CRIME & PUNISHMENT

Imagining A Safer Future For All

**A Discussion Guide
For Exploring Possibilities For Public Policy**

Developed by the Interactivity Foundation

IF...

Crime & Punishment

Special Thanks to the Contributing Flickr Photographers

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Why Talk About Crime & Punishment

Although many of us may not have daily or direct involvement with our criminal justice system, we likely have a general interest in and awareness of some of the broader issues and trends in our public policies and our rhetoric concerning crime and punishment. These issues, trends, and rhetoric may include several or more of the following:

1. The popular mandate to "get tough" on crime
2. The widely held belief that "nothing works" as it relates to rehabilitation and the continuing high rates of recidivism
3. The increased rate of incarceration and generally decreasing crime rates
4. The shifting trends in law enforcement, from high-tech SWAT teams to "community policing"
5. The privatization of some prison systems
6. The increasing severity or duration of prison sentences—especially for drug-related crimes
7. The disproportionate rates of arrest, incarceration, and victimization of minorities and the poor
8. The 40-year "war on drugs" being waged in part through our law enforcement and penal policies
9. The increased public costs of prisons, particularly "supermax" facilities that feature more cells for isolation/solitary confinement.

Of course these trends, rhetoric, and the public policies that result have consequences—both short and long term. And over the last few years especially, there has been a notable increase in the articles, books, and news stories that analyze these consequences and highlight at least two significant and disturbing longer-term changes to our criminal justice system.

First, the overall rate of incarceration in the United States hadn't just increased slightly over the last 30 years or more. It had gone up exponentially—multiple times, in fact. Although statistics are always problematic and subject to examination and review—especially crime and punishment figures—the larger trend was clear and overwhelming: The U.S. incarceration rate in 2009 was roughly five times higher than our historic average and roughly seven times higher than most other developed countries. Today, the United States is the world's leader in both the overall number of incarcerated individuals and the *rate* at which it locks up its citizens. With just about 5% of the world's population, the world's longest surviving democracy has nearly 25% of the world's prisoners. The term now commonly used to describe this singular shift in U.S. law enforcement and penal policy is mass incarceration. It seems all too apt.

Second, the disproportionate effects of our crime and punishment policies on minorities—African Americans especially—has gotten worse (in some cases far worse) even as overall crime rates have dropped. Black Americans not only continue to be victimized by crime at much higher rates than whites, but they are also far more likely to be caught and imprisoned. At current trends, one-third of black men with no college education will be incarcerated at some point in their lives. And for those who don't finish high school, the rate is 60%. In larger U.S. cities, young black men are more likely to go to prison than to college. Fifty years after the civil rights movement, the racial and economic divisions in our country are worsening, and some see our criminal justice system as part of a "racial caste system" comparable to, or worse than, the Jim Crow laws of the old South.

Taken together, these long-term policy trends of mass incarceration and massively disproportionate racial impacts raise basic questions about how well our criminal justice system is working for everyone—for the safety of the general public, our communities, neighborhoods, crime victims, as well as the rights of the accused and convicted. Increasingly, experts, governments officials, politicians, and voters from across the political spectrum are re-examining these issues and some of the other broad trends or assumptions described above. They are asking— whether the current system is sufficiently:

1. **Effective?** Does it deter enough crime and adequately ensure the safety of all citizens in all neighborhoods? It seems that while crime rates have generally declined, there is no consensus on why. Crime remains (and is increasingly) concentrated and far too high in many neighborhoods.

2. **Just or fair?** Can any society thrive for long or consider itself just if it tolerates or actively supports policies that produce vastly disproportionate racial and class impacts? Also, are we punishing the right crimes and fairly?

3. **Efficient?** What is it costing—not only in human misery but also tax dollars? It seems that even as some crime rates have decreased, many of the costs—especially for our penal system—have increased.
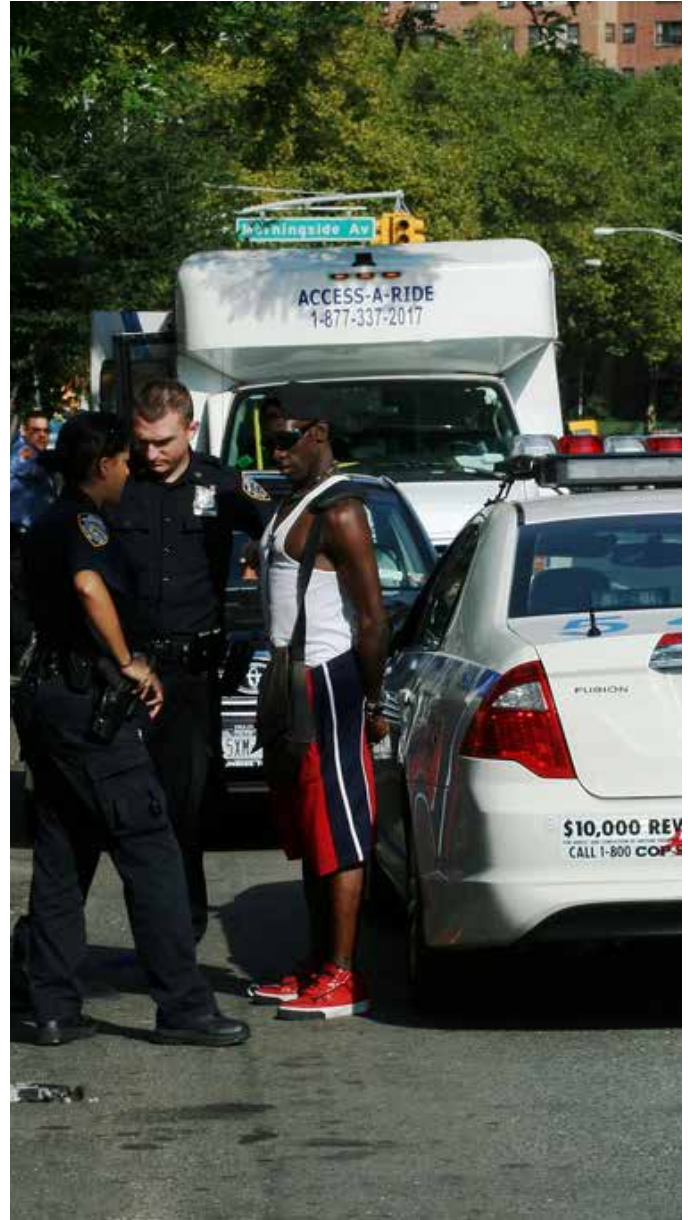
You Be the Judge

Another way to think about these issues—in addition to these broad concerns (and many others that you may have)—is to consider an individual case and how you would resolve it, something like the following:

A defendant has been arrested and charged with selling drugs for a *third* time. On the two previous charges, the defendant was *convicted* and served his or her sentence. While the defendant hotly disputes the facts in this new case, those facts are sufficient to sustain a third felony conviction. If you were the judge or the prosecuting attorney in this case, *what prison sentence or other punishment* would you order or recommend? What other facts or information, if any, would you want to know? Would any of the following additional information affect your decision? How and why?

What if . . .

   a. The prior convictions were for separate drug sales, months apart, and involved tens of thousands of dollars? Alternatively, what if the first two felony convictions arose from a single arrest and concurrent facts: selling small amounts of crack cocaine on one occasion to two separate buyers—for $40 and $120, respectively.

   b. There is evidence that the defendant has been continually involved in drug trafficking in the four-year period since the last arrest? Alternatively, what if the defendant has not been in any trouble with the law in that four-year interim, though nine months of that time was spent in a work-release program?

