



CRIMINAL JUSTICE STUDY MATERIALS

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INTRODUCTION

*“There is a point beyond which even justice becomes unjust.”
-- Sophocles*

Among the many usurpations and injuries inflicted by the British King, listed by the Founders in the Declaration of Independence, one of the shortest, simplest and most telling accusations was that “he has obstructed the Administration of Justice.” When those same men gathered eleven years later to draft a Constitution, the Administration of Justice was still much on their minds. As they laid out the governing structure of the new nation, they devoted two of the seven Articles – the Third and the Sixth – wholly or in part, to creating criminal and civil judicial systems, and establishing that the federal laws and treaties to be made within these structures would be the supreme law of the land.

As sweeping and revolutionary as these provisions were, the Founders had not yet finished with the business of Justice. And so they simultaneously passed ten amendments to the Constitution, the Bill of Rights, half of which were devoted to safeguarding the rights of individuals during the administration of justice. They assured that no one in the new nation could be subjected to unreasonable searches and seizures, nor could they be tried in criminal or civil courts without a grand jury deciding that there was sufficient reason to hand down an indictment outlining the charges against them. They decreed that everyone accused of a crime had the right to a fair, speedy and public trial before a local and impartial jury; and that they could not be compelled to testify against themselves. They established a constitutional right to legal counsel in both criminal and civil courts.

These rights abide.

But for nearly half a century these safeguards, fundamental to the very nature of American justice, have been steadily eroding as the criminal justice system reacted to an unprecedented spike in crime rates. Research indicates that many of the policies and practices adopted in response to this surge have been undergirded by the systemic racism and discrimination against minority groups that have been a part of the larger culture. The result of these co-existing factors has been the mass incarceration of American citizens, disproportionately impacting communities of color. Mandatory sentencing laws, shifts in the application of bail bonding, and alternatives to incarceration are among the many elements that affect the rates of arrest and imprisonment that are examined in the pre-incarceration sections of the study materials that follow. Prison conditions, sexual violence, employment of prisoners, and reentry into society are among the post-incarceration issues to be explored in the development of consensus for the LWVPA position on the Criminal Justice System.

Simply processing the volume of defendants who now come before the courts has turned the Founders’ elegantly simple and deliberative system into one that prioritizes expediency. To keep cases moving forward, 97% of all defendants enter plea bargains, without supervision by a judge. Bail is set, usually on a sliding scale related to the charges, and not the risk of flight or danger to the community. Thus, jails have become to some extent a type of debtor’s prison in which suspects who are not able to pay bail costs may be held for a year or more – without ever having been proven guilty.

Today's justice system was not planned so much as metastasized, the result of a very real increase in violent crime that began just as the first Baby Boomers reached the prime crime years between 16 and 24. The forty years between 1960 and 2000 saw a steady growth of criminal behavior. According to the FBI's Uniform Crime report, violent crimes, defined as murder and non-negligent homicide, forcible rape, robbery and aggravated assault, occurred at the rate of 160.9 crimes per 100,000 residents in 1960. That was up to 200.2 in 1965. After that, the climb began in earnest until it peaked at a rate of 758.2 crimes per 100,000 in 1991. It fell slightly for the next few years, then went down by sizable notches through 2012, the most recent year for which data are available. The rate now stands at 387.8. The same trend held true in Pennsylvania, which began with a crime rate of 99.0 in 1960, topped out at 480.3 in 1996, and has finally fallen to 348.7 in 2012.

The United States was not alone in experiencing a rise and decline in crime during the same years. Those countries considered "developed nations" at the end of the Second World War -- notably Western European nations not in the political and military sphere of the Soviet Union, Canada and the United States -- all experienced a similar spike and decline in violent crime since the 1960s. Data on homicides, accepted as an accurate proxy for violent crime in modern countries, gathered by OECD (Organization for Economic Cooperation and Development) show very similar modulations in annual rates for Western European nations, the U.S. and Canada from 1960 through 2010.

What is different during the last 50 years is that only the United States responded to crime increases with mass incarceration. The U.S. holds 25% of all the prisoners in the world, despite a mere 5% share of global population. When compared to the cohort of developed nations, the incarceration rates are startlingly different. According to the most recent data, compiled in 2012, the total American incarceration rate was 710 per 100,000 U.S. residents -- five times the average global incarceration rate of 130 per 100,000. The large majority of Western European countries have rates under 100. The American incarceration rate, started at 220 per 100,000 in 1970. It peaked at 756 in 2008 before beginning a glacial retreat.

Mass incarceration has come at a stunning cost. In 1980, the federal government spent \$970 million on prisons alone; by 2013, expenditures totaled \$6.7 billion (all figures adjusted for inflation). The total cost of the entire criminal justice system, including courts, prisons and local jails is \$260 billion a year. In Pennsylvania, incarceration rates skyrocketed almost 500% just since 1980. Spending on state prisons went up \$94 million in 1980 to \$1.8 billion -- an increase of 1,882%. The cost of incarceration in local jails is \$865 million. Today, 1 in 248 Pennsylvania residents is behind the bars of state prisons and local jails, at a cost of \$2.48 billion.

Money and inmate numbers are easier to measure than less visible costs of incarceration: The lost economic productivity of the 2.2 million Americans currently locked up across the country. The disruption of family and community life, including loss or diminution of family income, often leading to eviction and other hardships. The impact of absent parents on children, such as increased risk of behavioral and emotional problems, impacts on effective schooling and other developmental outcomes in high-crime areas.

And then there are the immeasurable effects on the victims of crime, their families and friends. Medical costs and lost income can be calculated. But emotional and psychological impacts -- notably depression on the part of victims' spouses and the effects of emotional distress on children -- exact a terrible toll. In the baldest terms, researchers have discovered an overarching impact of violent crime as it ripples through the mind of a community: A single violent crime causes 1 person to move elsewhere to live. One murder causes an out-migration that reduces a city's population by 70 persons.

In some areas, prosecutorial cultures have developed. Philadelphia is, unfortunately, a national symbol of a prosecutorial zeal. Although its population is just 12% of the state's total, 30% of the inmates now incarcerated in state prisons were sentenced in Philadelphia County. Over the previous ten years, according to a 2009 Philadelphia Inquirer investigation, the success in murder trials (82%) was greater than in other violent crimes. Nationally, prosecutors in big cities win felony convictions in half of violent-crime cases according to federal studies. In Philadelphia, prosecutors won only 20 percent. So the emphasis in Philadelphia was on murder investigations and prosecutions, not other violent crimes.

Philadelphia has sent 56 prisoners to Death Row, making it one of the three counties in the U.S. with the highest capital conviction rates. However, Philadelphia prosecutors also had 60% of their death penalty convictions reversed on appeal. A 2007 study found that 41 of 67 convictions overturned by appeals courts were tried in Philadelphia. As recently as 2013, three murders and a death penalty case were struck down by appeals judges in a single year. The reversal rates suggest that even highly scrutinized capital cases may not have been supported by the facts, or that juries rendered judgments in trials with severe procedural or constitutional faults.

Clearly these costs are unsustainable for American society in both financial and human terms. Thus, the Pennsylvania League of Women Voters approved a study of the state's criminal justice system at its 2015 biennial convention. A committee was formed to initiate an analysis for local Leagues to study. Consensus questions were developed to guide the establishment of a state-wide criminal justice position. A summary of the major areas of study for local Leagues follows, with references and recommended reading at the end.

Bail and Bonding

In the Middle Ages, when kings, not courts, decided the fate of transgressors, a speedy trial before a monarch was impractical, if not impossible. To temper the unfairness of lengthy delays before trials, posting bail was devised as a method to prevent the accused from languishing in prison while also creating a monetary incentive for alleged offenders to show up whenever the monarch was available to hold a trial. As originally conceived, bail was not meant to serve as a fine or punishment. Nor was it intended to function as a sliding-scale reflection of the seriousness of crimes alleged against a defendant who had not yet been convicted of them. The amount of bail required to secure release from pre-trial imprisonment has traditionally been set according to the defendant's ability to pay. If a judge determines that an arrestee is unlikely to flee or to pose a risk to society, the long history of common law argues that a defendant be released until a trial determines his guilt or innocence. When courts, judges and juries replaced monarchs, a speedy trial became both practical and a measure of fairness within the criminal justice system

A speedy trial is constitutionally guaranteed in the United States, and under current Pennsylvania rulings, defendants must be brought before a magistrate for a hearing to determine set bail "without unnecessary delay." With unusual exceptions, the guarantee of swift adjudication is observed in the initial stages after arrest in Pennsylvania.

A full-scale trial may proceed far more slowly, depending upon motions, postponements, and other exigencies. The impact of trial delays would be of far less consequence if the system for determining bail functioned as intended. The Eighth Amendment states that "Excessive bail shall not be required, nor excessive fines imposed..." Rule 524 of the Pennsylvania Code specifies that "the amount of monetary (bail) shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with the conditions" of bail. Under this formulation, bail set at \$500 is as powerful an incentive for one defendant as \$5 million is to another. For defendants with ties to family, job and community networks, no monetary incentive is needed to insure appearance at court proceedings, and the vast majority of suspects are released without posting money, known as release on their own recognizance (ROR) to await trial. In time, 90% of ROR arrestees duly appear for trial. But for those not granted ROR, constitutional guarantees to post bail and remain free on bail until a trial has proven their guilt are problematic. Instead, they end up being held in jail because they either were not granted or could not pay for bail. In the years between 2000 and the middle of 2014, fully 95% of the growth of inmate populations in local jails was due to the increase in prisoners imprisoned for lack of money for bail. None of them had yet been convicted of the crimes that led to their arrest.

In Pennsylvania, bail is determined by local magistrates and judges. The goal of magistrates and judges is to determine those defendants who pose a risk to public safety -- particularly those who appear likely to commit violent crimes -- or who are likely to flee and keep them in custody until trial. The remaining defendants are supposed to be released, with or without posting bail. If they fail to appear for trial and hearings, the money they posted will be forfeited to the state.

But constitutional safeguards often break down in the controversies that envelope bail decisions. At this first stage after arrest, all defendants in American courts are considered innocent, regardless of the crimes they are accused of committing. But that is not always enough to dispel an atmosphere of accusation and outrage that may follow arrest. Suspects who are likely to flee or are plainly dangerous to themselves or others can simply be held on remand without bail. Crimes that shock public sensibilities generate resistance to releasing suspects. Resistance, in turn, shapes judges' risk assessments. Moreover, prosecutors often oppose bail applications. In some instances, they are able to skew the possibility of pre-trial release by a tactic known as "parking the get-away car in a loading zone." By attaching a list of additional lower-level charges to the principal crime, a prosecutor increases the severity of potential punishment and, with it, the perception that a suspect is both a danger to the community and likely to flee.

More insidious is the use of an informal, but widely-practiced sliding scale that matches bail to the seriousness of the crimes with which defendants are accused. Even when judges agree to pre-trial release, they often link the size of bail to charges established by prosecutors who typically begin charges with the "top count" for a given crime -- for example, murder rather than non-negligent manslaughter. As a result, bail amounts climb to six and even seven figures for the most serious crimes. Often, the practice shuts off the possibility of pre-trial release altogether. When interpreted on a sliding scale, even low-level crimes can raise the cost of bail beyond defendants' ability to pay. While most European countries classify most drug possession and non-violent property crimes as misdemeanors, in the U.S., they are charged as felonies, with bail ratcheting up accordingly.

All of this maneuvering occurs shortly after an arrest. A trial determining guilt or innocence is still months, perhaps even a year or more away. For suspects held without bail or for bail they cannot afford, the prospect of prolonged imprisonment increases the likelihood that they will join the 97% of defendants who agree to a plea bargain. In Pennsylvania, half of the prisoners in rural jails are incarcerated before they have received a trial. In the U.S. as a whole, 60% of inmates in local jails are awaiting trial. Even at the deeply conservative cost of \$50 per inmate, the cost of locking up people who are still innocent in the eyes of the law would total \$12 billion annually.

