



Council on Crime and Justice



# JUSTICE, WHERE ART THOU?

## A FRAMEWORK FOR THE FUTURE

COUNCIL ON CRIME AND JUSTICE

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research

demonstration

advocacy



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## ACKNOWLEDGEMENTS

**Dick Ericson** served as the President of the Council on Crime and Justice for thirty one years (1967–1998). His leadership helped Minnesota develop and sustain a sensible, balanced approach to the causes and consequences of crime. Dick’s creative and productive life ended unexpectedly and sadly in 2006. This report is dedicated to him on the Fiftieth Anniversary of the Council.

A **Fiftieth Anniversary Advisory Board** provided invaluable guidance to the development of this report and to the research that proceeded it. The Board included:

**Co-Chairs:** Judge Diana Murphy  
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	Judge Michael Davis	Katie McWatt
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The following report is enriched greatly by a set of papers that shed light on the key developments affecting the justice system over the past fifty years and the significance that these developments may hold for the future. **Our deepest thanks go to the following authors who contributed papers:**

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## INTRODUCTION

The public safety and criminal justice landscape has experienced radical and profound change over the fifty-year lifespan of the Council on Crime and Justice. So, too, have the factors that influence the justice system. Even more fundamental change is anticipated. The purpose of this report is to examine some of the most important developments that have affected public safety and the justice system in Minnesota over the last 50 years, explore how these particular developments are likely to evolve, describe the demographic shifts that can be anticipated, the effect these demographic changes will have on the justice system given current trends, and recommend how to best meet the particular challenges raised by these coming changes.

When the Council began in 1957, Minnesota was a vastly different place. In 1957, the state's population was 3 million; today it is over 5 million. Fifty years ago, 1.2% of Minnesota residents were people of color, compared with 11.8% in 2000. For Minneapolis alone, the minority population stood at 38% in 2005, up from 3% in 1960. In 1960, the cities of Minneapolis and St. Paul had foreign born percentages of 7.1% and 5.6% respectively, compared with 14.5% and 14.3% in 2000 (U.S. Census Bureau 1960; 2000). Most types of criminal arrests have increased significantly, particularly drug offenses and newly reported crimes such as domestic assaults. Whereas only a handful of people were arrested for drug offenses in the late fifties, 19,858 were arrested in 2006 (Minnesota Bureau of Criminal Apprehension [MN BCA], 1949; 1956-2006). The state's prison population went from 1,214 in 1957 (Minnesota Department of Corrections [MN DOC], 1959) to 8,964, as of January 1, 2007 (DOC, 2007a; 2007b). Accordingly, the budget for the Minnesota Department of Corrections went from \$5.7 million in 1959 to over \$400 million in 2007 (MN DOC, 2000, p. 16).

These vast changes in demography and the reach of the criminal justice system are linked to many societal trends and developments. To identify which of these trends have had the most influence on public safety and the criminal justice system, the Council on Crime and Justice convened a Fiftieth Anniversary Advisory Board. This Board consisted of community members and leaders who have a long history with public safety and criminal justice. A list of the Advisory Board members is included in the Acknowledgements.

The Advisory Board identified nine trends that have significantly influenced public safety and criminal justice over the last 50 years. Specifically, the Board identified:

- **Changes in the juvenile justice system**, especially the development of the modern gang, the “criminalization of youth” and a shift from a rehabilitative, “best interests of the child” model to a mini-adult, punitive model;
- **The prosecution of the “War on Drugs,”** including the shift from a treatment orientation to a law enforcement focus and increases in the length and number of drug-related incarcerations;
- **Changes in criminal sentencing**, especially related to the adoption of sentencing guidelines, mandatory minimums and increased length of sentences, all evidencing a move from a rehabilitative to a “just desserts” model;
- **Changes in the mental health system**, particularly related to deinstitutionalization, limited access to community-based mental health care and chemical dependency treatment, and the growing recognition of the role that mental illness plays among the prison population;
- **Changes in education**, such as fewer neighborhood-based schools, the desegregation and re-segregation of schools, an emphasis on testing, and the increasing importance of education in a post-agrarian and post-industrial society;
- **Changes in family and community structure**, including a growing concentration of poverty, increases in single-parent families, increases in the number of incarcerated mothers and fathers of young children and shifts in community-police relations;
- **Changes in government aid and welfare**, especially those leading to family separation and intergenerational poverty;
- **Changes in the influence of the media**, particularly the culture of fear that the news media tends to foster and how people of color are portrayed; and
- **Changes in technology**, which provide ready access to justice related materials including criminal records, the 24-hour news cycle, and, most recently, online blogs and forums.

To provide further insight, the Council asked a diverse and thoughtful group of community leaders to contribute their views on the significance of the identified trends, particularly in light of the uniquely large racial disparity in the Minnesota justice system. Papers expressing the authors' views can be found in Appendix A. A short summary of each paper is found in the Past Developments section.

Finally and most importantly, this report explores Minnesota's future. It begins by examining the projected changes in Minnesota's population between now and 2030. From this analysis, we see that the future growth in Minnesota's population is disproportionately among populations of color. This is particularly true for the projected population growth among younger people, such as males between the historically high-crime ages of 18 to 30. Using these population projections, the report then calculates the arrest and imprisonment rates and numbers for 2030. This projection paints a bleak picture; one that comes with an unacceptably high cost, both financial and social.

Given these projections, the report turns to the societal and policy changes that research points to as the best hope for improving the projected trajectory. The report concludes with recommendations for a 'Framework for the Future'. This Framework flows from the research findings and what we have learned from the key developments over the past fifty years. To successfully implement the Framework, Minnesotans will need to build bridges across racial, ethnic and socio-economic divisions in new and effective ways – ways that have so far escaped us. But failure is no longer an option. We are at a tipping point. It is time to act, and act together.

## A CHANGING POPULATION: 1957 – 2007

While Minnesota's population grew significantly over the past fifty years, the growth was not uniform. The two central cities lost population, while populations in surrounding areas grew dramatically. This is illustrated in Table 1.

**Table 1: Population in Minnesota 1950-2000**

<b>Population Increase</b>	
Minnesota	+64.9%
Hennepin County	+65.0%
Ramsey County	+43.8%
Anoka County	+737.8%
Dakota County	+626.1%
Washington County	+482.2%

<b>Population Decrease</b>	
Minneapolis	-26.7%
St. Paul	-7.8%

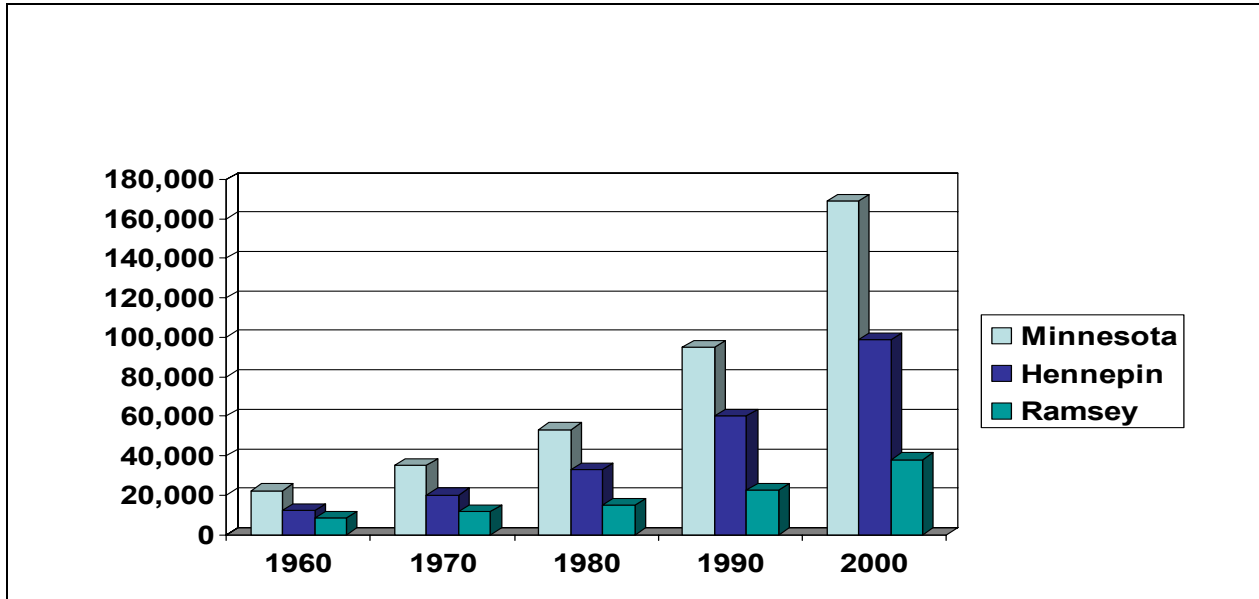
Source: U.S. Census Bureau, 1950; 1960; 1970; 1980; 1990; 2000.

Of importance for public safety purposes, the two central cities retained a significant share of young adults. Minneapolis, for example, had 80.1% of Hennepin County's 18-30 year-old population in 1950 and retained 50.2% of that population in 2000, even though the City's overall share of the County's population dropped from 77.1% to 34.3% (U.S. Census Bureau).

More dramatic is the racial and ethnic diversification of the state. All the minority populations grew significantly between 1960 and 2000, both in number and as a percentage of the state's population. This is illustrated by Figure 1 showing the increase in the Black population state-wide and in Ramsey and Hennepin counties. In Hennepin County, the Black population grew from roughly 1% to over 9% of the total population (U.S. Census Bureau).



**Figure 1: Black Population in Minnesota**



Source: U.S. Census Bureau 1960; 1970; 1980; 1990; 2000.

See Appendix B for similar charts relative to the growth in the Hispanic, American Indian and Asian populations. The diversification of the state's population was the result of numerous factors, with immigration and domestic migration being very prominent. St. Paul, for example, had nearly twice as many foreign-born residents in 2000 as it did in 1960 (14.3 vs. 7.8%) (U.S. Census Bureau, 2000).

Our state's population is also more formally educated now than at the Council's birth 50 years ago. The percentage of the overall population with a high school diploma or GED has nearly doubled, from approximately 45% to just below 90% (U.S. Census Bureau). Yet, there is currently considerable variation among different populations, especially along racial and ethnic lines. Significant differences also exist between population groups as it relates to median family income. For example, whites have a much higher median family income than do minority families, as shown in Table 2, and families headed by married couples have a median income over twice that of families headed by either males or females alone, as shown in Table 3 (U.S. Census Bureau, 2000).

**Table 2: Minnesota Median  
Family Income, 2000**

Black	\$31,200
American Indian	\$31,031
Asian	\$50,954
Hispanic	\$35,590
White, not Hispanic	\$58,641

Source: U.S. Census Bureau, 2000.

Note: Based on one race alone; Hispanics of any race.

**Table 3: Minnesota  
Median Family Income of  
Families with Own Children  
Under 18 Present, 2000**

Married Couples	\$66,428
Male headed, no wife present	\$32,454
Female headed, no husband present	\$24,335

Source: U.S. Census Bureau, 2000.

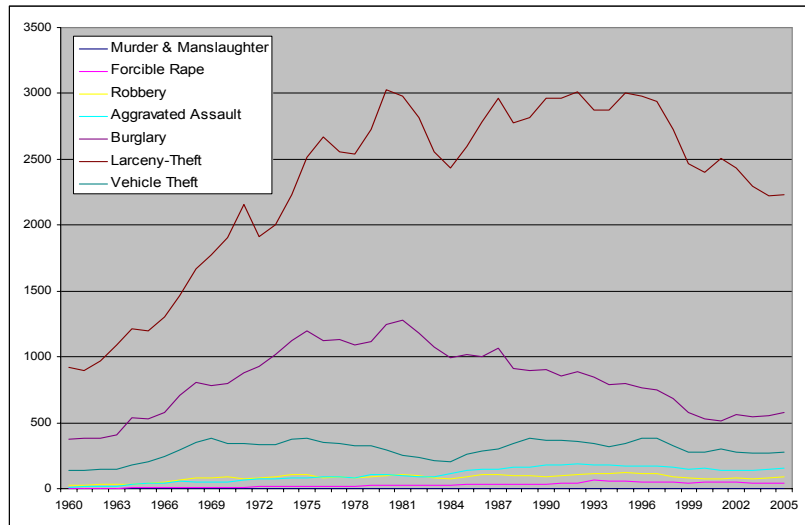
Note: Based on one race alone; Hispanics of any race.

The demographic changes highlighted above were dramatic, yet largely unforeseen fifty years ago. These changes were accompanied by significant, and also unforeseen, changes in the justice system as described in the following section.

## CRIME AND THE PERCEPTION OF CRIME: 1957-2007

Reported crime rates increased significantly in Minnesota during the twenty year period between the early 1960's and 1980's. Since then the rate has fluctuated, with a general downward trend being evident until the last few years. For most crimes, current crime rates are now at roughly the same rate as they were in the early 1970's. This pattern is illustrated in Figure 2.

**Figure 2: Reported Crime Rates in MN**



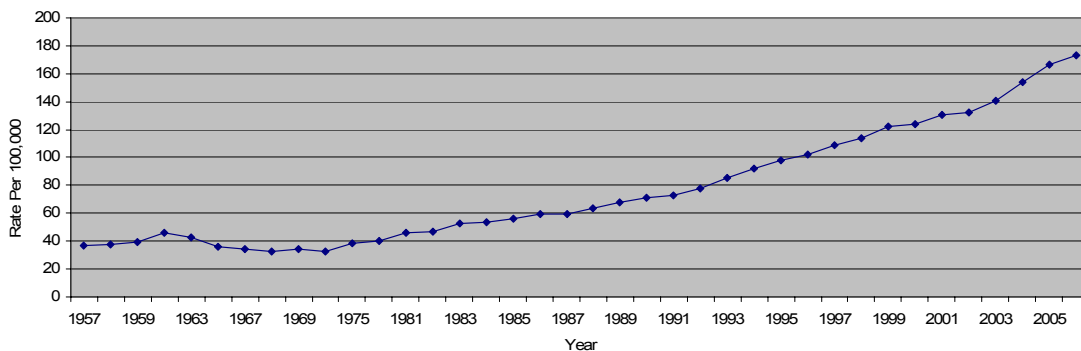
Source: Minnesota Bureau of Criminal Apprehension, 1957-2006.

Certain crimes, like sexual assault, showed a dramatic increase from their almost non-existent rate in the early 60's. Most observers believe this reflects a change in public attitude about the need to report certain historically stigmatized crimes and the resulting policy changes that provided legal protections to victims who did report (e.g., passage of the Rape Shield law, Minn.Stat. 609.347) rather than an increase in the occurrence of sexual assaults. Similarly, the increase in aggravated assaults can be partly attributable to the increased reporting of domestic violence which, like sexual assaults, were grossly under-reported until the late 1970's.

The imprisonment rate increased quite sharply beginning in the mid-1980's. This coincided with the beginning of the crack "epidemic" and a rapid growth of incarcerated drug offenders. The mid-1980's also marked the beginning of many sentencing enhancements to the Minnesota Sentencing Guidelines, causing the prison population to rise as longer sentences kept

inmates in prison longer. The racial disparity in Minnesota’s prisons also exploded at this time. In fact, Minnesota led the nation during the late 1990’s for a number of years with the worst racial disparity in the imprisonment rates between blacks and whites (23 to 1) of any state in the nation (Mauer, M. 1997). Today, there has been some lessening of the disparity due to the imprisonment of Methamphetamine offenders who are predominately white. Even so, African Americans comprise 31.7% (MN DOC, 2006) of the prison population while accounting for only 4.4% of the state population (US Census, 2006). Note too, that the incarceration rate remained relatively constant prior to the mid-80’s, which was largely a function of the fact that no new prisons or jails were built during that time. Figure 3 shows the climb in the imprisonment rate for Minnesota.

**Figure 3. Adult Imprisonment Rate in MN  
1957-2006**



Source: MN DOC 1957-2007

Public perception of crime also matters – just ask any police officer or politician. It can drive police response, public policy and public funding. It can also drive law-abiding residents from generally safe neighborhoods and deter others from moving in. As discussed below, public perception of crime is not always a good measure.

Nationally, we know that the results of public opinion surveys asking respondents whether they are “afraid to walk in their neighborhood at night” generally track the Uniform Crime Reporting (UCR) Index Rate. However, public opinion that “crime is the most important problem in the country” is often inconsistent with the level of crime. In fact, the public often

sees crime as a serious problem when the Crime Index Rate shows crime going down and vice versa.

In Minnesota, the best measure we have regarding the public's perception of crime is the Minnesota Crime Survey. This survey, now discontinued, was conducted every three years by the Criminal Justice Statistics Center starting in 1993, with the last report in 2002. It compared the public's "expected" rate of victimization against the actual occurrence rate. For all four times the survey was conducted, respondents expected to be victims of crime more often than they were actual victims. This is particularly true for violent crime where at least twice as many respondents thought they would be victims than actually were. Interestingly, fewer respondents expected to be crime victims each year the survey was administered with the percentage decreasing from 55% in 1993 to 36% in 2002 (Minnesota Planning, 1993; 1996; 1999; 2002).