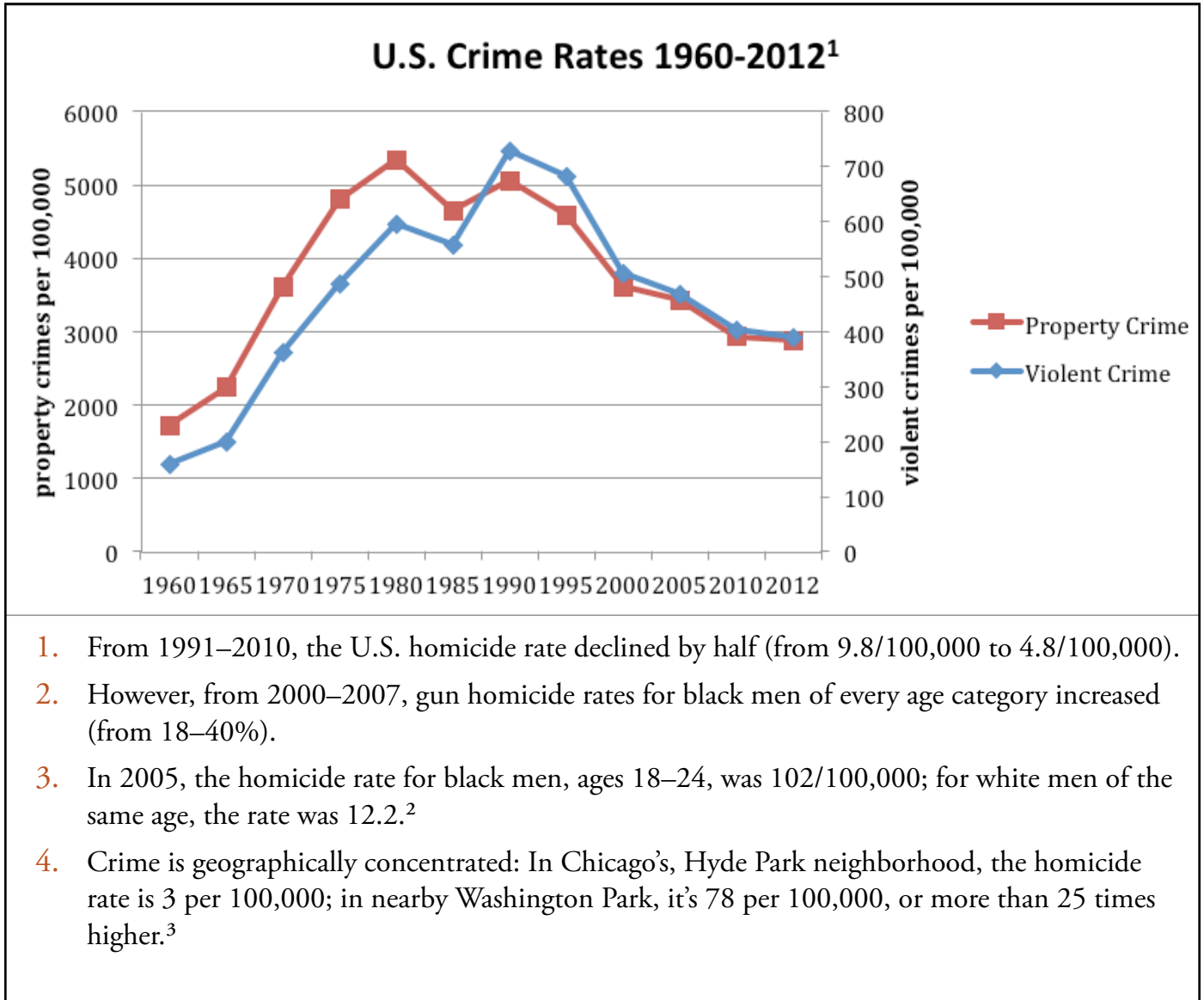   c. The defendant has a history of violence? Alternatively, what if there is no evidence or accusation of violence?

d. The evidence at trial showed that the defendant was the leader or a principal player, among several defendants, and this damaging testimony came from uninterested third parties? Alternatively, what if the most critical evidence at trial came from the testimony of other defendants, each of whom: (i) admitted to having a greater role in the crime than the defendant, whom they say had a minor role, (ii) received a reduced sentence in exchange for their testimony (a plea bargain), and (iii) had a much longer, more extensive criminal history?

e. The defendant is an unemployed black male, a non-custodial parent of five children by three different women with unpaid child support and a spotty or non-existent employment history? Or the defendant is a white suburban college kid from a "good family" accused of selling pot and/or prescription Adderall (for ADHD) who just happened to get caught—for a third time—even though "everyone does it" on campus?

f. Alternatively, what if the defendant is a single working mother and custodial parent of three minor children who is accused of being an accessory to her ex-boyfriend's drug sale because he hid some narcotics in her apartment? She vigorously denies any knowledge of the hidden drugs or any drug sales, but the ex-boyfriend and his associates testify otherwise in exchange for reduced sentences.

g. As judge or prosecuting attorney, you have wide discretion in sentencing in such cases, including everything from a long-term prison sentence to a work-release program or probation? Alternatively, what if your state law allows no discretion for the judge or prosecutor and requires a life sentence without the possibility of parole for anyone convicted of a three felonies without regard to the seriousness or extent of the offenses or other facts?

Finally, what if the "alternative" facts listed above are all true? Stephanie George (now 42) is serving a life sentence in Florida without the possibility of parole because 15 years ago an ex-boyfriend and two of his accomplices hid cocaine in her attic and then testified—in exchanged for reduced sentences—that she knew that it was there. And while the ex-boyfriend and his accomplices are now out of prison, the state will continue to pay upward of $50,000 per year for the rest of Stephanie's life for her to share an 11-by-7-foot cell with another inmate. *For Lesser Crimes, Rethinking Life Behind Bars, The New York Times,* Dec. 11, 2012.

Selected Crime & Punishment statistics, as highly contextual, contingent, and potentially misleading or otherwise problematic as they maybe**

U.S. Crime Rates 1960-2012[1]

1. From 1991–2010, the U.S. homicide rate declined by half (from 9.8/100,000 to 4.8/100,000).

2. However, from 2000–2007, gun homicide rates for black men of every age category increased (from 18–40%).

3. In 2005, the homicide rate for black men, ages 18–24, was 102/100,000; for white men of the same age, the rate was 12.2.[2]

4. Crime is geographically concentrated: In Chicago's, Hyde Park neighborhood, the homicide rate is 3 per 100,000; in nearby Washington Park, it's 78 per 100,000, or more than 25 times higher.[3]

