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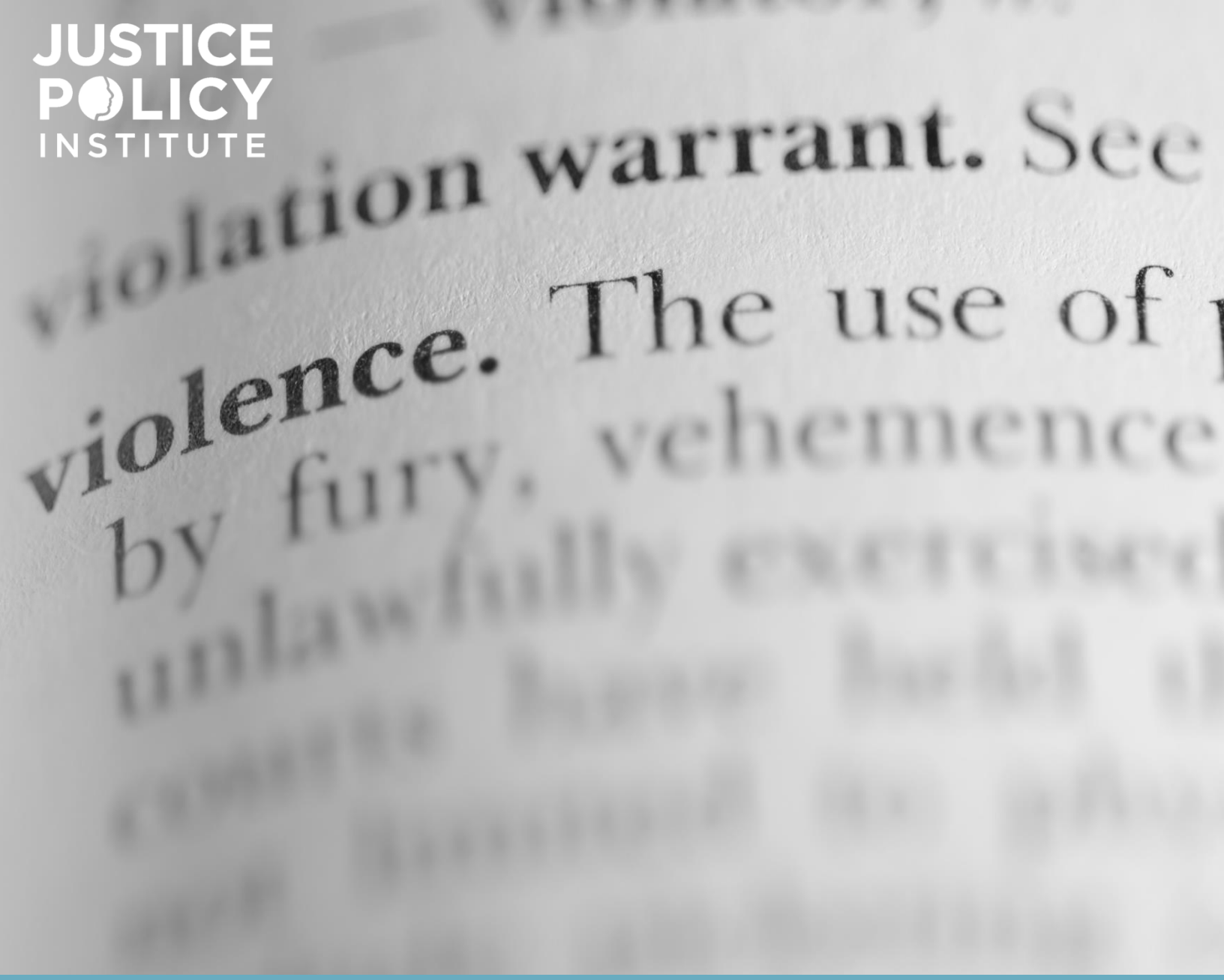

DEFINING VIOLENCE:

Reducing Incarceration by Rethinking America's Approach to Violence

Justice Policy Institute | August 2016

JUSTICE POLICY INSTITUTE

Justice Policy Institute (JPI) is dedicated to reducing the use of incarceration and the justice system by promoting fair and effective policies.

JPI envisions a society with safe, equitable and healthy communities; just and effective solutions to social problems; and the use of incarceration as a last report

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INTRODUCTION

"Can we, in fact, significantly reduce the prison population if we're only focusing on non-violent offenses where part of the reason that in some countries — in Europe, for example — they have a lower incarceration rate because they also don't sentence violent offenders for such long periods of time. I think it's smart for us to start the debate around non-violent drug offenders. You are right that that's not going to suddenly halve our incarceration rate, but if we get that — if we do that right … then that becomes the foundation upon which the public has confidence in potentially taking a future step and looking at sentencing changes down the road."

—President Barack Obama.[1]

"I want to go some place that is not safe ground yet because it is not commonly talked about. Every piece of legislation we have mentioned, [the] REDEEM act is all about nonviolent crimes, the mandatory minimums, everything nonviolent, nonviolent. I just want to go here to just give you a foreshadow of the future of what we must do as a society. We have labeled so many things violent crimes in such a huge way that we have got to start having an honest conversation about what really we want to be as a society… I am just saying that we have to reexamine the system as a whole."

—Senator Cory Booker (D-New Jersey), Bipartisan Summit on Criminal Justice Reform, in Conversation with Newt Gingrich, Moderated by Donna Brazile, March 2, 2015.

When President Barack Obama made his historic visit to a federal prison last year, he underlined the growing policy consensus that the nation needs to reduce the use of incarceration. But whether it was at an advocacy summit in Washington around a pledge to cut prison and jail populations by 50 percent, raised by a coalition of conservative and liberal organizations focusing on criminal justice reform, or echoed by the candidates for president, the justice reform discourse has been framed as reducing the incarceration of people convicted of nonviolent offenses rather than addressing the full spectrum of the prison population.

Whether this focus has helped reduce the use of incarceration remains in question.

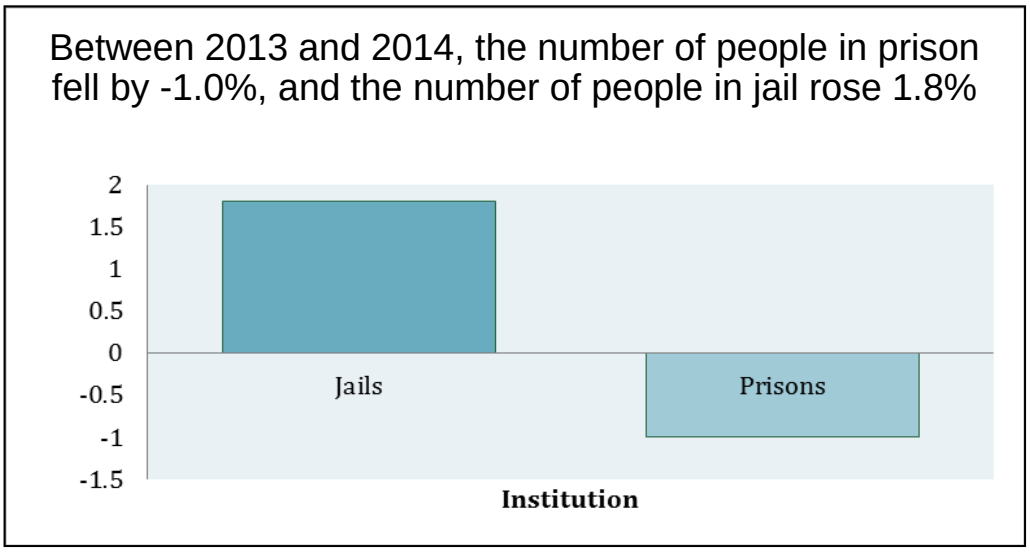
Has the focus on people convicted of nonviolent offenses helped reduce the use of incarceration?

The latest survey of prison populations showed that the nation experienced the second-largest decline in prison populations in 35 years, with about half the states and the Federal Bureau of Prisons showing reductions in the number of people in prison.

But this decline needs to be put into context: Of these 23 jurisdictions, including the federal system, 14 states and the Federal Bureau of Prisons saw their prison population decline by 2 percent,[2] or less, *with the overall number of people held in a correctional facility dropping by only 1 percent (15,400 people out of a total incarcerated population of 1,561,500 people under the custody of a prison system)*[3]

Underlining the reform challenge playing out in corrections where a modest reduction in prison populations has occurred simultaneously with multi-billion dollar jail expansion[4] proposals, the latest national surveys show that the number of people in jail, either as pretrial defendants or people sentenced to jail, *rose by 1.8 percent*.[5] The United States still has the highest incarceration rate in the world as well as the largest prison and jail populations in the world.

As was underscored by The Marshall Project last year, and echoed by academics and thought leaders,[6] "simple math shows why violent offenders would have to be part of any serious attempt to halve the number of prisoners."[7] Out of the 1.35 million people in state prisons, the Bureau of Justice Statistics reports that 718,000 people were serving time for a violent offense.[8] Accordingly, about half the people in state prisons would not be covered under current strategies that are tailored to exclude people with convictions for violent offenses.



Nearly two thirds of the places with a prisoner population decline had a reduction of 2 percent or less.

Source: Prisoners in 2014 (2015); Jail Inmates at Midyear 2014 (2015). Bureau of Justice Statistics.

There is no consensus on what the opposite of "mass incarceration" would look like. To answer the question of how many fewer people would need to be locked up to see significant change and to lower its incarceration rate to what European nations currently experience, the U.S. would have to reduce its incarcerated population by 80 percent,[9] or about 1.2 million fewer people in prison and jails. It has been nearly 60 years since the U.S. has experienced comparable incarceration rates to Europe[10] and although we have witnessed a dramatic increase in our prison population, it has not made us safer.[11]

Statutes abstractly categorize behavior as violent or nonviolent. How might these categorizations, along with the workings of the justice system, combine to limit reform efforts designed to reduce our reliance on incarceration? Does statistical reporting obscure critical facts that change agents, policymakers, and the public need to consider when designing policies to significantly reduce the use of incarceration?

Source: How to cut the prison population by 50 percent. The Marshall Project (2015)

To reach the European standard, 1.2 million fewer people would be incarcerated – a figure that far exceeds the number of people incarcerated for nonviolent offenses nationally.

In *Defining violence: reducing incarceration by rethinking America's approach to violence,* the Justice Policy Institute (JPI) explores how something is defined as a violent or nonviolent crime, how that classification affects how the justice system treats a person, and how all that relates to the use of incarceration. The report summarizes the relationship of offenses to the use of incarceration and how that varies by:

- **How violent offenses are categorized from place to place:** An act may be defined as a violent crime in one place and as a nonviolent crime somewhere else. The law in a particular jurisdiction may define something as a nonviolent crime, but a corrections department may define the same behavior differently. For example, although burglary rarely involves person-to-person behavior, it is defined as a violent crime in some places and can lead to a long prison sentence;

- **How context matters in the way a violent or nonviolent offense is treated by the justice system:** Sometimes a behavior that would not normally be a defined as a "crime of violence" or result in a long prison term can mean a much longer term of imprisonment when a gun is involved; and

- **The disconnection between the evidence of what works to make us safer and our current policies:** People

convicted of some of the most serious offenses – such as homicide or sex offenses – can have the lowest recidivism rates, but still end up serving long prison terms.

These three factors overlap with each other in a way that brings into sharp relief the fact that the nation will fail to make meaningful reductions in the use of incarceration unless we revamp our approach to violent crime and how the justice system treats people convicted of a violent crime. How a behavior is treated by the courts can occur in isolation from the research that demonstrates someone's ability to change, and brings competing values around what is proportionate and just response to behavior.

This is a complicated political and systems reform issue. When politicians support bills that focus solely on nonviolent crimes, they can point to polling and voter-enacted ballot initiatives that show that the public supports their agenda. In some places, policymakers have vocally rejected justice reform bills and ballot initiatives if there was a hint that someone convicted of a violent crime might benefit from the change. When someone has been the victim of a violent crime, they may want to see that person locked up. Scholars have noted that if the U.S. wants to treat the root causes of violence in the communities most affected by serious crime, it will require a significant investment of public resources – more than what we could currently "reinvest" from downsizing and closing prisons and jail.

To help unpack some of the complicated issues at play, the Justice Policy Institute (JPI) analyzes how behaviors are categorized under sometimes-arbitrary offense categories, explores the larger context that exists when something is classified as a violent or nonviolent offense, and shows the consequences for the justice system and the use of incarceration. This report also looks at how the debate over justice approaches to violent crime, nonviolent crime, and incarceration is playing out in legislatures and how justice reform proposals are debated.[12]

How many people are incarcerated for violent offenses?

Since most people in prison in America are under the jurisdiction of the states, this analysis focuses more attention on people in state prison, and in a few select cases, federal prison.

There are approximately 718,000 people in state prisons whose most serious offense is a violent offense: For national corrections reporting programs, the crimes that are included in violent crime are, homicide, rape (including sexual assault), robbery and aggravated assault (including simple assault), and other violent offenses if they lead to someone's custody for more than one year. In 2014, people convicted of robbery, rape or sexual assault, murder, and aggravated/simple assault accounted for approximately one out of two people in state prison (185,000, 169,000, 169,000, 135,000 respectively).

There are also the 15,000 people in federal prison whose most serious offense is a violent offense, and 140,000-plus people are who are awaiting trial in jail—people who are legally presumed innocent—who were charged with a violent crime. There are also 42,000-plus people who were convicted of a violent offense.

Source: How many people are locked up in the United States?. (Northampton, MA: Prison Policy Initiative (2016). Unless otherwise noted with a citation, all statistics that relate to the number of people incarcerated by offense were sourced to the Prison Policy Initiative

New York and California: What do violent offenses, violent felony offenses, and "nonviolent, nonserious, and nonsexual" offenses mean in the context of justice reform?

Not all violent offenses are classified as felonies and not all felonies are violent crimes. Each state has the ability to determine what is and is not violent crime, and whether it will be classified as a felony, a misdemeanor offense, and the consequences a conviction for these offenses will carry. When this state-based reality is parsed into a national discussion about justice reform, the local subtleties can get 'lost in translation.'

In **New York**—as is the case in other states—some **violent crimes are considered misdemeanors**. New York also delineates between *violent* and *nonviolent* felonies. In New York, a person is not charged with a ***violent felony***[13] *per se*. Each of New York's five felony classes are broken down into violent and nonviolent offenses.[14] One can be charged with a Class B felony, like assault in the first degree, which is considered a violent felony. There are also a series of Class A and Class B misdemeanors that include behaviors like assault or sexual abuse.

