SOLUTIONS: AMERICAN LEADERS SPEAK OUT ON CRIMINAL JUSTICE

Foreword by
President William J. Clinton

Authors
Joseph R. Biden, Jr.
Cory Booker
Chris Christie
Hillary Rodham Clinton
Ted Cruz
Mike Huckabee
Cathy L. Lanier
Martin O'Malley
Janet Napolitano
Rand Paul
Rick Perry
Marco Rubio
Bryan Stevenson
Scott Walker
James Webb

Edited by
Inimai Chettiar and Michael Waldman

BRENNAN CENTER
FOR JUSTICE
at New York University School of Law

Brennan Center for Justice
at New York University School of Law

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Edited by
Inimai Chettiar and Michael Waldman

Associate Editors
Nicole Fortier and Abigail Finkelman

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BRENNAN
CENTER
FOR JUSTICE
at New York University School of Law
161 Ave. of the Americas
12th Floor
New York, New York 10013

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Foreword

Hon. William J. Clinton
42nd President of the United States

In this time of increased political polarization, there is one area where we have a genuine chance at bipartisan cooperation: the over-imprisonment of people who did not commit serious crimes. The drop in violence and crime in America has been an extraordinary national achievement. But plainly, our nation has too many people in prison and for too long — we have overshot the mark. With just 5 percent of the world's population, we now have 25 percent of its prison population, and an emerging bipartisan consensus now understands the need to do better.[1]

It has been two decades since there was sustained national attention to criminal justice. By 1994, violent crime had tripled in 30 years.[2] Our communities were under assault. We acted to address a genuine national crisis. But much has changed since then. It's time to take a clear-eyed look at what worked, what didn't, and what produced unintended, long-lasting consequences.

So many of these laws worked well, especially those that put more police on the streets. But too many laws were overly broad instead of appropriately tailored. A very small number of people commit a large percentage of serious crimes — and society gains when that relatively small group is behind bars. But some are in prison who shouldn't be, others are in for too long, and without a plan to educate, train, and reintegrate them into our communities, we all suffer.

The new approach has many roots and just as many advantages: a desire to save taxpayers money; the resolve to promote rehabilitation not recidivism; an obligation to honor religious values; the necessity to alleviate crushing racial imbalances. All of them strengthen this powerful new movement.

Now it's time to focus on solutions and ask the right questions. Can we do a better job identifying the people who present a serious threat to society? If we shorten prison terms, could we take those savings and, for example, restore the prison education programs that practically eliminate recidivism? How can we reduce the number of prisoners while still keeping down crime?

As the presidential election approaches, national leaders across the political spectrum should weigh in on this challenge — and in this exciting book of essays from the Brennan Center, many of our nation's political leaders step up and offer answers. This, in itself, is deeply encouraging. After decades in which fear of crime was wielded as a political weapon, so many now understand the need to think hard and offer real reforms, which, if implemented, can bring about this change in the right way. To address our prison problem, we need real answers, a real strategy, real leadership — and real action. We can show how change can happen when we work together across partisan and political divides. That is the great promise of America.

Introduction

Leaders across the political spectrum agree on one fact: The American criminal justice system is not functioning as it should.

Our nation is beginning to understand certain fundamental truths. Mass incarceration exists. It is not needed to keep down crime. It comes at a huge cost to the country. And there are practical solutions on which we can agree to reduce our prison population, while keeping the country safe.

One in 100 Americans is currently behind bars. Our nation's prisons include one-third of the planet's incarcerated women. One in three black men will spend time behind bars. Mass incarceration is among the greatest challenges facing our nation.[1]

These numbers are intolerable, irrational, and unsustainable. Worse, they are unjustified. Public safety is of paramount importance. Strong communities can only grow amid order and respect for the law. Over the past three decades, the United States has made remarkable progress. Crime is now at the lowest levels in half a century.[2] But experience has shown conclusively that locking up ever-larger groups of people does not lead to fewer crimes. A large body of research has demonstrated that incarcerating people who do not need to be punished so severely actually increases their propensity to commit future crime. Paradoxically, letting certain people out of jail, or never putting them there in the first place, may be the best thing we can do to make our country safer.

We now know we can reduce crime and reduce mass incarceration. States have begun to do just that. For the first time in 40 years, both crime and incarceration have fallen nationwide. Since 2000, a geographically and politically diverse group of 13 states — ranging from Texas to California to New Jersey — have successfully reduced imprisonment and crime at the same time.[3]

Not only are these reforms needed from a public safety perspective, they are needed from an economic perspective. Mass incarceration imposes significant costs. The national archipelago of corrections facilities

and criminal justice agencies cost taxpayers $260 billion a year, and corrections spending has more than quintupled over the past 30 years. The overall economic toll is deeply troubling. Sixty percent of the 600,000 prisoners who reenter society each year face long-term unemployment. By some estimates, mass incarceration is responsible for as much as 20 percent of the United States poverty rate.[4]

But the human cost may be the starkest of all: If the total number of people behind bars were a state, it would be the 36th largest, bigger than Delaware, Vermont, and Wyoming combined. Adding people on probation and parole would make it the 14th largest state.[5]

The problem of mass incarceration is not new. For decades, it has grown in plain sight. What is new is the emerging bipartisan will to address it. Republicans, Democrats, and Independents are co-sponsoring legislation to decrease prison sentences. These reforms move in the right direction, but they are not systemic. Much more can and should be done.

The larger apparatus of overcriminalization and over-imprisonment remains. To truly reduce mass incarceration, we need a national conversation, led by national voices, offering national solutions. In this book, the Brennan Center asked the country's leading public figures and criminal justice experts to offer practical solutions. They responded by writing essays putting forth a variety of proposals to tackle the problem of overincarceration from differing perspectives. From helping ex-offenders reintegrate into society to decreasing the number of crimes, from treatment instead of prison for those with mental health and drug addiction issues to increasing employment and education, their thoughtful ideas provide a way forward. They share a commitment to continued progress in the fight against crime — and continued progress toward a more just society.

The 22 solutions offered here will not fix the problem on their own. It is our hope that lawmakers and stakeholders implement these ideas to produce a system that both reduces crime and reduces mass incarceration. These ideas must be turned into action. They must become policy, etched into law. Success will only come when ideas are translated into concrete results. And a successful reform of the criminal justice system is necessary for the continued health of our American democracy.

1
The Importance of Community Policing

Hon. Joseph R. Biden, Jr.
Vice President of the United States[1]

"There are changes that President Obama and I believe can and should be made that can help change the way police patrol their often dangerous streets without jeopardizing the safety or security of the community, which is the whole reason to patrol the street in the first place. One of the things we're looking at is genuine community policing."

Dr. Martin Luther King, Jr. stood for many things that still resonate in our country today — issues of war and peace, the rights of women overseas, the future of civil justice in this country. But here, I would like to focus on an area of Dr. King's teachings that sits especially close to home for many Americans.

I know that when you send your children, your grandchildren out into the world, you worry about them. Will they be safe? Will they be treated fairly? Will they be respected? Can I trust the world with this person I love?

It's the prayer of every parent and grandparent. When your child walks out the door you have enough fears to contend with — the possibility that they will get into a car accident, or fall victim to an act of crime, or be hit with a stray bullet from a drive-by shooting.

But in too many neighborhoods in this country, that fear is compounded by the fear your child may be presumed to be a gang member, or a suspect — the fear of someone in authority looking at that child and seeing only a profile, not an individual.

Dr. King wrote, "Men often hate each other because they fear each other; they fear each other because they don't know each other; they don't know each other because they cannot communicate; they cannot communicate because they are separated." We have to bridge the separation between the police and the community.[2]

In an interview on "Charlie Rose," New York City Police Commissioner Bill Bratton used an expression that I think should be the guiding principle for every effort to rebuild that trust. It is an expression from the Maasai tribe. The expression is simply, "We see you."[3]

But the question is: Do we see one another? Does the danger they face prevent the police in your neighborhood from seeing the people they serve? And does fear prevent the community from seeing and engaging with the person behind the badge?

I served in these communities as a public defender, and for 36 years as Delaware's senator. I know, and I see, the goodness and decency in communities across the country. And I have also worked with thousands of honorable and decent police officers, some of whom I grew up with and worked with my entire career. And at times I've seen reflected in their eyes the uncertainty and fear that comes with being asked to put their lives on the line when it's unclear who has their back.

I had the honor of speaking at the funeral of New York City Detective Rafael Ramos. I didn't know him, but I knew him. He's like the most courageous and compassionate guys I grew up with in Claymont, Del., the ones who were always there to help. Rafael was an active member of his church, about to be ordained as a chaplain. He didn't just keep a Bible in his locker, he lived his ministry as part of his job, reaching out to all people. He was a former school safety officer, who joined the NYPD at age 37. He was a father, a husband, and a son.

I was welcomed into the home of his partner, Wenjian Liu. A seven-year veteran of the force. He came to these shores from China as a 12-year-old and spoke several dialects. He was a newlywed.

Both were minorities. Both were the product of the community they lived in. Both knew the sting of stereotypes, of prejudice. They had families. They had stories. They had a humanity that was denied by an assassin, who judged them by the color of their uniform, and not by the content of their character.

We have to start seeing each other. We have to recognize that the black male on the corner is also a kid who likes to draw, and maybe has a future as an architect. We have to recognize that the cop on the beat is also a mom who plays basketball.

It is the responsibility of every community to recognize the humanity of the men and women who volunteer to put themselves in harm's way, to answer the urgent call in the night, to do the best that they can. And it is the responsibility of every officer who takes an oath to protect and serve to respect the dignity of every person that officer encounters, young or old, male or female, black, white, Hispanic, or Asian.

We need to agree as a nation on two basic statements of truth. Number one, cops have a right to make it home to their families tonight. And number two, all minorities have a right to be treated with dignity and respect. Because all life matters. And the fact that all life matters is the reason most officers became cops in the first place. And no one, no matter what their position, what badge they wear, no one is above the law. There can be no notion of impunity for any individual in society, regardless of their position.

There are changes that President Obama and I believe can and should be made that can help change the way police patrol their often dangerous streets without jeopardizing the safety or security of the community, which is the whole reason to patrol the street in the first place.

One of the things we're looking at is genuine community policing. In some ways we've lost the meaning of that term. I helped institutionalize the idea, in the 1994 Biden Crime Bill, to have community policing.[4] When there's criminal activity, the older lady living on the corner knows what's going on but may be afraid to call the cops because she may become the victim if the offenders find out she called them. But if she knows the cop and has his name, she can call and say, "Johnny, they're outside my door." And Officer Johnny can take care of it without exposing her. That's what community policing was supposed to be about.

When it started, it worked. But it's really expensive. It takes a lot of cops. In the beginning we had adequate resources. The 1994 Biden Crime Bill at the time was a pretty expensive operation. It put another 100,000 cops on the street, and it cost $1 billion. But because crime was

rampant, everybody signed on. And it worked. Community policing costs a lot of money. It's more expensive to have individuals patrolling the neighborhood than relying on technology, or up-armored vehicles, or jump squads, which every city in America now has.

But since 1998, states, as well as the federal government, in large part because crime dropped, have started to slash budgets. We acted like the problem was solved. Crime was not at the top of the country's agenda anymore. As a result, since 1998, funding for community policing has been cut by 87 percent.[5] That means fewer cops on the streets and in neighborhoods, building recognition and trust.

The result is more separation, less communication, more hostility, and a place for crime to thrive in a neighborhood full of decent and honorable people. That needs to change. A lot of other things need to change too. Ultimately, there's no overnight way to make that happen. It has to happen neighborhood by neighborhood, block by block, person by person. And there's nothing certain about it.

In his final sermon, Dr. King said: "Somewhere we must come to see that human progress never rolls in on the wheels of inevitability. It comes through the tireless efforts and the persistent work of dedicated individuals who are willing to be coworkers with God."[6]

Through the persistent work of so many Americans we've seen progress come rolling down the tracks on a host of issues that once seemed insurmountable. If we remember that, we'll recognize that we can solve this problem too. Let's not forget who we are. Let's not forget what we've done. Let's not forget that although there's much more to do, we have come very, very far. And we have come this far because of the spirit and hard work of the American people.

2
End One-Size-Fits-All Sentencing

Hon. Cory Booker
United States Senator for New Jersey

"To truly end mass incarceration, we need a comprehensive approach. We need to do away with harsh mandatory minimum penalties and the one-size-fits-all approach to sentencing. We should give judges — who are our sentencing experts — more discretion in sentencing."

We, as a nation, work to lead the world in areas from education to innovation; yet, we do not fully realize that the cancerous growth within our criminal justice system has made us the global leader in incarceration. Though only 5 percent of the world's population lives in the United States, we are home to 25 percent of the world's imprisoned people. This is, among other things, a phenomenon driven by the drug war. In fact, there are more people incarcerated in America today for drug offenses then all the people incarcerated in 1970.[1]

Some people need to be taken off the street for a long time. If you commit a crime, and particularly a violent crime, you must pay a price. But we are not focused on locking up violent, dangerous felons — far from it. Our prisons are filled not with violent criminals, but with nonviolent offenders — nearly one-third of federal prisoners have little or no prior criminal history.[2]

And we are all paying the financial price for these troubling trends. Using the narrowest of measures (not including police costs, courts, and more) the average American contributed $30 a year to corrections

expenditures in 1980; that number grew to over $230 by 2012.[3] Factoring in other costs, each American annually spends hundreds of dollars from his or her tax bill to incarcerate nonviolent offenders while our expenditures on other critical aspects of our society — from infrastructure to life-saving medical research — have declined. It costs hundreds of thousands of dollars to incarcerate a nonviolent offender for a few years, money that could be used to hire more police officers, secure our nation from terrorist threats, or solve more serious violent crimes. Or we could spend this money to empower those who break the law — from the drug addicted to youthful offenders — to succeed.

Our criminal justice system is so broken that, once convicted of a nonviolent crime and time has been served or punishment completed, we place daunting obstacles in the path of people leaving prison that undermine their ability to successfully rejoin society. The American Bar Association has identified over 46,000 penalties, called collateral consequences, which can impact people long after they complete their criminal sentence.[4] These consequences include roadblocks to voting and barriers to obtaining a job, business licenses, housing, education, and public benefits. That is why our state and federal prisons have become revolving doors, with two of every three former offenders getting rearrested within three years of release.

We use solitary confinement against juveniles, a practice that some nations consider torture. It also can have profound life-altering consequences on our youth. In fact, the majority of suicides by incarcerated youth are by ones that have been subjected to solitary confinement.[5]

You may assume mass incarceration exists because people are committing more crimes. But that is not true. Violent crime has plunged in recent decades; the rate has declined roughly by half since 1993. In fact, numerous studies have shown that incarceration rates cannot be tied to crime rates.[6] The incredibly costly reality is that prisons in our nation continue to grow irrespective of crime rates. It is a bureaucracy that has been expanding independent of our security or safety. One that costs each and every one of us more and more as it systematically deprives millions of Americans and their children of economic opportunity — the opportunity to contribute, succeed, and break cycles of poverty and hardship.

In fact, Americans are increasingly detained in jails for simply being too poor to pay a fine or from conduct stemming from mental illness, homelessness, or addiction. Instead of empowering people to succeed or treating their addictions or mental health problems, our overuse of detention, jail, and incarceration aggravates their problems. Being poor should not be a crime. Incarcerating a person further undermines his or her ability to achieve economic stability because it often results in the individual having to miss work, lose a job, or have an arrest record that makes the person even less employable.

Some feel the brunt of this broken system more than others. More than 60 percent of the prison population is comprised of racial and ethnic minorities. This is driven by wide disparities in arrests and incarceration. Even though blacks and Latinos engage in drug offenses at a rate no different than whites, blacks are incarcerated at a rate six times greater than whites, and Latinos are incarcerated at nearly twice the rate of whites for the same offenses. The incarceration rate of Native Americans is 38 percent higher than the national rate. Latinos account for 17 percent of the U.S. population, but 22 percent of the U.S. incarcerated population. And, blacks make up only 13 percent of the total U.S. population, but 37 percent of the U.S. prison population. Today, we have more black men in prison or under state or federal supervision than were enslaved in 1850.[7]

Despite these realities, I have a deep and abiding faith in our nation's ability to fix our justice system. We have shown time and time again that in the face of injustice, unfairness, and inequality we have the capacity to overcome, to reform, to change, and to grow. Correcting the problem of mass incarceration demands again a time of courage and action for our nation.

Today, I am encouraged. Across our country, people from all backgrounds, from all parts of our political spectrum are standing up to change this awful reality of mass incarceration. Liberals and libertarians, Democrats and Republicans, Christian conservatives and left wing atheists, together with many others are forming unusual partnerships to roll back mandatory minimum penalties, enact bail reform, expand drug treatment, and push for countless other reforms to our justice system. As an elected Democrat, I am encouraged to see conservative groups

like the Heritage Foundation, Right on Crime, and the National Rifle Association joining the call for change and pushing for substantive criminal justice reforms.

I am increasingly encouraged by the progress in our states, which often have been the laboratories of our democracy. So-called "red states" like Texas and Georgia — which have a widely-held reputation for prioritizing law and order — have made sweeping reforms in recent years to reduce their prison populations.

In addition, states like New Jersey, Texas, California, Virginia, Hawaii, Wyoming, Massachusetts, Kentucky, Connecticut, Rhode Island, Colorado, New York, South Carolina, Alaska, and Georgia have all enacted reforms and have seen drops in both their incarceration and crime rates. The reforms in these states prove that you do not have to lock up more people to create safer communities.

Now that we have made serious progress in many states, the question is what can policymakers do at the federal level? The answer: We must think big. We need broad-based reforms that will address all corners of the system — from sentencing, to incarceration, to reentry.

Since joining the Senate, I have taken steps toward introducing sensible reforms. Sen. Rand Paul (R-Ky.) and I came together to introduce the Record Expungement Designed to Enhance Employment (REDEEM) Act.[8] It would keep more kids out of the adult system, protect their privacy so a youthful mistake does not follow them all of their lives, and help make it less likely that low-level adult offenders reoffend. While new to the Senate, I am so grateful to join enduring champions for sensible reforms. Senators like Patrick Leahy (D-Vt.), Richard Durbin (D-Ill.), Mike Lee (R-Utah), Rob Portman (R-Ohio), Sheldon Whitehouse (D-R.I.), and John Cornyn (R-Texas) have for years all pushed for legislation that would make our legal system become more just.

In February, I joined with Sens. Lee, Durbin, and Ted Cruz (R-Texas) to reintroduce the Smarter Sentencing Act of 2015, bipartisan legislation that would enact meaningful sentencing reforms that would make our federal sentencing policy fairer, smarter, and more cost-effective.[9] It would reduce harsh mandatory minimums for nonviolent drug offenders, which is the single largest factor in the growth of the federal prison population.

If we want our prison population to decrease, we must reduce mandatory minimums. The bill would expand the federal "safety valve," which returns discretion in sentencing for nonviolent drug offenses back to federal judges. It would allow persons convicted under the pre-2010 crack cocaine laws to receive reduced sentences, a change needed to make crack cocaine penalties more in line with powder cocaine penalties. Crack and powder cocaine are pharmacologically the same. The Smarter Sentencing Act would reduce these sentences and save our country $229 million over the next 10 years.

To truly end mass incarceration, we need a comprehensive approach. We need to do away with harsh mandatory minimum penalties and the one-size-fits-all approach to sentencing. We should give judges — who are our sentencing experts — more discretion in sentencing. We need to adopt policies that push for the early release of those least likely to recidivate. And we need to do more to ensure that people who reenter society after serving time will contribute to society and not commit future crimes.

The road ahead will pose challenges and change will not be easy. It never has been. But nothing is more powerful than an idea whose time has come. We cannot afford to be deterred in this cause to end a cancer in our country that so aggressively eats away at our liberty and our justice.

We must reject the lie of cynicism that tells us that we cannot come together to make criminal justice reform a reality now. We must reject the lie of contentment that tells us to be satisfied with small reforms amidst such giant problems. We must reject the lie of otherness that leads us to believe that this is someone else's problem when we are an interdependent nation that knows "injustice anywhere is a threat to justice everywhere." I have an unshakable faith that our nation will rise to meet, and will eventually overcome, this challenge. Let's get to work.[10]

3
Ban the Box

Cornell William Brooks
President and CEO
National Association for the Advancement of Colored People

"A criminal conviction — or an arrest record — should not automatically sentence a person to a life of unemployment or underemployment. Legislation to "ban the box" should be implemented in all states and at the federal level. Without such legislation, African Americans will forever be a permanent underclass in the United States and mass incarceration will continue to hold back the economic growth of our men and our communities."

The tragic killings of unarmed African-American men Michael Brown and Eric Garner in 2014 are a grim reminder of our country's ineffective and unjust criminal justice system.

Racial profiling is a corrosive policing practice harming black and brown communities at both ends of the criminal justice system. At the front end, racial profiling can lead to tragic and senseless deaths of unarmed black men and women, as was the unfortunate case with Michael Brown and Eric Garner. More regularly, racial profiling results in men and women of color being disproportionately represented in our prisons and jails. At the back end, racial profiling takes an economic toll on communities of color, as upon release from prison, persons with an arrest record are often disqualified from finding employment and financially contributing to their community.

The NAACP stands at the forefront of addressing racial profiling and its immediate and long-term impacts, both with political action and advocating for policy reforms — like "ban the box" legislation,

which urges employers to remove from their hiring applications the box applicants with a criminal record are required to check. Our efforts aim to move our country toward establishing a fairer criminal justice system and eliminating barriers for formerly incarcerated people to work, which can transform our neighborhoods and make our communities safer and economically stronger.

