

Golden Gate University School of Law
GGU Law Digital Commons

Reimagining Criminal Justice

Centers, Clinics, & Programs

11-5-2020

**Reimagining Criminal Justice: The Violence of Incarceration in the
Midst of the COVID-19 Pandemic**

Tammy Henson

Follow this and additional works at: <https://digitalcommons.law.ggu.edu/reimagining-criminal-justice>

 Part of the [Criminal Law Commons](#)

🖨 [Click to print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/therecorder/2020/11/05/reimagining-criminal-justice-the-violence-of-incarceration-in-the-midst-of-the-covid-19-pandemic/>

Reimagining Criminal Justice: The Violence of Incarceration in the Midst of the COVID-19 Pandemic

With the increase of domestic violence incidents due to the COVID-19 pandemic, an increase in arrests and incarceration have followed, says Tammy Henson, a 2021 Juris Doctorate candidate at the Golden Gate University School of Law in San Francisco.

By **Tammy Henson** | November 05, 2020



Tammy Henson, a 2021 Juris Doctorate Candidate at the Golden Gate University School of Law. Courtesy photo

The Recorder has collaborated with students enrolled in Reimagining Criminal Justice, a seminar at Golden Gate University School of Law, to publish this series of student writings. This next generation of lawyers explore a broad range of topics touching on criminal and racial justice, and provide their perspectives and voices on myriad proposals for building a better, more just, system.

Six years after the infamous and disturbing elevator video of former NFL player Ray Rice punching his fiancée Janay Palmer in the face, knocking her unconscious and then dragging her out of the elevator, Rice and Palmer remain happily married, both speaking out against domestic violence. Contrast Rice's story to

that of Samuel Lee Scott (<https://www.foxnews.com/us/st-louis-man-accused-of-killing-wife-after-release-on-bail>), a husband charged with murdering his wife hours after a nonprofit group posted his bail in a domestic violence case. The difference in these cases: Rice was given domestic violence counseling in lieu of jail, Scott was incarcerated. Research shows that incarceration actually increases future crime. Criminologists call this the “criminogenic effect” of prison.

The criminogenic effect occurs when individuals enter prison and are surrounded by other prisoners who have committed more serious and violent offenses. Couple this with prison conditions such as overcrowding and lack of sanitation, and an environment that breeds violence and anti-social behavior is created. In the year 2020, a year filled with unprecedented violence due to political unrest, police brutality and social isolation from the COVID-19 pandemic, the effects of mass incarceration have become increasingly important. The more people we put in prison who do not need to be there, the more this criminogenic effect increases.

As of April 7, 306 million Americans, or 94.5% of the U.S. population, were sheltering in place due to the COVID-19 outbreak. The pandemic has added immense pressure to many families; the sudden loss of a job, prolonged proximity to partners and children all day, and isolation from friends and family make for a ticking time bomb. Partners who otherwise have kept violent behavior in check crack under the pressure and violent behaviors emerge.

Professors Emily Leslie and Riley Wilson of Brigham Young University analyzed public police records from 14 large U.S. cities and discovered a 7.5% increase in domestic violence calls (<https://phys.org/news/2020-08-domestic-violence-pandemic.html>) in March, April and May 2020 compared to spring 2019. San Francisco District Attorney Chesa Boudin reported that the victim-services division in his office saw a 60% rise in calls seeking domestic violence referrals during the first week of the shelter-in-place order.

Leslie and Wilson report that not only have domestic violence reports risen sharply during the pandemic, but the pandemic has produced many new offenders; reports of domestic violence from city blocks with no previous record of violence were the main drivers of the increase. The rise in reports also show no significant differences among lower and higher-income areas.

With the increase of domestic violence incidents due to the COVID-19 pandemic, an increase in arrests and incarceration have followed. There are significant human costs to families and communities when low-level offenders languish behind bars rather than earning wages and contributing to the economy. Prisons result in an enormous waste of human capital.

Additionally, the COVID-19 pandemic has been devastating to the prison population. According to the National Commission on COVID-19 and Criminal Justice (<https://covid19.counciloncj.org/2020/09/02/covid-19-and-prisons/>), correctional facilities represent 19 of the top 20 clusters of confirmed COVID-19 cases in the U.S. By Sept. 1, more than 155,000 COVID-19 cases and more than 1,000 deaths were confirmed among inmates and employees of state and federal prisons. Even a brief incarceration during the pandemic could prove fatal to the more than 1.3 million inmates currently are at risk.

Domestic violence, a widespread problem even before the pandemic, affects over 10 million Americans each year. The effects of domestic violence inundate our legal and health systems creating a substantial need for intervention. There are only two ways to end domestic violence in an intimate relationship: limit contact between partners, such as physical separation of the parties through restraining orders, relocation and temporary shelters. The other is to change a batterer’s behavior—end the violence.

Abusive partners must be held accountable for their use of violence. Incarceration, however, cannot be the only strategy. This one system has not, and cannot, be expected to end domestic violence. If the U.S. is to have hope of flattening the curve of domestic violence alongside flattening the curve of COVID-19, policies for prevention of domestic violence, rather than punishment, must be implemented.

Policies that address prevention are crucial. Preventative measures will save lives. Preventative measures will also save the U.S. economy, with hundreds of billions of dollars per year spent on mass incarceration. (<https://www.prisonpolicy.org/reports/money.html>) Funding programs that assist in preventing violence before it occurs will yield a tenfold return. Violence prevention programs such as cost-free anger management classes, parenting classes, and drug and alcohol classes—as well as counseling for both batterer and victim that teach practical life skills—will help participants become more aware of and more in charge of violent behaviors.

Janay Palmer, wife of Ray Rice, is able to advocate for prevention of domestic violence because prevention programs work. Marcia Johnson, wife of Samuel Lee Scott, unfortunately cannot. Scott did not receive preventative services, he was incarcerated. The beautiful 54-year-old Johnson is now added to the growing list of victims of the criminogenic effect.

Decades-old approaches of addressing domestic violence after it has occurred have not worked and must be replaced with policies that prevent people from entering the judicial system in the first place. As Time Magazine (<https://time.com/5851864/institutional-racism-america/>) reported, when faced with a social ill, our nation responds by building more prisons and jails.

We must do better, and we must do better now, in the midst of the COVID-19 pandemic. Too much has been lost to COVID-19 already.

Tammy Henson is a 2021 Juris Doctorate candidate at the Golden Gate University School of Law in San Francisco and currently interns at the Law Offices of Cotter C. Conway, Esq., a private practice criminal defense firm.