

Sentencing Times

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POLICY

A Growing National Consensus for Criminal Justice Reform

At long last, an American consensus for criminal justice reform is emerging. Mass incarceration has become a “trending” topic in the news, political discourse, and pop culture. Policymakers from President Obama to Senator Rand Paul have acknowledged that our current system is riddled with problems. And in an increasingly divided Congress, it seems the need for criminal justice reform is one issue upon which most can agree.

Much of the growing bipartisan momentum for reform has focused on drug convictions, which account for half of the individuals in federal prison today. As Jeremy Haile of The Sentencing Project wrote in a recent [*letter to the editor*](#) of *The New York Times*, “Ending the drug war will not end mass incarceration. But doing so would hardly be a trivial change.” As Haile explains, “Reducing mandatory drug penalties would scale back the excessive use of incarceration and would also have a significant effect on the disproportionate number of African-Americans and Latinos imprisoned

for these offenses.”

In recent years, a number of states have enacted drug sentencing reforms and successfully reduced their prison populations as a result. At the federal level, bipartisan consensus has culminated in the Sentencing Reform and Corrections Act, passed in the Senate Judiciary Committee in October. A comprehensive criminal justice reform package that centers on a number of reforms for drug offenses, Marc Maurer has called the bill “the most substantial criminal justice reform legislation introduced since the inception of the ‘tough on crime’ movement.”

While ending the drug war is an important first step to ending mass incarceration, a long-term strategy for cutting our prison population will need to also include meaningful reforms for other types of crime. Half of the people in state prisons today are incarcerated for violent offenses, and in order to truly end mass incarceration, we have continued to strive to push the national conversation

A Growing National Consensus for Criminal Justice Reform continued on page 3

RESEARCH

National Analysis: Eliminating Racial Inequity in the Criminal Justice System

“Every time you see me, you want to mess with me,” Eric Garner told the group of New York City police officers seeking to arrest him for selling loose cigarettes. Garner died an hour after an officer held him in a chokehold during the arrest.

In Ferguson, a police officer shot and killed Michael Brown, an unarmed 18-year-old. In Baltimore, Freddie Gray died after suffering a spinal injury while in police custody. In North Charleston, South Carolina, Walter Scott was shot in the back by an officer after fleeing from a traffic stop. In Waller

County, Texas, Sandra Bland is reported to have killed herself in jail after being arrested following a stop for failing to use a turn signal.

The tragic deaths of these black Americans, often at the hands of white police officers, have given rise to the Black Lives Matter movement. Advocates and a growing share of the public are pressing for accountability for police brutality and for reforms to prevent future tragedies.

In February, The Sentencing Project issued a report, [*Black Lives Matter: Eliminating Racial Inequity in the Criminal*](#)

National Analysis: Eliminating Racial Inequity in the Criminal Justice System continued on page 3

What Will It Take to End Mass Incarceration?

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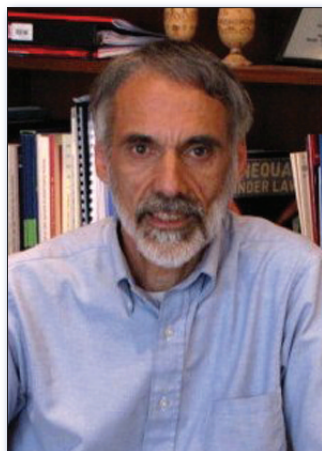
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Marc Mauer, Executive Director

It's difficult to open a newspaper or turn on talk radio today without hearing a discussion of how to end mass incarceration. From the Pope to leaders across the political spectrum, the idea of scaling back our world record prison

population is seemingly gaining traction by the day.

While this is certainly encouraging, developing a strategy to achieve this goal is a complex matter. This involves considerations of incremental change vs. "big picture" visions, "top down" vs. grassroots advocacy, racial justice, cost-effectiveness, and a host of other issues. But there are also substantial structural challenges regarding the nature of the criminal justice system that need to be addressed.

