

Sources: *The Sentencing Project, Marshall Institute, The New Jim Crow, National Council of the Churches of Christ in the United States, Opportunity Agenda, Osborne Assn, The Brennan Center for Justice*

“We need to stop talking about mass incarceration. ...Yes, the numbers justify calling it “mass.” But people experience imprisonment as something quite personal. It’s your father wearing greens. Your husband is “upstate.” Your Mommy cuffed in the back of a patrol car. When you walk into that visiting room, you see your son incarcerated, and other parents visiting their sons, not “masses”. We can only see people as the worst thing they have ever done if we don’t actually see them.” - Elizabeth Gaynes, President and CEO, Osborne Association. (abridged)

OVERVIEW

Mass incarceration “refers not only to the criminal justice system, but also to the larger web of laws, rules, policies and customs that control those labeled criminals both in and out of prison” (*Michelle Alexander, “The New Jim Crow” 2012:13*).

Values: We all want to live in safe communities, to be treated with dignity and respect. Our criminal justice policies should reflect that. We are a nation aspiring to life, liberty and the pursuit of happiness. We need a pragmatic approach to criminal justice reform that is responsible, right for our communities and true to our values.

Problems: Our current laws see incarceration as the default punishment for most crimes and the main response to drug issues, conflicts; disorder; immigration infractions, etc. An outdated criminal justice system drains resources and disrupts communities. The system is too big and costly and results in too many people in prison. This level of incarceration has massive societal consequences. This system, by design, treats people unfairly. It drives and reinforces deep seated racial inequity and disproportionately punishes African Americans. It ruins people’s lives and breaks up families.

Solutions: It is time to change laws to reflect and serve our country’s public safety needs and our community’s values. We need pragmatic and varied approaches to focus on prevention and alternatives, investing in jobs training, education, drug treatment and mental health programs instead of pouring money into prisons and detention centers.

BACKGROUND

The United States is the world’s leader in incarceration.

There are 2.2 million people in the nation’s prisons and jails—a 500% increase over the last 40 years. The United States outpaces Iran, Zimbabwe, and Singapore in incarcerating its people.



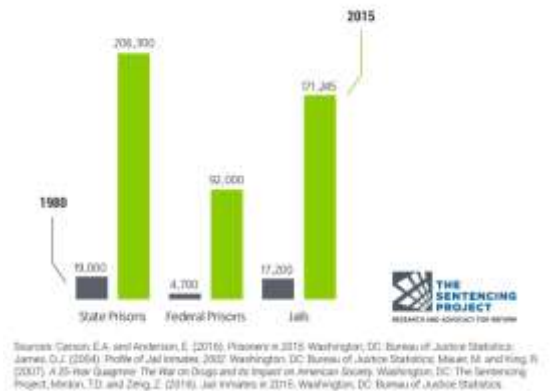
Changes in law and policy, not changes in crime rates, explain most of this increase. The results are overcrowding in prisons and fiscal burdens on states, despite increasing evidence that large-scale incarceration is not an effective means of achieving public safety.

HOW DID THIS HAPPEN?

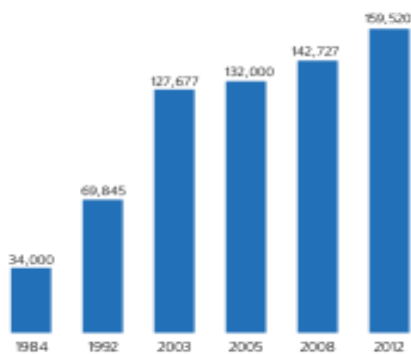
1) We send more people to prison.

A series of law enforcement and sentencing policy changes of the “tough on crime” era resulted in dramatic growth in incarceration. District Attorneys also are charging people more aggressively. Since the official beginning of the War on Drugs in 1982, the number of people incarcerated for drug offenses in the U.S. skyrocketed from 40,900 in 1980 to 450,345 in 2016. Now there are more people behind bars for a drug offense than the number of people who were in prison or jail for any crime in 1980. The number of people sentenced to prison for property and violent crimes has increased even during periods when crime rates have declined.

