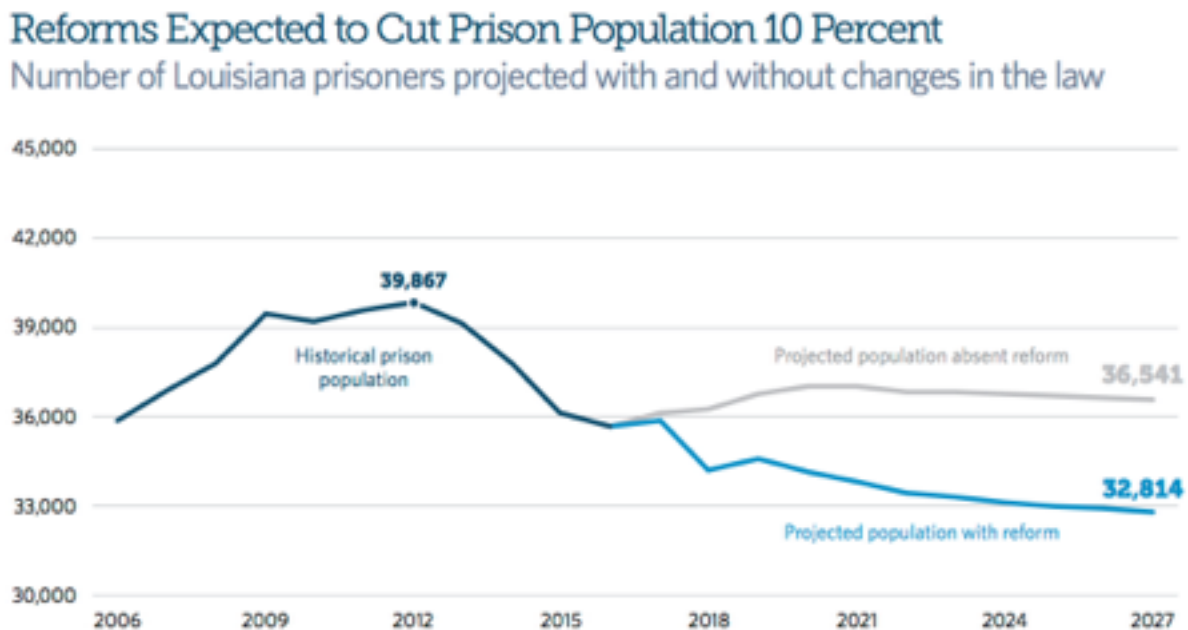
Thus the 1964 and later campaigns on fighting crime are built on a foundation of decades of debate and discourse on crime and African Americans. Both President Johnson’s political concerns of racial uprising and President Nixon’s hostility towards African Americans had ties to the “Negro Problem” era. African American have had to endure second-class citizenship, even after they were legally declared citizens with full and equal rights. The battle of inferiority versus



superiority ebbs and flows, but established practices become the unquestioned model for future discrimination. When punishment became the treatment of choice for crime, it was readily extended disproportionately to African Americans.

On a brighter note however the costs of incarceration had gotten so high that in Louisiana on June 15, 2017 the legislature passed 10 reinvestment bills designed to protect public safety, promote reentry, reduce recidivism, and reduce the incarcerated population. The reform also called for 70% of the savings to go towards programs to reduce recidivism and victim support. Previous statutory and administrative changes in correctional practices had reduced the incarcerated population by 9% from 2012-2015. With reform and a little more than a year after the signing of the reinvestment bills the population was projected to have decreased from 35,682 in 2016 to 32,814 in 2018. The legislature reported a \$12.2 million dollar savings to criminal justice, which is double the \$6.1 million dollars that Pew Charitable Trusts had projected.<sup>121</sup> The governor of Louisiana does not like leading the nation in incarcerating it's citizens.

