The Growth of INCARCERATION in the United States

Exploring Causes and Consequences

Committee on Causes and Consequences of High Rates of Incarceration

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COMMITTEE ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION

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Summary

After decades of stability from the 1920s to the early 1970s, the rate of incarceration in the United States more than quadrupled in the past four decades. The Committee on the Causes and Consequences of High Rates of Incarceration in the United States was established under the auspices of the National Research Council, supported by the National Institute of Justice and the John D. and Catherine T. MacArthur Foundation, to review evidence on the causes and consequences of these high incarceration rates and the implications of this evidence for public policy.

Our work encompassed research on, and analyses of, the proximate causes of the dramatic rise in the prison population and the societal dynamics that supported those proximate causes. Our analysis reviewed evidence of the effects of high rates of incarceration on public safety as well as those in prison, their families, and the communities from which these men and women originate and to which they return. We also examined the effects on U.S. society.

After assessing the evidence, the committee found that the normative principles that both limit and justify the use of incarceration as a response to crime were a necessary element of the analytical process. Public policy on the appropriate use of prison is not determined solely by weighing evidence of costs and benefits. Rather, a combination of empirical findings and explicit normative commitments is required. Issues regarding criminal punishment necessarily involve ideas about justice, fairness, and just deserts. Accordingly, this report includes a review of established principles of jurisprudence and governance that have historically guided society's use of incarceration.

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Finally, we considered the practical implications of our conclusions for public policy and for research.

FINDINGS AND CONCLUSIONS

From 1973 to 2009, the state and federal prison populations that are the main focus of this study rose steadily, from about 200,000 to 1.5 million, declining slightly in the following 4 years. In addition to the men and women serving prison time for felonies, another 700,000 are held daily in local jails. In recent years, the federal prison system has continued to expand, while the state incarceration rate has declined. Between 2006 and 2011, more than half the states reduced their prison populations, and in 10 states the number of people incarcerated fell by 10 percent or more.

The U.S. penal population of 2.2 million adults is the largest in the world. In 2012, close to 25 percent of the world's prisoners were held in American prisons, although the United States accounts for about 5 percent of the world's population. The U.S. rate of incarceration, with nearly 1 of every 100 adults in prison or jail, is 5 to 10 times higher than rates in Western Europe and other democracies.

CONCLUSION: The growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique.

Those who are incarcerated in U.S. prisons come largely from the most disadvantaged segments of the population. They comprise mainly minority men under age 40, poorly educated, and often carrying additional deficits of drug and alcohol addiction, mental and physical illness, and a lack of work preparation or experience. Their criminal responsibility is real, but it is embedded in a context of social and economic disadvantage. More than half the prison population is black or Hispanic. In 2010, blacks were incarcerated at six times and Hispanics at three times the rate for non-Hispanic whites. The emergence of high incarceration rates has broad significance for U.S. society. The meaning and consequences of this new reality cannot be separated from issues of social inequality and the quality of citizenship of the nation's racial and ethnic minorities.

Causes

By the time incarceration rates began to grow in the early 1970s, U.S. society had passed through a tumultuous period of social and political change. Decades of rising crime accompanied a period of intense political conflict and a profound transformation of U.S. race relations. The problem

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of crime gained a prominent place in national policy debates. Crime and race were sometimes conflated in political conversation.

In the 1960s and 1970s, a changed political climate provided the context for a series of policy choices. Across all branches and levels of government, criminal processing and sentencing expanded the use of incarceration in a number of ways: prison time was increasingly required for lesser offenses; time served was significantly increased for violent crimes and for repeat offenders; and drug crimes, particularly street dealing in urban areas, became more severely policed and punished. These changes in punishment policy were the main and proximate drivers of the growth in incarceration. In the 1970s, the numbers of arrests and court caseloads increased, and prosecutors and judges became harsher in their charging and sentencing. In the 1980s, convicted defendants became more likely to serve prison time. More than half of the growth in state imprisonment during this period was driven by the increased likelihood of incarceration given an arrest. Arrest rates for drug offenses climbed in the 1970s, and mandatory prison time for these offenses became more common in the 1980s.

