

# **CCDA White Paper Mass Incarceration 2015**

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## **Introduction**

Since 1980, the United States has seen an unprecedented rise in incarceration rates. Our nation's prison population has quintupled over a 30-year period. The United States currently has the highest incarceration rate and the most prisoners of any country in the world. These incarceration rates, which have run independent of crime rates, are suggested to be the result of policy changes over the last 30 to 35 years. In addition, incarceration rates have been documented to be disproportionately affecting minority communities in the U.S.

## **Background**

In the decades leading up to 1980, the United States had annual incarceration rates similar to rates in other developed countries.<sup>i</sup> Since 1980, the United States has seen a dramatic rise in incarceration rates. In 1980, 220 out of every 100,000 people in the United States was incarcerated. That rate had increased more than threefold by 2010, with 731 out of every 100,000 people incarcerated that year.<sup>ii</sup> This number only shows the annual number of people in prison or jail, and does not show the millions of people who are under the corrective system that are on probation or parole. Approximately 6.9 million people were under the supervision of the adult correctional control system at the end of 2012 (prison or jail, probation or parole),<sup>iii</sup> while the correctional facility population (prison or jail) surpassed 2.4 million people in 2014.<sup>iv</sup>

## **Four Primary Drivers**

Incarceration rates have been driven by what we believe to stem from four primary forces: the War on Drugs, the Private Prison Industrial Complex, Immigration Deportation Centers, and the School to Prison Pipeline

### The War on Drugs

While sky-rocketing incarceration rates are often relegated to the Regan era's expansion of the War on Drugs, policies implemented during the Nixon years and carried out through Clinton's presidency shaped the way the United States and its citizenry would see drugs, enforcement and incarceration.

During the Nixon administration, the Controlled Substances Act of 1970 introduced drug scheduling and included marijuana as a Schedule I drug.<sup>v</sup> President Nixon declared a War on Drugs in 1971 and worked to increase the size and presence of federal drug control agencies initiating policies like mandatory sentencing and no-knock warrants.<sup>vi</sup> In 1973, by Executive Order, President Nixon created the Drug Enforcement Administration in order to establish a single unified command to combat "an all-out global war on the drug menace." At its outset, the DEA had 1,470 Special Agents and a budget of less than \$75 million. Today, the DEA has nearly 5,000 Special Agents and a budget of \$2.02 billion.<sup>vii</sup>

In 1982, when the Reagan administration announced its "War on Drugs," expansion, they officially launched an offensive on drug crime at a time when only 2% of Americans felt that drug crime was the most important issue facing the country.<sup>viii</sup> Policy changes under the Reagan administration after the announcement of the War on Drugs increased penalties for drug offenses while incentivizing drug arrests for law enforcement agencies.

During the Clinton era, the Violent Crime Control and Law Enforcement Act of 1994, an Omnibus bill was signed into law including a provision that required a life sentence in prison to any individual who was convicted of committing their third serious violent or drug crime.<sup>ix</sup> President Clinton's State of the Union address in 1994, where he clearly stated, "three strikes and you ARE out" to an applauding audience,

captured the zeitgeist of the moment that spawned the legislative momentum of attaching lifetime sentences to an individual's number of offenses and not necessarily the severity of their crimes. This further led to "Three Strikes You're Out" laws being enacted in 25 states between the years of 1993-1995, with the most punitive laws in California, dramatically increasing that state's prison population.<sup>x</sup> What these types of legislative solutions did was put many non-violent offenders away for life, yet the data has shown that the reduction of violent crime has not been an outcome. The amount of people incarcerated for drug offenses has increased 1,412% between 1980 and 2006.<sup>xi</sup>

#### Drug Offenses & Parole Violations:

Two offenses that have contributed to the rise in incarceration rates are drug offenses and parole violations. Drug offenses account for two-thirds of the rise in the federal inmate population and for more than half of the rise in state prisoners between 1985 and 2000. Approximately 500,000 people were in prison or jail at the time that *The New Jim Crow* was published, which is a 1,100 percent increase from the 41,100 people imprisoned for drug offenses in 1980.<sup>xii</sup>