In **California**, how something is defined as violent or nonviolent runs into statutory categories like **"violent felony offenses:"** This category includes homicide, rape, any robbery, assault with the intent to commit a specified felony, and a series of 19 other behaviors.[15]

An entirely different narrative around how the system should treat various behaviors advanced around Governor Brown's Public Safety Realignment—the state's response to federal court orders to reduce prison overcrowding— expanded the debate around what some people think *should* be considered serious or violent crime as opposed to what is a violent crime.

Realignment changed California sentencing laws by shifting thousands of people from serving their sentences in state prisons to serving them in county jails: To make this politically palatable, Governor Brown promised that only people convicted of nonviolent offenses, and a larger group of people colloquially called "non, non, nons" could be sentenced to jail, instead of prisons: "Non, non, nons" refers to people whose current conviction was for neither a violent felony offense,[16] serious felony,[17] or sex offense.[18] An additional 60 offenses—many of which would not be defined as a violent offense in another place – were ultimately excluded from the realignment framework.[19]

Under California Governor Jerry Brown's Public Safety and Rehabilitation Act of 2016 – a ballot initiative being voted on in California in November – changes are being considered that would seek to reduce the justice involvement of some people convicted of violent crimes. If enacted by voters in November, the ballot initiative would change the state's juvenile transfer laws, so that a judge (not a prosecutor) would ultimately make the decision about whether a youth would end up in the adult system regardless of their offense. The ballot initiative would also memorialize the state's response to federal court orders to reduce prison overcrowding by allowing people convicted of violent crimes to earn time off their sentence when they participate in education and rehabilitative programs.

Part I:
A MOMENT IN TIME: THE OFFENSE REFLECTS A SINGULAR EVENT, NOT A PERSON'S CAPACITY TO CHANGE

Statistics cited by the media, policymakers, and the public on who is in prison for what offense reflect the most serious offense that led to someone's current incarceration at a moment in time. Alone, these figures do not tell much about a person's ability to change or likelihood of recidivism.

The leading national repository that generates information on incarcerated populations is the U.S. Justice Department's Bureau of Justice Statistics (BJS). In 2014, of the 1.5 million people incarcerated in prisons, there were about 718,100 people whose most serious current conviction was a violent offense, as reported to BJS by a state corrections department.[20] For BJS, the crimes that are included in violent crime are homicide, rape (including sexual assault), robbery, aggravated assault (including simple assault), and other violent offenses if they lead to someone's custody for more than one year. People convicted of robbery, rape or sexual assault, murder, and aggravated/simple assault accounted for approximately one out of two people in state prison.

When BJS reports the offense of a person who is incarcerated, the only thing that is reported is the most serious offense that person was convicted of leading to their incarceration in that instance, under the jurisdiction of a state or federal authority, for more than one year of custody. BJS updates how it defines offenses as "violent" or "nonviolent" based on changes in state laws, and other information learned from correctional authorities.

What this federal accounting of correctional statistics does not tell anyone—not the public, not policymakers, not the media—is whether someone will engage in the same behavior, or another destructive behavior, in the future.

Homicide: Low Recidivism Rates

People whose most serious crime was a homicide can face the longest sentences, but ironically they show the lowest recidivism rates. New information has emerged over the past few years that underscores that even among the 169,000 people in state prison for homicide, the offense of conviction—the instant offense designated to be the most serious offense—is not the primary determinant of whether someone will face challenges when returning to the community.

- **Maryland: nine out of 10 people released for homicide did not return to prison.** Due to a flaw in jury instructions, the Maryland Court of Appeals in *Unger v. State* ruled that people convicted in those criminal cases were entitled to new trials. Because of the challenges of bringing new trials based on offenses that occurred decades ago, the cases—most of which involve

people age 60 or older and most of whom were convicted for homicide—were settled in a way that resulted in the release of most of the people affected by the *Unger* decision. A private foundation provides resources to support enhanced reentry services for people leaving prison under the *Unger* decision, with a special focus on addressing their housing needs. As of March 2016, of the more than 100 people who have been released under the Unger decision, *none* has been convicted of a new felony offense.[21]

- **Michigan: nine out of 10 people paroled for homicide did not return to prison.** Michigan increased the capacity of the parole board so that a larger pool of people who had been denied parole could have their cases reviewed. Of all the people once convicted of homicide who were paroled from 2007 through the first quarter of 2010, more than 99 percent did not return to prison within three years with a new sentence for a similar offense.[22]

- **New York: nine out of 10 people released for homicide did not return to prison.** According to the Department of Corrections and Community Supervision Board of Parole, there were 987 people convicted of A-I violent felony offenses who were granted parole between 2009 and 2012 (most of whom were serving a homicide related offense). Of those who were granted parole, only two—or less than one percent—were re-imprisoned for a new felony conviction.[23] Over a longer timeline, of the 871 A-1 violent felony offenders who were conditionally released from their life sentences in 2008, 2009, 2010, and 2011, only five were returned on new felony convictions.[24]

Recidivism rates are important, but even they have their limitations particularly as they relate to how to help people who face challenges after justice system involvement, regardless of whether they were convicted of violent or nonviolent offenses.

Are people leaving prison less likely to return to prison than has been suggested?

In a paper published in *Crime & Delinquency* in 2014, researchers who routinely study data collected by BJS suggested that the national discourse around recidivism as it relates to offenses may obscure the success most people have when they leave prison because it is solely focused on a moment in time—the event—that is studied. In contrast to recidivism figures that show that half of people who leave prison will return within three years on a new offense or for a violation of their supervision, the researchers show that roughly two out of every three people who enter and exit prison will never return to prison.[25] The principal difference in the way the two figures are represented is the lack of individualized attention to the person's risk to reoffend that comes with a more in-depth study of the person's individual strengths or challenges. The way recidivism is reported does not necessarily account for someone's assessed risk to engage in new behavior—something that can change over time, change with someone's age, or change based on whether we provide someone with appropriate support.

People convicted of drug offenses can face more challenges with recidivism than people convicted of violent offenses.

People catalogued by justice system agencies as being convicted for nonviolent offenses may have much higher rates of recidivism than people convicted of violent offenses.

If a person convicted of a drug offense[26] or a property offense engages in behavior because of an addiction, they may have a higher recidivism rate because of relapse and continued activity in pursuit of sustaining drug use than someone convicted of a violent crime.[27] While only 2 to 3 percent of released prisoners in New York State who had been incarcerated for violent offenses were returned to prison for committing a new felony offense, a drug offense, or a technical parole violation—not a new violent crime—was the main reason these people were returned to prison.[28]

In summary, policymakers and the public need to interpret corrections and law enforcement statistics on offenses with caution; these figures only tell someone what happened at a point in time, and they do not explain much about someone's capacity to change.

Part II:
HOW VIOLENT OFFENSES ARE CATEGORIZED DIFFERS FROM PLACE TO PLACE

An act may be defined as a violent crime in one place and as a nonviolent crime somewhere else. The law may define something as a nonviolent crime, but a corrections department may define the same behavior differently.

Assault

The Bureau of Justice Statistics includes both aggravated assault and simple assault in its accounting of violent crimes. In 2014, there were 135,000 people in state prisons in for assault.

Assault can be defined by correctional authorities as a crime of violence, and as with a variety of crimes, assault is defined differently from one state to another. Some states define assault as the intentional use of force or violence against another, such as punching a person or striking the victim with an object. In other states, assault need not involve actual physical contact and is defined as an attempt to commit a physical attack or as intentional acts that cause a person to feel afraid of impending violence. In some places, domestic violence offenses are prosecuted under simple assault, which can carry a lesser penalty than aggravated assault but is defined as a violent crime.

Sometimes it does not matter whether an assault is "simple" or "aggravated" or whether it is a felony or a misdemeanor to result in significant consequences when the behavior occurs.

Maryland: 2nd Degree Assault

Many states have three or four categories of assault so that the justice system can choose from multiple options when reacting to a particular event. In New York, for example, Assault in the 3rd Degree is a Class A misdemeanor.

Maryland has two categories of assault—first and second degree. Because Maryland recognizes common-law crimes, no statute defines their elements. But Maryland case law fully articulates them. As recognized in Maryland common law, an assault is an attempted battery or an intentional placing of a victim in reasonable apprehension of an imminent battery.[29] A battery is defined as the "unlawful beating of another," and includes "*any* unlawful force used against a person of another, *no matter how slight*."[30] The common law offense of battery thus embraces a wide range of conduct, including "kissing without consent, touching or tapping, jostling, and throwing water upon another."[31]

As part of a review of what is driving growth in Maryland's prison population, the Justice Reinvestment Coordinating Council (JRCC) showed that, in 2014, Assault in the 2nd Degree was the second most common offense that resulted in someone being returned to prison for a new offense while on parole. The data also showed that people convicted of 2nd degree

assault were less likely to be released close to their parole date than people convicted of 1st degree assault (the more serious crime).[32]

In 2015, Maryland's JRCC contemplated adding 3rd and 4th degree categories of assault that would have carried different penalties. The administrative parole process that the JRCC enacted – something that allows people approaching their parole date to automatically be processed, and not necessarily have to face automatic parole hearings—excluded people convicted of 2nd Degree assault. The proposed inclusion of Assault in the 2nd Degree under a reformed administrative parole process was criticized by the Maryland Crime Victims Resource Center for carving out an avenue for release of people engaged in violent behaviors.[33]

As the Maryland Justice Reinvestment Act was being debated in the spring of 2016, the issue of what constitutes a violent or nonviolent crime became a significant point of contention; some legislators argued that someone selling drugs really cannot be considered 'nonviolent' because of the drug trade's impact on the community.[34]

Washington, D.C.: Assaulting a police officer

In Washington, D.C., Assaulting a Police Officer (APO) is an offense that can be a misdemeanor or a felony. The offense can result in a sentence of six months in jail, but if it co-occurs with another offense or causes significant bodily injury to a law enforcement official, it can result in a 10-year penalty.[35] Similar to the Assault in the 2nd Degree statute in Maryland, the District's APO statute extends to probation and parole staff.

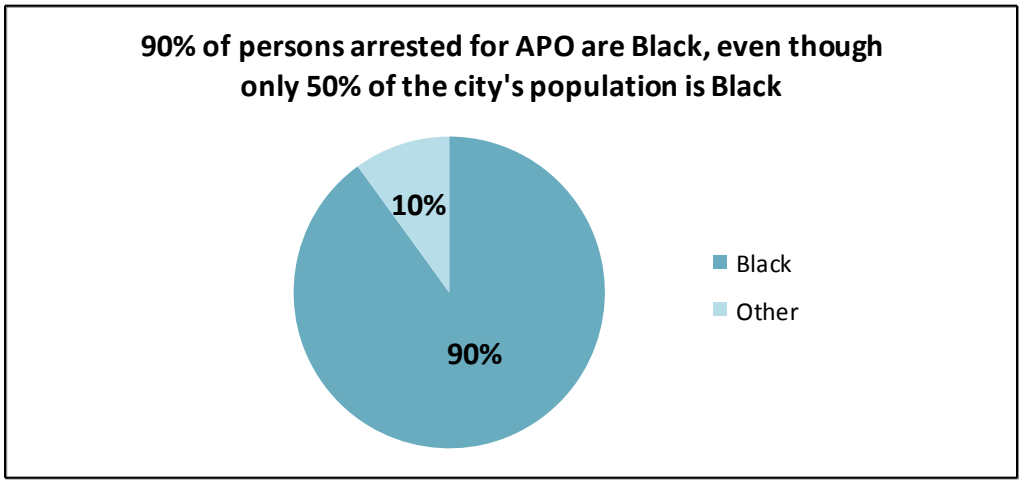
The APO statute covers a wide range of behaviors and has been critiqued because of how, in the context of an interaction with law enforcement, something that occurs can needlessly escalate and result in someone's deeper justice system involvement.

The Washington, D.C., APO statute on the books in 2015 was very broad, including in its language "whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer…" while the officer is performing their duties.[36] This translates into behaviors being charged as APO that have included wiggling in handcuffs, yelling at a police officer, or removing an officer's hand from one's person when they are not being arrested can result in a charge. In contrast, in another state—in another context—a person can only be charged with APO if they cause serious physical injury to a police officer with the intent to disrupt their duties.[37]

The application of the APO statute to minor incidents has broad implications. A five-month investigation by WAMU 88.5 and American University looked at nearly 2,000 cases of APO between 2012 and 2014 and found that the cases clog up the courts, rarely result in injuries to officers and residents, can result in arrest records and convictions that carry lifelong consequences, and disproportionately affect the city's African American residents.[38]

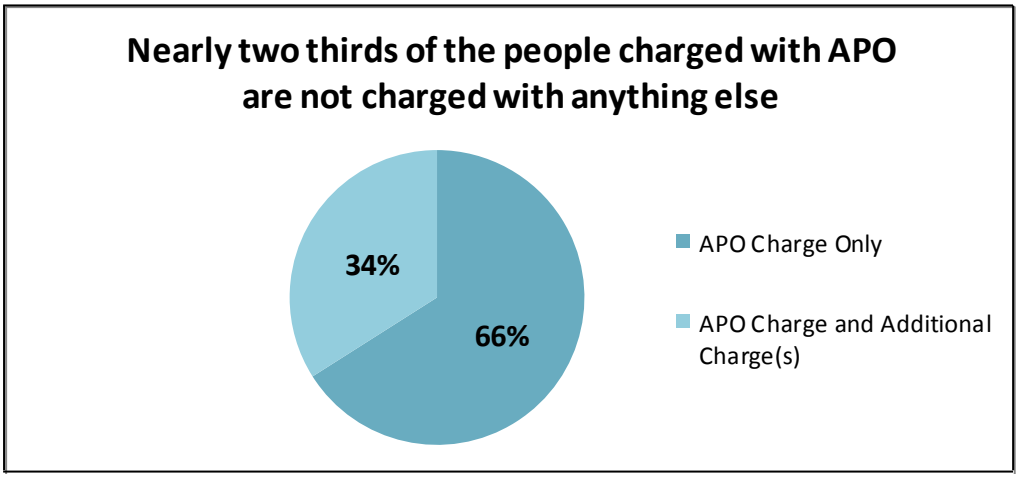
Key findings from the investigation included:

- About one in four people charged with APO needed medical attention, while one in five police officers involved in these situations needed medical attention;
- Compared with cities of comparable size, Washington, D.C., uses the APO charge three times more often;
- Prosecutors declined to press charges in more than 40 percent of the arrests for assaulting an officer;
- 90 percent of those charged with APO were African American even though only 50 percent of the city's population is black;



Source: Center for Investigative Reporting (2015).

- Nearly two thirds of the people charged with APO were not charged with any other offense.[39]



Source: Center for Investigative Reporting (2015).

