

# Sentencing Times

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## RESEARCH

### Dramatic Decarceration and Crime Decline in Three States

The United States experienced a significant **crime drop** in the past decade, during a period of slowing growth in the incarceration rate. But during this time, three states – New York, New Jersey, and California – actually reduced their prison populations in the range of 25% and saw their crime rates generally decline at a faster pace than the national average, finds *Fewer Prisoners, Less Crime: A Tale of Three States*, a widely-referenced report by The Sentencing Project.



The report's authors, Marc Mauer and Nazgol Ghandnoosh, spotlight the three states that led the nation in downsizing their prison populations to assess the potential, and limitations, of existing experiences with decarceration. These states demonstrate that it is possible to achieve substantial prison population reductions – much greater than the very modest 3% reduction that state prisons have achieved nationally since their 2009 peak – without compromising public safety.

Importantly, the authors also note: "There is also no reason why a reduction of 25% should be considered the maximum that might be achieved."

Among the report's key findings:

Between 1999 and 2012, the state prison population increased by 10%. During this time, New York and New Jersey reduced their prison populations by 26%. Meanwhile, both states exceeded by several percentage points the drop in the nationwide violent and

*Dramatic Decarceration and Crime Decline in Three States continued on page 3*

## POLICY

### U.S. Sentencing Commission Unanimously Votes to Reduce Drug Penalties Retroactively

In a historic move, the U.S. Sentencing Commission unanimously voted in July to reduce the sentences of up to 46,000 people currently serving time for federal drug offenses.

Over the last several decades, U.S. drug sentencing policies have led to ballooning federal prison populations and costs, and have contributed to significant racial and ethnic disparities, while doing little to enhance public safety. In April, the Sentencing Commission approved an amendment to the federal sentencing guidelines to reduce future sentences across drug types. The Sentencing Project submitted comments in

strong support of this amendment as a means of addressing these problems and providing a greater measure of justice in the federal court system.

The Sentencing Commission's decision in July expanded the reach of the amendment, applying the reduced sentencing guidelines retroactively to individuals currently in prison for drug offenses. The Sentencing Project urged the Sentencing Commission to approve full retroactivity in submitted comments, arguing that there is no sound basis on which to let sentence dates determine sentence lengths, and that partial

*USSC Vote continued on page 3*

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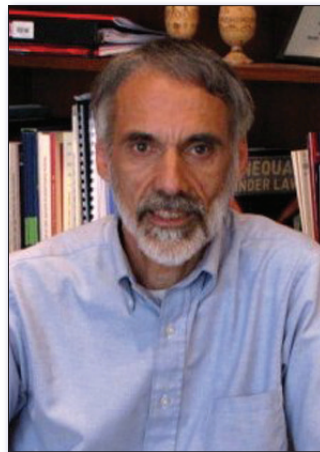
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**EXECUTIVE DIRECTOR'S MESSAGE**

# Why We Need to Talk About Race When We Talk About Justice



*Marc Mauer, Executive Director*

The tragic events in Ferguson, Missouri are an all too painful reminder of the vast racial divide that still plagues our nation. As but one indication, polling shows that while 80% of African Americans believe these events raise important racial justice issues, only 37% of white Americans feel similarly. How did we get to such a racial schism in this country?

Many people would argue that the glass is at least half full, and that we have made substantial progress toward racial justice over the past half century. Within the criminal justice system there is now a great diversity of leadership in many jurisdictions, with women and people of color serving as chiefs of police, commissioners of corrections, and in other leadership roles. The racist comments that were once common in many courtrooms would now be routinely condemned.

But Ferguson shows us once again that the relationship between law enforcement and African American communities is far too often fraught with tension and mistrust. With a nearly all-white police force in a town with a two-thirds black population, and with a revenue development strategy dependent on that police force's high rates of traffic stops and fines from the black community, Ferguson demonstrates that not much has changed in some parts of the country.