Figure 14



Source: Louisiana Justice Reinvestment Task Force

## LOCAL CRIMINAL JUSTICE

Locally, crime and punishment has its own story of problems and challenges, albeit on a much smaller scale than the national reports and studies presented above. Champaign County is the 10th largest in the State of Illinois with a population of 208,861 (2016). Reported crimes were at their highest in 2005, with a crime rate of 396.43 per 10,000 in Champaign County and 390.01 at the national level. The crime rate reported for 2009/2010 was 298.38 per 10,000 population, as compared to 346.55 nationally. In this respect, Champaign County is not terribly different from the nation in terms of crime rate.<sup>122</sup>

In Champaign County, the jail census has been declining after reaching a peak of between 260-270 for the month of June 2013. Beginning in June 2015, there was a noticeable decline in the census which fell from 240 to less than 200 by December. January 2016 started off with 200 detainees, the second lowest total in five years, and from April to August the total dipped below 200. Of course what is not shown is the churn, is the total number of people passing through the county jail over the course of the year.

On the other hand, African Americans make up 12% of the county and 64% of the jail population.<sup>123</sup> That exceeds the national profile of racial imbalance in incarceration. Further, while Whites have significantly more charges filed, African Americans face longer stays in jail and receive more serious charges. Reducing African-American incarceration and fostering greater equity in the system are thus important priorities.

Beginning with an appointed Community Justice Task Force (2012-13) and a concurrent needs assessment conducted by the Institute for Law and Policy Planning (ILPP) the Champaign County criminal justice system has been the subject of several focused attempts in recent years to better understand how it operates. The “Champaign County Criminal Justice System Assessment: Final Report” was presented by ILPP to the Champaign County Board in September 2013. As noted in the Executive Summary, “Reform is often triggered by a crisis or especially troubling incident in a jail. In Champaign County, the call for reform was triggered by the Sheriff’s deep concerns with poor jail conditions and two suicides.”<sup>124</sup> The resulting assessment was directly concerned with jail reform and facility needs, and only indirectly with reducing incarceration overall. Nevertheless, the assessment offered recommendations for change that this committee found of interest.

A hopeful dimension to the ILPP assessment is their finding that: “The County’s response to the Draft Report has shown that Champaign has the potential to significantly redirect budget resources and pressures through strategic data driven planning while greatly improving public safety.”<sup>125</sup> So the investigators concluded that the county has an interest in committing resources for reform. In spite of this potentiality, the investigators also noted that the County Board must balance traditional justice conservatism and fiscal conservatism “with the input of research which helps us understand the role and importance of risk assessment, family and restorative justice, and crime prevention, in achieving public safety.” If the Board does not address the political and

fiscal tension, the county is likely to miss a reform opportunity and will continue to do more of the same, which fails to reduce the jail population, reduce costs to taxpayers and the general community, or increase public safety.

The state of Illinois is experimenting with pretrial reform. According to a recent state law having implications for local practices, cash bail can be suspended under certain circumstances. On June 9, 2017 the Chicago Tribune reported that Governor Bruce Rauner signed into law the Bail Reform Act of 2017. This act made possible the release of people charged with a nonviolent misdemeanor or low-level felony, such as theft, prostitution, driving under the influence, or drug possession, if they could not afford the 10% cash down payment. The law would eliminate cash bail, however they would be subject to an alternative option. The options would include electronic home monitoring, curfews, drug counseling, stay-away orders and in-person reporting. The article stated that in 2015 more than 1000 inmates held the Cook County Jail had served more time in custody than they were ultimately sentenced to. Rauner said, "What this does is provide fairness to folks who really are just struggling to make ends meet, commit a minor offense and should not be forced to languish in jail".<sup>126</sup> The spirit of this reform is one that reduces the jail population without sacrificing public safety.

Other significant contributions to the ongoing reform dialogue in the County have come from the community group Build Programs Not Jails and from the County Board appointed Racial Justice Task Force (RJTF), which presented its findings in October 2017. The RJTF recommendations are of particular interest to the present effort, for they were developed specifically to reduce racial disparities in the criminal justice system.

As will be evident in the recommendation section below, we find these recent study and reform efforts helpful and hopeful, provided they are seized upon with sufficient vigor and resolve. In addition in the last few years, the State of Illinois has undertaken major investigations of criminal justice practices, and these signal the need for reform in ways that parallel and complement the local recommendations. See the final report of the Illinois State Commission on Criminal Justice and Sentencing Reform (December 2016) and the report of the Statutory Court Fee Task Force (June 1, 2016).