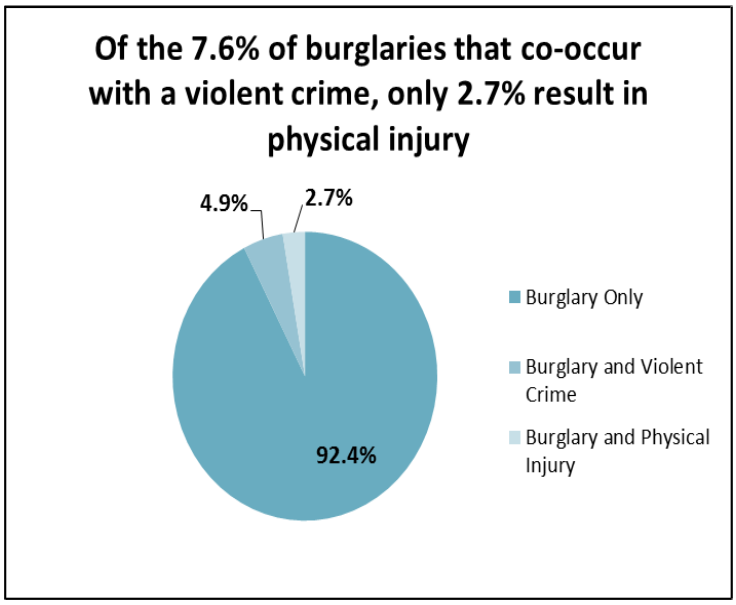
Washington, D.C.'s Chief of Police, Cathy Lanier, has said that the APO statute is too broad and should be revised, as it caused "tensions between police and residents."[40] In 2016, the D.C. Council passed legislation that created two separate offenses for "assault on a police officer" and "resisting arrest": the change narrowly tailored the charge of APO, and created a charge that can be filed when an individual intentionally resists a lawful arrest. Both charges can result in a jury trial. The change to D.C.'s APO law will become law in September, 2016.[41]

Burglary

"Simple burglaries very seldom involve violence, and when violence does indeed occur, separate criminal charges for those acts are added onto the burglary charges"

– Richard F. Culp et al., Is Burglary a Crime of Violence? An Analysis of National Data 1998-2007 (New York John Jay College of Criminal Justice, 2015).

People who are incarcerated for burglary are reported by national correctional authorities as being in prison for a *nonviolent* property offense; about 142,000 people are in state prisons for burglary. While correctional statistics report burglary as a nonviolent offense, most federal and state statutes define burglary as a violent offense in some contexts, whether as a standalone offense or when it occurs with other behaviors. Forty-seven states and the federal government use an array of methods to determine if a burglary is catalogued as violent or nonviolent.[42]



Source: Is Burglary a Crime of Violence (New York City: John Jay College of Criminal Justice, 2015).

Recent research using data collected by the Federal Bureau of Investigations Uniform Crime Reports (UCR) and the National Criminalization Victims Survey (NCVS) shows that, overall, burglaries do not include person-to-person contact. The NCVS shows that 7.6 percent of all burglaries between 1998 and 2007 involved burglary and a violent crime.[43] Of the burglaries reported to NCVS during this time, only 2.7 percent resulted in actual physical injury. The National Incident Based Reporting System, which provides supplemental expanded data to the UCR, found that 0.9 percent of all burglaries co-occurred with a violent crime.[44]

California's Three Strikes Law and burglary

The changes to California's Three Strikes Law– synonymous with America's embrace of "tough on crime" sounding laws—demonstrate the challenge of navigating how offenses are characterized and treated from place to place.

To get around the challenges of having to garner a two-thirds majority vote in the California legislature, reformers moved to modify California's Three Strikes Law through a voter ballot initiative enacted in 2012. [45] The change meant that the third offense that could lead someone to serve 25-years-to-life-in-prison could only be what is defined in California as "serious or violent." As of March 10, 2016, 2,188 people who had been sentenced under Three Strikes, and whose third strike was not serious or violent, had been released.[46] The Stanford Law Three Strikes Project reported that, as of November 2014, among the 1,613 people who had been released under the changes to the law resulting from the ballot, the recidivism rate was 1.3 percent.[47]

The ballot initiative changing California's Three Strikes Law was an important step forward, but in California, burglary of an unoccupied dwelling can count toward one of the strikes that can lead someone to serve a 25-to-life sentence.[48] Another ballot initiative was offered in 2015 to remove burglary of an unoccupied dwelling from having a role under the Three Strikes Law, but it failed to garner financial support or enough signatures to be placed on the 2016 ballot.

Virginia's recommended review of burglary's classification.

The Commonwealth's Commission on Parole Review recommended in 2015 that the state reevaluate whether burglary should be classified as a violent crime under the statute, including if it occurs in association with another offense: "The Commission reviewed evidence that a person convicted of an offense listed in the Virginia code face [sic] major impediments to incarceration, and they often result in serving much longer prison terms. Being categorized as a "violent offender" creates significant barriers to rehabilitative, self-improvement and reentry programs."[49]

As the Virginia legislative session drew to a close in 2016, no changes to the statute governing burglary were enacted. As a result, barriers remain in place that prevent people convicted of violent crimes from participating in drug court and other alternative interventions.

United States Sentencing Commission recommends amendments to burglary as a "crime of violence."

In 2016, the U.S. Sentencing Commission offered an amendment that would redefine how burglary is treated by federal law. The amendment deletes burglary of a dwelling from the list of enumerated offenses under "crimes of violence": "In implementing this change, the Commission considered that (1) burglary offenses rarely result in physical violence, (2) "burglary of a dwelling" is rarely the instant offense of conviction or the determinative predicate for purposes of triggering higher penalties under the career offender guideline, and (3) historically, career offenders have rarely been rearrested for a burglary offense after release."[50]

Unless the Congress rejects the change, the U.S. Sentencing Commission's amendment will take effect November 1st, 2016.

Part III:
CONTEXT MATTERS IN THE WAY A VIOLENT OR NONVIOLENT OFFENSE IS TREATED BY THE JUSTICE SYSTEM

When a weapon is involved in violent crime, the person who engaged in the behavior can face a much longer prison term. But such sentencing enhancements are divorced from the larger context that the U.S. is a country with more guns than people. Because of the charges usually brought in reaction to these behaviors, people often plead guilty and receive long sentences (because of mandatory minimum or sentencing enhancements), thus, placing a great deal of power in the hands of prosecutors. For example, there are gradients of behavior that fall under the category of "sex offenses." But the approach to incarceration and community control of people convicted of sex offenses are detached from whether registries work, and whether they cause more harm than good.

Sex offenses: context matters around penalties, but less around evidence of effectiveness

"Studies have indicated that sex offenders have among the lowest recidivism rates… Additionally, some of the most dangerous sexual crimes, those involving rape and murder, account for less than three percent of sexual offenses perpetrated in the United States."

—Kate Hynes, "The Cost of Fear: An Analysis of Sex Offender Registration, Community Notification, and Civil Commitment Laws in the United States and the United Kingdom."[51]

In 2014, there were 169,000 people in state prisons for sex offenses, which include rape and sexual assault, and they were categorized as violent offenses.[52]

Because the larger context of discourse around what works in curbing sex offending behavior is divorced from the science, the behavior carries significant consequences that extend beyond an actual prison sentence.

Policymaking around how to respond to sex offenses has been obscured by public perception. According to a study published in the *Analyses of Social Issues and Public Policy*, "it was found that community members believe that sex offenders have very high recidivism rates, view sex offenders as a homogeneous group with regard to risk, and are skeptical about the benefits of sex offender treatment."[53] One research study done in Florida showed that 67 percent of respondents said they thought prison was an effective strategy to reduce sexual offenses, with 73 percent saying they would *"support these policies even if there is no scientific evidence showing that they reduce sexual abuse."*[54]

People leaving prison for sex offenses are considerably less likely to be re-arrested for any offense compared with people convicted of other offenses, and their re-arrest rate within the first three years of discharge is still relatively low at 5.3 percent.[55] Data from Michigan show that 99 percent of people released from prison

through parole for a sex offesnse did not return to prison for a sex offense within three years.[56]

A sex offense can carry significant consequences that may compromise community safety. Many of these consequences extend beyond an actual prison sentence.

After someone convicted of a sex offense completes their prison term, they can end up being on a sex offense registry, and have that information publicized through a community notification process**.** Recent figures suggest that about 850,000 people convicted of sexual offenses were registered across the United States.[57] When someone is listed on a registry, it can take decades to be removed from it.[58] The proliferation of registries and notification laws has proven to be a barrier to re-entry for persons convicted of a sexual offense. Most notable are cases of harassment including threatening phone calls, property damage, loss of employment and residence, physical assaults, and, in a few cases, death by vigilantes.[59]

While registries and community notifications carry significant consequences for people placed on them, it isn't clear that these policies work to change behavior. A 2008 National Institute of Justice study examined recidivism among sex offenders before and after the law requiring community notification and concluded that "Megan's Law showed no demonstrable effect in reducing sexual re-offenses."[60] According to the study, there is little evidence to date that supports the claim that Megan's Law[61] (and other registration and notification laws) are effective in reducing new first-time sex offenses or sexual reoffenses,[62] except for a slight reduction in reoffending by sex offenders who were acquainted with their victims. Evidence is mixed as to whether community notification reduces recidivism.[63]

Violent and Sex Offenses Still on the Books

Some state statutes contain offenses that are outdated or unnecessary. When it comes to violent offenses, a few states outlaw dueling, an act considered antiquated and not relevant to today's times. For sex offenses, many states consider adultery, fornication, and other sexual acts to be illegal.

DUELING
Massachusetts, Mississippi, Nevada, Oklahoma, Rhode Island, South Carolina

ADULTERY
Florida, Idaho, Kansas, Maryland, Massachusetts, Minnesota, Mississippi, New York, Oklahoma, Rhode Island, South Carolina, Utah, Virginia, Wisconsin

FORNICATION
Idaho, Massachusetts, Minnesota, Mississippi, South Carolina, Utah Virginia

Weapons: penalties vary based on co-occurring behavior

The Bureau of Justice Statistics says that if one's most serious offense at commitment is simply a weapons offense, that person is serving time on a nonviolent public order offense. There were approximately 52,000 people in state prisons whose most serious offense was something relating to a weapon.

The federal prison system had 33,000 people in prison for weapons, explosives, and arson in 2015.[64] There are more people in prison for weapons offense than are in prison for all offenses in all but 13 states.[65]

Weapons statutes can sometimes be vague. Most states do not have "deadly weapon" statutes that identify what a deadly weapon is; instead, states employ a broad definition of deadly weapon.[66]

While a weapons offense in one context may be defined as a nonviolent offense, if the behavior occurs along with something else, it may carry much more severe penalties regardless of how the offense is defined. If someone has prior convictions or is convicted of behavior that occurs in a particular location (for example, near a school), the penalties may be enhanced, and under state or federal law, weapons offenses can lead to longer prison terms. Particularly when someone has a weapon, the context in which charges are brought, how sentencing laws work, or the adversarial court process can determine whether something that is defined as a nonviolent or violent crime carries a long penalty.[67]

According to a study by the Bureau of Justice Statistics, 40 percent of people in state prisons and 56 percent of people in federal prisons received a sentence enhancement (i.e., are serving a longer sentence) because a firearm was associated with the instant offense.[68]

Federal sentencing reform bills stoke a debate over what is violent and in what context.

In 2016, there were nearly a half-dozen bipartisan federal sentencing reform bills moving through Congress that sought to reduce sentence lengths for people convicted of certain types of crimes. The same debates playing out in statehouses over what constitutes a violent crime and in what context are also echoing through the halls of Congress.

Changes to one federal bill, The Sentencing Reform and Corrections Act (2015), were prompted when a group of senators laid out their critique of the legislation for benefiting "violent offenders" associated with the federal mandatory minimums. The issue that has been raised is whether someone whose current offense is a federal drug offense but who has a crime of violence conviction in their past would benefit from the bill. Senator Tom Cotton (R-AR) countered, "these sentencing reductions will apply not to first-time offenders but to repeat offenders – felons who have made the conscious choice to commit crimes over and over again. And they will not apply just to so-called "nonviolent offenders," but thousands of violent felons and armed career criminals who have used firearms in the course of their drug felonies or crimes of violence."[69]

The critique led the sponsor of The Sentencing

Reform and Corrections Act (2015) to amend the legislation to allow fewer people convicted of violent crimes to be eligible to apply for release. As the lead sponsor of the legislation, Senator Charles Grassley (R-IA), explained: "The authors fine-tuned some provisions to ensure violent criminals do not benefit from reduced sentence opportunities established by the bill. It now expressly excludes offenders convicted of any serious violent felony from retroactive early release."[70]

The Sentencing Reform and Corrections Act is still being debated.

Michigan's felony firearm law

In Michigan, possessing a weapon is not a violent crime, and it is not categorized by the Michigan Department of Corrections as violent if the only crime someone is in prison for is the possession of a weapon.

But under Michigan's felony firearm law, if you possess a firearm while committing another felony, you can be subject to a mandatory two-year minimum prison sentence, even if the other felony would only result in probation. By way of example, if you had a rifle in the back of your truck while you engaged in another felony that carried no prison term, the mandatory minimum prison term would apply. In 2013, there were 1,275 prisoners whose longest minimum sentence was for a felony firearm conviction.

The felony firearm law has been critiqued for a number of reasons: Judges have raised concerns that it ties their hands: if they believe that something less than a mandatory two-year consecutive sentence is called for, they cannot impose such a sentence. The law also has been critiqued for giving prosecutors undue leverage in plea negotiations and for causing people who would not otherwise be prison-bound to be incarcerated or to face a longer sentence than would be associated with the underlying felony. In 2016, the Michigan House Criminal Justice Committee passed a bill that would have eliminated the mandatory flat sentence and given judge's discretion to set an indeterminate term. The legislation is still under consideration.

Context matters for penalties, but not for gun availability.

While context matters around whether carrying a weapon affects someone's penalty, gun availability is not part of the larger context around sentencing and imprisonment.

Four out of 10 people in state prison, and more than half the people in federal prison, received a sentencing enhancement because a firearm was associated with the instant offense. With weapons playing a significant role in lengthening someone's prison term and also playing a role in lethal violence, how does the larger context of gun availability figure into the picture?

The last decade saw a sizeable increase in the number of guns produced in America: in the fall of 2015, the U.S. Department of Justice's Bureau of Alcohol, Tobacco and Firearms reported that 7.5 million *more guns* were produced in the United States in 2013 (10,884,792) than in 2003 (3,308,404)—a growth of nearly 230 percent.[71]

Not including guns that are sold illegally, the Congressional Research Service estimates that there are more than 300 million guns in the United States.[72] Including estimates that include guns possessed illegally, there are approximately 357 million guns in the U.S. as of

2013, which would mean that America is a country with more guns than residents.

