Written Statement of the American Civil Liberties Union Before the United States Senate Committee on the Judiciary's

Hearing on

Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism"

Wednesday, November 6, 2013
10:00 a.m.

Submitted by the

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The American Civil Liberties Union (ACLU) welcomes this opportunity to submit testimony to the Senate Committee on the Judiciary's for its hearing on *Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*" and urges the Committee to take action to bring the Bureau of Prisons into conformity with accepted legal, public-safety, and human-rights standards.

The ACLU is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal levels through public education, advocacy, and successful litigation.

The Federal Bureau of Prisons (BOP) is the largest prison system in the country, comprising 119 prisons and jails and managing the detention of about 219,000 people.[1] While most federal prisoners are housed in BOP-operated jails and prisons, BOP also contracts with private prisons, as well as state and local prisons and jails, to house a significant proportion of its prisoners and detainees.[2] Many of BOP's facilities are out of compliance with legal standards, as well as with widely acknowledged human-rights and public-safety guidelines for the treatment of prisoners and detainees. In particular, BOP should improve its policies on the use of solitary confinement; on contracts with private, for-profit prisons; on compliance with the Prison Rape Elimination Act (PREA) and with requirements for treating transgender and transitioning individuals; on the abusive practice of using Special Administrative Measures and Communication Management Units; and on the proposed relocation of approximately 1,000 women to a new facility in Aliceville, Alabama. The testimony that follows will first suggest a cost effective strategy for reducing recidivism and second recommend issues that the Committee should explore with the BOP in its oversight role with the agency.

Cost Effective Strategies to Reduce Recidivism

I. Congress Should Expand Time Credits for Good Behavior and Recidivism-Reducing Programs.

Of the over 219,000 people are in federal prison almost half of them are serving time for drug-related crimes and the majority of those cases are non-violent.[3] At the same time, BOP is operating at almost 40 percent over capacity and accounts for over 25 percent of the Department of Justice's (DOJ) budget.[4] One approach to addressing BOP overcrowding while also helping individuals successfully reenter society after incarceration would be to expand the existing earned time[5]credit that allows people to be released from federal prisons early based on their good behavior. The federal prison system's current method of calculating earned credit reduces a

prisoner's sentence to a maximum credit of 47 days per year – below the 54 days Congress intended. This decision results in unnecessary increases in prison sentences at significant cost. Congress should enact legislation that would allow individuals to receive the full 54 day credit and earn good time credit for successful participation in recidivism-reducing programs, such as education or occupational programming. If Congress would clarify the statutory language and enable BOP to provide more recidivism-reducing programs, it could save an estimated $41 million in the first year alone.

Committee Oversight of the BOP

II. BOP's Use of Solitary Confinement Is Excessive and Should Be Monitored

a. The BOP's Use of Solitary Confinement

Solitary confinement is an extreme form of punishment that should be reserved only as a measure of last resort. Prisoners housed in solitary confinement are typically held in a small cell—no bigger than a parking space—for 22 to 24 hours a day, with little to no human interaction aside from prison guards and the occasional healthcare provider or attorney. Many in the legal and medical fields criticize solitary confinement as both unconstitutional and inhumane. It is widely accepted that the practice exacerbates mental illness and undermines a prisoner's ability to successfully re-enter into society when his or her sentence is complete.[6] An estimated 80,000 people are currently held in solitary confinement in prisons across the country. Many are nonviolent offenders, caught up in punitive disciplinary systems that sometimes send prisoners into solitary confinement for infractions such as "possession of contraband" or talking back.[7] The United Nations Special Rapporteur on Torture has concluded that any period in solitary confinement over 15 days amounts to torture.[8] Yet many American prisoners can end up spending months or years in solitary confinement.

Over the last two decades, corrections systems across the country have increasingly relied on solitary confinement, even building entire "supermax"—super-maximum-security—facilities, where prisoners are held in conditions of extreme isolation, sometimes for years on end. In addition to posing humanitarian concerns, this massive increase in the use of solitary confinement has led many to question whether it is an effective use of public resources. Supermax prisons, for example, typically cost two or three times more to build and operate than traditional maximum-security prisons.[9]

BOP currently holds about seven percent of its population—more than 12,000 prisoners—in solitary confinement.[10] About 435 of these people are incarcerated at ADX Florence, the federal supermax prison, in Colorado.[11] Thousands more are held in "Special Housing Units" (SHU) or "Special Management Units" (SMU) within other prisons.[12] Prisoners can be sent to these solitary confinement units for administrative reasons, as punishment for disciplinary rule violations, or as a result of gang affiliations or activity.[13] That is to say, many

prisoners held in solitary confinement are not particularly dangerous or even difficult to manage. Despite the human and financial costs of solitary confinement, the number of federal prisoners in solitary confinement and other forms of segregated housing has grown nearly three times as fast as the federal prison population as a whole.[14]

b. The Need for Monitoring of BOP's Use of Solitary Confinement, and Its Effects

Following a Senate hearing in summer 2012 on the overuse of solitary confinement in American prisons, BOP announced that it would arrange for a third-party audit of its use of solitary confinement.[15] In particular, BOP planned to review the fiscal and public-safety consequences of solitary confinement.[16] A BOP spokesman told reporters in February that the audit would begin "in the weeks ahead."[17]

In May, the U.S. Government Accountability Office (GAO) added to public calls for more information on BOP's use of solitary confinement when it published a detailed report based on extensive investigations of BOP's use of solitary confinement.[18] The report found that BOP does not adequately monitor its use of solitary confinement and other segregated housing. It also found that BOP should be evaluating the effects that solitary confinement has on people in BOP custody. GAO further reported that BOP has not conducted any research to determine how the practice impacts prisoners or whether it contributes to maintaining prison safety.[19] The report noted that BOP officials refused to acknowledge that long-term segregation can seriously harm prisoners—even though BOP's own policy recognizes the potential for damaging lasting effects.[20]

Solitary confinement does not make prisons safer. Indeed, the corrections departments in several states have limited their use of solitary confinement with little or no adverse impact on prison management and safety.[21] Indeed, emerging research suggests that supermax prisons actually have a negative effect on public safety, because prisoners released from solitary confinement may be more likely to recidivate than those released from general population.[22]

c. BOP Can and Should Limit Its Use of Solitary Confinement

U.S. Immigration and Customs Enforcement (ICE), which detains over 400,000 people annually in facilities across the country, recently released a new directive regulating the use of solitary confinement in immigration detention.[23] While not perfect, the new ICE directives represent a major step in curbing the inhumane and unnecessary use of solitary confinement. BOP should look to the ICE directives as an example of a policy designed to monitor and control the use of solitary confinement significantly more effectively than current BOP policies.

If strictly enforced, ICE's new directive will create a robust monitoring regime that will enable the agency to oversee the use of solitary confinement across its sprawling network of approximately 250 immigration detention facilities.[24] The new directive also takes important steps to impose substantive limits on the use of solitary. For example, it requires centralized review of all decisions to place detainees in solitary confinement for more than 14 days at a time, including an evaluation of whether any less-restrictive option could be used instead of solitary.[25] The directive requires heightened justifications to place vulnerable detainees—such as victims of sexual assault, people with medical or mental illnesses, and people at risk of suicide—in solitary confinement.[26] In addition, ICE now requires medically and mentally ill detainees to be removed from solitary if they are deteriorating.[27] It requires attorney notification in certain circumstances[28] and it requires regular reviews of all longer detentions in solitary.[29]

In addition to examining ICE's new directive, BOP should look to states that have reformed their use of solitary confinement, as examples of how close monitoring and reduction of the use of solitary confinement can improve prison management and safety, and can bring BOP more in line with accepted human-rights standards.[30] We urge the Committee to inquire as to BOP's plans in this area and to push the agency to move forward with reforms that have worked elsewhere.

III. BOP's Contracts with Private Prisons Under the Criminal Alien Requirement Pose Human-Rights and Accountability Problems

Private prisons depend on and profit from America's high incarceration rates—more people in prison means, for these facilities, more business. In the past decade, BOP has become increasingly reliant on private prisons, and maintains 13 contracts, totaling a reported $5.1 billion, with for-profit prison companies.[31] This increase in privatization demands that the companies that run private prisons subject themselves to the same degree of public accountability as would a federal agency running the same prison. However, contract companies that run these facilities dedicate significant resources to lobbying against subjecting their BOP contract facilities to the same transparency requirements as BOP facilities.[32]

According to the Sentencing Project, 33,830 BOP prisoners were held in private facilities in 2010 (a 67 percent increase from the number of prisoners in 2002); by the end of 2011, while overall numbers of state prisoners in private prisons decreased, the federal number continued to climb, to 38,546 (18 percent of the total BOP population).[33] And the number of people in private facilities continues to grow. For fiscal year 2014, BOP requested funding to add 1,000 more beds in private facilities.[34] Of the private facilities holding BOP prisoners, 13 are private prisons operating under Criminal Alien Requirement (CAR) contracts with BOP. These CAR prisons are specifically dedicated to housing non-citizens in BOP custody. These people are at low custody levels, and many are serving sentences solely for unlawfully reentering the United States after having been previously deported.[35]

For-profit prisons—even those under BOP contract, housing BOP prisoners—are not subject to the same disclosure requirements under the Freedom of Information Act (FOIA) as are BOP prisons. This is due to an executive branch interpretation of the statute, which established that most disclosure requirements that apply to federally-run prisons do not apply to private prisons.[36] As a result, it is extremely difficult for the public to obtain the information necessary to help ensure that the constitutional rights of those held in private facilities are respected, and that their living conditions are humane. BOP should be required to respond to FOIA requests regarding privately run CAR facilities as it is required to respond to FOIA requests regarding its own facilities. Furthermore, CAR facilities should be held to the same standards as BOP-run facilities.

