fifteen years ago, a young black man walked into my office and forever changed the way I viewed not only our criminal justice system but also how I viewed myself as a civil rights lawyer and advocate. I wish I had known then what I know now.

At the time, I was the director of the Racial Justice Project of the ACLU of Northern California. We had launched a major campaign against racial profiling by law enforcement, known as the “Driving While Black or Brown Campaign.” We were planning to sue a number of police departments that were employing discriminatory stop-and-search tactics. I was looking for the perfect plaintiff—the poster boy for our litigation challenging racial profiling by the Oakland Police Department.

One day, this young man walked into my office carrying a stack of papers about three inches thick and almost immediately I realized that he might be the one. The papers he was carrying included detailed notes of his encounters with the police over a nine-month period of time. It was an extraordinary amount of documentation and detail. But as we were poring over his notes, he said something that made me pause. I interrupted him and said, “What did you just say? Did you just say that you’re a drug felon?”

We had been screening people with prior criminal records. We believed we could not represent
someone with a felony record as a named plaintiff in a racial profiling case, because we knew he would be cross-examined about his prior criminal history, thus undermining his credibility and distracting the jury’s attention away from the discriminatory police conduct.

Finally, this young man said, “Yeah, yeah, I’m a felon—a drug felon—but the police planted drugs on me and then they beat up me and my friend. I can tell you all about it. I got names, I got…”

I cut him off. I tried to explain why I couldn’t represent him and he kept trying to give me more details. I cut him off again and explained once more that there was nothing I could do for him. He kept begging and pleading, and then he snapped: “You’re no better than the police! The minute I tell you I’m a felon, you just stop listening. What’s to become of me? What am I supposed to do? I can’t get a job anywhere because of my felony record—anywhere. I can’t even get into public housing because of my record. I have to sleep in my grandmother’s basement at night, because nowhere else will take me in. How am I supposed to feed myself? I can’t even get food stamps—not even food—because of my drug felony. What’s to become of me? How am I supposed to take care of myself as a man?”

As he shouted, he was ripping up his notes. All of the notes he had taken over the past nine months were torn into bits. As he walked out, he said over his shoulder, “You’re no better than the police. I can’t believe I trusted you.”

Several months later, I learned he was telling the truth. I opened my newspaper and the Oakland Riders police scandal was front-page news. A gang of Oakland police officers, otherwise known as a drug task force, had been stopping, frisking, searching, and planting drugs on people—often while beating them up. It was only then that the light bulb finally went on for me.

In that moment, I realized that he was right about me. I was no better than the Oakland police. The minute that young man told me that he was a felon, I stopped listening. That moment of realization was the beginning of asking myself and others a lot of hard questions. I began to do an enormous amount of research, and what I learned through that process blew my mind.
I learned there are more African American adults under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850. In many large urban areas, more than half of working-age African American men now have criminal records and are thus subject to legalized discrimination for the rest of their lives in employment, housing, access to education, and public benefits. The rate of Latino imprisonment is astronomical as well. Women of color are now the fastest-growing segment of the prison system.

I also learned that who is behind bars is only part of the story. Of the 7.3 million people who are under correctional control, fewer than 2 million are in prison. The rest are in jail or on probation or parole, and millions more are trapped in a parallel social universe—a permanent second-class status that strips people of the very rights supposedly won in the civil rights movement. The War on Drugs and the “get tough on crime” movement gave birth to this vast, new racial undercaste and both political parties are responsible.

Above all, though, I learned that I made a tragic mistake during my encounter with that young man years ago. My error was not simply failing to represent an innocent man. My crime was imagining there was some path to racial and social justice that did not include those we view as guilty.

We stand at a critical moment in our history. Given the momentous demographic shifts that our country is experiencing, we cannot continue to travel this road. If diversity is to be our strength, we cannot write off entire communities defined by race and class. Our workforce needs all hands on deck; our families need parents who can provide both economic and emotional support. It was always immoral and indefensible to write off the incarcerated population—now it is not only wrong, but it also endangers the future and promise of America.

Research suggests that the most punitive nations in the world are the most diverse, while the most homogeneous nations are the most compassionate. It seems that human beings reflexively condemn and punish those who seem different. Given our nation’s racial history, mass incarceration may present the ultimate test of whether the American experiment can succeed. Can we—despite long odds—become a nation where “liberty and justice for all” is more than a slogan, but a genuine expression of the American creed? Can we learn to overcome the punitive impulse toward “others” and extend care and concern to all of us, even the millions we’ve labeled as guilty—the so-called criminals?

I believe the answer is yes. The road that leads to that higher ground is not well traveled, but the direction we must go is no mystery. If we are serious about ending mass incarceration in America, we must commit ourselves to building a movement for racial and social justice. Mere tinkering with the machine through piecemeal policy reform is not enough. This system of mass incarceration is now so deeply entrenched in our social, political, and economic structure that is not going to just fade away.
Its dismantling is going to require a major shift in public consciousness.

But this need not overwhelm us. What is required is clear. We must end the War on Drugs once and for all. The time has come to shift to a public health model for dealing with drug addiction and drug abuse. We must also end legal discrimination against people released from prison—discrimination that denies them basic human rights to work, shelter, education, and food. Last but not least, we must shift from a purely punitive approach to dealing with all forms of crime—including violent crime—to a more restorative and rehabilitative approach, one that takes seriously the experience of the victim, the offender, and the community as a whole.