Racial profiling is neither an efficient nor corrective tool of policing. In 2011, NYPD officers stopped nearly 800,000 people for alleged suspicious activity. Nine out of 10 were innocent, 99 percent did not have a gun, and 9 out of 10 were black or Latino. Furthermore, in 2011, black and Latino men between 14 and 24 years old made up 42 percent of those targeted by stop-and-frisk. That group makes up less than 5 percent of the city's population.[1]

Yet, overwhelmingly, people of color continue to be racially profiled. People with dreams, hopes, and aspirations are being locked and trapped in the bottoms of airtight cages of prisons and poverty. In 2012, there were an estimated 2.3 million people in U.S. jails and prisons — the disproportionate majority of whom are people of color. African Americans make up roughly 13 percent of the U.S. population, but are 37 percent of its prisoners. Some survey data suggest that more than half of formerly incarcerated people remain unemployed up to a year after their release from custody.[2] This means communities of color, which are overly profiled and incarcerated, are also acutely economically vulnerable.

Since its inception, the NAACP has always stood on the front lines to ensure a society free from racial discrimination. Black lives matter. Indeed all lives matter.

Most recently, the NAACP helped galvanize national and international attention around racial profiling and overaggressive policing practices, which led to the death of Michael Brown, in a 134-mile march, "Journey for Justice," from Ferguson to Jefferson City, Mo. Our marchers trudged up icy hills with boots often filled with bloodied and blistered feet. For seven days, from sunup to sundown, protesters joined us as we marched through harsh weather for the cause of justice. We marched to call for reforms of police practice and culture across the country. Racial epithets were thrown our way from passersby, but

we marched. A mob shattered the window of our "support bus" after some threatened to shoot us, yet we continued. And after marching 134 miles, we were in no way tired.

In no way was our trek from Ferguson to Jefferson City designed to be a solution. It was a continuation of the many demonstrations designed to make clear to the country and the world that the NAACP and our allies will not stand down until we see systemic change in our criminal justice system and we bring an end to the overaggressive policing culture, particularly racial profiling, that has become commonplace in communities of color all across the country.

That march is now completed, but we as a nation must continue to march forward. We march to arrive at a day when my two teenage sons and black men and women across this nation will be judged by the content of their character, not the color of their skin. We press on to achieve a criminal justice system that holds officers accountable for their misconduct and strengthens neighborhoods while keeping all communities safe.

Most of all, we march to end the plague of mass incarceration on our communities. There are several ways the NAACP marches forward for systemic reform in our criminal justice system. Clearly, we must advance systemic reform and fundamental change in how policing is conducted throughout our communities, which includes requiring police to use body cameras, revising the equipping of police with military hardware, promoting diversity on the force, ending the use of major force in cases involving minor offenses, and, of utmost importance, passing legislation that ends racial profiling at the federal, state, and local levels.

But there is one often overlooked consequence of today's system of racial profiling and mass incarceration that must become a more prominent part of the criminal justice reform conversation: the economic toll on communities of color. Much of this harm is caused by a box on job applications.

The impacts of racial profiling do not end with an arrest. Long after a person receives an arrest record, and has even repaid their debt to society, he or she can be potentially sentenced to a life of economic insecurity. With 70 million Americans with a record and 2.3 million incarcerated

nationally, everyone knows someone with a record — from the studious undergrad with a high school shoplifting conviction, to the respected middle manager guilty of a nearly forgotten sorority prank, to countless scores of ambitious young men arrested but never convicted under "stop and frisk" policing run amuck in our cities.[3]

The NAACP has long championed reforms to improve the economic outcomes for former offenders, chiefly legislation to "ban the box," which is gaining traction. "Ban the box" is aimed at urging employers to remove from their hiring applications the check box that asks if applicants have a criminal record. Its purpose is to enable ex-offenders to display their qualifications in the hiring process before having to disclose their criminal records.

A criminal conviction — or an arrest record — should not automatically sentence a person to a life of unemployment or underemployment. Legislation to "ban the box" should be implemented in all states and at the federal level. Without such legislation, African Americans will forever be a permanent underclass in the United States and mass incarceration will continue to hold back the economic growth of our men and our communities.

According to Harvard sociologist Devah Pager, having a criminal record decreases the likelihood of a white male job applicant getting called back for an interview by at least 50 percent. For black men, the rate is even 40 percent worse than for white men.[4] A man with a record of incarceration will lose $100,000 of income in his prime earning years. Not surprisingly, formerly incarcerated people lower the national employment rate as much as 0.9 percent; male employment as much as 1.7 percent; and those of less-educated men as much as 6.9 percent. This joblessness costs at least $57 billion nationally and annually.[5]

One in four adult Americans with a criminal record are reminded whenever they fill out a job application that states: "Please check the box, if you have ever been arrested or convicted of a crime." This tiny box is a massive economic challenge to both job applicants and businesses.

The economic challenge starts with today's ubiquitous digital technology. Anyone's criminal record is accessible to anyone anywhere in the world with the click of a mouse or the swipe of a finger across

a screen. These Internet records, no matter how old or inaccurate, have digital eternal life. For employers protecting business reputations, workplace safety, and staff quality, criminal record access is critical.

Once a person with a record checks the box, the employment process often ends immediately — regardless of what the record actually says. Applications with checked boxes are often trashed unread.

Employers who blindly screen out applicants by the box hurt both businesses and applicants. The majority of people with criminal records have neither spent time in prison nor committed a felony or violent crime. Many are not guilty of any crime at all. Most have been arrested, but not convicted. Moreover, of those convicted, most have only been convicted of nonviolent and often minor crimes.

The misuse of criminal records by some employers is not only an economic challenge but also a moral challenge. Harvard sociologist William Julius Wilson has long written empirically, eloquently, and sadly about what happens to poor communities when their citizens aren't able to work. Joblessness frustrates not only the ability and ambition to hold a job, but also the ability and perhaps the aspiration to raise a family responsibly.[6]

Imagine the possible moral consequences of employer policies that impede the ability of literally millions of people to compete fairly for work. Many employers, employees, and parents believe that work is not merely economic activity but a moral exercise. Work and even the ability to compete for work can imbue the young with discipline, ambition, an aversion to crime, and the aspiration to start a family responsibly.

Using the box to unfairly screen out qualified applicants, with minor convictions or mere arrests, not only affects them getting jobs, but also building character, forming families, and contributing to the community. For example, a child who sees a parent working — or even competing for work — gets a moral lesson in responsibility.

"Ban the box" legislation would move the box off the application and postpone (but not eliminate) a criminal background inquiry. This practical policy has already been adopted by our nation's largest public employer, the federal government; the nation's largest private employer, Wal-Mart; and several states, including Georgia. Both Wal-Mart

and Georgia's adoption of the "ban the box" policy were pursuant to persistent campaigning by the NAACP and our coalition partners.[7] This policy will allow job applicants first to be considered and compete on their qualifications — then be asked about and assessed on any criminal record. Returning citizens who gain employment are more than one-third less likely than their counterparts to recidivate and are more capable of turning their lives around permanently.

Now is the time to bring an end to unjust policies and policing strategies and strive toward both individual culpability and collective responsibility. Ending racial profiling and passing "ban the box" legislation would be major transformative steps in the right direction. We call on those we have elected to office to become our partners in the fight for equality and fairness. Now is the time to ensure that all communities can live safely — safe from violence both at the hands of criminals and at the hands of police. Upon release from prison, individuals must have the chance for employment; the chance to support themselves, their families, and their communities; and a fair chance to live economically productive lives.[8]

4
Save Jail for the Dangerous

Hon. Chris Christie
Governor of New Jersey

"I hope other states can build on New Jersey's experience, ushering in bail reform to keep violent offenders off the streets and give nonviolent offenders a chance to reclaim their lives. These changes will ensure that decisions about whether to detain someone pretrial are made based on real public safety threats and not on whether a defendant is rich or poor."

Our nation's criminal justice system has failed us in many ways. Too often, we let violent criminals slip through the cracks while ensnaring nonviolent — and sometimes innocent — people behind bars.

For New Jersey, this situation has played out most acutely in our bail system. Our system had allowed people who committed serious, violent crimes, and continued to pose a clear danger to the community, to be back on the streets while awaiting trial. At the same time, we kept those who committed minor, nonviolent offenses behind bars simply because they could not afford to pay a minimal bail amount. These people sat in jail for an average of 10 months while violent people, who could afford bail, walked free, further exemplifying how dysfunctional the system had become.

There are many stunning examples of the utter failure of our bail system. Perhaps there is none more striking than in July 2014, when a man from Hamilton, N.J., whom police arrested earlier that same month, invaded the home of a local family. He had been granted bail for a litany of charges, including multiple counts of first-degree robbery

and had been released on bail despite his prior convictions. During the robbery, he and his accomplice pointed a gun at the family's 8-month-old baby and threatened to put the child in the oven and turn it on if their demands were not met.[1] That man should never have been released simply because he could afford to post bail.

In contrast, Iquan Small was charged with a nonviolent offense that was ultimately dismissed, yet he sat in jail for four months, lost his job, and his life opportunities — all because he could not afford bail.[2] This is the real tragedy of a broken system that often leaves in its wake thousands of broken families created by low-income individuals, who are nonviolent, are no threat to our society, but are stuck in jail awaiting trial. These individuals often lose their jobs and their homes because of this.

Quite simply, the system did not work for the people it was supposed to protect. Our bail system failed two essential tests: it was not fair nor was it effective at protecting public safety. It is also fiscally irresponsible to jail the poor and let the violent free.

Some argued that this was not a crisis for our state. For me, however, every day that someone fears for their life on our streets is a crisis. For me, every day that someone is deprived of their liberty in a jail, simply because they lack the economic means, is a crisis. And I suspect that if it were your mother or father, son or daughter, or sister or brother who felt the graveness of that violent threat or sat unjustly in a jail cell that it would be a crisis for you, too.

This crisis is not unique to New Jersey. A 2007 study by the Bureau of Justice Statistics found that one-third of defendants released while awaiting trial were charged with one or more types of misconduct while on release. Nearly one-quarter had bench warrants for failing to appear in court. About one-sixth were arrested for a new offense, and more than half of these new arrests were for felonies.[3]

How can we allow a system to exist that fails our poor, fails those who pose no risk to our communities, and fails our citizens?

I knew that we could do things differently in New Jersey. So I made a commitment to overhaul our bail system. During my State of the State address in 2012, I made a promise to a mother from Newark that we would help reduce the cycle of violence so prevalent in many of our urban

communities. I made a promise that we would not allow the safety of our communities and the fair treatment of nonviolent and low-income offenders to continue to fall victim to politics and procrastination.

That's why I proposed two common-sense reforms to refocus New Jersey's bail system on whether a person poses a danger. These changes finally allow New Jersey courts to keep dangerous criminals off the streets and in jail until trial.

In August 2014, I signed a law that created non-monetary alternatives allowing for the release of low-level offenders while they wait for trial.[4] And in November, our citizens voted to pass a bipartisan ballot initiative that I championed to amend our state constitution and allow judges to deny bail for dangerous offenders, keeping them behind bars while they wait for trial.[5]

Our constitution had been interpreted to require judges to set bail amounts for all offenders — even if judges thought they should be kept behind bars because they were dangerous.[6] Judges should be able to look at defendants' criminal history, determine whether they pose a potential danger to other individuals — witnesses or innocent citizens on the streets — and then decide whether bail makes sense. The new amendment establishes a clear exception: When a court finds that no amount of bail, pretrial release conditions, or combination of the two would assure a defendant's appearance, protect the safety of the community, or maintain the integrity of the criminal justice process, it can deny bail and hold the defendant. This change will stop preventable crimes from occurring by allowing a judge to use his or her common sense to decide whether someone deserves to be released or not. This long overdue measure will improve the quality of life in our communities by keeping the most violent criminals off the streets and ease the minds of citizens around the state.[7]

The companion measure was a bill to reduce our state's reliance on monetary bail. It created alternatives for individuals charged with nonviolent offenses. These alternatives include requiring that defendants remain in the custody and under the supervision of a designated guardian, maintain employment or stay enrolled in school, report periodically to a law enforcement officer, abide by curfews, undergo drug or mental

health treatment, or submit to electronic monitoring.[8] These restrictions will work to ensure a defendant returns to court without committing another crime. This law brings fairness to individuals who have not been charged with violent crimes and do not belong warehoused in jail awaiting trial because they cannot afford bail.

We also made other sensible changes to our state's criminal justice system. In 2012, we expanded the mandatory drug court and treatment program to more counties.[9] I have a simple view on drug policy: Drug addiction is a disease. It can happen to anyone, from any station in life. And it can be treated. Most importantly, every life is an individual gift from God and no life is disposable. We have an obligation to help people reclaim their lives. And since we have the tools to help those with this disease to save their own lives, we should use them.

We need to realize that when we keep drug addicts in jail, we ensure that they will be a constant drain on our society. Treatment not only costs us less in the short run, but in the long run it produces contributing members to our society — people who are employed and pay taxes, rather than being in jail and draining taxes. These individuals will have the opportunity to become a good father or mother, a good son or daughter, and contribute to the cultural fabric of our society. Requiring mandatory treatment instead of prison for nonviolent drug addicts is only one step — but an important one. Treatment is the path to saving lives. For as long as I am governor of New Jersey, treatment will be mandatory in our system.

In 2014, I also signed legislation to "ban the box" and end employment discrimination against people with criminal records.[10] The Opportunity to Compete Act limits employers from conducting criminal background checks on job applicants until after a first interview has taken place. This will make a huge difference to people who have paid their debts to society and want to start their lives over again. They now have the opportunity to do that in our state.

I am proud that New Jersey led by example, showing it is possible to bring about true bipartisan progress and action. We passed real criminal justice reform in New Jersey. We can now release individuals accused of minor crimes without bail and ensure that those who pose the biggest

risks — the severest threats to our community — are kept behind bars and off our streets.

For six years, I was the United States Attorney for New Jersey, the chief federal law enforcement officer of the state. No one can say that I am "soft on crime." My career has been dedicated to trying to put bad people in prison. But we need to be smart about how we use prison.

I hope other states can build on New Jersey's experience, ushering in bail reform to keep violent offenders off the streets and give nonviolent offenders a chance to reclaim their lives. These changes will ensure that decisions about whether to detain someone pretrial are made based on real public safety threats and not on whether a defendant is rich or poor. They enhance the administration of justice and keep our citizens safe.

As elected officials, we are the only ones who can bring change to fix our criminal justice system. The individuals affected by the system cannot bring that change. Neither can prosecutors nor defense attorneys. And in some cases, not even judges can bring that change. These changes are serious and should be made by the people who are elected and therefore accountable to the people. It is our responsibility.

Elected officials across the country must act to make needed and long overdue changes to our criminal justice system. It is good for public safety. It is good for families. And it is good for New Jersey and the country.

5
Respect by the Law, Respect for the Law

Hon. Hillary Rodham Clinton
Former United States Secretary of State
and United States Senator for New York

"Everyone in every community benefits when there is respect for the law and when everyone in every community is respected by the law. All over the country, there are creative and effective police departments proving that communities are safer when there is trust and respect between law enforcement and the people they serve. They are demonstrating that it is possible to reduce crime without relying on unnecessary force or excessive incarceration."

In the wake of tragedies in Ferguson, Mo., and Staten Island, N.Y., our country is grappling with the urgent need to reform our criminal justice system and rebuild trust and respect in our communities. In a speech last December, I reflected on how the life and legacy of Robert Kennedy can inspire us to come together and pursue this important work. Today, it's critical that we ask these questions, place them on the national agenda, and work together to forge solutions.

What would Robert Kennedy think if he could see us today?

I think he would celebrate the enormous progress we have made over the past half century: the advance of democracy and human rights in parts of the world once locked in tyranny; the breakthroughs in health, science, and productivity, delivered by American innovation; and the great strides we have made here at home to build a more just and inclusive society. In many ways, we have moved forward

toward that more perfect union of which he dreamed and for which he worked.

But what would Robert Kennedy say about the fact that still today more than 14 million children live in poverty in the richest nation on Earth? What would he say about the fact that such a large portion of economic gains have gone to such a small portion of our population? And what would he say about the cruel reality that African-American men are still far more likely to be stopped and searched by police, charged with crimes, and sentenced to longer prison terms? Or that one-third of all black men face the prospect of prison during their lifetimes, with devastating consequences for their families, communities, and all of us. What would he say to the thousands of Americans who marched in our streets, demanding justice for all — to the mothers who have lost their sons?

We have to come to terms with some hard truths about race and justice in America. Despite all the progress we have made together, the United States has less than 5 percent of the world's population, yet we have almost 25 percent of the world's total prison population.[2]

We have allowed our criminal justice system to get out of balance, and I hope that the tragedies of the last year give us the opportunity to come together as a nation to find our balance again. We can stand up together and say: Yes, black lives matter. Yes, the government should serve and protect all of our people. Yes, our country is strongest when everyone has a fair shot at the American Dream.

Inequality is not inevitable. Some of the social disparities we see today may stem from the legacy of segregation and discrimination. But we do not have to perpetuate them, and we do not have to give into them. The choices we make matter. Policies matter. Values matter.

Everyone in every community benefits when there is respect for the law and when everyone in every community is respected by the law. All over the country, there are creative and effective police departments proving that communities are safer when there is trust and respect between law enforcement and the people they serve. They are demonstrating that it is possible to reduce crime without relying on unnecessary force or excessive incarceration. There are so many

police officers every day inspiring trust and confidence, honorably doing their duty, putting themselves on the line to save lives. They represent the best of America.

We can learn from these examples. We can invest in what works. We can make sure that federal funds for state and local law enforcement are used to bolster best practices, rather than contribute to unnecessary incarceration or buy weapons of war that have no place on our streets.

Of course, these are not new concerns, as I learned firsthand as a young attorney just out of law school. One of my earliest jobs for the Children's Defense Fund was studying the problem of juveniles incarcerated in adult jails. As director of the University of Arkansas School of Law's legal aid clinic, I advocated for prison inmates and poor families. I saw how our criminal justice system can be stacked against those who have the least power and are the most vulnerable. These experiences motivated me to work for reform, especially for juveniles, a priority as first lady and senator. Yet, our criminal justice challenges have become even more complex and urgent in the years since.

Today, there is a growing bipartisan movement for common-sense reforms. I was encouraged to see changes that I supported as senator to reduce the unjust federal sentencing disparity between crack and powder cocaine crimes finally become law. Last year, the Sentencing Commission reduced recommended prison terms for some drug crimes. And, President Obama and former Attorney General Eric Holder have led the way with important additional steps. But there is much more to do. Measures that I and others have championed to reform arbitrary mandatory minimum sentences, curb racial profiling, and restore voting rights for ex-offenders are long overdue.[3]

As a presidential candidate in 2008, I outlined proposals to reduce both crime and the size of our prison population.[4] For example, tough but fair reforms of probation and drug diversion programs to deal swiftly with violations, while allowing nonviolent offenders who stay clean to stay out of prison. I called for putting more officers on our streets, with greater emphasis on community policing to build trust while also fighting crime, as well as new support for specialized drug courts and juvenile programs.

These ideas are needed now more than ever — and they are just the beginning. We need a true national debate about how to reduce our current prison population while keeping our communities safe. We should work together to keep more nonviolent drug offenders out of prison and to ensure that we don't create another "incarceration generation."

Progress will not be easy, despite the emerging bipartisan consensus for reform. We will have to overcome deep divisions, replenish our reservoirs of trust, and stay focused on the common humanity that unites us all.

To move forward, we can again look back to the lessons of Robert Kennedy. Being the privileged heir to a famous name never stopped him from finding humanity in everyone — from a single mom in Bed-Stuy, to a steel worker in Buffalo, to a student in South Africa. He had the gift of seeing the world through their eyes, imagining what it was like to walk in their shoes. I was honored to follow in his footsteps in the United States Senate, and his example was often on my mind. New Yorkers took a chance on both of us, and I will always be grateful for that. And I followed in his footsteps again in the summer of 2012, when I went to South Africa. One of the places I went was the University of Cape Town to deliver a speech, just as he had decades earlier that continues to inspire today.

Before that speech, I stopped in for what turned out to be my final visit to my friend, Nelson Mandela, at his home in his ancestral village. We reminisced, and I thought about the extraordinary excitement of being at his inauguration in 1994. It was a time of political strife in our own country. I have to confess, my heart had been hardened by all the partisan combat. But then at lunch, the new president of the new South Africa, President Mandela, said something that shook me from my head to my toes. He welcomed all the VIPs who came from all over the world, that he was pleased they were there, and then said this: "The three most important people to me here in this vast assembly are three men who were my jailers on Robben Island."

Mandela called them by name, and three middle-aged white men stood up. He explained that despite everything that divided them, those men had seen him as a fellow human being. They treated him with

dignity and respect. Mandela had later told me when he was finally released he knew he had a choice to make — he could carry the bitterness and hatred of what had been done to him in his heart forever and he would still be imprisoned, or he could open his heart to reconciliation and become free.

Robert Kennedy said much the same thing on that terrible night in 1968, when Dr. King was killed. He spoke of his own loss, and he urged Americans to reach for justice and compassion, rather than division and hatred, quoting Aeschylus on the wisdom that comes through the awful grace of God.

It is in this spirit of common humanity that we will be able to come together again to restore balance to our criminal justice system, our politics, and our democracy.

6
Reduce Federal Crimes and Give Judges Flexibility

Hon. Ted Cruz
United States Senator for Texas

"This essay focuses on three vital areas of concern: overcriminalization, harsh mandatory minimum sentences, and the demise of jury trials. Congress should pass laws that would eliminate redundant crimes and convert regulatory crimes into civil offenses, take steps to give judges more sentencing flexibility, and require prosecutors to disclose material exculpatory evidence during plea negotiations."

The criminal law is the most potent "lever through which government brings power to bear on the individual citizen."[1] Not only can a criminal conviction lead to imprisonment and the loss of other rights, including the right to vote, it forever brands those who are convicted as criminals — a stigma that can be difficult, if not impossible, to overcome. Because of these serious consequences, the power to define crimes and to prosecute and jail people for committing them must be exercised with utmost care. Unfortunately, for all its virtues, the criminal justice system does not always exercise the care that it should.

This essay focuses on three vital areas of concern: overcriminalization, harsh mandatory minimum sentences, and the demise of jury trials. These problems pervade our criminal justice system at large, but there are practical ways to address them at the federal level. Congress

should pass laws that would eliminate redundant crimes and convert regulatory crimes into civil offenses, take steps to give judges more sentencing flexibility, and require prosecutors to disclose material exculpatory evidence during plea negotiations.

