Unequal Justice?: A Look at Criminal Sentencing in Allegheny County

Amanda M. Geary

Follow this and additional works at: https://dsc.duq.edu/dlr

Part of the Law Commons

Recommended Citation
Available at: https://dsc.duq.edu/dlr/vol56/iss1/6
UNEQUAL JUSTICE?
A LOOK AT CRIMINAL SENTENCING IN ALLEGHENY COUNTY

Amanda M. Geary*

I. INTRODUCTION .................................................................................. 81
II. RACIAL INEQUALITY IN SENTENCING ........................................... 83
   A. Historical Understanding .............................................................. 83
   B. The Present Reality ................................................................. 87
III. SOCIOECONOMIC FACTORS IN SENTENCING .............................. 89
IV. THE EFFECTS OF OUR JUVENILE “JUSTICE” SYSTEM .................. 92
V. PRISON AND SENTENCING REFORM EFFORTS ......................... 94
VI. ALLEGHENY COUNTY, PENNSYLVANIA .......................................... 96
VII. ANALYSIS .......................................................................................... 100
VIII. CONCLUSION ................................................................................... 103

I. INTRODUCTION

Every year, American taxpayers spend nearly $35 billion to main-
tain and construct prisons in the United States.1 While the rest of
the developed world continues to condemn mass incarceration,2 sol-
itary confinement,3 and juvenile prison sentences,4 America’s

* Special thanks to everyone who contributed to this article and helped produce the
final product: Professor April Milburn-Knizner, Professor Mark Bergstrom, Joel Mankoski
with the Administrative Office of Pennsylvania Courts, the Duquesne Law Review, my fam-
ily, Katherine Enright, Amy Kerlin, and Julia Florkowski. Thank you to everyone that lis-
tened to me present this article and asked challenging questions.

1. Gary Ford, The New Jim Crow: Male and Female, South and North, from Cradle to
Grave, Perception and Reality: Racial Disparity and Bias in America’s Criminal Justice Sys-
tem, 11 RUTGERS RACE & L. REV. 323, 330 (2010) (estimating that while taxpayer contribu-
tions hover around $35 billion, the total annual amount spent on prisons in the United States
is nearly $60 billion).

2. See generally NELL BERNSTEIN, BURNING DOWN THE HOUSE: THE END OF JUVENILE
PRISON (2014).

3. Id. at 134, 228 (“A 2012 report from Human Rights Watch and the American Civil
Liberties Union determined that ‘the conditions that accompany solitary confinement . . .
constitute violations of fundamental rights. . . .’ Anything over fifteen hours in solitary is
considered torture under international standards, even for adults, and the United Nations
has declared using it with adolescents for any duration at all to be torture.”).

4. See generally id.
prison population continues to grow. Home to 2.3 million prisoners, America boasts the largest incarceration system in the world. The effects of mass incarceration are not equal; poor black men continue to be disproportionately affected by growing prison populations. While African American and Hispanic men account for just 32% of the United States population, they comprise over half of the United States’ total incarcerated population. How have Americans become naïve to the incredible amount of racial inequality in the prison system? How have private, for-profit prisons become billion-dollar enterprises?

This article addresses the disparate effects of criminal sentencing for different segments of our population. First, the article discusses the impact of race on sentencing, exploring how these trends developed historically and how race remains the most pertinent factor in predicting an individual’s criminal sentence around the country. The current and historical reality of the American prison industry will be explored, exposing the racial inequity that exists today due to decades of prejudicial laws, political campaigns, and white America’s fear of criminality. Next, examining the effects of criminal sentencing on different socioeconomic classes, the article focuses on the for-profit bail system and its impact on low-income communities. The effect wealth has on our criminal justice system is then illustrated through a series of examples, like corrupt judges receiving kickbacks and the million-dollar profits of prison enterprises. Then, the article discusses the rate of juvenile incarceration and the effect of jail time on young minds.

Additionally, the article addresses current prison reform efforts and hypothesizes that the slow move toward reformation is not truly altruistic in nature. Finally, after presenting criminal sentencing trends in Allegheny County, Pennsylvania, the article concludes that African American males are convicted of certain low-level drug offenses at a rate that is disproportionate to their representation in the community. To conclude, the article provides suggestions for moving toward a criminal justice system rooted in equity, that focuses the discussion on one involving rehabilitation, instead of retribution and revenge.

5. 13TH (Kandoo Films 2016).
6. While “mass incarceration” in the typical sense refers only to federal incarceration, in this article it is used to explain the enormous incarceration rate in both state, federal, and county prisons and jails.
8. 13TH, supra note 5 (The Corrections Corporation of America is a $1.7 billion corporation).
II. RACIAL INEQUALITY IN SENTENCING

A. Historical Understanding

At the end of the American Civil War, more than 4 million slaves were freed. The United States saw its first prison boom shortly thereafter, when African Americans were arrested in droves for petty crimes. Segregation, the birth of the Ku Klux Klan ("KKK"), lynchings, and Jim Crow laws relegated African Americans to second-class citizens. The depth and history of the African American struggle through this era cannot be understated, a struggle perpetuated by the white political elites’ need for black working bodies and the fear of criminality.

Through most of the first half of the twentieth century, the United States prison population remained flat. This changed dramatically in the 1970s, when mass incarceration gained traction. The initial “War on Drugs,” however, focused on rehabilitation, with a national budget for drug treatment growing faster than the budget for law enforcement. Prior to the explosion of American prison population, black Americans received prison sentences for federal drug offenses that were only 11% greater in length than those for their white peers. By 1972, the United States prison population grew to 357,292. At the same time, President Richard Nixon labeled heroin as “public enemy number one.”

During the Nixon era, a demand for law and order allowed the rhetoric of “crime” to replace that of “race.” The focus shifted from promoting political agendas that targeted black people—because that was now generally unpopular with the public—to instead promoting ideals that focused on activities that most of white America

9. 13TH, supra note 5.
10. Id.
11. Jim Crow laws were laws that enforced racial segregation and inequality in the South. For example, laws that prevented black people from exercising the same rights as their white counterparts, like voting, or laws that mandated separation of blacks and whites, like not allowing them to ride on the same railroad. A Brief History of Jim Crow, CONSTITUTIONAL RIGHTS FOUND., http://www.crf-usa.org/black-history-month/a-brief-history-of-jim-crow (last visited Oct. 26, 2017).
12. 13TH, supra note 5.
13. Id.
14. Id.
15. Id.
17. 13TH, supra note 5.
18. Id.
20. 13TH, supra note 5.
erroneously associated with black people. This allowed politicians and lawmakers to promote a racist agenda without admitting forthright that they were, in fact, racist. It allowed white America to feel better about what was happening in black, urban ghettos because what they were supporting did not feel racist, at least not in the way Jim Crow laws, the KKK, and lynchings felt racist.