Number of People in Prisons and Jails for Drug Offenses, 1980 and 2015



Number of People Serving Life Sentences, 1984-2012



Source: Mellis, A. (2013). *Life Goes On: The Historic Rise in Life Sentences in America*. Washington, DC: The Sentencing Project.



2) We send people to prison for much longer terms.

Harsh sentencing laws like mandatory minimums, combined with cutbacks in parole release, keep people in prison for longer periods of time. The National Research Council reported that half of the 222% growth in the state prison population between 1980 and 2010 was due to an increase of time served in prison for all offenses. There has also been a historic rise in the use of life sentences and life without parole. One in nine people in prison is now serving a life sentence..

WHAT IS THE EFFECT ON PUBLIC SAFETY?

Incarceration has some impact in reducing crime, but with diminishing returns.

Crime rates have declined substantially since the early 1990s, but studies suggest that rising imprisonment has not played a major role in this trend. Incarceration is ineffective at preventing recidivism and at reducing certain kinds of crimes: in particular, youth crimes -- many of which are committed in groups -- and drug crimes. People tend to “age out” of crime: crime peaks in the teenage years, begins to decline when adults are in their mid-20s and drops sharply as they reach their 30s and 40s. The National Research Council study concludes: **“Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.”** The Brennan Center For Justice estimates that 49% of the federal prison population is incarcerated without an adequate public safety reason. Rather than creating safety, some studies show that prison may have a “criminogenic” effect, meaning that imprisonment can actually lead people to commit more crimes after release.

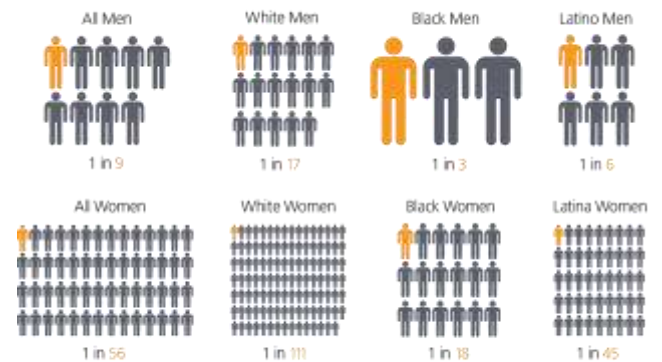
MASS INCARCERATION HAS NOT TOUCHED ALL COMMUNITIES EQUALLY

The racial impact of mass incarceration

Sentencing policies, implicit racial bias, and socioeconomic inequity contribute to racial disparities at every level of the criminal justice system. People of color make up 37% of the U.S. population but 67% of the prison population.

African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to face stiff sentences. Black men are six times as likely to be incarcerated as white men; Hispanic men are more than twice as likely to be incarcerated as non-Hispanic white men.

Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001



Source: Bonczar, T. (2003). Prevalence of Imprisonment in the U.S. Population, 1974-2001. Washington, DC: Bureau of Justice Statistics.

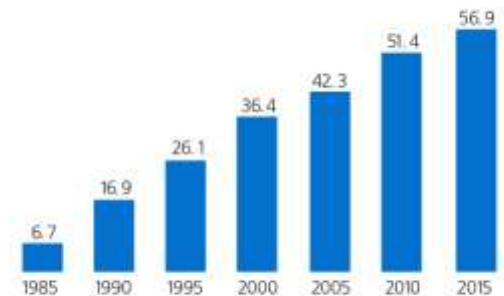


“Mass incarceration has created a state of racial oppression unlike any other in our history society is one in which incarceration has been normalized, and in which all of the racial stereotypes and assumptions that gave rise to the system are now embraced (or at least internalized) by people of all colors, from all walks of life, and in every major political party.” (M. Alexander)

Criminal Justice System costs are eating up our community resources.

At every level from our city police, county jails, state courts and prisons, to the federal budget, the rising costs of corrections is affecting our nations’ and our communities abilities to fund other priorities. In Hamilton County, officials predict a \$29 million deficit in 2019; law enforcement including the courts, the prosecutor’s office, the public defender’s office, the coroner and the sheriff, consume more than two-thirds of the county’s operating budget, those departments are the first targets when budgets get tight.