Over the past several years, there have been reports of poor treatment—with devastating consequences—in BOP's CAR facilities. In one such instance, in 2009, at the GEO Group-operated Reeves County Detention Center in Pecos, West Texas, immigrant prisoners organized an uprising after a man with epilepsy died from a seizure while in solitary confinement. An ACLU lawsuit alleges that medical staff failed to provide the man anti-convulsant medication 90 times. His gums began to bleed and he suffered frequent seizures, but he was placed in segregation rather than treated. The lawsuit alleges that there was not even a nurse available on weekends.[37] And in 2012, immigrant prisoners at the Corrections Corporation of America (CCA)-operated Adams County Correctional Facility in Natchez, Mississippi, staged an uprising to demand better conditions of confinement. CCA staff then failed to quell the uprising, which resulted in 20 people being injured, one correctional officer being killed, and $1.3 million in property damage.[38] Stories like these underscore the need for greater oversight and accountability of the conditions and policies at private, for-profit prisons within BOP's system—and the need for BOP to cancel contracts when the private prison companies fail to meet appropriate standards.

IV. BOP Should Share Results of Audits of the Implementation of the Prison Rape Elimination Act

The Prison Rape Elimination Act (PREA) passed unanimously through both houses of Congress and was signed into law in 2003. The Act charged the Department of Justice (DOJ) with gathering data on the incidence of prison rape,[39] and created a commission to study the problem and recommend national standards to DOJ.[40] After nine years of study and commentary by experts, the DOJ promulgated a comprehensive set of national standards implementing the Act in May 2012.[41] The Federal government was immediately bound to implement the PREA regulations in federal prison facilities.[42]

The PREA regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities, with specific guidance related to lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals. Testimony before Congress and National Prison Rape Elimination Commission (NPREC)

highlighted the particular vulnerability of LGBTI people to sexual victimization at the hands of facility staff and other inmates and the Department of Justice recognized "the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations."[43] This testimony led to the landmark inclusion of LGBTI-specific requirements for the prevention of sexual abuse.

Some of the most important regulations for protecting this vulnerable population include guidelines for housing, searches, and the use of protective custody. BOP's implementation of PREA will set the tone for state and local agencies. It is essential that BOP take full and complete measures to comply with PREA's mandate to eliminate sexual assault across the agency. We hope the Committee will ask BOP for details about its compliance plans and performance.

a. Individualized Assessments for Housing Transgender Individuals

The final PREA standards require adult prisons and jails to screen individuals within 72 hours of intake to assess the individual's risk for sexual victimization or abuse.[44] This screening "shall consider, at a minimum…whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex or gender nonconforming."[45]

The standards also require agencies to make individualized housing and program placements for all transgender and intersex individuals.[46] This includes assignment of transgender and intersex individuals to male or female facilities.[47] All such program and housing assignments must "be reassessed at least twice each year to review any threats to safety experienced by the inmate"[48] and an individual's "own views with respect to his or her own safety shall be given serious consideration" in these assessments.[49] Agencies are required to provide transgender and intersex individuals with access to private showers in all circumstances.[50]

One year later, reports from transgender and intersex prisoners in BOP custody continue to reveal that the agency does not provide individualized assessments in making housing, program, work and other assignments. Transgender detainees regularly report that they are housed solely based on their genital characteristics and birth-assigned sex, and many transgender prisoners report violence from staff and other prisoners with no safety precautions being taken by BOP despite clear guidance under PREA.[51]

b. Searches of Transgender Individuals

The PREA regulations impose a number of requirements on how prison officials search transgender individuals. The regulations prohibit any search that is conducted for the sole purpose of determining an individual's genital status.[52] All cross-gender searches are subject to strict guidelines under PREA, but restrictions on cross-gender pat searches of female individuals

do not go into effect until August 2015.[53] Under the regular effective dates for PREA compliance, BOP is currently prohibited from conducting cross-gender strip and cavity searches except in exigent circumstances or when performed by a medical practitioner.[54]

PREA further mandates that facilities implement policies to ensure that individuals are able to shower and undress without being viewed by staff of the opposite gender and that staff of the opposite gender announce themselves prior to entering any housing area.[55] These limitations apply to transgender individuals in custody. BOP should take clear steps to protect transgender individuals from abusive cross-gender searches.

c. Strict Limits on the Use of Protective Custody

PREA also strictly regulates the use of protective custody. Prisoners cannot be placed in "involuntary segregated housing" unless (1) an assessment of all available alternatives is made AND (2) a determination has been made that no available alternative means of separation is available (and this determination must be made within the first 24 hours of involuntary segregation).[56] The PREA standards recognize that protective custody is too often synonymous with solitary confinement by requiring that involuntary segregated housing should generally not exceed 30 days.[57] PREA also set standards geared to ameliorate isolation by requiring that, when prisoners are placed in protective custody, they must be given access to "programs, privileges, education, and work opportunities to the extent possible."[58] For all placements in protective custody, the nature of, reason for and duration of any restrictions to program, privilege, education and work opportunities must be documented.[59]

If the PREA regulations are subject to stringent and consistent enforcement, compliance, and monitoring, they are likely to protect many vulnerable prisoners from abuse and assault. In August, 2013, BOP commenced a series of PREA-mandated third-party audits, but has yet to release data or results publicly.[60] These audits, along with publication of their results and implementation of follow-up compliance measures, should be a top priority and we urge the Committee to follow up on these reports.

V. BOP Should Ensure Compliance with Requirements To Provide Hormones and Other Medical Care to Transgender Individuals

In 2011, BOP changed its policy for treating individuals in custody for Gender Identity Disorder (GID). As part of a settlement with one transgender prisoner who challenged BOP's policy that limited transition-related healthcare such as hormones to the level of treatment received prior to incarceration, the new policy promised to provide "a current individualized assessment and evaluation" to any prisoner with a possible GID diagnosis.[61]

Despite this change, reports persist from transgender individuals who have not received evaluations for hormone therapy despite repeated requests. Others have had their ongoing hormone treatment disrupted without any clear medical basis for the disruption in care and with severe physical and psychological side effects. For individuals in BOP custody who experience gender dysphoria and/or other symptoms of GID, there continues to be delayed or in some cases no response from BOP medical staff.[62]

BOP has an obligation under its own policy and the Eighth Amendment of the Constitution to provide necessary medical care, including transition-related medical care such as hormones, to prisoners in need of such care. To meet this obligation BOP should provide information on its compliance with the GID policy, and should take steps, including training of facility-level medical and mental health staff and contractors, to ensure that prisoners who are diagnosed or may be diagnosed with GID receive proper care.

VI. BOP Should Stop Monitoring Contact Between Prisoners and Attorneys, and Should Close Its Communication Management Units

When BOP chooses to designate certain people as terrorists—including both post-conviction prisoners and pre-trial detainees—the agency removes constitutional safeguards that apply to other detainees. In some circumstances, BOP denies prisoners the basic right to confer confidentially with an attorney or to have normal limited visitation with loved ones. There should be greater transparency and accountability in the federal Bureau of Prisons' use of "Special Administrative Measures" and in its operation of Guantanamo-like "Communication Management Units" within two federal prisons.

a. Special Administrative Measures

After the September 11 attacks, the Department of Justice (DOJ) issued a rule that expanded BOP's powers under the special administrative measures (SAMs) promulgated in the 1990s. These SAM regulations allow the Attorney General unlimited and unreviewable discretion to strip any person in federal custody of the right to communicate confidentially with an attorney.[63] They apply to convicted individuals held by BOP, as well as others held by DOJ, even the pre-trial accused, material witnesses, and immigration detainees.[64]

BOP should not have the power to monitor communications between detainees and attorneys; nor should it be able to restrict such communications. Because SAMs also permit extreme social isolation of certain prisoners, BOP should conduct a mental health screening of all those currently subject to SAMs; the seriously mentally ill should be relocated to an institution that can provide appropriate mental-health services.

b. Communication Management Units

After 9/11, BOP set up and began operating two Communication Management Units (CMUs) at federal prisons in Marion, Illinois, and Terre Haute, Indiana.[65] BOP opened these CMUs in violation of federal law requiring public notice-and-comment rulemaking.[66] The units severely restrict visitation privileges—for instance, prisoners in the CMU may receive fewer family visits per month than those in general population at even maximum-security prisons.[67] Many critics argue that this psychological punishment is arbitrary, and often the result of racial and religious profiling.[68] The criteria for placing prisoners in these extremely restrictive units remain so broad and ill-defined that they could apply to virtually anyone, inviting arbitrary, inconsistent and discriminatory enforcement.

VII. BOP Should Share Its Current Plan for FCI Aliceville

Earlier this year, BOP was enacting a plan to relocate approximately 1,000 women in the federal system to a new, $250-million prison in Aliceville, Alabama, a small town 110 miles southwest of Birmingham.[69] The plan would leave only 200 federal prison beds for women in the northeast.[70] BOP planned to convert the vacated units at Danbury into more space for male prisoners. Last month, however, BOP suspended the relocation in the face of criticism from elected officials and the public.

Because of the remote location of the Aliceville facility, contact with family through visits would be severely limited. As Senator Chris Murphy noted, the "transfer would nearly eliminate federal prison beds for women in the Northeastern United States and dramatically disrupt the lives of these female inmates and the young children they often leave behind."[71] Maintaining relationships is crucial, and can be even more difficult for women prisoners than for men. One lawyer noted, in response to the proposed relocation that [w] omen get fewer visits in jail, they become alienated from families and children, husbands and boyfriends move on[72]

The general public has a significant interest in prisoners' ability to stay connected with loved ones while serving a sentence. Maintaining important relationships helps former prisoners successfully reenter their communities after they are released. Upon release from prison, people who maintain strong family contact were shown to be more successful at finding and keeping jobs, and less likely to recidivate.[73] Disrupting the ability to visit a parent in prison, as the contemplated move would do in countless cases, can also victimize the children of incarcerated people.

BOP's plans to relocate many women from Danbury to Aliceville were criticized in the media and by a group of 11 senators in a high-profile public letter to BOP Director Charles Samuels.[74] As a result, plans to open Aliceville and relocate many women from Danbury have recently been suspended.[75] However, BOP currently describes Aliceville as a "low security

institution for female inmates" that is "currently undergoing the activation process."[76] If the move occurs and the prison opens as originally planned, BOP will be the cause of hundreds of families being torn apart irreparably. We urge the Committee to put BOP on the record on this issue and urge members to oppose the relocation of women prisoners from Danbury to Aliceville.