Take, for example, John Ehrlichman, one of Nixon’s top advisors, and his remarks concerning Nixon’s strategy during the 1968 campaign:

We knew we couldn’t make it illegal to be either against the [Vietnam] war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin. And then criminalizing both heavily, we could disrupt those communities. . . . We could arrest their leaders. [R]aid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.

“By 1986, 80% of [the federal anti-drug] budget went to interdiction and law enforcement,” shifting away from the prior treatment-centered approach. The move from a treatment-based approach to incarceration and arrest was consistent with the public’s growing fear of criminality, driven by the media’s propaganda of the savage black man terrorizing white communities. At this time, the U.S. prison population had risen to more than 759,100 people. Since 1986, funding for prisons has spiked 141%. The racial implications of growing prison populations during this era can be demonstrated by analyzing the difference in sentencing for powder cocaine and crack cocaine. Crack was propagandized as a cheap cocaine substitute, boasted as the ghetto drug of the century. Although far more white people used both powder cocaine and

21. Id.
22. Id.
26. 13TH, supra note 5.
crack cocaine than their black counterparts, the mass media perpetuated the stereotype of the black crack-user.\textsuperscript{28} The war against crack cocaine was really just a different way of waging a war against urban African Americans.\textsuperscript{29} Take, for example, Lee Atwater’s\textsuperscript{30} 1981 interview explaining the GOP’s changing Southern strategy:

You start out in 1954 by saying, “N—, n—, n—.” By 1968, you can’t say “n—” -- that hurts you. Backfires. So you say stuff like forced busing, states’ rights and all that stuff. You’re getting so abstract now [that] you’re talking about cutting taxes, and all these things you’re taking about are totally economic things and a byproduct of them is [that] blacks get hurt worse than whites.

And subconsciously maybe that is part of it. I’m not saying that. But I’m saying that if it is getting that abstract, and that coded, that we are doing away with the racial problem one way or the other. You follow me because obviously sitting around saying, “We want to cut this,” is much more abstract than even the busing thing, and a hell of a lot more abstract than “N—, n—.”\textsuperscript{31}

The 1986 Anti-Drug Abuse Act created a mandatory minimum sentence of five years for possession of five grams of crack cocaine with intent to sell.\textsuperscript{32} While this five-year mandatory minimum prison sentence may not be alarming on its face, “5 grams [of crack cocaine] is about the size of a sugar packet.”\textsuperscript{33} A baggie of crack cocaine small enough to fit in your wallet could automatically land you in prison for five years. Two years later, Congress added a five-year minimum sentence for possession of five grams of a mixture of

\begin{itemize}
  \item \textsuperscript{28} Ford, supra note 1, at 337; see also Provine, supra note 16, at 46 (“In 2006, for example, 82% of those convicted for crack offenses were African American and 9% were white, despite the fact that only an estimated 25% of users were African American.”).
  \item \textsuperscript{29} For a modern-day example of this concept, see Lomae O’Neal, Ibram Kendi, One of the Nation’s Leading Scholars of Racism, Says Education and Love are Not the Answer, UNDEFEATED (Sept. 20, 2017), https://theunlefated.com/features/ibram-kendi-leading-scholar-of-racism-says-education-and-love-are-not-the-answer (“Black neighborhoods are not more dangerous than white neighborhoods and neither are black people.”).
  \item \textsuperscript{31} Id. (dashes added and internal bracketed alterations preserved).
  \item \textsuperscript{32} Provine, supra note 16, at 45.
  \item \textsuperscript{33} Id.
crack cocaine.\textsuperscript{34} At this time, crack was the only narcotic drug for which mere possession mandated imprisonment.\textsuperscript{35} During this era, 500 grams of cocaine would render the same sentence for possession of five grams of crack.\textsuperscript{36} In contrast, 100 kilograms of marijuana would be required to trigger a similar sentence.\textsuperscript{37} By 2006, nearly 66\% of federal prosecution of crack cases on average “involv\_[ed] 51 grams, about the weight of a candy bar.”\textsuperscript{38}

The results of harsh sentencing on crack possession led to nonviolent drug offenders serving more time incarcerated than those convicted of rape, manslaughter, and assault.\textsuperscript{39} These federal sentencing practices led to sentences for crack cocaine offenses similar to those convicted of murder and kidnap.\textsuperscript{40} In some states, the possession of even a small amount of crack cocaine could land an individual in prison for life.\textsuperscript{41}

In 1989, a Gallup poll suggested that drug abuse was rated the nation’s number one problem by 64\% of the U.S. population.\textsuperscript{42} By 1990, the average prison sentence for a black American was 49\% longer than that for a white American, a substantial increase from the 11\% difference before America declared a War on Drugs.\textsuperscript{43} At the same time, the overall prison population in the United States had risen to more than 1.1 million people.\textsuperscript{44} These statistics demonstrate that as the prison population continued to grow, so, too, did the difference between being black or white in a courtroom.

In 1994, President Bill Clinton signed a $30 billion federal crime bill which called for a massive expansion of the criminal justice system and the militarization of police departments.\textsuperscript{45} The bill created mandatory minimums for several nonviolent offenses and created the “three-strikes” system, where those convicted of their third felony could face life in prison.\textsuperscript{46} Nearly 4,200 individuals serving time

\begin{flushright}
\textsuperscript{34} Id. at 45-46.  \\
\textsuperscript{35} Id. at 46.  \\
\textsuperscript{36} Id.  \\
\textsuperscript{37} Id.  \\
\textsuperscript{38} Id. at 47.  \\
\textsuperscript{39} Marne L. Lenox, \textit{Neutralizing the Gendered Collateral Consequences of the War on Drugs}, 86 N.Y.U. L. REV. 280, 286-87 (2011).  \\
\textsuperscript{40} Id.  \\
\textsuperscript{41} Ford, \textit{supra} note 1, at 323, 340-41 (“James Richards, a black male[,] was sentenced to life in an Arkansas prison for possession of a small amount of crack cocaine. . . . Derrick Kimbrough . . . was an African American who was an honorably discharged veteran of the 1991 Persian Gulf War. The sentencing range for the federal drug offenses to which he pled guilty[ ] ran from a mandatory statutory minimum term of 15 years to a maximum of life.”).  \\
\textsuperscript{42} Provine, \textit{supra} note 16, at 45.  \\
\textsuperscript{43} Id. at 46.  \\
\textsuperscript{44} 13TH, \textit{supra} note 5.  \\
\textsuperscript{45} Id.  \\
\textsuperscript{46} Id.
\end{flushright}
for misdemeanor offenses were released to make room for prisoners on their third strike.\textsuperscript{47} The 1994 bill led to a further surge in the incarceration of black people. While the total prison population by the year 2000 was more than 2 million people, some 878,400 of those individuals were African American.\textsuperscript{48} At this time, 44\% of the U.S. prison population was black or African American,\textsuperscript{49} while blacks made up only 12.3\%\textsuperscript{60} of the overall United States population. Clinton later acknowledged, “I signed a bill that made the problem worse. . . . And I want to admit it.”\textsuperscript{51}