During the 1980s, the U.S. Congress and most state legislatures enacted laws mandating lengthy prison sentences—often of 5, 10, and 20 years or longer—for drug offenses, violent offenses, and "career criminals." In the 1990s, Congress and more than one-half of the states enacted "three strikes and you're out" laws that mandated minimum sentences of 25 years or longer for affected offenders. A majority of states enacted "truth-in-sentencing" laws requiring affected offenders to serve at least 85 percent of their nominal prison sentences. The Congress enacted such a law in 1984.

These changes in sentencing reflected a consensus that viewed incarceration as a key instrument for crime control. Yet over the four decades when incarceration rates steadily rose, U.S. crime rates showed no clear trend: the rate of violent crime rose, then fell, rose again, then declined sharply. The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime. Mandatory prison sentences, intensified enforcement of drug laws, and long sentences contributed not only to overall high rates of incarceration, but also especially to extraordinary rates of incarceration in black and Latino communities. Intensified enforcement of drug laws subjected blacks, more than whites, to new mandatory minimum sentences—despite lower levels of drug use and no higher demonstrated levels of trafficking among the black than the white population. Blacks had long been more likely than whites to be arrested for violence. But three strikes, truth-in-sentencing, and related laws have likely increased sentences and time served for blacks more than whites. As a consequence, the absolute disparities in incarceration increased, and

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imprisonment became common for young minority men, particularly those with little schooling.

> CONCLUSION: The unprecedented rise in incarceration rates can be attributed to an increasingly punitive political climate surrounding criminal justice policy formed in a period of rising crime and rapid social change. This provided the context for a series of policy choices —across all branches and levels of government—that significantly increased sentence lengths, required prison time for minor offenses, and intensified punishment for drug crimes.

Consequences

Relationships among incarceration, crime, sentencing policy, social inequality, and numerous other variables influencing the growth of incarceration are complex, change across time and place, and interact with each other. As a result, estimating the social consequences of high rates of incarceration, including the effects on crime, is extremely challenging. Because of the challenge of separating cause and effect from an array of social forces, studies examining the impact of incarceration on crime have produced divergent findings. Most studies conclude that rising incarceration rates reduced crime, but the evidence does not clearly show by how much. A number of studies also find that the crime-reducing effects of incarceration become smaller as the incarceration rate grows, although this may reflect the aging of prison populations.

> CONCLUSION: The increase in incarceration may have caused a decrease in crime, but the magnitude of the reduction is highly uncertain and the results of most studies suggest it was unlikely to have been large.

Much research on the crime effects of incarceration attempts to measure reductions in crime that might result from deterrence and incapacitation. Long sentences characterize the period of high incarceration rates, but research on deterrence suggests that would-be offenders are deterred more by the risk of being caught than by the severity of the penalty they would face if arrested and convicted. High rates of incarceration may have reduced crime rates through incapacitation (locking up people who might otherwise commit crimes), although there is no strong consensus on the magnitude of this effect. And because offending declines markedly with age, the incapacitation effect of very long sentences is likely to be small.

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CONCLUSION: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.

The distribution of incarceration across the population is highly uneven. As noted above, regardless of race or ethnicity, prison and jail inmates are drawn mainly from the least educated segments of society. Among white male high school dropouts born in the late 1970s, about one-third are estimated to have served time in prison by their mid-30s. Yet incarceration rates have reached even higher levels among young black men with little schooling: among black male high school dropouts, about two-thirds have a prison record by that same age—more than twice the rate for their white counterparts. The pervasiveness of imprisonment among men with very little schooling is historically unprecedented, emerging only in the past two decades.

Much of the significance of the social and economic consequences of incarceration is rooted in the high absolute level of incarceration for minority groups and in the large racial disparities in incarceration rates. In the era of high incarceration rates, prison admission and return have become commonplace in minority neighborhoods characterized by high levels of crime, poverty, family instability, poor health, and residential segregation. Racial disparities in incarceration have tended to differentiate the life chances and civic participation of blacks, in particular, from those of most other Americans.

