

5 MYTHS ABOUT INCARCERATION

What will it take to *undo* the mass incarceration (and over-criminalization) policies and practices that have taken root in our public policy while recognizing the need for sound policy to prevent and control crime? In the last four decades, U.S. policies and practices have emphasized incarceration as the only legitimate punishment. This has created an insatiable appetite—resulting in the policies and practices of mass incarceration. The costs of administering incarceration policies have affected nearly all aspects of our society. Look at the numbers: the U.S. has an incarceration rate of 756 per 100,000 (the largest in the world) and holds 23% of the people incarcerated around the world (see www.pewcenteronthestates.com; Walmsley, 2007). In addition, 1 in 23 Americans aged 18 to 65 is involved in the justice system; 1 in 28 children have a parent incarcerated; and 1 in 5 American adults have a criminal record (Glaze, 2009; Glaze & Maruschak, 2009; O'Brien & Darrow, 2007). Current policies and practices affect the ability of people to resume full citizenship and become contributing members of society. That is, these practices present “brick walls.” If we intend to “undo” the consequences while protecting public safety, we have to begin by addressing some common misconceptions. Only then can we forge a pathway toward effective policy that protects public safety and justice while reducing costs and offending behaviors.

Myth #1: Once an offender, always an offender. Involvement with the justice system essentially labels a person an “offender.” This label affects an individual’s ability to retain status as a productive member of the community by, for example, limiting housing and employment options so severely that many cannot live or work successfully. Additionally, felon offenders lose (sometimes permanently) the ability to vote and participate in our democracy, which in turn stigmatizes and hinders productive societal participation. These collateral consequences build on the premise that once a person is an offender, a person will *always* be an offender. Despite the prominence of this thinking, data reveal that 42% of individuals in jail, 20% in prison, and 50% under probation and parole supervision are first time offenders. Anywhere from 12 to 20% of those involved in the justice system can be considered persistent offenders.

The impression that all offenders are persistent emerges from the difficulties in measuring outcomes. The widely cited 70% recidivism refers to felons in 15 states (see Langan & Levin, 2002) and does not recognize that there are patterns in reoffending. Recidivism is the general concept that this references but recidivism can consist of: arrest for a new crime; conviction for a new crime; reincarceration for a new crime; or various outcomes for violating the conditions of release (on probation or parole supervision). The tendency is to treat recidivism as a “terminal” or final condition (it happened or it did not). However, this does not take into account that involvement in the justice system—which is like many physical and mental health disorders—has reoccurring phases. It does not recognize that there may be significant breaks in offending behavior (remission) and that reoccurrences may be due to situational or opportunity factors. Nor does it recognize that younger people (18-28) and males are more likely to recidivate as are those who started their involvement in criminal behavior at an earlier age. Thus, not all criminally involved individuals will live a life of recycling through the justice system, in fact, most will not.

Myth #2: Mass incarceration reduces crime. For the last 20 years, the crime rate in the U.S. has been falling. As a result of the “war on drugs”, the crime rate hit a high in the early 1990s. Since that time, it has fallen to record lows (see the Uniform Crime Reports at <http://www.ucrdatatool.gov>). Despite a decreasing crime rate, the number of people involved in the justice system during that time ballooned by 293% (Bonczar, 2003; Bureau of Justice Statistics Correctional Surveys, 2009). Today, nearly 8 million American adults and 650,000 youth are involved with the justice system (see Pew Foundation, 2009; Taxman, Perdoni, & Harrison, 2007). Some attribute the decline in the crime rate to the rising use of jail and prison. Others report that jail and prison overcrowding is due to policies that have increased lengths of stay in prison/jail. These policies include mandatory minimums, increased incarceration periods, increased conditions attached to probation and parole, increased technical violations and the failure of parole boards to release offenders. While the incarceration of persistent offenders has probably affected the crime rate, the same policies for drug and misdemeanor offenders has only served to expand the incarceration population and intensify problems associated with offenders resuming life in their communities.

Myth #3: Severe sentences produce the best outcomes. Punishment as a means of providing hard treatment to convey disapproval for wrongdoing is driven by four primary goals: incapacitation, retribution, deterrence, and rehabilitation. The last 30+ years in the U.S. deemphasized rehabilitative goals, favoring prison/jail as the *only real* punishment capable of incapacitating, deterring and imposing “just desserts” on offenders. However, there is growing evidence to show that the swiftness and certainty of punishment provides a greater deterrent effect to many crimes than the severity of sanction. In fact, fear-provoking sanctions may yield unintended consequences that decrease, not increase, the sense of control citizens have over their lives (Braithwaite & Pettit, 1990) provoking recidivism. Yet, U.S. sentence lengths are virtually unmatched. For example, comparing 1994 U.S. with 1995 U.K. sentences reveals startling disparities. The U.S. incarcerates approximately 4 years longer for rape and robbery, 3 years longer for murder and assault, 2 years for burglary and 1 year for motor vehicle theft. Yet, recidivism in the U.K. is significantly less than in the U.S. The mean sentence in the U.S. is an average of six months longer than in 1988. Together with the steep increase in the number of people going to prison, this has resulted in policies of mass incarceration. This brings up an important query: *Can informal sanctions serve as an alternative form of punishment that satisfies key punitive goals while keeping undesired and/or criminal conduct to a manageable level?*