The first problem is the proliferation of federal crimes, what is often termed overcriminalization. Since the late 19th century, the number of federal offenses has risen steadily, accelerating during the New Deal and virtually exploding since the 1970s. The last time a rigorous effort was undertaken to tally the number was over 30 years ago in 1982. The task took two years and produced, at best, an educated estimate of approximately 3,000 federal criminal offenses. No one really knows what the real number is today. We do know, however, that Congress created more than 450 new crimes from 2000 to 2007, a rate of more than one a week. Assuming a one-a-week rate over the last 32 years, the number of federal criminal offenses would now exceed 4,600. But even that does not capture the full scope of our overcriminalization epidemic because many federal regulations carry criminal penalties. If those regulations are included in the tally, then the total number of federal offenses could reach a staggering 300,000.[2]

Congress and the president should work together — perhaps through a commission — to scrub the entire United States Code, eliminating crimes that are redundant and converting regulatory crimes into civil offenses. But the political incentives to criminalize disfavored conduct — whether it is inherently evil or not — could prove too great to generate the support needed to undertake this Herculean task.

The place to start is with incremental reforms aimed at mitigating the harmful effects of overcriminalization. Congress should begin by requiring that all criminal offenses are put into one title of the Code, Title 18, or if that proves too difficult, Congress can enact a law that prohibits criminal liability on the basis of any statute that is not codified or otherwise cross-referenced in Title 18.[3] Having thousands of criminal laws scattered throughout the entire Code works an intolerable hardship on the public akin to Caligula posting his laws high up to make them difficult for the public to see.

To ameliorate the effect of redundant or overlapping criminal laws, Congress should also pass legislation requiring courts to presume that a single criminal act or transaction should be treated as one crime subject to one punishment, even if the act or transaction is punishable under multiple statutes. And to mitigate the consequences of criminalizing regulatory offenses, Congress should repeal criminal penalties for violations of agency regulations. At the very least, it should require that any new regulations carrying criminal penalties be approved by Congress and the president. Perhaps most importantly, Congress should enact legislation that requires the government to prove the defendant knowingly violated the law — or that, at least, allows a mistake of law defense — for certain classes of crimes that have no analog in the common law or that no reasonable person would understand to be inherently wrong. Where the government has criminalized non-blameworthy conduct for regulatory purposes, ignorance of the law should be a valid defense to criminal liability.

The second problem is the ratcheting up of mandatory minimum sentences over the last several decades. Although there is nothing wrong in principle with mandatory minimums, they must be carefully calibrated to ensure that no circumstances could justify a lesser sentence for the crime charged. The current draconian mandatory minimum sentences sometimes result in sentencing outcomes that neither fit the crime nor the perpetrator's unique circumstances. This is especially true for nonviolent drug offenders.

Harsh mandatory minimum sentences for nonviolent drug crimes have contributed to prison overpopulation and are both unfair and ineffective relative to the public expense and human costs of years-long incarceration. According to a 2012 Government Accountability Office report, the inmate population in the federal Bureau of Prisons (BOP) increased by more than 400 percent since the late 1980s because of lengthening sentences. The number of drug offenders in federal and state prisons increased 13-fold during that time period. As of February 2015, nearly half — 49 percent — of BOP inmates were sentenced for drug crimes. This has contributed to overcrowding. BOP prisons now house 39 percent more inmates than their capacity.[4] It is far from clear

whether this dramatic increase in incarceration for drug crimes has had enough of an effect on property and violent crime rates to justify the human toll of more incarceration.

Given the undeniable costs and dubious benefits of mass, long-term incarceration of nonviolent drug offenders, Congress should take steps to give judges more flexibility in sentencing those offenders. The Smarter Sentencing Act of 2015, which was introduced by Sens. Mike Lee (R-Utah) and Dick Durbin (D-Ill.), and of which I am an original cosponsor, is a significant stride in that direction.[5] Among other things, the bill lowers minimum sentences, cutting them in half, to give judges more flexibility in determining the appropriate sentence based on the unique facts and circumstances of each case.

The third problem, which is exacerbated by the first two, is the demise of jury trials. Plea bargaining has become the norm in our criminal justice system, while the constitutional right to a jury trial — which the Founders understood to be a bulwark against tyranny — is now rarely exercised. Contrary to popular perceptions, we no longer have a system where a jury determines a defendant's guilt or innocence in a public trial. In 2013, 97 percent of all federal criminal charges that were not dismissed were resolved through plea bargains; less than 3 percent went to trial.[6]

In this plea-bargaining system, prosecutors have extraordinary power, nudging both judges and juries out of the truth-seeking process. The prosecutor is now the proverbial judge, jury, and executioner in the mine-run of cases. Often armed with an extensive menu of crimes, each with their own sentencing ranges, federal prosecutors can wield their discretionary charging power to great effect by threatening the most serious charges that theoretically (if not realistically) can be proved. If the accused succumbs to the threat and pleads guilty, which often happens, the prosecutor agrees to bring lesser or entirely different charges that carry a lower sentencing range.

Given the risks involved in turning down a plea offer, it is not unheard of for people to plead guilty to crimes they never committed. Of the 1,428 legally acknowledged exonerations recorded by the National Registry of Exonerations since 1989, 151 (or roughly 10

percent) involved false guilty pleas. It is estimated that between 2 and 8 percent of convicted felons who have pleaded guilty are actually innocent.[7] In a federal prison population of 218,000 — the number at the end of fiscal year 2011 — where 97 percent pleaded guilty, that means that anywhere from 4,229 to 16,916 people could be imprisoned for crimes they did not commit.

The plea-bargaining system is premised on the assumption that there is relatively equal bargaining power between the accused and the state. Nothing, of course, could be further from the truth. Mitigating the coercive effect of the plea-bargaining process will require empowering the defense. And one way to do that is to reduce the informational asymmetry between prosecutors and defense counsel. Plea offers are often foisted upon the accused before the defense has had enough time to investigate the facts, and the longer the investigation takes, the less generous the plea offer may become. Congress should pass legislation that requires the government — whether constitutionally required or not — to disclose material exculpatory evidence before the accused enters into any plea agreement. This reform will reduce the risk of false guilty pleas by helping ensure that the accused is better informed before sealing his or her fate.

Not all criminal justice reforms benefit criminal defendants. I, for instance, strongly supported Sen. Kirsten Gillibrand's (D-N.Y.) Military Justice Improvement Act, which would have transferred charging authority for many non-military-related crimes, including sexual assault, from unit commanders to independent military prosecutors — a change that may well make it more likely for charges to be brought against defendants.[8] Such a reform will better serve the interests of justice. Likewise, the reforms discussed in this essay would serve the interests of justice by giving much-needed protection to individuals — many of whom are poor or minorities — who find themselves in the crosshairs of federal prosecutors.

7
Shut the Revolving Door of Prison

Hon. Kamala D. Harris
Attorney General of California

"States can deliver accountability and achieve cost-effectiveness by implementing reentry programs, such as California's Back on Track, to ensure that offenders successfully transition from in-custody to out-of-custody life and stop committing crimes. Providing these services reduces recidivism, saves money, and prevents crime. It helps redirect nonviolent offenders from a life of repeated crime and prison time to get their lives back on track."

America is a global leader on many fronts, including our record incarceration rate. Over the last 40 years, the country's prison population has grown 500 percent. We now house more than one-fifth of the world's incarcerated population. In California, the prison population grew three times faster than the general population between 1990 and 2005.[1] With severe overcrowding in the state's prisons and increased scrutiny on the effectiveness of incarceration in enhancing public safety, California has had to develop innovative policies to hold criminals accountable and stop prison's revolving door.

For several decades, tough laws and long sentences have created the illusion that public safety is best served when we treat all offenders the same way: arrest, convict, incarcerate, and hope they somehow learn their lesson. As a career prosecutor, I firmly believe there must be swift and certain consequences for crimes, and that certain offenses call for nothing less than long-term imprisonment.

But we also know that the majority of prisoners are serving time for nonviolent offenses — what I call the base of the "crime pyramid." At the top of the pyramid are the most serious and violent crimes, which are committed far less often but should demand most of our attention in law enforcement. At the base of the pyramid are the vast majority of crimes committed, which are nonviolent and non-serious. Yet the manner in which our system deals with low-level offenders wastes precious resources needed to fight more serious crime and truly enhance public safety.

Crime is not a monolith. Instead of a one-size-fits-all justice system that responds to all crime as equal, we need a "Smart on Crime" approach — one that applies innovative, data-driven methods to make our system more efficient and effective. Being smart on crime means that we focus on the top of the pyramid and avoid treating all offenders the same way. This approach has three pillars: maintain a relentless focus on reducing violence and prosecuting violent criminals, identify key points in the lives of young offenders to stop the escalation of criminal behavior, and support victims of crime.

The issue of mass incarceration was brought into sharp focus for California when the U.S. Supreme Court issued its 2011 *Brown v. Plata* decision, requiring the state to reduce its prison population by approximately 46,000 inmates due to overcrowding.[2] This ruling forced California's leaders to confront how our state approached incarceration, particularly when more than 90 percent of prisoners return to their communities and are unprepared to be productive members of society.[3] In response to this ruling, the California legislature passed the Criminal Justice Realignment Act of 2011 ("Realignment"). Realignment shifted responsibility for the incarceration and supervision of low-level, nonviolent offenders from state prisons to California's 58 counties. It also funded counties to handle their increased responsibilities and create alternatives to incarceration and successful reentry.[4]

Since then, Realignment has achieved one of its primary purposes: to significantly reduce California's prison population. California has reduced its state prison population by 30,000 and also

shifted the supervision of 50,000 offenders from state parole agencies to county probation departments. Further, Realignment has allowed us to increase our return on investment, so that dollars we spend on criminal justice better equip inmates with the tools and skills they need to ensure they do not reoffend. This is particularly important because incarceration in California is expensive. Statewide, we spend an estimated $13 billion per year on prisons, yet nearly two-thirds of all state prisoners go on to reoffend within three years of release. These high rates of recidivism are not only a waste of taxpayer dollars, they are a serious threat to California's public safety.[5]

There has been a movement to change these trends, to adopt the smart on crime approach, and build evidence of its effectiveness for some time. In 2005, as district attorney of San Francisco, I put this strategy to the test when we created "Back on Track," a comprehensive reentry initiative for first-time, nonviolent drug offenders. The initiative focused on personal responsibility by holding offenders accountable for their behavior. In exchange, participants engaged in intensive reentry, life skills training, and education and employment opportunities to reduce the alarmingly high chance that they would resume a life of crime upon their release.[6]

Back on Track worked. The re-offense rate for participants was 10 percent, compared to 54 percent for non-participants who had committed the same types of crime. Taxpayer savings were significant. The program cost less than $5,000 per person, compared to the $43,000 it cost to house an offender in jail for one year. Back on Track yielded a substantial return on investment for the city and for California. Not only did we save taxpayer dollars for each successful participant who did not return to jail, the effort also grew the local labor force, expanded the tax base, and had a number of collateral benefits (e.g., higher child support payments). We were honored that the U.S. Department of Justice designated Back on Track as a model for law enforcement.[7]

Building on this success, I created the Division of Recidivism Reduction and Reentry ("DR3") of the California Department of Justice in November 2013. DR3 aims to reduce recidivism by

partnering with counties and district attorneys. DR3 identifies effective evidence-based best practices, measures their success in reducing recidivism and facilitating successful reentry, and identifies public and private funding sources to support those initiatives.[8]

In February 2015, we launched "Back on Track-LA."[9] This holistic reentry initiative targets nonviolent offenders in the Los Angeles County jail system to prepare them to reenter society as contributing and law-abiding members. Using evidence-based practices, the initiative combines in-custody education with the critical services for a seamless transition to out-of-custody life. The in-custody program provides cognitive behavioral therapy, academic and career-technical education, life skills, and reentry training. It also provides child support services, parenting and family services, identification cards, health services, and tattoo removal. Through partner schools, "Back on Track-LA" offers remedial and college courses, as well as certification courses in welding, construction, and other careers that match California's workforce needs.

After release from jail, the out-of-custody program provides employment, housing, and continuing education services. An Employment Advisory Board assists participants with job placement and the LA County Probation Department provides transitional housing for participants for up to 120 days and coaches who continue to monitor and assist participants for one year after release. Participants can continue toward completing high school studies, and transfer their college credits earned while in-custody to any California community college.

A foundational component of Back on Track-LA is personal accountability. Participants create individual responsibility plans and are guided by coaches who will hold them accountable to benchmarks. Participants make the transition from lives of crime to become productive members of society, benefitting not only their communities and families, but also California taxpayers.

Back on Track is proof that we can be smarter in reducing crime than simply perpetuating the pricey revolving door to prison. At the federal, state, and local levels, we need to explore how to best

scale and replicate proven approaches. We should continue building partnerships across agencies, such as sheriff's departments, probation departments, community colleges, and other public and private sector entities to pool their expertise and resources toward the goals of stopping recidivism and preventing crime.

Being smart on crime also means using the best and most innovative tools available to increase the effectiveness of law enforcement and criminal justice. Using state-of-the-art technology, California tracks program outcomes such as recidivism, educational attainment, employment, and child support payments. For example, we have collected data points on each of Back on Track-LA's program elements. Through data collection, we are setting a new standard for what "success" means in recidivism-reduction programs.

Recidivism reduction is a long-term commitment, and our programs must equally reflect that commitment. And we must measure progress toward those goals. To facilitate these reforms, last October I proposed a single statewide definition of recidivism, which represents a data-driven approach to evaluate recidivism rates and measure the effectiveness of criminal justice policies and programs.[10] California and many other states lack a uniform way to measure the rate of individuals who recidivate. One shared definition of recidivism is critical if we are to be smart on crime.

Our country has an opportunity to adopt a modern, cost-effective crime-fighting agenda that delivers the safety we deserve. States can deliver accountability and achieve cost-effectiveness by implementing reentry programs, such as California's Back on Track, to ensure that offenders successfully transition from in-custody to out-of-custody life and stop committing crimes. Providing these services reduces recidivism, saves money, and prevents crime. It helps redirect nonviolent offenders from a life of repeated crime and prison time to get their lives back on track.

In recent years, public opinion on criminal justice policy has changed. The message has been clear: We cannot continue to do business as usual, then act surprised when individuals reoffend. We are at a seminal moment for criminal justice policy — not just in

California, but across the nation. We can no longer afford to ignore our incarceration problem — the financial and societal costs for victims, communities, and taxpayers are too high. The smart on crime approach can shut the revolving door between prisons and our communities for good.[11]

8
Treat Drug Addiction and Address Character

Hon. Mike Huckabee
Former Governor of Arkansas

"We need to re-examine our incarceration objectives. The ultimate purpose of the system — beyond establishing guilt, assigning responsibility, delivering justice, and extending punishment — is to correct the behavior that led to the crime. Major first steps include treating drug addicts, eliminating waste, and addressing the character of our citizens and children."

I believe in law-and-order. I also believe in using facts, rather than fear, when creating policy. And, I believe in fiscal responsibility. Right now, our criminal justice system is failing us in all three camps.

The government's most fundamental responsibility is to protect the public with basic law and order. As a governor, I know firsthand the importance of delivering justice, especially for the worst crimes in our society. I authorized 16 executions, more than any other governor in my state's history. It was my duty and I took it seriously because each was the only decision I had made that was absolutely irrevocable. I have no tolerance for those who victimize and terrorize the innocent through crime. Ending someone's life or separating someone from their family for 30 years is not a trivial decision — it requires caution, care, and prayerful wisdom.

However, my up-close-and-personal view has also taught me that all judicial sentencing requires close deliberation. Many of the

cases that come before courtrooms are full of human emotion. These decisions impact real lives. Leaders in our country have a responsibility to evaluate sentencing policies to ensure justice. We must also take into account the broader impact these policies have on society. When it comes to criminals who will eventually be released and return to society, Americans simply cannot afford a system that is based solely on revenge.

We need to re-examine our incarceration objectives. We must make these decisions with an eye toward rationality. The ultimate purpose of the system — beyond establishing guilt, assigning responsibility, delivering justice, and extending punishment — is to correct the behavior that led to the crime. Major first steps include treating drug addicts, eliminating waste, and addressing the character of our citizens and children.

An Arkansas prison official once told me that 88 percent of incarcerated inmates at his prison were there because of a drug or alcohol problem or because they committed a crime in order to get drunk or high. As he astutely observed, we do not have a crime problem, we have a drug and alcohol problem. While those who deal drugs and entice others into enslaving addictions deserve serious time and tough sentences, we lock up many nonviolent drug users, some of whom spend longer periods in prison than they would if they had committed a violent crime. Though many of the efforts to address this problem have brought some measure of sanity to the process — drug treatment as opposed to merely warehousing drug users — we need to do things differently.

We have far too many bureaucratic protocols and sentencing mandates that create career criminals. This doesn't make our streets safer — it just makes our government more expensive. We need common-sense reforms, especially with sentencing. As my corrections director often said, "We need to quit locking up all the people that we are mad at and lock up the people that truly deserve it." Sexual predators, violent offenders, and dangerous criminals need to be locked up, but we must provide treatment options and real rehabilitation to those who struggle with drug abuse and addiction. Throwing them in prison with a long sentence is a costly, short-sighted, irresponsible response.

Drug courts provide one example of tried and true reform. With drug courts, a nonviolent drug offender can be directed to enroll in drug treatment program with comprehensive and intensive supervision, particularly as they reenter the community. Naturally, any violation of good behavior during this period results in prison. However, if the individual successfully completes drug rehabilitation and demonstrates responsible behavior over a period of time, the court would expunge that person's record.

When we instituted these reforms in Arkansas, we witnessed a significant drop in our recidivism rate. As an added benefit, drug court rehabilitation models, such as community based corrections, cost the state significantly less than incarceration — less than $5 a day as compared to about $45 a day. Over time, these reforms saved taxpayers millions, while also allowing and empowering offenders with the opportunity to regain, restore, and rebuild their lives.

We must reduce the waste in our criminal justice system. The United States will spend more than $80 billion on our prison system this year — with an average of $30,000 on each inmate. We will spend almost $58 billion adjudicating crime in our courts and $5.7 billion on our juvenile system.[1] In most states, it's less expensive to pay for a person to be in college for a year and pay full tuition, room and board, books, and spending money than for putting a person in prison for a year. I'm pretty sure we all agree that education is a better investment for taxpayers than incarceration.

But it is not just money being wasted. We are wasting human lives. I am deeply concerned about the rate at which young African-American males enter the prison system. As many African-American males have served in prison as have all whites both male and female, despite the significant population disparities between whites and blacks.[2] While disproportionate crime rates are a factor, it is inescapable that we have a system where white kids from upper middle class families get probation and counseling, while young black kids get 108 years behind bars. Our system must have true justice and equality for all.

As a person of faith, I recognize the fragility of the human spirit. And I recognize that our justice system needs both punishment and

redemption. From my time both as a governor and the job as pastor I held in my mid-20s to early 30s, I know about life-and-death, hope and pain, and crime and punishment. However, redemption is critical from both a moral and a pragmatic standpoint. After all, most of those we incarcerate for criminal and drug-related behavior will eventually rejoin society at some point in the future.

We simply cannot afford a criminal justice system where taxpayers spend billions of dollars sending small-time offenders to correctional facilities and expose them to teachers, techniques, and tools to be lifetime criminals. As governor, I signed common-sense laws that cut red tape, allowing rehabilitated persons who had committed minor crimes to become productive citizens in our society.

More importantly, we can build prisons as far as the eye can see, but without strong families to teach kids right from wrong, there will never be enough bars to hold all the criminals. Families are the building blocks of our society. Each home is a miniature civilization with authority figures, rules, and roles, and it is in that civilization that we learn how to act in the world at-large. When that civilization crumbles, then the larger society that rests on it has nothing to stand on. There will never be enough money to combat the social pathologies that result when parents do not love each other and do not raise their children properly.

The ultimate reason people are in prison is their lack of personal character, as evidenced by the self-centered who will break the law and violate the moral code of society. To those who would argue that addressing the issue of character is not a function of government, I would respond that the lack of character has become a very expensive part of government. That expense is evidenced by the budget of our court systems, the department of corrections, and the law enforcement agencies, as well as the cost of stolen property and the increased insurance premiums to pay for replacing it.

It grieves me when I think of how much I would rather have those folks in a university than a penitentiary. Maybe if we had been more diligent in their growing up with education programs that appeal to them, community mentoring programs to give them examples of proper adult behavior, and the simple encouragement to believe that

their lives could be better at the finish line than they were at the start, things could be different. Most of all, if we had focused on policies to help create stable families and strong fathers, we would have much less of a prison problem.

The kind of society we live in is determined by the daily decisions we make when doing the right thing is not easy or expedient. Those choices are based on a core set of principles we call character. And whether you are driving through an intersection, standing before a classroom, or running for office, character is the issue. Of course, it is never too late to change. And our criminal justice laws should recognize that.

9
A Real Mental Health System

David Keene
Former President of the National Rifle Association
and former Chairman of the American Conservative Union

"How can we move forward? One major way: rebuild the nation's mental health system — this would do far more to decrease incarceration than decriminalizing marijuana. We must also reduce the number of crimes on the books, reduce the number of crimes punishable by prison, and undertake other reforms."

Even a cursory look at the American criminal justice system will show it does not work. America locks up too many people for too long. We do little to prepare them for their release. Then we lock up more than half of them again and again.

We spend an exorbitant amount of money on a system that does not work and then argue that we lack the funds to make it cheaper and more efficient. And, too few of us have any idea of how it might be fixed.

Part of the problem stems from the relative invisibility of lawbreakers. When people are convicted and sent away, they are out of the public eye, so we forget about them until they are released. Then we brand them, refuse to hire them, and are shocked when they are arrested and end up in prison again.

The obstacles to reform have seemed insurmountable until quite recently. For decades, liberals and conservatives talked past each other. Liberals seemed only interested in the criminals and how they are treated; conservatives were viewed as interested only in punishing wrongdoers.