** Sources listed on page 37. As popularized by Mark Twain, "There are three kinds of lies: lies, damned lies, and statistics." And this is especially so for crime and punishment statistics, where terms, definitions, methods of data collection, and multiple other factors vary significantly over both time and place. This is especially true for rates of reporting for example: from 2006 to 2010 in the U.S., surveys show that approximately 52% of violent crimes, 60% of property crimes, and 65% of sexual assaults and rapes were never reported. These differences make nearly all statistics and their comparisons in this field highly "suspect," at least. Accordingly, the statistics provided throughout this Guide are offered only to pique interest and spur discussion and only as suggestive of certain general trends and/or common perceptions of trends (including their underlying assumptions or errors). They are not provided for their specific accuracy or ultimate truth, which is, more appropriately, for your own discussion and determination.
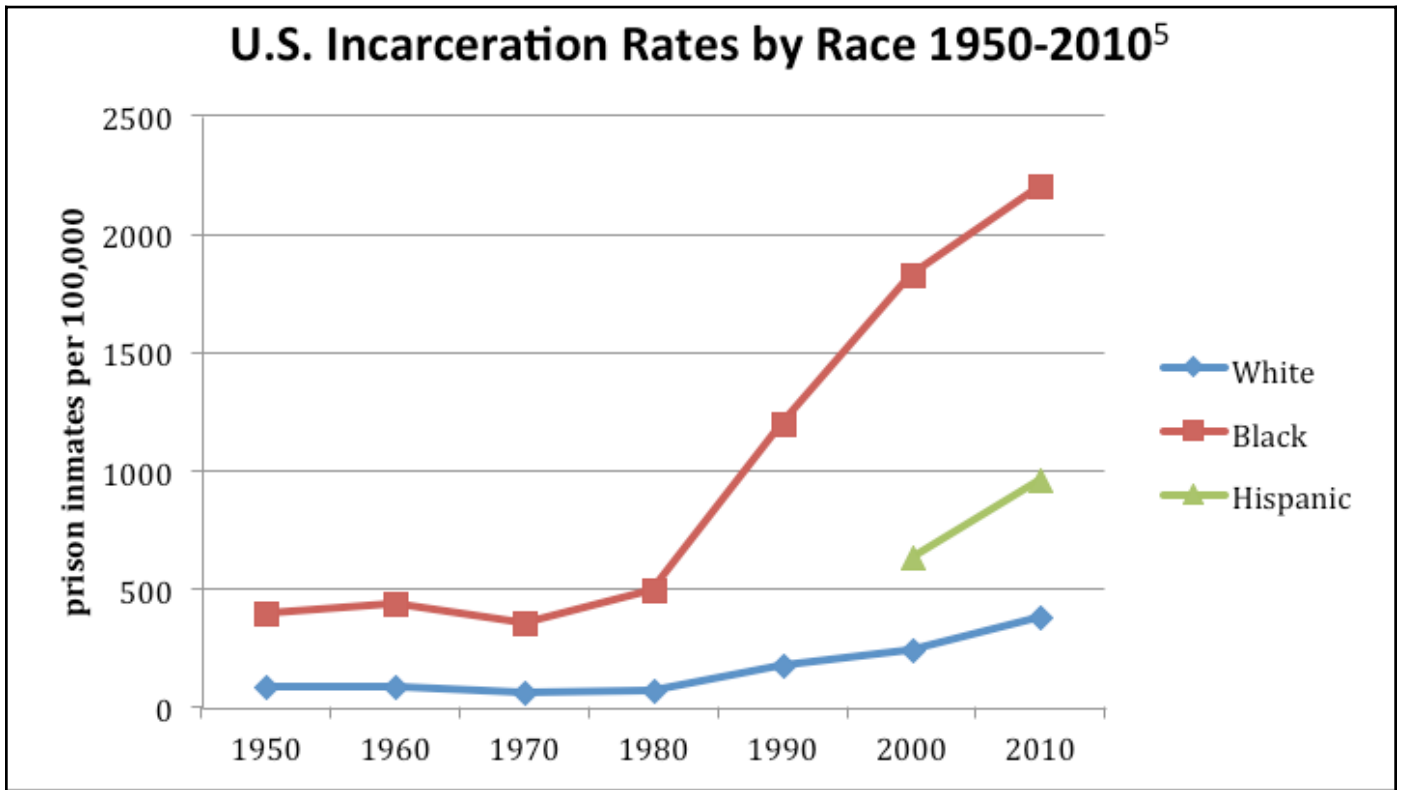
U.S. Incarceration Rates Overall & By Gender 1925-2011[4]
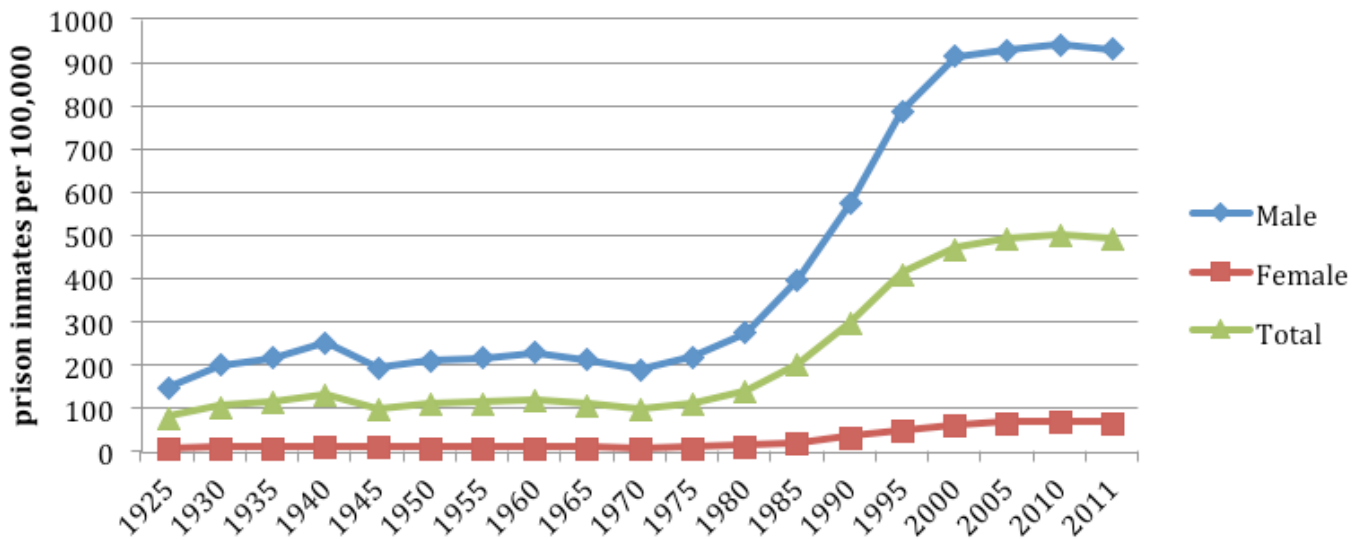
Rates only include those held in federal and state prisons, not those held in jails. If jail prisoners are added, the *total* incarceration rate (combined male and female) for recent years is well into the mid-700s per 100,000.

Your Concerns

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U.S. Incarceration Rates by Race 1950-2010[5]

Chart: prison inmates per 100,000 (y-axis, 0 to 2500) vs. year (x-axis, 1950 to 2010), with lines for White, Black, and Hispanic.

1. The United States imprisons a larger percentage of its black population than South Africa during apartheid.

2. There are more African American adults under correctional control now than were enslaved in 1850.

3. More black men are disenfranchised today than in 1870, the year the 15th amendment was ratified.[6]

4. Blacks are nine times more likely than whites to be imprisoned for drug crimes, yet rates of illegal drug use vary little among the races: 8% for Latinos, 9% for whites, and 10% for blacks.[7]

Just the Facts, Ma'am

Substance Use/Abuse (includes alcohol, illegal drugs, and abuse of prescription drugs)
- 80% of offenders abuse alcohol and/or other drugs.
- Nearly 50% of prison and jail inmates are clinically addicted.[8]

Mental Health and Crime
- More than 50% of all prison and jail inmates have mental health problems (major depression, mania, and psychotic disorders) and the number of these inmates quadrupled from 1998 to 2006.
- The rate of reported mental health disorders in the state prison population is five times greater (56.2%) than the rate reported in the general adult population (11%).[9]
- There are more mentally ill people in jails and prisons than in hospitals.[10]

Recidivism
- Nearly 70% of people released from prison are re-arrested within three years.[11]

Costs
- Annual cost per prisoner varies by geography and jurisdiction, but in 2008, it averaged $30,600 per inmate.[12] Average annual cost for 12 months of college—under a "moderate" budget: $23,470 in 2012–2013.[13]
- Prisons (federal, state, and local) cost taxpayers more than $75 billion per year.[14]
- After adjusting for inflation, spending on corrections has tripled in the past 20 years.[15]
- Other than Medicaid, prison costs are now the fastest growing state budgetary item.[16]
- In most states, prison costs now consume a larger portion of state budget expenditures than all of K–12 education.[17]

Your Concerns

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Key Questions for Crime & Punishment

1. What causes crime? Is it:

- Nature or genetics/genes—just some "bad seeds"?
- Nurture—bad parenting, dysfunctional families, poor schools, poor or non-existent medical care?
- The broader environment—both social and physical. Poverty/economics/necessity, lack of opportunity, racism, violent video games and other media, or pollutants such as lead in the environment and our bodies?
- Opportunity/convenience—people commit crimes when they can or think they can get away with them?
- Substance abuse, addiction, mental illness?
- Moral failings—both individual and societal; failure to set and enforce expectations or a sense of shame?
- Governments—by criminalizing behavior that is unpopular or inconvenient for the ruling class(es)?
- All, some, none of the above, or other

2. What is the purpose or goal of our criminal justice system? Should it provide:

- Safety—both for the broader public and for each individual? How much safety and at what cost?
- Justice for both crime victims and those accused or convicted of crimes?
- Public order to promote and ensure the smooth functioning of our economy?
- Simply a better, less violent alternative to controlling misbehavior than vigilantism, vendettas, or feuds?
- A moral template or guide for our behavior or—conversely—a floor, a legal minimum, but no more?
- Employment for police, prosecutors, court staff, and prison/parole officers?
- All, some, none of the above, or other?