## KEY DEVELOPMENTS AFFECTING CRIME AND JUSTICE

### Juvenile Justice

When the Advisory Board was asked to identify important trends influencing public safety and criminal justice over the last 50 years, one of the developments they identified was changes in the juvenile justice system. In particular, they described the “criminalization” of youth, the growth of modern gangs, and the increasingly harsh treatment of juveniles by the justice system.

In the 1950s, the juvenile court system was less formal than it is today, with an emphasis on rehabilitation and greater involvement of parents, particularly with respect to selection of sanctions. In 1967, with the U.S. Supreme Court decision *In re Gault* which mandated more formal procedural safeguards for youth, the juvenile justice system began to take on more characteristics of the adult criminal court. In 1973, Minnesota transferred control of juvenile offenders from the Youth Conservation Commission to the Commissioner of Corrections. In the 1980’s and 1990’s the number of offenses for which a juvenile could be tried as an adult increased significantly. Between the late 1980’s and the early 1990’s there was a 70% increase in the number of juveniles transferred to adult court (Hopson & Obidah, 2002, p. 159). In 1995, Minnesota authorized a new tier of sentencing called Extended Juvenile Jurisdiction which allowed juveniles to be tried and sentenced in juvenile court, but receive stayed adult sentences. Finally, in 1998 Minnesota juvenile court proceedings were opened to the public.

Overall, the total number of juveniles arrested in Minnesota increased by 286 times between 1971 and 2004 (Hopson & Obidah, 2002, p. 169). The overriding trend was to move away from “the best interests of the child” toward public safety and punishment reflecting a view that certain youthful offenders are beyond rehabilitation.

The changes in juvenile justice have had far greater impact on minority youth. For example, African American youth are significantly over-represented in Minnesota’s juvenile justice system. In Hennepin County, African Americans represent over 60% of the Juvenile Detention Center admissions (Council on Crime and Justice [CCJ], 2006a) and over 70% of these eligible for adult certification or extended juvenile jurisdiction (CCJ, 2005).

The focus on youth as perpetrators and victimizers also obscures their significant role as victims. The National Criminal Victimization Survey (2000) found that in 1998 “youth between

12 and 19 years old were the most likely age group to be victimized by personal crimes.” This age group was two times more likely than adults between 25 and 34 years old, and three times more likely than adults aged 35 to 49 years old to be victims of murder, aggravated assault, forcible rape, sexual assault and robbery” (Hopson & Obidah, 2002 p. 170). As our community has grown more afraid of our youth, it has also become harder to protect them from being victims themselves.

To further explore this key development and give their own insight, two authors submitted papers for this report. Professor Barry Feld provides an insightful analysis of the evolution of juvenile court detailing, in particular, how the expansion in procedural protections for juveniles did not keep pace with the imposition of adult sanctions. Otis Zanders gives historical depth to the juvenile justice system in Minnesota and focuses on the shifting attitudes and policies around rehabilitative, educational or punitive systems, which eventually led to Red Wing’s current Community Re-Integration Model. These papers are found in Appendix A.

## **War on Drugs**

Changes in public safety and the criminal justice system since the 1950s cannot be understood without considering the “War on Drugs.” The term was first coined in July 1969 by President Nixon in an address to Congress in which he labeled drug abuse America’s “public enemy number one.” Initially, more resources were budgeted for treatment than for law enforcement. This was based on the theory that treatment would reduce the demand for drugs, thereby reducing the amount of drug-related crime. This theory was first tested in Washington, D. C. and led to a drop in the D.C. crime rate, while national rates increased. Nevertheless, the treatment strategy was largely abandoned in 1973, the year the federal Drug Enforcement Agency (DEA) was created. The focus from that point forward has increasingly been on law enforcement with incarceration the central component.

The consequences of this shift have been very evident in Minnesota. According to the Minnesota Bureau of Criminal Apprehension (1949; 1956-2006), only six people were arrested in 1949 for narcotics violations, while in 2006 19,858 people were arrested for the same offense. Persons imprisoned for drug-related offenses now comprise 21% of Minnesota’s adult prison

population (MN DOC, 2007c). The number of narcotics arrests before and after the creation of the DEA is shown in Tables 4 and 5.

**Table 4: Narcotics Arrests in Minnesota  
Before the Creation of the DEA**

1956 – 1958	63
1958 – 1960	50
1960 – 1962	42
1962 – 1964	64
1964 – 1966	111

Source: BCA

**Table 5: Narcotics Arrests in Minnesota  
Since the Creation of the DEA**

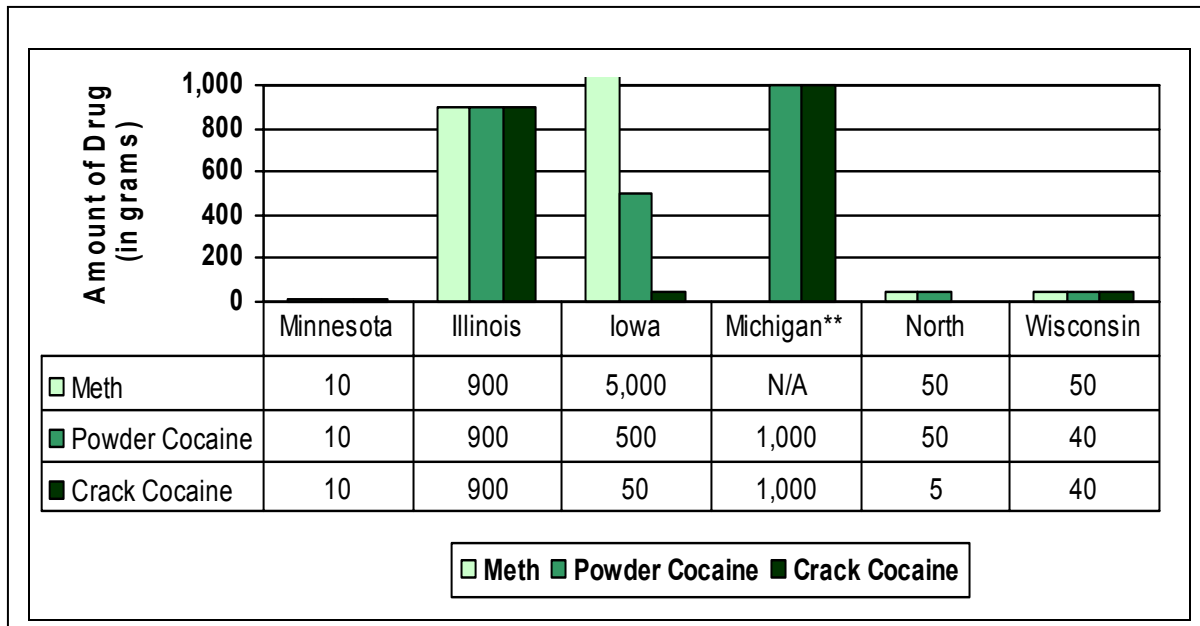
1975	5,764
1985	5,372
1995	15,085
2005	20,015

Source: BCA

Minnesota also views the threat of drug use and distribution as very serious for sentencing purposes. First-degree drug crimes (e.g. 10-gram sale or 25-gram possession of cocaine or methamphetamine) have presumptive sentences similar to offenses that cause great bodily harm or death, such as first degree assault or third degree murder, or criminal sexual conduct involving force, weapons or injury (Minnesota Sentencing Guidelines Commission [MSGC], 2007). Between 1988 and 2005, the average pronounced prison sentence for drug offenses increased from 22.9 months to 44.2 months (MSGC, 2007). Minnesota’s treatment of drug offenders is far more punitive than surrounding states, as shown in Figure 4 comparing the drug threshold level necessary to trigger the most serious drug offense.



**Figure 4: Comparison of Midwestern States:  
Drug Thresholds for Most Serious Sale Offenses**



\*\*In Michigan, the sale of any amount of meth is a felony, carrying a statutory maximum of 20 years.

Source: MSGC, 2007.

Minnesota’s treatment of drug offenders has disproportionately affected people of color. A study conducted by the Council in 2002 found a 10:1 disparity in drug-related arrests between African Americans and Whites (CCJ, 2002, p. 1). This disparity is more than twice the national disparity of 4 to 1 in 1998 and exists despite a Council study finding a similar level of drug use in Minnesota across racial and ethnic lines (CCJ, 2002). The imprisonment rate for African American drug offenders in Minnesota was 424 per 100,000 in 1996; the rate for whites was 11 per 100,000 for a 38:1 disparity ratio (CCJ, 2002, p. 2). The obvious injustice demonstrated by the disparity between how different races have been treated in the war on drugs undermines the integrity of the criminal justice system, causing people to lose confidence that the system is even-handed and works equally for the benefit of all citizens.

To further explore this key development and give their own insight, three authors submitted papers for this report. Michael Tonry explores Minnesota’s drug policy and its effect on racial and ethnic minorities resulting from extended sentences, the emphasis on prosecuting street-level dealers, and a refusal to provide treatment, followed by recommended policy changes

to address these consequences. Dan Cain traces the War on Drug's increasingly harsh penalties in Minnesota, highlighting the path of enforcement and interdiction and how the casualties of this "War" are most often people in poverty and people of color. Jason Marque Sole looks at the scope of the War on Drugs by examining the impact and detrimental effects it has had on African Americas, citing media sensationalism, increased sentencing, and a lack of treatment, as well as the differential implementation of criminal justice policy based on race and class. These can be found in Appendix A.

### **Sentencing Philosophy**

Changes in the juvenile justice system and the launching of the "War on Drugs" are part of a broader shift in criminal sentencing philosophy that has taken place largely over the past 25 years. Despite an ever greater appreciation for the complexity of factors that influence individuals toward criminal conduct (e.g. mental illness, drug addiction, lack of educational attainment, peer pressure, family dysfunction) the almost uniform response of the Minnesota legislature, the federal government and other policy-making bodies has been to "get tough," and then, "get tougher." It wasn't always this way. Until the early 1980's Minnesota's prison population was stable for many years (See Appendix C for prison population data). No new prisons were built, which served to limit the maximum prison population to the number of existing prison cells. The adoption of the Minnesota Sentencing Guidelines in 1982 was partly for the purpose of managing the prison population (MSGC, 1980). Then came the War on Drugs and changes in public attitudes, as previously discussed. Sentencing enhancements were enacted; new prisons were built, and the prison population grew. A full compilation of the sentencing enhancements is in Appendix D. It is worth studying.

The recitation of sentencing enhancements is not intended to argue against systematically addressing, with the creation of appropriate statutory offenses and sanctions, criminal activity as it exploits new and evolving segments of our community or becomes clearly necessary (e.g. domestic violence, child abuse, stalking, identity theft). However, as prison populations have exploded and the need to finance new prison beds squeezes funding for interventions, such as early childhood education and family-based therapy programs that have been demonstrated to lead to reduced crime levels and greater social and economic benefits to the community (Taylor-

Thompson, 2000, p. 1489), the one-note focus of legislatures and policy makers on more, longer and tougher sanctions for criminal activity is insufficient and misdirected.

To further explore this key development and give their own insight, two authors submitted papers for this report. Phil Carruthers gives an analysis of sentencing trends, specifically targeting longer incapacitation and imprisonment disparities; and recommends considering a recodification of Minnesota's criminal laws, an increased recognition of victim's rights, and education for offenders. Richard Frase addresses how sentencing policy changes and societal attitudes have affected Minnesota's criminal justice system, especially in regard to racial disparities and reaction to violent crimes, and how this will affect the justice system in the future. These papers can be found in Appendix A.

## **Mental Health**

As efforts to combat crime over the last 50 years have led to a dramatic increase in the number of people incarcerated in prisons and jails, people with mental illness have unfortunately been swept up in this incarceration binge. Ironically, this development started with the deinstitutionalization of the mentally ill. In Minnesota, from 1955 to 1994 the number of patients in public mental hospitals went from 11,449 to 1,593 (PBS: Frontline, 2005). While deinstitutionalization of people with mental illnesses was motivated by a variety of factors and in many instances resulted in improved care and living conditions, the state failed to provide adequate community-based resources, leaving the criminal justice system with a significant role in caring for the mentally ill.

Despite high levels of mental illness and substance abuse disorders among inmates, prisons are often ill-equipped to deal with inmates who have these concerns. A survey of Minnesota county jail staff found that 86% of respondents believed their jails had limited ability to address the needs of inmates with mental illness. (Minnesota Chapter of the National Alliance of Mental Illness [NAMI], 2005). In particular, only 15% of survey respondents indicated that they conducted a mental health screen to identify offenders with mental illness at the time of booking. Despite the fact that 99% of respondents believed that untreated mental illness increases the risk of re-offense, only 1.4% of respondents reported that discharge planning for inmates with mental illness was a consistent part of their protocol (NAMI, 2005, p. 1).

Nonetheless, while incarcerated, many offenders with mental illness receive pharmacological interventions. The Minnesota Psychiatric Society (2006) reports that 26% of individuals incarcerated in Minnesota prisons take psychotropic medication. This is in large measure due to a vastly enhanced awareness of mental illness that has developed over the last 50 years, as well as the availability of new medications to treat a whole range of disorders.

To further explore this key development and give their own insight, four authors submitted three papers for this report. Eric Janus writes of the expanding role of the criminal justice system in caring for people with mental illness since deinstitutionalization, using the consequences of laws concerning Sexually Violent Predators as illustration. Mark Anderson and Lynda Cannova describe the failures of health care systems for the care of persons with mental illness and how this burden rests with the criminal justice system, as it is often the only method to access treatment. Sue Aberholden describes the lack of access to treatment, medication, support and services for people with mental illness in the aftermath of deinstitutionalization, highlighting the stigmas surrounding mental illness and the impact on the justice system, as well as how this might change in the future. These papers can be found in Appendix A.

## **Education**

The Advisory Board identified shifts in Minnesota's education system as being an important development influencing public safety and the justice system. Despite many significant challenges facing education, there is good news when viewed over a fifty year perspective. In 1950, only 35.6% of Minnesota's population aged 25 or older had a high school diploma or more. By 2000, this number had grown to 88.% (US Census, 1950; 2000), In 1950, just 5.8% of Minnesota's population aged 25 or older had received a Bachelor's degree. By 2000, this number was 27.4% (US Census, 1950; 2000). Nonetheless, despite these hopeful statistics, an adequate level of educational attainment continues to remain out of reach for many, as displayed in Table 6. While 88.6% of the total population held a high school diploma or G.E.D. in Minnesota in 2000, for Blacks the rate was 79% and for Hispanics only 58.1%. Likewise, as compared to 27.4% of the total population who held Bachelor's degrees in 2000, just 18.7% of Blacks and 14% of Hispanics held that degree in 2000 (US Census, 2000).

**Table 6: Educational Attainment in Minnesota**

Percentage of Population, Age 25+, 2000

	High School Diploma	College Graduate
Black	79.0%	18.7%
American Indian	74.5%	8.8%
Asian	71.1%	36.3%
Hispanic	58.1%	14.0%
White, not Hisp.	89.5%	28.0%

*Source: U.S. Census Bureau, 2000 census*

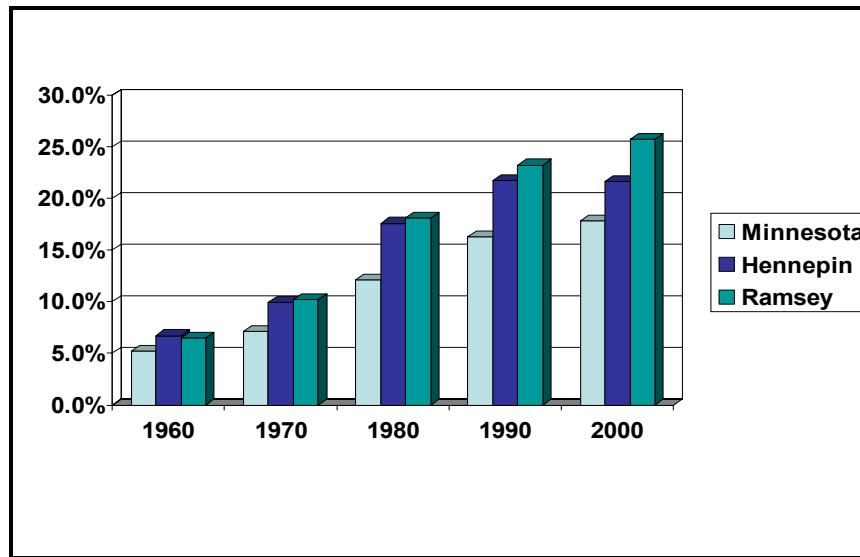
*Based on one race alone. Hispanics of any race.*

To delve into this issue further and give their own insight, three authors wrote two papers for this report. Arthur Rolnick and Rob Grunewald demonstrate the economic benefits of investing in early childhood development programs and the effect these economic benefits have on social issues, such as crime reduction. Bill Green explores the intersections of school and crime, especially the complex and challenging lifestyles of today's children and how this translates into a deficient education and a path towards crime. These papers can be found in Appendix A.