## RECOMMENDATIONS THE ROAD TO TRANSFORMING INCARCERATION

As we have seen, the existing criminal justice system is complicated, convoluted, and ill-conceived. Rather than simply reform the criminal justice system we suggest smart decarceration-transformation. The Center for Social Development says: Achieving smart decarceration will require major shifts in the criminal justice system. For the country to achieve effective, sustainable, and socially just smart-decceration three things must be accomplished, 1. substantially reduce the incarcerated population in jails and prisons. 2. Redress the existing social disparities among the incarcerated. 3. Maximize public safety and well-being.<sup>127</sup> Nationally, the NAACP has committed itself to the vital and challenging project of transforming our broken system. The NAACP advocates for smarter, results-based criminal justice policies to keep our communities safe, including treatment for addiction and mental health problems, judicial discretion in sentencing, and an end to racial disparities at all levels of the system.<sup>128</sup> We should prepare ourselves for a long messy journey.

The Champaign County NAACP has responded to the national NAACP priority by appointing our committee and commissioning this report with recommendations appropriate to a local initiative to reform criminal justice. The following recommendations are drawn from the many studies and reports reviewed, both national and local, and those generated by members of the committee.

The goals of the recommendations are to hold people accountable for misdeeds and, whenever possible, to employ a restorative justice approach that prepares people to become productive citizens, such that our criminal justice system is fair and just, and enhances public safety. Some recommendations are offered because they have implications for temporary incarceration relief. Others are offered with the intention of transforming current practices from punishment to opportunity, reducing crime, reducing costs, rebuilding lives, and restoring individuals, families, and communities. Until we recognize a more complete narrative concerning our history, diverse human experiences, and social and economic realities, existing divisions fed by stubborn stereotypes, and superficial perspectives will inevitably prevail. Thus with Beckett's "balanced needs" guiding us we propose immediate action within Champaign County to build strong foundations for our collective reform efforts, through public education, dialogue, and policy change. We recommend as follows:

**1. The Champaign County NAACP should build an infrastructure that will engage existing policies and practices associated with mass incarceration, and advocate for more humane policies and practices that respond to root causes and preference restorative justice practices.** The first step is to appoint a permanent standing committee and launch an office devoted to community justice advocacy. The Ella Baker Center for Human Rights in Oakland, California can serve as a useful model of a high-impact strategy and action center. The ongoing work should include documentation, public education, and advocacy through initiatives such as these:

A. In partnership with local libraries, the NAACP should develop a crime and punishment bibliography and depository of books and articles on incarceration, public safety, crime, and justice. This print and electronic material will be useful to those studying mass incarceration as well as those actively engaged in bringing about change in the justice system. The Law Library at the University of Illinois should be considered a key resource in this regard.

B. The NAACP should advocate for the collection of data that ask questions of the public and the justice system to help develop more grounded responses to crime and punishment. The data can also be used to compare against national data on crime and incarceration. The Community Data Portal described and recommended by the Racial Justice Task Force can serve this purpose, if properly funded and overseen.

C. The NAACP should design an advocacy plan for criminal justice reform that gives a prominent role to the faith community and is developed in collaboration with the Ministerial Alliance of Champaign-Urbana & Vicinity and the Interfaith Alliance of Champaign County.

This initiative would include both educational and volunteer activities and a speakers bureau. Examples of the former would include Sunday School lessons and teach-ins; volunteering with local groups such as First Followers and the Education Justice Program; and community vigils and other public programs that nurture a shared commitment to healthy, inclusive, peaceful community. The speakers bureau would feature racially diverse speaking teams of two or more persons and focus on raising public awareness of justice issues in our local context. Patterns of discrimination and segregation, poverty, trauma, and incarceration are among the topics to explore. We envision meaningful discussions about desirable systemic changes, framed as moral imperatives, e.g., reducing incarceration through restorative practices and mental health and other services. Target audiences include service clubs, civic groups, religious organizations, elected bodies, and public venues (libraries, park district facilities, senior citizen centers, media outlets).

D. In partnership with youth clubs and community organizations, the NAACP should develop a campaign of prevention education. This campaign would be directed at educating

individuals, especially teenage youth and their families and sponsors, about activities that put them at risk vis-a-vis law enforcement.

E. The NAACP should help ensure robust support for returning citizens and their families. Encouraging the work of the Reentry Council, supporting First Followers, and advocating for affordable housing options are priorities for both healthy community and reduced recidivism.

