

Guild Notes

***NLG's Newsletter for
Jailhouse Lawyer Members***

Volume 49, No. 2, Spring/Summer 2024



Photo from NLG Vermont/New Hampshire Chapter

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Welcome to our New Jailhouse Lawyer Members

If you are receiving this newsletter, that means that we have received your request to be added as a member. We are a membership association of lawyers, law students, legal workers, and jailhouse lawyers. Membership is open to anyone incarcerated who writes to the NLG National Office expressing their interest in becoming a member, and there is no cost. Membership lasts for three years, after which you can write to us again to let us know to renew and if you have a different mailing address. Your membership will be as a national member, not affiliated with a local chapter. Formerly incarcerated members have the option to annually renew their membership once they are released, free of charge.

Membership Consists of: a subscription to *Guild Notes*, which comes out 2 or 3 times a year, the *Jailhouse Lawyers Handbook* (currently 2021 edition - write to us if you need one!), ability to vote in our annual elections on bylaws/resolutions (will be in the fall) plus the opportunity to submit writing to the *Beyond Bars* column. When submitting, think about what in your experience as a jailhouse lawyer might be beneficial to share with other jailhouse lawyers around the country. Drawing upon personal experience as an illustration of a broader topic is encouraged. There is a word limit of around 750 words. You can send to: GN Submissions, National Lawyers Guild, PO Box 1266, New York, NY 10009. (Please also let us know if you would like your full name published). Unfortunately, we cannot write back to everyone who sends us an article, and there is no guarantee that an article will be published. We do, though, appreciate every submission we receive, and all give us insight that we wouldn't otherwise have of what is going on inside the prison walls.

Beyond these, the NLG staff unfortunately **do not** have capacity to facilitate further benefits, including:

- Membership cards
- Access to legal representation or to have a lawyer read through your legal documents
- Ability to return any legal documents you send to us back to you or to anyone else
- Marking either *Guild Notes*, the *Jailhouse Lawyers Handbook*, or any other mail as "legal mail", as we are not a law office and not acting in any representative capacity

We will continue to try using this publication to share with you what we have been doing on the outside as well as other resources that may be of interest.

NLG Condemns Attacks on Gaza Solidarity Encampments

Originally published on April 25th, 2024 - The NLG unequivocally condemns the ongoing repression of pro-Palestinian activism taking place on university campuses across the country. The NLG is firm in its support for a free Palestine, and is against Israel's ongoing genocide in Gaza and occupation of the West Bank. The violent and unprovoked attacks by police on student encampments at Columbia, Yale, NYU, University of Southern California, Emory, University of Texas, and other universities exhibit a dangerous overreach against students' 1st Amendment rights and further illustrates our country's spiral into a surveillance state. These militarized police raids also draw attention away from the main call of student protests: end the genocide against the Palestinian people and divest from Israel!

Since October, universities have been at the center of pro-Palestinian activism as students and faculty have responded to the daily atrocities inflicted by the Israeli government and military in Gaza and the West Bank as an occupying force. As a result, those that dare to speak out against the genocide of Palestinians are continually threatened, doxxed, and censored by their school administrations, powerful right-wing organizations, and even their fellow students. Anyone that supports the rights of Palestinians becomes a target of a well-funded movement of Zionist organizations, lobbyists for Israel, right-wing politicians, and media outlets equating any criticism of the state of Israel with anti-Semitism, even and especially against activists that identify as Jewish. Anti-Zionism is not anti-Semitism.

Last week, students at Columbia University set up the first "Gaza Solidarity Encampment" to demand their university divest from Israel. In response, Columbia administration called the NYPD and over 100 students were arrested within 24 hours. This attempt to crush the student movement has only inspired more encampments in support of Palestinian resistance at dozens of other universities and the ongoing movement continues to grow. At these encampments, students and faculty have organized teach-ins, shared meals, prayed, and made banners and signs to show their solidarity with Gaza.

The response by university administrations and police departments to student encampments exposes them as agents of fascism and repression. Campus-based organizations, including student chapters of the NLG, have been silenced, sanctioned, and de-certified. Video footage from Columbia, New York University, University of Texas Austin, Emory University, Cal Poly Humboldt, and others shows police in riot gear moving in and attacking students, often within a few hours of them occupying a space on campus. Arrests are now well into the hundreds, and university administrations are suspending, expelling, and taking housing away from student activists and organizers. University administration's collusion with an emboldened and militarized police force is not a spontaneous reaction to student protest: it is a deliberate tactic to use academic institutions to preserve the power of the war-mongering elite who directly benefit from Israel's occupation and genocide of Palestine.

Universities should liberate themselves from the attempted puppeteering of the right-wing on campuses and instead fight to preserve academic institutions' integrity as bastions for genuine freedom, democracy, and justice! This would be truer to the real purpose of U.S. universities, once imagined and publicly advertised as a fertile ground for scholarship, creativity, and innovation.

NLG fully supports the demands being put forward by the Gaza Solidarity Encampments:

- For universities to support and amplify boycott, divestment, and sanctions of Israel;
- For universities to officially call for an end to the genocide and occupation of Palestine;
- Drop all charges against student protesters;
- Cease all student disciplinary proceedings immediately; and
- Reinstate all students who have been suspended or expelled.

The NLG includes over 100+ student chapters and we stand by our student members and all students taking a principled stand in support of Palestine.

Update from NLG Vermont Chapter

Since October 7th, 2023, the Vermont NLG and the Vermont Law and Graduate School (VLGS) NLG Chapter have been working tirelessly to support and provide assistance to the Palestinian solidarity movement both in Vermont and in neighboring New Hampshire. In Vermont, the Palestinian solidarity movement has been organized and active for well over a decade achieving notable local as well as international victories including the successful BDS campaign targeting Ben and Jerry's that was organized and led by Vermonters for Justice in Palestine (VTJP).

In the aftermath of October 7th, Vermont NLG members were called upon to provide constant legal observing support at demonstrations, rallies, and direct actions. As the weeks proceeded, a much larger coalition of groups, unions, and political parties coalesced to create the Vermont Coalition for Palestinian Liberation (VCPL). Regional groups also emerged including Upper Valley for Palestine (UV4Pal) and Southern Vermont for Palestine. The Vermont NLG and VLGS NLG Chapter joined these coalitions, helping to organize, co-sponsor, and support various events and activities.

Students at Vermont Law and Graduate School quickly organized and reactivated the NLG student chapter which had become inactive during the COVID-19 pandemic. Students held weekly rallies on campus, organized presentations, potlucks, fundraisers, poetry readings, a film screening of Gaza Fights for Freedom, and a conference on the Ecocide taking place in Palestine.

Lawyers, law students, and legal workers quickly mobilized to provide support for two students at Dartmouth College arrested in October for setting up a tent overnight in front of the president's office. VT NLG member and VLGS alum Kira Kelly took the case and has represented the students in their ongoing legal battle in New Hampshire. I had the opportunity to work as a researcher under the leadership of Noura Erakat and Josh Paul as a member of the Independent Task Force on National Security Memorandum-20 (NSM-20) in the Winter and Spring of 2024. The Independent Task Force submitted its report to the Department of State, the White House, and Congress, subsequently releasing its findings to the public.

When the Palestinian movement on university campuses started to set up encampments calling for divestment in the Spring of 2024, VT and VLGS NLG members were on

the frontlines providing legal observers, LO training, and legal support. Encampments were set up at institutions of higher education throughout Vermont and New Hampshire including the University of Vermont, Middlebury College, Sterling College, the University of New Hampshire and Dartmouth College.

On May 1st, Dartmouth College students and community members organized a labor for Palestine event and set up approximately five tents on the college green. The VT and VLGS NLG chapters were mobilized and I served as a legal observer along with nine other comrades. As the hours went on and night set in, Dartmouth President Sian Leah Beilock called for the green to be cleared using a special anti-riot unit of the NH state police. The police brutalized students, professors, and community members who had gathered peacefully, holding hands and singing. By midnight, 89 students, faculty, and community members had been arrested. The NLG is providing ongoing legal support to all those unjustly arrested that night.

At VLGS, I worked with a team of students under the name VLGS Students Against Apartheid to draft and submit the Vermont Law & Graduate School National Lawyers Guild's Resolution for Palestinian Liberation and an Apartheid-Free Community to the Student Bar Association. On April 9, 2024, during the final SBA Senate meeting of the 2023-2024 term, the VLGS Senate unanimously passed the resolution. The resolution publicly acknowledges the genocide of Palestinians that is currently taking place at the hands of Israel and that these atrocities are being funded by the United States government and private companies across the globe. It issued a call to action to the VLGS Administration and Board of Trustees to guarantee an Apartheid-Free Community and ensure total divestment from genocide. The Student Bar Association of Vermont Law & Graduate School formally pledged to be an apartheid-free community. Subsequent meetings with VLGS President Rodney Smolla and the Board of Trustees have not yielded results. Student organizing and talks with VLGS administration are ongoing. We will not stop, we will not be silent, and we will continue to organize and chant, "From the River to the Sea, Palestine Will be Free!"