We have a lot of work to do. We need a human rights movement for quality education, not cycles of incarceration. We need jobs not jails, compassion not contempt. People must be afforded health care and drug treatment on demand, rather than being sentenced to hard time. We need a movement that resists the punitive impulse, a movement that is fully committed to justice for each and every one of us—justice for all. Then, and only then, to borrow the great poet Langston Hughes’s words, “will America be what it must become.”
Dismantle the Cradle to Prison Pipeline—Our Future Depends on It

BY MARIAN WRIGHT EDELMAN

In 1968, the day after Dr. Martin Luther King Jr. was shot and killed, I went into riot-torn Washington, D.C., neighborhoods and schools urging children not to loot, get arrested, and ruin their futures. A young black boy about 12 years old looked me squarely in the eyes and said, “Lady, what future? I ain’t got no future. I ain’t got nothing to lose.” I’ve spent my life working to prove that boy’s truth wrong. I had no idea it would be so hard.

Today a toxic cocktail of violence, poverty, racial disparities in child-serving systems, poor education, and racially unjust zero-tolerance policies are fueling a Cradle to Prison Pipeline® crisis that is funneling millions of poor children and adults into dead-end, powerless, and hopeless lives.

A black boy born in 2001 has a one-in-three chance of going to prison in his lifetime, and a Latino boy has a one-in-six chance of the same fate. The United States has the highest incarceration rate in the world: 7.1 million adults are under some form of correctional supervision including prison, jail, probation, or parole. Black males have an imprisonment rate that is nearly seven times higher than white males, and Hispanic males have a rate more than twice that of their white counterparts. This epidemic of mass incarceration has created one of the most dangerous crises for the black community since slavery and it affects everyone in our nation.

Federal spending on prisons totaled $6.6 billion in 2012 and annual state spending on corrections tops $51 billion. This federal and state spending spree to warehouse prisoners has perverted our nation’s
priorities. States spend on average two and half times more per prisoner than they spend per public school student, this at a time when a majority of children of all racial and income backgrounds cannot read or compute at grade level in fourth- or eighth-grade and huge numbers of youth drop out of schools. The privatization of juvenile and adult prisons is yet another added danger. The world’s largest for-profit, private prison corporation, the Corrections Corporation of America, recently offered to run the prison systems in 48 states for 20 years if the states would guarantee a 90 percent occupancy rate.

The greatest threat to America’s democracy and economic security comes from no enemy, but rather from our failure to dismantle this Cradle to Prison Pipeline and to invest in and prepare all our children for the future. Tomorrow is today. Children of color, who already are a majority of babies being born in the United States and who will be a majority of our child population within this decade, face bleak futures without high-quality early childhood programs and high-quality, equitable public schools that would prepare them for college and our workforce.

Closing the income and racial achievement gaps between poor and non-poor children and between white and nonwhite children is an urgent national priority. Today, every 1.5 seconds during the school year, a public school student is suspended; every 8 seconds during the school year, a public high school student drops out; every 19 seconds a child is arrested; and every 3 hours and 15 minutes, a child or teen is killed by a gun.

As soon as a child gets in trouble, too often the first thing schools do is kick them out of class or out of school, despite the fact that most suspensions punish nonviolent offenses. Zero-tolerance school discipline policies push children out of school at the first sign of disobedience using widely subjective catchall offenses like being “disrespectful” or being “disruptive.” It should be of little surprise when so many of the children who are punished by being pushed out of school go on to become high school dropouts and stay away from school for good. And it should be
even less surprising when many of the young people who drop out of school are the same ones whose behavior we continue to complain about, the same ones we fear, and the same ones we pay to build costly prison cells for later.

Here again the racial disparities are clear: New data show that one in five black boys and more than 1 in 10 black girls received an out-of-school suspension during the 2009-10 school year. Black students were more than three-and-a-half times more likely to be suspended or expelled than their white peers for the same offenses. The findings are even more troubling for the most serious forms of discipline: More than 70 percent of students involved in school-related arrests or referred to law enforcement are Hispanic or black. We need to get to the root of these disparities and rid our schools of this dual standard of discipline.

We must dismantle the Cradle to Prison Pipeline and replace it with a pipeline that leads all children to college and productive work. We must invest in prevention and early intervention. We must help children in their earliest years, so they can all start school ready to learn. We need teachers who recognize and value the ability of each child to learn. We need to replace zero-tolerance policies with real alternatives to keep students engaged and learning in safe schools and out of the juvenile and criminal justice systems. And we must confront the violence that saturates our culture and threatens our children and us.

We know what works. Let’s close the gap between what we know and what we do. The future of our children and of our nation depends on it.
Locked-Up Potential: A Blueprint for Ensuring Justice for All

BY JULIE AJINKYA
Salecia Johnson was just 6 years old when she was arrested last year for throwing a temper tantrum in her kindergarten classroom in Milledgeville, Georgia. Salecia was tossing books and toys when she pushed over a shelf that hit her principal in the leg. A zero-tolerance discipline policy allowed a school official to call the police. When the officers arrived at the school, they handcuffed the kindergartener, put her in a squad car, and took her to the police station where she was later released to her mother. Salecia now wakes in the night screaming, “They’re coming to get me!”

Clarence Aaron is an African American male who in 1993, at the age of 24, was sentenced to three life terms for his tangential role in a cocaine deal with a relative, where he introduced a supplier to a dealer and was simply present during the transaction. Despite the fact that this was his first criminal offense, and he was not the buyer, seller, or supplier, Clarence received the longest sentence of all those involved. Although federal law adjusted sentencing guidelines in 2010 so that someone convicted of the same crime today would receive a much less severe sentence, they fail to apply to Clarence, and he continues to sit in a federal prison in Alabama.

