
YALE LAW & POLICY REVIEW

The Incarceration Explosion

*Congressman John Conyers, Jr.**

INTRODUCTION

The United States has experienced a precipitous rise in its state and federal prison population over the last forty years. During that period, the number of individuals incarcerated in our nation has risen from approximately 300,000 to more than 2 million.¹ We now have the highest incarceration rate in the world, with more than 700 out of every 100,000 Americans behind bars.² Our nation's incarceration rate is roughly 5 times the international average.³ By comparison, Germany incarcerates 85 per 100,000; France incarcerates 96 per 100,000; and

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1. Ryan S. King et al., *Incarceration and Crime: A Complex Relationship*, SENT'G PROJECT 1 (2005), http://www.sentencingproject.org/doc/publications/inc_iandc_complex.pdf; see Lauren E. Glaze & Erika Parks, *Correctional Populations in the United States, 2011*, BUREAU JUST. STAT. 3 (2012), <http://www.bjs.gov/content/pub/pdf/cpus11.pdf> (noting that the total population of incarcerated adults was 2,239,800 in 2011).
2. Roy Walmsley, *World Prison Population List (9th ed.)*, INT'L CENTRE FOR PRISON STUD. 1 (2011), <http://www.idcr.org.uk/wp-content/uploads/2010/09/WPPL-9-22.pdf> (reporting an incarceration rate based on the number of both pretrial detainees and sentenced prisoners); see also Fareed Zakaria, *Incarceration Nation*, TIME, Apr. 2, 2012, <http://www.time.com/time/magazine/article/0,9171,2109777,00.html> (discussing high U.S. incarceration rates).
3. Walmsley, *supra* note 2, at 1.

Canada incarcerates 117 per 100,000.⁴ Only Rwanda comes anywhere near the U.S. rate, with 595 per 100,000.⁵

Mass incarceration in the United States has disproportionately impacted minorities, and most notably African Americans. The incarceration rate among African-American men is more than 3,000 per 100,000 citizens, roughly four times the national average, and roughly six times the rate among white men.⁶ In 2010, African Americans made up 13.6% of the U.S. population, but amounted to thirty-eight percent of those who are incarcerated.⁷ An African-American boy born in 2001 has a 32% chance of serving time in prison at some point in his life.⁸ By comparison, a white male born at the same time would have a 6% chance of being sent to prison.⁹ There are certain regions in our nation where these statistics are even more stark. In at least 15 states, African-American men are imprisoned on drug charges at a rate from 20-57 times greater than white men.¹⁰

While some have argued that these disparate numbers are the result of higher crime in African-American communities, that claim lacks evidentiary support. For example, even though only 10% of the adult African-American population uses illegal drugs (compared with 9% of the adult white population), African Americans are 9 times more likely than whites to serve prison sentences for drug crimes.¹¹

This *mass* incarceration is *overincarceration*. Policymakers on both sides of the aisle can agree that America's criminal justice system should be fair to the participants involved in the system, should increase community security, and should be cost-effective. However, a criminal justice system based on mass incarceration, in which we lock up more and more people, and particularly more people of color, with no crime reduction impact, and at a tremendous financial cost to our federal and state budgets, accomplishes none of those goals.¹²

4. *Id.* at 3, 5.

5. *Id.* at 2.

6. E. Ann Carson & William J. Sabol, *Prisoners in 2011*, BUREAU JUST. STAT. 6 (2012), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf>.

7. Compare Sonya Rastogi et al., *The Black Population: 2010*, U.S. CENSUS BUREAU 3 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf>, with Carson & Sabol, *supra* note 6, at 9.

8. Thomas P. Bonczar, *Prevalence of Imprisonment in the U.S. Population, 1974-2001*, BUREAU OF JUSTICE STATISTICS 1 (2003), <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf>.

9. *Id.*

10. *Punishment and Prejudice: Racial Disparities in the War on Drugs*, HUM. RTS WATCH 25 (2000), <http://www.unhcr.org/refworld/pdfid/3ae6a86f4.pdf>.

11. WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 4 (2011).

12. See TODD R. CLEAR, *IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE* 6-7, 9-10 (2007); Judith Greene & Marc Mauer, *Downscaling Prisons: Lessons From Four States*, SENT'G PROJECT 1-2 (2010), http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf; *One in 100: Behind Bars in Ameri-*

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The United States must address the problem of mass incarceration, and particularly the overincarceration of African-American men. This Essay identifies the policies that have driven incarceration rates to unprecedented levels over the past 40 years. Such policies include our nation's ongoing "drug war," mandatory minimum sentences, and a number of other harsh sentencing policies that serve as a system of racial control that harkens back to the Jim Crow era. The Essay then proposes a number of reforms that would decrease the rate of incarceration and the system's disparate treatment of African Americans. Such reforms include strengthening prisoner reentry programs, enacting laws to limit the severity of punishment for low-level offenses, abolishing mandatory minimums and other laws that limit judicial discretion, and enacting comprehensive, evidence-based prevention and intervention programs.

I. CAUSES OF THE PROBLEM: WHY DOES THE UNITED STATES HAVE SO MANY PEOPLE, AND SO MANY AFRICAN-AMERICAN PEOPLE, IN PRISON?

Several factors contribute to these alarmingly high numbers. The single most significant factor is this country's war on drugs. Since the 1980s, the United States has pursued an aggressive law enforcement campaign against the use and sale of illegal drugs.¹³ From 1980 to 1997, the rate of incarceration for drug offenses increased nearly tenfold, from 15 per 100,000 adults to 148 per 100,000 adults.¹⁴ Today, nearly half of America's federal inmates are in prison on drug convictions.¹⁵ Although the stated purpose of this "war on drugs" was race-neutral, African Americans have been disproportionately arrested, convicted, and incarcerated on drug charges, both relative to their numbers in the general population *and* among drug offenders.¹⁶

A second factor behind rising incarceration rates is the range of sentencing—policy reforms that have increased the length of time offenders are serving in prison. The average length of prison sentences has increased by 36% since

ca 2008, PEW CENTER ON STS. 4 (2008), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/one_in_100.pdf (finding that states spent more than \$44 billion on incarceration and related expenses by 2007—a 127% jump in adjusted spending from 1987—while spending on higher education rose just 21% over this period); *Smart Reform Is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities*, AM. C.L. UNION 5-7 (2011), <http://www.aclu.org/files/assets/smartreformispossible.pdf>; Greg Bluestein, *State Budget Crises Push Sentencing Reforms*, BOS. GLOBE, Apr. 2, 2011, http://www.boston.com/news/nation/articles/2011/04/02/state_budget_crises_push_sentencing_reforms.

13. STUNTZ, *supra* note 11, at 23-34.

14. *Punishment and Prejudice*, *supra* note 10, at 19.

15. *Quick Facts About the Bureau of Prisons*, FED. BUREAU OF PRISONS, <http://www.bop.gov/news/quick.jsp> (last updated Mar. 30, 2013) (stating that 47.3% of inmates in the Bureau of Prisons population are in prison for drug offenses).

16. Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 STAN. L. & POL'Y REV. 257, 257-58 (2009).

1990.¹⁷ William J. Stuntz argues in his book, *The Collapse of American Criminal Justice*, that mandatory minimum sentences, longer sentences for nonviolent first-time offenders, and “three strikes” laws mandating increased penalties for repeat offenders have all contributed to this increase.¹⁸ The United States Sentencing Commission highlighted the multiple ways in which federal mandatory minimum sentences have contributed to the growing federal prison population.¹⁹ The Commission found that mandatory minimums apply to more offenses, impose longer terms of imprisonment, and are used more frequently by prosecutors today than they were 20 years ago.²⁰

A third factor is the abolition of parole in the federal system and some states. The Sentencing Reform Act of 1984 abolished parole for federal inmates and modified how much good-time credit an inmate could earn.²¹ Offenders sentenced to incarceration for a federal crime committed after November 1, 1987, are not eligible for parole. The Federal Bureau of Prisons has stated that the abolition of parole is one cause of the growing federal prison population.²² Abolishing federal parole means that prisoners who have been subjected to longer and longer sentences now have to serve all or nearly all of their sentences.

In addition to increasing the prison population, longer prison sentences and the elimination of parole have also resulted in an aging prison population. According to a report by the Sentencing Project, 1 in 11 prisoners is serving a life term.²³ A report from the American Civil Liberties Union estimates that, by 2030, there will be more than 400,000 state and federal prisoners aged 55 and older—meaning that the number of prisoners over 55 years old will exceed one

17. *Time Served: The High Cost, Low Return of Longer Prison Terms*, PEW CENTER ON STS. 2 (2012), http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf; see also Kamala Mallik-Kane et al., *Examining Growth in the Federal Prison Population, 1998 to 2010*, URB. INST. 1 (2012), <http://www.urban.org/UploadedPDF/412720-Examining-Growth-in-the-Federal-Prison-Population.pdf> (“An increase in prisoners’ expected time to be served was, by far, the leading factor contributing to federal prison population growth, accounting for over one-half of the population increase during the 1998-2010 period.”).