For a start, unlike issues such as health care reform, where a single bill in Congress can produce substantial change across the country, the criminal justice system is comprised of 51 separate systems. Not only is there a federal justice system and one in each of the states, but local jails hold a third of the incarcerated population as well. So to the extent that policy change is necessary to address excessive incarceration this requires leadership across the national landscape by both policymakers and advocacy organizations.

Compounding this challenge is the fact that mass incarceration did not develop only because of legislative policies, but is also the result of practitioner decisionmaking at all levels of the justice system. Decisions made about arrest, pretrial release, charging, sentencing, and parole all play into the determination of how

many people are sent to prison and how long they are kept there. And as is true of many sentencing policies, day-to-day decisionmaking often becomes institutionalized as well, and too often with little reflection on or evaluation of effectiveness and fairness.

Given these dynamics, one might despair at the scale of change necessary to substantially reduce mass incarceration. Despite the growing talk of bipartisan reform, the number of people in prison has at best only stabilized in recent years. But there is still reason to believe that substantial change can be achieved. Since 1999, eight states have reduced their prison populations by more than 15% since reaching their peak levels, downsizing by as much as 31% in New Jersey. The factors producing these declines vary by state, but they have generally included a mix of policy and practice changes geared to an understanding that no single initiative in itself can "fix" the problem.

In order to achieve population reductions of this magnitude or more, we need to first recognize that it was the political climate of recent decades that created the framework for mass incarceration. Therefore, so too can a changed political environment create the potential for sustained shifts in policy and practice. But in order to stimulate new decarceration initiatives, we clearly need to accelerate the pace of change in the political environment. At one level this means providing policymakers with the data, analysis, program models, and political cover necessary to make the argument for reform. It also requires working with practitioners to develop new ways of thinking about problem-solving and evaluating success. And at the grassroots level, it means looking to movements like Black Lives Matter and others that can create a demand for change at both the local and national level.

This is still a daunting challenge. But it's one that we at The Sentencing Project welcome taking on, and we know that we do so with many allies around the country.

further to include meaningful reforms in sentencing for all crimes.

Early in 2015, Marc Mauer delivered *testimony* to the Charles Colson Task Force on Federal Corrections, calling for an upper limit of no more than 20 years in federal prison, barring exceptional circumstances. His proposal would reduce the federal prison population, avert unnecessary costs of incarceration, and provide resources for more effective public safety investments. Most offenders “age out” of crime, so incarcerating people after their 30s or 40s produces diminishing returns for public safety.

In May, a commentary by Marc Mauer and Georgetown University law professor David Cole in *The New York Times* titled “*How to Lock Up Fewer People*,” described the scale of policy and practice reforms needed to truly

tackle mass incarceration, and move the United States toward an incarceration rate more in line with other western nations. “We could cut sentences for violent crimes by half in most instances without significantly undermining deterrence or increasing the threat of repeat offending,” they wrote. “The facts that no other Western European nation even comes close to our incarceration rates, and that all have lower homicide rates, show that there are better ways to address crime.”

The Sentencing Project has been proud to help shape the national dialogue on criminal justice policy for the past three decades. As the movement for criminal justice reform gains traction, we will continue to advocate for commonsense, evidence-based approaches to public safety that create impactful reforms on all levels.

National Analysis: Eliminating Racial Inequity in the Criminal Justice System continued from page 1

Justice System. The report argues that the criminal justice system’s high volume of contact with people of color is a major cause of African Americans’ disproportionate rate of fatal police encounters, as well as of broader perceptions of injustice in many communities. It outlines four major sources of racial disparity throughout the criminal justice system.

First, racially biased use of discretion – not just among police officers, but also prosecutors, judges, and potentially even public defenders – is one source of racial disparity in the justice system.

Second, many ostensibly race-neutral policies and laws have a disparate racial impact. For example, drug-free school zone laws mandate harsher sentences for people selling drugs near school zones. The expansive geographic range of these zones has disproportionately affected residents of high-poverty urban areas, who are largely people of color.

A third source is the underfunding of key segments of the criminal justice system and expectations of significant financial outlays from defendants. Most states inadequately fund their indigent defense programs, and pretrial release often requires money bond. These policies put low-income people – who are disproportionately black and Latino – at a disadvantage.