New research into risk analysis reduces some of the uncertainties inherent in decision-making about bail. But, only a sliver of jurisdictions use risk assessment models to guide decision-making about bail vs. pre-trial incarceration. Usually, these risk assessment models are based on scripted interviews by probation officers and questionnaires about drug use, mental health and other markers believed to predict crime. In a recent study, the Arnold Foundation analyzed 1.5 million criminal cases from 300 jurisdictions to devise algorithms for a data-driven risk assessment that could be used in the 90% of local jurisdictions still operating on informal rules and judges' instincts. The Arnold research identified objective factors that accurately predicted who would show up for trial when granted bail. The factors, determined on an easily verified yes/no questionnaire, included age, criminal records and previous failures to appear for hearings or trials, statistically the most accurate indicator of whether or not a defendant will come to the courthouse on his trial date. The Arnold study revealed that a history of mental illness or drug use, long an influential factor in determining bail eligibility, was a poor indicator of which prisoners were likely to abscond. In a year-long trial in Charlotte, NC, the Arnold algorithms helped officials reduce the jail population by 20% with no increase in crime. (Once the trial

period is complete and refinements are implemented, the foundation will provide the assessment protocol free to jurisdictions requesting it.)

A critical benefit of more accurate risk assessment is that requiring bail, or setting it beyond a defendant's ability to pay, means that the defendant is returned to jail until he either agrees to a plea bargain or his case finally goes to trial. That poses a particular hardship for poor and working-class defendants. It removes them from their families and undermines their ability to support basic expenses such as rent and utility payments. Job loss is common when defendants fail to show up for work because they are incarcerated. Homelessness is always a possibility for the families of defendants held for their inability to post bail. Social costs rise as once-independent families require public assistance such as food stamps and Medicaid when the main breadwinner has been incarcerated. Middle class families who do not qualify for public defenders can be broken by the cost of paying for lawyers, especially when a breadwinner is held in jail. Again, job loss is likely, even for high-earning defendants. The court system could utilize credit reporting agency data to swiftly and accurately determine each defendant's assets and ability to pay, anchoring bail decisions in real-world information instead of a sliding scale of the accusations against him.

Steady increases in the cost of bail have pushed bail beyond the reach of even middle-class defendants. In Pennsylvania, the only way defendants unable to make bail using their own resources can hope to be released is to pay a non-refundable fee to commercial bonding companies. These are for-profit companies that issue a security, usually equal to 10% of the required bail. A \$15,000 bond, common for many non-violent felonies, would require the defendant to pay a non-refundable fee equal to 10% of the total bond to one of the for-profit bond companies operating in Pennsylvania. This fee is collected regardless of whether the defendant comes to court for trial or hearings as required. (Bail secured by a defendant's own assets by the court is refunded in full.) More than 2 million arrestees have their release secured by the 14,000 commercial bail agents operating across the country. Approximately 214 companies are licensed in Pennsylvania with Liberty Bail Bonds the largest with 60 offices. The Pennsylvania Insurance Department provides regulatory oversight.

Defendants who utilize bail bondsmen had been thought more likely to show up for trial rather than face forfeiture and coercion by the bail bonding companies. (The companies' agents have the right to pursue defendants across state lines and enter their homes and arrest them without a warrant.) Strikingly, twice as many defendants whose bail is backed by a commercial bail company abscond to avoid trial. In comparison, only 10% of defendants granted traditional bail fail to come to the courthouse at the appointed hour for their trial. Equally, 90% of defendants released on their own recognizance having paid no fees at all, come to the courthouse to face trial, a flight rate one-half that of defendants paying high non-refundable fees to commercial bail bond companies.

Given this performance, some states have stopped licensing commercial bail companies, despite intensive lobbying in state legislatures. Kentucky, Illinois, Oregon and Wisconsin have banned for-profit bail companies completely. The District of Columbia hasn't used bail bondsmen since 1992. Maine and Nebraska do not have official bans on for-profit bail companies, but the role of these companies there is negligible. In Kentucky, where for-profit bail has been banned for 38

years, 74% of defendants are released before trial. Only 6% of felony defendants fail to appear for court. Jurisdictions that have made a concerted effort to increase granting bail and reduce the costs of incarcerating defendants who pose little or no risk of absconding do a better job of bringing the accused to court than for-profit companies. The failure of for-profit bail companies to provide added value to traditional bail procedures, coupled with more accurate assessments of flight risk and the growth of electronic monitoring, appears likely to make the commercial bail industry redundant in states that make use of available research and resist bail company lobbies.

Effective Counsel

Pennsylvania is the only state in the union that provides no state funds to help pay for the defense of criminal defendants who are unable to afford a lawyer. Legal counsel for those accused of crimes is protected by the Sixth Amendment to the U.S. Constitution. The same protection has been assured in every Pennsylvania constitution since before the U.S. Constitution was written. The right to counsel and United States Supreme Court rulings extending its protection to indigent defendants is perhaps the only provision of the American Constitution that most citizens can recite from memory. It is, after all, constantly read out loud in movies and TV shows: “You have the right to an attorney. If you cannot afford an attorney, one will be appointed to you.”

The United States Supreme Court has also found that the Sixth Amendment requires that criminal defendants are provided with “effective” assistance of counsel. In recent years, the US Supreme Court has reversed convictions because the criminal defendant received ineffective assistance of counsel.

Definitions of effective counsel vary, but generally, counsel is ineffective if it falls below objective standards of reasonableness. This can include such failures as: not examining the evidence, not presenting mitigating evidence at sentencing, not pursuing a reasonable defense, and even, not being sufficiently prepared for trial.

In Pennsylvania, the lack of state funding for indigent defense may limit access to effective counsel for criminal defendants who cannot afford a lawyer. (Hiring a personal lawyer in Pennsylvania usually starts at \$3,500, paid in advance, for a simple, low-level crime.) Recent studies have found that the Commonwealth’s indigent defense system does not meet Constitutional requirements. The General Assembly and the State Supreme Court have formed investigatory committees and commissions to examine legal aid practices in the state. These committees and commissions have found that Pennsylvania fails to fulfill even one of the ten “principles” set out by the American Bar Association (ABA) for providing competent defense to poor defendants.

Without state funding, the tax burden is shifted to the counties, which rely on local taxpayers to fund this critical element of the criminal justice system. The result is glaring discrepancies from one judicial district to the next. Some judicial districts’ legal defense offices have no permanent attorneys, relying on court appointed local attorneys to mount a defense for indigents accused of crimes. But the districts may fail to provide the infrastructure, financial support or training to help these lawyers shift from their regular practice to high-stakes criminal defense. Even when court appointed attorneys are competent and determined to properly represent their clients, they may not be given the resources essential to effective representation: investigators to check out alibis or find additional witnesses, experts to testify on complicated forensic evidence, training in the intricacies of criminal cases, even a space to meet privately with their clients before going in front of a judge. That critical encounter may last only a few minutes before client and lawyer are called to the bench to present arguments for dismissing the case or setting bail.

The Commonwealth has not gathered much information about the overall conduct and fairness of the system. A former president of the Public Defenders Association of Pennsylvania told the

League's researchers that when his organization tried to conduct a statewide study of legal aid practices, they were unable to gather much meaningful data from the judicial districts on such housekeeping basics as caseloads and staffing or the funding, if any, which counties allotted for investigators and expert witnesses.

The mismatch between prosecutorial resources -- backed up by a state-funded appeals unit in Harrisburg -- and the means available to financially-strapped judicial districts' legal aid offices or court appointed attorneys is stark. Some counties may not pay for investigators, laboratory studies or expert witnesses. Others offer stipends for lawyers that are a fraction of standard reimbursements. For prosecutors, forensic laboratories and technical staff are a phone call away, their facilities and salaries paid for by taxpayers. The best symbol of the disparity between those who prosecute and those who defend Pennsylvanians caught up in the criminal justice system is that the Pennsylvania District Attorneys Association maintains its headquarters in a stately building in Harrisburg; the Public Defender Association of Pennsylvania's "headquarters" is a post office box rented by its current president.

There can be little wonder that the most recent study of the legal aid system commissioned by the General Assembly requested that the state "perform its duties under the U.S. Constitution and as a civilized society by reforming the system to comply with national standards." This 2011 Task Force recommended that Pennsylvania adopt reforms based on the American Bar Association's recommended principles for providing a public defender system sustained by state, as well as local funds:

- 1) A public defender system, including the selection, funding, and payment of defense counsel, should be independent of the local judiciary and elected officials.
- 2) Where the caseload is sufficiently high, the public defense system should have both a defender office and the active participation of the private bar.
- 3) Clients should be screened for eligibility and defense counsel assigned and notified of appointment as soon as feasible after clients' arrest, detention or request for counsel.
- 4) Defense counsel should be provided with sufficient time and a confidential space for meeting with the client.
- 5) Defense counsel's workload should be controlled to permit attorneys to render quality representation.
- 6) Defense counsel's ability, training and experience should match the complexity of the case.
- 7) The same attorney should continuously represent the client until completion of the case.
- 8) There should be parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.
- 9) Defense counsel should be provided with and required to attend continuing legal education.
- 10) Defense counsel must be supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

One much needed advantage of state involvement in legal aid services is that centralized organization and funding would enable the collection and analysis of data using common forms and standards. Today there is such a dearth of data that no meaningful analysis and comparison can be made from one jurisdiction to the next. For example, who qualifies as "indigent" varies from judicial district to judicial district. In the place of a codified statewide system, the judicial districts constantly reinvent the wheel, creating their own policies and reporting forms. The lack

of comparable data about what happens to defendants as they move through the criminal justice system after arrest makes it impossible to determine whether justice is done. If data on public defender programs were collected in a uniform format, it would tell judicial and political officials most of the information required to avoid convicting and punishing innocent people and to make sure that the guilty are held responsible for their crimes. Equally important, it would create a chart on the health and fairness of the entire system.

The search for data is not just a matter of curiosity. It is a way to show whether one jurisdiction has found a better alternative program for the mentally ill or juveniles. It is also a way to know if a judicial district has cultivated a prosecutorial culture that distorts individual crimes, creating a system of blind punishment, not justice.

In an adversary legal system such as ours, defense lawyers are in the best position to discern the workings of the criminal justice system to judge fellow Americans. For example, the only sure way to know whether the police are making “good arrests” is by the straight-forward litmus of a fair trial conducted in full compliance with all the constitutional safeguards: Can the charges, argued by skilled advocates on both sides, be substantiated by the evidence? Was custody of the evidence secure and safeguarded from manipulation or contamination? Were tests properly conducted and interpreted according to best practices? Had all the other possible suspects been investigated before settling on whom to arrest? Was all information provided to the defense attorney during discovery? For that matter, did prosecutors and the police investigate the defendant’s alibi? The list extends back in time to whether bail was properly determined and forward to the kind of sentence a defendant receives if convicted. To get at the truth, all of these issues must be argued in an open, adversarial process by lawyers who have equal access to the resources to resolve the questions embedded in every arrest.

On some level, all crime is difficult, if not impossible to understand and all evidence about a crime is subject to error. In the age of security cameras and closed-circuit TV, eyewitness testimony has been proven to be unreliable and inaccurate. But cameras cannot reach into plea bargain negotiations, nor can they determine if there is exculpatory evidence hidden away in a filing cabinet. The only cure for that is full, uniform reporting and accountability. Correcting the mistakes that inevitably creep into trials and reducing the underlying biases and assumptions that lead to them can begin only when data reveal what went wrong and point to the factors that caused them. State government could provide the coordination, training and oversight needed to create an actual system to defend suspects who cannot afford the cost of private lawyers.

A poor defendant deserves the same legal resources as those the taxpayers are purchasing for prosecutors. The state could provide continuing training on the complexities of criminal defense for public defenders and assure that the same training is available in all judicial districts. In especially difficult cases where an indigent defendant faces the death penalty or life in prison -- especially if the sentence also excludes parole -- state funds could assist public defenders in securing the help of investigators and expert witnesses. Equal access to resources for the prosecution and the defense can help achieve justice.