A declining violent crime rate, soaring incarceration costs, and empirical evidence have finally allowed policymakers to move beyond rhetoric. Liberals and conservatives are at long last beginning to work together in support of measures to improve a system that is not only failing in its mission, but is actually making the problem it is intended to fix worse. A wave of legislative reforms adopted in Texas, Georgia, Mississippi, and other states have resulted from bipartisan cooperation that would have been impossible even a decade ago.

The criminal justice system — the web of laws regulating conduct in a free society and the enforcement of those laws — exists to maximize the ability of citizens to live without fear. Punishing lawbreakers in the most humane and cost effective ways possible is a means to that end.

Of course, we need to imprison some wrongdoers lest they harm their fellow citizens, but a well-run society locks away only those who need to be kept off the streets — lest the innocent get caught up in the system. Once caught, those arrested, convicted, and incarcerated should be treated humanely and prepared to return to communities as responsible and productive citizens.

These goals are simply not being met. While we condemn the public stocks erected in the village square, we tolerate more than 4,500 federal offenses on the books along with thousands of state statutes that allow us to arrest, prosecute, and lock up anyone who runs afoul of them. Something is fundamentally wrong with a criminal justice system that imprisons millions of men, women, and even children for more crimes than any of us can imagine or count, subjects them to terrible conditions in overcrowded prisons that tend to harden them for far longer than necessary, and creates barriers that minimize their chances of succeeding once outside. The system has mushroomed over the years and no one remembers why or how this happened.

In some states, taxpayers spend more on prisons than on school systems. Prison guards see prisoners not as people, but as a source of money and jobs. Prosecutors prosper by "throwing the book" at lawbreakers who might benefit from alternative treatment. And legislators show just how tough they are by criminalizing more activities that had previously been merely frowned upon.

The Department of Justice report on the atmosphere in Ferguson, Mo., made it clear that police were aggressively citing residents for technical violations of local laws and regulations not to make Ferguson a safe place to live and work, but to add to city coffers.[1] Similarly, the New York City Police Department officers responsible for the death of Eric Garner over cigarettes were not attempting to maintain safety and order in that instance. Rather, they were using deadly force to enforce laws designed to raise money for the city. In Chicago, the 300 traffic cameras installed "to make the city's streets safer" have done nothing of the sort, but are extracting $70 million annually from Chicago drivers.[2] The purpose of criminal laws is to keep people safe, not to make money off them.

We like to believe we are a nation whose citizens live under "the rule of law." Yet if honest people are required to obey thousands of laws that make no sense to them, the police who arrest them, or the men and women who prosecute and punish them, then we all live under the tyranny of arbitrary prosecution.

James Madison drew a clear distinction in Federalist No. 62:

> It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known and less fixed.[3]

Madison would likely be appalled at the state of our laws today. Too many criminal justice system actors forget that their primary mission is not to put people in jail, but to see justice done. My Right on Crime colleague and former Prison Fellowship director, Pat Nolan, has often stated that we need to stop locking people up who simply

do not need to be locked up. That requires a full review of our laws and alternatives to incarceration.

Americans tend to overreact to problems in our effort to solve them. Ideology and good intentions, rather than a true understanding of what works and what does not, has guided and poisoned political discussions of criminal justice. In the 1970s, when crime and violence were escalating, some liberal judges blamed crime on societal shortcomings rather than the criminals themselves. They seemed willing to release even the violent and obviously guilty back onto the streets. Politicians reacted by demanding harsher and longer sentences, and enacting mandatory minimum and "three strikes you're out" laws, stripping all judges of the authority to tailor the punishment to fit the crime. During this same period abuses within the nation's mental health care system resulted in the closing of treatment facilities and the virtual dismantling of the system, leaving millions of at-risk men and women to their own devices.

How can we move forward? One major way: rebuild the nation's mental health system — this would do far more to decrease incarceration than decriminalizing marijuana. We must also reduce the number of crimes on the books, reduce the number of crimes punishable by prison, and undertake other reforms.

Six concrete suggestions:

- *Rebuild and strengthen the nation's mental health care system by ensuring the mentally ill are treated in hospitals or public treatment centers.* Today in every single state, more people diagnosed as mentally ill are in jails and prisons than in hospitals or treatment centers. Penal institutions do not treat mental illness and in fact exacerbate illnesses. One in five of those incarcerated suffer from severe mental problems that should best be treated elsewhere. The failure of the mental health care system to help the mentally ill accounts for as many as 1,000 homicides and 3,000 suicides each year. Some states have made progress. In New York, "Kendra's Law" requires people with severe mental problems to take prescribed

medications.[4] It has had a demonstrated empirical impact on crime, violence, and recidivism.

- *Reduce the number of criminal offenses.* The number of criminal acts in the United States is mind-boggling. But it is only a fraction of the actual offenses that can lead to criminal sanctions. There are thousands of state and federal regulations that carry criminal penalties without being explicitly labeled as crimes. Those should be identified and modified.[5]

- *Reduce the number of crimes punishable by prison.* People who do not pose a realistic threat to society, especially nonviolent lawbreakers, should be punished with alternative sanctions, such as mental and health treatment or probation. Kentucky, for example, has a program to send heroin addicts to treatment, not lock them up.[6]

- *Revise mandatory minimum and three strikes laws that keep people in prison far longer than necessary.* Very long terms are expensive, do not serve a public safety purpose, and make it difficult to readjust to freedom.

- *Reform how and when people on probation and parole get sent back to prison.* States can follow the model of Hawaii's Opportunity Probation with Enforcement ("HOPE") program. HOPE has had a remarkable impact on recidivism and incarceration. Judge Steve Alm, a former U.S. Attorney, found that a plurality of the court's work involved sending people back to prison for parole and probation violations.[7] By instituting a system of fair, swift, and certain punishment for such violations, Judge Alm changed the behavior of those previously viewed as incorrigible. Other states are replicating this success, and more states can follow suit.

- *Reduce the stigma attached to those who have served their time.* Some repeat offenders deserve their return visit, but many

> are almost forced into a life outside the law by circumstances resulting from their first arrest, conviction and sentence. There was a time when one "paid" his or her "debt to society" and could move on, but technology, the type of jobs now available, and the institutional safeguards put in place by many businesses and their insurers has made that more difficult.

Meaningful reform is possible and happening in some places. Prison splits families, produces negative role models, and reduces family incomes. Incarceration can cost more than $100,000 per year, more than an Ivy League education.[8] That our country allows this system to then get away with saying there is no money for training or treatment is laughable and deeply saddening. Once a prisoner is released, successfully reentering society requires a fresh perspective and whatever retooling and retraining we can assess and provide.

Jails and prisons are here to stay and truly dangerous lawbreakers deserve long sentences. But this should not obscure the fact that much can and should be done to improve the system. If there was ever a system that required a comprehensive overhaul, it is our criminal justice system.[9]

10
Graduated Reentry

Mark A.R. Kleiman
Professor of Public Policy
*University of California, Los Angeles**

"We need to swap prison for effective supervision. Prisoners should be released after serving some portion of their time behind bars. They should then spend the rest of their sentence outside bars, gradually earning their way toward freedom: a process of 'graduated reentry.' It can help keep down crime, our prison population, fiscal costs, and recidivism."

America's prison state is a disaster. One percent of the adult population is behind bars. We have five times as many prisoners as any other advanced democracy.[1] And corrections is squeezing higher education out of state budgets.

This disaster is completely unnecessary. Our prison system is built on the false notion that the only way to punish someone and control his behavior is by locking him up.

While it lasts, prison is horrible for the prisoner and expensive for the state. It often does not get better when it ends: Of the people released from prison today, about 60 percent will be back behind bars within three years. The transition from prison to the "free world" can be very tough, both for the offender and for the neighborhood he returns

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to. In the month after getting out, a person released from prison has about a dozen times the mortality rate of comparable people in the same neighborhood, with the leading causes of death among former inmates being drug overdose, heart attacks, murder, and suicide.[2]

This should not come as a surprise. Consider someone whose conduct earned him a prison cell. Typically that person came into prison with poor impulse control, weak if any attachment to legal employment, and few marketable skills. More often than not, he is returning to a high crime neighborhood. Many of his friends on the outside are themselves criminals. If he is lucky and has been diligent, he has picked up a GED while in prison. But he has not learned anything about how to manage himself in freedom, because he has not had any recent freedom. And he has not learned to provide for himself, because he has been fed, clothed, and housed at public expense.

Now let him out with $40 in his pocket, sketchy if any identification documents, and not enrolled for basic income support, housing, or health insurance. Even if he has family or friends who can tide him over the immediate transition, his chances of finding legitimate work in a hurry are slim. If he is not working, he has much free time to get into trouble, and no legal way of supporting himself.

This formula for failure leaves us stuck with mass incarceration. Luckily, there is a better way. We need to swap prison for effective supervision. Prisoners should be released after serving some portion of their time behind bars. They should then spend the rest of their sentence outside bars, gradually earning their way toward freedom: a process of "graduated reentry." It can help keep down crime, our prison population, fiscal costs, and recidivism.

To get back to our historical level of incarceration, we would need to reduce the prisoner headcount by 80 percent. How can we do that while also protecting public safety? By turning ex-criminals into productive, free citizens.

For the transition from prison to life outside to be successful, it needs to be more gradual. If someone needed to be locked up yesterday, he should not be completely at liberty today. And he should not be asked to go from utter dependency to total self-sufficiency in one flying

leap. He needs both more control and more support. Neither alone is likely to do the job.

Of course both control and support cost money. But prison costs even more. The trick is to start the reentry process before the prisoner's release date, so the money you spend in the community is balanced by the money you're not spending on a cell.

Start with housing. Spend some of the money that would otherwise have financed a prison cell to rent a small, sparsely-furnished efficiency apartment. In some ways, that apartment is still a cell, and the offender is still a prisoner. He cannot leave it or have visitors except as specifically permitted. The unit has cameras inside and is subject to search. But he does not need guards, and does not have to worry about prison gangs or assault.

Drug testing and sanctions can avoid relapse to problem drug use. GPS monitoring can show where he is all the time, including whether he is at work or at home when he is supposed to be there. This makes curfews enforceable and keeps him away from personal "no-go" zones (i.e. the street corner where he used to deal). GPS would also place him at the scene of any new crime that he might commit, thus drastically reducing his chances of getting away with it and therefore his willingness to take the gamble in the first place. The apartment functions as a prison without bars.

In some ways, it is a fairly grim existence, especially at the beginning: The offender starts off on a strict curfew, allowed out only for work, for job-hunting, for necessary personal business (food shopping, medical care, service appointments) and to meet the correctional officer in charge of his supervision. And he is required to work full-time at a public-service job. On top of that he has to spend time looking for an ordinary job. He never touches money except for small change; he makes purchases as needed with an EBT or debit card, and only for approved items. The "no-cash" rule makes it harder to buy drugs or a gun and reduces the benefits of criminal activity.

Minor violations — staying out beyond curfew, using alcohol or other drugs, missing or misbehaving at work, missing appointments — can be sanctioned by temporary tightening of restrictions, or even a couple of days back behind bars. Major violations — serious new offenses, attempts to

avoid supervision — lead to immediate termination from the program and return to prison. Not, on the whole, an easy life. But it is much simpler than the challenge of a sudden transition from prison to the street.

If you were to ask a prisoner who has now served two years of a five-year sentence (for drug dealing, say, or burglary), "Would you like to get out of prison right now and into the situation I just described?" the odds of his saying "Yes" would be excellent. (Entry into the program could actually be offered as a reward for good behavior in prison.)

The offender's freedom increases over time, as long as he does what he is supposed to do. While violations of the rules are sanctioned, compliance and achievement are rewarded with increased freedom. Every sustained period of compliance with the rules leads to some relaxation of them. Successful completion of the first 48 hours out of prison might earn a few hours' freedom to leave the unit other than for work or other necessary business. Further relaxation might change the rule from "out only as allowed" to a curfew ("not out after 6 p.m."). All of those transitions would be by formula, so that the subject knows the exact timing of his next milestone and exactly how much freedom he will obtain if he hits it. That tight coupling between behavior and results is the best way to gradually build the habits that will allow the ex-offender to stay out of trouble.

Eventually the transition from a prisoner in a cell to a person with a job and an apartment is complete. At that point, the ex-offender could be released from his legal role as a "prisoner" and put on parole or other post-release supervision, or even given unconditional liberty.

The ex-prisoner's biggest goal would be finding and holding a job. From the program's viewpoint, an employed person should be virtually cost-neutral other than monitoring costs; in most housing markets, even a minimum-wage job can pay the rent on an efficiency apartment plus groceries. That means that every re-entrant who finds a job would allow for the release of another prisoner. Thus, such a program could grow to a scale big enough to noticeably change the incarceration rate.

Once a former prisoner has become self-supporting, and developed the habits necessary to hold a job, his risk of recidivism plunges. For a re-entrant who gets and holds a real job, life would become much less

prison-like. The price of sustained liberty is sustained employment.

Given the lamentable record of offender employment programs, finding and holding a job might seem out of reach for most offenders. But the success of some job-oriented, incentive-based programs — federal probation in St. Louis, the Montgomery County Pre-Release Center in Rockville, Md., and the Alternatives to Incarceration program in Georgia — seems to indicate that if supervision can make offenders genuinely interested, many of them are capable of getting and holding jobs.[3]

There is good reason to think that the success rate would be higher for graduated release than for the current approach, and that the costs of the program could be more than recouped from the savings in reduced incarceration. But budget savings are not the main goal: The greatest benefits would flow to the offenders, to their families, to their neighborhoods, and to those who otherwise would have been the victims of their future crimes.

Getting back to a civilized level of incarceration while continuing to push crime rates down is out of reach using current policy tools. We need big new ideas that can be tested, and scaled up if they work. Graduated reentry is one such idea. We should test it with a few dozen prisoners at one or two sites, work out the kinks, evaluate it, and — if it works — expand it and try it elsewhere. If it fails, go back to the drawing board. But sticking with the existing system, and accepting its disastrous results, is not a reasonable choice.

11
A New Way of Policing

Cathy L. Lanier
Chief of Police
District of Columbia Metropolitan Police Department

"Merely responding to crimes and increasing the number of arrests are indications of failures of policing. Rather, the primary task in policing must be to prevent crime, not merely respond to it. There are four fundamental tenets of our 'crime reduction' policing philosophy: strengthening trust with the community, cultivating relationships to encourage information from community members to the police, increasing the flow of information from the public, and increasing the flow of information within the department."

It was not long ago — as recently as the early 1990s when I first began my career as a police officer — that the number of homicides in the District of Columbia regularly topped 400 a year.[1] Violence and disorder were taking a severe toll on the city. The street gangs and cold brutality of the associated drug trade seemed to consume entire neighborhoods, and the violence soon grew to epidemic proportions. The city had quickly gained a notorious reputation as the "Murder Capital of the World" and the "City of Unsolved Homicides." The unacceptable levels of crime not only resulted in needless suffering for numerous families, but opened a large divide between the police and the community, who felt the police were doing little to curb the violence. The city was reeling, with the perceived lack of public safety driving both residents and businesses out of the city, which only further hampered the city's ability to address the public's concerns.

Times have certainly changed. In stark contrast to the violent days of the 1990s, the last several years have seen historic reductions in crime. From 2008 to 2012, we reduced homicides by more than half — to a level the city had not seen in nearly 50 years. We ended 2012 with 88 homicides, and the annual number has remained near 100, an almost unimaginable notion when compared to the 482 lives lost in 1991.[2]

This progress did not occur overnight. It took several years and a concerted effort to implement an effective policing strategy for combating violent crime and rebuilding the relationship between the police and members of the community. Even now, we do not consider the success of the last several years as the end of our important work.

There are four fundamental tenets of our "crime reduction" policing philosophy: strengthening trust with the community, cultivating relationships to encourage information from community members to the police, increasing the flow of information from the public, and increasing the flow of information within the department. Other cities may be able to build upon this policing philosophy to both reduce crime and strengthen ties with communities. With minimum cost and the opportunity for flexibility, our approach has resulted in historic low levels of violent crime and fewer homicides in a city with a notoriously violent past.

Many cities drove down violent crime through a combination of "hot spot" and "zero tolerance" policing. Police identify specific areas through the density mapping of violent crimes and then flood those areas with extra officers who are instructed to use a zero tolerance approach to any criminal offense. We tried this in Washington. While the theory is valid, it unfortunately did little to curb the violence in the District. In fact, these approaches had almost the opposite effect. Because officers had to manually process each arrest and respond to court to present every arrest, many of the best officers were being pulled off the street for minor arrests, thereby leaving the neighborhoods in the hands of the more violent predators.

The other problem with employing a zero tolerance approach: The tactics drove a wedge between the police and the members of the

communities. The residents, who were often the victims of violent crimes, felt betrayed by their own police department. Not only did the police label their neighborhoods as essentially "bad," but officers would charge in and arrest neighbors for minor offenses, while the truly violent predators continued to victimize the community. The community perceived this as officers being too afraid to go after the real criminals or simply not caring about the community. Even worse, some community members began to believe that the police may even be conspiring with violent gang members who were known to be involved in violent attacks but were never held accountable. These attitudes only served to further distance the community from the police, thus making it nearly impossible for police to obtain critical information when crimes did occur.

To fix this real fear of crime and distrust of the police, the philosophy inside the department had to shift. Merely responding to crimes and increasing the number of arrests are indications of failures of policing. Rather, the primary task in policing must be to prevent crime, not merely respond to it. Unfortunately, somewhere along the way, officers and administrators began to believe they could neither stop crime nor prevent homicides. Neither belief is true. Everyone from the lowest ranking officer to the highest level executive has an important role in preventing crime. This transition in thinking is the first step to a more modern and effective system of policing. This is the first principle: You must strengthen ties with the community in order to achieve the ultimate goal of preventing crime.

Next, we sought to define "community policing" in Washington and educate the officers responsible for carrying out the mission. This proved challenging as zero tolerance policing had actually been used as a community policing technique in other cities.

We developed principle two: what we call "developing sources." This involves cultivating members of the community to be sources of information on future and past crimes. Historically, source development was primarily the function of specialized units such as narcotics, and sources were often developed through arrest or the threat of arrest. This stands in direct conflict with and threatened

to undo what our department had accomplished through principle one. To initiate a change in those methods, we deployed uniformed patrol officers on foot in the most violent areas, where they focused on developing sources within the community. With more than 300 officers on foot, mountain bikes, and Segways, this shift in policing was instantly recognized by residents. Their skepticism began to truly subside as residents got to know the names of the officers who routinely stopped to speak to them as they sat on their porches.

In the past, officers would arrest people for minor crimes, such as an open container of alcohol, alienating the very community we relied on for information. Officers instead developed new approaches to those situations, and began to build trust among all segments of the community. Since officers had established a positive relationship with the residents, they would often get tremendous amounts of information when a crime would occur. Within a short period of time, the uniformed patrol officers became the primary sources of information about serious crimes, gang members, and violent repeat offenders.

The shift in the public's trust of the police officers led to the development of the third principle: finding more ways for the public to get information to the police. While sophisticated technology in law enforcement — such as mobile computers, license plate readers, and gunshot detection — are all important tools, there are often simple and low cost tools that can have the biggest impact in a department's ability to receive, share, and use information to reduce violent crime. We began with automating the report-taking process and eliminating mandatory court appearances. This allowed officers to spend more time in the community rather than dealing with burdensome administrative matters. Each patrol district established a community listserv, which established a forum for neighborhood residents, with more than 16,000 members and growing, to communicate and engage with police around the clock. Detectives started using Facebook, Twitter, and other social media to investigate and communicate issues regarding crime. We created an anonymous text tip line to expand opportunities to develop sources. This approach proved effective, and we gained a flood of new information.

This led us to the fourth principle: The sharing of information within the department needed a not-so-subtle, persuasive shove forward. Vital information that should have been shared lingered in individual units. Patrol officers had information on violent offenders that had to be shared with detectives, the gang unit had information on newly validated gang members that needed to be shared with patrol officers, and homicide detectives often had information about potential retaliation that had to be shared with patrol officers — but none of this necessary information sharing was occurring.

In order to close the loop, we established a system of accountability within the department. We ensured that officers were charged with this responsibility and bore consequences if they failed to do so. Supervisors were tasked with working with subordinates to develop processes to rapidly disseminate the most critical information at all levels. The gang unit began analyzing information from numerous reports and sources to produce a daily gang conflict report that was shared among all units. Within minutes of gunfire in an area with an active gang conflict, uniformed patrol and gang unit members started to deploy to rival gang territory to contact gang members. Homicide detectives routinely alerted district commanders to any potential retaliation associated with active homicide investigations. This resulted in dramatic reductions in retaliatory violence in the most violent neighborhoods.

The department's philosophy to reduce violent crime has paid off tremendously. Our officers have garnered trust with the community, which ultimately led to more sources, an increased flow of information from the public, and more useful intelligence within the department about criminal activity. We were able to further our fundamental mission of reducing crime and building safe, thriving neighborhoods.

12
A System that Rewards Results

Marc Levin
Founder and Policy Director of Right on Crime and
Director of the Center for Effective Justice at
the Texas Public Policy Foundation

"The federal government and states across the country should take a page from the recent success of states like Texas, Georgia, and South Carolina. Specifically, federal policymakers should reduce mandatory minimums for nonviolent crimes and offer nondisclosure to ex-offenders. Congress should also reduce the number of federal criminal laws, ensure clear *mens rea* requirements, codify the rule of lenity, and pull back and allow states to enforce our criminal laws."

Keeping Americans safe, whether accomplished through our military or justice systems, is one of the few functions government should perform. However, that function should not be exercised without limits. We must move from a system that grows when it fails to one that rewards results.

When crime began increasing in the 1970s, Americans, and particularly conservatives, were correct to react against certain attitudes and policies that had arisen in the previous decade. The "if it feels good, do it" mentality and tendency to emphasize purported societal causes of crime — while de-emphasizing fundamental individual responsibility — was one culprit for a soaring crime rate. In response, we saw a nearly six-fold increase in incarceration, some of which was necessary to ensure violent and dangerous offenders were kept off the streets.[1] Public safety did increase. But we went too far, sweeping too

many nonviolent, low-risk offenders into prison for long terms.