The War on Drugs also substantially affected black women in a negative regard. Overall women’s incarceration in state prisons for drug offenses rose 888\% between 1986 and 1996.\textsuperscript{52} The incarceration rate for males during the same time period rose 522\%.\textsuperscript{53} In 2003, women remained more harshly effected by tough drug laws, with 29\% of women in state prisons for drug offenses compared to only 19\% of their male counterparts.\textsuperscript{54} Today, the racial impact of the War on Drugs continues to land a disproportionate number of black women in prison. Presently, black women are incarcerated at a rate 3.8 times higher than their white female counterparts.\textsuperscript{55} In some states, the incarceration rate for black women is more than twenty-five times greater than that of white women.\textsuperscript{56}

\textbf{B. The Present Reality}

Today, the U.S. prison population is 2.3 million, the highest body count of humans in cages than ever before.\textsuperscript{57} The incarceration rate of black individuals in the United States is six times higher than in South Africa during the heart of apartheid.\textsuperscript{58} In fact, the United States criminal justice system has grown to be capable of housing

\begin{footnotesize}
\begin{itemize}
\item[47.] Id.
\item[48.] Id.
\item[49.] Id.
\item[52.] Lenox, supra note 39, at 284.
\item[53.] Id.
\item[54.] Id.
\item[55.] Ford, supra note 1, at 343.
\item[56.] Id. ("In Colorado, Connecticut, Illinois, Iowa, Maine, New Jersey, New Mexico, New York, Rhode Island, Texas, Vermont, West Virginia, Wisconsin, and Wyoming, black women are incarcerated at rates from ten to thirty-five times greater than white women.").
\item[57.] 13TH, supra note 5.
\item[58.] Alec Karakatsanis, Civil Rights Corps, Remarks at the University of Pittsburgh: Johnson Institute for Responsible Leadership (Oct. 19, 2016).
\end{itemize}
\end{footnotesize}
over 2.25 million human bodies in jails around the country on any
given night.\textsuperscript{59} Our nation boasts a system of “equal justice under
law,” while 50,000 people sit in jail because they are unable to af-
ford bail.\textsuperscript{60} The United States, aggrandized as one of the best coun-
tries in the world, incarcerates its citizens at a rate five to ten times
higher than any of our fellow allied or enemy countries.\textsuperscript{61} Home to
just 5\% of the world’s population, the U.S. houses more than 25\% of
the world’s prisoners.\textsuperscript{62}

The historic racial inequity that exploded during the War on
Drugs era has been left largely unchanged in the modern prison
system. Today, the lifetime likelihood of a white man facing incar-
ceration is 1 in 17.\textsuperscript{63} Conversely, 1 in 3 black men are expected to
go to jail in their lifetimes.\textsuperscript{64} While black men account for just 6.5\% of
the United States population, they continue to occupy 40.2\% of
the U.S.’s prison capacity.\textsuperscript{65} In fact, there are more African Ameri-
cans under criminal supervision today than there were slaves in the
1860s.\textsuperscript{66}

Our nation hosts a system of incarceration that is home to ram-
pant infectious disease, sexual assault, and abuse, supported by vir-
tually no empirical evidence that it is helping lower crime or make
our communities safer.\textsuperscript{67} On the contrary, individuals who are in-
carcerated for a mere two days while awaiting trial are 40\% more
likely to reoffend than their non-incarcerated peers, whether for the
same crime or a different one.\textsuperscript{68}

Today, some of the worst prison conditions and highest rates of
incarceration around the country exist in predominantly black and
Hispanic counties. Harris jail, located in Houston, Texas, handles
more than 106 suicide attempts every year.\textsuperscript{69} The jail, plagued with
overpopulation and inmates complaining of sexual assault by cor-
rections officers, serves a county where 43.1\% of the population is
Hispanic and nearly 24\% is black.\textsuperscript{70} Over a ten-year period, from
2005 to 2015, 199 people died while in the custody of the Harris

\begin{flushleft}
59. \textit{Id.}
60. \textit{Id.}
61. \textit{Id.}
62. \textit{13TH, supra note 5.}
63. \textit{Id.}
64. \textit{Id.}
65. \textit{Id.}
66. \textit{Id.}
67. \textit{Karakatsanis, supra note 58.}
68. \textit{Id.}
69. \textit{Id.}
70. \textit{Race and Ethnicity in Houston, Texas, STATISTICAL ATLAS, http://statisticalat-
las.com/place/Texas/Houston/Race-and-Ethnicity (last updated Apr. 19, 2015).}
\end{flushleft}
County Sheriff's Office, 85% of whom have not yet been convicted of a crime.\textsuperscript{71} Waiting outside the gates of Harris jail, taxi drivers claim the most common destination for recently released Harris county inmates is the emergency room.\textsuperscript{72}

The inhumane conditions and overrepresentation of Hispanic and African Americans incarcerated does not just exist in Houston. A similar story is told in Ferguson, Missouri, where 68% of the region is black,\textsuperscript{73} and the average household has 3.6 arrest warrants.\textsuperscript{74} The average adult in Ferguson has 2.2 arrest warrants.\textsuperscript{75} In Alabama, nearly 27% of the population is black or African American,\textsuperscript{76} and, not surprisingly, roughly 30% of the state's population has lost the right to vote because of prior criminal convictions.\textsuperscript{77} These statistics coexist with the fact that the percentage of white District Attorneys in the United States rests in the high nineties.\textsuperscript{78}

III. SOCIOECONOMIC FACTORS IN SENTENCING

Each day, around 450,000 Americans sit in pretrial detention either because they were denied bail or were unable to post bail that has been set.\textsuperscript{79} At the heart of this injustice is the for-profit bail industry that capitalizes upon the threat of incarceration to coerce payment from people who already possess very little.\textsuperscript{80} Even when