Appropriate Sentencing

Of all the changes that have taken place in America's criminal justice system over the 50-year rise and decline of crime, none is as plain as the extraordinary increases in the sentences handed down to those judged guilty by courts or in plea bargains. Sentencing guidelines and mandatory minimums were enacted with the intent of discouraging crime and making sure that those convicted of crimes would receive the same punishment. The statutes enable juveniles as young as 14 in Pennsylvania to be tried in adult courts and sentenced to adult prisons.

The sentencing changes also capture in cold statistics the underlying racial bias that has always animated the American legal system to some degree. There has always been a harsher reality for African Americans than whites in the criminal justice system, from laws allowing the pursuit of runaway slaves to the intricately repressive legal architecture of Jim Crow to police practices. The War on Drugs and the draconian sentences that grew out of the chaotic crack cocaine crime wave that gripped U.S. cities during the 80s and 90s deepened the rupture between white justice and black justice in America.

Sentencing laws reveal how the criminal justice system came to focus on urban areas and minority residents, especially African American males under the age of 30. The newly-drafted laws lengthened the sentences for all kinds of crime, especially those involving violence or the threat of harm. Increases in the lengths of sentences especially honed in on a drug, crack cocaine, that was widely consumed by African Americans, not on the drugs, powder cocaine and methamphetamines, commonly used by whites. (Marijuana was the only equal opportunity drug when it came to harsh sentences.) And setting aside amounts of drugs, while five times as many whites use drugs, African American drug users are sentenced to prison 10 times more often than whites.

The first sentencing salvo came from New York Governor Nelson Rockefeller, whose name has become shorthand for the harsh punishment of drug offenses. The Rockefeller Drug Laws, signed in the spring of 1973, began an inverse spiral that increased the national incarceration rate by significantly extending the amount of time mostly non-violent drug users spend in prison. Offenders who sold as little as 2 oz. of controlled substances or possessed 4 oz. of those drugs were sentenced to mandatory minimums of 15 or 25 years to life, depending upon the drug. Soon the Rockefeller laws became template for other states and for the federal government.

Congress passed two acts, one for non-drug crimes in 1984 and another for drug abuse in 1986 that set out specific guidelines that required federal judges to impose long minimum sentences on offenders. These laws also established sharply disparate punishment for predominantly African American users of crack cocaine compared to predominantly white powder cocaine users, even though both drugs are the same chemical. Whites using powder cocaine could possess 100 times more of the drug without incurring a mandatory minimum sentence. An offender arrested with 5 grams of crack (about the weight of a nickel) received a minimum sentence of five years in prison; someone holding powder cocaine had to be in possession of at least 500 grams to trigger the same sentence. In Pennsylvania, mandatory minimum sentences kick in for the possession of 1 gram of heroin, 2 grams of cocaine and 2 lbs. of marijuana. In neighboring Ohio, offenders can hold as much as 10 times those weights in drugs before mandatory sentencing is enforced.

The federal Fair Sentencing Act of 2010 altered the thresholds for mandatory possession sentences to a ratio of 18 oz. of powder cocaine to 1oz. of crack for offenders held in federal prisons. But by that time, the inconsistencies had so outraged the federal judiciary that judges openly criticized rigid sentencing formulae and denounced the sentences they were about to impose from the bench.

But by then, the war on crime had scythed through black neighborhoods, shipping two generations of under-educated young black men to prison. The absence of fathers and breadwinners shattered family life and social cohesion in their communities. Surveys indicate that one in three men incarcerated during these years had active, often daily child care responsibilities. The children left behind suffered all the negative effects of growing up amid poverty and family instability.

The first tranche of African American baby boomers (born from 1945-49) who failed to finish high school were only 8% more likely to become incarcerated during their lifetimes than their white counterparts. But the last cohort of male African American drop-outs (born from 1975-79) was 58% more likely to be imprisoned during their lifetimes. White incarceration increased over that period as well. But when the statistical dust settled, the discrepancies in incarceration rates became ever more apparent. White males aged 30 who lacked a high school education had a 17% cumulative risk of being imprisoned during their lifetimes. African Americans had a 70% chance. As the manufacturing jobs that had formed the economic backbone of urban communities disappeared, the youngest black boomers had a better chance of going to prison than getting a job.

Drug sentencing remains the top generator of prison inmates in our state. A majority of offenders serving time in state prisons were convicted of crimes involving small amounts of drugs. Roughly 44% of those sentenced for cocaine, methamphetamines and PCP had amounts smaller than 2.5 grams. Less than 1 gram of heroin was enough to send half the people convicted for possessing the drug to prison. And 60% of state prisoners convicted of marijuana offenses had less than 1 lb. of the drug.

Drug-based sentencing is the poster child for the sentencing backlash against crime, but the move to get tough on crime spread throughout sentencing architecture. By 1998, 24 states, including Pennsylvania, had adopted “three strikes” sentencing laws, most of which required life without parole after a third felony, even if an offender’s crimes were non-violent. In some states, a third strike for shoplifting merchandise valued at \$400 could send an offender to jail for the rest of their lives. Pennsylvania, however, has never implemented its third-strike law for non-violent felonies.

Crime classification also adds to harsh penalties and rising incarceration costs. The dollar amounts triggering the state’s various misdemeanor/felony thresholds for thefts have not been revised since 1990, when shoplifting \$1,000 increased a simple, non-violent theft to a third-degree felony. Inflation has been low for the past 25 years, but goods worth \$1,000 back then are worth only \$549 today. Meanwhile, shoplifting has grown to account for 12.6% of state prison sentences in 2012. (In the last six years, 20 states have upgraded their theft thresholds.)

Similarly, Pennsylvania classifies burglary of an empty home as the second-highest felony class in penal code, even though it is a non-violent crime. Ohio and New Jersey classify the same crime as a misdemeanor.

A mandatory minimum sentence is the minimum that a judge must impose if the defendant is found guilty of the underlying crime to which it applies. In such a circumstance the judge has no discretion to consider mitigating factors such as age, remorse, character witnesses, lack of a prior record, etc.

Supporters of mandatory minimums argue that these laws are useful in deterring crimes involving the possession of drugs or firearms. They insist that deterrence results from locking up individuals who have been found guilty of relatively minor crimes in order to deter other individuals from committing those same crimes and to prevent the offenders from escalating to more serious crimes. Yet there is little evidence that mandatory minimums actually have any crime-reducing effect. A 2013 study by Northwestern University Law School concluded that “decades of empirical research ... have established that ‘policies [such as enhanced prison terms] rooted in the deterrence theory framework ... have been shown to have little empirical support.” The study also found that mandatory minimums had no detectable effect on violent-crime rates in Florida, Massachusetts, Michigan and Virginia.

According to the Pennsylvania Commission on Sentencing, mandatory minimum sentencing laws have not made Pennsylvanians safer. They have not reduced or deterred crime. Indeed, after performing a comprehensive analysis of state mandatory minimum laws, the Commission concluded in 2009, “Neither length of sentence, nor the imposition of the mandatory sentence per se, was a predictor of recidivism.” The Commission also stated that offenders are not deterred by mandatory sentences because they do not know which crimes carry them.

In 2013, the U.S. Supreme Court ruled that some mandatory minimum sentences were unconstitutional, finding that they can be applied only when the specific elements of a crime that triggers a mandatory minimum have been found true beyond a reasonable doubt by a jury.

On June 15, 2015, the Supreme Court of Pennsylvania issued an opinion that found unconstitutional the state’s Drug Free School Zones Act, which set mandatory minimum sentences for selling drugs near schools. The court’s reasoning applies to nearly all of the state’s drug- and gun-related mandatory minimum sentencing laws, and it is therefore likely that other drug and gun-related mandatory minimum sentencing laws would be found unconstitutional if challenged.

Even though the trend nationwide is to reduce or eliminate mandatory minimum sentences, especially for drug offenses, legislation was introduced in the fall of 2015 in the Pennsylvania House to reinstate mandatory minimum sentences for various drug and gun offenses. This bill is currently in committee.

Approximately 97% of criminal cases are decided through plea bargaining rather than through trial. Sentences are handed down by judges who preside over hearings that ratify the bargain made by the prosecutor and defendant. No judge is involved in the negotiation phase of plea

bargaining; they have no opportunity to independently review the facts of the case to know whether charges were inflated by prosecutorial “stacking” -- attaching a list of minor ancillary crimes to pressure the defendant to accept a deal. A system that would require prosecutors and defense attorneys to provide notes to judges on plea bargain discussions would allow judges to know whether or not coercion was used. Without this information, judges cannot know whether defendants held in jail awaiting trial simply agreed to a “time served” plea bargain in order to return to their families and jobs. The most conservative analyses of plea bargaining estimate that 4-6% of defendants are “factually innocent.” But if the impact of a conviction on a defendant’s civil life is not made clear by an attorney -- loss of eligibility for government support programs such as food subsidies, public housing, school loans and systematic employment discrimination - - prisoners who see their families crumbling while they wait in jail for a trial date may decide to take a bad bargain despite their innocence.

The only record of what takes place in a plea bargain is the defendant’s allocution (a formal admission of guilt at a sentencing hearing) before a judge the defendant is often seeing for the first time. If defense counsel is deprived of resources to investigate the facts, alibis and technical evidence, he will be forced to negotiate his client’s punishment based solely on information provided during discovery. Yet this plea-bargaining system is the one that sends 97 of 100 to prison in the United States.

Even as sentences have grown longer and the possibility of parole has been increasingly withheld for persons convicted of certain crimes, the traditional mechanisms that historically tempered punishment have fallen into disuse. Classically, commuted sentences come in the form of reduced imprisonment, although commutation can also involve a reduction of fees and other penalties ordered by a judge. In order to have a sentence commuted in Pennsylvania, the applicant must be approved unanimously by the board of pardons, the governor, and the secretary of state. Only 6 people have had their life sentences commuted in the last 15 years.

Pardons require a similarly arduous process, but are rarely granted. This unwillingness to wipe the slate clean through pardon has deeply unfair impacts for those who were wrongfully convicted and sentenced. Modern forensics, especially DNA evidence, have established the innocence of hundreds of Death Row prisoners, almost 3% of those once condemned to execution nationwide. Many of these miscarriages occurred for reasons that have nothing to do with guilt or innocence. Inadequate and incompetent defense counsel is a key factor in wrongful convictions; so is prosecutorial misconduct, such as failing to turn over exculpatory evidence. It is safe to assume that the same errors also occurred in other cases, and that pardons will always be in order for those who were wrongfully accused and convicted. There is no law on the books in Pennsylvania that specifically provides for compensation of individuals who have been falsely incarcerated.

The increase in life without parole and longer sentences overall mean that America’s prisons are rapidly evolving into nursing homes. Yet if ever there were justification for to revitalize moribund pardon, commutation and parole policy, it is for the elderly. The crime rate nationwide for people over the age of 50 is 2%; for those 65 and older, it shrinks to almost zero. New York State tracks recidivism more closely than other states, and only 4% of prisoners over the age of 65 are arrested again after their release. Considering the fact that prisoners of such advanced age

had probably not lived among society beyond the walls for 40 years or more, the recidivism rate is all the more remarkable. Perhaps more than anything else, the spectacle of feeble geriatric prisoners sitting in cells to their dying day calls into question the punishment paradigm that has dominated the American criminal justice system since the 1970s.

Pennsylvania has 5,400 inmates sentenced to life in prison without parole. Many of them are over the age of 55. The main causes of death among today's prison population are cancer and heart disease, which epidemiologists deem deaths of the aged. Commutation offers a way to release prisoners who have been imprisoned for years and have shown exemplary behavior, turning their lives around. Pennsylvania could return many of these individuals to the community, letting them resume family relationships, contribute to the well-being of others, and save the state money.

The causes of crime are complex and extremely difficult to reverse. The sentencing epidemic, on the other hand, has a simple origin: Congress and state legislatures rewrote the existing sentencing laws in ways that have turned out to be vengeful and particularly unfair to African Americans and other minorities. Moderating some of the more extreme sentencing can be done with a stroke of those same legislative pens.