Article by Christopher J. (Yousef) Helali, NLG Vermont/New Hampshire Chapter Secretary



above from @SJPColumbia Instagram, below from University of TX Austin: @apnews Instagram



Poetry/Artwork by Lorilei, NLG Texoma Member



By the Poet (2021)

Mixed media on canvas. Two motions filed by Lorilei to advocate for the release of detained unaccompanied migrant children were used to create a collage background, upon which a teddy bear holding a red balloon is painted in watercolor. (Both below submitted by member Lorilei W. in Houston, E.D. of Resilient Advocates Collective, a network of advocates who share a commitment to engaging in trauma-informed, antiracist, and intersectional legal advocacy)

Some days

Most days I have more empathy than anyone can handle, unless you have the audacity of not having fled in fear for your life. On others, I relish swapping bleeding hearts for bleeding the heartless, bathing in the rage I suppress with feigned innocence to survive. I dream of destroying that unholy white throne of saviorism that gives bullhorns to those who cry foul the loudest,

while the purse strings of privilege form unsolvable knots, their hands closing around throats while they demand justice?!

Most days I hose down the dragon fogging up my soul because when you're fighting an endless battle in a flat circle of pain, there are simply not enough spoons in the world for us

to catch your fragile tears as we're trying to slay the

naked king. On others, I open the gates so she can stretch her wings, curl her head back and unfurl ribbons of fire to engulf our allies who would rather see our smiles than hear our pain, for whom this battle is a fantasy while we just fight to be seen.

Most days I confine my frustrations to an eye roll and a sigh, biting my tongue because I still need your coin to free my friend languishing behind bars of othering, surviving on Uncle Ben's irony littered with a garnish of inedible rocks and dismembered roaches. But on others, I pause to dream of a world where the generosity of your spirit does not depend on your reflection, because as you stare into my eyes so eager to lend a hand, I still only see your image clouding your vision.

Beyond Bars: Submissions from NLG Jailhouse Lawyer Members

The Supply and Demand of Jailhouse Lawyering

by Henry Moses Mitchell, Jr., Crescent City, CA

Jailhouse lawyering arises from three unique situations: Where one seeks to act as his or her own jailhouse lawyers; where one seeks to obtain assistance from a jailhouse lawyer; and where a jailhouse lawyer seeks to provide assistance to the incarcerated population.

While the US Supreme Court has announce, “This Court’s experience indicates that pro se petitioners are capable of using lawbooks to file cases raising claims that are serious and legitimate...” (Bounds v. Smith, 430 U.S. 817, 826–27 (1977)), yet, do we see any pro se cases being granted certiorari, not even. What we do face are denials under complex procedural and judicially created edits that preclude litigant success for jailhouse lawyers and their inmate-clients.

It is these complex procedures and judicial edits that the average incarcerated person does not fully understand exist that must be thoroughly comprehended. Along with the legal questions(s) of issue(s) that are brought up within a complaint, petition, brief or case memorandum, jailhouse lawyers should embrace some form of ethics and professional responsibility. Certainly some courts have recognized an incarcerated person’s right to practice jailhouse law, jailhouse lawyering is a very unique and concentrated activity that cannot be minimized. Our activities have life changing consequences. We perform activities that do not require that we prove we have the competency to fulfill.

For those jailhouse lawyers such as myself, who take pride and work diligently for their craft and those incarcerated persons in which we serve, have to contend with others who fail ethically to fully acknowledge they can do. There is nothing wrong with truthfully expressing that some legal task is far beyond the scope of one’s own knowledge and skill sets. All too often I am asked or called upon to remedy mistakes created by unlearned practitioners who have placed clients into a very bad circumstance from not having the full legal know-how to resolve the client’s legal matter.

The incarcerated person has to sign the documents for filing, in propria persona. As such, a pro se litigant is not subject to any different standard when it comes to proving the merits of his or her claims. Jailhouse lawyering exists to be that of an advocate. Many times we are the incarcerated person’s last hope.

The demand for good quality jailhouse lawyering remains high. But, the supply pool can be contaminated by those who are not truly advocating for justice.

Fighting From Behind

by Sean Steele, Marion, OH

Jailhouse lawyers fight from behind. We sit in prisons using ancient typewriters while prosecutors use laptops. We research and study hundreds of caselaws on our own while prosecutors use teams of paralegals. We file motions through the US Postal Service while prosecutors walk, email, or fax their documents straight to the clerk. Jailhouse lawyers fight from the position of a significant disadvantage.

Yet we still fight.

Although jailhouse lawyers face obstacles difficult to overcome, we still find ways to challenge power-abusers who hold us captive. We use our last dollars to purchase a stamped envelope so we can file our motions. If we don't have paper to write on, we've used toilet paper, paper towels, or the back of written documents to push our response. We've even had to send motions in other prisoner's names to file lawsuits so we wouldn't receive retaliation from staff. The hurdles we face are endless.

Despite it all, we push our agenda, finding ways to challenge the abuse of our human rights. We don't quit. We don't cower in fear, hoping the injustice will go away. We don't close our eyes and pretend we don't see what is going on. We don't make excuses, blaming self, life, or God for the foul or corrupt acts sometimes imposed upon us by the State. We learn the law, we file the motion, and we fight until we win or lose.

And even when we lose, we do not let discouragement fester inside our mind. We suck it up. Then we reexamine where we may have gone wrong and we try again. Lose. Then we try again. Until we win. We don't tell ourselves no, we let other people do it. But we always fight for what's right until the end.

We fight from behind only because they started ahead. We all know the prosecutor, the judge, our lawyer all went to school to master the law game. We know, and they know, when we stepped in that courtroom we had no clue what was going on. We didn't understand procedural bars, due process, or res judicata. We knew that. They knew that. But they took advantage of us anyway. But from behind we still struggle and strive to overcome the legal deficit unfairly imposed upon us.

Fighting from behind has blessed us with courage and strength. It has blessed us with skill and competence, sometimes more effective than our opponents. Without the help of college professors, ex-judges or ex-prosecutors, or even the world wide web, we find ways, locked in our cells, to comprehend the law and turn it into a tool for the benefit of the poor and disadvantaged people who the prison system was designed to ensnare.

As DJ Khaled often says, "We the best!" Don't forget that. We often fight from behind, but we still winning. We still the ones who will save the downtrodden and the counted-out from being denied justice. Don't forget that. Humanity needs us because no one else will fight for us like we will fight for ourselves. We will continue to fight the good fight until we open the gates for all those who desire to be free!

Patchwork Tapestry (A Sonnet), by James Mancuso,, Boise, ID

The heavy pull of raw remorse and constant regret filled my cramped cell with a suffering miasma
That choked my happiness, ensuring I'd not forget.

I breathed deeply, those heady fumes of my darkened past, stirring a sudden swirl of illusion, delusion
And nightmares I can't outrun and will never outlast.

The dull rusted blades of my blame sliced and tore at me,
Ripping apart the fabric of my frayed and worn soul-
But in those tattered shreds I saw opportunity.

I stitched together the scraps of who I used to be,
Discarding those shameful swatches weaved in selfishness.
And made who I want to be into a tapestry

Filled with scenes of love, virtue and a sense of duty
That has opened my eyes to truth and humanity~

We Can All Do Better

by Paul T. Cieslowski, Vienna, IL

Recently I was remanded into the custody of my county jail to be resentenced. During my stay, I was housed in a couple of pods that had, on average, 17 other inmates. When they found out I was a jailhouse lawyer, inevitably, most of the other 17 inmates would find their way to my cell. Over and over I was asked questions that their lawyer should have answered long ago. I found inmates who only had a copy of the felony complaint. My state of IL requires grand jury indictment 30 days after arrest for felonies. These inmates had been locked up for months, even years and not been given a copy of their indictment. Something that is statutorily required to be given to the accused.

Once these mistakes were discovered, it led to other issues. In one case the inmate was improperly charted. This allowed him to request dismissal of charges after the jury was impaneled. He had been in jail for 2 years and his lawyer missed it. In another, the inmate's sentence range was improperly increased. This allowed him to negotiate a better plea. While most of the other questions I fielded were general legal procedure and questions of law, the amount of general ignorance about the law and their cases surprised me.

One item that was particularly upsetting, the public defenders made it difficult to contact them. Phone calls and voicemail messages from the jail are free. The obvious catch is the lawyer is usually in court. The other option, this one I

recommend, is to write to their lawyer. To facilitate this the public defender's office has pre-addressed blue envelopes. Placing these in the mailbox, by their very nature, makes it legal mail. The jail is aware of them and they go directly to the public defender's office. The public defenders are supposed to give these out to their clients for free. In the 4 months that I was at the jail, not one inmate knew about the blue envelopes. All of them were paying 70 cents to write their lawyer via US mail.

