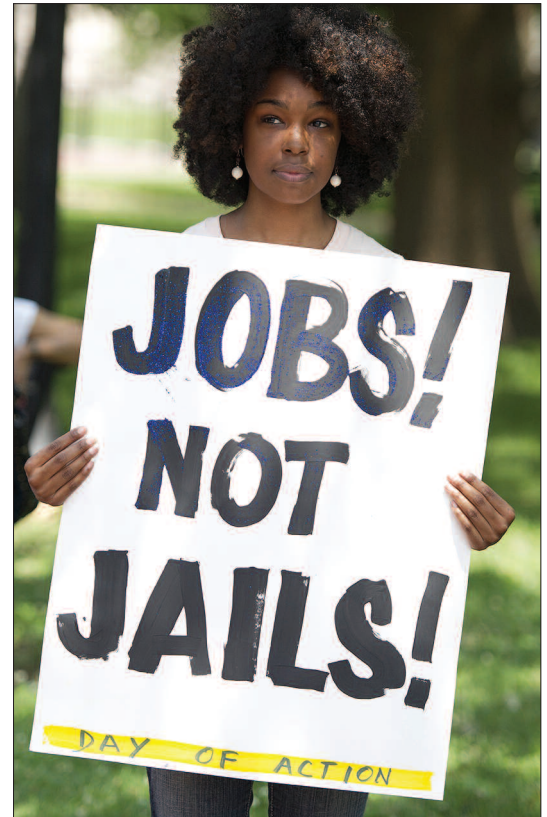


## Sentencing Reform

*Are mandatory sentences too harsh?*

A rash of federal and state laws in the 1980s and '90s — an era of crack cocaine-fueled violence and “tough-on-crime” rhetoric — introduced lengthy automatic prison sentences. In the laws’ wake, many low-level nonviolent drug offenders have been locked up for long periods, contributing to prison overcrowding and state budget deficits. Putting young people behind bars for the majority of their lives as punishment for a youthful error is inhumane, human rights and civil liberties groups say. At least 30 states have rolled back their harshest laws, and several bipartisan proposals in Congress would relax federal sentencing mandates. Prosecutors contend the threat of mandatory sentences induces defendants to cooperate with their investigations of criminal networks and reduces crime. But reformers, including some prominent conservatives, contend drug treatment and other alternatives to incarceration are cheaper than prison and more effective at reducing crime. States such as Texas and New York have closed prisons and still boast declining crime, but key congressional Republicans are skeptical of sentencing reform.



*During demonstrations in Washington on June 17, 2013, a protester calls on President Obama to fund job-creation and economic development programs in inner cities and end the “war on drugs,” which critics say leads to mass incarceration of African-Americans and unduly harsh sentences for nonviolent crimes.*

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# Sentencing Reform

BY SARAH GLAZER

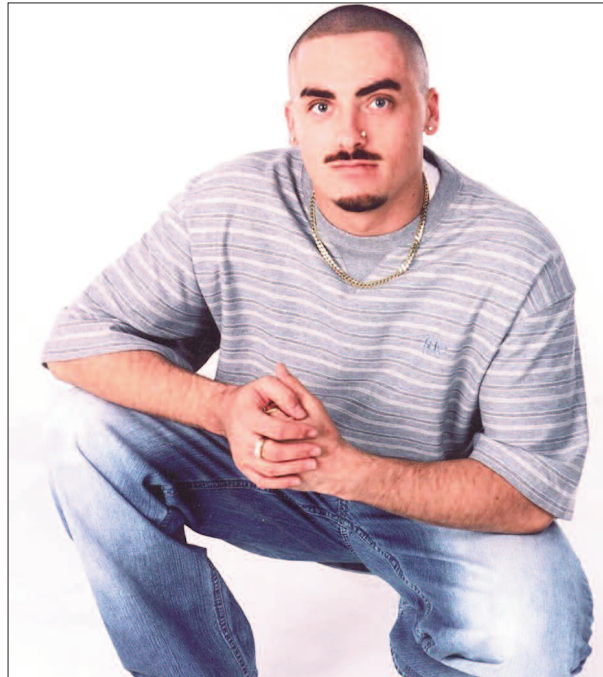
## THE ISSUES

**W**eldon Angelos, 22, was beginning to make it as a hip-hop music producer, releasing albums under his own Extravaganza label, when he sold marijuana to a childhood acquaintance who turned out to be a police informant.

Today, Angelos sits in a federal prison in California, 10 years into a 55-year sentence for three drug sales of \$350 each. Although Angelos says he never shot or pointed a gun, the informant said he saw a gun at two of the drug sales, and police found guns in Angelos' apartment after the third drug bust. His sister, Lisa Angelos, says he kept guns at home because drive-by shootings had been commonplace when they were growing up in Salt Lake City's housing projects.

Under federal mandatory sentencing laws, one count of possessing a firearm "in furtherance of" a drug transaction got Angelos an automatic five-year sentence, and the two subsequent transactions got him 25 years each. He will be nearly 80 upon his scheduled release. His two teenage sons will be in their 60s. The 55-year sentence is longer than the federal sentence for second-degree murder, kidnapping or child rape and more than four times the sentence for a marijuana dealer who shoots an innocent person during a drug sale. The sentencing judge, U.S. District Judge Paul G. Cassell, called the sentence "unjust, cruel and even irrational."

A conservative appointed by President George W. Bush, Cassell said his hands were tied by federal mandatory sentencing rules and recommend-



*Weldon Angelos is serving a 55-year sentence in California for three marijuana sales of \$350 each. In a recent letter to President Obama, more than 60 former judges and prosecutors called his sentence an "extraordinary injustice" for a low-level drug offender with no previous criminal history. However, Angelos was not included in Obama's most recent list of those receiving pardons and commutations.*

ed in his sentencing statement that Bush commute Angelos' sentence. Bush did not do so.<sup>1</sup>

Federal and state mandatory sentencing laws enacted in the 1980s and early '90s, during an era of crack\* cocaine-fueled violence and "tough-on-crime" rhetoric, were designed to punish drug kingpins.<sup>2</sup> But critics say the laws have ensnared thousands of low-level offenders such as Angelos. The U.S. imprisonment rate has tripled since 1980, giving the United States the world's highest incarceration rate.<sup>3</sup> In the past two decades, the amount of money states have spent on prisons has risen six times as fast as the amount spent on higher education.<sup>4</sup> And today

\* Crack cocaine is a cheaper, highly addictive form of the drug that can be smoked. It flooded the nation's inner cities in the 1980s.

nearly half of the inmates in state prisons — which house about 98 percent of the country's prisoners — were incarcerated for nonviolent offenses, according to the federal Bureau of Justice Statistics.<sup>5</sup>

"The enormity of what we've done is just staggering," says John Jay College of Justice President Jeremy Travis, a criminal-justice expert who calls harsh sentencing inconsistent with U.S. history. "We've lost some of the constraints we used to place on the state to deprive somebody of liberty," he says, when "there was a notion that the sentence would be proportionate to the crime."

Defenders of mandatory sentences, however, cite a sharp drop in crime nationwide since such laws were passed as evidence of their success. "We made a disastrous mistake in sentencing policies

in the '60s and '70s, and we paid for it in blood," says Kent S. Scheidegger, legal director of the Criminal Justice Legal Foundation, a conservative public interest law foundation in Sacramento, Calif. "We must be very careful not to repeat it. The tough sentencing of the '80s was adopted for good reason and was an important factor in bringing down crime rates and saving lives."

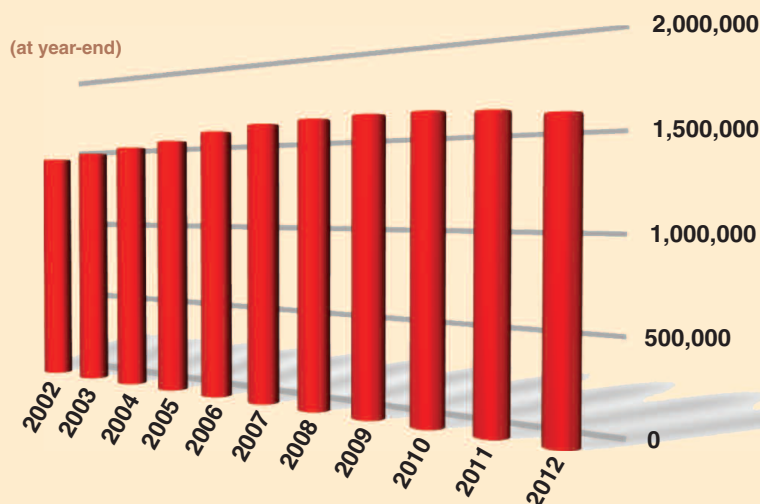
The foundation has filed numerous friend of the court briefs in state and federal courts on behalf of victims' families and others, "to assure people who are guilty of committing crimes receive swift and certain punishment." It filed an amicus brief in the Supreme Court challenging a lower court order sending thousands of California state prisoners to county jails, saying it would present a great danger to public safety.



## Prison Population Declines — Slightly

The total number of state and federal prisoners peaked in 2009 and has fallen by 2.7 percent since then. By the end of 2012 about 1.6 million prisoners were being held — 27,770 fewer than the year before. But all of the decline was in the state prison population, which fell by 29,223 inmates in 2012, while the federal prison population rose by 1,453. California, which has been ordered by the Supreme Court to alleviate prison overcrowding, accounted for just over half of the decrease in the state prison population.

### Prisoners Under State and Federal Jurisdiction, 2002-2012



\* Includes imputed counts for three jurisdictions that did not submit data in time for inclusion.

Source: U.S. Department of Justice, "Prisoners in 2012 — Advance Counts," July 2013, [www.bjs.gov/content/pub/pdf/p12ac.pdf](http://www.bjs.gov/content/pub/pdf/p12ac.pdf)

The political pendulum now seems to be swinging in the opposite direction, however, spurred in part by bipartisan concerns that the explosion in prison populations is costing states and the federal government billions of dollars a year. Support is growing in Congress to follow the lead of some 30 states that have rolled back some of their mandatory sentencing laws, at least for minor, nonviolent offenses.<sup>6</sup> And last August, Attorney General Eric Holder directed federal prosecutors not to charge certain low-level, non-violent drug offenders with "draconian mandatory minimum sentences."<sup>7</sup>

In 2012, after decades of steady growth, the total prison population fell

for the third straight year, driven by a few large states such as California and Texas, according to the Bureau of Justice Statistics.<sup>8</sup> (See *graphic, above*.) Some observers hailed the drop as a "sea change" in America's approach to criminal punishment, suggesting that shifts in public opinion could end the four-decade march toward what critics like Travis call a "mass incarceration" nation.<sup>9</sup> However, a close look at the statistics reveals that 84 percent of the decline occurred in just three states — California, Texas and North Carolina — and federal prison populations have continued to grow.<sup>10</sup>

Meanwhile, crime has been falling steadily and sharply since peaking in

1991, the height of the crack epidemic. The country is at an "historical moment" for reform of sentencing laws, says Michael Jacobson, a former director of corrections for New York City and now a professor of sociology at the City University of New York Graduate Center.