Alternatives to Incarceration

LWVUS Position: The LWVUS believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime.

Alternatives to Incarceration (ATI) have the potential to reduce recidivism and to save taxpayers money. In Pennsylvania currently there are five broad categories of ATI programs at state and local levels. Three of them --the Recidivism Risk Reduction Incentive (RRRI) and State Intermediate Punishment (SIP) -- are eligible to offenders who are incarcerated in state prisons. A third, Boot Camp, involves, on average, 25 months of incarceration. Under this option, reserved for young offenders, the initial months are spent in a state prison before transfer to a minimum security facility for boot camp itself. During 2014, these programs were operating at less than capacity.

In November 2008, Recidivism Risk Reduction Incentive legislation was enacted. Referred to by Department of Corrections (DOC) officials as RRRI, the law enables eligible, non-violent offenders to reduce their minimum sentences if they complete recommended programs and maintain a positive prison adjustment, or in other words, they practice good conduct and remain misconduct free during their incarceration. The reduction provided is a percentage off their minimum sentence that is based upon the sentence length.

Although reducing time served in prison may be cost effective for the Commonwealth, RRRI is principally a public safety initiative to reduce recidivism and victimization. The intent is to provide more access to crime-reducing drug treatment programs and to provide incentives to less violent offenders to complete programs that will provide them with tools to help them live productive, law-abiding lives. In 2014, the three-year recidivism rate for RRRI released inmates was lower than for those not in the program.

The SIP program is designed for offenders convicted of drug-related offenses. A drug-related offense is a crime that was motivated by the defendant's consumption of or addiction to alcohol and other drugs. The program excludes offenders convicted of any violent or sex offenses, including any lesser offenses that involved the use of a deadly weapon. From inception of SIP in May 2005 through September 2014, 4,318 offenders were sentenced to the program. Overall recidivism rates after three years are lower for SIP participants than for released inmates not in the program.

The remaining ATI programs operate on the local or county level. The most widely used ATI is probation, which usually includes specific conditions such as regular drug testing or attendance at treatment and counseling sessions. In 2014, 281,400 individuals were supervised by county probation departments under County Intermediate Punishment (CIP). Among the sanctions this may include are house arrest, electronic monitoring, intensive supervision, drug testing and treatment for alcohol and drug addiction. Day reporting requires offenders to come to a specific location for a full day of substance abuse treatment, counseling and support services, and is usually linked to electronic monitoring at night. Additionally, offenders may do community service and pay fines or make restitution to victims.

According to the most recent available data (2009-2010), 12,847 state inmates completed CIP programs -- half of them for DUI offenses. Of that number, 83% successfully finished their alternative programs, while 14.8% were removed from the program for technical violations of parole/probation. Only 2.2% committed new crimes.

Local Problem Solving Courts, such as Drug and Mental Health Courts, target offenders who suffer from specific conditions or commit certain types of crimes. Participants in these programs receive rehabilitation, treatment, counseling and other supports while under close supervision monitored by a judge who has the power to send them back to jail for short disciplinary stints or sever them from the specialty courts and place them in the state prison system. First introduced in 1997, the development of these courts in Pennsylvania lags that of other states. New York, for example, has courts for drug and alcohol abusers in all its counties; Pennsylvania has just 32 of its 60 judicial districts offering these courts. Mental health courts are especially lacking, with courts in only 19 judicial districts. A 2013 lawsuit brought against the Department of Corrections by the American Civil Liberties Union of Pennsylvania indicated that a large percentage of prisoners with mental illnesses languish in jail for months without treatment. Since many are homeless or unable to hold even menial jobs, they are usually unable to post bail as well, further assuring that they remain incarcerated and left untreated for prolonged periods.

In smaller judicial districts, there may be too few offenders to justify the creation of these special courts. However, districts could consider joining together in consortia to operate and share the costs of problem solving courts for inmates with addiction or mental illness. Jail and prison are the worst possible setting for the mentally ill, and yet they have become the default mental institutions of the 21st Century. Often those with mental illness are arrested for minor offenses such as public urination or vagrancy. Yet they end up in locked facilities where the slightest infraction of rigid rules they often barely understand send them to solitary confinement. A majority of mentally ill prisoners also abuse alcohol and drugs, a more accurate indicator of the likelihood of incarceration than mental illness alone. A very small percentage of mentally ill prisoners have committed serious crimes or pose a risk to the community or themselves. Some of the savings gained by transferring all but this minority of the mentally ill out of lock-up and into treatment could provide funding for local mental health care support. These resources are already in short supply. Redeploying funding from incarceration could help finance the kind of community treatment desperately needed by Pennsylvanians whose mental illnesses can be relieved and controlled.

Though this study is not focused on juvenile justice (LWVPA already has a position on juvenile justice), many juveniles are tried as adults and incarcerated in adult prison. Incarceration opens a huge gulf in outcomes between those who are sentenced to detention as juveniles, rather than to diversion into reform and restorative programs, such as probation or drug and alcohol treatment, with a large component of community service and victim restitution. Offenders who are incarcerated as juveniles are 13% less likely to ever complete high school, leaving them the last to be hired in an increasingly technical economy. They are 15 percentage points more likely to be incarcerated as adults for violent crimes; the probability that they will be imprisoned as adults for property crimes rises by 14 percentage points.

The state operates Drug and Alcohol Residential Intermediate Punishment (D&A RIP) at the local level. Under the terms of the program, these inmates are held in local jails while receiving intensive treatment, counseling and training to help them break addictions and return to their communities. Addictions make these prisoners among the most common recidivist offenders in the entire criminal justice system, especially when their drug and alcohol dependencies are compounded by mental illness. Yet 65% of the 1,555 offenders sentenced to drug and alcohol residential programs in 2009-10 were discharged after completing their rehab programs successfully. On average, these prisoners walked free 292 days earlier than they would have been if they had served out the average sentence for their offenses in state prison. Despite being enrolled in residential treatment facilities, the most expensive form of alternative punishment, the extra prison time would have cost state taxpayers \$67 million. Instead, the state spent \$15.4 million on locally-based D&A RIP.

The impact of local ATI programs for drug and alcohol abusers can be profound. On average, half of the people held in jails nationwide are imprisoned for driving under the influence of alcohol. Each successful rehabilitation among this population closes the books on what would otherwise be a recurring cost -- and returns individuals to productive lives among their families and communities. Pennsylvania's reform efforts to reduce recidivism rates seem to be having results: the 6-month recidivism rate was 19% in 2013 and the 1-year rate was 35.1%. These are the lowest rates recorded since 2000.

Another potential alternative to incarceration is Restorative Justice, an approach to justice that views a crime as an offense against an individual or a community. It focuses on the needs of the victims and the offenders, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender. Restorative justice is already part of the juvenile justice system and is used widely in schools. Instead of placing the offense for resolution in the court system, both victim and offender agree to participate in the restorative justice process. The process requires a trained facilitator but has the advantage of bringing closure for both the victim and the perpetrator of the crime. Every prisoner leaves behind a crime, its victims, and a community – beginning with his own family – that struggles to recover from the consequences. In the restorative justice process, victims, their family and friends have the opportunity to confront and question the perpetrators who turned their world upside down. Instead of the set role of silent suffering during trials and time-limited impact statements at sentencing, restorative justice gives them a chance to ask the most important question: Why? Prisoners search within themselves for the answer to that and all the other questions that torment the survivors of crime. They also come to understand the harm they have done in specific and personal terms. Prisoners also owe an accounting to the community whose sense of security and safety they have breached.

In restorative justice, a trained facilitator enables the victim and the offender to explain how the crime has affected them. With the guidance of the facilitator and community members, a plan for healing the harm done is established and agreed to. This might involve apologies, community service, restoration of money, or other actions. The conclusion offers the offender the realization of how his/her behavior affected the victim. The victim has the satisfaction of facing the offender. Both victim and offender are understood to have value to the community, and both must be as fully restored as is possible—a benefit to them and to the community.

Wider implementation of ATI could enable state and local governments to reassign resources to address embedded ills within the criminal justice system. The lack of state funding for most of the local costs of the criminal justice system assures that the judicial districts are condemned to providing separate and unequal treatment at almost every stage in the incarceration process. Moreover, cost savings achieved through ATIs could be invested in reducing recidivism by funding training programs to assist offenders in finding housing, transportation, medical care and jobs once they are released.

Prison Conditions

Before he came to the New World to found the Pennsylvania Colony, William Penn had been incarcerated in English prisons four times for expressing his Quaker beliefs in speeches and in print. His most influential books were written while in solitary confinement in the Tower of London. Penn's imprisonment also produced one other work: The penal code that governed Pennsylvania. The former inmate erased the panoply of trivial offenses, mostly property crimes, that warranted the death penalty in England and some of the colonies, reserving that sanction for murder and treason. In his view, prisons were meant to reform, not only to punish, and inmates were taught a trade so that they could be gainfully employed after their release. Above all, they were to be treated humanely while behind bars. It took nearly two centuries for Europe and the rest of the United States to catch up to the reforms of the former ex-con who founded Pennsylvania.

As sentences have grown ever longer and the chances of leaving prison alive have decreased for inmates outside Death Row, prison conditions in general, and prolonged solitary confinement in particular, have begun to draw some of the same scrutiny as capital punishment. The prison-building spree of the 80s and 90s continues, and modern prison architecture is even more punitive than the open-tier rows of cells common in 19th and early 20th Century prisons. Even the single-prisoner cells of Eastern Penitentiary, built in Philadelphia in 1829, had a skylight. The grim super-max prisons that proliferated in recent decades are designed so that windows -- when there are windows -- face out on concrete walls.

Solitary Confinement. Super-maximum, or control-unit prisons, are designed to hold prisoners in so-called "segregated housing" for long periods. Although prison officials state that holding prisoners in solitary confinement is often for their own protection from other prisoners, the data indicate that often this is not the case. A recent lawsuit in California revealed that its super-max prison had routinely held prisoners in solitary for a decade and more, some as long as 25 to 30 years. Super-max prisons are, in effect, prisons for solitary confinement. The State Correctional Institution in Greene County near Waynesburg is Pennsylvania's super-max prison.

Details about solitary confinement practices in Pennsylvania are difficult to determine although Secretary Wetzel reported that in September, 2015, the number of those so confined was around 1,970. Solitary cells are called by different names in different prisons across the state, and data are not made public on how long individual prisoners may have been confined in isolation in tiny cells (usually 7 ½ by 6 ft. in modern prison buildings). Solitary also includes denial of phone calls and visits, reduced access to TV and radio, and limits on the number of books or papers a prisoner can have in his or her cell, even how often they can change their underwear. Cell doors are solid metal, pierced by a few holes to permit air circulation and a single slot for receiving food and being put in shackles before leaving the cell. Prisoners are allowed out of their cells for one hour a day of exercise, alone, in a concrete "yard." Most prisoners in isolation are prevented from speaking with anyone except guards. As a result, they live in a cocoon of sensory deprivation that can cause hallucinations, panic attacks, paranoia and uncontrollable feelings of fear and rage. Said one researcher: "Try to stay in your bathroom for four hours. Most people can't do it."

The Department of Justice estimates that 80,000 prisoners are kept in isolation cells on any given day in America. All of them suffer, to some extent, what one researcher has called “social death.” In testimony before Congress last spring, Supreme Court Justice Anthony Kennedy said that solitary confinement “literally drives men mad.” A 2011 United Nations report said that solitary confinement longer than 15 days could amount to torture. The U.N. Committee on Torture has ruled that when solitary confinement is imposed on juveniles and mentally ill prisoners, it is cruel and unusual punishment that rises to the level of torture, no matter how briefly those prisoners are held in isolation cells. According to U.N standards, putting a prisoner who has not yet had a trial into solitary confinement, however briefly, is considered cruel and unusual punishment. The United States has no restrictions as to when prisoners may or may not be held in solitary confinement and permits pre-trial solitary confinement.