As it became clear that the incarceration rate was unnecessary and unsustainable, some of those same conservatives as well as a new generation of fiscal and social conservatives began to look for ways to keep this increased safety without needlessly and expensively locking up people who posed no threat to it. These leaders have helped pioneer today's national emerging call to reduce overincarceration.

Few would have expected some of the most significant moves to right-size and modernize America's bloated criminal justice system would have begun in Texas, a state not known for going easy on those who break the law. But that is exactly what happened.

In 2005, the Texas Public Policy Foundation launched a program to reform the state's criminal justice system. Along with other advocates, state legislators, and our governor, we worked to achieve a historic shift in criminal justice policy away from building more prisons and toward strengthening alternatives for holding nonviolent offenders accountable in the community. Since making this shift in 2007, Texas has dropped its incarceration rate by 12 percent. And our safety has actually *increased*. Our crime rate dropped by 25 percent, reaching its lowest level since 1968. Meanwhile, taxpayers saved $2 billion that would have gone toward new prisons.[2]

Building on our success in Texas, we launched Right on Crime in 2010. Our Statement of Principles, signed by conservative leaders and leading criminal justice experts — including Jeb Bush, Newt Gingrich, Ed Meese, Rick Perry, Ken Cuccinelli, Bill Bennett, Grover Norquist, J.C. Watts, John DiLulio, and George Kelling — explains how conservative principles such as personal responsibility, limited government, and accountability should apply to criminal justice policy. Right on Crime seeks to: maximize the public safety return on the dollars spent on criminal justice; give victims a greater role in the system through restorative justice approaches and improving the collection of restitution; and combat overcriminalization by limiting the growth of non-traditional criminal laws.

Since then, Right on Crime has worked with conservative governors and legislators across the country to advance tough and smart criminal

justice reforms. In most places, such as Georgia, Ohio, Pennsylvania, and South Carolina, these reforms have passed unanimously or with just a few votes against them. Conservatives were among the most vocal champions of these changes. The reforms in these states have been similar: strengthening and expanding problem-solving courts; reducing penalties for low-level drug possession; reinvesting prison savings into proven community corrections and law enforcement strategies; imposing sanctions for violations of parole and probation terms; increasing ability to earn time toward release from prison; and instituting rigorous, results-oriented performance measures to hold the system accountable for lowering recidivism.

These reforms have achieved wide success. In 2010, South Carolina passed legislation that created graduated sanctions for technical violations of parole and probation, reduced penalties for low-level drug possession, increased supervision for inmates upon release from prison, increased earned credits for probationers, used risk assessment to guide supervision levels, and reallocated 35 percent of prison savings to supervision. Since then, the state has closed two prisons and experienced a 9 percent drop in its crime rate. Moreover, the reductions in supervision revocations in the first two years alone saved the state $7 million.[3]

While state incarceration rates have been declining slightly in the last few years, largely due to these reforms, the federal prison system continues to swell. Since 1980, the number of federal prisoners has ballooned by over 700 percent.[4] Most of this increase has been driven by the influx of low-level drug offenders who in previous decades would have been tried and convicted in state courts. Of the 22,300 federal drug offenders sentenced in 2013, half had little or no prior criminal record and 84 percent had no weapon involved in the crime — and most of the 16 percent who did merely possessed the weapon. Despite these facts, 95 percent of all federal drug offenders went to prison in 2013, and 60 percent received mandatory minimum sentences of 5, 10, or 20 years, or even life without parole.[5]

Federal judges have often lamented that they are forced to give sentences that are unjust and far beyond what is needed to sufficiently punish the offender and ensure public safety. One such case: a 40 year-

old man named Robert Riley who was convicted in federal court in 1993 of selling a miniscule amount of LSD. Due to automatic statutory sentence enhancements based on his prior drug convictions, which also involved small amounts, Riley was sentenced to life without parole. The judge, who was nominated by President George H. W. Bush, said the sentence he was forced into was "unfair" and wrote a letter supporting presidential clemency, which has proven futile thus far.

In addition to drug cases, there are also many problematic federal cases involving guns legally owned by ex-convicts. Some such defendants have received mandatory terms of 10 to 40 years even when the prior offense was nonviolent and decades ago their guns would have been legally owned. In one case, a man used a 60-year-old hunting rifle to hunt turkey in rural Tennessee and the judge was forced to impose a 15-year mandatory term, which the judge himself found was "too harsh."

These judges are correct. These sentences are unfair and too harsh. They are also unnecessary. The federal government and states across the country should take a page from the recent success of states like Texas, Georgia, and South Carolina. They have proven that it is possible to rein in mandatory minimums for nonviolent offenses without decreasing public safety. Specifically, federal policymakers should reduce mandatory minimums for nonviolent crimes and offer nondisclosure to ex-offenders. Congress should also reduce the number of federal criminal laws, ensure clear *mens rea* requirements, codify the rule of lenity, and pull back and allow states to enforce our criminal laws.

Texas and Indiana are among the states that offer "nondisclosure," whereby after a period of time ex-offenders who have proven to be law-abiding citizens can apply to have their record made non-public.[6] Some 70 million Americans now have the scarlet letter of a conviction, which makes it far more difficult to secure employment and housing — hurting them, their families, and the economy overall, and making it more likely that they will reoffend.[7] To further prevent people from becoming trapped in the revolving prison door, we have worked in states such as Texas and Louisiana to enact legislation that ensures ex-offenders can obtain provisional occupational licenses and immunizes employers from being sued simply for giving an ex-offender a second chance.

Finally, it is time to pare back the astronomical growth in the breadth of federal criminal law, which is in tension with the primary constitutional role of state and local governments in the area of criminal justice. There are now more than 4,500 federal statutory offenses on the books, and hundreds of thousands of regulations carrying criminal penalties. We recommend that all necessary federal criminal laws be consolidated into one federal criminal code with clear *mens rea* requirements, which will make it simple for the average citizen to determine what is prohibited, and that agency regulations be precluded from carrying criminal penalties unless expressly authorized by Congress. Congress should also codify the "rule of lenity," meaning that courts should read ambiguous criminal laws in favor of defendants.

When it comes to conduct that is truly properly criminalized, the limited federal criminal justice resources available should be refocused on areas where the federal government is uniquely situated to supplement the role of states and localities, such as matters involving homeland security and international drug and human trafficking. The garden variety drug, property, or even violent offense that occurs on one street corner can and should be addressed by prosecution at the local and state levels. Congress and the administration should look at how to develop mechanisms, such as guidelines and performance measures, to ensure federal prosecutorial resources are being appropriately prioritized. We must be careful that in our attempts to protect the safety of all people, we do not infringe on the liberty of others. The recent successes of many states in reducing crime, imprisonment, and costs through reforms grounded in research and conservative principles provide a blueprint for reform — at the federal level and for states across the country.

13
Prosecutorial Prioritization

Hon. Janet Napolitano
Former United States Secretary of Homeland Security
and former Governor of Arizona

"Prosecutorial discretion is as fundamental a principle and practice to criminal justice, writ large, as it is to immigration enforcement. And as we contemplate reforms of our nation's criminal justice system, we must remember to preserve those elements, like prosecutorial discretion, that are essential to our eternal quest for balance and fairness in the service of justice and freedom."

Sometimes the most meaningful reforms are the ones in which a longstanding, fundamental principle or practice is not altered, but instead preserved. In terms of criminal justice reform, prosecutorial discretion certainly fits into this category.

It comes into play at every level of our legal system — from the cop on the beat deciding whether to write a parking ticket, or give chase to the bank robber sprinting down the block, to the establishment of enforcement priorities by state and federal regulators charged with policing factory pollution, workforce safety rules, and the like.

What follows is the story about the exercise of prosecutorial discretion on the largest of scales, an immigration-related initiative developed on my watch as Secretary of the Department of Homeland Security (DHS).[1]

I am referring to the Deferred Action for Childhood Arrivals, or DACA, which ultimately affected the lives of hundreds of thousands of young immigrants collectively known as the "Dreamers." This was

an exercise that required careful navigation between the potentially conflicting dictates of doing what is right, of doing what is lawful, and of doing what is defensible, both in the court of law and, to a lesser degree, the court of public opinion.

By 2012, there were an estimated 1.4 million Dreamers living in the country.[2] Named after the proposed "DREAM Act"[3] legislation first introduced in 2001, which would have given them legal status and a path to citizenship, Dreamers were brought into the country as children. They were kids who in all but the letter of the law were Americans. All lived in fear of deportation, and all endured everyday difficulties unknown to their American-born contemporaries.

As a former U.S. Attorney, Attorney General, and Arizona Governor, I came to DHS fully aware that many of our immigration enforcement policies made little sense, and with a fundamental question on my mind: How do we prioritize and use immigration enforcement resources responsibly without abandoning our executive branch obligation to "take care that the laws be faithfully executed"?

The U.S. Congress appropriates resources specifically to DHS removal and detention operations to remove fewer than 2 percent out of the estimated 11 million undocumented individuals in the U.S.[4] These numbers imply that, on an operational level in the field, choices were being made about who should be removed, thus raising a host of important questions about priorities and enforcement for DHS leadership.

We would never tell immigration enforcement agents that they should stop enforcing immigration laws. But we certainly could tell them how to prioritize enforcement efforts given the limited resources that Congress provided the Department.

And so early on at my time at DHS we issued a series of memos to Immigration and Customs (ICE) agents in the field, instructing them to focus their efforts on the "bad actors" — individuals who presented risks to national security, or who had committed felonies, or who had joined gangs, and so on. As for military veterans; long-time, law-abiding residents; nursing mothers; people with certain family ties; the severely ill; and Dreamers — policy memos issued by the ICE director made clear that these no longer fit the priorities.

Prosecutorial discretion has a long and distinguished history in immigration law, and so we were confident that we were on solid legal ground when it came to setting priorities for immigration enforcement efforts. Our attorneys had done a great job exploring the issue — sifting through the precedents; pursuing legal questions that ranged from Constitutional authority, to Congressional intent, to the legal definition of the word "shall" (which is not the same as "must always").

A key element was *Heckler v. Chaney*, a seminal 1985 Supreme Court case involving the FDA's authority to exclude or allow certain drugs to come to market. In that case, the Supreme Court had ruled, "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."[5]

Another important precedent was the Court's 1999 decision in *Reno v. American-Arab Anti-Discrimination Committee*, where it explicitly recognized the executive branch's authority to exercise prosecutorial discretion in the immigration context.[6]

With this legal footing in mind, and with progress toward any meaningful immigration reform clearly stalled in Congress, I assembled a small team of advisers in the spring of 2012 and asked them this: What, through the exercise of prosecutorial discretion, can we do about the Dreamers, short of a blanket amnesty and within the parameters of the law?

I wanted to create a potential pathway to deferred action for *all* Dreamers, not just the minority already caught up in the system and facing removal proceedings. In immigration-speak, the term "deferred action" generally means to suspend moving forward with certain cases for a fixed period of time. It does not mean granting amnesty or otherwise permanently resolving immigration status. But it does permit someone to live free from fear of deportation, and to obtain authorization to work.

To apply deferred action in the form of a categorical exercise of prosecutorial discretion to an entire group across the board raises serious questions. It runs the risk of appearing to make law, and usurping Congress. Thus, it would be crucial to underscore that each case would be assessed

individually, on its own merits — similar, but not identical, to how a prosecutor decides to charge a case. The Dreamers would be required to step forward individually and apply for deferred status. All applicants would need to pass background checks. Those who qualified would be eligible for work authorization, pursuant to a longstanding regulation that granted such eligibility to those who received deferred action.

At this point, I could not say with certainty that we would be able to pull off this approach. Individualized review of potentially hundreds of thousands of cases would require building complex new systems and processes within the existing bureaucracy — a daunting challenge. What I *did* know was that this was the right thing to do, and that it was lawful — although this latter view, we knew, would almost certainly need to be defended, both in court and in the court of public opinion.

As DACA was intended to apply to young people who came to the United States as children, we required that an individual must have arrived in the United States before turning 16 and be under the age of 30 on the date DACA was publicly announced. To reflect that those who received deferred action should have strong roots in the United States, we required that individuals must have lived in the United States for five years prior to the implementation of DACA, and be present in the United States on the DACA announcement date. And to ensure that recipients of DACA were productive members of their communities, we required that individuals must be currently in school, have graduated from high school, have obtained a GED, or be a veteran and not have a serious criminal record or pose a threat to public safety.

The White House then asked us to walk them through the legal rationale and the implementation challenges. The scale of our proposal was significant, perhaps more so than any previous exercise of prosecutorial discretion in the immigration context. Our White House colleagues asked serious, tough questions. Eventually, they reached a comfort level with our legal position — DACA was well within the legal authority of DHS — and with our preparations for implementing DACA across the country.

On June 15, 2012, I issued a memorandum to the heads of the DHS agencies that enforce immigration laws, handle immigration benefits, and police the borders and ports.[7]

"By this memorandum," it began, "I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation's immigration laws against certain young people who were brought to this country as children and know only this country as home. Additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities."

I closed with the following: "This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here."

We received what appeared to be early support for our efforts in a decision by the U.S. Supreme Court that came less than two weeks after our announcement. Although the issue before the Court in *Arizona v. United States* was Arizona's restrictive immigrant enforcement measures, Justice Kennedy wrote for the majority that "a principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all."[8]

Nevertheless, we soon, as anticipated, faced a legal challenge. Though the vast majority of ICE agents dutifully executed on DACA, and conducted themselves professionally and responsibly, a handful of immigration agents brought a lawsuit that challenged our theories of prosecutorial discretion. They argued that DACA required them to break the law. A district court judge in Dallas surprised us, and most legal scholars, by ruling the case might have merit.[9] He then dismissed it on the grounds that it belonged in an administrative setting, not in federal court.[10] The decision has been appealed and is pending before the Fifth Circuit.

In the political arena, our Congressional critics attacked DACA as both an open invitation for young people to illegally cross our borders, *and* a Constitutional power grab in the form of an executive amnesty

program. It is neither. DACA is no substitute for comprehensive immigration reform. But in the absence of reform action by the House of Representatives, something needed to be done to address the plight of the Dreamers. Our answer was to exercise prosecutorial discretion in the form of DACA. It was the right thing to do, and the lawful thing to do.

In closing, I would note that prosecutorial discretion is as fundamental a principle and practice to criminal justice, writ large, as it is to immigration enforcement. And as we contemplate reforms of our nation's criminal justice system, we must remember to preserve those elements, like prosecutorial discretion, that are essential to our eternal quest for balance and fairness in the service of justice and freedom.

14
Abolish the Death Penalty, Invest in Public Safety

Hon. Martin O'Malley
Former Governor of Maryland

"In tough times, we must make smarter, more principled decisions. The death penalty is expensive, ineffective, and wasteful as a matter of public policy. It is unjust as historically applied. And it has no place in a principled 21st century nation."

Today, there is a growing enlightenment in the world community regarding the value of capital punishment. The majority of public executions now take place in just seven countries: Iran, Iraq, China, North Korea, Saudi Arabia, Yemen, and the United States of America.[1] Our home is one of the last refuges of the death penalty.

Our nation was not founded on fear, or on revenge, or on retribution. Freedom, justice, equal rights before the law, and a fierce belief in the dignity of every human being — these are the foundational notions of what it means to be American. Our values are our treasures, and the death penalty is incompatible with them.

Nevertheless, advocates of the death penalty will argue that the death penalty is firmly rooted in our legal tradition, extending to its roots in England. But just as our notions on equality and civil liberties have rightfully changed since the early days of the republic, it is time to reconsider the place of the death penalty in our criminal justice system — and whether we should, as a nation, replace the death penalty with life without parole.

As we weigh this decision, there are several questions, to my mind, that we must address: First, does the death penalty work? Second, is the death penalty an effective use of limited taxpayer dollars? And finally, is the death penalty consistent with our values?

The answer to each, I believe, is an emphatic no.

The death penalty does not advance public safety. It has proved countless times to be an ineffective deterrent to violent crime. In fact, the average homicide rate in states with the death penalty is 4.4 per 100,000 people. In states without it, the rate is 3.4 per 100,000 people.[2]

Just consider the example of Baltimore City. When I decided to run for Mayor in 1999, my city had become the most violent, most addicted, most abandoned city in America. I was very close to, and indelibly moved by, the pain, suffering, and tragedy. I was witness to horrendous crimes — violent crimes, murderous crimes, crimes against humanity, crimes against children. And having the death penalty on the books did absolutely nothing to stem the growth of the city's crime and despair.

But the city government and its citizens decided to act. With concerted effort, we drove down violent crime by 42 percent in Baltimore. Not because of the existence of the death penalty, not because of great use of the death penalty, but because we employed new strategies to work to reduce violence. We actively combated crime. We focused on the collection of timely, accurate information that could be shared by all. We focused on direct and rapid deployment of resources to where they would do the most good. We focused on solving the crimes the death penalty did not deter, on more effective prosecutions, and on better and more widely available drug treatment. All these efforts worked. And together with law enforcement, we — not the death penalty — drove down violent crime and homicide to three-decade lows.[3]

The death penalty is also costly and ineffective governance. Despite being one of our weakest weapons in combating crime, it is enormously expensive: Sentencing a prisoner to death costs $400,000 more than sentencing one to life in prison. Given that 56 people have been sentenced to death in Maryland since 1978, our state has spent about $22.4 million more than it would have to imprison those people for the remainder of their lives.[4]

Moreover, the $22.4 million we spent in Maryland could have paid for 500 additional police officers or provided drug treatment for 10,000 of our addicted neighbors.[5] Every dollar we throw at maintaining an ineffective death penalty is a dollar we are not investing in the strategies, like those we followed in Baltimore, that actually work to save lives. Every dollar spent maintaining an antiquated system is a dollar deferred from creating a stronger, safer America.

Finally, the death penalty is not just. There are discrepancies in how we administer the death penalty on the basis of race. Defendants accused of murdering white victims are significantly more likely to face a death sentence than those accused of killing non-white victims. Although African Americans represent 43 percent of all death row inmates, they make up only 13 percent of the population at large. And a minority defendant is three times more likely to receive the death penalty than is a white defendant.[6]

Nor can we be certain that any defendant is being rightly convicted, for the death penalty is tragically subject to human error. It is unconscionable that an innocent person can be put to death by their own government — and yet, each year from 2000 to 2011, an average of five death row inmates was exonerated nationwide. And in Maryland, between 1995 and 2007, our state's reversal rate for the death penalty was 80 percent.[7]

The death penalty is simply inconsistent with the principles of our nation. If the death penalty as applied is inherently unjust, costly, and lacks a deterrent value, we are left to consider whether the value to society of partial retribution outweighs the cost of maintaining capital punishment. I believe that it does not. The damage done to the concept of human dignity by our conscious communal use of the death penalty is far greater than the benefit of a justly drawn retribution.

Our laws must be above the human temptation for revenge. They must not be an instrument for us to lash out in pain and anger. This will inevitably leave us with only bitterness and resentment, fraying the ties between each of us. Rather, our laws aim to strengthen those ties by using our resources to strengthen our communities and find innovative solutions to fight violent crime. Far more good will come by ending

violence and saving thousands of lives, than by ending the life of one person who contributed to violence.

For these reasons, in Maryland, we replaced the death penalty with the punishment of life without parole. In 2013, Maryland became the first state south of the Mason-Dixon Line to repeal capital punishment. The bill was supported by a broad coalition of victims' families, communities of color, law enforcement officials, faith groups, and civil rights leaders. I was proud to sign that bill. And, in December 2014, after speaking with the families of victims, I decided to commute the sentences of Maryland's four remaining death row inmates to life in prison without the possibility of parole as one of my final acts as governor.[8]

Across the nation, the tide is turning. Public support for the death penalty is at its lowest point in 40 years. In 2014, 72 people were sentenced to death, compared to about 300 per year in the mid-1990s. The number of states without capital punishment now totals 18, and Delaware, New Hampshire, and Kansas are also weighing repeal.[9] As momentum continues to shift toward repeal in state after state, there is real hope that America will soon join the rest of the free world in abolishing the death penalty once and for all.

In tough times, we must make smarter, more principled decisions. The death penalty is expensive, ineffective, and wasteful as a matter of public policy. It is unjust as historically applied. And it has no place in a principled 21st century nation. Instead we will look now for more creative, direct, and powerful tools to fight crime and ensure that each American remains safe. All of our leaders need to be held accountable to that standard.

15
Restore Fairness in Sentencing

Hon. Rand Paul
United States Senator for Kentucky

"As we debate the numerous policies that brought us to this point — mandatory minimum sentences, militarization of the police, overincarceration, and others — we must remember the lives that have been and continue to be impacted by these flawed policies. We should start by eliminating mandatory minimum sentences. Few policies have been as deeply flawed or destroyed as many lives."

Our nation's laws should focus on imprisoning the most dangerous and violent members of our society. Instead, our criminal justice system traps nonviolent offenders — disproportionately African-American men — in a cycle of poverty, unemployment, and incarceration. Our government's administrative and regulatory laws have become so labyrinthine that not even our federal agencies, let alone our citizens, know exactly how many laws are on the books.

Congress' failure to confront these problems has created what Congressman John Lewis (D-Ga.) calls a "growing discontent in this country." The lack of trust toward police in minority communities and the protests on our nation's streets are rooted in this discontent: 57 percent of Americans express confidence in the police, but only 34 percent of African Americans feel the same way. The War on Drugs is principally responsible for the wide gap in confidence between minorities and the police. African Americans use drugs at roughly the same rate as whites, but are more than twice as likely as whites to be

arrested for drug possession. Harsh mandatory minimum sentencing laws have also contributed to fatherlessness in these communities. From 1980 to 2000, the number of children with fathers in prison rose from 350,000 to 2.1 million.[1]

These policies tear apart families, weaken communities, and ultimately make us less safe. The criminal justice legislation I have proposed with bipartisan backing would create a fair system for all Americans. It would reverse the government's relentless attack on the fundamental rights enshrined in the Constitution, including the right to vote and the right to due process. It will reduce the number of nonviolent felons in our federal prisons and ensure that our limited federal budget is used to imprison violent criminals.