Critics of mandatory sentencing say Angelos' case epitomizes another major flaw in such laws: Judges cannot reduce sentences they view as overly harsh, but federal prosecutors can penalize defendants who choose to go to trial — rather than accept a guilty plea — by applying "enhanced" charges that lengthen the eventual sentence. This "trial penalty" extracted by prosecutors tripled the average sentence length for federal drug offenders convicted at trial in 2012 — to an average of 16 years — according to Human Rights Watch, a New York-based international advocacy group that works to change sentencing practices it considers inhumane.<sup>11</sup> In Angelos' case, he chose to go to trial to fight the gun charge rather than accept the deal offered by federal prosecutors: 15 years if he admitted to one count of selling drugs with a gun.

During the 1980s and '90s, states and the federal government also passed "habitual offender" laws, often called "three strikes" or "four strikes" laws for the stiff mandatory sentences they impose on defendants who commit multiple offenses, even if they are minor and nonviolent.

For example, Timothy Jackson was sentenced to life without parole under Louisiana's habitual offender law after stealing a \$159 jacket, burglarizing some cars and committing robbery without a weapon. He is one of more than 3,000 people serving life sentences for non-violent offenses, according to the liberal American Civil Liberties Union (ACLU), which works to protect individual constitutional rights through litigation, legislation and public education.<sup>12</sup>

The nation's prison population grew steadily every year between 1978 and 2009, when it peaked at 1.6 million,

more than five times its 1978 level.<sup>13</sup> Exacerbating the prison population boom was a 1994 federal law that gave states money to build prisons if they passed “truth-in-sentencing” laws, which required certain violent offenders to serve 85 percent of their prison terms.

However, as state prison populations swelled, stubbornly high recidivism rates have led some states to consider expanding alternatives to prison — such as drug treatment programs — which can reduce reoffending rates and cost less than imprisonment. In states such as New York, Michigan and Texas, crime plummeted even as governors began closing prisons and diverting prisoners to such alternative programs. The trend, says Jacobson, defies the widespread belief of the 1980s that “you have to keep locking up people to make crime go down.”

Nearly half of federal inmates are serving time for drug crimes, and many need substance abuse treatment, Holder said, as he announced the change in federal prosecutors’ charging policy on Aug. 12. In a speech to the Congressional Black Caucus in September, Holder said “inflexible” mandatory sentences “have had an unmistakable destabilizing effect on particular communities — largely poor and of color.”<sup>14</sup>

Holder’s move, however, does little to change the decades-long shift of power from judges to prosecutors under mandatory sentencing laws. Today, prosecutors can effectively determine defendants’ sentences by choosing to charge them for a crime punishable by an automatic minimum — leaving the judge no choice in the matter.

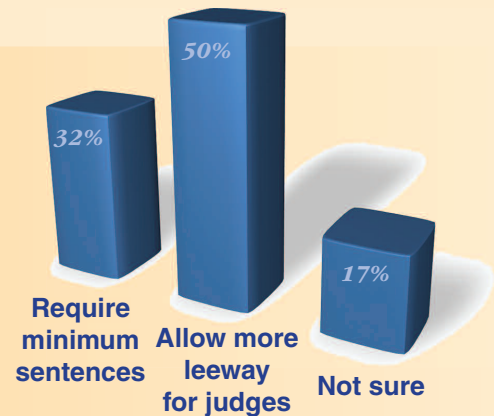
Senate Judiciary Committee Chairman Patrick Leahy, a liberal Democrat from Vermont, has joined conservative Kentucky Republican Sen. Rand Paul to sponsor legislation to re-empower federal judges by allowing them to impose less than the mandatory minimums.

Citing Angelos’ case at a Judiciary panel hearing on Sept. 18, Paul said, “The injustice of mandatory minimum

## Half of Americans Favor More Sentencing Leeway

*Only about a third of adults polled by The Huffington Post/YouGov last August said the government should require minimum sentences for people convicted of a crime, while half said judges should have more leeway in determining sentences.*

**Should the government require certain minimum prison sentences for people convicted of a given crime, or should judges have more leeway in determining sentences?**



*Note: Totals do not add to 100 because of rounding.*

*Source: The Huffington Post/YouGov poll, Aug. 13-14, 2013, [http://big.assets.huffingtonpost.com/toplines\\_sentences\\_0813142013.pdf](http://big.assets.huffingtonpost.com/toplines_sentences_0813142013.pdf). The poll is based on interviews with 1,000 adults and has a margin of error of plus or minus 4 percent.*

sentences is impossible to ignore when you hear the stories of the victims.” Leahy said mandatory minimums are “costly, unfair and do not make our country safer.”

Many prosecutors strongly oppose giving judges more discretion, saying the mandates help elicit cooperation from serious criminals. Some key Republicans in Congress who credit longer sentences for the sharp drop in crime also oppose relaxing mandatory minimums.

“It is hard to think of a more successful domestic policy accomplishment over the past 30 years than the reduction in crime rates,” said Sen. Charles E. Grassley, R-Iowa, the ranking Republican member on the Senate Judiciary Committee. “We should be very careful about any actions [to change] sentencing law, whether based on cost or other concerns.”<sup>15</sup>

But critics of longer sentences say many years behind bars can turn inmates into hardened criminals and bar them from jobs, making it difficult for prisoners to return to society.<sup>16</sup> As a result, say some researchers, the neg-

ative effects of long sentences may cancel out the crime reduction produced by keeping criminals off the streets for long periods.

As Congress and state legislators consider easing back on mandated lengthy sentences, here are some of the questions being debated:

### **Should mandatory sentences be rolled back?**

“An addict who is paid \$300 to stand at the entrance to a pier and watch for the police while a boatload of cocaine is unloaded . . . qualifies for kingpin treatment and a 10-year mandatory minimum,” based solely on the amount of cocaine in the boat, U.S. District Judge John Gleeson of New York observed recently.

By basing mandatory sentencing laws on the quantity of drugs rather than on the person’s actual role in the drug operation, Congress made a “mistake,” he said. As a result, the law has produced “unfairly harsh” unintended consequences.<sup>17</sup>

The drug-quantity trigger, written into federal law in 1986 at the height of a crack-fueled crime wave, is just one example of the “crudeness and breadth” with which mandatory sentences tend to get written, particularly in the heat of the political moment, says Ohio State University law professor Douglas A. Berman. Mandatory minimums “pick one particular factor and make it consequential,” so they lack “the nuance a sensible system should have,” he says.

State and federal mandatory sentences include automatic minimums for crimes such as drug trafficking, child sex trafficking and child pornography as well as for those who are convicted multiple times. In addition, longer sentences kick in automatically if the crime involves certain conditions, called sentence “enhancements,” such as selling drugs within a school zone or using a handgun while committing a crime.

Critics say such laws impose one-size-fits-all sentences on offenders whose personal circumstances or criminal histories don’t warrant such punishments. Many low-level offenders get caught in a net that is much too wide, they charge. In 2011, about three-quarters of federal crack defendants faced a mandatory minimum sentence, but only 5.4 percent of them led or managed a drug business, according to the U.S. Sentencing Commission, which establishes sentencing policies and practices for federal courts.<sup>18</sup>

State habitual offender laws also have landed nonviolent offenders with life sentences. Sylvester Mead — who received life without parole under Louisiana’s habitual offender law after making drunken threats to a police officer while handcuffed in a squad car — is among nearly 3,300 prisoners serving life without parole for nonviolent offenses, the ACLU found. Eighty-three percent of those sentences were mandatory.<sup>19</sup>

Julie Stewart founded Families Against Mandatory Minimums, a Washington-based advocacy group, after her brother received a five-year mandatory sen-

tence for growing marijuana in his garage. The congressional dialogue has been driven by the idea that “you can’t trust judges to sentence, so we members of Congress have to decide what the punishment should be,” she says. Yet, “members of Congress have never laid eyes on the defendant. They don’t know if he pulled the trigger or drove the car,” she objects.

Some legislatures have overturned or revised lengthy mandatory sentences for dealing drugs in a school zone because they swept in some unintended small-time dealers. “We have cases in Pennsylvania where someone was sitting in their living room [selling drugs] in the middle of the night in July when no children are in school, but by measurement they were in the school zone,” says Villanova University law professor Steven L. Chanenson, chair of the Pennsylvania Commission on Sentencing, which has called for repeal of the school zone mandate.<sup>20</sup> (See “*At Issue*,” p. 41.)

The tough mandates were enacted partly in response to criticism from both the right and the left that judges in the 1970s and early ’80s had too much discretion. The widely ranging ideologies of different judges resulted in too much disparity in how they sentenced for the same crime, sometimes influenced by racial bias, critics said.

William Otis, an adjunct professor of law at Georgetown University Law Center and a former federal prosecutor, says repealing mandatory sentencing — or even giving judges greater discretion — would send the country back to the days of “luck-of-the-draw sentencing.”

“That’s not the rule of law — that’s roulette,” he says. “Why shouldn’t Congress be able to say to judges, ‘Look, . . . there are some crimes sufficiently serious that there’s a rock bottom minimum?’” (See “*At Issue*,” p. 41.)

Berman responds: “We still have the bad old days” of disparate sentencing, but now it occurs in the privacy of prosecutors’ offices, “with no mechanism to review it,” while judges’ decisions are public and can be overturned on appeal.

However, the threat of a mandatory sentence, says Scott Burns, executive director of the National District Attorneys Association, has been an extremely helpful leverage for state and local prosecutors “to secure cooperation from defendants and witnesses and solve other crimes,” he told the Senate Judiciary Committee last September.<sup>21</sup>

Such prosecutorial leverage “leads to a snitching phenomenon,” Berman charges, “where one defendant manufactures claims about others’ criminal conduct as the only way to mitigate the harshness of the sentence.” Prosecutors also have abused their power by pressuring defendants to plead guilty instead of going to trial, defense lawyers say.

“If the prosecutor holds the hammer of a 10- or 20-year-mandatory minimum, very few people have the stomach to risk that enormous amount of mandatory time [by going to trial] if they get an offer that’s less than that,” David E. Patton, executive director of the Federal Defenders of New York, said at a Federal Bar Council panel in New York in November.

As a result, trials have become increasingly rare in the federal system: In 1963, nearly 15 percent of federal defendants went to trial; now only about 3 percent do.<sup>22</sup>

However, former federal prosecutor Otis says, “I’m just not buying the idea that innocent men are pleading guilty.” Based on his 18 years as a prosecutor, he maintains, “The reason people plead guilty is they are guilty. They know the government has evidence and they’ll get a better deal by admitting responsibility than by going to trial — [where] the evidence will come out in bloody detail.”

### ***Are lengthy sentences necessary to protect public safety?***

Until the 1970s, American penal policies were based largely on a belief that criminals could be rehabilitated. But after a crime wave in the 1960s, some crim-



inologists began to argue that only incarceration — which kept criminals off the street and thus “incapacitated” them for long periods — could reduce crime. That rehabilitation versus incapacitation debate continues today.

However, estimates of how much impact today’s longer sentences have had on the crime rate range from a lot to not much at all.

In 2004, when homicides had dropped more than 40 percent from their 1991 peak, economist Steven D. Levitt of the University of Chicago estimated that up to one-third of the decline in overall crime could be attributed to the rising prison population — stemming largely from longer sentences and sharply increased imprisonment for drug crimes.<sup>23</sup> When crime had reached a 40-year low in 2010, the late conservative criminologist James Q. Wilson, then at Boston College, estimated that higher imprisonment rates accounted for at least a quarter of the drop in crime.