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**Economic benefits of reducing disparities in the criminal justice system**

- The National Council on Crime and Delinquency estimates that if 80 percent of people who have been incarcerated for nonviolent offenses were sentenced to effective programming such as an alternative to prison, states and localities could save at least $7.2 billion annually.¹

- Making the recent reforms to penalties for crack cocaine possession in the Fair Sentencing Act retroactive would save $2 billion over the next three decades.²

- Studies suggest that using probation and alternative sentences for low-level, nonviolent offenses would save $22,250 annually for each incarcerated individual.³

- The use of specialty courts—for example, drug courts—could save on average $14,000 to $23,000 every year per incarcerated individual.⁴
A 42-year-old African American father applied for public housing for himself and his three children, who were living with him at the time. But an earlier drug possession charge, for which he pleaded guilty and served 30 days in jail, allowed housing officials to deny his application. Because he subsequently found himself homeless, he lost custody of his children. The collateral consequences of a minor drug offense tore his family apart.\textsuperscript{7}

All three of these individuals’ stories share one thing in common: our country’s broken criminal-justice system. The rate of incarceration in the United States has spiraled out of control—with nearly 2.3 million people in prison or jail, the rate is now about 240 percent higher than it was in 1980, and 60 percent of this population is comprised of nonviolent offenders.\textsuperscript{8} Another 4.8 million individuals\textsuperscript{9} are on probation or parole, also mostly for nonviolent offenses. This tragic scenario generates a much larger inmate population than that of the 27 nations of the European Union combined and means we, alone, incarcerate nearly a quarter of the prisoners in the entire world. And while cash-strapped states are shutting down institutions that provide important public services such as hospitals and universities, prison expansion is eating up higher percentages of state budgets.

It does not need to be this way. Continued prison expansion has not been a response to an increase in actual crime. In fact, research shows that if incarceration rates tracked violent crime rates, the incarceration rate would have peaked in 1992 and then by 2008

\textquote{The current criminal justice system not only wastes important state dollars that could be spent on vital services, but it also fails to keep the public safe because the system emphasizes punishment rather than rehabilitation.}
And while it is true that many states have seen decreases in their prison populations, there has still been a rise in the number of immigrant detention facilities, in addition to private prisons, county jails, and gender-specific facilities.\textsuperscript{11} The current criminal justice system not only wastes important state dollars that could be spent on vital services, but it also fails to keep the public safe because the system emphasizes punishment rather than rehabilitation.

What’s more, racial disparities in the current criminal justice system are outrageous, leading to a system of racial disenfranchisement and inequality that some argue we have not seen since slavery or its aftermath of codified segregation, Jim Crow.\textsuperscript{12} African Americans account for roughly 40 percent of the nation’s inmate population (while comprising only 13 percent of the total population) and Latinos account for slightly less, representing 21 percent of inmates (while being only 16 percent of the population). Even after offenders are released, they still face a lifetime of exclusion—often insurmountable job discrimination and disqualification from any public benefits that would help them get back on their feet as productive citizens such as food stamps, public housing, and even student loans.\textsuperscript{13}

The rampant and disproportionate imprisonment of people of color is a national tragedy. Not only is the justice system horrifically unfair to those it locks up and undermines its very name, but it also fails to serve the nation’s interests and jeopardizes our economic security. State spending on corrections reached more than $52 billion in 2011, which research shows makes corrections spending the second-fastest-growing budget item for states.\textsuperscript{14} While our nation is still trying to recover from the Great Recession, we should be spending these much-needed dollars on employment, education, health care, and a host of other programs that help Americans re-establish their economic security and sense of well-being. The cost-savings arguments are clear: By making short-term investments in bipartisan reform measures, such as diverting people charged

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure1.png}
\caption{Rise in incarceration}
\end{figure}

\textit{From 1980 to 2010}

\begin{tabular}{|c|c|}
\hline
\textbf{Men} & 419 \\
\hline
\textbf{Women} & 646 \\
\hline
\end{tabular}

Source: Sentencing Project; http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Incarcerated_Women_Factsheet_Sep24sp.pdf

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure2.png}
\caption{Racial disparities}
\end{figure}

\textit{Men of color were incarcerated in state and federal prison at higher rates than non-Hispanic white men}

\begin{tabular}{|c|}
\hline
\textbf{White non-Hispanic} & 1 \\
\hline
\textbf{African American} & 6.4 \\
\hline
\textbf{Latino} & 2.4 \\
\hline
\end{tabular}

with lower-level drug offenses into treatment instead of incarceration, some states have been able to reduce corrections budgets and save precious public funds without compromising public safety.¹⁵

But the economic imperative of criminal justice reform goes beyond cost savings. Securing American prosperity in a hypercompetitive global economy going forward will require leveraging all of the people power we can muster. America cannot afford to let millions of people languish in prisons and then release them without useful skills and unprepared to be productive members of society. In locking up such significant numbers of our able-bodied, working-age men (and increasingly women), we are also inhibiting our nation’s collective human potential and denying the reality of our future workforce needs.

The hopeful news is that smart criminal justice reform has already begun in numerous states across the country. This makes sense given the fact that the state prison population comprises the vast majority of the nation’s incarcerated population: In 2011 inmates in state prisons comprised 87.1 percent of sentenced prisoners nationwide.¹⁶ Yet as encouraging as these opportunities offered by states are, the scale of incarceration should not be forgotten. Most states continue to employ a range of mandatory sentencing policies, make drug arrests in record numbers, and frequently enact practices that extend the length of time that individuals spend in prison. Moreover, there are overly punitive practices in place that put youth on the track to incarceration earlier—criminalizing temper tantrums for children as young as age 4 and warehousing children instead of educating them.