3. Why do we punish offenders, or what is the purpose of our penal system? Should it:

- Provide for a sense of retribution or payback from those who violate society's rules: "an eye for an eye" or, as it we do it now, offenders must do "time for their crime"?
- Deter future criminal acts by providing certain, swift, and severe punishment that will dissuade others?
- Help to ensure safety and property by "incapacitating" the bad guys by taking them off the street?
- Help rehabilitate offenders by treating their mental illness, substance abuse, and providing job skills?
- All, some, none of the above, or other?

4. How are our criminal justice laws and policies made and sometimes changed?

- By whom? By policymakers (politicians, government officials, experts, etc.) acting on their own? Or by the public by pressuring their policymakers? Or by corporations, other special interests, or other persons?

- And how? By comprehensive and methodical consideration of multiple viewpoints and the most recent and reliable data? Or by political bargaining and/or crisis, media, or popular reaction?

- What role does education play? What role should it play? And who needs education—policymakers or the public?

- All, some, none of the above, or other?

5. Other Key Concerns and Questions

- Race, class, gender, and age are intertwined with every aspect of this topic and proposed policy.

- Discretion or power: who should have it, how much, and how should we best control or limit its misuse or abuse? Should police, prosecutors, judges, probation/parole offices, crime victims, the accused, the neighborhood or community, politicians, and/or the taxpayers have more or less power and why?

- There are multiple types or categories of crime: felonies, misdemeanors, violent crimes, property crimes, drug crimes, "consensual" or "victimless" crimes, white collar and corporate crime, fraud, tax evasion, juvenile crime, civil disobedience, etc. These (and many other) labels can trigger very different concerns and impulses.

- Limited public resources: Should more or fewer tax dollars be spent and on parts of our criminal justice system? Also, should commercial or corporate funding substitute for some public funding? "This court or rehabilitation program brought to you by Google or Wells Fargo." What could go wrong?

- For every policy possibility and proposed implementation, carefully consider these three questions: Will it work and will it be effective? Will it be fair or just to everyone? And what will it cost?

6. Other: Your Key Concerns?

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Summary Listing of Policy Possibilities

Policy Possibilities	Concerns What problems does it address?	Possible Actions Some of what could be done?	Pages
A. **Get Smart[er] to Prevent and Better Deter More Crime:** Reduce opportunities for crime and make bad behavior even more "inconvenient"	• Increased sentences and high incarceration rates don't deter crime • Alternative approaches rely too much on changing human nature	• More and better data & analysis on what works • Use more and better "passive" blocks to crime • Improved design of places and products	14-17
B. **Support Families, Strengthen Community, Reintegrate Society**	• Family and community stress and dysfunction often lead to crime • We've segregated, ignored, and imprisoned minorities and the poor	• Family respite centers • Health care for all • Improve public education • Support stable parenting • Fight child and domestic abuse	18-21
C. **Less Prison and More (and Better) Treatment for Mental Illness and Substance Abuse**	• Substance abuse and mental illness are public health concerns • Prisons are not able (or designed) to treat either	• Improve access to treatment for all • Better treatments and regulation • Alternative sentencing, courts, and facilities	22-25
D. **Fix Our Prison System**	• Current incarceration rates are far too high, costly, and fail to deter crime and grossly discriminate against minorities in urban areas	• Divert many more to non-prison sentences • Reduce sentences and other sanctions • Focus on upstream crime	26
E. **Do the Right Thing:** Re-examine our values, beliefs, and rhetoric on crime, punishment, race, class, and more	• We first must change hearts and minds • Honestly discuss race, class, crime, and punishment	• National discussion with regular people • Change media portrayals • Re-emphasize and teach ethics and civics	30-33

A. Get Smart[er] to Prevent & Better Deter More Crime:
Reduce opportunities for crime and make bad behavior even more inconvenient

Instead of relying primarily on the power of rational deterrence ("bad things will happen if I do it"), or on changing human nature, or engaging in other similarly difficult social or political reforms, what if we implemented a combination of more specific and "evidence-based" policies to reduce crime and increase public safety? These multiple reforms would vary widely, but they would all be based on the best data and research into what practically "works," even if just marginally, to reduce crime. Working from the idea that rather than attempting to change all human nature, we instead focus on changing the context, the circumstances, the setting, and thereby removing or greatly reducing the temptation, the access, and the option altogether so that bad behavior is impossible or at least really inconvenient.

Possible Motives: What's behind this approach (some of the underlying concerns, theories, goals)? According to classic theory, in order for any punishment to deter crime, the punishment must be certain, swift, and sufficiently severe. While many of our punishments (especially for drug crimes) have become increasingly severe, there is little about our criminal justice system that is—or is ever likely to become—very certain or swift. Under these conditions, studies show that increasing severity (longer prison sentences) just doesn't work. It doesn't deter crime. In addition, many of our other responses to the problem of crime involve singular, sometimes grand, reforms— a good many of which are either practically and/ or politically unworkable because they swim upstream against human nature or the realities of contemporary politics. This approach focuses less on changing either basic human nature or difficult political realities and instead focuses more on a combination of specific and "evidence-based" or data-driven reforms and policies to change the settings or circumstances. Essentially, they reduce the opportunities and temptations, and change the incentives. While some of these reforms may yet require significant (and sometimes still difficult) political change, each of them is likely to nudge us away from crime.

A. Get Smart[er] to Prevent & Better Deter More Crime:
Reduce opportunities for crime and make bad behavior even more inconvenient

Possible Means: How? Some of the possible reforms or specific proposals under this approach could include:

1. **Data & Analysis.** First and always, asking what works and what doesn't. What has been proven to reduce or deter crime in the first place—before the need to catch the crooks afterward? Relatedly, dedicate more resources to both good data collection (standardization/ best practices) and good analysis at all levels of the system.

2. **Policing Practices.** Use the data and analysis to focus enforcement resources on the few "high volume" offenders ("focused deterrence"), and/or high crime areas ("hot spot" policing), and/or linked crimes ("broken windows" policing).

3. **Passive Blocks.** Employ more "passive" blocks to reduce illegal/undesired behaviors.
    a. For drunk driving: make ignition interlocks standard equipment and promote walkable park and ride services.
    b. For gun violence: trigger locks, smart guns, limits or bans on automatic weapons, regulate sales at gun shows, and finally link up the databases for state and national mental health and substance abuse records.

4. **The Environment & Improved Design**
    a. For architecture and urban planning for all public spaces: improve sight lines, add cameras, control access, increase foot traffic, better lighting, etc.
    b. For consumer products—like mobile phones—reduce the "CRAVED"* design features that lead to theft: make them less concealable (use audio alarms), removable and available (more tethers/public locks), valuable (reduce value by making them standard equipment or commonplace like car stereos), enjoyable (fewer games?), and disposable (locking codes).
    c. For the environment, continue to "get the lead out" of gas, paint, and other consumer products. Recent studies show that blood lead levels correspond more closely to crime rates than any other social variable.

5. **Abolish Paper Money.** Use some form of electronic funds transfer (like credit/debit cards) for all transactions.

6. **Business Practices.** Increase accountability and reduce cost shifting. Require corporations to pay the increased police costs from their onsite check-cashing services, unlit parking lots, and ineffective shoplifting policies.

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* Clarke, Ronald V., *Hot Products: Understanding, Anticipating and Reducing Demand for Stolen Goods*, Police Research Series, Paper 112, 1999. Policing and Reducing Crime Unit, Research Development and Statistics Directorate. London: Home Office.

A. Get Smart[er] to Prevent & Better Deter More Crime:
Reduce opportunities for crime and make bad behavior even more inconvenient

On Appeal – some other concerns/considerations and possible further discussion questions:

1. Under the different "policing practices" described in this approach, won't all or some of the affected crime simply be displaced—that is, shift to other locations, persons, or crimes?

2. Does this approach sufficiently address the "root" causes for crime? Does it need to if it works? Can it be combined with other approaches?

3. How might our cities and public spaces look and work if we designed (or re-designed) them as suggested to reduce crime or temptations to crime?

4. Why only "passive" blocks for alcohol and guns? Why not more directly restrict them?

5. How could we build and maintain taxpayer support for less sexy policies (like data collection and analysis) that may take years to "pay off" and aren't tangible new "equipment" or quick fixes?

6. Could efforts to increase data collection overwhelm our best intentions so that we end up with "form-over-substance" problems: e.g., "all the beat cop does is fill out forms to document what he or she should be doing."