These events occur at a time when the pace of criminal justice reform is quickening, and thus challenge us to consider how to frame racial justice issues within that context. Some political

strategists argue that criminal justice reformers will have more success if they avoid race-based arguments. Their argument goes like this:

First, polling data show that arguments for sentencing reform based on racial disparities are less convincing – particularly for white respondents – than arguments focused on fiscal concerns, type of offense, or compassion for young offenders. Second, white policymakers will be turned off by race-based arguments either because they perceive it as “playing the race card” or because they don’t believe it affects most of their constituents. So, should reform advocates avoid talking about race because it may set back our agenda?

I don’t think so. Within recent years, we’ve witnessed criminal justice reforms that in large part have been framed as racial justice campaigns. In the area of sentencing policy, these include crack cocaine sentencing reforms passed by Congress and in states like Missouri and South Carolina, along with the Rockefeller Drug Law reforms in New York state, all premised in large part on documenting the racial injustices brought about by the drug war. Similarly, campaigns challenging racial profiling and “stop and frisk” policies of law enforcement agencies have convinced both federal judges and law enforcement officials that such practices cannot be tolerated.

It’s hard to imagine how we as a society can “get beyond race” if we don’t, in fact, talk about race. What are the tensions in Ferguson about, if not race? We can also be guided by such stirring and hard-won successes as the civil rights movement in the U.S. and the anti-apartheid movement in South Africa. These struggles were *all* about race, and managed to overcome centuries of racist rule by oppressive white societies to achieve greater democracy. We would be wise to remember those lessons as we continue to strive for sustainable reform of the criminal justice system.

property crime rates, which fell by 26% and 24% respectively.

California's prison population reduction of 23% between 2006 and 2012 far exceeded the nationwide state prison population decrease of just 1%. During this time, California's violent crime drop exceeded the national rate, and its property crime drop of 13% was slightly below the national reduction of 15%.

These prison population reductions have come about through a mix of changes in policy and practice designed to reduce admissions to prison and lengths of stay.

Incorporating other leading studies of the causes and consequences of decarceration in these states, the report details the specific policy mechanisms through which the states reduced prison counts.

This potentially counter-intuitive finding is not surprising in the context of historical and

international episodes illustrating a weak relationship between crime rates and incarceration levels.

Noting the great potential for other states to achieve similar prison downsizing, the authors note that "prior to embarking on these population reductions these states did not have excessive rates of incarceration by U.S. standards."

Six other states achieved double-digit reductions during varying periods within these years, though of a lesser magnitude.

The report received considerable media coverage, including *The Washington Post*, *The Huffington Post*, and *The Chicago Reporter*. Referencing the report, an op-ed in the *New Orleans Times-Picayune* wrote, "One thing is clear: our prisons and parish jails brimming with prisoners have not made us safer. Isn't it time we took a serious look at something different?"

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*USSC Vote continued from page 1*

retroactivity would exacerbate racial disparities in federal sentencing.

This important reform will help to alleviate the unsustainable burden on the federal prison system by allowing people serving time for a drug offense to seek a reduction in their current sentence – potentially reducing average prison terms by nearly two years. Unless Congress acts to disapprove the amendment, it will go into

effect November 1, 2015.

*The New York Times* reported that "civil rights groups and prison-reform advocates cheered the decision. Marc Mauer, executive director of The Sentencing Project, called it a 'historic shift in the decades-long war on drugs, which has filled half of federal prison cells with people convicted of drug offenses.'"

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## POLICY

# An Important Year for Sentencing Reform

Last December, Attorney General Eric Holder made a surprise visit to a meeting of advocates gathered at the U.S. Department of Justice to discuss reentry strategies. Noting bipartisan criminal justice reform efforts on a number of fronts, Holder concluded that 2014 "could be a groundbreaking year."

And indeed it has been so far.