Finally, criminal justice policies exacerbate socioeconomic inequalities by imposing collateral consequences on those with criminal records and by diverting public spending away from crime prevention efforts and drug treat-

ment programs.

These problems are not intractable. In fact, more than 20 states have designed initiatives to address these sources of disparity. Some of the reforms showcased in the report include:

- Milwaukee’s prosecutors worked with the Vera Institute of Justice to eliminate racial disparities in drug paraphernalia charges.
- Indiana amended its drug-free school zone sentencing laws.
- New Jersey reformed its bail system to emphasize risk assessment over monetary bail.
- California’s Proposition 47 reclassified a number of low-level offenses from felonies to misdemeanors and committed an estimated \$150-\$250 million of annual prison savings to drug treatment and crime prevention programs.

Ferguson and New York City have also begun implementing reforms, in response to the local outcry and the growing national movement. The Sentencing Project’s report, featured in outlets including *Salon*, *The Dallas Weekly*, and *The American Constitution Society* blog, demonstrates that practitioners and policymakers from around the country are working to eliminate sources of racial bias throughout the criminal justice system. We must now expand the scale and increase the speed of these efforts.

Public Education

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

Administrative Office
of the U.S. Courts
AFL-CIO
American Bar Association
American Society of
Criminology
American University
Baruch College – School of
Public Affairs
Bipartisan Summit on
Criminal Justice Reform
Brooklyn Public Library
Cabrini College (PA)
Coalition for Juvenile
Justice
Congressional Black
Caucus
Delaware Center for Justice
Ecumenical Advocacy
Conference
Georgetown University
Harvard Law School
Law and Society
Association
Life Imprisonment and
Human Rights
Convening (Spain)
Miami University
School of Law
Mid-Atlantic States
Correctional Association
Mt. St. Mary’s University
(MD)
National Action Network
New School Humanities
Action Lab (NY)
Northwest Community
Church (DC)
Public Education continued on page 4

Criminal Justice Reform Moves Forward in Washington

This fall, legislation was introduced in both the Senate and the House that could constitute the most substantial criminal justice reform since the beginning of the “tough on crime” movement.

The bipartisan Senate bill – the Sentencing Reform and Corrections Act of 2015 – would take a number of steps forward to reverse harsh penalties that have come at a ruinous cost to families and taxpayers while producing diminishing returns for public safety.

Among other provisions, the Senate bill would expand the existing safety valve and give judges new discretion to exempt a substantial number of individuals convicted of non-violent drug offenses from harsh mandatory minimum sentences. It would provide sentence reduction incentives for prisoners who take part in rehabilitative programming. And most salutary, it would make the Fair Sentencing Act of 2010, which scaled back the unfair sentencing disparity between crack and powder cocaine, retroactive to allow more than 6,500 current prisoners to petition for sentence reductions.

The bill would also limit solitary confinement for juveniles in federal custody.

Taken together, these provisions reflect a recognition in Congress that the harsh penalties adopted by lawmakers in recent years have

been overly broad, costly to taxpayers, and have produced diminishing returns for public safety.

“The components of this bill... provide the potential for a significant reduction of the federal prison population, with consequent cost savings, and no adverse effect on public safety,” Marc Mauer stated in his testimony before the Senate Judiciary Committee. “Hopefully, this legislation can be considered a substantial first step toward a broad assessment of federal sentencing and corrections policy.”

Although timing for the final passage of these measures is uncertain, both President Obama and key lawmakers have said they want to see a criminal justice reform bill enacted before the end of the year.

Meanwhile, President Obama recently became the first U.S. President to visit a federal prison while in office. In highlighting the need for criminal justice reform, President Obama recently said, we have to make sure the criminal justice system “does not perpetuate a cycle of hopelessness, but rather lifts people up.”

This year, the President has modestly increased the use of executive clemency. In July, President Obama granted commutations to nearly four dozen men and women serving long sentences for nonviolent drug offenses.