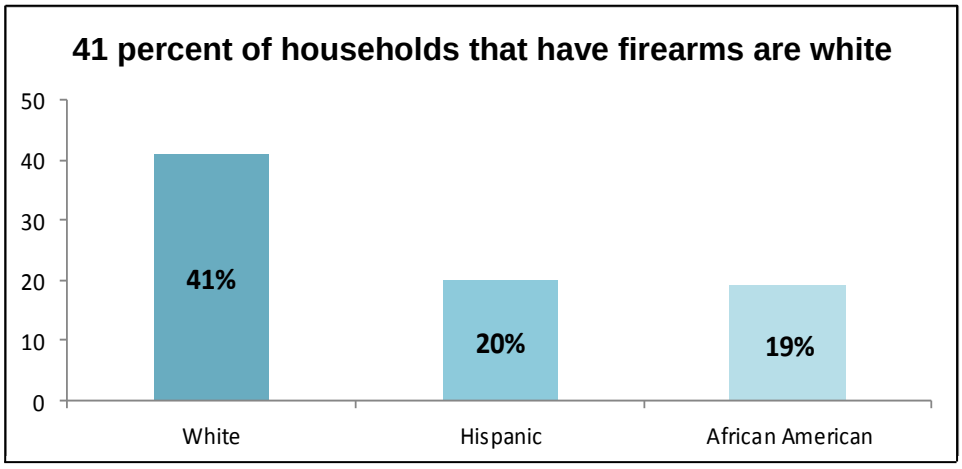
As organizations that focus on the gun industry have highlighted, firearms escaped safety regulation in the 1970s when the U.S. Congress created the major product safety agencies—a unique exemption that means that when a company makes a teddy bear, it is subject to consumer and health standards that do not apply to gun manufacturers.[73]

The question of whether the mass availability of guns plays a role in enhancing safety or reducing crime has become part of the polarized debate over gun control in the U.S. New international studies shed some light on the U.S. exceptionalism. A look at the relationship between gun availability and crime in cross-national samples of cities showed that gun availability influenced rates of assault, gun assaults, robbery, and gun robberies – a set of behaviors that are widely subject to enhancements and long prison terms, and that are all categorized as violent crimes. The author of the study notes that "for the cities sampled here, increasing gun availability provides an incentive for city residents to commit crime that they normally would not commit if guns were not available."[74]

Youth behavioral surveys show that some kind of assaultive behavior or forcible theft can happen more often than might be perceived through adolescence, raising questions about how assault should be treated.[75] Access to a gun can mean a shift from something that can be resolved without confinement to a prison term for robbery and aggravated assault. About 35 percent of people serving time for robbery in state prisons and 40 percent in the federal prison system had a gun at the time of the offense.[76]

The enforcement of laws that cover offenses can have implications for all communities, but it particularly affects communities of color in the context of sentencing and sentencing enhancements.

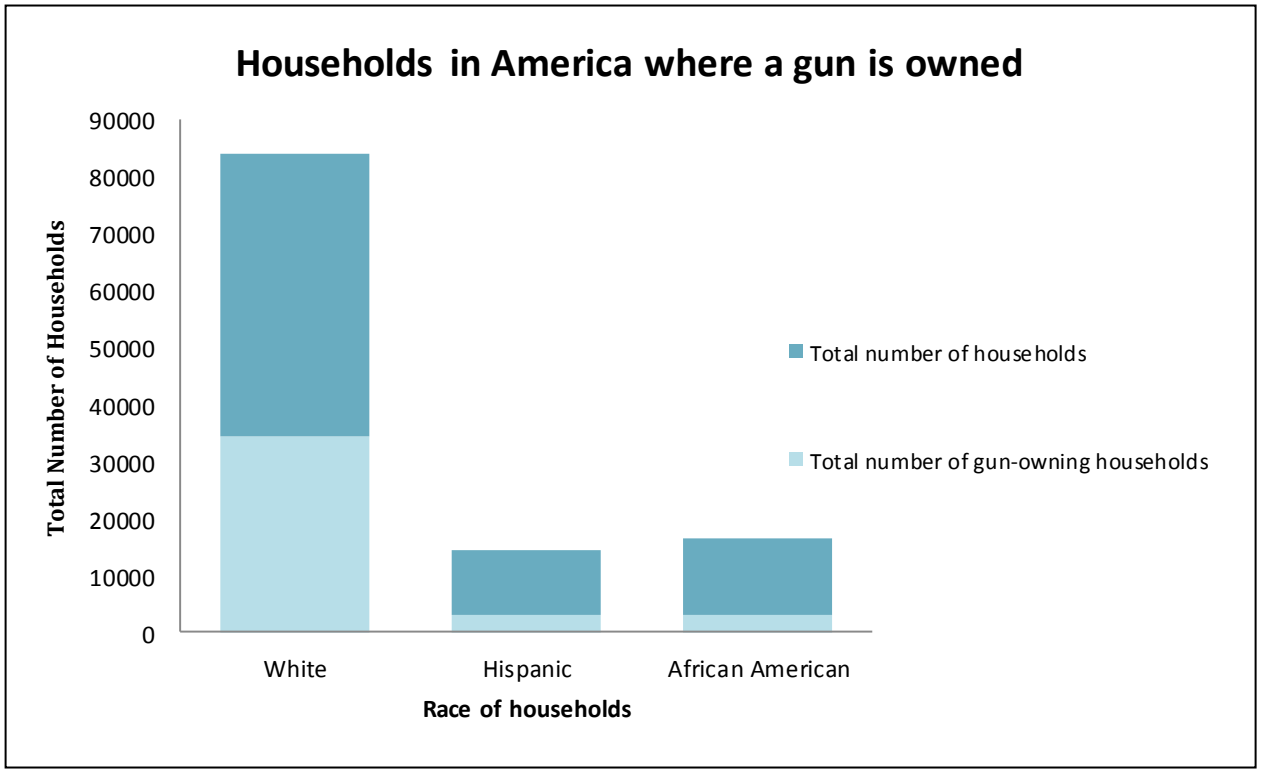
Despite the fact that most gun owners in American are white, most people serving time for weapon related offenses are African American or Hispanic, particularly in the federal system.

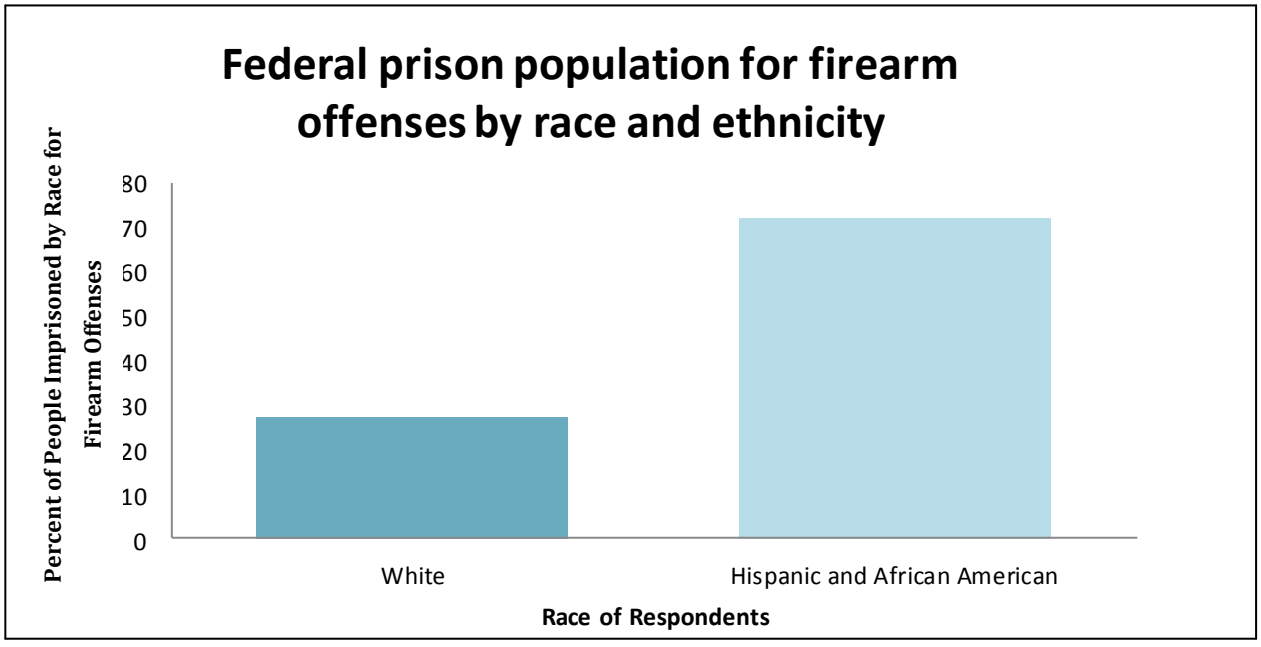


Source: Pew Research Center, "The Demographics and Politics of Gun-owning Households," July 2014. According to Pew Research Center, 41% of households that have a firearm are non-Hispanic white, 19% are African American, and 20% are Hispanic, http://www.pewresearch.org/fact-tank/2014/07/15/the-demographics-and-politics-of-gun-owning-households/.

United States Sentencing Commission, "Incarceration in the Federal Bureau of Prisons," Sourcebook 2014, http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/2014/sourcebook-2014.

According to the United States Sentencing Commission, 26.9% of persons incarcerated for a firearms offence are white, 23% are Hispanic, and 48.6% are African American.





Source: United States Sentencing Commission, "Incarceration in the Federal Bureau of Prisons," *Sourcebook 2014*, http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/2014/sourcebook-2014. Figures on incarceration relating to gun offenses in state prison show that about half (48% or 24,400 prisoners) of the people in prison for gun offenses were African American, with state prisons holding an additional 13,900 Hispanic and 11,200 white prisoners sentenced for weapons crimes (Prisoners in 2014).

PART IV:

THE COST OF INCARCERATING PEOPLE FOR VIOLENT OFFENSES IS LARGE, BUT AN EVEN BIGGER REINVESTMENT IS NEEDED IN COMMUNITIES WHERE VIOLENCE IS A CHALLENGE

The unfolding justice reform discourse has focused on the fact that taxpayers spend upwards of $80 billion a year to imprison and jail more than 2 million people and keep another 5 million people under some form of parole or probation supervision.[77] A significant focus of the debate has been on strategies to reduce the costs associated with incarcerating people for nonviolent offenses and reserving prison space for others.

This country already spends billions of dollars incarcerating people for violent offenses.

Excluding county and city spending on jails and the federal corrections budget—the National Conference of State Legislatures (NCSL) reported that in 2013 taxpayers spent approximately $24 billion incarcerating people convicted of something other than a nonviolent offense.[78]

NCSL's take on what taxpayers pay to incarcerate people for violent crimes represents just a small portion of what our current justice system policies may cost us.[79]

Other collateral costs exist that researchers are only beginning to quantify and that speak to the need to advance a broader approach to justice reform than simply looking at the offense.

The 10 states that spend the most incarcerating people convicted of a violent offense spend $12 billion.	
Texas	$2,639,568,534.00
California	$2,265,075,114.00
Florida	$1,712,188,922.00
Georgia	$873,567,692.00
New York	$872,128,536.00
Ohio	$857,486,688.00
Pennsylvania	$839,246,950.00
Illinois	$803,549,624.00
Michigan	$721,674,162.00
Arizona	$668,675,678.00

Source: National Conference of State Legislation (2014)

- **Cost to expending tax dollars with limited public safety outcomes:** In cases of incarceration for a homicide or a sex offense, data show that there are people in these offense categories who could have some of the lowest recidivism rates. Taxpayers are spending money to imprison hundreds of thousands of people included in various offense categories that is not improving public safety or helping engage someone in behavior change.

- **Cost of lifetime lost revenue for government and communities:** There is a growing literature—particularly focusing on young people and juveniles—that has attempted to quantify what the larger, long-term cost is to a community and a society when the community relies on incarceration. In *Sticker Shock: Calculating the Full Price Tag For Youth Incarceration,* JPI estimated that the nation loses $8 to $21 billion dollars every year incarcerating young people when you include lost future earnings of confined youth, lost future government tax revenue, additional Medicare and Medicaid spending that could have been avoided if someone was able to access the job market, and other costs due solely to the incarceration of youth. In 2016, the Brennan Center for Justice is launching a project to better quantify the longer term costs of adult incarceration.

- **Cost to children and communities when parents are incarcerated:** As more and more information has emerged on the impact of incarceration, it has helped fuel pressure to challenge laws, policies, and practices that have led to 2.3 million people being incarcerated and has shown the much larger costs our current policies have on communities. Over 5 million children have had a parent incarcerated at some point in their lives.[80] When a child has a parent in prison, it has lifelong consequences for them and for the entire community: A recent study shows that the traumatic experience of having a parent in prison has the same magnitude as abuse, domestic violence and divorce. When fathers are incarcerated, family income can drop 22 percent, a parent in prison when they were children experienced a 22 percent drop in family income, and 65 percent of families with a parent in prison could not meet their basic needs (e.g. food, utilities, rent).[81]

- **Concentrated costs to communities of color:** People of color are disproportionately incarcerated; they are also disproportionately incarcerated for violent and nonviolent offenses alike. In 2014, whites accounted for 31 percent of people in prison for violent offenses, whereas 40 percent were African American, and 23 percent were Hispanic.[82] While there is some evidence that in some crime categories violent behaviors come to the attention of law enforcement more frequently in communities of color than among other groups, these studies do not control for the impact of higher unemployment, lower incomes, and the collateral impact of higher levels of justice involvement that also could contribute to people of color being more likely to engage in some behaviors and be arrested, convicted, and imprisoned.[83]

Simply reallocating funds from the criminal justice system to meet human needs before crime occurs gives short shrift to the scale of the investment needed to truly address what drives people's engagement in crime, including violent crime.

Scholars, including those from the consensus report of the National Academy of Sciences, *The Growth of Incarceration in the United States,* have said that the kind of investment needed by the communities most affected by mass incarceration to address longstanding disinvestment in the jobs, schooling, and treatment infrastructures that drive violent crime exceeds what is currently being spent on corrections.

As Marie Gottschalk, a member of the National Academy of Sciences Task Force on Mass Incarceration wrote, "if the United States is serious about engineering deep and sustained reductions in urban violence, then addressing the country's high levels of inequality and concentrated poverty must become a top priority, not a public policy afterthought."[84]

The need to invest in the communities most affected by violence and crime with something larger than a $24 or $80 billion correctional price tag speaks to the need to expand the definition of "reinvestment" being offered by various justice reform agents.