Earlier this year, the Senate Judiciary Committee sent to the floor two sentencing reform measures with strong bipartisan support. One bill, the Smarter Sentencing Act, would ease harsh mandatory minimum penalties for drug offenses and extend the more equitable crack cocaine provisions of the Fair Sentencing Act retroactively. The other would provide sentence-reduction incentives for those who take



*U.S. Attorney General, Eric Holder.*

part in prison rehabilitative programming. Both bills have a growing number of co-sponsors, and though they have yet to receive floor votes, Majority Leader Harry Reid has said he

## Public Education

**The Sentencing Project has made presentations to many organizations and institutions in the past year, including:**

Abilene Christian University  
American Constitution Society  
American Sociological Association  
American University  
Washington School of Law  
Bennington College  
Cesar Chavez High School (DC)  
Columbia University School of Public Health  
Congressional Black Caucus Foundation  
Congressional Hispanic Caucus  
Embassy of Saudi Arabia  
Exodus Foundation  
Feminist Majority Foundation  
Ford Foundation  
Georgetown Law School  
Governing Institute  
Harvard Law School  
Huston-Tillotson University  
John Jay College of Criminal Justice  
Justice Studies Association  
Mid-South Peace and Justice Center  
Michigan Lifers Group

*Public Education continued on page 4*



# State Update: Reform in Missouri, California, and More

During 2014, The Sentencing Project continued to work with organizers, policy advocates, and state lawmakers to advance criminal justice reforms by providing research, offering testimony, and contributing technical assistance. State successes supported by The Sentencing Project's work included:

## Missouri

Background data from a report published by The Sentencing Project, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits*, helped pass a Missouri law for the state to opt out of the federal ban on food stamp benefits for persons with felony drug convictions. The Sentencing Project provided the state-based coalition of faith leaders, activists, and policy advocates with research support and legislative testimony, and organized national support in partnership with a coalition of civil rights and justice reform organizations.

## California

Technical assistance supported legislative efforts to equalize penalties for certain crack and powder cocaine offenses. Background information from The Sentencing Project report, *Cracked Justice*, helped state advocates document changes in Connecticut, Missouri, Iowa, Ohio and South Carolina. The Sentencing Project submitted legislative testimony and collaborated with a coalition of national organizations to support reform

## Kentucky

Research assistance helped Kentucky advocates promote legislation for a constitutional amendment that would have granted automatic rights restoration for persons with felony convictions who complete their sentences. A 2012 report by The Sentencing Project showed that in three states – Florida, Kentucky, and Virginia – more than one in five African-Americans had lost the right to vote. The Sentencing Project worked with state advocates to assess the impact of certain eligibility provisions on the disenfranchised population. Different versions of the voting rights measure passed in both

Houses, but legislators could not agree on a compromise bill.

## Mississippi

The Sentencing Project continued its efforts to help state advocates influence legislative reform. Nicole Porter, Director of Advocacy, delivered the keynote address at the Mississippi NAACP's Legislative Advocacy Day, where advocates prioritized a comprehensive criminal justice reform measure including reclassifying certain property and drug offenses and authorizing parole for persons who have served 25% of their sentences for non-violent offenses. Throughout the legislative session, The Sentencing Project provided the advocacy coalition with technical assistance, including efforts to address racial disparities.

Reforms in state sentencing policy continued in other parts of the country, too. In Texas, Nicole Porter was a featured speaker at a community event of activists, academics, and faith leaders on strategies to reduce state prison populations. The Sentencing Project staff also provided support to sentencing reform advocates in a number of states:

- Supporting legislation in Illinois, Massachusetts, Missouri, Michigan, Maryland, and Wisconsin to expand parole eligibility for persons serving long prison terms.
- Supporting legislation that would reduce enhanced "drug-free school zone" penalties in Connecticut.
- Providing technical assistance in Texas on an emerging campaign to address excess prison capacity.
- Supporting legislative efforts in California, Georgia, and Virginia to extend welfare benefits to persons with felony drug convictions.
- Providing technical assistance to advocates in Kentucky, Mississippi, and Oklahoma on legislative efforts to reduce state prison populations.
- Supporting efforts to address racial disparities in the prison system in Arkansas, Florida, New York, Washington, and Wisconsin.