### **Family and Community**

Perhaps the most politically sensitive 50-year trend is the shifting nature of our family and community relationships. The traditional family with a wife and husband, so commonplace in 1957, has changed dramatically. We can see, for example, that many more families are headed by women than 50 years ago. In 1960, the percentage of families in Minnesota with a female head was 5.2% statewide; in 2000, it was 17.8%, with this percentage considerably higher in Hennepin and Ramsey counties. This is illustrated in Figure 5 below.

**Figure 5: Percent of Female-Head Families with Children**



Source: US Census Bureau, 1960; 1970; 1980; 1990; 2000

While some of the factors altering the traditional family structure, for example, the greater acceptance of gays and lesbians as parents, have enhanced the lives and the sense of community for individuals, many of them have greatly altered our traditional notions of family and community.

One of the most damaging elements of this trend has been the impact on families of having a parent go to prison. It is estimated that more than 1.5 million children in the United States have a parent who is incarcerated (Hagan & Dinovitzer, 1999, p. 129). An even larger number of children will have a parent in jail or prison at some point during their childhood. Incarceration of a parent very often puts a significant financial and emotion burden on the family members left behind. When fathers are incarcerated, their ability to contribute economically and socially to their families is significantly diminished. When mothers are incarcerated, there is an increased likelihood that children will be removed from the home, placed with relatives and that siblings will be separated (Hagan & Dinovitzer, 1999, p. 122). Having a parent in prison can be traumatic for a child, with lasting emotional consequences. Many of these families have already experienced significant difficulties and the loss of a parent to prison or jail compounds the troubles faced by the children.

These issues were further explored by six authors who gave their insight into this key development by writing three papers. Rose Brewer focuses on the imperiled status of Black families due to policies on crime and prison and the structural growth of the prison-industrial complex in the United States. Mitch Pearlstein explores the harmful individual and societal effects of single parent families and argues for the strengthening of the marriage unit for the future. Ashley Taranto provides insight into domestic violence of same-sex partnerships and reveals the lack of research and attention focused on this problem area. Mindy Thompson Fullilove, Robert E. Fullilove and Rodrick Wallace explore the relationships between neighborhoods and crime, focusing on community segregation, displacement of families due to urban renewal, and social disintegration due to mass incarceration and criminalization. These papers can be found in Appendix A.

### **Government Aid and Welfare**

Government assistance is an area that has seen several huge shifts in the last 50 years. From its origins as part of the Social Security Act in the 1930's, the Aid to Families with Dependent Children (AFDC) Program went through many changes in the 1960's, including granting states the rights to design their own assistance programs in 1962. In Minnesota, this eventually led to the first tests of the Minnesota Family Investment Program (MFIP) in 1989.

Under President Clinton, the AFDC Program was reformed into Temporary Assistance to Needy Families (TANF), which incorporated time-limited benefits, work requirements, and block grants to states (United States Department of Health and Human Services, 1996, p. 1). In Minnesota, these changes have had broad impact. The number of families receiving benefits changed dramatically with the implementation of TANF and MFIP: the number of families with eligible caretakers and children on AFDC decreased from 51,333 in January 1992 to 26,346 on MFIP in June 1999 (Hirasuna, 2000, p. 21). Of this decline, the number of white caretakers decreased from 31,520 to 7,744 (a 75% drop). By contrast, the number of nonwhite caretakers decreased from 19,789 to 17,602 (an 11% drop). Through these shifts, nonwhites and Hispanics increased from 38.6% to 69.4% of all cases (Hirasuna, 2000, p. 19).

A change affecting the lives of many families is MFIP's requirement that people with felony drug convictions who fail subsequent, mandatory random drug tests are subject to a 30%

reduction (called a “sanction”) in food stamps and cash payments after the first drug test failure and are completely disqualified from receiving food stamps or cash payments after the second failure. These sanctions were adopted despite the fact that studies have demonstrated that between 10 and 20 percent of adults receiving welfare have drug or alcohol problems (Rubinstein, 2001, p. 4). Further research showed that those families most frequently sanctioned have a household head who did not graduate from high school (40.8%), is under 20 years of age (44%) and is African American (38.1%) (Hirasuna, 2003, p. 4). Thus, MFIP restrictions disproportionately impact mothers and women of color and jeopardize their ability to care for their children, causing them to risk having to place their children with others or utilize foster care (Allard, 2002, p. 10), with the attendant increased likelihood that the children will enter the juvenile justice system.

To further explore this issue, Deborah Schlick writes of the history of Minnesota’s welfare programs and explores the myths surrounding contemporary government aid, noting that without lifting certain views of the public, the welfare system will not be able to positively influence the criminal justice system. This paper can be found in Appendix A.

## **Media Influence**

In the last 50 years, changes in how information is consumed have profoundly affected how people view crime, the criminal justice system and their own vulnerability to crime. This is because the news media, and what they choose to cover, or not cover, have significant influence on what issues people believe are important and ultimately what policy choices are made to respond to particular issues (Dorfman, 2001, p. 4).

Over the last 50 years, newspapers have seen a decline in circulation from 58.9 million in 1960 to 53.3 in 2005 (Project for Excellence in Journalism, 2007). Meanwhile, the number of television news outlets has exploded. In 1980, CNN began the first all-news station. By the late 1990s, there were numerous 24-hour news stations. Access to news media in general has also grown. From 1960 to 2000, media outlets (radio stations, local TV stations and affiliates, and newspapers) increased 200% in 10 selected US markets (Roberts et al., 2002, p. 1).

With the increased competition brought by these changes, news coverage has shifted toward dramatic crimes, particularly violent crime (Dorfman, 2001, p. 8). This shift in coverage



does not reflect either the crime rate in general or the level of violent crime (Dorfman, 2001, p. 8), but instead reflects the financial and marketing decisions of media executives (Beale, 2006, p. 398). For example, despite falling crime rates, in the 1990s networks dramatically increased the coverage of crime in dinner hour newscasts: in 1990, the three major networks aired an average of 557 crime stories per year; by 1995, they covered 2,574 crime stories per year, with a major focus on murders (Beale, 2006, p. 423).

Media coverage also disproportionately represents the level of crime committed by people of color and by youth, leading members of the public to a distorted view of both the amount of crime committed by those populations and their own risk of being victimized by violent crime (Dorfman, 2001, p. 11). This is one of several factors leading to a shift in public opinion toward more punitive policies toward crime, such as mandatory minimums, longer sentences and treating juveniles as adults (Beale, 2006, p. 398). In particular, Americans say they base their view of crime in reliance on the news media, rather than on their own personal experience (Beale, 2006, p. 398). This, combined with the media's portrayal of nonwhites and juveniles as more criminally dangerous than others, has been correlated with support for punitive policies toward crime (Beale, 2006, p. 446).

To further explore this key development, Gary Gilson describes the inadequacies of the media's reporting of crime in its focus on sensationalism and conflict, and how these practices keep the public poorly informed and unmotivated to demand more reporting, context and analysis. This paper can be found in Appendix A.

## **Technology**

Many of the most astonishing changes over the last 50 years have taken place in the area of technology and access to information. Most of these changes could barely have been imagined in 1957, but they have had a profound effect on public safety. For example, in 1960, 12.7% of households had no telephone; in 2000, only 1.1% of households had no phone or cell phone (US Census, 2004). With nearly universal access to real-time communication, individuals can be better connected to each other and to law enforcement.

Technological innovation has increased communication between all branches of the criminal justice system. In 1992 the Minnesota Legislature began efforts to integrate criminal

information, forming the Criminal and Juvenile Justice Information Policy Group and Task Force that created CriMNet, an extensive information sharing program. In 2000, Katie's Law was passed, providing the basis for integrating criminal records in the CriMNet system which can be shared between 1,100 criminal justice agencies. In 1995 the National Criminal History Plan (NCHIP) was formed, which gave federal funds to states to put manual records into automated online databases. NCHIP grants have been used in Minnesota to help fund a Department of Corrections database available to the entire criminal justice community and the FBI, a database of statewide protection orders available to the courts, state and local law enforcement and the FBI, and a tri-State consortium that provides automated fingerprint identification services to Minnesota, North Dakota and South Dakota. In the 1980's the Total Court Information System (TCIS) was put in place, which was more recently replaced by the Minnesota Court Information System, which aims to make case data available electronically. These rapid advances in information technology have changed the way cases are processed, in particular by increasing the efficiency of case processing and thereby raising the question as to whether the current criminal caseload in Minnesota could actually be handled without computers and the related information systems.

Advances in technology have also changed policing. In 1968, the Federal Communications Commission created the 911 system to centralize emergency assistance in communities. The Minneapolis Police Department began to use computers in policing by implementing CODEFOR (Computer Optimized Deployment – Focus on Results), which uses computer-generated data to quickly identify areas of crime and direct police resources in a coordinated manner. Recently, Minneapolis has begun using ShotSpotters, gunshot detectors placed in high crime areas that alert police to the sound of gunshots.

Technology has also permitted citizens to be far better informed about many aspects of their community, including crime and offenders. For example, in 2005, the Minnesota Bureau of Criminal Apprehension began offering an online application for criminal background checks, going back 15 years. Access to the internet increased in U.S. households from 18% in 1997 to 54.7% in 2003 (US Census, 2003), and during this rise online content expanded to include many web-based resources to access criminal records and court information, such as offender registries, internet-based background check services and criminal record blogs. Easier access to this information has caused it to be more heavily relied upon. For example, a Society for Human

Resources Management survey showed that 80 percent of companies that conducted background checks in 2003 did criminal checks, compared with 51 percent in 1996 (Esen, 2004).

This has an enormous impact on offenders: It denies them an opportunity to remake their lives. Electronically accessed databases convey criminal histories to anyone who wants to know and does so without providing information relative to any particular offender's efforts to move beyond her or his past.

While there is no doubt that technology can be harnessed to enhance public safety and improve the fairness and effectiveness of the justice system (for example with the availability of DNA evidence), technology can also be exploited to undermine safety and justice. The widespread use of the internet has spawned a multi-billion dollar wave of identity theft. Predators can easily approach children electronically. With security cameras trained on busy street corners, true privacy may have become a thing of the past.

To further explore this development, Robert Sykora writes about the Permanent Punishment Machine: technological advances that have allowed criminal records to become electronic, accessible and permanent, and describes the unintended, but harmful, consequences of putting new technologies in place without adequate analysis. This paper can be found in Appendix A.

The scale and variety of changes impacting public safety and the justice system over the last 50 years is enormous. More remarkable, however, will be the changes still to come. The next section of the report will describe several key demographic shifts that are anticipated to occur over the next 25 years.

## MINNESOTA’S DEMOGRAPHICS IN 2030: THE CHANGES ACCELERATE

Population changes in the next 25 years will be very different than the population changes of the past fifty years. This is true relative to the rate of change, the geographic distribution of the change, and the characteristics of the change, particularly with respect to the aging of the white population and the acceleration of racial and ethnic make-up.

Overall, Minnesota’s population will continue to grow, but at a slower rate than in the past and mostly in regions of the state outside the 7-county metro area. Table 7 shows that phenomenon:

**Table 7: Population 2000-2030**

	Minnesota	7-County Region	Hennepin County	Ramsey County
2000	4,919,479	2,642,062	1,116,200	511,035
2010	5,446,530	2,906,530	1,149,290	494,710
2020	5,943,240	3,134,230	1,178,170	489,130
2030	6,297,950	3,286,910	1,190,240	482,490

Source: US Census Bureau 2000; Hazel Reinhardt, 2007.

Expressed as a percentage, the projected population growth between 2000–2030 looks like this:

**Table 8: Population 2000-2030, as percentage**

Minnesota	28.0%
7-County Region	24.4%
Hennepin County	6.2%
Ramsey County	-5.6%

Source: US Census Bureau 2000; Hazel Reinhardt, 2007.

The greatest growth will occur in the outer counties within the 11-county MSA and in certain areas in Greater Minnesota. Compared to the state population as a whole, the 7-county region will hold a slightly smaller percentage of the state's population in 2030 than it did in 2000 (52.2% vs. 53.7%) and the 11-county MSA will hold a larger percentage (60.8%). By 2030, the central cities of Minneapolis and St. Paul will together constitute only 20% of the 11-county MSA.

The most dramatic changes relate to the aging of the White population, and the growth in the populations of color. These two characteristics are related in that they are primarily a result of the minority population being currently much younger than the white population as shown in Table 9:

**Table 9: Median Age, 2000, by Race/Ethnicity:**

Black	25.2 years
American Indian	25.5 years
Asian	24.5 years
Hispanic	23.0 years
White, not Hisp.	37.2 years

Source: US. Census Bureau, 2000 Census.

Note: Based on one race alone; Hispanics of any race.

As a consequence, by 2030, over 20% of the State's population will be over 65 years old, up from 12.1% in 2000, with this growth occurring primarily within the white population. The growth in the minority populations is likewise quite phenomenal as shown in Table 10:

**Table 10: Minority Populations 1960-2030**

	Minnesota	11-County MSA	7-County Region	United States
1960	1.2%	1.7%	1.8%	12.0%
2000	11.8%	15.7%	16.8%	30.6%
2030	22.5%	26.0%	29.0%	42.5%

Source: U.S. Census Bureau, 1960; 2000; Hazel Reinhardt, 2007.

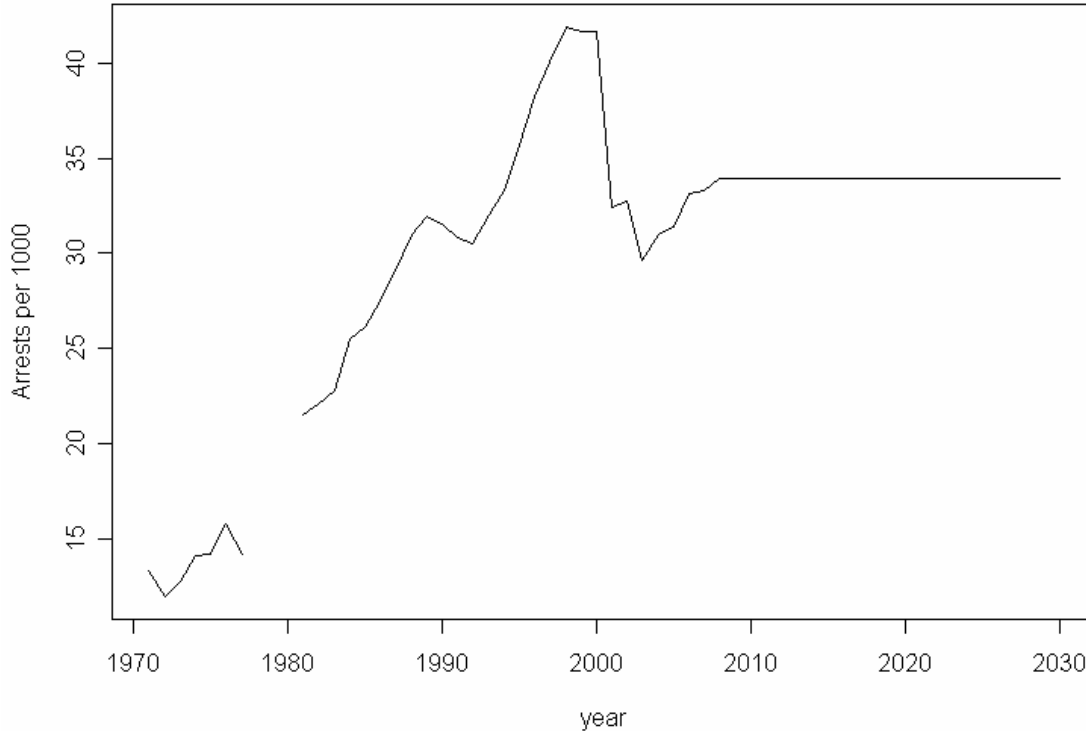
While the overall growth in Minnesota’s population generally tracks the growth nationally between 2000-2030, the growth within the communities of color is much larger than the overall growth, both within the state and nationally. For example, the Black population in Minnesota will have grown by 115% come 2030, the American Indian population by 59%, the Asian population by 121%, and the Hispanic population by 184%. In all cases, the growth among these populations in Minnesota exceeds their growth nationally resulting in Minnesota becoming more like the United States than it is today.

For public safety purposes, the population that matters most is the 18-30 year old male population. Within this age group for the 7-County region, the White male population shrinks slightly by 2030 (from 191,400 to 186,000). The opposite is true for all populations of color: Black (17,285 to 31,500); American Indian (2,296 to 3,300); Asian (14,395 to 24,700) and Hispanic (17,264 to 30,400). This difference is most noticeable in Hennepin and Ramsey counties. (See Appendix E).The demographic changes facing our State also have public safety consequences. This is the topic for the next section.

## ARREST AND INCARCERATION IN 2030: A BLEAK PICTURE

As the demographics of Minnesota change, so does the composition of those arrested. As shown in Figure 6, the overall adult arrest rate flattens between 2010 and 2030.