PART V:
EFFORTS TO DEVELOP JUSTICE REFROM APPROACHES THAT CAN HAVE AN IMPACT ON PEOPLE CONVICTED OF VIOLENT OFFENSES

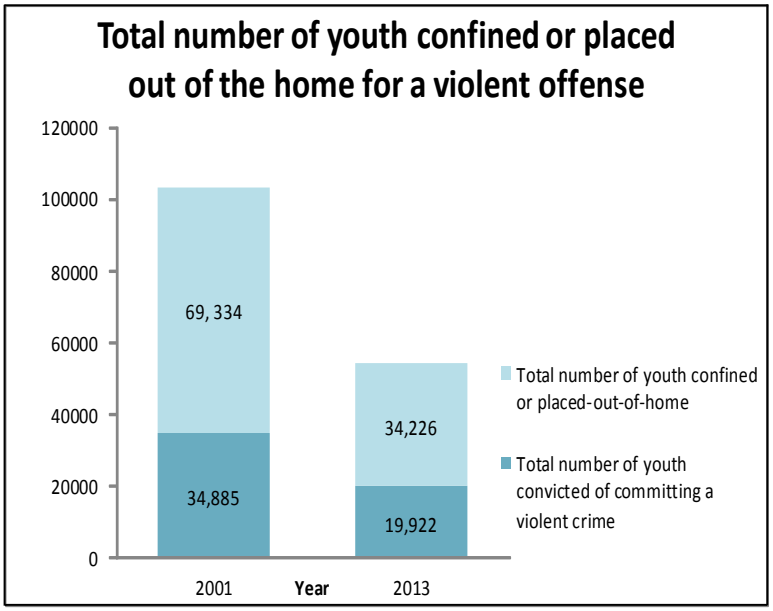
Justice reform approaches that move beyond the offense are being offered, but the challenges that proponents of such changes are having in mounting policy reform proposals underline how much work will need to happen to see significant and sustained reductions in incarceration.

JPI offers a review of how policymakers are seeking to broaden justice policy change proposals that rely less on how behavior is categorized.

Reductions in juvenile confinement transcend offense categories.

The juvenile justice system functions differently and under different presumptions so that when a young person is convicted of a violent offense and remains under juvenile court jurisdiction, the system has more tools to serve that young person in the community. The juvenile system is more likely to give the corrections department the ability to decide where a young person is best served, regardless of the offense, and it grants corrections administrators more authority to manage a young person's length of stay. The juvenile system also emphasizes diversion more than the adult system does, which offers the opportunity for the courts to keep young people out of the justice system entirely and to avoid the system exposure that can put a young person on a negative trajectory, including one that could lead to a violent offense.

While prison and jail populations have been on the rise, the number of young people confined and placed out of the home fell by about 50 percent between 1999 and 2013. During that time, the number of young people confined or placed out of the home for a violent offense also declined by 43 percent. As juvenile confinement fell, so did juvenile crime rates, showing that the reduction in the use of confinement has not adversely affected public safety.



Source: Census of Residential Placement, Office of Juvenile Justice and Delinquency Prevention, 2001 and 2013 (2016).

The changes in the juvenile justice system are good news for young people, but the trend should not signal that the problem of youth incarceration has been fully addressed. Much more needs to be done in juvenile justice policy reform.

Some laws on the books still require the confinement of young people even when the data might show that they could be safely served in the community. While many laws that transfer young people to the adult court have been changed, and fewer young people are being transferred to the adult system overall, in many states a young person convicted of a violent crime can still end up in an adult jail or prison. The juvenile "deincarceration trend" also has been lopsided by offense: the decline has largely been driven by fewer young people being confined and placed out of the home for nonviolent offenses, making up 70 percent of the decline in young people removed from their homes and locked up since 2001.

Juvenile life without parole case law expands offenses considered for release.

Since 2005, Supreme Court rulings that have banned the use of capital punishment for juveniles—and retroactively banned the use of mandatory life without parole—have catalyzed changes aimed at reducing incarceration for young people convicted of violent crimes. On a state-by-state basis, these rulings have created pathways for lawmakers, attorneys, and young people to reduce the sentence length for people who have been convicted of a violent crime.

California's Senate Bill 9 allows a person who was under 18 years old at the time of a crime and sentenced to life without parole to submit a request to have a new sentencing hearing and the chance to get a new sentence with the possibility of parole. Under Senate Bill 260, people who received extremely long sentences before age 18—sentenced consecutively to terms that would lead to their incarceration for decades—have an opportunity for a parole hearing, and the parole board has to consider their youthfulness at the time of the offense, that the person may have been less responsible for their actions than adults, and the person's propensity to change through maturity. Under Senate Bill 261, Senate Bill 260 was extended to people whose offense occurred before age 23.

There are some people who, by the nature of their offense, will not benefit under Senate Bills 9,[85] 260,[86] and 261. This reflects legislators' attempts to navigate the way California has layered sentencing enhancements and mandatory minimums through voter-enacted ballot initiatives, and the high threshold that two-thirds[87] of the legislature must support changes to voter-initiated laws. The change does mean that people convicted of a crime that relates to a homicide, robbery, or an offense with a gun enhancement have an opportunity for a parole hearing at the fifteenth, twentieth, or twenty-fifth year of their sentence. These three laws created pathways for people to show that they should be paroled, and as a result, people convicted of serious and violent offenses have been paroled. About 300 people have been released under the Youth Offender Parole, most of them people who were convicted of a violent offense, and as many as 16,000 more remain eligible.[88]

Under HB 4210, which passed in 2014, the state of **West Virginia** eliminated life without parole sentences for young people prospectively (going forward) and retroactively (youth convicted prior to the law change). Under the law, everyone who was sentenced in adult criminal

court for any crime committed as a young person must become eligible for release on parole after no more than 15 years. The effect of this change neutralizes the impact of consecutive sentencing, as well as harsh mandatory minimums for young people. During the parole hearing, the board must also now consider how young people are different from adult offenders, their diminished culpability, and other age-related mitigating factors. The law also requires judges on the "front-end" to consider these differences before sentencing a young person who has been transferred to adult court.

Under AB 267, which passed in 2015, the state of **Nevada** eliminated life without parole sentences for all children prospectively, and nearly all children retroactively. Under the new law, children convicted of non-homicide offenses must receive parole eligibility after no more than 15 years; children convicted of offenses where a person was killed receive parole eligibility after no more than 20 years. Similar to West Virginia, the effect of the new law in Nevada has been to neutralize the impact of stacked and consecutive sentencing, sentencing enhancements, and harsh mandatory minimums for children convicted of serious offenses.

Seventeen states now ban life without parole for all young people convicted of offenses, and an additional five states ban it for nearly all young people.

Changes offered to parole laws and practices can transcend the offense.

A number of legislative proposals were being debated in the first half of 2016 that would seek to change the parole process so that more people who might have had a violent crime in their distant past would be eligible for release, and to make parole decisions more reliant on someone's capacity to change and less reliant on the offense that led them to be incarcerated.

In **New York**, members of the Assembly and Senate introduced legislation that has been offered in previous years and dubbed by some as the "SAFER Act." New York has seen low parole approval rates in recent years, with the only justification for parole denial recorded as "the nature of the crime," which excludes a variety of other factors that could reasonably be considered in the decision about someone's propensity to change or the likelihood that they might reoffend upon release. Assembly Bill 02930 (and Senate Bill 01728) would add a series of systemic changes to the parole process and revised criteria that would "provide for the release of inmates who meet release criteria" in ways that provide other avenues for consideration beyond the "nature of the crime." Governor Cuomo indicated a need for parole reform in his State of the State this year.[89]

In **California,** pressure to reduce the prison population under a court order forced the state to establish an Elderly Parole Program. Under the existing program, people over age 60 who have been incarcerated for 25 years can be referred to Board of Parole Hearings, with certain sentencing limitations.[90] As of February 2016, the Board had held 1,187 hearings resulting in 317 grants of parole, 781 denials, and 89 stipulations of unsuitability.[91] Senate Bill 1310, introduced in 2016, would have established the Elderly Parole Program as a matter of law and would have expanded the universe of people who might benefit from it (while still excluding some categories of offenses from consideration).[92] SB 1310 was withdrawn from legislative consideration when the entire Elderly Parole Program was put under the

microscope as the result of crime victims raising concerns about the process.[93]

In **Michigan,** substantial bipartisan support (including from the Republican governor[94]) has been building in 2015 and 2016 for changes to the state's parole process. HB 4138, introduced by a Republican legislator and supported by the Republican governor, establishes a presumption of parole for people who score a high probability of parole on the parole guidelines and limits the parole system's denials to a set of criteria that focuses the process more on a person's risk of future violence and less on the offense. Presumptive parole will not apply to parole-eligible lifers but that is based on the sentence type, not the crime. The changes would seek to ease the challenge of thousands of people being incarcerated beyond their first parole eligibility date, despite scoring a high probability of parole on the Michigan Department of Corrections' parole guidelines, an indicator that someone presents a very low risk to public safety. There are about 1,900 people who have served their minimum sentences and have been denied release despite having high probability of parole scores.[95] The Michigan Department of Corrections estimates that a shift towards presumptive parole would save 3,200 prison beds and save $75 million over a five year period.[96]

Also in Michigan, the parole board had a prior authority to **grant medical parole** to people who were physically or mentally incapacitated, but the enactment of "truth in sentencing" legislation that requires every person to serve every day of his or her minimum sentence in a secure facility ended the practice. Under a medical parole package (5078-81) that passed the Michigan House Appropriations Committee in February 2016, new provisions would apply to all people in prison who qualify "regardless of offense."[97]

Both presumptive parole and the medical parole bills passed the Michigan House and are pending for consideration in the Michigan Senate.

Changes to sentencing enhancements and mandatory minimums chip away at offenses.

In 2016, legislatures considered proposals to change laws, policies, and practices that would provide some relief for people who received sentencing enhancements, long sentences due to the consecutive nature of multiple convictions, or mandatory minimums. In some cases, the changes marked the first repeal of mandatory minimums that some states had seen.

Florida policymakers have faced challenges enacting any kind of meaningful sentencing reform, regardless of whether the primary focus has been on people whose most serious offense at conviction was a violent crime or a nonviolent crime, and thus leading the prison population to keep ticking upwards. A primary driver of incarceration in Florida is the state's 10-20-Lifer statute. Under the law, someone who uses a firearm while committing a forcible felony can be sentenced to the law's maximum, and the mandatory sentences must be imposed consecutive to any additional sentence a person must serve. This statute included a 3-year mandatory minimum prison sentence under the 10-20-Lifer Law for aggravated assault with a firearm. In 2016, there were 235 people serving a prison term under the 10-20-Lifer Law whose primary offense was aggravated assault, or 2.3 percent of the 10-20-Lifer population in Florida prisons. Building on previous changes made to the law in earlier legislative sessions, SB 228

deletes aggravated assault from the list of convictions that carry a minimum term of imprisonment. The legislation was approved by Florida's Republican Senate and signed by Governor Rick Scott in February 2016, and it marked the first mandatory minimum that Florida had repealed in 20 years. Various other violent offenses[98] are still subject to the 10-20-Lifer Law, and the breadth of support for the change among law enforcement and gun rights organizations was around the impact of the law for people who display or fire a gun in self defense.[99]

In 2015, **Colorado,** through the passage of HB15-1303, legislators amended their state statutes to remove a five-year mandatory minimum for someone convicted of second degree assault on a peace officer, firefighter, or emergency management team member when committed with the intent of prevention of a lawful duty. Under the new law, the mandatory minimum no longer applies unless serious bodily injury occurs. The change aligned the offense with other classes for felonies, allowing a judge to take into consideration the circumstances of the case. Despite significant opposition from Colorado prosecutors and law enforcement, the changes to second degree assault became the first mandatory minimum repealed in Colorado.

In 2016, the Colorado Governor signed into law legislation that removed the requirement that consecutive sentences be imposed if someone is convicted of two or more separate crimes of violence arising from the same incident and one of such crimes is aggravated robbery, second degree assault, or escape. SB 16-051 returned discretion to the court to impose either a concurrent or consecutive sentence. Amendments to the bill limited the crimes where the courts could impose either a concurrent or consecutive sentence.

Policy approaches seek to address the root causes of violence or reduce the harm of violence.

A U.S. Justice Department study showed that, while young men of all races between the ages of 16 and 24 experience higher rates of violence than other age groups (including assault and robbery), over an 11-year study period, young African American men were more likely to be robbed and more likely to be victimized by violence. Young men of color are also overrepresented among homicide victims.[100]

What is true nationally is also true locally. In Washington, D.C., where just under half the residents are African American, more than eight out of 10 homicide victims in the city were African American and a third of those were between the ages of 18 and 24.[101]

The choices that policymakers can make around dealing with violent crime were brought into sharp relief this year in Washington, D.C., and neighboring cities. An analysis by the Brennan Center for Justice showed the homicide rate nationally in 2015 was projected to be about 15 percent higher than last year in the 30 largest cities, but just two cities—Baltimore and Washington, D.C.—accounted for almost 50 percent of the national increase in homicides.

Digging even deeper, incidents of lethal violence in just three police districts accounted for most of the growth in homicides in Washington D.C., and they occurred in parts of the city where a larger proportion of residents are African American, where unemployment is higher, and where greater challenges exist around employment, school success, and raising residents' income.

In the wake of the first significant increase in homicides seen in a decade, local policymakers in Washington D.C. were offered two starkly different approaches to violence prevention.

One legislative proposal offered by Washington D.C.'s Mayor in 2016 would have expanded the authority of officers to conduct warrantless searches in homes where people on parole, probation, and supervised release lived, and it would have lengthened sentences or increased the ability to detain people pretrial. While the increase in lethal violence was not associated with the public transportation system or parks, the proposal would have enhanced penalties for several dozen offenses if committed against a public transit passenger or worker, or against any person while located in or near a public park.

While the more punitive legislative proposal did not move forward, the Washington D.C. City Council in the spring unanimously endorsed a public health approach to violence prevention that was focused on responses outside the justice system. The Neighborhood Engagement Achieves Results Amendment Act of 2016 (The NEAR Act) would establish offices that will coordinate city agencies' responses to violent crime, and places clinicians in emergency rooms to respond to the needs of victims and to help prevent the escalation of violence. The NEAR Act also calls on the city to identify teenagers and young adults at the highest risk for committing or being a victim of violent crime to participate in a stipend-based program to assist them in life planning, provide trauma-informed therapy when appropriate, and offer mentorship services. The NEAR Act also provides law enforcement with community-policing training, requires the collection of data around "stop and frisk" and police use of force, and provides annual trainings to help police avoid bias-based profiling.

Along with the unanimous passage of the NEAR Act in Washington, D.C., neighboring Baltimore, Maryland, is also seeking to build on its public health approach to violence prevention.

When someone in Baltimore has been shot, stabbed, or severely beaten, they can be brought to a designated city hospital that has a Shock Trauma Center; there a violence intervention counselor assesses the person's needs and challenges, identifies other options besides retaliation to resolve conflicts between individuals, and steers affected individuals toward services.