CONCLUSION: People who live in poor and minority communities have always had substantially higher rates of incarceration than other groups. As a consequence, the effects of harsh penal policies in the past 40 years have fallen most heavily on blacks and Hispanics, especially the poorest.

Coming from some of the most disadvantaged segments of society, many of the incarcerated entered prison in unsound physical and mental health. The poor health status of the inmate population serves as a basic marker of its social disadvantage and underlines the contemporary importance of prisons as public health institutions. Incarceration is associated with overlapping afflictions of substance use, mental illness, and risk for infectious diseases (HIV, viral hepatitis, sexually transmitted diseases, and others). This situation creates an enormous challenge for the provision of health care for inmates, although it also provides opportunities for screening, diagnosis, treatment, and linkage to treatment after release.

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Prison conditions can be especially hard on some people, particularly those with mental illness, causing severe psychological stress. Although levels of lethal violence in prisons have declined, conditions have deteriorated in some other ways. Increased rates of incarceration have been accompanied by overcrowding and decreased opportunity for rehabilitative programs, as well as a growing burden on medical and mental health services.

Many state prisons and the Federal Bureau of Prisons operate at or above 100 percent of their designed capacity. With overcrowding, cells designed for a single inmate often house two and sometimes three people. The concern that overcrowding would create more violent environments did not materialize during the period of rising incarceration rates: rather, as the rates rose, the numbers of riots and homicides within prisons declined. Nonetheless, research has found overcrowding, particularly when it persists at high levels, to be associated with a range of poor consequences for health and behavior and an increased risk of suicide. In many cases, prison provides far less medical care and rehabilitative programming than is needed.

Incarceration is strongly correlated with negative social and economic outcomes for former prisoners and their families. Men with a criminal record often experience reduced earnings and employment after prison. Fathers' incarceration and family hardship, including housing insecurity and behavioral problems in children, are strongly related. The partners and children of prisoners are particularly likely to experience adverse outcomes if the men were positively involved with their families prior to incarceration. From 1980 to 2000, the number of children with incarcerated fathers increased from about 350,000 to 2.1 million—about 3 percent of all U.S. children. From 1991 to 2007, the number of children with a father or mother in prison increased 77 percent and 131 percent, respectively.

The rise in incarceration rates marked a massive expansion of the role of the justice system in the nation's poorest communities. Many of those entering prison come from and will return to these communities. When they return, their lives often continue to be characterized by violence, joblessness, substance abuse, family breakdown, and neighborhood disadvantage. The best evidence to date leaves uncertain the extent to which these conditions of life are themselves exacerbated by incarceration. It is difficult to draw strong causal inferences from the research, but there is little question that incarceration has become another strand in the complex combination of negative conditions that characterize high-poverty communities in U.S. cities.

Given the evidence, crime reduction and socioeconomic disadvantage are both plausible outcomes of increased incarceration, but estimates of the size of these effects range widely. The vast expansion of the criminal justice system has created a large population whose access to public benefits, occupations, vocational licenses, and the franchise is limited by a criminal

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conviction. High rates of incarceration are associated with lower levels of civic and political engagement among former prisoners and their families and friends than among others in their communities. Disfranchisement of former prisoners and the way prisoners are enumerated in the U.S. census combine to weaken the power of low-income and minority communities. For these people, the quality of citizenship—the quality of their membership in American society and their relationship to public institutions—has been impaired. These developments have created a highly distinct political and legal universe for a large segment of the U.S. population.

CONCLUSION: The change in penal policy over the past four decades may have had a wide range of unwanted social costs, and the magnitude of crime reduction benefits is highly uncertain.

The consequences of the decades-long build-up of the U.S. prison population have been felt most acutely in minority communities in urban areas already experiencing significant social, economic, and public health disadvantages. For policy and public life, the magnitude of the consequences of incarceration may be less important than the overwhelming evidence of this correlation. In communities of concentrated disadvantage—characterized by high rates of poverty, violent crime, mental illness and drug addiction—the United States embarked on a massive and unique intensification of criminal punishment. Although many questions remain unanswered, the greatest significance of the era of high incarceration rates may lie in that simple descriptive fact.