This is why the federal government also has a crucial role to play as the steward to our future—a future where the communities hurt the most by this broken system—communities of color—will soon be the country’s majority population. We simply cannot afford to make these mistakes any longer. In this difficult economic climate, criminal justice reforms are popular with both parties because elected officials are finally starting to realize that their communities are being deprived of important resources when state budgets are all but decimated by incarceration costs.

Public safety is paramount, but rigorous research has demonstrated that we can reduce spending without jeopardizing that safety by supporting policies that:

- Help youth to stay in school and on the path toward employment
- Modify sentencing and release policies
- Encourage a focus on rehabilitation instead of punishment
- Reinforce transition back into society after release
- Reduce recidivism after release
Keeping youth on track

Our broken criminal justice system does not just impact adults. Some of the most vulnerable youth—behaviorally troubled, low-income, and youth of color—are often referred to juvenile courts, which, instead of helping youth get back on track by focusing on interventions that have proven to prevent further disruptive behavior, serve as a feeder into the adult criminal-justice system. African American youth are 4.5 times more likely and Latino youth are 2.5 times more likely than their white peers to be detained for the very same crime. Native American youth are disproportionately incarcerated in state correctional facilities and waived into the criminal-justice adult system. Native American youth are 1.5 times more likely than white youth to both be placed in state prisons and waived into the adult criminal-justice system.

Even more troubling, the juvenile justice system has reached deeply into our country’s public education system and is fueled by an increase in zero-tolerance school policies that emerged in the 1990s and that disproportionately discipline and criminalize youth of color in our schools. Increased police presence in schools also makes youth feel like criminals under constant surveillance and leads to an adversarial environment that pushes students, particularly at-risk students, out of school. These overly punitive policies generate what is often called the “school-to-prison pipeline.”

One of the greatest failures of these policies is that they ignore individual circumstances and lack common-sense discretion. A 6-year-old child should be allowed to throw a tantrum without being led out of a classroom in handcuffs. A student should be allowed to lend another student Midol, an over-the-counter pain reliever, without being expelled. These are just two instances that have been reported under such policies.

While school safety should certainly be of utmost concern, there is no evidence that such policies actually make schools safer for children or improve student behavior. Zero-tolerance policies were initially meant to remove students from school for the possession of a weapon. While these policies still make sense when applied to the presence of guns in schools, they have since led to mandatory expulsions for a wide variety of behaviors—the majority of which involve no violence or threat of violence whatsoever.

Increased police presence has also been shown to have no impact on improved school safety. In contrast, research shows that schools with on-site law enforcement end up criminalizing behaviors traditionally resolved through standard school discipline policies. Because school resource officers, receive little to no training before being deployed in schools, they often do not have a clear understanding of their role within the larger educational context and needs of children they are meant to protect. This only hurts the reputation of noble law-enforcement agencies and does nothing to improve the educational achievement of students.

Students of color are at particular risk for these types of suspensions and expulsions, which puts
them at greater risk for incarceration. In 2012 the U.S. Department of Education’s Office of Civil Rights released new data revealing that African American students are more than three-and-a-half times more likely to be suspended or expelled for the same conduct than their white peers. And more than 70 percent of students who are involved in school-related arrests or referred to law enforcement are Hispanic or African American. What’s more, lesbian, gay, bisexual and transgender, or LGBT, youth—particularly gender-nonconforming girls—are up to three times more likely to experience harsh disciplinary treatment by school administrators than their heterosexual counterparts. Of these LGBT youth, 60 percent are black or Latino.

School suspensions are linked to a host of negative outcomes. Not only are suspended students more likely to underperform academically and eventually drop out of school, but they are also more likely to commit a crime down the road and end up incarcerated as adults. Youth of color are also more likely to have their cases formally processed and to be transferred to adult facilities. African American youth are more likely than white youth to be formally charged in juvenile court, even when referred...
for the same type of offense. Though just more than half of drug cases involving white youth result in formal processing, more than three-quarters of drug cases involving African American youth result in formal processing, and African American youth are somewhat more likely to be waived to adult criminal court than white youth. In 2002 more than 4,100 youth under age 18 were sent to adult prisons, and three out of four individuals were youth of color.26 And just as indigent defense is a serious problem in the adult justice system, in many regions of the country, indigent juveniles are also receiving inadequate counsel. This clearly demonstrates that youth of color are systematically and disproportionately being tracked into our nation’s prisons.

Another troubling trend is the criminalization of truancy. Instead of focusing on the causes of
truancy— which are often linked to economic hardship at home—school administrators, elected officials, and prosecutors are tackling the problem of student absence through the criminal-justice system. Schools are increasingly policed while students and parents are slapped with large fines. If that weren’t enough, families who cannot afford to pay these fines are threatened with jail time. Some states order that children are held or detained for truancy, which effectively criminalizes and warehouses children for school absence regardless of individual circumstances.

That said, there are some local campaigns fighting to decriminalize truancy that have gained traction and accomplished changes in policy that previously disproportionately targeted black, Hispanic, and low-income youth. The Community Rights Campaign in Los Angeles, for instance, spent five years fighting the city’s daytime curfew policy, which led to the rampant ticketing and criminalization of its public school student population, which is overwhelmingly black, Latino, and low income. After organizing community forums and students against such policies, the campaign won a major victory in 2011 when city councilmembers introduced an amendment to the law that established a three-tier system that only fined a student after his third truancy and reduced fines from $250 to $20 after a maximum of 20 hours community service.

There are also community-led initiatives that are seeing great results in improving public safety such as “intelligence-led policing,” which encourages more collaboration between law enforcement and the communities they serve. Cities suffering from high rates of violent crime have seen significant reductions in gun homicide, for instance, after implementing a strategy that not only asks law enforcement to gather sophisticated data on the worst offenders, but to also partner with social-service providers and community representatives to meet with offenders and explain how their actions hurt their community and offer assistance to find gainful employment that does not involve illegal activity. Given the success of this alternative approach on not only reducing incarceration costs but also improving public safety, it would be wise to incentivize law enforcement to invest more federal funds in such community-led approaches.