\textsuperscript{72} Karakatsanis, \textit{supra} note 58.
\textsuperscript{74} Karakatsanis, \textit{supra} note 58.
\textsuperscript{75} Id.
\textsuperscript{77} 13TH, \textit{supra} note 5.
\textsuperscript{78} Karakatsanis, \textit{supra} note 58; see also 13TH, \textit{supra} note 5 (stating that 95% of U.S. District Attorneys are white).
\textsuperscript{80} Here is an example of how this works, provided by the folks at Equal Justice Under Law: A 29-year-old woman is arrested for the first time in her life after getting into a physical fight with her brother-in-law. After her arrest, she is placed in county jail and told she will be released if she pays $150,000. At this point, the story can diverge in three different ways: (1) For the rich, the individual can pay the $150,000 and have the money refunded in full when the case ends; (2) for poorer individuals, private bail companies will offer a non-refundable payment of 10%—$15,000 in our case—and the money is never returned; or (3) private bail companies may offer payment of 1% of the bail amount—$1,500 in our case—and have the rest of the $15,000 financed by a debt agreement, applying the maximum interest rate allowable by law. \textit{Ending the American Money Bail System}, EQUAL JUSTICE UNDER LAW, http://equaljusticeunderlaw.org/wp/current-cases/ending-the-american-money-bail-system/ (last visited Sept. 23, 2017).
bail is set at $500 or less, only 15% of criminal defendants can afford to secure their own release.\textsuperscript{81} A monetary bail system like the one found in the United States exists in only two other countries around the world.\textsuperscript{82} This system offers many low-grade offenders freedom from incarceration if they pay a monetary fine, usually an amount that poor prisoners and their families are unable to afford.\textsuperscript{83}

The bail system has created a net of people who depend on it in some way: Judges, prosecutors, defense attorneys, court officials, probation officers and others whose paychecks are funded by low-grade criminals who struggle to put food on the table. The financial and economic implications of this can be seen across the country, like in New Orleans, where the bail industry is the largest donator to local political campaigns.\textsuperscript{84}

In many cases, being detained before trial, either from insufficient funds to pay bail or because no bail was set, adds pressure on the defendant to accept a guilty plea.\textsuperscript{85} Indeed, when criminal defendants were detained until their cases were resolved, the conviction rate was 92%.\textsuperscript{86} Meanwhile, for those who were released from jail prior to their case being resolved, only 50% were convicted.\textsuperscript{87} In some cases, the individual may be detained pending trial longer than his or her actual sentence requires. Therefore, accepting a plea deal may be his or her quickest escape route from jail, even if that person is innocent.

Forcing economically disadvantaged persons to post bail in order to secure release from detention is not the only method that is used to coerce money from those who otherwise cannot afford to pay. While many believe incarceration and its negative consequences are justified by the wrongs our criminal cohorts commit, the fact remains that the largest percentage of white people incarcerated today is due to their inability to pay a monetary fine.\textsuperscript{88}

Is there a better method than holding people ransom for their inability to pay parking tickets, traffic violations, and child support? The United States federal court method bases release from detention on an evidentiary model, evaluating an individual’s likelihood

\textsuperscript{81} Pinto, \textit{supra} note 79.  
\textsuperscript{82} Jasmine Rose Gonzalez, Assistant Professor of Law at the University of Pittsburgh, Panel Discussion at the University of Pittsburgh: Johnson Institute for Responsible Leadership (Oct. 19, 2016).  
\textsuperscript{83} \textit{Id.}  
\textsuperscript{84} Karakatsanis, \textit{supra} note 58.  
\textsuperscript{85} Pinto, \textit{supra} note 79.  
\textsuperscript{86} \textit{Id.}  
\textsuperscript{87} \textit{Id.}  
\textsuperscript{88} Karakatsanis, \textit{supra} note 58.
of flight and recidivism, instead of the depth of their pockets.\textsuperscript{89} A fairer system exists to keep poor people from being held hostage, but that would disrupt the web of individuals whose paychecks depend on a system of mass incarceration.

The bail industry and the numerous officials who are paid from it are not the only ones who benefit from a system that encourages mass incarceration. The Corrections Corporation of America, the first private prison corporation in the U.S., is now a $1.7 billion enterprise.\textsuperscript{90} Even private clothing companies, like Victoria’s Secret and J. C. Penney, have historically used prison labor to produce cheap merchandise.\textsuperscript{91} Across the United States, prison telephone companies made an estimated $114 million in profits last year alone.\textsuperscript{92} Meanwhile, for a Maryland resident working minimum wage, it would take an hour-and-a-half of work to afford a ten-minute phone call with a prisoner.\textsuperscript{93} While corporations are profiting from the financial implications of incarceration, prisoners and their loved ones struggle when prices on snacks, hygiene products, and clothing are 40% more expensive inside prison walls.\textsuperscript{94}

Services like JPay, a private company in Florida, charge people outside of prison a fee of up to 45% to put money on a prisoner’s account.\textsuperscript{95} In 2013 alone, JPay generated $50 million in profits.\textsuperscript{96} The company knows what it is doing, too, with registered lobbyists in at least seven states and efforts to contract with the Federal Bureau of Prisons.\textsuperscript{97}

Even in Pennsylvania, we see people in power profit from sending criminal defendants to jail. Former Luzerne County Judge Mark Ciavarella, Jr., was recently sentenced to twenty-eight years in prison for accepting a $1 million bribe to send juveniles to private state detention centers.\textsuperscript{98} It is estimated that Judge Ciavarella may have tainted the sentences of some 4,000 children in Luzerne

\textsuperscript{89} See 18 U.S.C.A. § 3142. Release or detention of a defendant pending trial.
\textsuperscript{90} 13TH, supra note 5.
\textsuperscript{91} Id.
\textsuperscript{92} Id.
\textsuperscript{93} Id.
\textsuperscript{95} Id.
\textsuperscript{96} Id.
\textsuperscript{97} Id.
County in what is now referred to as the “Cash for Kids” scandal. While on the bench, he and another co-defendant accepted bribes from Robert Mericle, the builder of the PA Child Care and Western PA Child Care detention centers. Judge Ciavarella sent children as young as 10 years old, many in court for their first offense, to private state detention centers in exchange for a financial kickback.

IV. THE EFFECTS OF OUR JUVENILE “JUSTICE” SYSTEM

The single strongest predictor for whether or not someone will face incarceration as an adult is their involvement in the juvenile justice system. Individuals who are involved with the criminal system as juveniles are thirty-eight times more likely to reoffend as adults than their childhood peers. Police arrest nearly 2 million juveniles a year, and demographers predict that 33% of American schoolchildren will be arrested by the age of 23. The United States stands alone in its treatment of child offenders; we incarcerate our youth at a rate eighteen times higher than that of France and seven times more often than Great Britain. Every year, our nation spends $88,000 to keep a single child in a state facility, more than eight times the amount we invest in their education.