F. The NAACP should explore programs that restore the civil rights of those formerly incarcerated and awaiting trial. One current example is Illinois HB 4469, which provides avenues for detainees awaiting trial to cast their ballots and provides for voter registration education for those being released.

Further in the spirit of Frederick Douglass assure that those who are incarcerated are permitted to vote. In a democracy “citizens” vote and participate in the political process.

**2. The NAACP should go on record as insisting upon the implementation of a best-practice pre-trial assessment protocol in Champaign County.** This will reduce the confinement of those awaiting trial without compromising public safety. Great care must be taken to guard against racial bias and to ensure adequate communication with defendants regarding their cases. See the Racial Justice Task Force Pretrial Jail Confinement Recommendations.

**3. The NAACP should advocate with the State’s Attorney and other public officials for the implementation of an adult diversion program.** This is in line with the local restorative justice recommendations of the Community Justice Task Force and the Racial Justice Task Force as well as the success of programs implemented by prosecutors in Milwaukee County, WI, Mecklenburg County, NC, and San Diego County, CA.

**4. The NAACP should vigorously support efforts to integrate Restorative Practices within both Urbana School District #116, and Champaign Unit 4 School District.** In both districts there is an over representation of students of color in discipline referrals, suspensions, and expulsions. This pattern is coupled with an unfortunate negative perception of school within these communities, a perception that can be negatively correlated with student engagement, academics, and well-being, and parental involvement. The objectives of restorative practices are: to increase the effectiveness of staff responses to challenging situations with students, other staff, and families; to improve the effectiveness of discipline and incentive methods; to increase mutual learning and self-responsibility following acts of harm; to improve classroom and school climate; to reduce the amount of time students spend out of class and out of school; to reduce the discipline gap for students of color; to reduce the number of more serious conflicts, (e.g. physical fights); and ultimately, to disrupt the school-to-prison pipeline.

**5. The NAACP should advocate for a flourishing behavioral health system of care that derives from community collaboration among social services, the medical community, the police, the jail administration, and other units of government, as recommended by the Community Justice Task Force and Institute for Law and Policy Planning.** The objective of this approach is to avoid incarceration, reduce recidivism, and promote rehabilitation for persons with mental health and substance abuse disorders (see recommendation #3, Community Justice Task Force Report, 2013). The trauma-informed care initiative of Neighborhood Champions, supported through the Community Coalition, must be an integral part of this effort.

**6. The NAACP should endorse the recommendations regarding fees and costs put forth by the Racial Justice Task Force (2017).** The first three of their recommendations are presented here, as set out in the RJTF report:

A. The Champaign County Board County should allocate sufficient funds for the Circuit Clerk's office to enable that office to waive all court fees for persons with incomes below the federal poverty level and to reduce fees for all whose incomes are 101-400% of the poverty level until the state enacts such legislation to do so.

B. County Board members and criminal-justice officials should advocate for passage of the two bills described above (HB 2591 and HB 3920 in 2017) that will reduce the impact of court fees on low-income persons convicted of criminal or traffic offenses.

C. A protocol should be established to grant low-income and indigent persons, at the conclusion of a case, a period longer than 180 days (up to five years) for paying court fines and fees without the debt being sent to collection. This would prevent the additional court filings and hearings that are now necessary for people whose incomes indicate they will likely be unable to pay all fees and fines within six months.

**7. The NAACP should actively pursue with local law enforcement the implementation of two recommendations made by the Racial Justice Task Force:**

A. Local law enforcement agencies should increase community collaboration for maintaining public safety. Law enforcement agencies in Champaign County must listen closely to and adequately respond to community members' concerns and questions. Some version of this is being done through the Champaign Community Coalition.

B. Local law enforcement agencies should investigate and identify how their policies, procedures, and practices, particularly those involving officer discretion, may be contributing to racial disparities at the stop and arrest levels of the criminal-justice system and to take corrective action steps. African-American representatives from the community should participate in this process. The County Board and local city councils should ensure that local law enforcement agencies meet this obligation.