**Figure 6: MN Adult Arrest Rate 1971-2006, Predicted to 2030**

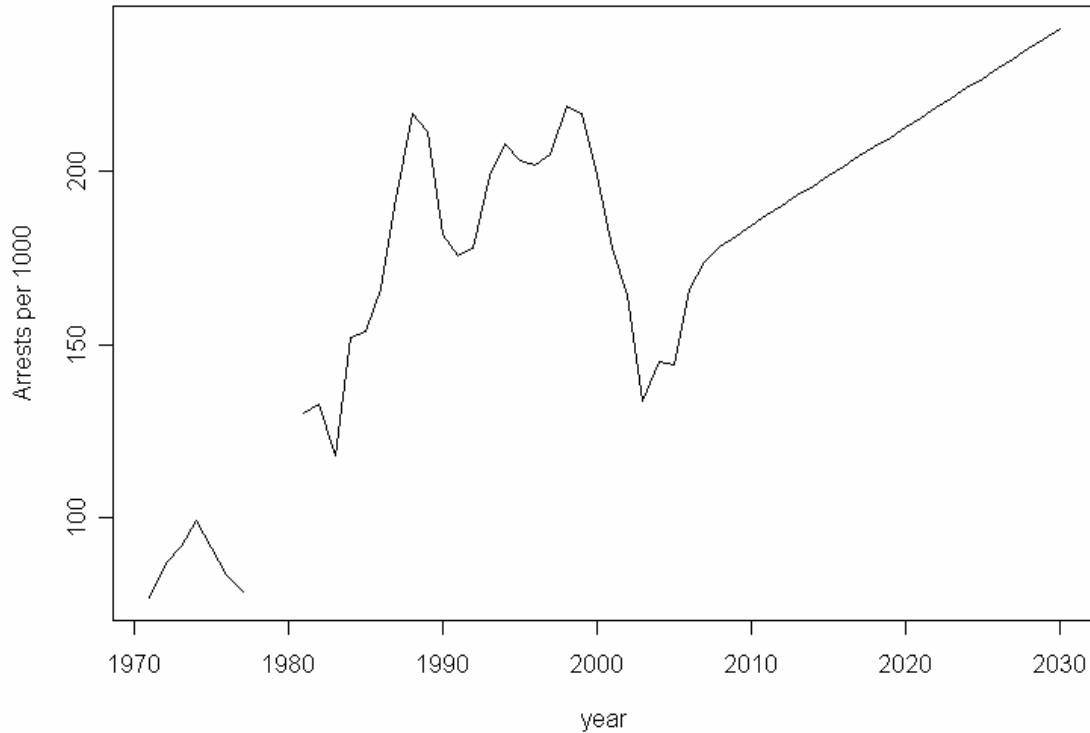


While the arrest rate for the state remains flat, the number arrested will increase due to the increasing population. The result is an increase of over 40,000 in the total number of arrests, an increase of approximately 25% over the total number of arrests in 2006, as shown in the chart below:

Year	Total Arrests
2006	169,903
2010	185,177
2015	193,368
2020	200,704
2025	207,157
2030	212,886

The increase in total arrests is accounted for entirely by increases in the number of minorities arrested. While arrests for whites are projected to decrease (by a relatively small amount), the number of African Americans arrested will nearly double to over 90,000 arrests per year by 2030. The increase in the arrest rate for African Americans is illustrated in Figure 7.

**Figure 7: MN Black Arrests 1971-2006, Predicted to 2030**



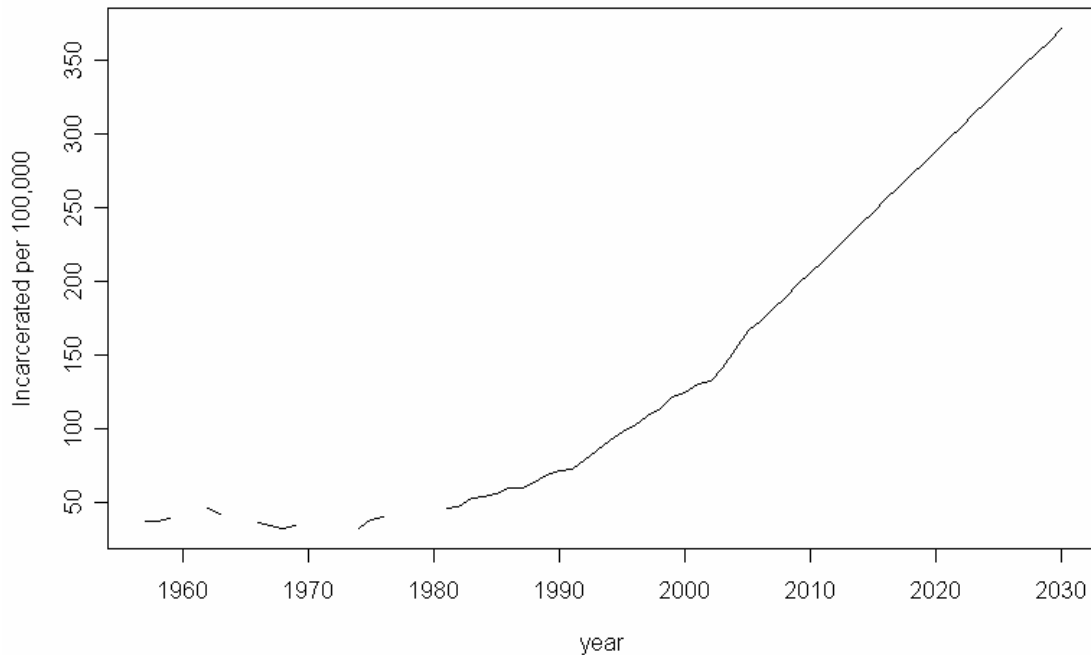
The chart below shows the dramatic increase in the number of African Americans projected to be arrested by 2030:

<b>Year</b>	<b>Black Arrests</b>
2010	47,852
2015	58,570
2020	69,767
2025	81,330
2030	93,083



A somewhat different phenomenon occurs with respect to imprisonment. Here, there is a significant increase in the total numbers of Minnesotan’s who are projected to be imprisoned in 2030. As shown in Figure 8, the imprisonment rate climbs dramatically throughout the next 20 years.

**Figure 8: MN Adult Imprisonment Rate 1971-2006, Predicted to 2030**



The above imprisonment rate results in the projected prison population increasing as follows by 2030:

<b>Year</b>	<b>Total Imprisoned</b>
2010	11235
2015	14093
2020	17078
2025	20156
2030	23313

Unlike the total number of arrests, which increase only slightly, the number of people imprisoned more than doubles by 2030 to a total inmate population in excess of 20,000. This growth is disproportionately accounted for by the growth in the number of minority inmates. However, again unlike the arrest projections, the White inmate population is also projected to increase. The combination of the White and minority increases means that Minnesota will need to build a new prison holding 1000 inmates roughly every two years between now and 2030. The associated costs, financial and social, are not an acceptable situation.

## **REACHING A TIPPING POINT: CHANGES THAT WOULD MAKE A DIFFERENCE**

The arrest and imprisonment projections paint a bleak picture. However, unless the current trend lines that serve as the basis for these projections are significantly changed in a positive direction, Minnesota will experience more crime and more arrests in 2030, even though it will be spending far more on incarcerating its population. This is not an acceptable situation either financially or socially.

Fortunately, there are steps that can be taken. Recent research has shed much light on what causes crime to go up – and to go down. While it is possible that positive developments might occur on their own, the stakes are far too important to leave any meaningful and lasting solution to chance. So, it is critical that we use what is now known to chart a course in the direction that will mean Minnesota is safer—much safer—in the future.

The “best” returns on our public and private investment will flow, we believe, from making an unprecedented commitment to educating *all* our youth, providing universal access to effective mental health and drug addiction treatment, having more fathers actively involved in raising children, eliminating the legal barriers that flow from a criminal record, and restoring Minnesota’s historic correctional model of “just” consequences within a rehabilitative and restorative framework. Each is discussed below.

### **Educate All Our Youth**

Research has demonstrated a clear relationship between increased educational attainment and reductions in crime, recidivism, and associated criminal justice costs. As would be expected, correctional populations have a lower level of educational attainment than the general population (Harlow, 2003). Based on data from the Minnesota Department of Corrections (2007a), less than half (46.5%) of the adult prison population in Minnesota has an education level of high school or higher (with 26.4% having less than a high school diploma/GED and 27.1% labeled as “other/unknown”) as of January 1, 2007. Generally speaking, low educational attainment is concentrated among people of color within the general population and among inmates (Justice Policy Institute, 2007).

Research shows the positive outcomes associated with increasing educational attainment to prevent involvement with the criminal justice system. For example, recent research demonstrated that higher rates of educational attainment, higher college enrollment rates, and increased spending on higher education are associated with lower rates of incarceration and violent crime (Justice Policy Institute, 2007). Another recent study was based on an arrest and crime rate for a cohort of 20 year old high school dropouts. This study demonstrated that high school graduation resulted in a 10-20% overall reduction in crime rates for serious crimes including rape/sexual assault, violent crime, property crime, and drug offenses (Levin, Belfield, Muennig, Rouse, 2007). For Minnesota specifically, the Alliance for Excellent Education (2006) recently reported that a 5 percent increase in male graduation rates would result in \$30,608,540 annual crime-related savings and \$47,171,157 additional annual earnings for a total economic benefit of \$77,779,698.

Correctional education has been shown to lower rates of re-arrest, re-conviction, and re-incarceration and have a positive effect on employment earnings of participants (Steurer & Smith, 2003). In a review of recent studies, it was found that Adult Basic Education, General Equivalency Degrees, and secondary education participants are less likely to recidivate (Jensen & Reed, 2006). One study demonstrated that inmates that participate in correctional education programming are less likely to return to prison, and only a 6% reduction in recidivism from correctional education would be needed for the cost of the education to break even with the cost of incarceration (Bazos & Hausman, 2004).

### **Equal Access to Mental and Chemical Health Treatment**

The number of individuals with mental illness and chemical addiction in the justice system has grown substantially over the past 50 years, as discussed previously. Their contact with the justice system usually stems from a lack of accessible and effective treatment options in the community, and without proper identification and treatment, they are likely to be caught in the “revolving door” of the justice system.

It is estimated that for every one person treated for a mental illness, about five people with such conditions are treated, or confined without treatment, in correctional facilities (Pustilnik, 2005). Moreover, chemical and mental health problems have been found to be associated with increases in recidivism and technical violations of the terms of an inmate’s

release. A report by the Bureau of Justice Statistics showed that almost a quarter of prison and jail inmates with a mental health problem had served three or more prior incarcerations in comparison to a fifth of inmates without such problems (James & Glaze, 2006). Similarly, according to the Minnesota Department of Corrections (2007d), substance abuse is commonly a direct and contributing factor for release violations that result in a return to prison. Despite this, the capacity of substance abuse treatment programs in Minnesota prisons are insufficient to provide services to all inmates in need of treatment (Minnesota Legislative Auditor, 2006).

There are a number of factors that affect the availability and effectiveness of chemical health and mental health treatment outside the criminal justice system. The most commonly cited reason for not receiving treatment is an inability to afford such treatment (Substance Abuse and Mental Health Services Administration, 2006). Similarly, there are problems with access to treatment. Diminished resources for mental health treatment in the community, according to the Minnesota Psychiatric Society (2006), has resulted from cuts to mental health departments spending, issues with access, and inadequate reimbursement. Additionally, assessment procedures have implications for identifying individuals with chemical addiction, mental illness, or the co-occurrence of both. These procedures utilized, along with referral practices, affect whether treatment is received and what treatment options are offered. For Minnesota, the Legislative Auditor (2006) found significant variance in assessments and referrals for publicly-funded community-based treatment.

Effective drug treatment has been shown to decrease future drug use and related criminal behavior (Fletcher and Chandler, 2006) and inmates that complete prison-based substance abuse treatment have lower overall arrest and conviction rates than inmates that do not receive treatment (Office of the Legislative Auditor, State of Minnesota, 2006). It is estimated that for every dollar spent on addiction treatment programs, there is a \$4 to \$7 reduction in the cost of drug-related crimes (National Institute on Drug Abuse, 2006). Meta-analysis also suggests that drug courts can reduce re-offending (Wilson, Mitchell, & MacKenzie, 2006; Farrington & Welsh, 2005). Estimates based on the costs of incarcerating persons with mental illness in Pennsylvania (Pulstilnik, 2005) found that it is about 75% more expensive to incarcerate people with mental illness than people without them. According to the Minnesota Psychiatric Society (2006) for every \$1 spent on early interventions for mental illness, \$16 is saved in later costs. Interventions such as mental health courts have demonstrated reductions in recidivism and

violence (McNiel & Binder, 2007) and for those with mental illness and co-occurring substance use, jail diversion has been shown to reduce time spent in jail without increasing the risks to public safety (Steadman & Naples, 2005).

### **Involve More Fathers in Raising Children**

As discussed previously, there has been a significant increase in the prevalence of single-parent families. It is estimated that more than one half of children spend some time in a single-parent family (Demuth & Brown, 2004). Some research, as outlined below, has shown that children growing up in single-parent homes are more susceptible to negative life outcomes, such as an increase in criminal behavior, than children reared in two-parent families.

Numerous studies of family structure conducted over the past decade have demonstrated that children who grow up in single-parent families have more negative outcomes than those with both parents (Thomas, Farrell & Barnes, 1996, p. 884; Antecol & Bedard., 2007, p. 55). A recent study by Heather Antecol and Kelly Bedard (2007) found that an additional 5 years with the biological father decreases the probability of juvenile smoking by 5.3 percentage points, drinking by 1.2 percentage points, engaging in sexual intercourse by 3.4 percentage points, marijuana use by 2.2 percentage points, and criminal conviction by 0.3 percentage points. A 2004 study concluded that “parental absence is positively related to adolescent delinquency” (Demuth, 2004, p. 78). In sum, these findings “indicate that the longer the father remains in the household, the ‘better off’ the youth is” (Antecol et al., 2007, p. 69).

These negative results are compounded when single-parent families are in their situation due to a parent being incarcerated. A 2006 study by the Council found that “all families face social challenges, such as, lack of financial support, social alienation, and stigma associated with having a parent in prison” (CCJ, 2006b, p. 4). By ensuring an active role for fathers in their families, rates of juvenile criminal activity could be positively affected.

### **Eliminate Legal Barriers to Successful Re-Entry**

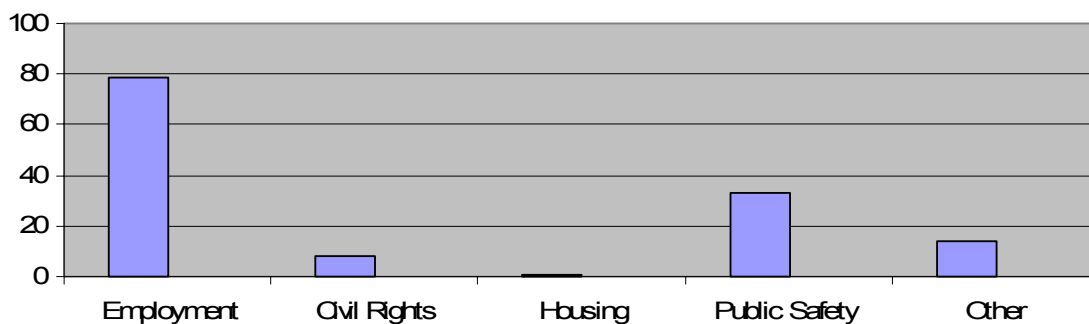
Ex-offenders are confronted with a multitude of barriers to successful reintegration into society. These barriers can be both informal (e.g., lack of job experience, inadequate education, etc.) and formal (e.g. statutory prohibitions on holding certain types of jobs, similar restrictions in administrative rules, etc.). Addressing the informal barriers is a challenging and complex

undertaking, necessitating a comprehensive approach to providing public education and both direct and indirect assistance at the individual level. On the other hand, the formal (legal) barriers exist because of public policy choices and can be undone through the political process.

As discussed previously, technology has made criminal records more accessible and, in the post-9/11 world, background checks have become commonplace. One study showed that 82% of employers conducted background checks on applicants in 2003, up from 66% in 1996 (cited in Flint, 2007). Interestingly, in a survey of public views towards the use of criminal history information, a majority of respondents believe that the right to access conviction or arrest records by employers or governmental licensing agencies should be limited based on the sensitivity of the position (Bureau of Justice Statistics, 2001). Faced with a choice between hiring a person with a criminal record and one without, the evidence suggests that employers consistently favor the person without a record. Research shows that employers are less likely to hire ex-offenders (Holzer, Raphael, & Stoll, 2004) even if they have expressed a greater likelihood of hiring an ex-offender (Pager & Lincoln, 2005). In addition to difficulty in finding housing, problems with securing employment after release has been shown to increase the likelihood of former prisoners becoming homeless (Kushel, Hahn, Evans, Bangsberg, & Moss, 2005).