The Sentencing Project Making an Impact

Marc Mauer in discussion with Ava DuVernay (director, Selma) about her forthcoming film examining the economic and racial components of mass criminalization, to be released in 2016.



Marc Mauer speaks as a featured panelist at the 2015 Young Elected Officials Network National Convening. Moderated by Van Jones, the panel discussed strategies for criminal justice reform at the state and local level.



Nicole Porter testifies at the Maryland state legislature at a hearing on felony disenfranchisement reform.

Public Education continued from page 3

Office of Minority Health –
U.S. Department of
Health and Human
Services

Roger Williams University
School of Law (RI)

Social Innovation Lab (DC)

St. Columba's Episcopal
Church (DC)

University of Baltimore
School of Law

University of Missouri-
Kansas City

University of Missouri
Law School

Wake Forest University

Washington DC
Independent Film
Festival

Washington University in
St. Louis

Young Elected Officials

Your Support Makes A Difference

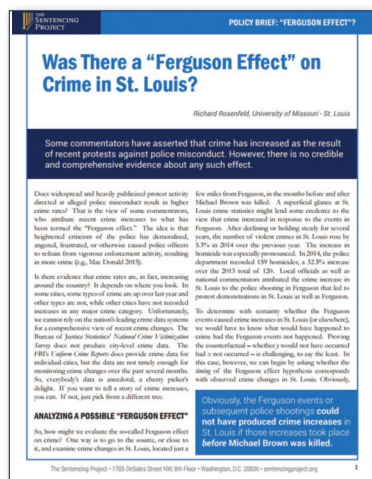
Support our efforts to promote fair and effective criminal justice policies and alternatives to incarceration by sending a contribution today.

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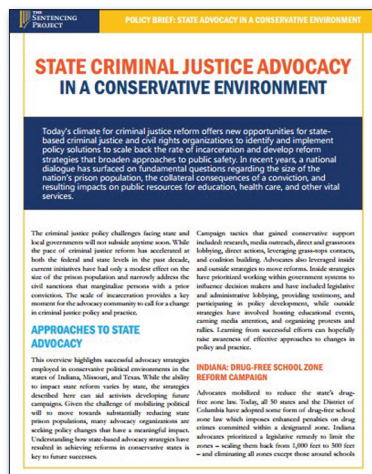
Make a long-term investment in sentencing reform

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.

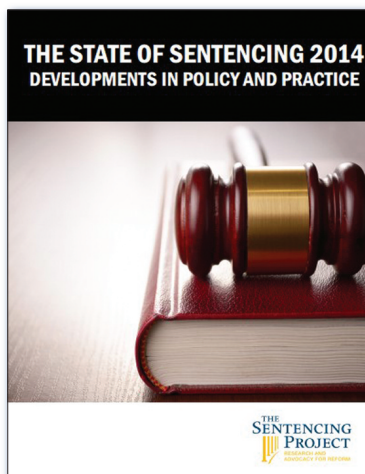
New Publications from The Sentencing Project



The “Ferguson effect” describes a conjecture by some commentators that rising crime rates in some urban areas in recent months are the result of widespread protests against police misconduct and calls for reform. Those demonstrations spread across the nation in response to a stream of highly publicized killings of unarmed black men and boys by police, starting with the death of 18-year-old Michael Brown in Ferguson, Missouri last August. ***Was There a “Ferguson Effect” on Crime in St. Louis?***, finds little support for a so-called “Ferguson effect” on crime in St. Louis. Since Ferguson is part of the St. Louis greater metropolitan area, one could expect that if such an effect exists anywhere, it would be in St. Louis. To determine whether such an effect exists, criminologist Richard Rosenfeld analyzed trend data on homicides, violent crimes, and property crime in St. Louis in recent years. The report finds that the homicide count in St. Louis was higher in 2014 than in 2013 for most of the year, but the gap between the two years began to increase two months before the events in Ferguson. “We can conclude with reasonable certainty that the events in Ferguson were not responsible for the steep rise in homicide in St. Louis,” the report states.