7. How might we train, govern, and guide the analysts and other experts under this approach? Would they be tempted to manipulate the data and/or engage in racial profiling or social engineering against either the public interest or individual freedoms?

A. Get Smart[er] to Prevent & Better Deter More Crime:
Reduce opportunities for crime and make bad behavior even more inconvenient

8. Abolishing paper money might greatly reduce crime. It might also reduce our privacy (as credit cards transactions are traceable) Also, would the absence of paper money work against the homeless and others without accounts at banks or other institutions? Could they get or maintain credit cards?

9. What about privacy and "Big Brother" surveillance concerns? Is there some level of street crime that we're willing to tolerate in exchange for greater anonymity and privacy?

10. Should public cameras and merchandise tracking codes become our new "town gossip" so that law enforcement (and/or everyone else) can know everywhere we go and everything we do or buy?

What would you recommend? (your notes, reflections, revisions)

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B. Support Families, Strengthen Community, Reintegrate Society

The pathways to crime and our pipelines to prison are often paved and plumbed early in life and all too effectively from within our increasingly segregated communities and our most struggling families. Too many of us are segregated by race, ethnicity, poverty, class, geography, education, and other factors. Too many are treated as invisible, unwanted, morally deficient, and generally negligible by the rest of America—or as fodder for sensationalized TV shows and the prison-industrial complex. Alternatively, what if we recommitted to supporting struggling families, strengthening our communities, and reintegrating with our neighbors? This policy possibility would re-commit us to working together to provide affordable housing, child care, and safe and successful schools; reduce child and domestic abuse; increase access to health care; and build better paths to college, jobs, and opportunity for all.

Possible Motives: What's behind this approach (some of the underlying concerns, theories, goals)? Families of all income and class levels struggle with abuse, discipline and behavior, and lowered expectations. And with a declining middle class and growing gap between the rich and poor, millions more families and children are plagued by additional problems of poverty, joblessness, poor schools, child care, poor housing or homelessness, inadequate or non-existent health care, and crime. These and other problems too often contribute to cycles of neglect, abuse, poor educational outcomes, limited employment opportunities—and all too predictably—crime and imprisonment. In fact, many Americans increasingly feel that rather than make serious and sustained efforts to address these admittedly difficult social problems, we have instead used our burgeoning criminal justice system to simply vacuum up and warehouse the growing numbers of those who are deemed difficult; costly; damaged; economically superfluous; or—even worse— undesirable "others" because of their poverty, culture, or skin color. This policy possibility recommends that we re-commit to taking on some of these root social problems and the increasingly costly burdens they impose on our criminal justice system, which is largely unsuited, expensive, and unsuccessful in addressing them.

Possible Means: How? Some of the possible reforms or specific proposals under this approach could include:

1. **Child Care, Parenting, and Family.** Government subsidized child care for all families under a certain income.

   a. Provide family respite centers with child care and counseling for parents under stress, shift workers, and single parents.

   b. Support long-term, stable parenting relationships (of all types) with counseling, stronger enforcement of child support, and—perhaps more controversial—discouraging single-custody arrangements and divorce.

   c. Invest more law enforcement and social services resources into reducing child and domestic abuse.

   d. Require paid family medical leave for all employees.

2. **Education.** Make a significant national investment in improving schools in our most troubled communities through:

   a. Required classes in parenting, child development, and family health for all school students and make them available to adults.

   b. Cut the "school-to-prison" pipeline. Ban all school disciplinary policies that criminalize student behavior.

3. **Health care.** Universal access to health care for all, or a similar single-payer system to insure the more than 40 million Americans without health insurance.

4. **Housing.** Cooperative and/or shared housing and support for co-parenting and shared child care arrangements.

5. **Jobs.** Institute a national jobs program and jobs-training program, e.g., a new CCC-style program. Repair our crumbling infrastructure and require 18 months of job training and public service for all students and formerly imprisoned citizens.

6. **Community.** Support community-based programs and participatory governance, e.g., community policing, neighborhood associations, participatory budgeting, tenant ownership, and governance.

B. Support Families, Strengthen Community, Reintegrate Society

On Appeal – some other concerns/ considerations and possible further discussion questions:

1. Could this approach be part of a larger, broader society-wide effort to renew and place greater importance on our shared responsibilities—to families, children, and generally to each other?

2. Do we know that supporting families and strengthening communities will actually reduce crime?

3. Are the rich and poor different in how they respond to government benefits? That is, do the rich always use their wealth and re-sources (including their tax breaks or other government benefits) for the public good (whether through philanthropy or trickle down economics). And do the poor always lose their incentive to work or learn when they receive government benefits (the "moral hazard" argument)? Or are the rich and poor equally prone to virtue and vice?

4. Many will view this approach as part of an all-too-conventional (and, in many places, politically unpopular) liberal political agen-da. What arguments might conservatives make for alternative approaches to these concerns? Alternatively, why might they sup-port some parts of this approach?
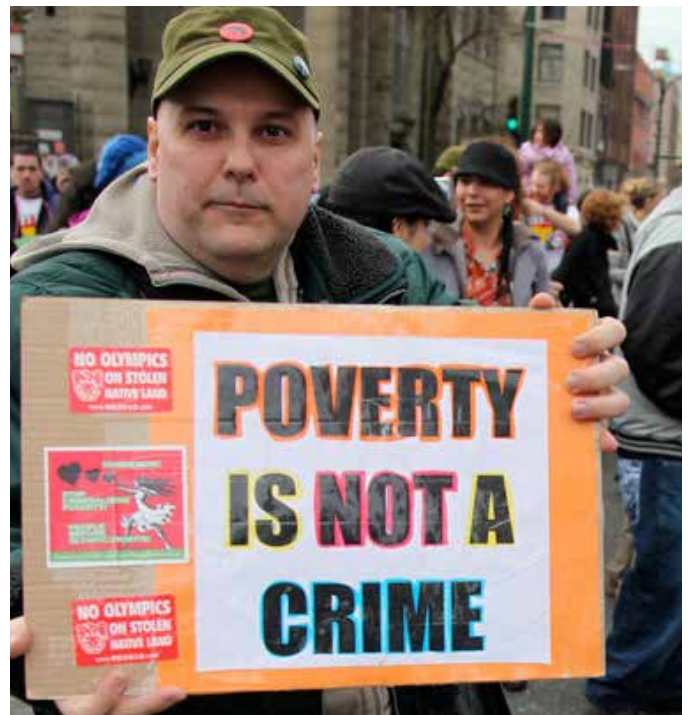
5. How can we break the cycle of abuse in families? Do we have any policies or treatments that are shown to work?

6. How can we best balance our strong desire to respect individual choice and autonomy in our personal lives—especially our family life and parenting choices—with our desire to help all families and children? Should parents ever stay together for the sake of the children? Or be forced or encouraged to?

7. Can we—should we even try to—identify the "it" factor (or factors) that makes for successful parenting, children, and families? What does "successful" mean and who should define it?

8. Costs? Universal health care, jobs programs, child care, and education reform will cost money—likely lots of it. How might we gain and maintain political and taxpayer support for some of the more costly measures in this approach?

What would you recommend? (your notes, reflections, revisions)

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C. Less Prison and Better Treatment for Mental Illness & Substance Abuse

What if we increasingly viewed that significant portion of crime arising out of or related to substance abuse or mental illness as a public health issue—one that requires a separate and much more systemic and comprehensive approach than just punishment and prison? This policy possibility would dedicate significantly more public resources to the treatment of substance abuse and mental health conditions as alternatives to incarceration. It would support the development of more effective therapies and treatment programs. This approach envisions a world where many more at-risk citizens receive effective treatment, therapy, and counseling, and proportionately fewer arrestees and inmates suffer from untreated or inadequately treated mental health or substance abuse problems.

Possible Motives: What's behind this approach (some of the underlying concerns, theories, goals)?

1. A sizable portion of our prison population and released prisoners (as well as a significant proportion of the general population) suffer from mental illness and/or substance abuse.

2. Many jurisdictions have significantly reduced funding—or never had funding—for even minimal evaluation and treatment programs. This is not only a moral failing, but also a practical and economic one since so many people in our community with untreated or inadequately treated conditions become repeat offenders.