The majority of research on barriers facing ex-offenders has focused on employment but it is well known that these barriers impact other areas than simply employment such as access to housing, welfare benefits, student financial aid, voting rights, and lending opportunities. As shown in Figure 10, legal barriers are highly concentrated in the area of employment in Minnesota.

**Figure 10: Number of Collateral Sanctions by Category - Minnesota**



Source: The Council on Crime and Justice (2007)

Legal barriers that lessen employment opportunities, and result in fewer jobs for ex-offenders, serve to increase recidivism.

### **Effective Offender Rehabilitation and Victim Restoration**

As presented earlier, Minnesota has experienced a dramatic shift from a rehabilitative correctional model to one that is more punitive, with rehabilitation secondary to offender punishment and control. The punishment model, particularly utilization of criminal justice sanctions and increases in sentencing length, has been found to have little to no impact on the rate of crime and is less cost-effective relative to a rehabilitative correctional model.

Despite this, Minnesota has experienced a significant increase in the length of incarceration of offenders. Research on the effect of increased sentencing length has shown that it provides little to no appreciable impact on preventing crime. One study on length of prison sentences found that for most individuals, a percent increase in prison term would yield a less than one percent increase in the number of crimes averted (Bhati, 2007). The Sentencing Project (2002) found that inmates serving jail or prison sentences of up to five years did not significantly vary in their likelihood to recidivate than those who served less than six months. According to a report by the Vera Institute of Justice, increases in incarceration have a minimal effect on crime with a 10 percent increase in incarceration only being associated with a 2 to 4 percent drop in crime (Stemen, 2007). What positive outcomes result from longer prison sentences may be diminished by the additional economic burdens such as higher health care costs as inmates age and possible increases in public assistance for impoverished families of offenders (Lippke, 2002).

Knowledge of the characteristics of effective treatment programs for offenders has advanced significantly in recent years and provides an understanding of “what works.” Specifically, the impact of different types of programs has demonstrated what is promising, and what is less effective in reducing recidivism. A quantitative review of 400 published research studies over the past 25 years found that some programs can be expected to deliver 20 to 30 percent reduction in recidivism or crime rates and more typical programs demonstrated a five to ten percent reduction (Aos, Phipps, Barnoski, & Lieb, 2001), as displayed in Table 11.



**Table 11: Crime Reduction Effects of Programs**

	Number of Program Effects in the Statistical Summary	Average Size of the Crime Reduction Effect	Standard Error
<b>Juvenile Offender Programs</b>			
<i>Specific "Off the Shelf" Programs</i>			
Multi-systemic Therapy	3	-0.31	0.10
Functional Family Therapy	7	-0.25	0.10
Aggression Replacement Training	4	-0.18	0.14
Multidimensional Treatment Foster Care	2	-0.37	0.19
Adolescent Diversion Project	5	-0.27	0.07
<i>General Types of Treatment Programs</i>			
Diversion with Services (vs. regular juvenile court processing)	13	-0.05	0.02
Intensive Probation (vs. regular probation caseloads)	7	-0.05	0.06
Intensive Probation (vs. as alternative to incarceration)	6	0.00	0.05
Intensive Parole Supervision (vs. regular parole caseloads)	7	-0.04	0.06
Coordinated Services	4	-0.14	0.10
Scared Straight Type Programs	8	0.13	0.06
Other Family-Base Therapy Approaches	6	-0.17	0.04
Juvenile Sex Offender Treatment	5	-0.12	0.10
Juvenile Boot Camps	10	0.10	0.04
<b>Adult Offender Programs</b>			
<i>Adult Offender Drug Treatment Programs (compared to no treatment)</i>			
In-Prison Therapeutic Community, No Community Aftercare	5	-0.05	0.05
In-Prison Therapeutic Community, With Community Aftercare	11	-0.08	0.02
Non-Prison TC (as addition to an existing community residential facility)	2	-0.17	0.10
In-Prison Non-Residential Substance Abuse Treatment	5	-0.09	0.03
Drug Courts	27	-0.08	0.02
Case Management Substance Abuse Programs	12	-0.03	0.03
Community-Based Substance Abuse Treatment	3	-0.07	0.05
Drug Treatment Programs in Jails	7	-0.05	0.05
<i>Adult Sex-Offender Treatment Programs (compared to no treatment)</i>			
Cognitive-Behavioral Sex Offender Treatment	7	-0.11	0.05
<i>Adult Offender Intermediate Sanctions (compared to regular programs)</i>			
Intensive Supervision (Surveillance-Oriented)	19	-0.03	0.03
Intensive Supervision (Treatment-Oriented)	6	-0.10	0.06
Intensive Supervision: Diversion from Prison	3	0.00	0.08
Adult Boot Camps	11	0.00	0.03
Adult Boot Camps - As a partial diversion from prison	11	0.00	0.03
<i>Cognitive-Behavioral Programs (compared to no treatment)</i>			
Moral Reconciliation Therapy	8	-0.08	0.05
Reasoning and Rehabilitation	6	-0.07	0.04

<i>Other Programs (compared to no treatment or regular programs)</i>			
Work Release Programs (vs. in-prison incarceration)	2	-0.03	0.11
Job Counseling/Search for Inmates Leaving Prison	6	-0.04	0.02
In-Prison Adult Basic Education	3	-0.11	0.05
In-Prison Vocational Education	2	-0.13	0.04
Correctional Industries Programs	3	-0.08	0.02

Source: Aos, Phipps, Barnoski, & Lieb (2001)

This chart demonstrates the positive effects of certain types of programs on crime rates. For example, a crime reduction effect of -.10 for a program is roughly equivalent to a 10% percent reduction in the rate of crime. The level of confidence in the effect size (standard error) is also shown, with a larger standard error relative to the effect size being associated with less confidence. Although a particular program may have significant reductions in crime, it is important to consider whether the cost of a particular intervention outweighs its benefits. For the state of Washington, the net benefit per participant ranged from a low of -\$8,855 to as high as \$131, 918 (Aos, Phipps, Barnoski, & Lieb, 2001). Thus, choice of programs is critical and, when done correctly, results in very substantial cost-savings.

## A FRAMEWORK FOR THE FUTURE

Minnesota can become a safer place to live. But only if certain “key” developments occur. Listed below are the developments, expressed as goals, that we believe will be most beneficial in building a framework for strengthening public safety. They do so by making Minnesota a stronger, more just place to live *for everyone*. A Framework for the Future, one that will ensure a higher level of public safety through greater justice, has the following elements:

1. By 2025, 95% of all high school students will graduate on time regardless of race or ethnicity.
2. By 2020, at least 90% of all fathers, regardless of race or ethnicity, will be actively involved in the lives of their children
3. By 2020, all person with a mental illness and/or chemical addiction will have an affordable and timely treatment option.
4. By 2015, Minnesota’s justice system will provide full restoration for every victim and proportionate consequences for each offender within a correctional model focused on rehabilitation and redemption
5. By 2012, all legal barriers arising from a person’s criminal record will be eliminated unless the barrier is directly and proportionately related to a criminal conviction for a serious offense.

This is an ambitious framework, one that requires changes in public values and attitudes in order to create the necessary societal and political will to act. But with a strong, collective will in place, the strategies and action steps necessary to achieve each goal can become a reality, not just a possibility.

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**APPENDIX A:  
AUTHOR PAPERS**  
*IN ORDER OF APPEARANCE*

**JUVENILE JUSTICE**

Barry Feld  
Otis Zanders

**THE WAR ON DRUGS**

Michael Tonry  
Dan Cain  
Jason Marque Sole

**SENTENCING**

Phil Carruthers  
Richard S. Frase

**MENTAL HEALTH**

Eric Janus  
Mark Anderson and Linda Cannova  
Sue Abderholden,

**EDUCATION**

Arthur J. Rolnick and Rob Grunewald  
Bill Green

**FAMILY AND COMMUNITY STRUCTURE**

Rose M. Brewer  
Mitch Pearlstein  
Ashley Taranto  
Mindy Thompson Fullilove, Robert E. Fullilove & Rodrick Wallace

**GOVERNMENT AID AND WELFARE**

Deborah Schlick

**MEDIA**

Gary Gilson

## TECHNOLOGY

Robert Sykora

### JUVENILE JUSTICE IN MINNESOTA: FRAMEWORK FOR THE FUTURE

Professor Barry C. Feld

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Over the past four decades, judicial, legislative, and administrative changes have transformed the juvenile court from a nominally rehabilitative social welfare agency into a scaled-down, second-class criminal court for youths that provides neither therapy nor justice. The Supreme Court in *Kent v. United States*, 383 U.S. 541, 556 (1966), observed that “juvenile justice” is an oxymoron: “the child receives the worst of both worlds: he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.” Since the Supreme Court in *In re Gault*, 387 U.S. 1 (1967) mandated some procedural safeguards in delinquency adjudications, there has been a substantive and procedural convergence between juvenile and criminal courts. But even as delinquency sanctions have become more punitive, juvenile courts provide a procedural regime under which few adults charged with a serious crime would consent to be tried.

At the beginning of the twentieth century, economic modernization fostered rapid industrialization, immigration, and urbanization. Social changes altered family structure and function and promoted a newer cultural construction of childhood as a period of innocence and vulnerability. The Progressive movement emerged to address the host of problems associated with social change, combined their belief in state power with the newer conception of childhood, and enacted a number of child-centered reforms – juvenile courts, child labor laws, welfare laws, and compulsory school attendance laws (Feld 1999). During this period, positive criminology supplanted classical explanation of crime as the product of free-will choices. Reformers attributed criminal behavior to deterministic forces, deemphasized individual responsibility, employed medical analogies to treat offenders, and focused on efforts to reform rather than to punish them. Juvenile courts melded the new vision of childhood with new theories of social control, introduced a judicial-welfare alternative to the criminal justice system, and enabled the state, as *parens patriae*, to monitor ineffective child-rearing. Juvenile courts emphasized reform and rehabilitation, used informal procedures, excluded lawyers and juries, conducted confidential hearings, and adopted a euphemistic vocabulary. Judges imposed indeterminate and non-proportional sentences to secure juveniles’ “best interests” and future welfare rather than to punish them for their past offenses.

Minnesota joined the nationwide movement and enacted its first juvenile court legislation effective June 1, 1905. Initially, the law to “regulate the treatment and control of dependent, neglected, and delinquent children” applied only to children under the age of seventeen years. Reflecting the breadth of legislative concerns, the original act defined a “delinquent child” as any child who

violates any law of this state or any city or village ordinance; or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who without just cause and without the consent of its parents or custodian absents itself from its home or place of abode; or who is growing up in idleness or crime; or who knowingly frequents a house of ill fame; or who knowingly patronizes any policy shop or place where any gaming device is or shall be operated; or who frequents any saloon or dram shop where intoxicating liquors are sold, or who patronizes or visits any public pool room or bucket hsop; or who wanders about the streets in the night time without being in any lawful business or occupation; or who habitually wanders about any railroad yards or tracks or jumps or hooks on to any moving train or enters any care or engine without lawful authority; or who habitually uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct in any public place or about any school house.

The legislation’s purpose clause further provided that it should be “liberally construed” to ensure “That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done, the child to be placed in an approved family home and become a member of the family by legal adoption or otherwise.” Amendments to the Juvenile Code effective January 1, 1918, raised the age of delinquency jurisdiction to children under eighteen years of age, closed delinquency proceedings to the public, provided confidentiality for court records, and expanded juvenile courts’ purpose to ensure that they “act upon the principle that to the child concerned there is due from the state the protection and correction which he needs under the circumstances disclosed in the case. . .”

In 1967, the Supreme Court in *In re Gault* concluded that most states’ juvenile court procedures violated the Constitution and required a substantial overhaul. *Gault* identified two crucial disjunctions between juvenile justice rhetoric and reality: the theory versus the practice of rehabilitation and the differences between the procedural safeguards available to criminal defendants and to delinquents. The Court required juvenile courts to use “fundamentally fair” procedures which included advance notice of charges, a fair and impartial hearing, the assistance of counsel, an opportunity to confront and cross-examine witnesses, and the privilege against self-incrimination. Although the Court based delinquents’ rights to notice, counsel, and confrontation on generic notions of due process and “fundamental fairness” under the Fourteenth Amendment rather than the specific requirements of the Sixth Amendment, it explicitly relied on the Fifth Amendment to grant delinquents the privilege against self-incrimination. As a result, juvenile courts’ proponents no longer could characterize delinquency adjudications as either “non-criminal” or “non-adversarial.” In subsequent decisions, the Court further equated criminal and delinquency proceedings. In *In re Winship*, 397 U.S. 358 (1970), the Court required states to prove delinquency “beyond a reasonable doubt,” rather than by the lower, civil “preponderance of the evidence” standard of proof. The Court reasoned that while *parens patriae* intervention may be a laudable goal to deal with miscreant youths, “that intervention cannot take the form of subjecting the child to the stigma of a finding that he violated a criminal law and to the

possibility of institutional confinement on proof insufficient to convict him were he an adult.” 397 U.S. at 367. However, in a plurality decision that produced five separate opinions, the Court in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), declined to grant delinquents all of the procedural safeguards of adult criminal trials. Although the Court in *Duncan v. Louisiana*, 391 U.S. 145 (1968), previously had held that the Sixth Amendment right to a jury trial applied to state criminal proceedings, *McKeiver* insisted that “the juvenile court proceeding has not yet been held to be a ‘criminal prosecution,’ within the meaning and reach of the Sixth Amendment, and also has not yet been regarded as devoid of criminal aspects merely because it usually has been given the civil label.” 403 U.S. at 541. *McKeiver* held that the constitution did not require jury trials in state delinquency trials because “due process” required only “accurate fact-finding,” which a judge could do as well as a jury. The *McKeiver* plurality denied that delinquents required protection from the State, invoked the imagery of the paternalistic juvenile court judge, ignored the jury’s crucial role in upholding *Winship*’s standard of “proof beyond a reasonable doubt,” and rejected concerns that juvenile courts’ closed hearings could prejudice the accuracy of fact finding. *McKeiver* emphasized the adverse impact that jury trials could have on the informality, flexibility, and confidentiality of juvenile court proceedings.

*Gault* and its progeny transformed the Progressives’ conception of the juvenile court as a social welfare agency into a second-class criminal court for juveniles. Progressive reformers intervened on the basis of a child’s “real needs” and viewed proof of a crime as secondary. Although *McKeiver* denied delinquents the right to a jury trial, *Gault* and *Winship* imported the adversarial model, attorneys, the privilege against self-incrimination, and the criminal standard of proof. By adopting some criminal procedures, the Court shifted the focus of the juvenile court from “real needs” to proof of criminal acts and formalized the connection between criminal conduct and coercive intervention. Although the Court did not intend to preclude juvenile courts’ rehabilitative agenda, judicial and legislative changes have fostered a procedural and substantive convergence with criminal courts. Constitutional theory, states’ delinquency laws, and actual practices continue to provide juveniles with “the worst of both worlds.” Youths receive fewer and less adequate procedural safeguards than do adult criminal defendants, especially the right to a jury and access to effective assistance of counsel. Despite these deficiencies, once states provided delinquents with even a semblance of procedural justice, they more readily departed from a rehabilitative model and adopted “get tough” policies. Although racial inequality provided the initial impetus for the Court’s focus on juveniles’ procedural safeguards, granting delinquents some rights legitimized the increasingly punitive, “get tough” penalties that now fall most heavily on minority offenders (Feld, 2003).

Since 1980, the Minnesota legislature and Supreme Court have adopted laws and rules of procedure that have fostered a criminalizing of juvenile justice. On the one hand, the explicit endorsement of punishment as an element of juvenile sentencing policy in Minnesota repudiates juvenile courts’ original postulates that children should be treated differently than adults and contradicts *McKeiver*’s assumptions that delinquents require fewer procedural safeguards than do adult criminal defendants. At the same time, many juveniles do not receive even the limited procedural safeguards that *Gault* envisioned (Feld 1989; 1993). Although juvenile courts increasingly converge with criminal courts, Minnesota does not provide youths with either procedural safeguards equivalent to those of adult criminal defendants, or with special procedures that more adequately protect them from their own immaturity. Instead, state laws and

judicial opinions place juveniles on an equal footing with adult criminal defendants when formal equality acts to their detriment, and employ less effective juvenile court procedures when they provide the state with an advantage (Feld, 1984; 1989; 1995).