18. STUNTZ, *supra* note 11, at 253, 264.

19. REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM, U.S. SENT’G COMM’N 63 (2011), http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/2011031_RtC_Mandatory_Minimum.cfm.

20. *Id.*

21. Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (codified as amended in scattered sections of 18 U.S.C. and 28 U.S.C.).

22. *A Brief History of the Bureau of Prisons*, BUREAU OF PRISONS, <http://www.bop.gov/about/history.jsp> (last visited Apr. 10, 2013).

23. Ashley Nellis, *Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States*, SENT’G PROJECT 27 (2010), http://sentencingproject.org/doc/publications/inc_federalsentencingreporter.pdf.

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third of the overall prison population.²⁴ Elderly prisoners are approximately twice as expensive to incarcerate as the average prisoner and pose little danger to society.²⁵

Fourth, the imposition of disparate penalties for similar crimes has also played a role in increasing incarceration rates, particularly among African Americans. In 1986, Congress passed the Anti-Drug Abuse Act.²⁶ Crack cocaine was a new and growing problem in large U.S. cities in the 1980s, and its wide availability and relatively low cost revolutionized inner-city drug markets.²⁷ Many legislators at that time believed that crack was more dangerous than powder cocaine.²⁸ In addition, public outcry about an epidemic of “crack babies,”²⁹ or children who had been exposed to crack in utero, gave rise to the perception that in-utero exposure to crack cocaine caused more profound developmental difficulties than in-utero exposure to powder cocaine.³⁰ In June 1986, public concern further intensified when all American basketball star Len Bias suddenly collapsed in his dormitory and died. He had been the number two overall pick in the NBA draft, and the nation was shocked. Cocaine was found in Bias’s system.³¹

Following the intense public reaction to Bias’s death, Congress passed the Anti-Drug Abuse Act of 1986, establishing mandatory minimum sentences triggered by specific quantities of cocaine and crack cocaine.³² Because many lawmakers at the time believed crack cocaine was more dangerous than the powder form of the drug, the 1986 Act imposed penalties for crack that were 100 times harsher than those for powder cocaine. For example, the Act provided for 5-year mandatory minimum sentences for individuals convicted of crimes involv-

24. *At America’s Expense: The Mass Incarceration of the Elderly*, AM. C.L. UNION, at i (2012), http://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.

25. *Id.* at 27.

26. Pub. L. No. 99-570, 100 Stat. 3207 (codified as amended in scattered sections of the U.S.C.).

27. Craig Reinerman & Harry G. Levine, *Crack in Context: America’s Latest Drug Demon*, in *CRACK IN AMERICA: DEMON DRUGS AND SOCIAL JUSTICE* 1, 1-2 (Craig Reinerman & Harry G. Levine eds., 1997).

28. *2002 Report to the Congress: Cocaine and Federal Sentencing Policy*, U.S. SENT’G COMMISSION 93 (2002), http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/200205_RtC_Cocaine_Sentencing_Policy/200205_Cocaine_and_Federal_Sentencing_Policy.pdf.

29. John P. Morgan & Lynn Zimmer, *Social Pharmacology of Smokeable Cocaine*, in *CRACK IN AMERICA: DEMON DRUG, AND SOCIAL JUSTICE* 149, 151-52 (Craig Reinerman & Harry G. Levine eds., 1997).

30. *2002 Report to the Congress*, *supra* note 28, at 94.

31. Keith Harriston & Sally Jenkins, *Maryland Basketball Star Len Bias Is Dead at 22: Traces of Cocaine Found in System*, WASH. POST, June 20, 1986, <http://www.washingtonpost.com/wpshr/sports/longterm/memories/bias/launch/bias1.htm>.