“[W]hen prisoners are kept off the street, they can attack only one another, not you or your family,” he wrote.<sup>24</sup>

If Wilson’s estimate was right, “it means that there are more than one million fewer serious crimes committed now than a generation ago on account of our increased use of imprisonment,” says former federal prosecutor Otis, “saving enormous financial and human costs.” Having a million fewer victims of serious crime, he says, is “one of the great achievements in social policy of our lifetimes.”<sup>25</sup>

But some prominent criminologists attribute the drop in crime to other factors, such as improved policing. “Both mandatory sentences and the lengthening of sentences in the ‘90s played a minor to tiny role in crime reduction,” says University of California-Berkeley law professor Franklin E. Zimring, author of the 2008 book *The Great American Crime Decline*.

The proof of that, he says, lies in how New York City reduced its serious

crime by 80 percent since 1991 — twice the national decline. New York’s experience was largely due to the city’s strategy of stopping people for minor offenses, taking them off the street after discovering they had more serious felony warrants and deterring them from committing more serious crimes, he says.<sup>26</sup>

In a recent book, another scholar who is skeptical of mandatory sentences, Todd Clear, dean of the Rutgers University School of Criminal Justice,

growing numbers of nonviolent offenders behind bars starts to cost more than the relatively minor crimes they would otherwise have committed.<sup>28</sup>

In addition, research increasingly suggests that longer sentences and prison population growth may create more crime than they prevent, according to Clear. Criminologists suggest that may be because prisoners who return to society are often turned down for jobs based on their criminal records and



Getty Images/Andrew Burton

*Eighty-two-year-old Anthony Alvarez is serving a life sentence at the California Men’s Colony prison in San Luis Obispo, Calif. He says he was sentenced under the state’s three-strikes law for a series of nonviolent crimes and escapes. He planned to apply for compassionate release, a program for prisoners no longer considered a threat to society. Elderly inmates are the fastest-growing group in the nation’s prisons, and their medical costs are three to nine times that for younger prisoners, according to Human Rights Watch.*

cities studies that attribute a much smaller share of the crime reduction — about 2 to 5 percent — to the increase in imprisonment between 1993 and 2001.<sup>27</sup>

Several scholars cite diminishing returns as more prisoners — especially less violent ones — are locked up. An Oregon Criminal Justice Commission study found that by 2005, a dollar spent on prison returned only about \$1 in public safety benefits, compared to more than \$3 in 1994. That’s because imprisoning violent offenders saves significantly more in crime averted than it costs to lock them up, but putting

may revert to crime to make ends meet. In addition, key family ties often are broken when someone is in prison for extended periods.

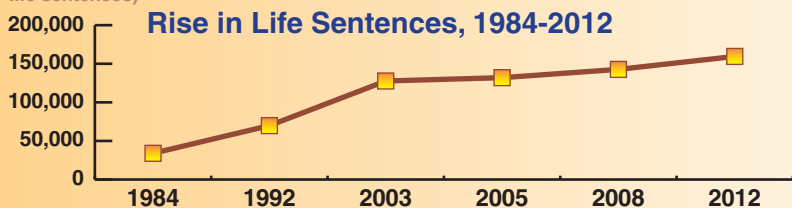
Time spent in prison also can lead to more criminality, says Adam Gelb, director of the Public Safety Performance Project at the Pew Charitable Trusts, “if you’re in institutions where you pick up a bunch of habits” and are surrounded by hardened criminals who “pull you the other way.”

According to Pew, several studies attempting to find out whether the length of a prison term affects reoffending

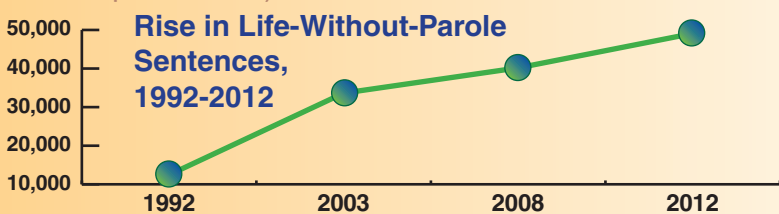
## Life Sentences on the Rise

Nearly 160,000 Americans were serving life sentences in 2012, more than four times as many as in 1984 and nearly 12 percent more than in 2008 (top). In the early 1980s, about 4 percent of prisoners were serving life sentences, but today nearly 11 percent are so-called lifers. The number of prisoners serving life sentences without the possibility of parole rose nearly fourfold between 1992 and 2012, from 12,453 to 49,081 (bottom).

(No. of inmates serving life sentences)



(No. of inmates serving life-without-parole sentences)



Source: “Life Goes On: The Historic Rise in Life Sentences in America,” *The Sentencing Project*, 2013, p. 13, [http://sentencingproject.org/doc/publications/inc\\_Life%20Goes%20On%202013.pdf](http://sentencingproject.org/doc/publications/inc_Life%20Goes%20On%202013.pdf)

“failed to find a consistent impact, either positive or negative.”<sup>29</sup>

People also age out of crime, most crime experts say, with peak years for criminality occurring during the teenage years to the mid-20s. “By the time you’re 55 you are done” with crime, says Jacobson, of the City University of New York. “Your back hurts; you’re not stealing someone’s pocketbook and running down the street. Why are you locking up all those people . . . during the time that they’re no threat to public safety?” Between 2007 and 2010, the number of state and federal prisoners 65 or older grew at 94 times the rate of the overall prison population, according to Human Rights Watch.<sup>30</sup>

A Pew analysis of three states — Florida, Maryland and Michigan — found

that extra time behind bars for nonviolent offenders neither prevented crimes during the incarceration period nor kept offenders from committing new crimes once they got out. Instead, the study found that up to a quarter of nonviolent inmates could have served from three months to two years less without any drop in public safety.<sup>31</sup>

Nevertheless, the purpose of long imprisonments is not just to deter future crimes but also to punish a heinous offense, which leads Gelb to doubt that legislatures will consider shortening their longest terms for violent offenders. With some exceptions, he says, people getting life sentences tend to have done terrible crimes.

“A legitimate part of the question is [about getting one’s] ‘just deserts,’ ”

he says, “and whether someone who has done something the legislature authorized a life sentence for ought to spend a significant part of time away from the rest of society.”

## Do alternatives to incarceration reduce recidivism?

Roughly 40 percent of federal prisoners and more than 60 percent of state prisoners are rearrested within three years of their release, according to Attorney General Holder, a recidivism rate that has spurred a search for alternatives. Many policymakers who argue for reducing lengthy prison stays say alternatives to prison can slow the justice system’s revolving door — at less cost than prison.

“While Congress has continued to pass legislation mandating ever-longer sentences, the states have focused on successful alternatives, and they have reduced their prison populations and saved taxpayer dollars, while their crime rates have decreased,” Senate Judiciary Committee Chairman Leahy said on Nov. 14, announcing he would push for a bipartisan proposal giving judges discretion to sentence below the mandatory minimums. “It is time we look to the states and draw on the lessons they have learned.”<sup>32</sup>

With the help of federal dollars, at least 25 states have begun a process called “justice reinvestment,” which aims to contain or reduce the growth of prison populations while investing instead in programs that keep people from committing crimes again. While the impetus for these generally bipartisan efforts is usually budgetary, there also is a growing interest in programs shown by research to reduce recidivism, according to Mike Thompson, director of the Council of State Governments Justice Center, which advises states on justice reinvestment.

According to the Justice Center, recidivism rates already are falling in some states: Michigan saw a 28 percent decline from 2000 to 2008, and Texas a 22 percent reduction from 2000 to 2007.<sup>33</sup>



Drug treatment courts — which mandate participation in drug rehabilitation programs rather than prison for addicted offenders — have proliferated, with more than 2,000 now operating nationwide. They usually consider drug-related crimes as well as other offenses, such as parental neglect, that may be rooted in a drug habit. Most do not consider violent offenders, according to the National Association of Drug Court Professionals.

Such “problem-solving” courts aim to cure the root problems that lead to crime, such as mental health issues, and generally work on the same basic principle: The defendants are assigned mandatory treatment, must make regular court appearances to report on progress and face the threat of regular sentencing, usually jail time, if they fail to comply with the treatment mandate.

When states roll back their mandatory sentencing laws they often expand such alternative programs. For example, in 2009 New York passed a measure reforming its famously strict Rockefeller drug laws and eliminated mandatory minimums in low-level drug cases.<sup>34</sup> Within the first year, the state sent 77 percent more drug-addicted offenders to drug courts than the year before. The increase saved taxpayers \$5,144 per offender, according to a new study, due to a drop in reoffending and because treatment was less expensive than the sentences they would otherwise have received.<sup>35</sup>

Citing big drops in prison populations and crime, Democratic New York Gov. Andrew Cuomo proposed closing four additional prisons in July 2013, saving \$30 million and bringing the total number of New York prisons closed since 2009 to 13.<sup>36</sup> (New York now has the lowest crime rate and the lowest incarceration rate of any large state in the nation.<sup>37</sup>) Between 1999 and 2012, the number of serious crimes in New York state dropped 25 percent and its prison population by almost as much, according to the state Division

of Criminal Justice Services.<sup>38</sup>

Nationally, drug courts reduce reconviction or rearrest by an average of 10-15 percent compared to conventionally sentenced offenders, according to the drug court professionals association.<sup>39</sup> And studies show some drug courts reduce recidivism even more — by up to 26 percent, said Douglas Marlowe, the group’s director of science, policy and law.<sup>40</sup>

Yet some criminal justice experts, including some supporters of drug courts, doubt that such courts can divert enough offenders from prison to dramatically reduce the nation’s prison population. Many low-level offenders assigned to drug courts would have received probation or a short jail term otherwise, experts in the field of probation say. Marlowe says while that was true in drug courts’ early days, the courts increasingly are seeking out prison-bound populations.

While drug courts are a success with nonviolent, addicted clients, Jacobson says, “You’re not going to replicate drug court for the rest of humanity in prisons.” Drug courts “only deal with a very small proportion of people,” he says, and they’re expensive to scale up.

The same limitation goes for most of the alternatives to jail being tried by states, Jacobson says, including electronic monitoring of offenders serving their sentence at home.

“There are only so many low-level, first-time-offender choir boys in the criminal justice system,” he says, especially in prison, which is where the big cost-savings need to come from. ■

## BACKGROUND

### From Rehab to Punishment

U ntil the 1970s, prison policy in the United States was guided by the

belief that criminals could be rehabilitated — by giving them jobs and education skills or psychological treatment.

In sentencing, prison was treated “reluctantly as a last resort,” Rutgers criminal justice expert Clear writes in *The Punishment Imperative*, his account of how this philosophy changed. Indeed, the prison population was so stable between the early 1900s and 1972 that prominent criminologists suggested it had reached the maximum level society would tolerate.<sup>41</sup>

The rehabilitative view was further bolstered under President Lyndon B. Johnson’s Great Society programs, which aimed to eliminate poverty and racial injustice — seen as the root causes of social problems like crime. Johnson’s Great Society legislative package, announced May 7, 1964, was launched at a time of social upheaval — the civil rights movement was staging antisegregation protests in the South, and riots broke out later that summer among youths in black neighborhoods in New York and other cities. Johnson’s initiatives started major antipoverty programs and translated some of the civil rights movement’s demands into law, such as the Civil Rights Act, which banned segregation in public places and outlawed discrimination on the basis of race, religion or sex in hiring.