Public Education continued from page 3

Missouri Association for  
Social Welfare  
NAACP (Des Moines,  
Iowa)  
NAACP (Kenosha,  
Wisconsin)  
National Comm-  
unications Association  
National People's Action  
Payne Theological  
Seminary (OH)  
Pennsylvania Prison  
Summit  
Princeton University  
Project Return  
Sojourners Summit  
United Methodist Women's  
Assembly  
University of Illinois,  
Chicago  
University of Michigan  
School of Social Work  
Yale University Law School

## Your Support Makes A Difference

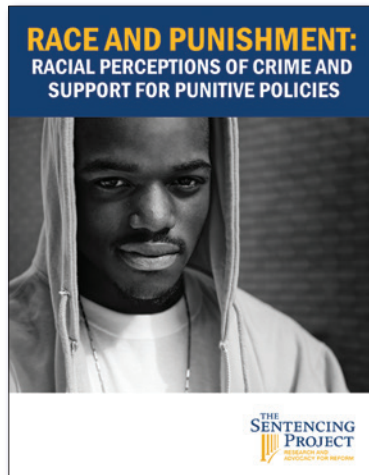
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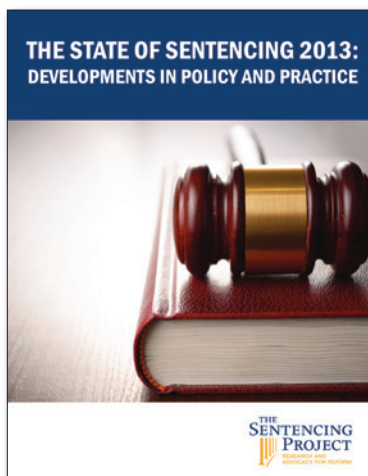
## Make a long-term investment in sentencing reform

For information about how you can make a bequest or a stock gift to The Sentencing Project, please contact Marc Levin at (202) 628-0871.

# New Publications from The Sentencing Project



Coming on the heels of the tragic events in Ferguson, Missouri, The Sentencing Project's recent report demonstrates that the consequences of white Americans' strong associations of crime with blacks and Latinos extend far beyond policing. *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies* examines how racial perceptions of crime are a key cause of the severity of punishment in the United States, synthesizing two decades of research revealing that white Americans' strong associations of crime with blacks and Latinos are related to their support for punitive policies that disproportionately impact people of color. The report recommends proven interventions for the media, policymakers, and criminal justice professionals to reduce racial perceptions of crime and mitigate their effects on the justice system, which include addressing disparities in crime reporting, reducing the severity and disparate impact of criminal sentencing, and tackling racial bias in the formal policies and discretionary decisions of criminal justice practitioners.

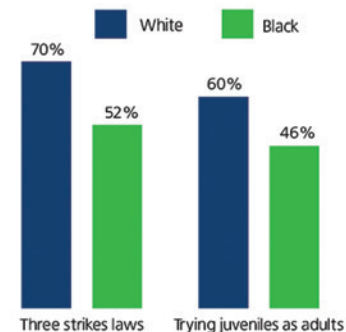


During 2013, legislators in at least 31 states adopted criminal justice policies that could help reduce the prison population, improve juvenile justice outcomes, and eliminate the barriers that marginalize persons with prior convictions. Highlights included expanding alternatives to incarceration for drug offenses, policies to reduce returns to prison for supervision violators, and comprehensive juvenile justice measures that emphasize prevention and diversion. *The State of Sentencing 2013* documents these reforms and provides recommendations for stakeholders invested in addressing the