32. Pub. L. No. 99-570, 100 Stat. 3207 (codified as amended in scattered sections of the U.S.C.).

ing either 500 grams of powder cocaine, or just 5 grams of crack cocaine.³³ Similarly, the Act provided for 10-year mandatory minimum sentences for individuals convicted of crimes involving either 5,000 grams of powder cocaine, or just 50 grams of crack cocaine.³⁴

Certain provisions of the Omnibus Anti-Drug Abuse Act of 1988 further widened the disparity in drug sentencing by specifying that simple possession of 5 grams or more of crack cocaine be subject to a 5-year mandatory minimum sentence and a 20-year maximum sentence.³⁵

As detailed in the House Judiciary Committee Report on the Fairness in Cocaine Sentencing Act of 2009, many beliefs about the more severe effects of crack cocaine compared to powder cocaine have been proven unfounded over the past 20 years.³⁶ For example, the violence associated with crack—similar to the violence associated with the trafficking of many other drugs—has been shown to derive from association with the illegal drug market, rather than from any physiological effects of the crack itself.³⁷ Moreover, recent data indicates that significantly less trafficking-related violence is associated with crack than was previously assumed. For example, in 2005, 57.3% of overall crack offenses did not involve weapons with regard to any participant, 67.6% of crack offenders had no personal weapons involvement, and only 2.9% of crack offenders actively used a weapon.³⁸

Scientific and medical research has also found that crack and powder cocaine have essentially the same pharmacological and physiological effects. In 2002, Dr. Ira J. Chasnoff, President of the Children's Research Triangle, testified before the United States Sentencing Commission that because crack and powder cocaine are essentially the same drug, the effects on the fetal brain are the same whether the mother used crack cocaine or powder cocaine.³⁹

Although many of the dangers and consequences thought to be associated with crack cocaine did not materialize, the crack cocaine law and other federal drug laws resulted in dramatic increases in the number of federal drug offenders in prison, and particularly in the number of African-American men in prison.

33. 21 U.S.C. § 841(b)(1)(B)(ii), (iii) (2012).

34. *Id.* § 841(b)(1)(A)(ii), (iii).

35. Pub. L. No. 100-690, § 6371, 102 Stat. 4181 (codified as amended at 21 U.S.C. 844(a) (2012)).

36. H.R. REP. NO. 111-670, at 3 (2010).

37. *Id.* (citing Paul J. Goldstein et al., *Crack and Homicides in New York City: A Case Study in the Epidemiology of Violence*, in *CRACK IN AMERICA: DEMON DRUGS AND SOCIAL JUSTICE* 113, 120 (Craig Reinerman & Harry G. Levine eds., 1997)).

38. *Id.* (citing *2007 Report to the Congress: Cocaine and Federal Sentencing Policy*, U.S. SENT'G COMMISSION 32-33 (2007), http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/200705_RtC_Cocaine_Sentencing_Policy.pdf).

39. *2002 Report to the Congress: Cocaine and Federal Sentencing Policy*, U.S. SENT'G COMMISSION, at E-4 (2002), http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/200205_RtC_Cocaine_Sentencing_Policy/AppE.pdf.

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On average, African Americans served almost as much time in federal prison for a drug offense (58.7 months) as whites did for a violent offense (61.7 months), largely due to sentencing laws such as the 100-to-1 crack-to-powder disparity.⁴⁰

Finally, Michelle Alexander explores yet another critical factor contributing to the United States' high incarceration rate. In her book, *The New Jim Crow*, Alexander argues that the mass incarceration of African Americans, and African-American men in particular, serves as a system of racial control similar to Jim Crow-era laws that followed the abolition of slavery and Reconstruction.⁴¹ She observes that elements of Jim Crow policies are imbedded in initiatives such as the war on drugs, mandatory minimum sentences, and other governmental policies that increase incarceration and that are applied to African Americans and Hispanics in a discriminatory manner.⁴² By targeting African-American men through the war on drugs and its corresponding policies such as mandatory minimums and three strikes, the U.S. criminal justice system functions as a contemporary system of racial control.

What, then, must we do to fix this broken system?

II. LEGISLATIVE SOLUTIONS

Congress should pursue various legislative initiatives to address the dual problems of overincarceration and the system's disparate treatment of African Americans.

A. *Eliminate Irrational Disparate Sentencing Penalties for Similar Crimes*

As noted in the preceding section, Congress reacted to the problem of cocaine use by devising a sentencing regime that penalized crimes involving crack cocaine 100 times more harshly than those involving powder cocaine. As a result of this illogical sentencing system, there has been a dramatic increase in the number of federal drug offenders in prison, and particularly in the number of African-American men in prison.