Meanwhile, however, news reports and the FBI said the country was experiencing a crime wave of “unprecedented proportions,” which they linked to civil rights protests and the 1964 summer youth riots.<sup>42</sup> In 1965 Johnson commissioned a panel to study the cause of rising urban crime. Its report in 1967 proposed a social agenda — such as providing jobs and removing slums — plus additional law enforcement.<sup>43</sup>

The commission’s recommendations typified the administration’s approach in seeking to find and address the root causes of crime. That approach came under attack during the presidential campaign of 1968, when Republican candidate Richard M. Nixon made “law and

order” a major theme, as street protests and college campus demonstrations were mounting against the Vietnam War. Riots had erupted in dozens of cities earlier that year after the April 4 assassination of civil rights leader Dr. Martin Luther King Jr., and antiwar protests — and a violent police reaction — marred the Democratic National Convention in Chicago that August.

In a speech accepting the Republican nomination, Nixon spoke of a nation “plagued by unprecedented lawlessness” and defended his use of the term “law and order” against critics who called it a code for racism.<sup>44</sup> Nixon won the presidential election in November 1968.

In his January 1970 State of the Union address, President Nixon announced “war against the criminal elements” in society and proposed doubling federal law enforcement spending.<sup>45</sup> In 1971, amid reports of a heroin epidemic among GIs returning from the Vietnam War, Nixon declared drug abuse “public enemy number one” and created a special office to combat drug abuse. Although Nixon’s declaration became known as the war on drugs, his declaration that more federal money would go to addiction prevention and “rehabilitation of those who are addicted” got less attention.<sup>46</sup> Paradoxically, Nixon’s administration marked the only period in the war on drugs in which more federal funds were spent on drug treatment than on law enforcement.<sup>47</sup>

During the 1970s, crime experts began to question the effectiveness of rehabilitation for convicted criminals. A 1974 article by City University of New York sociologist Robert Martinson reviewing more than 200 studies, entitled “What Works? Questions and Answers about Prison Reform,” concluded in essence that “Nothing Works,” as the article came to be known.<sup>48</sup>

That view was bolstered by political scientist Wilson’s 1975 book *Thinking about Crime*, which argued that

the focus on reforming criminals was undermining the deterrence effect of punishment. By the mid-’70s, most criminologists believed only long prison sentences — known as incapacitation — worked. That shift in view, says UC-Berkeley law professor Zimring, is largely responsible for the growth in the prison population that ensued.

“The whole debate between 1970 and 2000 was whether there was *any* other way to reduce crime,” Zimring recalls. “And our notion was these were very persistent high-rate offenders: Either lock them up or they keep offending.”

The growing endorsement of incapacitation influenced state legislatures, starting with New York, whose drug laws came to be known as the Rockefeller drug laws because of enthusiastic support from Republican Gov. Nelson Rockefeller. The new laws imposed a minimum sentence of 15 years to life for selling two ounces of drugs, including marijuana, and 25 years to life for larger amounts.<sup>49</sup>

### Sentencing ‘Reform’

In 1986, amid daily TV news reports of crack-fueled crime, one news story captured national attention: University of Maryland basketball star Len Bias died of an overdose of powder cocaine — initially reported as crack cocaine. Within a few weeks, Congress passed the Anti-Drug Abuse Act of 1986, establishing for the first time mandatory minimum sentences triggered by specific quantities of cocaine.

Passage of the law was philosophically in step with the move by state legislatures, begun in the late 1970s and early ’80s, away from “indeterminate” sentences that allowed judges wide discretion in setting the length of sentences. Such laws were criticized from both the right, for allowing too much leniency among judges, and from the left, for creating too much disparity — especially racial bias — in sentencing.

Beginning in the late 1970s, states began to establish “determinate” sentences — a precise sentence length or narrow range with less liberal policies on early release. During this period, 19 states passed guidelines to reduce disparity in sentencing among judges.

In 1987, mandatory federal sentencing guidelines took effect. Although the Supreme Court in 2005 — in *U.S. v. Booker* — made the guidelines only “advisory,” experts still debate how binding the guidelines remain.

Beginning in the 1980s and picking up in the ’90s, states passed a variety of laws mandating long sentences, including mandatory minimums for certain crimes, “three strikes” laws and “truth-in-sentencing” laws.

Still, by 1994 fewer than 10 states had mandatory sentences. The trend accelerated that year, after Congress passed Democratic President Bill Clinton’s \$30 billion Violent Crime Act, which gave states prison-building grants if they passed truth-in-sentencing laws requiring that 85 percent of a prisoner’s sentence be served.

In his State of the Union address that year, Clinton had endorsed a federal “three strikes and you’re out” habitual-offender law. The Violent Crime bill mandated life sentences for some three-time offenders and created dozens of new federal crimes punishable by death.<sup>50</sup> Between 1993 and 1995, two dozen states enacted habitual-offender laws.

The financial boost led to a surge of prison construction in the states in the 1990s, even as crime rates were stabilizing and beginning to decline. The Clinton administration’s tough-on-crime policies created the largest increase in the number of federal and state prison inmates of any presidential administration in American history.<sup>51</sup>

Between 1970 and 2005, the nation’s prison population exploded by 700 percent and then continued rising to a peak in 2009 of 1.6 million prisoners.<sup>52</sup>

*Continued on p. 36*

# Chronology

**1960s** *Rehabilitation philosophy governs; President Lyndon B. Johnson's Great Society programs aim to tackle root causes of crime. . . . Crime wave, urban riots spur calls for "law and order."*

**1967**

Johnson's Crime Commission recommends tackling poverty and inequality to combat crime.

**1968**

President Richard M. Nixon is elected after vowing to implement "law and order" policies.

**1970s** *Disillusionment with rehabilitation leads to harsher drug laws.*

**1971**

Nixon declares "war on drugs."

**1973**

So-called Rockefeller drug laws, named for Gov. Nelson Rockefeller, R-N.Y., adopted in New York state; they include mandatory sentences for drug possession.

**1980s** *Crack cocaine-fueled crime wave spurs Congress and states to pass lengthy penalties for drug traffickers.*

**1984**

Washington state passes first truth-in-sentencing law, requiring prisoners to serve at least 85 percent of their sentences.

**1986**

Congress passes mandatory sentences for drug traffickers.

**1987**

Federal sentencing guidelines become mandatory for judges until Supreme Court reversal in 2005.

**1989**

First drug court opens in Miami-Dade County, Fla.

**1990s** *President Bill Clinton's "tough on crime" bill gives states financial incentives to build new prisons, pass truth-in-sentencing laws. . . . More states pass mandatory sentencing, "three-strikes" laws. . . . Crime begins little-noticed decline from 1991 peak.*

**1994**

Violent Crime Control Act provides \$9.7 billion for prison building, grants to states that pass truth-in-sentencing laws. . . . California imposes mandatory life sentence for third offense.

**1995**

Twenty-four states have enacted "three strikes" repeat offender laws.

**2000s** *Budget pressures, rising prison populations lead states to roll back mandatory sentences, expand alternatives to incarceration; prison populations, crime rate decline.*

**2007**

Conservative Gov. Rick Perry, R-Texas, urges legislature to focus more on rehabilitation to avoid spending billions on new prisons.

**2009**

Rhode Island repeals all mandatory sentences for drug offenses; New

York repeals some mandatory sentences, gives judges more discretion to send defendants to drug courts.

**2010**

President Obama signs Fair Sentencing Act, reducing 100:1 crack cocaine vs. powder cocaine sentences, seen as biased against blacks, to 18:1. . . . South Carolina eliminates mandatory sentence for first drug possession offense. . . . Conservatives launch Right on Crime sentencing reform campaign.

**2011**

Supreme Court rules in *Brown v. Plata* that California must reduce its prison population by more than 30,000; California orders release of thousands of nonviolent prisoners to counties' supervision.

**2012**

California relaxes "three strikes" law; state prison populations decline for third year in row but federal population continues to grow. . . . Crime rate remains half of 1991 peak. Louisiana gives prosecutors discretion to waive some mandatory minimum sentences.

**2013**

At least 30 states have rolled back mandatory sentences since 2000. . . . Attorney General Eric Holder directs prosecutors to avoid mandatory minimums for low-level drug offenders. . . . Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., vows to act on bills relaxing mandatory sentences. . . . Democratic Chicago Mayor Rahm Emanuel backs mandatory sentence for unlawful gun possession. . . . Georgia, Hawaii allow judges to impose sentences below mandatory minimums. . . . Urban Institute says reducing mandatory minimums for drug violations is most effective way to cut federal prison overcrowding.



## Program Gives Youths a Second Chance

*“We’re keeping kids out of trouble and out of jail.”*

Seventeen-year-old “Nelson” had seen the warnings plastered in New York City subways: “Get caught carrying an illegal gun, get three-and-a-half years in prison.”<sup>1</sup>

But the notices hadn’t stopped him from picking up a gun he found on the street following a shootout in his Harlem neighborhood. He figured he could make a few hundred dollars selling the weapon on the street, but the cops caught him holding it before he had a chance.

So when he arrived in court on an illegal gun charge, Nelson feared he was headed for the mandatory sentence in an up-state prison. Already, prior to facing the judge, he had endured beatings and extortion attempts from fellow inmates while held for four months in Rikers Island’s infamous jail cells for 16- to 18-year-olds, known as “gladiator school.”<sup>2</sup>

But something unexpected happened in the courtroom. A representative from CASES, a New York City program for teens and adults in trouble with the law, proposed to the judge that instead of going to prison, Nelson should get an alternative sentence — six months with CASES’ education and job-training program followed by five years of probation. The judge agreed and said if Nelson continued to stay out of trouble during the year after graduating from the program, he would remove the felony conviction from his record.<sup>3</sup>

“When I was offered the program, I thought, it’s like they’re giving me a second chance, so I’ll make the most of my sec-

ond chance,” recalls Nelson, now 24.

Today, he is set to graduate from City College in January and is applying to law school. He credits CASES for getting him through the bumpiest period of his life. The program provided math tutoring for the SAT’s, helped register him for college, gave him job interview skills and found him a paid internship that inspired him to strive for a legal career.

Equally important, he says, during that first year when he still had an open felony conviction on his record, the program connected him to an attorney who managed to reverse his family’s pending eviction from public housing because of his criminal record.

Nelson says he knows how lucky he was to get a second chance. His brother, arrested shortly after him on a gun charge, served time in state prison and is still behind bars. “He has a conviction, and I was able to enter society,” says Nelson, who now works part-time for a nonprofit legal organization representing young people with criminal records. “I think the biggest thing is, you’re disenfranchised once you’re declared a criminal. That creates a vicious circle.”

CASES wins praise from criminal justice experts for seeking out some of New York City’s hardest prison-bound cases and intervening with judges at the point of sentencing. More than 70 percent of the 300 to 400 16- to 19-year-olds sent to the alternative program come in on violent charges, according to

*Continued from p. 34*

Ironically, the nation’s crime rate had peaked in 1991, three years before Clinton’s violent crime bill was adopted or the prison-building boom began. Between 1991 and 2000, the rates of robbery dropped 44 percent, homicide dropped 39 percent and rape dropped 41 percent, the “largest documented crime decline of the twentieth century,” Zimring wrote.<sup>53</sup>

### Disenchantment Grows

When widespread crack cocaine use sent New York City’s jail populations surging in the 1980s, the city renovated barges, converted ferries and erected reinforced tents in a desperate effort to house more prisoners

in the midst of a fiscal crisis.<sup>54</sup> States, also dealing with surging prison populations and budget deficits, began to roll back some mandatory sentences and look at cheaper sanctions to reduce the numbers cycling in and out of prison.