Conclusion

The BOP has the enormous task of managing and detaining over 219,000 people. The ACLU is pleased that the Senate Judiciary Committee is conducting today's oversight hearing to ensure that the agency respects the constitutional rights of individuals in its custody and maintains safe and humane conditions. If you have any additional questions or need more information, please feel free to contact Jesselyn McCurdy, Senior Legislative Counsel at (202)675-2307 or jmccurdy@dcalu.org .

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[1] About the Bureau of Prisons, FEDERAL BUREAU OF PRISONS, http://www.bop.gov/about/index.jsp.
[2] *Id.*
[3]Federal Bureau of Prisons, Weekly Population Report, http://www.bop.gov/locations/weekly_report.jsp
[4] Nancy LaVigne, Julie Samuels, Urban Institute *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* pgs.1 and 2 (2012) (hereinafter LaVigne Urban Institute Report).
[5] 18 U.S.C. Sec. 3624(b)(1).
[6] *See, e.g.*, BUREAU OF PRISONS: IMPROVEMENTS NEEDED IN BUREAU OF PRISONS' MONITORING AND EVALUATION OF IMPACT OF SEGREGATED HOUSING 39, United States Government Accountability Office, Report to Congressional Requesters (May 2013) [hereinafter GAO Report].
[7] *See, e.g.*, Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46-47 (2011).
[8] *Solitary Confinement Should Be Banned in Most Cases, UN Expert Says*, UN News Centre, Oct. 18, 2011, https://www.un.org/apps/news/story.asp?NewsID=40097.
[9] *See* DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS ii (2006).
[10] Highlights of GAO-13-4929, at 1 (May 2013).
[11] *See* GAO Report, *supra* note 6, at 2.
[12] *See* GAO Report, *supra* note 6, at 5, 6, 7-10.
[13] *See id.* at 7-8, 60 (describing disciplinary and administrative segregation conditions).
[14] From October 2007 through February 2013, the total prisoner population in BOP facilities increased by about six percent, yet the total prisoner population in segregated housing units increased approximately 17 percent. GAO Report, *supra* note6, at 14.
[15] *U.S. Bureau of Prisons To Review Solitary Confinement*, REUTERS, Feb. 4, 2013, http://www.reuters.com/article/2013/02/05/us-usa-prisons-solitary-idUSBRE91404L20130205.
[16] *Id.*
[17] *Id.*
[18] *See generally* GAO Report, *supra* note 6.
[19] *See* GAO Report, *supra* note 6, at 33-34.
[20] *See id.* at 39 (outlining studies that document that adverse and long-lasting effects of solitary confinement on mental health); *id.* at 40 (citing BOP's own admission, in a Psychology Services Manual, that solitary confinement can have adverse effects on mental health).
[21] *See* Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, N.Y. TIMES, March 11, 2012, http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all (noting that violence actually decreased after Mississippi closed its notorious supermax unit).

[22] *See* JOHN J. GIBBONS AND NICHOLAS DE B. KATZENBACH, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS 55 (2006) (citing a study from Washington state that linked long-term solitary confinement to higher recidivism rates), *available at* http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf.
[23] U.S. Immigration and Customs Enforcement Regulation 11065.1: Review of the Use of Segregation for ICE Detainees (Sept. 4, 2013) [hereinafter ICE Regulation 11065.1].
[24] *See* Fact Sheet: Detention Management, Nov. 10, 2011, http://www.ice.gov/news/library/factsheets/detention-mgmt.htm.
[25] ICE Regulation 11065.1, *supra* note23, at Section 2 (Policy) and Section 5.1 (Extended Segregation Placements).
[26] ICE Regulation 11065.1, *supra* note 23, at Section 5.2 (Segregation Placements Related to Disability, Medical or Mental Illness, Suicide Risk, Hunger Strike, Status as a Victim of Sexual Assault, or other Special Vulnerability).
[27] ICE Regulation 11065.1, *supra* note 233, at Section 7.5.4 (Detention Monitoring Council).
[28] ICE Regulation 11065.1, note 23, at Section 5.2.4 (requiring notification of a detainee's attorney, if applicable, when a vulnerable detainee is placed in segregation).
[29] ICE Regulation 11065.1, *supra* note 23, at Section 5.1.
[30] See *State Reforms To Limit The Use Of Solitary Confinement*, https://www.aclu.org/files/assets/stop_solitary_-recent_state_reforms_to_limit_the_use_of_solitary_confinement.pdf, (June 6, 2013)
[31] Garance Burke & Laura Wides-Munoz, *Immigrants prove big business for Prison Companies*, ASSOCIATED PRESS (Aug. 2, 2012), available at http://news.yahoo.com/immigrants-prove-big-business-prison-companies-084353195.html.
[32] *See* Letter from Center for Constitutional Rights et al. to Rep. Sheila Jackson Lee 1 (Dec. 18, 2012) (citing the U.S. Senate's Lobbying Disclosure Electronic Filing System for the fact that Corrections Corporation of America has spent millions of dollars lobbying against the passage of various Private Prison Information Acts since 2005).
[33] THE SENTENCING PROJECT, DOLLARS AND DETAINEES: THE GROWTH OF FOR-PROFIT DETENTION, at 4 (July 2012); Prison Population Declined In 26 States During 2011, PR Newswire (Dec. 17, 2012), *available at* http://www.marketwatch.com/story/prison-population-declined-in-26-states-during-2011-2012-12-17.
[34] *See* FY 2014 Performance Budget Congressional Submission, Salaries and Expenses 86, U.S. Dept. of Justice, Federal Prison System, *available at* http://www.justice.gov/jmd/2014justification/pdf/bop-se-justification.pdf ("The BOP requests $26.2 million to procure 1,000 contract beds to house low security male criminal aliens.").
[35] Illegal reentry cases are prosecuted subject to 8 U.S.C. § 1326 – Reentry of removed aliens. *See US: Prosecuting Migrants is Hurting Families*, HUMAN RIGHTS WATCH (May 22, 2013), http://www.hrw.org/news/2013/05/22/us-prosecuting-migrants-hurting-families.
[36] *See* Letter from Center for Constitutional Rights et al., *supra* note32, at 1.
[37] Forrest Wilder, "The Lawsuit West of the Pecos." Texas Observer (Dec. 8, 2010), available at http://www.texasobserver.org/forrestforthetrees/the-lawsuit-west-of-the-pecos.
[38] Judith Greene & Alexis Mazon, PRIVATELY OPERATED FEDERAL PRISONS FOR IMMIGRANTS: EXPENSIVE. UNSAFE. UNNECESSARY 7, Justice Strategies (Sept. 13, 2012), available at http://www.justicestrategies.org/sites/default/files/publications/Privately%20Operated%20Federal%20Prisons%20for%20Immigrants%209-13-12%20FNL.pdf. *See also* Associated Press, *FBI reports Mexican group "Paisas" started prison riot in Adams County* (Aug. 13, 2012) ("FBI spokeswoman Deborah Madden said Paisas are a loosely affiliated group within the prison, without ties to organized gangs."), available at http://blog.gulflive.com/mississippi-press-news/2012/08/fbi_reports_mexican_group_paisas.html.
[39] *See* Prison Rape Elimination Act (Sexual Violence in Correctional Facilities), Bureau of Justice Statistics (last visited May 31, 2013), available at http://www.bjs.gov/index.cfm?ty=tp&tid=20 (listing Bureau of Justice Statistics data gathered since the act's passage).
[40] NAT'L PRISON RAPE ELIMINATION COMM'N, NAT'L PRISON RAPE ELIMINATION COMM'N REP. 18 (2009), *available at* https://www.ncjrs.gov/pdffiles1/226680.pdf.
[41] *See* Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at* http://www.justice.gov/opa/pr/2012/May/12-ag-635.html (summary of regulations).
[42] 42 U.S.C. 15601 §8(b) (2003). *See also* Memorandum from the President of the United States Implementing the Prison Rape Elimination Act (May 17, 2012), *available at* http://www.whitehouse.gov/the-press-office/2012/05/17/presidential-memorandum-implementing-prison-rape-elimination-act.
[43] https://www.federalregister.gov/articles/2012/06/20/2012-12427/national-standards-to-prevent-detect-and-respond-to-prison-rape