Given that the majority of births today are already children of color and that the under-18 population will be majority communities of color before the end of this decade, it’s absolutely imperative that we stop criminalizing our young people in the precise institutions—schools—where we are supposed to be investing in their success.

**Adult incarceration**

There are a number of problems with today’s criminal-justice system. Longer sentences, increased convictions for property offenses, and drug offenses are some of the most significant causes of the explosion in incarceration rates. Those convicted of drug offenses comprise half of the federal prison
Robert Lee Stinson, second right, hugs a family friend after he walked out of the New Lisbon, Wis., Correctional Institution. He was freed after 23 years behind bars for a murder he didn’t commit.

AP PHOTO/ANDY MANIS
population, and the number of drug offenders in state prisons has increased 13-fold since 1980.\textsuperscript{32} Arrests for marijuana possession in particular—most often a nonviolent minor offense—surpassed arrests for violent crime in 2011.\textsuperscript{33} In that year, there were 757,969 total marijuana arrests, compared to 534,704 violent crime arrests.\textsuperscript{34}

The War on Drugs, which began under President Richard Nixon in the 1970s and intensified under President Ronald Reagan in the 1980s, ushered in a series of laws that created financial incentives for local law enforcement to prioritize capturing nonviolent drug offenders. From huge federal cash grants awarded to law enforcement agencies that were willing to make drug-law enforcement a priority to asset forfeiture laws, which allowed state and local law enforcement agencies to keep the majority of cash and assets seized in drug busts for their own use, made waging the drug war a money maker.\textsuperscript{35}

These law enforcement methods have been waged almost exclusively in communities of color, and this is why the racial disparities are glaring in the criminal justice system. More than 60 percent of people in prison are people of color and, though studies show that the majority of illegal drug users and dealers in the United States are white, two-thirds of people imprisoned in state prison for drug offenses are African American or Hispanic.\textsuperscript{36}

While ultimate discretion is handed to law enforcement in waging the War on Drugs, the same discretion is often stripped from judges through mandatory minimum legislation. Mandatory minimums apply the faulty one-size-fits-all approach to sentencing and prevent judges from fitting the punishment to the individual and applying proven alternatives to detention. These laws punish nonviolent offenders the worst and incentivize defendants to pursue plea bargains, since one of the ways to reduce your sentence is to give prosecutors information on other offenders.\textsuperscript{37} Mandatory minimums are also exorbitantly expensive for taxpayers because they fill prisons to the brim with people who do not need to be there.

Again, states are leading the way in sentencing reforms. As early as 2004 Connecticut repealed its crack and powder cocaine sentencing disparities. In 2009, New York reformed the infamous Rockefeller Drug Laws, which created mandatory minimum sentences that almost immediately led to a surge in drug convictions for nonviolent, low-level drug possession and sales, yet no measurable decrease in overall crime.\textsuperscript{38} One way states are encouraged to reduce racial disparities in sentencing is through the use of racial impact statements. Similar to fiscal and environmental impact statements, these statements force policymakers to assess the unintended potential racial impact of proposed legislation prior to enactment. In 2008 Iowa became the first state in the nation to require policymakers to prepare racial impact statements for proposed legislation that affects sentencing, probation, or parole policies, after a study revealed that the state topped the nation in racial disparity in its prison population.\textsuperscript{39}
In 2010, as the result of years of hard work from those seeking to highlight the racial injustice of mandatory minimums, the Fair Sentencing Act was passed at the federal level to reduce the disparity between the mandatory minimums for crack cocaine offenses versus powder cocaine offenses. Prior to the new law, it took 500 grams of powder cocaine to trigger the same minimum sentence as 5 grams of crack cocaine; given that most people charged with crack cocaine offenses are black and most powder cocaine defendants are white or Latino, this led to huge racial disparities. At the time African Americans made up 80 percent of people convicted for a federal crack cocaine offense. The new law reduced the sentencing quantity from 100-to-1 to 18-to-1.

While the racial disparities have been reduced, they have not been eliminated because mandatory minimums continue to significantly contribute to increasing state and federal prison populations. And individuals who were convicted and sentenced prior to 2010 were not covered by the change in the law. So there is still work to be done, but here too states are leading the way. In the 2012 election, for instance, Californians voted overwhelmingly to reform the state’s infamous “three strikes” law, by requiring that life sentences could only be imposed when the third conviction was for a “serious or violent” offense. This is projected to save the state $70 million to $100 million annually from a reduction in parole hearings and a lower prison population. California has also successfully passed criminal justice realignment legislation, which aims to decrease the number of people incarcerated and shifts the responsibility and resources from the state to counties for the custody, treatment, and supervision of individuals convicted of specified nonviolent, nonsex crimes.

Once individuals are sentenced, however, there are a host of other issues regarding their treatment while in jail and prison custody, including but not limited to prison overcrowding, a widening staff-to-inmate ratio, exploitative prison labor practices, and the disruption to important family connectivity. For instance, while we know that an inmate’s ability to stay in contact with his or her family dramatically reduces recidivism rates, phone company monopolies are allowed to charge exorbitant rates, which can be as high as $20 for a 15-minute call to relatives. These phone charges are billed to the inmate’s loved ones and the commission rates that families are forced to pay vary from state to state but can be as high as 65 percent. A commission rate of 61.5 percent in Alabama, for instance, translates into families having to pay 89 cents a minute on top of a $3.95 connection fee every time an inmate simply wants to pick up a phone and talk to his or her family.