Policies regulating criminal punishment cannot be determined only by the scientific evidence. The decision to deprive another human being of his or her liberty is, at root, anchored in beliefs about the relationship between the individual and society and the role of criminal sanctions in preserving the social compact. Thus, sound policies on crime and incarceration will reflect a combination of science and fundamental principles.

GUIDING PRINCIPLES

A broad discussion of principles has been notably absent from the nation's recent policy debates on the use of imprisonment. Beginning in the early 1970s, in a time of rising violence and rapid social change, policy makers turned to incarceration to denounce the moral insult of crime and to deter and incapacitate criminals. As offender accountability and crime control were emphasized, principles that previously had limited the severity of punishment were eclipsed, and punishments became more severe. Yet a balanced understanding of the role of imprisonment in society recognizes that the deprivation of personal liberty is one of the harshest penalties

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society can impose. Even under the best conditions, incarceration can do great harm—not only to those who are imprisoned, but also more broadly to families, communities, and society as a whole. Moreover, the forcible deprivation of liberty through incarceration is vulnerable to misuse, threatening the basic principles that underpin the legitimacy of prisons.

The jurisprudence of punishment and theories of social policy have sought to limit public harm by appealing to long-standing principles of fairness and shared social membership. We believe that as policy makers and the public consider the implications of the findings presented in this report, they also should consider the following four principles whose application would constrain the use of incarceration:

- *Proportionality:* Criminal offenses should be sentenced in proportion to their seriousness.
- *Parsimony:* The period of confinement should be sufficient but not greater than necessary to achieve the goals of sentencing policy.
- *Citizenship:* The conditions and consequences of imprisonment should not be so severe or lasting as to violate one's fundamental status as a member of society.
- *Social justice:* Prisons should be instruments of justice, and as such their collective effect should be to promote and not undermine society's aspirations for a fair distribution of rights, resources, and opportunities.

These principles ought to be seen as complementing rather than conflicting with the recent emphasis on offender accountability and crime control. Together, they help define a balanced role for the use of incarceration in U.S. society.

CONCLUSION: In the domain of justice, empirical evidence by itself cannot point the way to policy, yet an explicit and transparent expression of normative principles[1] has been notably missing as U.S. incarceration rates dramatically rose over the past four decades. Normative principles have deep roots in jurisprudence and theories of governance and are needed to supplement empirical evidence to guide future policy and research.

[1]Political theorists and legal analysts have often observed that public policy necessarily embodies ethical judgments about means or ends. These judgments are informed by normative principles: basic ideals or values—often embedded in history, institutions, and public understanding—that offer a yardstick by which good governance is measured (see, e.g., Gillroy and Wade 1992).

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POLICY IMPLICATIONS AND RECOMMENDATION

We have looked at an anomalous period in U.S. history, examining why it arose and with what consequences. Given the available evidence regarding the causes and consequences of high incarceration rates, and guided by fundamental normative principles regarding the appropriate use of imprisonment as punishment, we believe that the policies leading to high incarceration rates are not serving the country well. We are concerned that the United States has gone past the point where the numbers of people in prison can be justified by social benefits. Indeed, we believe that the high rates of incarceration themselves constitute a source of injustice and, possibly, social harm. A criminal justice system that made less use of incarceration might better achieve its aims than a harsher, more punitive system

> **RECOMMENDATION: Given the small crime prevention effects of long prison sentences and the possibly high financial, social, and human costs of incarceration, federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States. In particular, they should reexamine policies regarding mandatory prison sentences and long sentences. Policy makers should also take steps to improve the experience of incarcerated men and women and reduce unnecessary harm to their families and their communities.**

We recommend such a systematic review of penal and related policies with the goals of achieving a significant reduction in the number of people in prison in the United States and providing better conditions for those in prison. To promote these goals, jurisdictions would need to review a range of programs, including community-based alternatives to incarceration, probation and parole, prisoner reentry support, and diversion from prosecution, as well as crime prevention initiatives.