40. Marc Mauer & Ryan S. King, *A 25-Year Quagmire: The War on Drugs and Its Impact on American Society*, SENT'G PROJECT 22 (2007), http://www.sentencingproject.org/doc/publications/dp_25yearquagmire.pdf.

41. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

42. According to Alexander, the impact of a felony conviction extends far beyond the end of the sentence. Once someone is branded as a felon, she explains:

[All] the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal. As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it.

Id. at 2.

In an effort to respond to this problem, while I was Chairman of the House Judiciary Committee, the Congress passed the Fair Sentencing Act (FSA), which was signed into law in 2010.⁴³ This measure reduced the crack-to-powder sentencing disparity from 100-to-1 to 18-to-1.⁴⁴ It also eliminated the 5-year mandatory minimum sentence for the simple possession of 5 grams of crack cocaine.⁴⁵ The FSA was a step in the right direction. 18-to-1 was a legislative compromise, but much more needs to be done. Legislation should be enacted to eliminate the disparity entirely and to apply the FSA retroactively.

B. Offer Opportunities That Will Reduce Recidivism

The current prison population would be significantly reduced if prisoners who have completed their sentences and are ready to reenter society were offered opportunities and support to ensure they will not return to prison. For example, the Second Chance Act⁴⁶ is designed to improve outcomes for people returning to communities from prisons and jails. The Act provides transitional assistance to ex-offenders dealing with the challenges of reentry into the community. The measure authorizes grants to states and local entities to assist in establishing drug and mental health treatment programs, providing transitional job services and other job training opportunities, and offering education, housing, and other critical services for formerly imprisoned persons who are returning to the community.⁴⁷ Many treatment programs and support services have been shown to reduce recidivism.⁴⁸

Although this legislation passed in Congress in 2008 with strong bipartisan support, it is currently past due for reauthorization. It is time to reauthorize the Second Chance Act and properly fund it to provide assistance to more former offenders.

C. Provide Alternatives to Prison

Prison should not be the only mechanism for dealing with an individual who has committed a crime. Laws that provide for alternatives to prison for low-level offenses, such as possession or use of drugs, would reduce recidivism,

43. Pub. L. No. 111-220, 124 Stat. 2372 (codified as amended at 21 U.S.C. §§ 841, 844, and 960).

44. *Id.* sec. 2, 124 Stat. at 2372 (amending 21 U.S.C. § 841(b)(1)).

45. *Id.* sec. 3, 124 Stat. at 2372 (amending 21 U.S.C. § 844(a)).

46. Pub. L. No. 110-199, 122 Stat. 657 (2008) (codified as amended in scattered sections of 18 and 42 U.S.C.).

47. *Id.* § 2978(b), 122 Stat. at 669-70 (codified at 42 U.S.C. § 3797w-2(b) (2012)).

48. See, e.g., *Evidence-Based Public Policy Options To Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rate*, WASH. ST. INST. FOR PUB. POL'Y 9 (2006) [hereinafter *Evidence-Based Public Policy Options*], <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf> (finding that future incidence of crime was 9% lower where inmates had access to vocational education in prison, and 6% lower where defendants could seek cognitive-behavioral therapy in prison or in the community).

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lower incarceration rates, diminish the severity of the criminal justice system, and reduce the number of guilty pleas motivated by the possibility of a long mandatory minimum sentence.

Alternatives to incarceration can divert low-level, nonviolent offenders away from prison through drug courts or work programs. Research has shown that “interventions that follow all evidence-based practices can achieve recidivism reductions of 30 percent.”⁴⁹ Not surprisingly, one study has found that investment in these programs would save taxpayers a considerable amount.⁵⁰ Moving low-level, nonviolent offenders from prison to community supervision would dramatically reduce the prison population, ensure that fewer people recidivate, lower the costs to the corrections system and American taxpayers, and reduce the social costs of mass incarceration.

D. Create Rational Sentencing Policies

Mandatory sentences, long sentences for nonviolent first offenses, and laws mandating increased penalties for repeat offenders lead to overincarceration. Often, Congress promulgates mandatory minimum sentences in the heat of political passions.⁵¹ Unfortunately, courts must eventually apply those laws to unrelated crimes committed much later—without considering the particular circumstances of those later crimes, the backgrounds of the individual defendants, or their actual roles in the crimes. A minimum sentence depends solely on which statute a person is found to have violated, rather than a holistic analysis of the facts and circumstances of the crime. Further, mandatory minimums place the primary sentencing discretion in the hands of one side of an adversarial process—the prosecution—rather than in the hands of a dispassionate judge.