Our nation's criminal justice system is fiscally unsustainable and morally bankrupt. If we come together — liberals and conservatives, Democrats and Republicans — we can create a criminal justice system that makes our streets safer and our communities stronger. As we debate the numerous policies that brought us to this point — mandatory minimum sentences, militarization of the police, overincarceration, and others — we must remember the lives that have been and continue to be impacted by these flawed policies.

We should start by eliminating mandatory minimum sentences. Few policies have been as deeply flawed or destroyed as many lives. Fate Vincent Winslow will die in prison for selling $20 worth of marijuana. Weldon Angelos will serve 55 years in federal prison for selling $350 worth of marijuana.[2] Like many incarcerated under mandatory minimum sentences, neither Winslow nor Angelos committed violent crimes, but the judges who oversaw their cases were forbidden from exercising their judicial discretion. Instead, the government was able to dictate a one-size-fits-all punishment that serves no one. A chorus of judges has lamented the effect of mandatory minimum sentences as "unjust, cruel, and even irrational." One judge declared, "[F]airness has departed from the system" as a result of these laws.[3]

We can restore fairness in our sentencing decisions if we allow judges to treat each case according to its specific circumstances

instead of a government mandate. This is why Sen. Patrick Leahy (D-Vt.) and I have introduced the Justice Safety Valve Act in the Senate, which is sponsored by Rep. Bobby Scott (D-Va.-3) in the House of Representatives.[4] The bill allows judges to exercise discretion and not apply mandatory minimum sentences when there are mitigating factors involved — such as the defendant's criminal history and mental health. I have also joined with my colleagues Sens. Mike Lee (R-Utah) and Dick Durbin (D-Ill.) in support of cutting mandatory minimum sentences in half for nonviolent drug offenses.[5] Similar reforms have occurred on the state level and prove that we can reduce the federal prison population while keeping the country safe.

Our society must also be more accepting of ex-offenders after they're released from prison. Floyd Carr of Richmond, Ky., has been out of prison for 18 years but his criminal record still prevents him from obtaining a job. The *Lexington Herald-Leader* described his frustration with being turned away from more than 75 jobs, and his desire to find consistent work: "I've been let go three times after they find out I have a record," Carr said. "I just turned 70 and work every day ... I made a mistake and I'm still paying for it."[6]

Taxpayers are paying for it too, in high recidivism rates and the costs of imprisoning nonviolent offenders who are drawn back into crime by a society that defines them by their worst moments. These limited employment opportunities result in roughly two-thirds of ex-offenders being arrested again within three years of release.[7] Dan Caudill, owner of the Caudill Seed Company in Louisville, Ky., is one man fighting to curb this costly cycle by offering felons employment and providing the second chance that so many of them hope for. The jobs that Mr. Caudill provides these offenders will grant them financial security and improve their chances of adjusting back into society. He describes these employees as some of the hardest workers he has ever hired.

If more employers followed Mr. Caudill's example, then people like Floyd would find opportunities after they paid their debt to society — but that is just not the case. Eight months after being released from prison, only 45 percent of ex-offenders have a job — while 70 percent of

these offenders held a job for over a year before they were incarcerated.[8]

It is not a question of willingness to attain a job but a lack of opportunities that prevent ex-offenders, like Mr. Carr, from entering the workforce. I introduced the REDEEM Act (Record Expungement Designed to Enhance Employment Act) last year with Sen. Cory Booker (D-N.J.) to give these ex-offenders a second chance.[9] It creates a process for juvenile and nonviolent offenders to seal or expunge their criminal record. These offenders would have to demonstrate their willingness toward being rehabilitated to a judge in order to qualify for the process. As a result, Americans who would have been defined by drug possession crimes for the rest of their lives will finally be able to get jobs and provide for their families. The dignity and self-sufficiency that comes with economic opportunity will make it far less likely that these ex-offenders will return to a life of crime.

Employment is not the only barrier former offenders have to deal with after release. Many must also contend with the long list of civil rights they lose years after incarceration — like the right to vote. In the 2008 election, over 2.1 million ex-offenders were unable to vote even after completing their prison sentence.[10] Minority Leader Harry Reid (D-Nev.) and I have introduced The Civil Rights Restoration Voting Act to restore the right to vote for nonviolent offenders who have completed their debt to society.[11]

Our methods of policing must also change. Prepared with a "no knock" warrant, the Habersham Special Response Team proceeded to force their way into the house of a suspected drug dealer. After being unable to breach the door fully, they threw a stun grenade into the residence. The flash bang was inadvertently tossed into the playpen of a 19-month-old child, resulting in significant burn related injuries. As it turns out, the suspect that the response team was looking for wasn't even at the residence. The district attorney and Georgia Bureau of Investigations would later go on to justify the actions and procedure administered during the raid, even when taking into account the end result. Unfortunately, events like this happen all too often, bringing the need for more skepticism about the necessity of no-knock raids.[12]

The escalation of the militarization of America's police force has become increasingly alarming over recent years. Police departments are being equipped with military grade gear and equipment, usually with little to no oversight or documented training. Evidence has shown that the use of SWAT teams to execute search warrants disproportionality affects minorities in comparison to white suspects. Overall, "42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino." The Department of Defense's 1033 program, which transfers militarized equipment to law enforcement, has transferred $5.1 billion worth of new equipment from the Department to federal and local law enforcement agencies since its creation in 1997.[13]

The Stop Militarizing Our Law Enforcement Act will substantially curb this practice.[14] The bill restricts what equipment can be transferred or bought through the 1033 program, the Department of Homeland Security's Preparedness Grant Program, and the Justice Department's Byrne Grant Program. It will prohibit the transfer of militarized weaponry that was never designed to be in the hands of law enforcement — including mine-resistant ambush protected vehicles and weaponized drones. If local law enforcement is convinced that these items are necessary to protect their communities, then they should pay for it with local tax dollars and be held accountable for the expense by the people they serve.

Civil asset forfeiture is another issue that we must reform. Outside of his home in Philadelphia, the police arrested Christos Sourvelis' son for selling $40 worth of drugs. One month later, the police were back at Sourvelis' home, not for his son, but for his house.[15] Thousands of innocent citizens like the Sourvelis family are having their property seized without criminal charges. What used to be a tool for targeting drug cartels and powerful crime organizations has become a weapon against law-abiding, tax-paying citizens. Law enforcement has become focused on revenue generation instead of keeping communities safe. The reforms in the Fifth Amendment Integrity Restoration Act (FAIR Act), which I have introduced with Sens. Mike Lee (R-Utah) and Angus King (I-Maine), would end this perverse practice.[16] The FAIR Act codifies

into law numerous necessary reforms to the federal government's civil asset forfeiture laws. It has one simple objective: To ensure that the government cannot take the private property of citizens without due process of law and a criminal conviction.

States as conservative as Texas and Georgia have shown us that reforming the criminal justice system makes fiscal and moral sense. The states have led the way and their success should spur the federal government to realize the folly of our current criminal justice policies. We can and must work together to create a criminal justice system that punishes nonviolent offenders without incapacitating them and stripping them of their civil rights.

16
Follow the Texas Model

Hon. Rick Perry
Former Governor of Texas

"States across the country can follow the successful example of Texas. By offering treatment instead of prison for those with drug and mental health problems — upon entrance and exit from prison — the United States can eliminate our incarceration epidemic."

For too long, fear has dictated America's criminal justice policy. Citizens, afraid of the growing violence brought on by the drug wars of the 1980s, demanded harsher penalties and longer sentences. Politicians, afraid of looking soft on the issue, eagerly obliged.

But policy driven solely by fear — absent the equally powerful motivation of human redemption — has failed us. States across the country spent billions locking up kids for the most minor of offenses. In jail, these kids learned how to become hardened criminals. Out of jail, they often repeated their crimes. The result was a significant fiscal burden for taxpayers, a less safe community, and a segment of society shut out from hope and opportunity.

I saw this firsthand in Texas. While arrests for violent and property offenses remained fairly steady throughout the 1990s, drug-related arrests had increased by one-third. The amount Texas spent on prisons and parole had ballooned to nearly $3 billion a year in 2007 — and it was nowhere near enough. Projections called for an additional 17,000 prison beds, at an additional $2 billion, just to sustain the system for another five years.[1]

Something needed to change. No political party has a monopoly on good ideas, including my own. Over the course of my career in public service, I have never been afraid to borrow good ideas, regardless of where they come from.

That's why, when Judge John Creuzot, a Democrat from Dallas, shared an idea that would change the way Texas handled first-time, nonviolent drug offenders, I listened. As the founder of one of the first drug courts in Texas, Judge Creuzot argued that incarceration was not the best solution for many low-risk, nonviolent offenders. It benefits neither the individual nor society at large, and can even increase the odds that offenders will commit more crimes upon release. And, just as importantly, by treating addiction as a disease — and not merely punishing the criminal behavior it compels — Texas could give new hope to people trying to get their lives back. The evidence he presented was compelling. Recidivism in his program was 57 percent lower than traditional state courts, and every dollar he spent saved $9 in future costs.[2]

So. in 2007, with broad support from Republicans and Democrats alike, Texas fundamentally changed its course on criminal justice. We focused on diverting people with drug addiction issues from entering prison in the first place, and programs to keep them from returning.

First, we expanded our commitment to drug courts that allow certain low-level offenders to stay out of prison, if they agreed to comprehensive supervision, drug testing, and treatment. We added drug courts to more counties, increased funding, and expanded the types of crimes that allow a defendant to enter drug courts. Rather than languishing somewhere in a cell, first-time, nonviolent offenders willing to confront their drug addiction are connected with counseling and undergo intense supervision, including weekly random drug tests and meeting with a probation officer. These programs work. The National Association of Drug Court Professionals found that about 75 percent of people who complete drug court programs do not recidivate.[3]

Second, we reformed our approach to parole and probation. We focused financial resources on rehabilitation so we could ultimately spend less money locking prisoners up again. We invested $241 million to create treatment and rehabilitation programs to address

drug addiction and mental illness for people on parole and probation.[4] Rather than immediate re-incarceration for minor violations of parole or probation conditions, we introduced a system of progressively increasing punishments, or "graduated sanctions." If people committed violations because of drug or mental health issues, we addressed those issues instead of simply locking them up again. We added more residential and outpatient beds for substance abuse treatment. We added more beds in halfway houses providing reentry services. And we provided more substance abuse programs in prisons and jails.

A key shift was a focus on outcomes rather than volume. We offered financial incentives to local probation departments: They could win additional state funds if they reduced the number of probationers returning to prison by 10 percent by adopting the graduated sanctions approach.[5] Most departments accepted this challenge, and the number of new crimes committed by probationers substantially decreased across the state. These types of financial incentives are proven to work. Government should be funding what works — not blindly funneling money into broken prisons.

The results have been remarkable. Texas implemented these reforms in 2007. By the time I left office in 2015, Texas had expanded the number of specialty courts in the state from nine to more than 160. We reduced the number of parole revocations to prison by 39 percent. We saved $2 billion from our budget, not to mention the countless lives saved. We did all this while our crime rate dropped to its lowest point since 1968. And for the first time in modern Texas history, instead of building new prisons, we shut down three and closed six juvenile lock-ups.[6]

Taxpayers have saved billions because of our new approach to criminal justice, and they're safer in their homes and on the streets. Fewer lives have been destroyed by drug abuse, and more people are working and taking care of their families instead of languishing behind bars. That may be the most significant achievement of all: By keeping more families together we are breaking the cycle of incarceration that condemns each subsequent generation to a life of lesser dreams.

Our new approach to criminal justice policy is all about results. This change did not make Texas soft on crime. It made us smart on crime.

There is nothing easy about our diversion programs. Our drug courts provide an opportunity to those willing to work hard to regain control of their lives. They are often much tougher than traditional programs. What they get in return is a chance to minimize the damage they have done to their lives. And for some people, a chance is all they really need.

I am proud that in Texas criminal justice policy is no longer driven solely by fear, but by a commitment to true justice, and compassion for those shackled by the chains of addiction. My hope is that all states will do likewise. States across the country can follow the successful example of Texas. By offering treatment instead of prison for those with drug and mental health problems — upon entrance and exit from prison — the United States can eliminate our incarceration epidemic.

A big, expensive prison system — one that offers no hope for second chances and redemption — is not conservative policy. Conservative policy is smart on crime.

I am reminded of the words of the 20th century social activist who co-founded Volunteers for America, Maud Ballington Booth: "There is a sunshine that can force its way through prison bars and work wondrous and unexpected miracles . . . and a genuine change of heart where such results seemed the most utterly unlikely and impossible."[7]

We must remember that when it comes to the disease of addiction, the issue is not helping bad people become good, but rather helping sick people become well.

17
A Step Toward Freedom: Reduce the Number of Crimes

Hon. Marco Rubio
United States Senator for Florida

"[W]hen we consider changing the sentences we impose for drug laws, we must be mindful of the great successes we have had in restoring law and order to America's cities since the 1980s drug epidemic destroyed lives, families, and entire neighborhoods. I personally believe that legalizing drugs would be a great mistake and that any reductions in sentences for drug crimes should be made with great care. Nonetheless, we must not let disagreements over drug policy distract us from the pressing need for a thorough review of our entire criminal code."

Earlier this year, the U.S. Supreme Court considered the case of John Yates, a Florida fisherman who once earned his living harvesting fish in the Gulf of Mexico.[1] That career came to an abrupt end when, following a dispute over red grouper fish, Mr. Yates found himself not just out of a job, but also a convicted felon.

The trouble for Mr. Yates began when a Florida Fish and Wildlife Conservation inspector boarded his ship to inspect his catch. The officer alleged that 72 of the grouper Mr. Yates had caught were less than the then-minimum legal size of 20 inches. (That minimum has since been lowered to 18 inches.) All of Mr. Yates' fish were 18 and three-quarter inches or longer. Most were a mere fraction of an inch shorter than the legal minimum.

Ordinarily, catching a few under-sized fish might result in a civil fine, not jail time. This was not the case here. When investigators re-measured

Mr. Yates' catch after he docked his boat, they found the fish were still undersized, but slightly less so. The government then alleged that Mr. Yates threw some of the offending fish overboard. That allegation, a loosely worded federal statute, and overzealous prosecutors combined to turn a possible fine into a federal criminal case.

Mr. Yates was charged and convicted under a provision of the federal Sarbanes-Oxley Act initially meant to prevent white collar criminals from shredding documents. The law carries a maximum penalty of 20 years in prison.[2] Mr. Yates served 30 days in jail, followed by three years of supervised release. He lost his job as a boat captain for hire.

Fortunately for Mr. Yates, he managed to convince the U.S. Supreme Court, by a narrow 5-4 majority, to reverse his conviction. The Justices were sharply divided on the definition of "tangible things" in the Sarbanes-Oxley Act and whether it included fish. While this question of statutory interpretation might seem scintillating to lawyers, the case highlights a problem much bigger than a few fish or a legal debate. American criminal law has grown far beyond its proper scope and is in serious need of reform.

Even those Justices who voted to allow Mr. Yates' conviction to stand agreed that the case highlights a cause for concern. Justice Elena Kagan, writing for herself and Justices Antonin Scalia, Clarence Thomas, and Anthony Kennedy, wrote that this "is a bad law — too broad and undifferentiated, with too-high maximum penalties, which give prosecutors too much leverage and sentencers too much discretion. And I'd go further: In those ways, [it] is unfortunately not an outlier, but an emblem of a deeper pathology in the federal criminal code."[3]

John Yates going to jail for red grouper highlights a fundamental problem in American criminal law today. Lawmakers have increasingly turned to criminal law as a form of regulation. Recklessly passed, duplicative, conflicting, and vague laws have turned criminal law into a trap for the unwary.

There are now thousands of federal crimes; indeed so many that legal experts cannot agree on a specific number. This is despite the fact that the Constitution gives the federal government no general criminal jurisdiction. To compound the problem, Congress has delegated broad

enforcement powers to unelected bureaucrats in federal agencies. Attorney and writer Harvey A. Silverglate has estimated that the average American now unknowingly commits three felonies a day.[4] This state of affairs is intolerable in a republic and practically invites selective enforcement.

There is an emerging consensus that the time for criminal justice reform has come. A spirited conversation about how to go about that reform has begun. Unfortunately, too often that conversation starts and ends with drug policy. That is an important conversation to have. But when we consider changing the sentences we impose for drug laws, we must be mindful of the great successes we have had in restoring law and order to America's cities since the 1980s drug epidemic destroyed lives, families, and entire neighborhoods. I personally believe that legalizing drugs would be a great mistake and that any reductions in sentences for drug crimes should be made with great care.

Nonetheless, we must not let disagreements over drug policy distract us from the pressing need for a thorough review of our entire criminal code. Convicting someone of a crime is the most serious action a government can take. Once a person becomes a "convicted criminal," the government can take his property, his liberty, and even his life. Yet, despite the gravity of criminal law, the federal government has at times been wildly irresponsible in what it treats as a crime and how it proves guilt.

No one doubts the need for criminal law, and the federal government has an important role to play in combating offenses ranging from organized crime to white collar environmental crime. But the current state of criminal law, especially federal criminal law, is simply foreign to our Constitution and unworthy of a free people. Congress can and must take sensible steps to begin correcting this serious problem. It should start by cataloguing all federal crimes in one statutory location, restoring a standard of intent in criminal law, reining in out-of-control regulatory agencies, and stopping the seizure of the property of citizens to fund law enforcement agencies.

First, Congress should immediately require the federal government and regulatory agencies to catalogue and publish in one place all the existing

statutory and regulatory crimes. Remarkably, this is not available today. Following a comprehensive catalogue of criminal law, we should pay special attention to laws that are duplicative, underused, or better handled by states. Those laws should be identified for potential repeal.

Second, Congress should restore a standard of intent to federal crimes. Traditionally, criminal law included what lawyers call a *mens rea*. The government could not bring down the weight of criminal condemnation on an individual simply because he had made a mistake; it also had to show that he had a mental state that made him worthy of punishment.

Consider this common illustration of this concept. If a person on the way out of a restaurant accidentally picks up an umbrella that he thinks is his, he has made a mistake. He has not committed a crime. However, if a person deliberately takes someone else's umbrella from a restaurant because it begins to rain and he forgot to pack his own umbrella, he has committed theft. To convict him of a crime, the government must prove intent to steal — the relevant state of mind. That is the difference *mens rea* makes in criminal law.

This critical component of criminal law has been neglected in recent decades. Congress can begin to restore this damage by insisting on standards of intent for any new criminal law and by establishing a default *mens rea* standard for existing federal criminal laws that lack one. There may be a limited place for crimes that do not require a standard of intent; if so, Congress should expressly make that decision in the relevant laws.

Third, Congress must rein in out-of-control regulatory agencies. It should stop delegating additional criminal lawmaking authority to regulators. The public has long understood the burden unaccountable regulators place on business and ordinary Americans. In many cases, regulations have become more consequential than the statutes that they purportedly execute. It is for this reason that I have proposed that Congress establish a national regulatory budget, which would require that new, costly regulations be offset by the repeal of other existing regulations. I have also joined many of my colleagues in supporting legislation that would require congressional review of major regulations. It is time we apply similar attention to regulations with criminal implications: Regulations should be reviewed by Congress and potentially offset by the simplification and repeal

of older regulations. Better still, Congress in the future should refuse to delegate new criminal lawmaking authority to unelected regulators. While truly bad actors deserve punishment, Congress should be mindful of the serious impact our bewildering thicket of statutory and regulatory criminal laws have on well-meaning businesses, which now must spend millions in compliance costs and may decline to pursue innovative ideas for fear of possible criminal punishment.

Fourth, law enforcement agencies should never have a conflict of interest. Currently, through civil asset forfeiture, law enforcement agencies can seize the property of citizens simply by asserting a connection to illegal activity without ever pursuing criminal charges. Agencies are often allowed to keep financial proceeds raised through these seizures. These types of perverse incentives to raise funds can badly skew the priorities and judgment of otherwise well-intentioned public servants, especially in tough budgetary times. The potential for abuse is significant, especially in civil forfeiture which does not carry many of the safeguards traditionally found in criminal law. former Attorney General Eric Holder recently announced he would curtail some aspects of civil forfeiture.[5] It is a welcome start, but Congress should go further and end this practice by requiring all proceeds from federal forfeiture must go to the general fund of the U.S. Treasury. Public interest and safety should be the only factors motivating property seizure.

Certain Roman Emperors had a practice of posting new criminal offenses so high up on columns in the Forum that subjects could not read them, nor hope to comply with them. This story is usually told as evidence of the madness and cruelty of those leaders. As Americans, we deserve a criminal justice system that is neither mad, nor cruel, but fair and just — with criminal laws and regulations that are easy to understand and not prone to abuse.

With the four steps outlined above as a starting point, Congress can begin the project of restoring a criminal justice system that both protects public safety and reflects our values as a free people. We can also turn to the difficult problem of drug crimes. Our hearts are broken by stories of individuals and families whose lives have been wrecked by drugs, and we must re-commit as a society to helping these souls find a productive path forward.

The states have made important strides here, particularly with youthful and first-time offenders. We should continue this work, focusing on evidence-based rehabilitation and recidivism reduction programs. Much of the criminal behavior in America is committed by repeat offenders, and much of it is drug-related. If we are able to break this cycle early, we can change not just the life trajectory of the offenders, but those of the many lives he or she touches. The government, of course, cannot do this alone. Families, faith communities, and employers all play indispensable roles.

We do not have to choose between the rampant criminality of the 1970s and 1980s and the overreaching criminal laws and overstretched prison resources we have today. Working together, those of us in government along with partners in civil society can work to restore an America characterized by liberty and law.

18
Mercy, Especially for the Mentally Ill

Bryan Stevenson
Executive Director
Equal Justice Initiative

"At every juncture, decision makers can be more compassionate. One powerful way to exercise mercy: change how we treat the mentally ill. And, make how we treat the most vulnerable among us just."