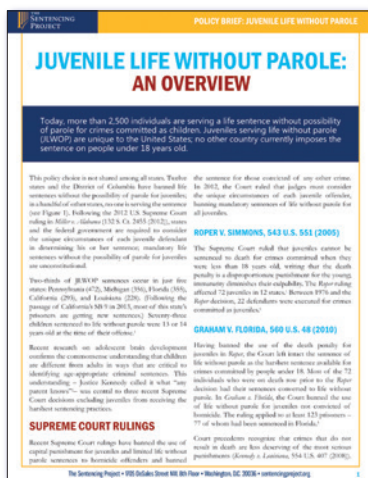
scale of incarceration to consider during the 2014 legislative session.

## From *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies*:

Support for various punitive measures, by race, 2000-2001

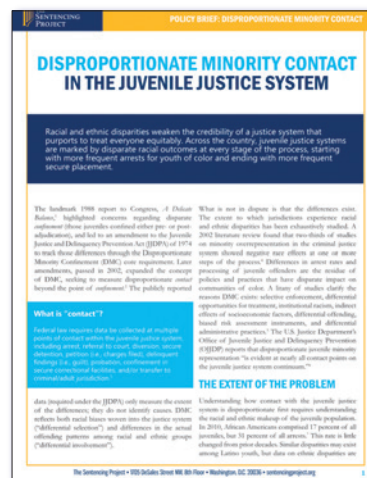


Source: Peffley, M. & Hurwitz, J. (2010). *Justice in America: The Separate Realities of Blacks and Whites*. New York, NY: Cambridge University Press (pp. 152-3).



Recent Supreme Court rulings have banned the use of mandatory life without parole for youth, as well as juvenile life without parole in non-homicide cases. Still, the United States stands alone as the only nation that sentences people to life without parole for crimes committed before turning 18. *Juvenile Life Without Parole* documents the key legal cases in this area, as well as the impact on fiscal costs,

racial disparities, and prospects for reform.



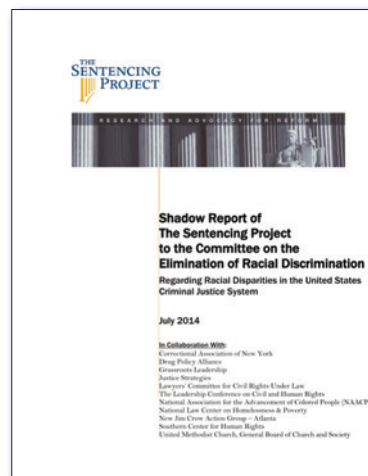
Despite declining numbers of juveniles held in confinement nationally, racial disparities in the juvenile justice system remain a persistent problem. *Disproportionate Minority Contact in the Juvenile Justice System* provides an overview of disparity trends in recent decades, and an assessment of how policy and practice decisions contribute to racial disparities.





On June 25, 2012, the Supreme Court struck down laws in 28 states that mandated life without parole (LWOP) for some youth. *Slow to Act: State Responses to the 2012 Supreme Court Mandate on Life Without Parole* details what has happened since. In the wake of *Miller v. Alabama*, a majority of these states have not passed new laws to address fair sentencing; others have

replaced LWOP with mandatory decades-long sentences that dodge the intent of the decision. This report updates how legislatures and courts in those 28 states and elsewhere have responded.



and felony disenfranchisement. The review of the United States' compliance with the CERD convention took place in August.

Along with 11 allied civil rights and justice reform organizations, The Sentencing Project submitted a **shadow report** regarding racial disparities in the justice system to the United Nations Committee on the Elimination of Racial Discrimination (CERD). Our report documents continuing disparities in incarceration, the imposition of juvenile life without parole, the death penalty,

## ADVOCACY

# State Advocacy Convening on Racial Impact Statements

In recent years there has been growing momentum among states to enact racial impact statement legislation. In response to state advocates' expressed interest in learning from their peers about strategy

The convening included stakeholders from nine states: Arkansas, Connecticut, Florida, Iowa, Mississippi, New York, Oregon, Washington, and Wisconsin. The strategy session gave participants an opportunity to discuss and share information on successful legislative strategies and talk about effective messaging tactics.