[44] 28 C.F.R. § 115.41(b); 28 C.F.R. § 115.241 (b).
[45] 28 C.F.R. § 115.41(c)(7).
[46] 28 C.F.R. § 115.42 (c) ("In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.").
[47] *Id*.
[48] 28 C.F.R. § 115.42 (d).
[49] 28 C.F.R. § 115.42 (e).
[50] 28 C.F.R. § 115.42 (e).
[51] The reports referenced in this paragraph come from prisoners, by mail, to legal and human-rights organization that advocate for PREA compliance, including the ACLU, National Center for Lesbian Rights (NCLR), National Center for Transgender Equality (NCTE), Just Detention International (JDI), Gay & Lesbian Advocates & Defenders (GLAD), Lambda Legal, and Sylvia Rivera Law Project (SRLP).
[52] 28 C.F.R. § 115.15 (e)
[53] 28 C.F.R. § 115.15 (b) and 28 C.F.R. §115.215(b)
[54] 28 C.F.R. § 115.15 (a)
[55] 28 C.F.R. § 115.15 (d)
[56] 28 C.F.R. § 115.43 (a).
[57] 28 C.F.R. § 115.43 (c).
[58] 28 C.F.R. § 115.43 (b).
[59] 28 C.F.R. § 115.43 (b).
[60] *See* Bureau of Justice Assistance, BJA PREA Audits, Aug. 29, 2013 (on file with the ACLU).
[61] *See* Memorandum for Chief Officers from Newton E. Kendig and Charles E. Samuels, Jr., U.S. Dept. of Justice, Federal Bureau of Prisons, at 2 (May 31, 2011), *available at* http://www.glad.org/current/pr-detail/federal-bureau-of-prisons-makes-major-change-in-transgender-medical-policy/.
[62] The reports referenced in this paragraph come from prisoners, by mail, to legal and human-rights organization that advocate for compliance with GID-treatment requirements, including the ACLU, National Center for Lesbian Rights (NCLR), National Center for Transgender Equality (NCTE), Just Detention International (JDI), Gay & Lesbian Advocates & Defenders (GLAD), Lambda Legal, and Sylvia Rivera Law Project (SRLP).
[63] 28 C.F.R. § 501.3(d); *see also Rights Groups Issue Open Letter on Upcoming NYC Trial of Syed Fahad Hashmi and Severe Special Administrative Measures*, Apr. 23, 2010, https://ccrjustice.org/newsroom/press-releases/rights-groups-issue-open-letter-upcoming-nyc-trial-syed-fahad-hashmi-and-sev.
[64] 28 C.F.R. § 501.3.
[65] *See* Carrie Johnson and Margot Williams, *"Guantanamo North": Inside Secretive U.S. Prisons*, NPR (March 3, 2011), http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons.
[66] *See* Letter from David C. Fathi et al. to Sarah Qureshi, Rules Unit, Bureau of Prisons, June 2, 2010, at 1-2 (submitting comments to Notice of Proposed Rulemaking and noting that CMUs had already been in operation prior to the commencement of the notice-and-comment process), available at https://www.aclu.org/files/assets/2010-6-2-CMUComments.pdf.
[67] *See* Johnson, *supra* note 65.
[68] *See* Scott Shane, *Beyond Guantanamo, a Web of Prisons for Terrorism Inmates*, N.Y. TIMES, Dec. 10, 2010, available at http://www.nytimes.com/2011/12/11/us/beyond-guantanamo-bay-a-web-of-federal-prisons.html?pagewanted=all (noting that the CMUs are "Muslim-majority").
[69] *See* Judith Resnik, *Harder Time*, SLATE, July 25, 2013, http://www.slate.com/articles/news_and_politics/jurisprudence/2013/07/women_in_federal_prison_are_being_shipped_from_danbury_to_aliceville.html
[70] *Id*.
[71] Karen Ali, *Federal Prison Officials Will Answer Questions Before Moving Women*, CONN. LAW TRIBUNE, Aug. 16, 2013, http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202615866626&Federal_Prison_Officials_Will_Answer_Questions_Before_Moving_Women_&slreturn=20130716182512.
[72] *Id*.
[73] *See* Resnik, *supra* note 69 ("Being moved far from home limits the opportunities of women being moved out of Danbury; it hurts them in prison and once they get out. Recent research from Michigan and Ohio documents that

inmates who receive regular visits are less likely to have disciplinary problems while in prison and have better chances of staying out of prison once released.").

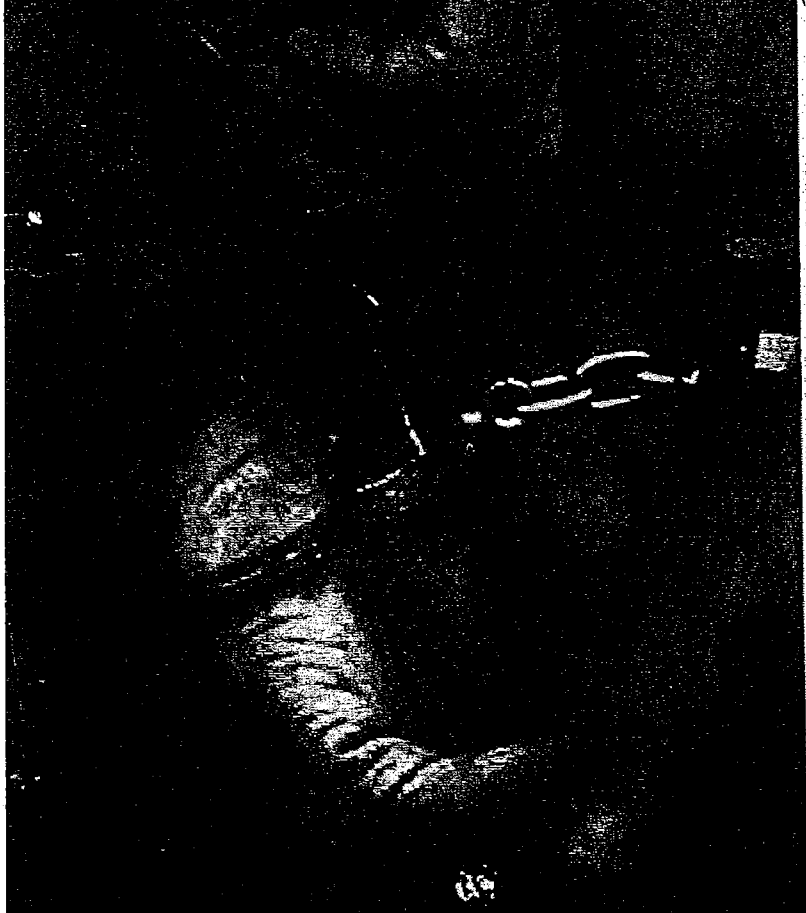
[74] *See* Letter from Chris Murphy, Senator, et al. to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Aug. 2, 2013), *available at* http://www.murphy.senate.gov/record.cfm?id=345491.

[75] *See* Ali, *supra* note 711.

[76] FCI Aliceville, Federal Bureau of Prisons, http://www.bop.gov/locations/institutions/ali/ (last visited Sept. 15, 2013).

Rhode Island Halts Growth in the Inmate Population While Increasing Public Safety

By A.T. Wall



During the second half of the 1980s, a surge in the inmate population overwhelmed the Rhode Island Department of Corrections (RIDOC). As a unified correctional system encompassing the state's prisons, jails, probation and parole services, the agency felt the impact on every front. The repercussions were particularly severe in the institutions. Fueled by statutory changes resulting from the "war on drugs" and prosecutorial demands that all potential probation violators be held without bail, the inmate population climbed by 85 percent in just six years.

The department, which had been on the verge of resolving a longstanding federal court order regarding conditions of confinement, found itself mired in additional decrees from the court as the rising number of inmates compromised the gains that had been made in the previous decade. By 1990, with a population more than three times that of a decade ago, pressure from the federal bench culminated in the mandate to abruptly release hundreds of inmates. The scene reinforced the perception of disarray in the correctional system on the part of Rhode Island's citizenry.

Meanwhile, in a race against time, the state had embarked on a massive building campaign to add more beds to the system. Hundreds of millions of dollars in construction — and millions more in operational expenses down the line — boosted jail and prison capacity by 50 percent as of 1992. At a tremendous cost to the taxpayers, the bleeding was stanched. Forced releases were halted and the expanded capacity afforded the department the breathing room to settle the federal court order after 20 years of litigation.

The inmate population continued to grow until, by the early years of the 21st century, it had consumed this additional bed space, and crowding began to make headlines again. After all the blood, sweat, tears, dollars spent and cost in public credibility, RIDOC was on the verge of repeating the same cycle. One reporter, who had covered the previous crisis, looked to Yogi Berra when he wrote, "It's like déjà vu all over again."

In the 15 years since 1992 the average daily population had risen by 35 percent until it was 5 percent shy of the agency's total operational capacity of 4,085 by July 2007. Due to restrictions associated with such issues as gender, protection and custody levels, no correctional system can make maximum use of all available beds, and there were a number of institutions operating at, and sometimes over, capacity on a routine basis.

The consequences were far reaching. Rhode Island's economy was fragile well before the current recession and soaring correctional costs were doing their part to wreak havoc on the state's budget. The rising tide of inmates was putting a strain on every aspect of institutional operations — from staffing and security to health services and programming. On the horizon, an even larger crisis loomed. The settlement order in the federal case stipulated maximum capacities at each institution, which, if exceeded for a set number of days, could trigger renewed judicial intervention. The Criminal Justice Oversight Committee, a statutory mechanism put in place as part of the federal court settlement, is responsible for monitoring the relationship of the inmate population to the court's settlement order. It is composed of leaders from every entity in the justice system. The committee was warned that if trends continued, the federally imposed cap would be triggered in the not-too-distant future.

Given the state's financial distress, there was no appetite for building and operating more correctional institutions. The state's leaders also realized that nibbling around the edges of criminal justice policy would not yield an outcome of the magnitude needed. At the same time, all involved were very well aware of the legitimate concerns and political sensitivity associated with public safety and the need to consider significant change in a thoughtful, rational and inclusive manner.

Investing in Justice Reinvestment

It was against this backdrop that in 2005 Gov. Donald Carcieri and the leadership of both houses in the legislature jointly wrote to the Justice Center of the Council of State Governments asking for its help. This organization was uniquely qualified to lend its support to resolving Rhode Island's dilemma. CSG is a nonprofit, nonpartisan membership association of officials from all three branches of state government. As such, it is ideally positioned to assist policymakers with data-driven and evidence-based solutions as they grapple with difficult and controversial issues. The Justice Center, with financial support from the U.S. Justice Department's Bureau of Justice Assistance and the Public Safety Performance Project of the Pew Charitable Trusts' Center on the States, had begun working with a few jurisdictions on a pioneering initiative known as justice reinvestment. The concept recognizes the predicament posed by growing prison populations coupled with mounting fiscal pressures on state budgets. It contemplates the development of state-specific ways to manage growth of correctional populations. The savings generated by averting projected spending are reinvested in strategies that serve to increase public safety.

Rhode Island was fortunate enough to be selected as one of the first jurisdictions to implement the justice reinvestment model. Consistent with the project's approach, work began with a thorough analysis of the reasons for Rhode Island's inmate growth. This analysis was undertaken by James Austin, Ph.D., of JFA Associates/The JFA Institute. The Justice Center asked him to conduct this research because his firm was thoroughly familiar with the state's correctional system, having done its annual population projections for almost 20 years. In addition, Austin was working with the Rhode Island Parole Board to develop risk-based guidelines for granting parole applications. In keeping with a state-centered approach, which recognizes that the drivers of correctional populations differ according to each jurisdiction's specific statutes, policies, practices and culture, Austin focused explicitly on these factors as they played out in Rhode Island.