What is common to Baltimore's Shock Trauma Center and what is being imagined in the Washington, D.C., NEAR Act is having someone facilitate preventing an escalation of conflict by working in the community (or hospital) to help the parties stop the cycle of retaliation, to mediate conflicts, and to connect people to resources to address the harm of the violence outside the justice system.

Along with the public health approach being offered in these cities, other approaches also exist to address violent crime that do not rely on incarceration and seek to address harm.

In New York City, Common Justice (a project of the Vera Institute of Justice) approaches violent crime in a manner that transforms the lives of victims and fosters racial equity without relying on incarceration. Common Justice serves as the first alternative-to-incarceration and victim-service program in the United States that focuses on violent felonies in the adult court, almost exclusively serving young adults of color. If—and only if—the harmed parties consent,

Common Justice diverts cases such as assault and robbery into a dialogue process designed to recognize the harm done, identify the needs and interests of those harmed, and develop appropriate responses to hold the responsible party accountable. Under the Common Justice approach, program staff rigorously monitor responsible parties' compliance with agreements—which may include restitution, community service, and commitments to attend school and work—and supervise their completion of the 15-month intensive violence intervention program.[102] In 2015, Common Justice staff launched a national learning collaborative to support people working with young men of color harmed by crime nationally.

CONCLUSION:
STRATEGIES TO REDUCE THE USE OF INCARCERATION THAT ARE LESS FOCUSED ON THE OFFENSE

While this is a complicated issue, the data show that the only way to bring down prison and jail populations to a level that looks like the opposite of "mass incarceration" will involve changes to laws, policies, and practices that change how society responds to violent crime. Such policy changes must begin by acknowledging how people convicted of violent and nonviolent offenses alike are treated by the system.

As a first step, JPI recommends scrutinizing all laws, policies, and practices that affect the length of time that someone is in prison or jail based solely on the person's conviction. A person's propensity for change, an assessment of their risk to engage in other behavior (and an assessment of what they would need to change their behavior), and the most effective ways to address the harm caused by crime need to be elevated as issues in the discourse.

Specifically, JPI offers the following approaches to help the country develop sounder justice reform proposals that may more meaningfully reduce the use of incarceration across offense categories.

1) **Increase prevention, intervention, and public health responses to violence.** Local responses to the spike in violent crime in Washington, D.C., Baltimore, and other cities have shown support for efforts that address the root causes of violent crime, de-escalate conflict, and focus on providing a resource other than prison or jail when serious public safety challenges arise. The challenge for policymakers is not to end up in the position of offering multi-pronged approaches where only one of the prongs is resourced. As the field has learned from efforts to reduce gang crime, efforts to prevent, intervene, and suppress gang activity have seen a lopsided investment in suppression.[103] If prison and jails are to be downsized, prevention, intervention, and public health approaches to violence prevention need to be resourced at scale, along the lines of a "Marshall Plan" for America's distressed communities. In other words, we need more than a simple reallocation of the approximately $80 billion that the nation spends on corrections. As dollars are targeted to these approaches, they should be targeted to the communities that face the biggest crime and incarceration challenges, should support approaches that largely occur outside the formal justice system, and should be stable from year to year. A revamped approach to prevention, intervention, and public health approaches to violence prevention also will target more dollars to communities of color, where crime and incarceration occur in higher proportions.

2) **Expand diversion approaches without stringent offense prohibitions.** There has been a significant increase in policy attention towards approaches that divert

someone from the justice system before they end up being arrested, convicted, and imprisoned. By way of example, Law Enforcement Assisted Diversion—where police officers have the option of diverting someone they would otherwise arrest and book, to a case manager that lines them up with various services—have been pioneered in some jurisdictions. These programs create opportunities to reduce the number of people formally processed by the justice system. Right now, many diversion approaches are only targeted to individuals whom law enforcement identifies as engaging solely in nonviolent crimes.[104] Approaches that divert someone from the justice system before they end up being arrested, convicted, and imprisoned should be expanded, and offense restrictions to these approaches should be scrutinized.

3) **Reduce the number of offenses that can result in incarceration.** There has been significant movement to reclassify certain behaviors so that they are no longer eligible for prison and create opportunities for a person to be re-sentenced. When Californians passed Proposition 47, the voter-initiated law changed a series of felony offenses to misdemeanors, which permitted people previously sentenced for these crimes to petition for re-sentencing. As of January 6, 2016, approximately 4,532 people have been released under Proposition 47, but like many changes in justice policy in California, the crafting of Proposition 47 landed squarely in the debate around what constitutes a violent offense. While the uniqueness of California's statute and the polarized justice reform discourse affect who can benefit from recent reforms, these changes represent a base to build from. Offense reclassification should include a broader range of behaviors, including those defined in some contexts (statutory or correctional) as being a violent crime. When changing the classification of an offense, caution should be taken so that the approach also seeks to reduce the number of people sentenced to local jails, and to reduce the chances that reductions in state prison populations would lead to more people being sentenced to jail.

4) **Reduce the number of offenses that result in criminal and delinquency proceedings.** For decades, American legislators have simply layered their statutes with more and more offenses, some of which can lead directly to imprisonment or to deeper penetration into the justice system through an arrest. Some conservatives have called for an end to "overcriminalization"—the trend to use the criminal law rather than the civil law to solve every problem, to punish every mistake, and to compel compliance with regulatory objectives,"[105] a frame that seeks to reduce the role of the justice system on individuals and corporations. In Ohio, the Criminal Justice Recodification Committee was instituted and tasked with reviewing the criminal code to "recommend a plan for a simplified criminal code" and reviewing how offenses—including violent crimes—are treated under the statute. Legislators throughout the country should start reducing the number of behaviors that result in a criminal or civil offense and help ratchet down the reach of the justice system.

5) **Reduce the number of people on community supervision.** While 2.3 million people in the country are incarcerated, an additional 5 million people are on community supervision, with 4 million of those on probation. In alignment with best

practices, probation, parole, and pretrial agencies are being asked to ratchet down supervision based on a person's assessed needs; remove fees, fines, or housing restrictions that serve as barriers to someone's success; connect people to services; and shorten supervision terms or create incentives for people to earn their way off supervision. This best-practice approach also calls on supervision agencies to change their approach from something colloquially described as "nail them and jail them"—a manner of supervision solely reliant on monitoring behavior—to an approach where a supervision agent engages the person they are working with in positive behavioral change. The hallmark of this approach is an objective assessment of what a person needs to change their behavior, a less subjective assessment of their risk to reoffend, and a tailored approach to meet the needs of each person. If these approaches were adopted at scale, they would include changes that would remove from intensive supervision people assessed to be at low risk of reoffending and with few needs, reduce the number of people on supervision, reduce the time people are on supervision, and reduce the number of people revoked and sent to prison or jail from community supervision.[106] All of these approaches are less reliant on the instant offense that leads to someone's justice system involvement.[107]

6) **Change laws, policies, and practices that affect length of stay.** Significant numbers of people in prison face mandatory terms of incarceration and parole restrictions that are based on the crime that occurred in someone's distant past and that limit the integration of other factors such as a person's assessed risk to reoffend due to their age, progress in completing treatment or a service, or the demonstration that the person has a capacity to change. All laws, policies, and practices that lengthen the amount of time someone is incarcerated need to be put under the microscope, across offense categories. Justice system leaders need to be looking at mandatory minimums, sentencing enhancements, truth-in-sentencing laws, statutes that make certain offenses ineligible for parole, and practices that restrict people from earning time off their sentence for participation in programing and services. Legislators and justice system professionals need to increase opportunities for an individualized approach to assessing whether the use of incarceration is just, both for the person incarcerated and the harmed party, and for the community.

7) **Increase restorative justice and trauma-informed approaches to reduce violence.** Under some of the more thoughtful approaches to meet the needs of crime victims and promote restorative justice practices, the line between who is the harmed party and the person causing the harm—and what they both need—stretches beyond the offense. As one federal agency notes, "the majority of people who have behavioral health issues and are involved with the justice system have significant histories of trauma and exposure to personal and community violence. Involvement with the justice system can further exacerbate trauma for these individuals."[108] The strength of trauma-informed, public health, and restorative justice approaches is that they address root causes of crime and make restoring the harm caused by behavior more central than simply punishing a person based on the offense. These approaches also

help focus resources in the right direction, largely away from the justice system and toward addressing the harm. Surveys of crime victims show that there is more support for using alternatives-to-incarceration, restitution, and providing a service to a crime victim than simply relying on long prison or jail sentences.[109]

8) **Use risk assessment tools in decision-making.** Risk assessments are being used throughout the criminal justice system to help make better decisions, particularly around whether someone can be released pretrial or paroled. These tools need to be scrutinized for any factors that might needlessly ratchet up someone's offense history (such as increased law enforcement presence in one community over another). While risk assessments hold promise to help move the discussion from a sole focus on the offense to help justice system professionals manage the system, these tools are just that, tools. Risk assessments are only as good as what they were designed to do, how they are used, who is using them, and to what end. Risk assessments do not eliminate the need for a trained justice professional to make an individualized judgment around what a person might need to help change their behavior, or replace the value that a justice system needs to act proportionately and justly. All assessment tools need to be carefully validated and reviewed to know that they are assessing risk accurately and that they are not perpetuating racial and ethnic bias.

9) **Make prison and jail closures part of justice reform proposals.** A number of states have already gone through stakeholder-driven processes to recommend strategies to right size their systems, and they have seen little change in their overall use of incarceration. Initiatives have been offered to cut the prison and jail population by 50 percent or to reduce a particular state prison population by a certain amount. Jurisdictions could start building into reform proposals the idea that the metric of success should include a reduction in the overall number of prisons and jails. Making reductions in the number of prisons and jails part of justice reform proposals will give policymakers a tool to move beyond offense categories in how they redesign public safety systems.

10) **Reduce gun availability.** The role that mass gun availability plays in mass incarceration is something that needs to be a broader area of focus in justice reform proposals. With America becoming a place with about as many guns as people, and with guns playing such a significant role in increasing sentence lengths and racial disparities, the relationship between guns and incarceration needs to be part of the overall dialogue in justice reform. Reducing gun access, availability, and production, and reexamining the role that guns play in sentencing need to be part of a broader approach to reducing the use of incarceration. Efforts to reduce gun violence that focus on restrictions on who can have a gun (versus reducing the supply of guns) need to be balanced to get to the heart of reducing the use of incarceration, and enhancing public safety.

By expanding the use of prevention, diversion, and revamping community supervision; making better use of trauma-informed approaches; identifying and removing barriers to length of stay; and making prison closures part of justice reform proposals, fewer people will be locked

up. Taken together, these strategies would result in a reduction of justice system involvement overall and would guard against having a population of people needlessly moved from prisons to jails or from locked custody to less-effective forms of supervision.

Is studying the problem the same as solving the problem?

As the issue of the overuse of incarceration has become part of the mainstream justice debate, various task forces, commissions, and study groups have been convened to study the problem and recommend policy changes. While it is important in the hyperpolarized justice policy field for stakeholders to have an opportunity for meaningful dialogue around sound policy proposals, studying the problem of mass incarceration isn't the same as solving the problem. **Ohio, Virginia, and Illinois offer cautionary tales about the need to balance a process of studying the problem with tangible progress in addressing the problem.**

In **Ohio,** the Criminal Justice Recodification Committee work is not yet complete, and recommendations for changes to how offenses are catalogued have not yet been offered to legislators. As noted by the ACLU in Ohio, the need to study the statute to potentially reduce the number of offenses did not stop the Ohio General Assembly from introducing 54 new bills—11 percent of the total number introduced in both chambers—that increased the number of offenses or penalties that could result in a prison or jail term.[110]

In **Virginia,** Governor McAuliffe (D) instituted a Commission on Parole to assess the impact of the Commonwealth's abolition of parole, truth-in-sentencing, and correctional policies. While two dozen recommendations were offered to legislators—including redefining what constitutes a violent crime and changes to sentencing and statutes that would have meant people convicted of violent crime might have had opportunities to leave prison sooner—none of the recommendations offered was enacted in the 2016 legislative session.

Illinois, the State Commission on Criminal Justice and Sentencing Reform was charged with developing policy proposals that would review the "current criminal justice and sentencing structure, sentencing practices, community supervision, and the use of alternatives to incarceration" and to "make recommendations for amendments to state law that will reduce the State's current prison population by 25% by 2025." In March 2016, three bills that stemmed from recommendations in the report were offered to legislators: bills that would issue state identification cards to people leaving prison, a requirement that a judge review pre-sentencing reports and explain why incarceration (rather than probation) is appropriate, and legislation to expand the use of electronic monitoring for people sent to state custody for less than a year. Thus far, these approaches have been focused on finding ways to reduce the incarceration of people convicted of nonviolent offenses. Illinois Governor Rauner (R) noted when these legislative proposals were introduced that "this is not the end of anything. This is the very beginning of a process that will go on for years to improve our criminal justice system."[111]

[1]Daniel Denvir, "'Non-serious, non-violent, non-sexual': Fixing our mass incarceration problem means getting past the easy steps," *Salon*, October 26, 2015, http://www.salon.com/2015/10/26/non_serious_non_violent_non_sexual_fixing_our_mass_incarceration_problem_means_getting_past_the_easy_steps/

[2]Sixteen states out of twenty four saw declines in their prison population saw declines of two percent or less, and the federal prison population declined by 2 percent. See E. Ann Carson, *Prisoners in 2014* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015).

[3]E. Ann Carson, *Prisoners in 2014* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015).

[4]By way of example, in California, between 2007-2015, the state spent $2.2 billion on building new jails, and the most recently enacted state budget added another $270 million to that figure. Personal correspondence, Steve Steven Meinrath, ACLU of California, Center for Advocacy and Policy, June 23, 2016.