In 2012, the Bureau of Justice Statistics estimated that 20% of prison inmates and 18% of those held in local jails had been held in solitary during the previous year; 10% of prison inmates and 5% of those in local jails spent more than 30 days in isolation. The Bureau of Justice Statistics does not keep data on solitary confinement, and information about who is put into solitary is drawn primarily from documents discovered during lawsuits and small, specific studies by academic researchers. While the available information is incomplete and fails to use standardized data collection, the most accurate predictor of which prisoners will be sent to solitary seems to be race: African Americans are two and one-half times more likely to serve time in solitary than are whites. African American prisoners already exceed their representation in the overall prison population by 36%.

Lesbian gay, bisexual and transgender prison inmates were 10% more likely to end up in solitary confinement; in jails, 5% more LGBT jail prisoners were put in solitary. Some, but not all, of these lockups are to keep LGBT prisoners secure from assault by other inmates. Between 23 and 31% of prisoners with a past history of mental health problems were also held in solitary confinement. Of mentally ill inmates sent to solitary for 30 days or longer, 25% of state prisoners and 35% in local jails were diagnosed as suffering serious psychological distress (SPD). Virtually all of them were seriously impaired by mental illness before arriving in detention units -- a classification that mental health experts say should exempt them from solitary confinement in the first place. When examined on day one of isolation, the number suffering SPDs in jails was the same (35%) and in prison, 22% of those in solitary entered their cells already suffering from severe mental illness.

More about Pennsylvania’s use of solitary confinement may soon be made public because the Department of Corrections (DOC) has partnered with the Vera Institute of Justice in the Segregation Reduction Project. Vera will examine the DOC’s use of segregation for the overall inmate population and develop strategies to safely reduce the use of segregation through training, policy modifications and other initiatives.

In 2013 the Disability Rights Network of Pennsylvania brought a lawsuit against the Pennsylvania Department of Corrections (DOC) asking the courts to rule on whether putting mentally ill prisoners into solitary confinement was cruel and unusual punishment. In January 2015, the DOC settled the lawsuit. Procedures to divert inmates with serious mental illness to specialized treatment units instead of solitary confinement were established. An independent

technical compliance consultant was appointed to assess and report on implementation of the agreement. At the time of the settlement, a number of significant improvements had already been made including the establishment of a centralized office for the administration of mental health care to centrally promulgate policies, track data, review incidents and provide direction for issues related to the department's delivery of mental health services, to improve requirements and procedures for clinical reviews of self-injurious behaviors, to develop a centralized tracking system of all inmate self-injurious behaviors, and to enhance its special needs psychiatric review team through the use of data to improve mental health services at the systemic, institutional and individual levels. Additionally new misconduct procedures were developed to divert seriously mentally ill inmates from restrictive housing (solitary confinement). At the end of 2015 fewer than 150 seriously mentally ill inmates were housed in restrictive housing units, down from nearly 850 inmates before the new procedures were instituted.

The Department of Corrections also updated its definition of severely mentally ill to better track those who suffer and to identify better treatment services. The Office of Mental Health Advocate, independent from the DOC psychology office, was established to ensure offenders are getting the treatment they should receive in prison and to help connect offenders with eligible benefits upon release. Under this office, the Certified Peer Support Specialist program has trained more than 500 inmates to provide support and counseling services to other inmates on a variety of issues, including participation in mental health treatment. Crisis Intervention Team training conducted by the DOC provides correctional officers with an understanding of the ways in which mental illness may affect the inmates they deal with daily, and provide them with skills to deescalate crisis situations. The DOC is planning to offer this training to PA county prisons in the future. Additionally, all DOC employees have been trained in mental health first aid. This training equips employees to understand, recognize and respond to the symptoms of mental illness. In the fall of 2015, Pennsylvania began a special program at the Wernersville Community Corrections Center to prepare offenders with serious mental illness to prepare for and return home following incarceration. This program will be evaluated in the future with the possibility of being expanded to other centers.

Mentally ill prisoners are often impaired in their ability to handle the ordinary stresses of confinement. They are disproportionately represented in solitary confinement because of their inability to conform to regimented routines and expectations of immediate obedience by guards, who fail to account for their mental confusion. Many researchers have found that these types of minor offenses -- which are sins against routines, not violent or destructive behavior -- are the most common reason for putting all kinds of prisoners in the general population into solitary. In their view, if solitary is to be used, it should be limited to those who commit serious breaches, and even then, utilized for brief, prescribed periods. Above all, experts say, no one should go into a solitary cell wondering when, or if, he will ever come out. Prolonged solitary confinement is so psychologically damaging that those who spend years in isolation are unlikely to recover fully. Indeed, while prisoners held in isolation cells make up 3-8% of the total prison population, they account for 50% of prison suicides.

There is also a public safety issue that should serve as a check on prolonged use of solitary: Many prisoners who have been held in solitary will return to society on parole, or more often, because they have served their sentences in full. Roughly 4,000 prisoners who have spent at least

some time in solitary confinement are released every day, some of them straight from solitary with no counseling, job training or anger management classes to smooth their return to the outside world.

In September, 2015, the US House of Representatives re-introduced the Solitary Confinement Study and Reform Act of 2-14, now labeled H.R.3399 of 2015, which would create a comprehensive framework to study, develop and implement national standards for the use of solitary confinement in order to ensure that it is used infrequently and only under extreme circumstances. It would also take an important step toward increasing accountability for prison officials who fail to design and implement humane and constitutionally sound solitary confinement practices.

Medical Care. The practice of medicine within prison walls has always been marked by tensions between a profession whose core ethic is to “do no harm” and an institution which has punishment as its first priority. In the past, prisoners “volunteered” to be used as guinea pigs in grotesque drug and radiation trials -- in large part because it was one of the very few ways to increase the odds of parole or pardon. Those abuses have been curbed, but serious questions about the prison health system remain. In 1976, the Supreme Court affirmed inmates’ constitutional right to adequate medical care, a term that is regularly redefined in court cases. On the whole, prisoners are sicker than the rest of Americans. They have HIV/AIDS rates 4 to 5 times higher than those of the general population. They are almost 10 times more likely to have Hepatitis C and 17 times more likely to have tuberculosis. As they age, the stresses of prison life compound their rates of depression, anxiety and serious mental illness. They don’t get enough exercise to build cardiovascular fitness and prevent obesity. So their medical costs run above those on the outside.

Many states have privatized prison health care in an effort to curb costs. Some of Pennsylvania prison health services have been privatized. There are no data available about Pennsylvania’s privatization experience, but the experience in other states indicates that very tight supervision and controls need to be put in place for privatized health systems. In other states, the operators of privatized prisons typically ship prisoners back to state facilities when their medical costs rise beyond pre-determined levels that make further treatment unprofitable. There are no privately-operated state prisons in Pennsylvania to bounce inmates over to state facilities when they become ill. But that doesn’t mean there are no risks to using private contractors to provide medical services in the Commonwealth’s prisons. Regardless of who runs them, medical services have to meet the Supreme Court’s test for “adequate care,” and the Commonwealth remains legally liable if a private contractor fails to do so. Disastrous malpractice suits don’t disappear because the patients are prisoners. Without direct oversight by state-employed medical supervisory personnel, there is no way to assure that short-cuts aren’t being taken in order to remain within budget.

But inmate medical care now faces a new challenge that is even harder to solve: the increase in geriatric prisoners. Between 1995 and 2015, the number of state and federal prisoners over age 55 rose 282%, while the prison population as a whole increased just 42%. The cost of caring for elderly men and women with chronic diseases and dementia is astronomical. Estimates put the minimum cost for older prisoners at twice the cost of incarcerating prisoners 49 and younger.

Studies show that when help is needed to feed, dress and manage personal care, the cost can increase five-fold. In Pennsylvania, that means the cost for a single sick, elderly prisoner could be as much as \$185,000 a year. To reduce pharmaceutical expenses, the DOC has partnered with the Department of Aging and Long-term Living to apply the benefits of the existing PACE program to eligible senior inmates prior to and after their release. This partnership will reduce the pharmaceutical expenses and will also make it easier for released inmates to continue with the program.

Sexual Abuse. Sexual abuse in prisons and jails is so widespread that it is legendary. It is widely understood that prison life includes sexual predation by other inmates, as well as guards, staff and contract workers. Researchers say that fear of sexual violence dominates the expectations of prison life for new prisoners of both sexes. As in all forms of sexual violence, perpetrators are motivated by the determination to exercise power and control over another person. The mismatch in power relationships between guards and prisoners and within the power webs of gangs and “senior” prisoners increase the likelihood of abuse. Daily prison life includes random and degrading searches that are themselves outlets for abuse by the guards conducting them. In women’s prisons, the formalized imbalance between guards and inmates is intensified by the imbalance of power between men and women. Never is sexual power politics more glaringly on display than it is in the treatment of women prisoners who are pregnant. Advocacy groups found it necessary to file state-by-state lawsuits to halt the standard practice of shackling women to their delivery room beds while they give birth. In Pennsylvania this practice was specifically prohibited in 2010 unless a verifiable danger for flight was present.

Prisoners with developmental disabilities and mental illness, young, non-violent offenders and LGBT prisoners are even more vulnerable. In California, 67% of prisoners identified as non-heterosexual reported sexual assaults by another prisoner, a rate 15 times higher than for the overall inmate population. A recent Justice Department study indicates that correctional guards are responsible for half of the roughly 200,000 sexual assaults against adult prisoners each year. Roughly one-third of the guards who are caught committing sexual assault against prisoners are allowed to resign without any punishment -- including trial in a criminal court for forcible sexual assault. A violently-enforced code of silence rules prisons. Most inmates would rather continue to suffer abuse than to bear retaliation for speaking out. Guards are also part of a culture of silence that enables physical and sexual abuse. Prisoners file a blizzard of complaints against guards every year. An investigation usually ensues. But the code of silence assures that investigators will end up ruling complaints “unsubstantiated.” In 2014, Pennsylvania prisoners reported 299 allegations of sexual misconduct. Nine of them were substantiated. Another 201 complaints of sexual harassment were also filed. Only one of them was substantiated.

In 2012, the Federal Prison Rape Elimination Act (PREA) went into effect. According to PREA regulations, all states are required to: establish a zero-tolerance standard for sexual harassment and sexual assault; collect and report data on prison sexual violence; conduct thorough and appropriate risk assessment and screening of inmates to keep apart potential aggressors and potential victims; discipline and prosecute corrections staff who perpetrate sexual abuse against an inmate; and hold corrections administrators accountable for the occurrence of prison sexual violence in their facilities. As of October 2015, 18 Department of Correction facilities (including community corrections centers) successfully passed the federally required PREA audit with only

one facility being in a corrective action period. Seventeen facilities have audits scheduled with all facilities being audited by the end of August 2016.

Perhaps one way to address the culture of silence surrounding sexual abuse and any other abuse of prisoners' rights and personal dignity is to establish an independent ombudsman's office with the power to investigate all abuses and miscarriages inside prison walls. The establishment of ombudsman programs to oversee correctional institutions and systems has been used to assure the protection of prisoners' constitutional rights and to correct systemic problems resulting in individual violations in several states. Ombudsman programs have independence from the department of corrections, impartiality in their activities, expertise to investigate complaints, and accessibility by potential complainants. In some states, the office of the ombudsman addresses issues related to the families of inmates and/or correctional staff as well as inmates. The basic approach of neutral fact-finding, and the solution orientation of the ombudsman can be applied to work on behalf of all constituencies.

Some states have established commissions separate from the department of corrections to provide oversight of prisons. In New York and New Jersey, state commissions have the power to enter prisons and interview prisoners at any time without prior notification. They also have the power to subpoena witnesses and compel testimony under penalty of perjury. In 2008, the American Bar Association recommended "federal, state, and territorial governments to establish public entities that are independent of any correctional agency to regularly monitor and report publicly on the conditions in all prisons, jails, and other adult and juvenile correctional and detention facilities operating within their jurisdiction."