Austin presented his findings on the threshold of the 2006 session in a forum at the state House. Leaders of all three branches, criminal justice officials, community leaders and members of the media were in attendance. His conclusions, as described at the session and in a subsequent analysis conducted during the following months, were sobering:

- The jail and prison population, which had risen by 15 percent from 1997 to 2007, was projected to grow at an accelerated rate in the next decade;
- The inmate census would increase by an additional 25 percent in the next decade; and
- Unless policymakers acted, the state would need to appropriate an additional $300 million in operating costs at the adult correctional institutions during the coming 10 years to accommodate the projected increases.

Austin also pointed out that the outcomes of the current system were not particularly good: Nearly one-third of inmates released from the institutions were reincarcerated within 12 months of release on new sentences or violations of conditions of supervision. In addition, if the figures were included for released offenders who were back in corrections custody within one year but still awaiting trial, the number rose to 46 percent.

Faced with this evidence, the governor, legislative leadership and the judiciary's administrative judges asked the Justice Center to follow up by proposing options that could reduce projected growth by 500 beds within one year of their implementation (see Table 1). The center's staff delved into the data and generated a menu of ideas that, taken in the aggregate, would both accomplish this goal and would augment bed and dollar savings in subsequent years. Finalized in the spring of 2007, options ranged from expanding home confinement eligibility criteria and reforming the terms and conditions of probation supervision to reducing the number of offenders held awaiting trial and changing the length of stay for sentenced inmates. Given the sensitivity of the topic and the need for all affected parties to have an opportunity to weigh in on these ideas before a final set of options was agreed upon, the general assembly adjourned in June 2007 without acting on the package.

Although the initiative had been delayed, it certainly was not dead. Through the summer and fall, Gov. Carcieri, Senate Majority Leader Teresa Paiva-Weed and House Speaker William Murphy all expressed their resolve to pursue the justice reinvestment approach. As the inmate census soared to all-time highs in the summer and fall of 2007, the DOC sought the approval of chief counsel for the plaintiffs in the federal litigation to increase the capacities at

Table 1. Justice Center Proposed Policy Options to Reduce Projected Growth

Policy Options	Estimated	
	FY 2008 Bed Savings	FY 2017 Bed Savings[1]
1. Expand the capacity of the residential substance abuse treatment system to reduce the number of people approved for parole but awaiting treatment slots.[2]	100	118
2. Improve the parole board's use of data regarding offender's risks/needs to ensure that release decisions are science-based.	4	18
3. Improve the effectiveness of parole supervision.	27	75
4. Target probation resources to supervise offenders when they are most likely to reoffend.	27	75
5. Make probation supervision responsive to the risks/needs of offenders.	55	81
6. Ensure that people in prison complete programs such as drug treatment and job training to reduce their risk to public safety before they are released.	20	20
7a. Provide less serious offenders with the same incentive for good behavior as more serious offenders.	84	288
7b. Make the standardized "earned time" policy retroactive for all currently sentenced offenders.[3]	97	0
8. Ensure the payment of restitution to victims.	8	10
9. Reduce the number of people held at the ACI awaiting trial with bail set at less than $500.[4]	10	10
10. Increase the number of people placed on home confinement who would otherwise be held at the ACI.	70	70
Estimated Combined Impact	502	765
Averted Costs (The cost of implementing the policy options is not included.)	FY 2008 $4 million	FY 2008-2017 $58.6 million

[1] Bed savings indicated for each policy are for the year identified and are not cumulative. For example, policy option 2 will require 43 fewer beds than projected in FY 2008 and 64 fewer beds than projected in FY 2017.

[2] Assumption: Additional treatment resources are sufficient to eliminate the backlog of people scheduled for release on parole who currently are held past their release date for a residential substance abuse treatment bed to become available. Further funding of the substance abuse treatment system could, if targeted appropriately, have an additional unknown impact on the prison population if used by judges to divert offenders who would otherwise have been sentenced to a term of incarceration.

[3] The estimated bed savings for policy option 7b represents the impact this policy could have on the population at the ACI in addition to the impact stated in policy option 7a. The bed savings estimated in policy option 7b may be reduced by any increase in the parole grant rate if policy option 2 is adopted.

[4] The estimate of bed savings associated with policy option 9 is based on data from calendar year 2006 and extrapolated over the 10 year period, unlike the rest of the bed savings estimates, which utilize a statistical model of the prison population.

several institutions in order to avoid violating the terms of the settlement order. He agreed, but stated in a meeting with the governor and in subsequent remarks to the media that his consent was explicitly contingent on his understanding that the state would enact solutions to the crowding crisis in the next legislative session.

Also in the fall of 2007, the Criminal Justice Oversight Committee convened a meeting in the state House to vet the options put together the previous spring. Present were the governor; the Senate president; a key aide to the House speaker; leaders of the Legislature's Finance and Judiciary committees; the chief judges of the state's trial courts and top staff to the Supreme Court chief justice; the parole board chair; the chief of the Criminal Division for the attorney general (who serves as Rhode Island's chief prosecutor); the state's public defender; the superintendent of the state police; and Rhode Island's leading victims' advocate. Recognizing the importance of consensus, they agreed that any option that met with resistance from any of those gathered would be tabled.

Key Solutions

Ultimately, all parties coalesced around three key ideas, which were introduced into the General Assembly in a series of budget articles that became known as the "Correctional Options" package. Enacted in May 2008 by an overwhelming majority, Correctional Options included three major reforms:

Standardization of earned time. Austin had highlighted a statutory scheme used by Rhode Island whereby inmates earned credit off sentences for complying with institutional rules. Under this inverted and illogical system, inmates who abided by the rules were given the number of days off each month that corresponded to the years of their sentence (up to a maximum of 10). This policy greatly benefited the inmates with long sentences for the most serious crimes while affording those serving short terms for petty crimes almost no time off. For example, an inmate with a three-month sentence served every single day of that term while an inmate doing 10 years saw his or her sentence reduced by one-third. The Legislature standardized the formula so that all inmates (except those serving only one month or less, sex offenders and lifers) could earn the same 10 days each month.

Inauguration of risk reduction program credits. Rhode Island's rehabilitative programs had been offered cafeteria-style: Interested inmates could sign up for available programs and were wait-listed when the slots were filled. Rhode Island law provided very limited incentives for the offender population to complete programs that would reduce their risk of re-offending upon release. Under the new legislation, inmates (except those excluded in the option above) who fully participated in programs that addressed their criminogenic factors are eligible for ~~up to~~ five days credit off their sentences each month. Completion of a program can earn an inmate up to 30 additional days. RIDOC staff prequalify each program by deciding the maximum amount of days credit that can be earned for each program and then awarding participating offenders the number of days justified by their performance. As this author explained at a meeting of the state's police chiefs, these inmates would of course be released eventually. It is preferable to discharge an offender a few weeks earlier knowing that he or she had dealt with addiction and other issues than waiting and discharging the inmate untreated. The chiefs are realists and they understood the advantages of this approach to public safety.

Risk assessment in parole decisions. The new legislation mandated that the parole board consider not only the seriousness of the crime and the offender's institutional behavior but also the potential to re-offend as determined by a validated risk instrument. This tool provides support to members of the board as they make the difficult decisions about whom to parole.

Improving Services

In keeping with the philosophy that underlies justice reinvestment, the legislation did not eliminate the full savings associated with these reforms from RIDOC's budget. Instead, it retained a portion of the funds and redirected them to three areas of need:

Increased programming. Recognizing that the number of institutional programs must be expanded for inmates to earn risk reduction credits and leave better prepared to be law-abiding citizens, money was reinvested to increase the number of slots for such programs as substance abuse treatment, anger management and cognitive restructuring.

Investment in community corrections. As it was evident that Correctional Options would shift more offenders onto post-release probation and do so more quickly, money was reserved to augment discharge planning services and increase the number of probation officers. RIDOC implemented a process to place the inmates released pursuant to Correctional Options on a heightened level of supervision until such time as they would otherwise have left an institution.

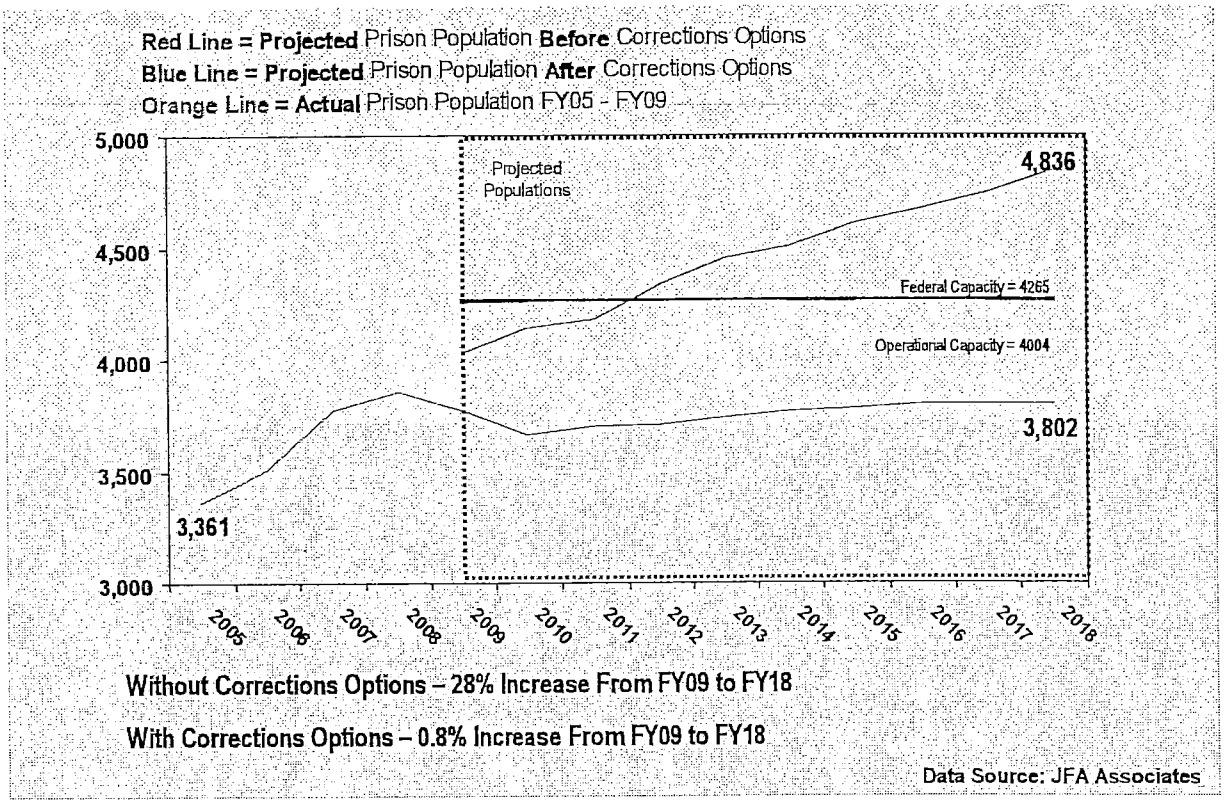
Computer enhancements. Money was provided for a one-time enhancement to the agency's databases in order to recalculate release dates using the new criteria established in the legislation. These upgrades were completed in November 2008.