Prison admissions due to parole violations have also risen. In 1980, only 1 percent of all prison admissions were for parole violations. This number rose to 35 percent in 2000. This means that about as many people were admitted to prison for parole violations in 2000 as were admitted to prison for all reasons in 1980.<sup>xiii</sup> This rise in parole violations can be partially understood when we see how difficult it can be to meet parole requirements. Parolees are often required to obtain and maintain employment, which is difficult with a felony conviction on record. They can also be required to pay any number of fees for services, drug testing, and many other possible offenses. These rules vary from state to state, and many have been recently passed (Florida has passed more than 20 such regulations since 1996). Fees related to pre-trial booking, containment, and lawyer's fees (even for a public defendant) can be levied against people being held in jails. With two thirds of people being held in jails reporting an annual income under \$12,000, it is not a surprise that many fees cannot be paid and parolees will be re-admitted to jails and prisons.<sup>xiv</sup>

The announcement of the War on Drugs was initially met by some push-back from law enforcement agencies. Agencies were unwilling to arrest more drug offenders because local law enforcement viewed the move by the federal government as an infringement on local jurisdiction.<sup>xv</sup> The Reagan administration's response to this push-back was to financially incentivize drug arrests.<sup>xvi</sup> State and local law enforcement agencies are also allowed to keep a large majority of the cash and assets they seize in drug raids and arrests.<sup>xvii</sup>

In addition to financial incentives, many law enforcement agencies have also been able to obtain training, military style vehicles, and SWAT teams in order to fight the War on Drugs.<sup>xviii</sup> Police departments often claim that they want SWAT teams in case of a Columbine-type incident or a terrorist incident; however, SWAT teams are most often used in drug raids, which sometimes yield very small amounts of drugs or are executed at incorrect addresses.<sup>xix</sup> Additional training has also been given in order to wage the War on Drugs. One example is Operation Pipeline, a program implemented by the DEA to train more than 300 police agencies to use large scale pre-textual traffic stops and consent searches to find drugs.<sup>xx</sup> (The use of traffic stops in this manner has been upheld as constitutional by several Supreme Court decisions, specifically *Whren v. United States*<sup>xxi</sup> and *Atwater v. City of Lago Vista*<sup>xxii</sup>). This information suggests and demonstrates that drug arrests and incarceration rates have not increased because of an increase in drug use or crime, but rather because of incentives to increase drug arrests.

### The Effects of Mandatory Minimums:

Another reason given for the increase in incarceration rates is the introduction of mandatory minimums for drug offenses. Prior to 1986, the longest sentence handed down for any drug offense in the United States was one year in prison.<sup>xxiii</sup> The Anti-Drug Abuse Act of 1986 changed drug sentencing, creating mandatory minimum sentences that are typically five to ten years in federal courts.<sup>xxiv</sup> This differs from the rest of the developed world, where a first time drug offense is typically only met with up to six months in jail.<sup>xxv</sup> Mandatory minimums are often cited as an important way of keeping violent criminals or kingpins off of the streets, but these sentences are most often handed down against nonviolent drug offenders.<sup>xxvi</sup> The U.S. Sentencing Commission has also noted that the value of a mandatory minimum is not in the sentence itself, but in its use as a bargaining chip for plea bargains that lead to more information.<sup>xxvii</sup> It has also been suggested that mandatory minimums disproportionately affect minority offenders: a five year mandatory minimum is triggered for the sale of five hundred grams of powder cocaine, a drug more typically associated with white users, while the sale of five grams of crack, a drug more typically associated with black users, triggers the same sentence.<sup>xxviii</sup>

Another offense in the United States that has a mandatory minimum is a DUI/DWI offense. However, these penalties are much more lenient, with a two day jail sentence typical for a first offense and a ten day jail sentence typical for a second offense.<sup>xxix</sup> With a recent report stating that alcohol is the most dangerous drug,<sup>xxx</sup> it is interesting to see mandatory minimums so much lower for this offense than for other drug offenses.