Prison Labor. A central feature of the inmate intake process is individual assessment and classification to determine the level of custody required during incarceration, followed by aptitude testing to identify skills and abilities – or their absence – that may be matched with education, training and/or work assignments. Corrections administrators candidly admit that prison work is an effective population management tool, preventing the idleness and boredom known to foster unrest and tensions, and providing a measure of certainty about the location of each worker during the day. But more importantly from the perspective of those who are incarcerated, the shift from punitive work (breaking rocks, chain gangs) to paid employment (well below the minimum wage) is said to reflect an emphasis on rehabilitation of offenders. As one researcher notes, however, "... the rehabilitation argument sounds good, but in practice, even a cursory examination of how prison industries are administered makes clear that the motivation ... has little to do with rehabilitation."

Effective rehabilitation labor has two defining characteristics: 1) the skills and experience gained must be useful for post-release employment, and 2) employment during incarceration is directly related to a documented decline in recidivism. A garment sewer in prison, for example, is likely to experience low wages and exploitation in the private garment industry, as well as the relocation of most jobs to overseas locations so training for this kind of work would not be useful for post-release employment. Training and jobs that require higher skill sets, such as computer technology and business education, do not always provide skills and experience that meet industry-recognized standards. For example, the business education and computer technology

classes offered at three of Pennsylvania's prisons do not meet industry-recognized certification requirements.

In November, 2015, the Pennsylvania Department of Corrections announced that it had been awarded a \$1 million grant from the U.S. Department of Education to restructure the delivery of educational, training and workforce programs in an effort to better prepare offenders to obtain and retain employment once released from prison. Officials also plan to address the issues of underemployment for ex-offenders and to bridge the gap between prison and community-based education and training programs post incarceration. Programs will target adult offenders aged 25 and younger.

The cheap cost of prison labor has affected outside employment as well, as outside workers have long voiced concerns about unfair competition created by low prison wages and other advantages to employers. Laws were passed during the Depression to restrict the sale of goods produced by convict labor and banning the use of prison labor on large federal contracts in order to prevent the loss of private jobs. When those laws were repealed in the late 1970s they were replaced with the Justice System Improvement Act that established seven Prison Industry Enhancement programs (PIEs) to allow private industry to contract with prisons for their labor, and to participate in interstate commerce. Under this act, goods made by inmates are banned from interstate commerce unless the inmates are paid wages comparable to those in the private sector. In reality, these criteria are routinely circumvented. In Pennsylvania, inmates are paid between 19 and 42 cents an hour and can earn up to 70 cents more with production bonuses.

The wide implementation of fees and fines throughout the criminal justice system could be a reason to view prison labor not as mere labor, but as paid work. Virtually no one is convicted of a crime, especially one that involves violence or loss of property, without having some monetary restitution of victims included in the sentence. When prisoners are set free, they often need money simply to avoid re-incarceration. Often they are required to pay for the costs of parole requirements such as electronic monitoring. These are functions usually contracted to private companies, who may set steep fees for late payments that are added to fines and interest from the courts. These arrangements, like minor traffic infractions that can quickly escalate to thousands of dollars in debt, extend financial punishment long after a prisoner's "debt to society" was paid with lengthy incarceration. Decent pay for work in prison would enable parolees to cover these fees while they look for housing and jobs. Current pay averages less than \$1 per hour, but an increase to a fairer sum could transform the problems of reentry. Earnings could be held in prisoner accounts that could only disburse large sums for certain expenditures, such as for the education of prisoners' children. It would shift some of the most common reentry costs away from local counties. Moreover, it would give prisoners a financial incentive to work for their own success once they leave prison.

Reentry

One thing about prisoners. Most of them get out. Even in an era of lengthy mandatory sentences, all but a small percentage of the nearly 2.2 million men and women now incarcerated in federal and state prisons nationwide will eventually be released. That includes the 47,932 prisoners in Pennsylvania state correctional facilities.

In Pennsylvania, the average minimum sentence of inmates who are not sentenced to life imprisonment or the death penalty is 7 years. The average maximum sentence is almost 16 years. So when they are set free, inmates often return to families, friends and neighborhoods that have changed so much that they may now seem a foreign land filled with strangers.

Former offenders who have served long terms in prison often return to shattered families. Their children, wounded and angry, haven't seen them in years. Spouses may have divorced them and moved on to find another husband or wife -- and surrogate parent for the children. Parents have died or grown old and, in any event, may lack the money or ability to retrain an adult child who has little idea how to navigate streets that have changed, neighbors who are suspicious of an ex-con, or search for a job now that most classified ads are on the Internet.

They also return to civil institutions that may be understandably hostile toward helping them relaunch their lives. If they committed certain sexual crimes, Megan's Law requires them to report where they live, then watch helplessly as neighbors turn on them after finding their names on public sex offender registries. In some areas, when they apply for jobs, they must check the "yes" box after a question about whether they have been convicted of a crime -- and then await the chill when an interviewer notices the answer or never get an interview at all. A background check and clean criminal record are needed to get a license to cut hair or work in the kitchen of a child-care center. African American parolees in particular may return to poverty-stricken inner-city neighborhoods where unemployment rates for low-skill workers without at least a high school education run as high as 50%. If they want to improve their job skills through education, they will find that they may not be eligible for most forms of financial aid and student loans, including Pell Grants. With no credit history, they must pay high security deposits to landlords and utility companies. With no record of financial reliability, credit cards and bank loans are out of the question. Again, if they have committed certain crimes, they are barred from applying for public housing -- and from spending more than a night or two as a guest. If they owe fines or fees -- as restitution to victims, as fees to offset the cost of their incarceration, or to pay for electronic monitoring while on parole -- they will find it almost impossible to meet those obligations in job markets that shun them. Currently prisoners are required to pay some of the costs of their sentences to ATIs, which saves the state the cost of full incarceration in prison and/or jail. When they are forced to take on the costs of the ATI (some of which are supplied by for-profit private contractors), they are forced to accumulate debt at the same time they are deprived of full freedom.

"Pennsylvania Reentry Survival Manual," the handbook provided to state prisoners drawing near their parole or release date, contains much sound, if obvious advice on how to manage re-entry to life outside prison walls: Don't hang around with the people who helped you get in trouble to

begin with, such as drug users and gang members. It also includes advice that new college graduates find difficult to fulfill: Look for a job with medical and retirement benefits. Most prisoners who require medications to control mental illness or addictions are given a short-term supply of the drugs they need to function and must receive a physician's prescription quickly in order to maintain stability. The Commonwealth recently lifted a 1996 federal ban on providing welfare benefits, food stamps and Medicaid to ex-prisoners, a critical reform of a cruelty that only 14 states have found the political courage to enact. But finding a doctor who accepts both Medicaid patients and former prisoners makes booking an appointment less than automatic.

The barriers to successful re-entry for those who have been convicted and imprisoned are wide-ranging and long-lasting. They also add another layer of bias against African Americans, other minorities and women who routinely suffer discrimination in hiring, housing and access to job training and education. Prison job training usually lags the job markets by one Industrial Revolution. For example, there is no training in computer and speaking skills for jobs in customer service or on help desks. Training that exists may fail to meet industry-recognized standards. In recent years, the state has removed restrictions on prisoners who take correspondence courses and made efforts to improve instruction in real-world jobs. Training for skilled trades and crafts, such as welders or electricians, provide marketable skills, but require support from unions to convert training into jobs. Links between prisons isolated in rural areas and civil society in urban centers -- social service agencies, unions, business associations, employers, churches and educational institutions -- are critical for inmates to transition from incarceration to freedom.

The broader society is slowly beginning to understand and take up its responsibilities toward making freedom work for men and women who have been damaged by prolonged incarceration. The high cost of incarceration -- and the prospect of financing the care of geriatric prisoners with chronic diseases and dementia -- has focused minds in and out of government and the criminal justice system on finding ways to end recidivism and make re-entry work. A movement has taken shape around "ban the box" legislation that would prohibit asking job applicants about criminal records on the initial job application. This would end the automatic rejection by interviewers before an individual even had a chance at a second interview. By 2015, 19 states representing every region of the country have adopted "ban the box" policies. President Obama signed an executive order eliminating the criminal records question on federal job applications in November, 2015. Philadelphia Mayor Nutter signed the original "ban the box" bill for Philadelphia employees in 2011, and strengthened its provisions in December, 2015, to ban criminal investigations of applicants until after provisional job offers have been made.

Two federal laws have made job-hunting easier for ex-offenders. The Work Opportunity Tax Credit gives \$3,000 per year in tax breaks to employers who hire a former prisoner. The Federal Bonding Program offers an incentive to employers who hire hard-to-place offenders by providing a business insurance policy that protects companies against loss of property or money due to employee dishonesty. Individual employees can ultimately secure commercial bonds for themselves after a trial period. This enables them to work in construction trades and other fields that potentially present risks for customers or clients.

Housing stability is essential for breaking the cyclical relationship between incarceration and homelessness. To reduce the risk of recidivism, programs that prioritize family reunification and do not use a person's criminal history as a deterrent to housing access are crucial. Since 2011 the U.S. Department of Housing and Urban Development (HUD) has explicitly encouraged all public housing authorities (PHAs) to utilize their discretion in giving people a second chance. Permanent bans are issued on public housing for only two offenses: 1) conviction of meth production on properties of federally-funded housing, and 2) lifetime registration requirement under state sex offender programs. In addition to the Justice Bridge Housing Program that provides short-term housing for released prisoners, the state could help provide affordable housing by giving additional tax incentives or development money for low-income housing that reserved a percentage of units for ex-prisoners under close supervision. Civic and religious groups could help finance the high cost of a first rental through loans or subsidies for security deposits.

Transportation to jobs, especially in rural areas, is another serious impediment to reentry. Public transportation is often lacking especially in rural areas. Many churches operate car pools to take workers to their jobs. More civic institutions could do the same. Health clubs that offer fitness programs for people who have been confined for years can improve both their health and self-esteem. Clothing banks can help find suitable clothing for job interviews and the workplace. State and local governments could help these private sector initiatives by providing financial support and resources for groups to work together in creating holistic community approaches toward reintegrating former prisoners.

The Pennsylvania Commission on Crime and Delinquency reentry coordinator works with agencies and non-profit service providers to bring consistency to how prisoner reentry is managed before and after release from incarceration. PCCD's reentry coordinator acts as a liaison with groups vested in the problem and interested in finding ways to remove those barriers, prevent recidivism, and adapt services better to the real needs of released offenders.

The old-fashioned prison farewell, \$50 and a new set of clothes, fails to address the realities of rebuilding life outside prison walls, especially for inmates who have served the longest sentences in the history of American law. Family breakdown increases with every passing year. Support on the outside, particularly immediately after release, is critical to breaking the cycle of recidivism. Help in finding housing and a job is essential to stabilizing ex-prisoners' lives enough to meet the requirements of their parole -- which usually include living at a fixed address and holding a job. For former prisoners preparing to transition to life on the outside, counseling in everything from how to absorb the anger of children who had to grow up without them to how to manage the frustration of job hunting is critical to lasting out the difficulties of reentry and finally finding a niche in society.

Successful reentry hinges on pre-release planning, continuity of treatment and services in the community, and following the known principles of effective intervention – for example, targeting key treatment needs (such as counseling or substance abuse) using evidence-based programs. These services are limited in rural areas. Former prisoners are more likely to successfully reintegrate when society helps them to resettle and build new lives within a community that welcomes and supports their rehabilitation.

The Economics of the Criminal Justice System

Costs of Incarceration.

Today just over 48,000 Pennsylvanians are incarcerated in state prisons, 1 out of every 248 residents. The cost of incarcerating a single inmate in state prisons was \$36,608 in 2014. The total bill at the state level came to \$1.8 billion, and that figure is probably understated. The Corrections Department budget does not include costs such as corrections officers' health insurance costs, in-prison health care costs, contributions to state pension funds and capital costs, the principle and interest on bonds for prison construction. A study of corrections expenditures in 40 states by the Vera Institute and the Pew Center for the States reported that Pennsylvania was among six states where these kinds of costs were entered elsewhere in the state budget, rather than included in the Corrections Department's ledgers -- a method of accounting that "disappeared" 22.2% of the true costs of imprisonment in our state. When all costs are included, locking up an offender costs \$44,661, more than the cost (\$42,176) of sending an undergraduate to the University of Pennsylvania.