Further, despite evidence that inmates often suffer from drug addiction and a disproportionate number of individuals exhibit symptoms of mental disorders, substance-abuse treatment and mental-health services are hard to come by. There are often waiting lists for prisoners to receive such treatment, or there are eligibility requirements that make it nearly impossible for inmates to qualify.
In addition to expanding access to treatment and services, prisons should also provide incentives for good behavior and motivate the completion of such programs, the combination of which has shown to not only cut prison costs but to also reduce recidivism rates. Earned credit programs that provide sentence reductions for exemplary time served in prison would encourage a cascade of positive results: inmates would be motivated to complete treatment, educational, and vocational programs; decreased sentences would shrink prison populations; and smaller prison populations would save taxpayers money.

Again, states are leading the way. They’re doing so because state lawmakers realize that criminal justice reform receives strong bipartisan support, saves millions of dollars, and is popular with the public because it improves public safety. Mississippi, for example, saved $31.4 million in 2004 by expanding its earned credit program. After a host of other reforms implemented between 2004 and 2010, Mississippi’s crime rate has now fallen to its lowest level since 1984. Likewise, in 2011, Texas expanded earned credit programs for individuals in prison for up to 20 percent of their sentences for completing treatment, educational, and vocational programs; this reform is projected to save Texas $49 million by 2013.

Justice reinvestment strategies have also become popular. This approach aims to reduce correction costs and improve public safety by focusing on comprehensive data analysis to figure out the root cause of each state’s prison growth, engaging various state agencies. Savings that state agencies realize from lowered incarceration rates can also be funneled back to the agencies that helped lower the incarceration rate, thereby incentivizing and rewarding their performance.
Ex-offender Heber Nixon Jr. is seen at work in Philadelphia, May 1, 2008. Philadelphia is making a concerted new effort to spur the hiring of ex-convicts amid a renewed interest across the United States in dealing with the problems of high recidivism and exploding prison populations.

AP PHOTO/MATT ROURKE
stakeholders in the community, focusing resources on the individuals who are most likely to reoffend, strengthening community supervision, and reinvesting savings in high-performing programs such as substance-abuse treatment, mental-health programs, and programs aimed at reducing recidivism. Savings that state agencies realize from lowered incarceration rates can also be funneled back to the agencies that helped lower the incarceration rate, thereby incentivizing and rewarding their performance. After Texas became the first state to complete this process in 2007, generating $443 million in upfront savings, 15 other states have designed similar strategies.\(^49\)

Instead of wasting billions of taxpayer dollars on a system that is spiraling out of control, we should make sure that our prisons aren’t overcrowded with inmates who should no longer be locked up—non-violent offenders, “good behavior” inmates, and the elderly to name just a few. We should invest in programs that are well documented to keep us all safe by reducing recidivism rates.

**Successful reintegration**

We know that 95 percent of state prisoners will be released at some point, yet we do little to prepare them to be productive members of society.\(^50\) In fact, obstacle after obstacle is put in their path.

Despite numerous studies that demonstrate post-secondary education has an enormous effect on reducing recidivism and the substantial savings to society that this generates, the Violent Crime Control and Law Enforcement Act banned prisoners from using Pell Grants from 1994 onward. This policy change is in direct contradiction to the education funds’ late namesake, former Sen. Claiborne Pell (D-RI), who believed that education was our “primary hope for rehabilitating prisoners.”\(^51\)

When inmates are released they are disenfranchised in ways that go beyond the loss of their voting rights. They are also deprived of power and stability in very basic ways—from fighting job discrimination to trying to simply qualify for affordable housing. Often inmates are released back into society without any transition assistance, and this is a strong predictor of whether they will reoffend and have to return to prison.\(^52\)

Once again, we see local campaigns leading the way in reforms. The Fortune Society, a re-entry service organization in New York City, participated in a campaign to ensure that employers could not discriminate against job applicants solely because of their criminal record.\(^53\) In response, the Equal Employment Opportunity Commission approved updated enforcement guidance in 2012 that warns employers they might be in danger of violating Title VII of the 1964 Civil Rights Act if their employment policies have a disproportionately adverse impact based on race or other protected categories. This type of change helps to build a more level playing field for formerly incarcerated people seeking work and helps broaden the pool of qualified applications for employers.\(^54\)
The lack of standardized procedures for parole and probation assessment also leads to disparate treatment. Parole violators account for about a third of all prison admissions and about half of all African Americans admitted to prison are admitted for one of these technical violations.\(^5\)

After inmates have served their time, we should do everything in our power to make sure that they have the right tools to become productive members of our society. We should do this because it is the right thing to do. We should do this because it doesn’t make sense and it is unfair to punish people twice for the same offense. We should do this because we’re going to need all hands on deck as we move into our shared future.

**Policy recommendations**

Our current criminal justice system is clearly broken, but it doesn’t have to stay this way. There is strong evidence at the state and local level of policies that work, including programs that help find alternatives to the policing of our children’s schools and make sure that children aren’t tracked into prison for the rest of their lives; programs that reform harsh sentencing laws; programs that make sure the indigent receive proper legal representation; programs that ensure inmates have access to treatment, services, and education in prison to help them become productive members of our society; and programs that help the formerly incarcerated with the difficult transition to jobs, affordable housing, and overall stability. The federal government should learn from these state innovations and establish a policy framework that encourages our criminal-justice system to promote rehabilitation instead of punishment, productivity instead of decline, and equity instead of the racial and income-based disparities that now run rampant.