I'm not trying to disparage public defenders. They do a difficult job with a small budget and an excessive caseload. I follow all advice I give with the emphasis that they should discuss what I told them with their lawyer. What I want to do is remind them that most of their clients are ignorant of the law, do not know how to use a law library, and are scared.

To the jailhouse lawyers, be smart in what you litigate. My public defender did not want to use my legal experience as a mitigating factor at my resentencing. He is under the belief that jailhouse lawyers have a bad reputation for filing frivolous lawsuits. Only through smart litigation and avoiding clients who want us to write up questionable suits can we rehabilitate our reputation.

Both bar attorneys and jailhouse lawyers can do better, be better, and strive to help those who can't help themselves!

With Enough Punishment

by E.C. Theus-Roberts, Pendleton, IN

The national average recidivism rate hovers around 60 percent according to Randall G. Sheldon of the Center for Juvenile and Criminal Justice. That means six out of every ten persons released from prison find themselves rearrested or back inside a cell. Through its various departments of correction(s) the Penal Institution is supposed to protect society by punishing criminality and rehabilitating convicted felons. As Sheldon and Kathleen Bender, Center for American Progress, point out: Our Penal Institution is failing more than half the time.

Modern-day penology is a direct descendant of social upheavals in the 1970s, wars on drugs and gangs and minorities from the 1980s through to the late 1990s, doctrines of total incapacitation and deterrence, and the ever-fashionable “tough on crime” political posturing. For penology this has manifested a focus on punishment to the almost complete exclusion of anything resembling rehabilitation. If the State and criminal justice systems are tough on crime then the Penal Institution is tougher on convicts. Today’s Penal Institutions’ operative philosophy can be colloquially summarized: With enough punishment they [i.e., convicts] will learn. Consider this the “stick - maybe carrot - stick doctrine.”

A prisoner is first beaten by the sticks of impersonalization (e.g. “offender”, “prisoner”, “inmate”, etc). Dehumanization (e.g. no privacy for bodily functions, constant observation), dispossession (e.g. circumscribed self-expression, denial of individuation), and subjection to rules, regulations, policies and norms; written and unwritten. The maybe carrot comes in the form of, as long as a prisoner acclimates and adheres to every demand or expectation, demonstrating themselves properly conformed, perhaps, being allowed access to the miniscule offering of rehabilitation available. The second stick - punishment - comes if and when, but also, quite frequently, even if not, a prisoner breaks a rule. Punishments: punitive segregation, loss of privileges - more about these later - and reclassification. Other punishments such as loss of good time, which affects a prisoner’s parole eligibility, or administrative restrictions are likewise habitually applied or imposed.

The Penal Institution is hard-pressed to view prisoners as anything other than objects. Correctional employees are equally hard-pressed to dissociate. Dehumanization and dissociation facilitate the fallacious, guiding narrative that

prisoners need a heavy hand.

But modern penology is rooted in a deeper psychology. This psychology asserts that it is not only proper but rather morally valid and justified to punish the prisoner as ‘other’. As to prisoners’ “privileges” - seeing or speaking to loved ones, self-improvement through education, maintaining community ties, even access to adequate personal hygiene, bathing, and even a basic, nutritional diet - are always subject to being taken away. Even the caged-liberty prisoners enjoy is tenuous. For example, in CO, prisoners can be placed in restrictive housing (i.e. punitive segregation) for investigation, even if said investigation stems from the action of others.

The above noted first sticks and prisoners’ precarious relation to “privileges” are the basic units of personhood. Lack of these strips individuals of what makes them an individual. Try to imagine the psychological and emotional consequences of daily living as ‘other’ under modern penology for years or multiple decades. Conditions our Penal Institution imposes are anything but conducive to rehabilitation. For the four of every ten who do not recidivate, after years under said daily regimen, it is truly amazing. Modern penology emphasizes punishment and rarely goes further.

But what if it did go beyond its first objective? It is incontestable that incarceration, in and of itself, the loss of liberty, is a great punishment. Dispossession, impersonalization, and dehumanization are necessary for the “effective punishment” modern penology seeks to justify. Seeing as the Penal In does nothing to resolve criminality, but instead only exacerbates and perpetuates it. Society must find a non-retributive framework.

To rehabilitate someone is to bring them back into the social fold. There is no meaningful nor any significant positive inculcation of prisoners today. No serious attempts to prepare them for reintegration into society. There is only subjugation, oppressive controls, and a constant, negative reinforcing loop of a prisoners ‘other’ status.

Our Penal Institution is meant to help make society safer. Until conceptions of prisoners are changed, until we abandon retribution for actual rehabilitation, and until society impresses a demand on government and the laws to reflect that change, we will never see the inverse average where some 60 percent never recidivate. Every data indicates the Penal Institution is doing something disastrously wrong. Therefore, we must correct corrections.

CO DOC Violating State Constitution

Colorado DOC continues the blatant, direct, illegal, terrible, disgusting practice of slavery/involuntary servitude “forced prison labor and punishment”. CDOC is still illegally violating the state constitution/laws regarding this. All with complete knowledge of doing so illegally. See CO Constitution Art. II Section 26. It is a new law after the majority of voters in Nov. 2018 removed the “slavery...” exception clause. It makes all CRS’s (statutes) and CDOC’s ARs policies, procedures dealing with prison work and punishment etc now illegal.

In a nutshell, I request any help to force CDOC to obey the state constitution/laws-any request help dealing with my ongoing struggles and years of illegal “punishment”/restricted privileges I have to illegally endure. Request anyone to help fight CDOC could be class action lawsuit affecting all

prisoners other sources/addresses to contact - orgs, projects, groups

Civil rights lawyers, attorneys doing prison litigation, elected officials, activists, prison abolition orgs, support groups in CO, other states and nationally

Clearly CDOC is illegally violating the state constitution in a number of ways and should be punished to the fullest extent possible as anyone else would be. As a death by incarceration.life without parole inmate, all help and responses appreciated. Please respond to:

Charles A. Garrison #108271
12750 Hwy 96 Ln 13
Ordway, CO 81034

Template Letter to UN Human Rights Committee

(The following was sent to us from a jailhouse lawyer member incarcerated in PA to reprint/distribute).

The attached is a template letter, drafted and sent out by PA prisoners. Could the NLG duplicate this example in all of its publications and online resources, plus with contacts in other groups and organizations, requesting that they spread it and have US prisoners follow the platform in all 50 states?

Dear Representative _____,

I am a citizen of the US, incarcerated in the State of _____.

My purpose for writing you is due to the United Nations Human Rights Committee recommendations of November 4, 2023, that all prison sentences in the United States should include parole eligibility, including mandatory sentences, and death-by-incarceration, calling a moratorium on the imposition of sentences to life imprisonment without parole, often referred to as death by incarceration by advocates in the U.S. It is my understanding that the US is not in compliance with the International Covenant on Civil and Political Rights (ICCPR), and International Human Rights, and has not been for quite some time.

On October 17 and 18, 2023, in Geneva, a coalition of groups from around the country fighting death-by-incarceration joined more than 140 representatives of U.S. civil society organizations to petition the U.N. to hold the U.S. government accountable. Their testimonies, the U.N. Human Rights Committee concluded that the U.S. policy and practice of death-by-incarceration violates the treaty’s prohibition on racism and torture and its protection of life and liberty; that more than 200,000 people in the U.S. are currently serving death-by-incarceration sentences, and 46 percent of those people are Black, although only 14 percent of the U.S. population is Black.

As a result of these disclosures, I am respectfully requesting that you, _____, immediately take steps necessary for the implementation of the recommendations made by the U.N. to the U.S. on November 3, 2023, including the abolishment of death-by-incarceration i.e., life-without-parole in the U.S., in particularly, the Commonwealth of Pennsylvania.

Signed, a resident and Citizen in the U.S., _____

A Prisoner's Reality

by Antwann Johnson, Jefferson City, MO

I was once asked, "What is the day in the life of a prisoner like?" My only response was, "Life altering". A day in the life of a prisoner revolves around an institutional routine schedule. Some prepared to go to the morning meal, while others carried on with whatever activity or chore that they had planned. I was awakened by the annoying sounds of my alarm clock telling me that it was 5am, and thus time to get up. This is the typical time for most prisoners to start their day. It was a Saturday, March 16, 2024. The weather was beautiful; there was a slight breeze, but still enough for me to achieve my goal of running three miles. Some of the inmate patients, many of which are battling debilitating illnesses, or who are wheelchair bound, were also outside enjoying this wonderful day.

As I was running around the small yard - the station in front of every Housing Unit - I began to sense that something was different about the atmosphere due to everyone's movements. I noticed several inmates coming out of the Housing Unit and others started gathering around them. Then I saw guards rushing toward our Housing Unit from different directions. I continued my run, thinking that maybe a Code 16 - the code for a Medical Emergency - had been called. As even more guards came rushing that way, I began to think that this was a little more serious than I previously thought. I stopped running because one of the guards instructed all of us to move to one side of the yard. Then we all heard the sounds of sirens as they grew louder and drew closer. About 10 minutes later we watched as the paramedics rushed towards our unit with a stretcher full of medical equipment.