Even without including these costs, spending on prisons has grown 1,882% since 1980 --from \$94 million to 1.8 billion -- a rate that is six times faster than spending on basic education. Although two prisons were closed in 2013, three more were proposed to be completed by 2015 at a total cost of \$600 million. A third prison is scheduled to be closed when these are completed. All of them will be full the day they open. Each of them will cost \$50 million a year to operate.

Unless something radically changes, inmates in the new prisons will be just like those currently incarcerated: Fully 35% will be non-violent offenders; another 12.3% will be imprisoned for violating the terms of their parole or probation. Many of these re-incarcerations are not for the commission of new crimes, but for so-called "technical violations" of probation or parole requirements. Paroled prisoners can be re-incarcerated to complete the full term of their sentences for technical violations such as missing a single appointment with a parole officer. In all, 49.2% of state prisoners are incarcerated for committing low-level felonies or technical violations of the terms of parole or probation. They either have no record of violent crime or, after an extensive risk assessment by local parole departments, a judge determined that they presented such a small risk to public safety that they were granted probation.

Whatever its costs, incarceration is just the end point of a long process from arrest through trial (or plea bargain) to a cell in state prisons. Pre-imprisonment costs place greater burdens on local and municipal taxpayers than on state revenues. Of \$8.33 billion in total criminal justice spending, counties paid \$2.25 billion, with municipalities adding another \$2.72 billion in local tax money. Pennsylvania spent \$3.2 billion on policing costs in 2012 (most recent data). The vast majority of that money, \$2.1 billion was from municipal coffers, not from state revenues. Counties bore the lion's share of the next stage in the process, judicial and legal costs. Operating all of the courts and District Attorneys' offices around the state cost \$1.8 billion this year. State revenues funded the \$530 million needed to run state appellate courts. County and municipal taxpayers spent \$1.25 billion to operate local prosecutors' offices and trial courts. However, these costs are considerably understated. Pennsylvania's state government neither provides

money to fund legal aid to poor defendants nor collects data on what counties and municipalities spend from their tax revenues. It is the only state in the country that does not contribute to providing defense counsel to poor residents. A guide to how much is missing from the Commonwealth's total legal costs can be found in the amounts spent on indigent defense in neighboring states in 2012: New Jersey (\$117 million), Ohio (\$70 million) and New York (109 million). When the elements are considered together, almost as much money was spent on criminal justice (\$8.3 billion) as on the combined pensions (\$10.1 billion) for all municipal, county and state employees. Total state, county and municipal government expenditures last year were \$129 billion.

Alternatives to Incarceration.

Since crime began to accelerate in the late 1960s, strategies to deter and reduce criminal behaviors have concentrated all but a sliver of the justice system's energy and expenditures on the middle of the crime continuum -- arrest, trial, sentencing and incarceration. Less attention has been given to the beginning and end of the spectrum -- to juveniles committing their first crimes and to prisoners who are about to be released after serving lengthy sentences. In all this time, however, recidivism rates have barely budged. Nearly half of released prisoners have returned to correctional institutions within three years after being paroled or serving out their sentences in full. The minute changes in recidivism over the years erode assumptions that punishment alone will deter crime. Pressure is building within the system for increased interventions to reduce the failure rate by focusing at both ends of the continuum -- to keep young offenders from committing a second crime and parolees from lapsing back into criminality because they cannot build a new life outside prison walls.

There is another reason to focus on strategies to reduce recidivism: The Pew Center on the States studied 41 states that reported detailed recidivism data on prisoners released in 2004. The study, released in 2011, is both the largest and most recent tracking of released prisoners in history. The Pew researchers estimated that 43.3% of ex-prisoners were re-incarcerated within three years. This study determined that a 10% cut in recidivism would save the 41 states participating in the study \$635 million in just a single year.

Alternatives to Incarceration (ATI) have been shown to reduce recidivism. Not every Pennsylvania prison inmate would meet the strict criteria to be released from prison and enrolled in other forms of supervision. But if one in four prisoners (12,000) met those standards, the state could reduce the annual cost of incarceration by \$448.9 million. These savings could be transferred to the judicial districts to fund local ATI programs, including probation, electronic monitoring, supervised local programs for the mentally ill and specialty courts that provide intensive rehabilitation services for offenders with addictions to alcohol and drugs. The most intensive -- and expensive -- of these non-residential alternative programs has an annual cost of approximately \$6,500 to \$14,000 per offender. Even if all 12,000 qualifying prisoners were subject to the highest-intensity supervision or drug treatment programs, it would cost just \$168 million to sentence them to these alternatives. In addition to cost benefits, locally-administered alternative programs keep offenders close to their homes and families, reducing stress on the relationships that will someday aid them to fully reenter society.

The state forwarded \$3 million to the judicial districts to operate sentencing programs in 2009-10, an average of \$233 per offender. On average, offenders would have served 93 additional days in prison if they hadn't successfully completed their alternative punishment. If those 12,847 prisoners had not been in SIP in 2009-10, they would have racked up 1.2 million more days in prison, at a cost of \$103 million, for a savings of \$8,019 per prisoner. Aside from residential drug/alcohol rehabilitation services contracted to private providers, alternatives to incarceration are substantially less than the costs of imprisonment.

Alternatives to Incarceration can save the state money, but they can also impose hardships on those released from prison or jail. Supervision of probation costs approximately \$3,650 per inmate. Electronic monitoring often is based on the income level of the parolee anywhere from \$1 to \$25 per day, intensive supervision costs approximately \$6,000 per parolee and drug testing and treatment for alcohol and drug addiction can cost up to \$14,000 a year. When released inmates are forced to take on the costs of the ATI (some of which are supplied by for-profit private contractors), they are forced to accumulate debt at the same time they are deprived of full freedom.

The cost of confining juveniles in a public facility is more than double that of adult imprisonment: the national average is \$240 per day, or \$88,000 per person per year. Given the options, "sentencing" juveniles to school and possible tutoring would be cost effective in the most enduring sense: It would harness the transformative power of education to both reduce recidivist crime and send young offenders down the path to a more successful and productive life.

Pennsylvania has begun to fund a range of pre-release training and counseling programs to help prisoners adjust to life on the outside. The training is practical (apply for a birth certificate and social security card before leaving prison, get information about offender-friendly employers) and fundamental to stabilizing prisoners' emotional and social behavior (anger management, learning how to talk to people again). The Department of Corrections has also increased the number and sophistication of what have traditionally been called "half-way houses." But these programs are primarily available to prisoners who are within a year of release, whereas the states that have lowered recidivism most markedly over the last decade start parole preparation training and counseling shortly after newly-sentenced prisoners come through the gates. As helpful as learning these skills may be for parolees, it is another example of funding at the end of the spectrum. Prisoners (and their guards) might be better served by anger management counseling beginning on Day One of imprisonment.

Privatization and Fees for Service

Some states have tried to work their way out of financial burdens by privatizing aspects of the system and passing other costs along to offenders. Privatization has not made deep inroads into the justice system in Pennsylvania. State prisons contract some services, such as food and medical services to private contractors. Privatization has a bigger foothold in providing post-release programs for adults and detention centers for juveniles. The "kids for cash" scandal in Luzerne County revealed the risk inherent in these arrangements: Local judges took kickbacks to maintain a profitable head count at a nearby private juvenile detention facility. Young first-time offenders were sentenced to detention rather than to rehabilitative programs such as addiction

treatment to permit a private contractor to fulfill his business plan. Although there were subsequent reforms to the juvenile justice system that make future abuses far less likely, this experience should be treated as a cautionary tale. States with a large number of privatized jails and prisons have likewise been forced to come to grips with the limits of for-profit incarceration. In Utah and Arizona where privatization is widespread, contractors anxious to shed the costs of medical treatment routinely sent older and sicker prisoners back to state-run facilities.

County governments and to a lesser extent municipalities bear the costs of both the courts and probation and parole supervision. Increasingly, local governments have shifted parts of the cost to ex-offenders through an elaborate system of “user fees” to defray the costs of basic judicial supervision, including routine reporting to probation officers and court appearances. However, short-term savings may actually sabotage the long-term success of offenders trying to reenter society. The full cost of failed reentry -- \$37,000 a year in Pennsylvania -- is much greater than the money that can be raised from parolees and probationers in fees. Although there is variation among judicial districts in Pennsylvania, all counties have instituted fee systems for some aspects of incarceration such as booking fees, medical and dental fees, and room and board. But funding any part of court and probation/parole costs through fees on ex-prisoners threatens their already-fragile prospects of successful resettlement in society.

The next wave of privatization is in post-incarceration and probation/parole services. The Pennsylvania Department of Corrections already has 40 privately-operated half-way houses and counseling centers. Probation and parole supervision are becoming increasingly digitized with the use of electronic monitoring devices to assure that parolees do not leave their homes at unauthorized hours. Private companies provide the equipment and staff for electronic monitoring, but prisoners are required to pay the monthly bill, usually equivalent to those for a home security system. For-profit monitoring companies typically charge high fees for late and partial payments, adding penalties and interest charges that can exceed state usury laws. Ex-offenders face difficult barriers to employment, and by the time they finally find jobs, their monitoring debts may easily have climbed to four figures. Bill collection can include sending ex-inmates and probationers to prison for debts incurred because they were sentenced to pay the cost of electronic monitoring operated by for-profit companies.

There is also a parallel universe of privatized services so mundane that they go unnoticed. Prisoners need money to buy personal toiletries and other supplies, as well as tobacco products. One company, JPay holds the money transfer franchise for Pennsylvania and virtually every prison and jail nationwide. Pennsylvania negotiated a reduced rate in 2015 for sending money to prisoners through JPay; instead of a rate of \$4 to \$11 depending upon amount, the new rates are \$1.75 to \$3.25. Until a recent ruling by the Federal Communications Commission, AT&T charged prisoners across the country incredible fees -- up to \$15 per minute -- to speak by telephone with their families, lawyers and friends on the outside. A 15-minute collect call from a pay phone, the daily limit for prisoners in most jurisdictions, used to cost a couple of dollars for intrastate phone calls. But the installation of new digital equipment opened the door to new phone suppliers, and with them, new pricing structures. The companies paid a rebate or commission to the corrections departments based on call volume. Those commissions were subsidized by the extraordinary rates charged to prisoners or their families. In 2015, the

Department of Corrections re-bid the inmate phone contract which reduced the rates for inmate phone calls from over \$.25 to less than \$.06 per minute, a positive development.

Before allowing for-profit companies to monopolize critical prison services such as telephone calls and banking services, a cost analysis could be done that includes additional examination to determine whether private providers will be positioned to raise costs radically once they have secured control of any prison service. This is already beginning to happen in states that have contracted with private suppliers of systems, similar to Skype, that enable prisoners to “visit” with their families via computer, even outside normal visiting hours. This poses a hardship for families without high-speed internet access, but it does have the advantage of flexible hours -- and sometimes more. The Philadelphia Free Library runs a program, Stories Alive, that enables an imprisoned father to sit at one computer and read books for an hour with his children, who sit at another computer in one of Free Library’s branches. However, some prisons have used tele-visiting to effectively shut down their normal visiting facilities. Instead, they have set up computers to replace face-to-face conversation. Families now talk to prisoners who are seated at another computer literally a short walk away.

Changing the System

Improving alternatives to incarceration and increasing pre- and post-release help for prisoners have costs. International opinion polls consistently confirm that the American public is uniquely tax-averse. Raising taxes to provide increased services to people convicted of crimes will likely prove very unpopular. But there is already great deal of taxpayer money invested in the criminal justice system. Some of the increased near-term costs of the system could be lessened by keeping offenders out of state prisons whenever possible by utilizing cheaper alternative sentencing. The most straight-forward source of funds could come from swapping incarceration expenses (\$37,000 per prisoner per year) for supervised alternative sentences in their community. The savings from releasing two inmates from state prisons would fund the median cost of alternative programs for both ex-prisoners plus another five offenders as well. People in local jails arrested for DUI offenses might be better and more cheaply served by sentences that require them to receive counseling, attend daily AA meetings and perform community service rather than sitting in lock-up. It would also cost local taxpayers a fraction of the expense of building and operating jails. Recidivism is the great failure of current incarceration policy. Alternative sentencing programs address the underlying causes of crime, such as addictions and educational deficits that make self-sufficiency difficult. Each offender who does not commit a crime on the outside immediately creates short-term economies. In time, the long-term savings and benefits to society are even greater -- especially for those who end up becoming the victims of the crimes that re-incarcerate half of ex-prisoners.