Current Outcomes

Key outcomes to date of this fundamental change in Rhode Island's correctional policy are:

Impact on the census. Eighty-one percent of the sentenced inmates discharged in fiscal year 2009 were released earlier than they would have been under the old law. There were no significant changes in either the number of commitments and discharges or in the length of sentences between fiscal year 2008 and fiscal year 2009. The overall population dropped between the two years because of the decrease in length of time served. In other words, Correctional Options has had the intended effect on length of stay. This decline reversed longstanding trends. The dip in the average daily population has accelerated as the effects of the legislation continue to reverberate in the current fiscal year. The census for 2010 to date is 3,643; it was 3,860 in fiscal year 2008 and 3,773 in fiscal year 2009.

Figure 1. Population Projections Before and After Corrections Options Fiscal Year 2005 to Fiscal Year 2018



Impact on costs. The DOC's costs have decreased. While significant portions of the reduction have been due to the constraints on hiring and purchases because of the state's deteriorating financial picture, the savings are also census-driven. For example, Rhode Island has been able to close housing units at several of its largest male institutions on a periodic basis since the enactment of this legislation.

Impact on public safety. Insufficient time has elapsed for a credible study of the legislation's effect on recidivism. In order to calculate the impact, a group of inmates need to leave the system and be allowed a certain amount of time out in the community before a composition of their return rates and comparisons to past departmental recidivism studies can be undertaken. The earliest one-year group released under the new earned time calculations encompasses releases from July 1, 2008 through June 30, 2009. Therefore, the return rates for the first one-year group released under this initiative will be calculated sometime after July 1, 2010.

Seeing Results

The fact that the number of admissions has not increased, even as inmates are being released earlier, is an encouraging sign. Larger numbers of inmates are better equipped for reintegration into the community as a result of the risk reduction program credits. The programs that awarded the most credits were high school equivalency, residential substance abuse treatment, and adult basic and special educational services.

An interview with a former inmate from Pawtucket, R.I., published by the Associated Press on Oct. 15, 2009, put a human face on the impact. As reported in the article, 24-year-old Joshua Gomes has been working, passing drug screens, continuing substance abuse treatment and keeping appointments with his probation officer since his release from incarceration in June 2009. He acknowledges that the prospect of accelerated release through program credits gave him the added incentive to complete his drug treatment regime behind walls "for the sake of going home a couple of months earlier." In the process, he credits the program with changing his attitude about his behavior and its effect on others.

Rhode Island's experience shows that debates over correctional policy need not pit public protection against the costs of incarceration. Although corrections is a particularly volatile component of the public domain, a careful process, shaped by evidence and conducted among thoughtful leaders with the requisite political will, can yield a balance that respects both fiscal responsibility and public safety. For correctional professionals, it is an encouraging development indeed.

A.T. Wall is director of the Rhode Island Department of Corrections.

Statement of Julie Stewart, President
Families Against Mandatory Minimums
Submitted to the Senate Judiciary Committee
for a hearing on
"Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism**"**

November 6, 2013
Washington, DC

Introduction

I appreciate the opportunity to submit this written statement on behalf of Families Against Mandatory Minimums (FAMM). FAMM is a nonpartisan, nonprofit organization advocating for fair, proportionate, and individualized sentences that fit the crime and the offender and protect the public. FAMM supports punishment for those who violate our nation's laws and believes incarceration is necessary to protect the public from dangerous and violent offenders. We know, however, that mandatory minimum sentences are not essential to reducing crime and in fact contribute to the public safety funding crisis our nation faces today. Common sense sentencing reforms are particularly important, urgent, and relevant today because they will increase public safety by ensuring that the Department of Justice (DOJ) spends its limited resources on investigating, arresting, and prosecuting the most violent and dangerous offenders, rather than wasting that money on the needless incarceration of thousands of nonviolent and low-level offenders serving excessive mandatory minimum sentences.

FAMM has enjoyed working with many members of this committee to make our federal sentencing laws more just and rational. We thank Chairman Leahy for his strong and steadfast leadership on this issue and on the Justice Safety Valve Act, S. 619. We thank Senator Whitehouse for chairing this important hearing and for his commitment to improving the federal prison system. We thank Senators Durbin and Lee for proposing reforms to federal mandatory minimum laws in S. 1410, the Smarter Sentencing Act. We also thank Senator Sessions for his leadership on reforming crack cocaine laws. In 1994, Senators Orrin Hatch and Chuck Schumer spearheaded the most important reform of mandatory minimum sentences to date: the creation of the drug "safety valve" in 18 U.S.C. § 3553(f).[1] That provision allows judges to sentence federal drug offenders below the mandatory minimum term if the judge finds that the defendant meets a strict, five-part test. Over 85,000 people have received fairer, more sensible sentences because of that reform, saving taxpayers billions in unnecessary incarceration costs. We would not be having today's vibrant debate about mandatory minimum sentencing reform without this leadership from Senators Hatch and Schumer 20 years ago.

We submitted testimony to this Committee at its September 18, 2013, hearing on "Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences," and we incorporate

[1] The drug safety valve is a five-part test: no one must have suffered serious bodily injury as a result of the offense, and the drug offender may not have more than one criminal history point under the U.S. Sentencing Guidelines, cannot have possessed a weapon or used violence in the course of the crime, cannot have played a leadership role in the drug offense, and must confess his role in the crime to the prosecutor. *See* 18 U.S.C. § 3553(f) (2012).

by reference the substance of that testimony here.[2] Today, we hope that the members of the Committee will recognize the connection that experts, academics, government agencies and officials, Republicans and Democrats, law enforcement and civil liberties groups alike are increasingly seeing: three decades of mandatory minimum sentences have produced an unsustainable, costly, overcrowded prison system that is hindering the Justice Department from protecting communities across America. The time to reform mandatory minimum sentencing laws is now.

We understand that this hearing is designed to look primarily at Bureau of Prisons (BOP) reforms that could reduce overcrowding and recidivism, but this effort will surely fail unless Congress addresses front-end reform – specifically, reforming mandatory minimum sentencing laws. Today, the BOP consumes 25 percent of the DOJ budget; by 2018, if unchecked, it will reach 30 percent.[3] The DOJ spends billions annually for a federal prison system overstuffed with nonviolent offenders; half of all federal prisoners are drug offenders.[4] The average drug offender who lands in federal prison (96 percent of all federal drug offenders get prison sentences[5]) is not the violent, armed kingpin Congress hoped to incapacitate when it created mandatory minimums. In FY 2012:

- 53% of federal drug offenders had little or no prior criminal history;
- 85% of federal drug offenders had no weapons involved in their cases;
- Only 6.6% of federal drug offenders were considered leaders, managers, or supervisors of others in the offense.[6]

Despite this profile of an overwhelmingly low-level, nonviolent group of offenders, only 23 percent of them received sentences below the mandatory minimum because they met the strict, five-part test of the "safety valve" at 18 U.S.C. § 3553(f).[7]

The high cost of incarcerating tens of thousands of nonviolent offenders serving mandatory minimum sentences is depleting funds from the DOJ's crime-fighting budget. Recently, the Justice Department reapportioned $150 million in funds to cover BOP costs. Of

[2] Statement of Julie Stewart, President, Families Against Mandatory Minimums, submitted to the U.S. Senate Committee on the Judiciary for a hearing on "Reevaluating the Effectiveness of Mandatory Minimum Sentences," Sept. 18, 2013, *available at* http://www.judiciary.senate.gov/resources/documents/113thCongressDocuments/upload/091813RecordSub-Leahy.pdf.

[3] Statement of Michael E. Horowitz, Inspector General, U.S. Department of Justice, before the U.S. House of Representatives Committee on Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies concerning Oversight of the Department of Justice 8 (Mar. 14, 2013), *available at* http://appropriations.house.gov/uploadedfiles/hhrg-113-ap19-wstate-horowitzm-20130314.pdf.

[4] BUREAU OF PRISONS, QUICK FACTS ABOUT THE BUREAU OF PRISONS, http://www.bop.gov/news/quick.jsp (last updated Sept. 28, 2013).

[5] U.S. SENTENCING COMM'N, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Table 12 (2012), *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/sbtoc12.htm.

[6] *Id.* at Tables 37, 39, 40.

[7] *Id.* at Table 44.

that sum, $90 million had to be diverted from funds reserved for the FBI,[8] which might have used that money to further its top priorities of fighting terrorism and cyberterrorism.[9]

Diverting money from police, investigators, and prosecutors to pay for unnecessarily lengthy prison sentences for nonviolent offenders contradicts what we've learned over the last 30 years about deterrence. If we want to discourage people from committing crime, we need to make detection and punishment more certain and swift by capturing and prosecuting more offenders. The DOJ cannot pursue this strategy if it must cut its number of investigators and prosecutors so that it can pay to incarcerate nonviolent offenders serving excessive mandatory prison terms.

Legislative Proposals for Mandatory Minimum Sentencing Reform

There are many ways the BOP population crisis can be addressed, thus saving money for crime-fighting priorities. Not all methods of prison population and cost reduction are created equal, however. Fortunately, Congress has several bipartisan mandatory minimum sentencing reform proposals to choose from, and over time both could restore up to billions of dollars in public safety funding to DOJ.