The reason our nation locks up large numbers of children every year is a cause for concern. In 2010, most of the juveniles behind bars were incarcerated due to low-level, low-threat offenses, like technical violations of probation, drug possession, and minor property crimes. Once placed in a juvenile detention center, 33-35% of children will face solitary confinement, another 10% will experience sexual or physical abuse at the hands of a staff member, and another 2% will be sexually victimized by a peer. More than 33% of children in secure correctional facilities reported that staff used

99. Id.
100. Id.
101. Id.
102. BERNSTEIN, supra note 2, at 181.
103. Id.
104. Id. at 6 (totaling over 66,000 youth confined in juvenile facilities, with 66% in long-term placement).
105. Id. at 11.
106. Id. at 6, 11 (spending a total of $5 billion annually to keep children in state institutions).
107. Id. at 9, 52 (reporting that 42% of children claimed they were incarcerated for status offenses—crimes that only minors can be arrested for; like truancy, running away, and underage drinking).
108. Id. at 29-30, 132.
unnecessary force, while 38% of child detainees feared being physically attacked by staff or other youth.\textsuperscript{109}

Making matters worse, only 10% of formal abuse claims that were reported in state run facilities nationwide over a three-year period had been officially confirmed by authorities.\textsuperscript{110} Staff that were found to be abusing children faced very few consequences: Only 8% were sentenced to more than one year in prison, and 25% of all known staff predators were allowed to keep their jobs.\textsuperscript{111} With haunting conditions inside juvenile facilities and little recourse available, 11,000 incarcerated youth engage in suicidal behavior every year.\textsuperscript{112} Half of the children who committed suicide inside juvenile facilities did so while in solitary confinement,\textsuperscript{113} where many are reportedly sent to avoid that very result.

The prejudicial nature of juvenile incarceration rates mirrors that of adult trends. While young people of color make up 38% of the youth population, they account for 72% of incarcerated juveniles.\textsuperscript{114} Black children are incarcerated at a rate five times higher than their white counterparts.\textsuperscript{115} Although 90% of teenagers acknowledged having committed illegal acts serious enough to warrant incarceration,\textsuperscript{116} white teens were twice as likely to go home without ever being formally charged with a crime.\textsuperscript{117} When it comes to detention rates, African American youth are 4.5 times more likely to be detained than white youth for identical offenses.\textsuperscript{118} African American children are targeted even more harshly when it comes to drug crimes; even though white youth are 33% more likely to sell drugs, black youth are 50% more likely to be arrested on charges of drug sales.\textsuperscript{119}

The effects of childhood incarceration are long-lasting and severe. Roughly 80% of children who spend time in a juvenile facility will end up back behind bars within three years of release.\textsuperscript{120} Despite the harrowing fate of childhood offenders, more than two-thirds of

\begin{itemize}
\item \textsuperscript{109} Id. at 82.
\item \textsuperscript{110} Id. at 83.
\item \textsuperscript{111} Id. at 107-08.
\item \textsuperscript{112} Id. at 99.
\item \textsuperscript{113} Id. at 134.
\item \textsuperscript{114} Id. at 58 ("In almost every state, youth of color are held in secure facilities at rates as high as four and a half times their percentage of the population.").
\item \textsuperscript{115} Id. at 58.
\item \textsuperscript{116} Id. at 58.
\item \textsuperscript{117} Id. at 59.
\item \textsuperscript{118} Id. (concerning drug crimes, this number rises to forty-eight times more likely to be detained than their white peers).
\item \textsuperscript{119} Id.
\item \textsuperscript{120} Id. at 10.
\end{itemize}
children in custody aspire to attend an institution of higher education. The reality is that only 15% of children who are incarcerated in the ninth grade will finish high school. These numbers create a cyclical pattern haunting the fate of juveniles in the system. Without a high school diploma, a child is 3.5 times more likely to be arrested, while being arrested greatly decreases the likelihood that a child will ever obtain a high school diploma. Even setting education aside, the National Bureau of Economic Regulation estimated that being incarcerated as a juvenile reduced the total time an individual spent working over the following decade by 25-30%.

Over the last twelve years, the United States Supreme Court has taken a variety of steps to address issues of constitutionality in the juvenile justice system. This lineage of cases demonstrates a growing concern for the treatment of children in the justice system and the fundamental differences that arise because of a young offender’s age, which may render certain punishments inappropriate. While these reforms are noteworthy, statistics demonstrate that there is a lot more to be done before we can celebrate.

V. PRISON AND SENTENCING REFORM EFFORTS

The largest push for prison reform is driven not by social justice concerns, but the harrowing price tag of keeping bodies in cages. Texas and Arizona, the two states that incarcerate the most people in our nation, are taking steps to reform the incarceration system not because it is inherently unjust, but because overcrowded jails are too costly to maintain. Indeed, American taxpayers spend nearly $60 billion a year to maintain and construct prisons in the United States.

Those who have pushed for reform in the name of social justice have historically been shot down without a second thought. A slo-

121. Id. at 15.
122. Id. at 196.
123. Id.
124. Id. at 182-83.
125. See Miller v. Alabama, 132 S. Ct. 2455 (2012) (finding that mandatory life imprisonment without parole for children under the age of 18 violates the Eighth Amendment); J.D.B. v. North Carolina, 564 U.S. 261 (2011) (declaring that a child’s age may affect the Miranda custody analysis); Graham v. Florida, 560 U.S. 48 (2010) (holding that the Eighth Amendment prohibits juveniles to be sentenced to life without parole who have not committed homicide); Roper v. Simmons, 543 U.S. 551 (2005) (holding that the death penalty for children under the age of 18 at the time of their crimes violates the Eighth and Fourteenth Amendments).
126. Id.
127. Ford, supra note 1, at 330.
gan of “soft on crime” has never before successfully brought a politician to office. Recall the 1988 presidential campaign and the October 1988 debate moderated by Bernard Shaw, a CNN anchorman notoriously known for asking perplexing and offhanded questions. Shaw bluntly asked Michael Dukakis, the Massachusetts governor and Democratic candidate opposing George Bush in the presidential election, “Governor, if Kitty Dukakis were raped and murdered, would you favor an irrevocable death penalty for the killer?”128 Dukakis coolly responded, “I think you know that I’ve opposed the death penalty during all of my life.”129 Political commentators and journalists alike claim Dukakis’ answer devastated his political career, costing him the election because of the public’s view that he was “soft on crime.”130 After the debate, his aides tried to justify his response: He was sick, he had seen two doctors before the debate, he had a fever or a virus, and he was not acting like himself.131 Throughout history, it has been better to be viewed as sick and delusional than believed to oppose the death penalty and show leniency on criminal sanctions.