As the number of those incarcerated decreases, we are likely to see a related economic jolt to changing the system: prison closure, leaving workers without jobs and communities without major employers. Often prisons are built in rural areas where there is adequate space for them, and when they close, the impact is great. Plans for retraining or relocating workers, possibilities for use of abandoned prisons, and support for community infrastructure could help communities cope with the change.

Any changes to the system should, of course, be subject to rigorous cost-benefit analysis, beginning with a full understanding of current costs. According to the Department of Justice's Bureau of Justice Statistics, the total monies spent on the criminal justice system in Pennsylvania reached \$8.33 billion in 2014. The state Department of Corrections reported spending \$1.8 billion operating its prisons system. However, this figure is barely two-thirds of the true costs: The principle and interest on prison construction bonds, contributions to both the pension and medical insurance funds for retirees, as well as some administrative costs were shifted to other budgets. In 2010, the last year for which figures were broken out by researchers at the Vera Institute and the Pew Center for the States, relocating those costs in other bureaucratic niches reduced the Department of Corrections outlays by \$464 million. To that can be added another \$1.1 billion spent on jails by Pennsylvania counties (an amount equal to 47.6% of incarceration expenditures statewide) and another \$276 million by municipalities.

Cost-benefit analysis can dramatically improve criminal justice policymaking, infusing evidence based and research-driven methodologies into decision making processes that are often politically or ideologically motivated. As an analytical tool, cost-benefit analysis is well established in other disciplines, and is relied upon by economists, social scientists, and regulators alike. It allows for the thorough and objective consideration of how a policy change will impact society, facilitating comparisons amongst competing alternatives and conclusions about how to maximize fiscal resources. Despite some challenges, including the need for additional empirical research, the utilization of cost-benefit analysis to evaluate criminal justice programs is an attainable and worthwhile goal. Compared to other decision making methods, cost-benefit analysis is neutral and transparent; it also has unique political salience given the economic climate. Successes already experienced by states like Washington and North Carolina—including reductions in recidivism and taxpayer costs—are replicable in jurisdictions around the country.

For all the money weaving through the criminal justice system, it remains a very poor investment in both human and financial terms. Some acts by some offenders warrant their removal -- even prolonged removal -- to establish civilized norms and keep society safe. But for almost three generations, incarceration has not been reserved for the small segment of offenders who pose the worst risks. It has, instead, been a policy for mass imprisonment imposed unevenly according to race and the relative wealth of offenders, not the seriousness of the crimes they committed.

In the U.S., money is available for imprisonment. But the budget for providing effective interventions outside lock-ups is meager. The disparities in how money is spent in the criminal justice system have so far produced high recidivism rates and lowly lives for ex-prisoners when they return to society decades later without the job skills to feed, clothe and house themselves. Smarter spending earlier in the criminal justice process will not end crime. But it could slash a recidivism rate that now sends almost half of released prisoners back to confinement. Smarter spending on training prisoners in the myriad skills needed to live in society won't ameliorate the stigma and the barriers they face as they make their transition. But it could help them to eventually wear away those prejudices in the small corner of America where they live newly productive lives.

References and Additional Reading

Introduction

Brewster, M. P., & Dammer, H. R. (Eds.) (2014). *Pennsylvania's criminal justice system*. Durham, NC: Carolina Academic Press.

deVuono-powell, S., Schweidler, C., Walters, A., & Zohrabi, A. (2015) *Who pays? The true cost of incarceration on families*. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design. Available at: <http://ellabakercenter.org/who-pays-the-true-cost-of-incarceration-on-families>

Mitchell, M., & Leachman, M. (2014). *Changing Priorities: State Criminal Justice Reforms and Investments in Education*. Washington, DC: Center on Budget and Policy Priorities. Available at: <https://csgjusticecenter.org/corrections/publications/changing-priorities-state-criminal-justice-reforms-and-investments-in-education/>

Bail/ Bonding

American Civil Liberties Union. *The commercial bail industry shouldn't profit off financial desperation*. Available at: <https://action.aclu.org/bail>

Bradford, S. (2012). *For better or for profit: How the bail bonding industry stands in the way of fair and effective pretrial justice*. Washington, DC: Justice Policy Institute. Available at: <http://docplayer.net/43037-For-better-or-for-profit-how-the-bail-bonding-industry-stands-in-the-way-of-fair-and-effective-pretrial-justice.html>.

The Pennsylvania Code. Rule 524, *Types of release on bail*. Available at: <http://www.pacode.com/secure/data/234/chapter5/s524.html>

Effective Counsel

McCoy, C. R., Phillips, N., & Purcell, D. (2009). *Justice: Delayed, Dismissed, Denied*. Philly.com. Philadelphia. Available at <http://www.emailthis.clickability.com/et/emailThis?clickMap=viewThis&etMailToID=852193084>

Task Force and Advisory Committee on Services to Indigent Criminal Defendants (2011). *A Constitutional default: Services to indigent criminal defendants in Pennsylvania*. Harrisburg, PA: Joint State Government Commission. Available at: http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=265

Taylor, K. (2011) *System overload: The costs of under-resourcing public defense*. Washington, DC: Justice Policy Institute. Available at: http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf

Alternatives to Incarceration

Families Against Mandatory Minimums. (no date). *Alternatives to incarceration in a nutshell*. Washington, DC: Authors. Available at: <http://famm.org/wp-content/uploads/2013/08/FS-Alternatives-in-a-Nutshell-7.8.pdf>

Pennsylvania Commission on Sentencing. (2015). *Pennsylvania's Recidivism Risk Reduction Incentive, Report to the legislature*. Harrisburg, PA: Authors. Available at: <http://pcs.la.psu.edu/publications-and-research/research-and-evaluation-reports/recidivism-risk-reduction-incentive>

Pennsylvania Commission on Sentencing. (2014). *Pennsylvania's State Intermediate Punishment Program, Report to the legislature*. Harrisburg, PA: Authors. Available at: <http://pcs.la.psu.edu/publications-and-research/research-and-evaluation-reports/state-intermediate-punishment/sip-2014-report-to-the-legislature/view>.

Pennsylvania Commission on Sentencing. (2013). *Report 2. Predictors of recidivism*. Harrisburg, PA: Authors. Available at: <http://pcs.la.psu.edu/publications-and-research/research-and-evaluation-reports/county-sentencing-project>

Pennsylvania Commission on Sentencing. (2012). *County time served and revocations*. Harrisburg, PA: Authors. Available at: <http://pcs.la.psu.edu/publications-and-research/research-and-evaluation-reports/county-sentencing-project>

Pennsylvania Commission on Sentencing. (2011). *Pennsylvania's Motivational Boot Camp Program*. Harrisburg, PA: Authors. Available at: <http://pcs.la.psu.edu/publications-and-research/research-and-evaluation-reports/state-motivational-boot-camp-program>

Sentencing Guidelines

American Civil Liberties Union. (no date). *Pennsylvania: Getting smart on incarceration policy*. Philadelphia: Authors. Available at: http://www.aclupa.org/files/8114/1289/0391/Pennsylvania_Getting_Smart_v12_Complete.pdf.

Families Against Mandatory Minimums. (2015). *Mandatory minimum sentences revived in Pennsylvania*. Washington, DC: Author. Available at <http://famm.org/mandatory-minimum-sentences-revived-in-pennsylvania>

Kempinen, C. A. (2010). *A multi-method study of mandatory minimum sentences in Pennsylvania*. Research Bulletin, Harrisburg, PA: Pennsylvania Commission on Sentencing. Available at: <http://thenasc.org/images/PCS.ResearchBulletin.V9I1.pdf>

Prison Conditions

Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School. (2014). *Time-in-Cell: New report on prisoners in administrative segregation*. Available at <http://www.asca.net/articles/3685>.

Clear Coalition, SEIU Healthcare. (no date). *Public Health and Public Safety in the Commonwealth's Prisons*. Harrisburg, PA: Authors. Available at: http://www.clearforpa.org/publication_files/public-health-and-safety-in-the-commonwealths-prisons.pdf

Coates, T. (2015). *The Black family in the age of mass incarceration*, *The Atlantic*. Available at: <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246>

Collins, S. P. K. (2015). *Pennsylvania overhauls health care for mentally ill inmates*. ThinkProgress. Available at: <http://thinkprogress.org/health/2015/01/07/3608971/penn-prison-mental-health>

Decker, C. (no date). *Time to reckon with prison labor*. Available at: <http://isps.yale.edu/news/blog/2013/10/time-to-reckon-with-prison-labor-0>

Ellers, R. S. (2011). *Health care services overview*. Harrisburg, PA: Pennsylvania Department of Corrections. Available at: <http://www.nga.org/files/live/sites/NGA/files/pdf/1208InmateHealthEllers.pdf>

Heskamp, B. D. (2008). *The prisoner's ombudsman: Protecting constitutional rights and fostering justice in American corrections*. *Ave Marie Law Review*, 6(2), 527-558. Available at: <http://lr.avemarialaw.edu/Content/articles/v6i2.heskamp.copyright.pdf>

Muchlin, M. B., & Deitch, M. (2010). *Independent correctional oversight mechanisms across the United States: A 50-state inventory*. *Pace Law Review*, 30(5). Available at <http://digitalcommons.pace.edu/plr/vol30/iss5/1>

Pennsylvania Department of Corrections. (2016). *2015 Accomplishments*. Harrisburg, PA: authors. Available at <http://www.cor.pa.gov/Documents/2015%20DOC%20Accomplishments.pdf>

Reentry Issues

Pennsylvania Department of Corrections. *Pennsylvania Reentry survival manual: Manual for people leaving prison*. Harrisburg, PA: Authors. Available at: <http://www.cor.pa.gov/Documents/PA%20Reentry%20Manual.pdf>

Rodriguez, M. N., & Mehta, N. (2015) *Ban the box? U.S. cities, counties, and states adopt fair hiring policies*. New York: National Employment Law Project. Available at: <http://nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

VERA, Center on Sentencing and Corrections. (2015). *Public housing for people with criminal histories*. New York: VERA Institute of Justice. Available at: <http://www.vera.org/sites/default/files/resources/downloads/public-housing-criminal-histories-fact-sheet.pdf>

Zajac, G., Hutchinson, R., & Meyer, C. A. (2014) *An examination of rural prisoner reentry challenges*. Harrisburg, PA: Center for Rural Pennsylvania. Available at: http://www.rural.palegislature.us/documents/reports/rural_prisoner_reentry_2014.pdf

Economics

Durose, M. R., Cooper, A. D., & Snyder, H. N. (2014). *Recidivism of prisoners released in 30 states in 2005: Patterns from 2005 to 2010*. Washington, DC: U.S. Department of Justice. Available at: <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>

Pew Center on the States, (2011). *State of Recidivism: The Revolving Door of America's Prisons*. Washington, DC: The Pew Charitable Trusts. Available at: http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2011/PewStateofRecidivism.pdf

Rawlings, N. (2013). *Welcome to prison. Will you be paying cash or credit?* Time, Available at: <http://nation.time.com/2013/08/21/welcome-to-prison-will-you-be-paying-cash-or-credit>

VERA, Center on Sentencing and Corrections. (2012). *The price of prisons: Pennsylvania*. New York: VERA Institute of Justice. Available at: <http://www.vera.org/pubs/special/price-prisons-what-incarceration-costs-taxpayers>

Books Through Bars. (no date). *Books. Knowledge. Change*. Philadelphia, :PA: Authors. Available at: <http://booksthroughbars.org/learn/education-incarceration>