As several guards began to huddle and converse, I began to sense whatever happened wasn't good. Another 10 minutes passed by and people began to become anxious and curious as to what's going on. One of the inmates who initially came out stated, "They all rushed into Billy Dyer and Larabee's cell." Then we saw all the paramedics come out with their equipment, but no one was on the stretcher. We still weren't allowed to go into the unit. My focus was on the patients who were talking among themselves, and on trying to make sense of what had taken place. My answer came in the form of several guards coming out of the unit doors, carrying the lifeless body of Billy Dyer, covered in a blanket with only his feet showing. We all watched as the stretcher was pushed towards Medical to await the mortician's arrival.

Billy Dyer was a white male, in his late 50s. He was liked by all those who knew him. His personality and humor would

instantly absorb you. Despite his struggle with addiction and substance abuse, he was a fairly decent guy. He had been in prison for over 40 years. Billy also struggled with recently being diagnosed with Parkinson's Disease, which allowed him to become a patient and eligible for the Daily Living Assistance program. What was strange about Billy's death was that everyone said that he had just returned from a visit. However, it was revealed that at the visit he learned of his mother's passing. We all firmly agreed that, due to learning that, Billy chose suicide by overdose. I heard of of the elderly patients who was just 10 feet from me murmur, "Goodbye, Billy." My heart sank for his fellow friends in the Daily Living Assistance program.

We were then instructed to return to our wings in the housing unit and prepare for the custody count. As I entered my cell, I got up on the top bunk and replayed Billy's lifeless body being rolled to medical. An hour or so after, count was cleared and we were all released from our cells to resume our activities. What made Billy's death different from all of the others was the fact that the entire population was able to witness the reality of dying in prison. This was compounded by the sense of unrest concerning the controversy surrounding the recent death of Othel Moore and of how he actually died in solitary confinement. My sorrow for Billy's death quickly turned to anger. I had concerns as to how he obtained opioid/fentanyl drugs that caused it. I was upset because these drugs were the very reason that the most meaningful things to prisoners had been taken from us; incoming mail, books, magazines, etc.

As I was sitting in the wing, in a chair that was placed against the wall, I put my headphones on and listened to my music, getting lost in the rhythm. The thing I quickly noticed about many of the other inmates was that all they have is hope, but their hope is in the form of family members or friends. And when that's taken away they believe that they have nothing worth fighting for. How do you explain to another person that everything's going to be ok when he feels that he's all alone, with no money, no family, blocks on the phones, and serving life for something he did as a child? A sense of guilt always overcomes me because I feel I'm not doing enough to help them. I believe when anyone chooses suicide, we really don't know what struggles there were truly dealing with. It's during these kinds of trials I've prayed, "Precious Lord, heal these broken wings. Please take my hand and lead the way."

I sincerely ask of you to please share this story with others, in hopes that they would fully understand...A Prisoner's Reality!

Reprint from Prison Policy Initiative - Mass Incarceration: The Whole Pie 2024

Published March 14, 2024 (Prison Policy Initiative, P.O. Box 127, Northampton, MA 01061): The Prison Policy Initiative is a national organization that produces cutting edge research to expose the harms of mass incarceration. They send in a quarterly newsletter containing all of their publications and will mail incarcerated people any titles they would like to read. They welcome requests for national or state-level data on a range of issues related to mass incarceration including (but not limited to) probation/parole, prison/jail population data and more.

Can it really be true that most people in jail are legally innocent? How much of mass incarceration is a result of the war on drugs, or the profit motives of private prisons? Have popular reforms really triggered a crime wave? These essential questions are harder to answer than you might expect. The various government agencies involved in the criminal legal system collect a lot of data, but very little is designed to help policymakers or the public understand what's going on. The uncertainty that results muddies the waters around our society's use of incarceration, giving lawmakers and lobbyists the opportunity to advance harmful policies that do not make us safe. As criminal legal system reforms become increasingly central to political debate — and are even scapegoated to resurrect old, ineffective “tough on crime” policies — it's more important than ever that we get the facts straight and understand the big picture (*see image graph at the end of this article*).

Further complicating matters is the fact that the U.S. doesn't have one criminal legal system; instead, we have thousands of federal, state, local, and tribal systems. Together, these systems hold over 1.9 million people in 1,566 state prisons, 98 federal prisons, 3,116 local jails, 1,323 juvenile correctional facilities, 142 immigration detention facilities, and 80 Indian country jails, as well as in military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories — at a system-wide cost of at least \$182 billion each year.

This report offers some much-needed clarity by piecing together the data about this country's disparate systems of confinement. It provides a detailed look at where and why people are locked up in the U.S., and dispels some common myths about mass incarceration to focus attention on overlooked issues that urgently require reform. This big-picture view is a lens through which the main

drivers of mass incarceration come into focus; it allows us to identify important, but often ignored, systems of confinement, from immigration detention to involuntary commitment and youth confinement. In particular, local jails often receive short shrift in larger discussions about criminal legal system reform, but they play a critical role as “incarceration's front door” and have a far greater impact than the daily population suggests.

With a sense of the big picture, the next question is: why are so many people locked up? How many are incarcerated for drug offenses? Are the profit motives of private companies driving incarceration? Or is it really about public safety and keeping dangerous people off the streets? There are a plethora of modern myths about incarceration. Most have a kernel of truth, but these myths distract us from focusing on the most important drivers of incarceration.

Ten myths about mass incarceration

The overcriminalization of drug use, the use of private prisons, and low-paid or unpaid prison labor are among the most contentious issues in the criminal legal system today because they inspire moral outrage. But they do not answer the question of why most people are incarcerated or how we can dramatically — and safely — reduce our use of confinement. Likewise, emotional responses to sexual and violent offenses often derail important conversations about the social, economic, and moral costs of incarceration and lifelong punishment. False notions of what a “violent crime” conviction means about an individual's dangerousness continue to be used in an attempt to justify long sentences — even though incarceration does not deter crime and more incarceration is not what victims want. At the same time, misguided beliefs about the “services” provided by jails are used to rationalize the construction of massive new “mental health jails.” Finally, simplistic solutions to reducing incarceration, such as moving people from jails and prisons to community supervision, ignore the fact that “alternatives” to incarceration often lead to incarceration anyway. Focusing on the policy changes that can end mass incarceration, and not just put a dent in it, requires the public to put these issues into perspective.

Offense categories might not mean what you think

Reported offense data oversimplifies how people interact

with the criminal legal system in two important ways. To understand the main drivers of incarceration, the public needs to see how many people are incarcerated for different offense types. But the reported offense data oversimplifies how people interact with the criminal legal system in two important ways: it reports only one offense category per person, and it reflects the outcome of the legal process, obscuring important details of actual events.

First, when a person is in prison for multiple offenses, only the most serious offense is reported. So, for example, there are people in prison for violent offenses who were also convicted of drug offenses, but they are included only in the “violent” category in the data. This makes it hard to grasp the complexity of criminal events, such as the role drugs may have played in violent or property offenses. We must also consider that almost all convictions are the result of plea bargains, where defendants plead guilty to a lesser offense, possibly in a different category or one that they did not actually commit, in exchange for a more lenient sentence.

Secondly, many of these categories group together people convicted of a wide range of offenses. For violent offenses especially, these labels can distort perceptions of individual “violent offenders” and exaggerate the scale of dangerous, violent crime. Even the seemingly clear-cut offense of “murder” is applied to a variety of situations and individuals: it lumps together the small number of serial killers with people who participated in acts that are unlikely to ever happen again, either due to circumstance or age. “Murder” also includes acts that the average person may not consider to be murder at all. In particular, the felony murder rule says that if someone dies during the commission of a felony, everyone involved can be as guilty of murder as the person who directly caused the death. Many may be surprised that a person who was acting as a lookout during a break-in where someone was accidentally killed can be convicted of murder.

The first myth: Private prisons are the corrupt heart of mass incarceration

In fact, just 8% of all incarcerated people are held in private prisons; the vast majority are in publicly-owned prisons and jails. Some states have more people in private prisons than others, of course, and the industry has lobbied to maintain high levels of incarceration, but private prisons are essentially a parasite on the massive publicly-owned system — not the root of it.

Nevertheless, a range of private industries and even some public agencies continue to profit from mass incarceration. Many city and county jails rent space to other agencies, including state prison systems, the U.S. Marshals Service, and Immigration and Customs Enforcement (ICE). Private companies are frequently granted contracts to operate prison food and health services (often so bad they result in major lawsuits), and prison and jail telecom and commissary functions have spawned multi-billion dollar private industries. By privatizing services like phone calls, medical care, and commissary, prisons and jails are offloading the costs of incarceration onto incarcerated people and their families, trimming their budgets at an unconscionable social cost.