CAP and PolicyLink suggest a set of five policy priorities that will ensure that communities of color are not left behind. While these policies by themselves will not fix the entire system, they are pragmatic first measures that we can take right now to make sure that everyone in our society will be able to contribute to making our collective future bright and just.

**Improve data collection**

Without access to comprehensive data at all stages of the juvenile and adult justice systems, we will be unable to determine the root causes of prison growth and suggest appropriate solutions. This data collection should seek to better gather information on groups currently disproportionately represented in the justice system, such as LGBT youth, as well as individual-level data, such as the educational attainment of offenders, so we can better understand how education policy can also play a role in reducing our incarcerated population.

- The Department of Justice should expand the budget for its Bureau of Justice Statistics’ National Corrections Reporting Program, or
Locked-Up Potential: A Blueprint for Ensuring Justice for All

NCRP. Currently funded at less than $1 million, this program tracks episodes of prison admissions and releases and provides detailed correctional statistics that are crucial for public policy deliberations, but are otherwise difficult to gather since they are typically maintained separately by each of the states and the federal government. Expanding the NCRP’s budget would allow the program to address a fundamental limitation—the fact that it currently does not have the capacity to identify offenders who enter and leave probation. This is a project for which a fairly small investment could have a demonstrably large impact. Furthermore, the earmark could stimulate cost savings. The Bureau of Justice Statistics currently fields several overlapping surveys and data-assembly projects that could be eliminated with an expanded National Corrections Reporting Program.

Ensure that youth are not criminalized and warehoused

We need to make sure that our policies turn our youth into the promising young leaders, voters, and workers they could and should be, instead of criminalizing and warehousing entire populations, which sets them on a one-way track to enter the adult justice system.

- Congress should modify the Juvenile Justice Delinquency Prevention Act to require states to take concrete steps to reduce racial and ethnic disparities in the juvenile justice system. Congress should also eliminate the exception that allows states to detain youth for status offenses—for example, truancy, running away, violating curfew laws—with a valid court order, as this provision has effectively led to the continued warehousing of youth of color for minor offenses.

- The Department of Justice should provide a funding pool, similar to the Bureau of Justice Assistance’s Justice Assistance Grant, or JAG program, to support innovative approaches that offer productive alternatives to detention for youth.

Encourage fairness in sentencing

Prisons should be reserved for individuals who commit the most serious offenses, instead of being overcrowded with people who need not be there. We should stop sentencing policies that do not allow judges discretion to consider individual circumstances and that perpetuate rampant racial disparities.
The president should sign an executive order establishing a Fair Sentencing Act 2010 review board to consider relief for those individuals who are currently serving sentences for crack cocaine offenses that are now discredited. The U.S. Sentencing Commission has already applied retroactive reductions in the federal sentencing guidelines for those offenders, but has no authority to reduce the mandatory penalties. The Bureau of Prisons estimates that retroactivity could result in a savings of more than $200 million within the first five years after retroactivity takes effect.

Congress should expand the federal “Sentencing Safety Valve,” which applies to low-level drug cases, permitting judges to avoid having to impose unnecessarily punitive mandatory minimum terms. Federal judges use the safety valve in about a quarter of all drug cases, an indication of their perception that mandatory penalties are frequently excessive. This criteria for use of the safety valve could be expanded to allow judges to use their discretion to sentence less-serious offenders according to guidelines that don’t require imposition of restrictive and rigid minimums.

Focus on rehabilitation and treatment, not punishment

Our justice system should shift from its overly punitive focus that does not improve our public safety to a framework that emphasizes rehabilitation and treatment. Knowing full well that most offenders are eventually released, we need to make sure that they are able to complete programming in facilities that would aid their successful transition back into society. We should incentivize the completion of such beneficial programs and treatment with early release credits that reward good behavior.

The Federal Bureau of Prisons should expand the Residential Drug Abuse Program, or RDAP. This is seen as a largely administrative but also budgetary fix and in accordance with the Obama administration’s focus on shifting from punishment to treatment and education. It has been proven to reduce recidivism and reduce prison costs, but rigid eligibility requirements mean only a small percentage of inmates who could benefit from such a program are allowed to enroll.

Congress should restore Pell Grant eligibility to the incarcerated. The grant program was established almost 40 years ago to promote access to higher education by providing low-income students with assistance. In 1994 the Violent Crime Control and Law Enforcement Act banned prisoners from using these funds, despite the fact that research demonstrates education can contribute to reducing recidivism and even the namesake behind the law, the late Sen. Claiborne Pell, believed that education was the primary hope for rehabilitating prisoners.
Connect the formerly incarcerated to good jobs

The pathway to meaningful work at a family-supporting wage can be especially challenging for formerly incarcerated individuals. This population is often among the chronically unemployed. Additionally, the formerly incarcerated often face stigma associated with having a criminal record. To ensure that this population is able to reach its full potential, our nation should make target investments that connect the formerly incarcerated to good jobs and eliminate barriers to employment.

- Congress should establish a competitive grant program with dedicated federal funds to support the employment needs of individuals with barriers to employment through Transitional Jobs Programs.\(^{56}\)

- Congress should continue funding for the Second Chance Act, which creates incentives for people in prison to engage in re-entry training. The reauthorization of this act should include a formal definition of transitional jobs\(^{57}\) and make transitional jobs programs an allowed use of Second Chance Act funding, to encourage widespread adoption of
In this July 27, 2011 photo, Michael Frasier transports bags of ice at his job in New Haven, Conn. Frasier, who has been in and out of prison most of his adult life, found employment with help of a prison re-entry program in New Haven.

AP PHOTO/JESSICA HILL
transitional jobs as a holistic approach for the formerly incarcerated. The legislation would improve the coordination of family-centered programs, addiction treatment, employment, mentoring, and other re-entry services that help reduce recidivism and enable the formerly incarcerated to become productive members of society.