Faced with fiscal pressures in the mid-1980s, Georgia became the first state to try intensive probation with weekly contact for those with felony records. Early results found lower recidivism among such probationers compared to offenders sent to prison.<sup>55</sup>

By 2003, Michigan had repealed nearly all its mandatory minimums for drug offenses, and in 2009 Rhode Island repealed all of its mandatory minimums for such offenses, which had included 10- and 20-year sentences for simple drug possession.<sup>56</sup>

That same year New York state rolled back some of the severest penalties under its Rockefeller laws, eliminating mandatory sentences for most felony drug offenders and giving judges expanded discretion to send such offenders to drug court and treatment. (Previously the consent of the prosecutor was required.)

A recent study revealed that since 2009 every New York state taxpayer dollar invested in expanded treatment netted a benefit of more than \$3 in reduced recidivism and avoided victimization costs.<sup>57</sup>

Southern states, which traditionally have had the nation’s highest incarceration rates, also have begun to change their laws. In 2010, South Carolina eliminated mandatory minimum sentences for the first conviction of

Joel Copperman, chief executive officer of CASES, and all have pleaded guilty to a felony.

That makes CASES different from many alternative-to-incarceration programs around the country, which typically are aimed at low-level nonviolent offenders who would otherwise get probation or a short jail sentence, says Vincent Schiraldi, New York City commissioner of probation. It also means CASES is saving the state money on prison beds.

“One of the things that CASES does that is unique, incredibly effective and insightful is they get in at the plea bargaining stage with the district attorney and the defense attorney,” Schiraldi says. “That DA is not cutting that deal [to reduce the sentence] unless he has a CASES to send that defendant to.”

Partly because CASES boasts a good track record, prosecutors cooperate with it, and judges find it appealing. Two years after graduation, less than 3 percent of graduates have a new conviction for a violent offense and less than 10 percent for a misdemeanor, according to Copperman.

Twenty-seven-year-old “Ashley” credits CASES for “changing my life” after she was charged with attempted assault at age 16 following a fight with another girl that involved a knife. Sentenced to six months with the program, she ended up staying two years as a paid employee. “I felt like I had a second family here for me,” she says, noting the staff was supportive

even after it turned out she was pregnant one month into the program. Now the mother of a 7-year-old daughter, she is a year-and-a-half away from a nursing degree and works full-time at CASES.

Copperman credits a range of offerings from drug treatment to job readiness classes to hiking and ski trips for his graduates’ success.

“There are a hundred ways we can count this stuff, but it all points to engagement — giving kids a good experience at a particularly crucial point in their lives,” he says. “We’re keeping kids out of trouble and out of jail.”

— Sarah Glazer

<sup>1</sup> In 2006 Republican New York Gov. George Pataki signed into law a mandatory 3.5-year term for carrying an illegal gun. In 2007 the New York Crime Commission launched a public service advertising campaign against illegal guns, placing posters in subways and buses, phone kiosks and billboards. Nelson was arrested in 2007. See [www.nycrimecommission.org/guns-prison.php](http://www.nycrimecommission.org/guns-prison.php).

<sup>2</sup> Rikers Island is New York City’s main jail complex, where defendants who don’t make bail are held before trial.

<sup>3</sup> Under New York law, if a judge approves “youthful offender” status for a 16- to 18-year-old, the records are sealed and the defendant does not have to report any convictions for crimes on applications for work or college. In New York, 16- to 18-year-olds are tried as adults. See New York State Unified Court System, “Youthful Offender & Sealing,” [www.nycourts.gov/courts/7jd/courts/city/criminal/youthful\\_offender\\_sealing.shtml](http://www.nycourts.gov/courts/7jd/courts/city/criminal/youthful_offender_sealing.shtml).

simple drug possession and removed the 10-year mandatory minimum for selling drugs in a school zone. In 2012 Louisiana gave prosecutors discretion to waive mandatory minimum prison terms for nonviolent, non-sex-related offenses.

Texas, where incarceration rates are among the top five in the nation, shifted from building more prisons to strengthening alternative sanctions, such as drug courts, for nonviolent offenders. Since Texas made the shift in 2007, its incarceration rates have dropped more than 9 percent and its crime rate by more than 12 percent — its lowest since 1968, according to the Texas Public Policy Foundation, a conservative think tank that supports the shift to alternatives to incarceration. As a re-

sult, taxpayers avoided spending more than \$2 billion on new prisons, the foundation estimates.<sup>58</sup>

CUNY sociologist Jacobson says the Texas program is the biggest state reform in recent years — and surprising, he says, for a state where legislative leaders have been “big, tough guys” in cowboy hats. “In a remarkably bipartisan way, they took half a billion dollars out of the prison budget, and they reinvested it in community rehabilitation programs,” he says, shifting their system away from a largely punitive approach.

In 2010, citing the Texas story, the Texas Public Policy Foundation launched the Right on Crime Initiative and recruited a roster of conservative leaders such as former Florida Republican Gov. Jeb Bush and former

Republican House Speaker Newt Gingrich of Georgia to support a campaign for less spending on prisons and more treatment for drug offenders. The group’s goal was “maximizing the public safety return on the dollars spent on criminal justice.”

But conservatives are supporting the initiative on nonbudgetary grounds as well, says Marc Levin, policy director of the Right on Crime Initiative. “Individuals signed on who were concerned about the idea of redemption — that people can change, and we shouldn’t just write every offender off,” he says, including supporting the removal of barriers for ex-offenders who seek licenses required for working in certain occupations.

“We’re not Pollyana-ish; there are serial killers and rapists who need to

## Once-Violent Prisoners Often Turn Their Lives Around

*“They are very grateful for the job and are loyal employees.”*

A common assumption is that everyone knows who is likely to commit future crimes — the offender who has already committed a violent crime. But that may not always be the case, some researchers find.

The Sentencing Project, a sentencing-reform advocacy group, found that people released from life sentences were less than one-third as likely to be rearrested in three years as all released prisoners.<sup>1</sup>

Murderers tend to have among the lowest recidivism rates, says Marta Nelson, executive director of the New York City branch of the Center for Employment Opportunities (CEO), which provides transitional jobs for ex-inmates and helps them find full-time work. Murder is often a “crime of passion” that wasn’t premeditated and isn’t repeated, Nelson says. Convicted murderers who find work through CEO “are very grateful for the job and are loyal employees,” she says.

The majority of returning prisoners that the New York branch helps have been convicted of “violent” offenses, which in New York includes home burglaries. CEO reduced the rate of new arrests for recently released prisoners by 16 percent and the rate of new convictions by 22 percent compared to a control group. The program had its greatest impact among ex-inmates who were at the highest risk of reoffending, according to an independent evaluation by MDRC, a nonprofit education and social policy research organization that was originally called the Manpower Demonstration Research Corp.<sup>2</sup>

“There’s this notion that someone who committed a nonviolent crime is a nonviolent person and a person who committed a violent crime is a violent person, and I don’t think that tracks,” says Mindy Tarlow, executive director nationally of CEO, which also operates in California and Oklahoma. A 22-year-old getting out of prison after a short sentence can be a lot harder to place on a law-abiding path than an older, wiser

prisoner who served a long sentence, CEO staff members say.

Jason Heyliger, 46, who served nearly 30 years for second-degree murder in a videotape-store robbery, seemed like a dazed innocent eager to please as he attended a CEO class on job-interviewing skills in November, just three months after his release. Coming back to a changed society where he couldn’t even work a cell phone “felt weird,” he said. He found himself turning to his nieces and nephews when he got locked out of his phone.

Among people who have served life sentences for violent crimes, “The reality is when they were 18, 19, 20, they committed a terrible act, now they’re 40 and 50 and very different people,” says Marc Mauer, executive director of the Sentencing Project, which has urged the federal government and the six states that have abolished parole to restore parole eligibility to those with life sentences.\*

Nevertheless, “There is no appetite in the states for reducing sentences for violent offenders,” says Adam Gelb, director of the Public Safety Performance Project at Pew Charitable Trusts, which has helped more than 20 states develop alternatives to prison, mainly for low-level offenders. However, Gelb says, there’s growing interest in reentry programs to help ex-inmates readjust to society when they leave prison.

“People intuitively understand it doesn’t make sense to take someone who has been in prison for years and put them on the street with no supervision at all,” says Gelb.

Still, judges relying on gut instinct often make mistakes in predicting which defendants are most likely to reoffend or to commit violent crimes, according to a recent study examining

\* The six states that eliminated parole are Illinois, Iowa, Louisiana, Maine, Pennsylvania and South Dakota.

be locked up for a long time, but the majority of people in the criminal justice system can, with the right intervention, be put on the right track to being a productive, law-abiding citizen,” says Levin.

The drug laws passed by Congress in the mid-’80s have long been criticized for having a disproportionate impact on blacks. Under the 1986 federal drug law, the same mandatory sentence was triggered for the sale of 1/100th as much crack cocaine — a cheap version of cocaine popular among some blacks — as for the sale

of powder cocaine, the form of the drug used primarily by whites.<sup>59</sup>

In 2010, President Obama signed the Fair Sentencing Act, to reduce the 100:1 crack-cocaine disparity. While the original bill introduced in the Senate would have eliminated the disparity entirely, a compromise with Senate Republicans legislated an 18:1 ratio.<sup>60</sup>

During the last decade, California, New York and Michigan have retroactively rolled back their mandatory sentences for convicted offenders, resulting in some prisoners being released immediately. In 2012, California voters

repealed the strictest provisions of the state’s three-strikes law, which had imposed a mandatory life sentence on offenders convicted of a third offense, regardless of its seriousness. Now the life sentence applies only if the defendant committed a third felony that was violent or serious.

Since the law took effect in November 2012, more than 1,000 individuals have been released from prison, and 2,000 more releases are pending. The state estimates that the repeal saved the state more than \$10 million in the first nine months of implementation.<sup>61</sup> ■



who gets released and who gets detained pending trial — a finding that could also apply to judges' sentencing decisions.

Recognizing that intuition isn't always the best predictor, judges in Arizona, Indiana and Nevada now get training in risk assessment, using research-based tools predicting which types of defendants are most likely to reoffend, and many use these assessments in their sentencing decisions, according to Pamela Casey, principal court research consultant with the National Center for State Courts. Similar tools are used in some courts in California, Colorado, Idaho, Ohio, Oregon, Wisconsin and Texas, according to Casey.

But the more conventional trend, in which judges make pre-trial decisions "based on gut and intuition instead of using rigorous, scientific, data-driven risk assessments," has led to too many high-risk defendants going free, creating "a public safety crisis nationally," concludes a study by the Laura and John Arnold Foundation. Close to 50 percent of high-risk defendants were released in two states, the study found. And too many low-risk defendants are being locked up for long periods.<sup>3</sup>

While judges often look at criminal history, they often don't assign the proper weight to factors that predict future behavior, says Anne Milgram, vice president of criminal justice for the Arnold Foundation, which has developed a new risk assessment tool for judges in pre-trial decisions. For example, a young person charged with a nonviolent crime such as car theft might seem like a relatively low risk to public safety. But if he is a gang member, "he might be a person we know is likely to come back" to court with another crime, she says, emphasizing that the offense by itself "is not predictive of future crimes."