In 1980, the Minnesota legislature significantly amended and modified a number of interrelated provisions of the juvenile code – changes directed at serious young offenders, the certification process, and the interface between juvenile and criminal court sentencing practices (Feld, 1981). The legislature repudiated its earlier “rehabilitative” commitment to provide “care and guidance . . . as will serve the spiritual, emotional, mental and physical welfare of the minor and the best interests of the state” and redefined the purpose of juvenile courts. For delinquents charged with criminal misconduct, the purpose of the juvenile court is “to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive laws prohibiting certain behavior and by developing individual responsibility for lawful behavior (Minn. Stat. § 260.011(2)(1980); Feld, 1981).” The legislature enacted a presumption in favor of waiver to criminal court for older juveniles charged with various combinations of present offense and prior record (Minn. Stat. § 260.125 (3)(1980); Feld, 1981). Although Minnesota’s juvenile courts conducted hearings informally and without a jury, the new law required them to adhere to the criminal rules of evidence in delinquency and certification proceedings (Minn. Stat. § 260.155(1)(1980); Feld, 1981). Significantly, the 1980 legislature also adopted the Minnesota Sentencing Guidelines for adults that required judges to base decisions whether or not to imprison and the length of the sentence primarily on the seriousness of the present offense and prior record. In calculating an adult offender’s prior criminal record, the sentencing guidelines mandated the partial inclusion of juvenile offenders’ felony offense history and required judges to sentence youths transferred for prosecution as adults under the same presumptive guidelines applicable to adult offenders (Feld, 1981). Finally, the Minnesota Department of Corrections administratively implemented determinate parole release guidelines based on a committed juvenile’s present offense and prior record (Feld 1981). Cumulatively, these changes shifted focus from the offender to the offense and began a substantive convergence between the juvenile and criminal justice systems.

In 1983, the Minnesota Supreme Court replaced an urban- and rural-county patchwork of rules with one set of statewide rules to govern juvenile court proceedings (Feld, 1984). The new rules responded to *Gault*’s requirements for greater procedural formality and marked a further criminalizing of juvenile courts. However, the Court made a number of policy decisions to provide delinquents with less adequate safeguards than those afforded criminal defendants. In every instance in which the Court had an opportunity to recognize youths’ immaturity and vulnerability and to provide them with more effective procedural safeguards than those afforded criminal defendants, the Court treated juveniles just like adults. Conversely, in every instance in which the court had an opportunity treat delinquents at least as well procedurally as criminal defendants, it adopted juvenile court procedures that provided less effective safeguards (Feld, 1984). As a result, juveniles in Minnesota continued to receive “the worst of both worlds.” For example, when *Gault* granted delinquents the privilege against self-incrimination, the procedural safeguards developed in *Miranda v. Arizona*, 384 U.S. 436 (1966), also became available to juveniles. Allowing juveniles to waive their *Miranda* rights and their right to counsel under the adult standard of “knowing, intelligent, and voluntary” under the “totality of the circumstances” is an example of formal equality producing practical inequality. Developmental psychologists

long have recognized that juveniles – especially those younger than sixteen years of age – lack the understanding, maturity, judgment, experience and competence to exercise legal rights on a par with adults (Feld, 2006). Despite youths’ limitations, the Minnesota Court repeatedly has rejected appeals for additional procedural safeguards, such as the presence of a parent during interrogation, and instead endorsed the adult waiver standard (Feld, 1984; 2006). On the other hand, the legislature and Court adhere to *McKeiver* and continue to deny delinquents the right to a jury trial that adult criminal defendants enjoy. The denial of a jury right affects many other aspects of juvenile justice administration as well (Feld, 1984; 2003). Trial judges and juries apply *Winship*’s standard of proof “beyond a reasonable doubt” differently and, as a result, it is easier for the state to convict delinquents in juvenile courts than it is to convict adults in criminal courts (Feld, 2003). Despite that, the Minnesota Supreme Court allows the state to include those procedurally deficient delinquency convictions in the criminal history score to enhance the sentences of adult offenders. *State v. McFee*, 721 N.W.2d 607 (MN. 2006). The *McKeiver* plurality denied delinquents a jury trial because it feared that juries would bring to the juvenile system “the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial.” 403 U.S. 528 (1971). Illustrating the punitiveness and procedural schizophrenia of juvenile justice, the 1986 legislature opened delinquency hearings to the public of juveniles sixteen years of age or older and charged with a felony level offense while simultaneously denying them the right to a jury trial. Minn. Stat. § 260.155 Subd. 1(c) (1986).

Although *Gault* likened the seriousness of a delinquency proceeding to a felony prosecution, Minnesota’s use of the adult waiver standard – “knowing, intelligent, and voluntary” under the “totality of the circumstances” – to gauge juveniles’ waivers of the right to counsel has denied many juveniles effective assistance of counsel (Feld, 1989; 1993). Research conducted in the late-1980s reported that a majority of juveniles who appeared in juvenile courts lacked the assistance of counsel. One-third of juveniles removed from their homes and nearly a quarter of delinquents confined in institutions were not represented by counsel at their delinquency adjudications (Feld, 1989; 1993). Moreover, despite statewide laws and procedural rules, juvenile justice administration varied widely throughout the state. Judges in different locales appointed counsel, detained, and sentenced youths very differently and provided “justice by geography” (Feld, 1991; 1993). Judges in urban counties appointed counsel for delinquents more than twice as often as did rural judges; the majority of youths in rural counties charged with felony offenses lacked representation (Feld, 1991; 1993).

In addition to geographic disparities, research reports substantial racial disparities in juvenile justice administration (Feld 1989; 1993). Both nationally and in Minnesota, studies consistently report racial disparities in detention, sentencing, and waiver decisions by juvenile court judges (Feld, 2003). After controlling for the seriousness of the present offense and prior record, juvenile court judges are more likely to transfer minority youths than similarly-situated white youths to criminal court (Feld 2003). Empirical evaluations of juvenile court delinquency sentencing practices report two consistent findings. First, the ordinary principles of the criminal law – present offense and prior record – explain most of the variance in how juvenile court judges sentence delinquents. Because the state defines delinquency jurisdiction based on a child committing a criminal act, judges’ sentencing practices focus primarily on the seriousness of the present offense and prior record. Secondly, after controlling for offense variables, juvenile courts consistently produce racial disparities in pre-trial detention and sentencing (Feld 1999;

2003). Black youths engage in higher rates of violent offenses and use of firearms than do white juveniles and this accounts for some of the racial differentials in sentencing (Feld 1999). Part of the differences in rates of offending by race is attributable to differential exposure to risk factors associated with crime and violence – poverty, segregation and cultural isolation in impoverished neighborhoods, lack of access to health care, and the like – and a “culture of the street” within some urban settings which exacerbates youth violence (Feld 1999; 2003). Regardless of the causes of crime, no society and, especially the law-abiding victims within the affected communities, can tolerate youth violence. But, justice system responses may aggravate the cumulative disadvantage of minority youths. Research consistently reports that even after controlling for variables such as the seriousness of the offense and prior record, judges detain and sentence minority youths at higher rates than they do white youths (Feld 1999, 2003). In a society marked by economic and racial inequality, minority youths are most “in need” and therefore most “at risk” for juvenile court intervention. The structural context of juvenile justice places minority youths at a dispositional disadvantage. Urban juvenile courts are procedurally more formal and sentence all delinquents more severely. Urban courts have greater access to detention facilities and juvenile court judges sentence detained youths more severely than those who remain at liberty. Because proportionally more minority youths live in urban counties, the geographic and structural context of juvenile justice administration interacts with race to produce minority over-representation in detention facilities and correctional institutions (Feld 1989; 2003). The Minnesota Council on Crime and Justice (2006) reported that the Hennepin County Juvenile Detention Center detained disproportionately more black juveniles for all forms of violations – new offenses, warrants, and arrest and detention orders – and for longer periods than their white counterparts. The Minnesota Supreme Court Task Force on Racial Bias in the Judicial System (1993) reported substantial disparities in Minnesota’s juvenile justice system in rates of detention and out-of-home placement of minority youths compared with white juveniles charged with similar offenses and prior records. The Race Bias Task Force also reported substantial geographic disparities in detention and sentencing that compounded racial disparities.

In 1995, the Minnesota legislature enacted a comprehensive package of law reforms that fostered even greater substantive and procedural convergence between juvenile and criminal courts (Feld 1995). In the early-1990s, increases in youth violence and homicide, especially within the urban black male population, provided impetus nationwide and in Minnesota to “get tough” and “crack down” on juvenile crime (Feld 1999; 2003). The 1995 amendments used the offense criteria of the adult sentencing guidelines to make it easier to waive juveniles to criminal court and excluded from juvenile court jurisdiction youths sixteen years of age and older charged with first-degree murder (Feld 1995). Once the state tries youths in criminal court, judges sentence them as if they were adults and impose mandatory sentences of life imprisonment on youths as young as fourteen or fifteen years of age without any recognition of youthfulness as a mitigating factor. *State v. Mitchell*, 577 N.W.2d 481 (MN. 1998). Most significantly, the legislature enacted a blended sentencing law – Extended Jurisdiction Juvenile (EJJ) prosecution – through which the state tried youths in juvenile court with adult criminal procedural safeguards including the right to a jury trial and imposed both juvenile dispositions that continued until age twenty-one and a stayed adult criminal sentence (Feld 1995). Although the legislature intended EJJ to provide judges with a stronger juvenile treatment alternative to waiver, the law instead had a substantial “net-widening” effect; judges continued to waive the same numbers and type of youths that they had transferred previously *and* revoked the probation and executed the adult

sentences of nearly one-third of EJJ youths, many of whom were younger and first-offenders (Podkopacz and Feld, 2001). Most of those youths, judges previously had decided should *not* be waived and many of them had their probation revoked for technical violations rather than new offenses. In addition, the legislation expanded and extended the use of delinquency convictions in the criminal history score to enhance the sentences of adults. As a result, waived juveniles and young adult offenders may receive substantially longer sentences based on delinquency convictions obtained without the right to a jury trial (Feld, 1995; 2003). In addition to increasing juvenile courts' sentencing powers, the new legislation also strengthened provision for appointment of counsel (Feld 1995). Although the Minnesota legislature and Supreme Court long had recognized that only half of juveniles received assistance of counsel, earlier proposals to expand delivery of legal services foundered. The 1995 code required judges to appoint counsel for all youths charged with a felony or gross-misdemeanor offense or in which out-of-home placement is contemplated (Feld 1995). Despite these changes, rates of representation of juveniles remain lower than those of adults charged with comparable offenses. And, the legislature again declined to provide delinquents charged with crimes the right to a jury trial.

The juvenile court in Minnesota today is a very different one from that envisioned a century ago. There has been a substantial convergence between the sentencing policies and procedures of the juvenile and criminal justice systems. And, in the contemporary juvenile court, youths *continue* to receive “the worst of both worlds . . . neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.” A study conducted by the Legislative Auditor of Minnesota’s state-run institutions and largest private programs reported very high rates of recidivism and concluded that “Minnesota’s most-used residential programs have shown a limited ability change entrenched criminal values and behavior patterns among juveniles” (Feld 1995). Minnesota’s legislation, judicial opinions, and juvenile justice practices emphasize the greater role of punishment. This is reflected in the juvenile code purpose clause, judges sentencing practices of ordinary delinquents, the greater use of the adult sentencing guidelines to structure prosecutorial decision-making, waiver and EJJ decisions, and the expanded role of delinquency convictions in the adult criminal history score (Feld 1995). Notwithstanding *McKeiver*’s fond hopes, juvenile courts’ trials simply replicate those of criminal courts, albeit with fewer, less adequate procedural protections. The denial of a right to a jury trial affects every other aspect of juvenile justice administration – adherence to the criminal standard of “proof beyond a reasonable doubt,” access to and the performance of counsel, the timing of evidentiary hearings, and the like. Minnesota denies delinquents jury trials in an increasingly punitive juvenile justice system and then compounds that inequity when it uses those nominally rehabilitative sentences to extend terms of adult imprisonment. Finally, criminal courts sentence youths tried as adults without any formal recognition of youthfulness as a mitigating factor in sentencing. And all of these consequences fall disproportionately heavily on minority youth (Feld 1999; 2003).

Confronted with Minnesota juvenile courts’ punitive sentencing practices, Judge Gary Crippen, in *In re D.S.F.*, 416 N.W.2d 772 (Mn. Ct. App. 1987), posed three plausible policy options:

1. [T]he juvenile delinquency systems could be “restructured to fit their original [rehabilitative] purpose.”



2. [W]e can . . . embrac[e] punitive dispositions as an acceptable and inherent part of delinquency proceedings, but call[] upon the Minnesota Legislature and the Minnesota Supreme Court to extend to accused juveniles all procedural safeguards guaranteed for adults in criminal cases. Most critically, we could assert the demonstrated need for jury trials in accusatory proceedings where juveniles may be incarcerated, and the additional need for representation by competent counsel in every case where a juvenile is faced with incarceration.
3. [W]e could call for dismantling a system that openly exacts from our younger citizens a sacrifice of liberties and gives in return a false promise to serve the best interests of those who come before it. The federal and state constitutions do not permit a criminal justice system without criminal procedural safeguards.

Two decades later, we face the same issues of procedure and substance against the backdrop of an even more punitive juvenile justice system in which youths continue “to receive the worst of both worlds.” As long as juvenile courts operate in a societal context that does not provide adequate support and services for children in general, intervention in the lives of those who commit crimes inevitably will be for purposes of crime control, rather than for social welfare. Addressing the “real needs” of young people – social welfare, family assistance, health, housing, nutrition, education, segregation, and poverty – requires a public and political commitment to the welfare of children that extends far beyond the resources or competencies of any juvenile justice system.

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**MCF-Red Wing Perspectives on the State Juvenile Criminal Justice System**  
Superintendent Otis Zanders

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A Brief Historical Perspective:

The early history of state juvenile corrections can be traced back to 1866 when the Minnesota Legislature established a 25-bed facility known as the "House of Refuge" in response to the public's concern over the presence of adolescent offenders in local jails and the Stillwater state prison. By the end of 1868, they were housing 36 boys, some less than 8 years old. That same year, because of concerns over a private corporation running the facility and subsequent conflicts of interest, the legislature modified the law and renamed it the "State Reform School," located in St. Paul where Concordia College currently stands.

In 1870, the law directed that males under 16 and females under 15 who were incorrigible, vicious, or guilty of any crime other than murder should be sent to the school. They were placed under the guardianship of a Board of Managers while they were "minors" or until released by the Managers. In some cases, children were inappropriately placed there so the legislature required written testimony of disinterested witnesses before a child was committed. This was the same year girls were first committed to the Reform School, although social norms of the time prevented this except for those who had committed quite serious offenses. Most of the youth were homeless, neglected and dependent children of immigrants, and very poor. The laws originally required counties to provide for the maintenance of juveniles placed in the care of the school. But in 1883 this changed and the clothing, maintenance and instruction of the youth became the charge of the state. By 1885, all county maintenance responsibility had been lifted. By 1887, the problems of site size, overcrowding, and many other concerns made it necessary to relocate. In 1889, the Legislature selected Red Wing as the site and by 1891 the cornerstone had been laid and the facility was operational. In 1895, the name was changed to "The Minnesota State Training School for Boys and Girls." By 1896, the facility population had reached 361 and legislation allowed the school to detain youth until they reached age 21. This was later repealed and in 1905 changed to the age of 18.

The Board of Managers was abolished in favor of a "Board of Control" in 1910, which provided oversight of the school until 1939 when this function fell to the Director of Public Institutions. In 1947, the responsibility went to the Youth Conservation Commission. Where previously the youth could be committed directly to the State Training School by Juvenile Court Judges, the YCC act required Juvenile Courts to commit them to the YCC and be transported to a

Reception and Diagnostic Center "for a period of study and observation." The Reception and Diagnostic Center for Boys was established on the grounds of the Red Wing facility.

The Minnesota Department of Corrections was created in 1959 and became the primary administrator for juvenile correctional programs, including oversight of the Minnesota State Training School. In 1972, the state was divided into three regions for delivery of juvenile services and the Training School began to accept direct commitments from the Eastern Region that year. In 1973, the Legislature allowed girls from the Eastern Region to receive treatment at Red Wing, but by the end of 1976 they were transferred to the Sauk Centre correctional facility.

### New Thinking:

In 1979, the "Training School" formally changed its name to the Minnesota Correctional Facility - Red Wing; however, the name "State Training School" still lingers in the vocabulary of senior staff and local citizens. In those years, the purpose of the institution in state juvenile corrections was to change the attitudes, values, and behavior of youth committed to the institution so they might be returned to the community to live with dignity, and feelings of self worth.

The juvenile mission in other institutions, such as Thistledeew Camp and Sauk Centre, were also linked to the importance of self worth and values, and that reshaping these inner attitudes was the key to success with delinquent youth. To accomplish this mission, the institution introduced a group therapy model in the late 1960's called Guided Group Interaction. In the early 1970's, this migrated to a "Positive Peer Culture" model. These efforts were based on the belief that it was the best approach to reverse the negative value system of the delinquent subculture, and substitute a positive set of values and goals using peer pressure and staff guidance. It hinged on direct involvement of youth in the helping process.

Research has shown in recent years that these models had minimal long-term success, although they had certain institutional benefits. In the late 1990's and into the 21st century. Red Wing has implemented an integrated model based on principles of Restorative Justice, Cognitive Behavioral Restructuring and Skill Development, Relapse Prevention, and a strong community-based transition support concept. Red Wing has spent the last ten years developing these programs and establishing a diverse set of special needs programs to address delinquency.