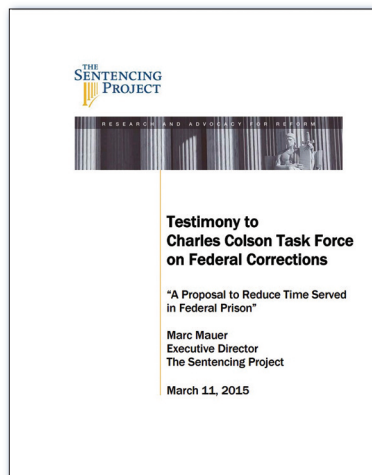


State Criminal Justice Advocacy in a Conservative Environment documents successful advocacy strategies employed in campaigns in Indiana, Missouri, and Texas. Victories including reducing enhanced penalties in drug-free zones in Indiana by shrinking the limit of zones from 1,000 feet to 500 feet, and eliminating all zones except those around schools and parks; modifying Missouri’s federal

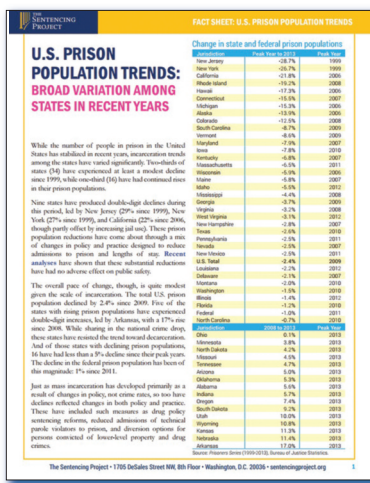


In 2014, lawmakers in at least 30 states adopted criminal justice policies that could help reduce the prison population, improve juvenile justice outcomes, and eliminate the barriers that marginalize individuals with convictions. Highlights included scaling back sentences for low-level drug offenses, reducing barriers to reentry, including employment restrictions and bans on public assistance, and eliminating juvenile life without parole. ***The State of Sentencing 2014*** documents these reforms and provides recommendations for stakeholders invested in addressing the scale of incarceration to consider during the 2014 legislative session.

lifetime ban on food stamp benefits for persons with felony drug convictions; and closing two Texas prison facilities: the Dawson State Jail and the Mineral Wells Pre-Parole Transfer Facility.



The Charles Colson Task Force on Federal Corrections was established by Congress in 2014 and is engaged in a year-long examination of challenges in the federal prison system and opportunities for criminal justice reform. In December 2015, the panel will present policy recommendations for consideration by Congress, the Attorney General, and President Obama. In ***A Proposal to Reduce Time Served in Federal Prison***, testimony delivered to the Task Force, Marc Mauer, Executive Director of The Sentencing Project, called for reforms to federal sentencing structures to create an upper limit of no more than 20 years in prison, barring exceptional circumstances. The proposal would reduce the federal prison population considerably, avert unnecessary costs of incarceration, and provide resources for more effective public safety investments.



While the number of people in prison in the United States has stabilized in recent years, incarceration trends among the states have varied significantly through 2013. ***U.S. Prison Population Trends: Broad Variation Among States in Recent Years*** reveals that two-thirds of states have experienced at least a modest decline since 1999, while one-third have had continued rises in their prison populations. The overall pace of change, though, is quite modest given the scale of incarceration. Just as mass incarceration has developed primarily as a result of changes in policy, not crime rates, so too have declines reflected changes in both policy and practice. These have included such measures as drug policy sentencing reforms, reduced admissions of technical parole violators to prison, and diversion options for persons convicted of lower-level property and drug crimes.

POLICY

State Update: Reform in Alabama, Texas, and More

This year, states have continued to adopt legislation to expand public benefits to persons with felony drug convictions. These law changes address the 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which imposed a lifetime ban on cash and food assistance to people convicted in state or federal courts of felony drug offenses; the ban is imposed for no other offenses but drug crimes. States can opt out of the federal ban or modify it by authorizing legislative reform.