— Sarah Glazer



CQ Researcher/Sarah Glazer

*Jason Heyliger, 46, is receiving help from the Center for Employment Opportunities, which aids ex-inmates. He was released from prison in August 2013 after serving nearly 30 years for second-degree murder and attempted armed robbery, committed when he was 16.*

<sup>1</sup> "Life Goes On: The Historic Rise in Life Sentences in America," Sentencing Project, September 2013, p. 17, [www.sentencingproject.org/detail/publication.cfm?publication\\_id=514&id=106](http://www.sentencingproject.org/detail/publication.cfm?publication_id=514&id=106).

<sup>2</sup> "More than a Job," MDRC, January 2012, p. 21, [www.mdrc.org/publication/more-job](http://www.mdrc.org/publication/more-job).

<sup>3</sup> "Developing a National Model for Pretrial Risk Assessment," Laura and John Arnold Foundation, November 2013, see pp. 1 and 5, [http://arnoldfoundation.org/sites/default/files/pdf/LJAF-research-summary\\_PSA-Court\\_4\\_1.pdf](http://arnoldfoundation.org/sites/default/files/pdf/LJAF-research-summary_PSA-Court_4_1.pdf).

## CURRENT SITUATION

### Federal Actions

**O**n Dec. 19 President Obama granted clemency to 21 individuals, including five in prison for crack cocaine offenses — a notable act for a president who has issued fewer pardons than any other president and a reflection of

shifting views of drug offenses since the crack era. Three of those granted clemency had been serving life without parole for minor, nonviolent roles in drug deals and had been profiled by an ACLU report that received broad press coverage just weeks before.<sup>62</sup>

A Nov. 13 letter asking President Obama to commute Weldon Angelos' sentence — signed by 17 former judges, more than 50 former prosecutors and music stars such as singer Bonnie Raitt — called his sentence an "extraordinary injustice" for a low-level drug offender with no previous criminal history.<sup>63</sup>

However, Angelos was not included in Obama's most recent list of those receiving pardons and commutations.

In an email response to *CQ Researcher* questions written from federal prison in California before Obama's recent clemency announcement, Angelos, now 34, said of his sentence, "It's difficult to understand how this can happen in America. I understand what I did was wrong, irresponsible and misguided, but I don't see how keeping me in prison until I'm a senior citizen for marijuana offenses I committed when I was 22 years old is the right thing to

do, when murderers, child rapists, career criminals and even some terrorists receive much lighter prison sentences.”

Several bipartisan bills are pending in Congress aimed at relaxing mandatory minimums.

The Smarter Sentencing Act, introduced by Sen. Richard J. Durbin, D-Ill., and Sen. Mike Lee, R-Utah., would reduce mandatory minimum penalties for nonviolent drug offenders. The Justice Safety Valve Act, introduced by Senate Judiciary Committee Chairman Leahy and Sen. Paul, would allow judges to depart from the statutory minimum penalty for any offense, not just drug offenses. While judges already can sentence below the minimum under a “safety valve” in existing law, it applies only to drug offenders and only to about 39 percent of those, according to Human Rights Watch.<sup>64</sup>

The staffs of Democratic and Republican committee members have been working to develop a bipartisan consensus package based on those two bills, along with proposals from Republicans, including Sen. John Cornyn of Texas. Rather than reducing sentences delivered by a court, Cornyn’s proposal aims to expand alternatives to incarceration toward the end of a prison sentence. Modeled after Texas reforms, it would permit low-risk, nonviolent offenders to serve up to half their remaining sentences in a halfway house or under home confinement by attending programs in prison — such as vocational training, therapy or drug treatment — shown to reduce recidivism.

Federal prisons currently are operating at 35 to 40 percent above capacity, and a report in November by the Urban Institute, a Washington think tank, concludes, “The most effective way to reduce overcrowding is to lower mandatory minimums for drugs.”<sup>65</sup>

The rising cost of operating prisons is a major concern: Spending on federal prisons has doubled since 2000 to nearly \$7 billion. “If we keep on with [mandatory] sentencing, we’re

going to [have to] take money from all the programs that make us safe,” such as the FBI, the Drug Enforcement Administration and federal prosecutors, Leahy said, addressing the Judiciary Committee Dec. 19.

At a committee hearing on Nov. 6, Nancy La Vigne, a co-author of the Urban Institute report, estimated that the Durbin bill could save \$2.5 billion over 10 years by reducing prison overcrowding and making new prison beds unnecessary, while the Leahy bill would save about one-third that amount.<sup>66</sup>

Public defenders say the Leahy-Paul bill would have produced lower sentences for about 3,000 defendants in 2012 and that the Durbin-Lee bill could lower sentences for as many as 4,539 defendants. Those numbers are many times the 530 defendants that public defenders say would be helped by Holder’s memo directing prosecutors to avoid mandatory minimums for low-level drug offenders.<sup>67</sup>

Bipartisan companion bills have been introduced in the House, but supporters are less optimistic that the GOP-controlled chamber will act.

Several Republican senators, including ranking Judiciary minority member Grassley, staunchly support mandatory minimums. Moreover, Sen. Jeff Sessions, R-Ala., said at a November hearing that they are still needed, citing a recent rise in violent crime and stressing “the value of prison in terms of reducing crime.”<sup>68</sup>

Appropriations bills that would more than quadruple current funding for state alternatives to incarceration also are pending. A House bill would provide \$25 million for fiscal 2014 for the Justice Reinvestment program, which more than 20 states have participated in, and the Senate bill would provide \$30 million.<sup>69</sup> Omnibus appropriations bills are expected to be passed before Jan. 15, when the federal government’s current funding runs out.

A bipartisan bill introduced in both houses in November would reauthorize

grants to states for employment training and drug treatment for prisoners and former inmates. Since becoming law in 2008, the Second Chance program has provided nearly \$600 million in 600 grants. Appropriations legislation is also pending for that program.<sup>70</sup>

### State Action

Right on Crime’s Levin can reel off a list of Republican and conservative governors who are considering alternatives to locking people up for long periods. Most notably, his list includes the conservative governor of Louisiana — the state with the country’s highest incarceration rate and some of the nation’s strictest mandatory penalties.

At a press conference last February unveiling legislation in Louisiana to expand access to drug courts and treatment programs in place of incarceration, Gov. Bobby Jindal said, “Studies . . . have shown that substance abuse treatment instead of incarceration is a more effective treatment for nonviolent, non-sex, non-habitual drug offenders. By enacting these common-sense sentencing reforms, we can provide these types of offenders with the help they need and lower recidivism rates that are costly to the state and our communities.”<sup>71</sup>

During the 2013 legislative session, Jindal signed the measure, which allows a court to order certain nonviolent defendants to receive treatment instead of incarceration if the prosecutor agrees. It would affect an estimated 500 offenders.<sup>72</sup>

Libertarian and conservative groups, including the Reason Foundation and the Texas Public Policy Foundation, recently issued a report urging Louisiana to lock up fewer people for nonviolent crimes, describing Jindal’s 2013 legislation as “modest” reform. The report singled out Louisiana’s habitual offender law, which can send people to prison

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# At Issue:

## *Should mandatory sentences be abolished?*



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WRITTEN FOR *CQ RESEARCHER*, JANUARY 2014

**J**udges should have discretion to craft fair and effective sentences — informed and limited by sensible legislative ranges, detailed guidelines and meaningful appellate review. Ensuring judges have such discretion fosters sound sentencing outcomes, respects our commitment to checks and balances and is better than a system skewed by mandatory minimums.

A neutral judge should balance competing sentencing goals like retribution, deterrence, incapacitation and rehabilitation consistent with broad legislative direction. Selection of judges is often controversial partly because we recognize the breadth of judicial authority and demand its fair and independent exercise.

Sound legislative sentencing ranges are often broad because offenses are committed differently and offenders are as diverse as the human condition. Mandating precise punishments before crimes occur requires ignoring pertinent circumstances about an offense and about an offender's characteristics. Mandatory minimums are one-size-fits-all dictates that can result in unfair sentences.

Some claim mandatory minimums ensure serious offenses result in a minimum punishment in all cases. But that never happens: Prosecutors use charging and bargaining discretion to deploy or avoid mandatory minimums as they see fit.

When prosecutors threaten a severe mandatory penalty (or offer relief from one), the incentive to plead guilty can be overwhelming, even for those with viable defenses. Although usually seeking justice, prosecutors can lose perspective. Is a 20-year sentence more appropriate than 10 years just because a drug defendant refused to plead guilty quickly or cooperate? Who should make that decision — prosecutors whose sentencing judgments are usually off the record, or judges whose decisions are made in open court? Severe mandatory minimums greatly enhance prosecutorial power and largely remove the judge as a check on potential governmental excesses. Although constitutional, prosecutors neither need nor deserve such extra leverage.

Few dispute the virtues of a sentencing system built around guided judicial discretion with meaningful appellate review to police unreasonably lenient or harsh sentences. The debate over mandatory minimums is about when and how often prosecutors can trump the operation of such a system. No sentencing structure can always guarantee the indisputably "right" result. But we should strive for greater fairness and effectiveness through nuanced sentencing guidelines and appellate review. Mandatory minimums within such a system are a tool of prosecutorial power masquerading as an instrument of justice.



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**W**e can have more crime or less. Whether it's the one or the other depends on what we do — on whether we decide to keep the sentencing system that's been working for a generation or return to what we know fails.

It is often said that the criminal justice system is broken and needs "reform," consisting of abolishing or watering down mandatory minimum sentencing and, generally, putting fewer criminals in jail for shorter terms.

In the short run, that would save on prison expenses. But its long-run effects will overwhelm any savings. We know because we've tried it. In the 1960s and '70s we had the same fashionable de-emphasis on incarceration and optimism about rehabilitation and "community based programs." For our trouble we got a crime wave. From 1960 through 1980, violent crime increased 370 percent, and property crime increased 310 percent.

President Ronald Reagan and bipartisan congressional majorities responded by creating a more serious sentencing system under which judges, while retaining considerable discretion, no longer had free rein. Mandatory minimum sentences for more serious or repeat offenses were part of the answer.

We got something for our trouble there, too. In the last 20 years, as incarceration has grown significantly, the crime rate has plummeted. Over that time, violent crime has fallen by half, and serious property crime by almost as much. We are now safer than at any time since the baby boomers were children. We have also experienced huge fiscal savings — millions of dollars that people who did not become crime victims did not have to spend for recovery and healing.

It's true the federal prison population has increased substantially, to more than 200,000 inmates. But the great majority are not there for low-level or harmless pot offenses. They are there for major trafficking, and not just for pot but for very dangerous drugs such as methamphetamine, PCP and heroin. Many others are there for weapons trafficking, explosives, arson, extortion, fraud and sex offenses. Many offenses could be considered "nonviolent," but they inflict grave injury nonetheless.

We wisely give judges substantial discretion, but they should not have 100 percent discretion 100 percent of the time. Congress should be able to draw the line on extreme sentencing outcomes.

Complacency about our present success against crime is not the way to go. Congress should keep the sentencing rules that have helped keep the rest of us safe.