The second myth: Prisons are “factories behind fences” that exist to provide companies with a huge slave labor force

Simply put, private companies using prison labor are not what stands in the way of ending mass incarceration, nor are they the source of most prison jobs. Only about 6,000 people in prison — less than 1% — are employed by private companies through the federal PIECP program, which requires them to pay at least minimum wage before deductions. (A larger portion work for state-owned “correctional industries,” which pay much less, but this still only represents about 6% of people incarcerated in state prisons.)

But prisons do rely on the labor of incarcerated people for food service, laundry, and other operations, and they pay incarcerated workers unconscionably low wages: our 2017 study found that on average, incarcerated people earn between 86 cents and \$3.45 per day for the most common prison jobs.

In at least five states, those jobs pay nothing at all. Moreover, work in prison is compulsory, with little regulation or oversight, and incarcerated workers have few rights and protections. If they refuse to work, incarcerated people face disciplinary action. For those who do work, the paltry wages they receive often go right back to the prison, which charges them for basic necessities like medical visits and hygiene items. Forcing people to work for low or no pay and no benefits, while charging them for necessities, allows prisons to shift the costs of incarceration to incarcerated people — hiding the true cost of running prisons from most Americans.

The third myth: Releasing “nonviolent drug offenders” would end mass incarceration

It's true that police, prosecutors, and judges continue to punish people harshly for nothing more than drug possession. Drug offenses still account for the incarceration of over 360,000 people, and drug convictions remain a defining feature of the federal prison system. And until the pandemic hit (and the official crime data became less reliable), police were still making over 1 million drug possession arrests each year, many of which lead to prison sentences. Drug arrests continue to give residents of over-policed communities criminal records, hurting their employment prospects and increasing the likelihood of longer sentences for any future offenses.

Nevertheless, 4 out of 5 people in prison or jail are locked up for something other than a drug offense — either a more serious offense or an even less serious one. To end mass incarceration, we will have to change how our society and our criminal legal system respond to crimes more serious than drug possession. We must also stop incarcerating people for behaviors that are even more benign.

The fourth myth: By definition, “violent crime” involves physical harm

The distinction between “violent” and “nonviolent” crime means less than you might think; in fact, these terms are so widely misused that they are generally unhelpful in a policy context. In the public discourse about crime, people typically use “violent” and “nonviolent” as substitutes for serious versus nonserious criminal acts. That alone is a fallacy, but worse, these terms are also used as coded (often racialized) language to label individuals as inherently dangerous versus non-dangerous.

In reality, state and federal laws apply the term “violent” to a surprisingly wide range of criminal acts — including many that don't involve any physical harm. In some states, purse-snatching, manufacturing methamphetamines, and stealing drugs are considered violent crimes. Burglary is generally considered a property crime, but an array of state and federal laws classify burglary as a violent crime in certain situations, such as when it occurs at night, in a residence, or with a weapon present. So even if the building was unoccupied, someone convicted of burglary could be punished for a violent crime and end up with a long prison sentence and a “violent” record.

The common misunderstanding of what “violent crime” really refers to — a legal distinction that often has little to do with actual or intended harm — is one of the main barriers to meaningful criminal legal system reform. Reactionary

responses to the idea of violent crime often lead policymakers to categorically exclude from reforms people convicted of legally “violent” crimes. But almost half (47%) of people in prison and jail are there for offenses classified as “violent,” so these carveouts end up gutting the impact of otherwise well-crafted policies. As we and many others have explained before, cutting incarceration rates to anything near international norms will be impossible without changing how we respond to violent crime. To start, we have to be clearer about what that loaded term really means.

The fifth myth: People in prison for violent or sexual crimes are too dangerous to be released

Of course, many people convicted of violent offenses have caused serious harm to others. But how does the criminal legal system determine the risk that they pose to their communities? Again, the answer is too often “we judge them by their offense type,” rather than “we evaluate their individual circumstances.” This reflects the particularly harmful myth that people who commit violent or sexual crimes are incapable of rehabilitation and thus warrant many decades or even a lifetime of punishment.

As lawmakers and the public increasingly agree that past policies have led to unnecessary incarceration, it's time to consider policy changes that go beyond the low-hanging fruit of “non-non-nons” — people convicted of non-violent, non-serious, non-sexual offenses. Again, if we are serious about ending mass incarceration, we will have to change our responses to more serious and violent crime.

Recidivism data do not support the belief that people who commit violent crimes ought to be locked away for decades for the sake of public safety. People convicted of violent and sexual offenses are actually among the least likely to be rearrested, and those convicted of rape or sexual assault have rearrest rates 20% lower than all other offense categories combined. One reason for the lower rates of recidivism among people convicted of violent offenses: age is one of the main predictors of violence. The risk for violence peaks in adolescence or early adulthood and then declines with age, yet we incarcerate people long after their risk has declined.

The sixth myth: Reforming the criminal legal system leads to more crime

The specter of “rising crime” has re-emerged as a central issue among elected officials, political candidates, and in media commentary. Their explanations and exaggerations of recent crime trends don't add up, but these lies have serious

consequences. After ticking up slightly in 2020, the violent crime rate appears to have fallen dramatically in 2023. In general, violent crime has remained remarkably steady over the last 15 years; property crime has trended steeply downward and remains near historic lows (with the exception of auto theft). Overall, the crime rate appears to be the lowest it's been since 1963.

Jail and prison populations have continued to rebound toward their pre-pandemic levels — not because of rising crime, but because pandemic-related delays in the system have subsided.

Politics present another important explanation: many in law enforcement and on the right (and some Democrats, too) have rushed to blame recent reforms for minor shifts in crime trends in an effort to resurrect the same “tough on crime” policies that failed in the 1980s and 90s. The combination of restored court capacity and the return to 90s-era crime policies — not COVID-era releases, bail reform, changes to police budgets, “progressive” prosecutors, or other popular reforms — best explain why more people are behind bars this year than last. In reality, a number of studies have shown:

- No evidence that progressive prosecutors were to blame for the increase in homicides during the pandemic or in the five years before it.
- Murder rates were an average of 40% higher in “red” states compared to “blue” states in 2020; more broadly, murder rates over the years 2000-2020 were 23% higher on average in “red” states.
- Releasing people pretrial doesn't harm public safety. Moreover, the increases in certain types of crime were seen in cities across the country, most of which have not enacted bail reforms.
- Far from being “defunded,” police budgets have increased in the vast majority of cities and counties. And again, cities that increased funding, enacted no bail reforms, and did not elect “progressive” prosecutors also saw increases in homicides in 2020 and 2021.

While crime rates remain near historic lows, what has actually changed most is the public's perception of crime, which is driven less by first-hand experience than by the false claims of reform opponents. These false claims are deliberately stoked to undo the hard-won, evidence supported, common sense reforms that have only begun to put a dent in mass incarceration.

The seventh myth: Harsh punishments deter crime, mak-

ing us safer

Many people mistakenly believe that long sentences, paired with austere and even brutal prison conditions, will have a deterrent effect on crime. But research has consistently found that harsher sentences do not serve as effective “examples” that would prevent new people from committing serious crimes. In 2016, the National Institute of Justice summarized the research on deterrence, finding that prison sentences, and especially long sentences, do little to deter future crime.

Another study concluded that, compared to punishments that don't involve prison or jail time, incarceration has either no effect or — worse — even a “mildly criminogenic impact” on future lawbreaking. In other words, incarceration is counterproductive: While a prison sentence can incapacitate people in the short term, it actually increases the risk that someone will commit a crime after their release.

People face extremely poor living conditions in practically every jail and prison, which negatively impacts their odds of success upon release, their families, and public health at large. Routine failure to provide for the medical needs of incarcerated people is harmful (even deadly) for those inside, and strains family resources and healthcare infrastructure after they're released — and nearly everyone will eventually be released. Poor nutrition compounds health problems, as does contaminated water, pests, and exposure to extreme heat and cold. The physical and psychological effects of incarceration, including the PTSD-like Post-Incarceration Syndrome, make it harder to maintain employment and housing, trapping people in cycles of incarceration. Put simply, when people are released from prison, their health and wellbeing are intertwined with that of the community, so the harms visited upon them inside impact everyone.

The eighth myth: Crime victims support long prison sentences

Policymakers, judges, and prosecutors often invoke the name of victims to justify long sentences for violent offenses. But contrary to the popular narrative, most victims of violence want violence prevention, not incarceration. Again, harsh sentences don't deter violent crime, and many victims understand that incarceration can make people more of a public safety risk. National survey data show that most victims support violence prevention, social investment, and alternatives to incarceration that address the root causes of crime, not more investment in carceral systems that cause more harm. This suggests that they care more about the health and safety of their communities than they do about

retribution.