On the whole, it can be argued that prison reform is rather insignificant when it comes to keeping people out of jail. Indeed, the sole predictor of incarceration rates in this country is the current availability of empty jail cells.132 With this in mind, increasing funding for prisons to improve existing conditions and programs only increases the chances that the government will seek to fill the space with people who can reap the benefits of its monetary investment. The only viable solution may be to stop locking people up altogether, instead of trying to remedy overcrowding and underfunding by giving more money to prisons.133

---

128. Roger Simon, Death-Penalty Question was Death Knell for Dukakis, SEATTLE TIMES (Nov. 6 1990), http://community.seattletimes.nwsource.com/archive/?date=19901106&shu g=1102666.
129. Id.
130. See generally id.
131. Id.
132. Karakatsanis, supra note 58.
133. In order to facilitate this idea, the U.S. would have to begin by closing prisons. Cutting off funding for certain programs would only increase hardship for already incarcerated individuals. This is particularly worrisome when one considers the very high threshold required to trigger an Eighth Amendment violation for cruel and unusual punishment and prison conditions litigation. The only viable and safe way to cut prison budgets is to close prisons. See also Why Building Prisons is Bad for Pennsylvania, DECARCERATE PA, http://decarceratepa.info/why-building-prisons-bad-pennsylvania (last visited Jan. 28, 2018).
VI. ALLEGHENY COUNTY, PENNSYLVANIA

Pennsylvania’s sentencing scheme is indeterminate, guided, and advisory. An indeterminate sentencing system allows a judge to impose a sentence with the earliest time a defendant may be eligible for parole and the latest date for which the defendant may be released from confinement. A guided sentencing scheme simply means that the judge must consider the sentencing range imposed by the sentencing guidelines, crafted to the type and nature of the offense. Finally, advisory sentences require the judge to consider the suggestion of the sentencing guidelines but do not mandate that he or she must sentence within that prescribed range. In fact, the trial courts ordinarily receive broad discretion to sentence outside the guideline range. However, the judge may not impose a sentence beyond the statutory maximum allowed by law.

The sentencing guidelines recommend a sentencing range based on the type of offense, the defendant’s prior criminal history, and a variety of aggravating and mitigating factors. The minimum sentence recommended by the guidelines is determined by evaluating the defendant’s prior record score and the offense gravity score on a basic sentencing matrix. While the guidelines are merely one factor that Pennsylvania courts must consider, every court must explain its reasons for refusing to follow the guidelines in any given case. A failure to explain the court’s deviation will result in vacating the sentence and resentencing the defendant.

Roughly 1.2 million people resided in Allegheny County in 2015. Of those 1.2 million, 19% were under the age of 18—resting just below the national average of 23%. The average

---

135. Id. (as compared to a determinate sentencing scheme, where there is a single release date imposed and no discretionary parole release).
136. Id. (as compared to an unguided sentence, where the judge is only bound by the statutory maximum).
137. Id. at 1119.
138. Id. at 1118.
139. Id. at 1119 (citing 204 Pa. Code § 303 et seq.).
140. Id. (citing 204 Pa. Code § 303.13).
141. Id. (quoting 42 Pa.C.S. § 9721(b)).
142. Id. (quoting 42 Pa.C.S. § 9721(b)).
143. Id. (citing 204 Pa.C.S. § 9721(b)).
145. Id.
household income in Allegheny County was on target with the national median, around $53,000. The number of individuals in the workforce over 16 years of age and the percentage of the population that was female were unremarkable and mirrors the national average. However, Allegheny County beats the national average for persons aged 25 or older with a high school diploma by nearly 7%.

Presently, Pennsylvania is one of eleven states that spends more money on prisons than its public colleges. Prison population growth in the Commonwealth has far outpaced the nation’s, increasing more than 500% in the last thirty years. This massive increase in growth has led to 60% of our state prisons at full capacity or above. In fact, Pennsylvania has 2,300 more inmates than it has beds. Over the last twenty years, the cost of corrections in Pennsylvania has quadrupled, making it the second fastest-growing state expense behind Medicaid. Pennsylvanians spend roughly $2 billion annually on corrections, a 700% increase from 1974. Despite this increase in prison spending, recidivism rates remain high. Over a period of eleven years, the Pennsylvania Department of Corrections found that 60% of former Pennsylvania inmates were arrested or incarcerated within three years of release.

The racial patterns and trends found in Allegheny County jails represent merely a microcosm of a systemic inadequacy to deliver

148. In Allegheny County 51.7% of the population is female, compared with the U.S. average of 50.8%. The U.S. average for people over the age of 16 who are in the labor force is 63.3%, compared with 64.4% in Allegheny County. See QuickFacts: Allegheny County, Pennsylvania, U.S. CENSUS BUREAU, http://www.census.gov/quickfacts/table/PST045215/42003 (last visited Feb. 5, 2017); see also QuickFacts: United States, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/00 (last visited Feb. 5, 2017).
150. Lobosco, supra note 27.
152. Id.
153. Id.
154. Id.
155. Id. (In 1974, Pennsylvania spent $59.9 million. The 700% figure has been adjusted for inflation.)
156. Id.
justice found in the nearly 3,000 jails\textsuperscript{157} scattered around the country. In order to advance that the criminal justice system is "fair," the race and ethnicity of individuals in custody should mirror that of the general population or closely relate to it. Therefore, if 81% of the population in Allegheny County in 2015 was white,\textsuperscript{158} roughly 81% of those in Allegheny County jails should also be white to reflect the fact that individuals are arrested and detained at the same rate for which they exist in the community. Obviously, some fluctuation is necessary to account for human error and environmental factors, but the overall numbers should generally mimic one another.

Rarely does the population in county jails represent the actual demographic of the community, with Allegheny County as no exception. Allegheny County continues to promote a system funded by private for-profit corporations that supply food, medication, commissary, and phone calls to nearly every prisoner. In Allegheny County, 81% of people sitting in jail have yet to be convicted of anything.\textsuperscript{159} In fact, 32% percent of these individuals are being detained for charges that have not yet been brought before the court.\textsuperscript{160} Serving as a representation of the harsh consequences of the United States money bail system, nearly 35% of people housed in Allegheny County jails are there because they cannot pay fines of less than $5,000 on misdemeanor charges.\textsuperscript{161}

In 2015, in the Allegheny County Court of Common Pleas, 2,934 people were sentenced for low-level drug offenses.\textsuperscript{162} The average

\textsuperscript{157} Karakatsanis, supra note 58.
\textsuperscript{159} Frederick W. Thieman, Panel Discussion at the University of Pittsburgh: Johnson Institute for Responsible Leadership (Oct. 19, 2016).
\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{162} The "low-level" drug offenses analyzed are: Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered (35 PA. STAT. § 780-113(a)(16)); the use of, or possession with intent to use, drug paraphernalia (35 PA. STAT. § 780-113(a)(32)); the manufacture, delivery or possession with intent to manufacture or deliver, a controlled substance (35 PA. STAT. § 780-113(a)(30)); the acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge (35 PA. STAT. § 780-113(a)(31)(i)-(iii)); selling, giving, transmitting, or furnishing to any convict in a prison, or inmate in a mental hospital, or giving away in or bringing into any prison, mental hospital, or any building appurtenant thereto (18 PA. CONS. STAT. ANN. § 5123(a)); possessing a controlled substance contraband by an inmate (18 PA. CONS. STAT. ANN. § 5123(a.2)); knowingly distributing or selling a noncontrolled substance upon the express or implied representation that the substance is a controlled substance (35 PA. STAT. § 780-113(a)(35)(ii)); manufactur-
individual who was charged and sentenced for one of the listed drug offenses also had seven other charges from the same criminal incident that involved the listed drug offense.\textsuperscript{163} The most common charge analyzed that individuals were sentenced to was intent to possess a controlled substance,\textsuperscript{164} regardless of the individual’s race.\textsuperscript{165}