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for most of their life for a minor non-violent crime committed within 10 years of an earlier felony.<sup>73</sup>

“There’s a lot of optimism about legislation going through in the next legislative session,” which begins in March, says Levin. “The business community has gotten engaged on this issue. Gov. Jindal . . . has talked about the need to hammer away at having the highest incarceration rate.”

At least 30 states have rolled back mandatory sentences in some form since 2000 — generally aimed at relaxing sentences for low-level drug offenders.<sup>74</sup> Both traditionally conservative and liberal states have joined the movement.

“There’s been a big shift, and we’ve seen a lot of Tea Party and recently elected conservatives [being] very positive” about prison and sentencing reform, Levin says, because “this fits into their skepticism of government overall.”

Reform advocates say at least three states — Mississippi, Idaho and Alaska — are expected to focus on nonviolent offenders and enhancing alternatives to incarceration. “Some will deal with sentencing changes,” Levin says.

In past years, prison guard unions supported mandatory sentences and famously played an important part in the campaign to pass California’s first three-strikes proposition in 1994. But unions haven’t been a big presence lately and, if anything, have reversed their stance, reform groups say. The American Correctional Association passed a resolution in August 2013 supporting elimination of mandatory sentencing policies.<sup>75</sup>

Yet some groups still have vested interests in maintaining the status quo. In Louisiana, opposition to reforms is expected from sheriffs, whose parishes are paid to house nearly half of the state’s inmates in local jails, according to Levin. And in many states, local and state prosecutors still support laws they consider important either for punish-

ment or for leverage in plea bargaining and information-gathering.

California is being closely watched. In 2011 the U.S. Supreme Court ordered the state to release thousands of inmates from overcrowded prisons. Under Democratic Gov. Jerry Brown’s 2-year-old law known as prison realignment, low-level state prisoners are being sent to county jails, many of which are already overcrowded, or being assigned to other forms of county supervision such as probation.

Michael Rushford, president of the conservative Criminal Legal Justice Foundation, cites a 3 percent uptick in violent crime in California in 2012 as bearing out the foundation’s public safety concerns about dumping “tens of thousands of habitual criminals in the state’s cash-strapped counties.”<sup>76</sup>

Thompson, at the Council of State Governments Justice Center, has called California’s court-ordered release every corrections officer’s “worst nightmare.”

And officials in some states, such as Alabama, where prisons are at 180 percent over capacity, are worried their states could be ordered to release prisoners. That threat has given momentum to groups urging states to seek cheaper alternatives to reduce prison overcrowding.

Some of the most comprehensive changes have occurred in Georgia, which has been saddled with a \$1 billion budget for a prison population that doubled in two decades. Under Republican Gov. Nathan Deal the state allowed judges to depart from mandatory sentences for low-level drug offenders and expanded drug courts. In 2012, Deal provided funds for a new program to help judges identify lower-risk, nonviolent offenders who could be safely diverted to programs other than prison.<sup>77</sup>

“That’s what’s really struck people — that a lot of states in the South with the highest incarceration rates have said we want to turn this ship in a different direction,” says Levin.

However, mandatory sentences remain popular with some politicians — even one as liberal as Democratic Chicago Mayor Rahm Emanuel — especially for violent crimes committed with a gun. To help combat a recent wave of homicides in Chicago, Emanuel has proposed mandatory minimums for illegal gun possession. Currently, gun-toting offenders in Illinois can be sentenced to up to three years in prison but can also get just probation or boot camp.<sup>78</sup>

“Criminals continue to escape with minor sentences for possessing and using firearms, and these light penalties do not reflect the severity of their crimes nor the damage they cause our communities,” Emanuel said as he proposed the legislation in February. “Increasing these penalties and requiring minimum sentences will . . . discourage criminals from carrying and using guns.”<sup>79</sup>

After a similar law was implemented in New York, said Chicago Police Superintendent Garry F. McCarthy, offenders began serving their full sentences, while the murder rate and prison population fell by double digits. “I’ve seen firsthand the impact that mandatory minimum sentencing can have on a large city,” said McCarthy, who served for seven years as the New York Police Department’s deputy commissioner of operations.<sup>80</sup>

Jens Ludwig, director of the University of Chicago Crime Lab, said that those sentenced to probation after being convicted of illegal gun carrying are nearly nine times as likely as other felons on probation to be re-arrested for shooting someone and more than four times as likely to be arrested for homicide.<sup>81</sup>

A group of black state lawmakers blocked a vote on the measure in November, concerned that increased incarceration would harm their communities, already beset by unemployed ex-prisoners.<sup>82</sup>

The bill could come up for a vote when the legislature reconvenes in January. ■

# OUTLOOK

## New Consensus?

America today is far safer than a generation ago: Murders in 2012 were less than half their rate of 20 years ago, and overall violent crime is 51 percent of its peak 1991 rate.<sup>83</sup> Those trends explain why recent polls have pushed crime off the national radar compared to concerns about health and education, experts say.

In an era when almost everyone knows someone with a drug problem, the country is becoming disenchanted with the war on drugs, CUNY sociologist Jacobson says. And in a time of budget cutbacks, it's no longer "free political capital" for politicians to campaign on a "tough on crime" platform when that spells more costly prison housing.

"The dynamic now at the local level is you have no money, and you can raise taxes, which is usually off the table, or you can throw little kids off health care," he says. "You can't do anything about health and education because you're spending more and more on corrections."

The rationale for the vast ramp-up in imprisonment may become even shakier as long-term inmates turn gray and need expensive medical care. Elderly men and women are the fastest growing group in the nation's prisons, and their medical costs are three to nine times that for younger prisoners, according to Human Rights Watch.<sup>84</sup>

"Putting 60-year-olds in prison — even 50-year-olds — has close to zero crime effect," says John Jay College President Travis. "So at some point all the incarceration dollars we're spending have to be attributed to retribution as the goal. That's a lot of money to spend and a lot of lives to lose for retribution."

Although reformers like Travis have long advocated reducing America's reliance on punishment, it may be con-

servatives who reflect the country's shifting mood. They have galvanized their belief in redemption to revive the older rehabilitation philosophy — in new clothing — bolstered with new research on what reduces recidivism.

As governors with conservative political credentials in states such as Texas and Georgia argue for reorienting their criminal justice approach, other conservative governors may take tentative footsteps in their direction — as Louisiana's modest reforms suggest.

The country may be moving toward a new consensus, says Jacobson. "There's no state I know of where people are calling for more prisons, and within that polling there are big shifts about the use of prisons," he says.

"We're punitive about people who are violent; but for nonviolent offenders, for drug offenders, there's overwhelming support for alternatives to prison," he says. ■

## Notes

<sup>1</sup> Testimony of Lisa Angelos, Senate Judiciary Committee, Sept. 18, 2013. See, [www.thecrime.com/report/viewpoints/2013-10-55-years-behind-bars-why-mandatory-minimums-need-ref](http://www.thecrime.com/report/viewpoints/2013-10-55-years-behind-bars-why-mandatory-minimums-need-ref). Also see "An Offer You Can't Refuse," Human Rights Watch, Dec. 5, 2013, [www.hrw.org/reports/2013/12/05/offer-you-can-t-refuse-0](http://www.hrw.org/reports/2013/12/05/offer-you-can-t-refuse-0). See U.S. District Court, Utah, Central Division, *U.S. v. Angelos*, decided Nov. 16, 2004, by Judge Paul G. Cassell, <https://www.casetext.com/case/us-v-angelos-3/>.

<sup>2</sup> For background, see Kenneth Jost, "Sentencing Debates," *CQ Researcher*, Nov. 5, 2004, pp. 925-948.

<sup>3</sup> See Adam Gopnik, "The Caging of America," *The New Yorker*, Jan. 30, 2012, [www.newyorker.com/arts/critics/atlarge/2012/01/30/120130crat\\_atlarge\\_gopnik](http://www.newyorker.com/arts/critics/atlarge/2012/01/30/120130crat_atlarge_gopnik).

<sup>4</sup> *Ibid.*

<sup>5</sup> According to the most recent statistics available, 53 percent of state prisoners in 2011 were there for violent offenses, the remaining 47 percent for nonviolent offenses. "Prisoners in 2012: Advance Counts," Bureau of Justice Statistics, Department of Justice, July 2013, p. 10, [www.bjs.gov/content/pub/pdf/p12ac.pdf](http://www.bjs.gov/content/pub/pdf/p12ac.pdf).

<sup>6</sup> Ram Subramanian, *et al.*, "Winds of Change? States Reconsider Their Use of Mandatory Sentences," Vera Institute of Justice, (forthcoming), p. 3.

<sup>7</sup> Eric Holder, "Remarks at the Annual Meeting of the American Bar Association," Aug. 12, 2013, [www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html](http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html).

<sup>8</sup> "US Prison Population Declined for Third Consecutive Year During 2012," Bureau of Justice Statistics, Department of Justice, July 25, 2013, [www.bjs.gov/content/pub/press/p12acpr.cfm](http://www.bjs.gov/content/pub/press/p12acpr.cfm). The prison population dropped 2 percent from 2011.

<sup>9</sup> Erica Goode, "US Prison Populations Decline," *The New York Times*, July 25, 2013, [www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html](http://www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html). See for example, Jeremy Travis, "Rethinking Prison Education in the Age of Mass Incarceration," City University of New York, Feb. 4, 2011, [www.jjay.cuny.edu/extra/speeches/UFS\\_Prison\\_Education\\_speech.pdf](http://www.jjay.cuny.edu/extra/speeches/UFS_Prison_Education_speech.pdf).

<sup>10</sup> Inimai Chettiar, "The Decline of the Prison Population," Letters to the Editor, *The New York Times*, Aug. 2, 2013, [www.nytimes.com/2013/08/03/opinion/the-decline-of-the-prison-population.html?\\_r=0](http://www.nytimes.com/2013/08/03/opinion/the-decline-of-the-prison-population.html?_r=0).

<sup>11</sup> Erik Eckholm, "Prosecutors Draw Fire for Sentences Called Harsh," *The New York Times*, Dec. 5, 2013, [www.nytimes.com/2013/12/06/us/federal-prosecutors-assailed-in-outcry-over-sentencing.html?\\_r=0](http://www.nytimes.com/2013/12/06/us/federal-prosecutors-assailed-in-outcry-over-sentencing.html?_r=0).

<sup>12</sup> "A Living Death: Life Without Parole for Nonviolent Offenses," American Civil Liberties Union, November 2013, <https://www.aclu.org/sites/default/files/assets/111813-lwop-complete-report.pdf>.

<sup>13</sup> Bureau of Justice Statistics, *op. cit.*, "U.S. Prison Population Declined for Third Consecutive Year During 2012."

<sup>14</sup> Holder, *op. cit.* Also see, "Speech to Congressional Black Caucus," Sept. 13, 2013, [www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-1309191.html](http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-1309191.html).

<sup>15</sup> CQ News, "Leahy Vows Action This Year on Sentencing Overhaul," Families Against Mandatory Minimums, Nov. 7, 2013, <http://fammm.org/leahy-vows-action-this-year-on-sentencing-overhaul/>.

<sup>16</sup> Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (2005).

<sup>17</sup> *United States v. Jamel Dossie*, March 30, 2012, pp. 2-3, <http://sentencing.typepad.com/files/us-dossie-opinion.pdf>.