During 2015, both **Alabama** and **Texas** scaled back restrictions for public benefits. Alabama lawmakers included a provision to expand eligibility for Temporary Assistance for Needy Families (TANF) program and/or the federal Supplemental Nutrition Assistance Program to an estimated 9,600 women with felony drug convictions. Lawmakers in Texas expanded food stamp eligibility to persons with prior felony drug convictions, expanding benefits to at least 65,000 women. These successes build on similar reforms in California, Missouri and South Dakota. Advocates in states that continue to implement public benefits bans are building on momentum to advance reforms. The Sentencing Project has

provided technical assistance to state advocates advancing these reforms by conducting state-specific research, convening advocates across states to share successful strategies and lessons learned, and organizing national support to reinforce support for state remedies.

Throughout the year, The Sentencing Project supported many other local and state campaigns as well. In **Maryland**, Nicole Porter, Director of Advocacy, testified before the House of Delegates in support of legislation to expand voting rights to persons on felony probation and parole, an estimated 40,000 individuals. In **South Carolina**, we presented at the 21st Century Social Justice Forum on pragmatic solutions to address mass incarceration. In **Arkansas**, **Mississippi**, **Washington**, and **Wisconsin** we provided technical assistance to advocates and lawmakers championing efforts to reduce racial disparities in the criminal justice system.

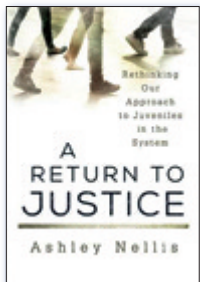
The Sentencing Project also provided support to sentencing reforms in a number of states this year, including:

- Supporting legislation in Connecticut to reclassify certain felony drug offenses as misdemeanors and scaling

back drug penalty enhancement zones;

- Providing technical assistance to advocates in New Jersey and Pennsylvania on addressing racial disparities in sentencing;
- Supporting legislation in Minnesota to expand voting rights to persons on felony probation and parole – over 59,000 impacted persons;
- Convening policy strategy calls on remedies for long-term sentencing reform and collateral consequences for state advocates in California, Tennessee, Texas, and South Carolina;
- Supporting policy remedies to reduce employment-related collateral consequences for persons with felony convictions in Missouri and the District of Columbia;
- Hosting legislative trainings to build capacity for advocates in South Carolina; and
- Providing technical assistance to state coalition to advance policy remedies for persons sentenced to long-prison terms in Maryland, South Carolina, Tennessee, Texas, Michigan, Missouri, and Wisconsin.

A Return to Justice: Rethinking Our Approach to Juveniles in the System



Senior Research Analyst Ashley Nellis's new book, *A Return to Justice: Rethinking Our Approach to Juveniles in the System*, has just been published by Rowman and Littlefield. Nellis's book describes how the intended purpose and use of the juvenile justice system has fluctuated since its inception, with attention to the critical role that race has played in creating — or failing to

create — a juvenile justice system that is suitable for children. The growing appreciation of the role of adolescent development, crippling racial and ethnic inequalities, and the profound impact of school discipline policies in criminalizing youth behavior have created a hopeful moment for the original vision of juvenile justice to emerge again.

MEDIA

The Sentencing Project in the News

The New York Times

May 23, 2015

How to Lock Up Fewer People

By Marc Mauer and David Cole

WHEN Hillary Rodham Clinton, Ted Cruz, Eric H. Holder Jr., Jeb Bush, George Soros, Marco Rubio and Charles G. Koch all agree that we must end mass incarceration, it is clear that times have changed. Not long ago, most politicians believed the only tenable stance on crime was to be tougher than the next guy.

Today, nearly everyone acknowledges that our criminal justice system needs fixing, and politicians across the spectrum call for reducing prison sentences for low-level drug crimes and other nonviolent offenses. But this consensus glosses over the real challenges to ending mass incarceration. Even if we released everyone imprisoned for drugs tomorrow, the United States would still have 1.7 million people behind bars, and an incarceration rate four times that of many Western European nations.

Ending mass incarceration will not be easy. Opposition will come from rural community leaders who see prisons as economic development, legislators who still respond emotionally to the “crime of the week” and prosecutors who measure success by convictions and incarcerations, rather than by resolving conflict. But the recent tragic police shootings of young black men have, for the moment, focused our

attention on the imperative for reform. And state budgetary crises have led many to question the vast resources we devote to holding too many people under lock and key.