[5] Todd D. Minton and Zhen Zeng, *Jail Inmates at Midyear 2014* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015). "Twenty-eight counties are leveraging $1.7 billion in state grants to build and expand 35 jails. These projects, in various stages of design and construction, will initially add about 12,000 jail beds in the state, according to the Public Policy Institute of California. But many of the new jails are designed to accommodate future expansions that could significantly increase their capacity." See Anat Rubin, "California's Jail-building Boom: What comes after mass incarceration? Local incarceration," *The Marshall Project*, July 2, 2015, https://www.themarshallproject.org/2015/07/02/california-s-jail-building-boom#.Rjr3eRYek

[6] Marie Gottschalk, "Are We There Yet? The Promise, Perils and Politics of Penal Reform," *Prison Legal News*, January 1, 2016, www.prisonlegalnews.org/news/2016/jan/1/are-we-there-yet-promise-perils-and-politics-penal-reform/

[7]Dana Goldstein, "How to Cut the Prison Population by 50 Percent. No, freeing potheads and shoplifters is not enough," *The Marshall Project,* March 4, 2015, www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent#.sPHgvXGF5

[8] "Mass Incarceration: The whole pie. " (Northampton, MA: Prison Policy Initiative, 2016). http://www.prisonpolicy.org/reports/pie2016.html

[9] Dana Goldstein, "How to Cut the Prison Population by 50 Percent," *The Marshall Project,* March 4, 2015,www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent

[10] Jason Ziedenberg, "The Punishing Decade: Prison and Jail Estimates at the Millennium (Washington, DC: Justice Policy Institute, 2000) http://www.justicepolicy.org/images/upload/00-05_rep_punishingdecade_ac.pdf

[11] A study analyzed crime rates between the United States and other developed European countries. It found that the United States' average homicide rate from 1950 – 1960, per 100,000 residents is 5.27. Conversely, Europe's homicide rate, which included Great Britain, Netherlands, France, Germany, Italy, Spain, Sweden and Poland, in the same time frame, was .88 per 100,000 residents. During this time period, the United States' incarceration population was comparable to the current conditions in Europe. Furthermore, in 2000 the United States' homicide rate per 100,000 was 6.1 compared to Europe's 1.225; Any Kiersz, "The U.S. has had the Western World's Worst Rate of Homicide for at least 60 Years," *Business Insider*, November 2014. http://www.businessinsider.com/us-vs-western-homicide-rates-2014-11

[12] A statutory analysis was conducted for select states and the District of Columbia to highlight how helpful broad offense categories might be in understanding how to reduce prison and jail populations. A literature review supplements the statutory analysis, and additional information was reviewed to put certain behaviors in their proper social and community context.

[13] In New York, violent felonies include aggravated murder, crime of terrorism, assault in the first degree, burglary in the first degree, robbery in the first degree, and rape in the first degree. http://yonkerspd.com/penal.law/bviolent_felonies.htm

[14] In New York, nonviolent felonies include grand larceny in the first degree, insurance fraud in the first degree, compelling prostitution, bribery in the first degree, enterprise corruption, and aggravated vehicular homicide. See, http://yonkerspd.com/penal.law/b_felonies.htm

[15] Division of Adult Parole Operations Non-Revocable Parole. California Department of Corrections and Rehabilitation. http://www.cdcr.ca.gov/parole/non_revocable_parole/non-revocable_parole_faqs.html

[16] Defined in Penal Code section 667.5(c).

[17] Defined in Penal Code section 1192.7(c).

[18] Defined a registerable offense under Penal Code section 290.

[19] "While, as of October 1, 2011, local communities will begin taking custody of offenders who meet the criteria of being non-violent, non-serious, and non-sex offenders, there are some exceptions to this rule. There are a number of crimes that are categorized as being non-violent, non-serious, and non-sex offenses but nonetheless, under the California Penal Code, will still require that offenders serve their sentences in State prisons. These crimes are also known as the Exclusions, and there are a total of 59. Their exclusion status is due to their enactment as majority-vote bills wherein voters decided that tougher and longer sentences were required for certain kinds of offenses. Thus, any offender convicted of any one of these 59 exclusions will serve their sentences with the State."

[20] E. Ann Carson, *Prisoners in 2014* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2015),Appendix Table 4 and 5, http://www.bjs.gov/content/pub/pdf/p14.pdf
[21]Personal Communication, Elizabeth Smith, University of Maryland's Carey School of Law, February 26, 2016. Also see "From A Life Term To Life On The Outside: When Aging Felons Are Freed," *National Public Radio*, February 18, 2016, http://www.npr.org/2016/02/18/467057603/from-a-life-term-to-life-on-the-outside-when-aging-felons-are-freed
[22]Of 820 people who had been serving for murder or manslaughter, two (0.2 percent) returned to prison for a new homicide. About 6 percent of this group did return to prison for other crimes over the three year period. Barbara Levine, *10,000 Fewer Michigan Prisoners: Strategies To Reach the Goal,* (Lansing, Michigan: Citizens Alliance on Prisoners and Public Spending, June 2015).
[23] Freedom of Information Law appeal, email message from Terrence Tracy, April 19, 2013
[24] Prison Returns for A-1 Violent Offenders. How do Violent Offenders preform in the community? 2012 Annual Report from the Parole Board to the New York State Legislature.
[25]"Recent studies suggest that 50 percent of offenders released from state prisons return to prison within 3 to 5 years. In contrast, this article shows that roughly two of every three offenders who enter and exit prison will never return to prison. Using data from the Bureau of Justice Statistics' newly revised National Corrections Reporting Program, we examine prison admissions and releases over a 13-year period in 17 states and over shorter periods in other states to determine the rate at which individual offenders return to prison. We distinguish between the traditional event-based sampling methods for studying recidivism and our alternative offender-based method, explaining how each is useful but how the two approaches answer different policy questions." William Rhodes, Gerald Gaes, Jeremy Luallen, Ryan Kling, Tom Rich, and Michael Shively. "Following Incarceration, Most Released Offenders Never Return to Prison," *Crime & Delinquency* (2014): 1-23.
[26] As of 2014, 3 percent of people in state prison were there for drug possession offenses, 12 percent were people incarcerated whose most serious drug offense was "other" – a category designed to exclude individuals convicted of trafficking and other drug offenses. In total, there were about 50,000 people in state prison in 2013 whose most serious offense was drug possession, among the 208,000 people in state prisons for drug offenses. In the federal system, there were 86,080 on December 26, 2015 whose most serious offense was a drug offense.
[27] Doug McVay, Vincent Schiraldi, and Jason Ziedenberg. *Treatment or Incarceration: National and State Findings on the Efficacy and Cost Savings of Drug Treatment Versus Imprisonment* (Washington, D.C.: Justice Policy Institute, 2004).
[28]Carla Marquez et al., "How Much Punishment is Enough? Designing Participatory Research on Parole Policies for Persons Convicted of a Violent Crime," paper presented at the Annual Meeting of the American Anthropological Association, Montreal, Canada, November 16-20, 2010: 10.
[29] See Lamb v. State, 93 Md.App. 422, 441, 613 A.2d 402 (Md.Ct.Spec.App.1992).
[30] State v. Duckett, 306 Md. 503, 510, 510 A.2d 253 (1986).
[31] Epps v. State, 333 Md. 121, 127, 634 A.2d 20 (1993).
[32]Proposals that were offered to the Maryland JRCC around assault included: adding a category of Assault in the 3rd degree and 4th degree, new offenses that would have carried penalties between 3 and 5 years, in contrast to the 10 year sentence that a judge can apply under Maryland's 2nd Degree Assault law. Sentencing Worksheet, Maryland Justice Reinvestment Coordinating Council, November 3, 2015.
[33] "Important to understanding the scope of the Justice Reinvestment Initiative recommendations is to understand the definition of "violent crime" as currently defined and used…..The scope of that definition does not include crimes that many individuals would deem to be violent and it would also include crimes that many individuals would not deem to be violent. Justice will be denied if crimes that are equally or more serious than existing "violent crime" and "crime of violence" are not similarly situated. The crimes in Appendix B should not obtain day for day (30 days a month) of diminution credits and they should not be released on administrative parole without a parole hearing. These are violent crimes and they should not be treated as nonviolent in nature." Testimony of Roberta Roper, Debra Tall, and Russell P. Buttler in Support of the Justice Reinvestment Act, Maryland Crime Victims Resource Center, March 3, 2016.
[34]"Pushing heroin and other opioids isn't nonviolent. Shooting a person is violent; quietly poisoning them may not draw blood, but the result is the same. Reducing jail time for heroin pushers, during an opioid epidemic, does not send the message heroin pushers need to hear." Del. Herb McMillan, Republican (Anne Arundel). "Maryland House Approves Criminal Justice Overhaul," *The Baltimore Sun*, April 4, 2016, http://www.baltimoresun.com/news/maryland/politics/bs-md-justice-house-20160404-story.html
[35]The D.C. statute reads as follows: (1) 22-405(b) – is 180-days under current law and it makes it a crime to assault, resist, oppose, impede, etc. a law enforcement officer engaged in his/her official duties.(2) 22-405 (c) – is a 10-year offense and it makes it a crime to commit subsection (b) AND cause or create a grave risk of causing "significant bodily injury" to the officer. See Code of the District of Columbia 22–405, Assault on member of police force, campus or university special police, or fire department.
[36]Id.
[37] Law Offices of Stephen Bilkis & Associates, "N.Y. Pen. Law § 120.08 New York Assault on a Police Officer," http://criminaldefense.1800nynylaw.com/new-york-assault-on-a-police-officer.html
[38] Christina Davidson and Patrick Madden, "In DC, Wiggling while Handcuffed Counts as Assaulting an Officer." *Center for Investigative Reporting Reveal News*, May 9, 2015, www.revealnews.org/article/dcs-assaulting-an-officer-charge-could-hide-police-abuse-critics-say/

[39] Christina Davidson and Patrick Madden, "In DC, Wiggling while Handcuffed Counts as Assaulting an Officer." *Center for Investigative Reporting Reveal News*, May 9, 2015, www.revealnews.org/article/dcs-assaulting-an-officer-charge-could-hide-police-abuse-critics-say/

[40] Christina Davidson and Patrick Madden, "In DC, Wiggling while Handcuffed Counts as Assaulting an Officer." *Center for Investigative Reporting Reveal News*, May 9, 2015, www.revealnews.org/article/dcs-assaulting-an-officer-charge-could-hide-police-abuse-critics-say/

[41]See, Report on Bill 21-0360, the "Neighborhood Engagement Achieves Results Amendment Act of 2016," January 27, 2016, http://dccouncil.us/files/user_uploads/event_testimony/B21-0360%20Committee%20Report%20without%20Attachments.pdf

[42] Defined as aggravated (violent) or simple (nonviolent). Richard F. Culp et al., *Is Burglary a Crime of Violence? An Analysis of National Data 1998-2007* (New York, NY: John Jay College of Criminal Justice, 2015), www.ncjrs.gov/pdffiles1/nij/grants/248651.pdf

[43] Richard F. Culp et al., *Is Burglary a Crime of Violence? An Analysis of National Data 1998-2007*, (New York, NY: John Jay College of Criminal Justice, 2015), www.ncjrs.gov/pdffiles1/nij/grants/248651.pdf

[44] Richard F. Culp et al., *Is Burglary a Crime of Violence? An Analysis of National Data 1998-2007*, (New York, NY: John Jay College of Criminal Justice, 2015), www.ncjrs.gov/pdffiles1/nij/grants/248651.pdf

[45] "Proposition 36, passed as part of a ballot initiative in California in 2012, revised the three strikes law to impose life sentence only when the new felony conviction is "serious or violent, authorized re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and if the judge determines that the re-sentence does not pose unreasonable risk to public safety. The law change continues to impose a life sentence penalty if the third strike conviction was for "certain non-serious, non-violent sex or drug offenses or involved firearm possession," and maintains the life sentence penalty for felons with "non-serious, non-violent third strike if prior convictions were for rape, murder, or child molestation." See Ballotpedia, Proposition 36, www.ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes%22_Law_(2012)

[46] Update to the Three Judge Court (State of California, Department of Corrections and Rehabilitation, March 15, 2016).

[47] 'The CDCR data shows that the recidivism rate of prisoners released under Proposition 36 is 1.3 percent. By comparison, the recidivism rate of all other inmates released from prison over the same period of time is over 30 percent." See *Proposition 36 Progress Report: Over 1,500 Prisoners Released Historically Low Recidivism Rate* (Stanford, CA: The Stanford Law Three Strikes Project, 2014), http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/595365/doc/slspublic/ThreeStrikesReport.pdf

[48] Paige St. John, "Petition Drive To Scale Back California's Three Strikes Law Cleared for Circulation," *The Los Angeles Times*, October 20, 2015.

[49] Commonwealth of Virginia, *The Commission on Parole Review,* December 4, 2015.

[50]U.S. Sentencing Commission, *Amendment to the Sentencing Guidelines*, January 21, 2016. www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20160121_RF.pdf

[51] Kate Hynes, "The Cost of Fear: An Analysis of Sex Offender Registration, Community Notification, and Civil Commitment Laws in the United States and the United Kingdom," *The Penn State Journal of Law & International Affairs*. 2 (2013): 351-79.

[52] "Sexual assault. A wide range of victimizations, separate from rape or attempted rape. These crimes include attacks or attempted attacks generally involving unwanted sexual contact between victim and offender. Sexual assaults may or may not involve force and include such things as grabbing or fondling. It also includes verbal threats. See "Rape and Sexual Assault, http://www.bjs.gov/index.cfm?ty=tp&tid=317

[53] Jill S. Levenson, Yolanda N. Brannon, Timothy Fortney, and Juanita Baker, "Public Perceptions About Sex Offenders and Community Protection Policies," *Analyses of Social Issues and Public Policy*, 7 (2007): 1-25.

[54] Jill S. Levenson, Yolanda N. Brannon, Timothy Fortney, and Juanita Baker, "Public Perceptions About Sex Offenders and Community Protection Policies," *Analyses of Social Issues and Public Policy*, 7 (2007): 1-25.

[55] "The rearrest rate for all crimes – not just sex offenses – was 43 percent for released sex offenders compared to 68 percent for released non-sex offenders, or about one third lower. The reconviction rate for sex offenders for all crimes was 25." Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, D.C.: U.S. Justice Department, Office of Justice Programs, Bureau of Justice Statistics). Certain subgroups of sex offenders do pose comparatively higher risk of offending, including same-sex child serious abusers and men who assault women. See Tracey Velazquez. *The Pursuit of Safety:*
Sex Offender Policy in the United States (Vera Institute of Justice: New York City, 2008).

[56] Of the 4,109 people once convicted of a sex offense who were paroled from 2007 through the first quarter of 2009, 32 (0.8 percent) returned to prison for a new sex offense.

[57] Center on Youth Registration Reform. *Understanding Youth Registration*, May 2016, http://impactjustice.org/cyrr/

[58] For tier II sex offenders it is 25 years and tier III sex offenders appear on a registry for life.