<sup>18</sup> *Ibid.*

<sup>19</sup> "A Living Death: Life without Parole for Nonviolent Offenses," *op. cit.*, p. 96.

<sup>20</sup> “Recent State-Level Reforms to Mandatory Minimum Laws,” Families Against Mandatory Minimums, <http://famf.org/wp-content/uploads/2013/08/FS-List-of-State-Reforms-2.25.pdf>.

The Pennsylvania Commission on Sentencing recommended repeal of the school zone mandate in 2009, but the state legislature has not changed the law.

<sup>21</sup> Scott Burns, “Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences,” testimony before the Senate Judiciary Committee, Sept. 18, 2013, [www.judiciary.senate.gov/pdf/9-18-13BurnsTestimony.pdf](http://www.judiciary.senate.gov/pdf/9-18-13BurnsTestimony.pdf).

<sup>22</sup> David E. Patton, “Federal Public Defense in an Age of Inquisition,” *Yale Law Journal*, June 2013, pp. 2578-2602, <http://yalelawjournal.org/the-yale-law-journal/essay/federal-public-defense-in-an-age-of-inquisition>.

<sup>23</sup> Steven D. Levitt, “Understanding Why Crime Fell in the 1990s,” *Journal of Economic Perspectives*, Winter 2004, pp. 163-190, <http://pricetheory.uchicago.edu/levitt/Papers/LevittUnderstandingWhyCrime2004.pdf>.

<sup>24</sup> James Q. Wilson, “Hard Times, Fewer Crimes,” *The Wall Street Journal*, May 28, 2011, <http://online.wsj.com/news/articles/SB10001424052702304066504576345553135009870>.

<sup>25</sup> Violent and property crimes combined fell from a peak of 14.9 million in 1991 to 10.2 million in 2012. See United States Crime Rates 1960-2012, [www.disastercenter.com/crime/uscrime.htm](http://www.disastercenter.com/crime/uscrime.htm).

<sup>26</sup> Kenneth Jost, “Racial Profiling,” *CQ Researcher*, Nov. 22, 2013, pp. 1005-1028.

<sup>27</sup> Todd R. Clear and Natasha A. Frost, *The Punishment Imperative* (2013), p. 138.

<sup>28</sup> Christian Henrichson, “The Costs and Benefits of Incarcerating Low-Level Drug Offenders,” Vera Institute of Justice, *Current Thinking* blog, Sept. 5, 2013, [www.vera.org/blog/costs-and-benefits-incarcerating-low-level-drug-offenders](http://www.vera.org/blog/costs-and-benefits-incarcerating-low-level-drug-offenders). In 2005, each Oregon state dollar spent to incarcerate a violent offender yielded \$4.35 in public safety benefits. But for drug offenders, the cost of incarceration was roughly three times the benefits.

<sup>29</sup> “Fact Sheet: Prison Time Served and Recidivism,” Pew Charitable Trusts, Oct. 8, 2013, [www.pewstates.org/research/fact-sheets/prison-time-served-and-recidivism-85899510643](http://www.pewstates.org/research/fact-sheets/prison-time-served-and-recidivism-85899510643).

<sup>30</sup> “U.S. Number of Aging Prisoners Soaring,” Human Rights Watch, Jan. 27, 2012, [www.hrw.org/news/2012/01/26/us-number-aging-prisoners-soaring](http://www.hrw.org/news/2012/01/26/us-number-aging-prisoners-soaring).

<sup>31</sup> Pew “Fact Sheet,” *op. cit.*

<sup>32</sup> Statement of Senator Patrick Leahy, D-Vt., Chairman, Senate Judiciary Committee, Nov. 14, 2013, [www.judiciary.senate.gov/pdf/11-14-13LeahyStatement.pdf](http://www.judiciary.senate.gov/pdf/11-14-13LeahyStatement.pdf).

<sup>33</sup> Council of State Governments Justice Center, “States Report Reductions in Recidivism,” 2012, see pp. 2-3, [http://csgjusticecenter.org/documents/0000/1569/9.24.12\\_Recidivism\\_Reductions\\_9-24\\_lo\\_res.pdf](http://csgjusticecenter.org/documents/0000/1569/9.24.12_Recidivism_Reductions_9-24_lo_res.pdf).

<sup>34</sup> Subramanian, *et al.*, *op. cit.*, p. 11.

<sup>35</sup> Greg Berman, “Alternatives to Incarceration are Cutting Prison Numbers, Costs and Crime,” *The Guardian*, July 4, 2013, [www.theguardian.com/commentisfree/2013/jul/04/alternatives-incarceration-prison-numbers](http://www.theguardian.com/commentisfree/2013/jul/04/alternatives-incarceration-prison-numbers).

<sup>36</sup> Subramanian, *et al.*, *op. cit.*, p. 11.

<sup>37</sup> “Crime in the United States, 2012” and “Prisoners in 2011,” Office of Justice Programs, Bureau of Statistics, U.S. Department of Justice.

<sup>38</sup> Email from the New York Division of Criminal Justice Services, Dec. 6, 2013.

<sup>39</sup> Douglas Marlowe, “Research Update on Adult Drug Courts,” December 2010, [www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP\\_1.pdf](http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf).

<sup>40</sup> See *ibid.*

<sup>41</sup> Clear and Frost, *op. cit.*, pp. 27, 63.

<sup>42</sup> Dennis D. Loo and Ruth-Ellen M. Grimes, “Polls, Politics and Crime,” *Western Criminology Review* 5(1), pp. 50-67, 2004, <http://neww.cr.sonoma.edu/v5n1/manuscripts/Loo.pdf>.

<sup>43</sup> Clear and Frost, *op. cit.*, pp. 40-42, 71-72.

<sup>44</sup> “Richard Nixon Acceptance Speech to Republican National Convention,” Aug. 8, 1968, [www2.vcdh.virginia.edu/HIUS316/mbase/docs/nixon.html](http://www2.vcdh.virginia.edu/HIUS316/mbase/docs/nixon.html).

<sup>45</sup> “Richard Nixon, State of the Union Address,” Jan. 22, 1970, [www.presidency.ucsb.edu/ws/?pid=2921](http://www.presidency.ucsb.edu/ws/?pid=2921).

<sup>46</sup> “Richard Nixon, Special Address to the Congress on Drug Abuse Prevention and Control,” June 17, 1971, [www.presidency.ucsb.edu/ws/?pid=3048](http://www.presidency.ucsb.edu/ws/?pid=3048).

<sup>47</sup> “Thirty Years of America’s War on Drugs: a Chronology,” “Frontline,” PBS, [www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/](http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/).

<sup>48</sup> *Ibid.*, p. 63. Also see Robert Martinson, “What Works? Questions and Answers about Prison Reform,” *The Public Interest*, 1974, 35:22-44. For another evaluation, see Rick Sarre, “Beyond ‘What Works,’” paper presented to Australian Institute of Criminology, December 1999, [www.aic.gov.au/media\\_library/conferences/hcpp/sarre.pdf](http://www.aic.gov.au/media_library/conferences/hcpp/sarre.pdf).

<sup>49</sup> Clear and Frost, *op. cit.*, pp. 74-75.

<sup>50</sup> Michelle Alexander, *The New Jim Crow* (2012), p. 56. For background, see David Masci, “Prison-building Boom,” *CQ Researcher*, Sept. 17, 1999, pp. 801-824; and Peter Katel, “Prison Reform,” *CQ Researcher*, April 6, 2007, pp. 289-312.

<sup>51</sup> Alexander, *op. cit.*, p. 56.

<sup>52</sup> “Public Safety, Public Spending,” Pew Charitable Trusts, Feb. 14, 2007, [www.pewtrusts.org/our\\_work\\_report\\_detail.aspx?id=29967](http://www.pewtrusts.org/our_work_report_detail.aspx?id=29967).

<sup>53</sup> Franklin E. Zimring, *The City that Became Safe* (2012), p. ix. Of seven major crimes tracked by the FBI and examined by Zimring — murder, rape, robbery, assault, burglary, larceny and auto theft — only larceny and aggravated assault experienced declines less than 37 percent.

<sup>54</sup> Michael Jacobson, *Downsizing Prisons* (2005), p. 2.

<sup>55</sup> Clear and Frost, *op. cit.*, p. 91.

<sup>56</sup> Families Against Mandatory Minimums, *op. cit.*

<sup>57</sup> “Testing the Cost Savings of Judicial Diversion,” Center for Court Innovation, August 2013, [www.courtinnovation.org/sites/default/files/documents/NY\\_Judicial%20Diversion\\_Cost%20Study.pdf](http://www.courtinnovation.org/sites/default/files/documents/NY_Judicial%20Diversion_Cost%20Study.pdf).

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## About the Author

**Sarah Glazer** contributes regularly to *CQ Researcher*. Her articles on health, education and social-policy issues also have appeared in *The New York Times* and *The Washington Post*. Her recent *CQ Researcher* reports include “Plagiarism and Cheating” and “Telecommuting.” She graduated from the University of Chicago with a B.A. in American history.



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## FOR MORE INFORMATION

**American Civil Liberties Union**, 125 Broad St., 18th Floor, New York, NY 10004; 212-549-2500; [www.aclu.org](http://www.aclu.org). National organization advocating individual rights and sentencing reform.

**Council of State Governments Justice Center**, 100 Wall St., 20th Floor, New York, NY 10025; 212-482-2320; <http://csgjusticecenter.org>. National organization that advises federal, state and local policymakers on reducing corrections spending.

**Criminal Justice Legal Foundation**, 2131 L St., Sacramento, CA 95816; 916-446-0345; [www.cjlf.org](http://www.cjlf.org). Conservative public interest law organization. Its Crime and Consequences blog at [www.crimeandconsequences.com/crimblog](http://www.crimeandconsequences.com/crimblog) provides timely commentaries on issues such as mandatory sentencing.

**Human Rights Watch**, 350 Fifth Ave., 34th Floor, New York, NY 10118-3299; 212-290-4700; [www.hrw.org](http://www.hrw.org). International human-rights organization that issues reports on U.S. sentencing practices.

**Public Safety Performance Project**, Pew Charitable Trusts, 901 E St., N.W., Washington, DC 20004; 202-552-2000; [www.pewstates.org/projects/public-safety-performance-project](http://www.pewstates.org/projects/public-safety-performance-project). Helps states advance research-backed policies that control corrections costs and advance public safety.

**Sentencing Law and Policy blog**; [www.sentencing.tyepad.com](http://www.sentencing.tyepad.com). Blog by Ohio State University law professor Douglas A. Berman, an advocate of sentencing reform.

**Sentencing Project**, 1705 DeSales St., N.W., Eighth Floor, Washington, DC 20036; 202-628-0871; [www.sentencingproject.org](http://www.sentencingproject.org). Research and advocacy organization working for changes in sentencing policy and alternatives to incarceration.

**Texas Public Policy Foundation**, 900 Congress Ave., #400, Austin, TX 78701; 512-472-2700; [www.texaspolicy.com](http://www.texaspolicy.com). Research foundation that launched Right on Crime ([www.rightoncrime.com](http://www.rightoncrime.com)), an initiative making a conservative case for reform in sentencing and corrections.

**Vera Institute of Justice**, 233 Broadway, New York, NY 10279; 212-334-1300; [www.vera.org](http://www.vera.org). Research group that works closely with government to improve services affecting criminal justice and public safety.

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