Of the cases disposed, 50\% of the individuals were appointed a public defender while 40\% retained private counsel.\textsuperscript{166} The remaining individuals received representation from court-appointed private counsel (less than 1\% or ninety-three individuals), court-appointed conflict counsel (less than 1\% or 109 individuals), the district attorney (two people), or Legal Aide (seven people). Of the 16,246 charges, 15,474 were resolved in a guilty plea.\textsuperscript{167} This resulted in over 95\% of low-level drug convictions in the Allegheny County Court of Common Pleas ending in guilty pleas. Compare this with the years 2010-2014, where the individuals who were charged with one of the above listed drug offenses were surveyed for their past criminal convictions, whether drug-related or not. Of roughly 15,629 charges, 7,300 resulted in guilty pleas.\textsuperscript{168} Another

\textsuperscript{163} Drug Sentencing Report (There were more than 16,246 charges accompanying 2,934 people.).
\textsuperscript{164} 35 PA. STAT. § 780-113(a)(16).
\textsuperscript{165} Drug Sentencing Report.
\textsuperscript{166} Drug Sentencing Report.
\textsuperscript{167} The term “guilty plea” includes negotiated guilty pleas, non-negotiated guilty pleas, guilty pleas concerning the mentally ill, and guilty pleas accompanied by probation without verdict. Drug Sentencing Report.
\textsuperscript{168} 15,269 represents the number of statewide criminal cases disposed of from January 1, 2010 until December 31, 2014 for defendants who were later charged with a drug offense.
5,688 of those charges were withdrawn.\textsuperscript{169} In addition, far more people accepted court-appointed public defenders for non-drug related offenses, closer to 60\%.\textsuperscript{170} Evidentially, it is more common in Allegheny County to accept a guilty plea and retain private counsel on drug charges than offenses of a different nature.\textsuperscript{171}

The Pennsylvania Commission on Sentencing found that 57\% of all criminal offenders in Allegheny County were white and 77\% were male.\textsuperscript{172} The average age was roughly 35 years old, and 91\% of those individuals accepted negotiated guilty pleas.\textsuperscript{173} These numbers closely mirror the statistics for the listed drug offenses. Nearly 80\% of individuals sentenced to one of the aforementioned drug crimes was male.\textsuperscript{174}

However, for the provided drug offenses, 50\% of the criminal defendants were white, and 49\% were black.\textsuperscript{175} Thus, black people were charged at a higher rate for one of the listed drug crimes than for other offenses in Allegheny County in the year 2015. While an almost 50/50 white-to-black ratio may sound fair on its face, the problem arises when you consider the percentage of people of color who live in our community. In 2015, 13\% of Allegheny County residents were black or African American.\textsuperscript{176} In Allegheny County, black people are grossly overrepresented in drug sentencing, while every other racial group in our population is underrepresented. Although occupying 68\% more of the population, white people made up a mere 1\% more of those sentenced for the above delineated drug crimes.\textsuperscript{177}

VII. ANALYSIS

America’s history with mass incarceration has been fueled by politicians that have long used drug use and black criminality as a platform to gain voters—promoting fear of criminals, drug addicts,
and black men and then promising a safe-haven of help and heavy sentences if elected. It would be comforting to assert that this was merely a bitter part of American history and that our nation is living in the aftermath of a dark era. However, the same trends exist today and continue to be left largely unchallenged while yielding overwhelming success rates. Take, for example, the 2016 Donald Trump presidential campaign, where voters chanted “Build a wall” to promote acceptance for deporting Mexicans from the United States.\textsuperscript{178} This campaign utilized a familiar strategy: Create fear of the other—by calling them rapists, criminals, and savages—and then promise safety and protection if elected.\textsuperscript{179} The War on Drugs was successful due to white America’s primitive fear of black men as criminals and general misconceptions promoted by the mass media; Trump’s campaign mirrored this strategy, simply utilizing a different portion of a discriminated against population: Mexican Americans.

This fear, perpetuated by ignorance of drug addiction, mental illness, and criminal behavior, causes the average citizen to prefer caging human beings rather than come to grips with the socioeconomic, political, and racial circumstances that drive individuals to criminality in the first place. Throwing bodies in cages continues to ignore the underlying problem of drug use, putting a Band-Aid on a 200-year-old wound.

The effects of mass incarceration are particularly appalling for our nation’s children. As we continue to incarcerate children at the highest rate in the world, for petty crimes and self-injurious offenses, we ignore the real issues that bring our children to the juvenile justice system. A 2010 study found that the average reported age of “first sexual encounter” for girls in the juvenile justice system was less than 7 years old.\textsuperscript{180} A survey of youth in residential placement revealed that 72% of incarcerated children experienced direct victimization.\textsuperscript{181} Nearly one-third of children in custody had been sexually or physically abused, and a quarter of those children reported the abuse to be frequent or injurious.\textsuperscript{182} What leads our children to detention centers is much more complicated and emotional than what our system of mass incarceration takes into account. Eventually, our nation’s harmless childhood offenders become full-

\textsuperscript{179} See generally id.
\textsuperscript{180} BERNSTEIN, supra note 2, at 153.
\textsuperscript{181} Id. at 152.
\textsuperscript{182} Id.
grown adults who may be shackled to the criminal justice system for life.

The failure of our criminal justice system to rehabilitate people, as demonstrated through the sky-high recidivism rates for adults and juveniles alike,\(^\text{183}\) begs the question of whether we are doing what is appropriate or simply what is available. One also begins to wonder if perhaps the system is not broken to begin with but, rather, if it is functioning exactly as designed. Although our system is not reforming people, it has created a billion-dollar enterprise,\(^\text{184}\) while simultaneously “dealing” with “bad” people with very little effort. In fact, we are left with a system that creates a continuous supply of returning customers and a bail industry that extorts thousands of dollars from poor people, money that would be hard to obtain if it were not for the threat of jail time. As a business model, the prison industry is self-sustaining and profitable. The prison system is also successful if viewed from the lens that its main purpose is not rehabilitation, but some other goal, like seeking “justice” for its victims. If rehabilitation and minimal recidivism rates are not the priority, then the focus of this conversation easily shifts. Indeed, people with different backgrounds and academic disciplines disagree about the purpose of punishment.\(^\text{185}\)

Our citizens have become so desensitized and normalized to mass incarceration that the hierarchy of power is left virtually unchallenged to perpetuate the oppression of a certain population of individuals while keeping those who benefit at the top. It is easier to throw someone in a cell and forget about them rather than confront the deeper reasons for what led them to criminality and how we can help change their life. Talking about solutions to this never-ending cycle of incarceration requires discussion about what leads people to prison cells in the first place. Indeed, conversations about prison reform have to be contemporaneous with discussions of drug addiction, education, poverty alleviation, and mental health issues that plague our nation. Once that conversation begins, we can talk about what happens behind bars, how it continues to be profitable for the incumbency, and the collateral consequences of criminal convictions.\(^\text{186}\) The scope of this article is narrow, and while the num-

\(^{183}\) Id. at 7.