In addition to the War on Drugs which has been shown to be the largest contributing factor to mass incarceration, the private prison industrial complex, immigration deportation centers and the school to prison pipeline are other factors that contribute to mass incarceration.

### Private Prison Industrial Complex

In 1984 the Corrections Corporation of America revolutionized the way prisons in the United States operate. The company took over a prison facility in Hamilton County, Tennessee -- the first time a private operator was contracted to run a jail.<sup>xxxi</sup> Between 1990 and 2010 there was a 1600% increase in the number of privately operated prisons in the U.S.<sup>xxxii</sup> By 2013, ten percent of all prisons in the U.S. were privately operated. CCA operates 67 federal and local facilities and has about 40% market share while the GEO Group operates 95 prisons in the U.S. and abroad. Today, the increase in privately operated prisons has outpaced the growth of public prison facilities.<sup>xxxiii</sup>

From the birth of privatized -- for profit -- prisons to people's ability to buy and trade Wall Street Stock in such prisons, money is indelibly connected to our inflated incarceration rates. In fact, the two largest private prison corporations, CCA & the GEO Group, collectively made \$3.3 billion in revenue in 2011 and CCA acquired \$1.7 billion in revenue in 2012, while the Geo group received \$1.6 billion (these two companies alone constitute roughly 75% of the entire 'private prisons market').<sup>xxxiv xxxv</sup> These companies are not classified as correctional facilitators; they consider themselves real estate investment trusts, or REITs, to limit corporate tax liability. Corrections Corporation of America and The GEO Group derive about 40% of their revenue from the federal government -- and are exempt from paying federal taxes.<sup>xxxvi</sup>

Corporations such as these have found ways to financially profit off discriminatory legislation which masquerades under the guise of "get tough on crime" rhetoric. The prison industry has also made money by contracting prison labor to private companies. Companies benefit from this cheap labor,

because prison laborers cost between 93 cents and \$4 a day and prisoners do not collect benefits nor can they join unions, thus making them cheap employees. Another way that private prisons financially profit is through a common provision that is included in a majority of private prison contracts in the U.S., according to a public records analysis release by the advocacy group In the Public Interest. The group reviewed more than 60 contracts between private prison companies and state and local governments across the country, and found language mentioning quotas for prisoners in nearly two-thirds of those analyzed. The prison bed guarantees ranged between minimums of 70 percent occupancy in a California prison to 100 percent occupancy requirements at some Arizona prisons. Most of the contracts had language mandating that at least 90 percent of prison beds be filled.<sup>xxxvii</sup>

### Immigration Deportation Centers

Hispanics currently have a one in six chance of being confined in prison during their lifetimes. Arrests for immigration offenses increased 610% over ten years – from 1,728 in 1990 to 12,266 in 2000. The United States immigrant detention system has increased from 10,000 beds to 34,000 in the last 15 years.<sup>xxxviii</sup> This number has been driven in part by the detention bed quota put into place by Congress, requiring that 34,000 immigrants be utilizing that number of beds at a given time.<sup>xxxix</sup>

In 2012 it was found that private prisons, with little oversight, detain 84 percent of all detained immigrants. Over half of the revenue that private prisons receive comes from holding facilities for undocumented immigrants. Private operations run between 50% to 55% of immigrant detainment facilities.<sup>xi</sup> In fact, the American Legislative Exchange Council, (also known as ALEC), who is a membership organization of CCA, helped to draft and pass Arizona's Senate Bill 1070. Some estimate that this bill led to a crackdown on undocumented immigrants that led to more than 14,000 inmates being incarcerated annually, with 80% of that business going to private prisons.<sup>xii</sup> Share prices for CCA and GEO have spiked sharply since the influx of unaccompanied minors who were dropped off at the border was reported this summer. Since July 30, CCA's stock has increased 8.5 percent, and GEO's has increased 7 percent.<sup>xiii</sup>