A report published yesterday by the Urban Institute[10] provides compelling evidence that the legislative reforms that will save the most without harming public safety are so-called "front-end" reforms: creating broader safety valves that allow judges to sentence below the minimum term when doing so does not harm public safety, and reducing the length of our draconian mandatory minimum sentences for drug offenses. The Urban Institute's report provides conservative prison bed space and cost savings estimates that show that mandatory minimum sentencing reform far out-performs "back-end" reforms like expanding good time credit or permitting some low-level offenders to be released to home confinement if certain rehabilitative programs are completed.[11] The Urban Institute suggests a combination of front- and back-end reforms to get a real handle on the BOP's high costs and overpopulation problem.

The Justice Safety Valve Act of 2013, S. 619

S. 619, the Justice Safety Valve Act of 2013, sponsored by Senator Rand Paul (R-KY) and Chairman Leahy, seeks to build on the success of the existing drug safety valve by authorizing judges to depart below the statutory minimum in more cases where the minimum is not warranted. The bill does not repeal any mandatory minimum sentencing laws, but it represents the boldest reform introduced to date. According to the Urban Institute's report, the

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[8] Transcript of Testimony of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, at the hearing on the Bureau of Prisons FY 2014 Budget Request before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, 6 (April 17, 2013) (on file with author).

[9] FEDERAL BUREAU OF INVESTIGATION, QUICK FACTS, http://www.fbi.gov/about-us/quick-facts (last accessed Nov. 5, 2013).

[10] URBAN INSTITUTE, STEMMING THE TIDE: STRATEGIES TO REDUCE THE GROWTH AND CUT THE COST OF THE FEDERAL PRISON SYSTEM [hereinafter STEMMING THE TIDE] (Nov. 2013), *available at* http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf.

[11] *Id.* at App. A.

Justice Safety Valve could, by conservative estimates, save 81,000 prison bed years and $835 million over 10 years.[12]

The Smarter Sentencing Act, S. 1410

The Smarter Sentencing Act, S. 1410, reduces many drug mandatory minimum prison terms, applies the Fair Sentencing Act of 2010 retroactively (permitting over 8,000 federal prisoners to seek sentences in accord with that legislation's fairer treatment of crack cocaine offenses[13]), and expands the criminal history prong of the existing drug safety valve so that drug offenders with a criminal history category of I or II under the U.S. Sentencing Guidelines may be sentenced below the applicable mandatory minimum term. According to the Urban Institute, the Smarter Sentencing Act could conservatively save more than $3 billion over 10 years.[14]

Conclusion

Public policy leaders, government officials, criminal justice experts, and advocates from across the political spectrum are supporting federal mandatory minimum reform, including the Department of Justice, former New York City police commissioner Bernard Kerik, former Bush administration attorney general Michael Mukasey, the American Correctional Association, the Council of Prison Locals-American Federation of Government Employees, over 50 former federal prosecutors and judges, Heritage Action, former National Rifle Association president David Keene, Americans for Tax Reform president Grover Norquist, conservative columnist George Will, Marc Levin of the Texas Public Policy Foundation's Right on Crime project, the National Association of Evangelicals, Justice Fellowship/Prison Fellowship Ministries, the NAACP, the ACLU, and the Leadership Conference on Civil and Human Rights, just to name a few.

As Congress considers many options for reducing the BOP's high population and price tag, we urge it to enact meaningful, broad reforms to mandatory minimum sentencing laws as soon as possible. Such reforms will reduce prison overcrowding, save prison beds for the most violent and dangerous offenders, and restore crime-fighting funding to the DOJ so that it can continue to protect our communities. These reforms would be simultaneously smart on crime and tough on crime and would benefit public safety, taxpayers, the Justice Department, and the federal prison system.

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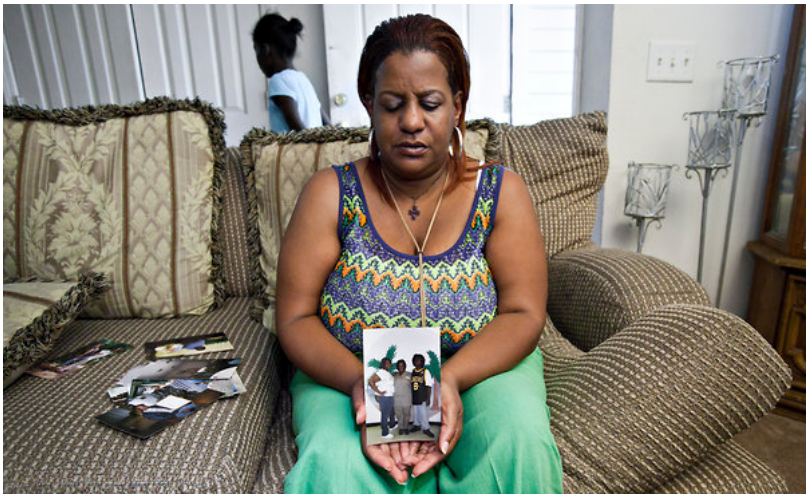
[12] *Id.* at App. A.

[13] U.S. Sentencing Comm'n, Statement of Judge Patti B. Saris, Chair, United States Sentencing Commission for the Hearing on "Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences" before the U.S. Senate Committee on the Judiciary, Sept. 18, 2013, *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20130918_SJC_Mandatory_Minimums.pdf.

[14] STEMMING THE TIDE at App. A.

TIME AND PUNISHMENT

For Lesser Crimes, Rethinking Life Behind Bars



William Widmer for The New York Times

LEFT BEHIND Wendy Evil raised her sister's three children when her sister, Stephanie George, went to prison.

By JOHN TIERNEY
Published: December 11, 2012 | 457 Comments

TALLAHASSEE, Fla. — Stephanie George and Judge Roger Vinson had quite different opinions about the lockbox seized by the police from her home in Pensacola. She insisted she had no idea that a former boyfriend had hidden it in her attic. Judge Vinson considered the lockbox, containing a half-kilogram of cocaine, to be evidence of her guilt.

But the defendant and the judge fully agreed about the fairness of the sentence he imposed in federal court.

"Even though you have been involved in drugs and drug dealing," Judge Vinson told Ms. George, "your role has basically been as a girlfriend and bag holder and money holder but not actively involved in the drug dealing, so certainly in my judgment it does not warrant a life sentence."

Yet the judge had no other option on that morning 15 years ago. As her stunned family watched, Ms. George, then 27, who had never been accused of violence, was led from the courtroom to serve a sentence of life without parole.

"I remember my mom crying out and asking the Lord why," said Ms. George, now 42, in an interview at the Federal Correctional Institution in Tallahassee. "Sometimes I still can't believe myself it could happen in America."

Her sentence reflected a revolution in public policy, often called mass incarceration, that appears increasingly dubious to both conservative and liberal social scientists. They point to evidence that mass incarceration is no longer a cost-effective way to make streets safer, and may even be promoting crime instead of suppressing it.

Three decades of stricter drug laws, reduced parole and rigid sentencing rules have lengthened prison terms and

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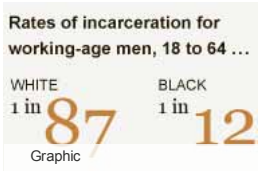

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more than tripled the percentage of Americans behind bars. The United States has the highest reported rate of incarceration of any country: about one in 100 adults, a total of nearly 2.3 million people in prison or jail.

But today there is growing sentiment that these policies have gone too far, causing too many Americans like Ms. George to be locked up for too long at too great a price — economically and socially.

The criticism is resonating with some state and federal officials, who have started taking steps to stop the prison population's growth. The social scientists are attracting attention partly because the drop in crime has made it a less potent political issue, and partly because of the states' financial problems.

State spending on corrections, after adjusting for inflation, has more than tripled in the past three decades, making it the fastest-growing budgetary cost except Medicaid. Even though the prison population has leveled off in the past several years, the costs remain so high that states are being forced to reduce spending in other areas.

Three decades ago, California spent 10 percent of its budget on higher education and 3 percent on prisons. In recent years the prison share of the budget rose above 10 percent while the share for higher education fell below 8 percent. As university administrators in California increase tuition to cover their deficits, they complain that the state spends much more on each prisoner — nearly $50,000 per year — than on each student.

Many researchers agree that the rise in imprisonment produced some initial benefits, particularly in urban neighborhoods, where violence decreased significantly in the 1990s. But as sentences lengthened and the prison population kept growing, it included more and more nonviolent criminals like Ms. George.

Half a million people are now in prison or jail for drug offenses, about 10 times the number in 1980, and there have been especially sharp increases in incarceration rates for women and for people over 55, long past the peak age for violent crime. In all, about 1.3 million people, more than half of those behind bars, are in prison or jail for nonviolent offenses.

Researchers note that the policies have done little to stem the flow of illegal drugs. And they say goals like keeping street violence in check could be achieved without the expense of locking up so many criminals for so long.

While many scholars still favor tough treatment for violent offenders, they have begun suggesting alternatives for other criminals. James Q. Wilson, the conservative social scientist whose work in the 1970s helped inspire tougher policies on prison, several years ago recommended diverting more nonviolent drug offenders from prisons to treatment programs.

Two of his collaborators, George L. Kelling of the Manhattan Institute and John J. DiIulio Jr. of the University of Pennsylvania, have joined with prominent scholars and politicians, including Jeb Bush and Newt Gingrich, in a group called Right on Crime. It advocates more selective incarceration and warns that current policies "have the unintended consequence of hardening nonviolent, low-risk offenders" so that they become "a greater risk to the public than when they entered."

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SWEPT AWAY Stephanie George is serving a life sentence after an ex-boyfriend hid cocaine in her attic.

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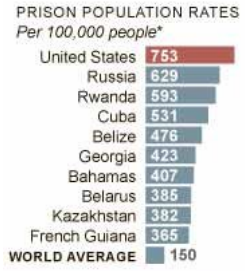
Michael Spooney barger for The New York Times

Judge Roger Vinson, who sentenced Stephanie George to life in prison 15 years ago, as required by federal law.

Behind Bars

The United States has a higher percentage of people in prisons and jails than any other country.



* Chart excludes countries of fewer than 100,000.