Today, at long last, a consensus for reform is emerging. The facts that no other Western European nation even comes close to our incarceration rates, and that all have lower homicide rates, show that there are better ways to address crime. The marked disparities in whom we choose to lock up pose one of the nation's most urgent civil rights challenges. But we will not begin to make real progress until we face up to the full dimensions of the task.

Newsweek

April 11, 2015

State Prison Populations Show Upswings, Declines

Since 1999, 34 states have seen “at least a modest decline” in their prison populations, but 16 have recorded upswings, according to new data released by The Sentencing Project that demonstrate incarceration rates vary dramatically between states.

New Jersey had the biggest drop in inmates since 1999, at 29 percent, while New York experienced a 27 percent decline and California's since 2006 was 22 percent. Overall, nine states posted double-digit drops.

Meanwhile, five states showed double-digit growth, with Arkansas topping the list at 17 percent, The Sentencing Project's report states.

“In comparison to the nearly four decades of unprecedented rise, essentially the prison population has more or less been stabilizing these last three or four years,” says Marc Mauer, executive director of The Sentencing Project.

Mauer also makes clear that research showing simultaneous declines in prison population and crime rates does not mean the two are causally related.

“We looked at the crime changes in those states, basically in response to the argument some make: ‘If you reduce the prison population, crime will go up,’” he says. “It turns out, that's not the case.”



May 14, 2015

After Baltimore And Ferguson, Major Momentum For Criminal Justice System Reform

Lawmakers working on fixes to the justice system say that unrest in places like Ferguson, Mo., and Baltimore is pushing them to act.

“The whole idea of a young man dying in police custody, the confrontations with police, the looting and burning of innocent minority owned businesses,” Texas Republican Sen. John Cornyn said on the Senate floor this month. “The question arises, what can we do?”



RESEARCH AND ADVOCACY FOR REFORM

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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

Media continued from page 7

There's an unusual bipartisan consensus in Washington on the need to overhaul the justice system. Presidential candidates from both political parties are talking about how to reduce the prison population and lawmakers are negotiating on legislation designed to do just that. But those proposals may not go far enough for many advocates.

"We have to think big right now," says Marc Mauer of The Sentencing Project, a nonprofit working to change sentencing laws and seek alternatives to incarceration. "Our sentencing policies have become so excessive that tinkering around the edges is not going to get us very far."

Mauer says if Congress wants to help restore minorities' trust in police, it should go big on sentencing reform.

"Half the people in federal prison are there for a drug offense, a substantial majority of those are African-American or Latino," Mauer says. "All the evidence we have shows that the war on drugs has had an unwarranted, disproportionate racial effect and there's nothing we could do that would help to

reverse that more than substantial sentencing reform across the board."

Richmond Times-Dispatch

April 13, 2015

Schools should not be pipeline to prison

By Michael Paul Williams

Educational attainment is a huge factor in warding off incarceration.

If school districts are funneling students into the criminal justice system, they are working against their central mission and abdicating their responsibility as educators.

That's what appears to be happening in Virginia, more so than any other state, according to an analysis by the Center for Public Integrity. Nearly 16 out of 1,000 students in the commonwealth are referred to law enforcement.

This is a predictable outcome to the proliferation of police officers that took place in the wake of high-profile school shootings during the 1990s.

Ashley Nellis, a senior research

analyst with The Sentencing Project, says the increased police presence in schools can be traced to the Gun Free Schools Act of 1994, which incentivized states to enact zero-tolerance policies by tying them to federal dollars.

"It was originally related to firearms, but schools went way beyond that and that's how you started to hear stories of little Sally bringing her nail clippers to school and getting expelled," Nellis said. The law "moved school discipline into this criminal justice paradigm."

"I think the recommendation that seems to make the most sense is we need to replace many of the schools' law enforcement with more mental health workers and social workers," who are actually trained to respond to young people who have problems in school, she said.