Convening participants heard from state lawmakers and practitioners who championed legislative measures to authorize racial impact statements in Iowa, Connecticut, and Oregon. In 2013, Oregon became the third state to adopt the measure; Iowa and Connecticut authorized similar policies in 2008. Highlights on strategy included:

- Using research to raise awareness about the problem of racial disparity;
- Building bipartisan coalitions – including law enforcement allies – to insure broad political support;
- Encouraging collaboration with practitioners in states that have experience with impact statements to

address logistical issues; and

- Discussing grassroots tactics including meetings in target legislative districts and community education events.



Participants brainstorm next steps in using racial impact statements effectively.

and messaging in racial impact statement advocacy, The Sentencing Project convened a meeting in August of organizers, formerly incarcerated activists and lawmakers to discuss political strategies in state-based campaigns.



Advocates discuss political strategies.

hopes the Senate will take up a criminal justice reform measure by the end of the year.

In April, the Justice Department announced that it would expand the federal clemency process to review more petitions from people convicted of low-level, non-violent offenses. The unprecedented initiative, which has sought the help of volunteer attorneys throughout the country, could potentially provide relief to hundreds, or even thousands, of federal prisoners. To improve the process, the Justice Department also announced the appointment of Deborah Leff as the new head of the Office of the Pardon Attorney.

Combined with the U.S. Sentencing Commission's amendment to reduce prison terms for people convicted of

drug offenses, these developments represent a long-overdue recognition of the excessive punishments required by federal drug sentencing policies. They reflect a growing bipartisan understanding that in far too many cases, federal drug sentences have been unfair, racially discriminatory, and fiscally irresponsible in terms of their limited public safety impact.

## MEDIA

# The Sentencing Project in the News

## The New York Times

September 7, 2014  
*Crime, Bias and Statistics*  
By Charles M. Blow

Discussions of the relationship between blacks and the criminal justice system in this country too often grind to a halt as people sink down into their silos and arm themselves with their best rhetorical weapons – racial bias on one side and statistics in which minorities, particularly blacks, are overrepresented as criminals on the other.

What I find too often overlooked in this war of words is the intersection between the two positions, meaning the degree to which bias informs the statistics and vice versa.

The troubling association – in fact, overassociation – of blacks with criminality directly affects the way we think about both crime and blacks as a whole.

**A damning report released by The Sentencing Project last week lays bare the bias and the interconnecting systemic structures that reinforce it and disproportionately affect African-Americans.**

**This is the kind of report that one really wants to publish in its totality, for its conclusion is such a powerful condemnation of the perversity of racial oppression.**

## THE HILL

May 27, 2014  
*Last Stand for The Drug Warriors*  
By Jeremy Haile, Federal Advocacy Counsel at The Sentencing Project

Three decades ago, in announcing an initiative to curtail drug abuse, President Reagan compared the enforcement of drug laws to the Battle of Verdun – one of the costliest and deadliest battles of World War I. Six years later, Congress had passed laws imposing across-the-board mandatory minimum penalties for drug offenses, authorizing billions of dollars for enforcement, and establishing a national policy to create a "Drug-Free America."

Thus the modern "War on Drugs" was born. It has not aged well.

In the past three decades, the number of people in federal prison has increased nearly 800 percent, primarily driven by mandatory minimum sentences for drug offenses. Today, half of all federal prisoners are serving time on a drug charge. Nearly three quarters of people imprisoned for a drug trafficking offense are black or Latino, even though people of all races use and sell drugs at roughly the same rates.