Federal judges raise concerns about being constrained by unreasonable and unjust mandatory minimum sentences. In one case,⁵² a 22-year-old man served as a middleman in a series of hand-to-hand crack sales in 2010. Over the course of 4 transactions involving a federal informant, the defendant handed over a total of 88.1 grams, or 3.1 ounces, of crack, for which he earned \$140. Despite his very minor role in the transaction, the defendant was convicted of selling more than 28 grams of crack, which automatically triggered the imposition of a 5-year mandatory minimum sentence. Lamenting that the proceeding “had all the solemnity of a driver’s license renewal and took a small fraction of the time,” Judge Gleeson of the Eastern District of New York nevertheless observed that he was not permitted to consider the defendant’s very limited role in the transaction—let alone the defendant’s remorse for the offense or his personal background—because the prosecutor had charged the defendant with a crime that

49. *One in 100*, *supra* note 12, at 24.

50. *Id.*

51. *See supra* Part I (explaining how poorly informed public opinion pushed Congress to impose harsh mandatory minimums in the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986) (codified as amended in scattered sections of U.S.C.)).

52. *U.S. v. Dossie*, 851 F. Supp. 2d 478 (E.D.N.Y. 2012).

called for a mandatory 5-year prison sentence.⁵³ Indeed, Judge Gleeson stated in the first sentence of his opinion that the case had “illustrate[d] how mandatory minimum sentences in drug cases distort the sentencing process and mandate unjust sentences.”⁵⁴

The practice of enacting legislation that includes mandatory minimum sentences must stop. Last Congress, Senator Rand Paul (R-Kentucky) successfully modified an amendment authored by Senator Rob Portman (R-Ohio) to the Food and Drug Administration Safety and Innovation Act that would have applied harsh mandatory minimum sentences to future offenses involving new synthetic drugs.⁵⁵ We need to continue to work with members of both parties to keep mandatory minimums out of bills.

E. Offer Comprehensive, Evidence-Based Prevention and Intervention Programs

Prevention efforts that focus on children and families at risk of entering the criminal justice system offer a key solution to overincarceration. These programs have been proven not only to benefit children, families, and communities, but also to greatly reduce criminal justice and social welfare costs to taxpayers.⁵⁶ Programs such as teen pregnancy prevention, prenatal care, new parent training, nurse home visits, Head Start and other early childhood education programs, quality education, after-school programs, summer recreation and jobs, guaranteed college scholarships, and job-training programs work cost-effectively to reduce crime by breaking the cycle of criminal justice system involvement.

That is why I have joined Representative Robert C. “Bobby” Scott in introducing the Youth Promise Act.⁵⁷ The Youth Promise Act would put evidence-based approaches to crime reduction into legislative practice. This Act would mobilize community leaders, including law enforcement officials, educators, health and mental health professionals, and social service providers. These leaders would come together to form PROMISE Coordinating Councils, which would identify their communities’ needs with regard to youth and gang violence and develop plans to address these needs. Their communities would then be eligible for grants to implement evidence-based strategies aimed at dis-

53. *Id.* at 483-84.

54. *Id.* at 478.

55. Monica Pratt Raffanel, *FAMM Applauds Sen. Rand Paul for Opposing Minimums*, FAMILIES AGAINST MANDATORY MINIMUMS (May 29, 2012), <http://www.famm.org/newsandinformation/PressReleases/FAMMApplaudsSenRandPaulforOpposingMinimums.aspx>.

56. See, e.g., NAT’L RESEARCH COUNCIL COMM. ON ASSESSING JUVENILE JUSTICE REFORM, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* (Richard J. Bonnie et al. eds., 2012); *Evidence-Based Public Policy Options*, *supra* note 48.

57. H.R. 1318, 113th Cong. (2013).

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mantling what the Children's Defense Fund calls the "Cradle-to-Prison Pipeline" and putting children on a Cradle-to-College Pipeline instead.⁵⁸

CONCLUSION

Over the last 4 decades, we have seen an unprecedented rise in the prison population and a disturbing rise in the number of African Americans in prison. As a nation that holds itself out to the world as the land of the free, the United States cannot continue this unparalleled level of incarceration. Congress must take thoughtful action now to end overincarceration and its disparate impact on African Americans.

58. See *America's Cradle to Prison Pipeline*, CHILDREN'S DEF. FUND (2007), <http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-report-2007-full-lowres.pdf>.