3. Inmates with mental health and/or substance abuse problems use a vastly disproportionate amount of prison resources.

4. A large and increasing portion of substance abuse arises from "diversion" of prescription drugs to non-prescribed uses or abuse.

5. While most substance and mental health treatments aren't simple, certain, or "quick and easy," there are treatments that can help some. And, with improving drugs and scientific understanding of brain function and behavior, we may be able to better treat more people.

C. Less Prison and Better Treatment for Mental Illness & Substance Abuse

Possible Means: How? Some of the possible reforms or specific proposals under this approach could include:

1. **Specialized Courts and Prisons.** Explore rehab and non-prison facilities for offenders with substance and mental health problems (e.g., "drug courts").

2. **Alternative Sentencing and Treatment Programs.** Develop, enact, and support alternative sentencing and treatment for offenders with mental health and/or substance abuse problems, e.g., "Treatment Instead of Prison" (or "TIP") programs.

3. **Counseling/Therapy.** More and better non-drug treatments.

4. **Drug Treatments.** Developing effective vaccines (and other and better drugs therapies) for both the diseases and symptoms of mental health illnesses and substance abuse.

5. **Expanded Insurance Coverage and Free Clinics.** Increase access to mental health and substance abuse services for everyone through expanding insurance coverage and providing more free clinic options.

6. **Tighter Regulations on Prescription Drugs.** Enact tighter regulations of prescription drugs and other controlled substances to reduce the opportunity for abuse and related crimes (e.g., tighter controls on the supply chain and the prescription process, making all prescriptions electronic and secure, and eliminating handwritten paper prescriptions to reduce forgery).

7. **Include Family & Friends.** Require that the offender's family and significant others also participate in and support treatment.

'OUT OF NOWHERE'
© 2006 PATRICIA OBLETZ

PUT YOUR MONEY WHERE YOUR MIND IS

MENTAL ILLNESSES RUN IN EVERY FAMILY

EDUCATE YOURSELF,

C. Less Prison and Better Treatment for Mental Illness & Substance Abuse

On Appeal – some other concerns/ considerations and possible further discussion questions:

1. This approach will be costly. Separate courts, prison/treatment facilities, and publicly provided counseling and therapy are not cheap.

2. Over the long haul, this approach might help decrease homelessness, increase social stability, and decrease the social costs associated with substance abuse and mental illness. How would we maintain taxpayer support for this long-term pay-off?

3. What should we do for those who still don't respond to treatment?

4. How should we treat the "reluctant patient"? Should the criminal justice system be the entry point for getting broader court orders that commit the addict or mentally ill to treatment programs?

5. Will this approach reduce overall consumption of alcohol and other drugs? If so, will those who profit from sales of alcohol and other "controlled substances" fight this approach? Or what would happen if we had an effective vaccine or other treatment for alcoholism and other addictions?

C. Less Prison and Better Treatment for Mental Illness & Substance Abuse

6. How can we force "family members" and significant others to participate in treatment?

7. Should convicted criminals be able to use their mental illness or substance abuse problem as a bargaining chip for better sentencing options or entrance into treatment programs?

8. Could this lead those who can't afford treatment to violate the law in order to get help? Is there a way to reduce or avoid this "unintended consequence"?

9. What happens to our traditional notions of guilt or innocence if our behavior is increasingly explained by physiological forces (brain function, chemistry, hormones, neurotransmitters) that are beyond our apparent conscious control? Or, should we worry less about punishment for past behavior and focus more on how to deter and prevent future criminal activity—including continued incarceration in cases where that is the only known or best solution?

What would you recommend? (your notes, reflections, revisions)

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D. Fix our Prison System: Focus on Reform, Recidivism, and Re-entry

This policy possibility would focus on significantly reforming our penal system to:

a. Provide alternative sentencing and programs

b. Greatly reduce the overall number of incarcerated offenders

c. Improve the skills, training, and life skills for those who are incarcerated

d. Greatly reduce the number and rate of repeat players (recidivism) for the 93% of all prisoners who are eventually released and must attempt to re-enter society.

Possible Motives: What's behind this approach (some of the underlying concerns, theories, goals)? Since the early 1980s, as part of the "War on Drugs," the United States has greatly increased the length of prison sentences, decreased judges' ability to moderate those sentences, increased the number and severity of post-prison sanctions (fines/forfeitures, ineligibility for assistance, lost rights/privileges, etc.), and increased funding for drug-related enforcement (more officers, task forces, equipment, and more stops and arrests). This shift in policy has had an effect: The rate of incarceration in the United States has exploded to the point where we now have a higher percentage of our population in prison than any other country and a higher percentage of incarcerated citizens than at any point in our history. Racial disparities and recidivism rates have increased greatly. A significant percentage of Americans who are imprisoned are incarcerated for non-violent offenses, and a large percentage of these are for low-level drug and parole violations. The vast majority are neither criminal kingpins nor masterminds. Rather they are often just guilty of poor judgment, being poor, black, and all too easy to catch. The "deterrent effect" of this regime is minimal or negative because after years in prison, many ex-cons have few good or non-criminal options; the rewards of some crimes are still high, and few offenders know the penalties (or their "strike count"). Considered as a whole, our penal system is hugely ineffective, wasteful, and unjust. We can't afford it. We must reform it.
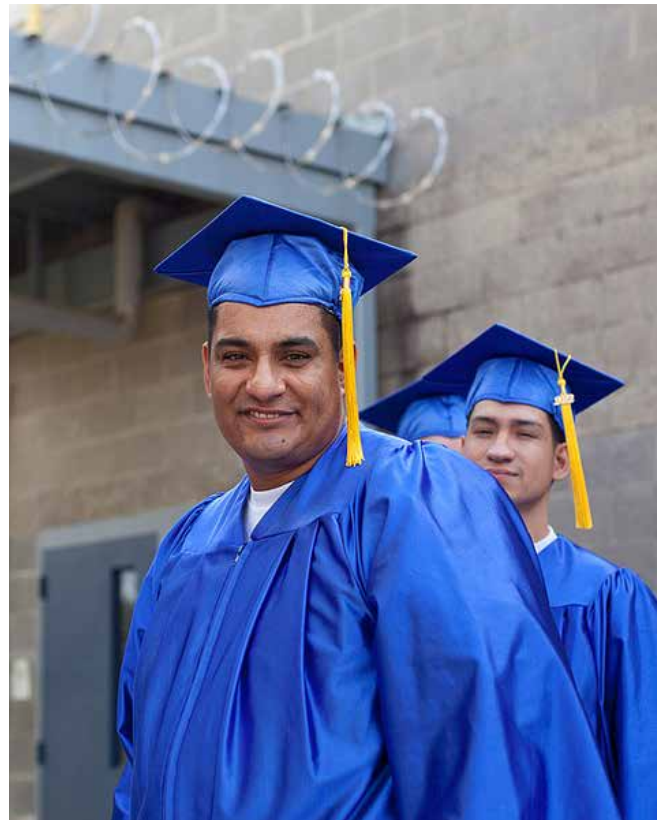
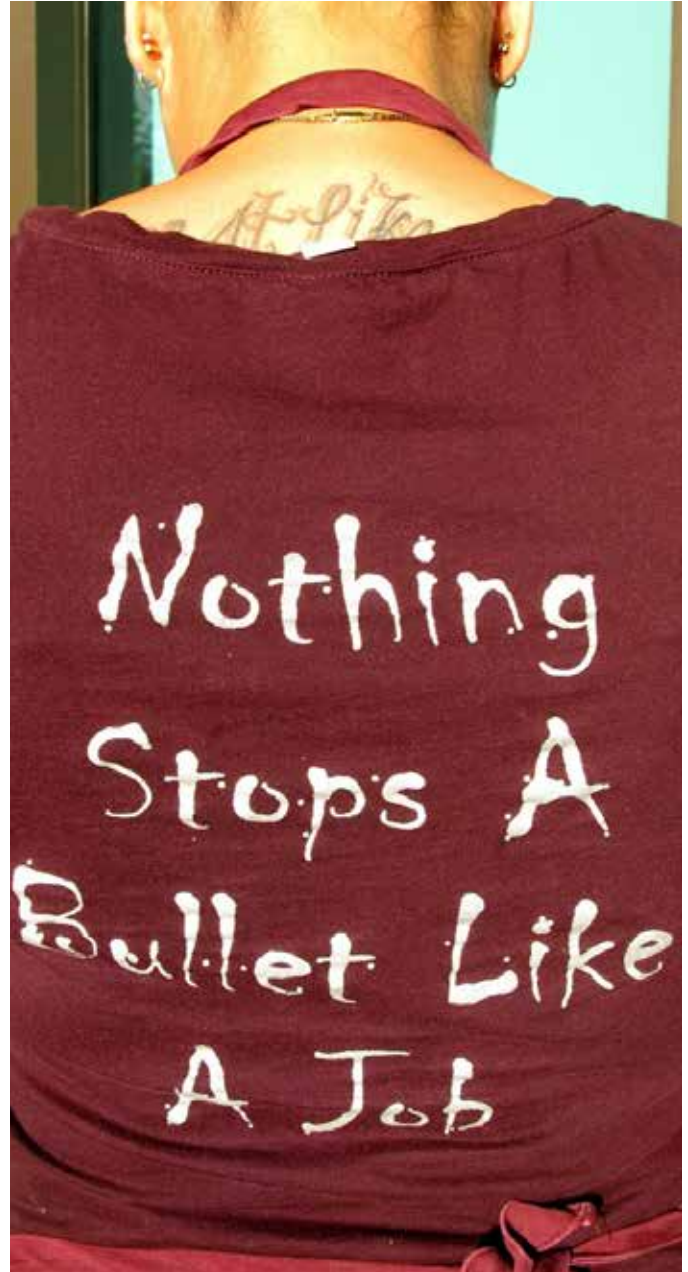## D. Fix our Prison System: Focus on Reform, Recidivism, and Re-entry