[59] Richard Tewksbury, "Collateral Consequences of Sex Offender Registration," *Journal of Contemporary Criminal Justice Research* 21 (2005): 75, table 2; Richard Tewksbury, "Exile at Home: The Unintended Collateral Consequences of Sex Offenders Residency Restrictions," *Harvard Civil Rights-Civil Liberties Law Review* 42 (2007): 532-34

[60]Kristen Zgoba, Phillip Witt, Melissa Dalessandro, and Bonita Veysey, *Megan's Law: Assessing the Practical and Monetary Efficacy* (Washington, DC: National Institute of Justice, 2008), https://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf

[61] Refers to both sex offender registration and community notification.
[62] There was a slight reduction in reoffending by sex offenders who were acquainted with their victims, which are a small part of the population of people on registries. Kristen Zgoba, Phillip Witt, Melissa Dalessandro, and Bonita Veysey, *Megan's Law: Assessing the Practical and Monetary Efficacy* (Washington, DC: National Institute of Justice, 2008), https://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf
[63]Offenses Statistics based on prior month's data, Last Updated Saturday, 26 December 2015. Federal Bureau of Prisons, accessed February 15, 2016,
[64]"Mass Incarceration: The whole pie. " (Northampton, MA: Prison Policy Initiative, 2016).
[65] The Sentencing Program, "The Facts: State-by-State Data," (2014) http://www.sentencingproject.org/the-facts/#map
[66]During a 30-state statutory analysis, it was found that 20 states either do not define what a deadly weapon is or they say it is a firearm or anything else that can cause death. The other 10 states define what a deadly weapon is and give explicit examples of the weapon.
[67]Prosecutors are not legally allowed to charge individuals with crimes unless they feel they have a reasonable likelihood of a conviction. However, scholars have identified discernible differences in strategies employed by prosecutors that can affect how a criminal justice process ends under the plea process: *vertical overcharging* relies on charging a single offense at a higher level than the circumstances seem to warrant, and *horizontal overcharging* relies on multiplying the number of charges. In both cases, these are tools the criminal justice system assigns to prosecutors in the process: there is a possibility to acquire a conviction, and the threat of a greater sentence due to the augmented charges helps to secure a plea deal and avoid a time consuming trial. These processes are important because the vast majority of cases that result in someone being convicted of a particular offense are resolved through a plea deal: In 2013, 97 percent of federal criminal charges were resolved with a plea bargain while only 3 percent went to trial. Kyle Graham, *Overcharging*, www.moritzlaw.osu.edu/students/groups/osjcl/files/2014/06/10.-Graham.pdf; Instead of focusing on the principal offense, the prosecutor delves into and fragments said offense into numerous criminal transactions, Kyle Graham, *Overcharging*, www.moritzlaw.osu.edu/students/groups/osjcl/files/2014/06/10.-Graham.pdf; Jed S. Rakoff, "Why Innocent People Plead Guilty," November 20, 2014, www.nybooks.com/articles/archives/2014/nov/20/why-innocent-people-plead-guilty/
[68]Caroline Wolf Harlow, *Firearm Use by Offenders* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2001).
[69]Senator Tom Cotton, "Why I Oppose the Sentencing Reform and Corrections Act," *The Washington Times*, February 12, 2016.
[70] Dara Lind, "Criminal Justice Reform in Congress Has Officially Caved to a Dangerous Myth," *Vox*, April 28, 2016, http://www.vox.com/2016/2/9/10949310/criminal-justice-reform-bill
[71]*Firearms Commerce in the United States, Annual Statistical Update* (Washington, D.C.: U.S. Department of Justice, Bureau of Alcohol, Tobacco and Firearms, 2015).
[72]William J. Krouse, *Gun Control Legislation* (Congressional Research Service, 2012), www.fas.org/sgp/crs/misc/RL32842.pdf
[73] *Regulate Firearms Like Any Other Consumer Product* (Washington, D.C.: The Violence Policy Center, 2016).
[74] Irshad Altheimer, "An Exploratory Analysis of Guns and Violent Crime in a Cross-national Sample of Cities," *Southwest Journal of Criminal Justice*, 6 (2010): 204-27.
[75] National survey data show that African-American youth are often less likely to report committing serious offenses such as carrying weapons to school. According to the 2013 Youth Risk Behavior, 5.3 percent of African American male students reported carrying a weapon to school compared to 8.3 percent of white male students.; Laura Kann, Steve Kinchen, Shari L Shankin, et al., *Youth Risk Behavior Surveillance —United States, 2013* (Atlanta: Center for Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 2014).
[76] Caroline Wolf Harlow, *Firearm Use by Offenders* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2001).
[77] The total corrections and supervision expenditure of $39 billion does not include the nearly $26 billion spent by local governments or any money budgeted by the federal government for federal prisons. See Alison Lawrence, *Managing Corrections Cost* (Washington, D.C.: National Conference of State Legislatures, 2014), http://www.ncsl.org/documents/cj/managingcorrectionscosts.pdf. The Bureau of Justice Statistics reports that in 2010, the total state incarceration expenditure was roughly $48.5 billion. This report does not include any federal spending. See Tracey Kyckelhahn, *State Corrections Expenditures, FY 1982-2010* (Washington, D.C.: Bureau of Justice Statistics, 2014), www.bjs.gov/content/pub/pdf/scefy8210.pdf
[78] See Tracey Kyckelhahn, *State Corrections Expenditures, FY 1982-2010* (Washington, D.C.: Bureau of Justice Statistics, 2014), www.bjs.gov/content/pub/pdf/scefy8210.pdf
[79] See Tracey Kyckelhahn, *State Corrections Expenditures, FY 1982-2010* (Washington, D.C.: Bureau of Justice Statistics, 2014), www.bjs.gov/content/pub/pdf/scefy8210.pdf
[80] *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (Baltimore, Maryland: Annie E. Casey Foundation, 2016).
[81] *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (Baltimore, Maryland: Annie E. Casey Foundation, 2016).

[82]E. Ann Carson, *Prisoners in 2014* (Washington, D.C.: U.S. Justice Department, Office of Justice Programs, Bureau of Justice Statistics, 2015), Appendix Table 4 and 5.

[83]The National Academies notes that there are a couple of factors that drive disparities in who engages in select categories of crime. First, the overrepresentation of African Americans in prison for violent offenses persists in spite of the fact that the relative involvement of African Americans in violent crimes has steadily declined since the 1970s. Second, because policing strategies lead to law enforcement observing crime more often in communities of color, behavior that is common across races and ethnicities are more likely to result in people of color being arrested, convicted, and imprisoned. Stop and frisk and drug offenses were specifically cited as examples where the observed behavior of some communities lead to their higher levels of involvement in the justice system downstream. Third, the chronic concentration of negative justice system involvement matched with structural disadvantages that communities of color face in employment, income, and access to health represent structural and historical disparities that are not controlled for in any research around differential rates of offending. See *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education (Washington, DC: The National Academic Press, 2014).

[84] Marie Gottschalk.,"Are We There Yet? The Promise, Perils and Politics of Penal Reform," *Prisoner Legal News*, https://www.prisonlegalnews.org/news/2016/jan/1/are-we-there-yet-promise-perils-and-politics-penal-reform/

[85]People who were sentenced to life without parole for a crime in which the person was convicted of torturing their victim, or were sentenced to life without parole for a crime in which the victim was a public safety official are excluded from the SB 9 framework.

[86]People who received a life sentence under the "One Strike" law for particular sex offenses and "Three Strikes" life sentence based on two or more prior serious or violent felonies are excluded from the SB 260 and 261 framework.

[87]In California, legislative changes to initiative statutes may require even more than the two-thirds majority, depending on the language of the initiative. For example, 'Victim's Bill of Rights' enacted by voters in 2008 changed parole eligibility, and requires a four-fifths vote of the legislature to modify.

[88]Rob Kuznia, "An Unprecedented Experiment in Mass Forgiveness," *The Washington Post*, February 8, 2016. *Report to the Three Judge Court*, California Department of Corrections and Rehabilitation, January 15, 2016, http://www.cdcr.ca.gov/News/docs/3JP-Jan-2016/January-2016-Status-Report.pdf

[89] "We have the most aggressive re-entry program in the country. We have a new conditional pardon program for youthful offenders. We are working to end warehousing in prisons and moving towards educating and rehabilitating as an operating mantra for our corrections system. We all agree that public safety is paramount." See, Andrew Cuomo, 2016 State of the State and Budget Address, January 13th, 2016, www.governor.ny.gov/news/video-transcript-built-lead-governor-cuomos-2016-state-state-and-budget-address

[90] People who are sentenced to death or life without the possibility of parole are not eligible to receive a hearing or to be granted parole under this program. Parole process for inmates 60 years of age or older having served at least 25 years. The Board continues to schedule eligible inmates for hearings who were not already in the Board's hearing cycle, including inmates sentenced to determinate terms. From February 11, 2014 through December 31, 2015, the Board has held 1,080 hearings for inmates eligible for elderly parole, resulting in 288 grants, 710 denials, 82 stipulations to unsuitability, and there currently are no split votes that require further review by the full Board. See California State Senate, Senate Bill. No. 1310. An act to add Section 3055 to the Penal Code, relating to parole.

[91] *Update to the Three Judge Court*, State of California Department of Corrections and Rehabilitation, March 15, 2016.

[92] See California State Senate, No. 1310. An act to add Section 3055 to the Penal Code, relating to parole.

[93] "In Sacramento, prosecutors and victims rights groups have been working to prevent this temporary program from becoming state law. They scored a small victory last week when, after a call from this newspaper, state Sen. Mark Leno, D-San Francisco, gutted Senate Bill 1310, which he introduced last month. The original bill would not only make the Elderly Parole Program state law, but it would also lower the eligibility age to 50 and the time in prison to 15 years. The withdrawal was unexpected and came with little explanation. Leno said in a statement Thursday that the bill would be used as a place holder for "other criminal justice reforms" and that "the bill will not deal with the issue of elder parole." See Julia Prodis Sulek, "California's Elderly Parole Program Forcing Victims to Face Attackers Decades Later," *The San Jose Mercury News*, March 21, 2016, www.mercurynews.com/crime-courts/ci_29663124/californias-elderly-parole-program-forcing-victims-face-attackers

[94] "The Legislature has considered a proposal that would have instituted presumptive parole at the earliest release date for inmates determined to have a high probability of success. This reform would result in significant savings without having a substantial negative impact on the rate of recidivism." Governor Snyder (R) Michigan, Special Criminal Justice Message, May 18, 2015, see https://medium.com/governor-rick-snyder-s-criminal-justice-special/governor-snyder-s-2015-criminal-justice-special-message-456df83f064#.5eieaax8z

[95]"In fact, parole data shows that the board often denies release based on the nature of the offense, with assaultive and sex offenses far more likely to result in denial. Since the nature of the offense was already a major factor in setting the minimum sentence, the parole board is effectively engaging in resentencing, substituting its judgment of how long someone should serve for that of the court. However, prisoners can no longer appeal parole denials and the current parole guidelines cannot be enforced." See

"Evidenced-based Parole Reform Bill (HB 4138) Is an Important First Step," Citizens Alliance on Prisons and Public Spending, January 2016, http://2015capps.capps-mi.org/2015/10/house-criminal-justice-committee-votes-8-1-for-presumptive-parole-reform/

[96] Personal Communications, Barbara Levine, Citizens Alliance on Prisons and Public Spending, June 20th, 2016.

[97]"Medical Parole Package (5078-81) Passes House Appropriations Committee," Citizens Alliance on Prisons and Public Spending, January 2016, http://2015capps.capps-mi.org/2016/02/medical-parole-package-5078-81-passes-house-appropriations-committee/

[98] Specified crimes still covered under the 10-20-Lifer Law include homicide, sexual battery, robbery, burglary, arson, aggravated assault, and aggravated battery. The Florida Senate, Bill Analysis and Fiscal Impact Statement, CS/SB 228, Mandatory Minimum Sentences, February 2016.

[99]"Bill to Reform Florida's 10-20-Life Law filed by Aaron Bean, Niel Combee," *Floridapolitics.com*, http://floridapolitics.com/archives/189701-bill-to-reform-floridas-10-20-life-law-filed-by-aaron-bean-and-neil-combee

[100]As cited by Danielle Sered, *Young Men of Color and the Other Side of Harm: Addressing Disparities in our Responses to Violence* (New York City: Vera Institute of Justice, 2015). Bureau of Justice Statistics (BJS), *National Crime Victimization Survey*, Table 10: Number of victimizations and victimization rates for persons age 12 and over, by race, gender, and age of victims and type of crime, 1996 - 2007, http://www.bjs.gov/content/pub/sheets/cvsprshts.cfm (accessed August 13, 2014). When these numbers are broken down by crime type, there are types of crime, e.g., domestic violence, in which other groups are significantly more likely to be victims. K.F. Parker, *Unequal Crime Decline: Theorizing Race, Urban Inequality, and Criminal Violence* (New York: New York University Press, 2008).

[101]Safer, Stronger DC Advisory Committee Kick-Off Meeting (PowerPoint Presentation). (Washington, DC: Department of Health and Chief Office of the Medical Examiner, December 2016).

[102] Vera Institute of Justice, "Common Justice," March 11, 2016, http://www.vera.org/project/common-justice

[103]Judith Greene and Kevin Pranis, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies* (Washington, D.C.: Justice Policy Institute, 2007).-

[104]Roy L. Austin, "LEAD-ing the Way to a More Efficient Criminal Justice System," *The White House Blog*, July 2, 2015, accessed March 13, 2016, https://www.whitehouse.gov/blog/2015/07/02/lead-ing-way-more-efficient-criminal-justice-system

[105]See "Legal Issues: Overcriminalization." http://www.heritage.org/issues/legal/overcriminalization

[106]See *Community Corrections Collaborative Network: Safe and Smart Ways To Solve America's Correctional Challenges* (Washington, D.C.: U.S. Department of Justice, Federal Bureau of Prisons, National Institute of Corrections, 2014).

[107] For example, if someone lives in a community where police are deployed more than somewhere else, they are more likely to be arrested for crimes that are fairly common.

[108] "Trauma Training for Criminal Justice Professionals," SAMHSA, August 19, 2015, http://www.samhsa.gov/gains-center/trauma-training-criminal-justice-professionals

[109] When Iowa burglary victims were surveyed in the 1997 Iowa Crime Survey around what punishments they preferred, they voiced stronger support for approaches that rely less on incarceration, such as community service (75.7 %), regular probation (68.6%), treatment and rehabilitation (53.5%), and intensive probation (43.7%). Support among surveyed burglary victims for a short jail term (41.4%) and a prison sentence for more than a year (7.1%) garnered much less support. See Gene M. Lutz et al., *The 1997 Iowa Adult Crime Victimization Survey* (Des Moines, Iowa: Iowa Crime Research Initiative, 1998). One survey of California crime victims found that, when asked where the state should prioritize resources, seven in 10 victims supported directing resources to crime prevention versus towards incarceration (a five-to-one margin). *California Crime Victims' Voices. Findings from the First EverSurvey of California Crime Victims and Survivors* (Californians for Safety and Justice, 2012).

[110] American Civil Liberties Union of Ohio, *Ohio's Statehouse-to-Prison Pipeline* (Columbus, Ohio: American Civil Liberties Union, 2015).

[111] Kevin Hoffman, "Rauner, Bipartisan Group of Lawmakers Announce Illinois Criminal Justice Reform Package," *Reboot Illinois,* March 2, 2016, http://www.rebootillinois.com/2016/03/02/editors-picks/kevin-hoffmanrebootillinois-com/rauner-bipartisan-group-of-lawmakers-announce-illinois-criminal-justice-reform-package/53855/

ABOUT THE ORGANIZATION

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