### Shifting Tides:

The mission has shifted back to communities being the focal point, and the need for state juvenile corrections to find a collaborative balance to successfully re-integrate youth. More focus and resources are being placed on developing a response to the community. In an effort to be more supportive of the counties, a number of changes have taken place, and many of these have now come full circle.

Unlike the 1870's, when the law was crafted to send younger incorrigible and delinquent youth out of the communities, the law now directs these same youth back to their communities.

It instead directs authorities to remove only those youth that meet more serious criteria, resulting in placement of older and more seriously delinquent youth at Red Wing. Much like the reason for building the House of Refuge in the 1860's over concerns of children in prison, we are still working to remove adolescents from our adult jails and keep them separated from predatory adult offenders. Ironically, new laws seem to be resulting in placing the more serious juveniles back into prison at younger ages. The disproportionate sentencing of minority and impoverished youth has not slowed, and there appears to have been little change over the last 140 years in the

continued incarceration of neglected and damaged youth. Of escalating significance is the increase in the incarceration of youth with mental health challenges and youth with multiple diagnoses that contribute to their delinquency. Current Response:

In response to such a wide array of social issues, the juvenile facility at Red Wing has evolved toward a Community Re-Integration model specializing in chronic and violent juvenile offenders. The legislature established admission criteria for the facility and ensures the purpose of the facility remains true to dealing with youth who have not succeeded at the community level. To that end, the facility has developed programs designed to be inclusive and considerate of the needs of not only the offender, but also victims, community, family and affected agencies.

One effect of implementing admission criteria for serious and chronic juvenile offenders has been to increase the length of stay. This in turn has allowed the facility to enhance its educational offerings, assisting youth to achieve GED and High School Diplomas, and gain occupational and independent living skills. It is noteworthy that the typical path for this population is toward vocational and technical jobs as young adults. Success often depends on their opportunity to prepare to compete on a relatively even footing in these job markets.

Through comprehensive pre-vocational and post-secondary education courses, youth are able to gain valuable exposure and skills necessary in today's world of work. They are able to receive real work experience and pre-vocational training in a number of trades while at the institution, including metal fabrication, construction, printing, building care, grounds maintenance, and light industrial work. Individualized skilled trades programs are also being offered with success, exposing youth to trades such as electrical, plumbing and low pressure stationary engineer occupations. Additionally, youth acquire soft skills needed to seek and maintain employment through experiential education program training. After-school enrichment programs assist youth to improve upon their basic academic skills, enhancing their overall development toward a productive adulthood.

A comprehensive approach such as this, of providing the basic secondary education in conjunction with the technical and trades-based vocational skills, will help redirect youth toward a more productive lifestyle. A strictly academic offering does not meet the overall needs for a well-rounded education that leads to productive jobs and independence. It is important to focus on vocational curriculum that can provide entry level knowledge and skills needed to succeed in the current job markets as youth prepare for community re-entry.

Youth in this situation were previously unlikely to have these advantages in the community setting, especially given the difficulty maintaining a healthy and positive lifestyle. At Red Wing, the comprehensive approach has also included specialized treatment services to meet needs in areas such as mental health, sex offender treatment, and chemical dependency.

One of the most important changes and redirection for the future has been to focus more heavily on community reintegration, realizing that the chances of success for youthful offenders is greatly enhanced by blending this with the insight and skills developed through institutional programs. The reintegration approach begins when they are first placed at Red Wing rather than when they are preparing to be released from Red Wing.

The therapeutic services and specialized programming are supported by the Community Re-Entry Division (CRD) throughout their stay at the institution. This ensures a premier continuum of services well into the community re-entry phase and focuses on providing the youth with access to resources and community support that will help them to be an inclusive member of the community, not just coldly returned to their old environment with no support. Through intensive supervision and multiple agency collaboration, the CRD utilizes a case

management model to support the youth's successful re-entry as a pro-social citizen. The reentry model is based upon elements in the Intensive Aftercare Program model supported by the Office of Juvenile Justice and Delinquency Prevention.

Graduated re-entry services are accomplished with short-term and 90-day supervised furloughs. The community re-entry progression allows the youth to assess their strengths and overcome barriers using established skills and support systems. They can methodically re-adjust to a less structured environment. The furlough process is managed in collaboration with an inclusive re-entry support team, ranging from Probation Officers, Parents, Community Members, and Mentors, to a myriad of available community based support services.

Preliminary results of the overall approach are extremely promising for addressing serious and chronic juvenile delinquency. Not all barriers and concerns have been addressed, but this has taken the state in a very positive direction for the future. There is a solid realization that the juvenile justice system must not become compartmentalized if there is to be substantial progress in turning the tide on delinquency.

**Minnesota Drug Policy and its  
Disastrous Effects on Racial and Ethnic Minorities**  
By Michael Tonry

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Current Minnesota drug policies damage minority communities and help assure that many minority group members remain locked in multi-generational cycles of disadvantage and social exclusion. If Minnesota is ever to offer equal opportunities and life chances to all its citizens, it will have radically to rethink and revise its responses to drug use and abuse. Current policies cause much more harm than they prevent, and require tens of millions of dollars of annual expenditure on law enforcement and corrections that could be much more constructively committed to improving people's lives. Doing better will require that emphases on drug treatment and reduction of harms associated with drug use (and drug law enforcement) replace current preoccupations with arresting street-level drug dealers and sending thousands of people to prison and jail.

It was not always so. Although Minnesota has experienced among the steepest increases in prison use overall in the country since 2000, during the 1960s through the 1980s, the state was widely admired for its sparing use of imprisonment and its moderate and sensible policies toward crime and drug abuse. Only rarely in the 1960s and 1970s were people sent to state prison for drug offenses. In 1989, only 173 prison inmates had been convicted of a drug crime; by 2004 (and since) more than 2000 inmates were drug offenders. Between 1989 and 2005, the number of prisoners other than drug offenders increased by 128 percent. The number of drug offenders increased ten times faster, by 1159 percent.

In recent years, the number of white prisoners convicted of methamphetamine offenses has increased, but for most of the past 18 years crack and cocaine have been the substances that led to prison, and most of the drug offenders sent there were minority group members. In 2006, 90 percent of prisoners sentenced for crack offenses were minorities as were 71 percent of cocaine prisoners.

#### What Went Wrong?

“Reefer Madness,” a 1950s film used in drug education programs, has come to exemplify the harm that results when anti-drug policies become hysterical and moralistic. The film's images of slavering, lurching, out-of-control, marijuana-smoking drug fiends, intended to persuade young people that drug use is a bad idea, more closely resembled film versions of Dr.

Frankenstein's monster than of students' marijuana-using friends and popular musicians. Showings of the film were often accompanied by laughter from student audiences and are generally understood to have discredited the intended message and reinforced the idea that marijuana use is harmless.

The series of American drug wars are seen by most informed people outside the United States, and many inside, as equally hysterical and destructive. Drug war elements such as decades-long prison sentences for dealers, emphasis on arrest and prosecution of street-level dealers, and refusal to provide treatment facilities to meet drug-dependent peoples' needs, have given millions of people jail and prison records and ruined hundreds of thousands of people's (and their children's) life chances and lives. They have also cost a huge amount of money that could have been spent constructively or not at all. Reduce the scale of the numbers, and the same things are true in Minnesota.

Worse than this, though, modern drug wars date from the early 1970s administration of Richard Nixon and Attorney General John Mitchell, shortly after the first serious federal anti-discrimination laws were enacted, and have served to keep black Americans "in their place." At a time when civil rights and welfare policies aimed at improving opportunities and living standards for black Americans, drug and crime policies worsened them. University of California at Berkeley sociologist Loïc Wacquant has shown how modern wars on drugs and crime have operated in the same ways as slavery and "Jim Crow" legalized discrimination did in earlier periods to de-stabilize black communities and disadvantage black Americans, especially black American men.

The results are plain to see. For two decades, nearly half the population of American prisons has been black, up from about a third in the early 1960s. Depending on how the numbers are calculated, the chances that a black American is in prison are 6 to 8 times greater than a white American's. The U.S. Bureau of Justice Statistics estimates that on any given day, one in three young black men is in jail or prison or on probation or parole and that 32 percent of black American men born in 2001 will spend some time as a jail or prison inmate (compared with 6 percent of white men). On New Year's Day 2006, more than 8 percent of black men aged 25-29 were in prison, and another 4 percent were in jail. All of these sad realities are traceable to American wars on drugs and crime, but especially to the wars on drugs.

Reasonable people can differ about the details of modern American crime policies targeting violent crime, but no one can doubt the importance of the goal—reducing the incidence of victimization by serious violent and sexual crimes, many of which occur within racial and ethnic groups. Most assaults and sexual crimes are of whites against whites, blacks against blacks, Hispanics against Hispanics. Severe punishments suffered by members of minority groups who commit serious violent and sexual crimes are at least related to concern about crimes afflicting members of their groups.

Aggressive law enforcement and severe penalties for drug offenses are a different matter. The drug wars are fought to lessen drug use among the general population, which is mostly white middle and working class. The people arrested, prosecuted, convicted, and imprisoned for drug crimes are mostly non-white. In other words, huge numbers of disadvantaged black (and Hispanic) people are being sent to prison, and serving long periods behind bars, to lessen the attraction and use of drugs among non-disadvantaged whites.

Most Minnesotans, accustomed to thinking of themselves as living in one of the more liberal minded and socially enlightened states, probably accept that what has been said so far is



true, but in other parts of the United States. Perhaps I speak of national averages, or of experiences in bigoted southern and western states?

Alas, no. Increases in the use of imprisonment in Minnesota have outpaced the rest of the country since 1980, and have stunningly outpaced other states since 2000. And drug laws, accordingly to the Minnesota Sentencing Guidelines Commission, are among the harshest in the country—harsher than in other midwestern states, harsher than national averages, harsher even than in states such as California and New York where the politics of law and order rules.

### *Imprisonment*

Consider imprisonment first. Table one [See Table 1A] shows imprisonment trends since 1980 in Minnesota, Maine (the state that traditionally alternated with Minnesota in having the country's lowest imprisonment rates), Louisiana and Texas (both traditionally among the most punitive states in America), and in the 50 states taken as a whole. Using a common statistical method for comparing trends, the rate in 1980 is set at 100 and the rates in subsequent years are expressed relative to that starting point. Thus the figure 150 for a subsequent year means the rate is 50 percent higher than in the starting year.

For the last 25 years, Minnesota imprisonment rates grew faster than Maine's, Texas's, or the average of all 50 states. When the comparison is made between 1990 and 2005 [See Table 1B], Minnesota's imprisonment rate grew more than twice as fast (150 percent) as the average for all states (60 percent) and exceeded the increases even in stereotypically punitive states like Texas (138 percent) and Oklahoma (87 percent). The increase over those 15 years in Maine was 22 percent. During the most recent period, 2000 to 2005 [See Table 1C], the average national imprisonment rate increased by less than one percent, those in Texas and Louisiana fell, and that in Maine rose by 11 percent. Minnesota's rate rose 41 percent. In a state where 35-40 percent of prisoners are black, prison inevitably is cutting ever more deeply into the lives and neighborhoods of its minority residents.

### *Drug policy*

Minnesotans have little to be proud about in relation to the state's handling of drug dependence and abuse and their unhappy consequences. A critical turning point may have been the legislature's response to the Minnesota Supreme Court's ruling in *State v. Russell*, 477 NW 2d 866 (1991) that laws punishing crack offenses, typically committed by blacks, much more harshly than more powder cocaine offences, more often committed by whites, were unconstitutional. The legislature could have responded simply by amending the law so that the powder cocaine provisions applied to all cocaine offenses. Instead, penalties for all cocaine offenses were ratcheted up to crack levels. And penalties for other drug crimes were raised.

The result is startling. Minnesota's prison population tripled between 1989 and 2006. The number of drug offenders in prison, by contrast, 173 inmates in 1989, six percent of the population, had grown to 2176 in 2005, nearly a quarter of the population. Their number grew thirteen-fold.

The result is something of which no Minnesotan can be proud. Nearly a quarter of inmates in Minnesota have been sent there for drug offenses, and many more were imprisoned for crimes that were related to their drug dependence. Minnesota's imprisonment rate for drug offenses alone, about 49 per 100,000 Minnesotans, is as high as Minnesota's total imprisonment rate in 1980.

We know why drug-offense prisoners in recent years have mostly been minority group members. National data show that about the same percentages of blacks and whites admit to drug use. The problem in Minnesota is that blacks and Hispanics are much more likely than whites to be stopped by the police, to be arrested for drug crimes, to be convicted, and to be sent to prison than are whites.

Studies carried out as part of the Racial Disparity Initiative of Minnesota's Council on Crime and Justice demonstrate why members of minority groups are so much more likely to wind up in prison. Blacks in Minneapolis were in 2000 much more likely than whites to be the subject of police vehicle stops. Blacks constituted 18 percent of the population but experienced 37 percent of stops. Whites, 65 percent of the population, experienced 43 percent of stops. In 1999, 77 percent of males aged 18-to-30 arrested for narcotics offenses in Minneapolis were black; 13.8 percent were white.

Woefully few drug-dependent inmates receive treatment. The Department of Corrections in 2006 had 849 treatment beds and is funded to treat 1800 inmates annually. This is in a system in which nearly 3000 admitted inmates each year, 85 percent of all admissions for terms long enough to complete treatment, are assessed to need drug treatment. And those numbers ignore inmates admitted in earlier years, many of whom also need treatment.

A recent Minnesota Sentencing Guidelines Commission report compared Minnesota sentencing laws to those of other states. A 10-gram transaction in crack or powder cocaine or in methamphetamine triggers a 30-year prison sentence in Minnesota. The equivalent threshold amounts in Midwestern states are much higher: Illinois (900 grams); Iowa (5 kilograms for methamphetamine, 500 grams for powder, 50 grams for crack); Michigan (1 kilogram for crack or powder); Wisconsin (50 grams for methamphetamine, 40 grams for crack or powder). Similar comparisons were made of presumptive sentences for sales of 10 grams and possession of 25 grams. Minnesota sentences were 4-to-6 times higher than in Washington and Oregon, the other two pioneering sentencing guidelines states, 6 times higher than in New York, and 40 percent (sale of 10 grams) to 300 percent (possession of 25 grams) higher than in Texas.

So what can be done to lessen the damage current Minnesota drug policies do to minority communities (and to Minnesotans generally)? Almost any Minnesota policy-maker active in the 1960s and 1970s, were he or she brought by time machine to the present, would support five proposals:

1. Repeal all mandatory minimum sentence laws for drug offenses;
2. Reduce sentence lengths set out in sentencing guidelines to levels equal to the lowest of those in contiguous states;
3. Provide sufficient resources to make possible provision of drug treatment to any and all Minnesota prisoners and jail inmates who need it;
4. Provide sufficient resources to make drug treatment available in the community to all drug-dependent people who need it;
5. Greatly de-emphasize use of law enforcement approaches to handling the public health problem that, at bottom, drug abuse primarily is.