June 24, 2014  
*Study Finds States Struggling To End Life Sentences for Juvenile Offenders*

A new study finds state courts are still struggling with how to comply

with a 2012 Supreme Court ruling that limits the use of mandatory life without parole sentences for juveniles who commit serious crimes.

Wisconsin doesn't have a mandatory life without parole law, and there is only one person serving such a sentence in the state. But authors of the new study say Wisconsin has an opportunity to do what 11 other states have done to comply with the ruling.

**"Hawaii recently banned juveniles from ever serving life without parole. West Virginia has as well," said Josh Rovner of the Washington, D.C.-based Sentencing Project. "In Massachusetts, the state Supreme Court banned the sentence."**

Ashley Nellis, one of Rovner's colleagues at the project, said Wisconsin judges and prosecutors can join these states in living up to the central findings in the high court's ruling: **"Which are that young people can change – even young people who have committed very serious crimes," she said.**

## theguardian

June 13, 2014  
*The real legacy of the OJ Simpson trial: you can buy a get-out-of-jail-free card*

In theory, the US justice system, often hailed as the best in the world, is heavily weighted in favor of defendants: reasonable doubt, a unanimous jury, a quick-and-speedy trial, the right to counsel, and all that. What more could an accused person ask for, right? But

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## THE SENTENCING PROJECT

Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.

To these ends, it seeks to recast the public debate on crime and punishment.

To receive news and updates from The Sentencing Project electronically, send an email to: [staff@sentencingproject.org](mailto:staff@sentencingproject.org)

*Media continued from page 7*

the odds are stacked against defendants – especially poor ones – because the system, beautifully designed as it was, is cracking under its own weight.

Public defenders today are dealing with caseloads that far exceed the recommended federal maximums established in 1973, and they're cutting back on case spending because of it. "No matter how zealous, talented or passionate an attorney is," says Rapping, "they cannot perform at their best when they are overworked and under-resourced." Pit that lawyer against a team of high-powered attorneys with their accompanying "expert" witnesses, investigators, scientific tests, gloves and all, and someone who relies upon the Sixth Amendment doesn't stand a chance.

Not that the courts need a conviction to put poor defendants in jail in the first place. As Nazgol Ghandnoosh, a research analyst with The Sentencing Project, told me: "We have really high rates of people in this country being charged and detained in jail until they are processed, simply because they can't afford to make bail."

## GOVERNING

CONNECTING AMERICA'S LEADERS

March 20, 2014

### *Why Prison Populations Are Shrinking and How to Shrink Them More*

By Marc Mauer, Executive Director of The Sentencing Project

*The New York Times* reported recently on a lunch get-together at the Justice Department between Attorney General Eric Holder and Republican Sen. Rand Paul. That's right: Two political leaders who seemingly could not be further apart politically, and yet they engaged in a frank discussion about their common vision for sentencing and corrections reform. And in just the past two months, the Senate Judiciary Committee has passed two reform measures with strong bipartisan support. One bill would sharply reduce mandatory sentences for federal drug offenses; the other would provide sentence-reduction incentives for prisoners who take part in rehabilitative programming.

This collaboration at the federal level mirrors a trend that has been developing at the state level for the past

decade. The dramatic expansion of prison populations of the 1980s and '90s has seemingly ended, and for the past three years there has even been a modest overall decline. This has come about in part because of a decline in crime, but is also due to changes in policy and practice. Notably, these reductions have had no adverse impact on public safety.

The states leading this trend are California, New Jersey and New York, all of which have experienced a 20 percent reduction in their prison populations over the past decade. In California, a policy of "realignment" is shifting supervision of non-violent offenders and parole violators to the local level. In New York, reduced prosecutions of lower-level drug offenders and a scaling back of the state's "Rockefeller drug laws" have made a big difference. And in New Jersey, policymakers have slowed the return of parole violators to prison through enhanced supervision and services. Other states engaging in similar reforms include Georgia, Michigan, South Carolina and Texas.

Sentencing Times | Fall 2014