- Congress should pass “Ban the Box” legislation, which would prohibit an employer from inquiring into an applicant’s criminal history until the final steps of a job application process. This legislation should provide that agencies may inquire about an applicant’s criminal history only after their job qualifications have been screened and the agency determines the applicant’s qualifications meet the requirements for the position.

Support re-entry into society

America cannot afford to continue losing the tremendous amount of human capital our society sheds by making it difficult for formerly incarcerated people to successfully reintegrate into society after their release. In order to recapture such potential, our nation must adopt the approach of beginning re-entry on the first day of incarceration. Moreover, once they have served their time, we should do everything possible to guarantee they transition into productive members of our society.

- The Department of Justice should create a task force that would initiate statutory changes to make it easier for formerly incarcerated people to re-enter society. The task force would base these changes on the results of the American Bar Association project, with funding from the Department of Justice, which is in the process of producing a thorough database of federal and state laws that hinder people with criminal records from the basic things that allow them to re-enter society successfully—like finding a job or obtaining housing. Utilizing these data, the task force should make statutory changes that would prevent people convicted at the federal level from experiencing federal consequences, thereby opening up eligibility to benefits, including veteran benefits and federal housing among others.

- The Department of Housing and Urban Development should expand the eligibility of those who qualify for affordable housing by expanding its definition of homelessness. Right now, many individuals who are released from prison or jail are not considered homeless, because of the current definition of the term of homelessness, despite the research that tells us that the first 24 hours to 48 hours after release are important in relation to recidivism rates. HUD should also stipulate that companies receiving low-income housing tax credits not simply exclude people with prior criminal records.

- Congress should pass the Democracy Restoration Act, which would restore voting rights in federal elections to millions of Americans.
who are living, working, and paying taxes in our communities, yet have had their right to vote taken away because of a past criminal conviction. Thirty-five states continue to deny voting rights to Americans after their release from prison, and 12 even after completion of sentence. The United States is the only democracy that denies voting rights to persons no longer under criminal justice supervision. One of every 13 African Americans is ineligible to vote due to this restriction, four times the national average.

The United States must decide if it wants to remain a country focused on punishment, one that systematically creates second-class citizens from huge swaths of our population—particularly those of color—or whether it will aspire to be a country centered on opportunity, one where everyone can contribute, regardless of race or creed or sexual orientation.
Endnotes


3 Ibid.

4 Ibid.


10 Ibid.


29 Ibid.


Given that crime is a function of various factors, including changes in population and reporting rates, these reforms cannot be held solely responsible for the decline in crime rates.

American Civil Liberties Union, “Smart Reform Is Possible.”


According to the National Transitional Jobs Network, transitional jobs is “an employment strategy that seeks to overcome employment barriers and transition people with labor market barriers into work using wage-paid, short-term employment that combines real work, skill development and supportive services.” See “National Transitional Jobs Network,” available at http://www.heartlandalliance.org/ntjn/.

Similar legislation, H.R. 6220, was introduced in Congress by Rep. Hansen Clarke (D-MI) in 2012.

This approach was included in California State Assembly Select Committee on the Status of Boys and Men of Color in California, “Claiming the Promise of Health and Success for Boys and Men of Color in California” (2012), available at http://www.allianceforbmoc.org/assets/pdfs/Select%20Committee%20Report%20Action%20Plan%20FINAL.PDF.
Locked-Up Potential

The United States incarcerates more individuals than any other country in the world. What’s more, the overwhelming majority of those incarcerated are people of color. The “school-to-prison pipeline” disproportionately disciplines and criminalizes youth of color, tracking them into a broken criminal justice system. Most prisons do very little to prepare the incarcerated for re-entry into society. And many of our nation’s education, employment, and housing policies shut formerly incarcerated individuals out of opportunity. As a result, our nation is losing out on opportunities to leverage human potential for economic growth.

Policy reforms aimed at increasing rehabilitation, improving services, cutting prison costs, and reducing recidivism are emerging in several states. Federal action is needed to eliminate disparities and reduce the negative impact of imprisonment on communities.

Facts at a glance

- **$ 70 million to $100 million**: How much California is projected to save each year by simply eliminating its “three strikes” law
- **2.3 million**: The number of people in U.S. prisons
- **4.5 times**: How much more likely African American youth are than white youth to be detained for the same crimes
- **2.5 times**: How much more likely Latino youth are than white youth to be detained for the same crimes
- **At least 70 percent**: The number of youth involved in school-related arrests or referred to law enforcement that are African American or Hispanic
- **60 percent**: The share of those incarcerated in the United States that are people of color
Call to action

America cannot realize sustainable economic prosperity absent a reformed criminal justice system. To that end, Congress and the administration must act together to collect and analyze data effectively. As a first step, funding for the Bureau of Justice Statistics’ National Corrections Reporting Program should be increased. Furthermore, Congress and the administration should take the following actions:

- **Ensure that youth are not criminalized and warehoused.** Enact the Youth Promise and Juvenile Justice Delinquency Prevention Acts

- **Foster sentencing fairness.** Expand the provisions of the Fair Sentencing Act of 2010 to offer relief to those currently serving discredited sentences for certain drug offenses

- **Focus on rehabilitation and treatment.**

- **Connect the formerly incarcerated to good jobs.** Congress should make targeted investments that connect the formerly incarcerated to good jobs and eliminate barriers to employment. It should continue funding the Second Chance Act and pass “Ban the Box” legislation

- **Support re-entry into society.** Congress should restore Pell Grant eligibility to the incarcerated and continue funding for the Second Chance Act

Endnotes


4 Ibid.