### The School to Prison Pipeline

The "School to Prison Pipeline" is what many refer to as policies that are in place in schools today that push students, especially those who are considered at-risk, out of classrooms and into the criminal justice system. Students are suspended, expelled and arrested for minor offenses that at one time would be dealt with at the school administrator's level. While there is no defined point of origin to these phenomena, one thing statistics do show is that the policies that are in place, disproportionately target minority students and those with a history of learning disabilities, poverty and abuse. Zero tolerance policies have shown increased rates of suspension from 1.7 million in 1974 to 3.1 million in 2000 the most dramatic impact for children of color.<sup>xiiii</sup> Additionally, 40% of students expelled from school each year are African American. 70% of students arrested in school or referred to law enforcement are African American or Latino. African Americans are 3.5 times as likely to be suspended as whites.<sup>xlv</sup> 68% of all incarcerated males do not have a high school diploma.<sup>xlv</sup>

### **Disproportionately Affecting Minorities**

Current incarceration rates disproportionately affect minority communities in the United States. There are currently more black people under correctional control—either in prison or jail or on probation or parole—than were in slavery in 1850.<sup>xlvi</sup> In some states, 90 percent of drug offenders are black.<sup>xlvii</sup> Almost half of the state and federal prison population is black. Also, reports show that a black boy born in 2001 has a 32.2 percent chance of serving time behind bars.<sup>xlviii</sup> Overall, black men are six times as likely to be incarcerated as white men.<sup>xlix</sup>

Women represent the fastest growing population in prison. Women prisoners are disproportionately women of color, with African American women comprising 46% of the population nationwide, White women comprising 36%, and Hispanic Women comprising 14%.<sup>i</sup> Incarcerated women are overwhelmingly poor. When women go to prison, it takes a devastating toll on the family. Sixty seven per cent of women incarcerated in state prisons are mothers of children under 18. Women prisoners report significant histories of domestic violence.<sup>ii</sup>

While medical care for all prisoners is poor, the situation is far worse for women prisoners. Because prison health care systems were created for men, routine gynecological care, such as pap smears, breast exams and mammograms, is extremely rare in prisons.<sup>iii</sup>

The impact of incarceration rates on minority communities can also be seen through the impact on children in the community. In 2007, 1.7 million children had a parent in prison or jail, an 80% increase from 1991.<sup>iiii</sup> 1 in 15 black children, 1 in 42 Latino children, and 1 in 111 white children had a parent in jail or prison in 2007.<sup>lv</sup> This means that black children were 7.5 times more likely and Hispanic children were 2.6 times more likely than white children to have a parent in prison or jail in 2007.<sup>lv</sup>

Additionally mental health plays a role in the prison population and needs careful consideration. About 56% of state prisoners, 45% of federal prisoners, and 64% of inmates suffer from mental illness.<sup>lvi</sup>

### **Solution**

A simple solution will not be found for a problem that has been festering for more than 30 years and has a multi-layered, wide scope of policy implications. However the need to engage in policy advocacy to change policies around mandatory minimums, financial gains for drug arrest, convictions and prison bed minimums is imperative. Additionally, looking at some practical community solutions like restorative justice programs is both strategic and beneficial.

The restorative justice hubs concept in Chicago, IL is a collaborative, multi-sector endeavor to establish safe and healthy community spaces for the purpose of establishing an experience of belonging, opportunity and positive transformation. The RJ Hub works to build strong relationships with the organizations, schools, faith-based institutions, etc. that are a part of the overall needed resources. The RJ Hub links affected individuals with the various resources needed to be successful while still maintaining a strong presence in his or her life. In summary, the five pillars (or principles) of the RJ Hub Model include: 1) Hospitality, 2) Accompaniment, 3) Building Relationships with youth and families, 4) Relentless Engagement of organizations and resources, and 5) Collaboration and relationships with other RJ Hubs.