Mass incarceration, in my judgment, has fundamentally changed our world. This country is very different today than it was 40 years ago. In 1972, there were 300,000 people in jails and prisons. Today, there are 2.3 million. The United States now has the highest rate of incarceration in the world.[1]

In poor communities, in communities of color there is this despair. There is this hopelessness that is being shaped by these outcomes. One out of three black boys born in the 21st century will be incarcerated at some point in their lives.[2] In urban communities across this country — Los Angeles, Philadelphia, Baltimore, Washington — 50 to 60 percent of all young men of color are in jail or prison or on probation or parole. Our system is not just being shaped in these ways that seem to be distorting around race, they are also distorted by poverty. We have a system of justice in this country that treats you much better if you are rich and guilty than if you are poor and innocent. Wealth, not culpability, shapes outcomes.

The politics of fear and anger have made us believe that these are problems that are not our problems. We have been disconnected.

Incarceration became the answer to everything — health care problems like drug addiction, poverty that had led someone to write a bad check, child behavioral disorders, managing the mentally disabled poor, even immigration issues generated responses from legislators that involved sending people to prison.

For decades, I have worked in a broken system of justice. My clients were broken by mental illness, poverty, and racism. They were torn apart by disease, drugs and alcohol, pride, fear, and anger. In their broken state, they were judged and condemned by people whose commitment to fairness had been broken by cynicism, hopelessness, and prejudice. We are supposed to sentence people fairly after fully considering their life circumstances, but instead we exploit the inability of the poor to get the legal assistance they need — all so we can kill them with less resistance.

We need to find ways to embrace these challenges, these problems, the suffering. Because ultimately, our humanity depends on everyone's humanity. We have a choice. We can embrace our humanness, which means embracing our broken natures and the compassion that remains our best hope for healing. Or we can deny our brokenness, forswear compassion, and, as a result, deny our own humanity.

I am encouraged by the fact that nationwide the rate of mass incarceration has finally slowed. For the first time in close to 40 years, the United States saw the first decline in its prison population.[3]

Our criminal justice system must change. Fear and anger are a threat to justice; they can infect a community, a state, or a nation and make us blind, irrational, and dangerous. Mass imprisonment has littered the national landscape with carceral monuments of reckless and excessive punishment and ravaged communities with our hopeless willingness to condemn and discard the most vulnerable among us.

But simply punishing the broken — walking away from them or hiding them from sight — only ensures that they remain broken and we do, too. There is no wholeness outside of our reciprocal humanity. Each of us is more than the worst thing we have ever done. I am more than broken. In fact there is a strength, a power

even, in understanding brokenness because embracing our brokenness creates a need and desire for mercy, and perhaps a corresponding need to show mercy.

When you experience mercy, you learn things that are hard to learn otherwise. You see things you can't otherwise see; you hear things you can't otherwise hear. You recognize the humanity that resides in each of us. All of a sudden, I felt stronger. I began thinking about what would happen if we all just acknowledged our brokenness, if we owned up to our weakness, our deficits, our biases, our fears. Maybe if we did, we wouldn't want to kill the broken among us who have killed others. Maybe we would look harder for solutions to caring for the disabled, the abused, the neglected, and the traumatized. I had a notion that if we acknowledged our brokenness, we could no longer take pride in mass incarceration, in executing people, in our deliberate indifference to the most vulnerable. Mercy is most empowering, liberating, and transformative when it is directed at the undeserving. The people who haven't earned it, who haven't even sought it, they are the most meaningful recipients of our compassion.

How can mercy translate into practical changes in our criminal justice system? The ways are countless. At every juncture, decision makers can be more compassionate. Police can presume innocence in interactions with individuals. Judges and prosecutors can recommend less punitive sentencing for defendants. Corrections officers can treat inmates with humility. One powerful way to exercise mercy: change how we treat the mentally ill. And, make how we treat the most vulnerable among us just.

America's prisons have become warehouses for the mentally ill. Mass incarceration has been largely fueled by misguided drug policy and excessive sentencing. But the internment of hundreds of thousands of poor and mentally ill people has been a driving force in achieving our record levels of imprisonment. It has created unprecedented problems.

For over a century, institutional care for Americans suffering from serious mental illness shifted between prisons and hospitals set up to manage people with mental illness. In the late nineteenth century, the numbers of incarcerated people with serious mental illness declined

dramatically, while public and private mental health facilities emerged to provide care to the mentally distressed.

By the middle of the 20th century, abuses within mental institutions generated a lot of attention, and involuntary confinement of people became a significant problem. Families, teachers, and courts were sending thousands to institutions for eccentricities that were less attributable to acute mental illness than resistance to social, cultural, or sexual norms. People who were gay, resisted gender norms, or engaged in interracial dating often found themselves involuntarily committed.

In the 1960s and 1970s, laws were enacted to make involuntary commitment much more difficult. Deinstitutionalization became the objective in many states. Legal rulings empowered people with developmental disabilities to refuse treatment and created rights for the mentally disabled that made forced institutionalization much less common. By the 1990s, several states had a deinstitutionalization rate of over 95 percent. In 1955, there was one psychiatric bed for every 300 Americans; 50 years later, it was one bed for every 3,000.[4]

While these reforms were desperately needed, deinstitutionalization intersected with the spread of mass imprisonment policies — expanding criminal statutes and harsh sentencing — to disastrous effect. The "free world" became perilous for deinstitutionalized poor people suffering from mental disabilities. The inability of many disabled, low-income people to receive treatment or necessary medication dramatically increased their likelihood of a police encounter that would result in jail or prison time. Jail and prison became the state's strategy for dealing with a health crisis created by drug use and dependency. A flood of mentally ill people headed to prison for minor offenses and drug crimes, or simply for behaviors their communities were unwilling to tolerate.

Today, more than 50 percent of prison and jail inmates in the United States have a diagnosed mental illness, a rate nearly five times greater than that of the general adult population. Nearly one in five prison and jail inmates has a serious mental illness. In fact, there are more than 10 times the number of seriously mentally ill individuals in jail or prison than in hospitals.[5] And prison is a terrible place for

someone with a mental illness or a neurological disorder that prison guards are not trained to understand.

Most overcrowded prisons do not have the capacity to provide care and treatment for the mentally ill. The lack of treatment makes compliance with the myriad rules that define prison life impossible for many disabled people. Other prisoners exploit or react violently to the behavioral symptoms of the mentally ill. Frustrated prison staff frequently subject them to abusive punishment, solitary confinement, or the most extreme forms of available detention. Many judges, prosecutors, and defense lawyers do a poor job of recognizing the special needs of the mentally disabled, which leads to wrongful convictions, lengthier prison terms, and high rates of recidivism.

There are hundreds of ways we accommodate physical disabilities — or at least understand them. We get angry when people fail to recognize the need for thoughtful and compassionate assistance when it comes to the physically disabled, but because mental disabilities aren't visible in the same way, we tend to be dismissive of the needs of the disabled and quick to judge their deficits and failures. Brutally murdering someone would of course require the state to hold that person accountable and to protect the public. But to completely disregard a person's disability would be unfair in evaluating what degree of culpability to assign and what sentence to impose.

We can take steps to accommodate mental disabilities both inside and outside of the criminal justice system. People suffering from mental health issues should be treated with compassion and mercy. Reforms must focus at the root of the problem, and learn from history. In the past, the mentally ill were institutionalized in separate institutions with their own problems. The intention of deinstitutionalization was not to subject the mentally ill to incarceration in prisons where corrections officers have no relevant training and they would be subject to conditions that would exacerbate their disabilities. Instead, the intention was to provide services outside the institutional setting, accessible clinics with helpful resources to treat mental illness and address issues without incapacitation. Providing these services requires mercy, but also money. Funds directed to mental health social services in communities can control problems without institutionalization.

Inside the system, mental health courts can redirect individuals to treatment instead of prison, to effectively address problems outside of traditional criminal justice.

Ultimately, you judge the character of a society, not by how they treat their rich and the powerful and the privileged, but by how they treat the poor, the condemned, the incarcerated. Because it's in that nexus that we actually begin to understand truly profound things about who we are, about human rights and basic dignity. All of our survival is tied to the survival of everyone.[6]

19
A Culture Change

Jeremy Travis
President
John Jay College of Criminal Justice

"Achieving this cultural change will require five interrelated activities: understanding American punitiveness, imagining a different future, breaking the Gordian knot of crime and prison policy, rethinking the role of the criminal sanction, and pursuing racial reconciliation."

Mass incarceration is one of the most important moral challenges facing our democracy. If this level of incarceration, or anything close to it, becomes our new normal, I am concerned for the future of our democratic experiment, our notion of limited government, and our pursuit of racial justice.

Reversing course will require something much more profound than our current reform strategies. What is required is a deep cultural change.

The National Academy of Sciences published a report in 2014 that reflects the deliberations of a panel of twenty prominent scholars convened to assess the evidence on the "causes and consequences of high rates of incarceration in the United States."[1] I was honored to serve as chair. These are the key findings of this report: First, we stand apart from the rest of the world. The growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique. Second, we are here because we chose to be here; our high incarceration rates are the result of our policy choices. Third, the public safety benefits of the prison build-up are, at best, modest. Fourth, the financial and social costs of the prison build-up

are likely significant. Lastly, we have lost sight of important principles.

Our panel recommended that the United States reduce incarceration rates. Specifically, we recommended reforms to the policies that drove the prison build-up: mandatory minimums, long sentences, and drug enforcement. We also recommended that the nation improve conditions for those incarcerated and reduce the harms experienced by their families and communities. Finally, we need to increase service needs in those communities.

Certainly there are reasons to be optimistic that these reforms will happen. The incarceration rate has dropped slightly over the past few years. We are seeing a new left-right coalition that has embraced the common goal of reducing the prison population. Solidly conservative states like Texas, Georgia, Mississippi, and Alabama have taken steps to cut back on their prison populations.

But, the euphoria occasioned by the slight downturn in incarceration rates is premature and the reforms that we celebrate are nibbling around the edges.

I would like to imagine a different future for our country, when we do not lead the world in incarcerating our fellow citizens. To get there, we must attack the breeding grounds of the political reality that brought us to this situation. But a cultural change is a necessary precondition to this political change. Achieving this cultural change will require five interrelated activities: understanding American punitiveness, imagining a different future, breaking the Gordian knot of crime and prison policy, rethinking the role of the criminal sanction, and pursuing racial reconciliation.

Why did America become so punitive? We need to look beyond criminal justice policy — and beyond traditional political and historical analysis — to answer this question. We need to recognize that this punitive reflex has been evident in other policy domains as well. We have substituted school disciplinary processes with criminal proceedings. We have decided to detain millions of undocumented immigrants in a network of prisons not counted in our measures of incarceration. In response to threats of terrorism, we have enacted policies that significantly constrain the liberty of all Americans and have subjected Muslim Americans to special scrutiny.

Our efforts to reduce mass incarceration will require a deep exploration of why our country embarked on this aberrational experiment in the massive deprivation of liberty.

One of the missing ingredients in the current debate over mass incarceration is that we do not have an alternate vision for our future. We are so focused on the tactical challenges of coalition building, the hand-to-hand combat of legislative reform, and the concern about short-term victories that we do not take the time to say, simply: It need not be so.

What might be effective? For starters, consider the recent success of Proposition 47 in California, which reclassified criminal offenses, reallocated money from corrections budgets, and provided opportunities for people convicted of low-level felonies to have these felonies removed from their records.[2] Many lessons can be drawn from this success. First, the campaign led with the voices of crime victims — everyday Californians who said that the current system did not deliver the justice they sought.[3] Second, the campaign specified alternative investments of the money spent on prisons.[4] Finally, because of California's ballot initiative, the campaign was able to bypass the legislative process and directly reflect the will of the people.

Only a few states provide for sentencing reform by referendum. We need other ways to paint a different vision for the future, such as conducting community-level conversations that provide direct input into a new vision for justice.

We can also compare our prison system with those of other countries. We Americans are notoriously parochial and frequently respond with excuses of American Exceptionalism. In our nation's history, Europeans came to this country to learn about progressive sentencing and prison policies. Today, we need to repay that compliment by looking carefully at what we can learn from the prison systems of other countries.

Next, we have to break the Gordian knot of crime policy and prison policy. The prison build-up was only indirectly caused by crime increases, and high rates of incarceration yielded, at best, only modest benefits in terms of public safety. But every time we talk about reducing prison populations, that proposition is still cast in terms of public safety.

Research now shows us that we are only repeating a false premise if we couch a prison reduction strategy as possible only if crime does not go up.

We need to develop other reasons for reducing the number of people in prison. To be credible, advocates for reductions in imprisonment need to have a position on public safety. It is the height of irony that we have so many people in prison precisely at a time when we have developed a very sophisticated portfolio of effective crime prevention strategies. We are now in a position to question the premise of mass incarceration itself and to ask: Why do we need to use prison so extensively to reduce crime? Why not put the intellectual energy and taxpayer resources into effective strategies?

We have a golden opportunity to reframe crime policy in terms of new ideas about the role of the criminal sanctions in producing public safety. Nothing would be a more powerful antidote to the prison-centric realities of our current crime policy than the design and implementation of a suite of effective crime prevention policies that minimize the use of prison, such as the concept of "focused deterrence." This concept envisions the criminal sanction — including arrest, prosecution, and incarceration — as part of a larger strategy designed to address specific crime conditions. Today, over 50 jurisdictions have joined the National Network for Safe Communities, the vehicle for implementing focused deterrence strategies around the country.[5]

One of the principles of the National Network is to reduce the unnecessary use of incarceration while reducing crime. In focused deterrence, formal social control is used only in connection with explicit informal social control, including the moral voice of communities, persuasion of family members, and positive examples of formerly incarcerated individuals. Police officers, prosecutors, defense lawyers, probation officers, judges, and corrections officials are not accustomed to an embrace of informal social control that is so explicit and so strategic. The success of focused deterrence requires a rethinking of the role of the law in influencing behavior.

These innovations are important for what they teach us about deterrence and for what they can deliver in terms of public safety. They are also important because they undercut the notion that we need long prison sentences to produce public safety.

Perhaps the most important task we need to undertake is to come to terms with the implications of mass incarceration for our country's pursuit of racial justice. Most of the increase in incarceration came from one subpopulation: minority male high school dropouts. The likelihood that African American high school dropouts born between 1945 and 1949 serving at least a year in prison before age 34 was 14.7 percent. For those born a generation later — during the prison boom — the risk of imprisonment is now a staggering 68 percent.[6] These data lead to only one conclusion: Our incarceration policies — and, more broadly, our criminal justice policies — have done enormous harm. For young men growing up today who are living in our inner cities, in communities with poor school systems, poor housing, poor health care, who are not able to complete high school, their life course likely includes time in prison.

We can nibble around the edges, work with politicians to change sentencing laws, deepen our understanding of punitiveness in America, even adopt new crime prevention strategies, but a moral and historical imperative remains: We need to come to terms with the racial damage caused by the era of mass incarceration. We need to admit our government — acting in our name — has done great harm. We need to accept responsibility for that harm, and find ways to alleviate the consequences.

We must find the way, and must find it together. The optimist in me says we have a chance of success. If we dig deep and commit ourselves to doing the truly hard work of our democracy: ensuring that our society lives up to its ideals.

20
Get People Ready for Work

Hon. Scott Walker
Governor of Wisconsin

"I proposed a strategy for Wisconsin that will allow drug testing at critical junctures. This provides an opportunity for intervention at the earliest possible stages and for treatment as well as job training for those suffering from drug addiction. Rather than leaving citizens on the path to self-destruction through drugs use while taxing our law enforcement and court system, we can do the opposite. We can address these issues head-on and get people ready for work."

Protecting the lives, liberty, and property of its citizens must in all cases remain the very highest priority of government. Therefore, when thinking of criminal justice system reform, I first think about the impact on victims.

Often times, the voices of those most seriously harmed are not always the ones most prevalently heard in our courtrooms. During a listening session years ago at the Brown County Courthouse in Green Bay, a woman once related to me how she testified against her perpetrator — an intensely personal experience — because she was told that he would be punished for his crime, that he would serve his time, and that she and other potential victims would be safer. She was not aware that he would soon be released and back on the streets due to a shortened sentence.

Years ago, I authored legislation that required certainty in sentencing so victims like the woman I met in Green Bay can know how long the man who attacked her will be behind bars — whether it is two or 20 years.[1] As

a victim, she deserves to be a part of that process and she deserves to have the peace of mind of knowing how long he will be in prison.

With this in mind, we are pushing reforms at the front end of the process to create opportunities that impede paths to incarceration. We want a safe and sound system.

Every Friday afternoon, when most courts across America are winding down and putting the finishing touches on all of the items on their busy weekly calendars, some courtrooms bustle with activity. In a family drug treatment court in Milwaukee where substance abuse problems lead to the break-up of families, the judge pointedly addresses each addict's weekly progress. In Green Bay, Appleton, Eau Claire, La Crosse, Janesville, and Racine, special veterans' courts fashion an informed response to the unique trauma presented by those who have served our country in combat.[2]

Joining many states across the nation, Wisconsin has continued the approach of "problem-solving courts" in an effort to address tough issues presented by alcohol and drug addiction, domestic abuse, and mental illness.[3] No longer do offenders see their judge for only one sentencing hearing. Now, they must return. Back in front of their sentencing judge, offenders face the type of scrutiny that only "eye to eye" accountability affords. Successful outcomes for participants mean lower incarceration rates and potential cost savings for taxpayers.[4]

Created in 2012, the Wisconsin Statewide Criminal Justice Coordinating Council has assisted in directing, coordinating, and collaborating with statewide and local governmental and non-governmental partners to increase efficiency, effectiveness, and public safety.[5] Innovative problem-solving courts are one of the many topics on our docket.[6] Building a strong, efficient criminal justice system improves public safety, saves taxpayer dollars, and ensures justice for all victims.

Proactively identifying and targeting barriers that prevent people from moving from government dependence to true independence and personal success have set the contours of our approach. We want every citizen empowered to take charge of his or her life. With true independence, people become educated, obtain gainful employment, provide for their families, find stability and success — and yes, avoid prison.

Heroin use creates a different kind of prison. Heroin does not discriminate. Regardless of gender, age, race, income, or zip code, heroin entangles its victims and their families in a dangerous web of devastation. In 2012, an escalating trend of heroin abuse in Wisconsin led to a drastic rise in overdose deaths by nearly 50 percent.[7] Swift action was needed to protect our friends, family members, and neighbors from this insidious drug because our communities lacked the armor to combat this deadly addiction.

In 2014, I signed into law a package called "H.O.P.E.," which stands for Heroin Opiate Prevention and Education.[8] H.O.P.E. invests in Wisconsin communities. It comprehensively changes how we contend with heroin by implementing the twin principles of support and accountability. To prevent deaths due to overdose, H.O.P.E. equips law enforcement officers and first responders with additional tools to more effectively combat opiate abuse, including access to life-saving medicines, and encourages addicts to seek emergency care for fellow drug users. H.O.P.E. also supports addicts with treatment alternatives, especially in underfunded, yet high-need, rural areas of our state. Accountability-wise, H.O.P.E. creates swift and certain sanctions to respond to probation violations instead of automatic incarceration. And finally, H.O.P.E. calls upon medical professionals to demand identification for certain prescriptions. H.O.P.E. lays the foundation for reversing the dangerous trend of heroin addiction.[9]

It is important to take action — to take the critical steps to reduce drug abuse. Earlier this year, we noted that more than 72,000 job openings had been posted on our state website. We need people prepared to fill these jobs.[10] Business owners tell me often that they have positions available — they just need responsible individuals who can reliably show up for work and pass a drug test.

As part of my plan to help fill those jobs, I proposed a strategy for Wisconsin that will allow drug testing at critical junctures.[11] This provides an opportunity for intervention at the earliest possible stages and for treatment as well as job training for those suffering from drug addiction. Rather than leaving citizens on the path to self-

destruction through drug use while taxing our law enforcement and court system, we can do the opposite. We can address these issues head-on and get people ready for work.

Back in 1997, the U.S. Department of Justice developed a set of "key components" for drug treatment courts by a committee of the National Association of Drug Court Professionals, including such important measures as: forging collaborative partnerships, integrating treatment services with effective judicial oversight, and monitoring abstinence through frequent randomized alcohol and drug testing.[12]

Drug testing is not a new concept. It is a common sense policy. Take, for instance, some high-demand fields and manufacturing jobs, where sobriety is unquestionably necessary for the operation of technical equipment and heavy machinery. Workplace safety requires the imposition of drug testing for employees.

Our goal is to help open the door for more people to enjoy the freedom and prosperity that comes from having a great job and doing it well. While some, on the other side of the aisle in the Wisconsin Capitol, have said that drug testing makes it harder to get assistance, we say it makes it easier to get a job and helps people live full and meaningful lives. And that job provides many benefits to society as a whole. We have worked to address drug addiction issues without necessitating mass incarceration.

Our message of straightforward government reform resonates with Americans across the country because reform has but one goal: effecting positive change. Positive change also comes with the implementation of new and effective technology to make our streets safer from violence. Effective, efficient, and accountable government is the floor, not the ceiling. We must move forward with greater expectations working to improve the prosperity of our neighborhoods, so more people contribute and care for themselves and for others. It is our choice to lead. We must answer the call.

We can increase the public safety by continuing our efforts. Since I took office as Governor of the state of Wisconsin, employment has reached a record high with fewer people suffering from

unemployment. Today, in Wisconsin, more students are graduating and state budgets are based on the public's ability to pay and not government's hunger to spend. We have done all this in the hope that we can decrease government dependence, discourage criminal behavior, and put power back into the hands of the citizens.

21
A National Commission on Mass Incarceration

Hon. James Webb
Former United States Senator for Virginia

"Now is the time to revive the push for a national commission to address the overall issue of mass incarceration. A national commission is needed to conduct a top-to-bottom review of our nation's entire justice system — federal and state — ultimately providing Congress and state governments with specific, concrete recommendations to cut the national prison population."