State Expenditures on Corrections in Billions, 1985-2015



Source: National Association of State Budget Officers (1985-2015). State Expenditure Report Series. Washington, DC: National Association of State Budget Officers.



RECOMMENDATIONS AND REFORMS

Focus on correcting policies known to unfairly affect people of color.

The U.S. criminal justice system is rooted in racism and inequality, starting from a legacy of legal slavery. Efforts to undo mass incarceration require explicit and intentional racial justice strategies. Lawmakers can reform policies that seem neutral but that can result in disparate outcomes, such as risk-assessment tools, discriminatory gang sentencing enhancements or geography-based school zone penalties. State and local governments around the country are developing innovative ways to address racial disparities. Cities and towns can reform law enforcement practices to reduce concentrated over-policing and

prioritize community oriented approaches instead. They can also reject unfair policies such as pretrial money bail.

Revising how we think about people who commit crime changes how we respond.

Teenagers are subject to adult court jurisdiction in certain circumstances, and policies expanded this in the “tough on crime” era of the 1980s and 1990s. But awareness of the violence inflicted on juveniles in adult facilities and scientific research about childhood brain development have changed public policy. Most people understand that teenagers make poor choices but deserve second chances; it is counterproductive to subject them to a brutal prison environment. As a result, many juveniles who would have gone to adult prisons are now in juvenile facilities that are better designed for their needs, or have been diverted from confinement altogether.

We can start by restoring an individualized and rehabilitative approach to working with young adults; seeking to avoid punishments that will diminish their life prospects. And if such an approach makes sense for juveniles it also can be adapted for adults. The life history of individuals in prison shows that, more often than not, they committed their crimes after major setbacks — addiction, loss of jobs or housing — for which they received little support. Approximately 79 percent of today’s prisoners suffer from either drug addiction or mental illness, and 40 percent suffer from both. Alternative interventions such as treatment could be more effective sanctions for many of these individuals.

If we want to end mass incarceration we need to change our mindset to emphasize prevention and restoration over punishment. There need to be consequences for criminal behavior, but we need to find a balance with helping offenders address the factors that contributed to their crimes.

After nearly 40 years of continued growth, the U.S. prison population has stabilized in recent years.

This is partially a result of declining crime rates, but has largely been achieved through changes in policy and practice. For more than a decade, the political climate of criminal justice reform has been evolving toward evidence-based approaches to public safety. This can be seen in a variety of legislative, judicial, and policy changes that have successfully decreased incarceration without adverse impacts on public safety.

Many changes are happening at the state level. For example, California voters passed ballot measure Proposition 47 in 2014, which reclassified certain low-level property and drug crimes from felonies to misdemeanors, and will reinvest some of the fiscal savings into prevention programs. And while Ohio did not pass Issue 1, several criminal justice proposals are making their way through the General Assembly.

At the federal level:

- Congress passed the Fair Sentencing Act in 2010, which reduced the disparity in sentencing between crack and powder cocaine offenses
- In 2014, the United States Sentencing Commission unanimously voted to reduce excessive sentences for up to 46,000 people currently serving time for federal drug offenses

WHERE DO WE GO FROM HERE? *Some varying suggestions from researchers and advocates:*

LEAGUE POSITIONS—LWV SUPPORTS:

- Effective re-entry planning and follow-up for people released from both behavioral health hospitalization and the criminal justice system
- Problem solving or specialty courts, including mental health and drug courts, to provide needed treatment and avoid inappropriate entry into the criminal justice system.

1) INVEST IN PREVENTION

- a) Shift resources to community-based prevention, jobs training programs and education, improved access to mental health treatment and treatment for substance abuse.
- b) Promote youth development and respond to delinquency in age-appropriate ways.
- c) Explicitly address race: Examine and address the policies and practices, conscious or not, that contribute to racial inequity at every stage of the justice system.
- d) Modernize law enforcement: recruit and train police in tactics focused on crime prevention and de-escalation to reduce unnecessary arrests and uses of force. Build police skills, tools, accountability and community involvement.