## CONCLUSION

It is highly questionable whether the law and order campaigns that gave birth to mass incarceration were ever really about fighting crime and enhancing public safety. Punishment is not the only society response to crime however, once crime became politicized the following agenda ignored all other possible alternative responses. Now after a forty year experiment it is obvious punishment is bankrupt not resulting in any of the promises of safety, reduced crime, affordability, and most of all justice. When we wade through the foundational crime myths of those seeking and holding political power, we see clearly that ideological reform on crime, punishment, and justice, not solely criminal justice (process) reform, is needed. We are in danger of repeating past mistakes, if we retain the punitive imperative and incarceration as the go-to tool. Instead, we need to pursue policies and practices that restore and empower people and communities. We are in desperate need of a criminal justice transformation.

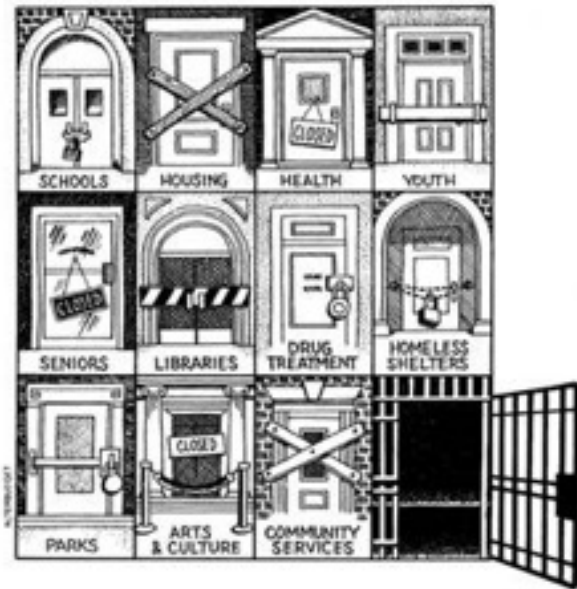
How we got here is both accidental and planned. The crime rate began to climb in the 1960's into the 80's. Beginning in 1964 political campaign pledges vowed to free the nation from violence, and to restore order. Mandatory minimum sentencing from the 1973 Rockefeller drug laws placed more people in prison for longer periods of time around possession of marijuana and other drugs. In 1984 the federal government created the United States Commission on Sentencing. It instituted sentencing guidelines, and abolished parole for federal crimes. By the end of the century over half the states had adopted "three strikes and you're out laws.

Racism also has played, and continues to play, a significant role in the levels of incarceration. As Equal Justice Initiative founder Bryan Stevenson states, "I don't think you can understand the tremendous increase in the incarceration rates, the targeting of black people and menacing of communities of color and poor communities without understanding this history. We have to understand enslavement in a new way."<sup>129</sup> In African-American families and communities, mass incarceration has contributed to the rise of crime. It has devastated the informal social control of families and communities, shattered social relationships, and robbed families and communities of the opportunity to pursue their dreams and future. The Brennan Center reports that over time incarcerations have very little effect on crime, and sadly it continues. While there is no silver bullet to reduce crime they say some police practices, and social and economic factors have a greater effect on reducing crime than incarcerations do.<sup>130</sup> It is to our advantage as a nation to move away from what does not work, and embrace that which has a better chance of reducing crime. Incarceration is a failed social experiment.

The cartoon below from Build Programs not Jails (posted February 12, 2017)<sup>131</sup> captures the damage that has been done to communities: it graphically illustrates the reality of the opportunity-doors open to residents of many poor and minority community. Every institution and resource is



boarded up or locked. The only open door is jail or prison. To be living in such an environment would do little to instill hopefulness for one's future.



For too long, we have overlooked the growing financial costs associated with crime prevention, and the harm that incarceration does to individuals, families, and communities. We should be guided by a new world view and set of questions regarding crime and punishment, and boundaries of society's responsibility. These questions have to do with human well-being, and livable, productive communities. A set of balanced questions must be put before our citizens and legislators. What is it we are trying to do? With Milwaukee County District Attorney John Chisholm, let us ask, what is the best way to keep our community and our fellow citizens healthy? What essential services are lacking or inadequately funded? Which groups are suffering disproportionately? As reported crime incidents and incarcerations are now falling, it is time to dismantle the mass incarceration structures and design a justice system that protects both victims and offenders, reduces crime, prioritizes community health and the well-being of all, and promotes justice.

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The opening sentencing of this amendment reads:

The General Assembly recognizes that the promotion of public safety and protection of crime victim rights are of the main focuses of our State's criminal justice system; it further acknowledges that protecting the rights of the accused is central to the integrity of our State's criminal justice system.

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