A commitment to building and maintaining strong restorative justice collaborative communities will help toward the success of the at-risk individual but also create communities of care that will be the catalysts to productive community conversations that can bring about both community and public policy change.

### **Conclusion**

At the present time issues of police and citizen division, exacerbated by racial tension has been national news in states like Missouri, New York and Ohio. While these circumstances are not necessarily direct results of mass incarceration, they have clearly shown the urgent need to address racism in the United States. The correctional system in the U.S. is one example of these racial issues. With growing

incarceration rates, especially in minority communities, the American public must face the issue of mass incarceration and determine a course of action for the future.

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<sup>i</sup> Michelle Alexander, *The New Jim Crow*, 7.

<sup>ii</sup> <http://www.newyorker.com/magazine/2012/01/30/the-caging-of-america?currentPage=all>

<sup>iii</sup> <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4843>

<sup>iv</sup> <http://www.prisonpolicy.org/reports/pie.html>

<sup>v</sup> <http://www.deadiversion.usdoj.gov/21cfr/21usc/>

<sup>vi</sup> <http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>

<sup>vii</sup> <http://www.dea.gov/about/history.shtml>

<sup>viii</sup> Alexander, 49.

<sup>ix</sup> <http://www.justice.gov/crt/about/spl/police.php>

<sup>x</sup> <https://www.washingtonpolicy.org/publications/brief/three-strikes-youre-out-review>

<sup>xi</sup> [http://www.justicepolicy.org/uploads/justicepolicy/documents/finding\\_direction-full\\_report.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/finding_direction-full_report.pdf)

<sup>xii</sup> Alexander, 60.

<sup>xiii</sup> *Ibid*, 95.

<sup>xiv</sup> *Ibid*, 154-157.

<sup>xv</sup> *Ibid*, 72.

<sup>xvi</sup> *Ibid*, 73.

<sup>xvii</sup> *Ibid*, 78.

<sup>xviii</sup> *Ibid*, 74.

<sup>xix</sup> *Ibid*, 75.

<sup>xx</sup> *Ibid*, 70.

<sup>xxi</sup> *Ibid*, 108.

<sup>xxii</sup> *Ibid*, 69.

<sup>xxiii</sup> *Ibid*, 90.

<sup>xxiv</sup> *Ibid*, 87.

<sup>xxv</sup> *Ibid*.

<sup>xxvi</sup> *Ibid*, 91.

<sup>xxvii</sup> *Ibid*, 88.

<sup>xxviii</sup> *Ibid*, 112.

<sup>xxix</sup> *Ibid*, 206.

<sup>xxx</sup> <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/08/19/alcohol-is-still-the-deadliest-drug-in-the-united-states-and-its-not-even-close/>

<sup>xxxi</sup> <http://www.bu.edu/bulawreview/files/2014/10/TARTAGLIA.pdf>

<sup>xxxii</sup> United States Department of Justice, Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 1995* iv (1997); Heather C. West, et al., *United States Department of Justice, Bureau of Justice Statistics, Prisoners in 2009*, 33 App. Table 19 (2010).

<sup>xxxiii</sup> <http://finance.yahoo.com/blogs/daily-ticker/top-5-secrets-private-prison-industry-163005314.html>

<sup>xxxiv</sup> Corrections Corporation of America, 2012 Annual Report on form 10-K, F-4.

<sup>xxxv</sup> <http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-reportsannual>

<sup>xxxvi</sup> [http://sentencingproject.org/doc/publications/inc\\_Too\\_Good\\_to\\_be\\_True.pdf](http://sentencingproject.org/doc/publications/inc_Too_Good_to_be_True.pdf)

<sup>xxxvii</sup> <http://s3.documentcloud.org/documents/798018/in-the-public-interest-report-on-private-prison.pdf>

<sup>xxxviii</sup> <http://immigrationforum.org/blog/themathofimmigrationdetention/>

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