Moreover, people convicted of crimes are often victims themselves, complicating the moral argument for harsh punishments as “justice.” While conversations about justice tend to treat perpetrators and victims of crime as two entirely separate groups, people who engage in criminal acts are often victims of violence and trauma, too — a fact behind the adage that “hurt people hurt people.” As victims of crime know, breaking this cycle of harm will require greater investments in communities, not the carceral system.

The ninth myth: Some people need to go to jail to get treatment and services

It’s absolutely true that people ensnared in the criminal legal system have a lot of unmet needs. But jails and prisons are no place to recover from a mental health crisis or substance use disorder — they are designed for punishment, not care. Local jails, especially, are filled with people who need medical care and social services, but jails have repeatedly failed to provide these services. For example, while two-thirds of people in local jails have substance use disorders, only a tiny fraction of all jails provide medication-assisted treatment (MAT) for opioid use disorder — the gold standard for care. That means that rather than providing drug treatment, jails more often interrupt drug treatment by cutting patients off from their medications. Between 2000 and 2018, the number of people who died of intoxication while in jail increased by almost 400%; typically, these individuals died within just one day of admission.

Similarly, jails often put people with mental health problems in solitary confinement, provide limited access to counseling, and leave them unmonitored due to constant staffing shortages. The result: suicide is the leading cause of death in local jails, with death rates far exceeding those found in the general U.S. population. Given this track record, the trend of proposing new “mental health jails” to respond to decades of disinvestment in community-based services is particularly alarming. Jails are not safe detox facilities, nor are they capable of providing the therapeutic environment people require for long-term recovery and healing. Even when other options for providing mental health and substance use treatment are scarce, decisionmakers should not rely on correctional settings to do so.

The tenth myth: Expanding community supervision is the best way to reduce incarceration

Community supervision, which includes probation, parole, and pretrial supervision, is often seen as a “lenient” punish-

ment or as an ideal “alternative” to incarceration. But while remaining in the community is generally preferable to being locked up, the conditions imposed on those under supervision are often so restrictive that they set people up to fail.

The long supervision terms, numerous and burdensome requirements, and constant surveillance result in frequent “failures,” often for minor infractions like breaking curfew or failing to pay unaffordable supervision fees. At last count, at least 128,000 people were incarcerated for such non-criminal “technical violations” of probation or parole.

These supervision violations accounted for 27% of all admissions to state and federal prisons. In fact, the Bureau of Justice Statistics found that almost a quarter (24%) of people in state prisons were on probation at the time of their arrest, underscoring how this “alternative to incarceration” often simply delays incarceration.

Newer methods of community supervision don’t simply delay incarceration; they replicate the experience so closely through the use of technology that they amount to “e-carceration” or “electronic prisons.” The use of electronic monitoring, in particular — whether via ankle shackle, phone app, or other technology — has exploded in recent years, especially in the contexts of pretrial supervision and immigration enforcement. Proponents argue the technology improves court compliance and public safety, but a recent study found the practice accomplishes neither of these goals. The technology is unreliable, frequently leading to security breaches and false alarms, and it has created yet another path to incarceration via technical violations. Like probation before it, electronic monitoring is touted as an “alternative” to incarceration, but in reality it is expanding the scope of correctional control, not reducing the number of people behind bars.

The high costs of low-level offenses

Most people in the U.S. criminal legal system are not accused of serious crimes; more often, they are charged with misdemeanors or non-criminal violations. Yet even low-level offenses, like technical violations of probation and parole, can lead to incarceration and other serious consequences. Rather than investing in community-driven safety initiatives, cities and counties are still pouring vast amounts of public resources into the processing and punishment of these minor offenses.

Probation & parole violations and “holds” lead to unnecessary incarceration

Often overlooked in discussions about mass incarceration are the various “holds” that keep people behind bars for administrative reasons. A common example is when people on probation or parole are jailed for violating their supervision, either for a new crime or a non-criminal (or “technical”) violation. If a parole or probation officer suspects that someone has violated supervision conditions, they can file a “detainer” (or “hold”), rendering that person ineligible for release on bail. For people struggling to rebuild their lives after conviction or incarceration, returning to jail for a minor infraction can be profoundly destabilizing. The most recent data show that nationally, almost 1 in 5 (19%) people in jail are there for a violation of probation or parole, though in some places these violations or detainers account for over one-third of the jail population. This problem is not limited to local jails, either; in 2019, the Council of State Governments found that nearly 1 in 4 people in state prisons are incarcerated as a result of supervision violations.

A particularly disturbing type of “hold” is becoming increasingly common: people held in jails while awaiting transfer to psychiatric facilities. One recent study reports that “thousands of [people] with serious mental illness languish in jail for months, or even years, waiting for a state hospital bed to open.” Typically, these vulnerable adults are in need of evaluation or restoration of their competency to stand trial. But being held in jails puts them at heightened risk of victimization, self-harm, and even additional criminal charges for behaviors that are actually symptoms of their illness. The result of disinvestment in mental health infrastructure and the criminalization of mental illness, these “holds” are not only unnecessary, but unconscionable.

Misdemeanors: Minor offenses with major consequences

The “massive misdemeanor system” in the U.S. is another important but overlooked contributor to overcriminalization and mass incarceration. For behaviors as benign as jaywalking or sitting on a sidewalk, an estimated 13 million misdemeanor charges sweep droves of Americans into the criminal legal system each year (and that’s excluding civil violations and speeding). These low-level offenses, along with other non-felony offenses, typically account for about 25% of the daily jail population nationally, and much more in some states and counties. The rampant criminalization of homelessness and aggressive enforcement of these laws — almost all misdemeanors — also contributes to harmful and costly cycles of homelessness and incarceration.

Misdemeanor charges may sound trivial, but they carry

serious financial, personal, and social costs, especially for defendants but also for broader society, which finances the processing of these court cases and all of the unnecessary incarceration that comes with them. And then there are the moral costs: People charged with misdemeanors are often not appointed counsel and are pressured to plead guilty and accept a probation sentence to avoid jail time. This means that innocent people routinely plead guilty and are then burdened with the many collateral consequences that come with a criminal record, as well as the heightened risk of future incarceration for probation violations. A misdemeanor system that pressures innocent defendants to plead guilty seriously undermines American principles of justice.

“Low-level fugitives” live in fear of incarceration for missed court dates and unpaid fines

Defendants can end up in jail even if their offense is not punishable with jail time. Why? Because if a defendant fails to appear in court or to pay fines and fees, the judge can issue a “bench warrant” for their arrest, directing law enforcement to jail them in order to bring them to court. While there is currently no national estimate of the number of active bench warrants, their use is widespread and, in some places, incredibly common. In Monroe County, N.Y., for example, over 3,000 people have an active bench warrant at any time, more than 3 times the number of people in the county jails.

But bench warrants are often unnecessary. Most people who miss court are not trying to avoid the law; more often, they forget, are confused by the court process, or have a schedule conflict. Once a bench warrant is issued, however, defendants frequently end up living as “low-level fugitives,” quitting their jobs, becoming transient, and/or avoiding public life (even hospitals) to avoid having to go to jail.

Lessons from the smaller “slices”: Youth, immigration, and involuntary commitment

Looking more closely at incarceration by offense type also exposes some disturbing facts about the 35,500 youth in confinement in the United States: too many are there for a “most serious offense” that is not even a crime. For example, there are 2,700 youth behind bars for non-criminal violations of their probation rather than for a new offense. An additional 700 youth are locked up for “status” offenses, which are “behaviors that are not law violations for adults such as running away, truancy, and incorrigibility.”

About 1 in 11 youth held for a criminal or delinquent

offense is locked in an adult jail or prison, and most of the others are held in juvenile facilities that look and operate a lot like prisons and jails. We also know that for many children, legal system involvement overlaps with other kinds of “systems” involvement, such as the foster care system: almost half of youth in foster care have an encounter with the criminal legal system by age 17. The criminalization of youth is apparent in the adult prison population: more than one-third (38%) of people in state prisons were first arrested before they turned 16. The early criminalization of youth is apparent in the adult prison population: more than one-third (38%) of people in state prisons were first arrested before they turned 16.

Turning to the people who are locked up criminally and civilly for immigration-related reasons, we find that over 6,000 people are in federal prisons for criminal convictions of immigration offenses, and 12,400 more are held pretrial or presentence by the U.S. Marshals Service. The vast majority of people incarcerated for criminal immigration offenses are accused of illegal entry or illegal reentry — in other words, for no more serious offense than crossing the border without permission.

Another 38,000 people are civilly detained by U.S. Immigration and Customs Enforcement (ICE) not for any crime, but simply because they are facing deportation. People detained by ICE are physically confined in federally-run or privately-run immigration detention facilities, or in local jails under contract with ICE. While this number is below what it was pre-pandemic, it’s actually climbed back up from a record low of 13,500 people in ICE detention in early 2021. In fact, ICE is very rapidly expanding its overall surveillance and control over the non-criminal migrant population by growing its electronic monitoring-based “alternatives to detention” program.