\(^{184}\) Id. supra note 5.

\(^{185}\) See, e.g., Richard S. Frase, Punishment Purposes, 58 STAN. L. REV. 67 (2005) (demonstrating the numerous “purposes” that academia has recognized for incarcerating an individual).

\(^{186}\) One of the most alarming collateral consequences in Pennsylvania for a drug conviction, for example, is the loss of an individual’s driver’s license. There is no rationale, other
Unequal Justice

bers are startling, many topics have been left intentionally untouched. The issues are multicausal, and the need for reform is broad. The analysis has only just begun.

VIII. CONCLUSION

For decades, there has been no empirical evidence that jail time creates a reformed person. In fact, studies repeatedly demonstrate that the exact opposite is true. Why do we continue to operate under a failing system? Until more people start to care about what goes on behind prison walls, little reform will take place. The reality is that this system is built upon years of racism, promoted by politicians who benefit from irrational fear, easily manipulated minds, and the ignorance of the American people. Do not forget the influence of corporations that promote a “tough on crime” stance so they can continue to build financial empires. None of the reasons for mass incarceration are due to helping or protecting our community because we know that this system has not led to that. The only reason we continue to lock people up at exorbitant rates is because the system remains unchallenged by the American people, while politicians and the media continue to promote it for the benefit of their own agendas.

Step one for changing the current system is to educate people about what is going on: the exponentially higher rate at which people of color are being arrested, charged, and sentenced for crimes that have been proven to be committed more commonly by white people; the rates of abuse in prison, particularly for our children; the profits corporations make from mass incarceration; politicians promoting racism to further political campaigns; and the startling number of people we lock away each year compared to every other country in the world. Without informing people about what is going on behind the smokescreen, there is no way for them to challenge it or become angry at the injustice that has unfolded in our nation.

The more people who become enraged about how they have been manipulated for the personal incentive of incumbents, the further we can push back against the hierarchy that keeps the system in

---

than purely punitive incentives, to revoke an individual’s driver’s license for a conviction that never involved traffic laws, driving, or safe transit. For current legislative action on this issue, see e.g., Ryan Gallagher, Proposed Legislation in PA Could End License Suspensions for Non-Driving-Related Crimes, DMV (Nov. 17, 2017), https://www.dmv.org/articles/pennsylvania-considers-dropping-license-suspension-for-non-driving-crimes.

187. Karukatsanis, supra note 58.
188. Id.
place. We can do this by not supporting corporations that use prison labor and not voting for politicians who are funded by the bail system or prison lobbyists. Recently, Ibram Kendi, one of the leading academics on racism, expressed his belief that the answer to racism was not through promoting education but, instead, through removing self-interest.\textsuperscript{190} If the monetary benefits of jail time stem from the desire of our political elites to maintain the status quo, then the only way to alleviate the issue is to eliminate selfishness. Inherently, those who are financially benefiting from our current system are not interested in reform. It is far more difficult to encourage people to lighten up on prison sentences when the alternative avenue promises financial stability.

In sum, my conclusion is simple. Sentencing for drug offenses, like nearly all other sentences, are bias and prejudicial to minorities in our nation. Given the self-injurious nature of drug abuse,\textsuperscript{191} I suggest that we completely stop incarcerating people for possession and use of narcotics. Incarceration does not lead to reformed people. If we are concerned about people hurting themselves (especially children), then the solution we provide them should actually help combat their drug addiction.\textsuperscript{192} If jail time is not making the problem any better, then why are we incarcerating people, particularly when statistics dictate they will be released and continue on the same pattern that brought them to jail in the first place? With a $60 billion annual prison budget,\textsuperscript{193} the money already exists to create programs that actually produce results. If we took the existing budget, more than $2 billion in Pennsylvania alone,\textsuperscript{194} and reallocated it to effective programs and services for drug offenders, our

\textsuperscript{190}. “The actual foundation of racism is not ignorance and hate, but self-interest.” O’Neal, supra note 29.

\textsuperscript{191}. I admit that drug abuse is never truly just self-injurious. The family and loved ones of addicts around the world will readily attest that the havoc drug abuse wreaks on the addict’s community is profound. As someone who understands the pangs of drug abuse, I do not intend to minimize the effect drugs have on those other than the user.

\textsuperscript{192}. Much of this would involve not incarcerating individuals for violations of their probation or parole due to drug addiction. Take for example, the Philadelphia rapper Meek Mill, who was recently sentenced to two to four years in a Pennsylvania prison for a failed drug test and other technical violations of his probation. Meek Mill has been on probation for ten years for charges he incurred at the age of 18. Whatever your feelings on Philly hip-hop, Meek’s fame and publicity sheds light on an inherent injustice in our Pennsylvania sentencing scheme. For more on this, see Deena Zaru, Is Meek Mill a Poster Child for Mass Incarceration? What the Outrage is All About., CNN POLITICS (Nov. 25, 2017) https://www.cnn.com/2017/11/24/politics/meek-mill-prison-judge-mass-incarceration/index.html.

\textsuperscript{193}. Ford, supra note 1, at 330.

Unequal Justice

recidivism rates would yield lower numbers. While this would take planning and patience, we already have the funding necessary to implement a better system.

One example of implementing programs that work is drug courts: courts that combine drug abuse treatment with intense judicial supervision. Indeed, drug courts have been proven to reduce drug abuse and crime over an extended period of time. This is but one example of understanding the problem that plagues individuals involved in the criminal justice system (i.e., the fact that roughly 80% of offenders meet a “broad definition of substance involvement”) and allocating resources to appropriately combat the problem.

Admittedly, this idea is not widely accepted or promoted by the American public. Similar to issues surrounding harsh child pornography sentences, not many people are willing to have a conversation about drugs. The taboo nature of drug use and the illegality that surrounds this activity makes it difficult for people in positions of influence to discuss this rhetoric without political retaliation or being deemed unfavorable candidates. As history demonstrates, it is unpopular to be “soft on crime.” In this regard, starting the conversation is important. Making sure people understand the issue and the prejudicial nature of our criminal “justice” system helps facilitate an honest conversation. It is important for people to know what is going on. Spread the word.

196. Id. at 173.
197. Id. at 167.