Possible Means: How? Some of the possible reforms or specific proposals under this approach could include:

1. **Divert more offenders.** Whether probation, treatment (as in Possibility C), work release, electronic monitoring, or house arrest, funnel citizens in the penal system through alternative non-incarceration programs.

2. **Use statistics rather than hunches.** To help determine sentences and guide parole/release decisions, studies show that statistics are much better predictors of who will re-offend and who won't.

3. **Undo much of the War on Drugs.**
   a. Reduce or eliminate determinant sentencing laws that restrict flexibility at sentencing.
   b. Reduce the length of sentences for non-violent drug crimes back to historical norms.
   c. Reduce or eliminate many of the additional, post-prison sanctions (the "negative credentials") that make it difficult or impossible for ex-cons to re-integrate into society. For example, change laws so that ex-cons are eligible for, and may not be discriminated against when attempting to obtain, employment, licenses, housing assistance, financial aid for education, and other government benefits.
   d. Make ex-cons eligible to vote. Upon completion of their sentences, including any parole or supervision, reinstitute civil rights and all that they afford to offenders. Limit the use of multiple (and compounding) fines and fees so that upon release offenders do not remain forever shackled by financial debt so great that it can never be repaid.
   e. Reduce and re-allocate federal grant monies. Reassign funds currently used for drug task forces and other drug-related enforcement to job training, counseling, drug treatment, and similar programs to aid re-entry.

4. **Establish "restorative justice" programs.** These would help offenders take responsibility for the harms they've caused, bring closure for victims, and possibly help re-integrate offenders into the community.

5. **Reinstate, improve, and require job-training programs for inmates.** Upon release, provide jobs directly, and/or significantly increase the tax incentives for private employers to hire ex-cons.

6. **Experiment with alternative funding.** Mechanisms such as "social impact bonds" could attract private capital to pay for lower-cost treatment programs for released prisoners and repeat offenders. Such bonds pay off their investors only if they produce a lower rate of recidivism.

7. **Re-focus enforcement policies.** Implement alternative interventions (e.g., community service) for lower-level crimes.

D. Fix our Prison System: Focus on Reform, Recidivism, and Re-entry

On Appeal – some other concerns/considerations and possible further discussion questions:

1. How will this affect the prison/industrial complex? The powerful corporate interests of the private prison industry and many of the workers in the public prison systems are likely to fight against any proposal that would reduce the flow of inmates into the current system and reduce the need for cells and staff. They've invested a lot of money over the last 30 years in building prisons cells, hiring staff, and paying politicians to award them contracts. They won't give up their profits or employment easily. On the other hand, in the last few years, some states have already begun to reduce their prison populations.

2. The politics of this approach are a non-starter. No politician of any party gets elected by being "softer" on crime or even appearing to be softer on crime. It's the "Willie Horton" problem—all it takes is one released prisoner to commit a crime.

3. Couldn't we make deterrence and the current system work, or work better, rather than dismantling it? What if we somehow changed or increased enforcement and prosecution to add certainty and swiftness to the severity of the penalty? What would this take? What might be the side effects?

D. Fix our Prison System: Focus on Reform, Recidivism, and Re-entry

4. Is there any scientific research to support the idea that carrots work better than sticks? Is this a linear relationship, or do sticks work only to a point?

5. If we restore or increase judicial discretion, how do we ensure that it won't be exercised in inequitable ways—as it too often has been or is?

6. Is the flip side of focusing less on deterrence the "moral hazard" or "welfare queen" concern? That is, if you can't otherwise find or qualify for a job, just commit a crime, get caught, and then hope to be sentenced to a job-training and placement program.

7. Aren't low-level drug crimes a "gateway" to other crimes? Will reducing penalties and enforcement resources and policies on drugs lead to an increase in all crimes?

What would you recommend? (your notes, reflections, revisions)

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E. Do the Right Thing: Re-Examine our Values, Beliefs, and Rhetoric on Crime, Punishment, Race, Class, and More

What if we initiated and sustained a serious national discussion of crime and punishment concerns, including a re-examination of how well our laws, policies, and budgets for enforcement and punishment align (or don't align) with our values and social norms—our most basic morality? This national discussion, our rhetoric, and—most importantly—our resulting public policies would be less about division, tragedy, failure/dysfunction, increasing costs, and decreasing resources and more about common ground, achievement, safety, investment in the future, and opportunity for all citizens. This re-examination might look at how our law enforcement and policies interact with race and class and whether we should change any of our policies with respect to:

a. White collar and financial/corporate crime
b. Drug crimes
c. The "media" and how it portrays or perpetuates certain attitudes and behaviors.

Possible Motives: What's behind this approach (some of the underlying concerns, theories, goals)? All the best data or analysis on crime and punishment in the world won't, by itself, solve our crime problems—especially if it doesn't align with our underlying beliefs and values. Few, if any, of the policy ideas discussed in the other possibilities will happen on their own. We need to first change individual hearts and minds, and we need to look hard and honestly at how our beliefs, values, and rhetoric affect our policies and our behavior. For that, we need to significantly shift the focus and the overall conversation. Most of our behavior is far less determined by specific provisions of "the law" or our chances of getting caught and punished, but rather by our sense of social norms, or our expectation of what's "acceptable" to ourselves and within our community. These social norms and corresponding values (resulting in our laws) have changed significantly in the past on a number of public issues: e.g., legal discrimination on the basis of race, working conditions/child labor, pollution/littering, smoking, sexual harassment, and seat belt use.

This possibility suggests that we take up the public conversation anew on a number of criminal justice issues. Which behaviors should be unacceptable socially and legally? And which should remain legal even if socially debatable? What is the law for? What reforms are needed and how might changing social pressures help us over the long term to achieve these reforms?

Possible Means: How? Some of the possible reforms or specific proposals under this approach could include:

1. **Sustain a national conversation.** Use recent events on matters of race, crime, and punishment as a starting point for discussions with regular people, non-governmental organizations, nonprofits, religious organizations, and grass-roots groups.

2. **Shift our rhetoric.** Change our national conversations.

   a. Change "wasteful government spending" to "necessary *investments* in our children's future."

   b. Change from "get tough on crime" and "nothing works" to treating many criminal justice as "*public health concerns*" that can be reduced through committed, smart, long-term, and collective effort. And remind ourselves that progress on these concerns, while difficult, is possible and that little changes can add up and compound over time to effect real change.

3. **Fixing the feedback loop.** Significantly reduce the sensationalism or glorification of violence and crime in our media (news coverage, movies/TV shows, video games, etc.) and replace them with more positive images of success, intellect, and civilization. Be willing to be a bit more idealistic again—in our media and otherwise.