An additional 8,000 unaccompanied children are held in the custody of the Office of Refugee Resettlement (ORR), awaiting placement with parents, family members, or friends. Their number has more than doubled since January of 2020. While these children are not held for any criminal or delinquent offense, most are held in shelters or even juvenile placement facilities under detention-like conditions.

Adding to the universe of people who are confined because of criminal legal system involvement, 25,000 people are involuntarily committed in state psychiatric hospitals and civil commitment centers. Many of these people are not even convicted, and some are held indefinitely. These “forensic patients” include people being evaluated or treated

for incompetency to stand trial, as well as those found not guilty by reason of insanity or guilty but mentally ill, who may remain hospitalized for decades or for life. Roughly 6,000 are people convicted of sex-related crimes who are involuntarily committed or detained after their prison sentences are complete. While the facilities they are held in aren’t typically run by departments of correction, they are in reality much like prisons. Meanwhile, at least 38 states allow involuntary commitment for substance use disorder treatment, and in many cases, people are sent to actual prisons and jails, which are inappropriate places for treatment.

Beyond the “Whole Pie”: Community supervision, poverty, age, + race/gender disparities

Once we have wrapped our minds around the “whole pie” of mass incarceration, we should zoom out and note that people who are incarcerated are only a fraction of those impacted by the criminal legal system. There are another 800,000 people on parole and a staggering 2.9 million people on probation. Many millions more have completed their sentences but are still living with a criminal record, a stigmatizing label that comes with collateral consequences such as barriers to employment and housing.

Beyond identifying how many people are impacted by the criminal legal system, we should also focus on who is most impacted and who is left behind by policy change. Poverty, for example, plays a central role in mass incarceration. People in prison and jail are disproportionately poor compared to the overall U.S. population. The criminal legal system punishes poverty, beginning with the high price of money bail: The median felony bail bond amount (\$10,000) is the equivalent of 8 months’ income for the typical detained defendant. As a result, people with low incomes are more likely to face the harms of pretrial detention. Poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroys wealth, creates debt, initiates or perpetuates cycles of homelessness, and decimates job opportunities.

It’s no surprise that people of color — who face much greater rates of poverty — are dramatically overrepresented in the nation’s prisons and jails. These racial disparities are particularly stark for Black Americans, who make up 35% of the prison and jail populations but only 14% of all U.S. residents. The same is true for women, whose incarceration rates have for decades risen faster than men’s, and who are often behind bars because of financial obstacles such as an inability to pay bail. As policymakers continue to push for reforms that reduce incarceration, they should avoid chang-

es that will widen disparities, as has happened with juvenile confinement and with women in state prisons.

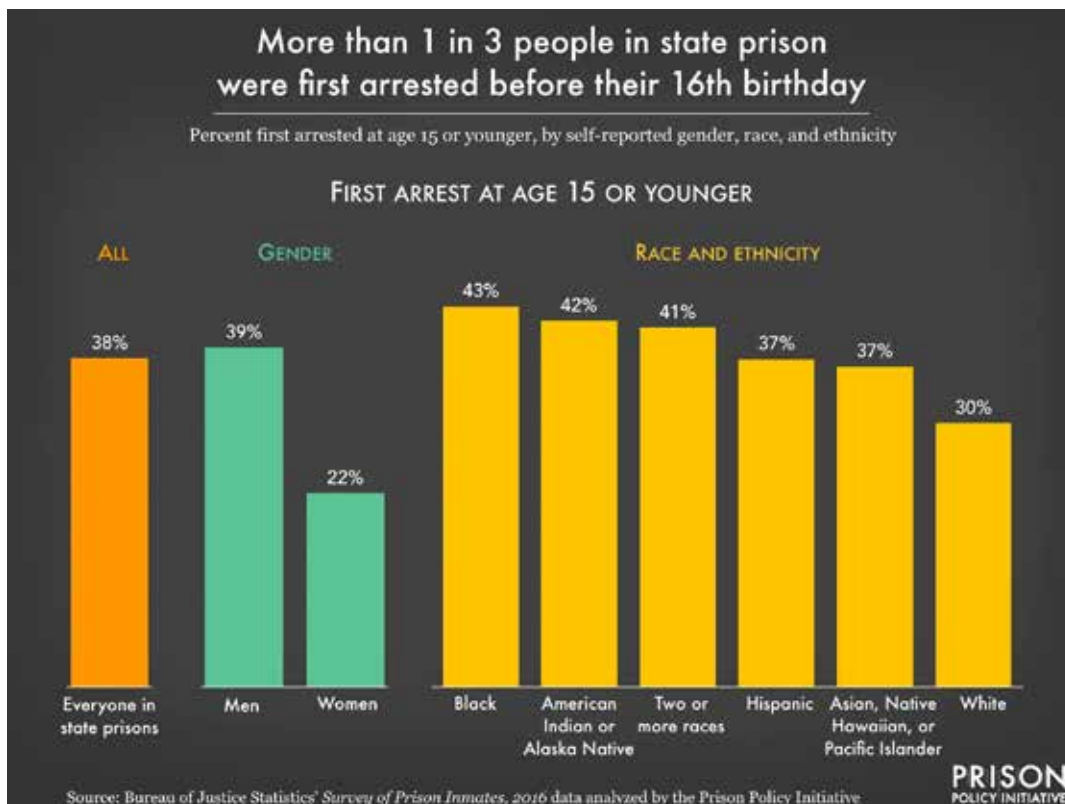
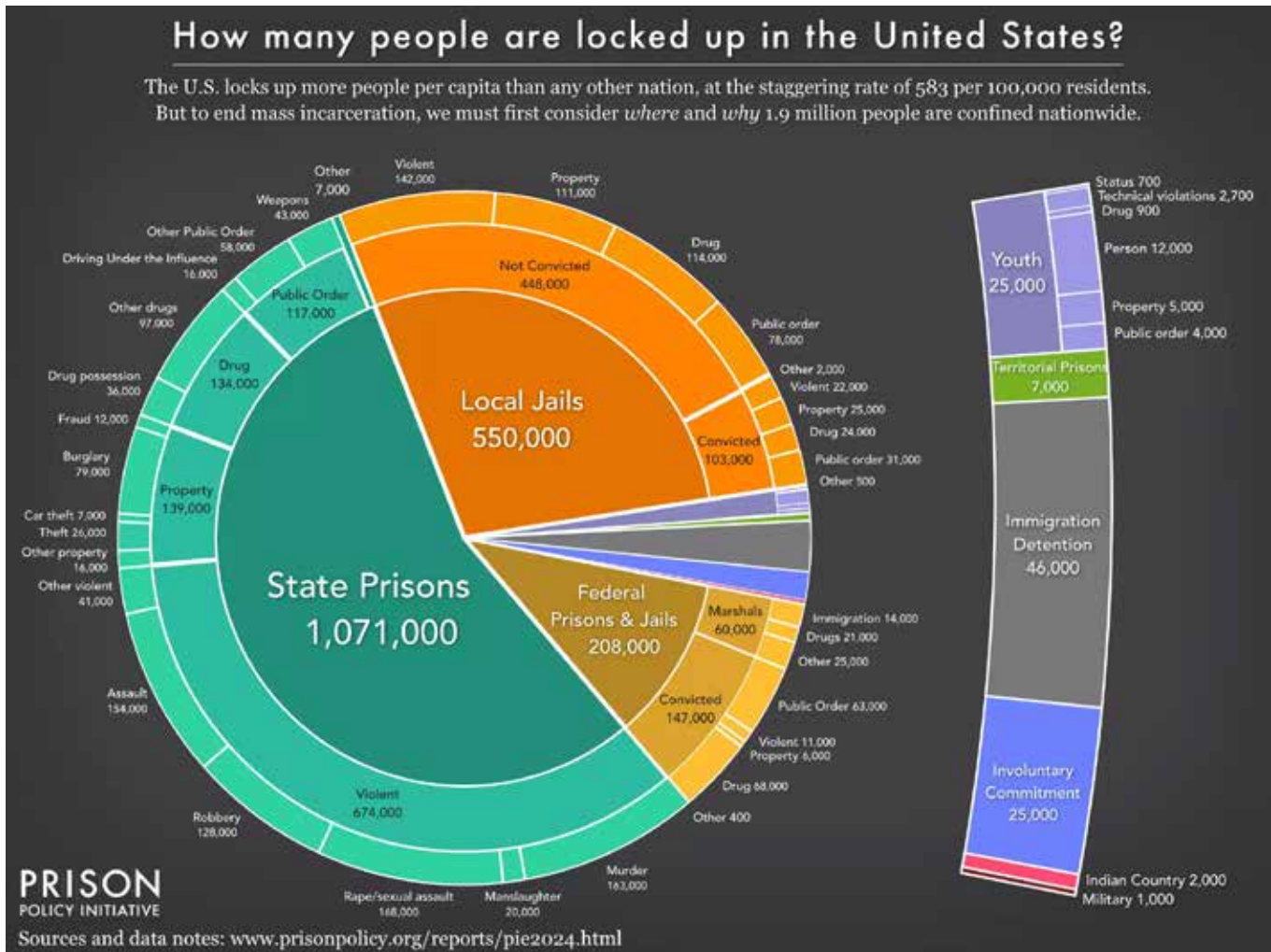
Finally, while states have made progress in reducing youth confinement — due to developments in adolescent brain research, mounting evidence that confinement leads to worse outcomes, and dogged advocacy to protect youth — the elder population in prison has only grown. Many are stuck serving excessively long sentences, despite the evidence that their incarceration is both extremely costly and unnecessary to ensure public safety.