Given the evidence that incarceration has been overused when less harmful alternatives could plausibly achieve better individual and social outcomes, we specifically urge consideration of changes in sentencing and other policies. We also propose that policy makers and citizens rethink the role played by prisons in addressing public safety and seek out crime reduction strategies that are more effective and less harmful. In many cases, alternatives to incarceration would be more practical and efficient ways to achieve the same objectives. Although a comprehensive review of the research on noncustodial sanctions and treatments was not part of our charge, that research could provide policy makers with guidance on when and how to substitute these alternatives for incarceration.

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To minimize harm from incarceration, we urge reconsideration of the conditions of confinement and programs in prisons. Given that nearly all prisoners are eventually released, attention should be paid to how prisons can better serve society by addressing the need of prisoners to adjust to life following release and supporting their successful reintegration with their families and communities. Reviews of the conditions and programs in prisons would benefit from being open to public scrutiny. One approach would be to subject prisons to systematic ratings related to their public purposes. Such ratings could incorporate universal standards that recognize the humanity and citizenship of prisoners and the obligation to prepare them for life after prison.

We offer more specific suggestions for reconsideration of incarceration policies in three domains—sentencing policy, prison policy, and social policy.

- **Sentencing policy.** The evidence does not provide explicit guidance for a comprehensive reexamination of current sentencing policies. Details of strategies for reducing incarceration levels will depend on a complex interplay between the public and policy makers. Yet the evidence points to some sentencing practices that impose large social, financial, and human costs; yield uncertain benefits; and are inconsistent with the long-standing principles of the jurisprudence of punishment. Specifically, the evidence suggests that long sentences, mandatory minimum sentences, and policies on enforcement of drug laws should be reexamined.
- **Prison policy.** Given how damaging the experience of incarceration can be for some of those incarcerated and in some cases for their families and communities, we propose that steps be taken to improve the conditions and programs in prisons in ways that will reduce the harmful effects of incarceration and foster the successful reintegration of former prisoners when they are released.
- **Social policy.** Reducing the severity of sentences will not, by itself, relieve the underlying problems of economic insecurity, low education, and poor health that are associated with incarceration in the nation's poorest communities. Solutions to these problems are outside the criminal justice system, and they will include policies that address school dropout, drug addiction, mental illness, and neighborhood poverty—all of which are intimately connected to incarceration. If large numbers of intensely disadvantaged prime-age men and women remain in, or return to, poor communities without supports, the effects could be broadly harmful. Sustainably reducing incarceration may depend, in part, on whether services and programs are sufficient to meet the needs of those who would

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otherwise be locked up. Thus, policy makers and communities will need to assess and address the availability, accessibility, and quality of social services, including drug treatment, health care, employment, and housing for those who otherwise would be imprisoned.

RESEARCH RECOMMENDATION

Recognizing that the knowledge base for many policies related to incarceration is limited, we urge the research community to work closely with the national and state governments and nongovernmental institutions to develop an ambitious and multifaceted portfolio of study to fill knowledge gaps in this field. For policy and public understanding, more studies are needed of the effects of various sanction policies, including those involving incarceration, on crime. The availability and effectiveness of alternatives to help achieve a just and safe society without a heavy reliance on incarceration need to be thoroughly studied.

The design and evaluation of promising alternatives to incarceration are of critical importance to this proposed research portfolio. Such a research program would expand the options of state officials for responding to the problem of crime. Scholars should also be engaged in policy discussions about the costs and benefits of various changes in sentencing policy that would reduce rates of incarceration. Researchers should expand the number of systematic evaluations of prison-based programs, aid in the development of evidence-based policies that promote humane prison conditions, and help design and evaluate reentry programs that support successful reintegration. Finally, when these interventions have proven effective, the research community should offer its expertise to assist in bringing them to scale.

RECOMMENDATION: Given the prominent role played by prisons in U.S. society, the far-reaching impact of incarceration, and the need to develop policies that reduce reliance on imprisonment as a response to crime, public and private research institutions and statistical agencies should support a robust research and statistics program commensurate with the importance of these issues.

Research aimed at developing a better understanding of (1) the experience of being incarcerated and its effects, (2) alternative sentencing policies, and (3) the impact of incarceration on communities is outlined in the report's final chapter and expanded on in Appendix C.

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