4. **Focus on quality discourse.** Underscore the power and necessity of periodic and high-quality adult education on crime and punishment issues—both for policymakers and for the broader public.

5. **Begin or continue to test laws.** Evaluate our enforcement and penal policies for any adverse or disparate racial impacts, and be willing to consider and implement more neutral and effective measures.

6. **Eschew the "quick fix."** Avoid emotional policymaking that can often follow a sensational crime story.

7. **Examine cultural mores.** Consider the roles that ethics, morality, social norms, and shame play in defining and regulating crime.

E. Do the Right Thing: Re-Examine our Values, Beliefs, and Rhetoric on Crime, Punishment, Race, Class, and More

On Appeal – some other concerns/considerations and possible further discussion questions:

1. A virtuous cycle? Could this approach lead to other, more substantive changes in law and policy and behavior—all of which could be mutually reinforcing?

2. How would we organize and fund these local discussions across the country? Who would lead them? And how could we ensure that the results are translated (eventually) into law—whether statutory or regulatory?

3. What role might shame play in these conversations? Could individual shame or even public shaming be useful, either in lieu of criminal sanctions or included as part of a criminal sentence (e.g., publishing names of offenders and/or posting their failure to pay child support on their Facebook pages)?

4. Could the long-term, systematic, and holistic efforts of this approach help wean us from a mindset that focuses on singular "quick fixes," which often prove to be ineffective or even counterproductive?

5. Would this approach increase our sense of shared responsibility for each other? Would it be enough to combat our rampant individualism and consumerist approach to public policy?

6. Or could such discussions open up more wounds and increase division? How could we ensure that they work toward developing more common ground and bringing people together rather than further polarizing an already politically divided country?

E. Do the Right Thing: Re-Examine our Values, Beliefs, and Rhetoric on Crime, Punishment, Race, Class, and More

7. How would we change the media? Who should decide what is shown on TV, or in the movies? Has government or any private interest been particularly successful at this in the past? And which criteria and values or interests should govern the process?

8. Sin sells, virtue not so much. How do we meld this possibility with the realities of media, advertising, and our consumer-oriented economy and culture?

9. How can we—or should we—disabuse ourselves of commonplace assumptions about crime and class? Should corporations or their officers or directors be punished for their crimes in proportion to the harms that they cause, such as widespread job loss?

10. How can we facilitate a productive "national conversation" on difficult issues such as race or corporate crime?

What would you recommend? (your notes, reflections, revisions)

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About this Discussion Guide

What's it for? A way to start discussions, not settle arguments. The Interactivity Foundation's discussion guides or reports are intended to provide rough and intentionally incomplete maps to encourage and assist readers' own exploration, consideration, and discussion of the topic. As such, they are intended to be "starting points," or sample trailheads, for additional discussion—not clearly defined destinations. They are not meant to be answer books or expert policy papers that guide readers to a singular or specific policy solution. Rather, we hope that they will generate more questions, more exploration, and more discussion. As a consequence, most of the questions, issues, and multiple contrasting "policy possibilities" in this Discussion Guide are intentionally broad, non-specific, incomplete, sometimes vague, and sometimes conflicting.

How could it be used? Of course, the answer is however you like. While we use and generally promote a few guidelines for any public discussion, we also encourage anyone interested in this or any other topic to experiment and play with both the discussion process and the topic. Some of the discussion guidelines that we've found helpful include:

1. The overall goal is to foster engagement, encourage exploration, increase understanding, and have fun.

2. There is no requirment of, or effort to achieve, group agreement, consensus, or any other decision. Exploration of contrasting viewpoints and divergence is encouraged, and respectful disagreement is expected and allowed.

3. Avoid two-sided and confrontational debate in favor of group discussion that encourages and respects multiple points of view and builds on the contributions of all participants.

4. Focus on broader trends, bigger-picture concepts, long-term choices and trade-offs. Avoid getting hung up on any specific facts or small-scale problems (whether those presented in this Guide or from participants' outside reading, research, or experience).

5. Encourage everyone to participate and not concern themselves with special expertise or perfectly developed solutions. Make the discussion a safe space where all participants can try out and play with new and different ideas—especially those that may need more exploration or which may be politically unpopular.

6. Finally, our discussions are:
    a. Generally done in small-groups with six to eight participants being ideal. No fewer than four to five participants, but no more than 10.
    b. Facilitated to help move the discussion along and keep it exploring, not mired in one or more of the swamps of specificity or ambiguity, frustration or despair, or single-issue advocacy, etc.

Who developed it and how? This Discussion Guide was developed and is published by the Interactivity Foundation, which is a nonpartisan nonprofit organization that works to enhance the quality and quantity of our public discourse—and ultimately the health of our democracy—through facilitated, small-group discussion projects on broad topics of public concern. The Foundation supports the discussion of public policy concerns and the exploration and development of multiple and contrasting approaches. It does not, however, recommend or otherwise advocate for any of the specific ideas or policy "possibilities" in its Discussion Guides or other publications. The Foundation's administrative offices are located in Parkersburg, West Virginia. In other locations around the United States, it employs Fellows who facilitate and manage the long-term discussion projects that produce these Guides, and other staff in other locations around the United States. You can find out more about the Interactivity Foundation at www.interactivityfoundation.org.

Most of the content for this Discussion Guide was developed from the long-term discussions of two panels, each with seven or eight members. One panel was principally composed of those with professional and/or educational expertise in one or more areas of the criminal justice system. The second panel was principally (but not exclusively) composed of interested "generalists." Their discussions were facilitated by an IF Fellow, the project manager, and the editor of this Guide. Although many of the suggestions and other ideas that were developed from the panelists' discussions (in various and edited forms) are included in this Guide, the Interactivity Foundation is solely responsible for its content.

Possible Next Steps— for those interested in learning or doing more:

Learn/participate/experience more or volunteer:

1. Learn more about both existing crime policy and how it's made, who the players are, and how they affect policy. For example, much of our crime policy is shaped by various policy organizations, think tanks, trade and interest groups, academics, and other experts. And it's often driven by the politics of crisis or extreme cases. Learn more about and consult with some of these groups and experts. There are scores around the country. Some examples include:

    a. National Network for Safe Communities: www.nnscommunities.org

    b. National Council on Crime & Delinquency: www.nccdglobal.org

    c. Families Against Mandatory Minimums: www.famm.org

    d. The National Center for Victims of Crime: www.victimsofcrime.org/home

    e. National Institute of Corrections: nicic.gov (a federal agency within the U.S. Dept. of Justice)

    f. The Innocence Project: www.innocenceproject.org

    g. Restorative Justice: www.restorativejustice.org (information clearing house) or www.rjca-inc.org (a Minneapolis-based group)

    h. Equal Justice Initiative: www.eji.org/about (a private nonprofit organization that provides legal services to the indigent defendants and prisoners, especially in cases involving juveniles and issues of race; based in Montgomery, Alabama and founded by attorney Bryan Stevenson; see his TED talk here: www.ted.com/talks/view/lang///id/1378

2. Volunteer with a local social services agency and/or serve on a government board or committee.

3. Experience: go on a police "ride-along," go to court, visit your local jail or prison.

4. Study groups: join or form one, read, watch documentaries/films/video. On race and police issues, for example, you might see *Fruitvale Station,* a movie based on a 2009 police shooting in Oakland, California.

5. Act/advocate for the change you want to see:

    a. Re-write this discussion guide and/or write an altogether different or new one.

    b. Write to and/or meet with your elected representative, public official, or your newspaper editor/other media.

    c. Make and share your own media advocating for change.

    d. Join and support a crime policy organization or interest group of your choice.

What else? What would you do or recommend?

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Sources for Selected Statistics on pages 6-9

1. Uniform Crime Reporting Statistics from the Federal Bureau of Investigation, U.S. Department of Justice. www.bjs.gov/ucrdata. Note, "property crime" includes burglary, larceny/theft, and motor vehicle theft (arson is not included). "Violent crime" includes murder/manslaughter, rape, robbery, and aggravated assault. Rates for 2012 were calculated from "preliminary data" released by the FBI in June 2013.

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6. Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* New York: The New Press, 2010. 6, 175.

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Discussion Guides

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