2) CHANGE HOW RESPOND

- a) Decriminalize things that aren't really crimes: Fix laws that imprison people who have used drugs, experienced homelessness or are caught up in our broken immigration laws.
- b) Reform Bail: Don't jail people who are presumed innocent: Hamilton County jail is often filled with people awaiting trial. Reformers say people who haven't been convicted shouldn't be in jail anyway.
- c) Eliminate incarceration for failure to pay fines and fees, especially mounting penalties from private debt collection firms that create "debtor's prisons" in local jails.
- d) Eliminate prison terms for lower-level offenses and shorten prison terms for other crimes.
- e) Eliminate mandatory minimum sentences and cut back on excessively lengthy sentences; for example, by imposing a 20-year maximum on prison terms.
- f) Eliminate systemic incentives for more incarceration: these include federal subsidies to local areas for jail construction; elected prosecutors who are rewarded for the number and length of imprisonments; and prison corporations who lobby for services they can sell to governments.

3) ASSIST PEOPLE DURING AND AFTER INCARCERATION

- a) Use prison time to help people grow and heal: Offer effective rehabilitation, education, mental health and addiction treatment, trauma care and more during incarceration.
- b) Eliminate the quick return to prison for minor probation violations like missed appointments.
- c) Remove barriers that make it harder for individuals with criminal records to return to the community. This includes removing collateral sanctions for employment, offering better re-entry and reunification planning, affordable housing, re-enfranchising voters.

"We know that people released from prison face a lifetime of discrimination, scorn, and exclusion, and yet we claim not to know that an under caste exists" (M. Alexander)

Discussion Questions:

1. While we can recognize individual bad choices, what systemic issues lead individuals to becoming incarcerated?
2. Can we envision anything different? If we had no prisons, how else could we solve problems? What might a better system look like? How else can we keep communities safe?
3. Theft, Assault, Drug possession are all crimes that can carry the consequence of prison, as well as loss of opportunity to find employment or enroll in higher education, receive federal benefits or vote. Are these reasonable consequences? Are they effective deterrents? Why or why not?
4. What contributes to recidivism?
5. Some advocates of “Non-enforcement and Harm Reduction” point out that other countries choose not to enforce laws based on public health, ethics, or even cost-benefit analysis. Instead of arresting people for using illegal drugs, Canada and the Netherlands offer needle exchanges or safe injection sites. In America, we generally seek consistent enforcement, even if enforcement does more harm than good, or if it would be easier and cheaper not to enforce. What do you think of this dilemma?

GENERAL OUTLINE - INCARCERATION ISSUES FOR FURTHER STUDY

- **What is a criminal offense?** What is considered criminal changes over time: Prohibition and decriminalization; prostitute or victim of sex trafficking? Is addiction a crime or a disease?
- **Police Training, Police Practices and Arrests**
- **Bail, and pre-trial incarceration**
- **Trial, plea bargaining and fair representation:** Most convictions are by plea bargain without a trial; funding for defense attorneys; discretion in what offenses are charged.
- **Jail vs. Prison:** Some corrections reform moving people out of prisons moves them from federal or state institutions or county jails, moving the costs to other levels of government.
- **For-Profit Prisons, prison industries, incentives to incarcerate**
- **Sentencing- length of sentence, alternatives to incarceration; Restorative Justice:** Release through good behavior vs. truth in sentencing.
- **Aging in prison:** Elderly prisoners- health care costs to system; lack of supports when released.
- **Prison conditions, Prisoner organizing and advocacy:** Solitary confinement, overcrowding, educational opportunities, aging infrastructure, prison worker rights; prisoner strikes.
- **Effects on family and neighborhood of incarceration:** Adverse impact for children; Loss to the economy and community of missing adults of earning/parenting age.
- **Parole:** At least 61,000 nationwide are in prison for minor parole violations.
- **Debtor's prison:** incarceration for failure to pay court costs and fines, dependence on penalties and fees for government income; for-profit debt-collection firms.
- **Reentry:** How to plan for/facilitate a good return. When is the debt to society paid?
- **Disparate Impact**