Sources: International Center for Prison Studies; Center for Economic and Policy Research

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These views are hardly universal, particularly among elected officials worried about a surge in crime if the prison population shrinks. Prosecutors have resisted attempts to change the system, contending that the strict sentences deter crime and induce suspects to cooperate because the penalties provide the police and prosecutors with so much leverage.

Some of the strongest evidence for the benefit of incarceration came from studies by a University of Chicago economist, Steven D. Levitt, who found that penal policies were a major factor in reducing crime during the 1990s. But as crime continued declining and the prison population kept growing, the returns diminished.

"We know that harsher punishments lead to less crime, but we also know that the millionth prisoner we lock up is a lot less dangerous to society than the first guy we lock up," Dr. Levitt said. "In the mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration. Today, my guess is that the costs outweigh the benefits at the margins. I think we should be shrinking the prison population by at least one-third."

Some social scientists argue that the incarceration rate is now so high that the net effect is "crimogenic": creating more crime over the long term by harming the social fabric in communities and permanently damaging the economic prospects of prisoners as well as their families. Nationally, about one in 40 children have a parent in prison. Among black children, one in 15 have a parent in prison.

Cocaine in the Attic

Ms. George was a young single mother when she first got in trouble with drugs and the law. One of her children was fathered by a crack dealer, Michael Dickey, who went to prison in the early 1990s for drug and firearm offenses.

"When he went away, I was at home with the kids struggling to pay bills," Ms. George said. "The only way I knew to get money quick was selling crack. I was never a user, but from being around him I pretty much knew how to get it."

After the police caught her making crack sales of $40 and $120 — which were counted as separate felonies — she was sentenced, at 23, to nine months in a work-release program. That meant working at her mother's hair salon in Pensacola during the day and spending nights at the county jail, away from her three young children.

"When I caught that first charge, it scared me to death," she recalled. "I thought, my God, being away from my kids, this is not what I want. I promised them I would never let it happen again."

When Mr. Dickey got out of prison in 1995, she said, she refused to resume their relationship, but she did allow him into her apartment sometimes to see their daughter. One evening, shortly after he had arrived, the police showed up with a search warrant and a ladder.

"I didn't know what they were doing with a ladder in a one-story building," Ms. George said. "They went into a closet and opened a little attic space I'd never seen before and brought down the lockbox. He gave them a key to open it. When I saw what was in it, I was so mad I jumped across the table at him and started hitting him."

Mr. Dickey said he had paid her to store the cocaine at her home. At the trial, other defendants said she was present during drug transactions conducted by Mr. Dickey and other dealers she dated, and sometimes delivered cash or crack for her boyfriends. Ms. George denied those accusations, which her lawyer argued were uncorroborated and self-serving. After the jury convicted her of being part of a conspiracy to distribute cocaine, she told the judge at her sentencing: "I just want to say I didn't do it. I don't want to be away from my kids."

Whatever the truth of the testimony against her, it certainly benefited the other defendants. Providing evidence to the prosecution is one of the few ways to avoid a mandatory sentence. Because the government formally credited the other defendants with "substantial assistance," their sentences were all reduced to less than 15 years. Even though Mr. Dickey was the leader of the enterprise and had a much longer criminal record than Ms. George, he was freed five years ago.

Looking back on the case, Judge Vinson said such disparate treatment is unfortunately all too common. The judge, an appointee of President Ronald Reagan who is hardly known for liberalism (last year he ruled that the Obama administration's entire health care act was unconstitutional), says he still regrets the sentence he had to impose on Ms. George

because of a formula dictated by the amount of cocaine in the lockbox and her previous criminal record.

“She was not a major participant by any means, but the problem in these cases is that the people who can offer the most help to the government are the most culpable,” Judge Vinson said recently. “So they get reduced sentences while the small fry, the little workers who don’t have that information, get the mandatory sentences.

“The punishment is supposed to fit the crime, but when a legislative body says this is going to be the sentence no matter what other factors there are, that’s draconian in every sense of the word. Mandatory sentences breed injustice.”

Doubts About a Penalty

In the 1980s, stricter penalties for drugs were promoted by Republicans like Mr. Reagan and by urban Democrats worried about the crack epidemic. In the 1990s, both parties supported President Bill Clinton’s anticrime bill, which gave states money to build prisons. Three-strikes laws and other formulas forced judges to impose life without parole, a sentence that was uncommon in the United States before the 1970s.

Most other countries do not impose life sentences without parole, and those that do generally reserve it for a few heinous crimes. In England, where it is used only for homicides involving an aggravating factor like child abduction, torture or terrorism, a recent study reported that 41 prisoners were serving life terms without parole. In the United States, some 41,000 are.

“It is unconscionable that we routinely sentence people like Stephanie George to die in our prisons,” said Mary Price, the general counsel of the advocacy group Families Against Mandatory Minimums. “The United States is nearly alone among the nations of the world in abandoning our obligation to rehabilitate such offenders.”

The utility of such sentences has been challenged repeatedly by criminologists and economists. Given that criminals are not known for meticulous long-term planning, how much more seriously do they take a life sentence versus 20 years, or 10 years versus 2 years? Studies have failed to find consistent evidence that the prospect of a longer sentence acts as a significantly greater deterrent than a shorter sentence.

Longer sentences undoubtedly keep criminals off the streets. But researchers question whether this incapacitation effect, as it is known, provides enough benefits to justify the costs, especially when drug dealers are involved. Locking up a rapist makes the streets safer by removing one predator, but locking up a low-level drug dealer creates a job opening that is quickly filled because so many candidates are available.

The number of drug offenders behind bars has gone from fewer than 50,000 in 1980 to more than 500,000 today, but that still leaves more than two million people on the street who sell drugs at least occasionally, according to calculations by Peter H. Reuter, a criminologist at the University of Maryland. He and Jonathan P. Caulkins of Carnegie Mellon University say there is no way to lock up enough low-level dealers and couriers to make a significant impact on supply, and that is why cocaine, heroin and other illegal drugs are as readily available today as in 1980, and generally at lower prices.

The researchers say that if the number of drug offenders behind bars was halved — reduced by 250,000 — there would be little impact on prices or availability.

“Mandating long sentences based on the quantities of drugs in someone’s possession just sweeps up low-level couriers and other hired help who are easily replaced,” Dr. Caulkins said. “Instead of relying on formulas written by legislators and sentencing commissions, we should let judges and other local officials use discretion to focus on the dealers who cause the most social harm — the ones who are violent, who fight for turf on street corners, who employ children. They’re the ones who should receive long sentences.”

These changes are starting to be made in places. Sentences for some drug crimes have been eased at the federal level and in states like New York, Kentucky and Texas. Judges in Ohio and South Carolina have been given more sentencing discretion. Californians voted in November to soften their state’s “three strikes” law to focus only on serious or violent third offenses. The use of parole has been expanded in Louisiana and Mississippi. The United States Supreme Court has banned some life sentences without parole for juvenile offenders.

Nonetheless, the United States, with less than 5 percent of the world’s population, still has

nearly a quarter of the world's prisoners.

A Mother Taken Away

Ms. George said she could understand the justice of sending her to prison for five years, if only to punish her for her earlier crack-selling offenses.

"I'm a real firm believer in karma — what goes around comes around," she said. "I see now how wrong it was to sell drugs to people hooked on something they couldn't control. I think, what if they took money away from their kids to buy drugs from me? I deserve to pay a price for that. But my whole life? To take me away from my kids forever?"

When she was sentenced 15 years ago, her children were 5, 6 and 9. They have been raised by her sister, Wendy Evil, who says it was agonizing to take the children to see their mother in prison.

"They would fight to sit on her knee the whole time," she recalled recently during a family dinner at their home in Pensacola. "It's been so hard for them. Some of the troubles they've had are because of their anger at her being gone."

The youngest child, William, now 20, dropped out of middle school. The older two, Kendra and Courtney, finished high school but so far have not followed their mother's advice to go to college.

"I don't want to blame things on my situation, but I think my life would have been a whole lot different if she'd been here," said Courtney, now 25, who has been unemployed for several years. "When I fell off track, she would have pushed me back. She's way stronger than any of us."

Ms. George, who has gotten a college degree in prison, calls the children every Sunday. She pays for the calls, which cost 23 cents a minute, with wages from two jobs: a regular eight-hour shift of data processing that pays 92 cents an hour, supplemented by four hours of overtime work at a call center in the prison that provides 411 directory assistance to phone companies.

"I like to stay busy," she said during the interview. "I don't like to give myself time to think about home. I know how much it hurts my daughter to see her friends doing things with their mothers. My boys are still so angry. I thought after a while it would stop, that they'd move on as they got older and had girlfriends. But it just seems like it gets worse every Mother's Day and Christmas."

She seemed undaunted, even cheerful, during most of the interview at the prison, where she sleeps on a bunk bed in an 11-by-7-foot cell she shares with another inmate. Dressed in the regulation uniform, khaki pants and work boots, she was calm and articulate as she explained her case and the failed efforts to appeal the ruling. At this point lawyers say her only hope seems to be presidential clemency — rarely granted in recent years — yet she said she remained hopeful.

She lost her composure only once, while describing the evening in 1996 when the police found the lockbox in her apartment. She had been working in the kitchen, braiding someone's hair for a little money, while Courtney, then 8, played in the home. He watched the police take her away in handcuffs.

"Courtney called out, 'Mom, you promised you weren't going to leave us no more,' " Ms. George recalled, her eyes glistening. "I still hear that voice to this day, and he's a grown man."

This article has been revised to reflect the following correction:

Correction: December 14, 2012

An article on Wednesday about growing skepticism over mandatory prison sentences referred incorrectly to Supreme Court rulings on sentencing for juvenile offenders. The court has banned sentences of life without the possibility of parole for juveniles convicted of crimes that did not involve killings; the justices also struck down laws that required such sentences in homicide cases without allowing judges or juries to consider individual circumstances. The court has not completely "banned life sentences without parole for juvenile offenders."

A version of this article appears in print on December 12, 2012, on page A1 of the New York edition with the headline: For Lesser Crimes, Rethinking Life Behind Bars.

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