To this end, Petersilia & Deschenes' (1994) study (among others) of inmates and correctional staff views of penal severity compared with community sanctions finds that roughly 1 year in prison is considered the punitive equal to 3 years of intensive supervision probation (ISP). In a similar study, researchers found that one-third of prisoners preferred prison to community supervision because of the conditions attached to supervision. Considering the social, psychological, and cost-savings provided by ISP over prison, community sanctions might provide a viable avenue for “undoing” mass incarceration while maintaining swift and certain sanctions. Additionally, decreased reliance on prison as the primary—and in many cases first and only—source of punishment will also help eliminate some of the glaring inequality present when offender characteristics (e.g., race, gender, employment history) are valued differently by discretionary systems and actors within pre-prison justice processes.

Myth #4: Community sanctions do not work. Essentially the U.S. does *not* have a system of community punishments (sanctions). There is very little available between standard probation (reporting) and incarceration (prisons or jail). Instead, we have a probation system designed to trap people into a life of involvement with the justice system. The current system does not incorporate existing science (evidence-based practices) about effective treatments or punishments that reduce recidivism. Rather, it builds on the premise that real punishment emerges from incarceration. The failure to use existing science in crime policy contributes to the continued use of expensive (incarceration) means to punish people.

Although nearly 70% of those involved in the justice system are on probation or parole, the probation and parole in the U.S. is underfunded and undervalued (Taxman, Perdoni, & Harrison, 2007). The average daily cost to keep an individual on probation is \$3.82 a day versus \$78.95 for imprisonment (Pew Foundation, 2009). Instead of using probation as a legitimate sanction, probation has become a feeding ground for further involvement in the justice system through conditions that do not serve to address dynamic patterns that are likely to be criminogenic (result in further involvement in criminal behavior). Increased and irrelevant (not related to preventing or addressing criminal behavior) conditions mean more opportunities to fail probation and parole and exacerbate the problem. Probation supervision that uses the principles of behavioral management (an evidence-based practice) instead of mere law enforcement can reduce recidivism and technical violations, yet few probation agencies use this type of supervision. Overall, evidence-based practices are available but underutilized in correctional settings.

Further, while we know that 80% of offenders have substance use disorders, the existing system provides treatment for fewer than 10% of the offenders who need these services (Taxman, Perdoni, & Harrison, 2007). Even more troubling is that the available programs insufficiently meet participants' needs. To be effective, we need to expand the use of drug treatment courts (offering treatment for 1 year), cognitive behavioral therapy, use of motivational enhancement techniques, and employment programs that focus on social supports. We need resources to integrate evidence-based practices into community punishments. Building a community capacity to address crime problems encourages implementation of more cost-effective strategies.

Myth #5: Incarceration only affects offenders. When an individual is involved in the criminal justice system, families and communities are also involved. One in 28 youth has a parent in prison or jail, which means that the children are separated from their families during critical developmental periods. It also means that youth experience the criminal justice system via visiting a parent in jail/prison, going to court, or dealing with the loss of the individual in their daily life. Since over 90% of inmates are male, this means that many youth may only develop relationship with a key male role model within the confines of the justice system. Incarceration affects life prospects, including reduced hourly wages for men by approximately 11%, reduced annual employment by 9 weeks, and reduced annual earnings by 40%. By age 48, the typical former inmate will have earned \$179,000 less than individuals not involved in the justice system (Western & Pettit, 2010).

Recent attention focuses on the concentration of people involved in the justice system in certain communities. In New York City, neighborhoods that are home to 18% of the city's adult population account for more than 50% of prison admissions each year. A similar trend appears in Wichita, Kansas, where one-quarter of all people on probation or parole live in only 8% of the city's neighborhoods. In Austin, Texas, 3 neighborhoods are home to only 3.5% of the city's adult population, but they grapple with over 17% of people returning from prison each year. (See <http://www.justicemapping.org/about-us/> for more information). Incarceration policies particularly affect communities where the return of individuals is concentrated with increased STDs, pregnancy rates, and lack of male role models.

Incarceration-only policies have many costs attached to them, including disengaging people from productive citizenship, desensitizing the population to the adverse effects of incarceration and a criminal lifestyle, and stripping communities of potentially valuable, tax-paying members. Regrouping from this 30-year emphasis on incarceration will require dealing with these myths and recognizing that the criminal justice system and society at-large can benefit from seeking community-based punishments that prevent and address societal problems. To that end, we need to “undo” our focus on incarceration by pursuing a range of punishments that address the underlying cause of criminal behavior.

References available at: <http://gemini.gmu.edu/ebct>