In addition to my public service, I have spent much of my life as an author and a journalist. Thirty years ago, I became the first American journalist to report from inside the Japanese prison system. It was when I was investigating the Japanese criminal justice system that I became aware of the systemic difficulties and challenges we face here at home. In 1984, Japan had a population half the size of ours and was incarcerating 50,000 prisoners, compared with 580,000 in the United States. As shocking as that disparity was, the difference between the countries now is even more astounding — and profoundly disturbing. Japan's total prison population has now increased to 67,000, while ours has quadrupled to 2.3 million.[1]

The incarceration rate in the United States, the world's greatest democracy, is five times higher than the average incarceration rate of the rest of the world.[2] With so many of our citizens in prison compared with the rest of the world, there are only two possibilities: Either we

are home to the most evil people on earth or we are doing something dramatically wrong in how we approach criminal justice. Obviously, the answer is the latter.

Despite burgeoning prisoner populations, our communities are not safer and we are still not bringing to justice many of the most hardened criminals who perpetuate violence and criminality as a way of life. It is in the interest of every American that we thoroughly reexamine our entire criminal justice system. I am convinced that the most appropriate way to conduct this examination is through a Presidential commission, tasked to bring forth specific findings and recommendations for Congress to consider and, where appropriate, enact. We need a holistic plan to identify and solve the entire range of problems plaguing our system, from point of apprehension to sentencing, prison administration, and reentry programs for those who wish to become full, participating members of our society.

The "elephant in the bedroom" in many discussions about the justice system is the sharp increase in drug-related incarceration over the past three decades. In 1980, we had 41,000 drug offenders in prison; today we have almost 300,000.[3] This is an increase of over 600 percent and a significant proportion of this population is incarcerated for possession or nonviolent offenses stemming from drug addiction and related behavioral issues. Yet locking up more of these offenders has done nothing to break up the power of the multibillion-dollar illegal drug trade. Nor has it brought about a reduction in the amounts of the more dangerous drugs — such as cocaine, heroin, and methamphetamines — that are reaching our citizens.

Justice statistics also show that about half of all the drug arrests in our country were for marijuana offenses. Additionally, nearly half of the people in state prisons are serving time for a nonviolent or drug offense. And although experts have found little statistical difference among racial groups regarding actual drug use, African Americans — who make up about 13 percent of the total U.S. population — accounted for 30 percent of those arrested on drug charges, and 38 percent of all drug offenders sentenced to prison.[4]

We need smarter ways of dealing with people at apprehension, and even whether you decide to arrest. We need to consider the types of

courts drug offenders go into — drug courts, as opposed to regular courts — how long you sentence them, and how you get them ready to return home. It is a sickness and we have got to treat it that way. We must treat the people who need to be treated and incarcerate the people who need to be incarcerated.

At the same time we are putting too many of the wrong people in prison. This does not bring safety to our communities. While heavily focused on nonviolent offenders, law enforcement has been distracted from pursuing more serious and violent crimes.

While I was Senator, following more than two years of hearings, conferences, and meetings, I introduced the National Criminal Justice Commission Act of 2009 which would have paved the way toward systemic reform.[5] The Act garnered wide support from across the political and philosophical spectrum. My staff and I engaged with more than 100 organizations and associations, representing the entire gamut of prosecutors, judges, defense lawyers, former offenders, advocacy groups, think tanks, victims' rights organizations, academics, prisoners, and law enforcement on the street. Despite the energy behind this legislation, and despite gaining a strong, 57-vote majority, it was filibustered in the Senate, causing even the *National Review* to lament the "insanity" of the Republican failure to allow the bill to pass through Congress.

We lost the legislation, but we did win the war of bringing the issue of criminal justice reform out of the political shadows. Six years after the introduction of this bill, bipartisan support for criminal justice reform has only increased. Last year, Congress created the "Chuck Colson Task Force" to alleviate overcrowding in federal prisons.[6] President Obama created the "Task Force on 21st Century Policing" to recommend ways to repair police community relations.[7] These commissions are steps toward reforms, but they do not address our larger, systemic national criminal justice problems.

Now is the time to revive the push for a national commission to address the overall issue of mass incarceration. Policing and the growth of the federal prison population are only parts of our nation's larger problem with prisons. A national commission is needed to conduct a top-to-bottom review of our nation's entire justice system — federal

and state — ultimately providing Congress and state governments with specific, concrete recommendations to cut the national prison population. Only an independent, outside commission focusing on the larger national problem of mass incarceration can bring us complete findings necessary to restructure the criminal justice system in the United States.

This commission must be properly structured and charged. It must be shaped with bipartisan balance. The President would nominate the commission's leader. The Majority Leaders and Minority Leaders of both houses of Congress would appoint two members each, in consultation with their respective congressional judiciary committees. The Republican and Democratic Governors Associations would each nominate one member.

This commission would bring together a group of federal, state, and local experts with credibility and with wide experience to examine specific findings and to come up with bold, systemic policy recommendations.

The commission would review all areas of federal and state criminal justice practices and make specific findings, including an examination of:

- The reasons for the increase in the U.S. incarceration rate compared to historical standards.
- Incarceration and other policies in similar democratic, Western countries.
- Prison administration policies, including the availability of pre-employment training programs and career progression for guards and prison administrators.
- Costs of current incarceration policies at the federal, state, and local levels.
- The impact of gang activities, including foreign syndicates.
- Drug policy and its impact on incarceration, crime, and sentencing.
- Policies as they relate to the mentally ill.
- The historical role of the military in crime prevention and border security.

These issues need to be examined carefully and comprehensively by a group of people who are going to do more than sit around and simply

remonstrate about the problem. The commission's recommendations must result in action.

The first step for the commission would be to give us factual findings, and then from those findings, give us recommendations for policy changes. The recommendations would address the same issues above: how we can refocus our incarceration policies; how we can work toward properly reducing the incarceration rate in safe, fair, and cost-effective ways that still protect our communities; how we should address the issue of prison violence in all forms; how we can improve prison administration; how we can establish meaningful reentry programs.

Though I leave it to the commission to decide what recommendations are best for this country, I believe they should include graduated sanctions for individuals on probation and parole, work-release programs, education opportunities, the introduction of risk assessment tools for prisoners preparing to reenter society, fewer arrests, and shorter sentences for nonviolent drug users.

Without question, it is in the national interest that we bring violent offenders and career criminals to justice. I do not suggest that we let dangerous or incorrigible people go free, simply that we determine how best to structure our criminal justice system so that it is fair, appropriate and — above all — effective. No American neighborhood is completely safe from the intersection of these problems.

There are better ways to keep our communities safe than simply incarcerating people. Fixing our system will require us to reexamine who goes to prison, for how long, and how we address the long-term consequences of their incarceration. As a nation, we can spend our money more effectively, reduce crime and violence, reduce the prison population, and create a fairer system. Our failure to address these problems cuts against the notion that we are a society founded on fundamental fairness. It is time to take stock of what is broken and what works and modify our criminal justice policies accordingly. The creation of a National Criminal Justice Commission is still the best way to do this.[8]

22
A National Agenda to Reduce Mass Incarceration

Inimai Chettiar
Director, Justice Program
*Brennan Center for Justice at New York University School of Law**

"To end mass incarceration, the American people and their top leaders must also embrace the cause. We need a national conversation, led by national voices, offering national solutions. Those ideas must be big and aim high. Three ideas to start: eliminate incarceration for low-level offenses, except in exceptional circumstances; reduce mandatory sentences set by law; and create financial incentives to steer toward reducing both crime and incarceration."

Mass incarceration threatens American democracy. Hiding in plain sight, it drives economic inequality, racial injustice, and poverty. It will ultimately make it harder to compete in the global economy.

The United States has 5 percent of the world's population, yet it has 25 percent of the world's prisoners. More black men serve time in our correctional system today than were held in slavery in 1850. If the prison population were a state, it would be the 36th largest — bigger than Delaware, Vermont, and Wyoming combined.[1]

Our current penal policies do not work. Mass incarceration is not only unnecessary to keep down crime but also ineffective at it. Increasing incarceration offers rapidly diminishing returns. Extensive

* Abigail Finkelman and Nicole Fortier contributed to this essay.

research shows incarceration can increase future crime in some cases, as prison often acts as a "crime school." [2]

Mass incarceration has startling harmful effects. The criminal justice system costs taxpayers $260 billion a year. Spending grew almost 400 percent over the past 30 years. With so many withdrawn from society, and returning stigmatized as "convicts," the criminal justice system drains overall economic growth. Best estimates suggest it contributed to as much as 20 percent of the U.S. poverty rate. Nearly two-thirds of the 600,000 people who exit prisons each year face long-term unemployment.[3] The social and human costs are even higher.

How did we get here? In response to the crime wave of the 1980s, politicians vied to be the most punitive — from the 1977 New York City mayoral election, which improbably turned on the issue of the death penalty (over which a mayor has no power), to the 1994 referendum that passed "three-strikes-and-you're-out" in California.

But times have changed. Reducing mass incarceration is now one of the few issues on which the left and right are coming to agree. Notably, Republicans are leading the charge, while Democrats largely play catch up. Lawmakers approach the issue from different perspectives. Their concerns vary from spiraling prison costs to intrusion of big government, from religious redemption to civil rights concerns.

We now know that we can reduce crime *and* reduce incarceration. States like Texas, New York, Georgia, and California have changed their laws to do just that.[4] For the first time in 40 years, crime and incarceration fell nationwide.[5] These state reforms provide modest fixes and short-term relief. Local grassroots and state advocacy groups were vital to these wins, working tirelessly to build momentum. Although these reforms are heartening, they are not the wholesale systemic changes needed to strike a blow to mass incarceration.

To end mass incarceration, the American people and their top leaders must also embrace the cause. We need a national conversation, led by national voices, offering national solutions. Those ideas must be big and aim high.

But, since criminal justice is largely a province of states and cities, how can there be "national" solutions? Each state struggles with the

same challenges: too many arrests, prosecutions, pretrial detentions, prison sentences, and probation and parole revocations. Trends of overcriminalization, overincarceration, and selective enforcement play out across the country, with some variation. It is a false choice to debate whether we need powerful, state-focused efforts or a vibrant, national conversation. A change in national attitude will create the space for bolder state reforms.

This essay offers three national solutions, executed through a mix of federal, state, and local reforms. Though a President or other national leader may not have legal authority to enact all of them, they can and should be champions for these changes.

Eliminate incarceration by law for most low-level offenses, except in extraordinary circumstances.

Incarceration is the punishment of first resort for too many offenses. Half of state prisoners are behind bars for nonviolent crimes; half of federal prisoners are locked up for drug crimes. Roughly one in three new prison admissions are for violations of parole or probation conditions. And 6 out of 10 local jail inmates await trial, though research suggests that as many as 80 percent could be released with little or no threat to public safety. All told, as many as 1.07 million people may be behind bars without a public safety rationale.[6]

Many states increased the discretion of judges so they can decide — or a prosecutor or parole officer can recommend — whether to send a defendant to prison or to an alternative punishment. However, prison is still a legally permissible option for low-level crimes.[7]

But we should ask: Why do our laws allow prison — the harshest punishment available short of execution — for many of these crimes in the first place? Of course, those who commit crimes should be punished (and some low-level offenders may need prison), but generally such severe punishment simply is not warranted. Ample research demonstrates that alternatives to incarceration in such cases often reduce recidivism and are cheaper than prison time.[8]

We can safely reduce the ranks of the incarcerated in several ways:

- *Change criminal laws to remove prison as an option for most low-level, nonviolent, or non-serious crimes — except in extraordinary circumstances.* More suitable punishments include: probation, community service, electronic monitoring, or psychiatric or medical treatment. This holds especially true for an array of drug crimes. Many argue for drug legalization. Many argue against it. The same neighborhoods where drugs wreaked havoc in the 1980s are now devastated by mass incarceration. It remains unclear whether drug legalization would be helpful or harmful to communities of color. However, one fact is clear: It is neither effective nor cheap to throw a person into prison for years for possessing a joint or a bag of cocaine.[9]

- *Make treatment, not prison, the standard response for people with mental health or addiction issues*. Half of prisoners suffer from mental health or drug addiction issues. There are more Americans with mental illness in prisons than in hospitals. Prison does not treat health issues; it makes them worse.[10] Treatment will help people get back on their feet and become productive members of society. (Of course, they should also be supervised; and incarceration may be needed for some due to the nature of the crime or threat posed.)

- *End incarceration as a sanction for technical violations of terms of parole and probation.* Texas found a way to safely curb these revocations. In 2007, the state introduced a system of progressively stronger punishments for violations. It invested $241 million in alternatives, including treatment. By 2015, the state cut revocations to prison by 40 percent. It also saved $2 billion, closed three prisons, and dropped its crime rate to the lowest since 1968.[11]

- *Detain defendants who await trial based on dangerousness, not wealth.* Last year, New Jersey overhauled its bail process: the state will now release defendants charged with low-level crimes

under conditions that protect public safety, while detaining those who pose risks of violence. These defendants are required to remain in the custody of a guardian, maintain a job or school enrollment, report to a law enforcement officer, undergo drug or mental health treatment, or submit to electronic monitoring.[12] Other states use social science tools to assess danger and flight risks to make detention decisions.[13]

Reduce mandatory sentences set by law.

Sentencing laws must change. Mandatory minimum, "three strikes you're out," and "truth-in-sentencing" regimes set overly-punitive sentences for defendants. Not only are people now incarcerated at higher rates than ever before, they are incarcerated for longer. According to the Pew Center, the average prison stay increased 36 percent since 1990.[14]

Lawmakers enacted these regimes partly out of a concern for uniformity and equal treatment. If states simply eliminate these laws and return discretion entirely to judges, they could create the very problems of inequity some of these laws were intended to fix.

Instead, we should reduce the mandatory minimum sentences set by law, and reduce the maximum sentences ranges set by codes. Sentence lengths are often wildly disproportionate to the crimes committed. And research shows that longer sentences, beyond a certain point, do not decrease recidivism.[15]

Create financial incentives to steer toward curbing crime and reducing mass incarceration.

A web of perverse financial incentives drives mass incarceration. For example, police departments often report their "success" by tallying the number of arrests and drug seizures. Prosecutors are often hailed when they increase the number of convictions and prison sentences. These counts are reported as part of the budget process. And prisons — public and private — get more funds when their populations swell.[16]

Instead, a new way forward, termed "Success-Oriented Funding," prescribes that government should fund what works. Government should closely tie the hundreds of billions of dollars spent on criminal justice to the twin goals of reducing crime and incarceration. Harnessing the power of incentives, this approach can be implemented at the federal, state, and local levels.[17]

The federal government has been one of the largest instigators of perverse incentives. For example, the 1994 Crime Bill included $9 billion to encourage states to drastically limit parole eligibility. Unsurprisingly, 20 states promptly enacted such laws, yielding a dramatic rise in incarceration.[18] Today, the federal government continues to subsidize state and local criminal justice costs to the tune of $3.8 billion annually.[19]

One basic, yet effective, step: The federal government should provide funds to states that cut both crime and imprisonment. California, Texas, and other states succeeded by changing financial incentives. They awarded additional funds to local probation departments that reduced the number of people revoked to prison. In its first year alone, California reduced revocations to prison by 23 percent, saving the state nearly $90 million.[20] In one year, Texas reduced the number of people revoked to prison by 12 percent.[21] In both states, crime continued to drop.

A federal program to reward states that reduce crime and incarceration would spur vital change. States should also implement similar financial incentives for budgets to police, prosecutors, jails, prisons, and parole and probation offices. Success-Oriented Funding steers decision making toward broad goals, while allowing local officials the flexibility to decide how to achieve these outcomes.

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What political strategy can achieve the change needed? A strategy that firmly puts mass incarceration at the forefront of a national political conversation. One in which the President, U.S. Senators, governors, mayors, police chiefs, civil rights leaders, and business heads call for change. One that puts forward big solutions that can also secure political support. As Abraham Lincoln said of the debate over slavery: "Public

sentiment is everything. With public sentiment, nothing can fail. Without it, nothing can succeed."[22]

Mass incarceration — the fundamental civil rights issue of our time — will only end when there is a collective American will do so. The challenge at hand is to find bold, practical ways to cut the prison population while keeping the public safe. Three ideas to start: eliminate incarceration for low-level offenses, except in exceptional circumstances; reduce mandatory sentences set by law; and create financial incentives to steer toward reducing crime and incarceration.

More broadly, this book provides an array of additional solutions from our nation's leading bipartisan public figures and criminal justice experts to reduce mass incarceration. It aims to ignite a conversation that national leaders will join, support, and encourage. Now is the moment to push forward to revitalize our justice system and our democracy.

Endnotes

Clinton: Foreword

1 The U.S. represents 5% of the world's population and approximately 25% of its prison population. *See* Roy Walmsley, International Centre for Prison Studies, World Prison Population List 3 (10th ed. 2013), *available at* http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf (providing the national population for the United States as 5% of the world population and the prison population as 22% of the world's incarcerated population).

2 *UCR Data Online*, Uniform Crime Reporting Statistics, http://www.ucrdatatool.gov/index.cfm (providing crime statistics from 1960 to 2013).

Introduction

1 *See* Roy Walmsley, International Centre for Prison Studies, World Prison Population List 3 (10th ed. 2013) (providing the national population for the United States as 5% of the world population and the prison population as 22% of the world's incarcerated population); Roy Walmsley, International Centre for Prison Studies, World Female Imprisonment List 1 (2nd ed. 2012), *available at* http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wfil_2nd_edition.pdf (showing that nearly one third of incarcerated women worldwide were in the United States in 2013).

2 Violent and property crime rates in 2012 were 387 and 2,860 per 100,000, respectively. The last time the violent crime rate was that low was in 1970, when it was 364, and the last time the property crime rate was that low was in 1967, when it was 2,737. *See* FBI, Uniform Crime Reports as prepared by the National Archive of Criminal Justice Data, http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm.

3 From 2008 to 2012, numbers of crime declined by 8.8% and numbers of incarceration declined by 3.2%. In that same time, the crime rate declined by 11.6% and the incarceration rate declined by 8%. *See* Lauren-Brooke Eisen, et al., Brennan Ctr. for Justice, Federal Prosecution for the 21st Century 56 n.21 (2014), *available at* http://www.brennancenter.org/publication/federal-prosecution-21st-century; Thomas P. Bonczar, Bureau of Justice Statistics, Prevalence of Imprisonment in the U.S.. Population, 1974-2001 1 (2003), *available at* http://www.bjs.gov/content/pub/pdf/piusp01.pdf (finding that about 1 in 3 black males are expected to go to prison during their lifetime, if current incarceration rates remain unchanged).

4 *See* Bureau of Justice Statistics, Justice Expenditure and Employment Extracts: 1984, 1985, and 1986 156 (1991), *available at* http://www.bjs.gov/content/pub/pdf/jeee-848586.pdf (finding that in 1986 the justice system spent $53.5 billion); *see* Tracey Kyckelhahn & Tara Martin, Bureau of Justice Statistics, Justice Expenditure and Employment Extracts, 2010 — Preliminary (2013), *available at* www.bjs.gov/index.cfm?ty=pbdetail&iid=4679. The Brennan Center estimates the $260.5 billion number by adding the estimated judicial and legal costs ($56.1 billion), police protection costs ($124.2 billion), and corrections costs ($80 billion). *See* E. Ann Carson, Bureau of Justice Statistics, Prisoners in 2013 10-11 tbl.9 (2014) (showing that 636,715 prisoners were released in 2012 and 623,337 in 2013); Joan Petersilia, Nat'l Inst. Of Justice, *When Prisoners Return to the Community: Political, Economic, and Social Consequences*, Sentencing & Corrections: Issues for the 21st Century 3 (2000), *available at* https://www.ncjrs.gov/pdffiles1/nij/184253.pdf (finding that one year after release as many as 60% of former inmates are not employed in the legitimate labor market); Robert DeFine & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, 49 Crime & Delinquency 581 (2013) (indicating that had mass incarceration not occurred, poverty would have decreased by more than 20%, or about 2.8 percentage points).

5 *See* Lauren E. Glaze & Danielle Kaeble, Bureau of Justice Statistics, Correctional Populations in the United States, 2013 3 tbl.1 (2014), *available at* http://www.bjs.gov/content/pub/pdf/cpus13.pdf (showing that in 2013 there were 2,220,330 persons incarcerated in the United States in 2013 and 6,899,000 in the entire correctional population); *see* U.S. Census Bureau, Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014 (2015), *available at* http://www.census.gov/popest/data/national/totals/2014/index.html (showing that as of July 1, 2014 the estimated population of the 35th largest state, Nevada, was 2,839,099 and the population of the 36th largest state, New Mexico, was 2,085,572; the populations of Delaware, Vermont, and Wyoming combined equaled 2,146, 329; the population of the 13th largest state, Washington, was 7,061,530 and the population of the 14th largest state, Massachusetts, was 6,745,408).

Biden: The Importance of Community Policing

1 This essay is adapted from a speech originally delivered by Vice President Biden to the Organization of Minority Women at the Martin Luther King Day Breakfast in Wilmington, Del., on January 19, 2015.

2 Martin Luther King, Jr., Stride Toward Freedom: The Montgomery Story (1958).

3 *Charlie Rose: Bill Bratton* (PBS television broadcast Jan. 13, 2015)

4 Violent Crime Control and Law Enforcement Act, H.R. 3355, Pub.L. 103–322 (1994).

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Napolitano: Prosecutorial Prioritization

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O'Malley: Abolish the Death Penalty, Invest in Public Safety

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About the Editors

Inimai Chettiar is director of the Justice Program at the Brennan Center.
Michael Waldman is president of the Brennan Center.

About The Associate Editors

Nicole Fortier is counsel in the Justice Program at the Brennan Center.
Abigail Finkelman is special assistant to the director of the Justice Program at the Brennan Center.

Mass incarceration. In recent years it's become clear that the size of America's prison population is unsustainable – and isn't needed to protect public safety.

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Brennan Center for Justice
at New York University School of Law

161 Avenue of Americas, 12th Floor
New York, New York 10013
(646) 292-8310
www.brennancenter.org