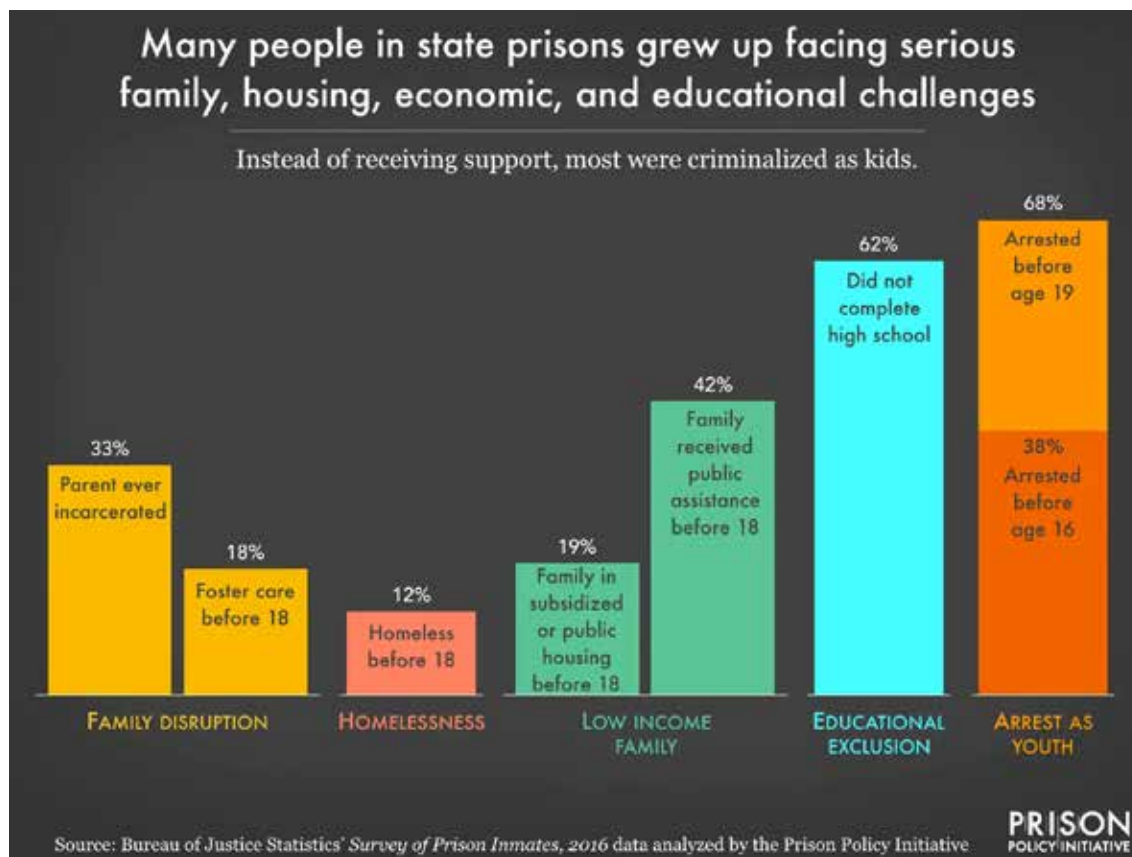
Equipped with the full picture of how many people are locked up in the United States, where, and why, we all have a better foundation for moving the conversation about criminal legal system reform forward. For example, the data make it clear that ending the war on drugs will not alone end mass incarceration, though the federal government and some states have taken an important step by reducing the number of people incarcerated for drug offenses. Looking at the “whole pie” of mass incarceration opens up conversations about where it makes sense to focus our energies at the local, state, and national levels. For example:

- How can we effectively invest in communities to make it less likely that someone comes into contact with the criminal legal system in the first place? And what measures can help aid successful reentry and end the vicious cycle of re-incarceration that so many individuals and families experience?
- Can we persuade government officials and prosecutors to revisit the reflexive, simplistic policymaking that has served to increase incarceration for “violent” offenses? How can we eliminate policy “carveouts” that exclude broad categories of people from reforms and end up gutting the impact of reforms?
- What will it take to embolden policymakers and the public to do what it takes to shrink the second largest slice of the pie — the thousands of local jails? And what will it take to redirect public spending to smarter investments like community-based drug treatment and job training?
- While the federal prison system is a small slice of the total pie, how can improved federal policies and financial incentives be used to advance state and county-level reforms? And for their part, how can elected sheriffs, district attorneys, and judges — who all control larger shares of the correctional pie — slow the flow of people into the criminal legal system?
- Given that the companies with the greatest impact on incarcerated people are not private prison operators, but service providers that contract with public facilities, how can governments end contracts that squeeze money from those behind bars and their families?
- What reforms can we implement to both reduce the number of people incarcerated in the U.S. and the well-known racial and ethnic disparities in the criminal legal system?
- What lessons can we learn from the pandemic? Are federal, state, and local governments prepared to respond to future pandemics, epidemics, natural disasters, and other emergencies, including with plans to decarcerate? And how can states and the federal government better utilize compassionate release and clemency powers moving forward?

The United States has the dubious distinction of having the highest incarceration rate of virtually any democratic nation on earth. Looking at the big picture of the 1.9 million people locked up in the United States on any given day, we can see that something needs to change. Both policymakers and the public have the responsibility to carefully consider each individual slice of the carceral “pie” and ask whether legitimate social goals are served by putting each group behind bars, and whether any benefit really outweighs the social and fiscal costs.

Even narrow policy changes, such as ending incarceration for “technical” violations, can meaningfully reduce our society’s use of incarceration. At the same time, we should be wary of proposed reforms that seem promising but will have only minimal effect, because they simply transfer people from one slice of the correctional “pie” to another or needlessly exclude broad swaths of people. Keeping the big picture in mind is critical if we hope to develop strategies that actually shrink the “whole pie.”





Other Subscriptions for Incarcerated Members

News Inside is a free, award winning publication which is a compilation of criminal justice news from the Marshall Project (a nonpartisan, nonprofit news organization that seeks to create and sustain a sense of national urgency about the U.S. criminal justice system). It is produced by Marshall Project editors and writers along with incarcerated contributors.

To subscribe, send your Full name, Identification number, Name of Facility, Street Address or PO Box, City, State, and Zip Code to this address:

Attn: News Inside
The Marshall Project
156 West 56th Street, 3rd Floor
New York, NY 10019

The Abolitionist is a bilingual (English/Spanish) publication dedicated to the strategy and struggle of abolition which was launched in 2004 by Critical Resistance, a national organization which seeks to build an international movement to end the prison industrial complex by challenging the belief that caging and controlling people makes us safe. It is free to prisoners and is supported by paid subscribers on the outside.

Two times per year, Critical Resistance prints different issues of *The Abolitionist*, exploring a range of topics. From analyses of racial capitalism and imperialism, to housing, education, land struggles, mental health, confronting gender violence, fights to build life-affirming infrastructure for community self-determination and more, each issue is packed with fresh analytical articles, reflections, poetry, visual art, and organizing resources and tools for resistance inside and outside of prisons.

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Prison Legal News, a project of the Human Rights Defense Center PLN is an independent 72-page monthly magazine that provides review and analysis of prisoners' rights, court rulings and news concerning criminal justice-related issues. Some of the areas they cover include prison labor, the private prison industry, medical and mental health care for prisoners, misconduct and abuse by prison and jail staff, settlements and verdicts in lawsuits against detention facilities, juvenile justice, the death penalty, the Prison Litigation Reform Act, and more.

You can subscribe for yourself or someone else by sending a check or money order for the correct amount (see below) to: Prison Legal News, P.O. Box 1151, Lake Worth, FL 33460.

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In addition to the resources listed, remember you can order the *Jailhouse Lawyers Handbook* (2021 Edition) by writing to us at our main address (National Lawyers Guild, PO Box 1266, New York, NY 10009). It usually takes at least 6-8 weeks for people to receive. The *Handbook* helps with learning your constitutional rights while you're incarcerated, and how to file a civil lawsuit against the administration.

National Lawyers Guild Foundation

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