Table 1A

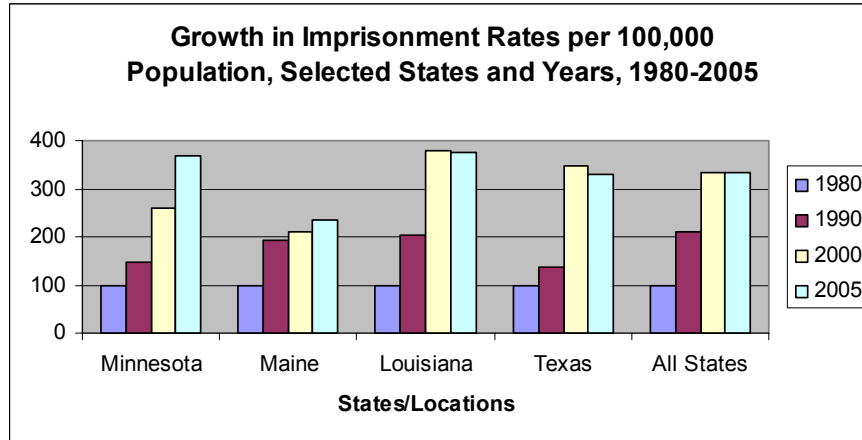


Table 1B

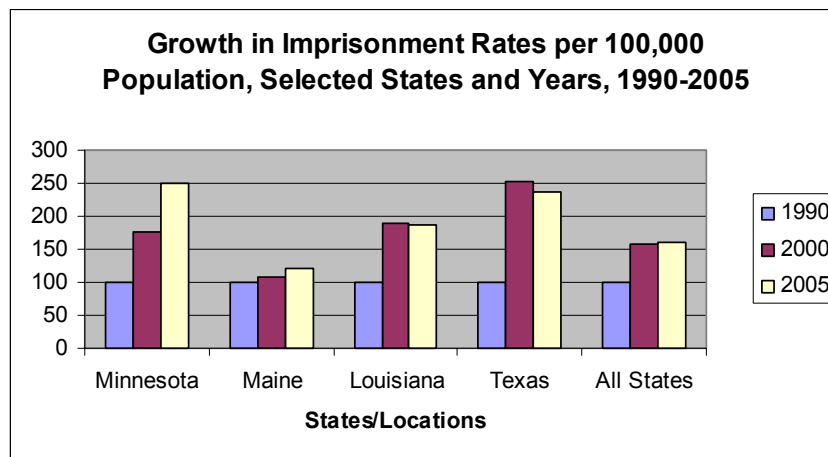
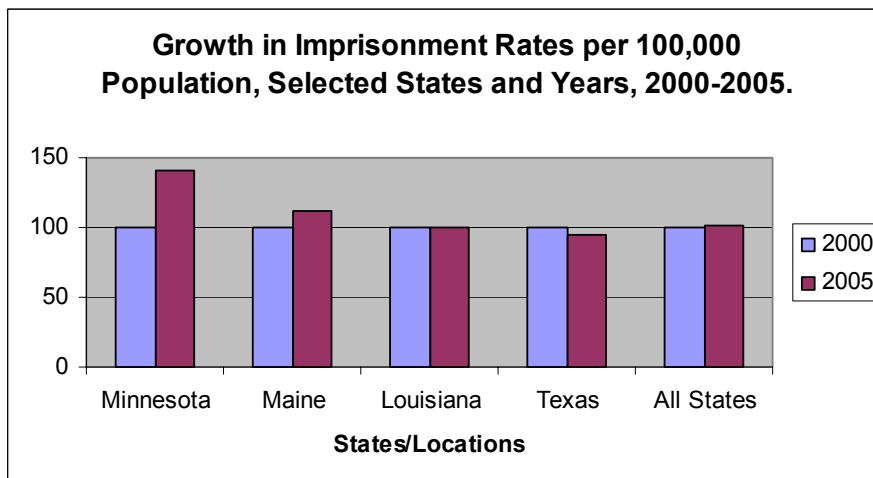


Table 1C



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### **The War on Drugs – Observations from the Front**

Dan Cain

*Dan Cain, President of RS Eden, has 34 years experience in the Chemical Dependency Field as counselor, supervisor and administrator, and has been Chair and CEO of numerous chemical dependency coalitions. Formerly incarcerated himself, Mr. Cain has been awarded the 1991 Corrections Person of the Year and the 2007 Hazelden C.A.R.E. Award for continuous service to the recovery community.*

Substance abuse, while existing since the beginning of recorded history, remains enigmatic. And proposed solutions to it have ranged from tolerance, to prohibition, to treatment, to draconian punishment, depending on the politics of the moment.

For many of those alive today, our experience with, and awareness of, illegal substances began in the 1960's, when we were faced with an influx of illegal drugs, when the mood of the day was one of tolerance and free expression, when the populace was looking for answers to, among other things, an unpopular war and disenchantment with the status quo, and when the explosion of young people; early baby boomers; began to become a political force. Use of marijuana, the most commonly used illegal substance, was largely ignored. For those convicted of possession of drugs like heroin and cocaine, statutes generally called for an indeterminate sentence of 0-5 years with most of those convicted being placed on probation. Treatment, outside of fledgling 12 step programs directed primarily at alcoholism, was limited largely to two separate National Institute of Mental Health, Clinical Research Centers; one located in Lexington, Kentucky and the other in Fort Worth, Texas. Under the Narcotic Addict Rehabilitation Act, they were designed to do little more than provide a six month respite, in a secure setting.

However, the mood changed dramatically in 1969 shortly after a series of murders in Southern California by perpetrators commonly referred to as the Manson Family. The high-profile crimes shocked the nation and, since the assailants were stereotyped as “drug crazed hippies”, the tolerant attitude was replaced by one of fear and trepidation.

The term “War on Drugs” was first coined by Richard Nixon in 1971, when he signed into law legislation appropriating \$155 million. For whatever reason, whether because he saw a reduction in substance abuse as the keystone to a reduction in crime, because of the high number of Viet-

Nam veterans who were returning as narcotic addicts, or for some other more political or less utilitarian reason, \$105 million of that was targeted toward treatment and rehabilitation, and only \$50 million toward enforcement and interdiction. So the original “War on Drugs” could more appropriately be termed a “War on Drug Abuse”.

The system response continued to focus on rehabilitation throughout much of the 1970’s, however the demand for treatment resulted in a growing number of treatment programs and increased costs per treatment episode. While there was still an emphasis on publically funded treatment, in the late 1970’s we initiated efforts to control costs by reducing treatment stays and expanding the use of outpatient services, and to improve outcomes by implementing various costly, but usually inconsistent, gate-keeping functions. Program lengths of stay were dramatically reduced to accommodate access issues and reduced resources. Effectiveness suffered.

The direction took a dramatic turn with the advent of a new decade, perhaps because of a change in administration, possibly due to awareness of how drug profits were used to finance armed, worldwide, political disturbances or maybe because of the lucrative drug trade being used to finance street gangs. The emphasis became interdiction and enforcement and the treatment response was reduced dramatically. People were told to “Just Say No” to drugs. (one of the more cynical responses to the “Just Say No” campaign came from Abbie Hoffman, a 1960’s radical who opined that telling an addict to “Just Say No” was like telling someone who was clinically depressed to “Just Cheer Up”)

Our policies became somewhat schizophrenic throughout the early part of the decade. Decisions about the dangers of, and political response to, a particular drug were rooted in politics and preference more than pharmacology or potential for harm. For example, marijuana users were again vilified and taunted with messages such as, “if you smoke marijuana, you bear responsibility for the torture and death of Enrique Camarena (a DEA agent killed in Mexico)”. Yet during the same time frame, cocaine use was largely tolerated, presumably because it was the drug of choice for socialites, sports figures and entertainers. It was not until cocaine was marketed as “crack”, a concentrated form of the drug that was more affordable to the lower class, that we developed a more measured response. Prior to 1985, the Minnesota Legislature, and by extension the Minnesota Sentencing Guidelines Commission, treated sale and possession of cocaine in the same vein as sale and possession of marijuana, with drugs like heroin and methamphetamine prescribed much harsher penalties. In 1985, cocaine penalties were changed by the MSGC to coincide with those for heroin. Shortly thereafter, after defining “crack” as a new and more dangerous drug than cocaine, the legislature took this so called “war” one step further by delineating drug crimes by the amount of drug possessed or sold, and by extension made the penalty for “crack” ten times harsher than the ones for powdered cocaine and heroin. Ultimately this law was overturned as being racially discriminatory as a result of the disparate impact on communities of color.

Our efforts continued to be skewed toward enforcement and interdiction throughout the next several years and in 1989 the White House Office of National Drug Control Policy (ONDCP) was established. Bill Bennett, whose conservative credentials went unchallenged (until a gambling addiction was uncovered years later), was named the new “Drug Czar”. The purpose

of the new ONDCP was to produce a National Drug Control Strategy. The strategy was, control the borders and imprison users.

It was also in 1989 that the Minnesota Sentencing Guidelines Commission essentially doubled the penalties for most drug crimes.

With few exceptions we have continued down the path of enforcement and incarceration, with less regard for rehabilitation, for the past 18 years. One of those exceptions has been the advent, and subsequent growth of the drug court movement. In recognition of the need to have both enforcement/accountability and rehabilitation, select court systems formed partnership with the local treatment communities to work in concert with select offenders. These complimentary unions of two systems, with the intent to keep people in their communities has shown promise not only in reducing drug crime, but also in helping people progress toward law abiding, self-sufficient lifestyles.

The positive impact of our actions over the past 4 decades is debatable. Per capita spending on enforcement, interdiction and incarceration is up. We seize more drugs at our borders than at any point in history. Per capita spending on treatment is lower than it has been since the 1970's. Drug crimes account for the largest growth area in prison populations, and the number of people in prison today is four times what it was in 1980. Populations of color within the corrections system have expanded exponentially. And drug use, as well as drug related crime, has not noticeably declined. On the other hand, there is no way of knowing the outcome had other approaches been followed. The presumption has been, remove drugs and drug users from the community and both drug use and other crimes will go down. Neither of those seem to have happened, but what we don't know is how bad it would be if we had gone in another direction.

While writing this, I was contacted by a local radio station to get my reaction to the relaxation of FBI eligibility rules. Previously, perspective agents needed to swear under oath that they had not used illegal drugs other than marijuana, and had not used marijuana in over 15 years. The new change only required that they swear they hadn't used illegal drugs in the recent past, defined as anything less than three years. My reaction was, after one president admittedly smoked marijuana but allegedly didn't inhale, and another refused to deny using cocaine, an FBI agent who had previously smoked cannabis seemed tame. Furthermore the change was probably motivated by recruiting demands. Given the widespread experimentation of more tolerant times, the Bureau was faced with the lesser of two evils, either accept someone who experimented with drugs, or accept someone you intuitively know to be lying under oath. Similar to the armed forces, the Bureau was undoubtedly faced with either accepting previously disqualifying behavior, or having a candidate pool too small to meet the need. The bright point in all this is that major bureaucratic institutions relaxing their rules may be a signal that we are finally willing to accept that people make mistakes and can not only change, but make major contributions.

As a Nation, over the past 40 years, we have declared war on poverty, war on hunger, war on crime, war on terrorism, war on drugs and war on other countries. War implies casualties. And in the War on Drugs, if not in all these testosterone laden euphemisms, people in poverty and people of color are dramatically overrepresented in the casualty counts. By focusing our efforts on punishment at the expense of rehabilitation, we have created many casualties, not only in the

present tense, but for the foreseeable future, since 98% of those imprisoned will eventually be released. And, unless our sole objective in this war was to marginalize whole segments of our population, none of our efforts so far have resulted in victory, at least not by any traditional standard.

It may be time to reexamine our approach, as well as our vernacular.

## **The War on Drugs**

Jason Marque Sole

*Jason Marque Sole was severely wounded by a gunshot in 1998 and entered into the Minnesota Department of Corrections as an inmate at the age of twenty-one. He earned his B.A. in Criminal Justice in 2006 and has one year left to obtain his M.A. in Criminal Justice. He hopes to inspire ex-offenders to seek higher education by excelling from prison to a PhD.*

The War on Drugs, the longest war in America's history, is an abject failure – unless you think spending a lot of tax payer's money for a constant catch and release program is the real purpose. If you were to design a "War on Drugs", would it necessarily be focused on poor blacks in the inner city? If you focused more broadly – would you apply different rules for different communities – and if so, on what basis? This article will look at the scope of the war by examining the impact and the detrimental effects it has had on African Americans, and the differential implementation of criminal justice policy based on race and class.

"US Chief Executive Ronald Reagan declared war on drugs in February 1982, and pledged his administration to the task of curtailing the burgeoning drug epidemic in the United States. To accomplish this urgent national security objective, the federal government rapidly increased expenditures for narcotics control programs during the ensuing seven years of his two-term presidency, reaching \$4.3 billion annually in 1988" (Bagley, 1988). Why wasn't this war waged on the coast of Florida and California, where drugs are imported? Why wasn't their effort geared towards stopping it at the door?

With an appropriate policy response, we could have had a war on drugs that curtailed substance abuse, and created alternatives to the "crack economy" of ghettos across the un-United States. Quality jobs, education and connection to opportunity networks would have become the norm rather than the exception for poor inner city blacks.

We did not choose this policy track. What we did choose to do was focus the attention of limited police resources on arrests in black communities, and for courts to focus on convictions of those arrested, and for corrections to hold as long as they could and release when they have to. All of this was done in the name of safety and justice? Safety for who? Justice for who?

Violent media images and stereotypes to justify harassment and racial profiling in impoverished communities were smoothly delivered into every American living room with access. The everyday proof that the war was necessary and effective when adequately resourced was spoon-fed to the public, and many, if not most, accepted this as true. Treating the surface manifestations of a problem will never address its roots. The media bamboozling about the War on Drugs inundated us with what was and is happening on the surface, but hasn't bothered to dig beneath this level. The public is also culpable – it didn't bother to dig deeper either. The reality is really quite sobering.

The War on Drugs has had a genocidal effect. Before this war, our U.S. prison population was around 300,000. Today, our prison population is above 2.3 million and is rapidly rising; the majority of offenders are locked up for non-violent offenses – many of them for drug offenses. Before this war, African American men were beginning to close the racial wage gap and benefit from a rising economy – it appeared that the “American Dream” was beginning to include them. The rise, from the end of World War II to the early 1970s, coincided with the zenith of the Civil Rights Movement politically, the move of blacks from the south to the north demographically, the robust post-war economy, and significant technological changes that changed patterns in industry and in homes and communities.

For the poor African American men, songs of being Black and proud or fighting against the powers that be, began to become too mainstream, while the establishment thought redemption seemed too near. It is not a question of who was right or wrong, but rather one of a relationship between perspectives. The establishment perspective determined a way to “partner” with the corporate perspective to “contain” certain zip codes as drug hot spots and focus the attention of police on making arrests there – prompting the engagement of the entire criminal justice system.

Next, the media sensationalizes how out of control the drug hot spots are and whips up hysteria among the public that prevents clear thinking about the under-lying problems never or rarely mentioned in the media sound-bites. Poor African Americans, for their part in this madness – either joined the police-homeowner-government-corporate partnership for arrests and convictions of all drug offenders (the ones in the hot spots, not the ones watching the news), or opted either to just continue their daily struggle to survive or fight back in any way they could against institutional, cultural and structural racism AND impoverishment.

If we break it down to two teams competing – the “partnership” as we will call it, and “poor blacks” – the partnership is winning. A cost-benefit analysis was conducted, resources were mobilized, and this strategic “war on drugs” plague formed a means to keep blacks down permanently and the end is nowhere in sight.

In 1986, the death of Len Bias of the Boston Celtics sparked frenzy in America because everyone assumed that he died from a “crack” overdose. He actually died from a cocaine overdose but the “get tough on drugs” policy had already been implemented when the truth was revealed. The old saying “perception IS reality”, is all too true in the case of the war on drugs. Blacks actually use drugs significantly less than whites, but you sure couldn't tell from studying



only who is arrested and/or convicted. Whites make up 75% of drug users but is this message being broadcasted or will this hegemonic regime rule forever?

Mauer (2004) states:

*“Even though crack is produced from powder cocaine-just add a baking soda mixture and cook until the water evaporates and the rock ‘cracks’-the federal legislation established dramatically different penalties for the two forms of the drug. For crack, the possession or sale of as little as five grams mandates five years in prison, but for cocaine that penalty is not triggered until the sale of one hundred times that amount, or five hundred grams. The racial disparities that have accompanied the prosecution and sentencing of federal crack offenders have been dramatic with African Americans constituting 85% of defendants each year.”*

During the time in which the War on Drugs policy was implemented research showed that African Americans indulged in crack, while Whites indulged in cocaine. It is no coincidence that the penalties were much stiffer for crack. It has been easier to arrest African Americans for possession of crack, in comparison to Whites because the core locations of crack drug sales just happen to coincide with the concentrated poverty tracts where African Americans are over-represented. You can capture a large pool of suspects in droves, and this methodology of seek and destroy does not pertain to the suburbs or rural America.

Whites have been able to conceal their behavior in the privacy of their basements, while the African American poor - who are under-housed, under-employed, under-privileged and with limited political power operate open air drug markets – are much easier to catch, keep and control by comparison. Many in our community make parallels between slavery and the oppressive nature of incarceration of the African American poor with limited education. People enter the prison-industrial complex with a name but they leave as a number. The old saying was, “You do the crime, you do the time” but the new saying should be, “You do the crime, you do the time by suffering for the rest of your life via background checks.”

We are calling for a new abolition movement. Abolish the use of prison as a warehouse for the poor and abolish the pattern of inter-generational impoverishment. Malcolm X once stated that if you are born in a poor community, you enroll in a poor school where you receive a poor education that enables you to get a poor job, which puts you right back in a poor community. This a vicious cycle but when the injustice system is added into the equation its effect is catastrophic.

In the pursuit of happiness, many African American males have resorted to selling crack because of the illusion of success deemed inevitable in the inner city. I always wondered why the government facilitated the co-location of illicit drug markets with concentrated poverty tracts, then turned right around and focused their arrests on people who lived in the very places they encouraged the drugs to flow with government policy. But I no longer have blind eyes.

I sold my first bag of crack at the age of fourteen and have been to prison due this powerful drug. Having a father addicted to cocaine left a heavy burden on my mother. Entering

into what I considered a lucrative position of authority, selling drugs seemed to make life a little better financially. I was sixteen when my mother sent me to Iowa, in an effort to save me from the lure of the streets but I didn't stop there. I even landed in Minnesota via the drug trade. Drugs are everywhere and there is never a shortage.

To better understand the criminal justice system I sought higher education; receiving a B.A. in Criminal Justice and with a year left in a Graduate Program in Criminal Justice, the corruption seems much clearer. Mentoring and community organizing about issues that affect the underserved, has helped more youth understand the traps that have been laid before them. My mission is to help children learn from my mistakes and help ex-offenders learn from my road to redemption. By showing others the pain and suffering that I endured helps them gain a sense of hope.

Many of my childhood friends are prisoners of war due to Reagan's decision in 1982. Research has proven that prison does not work, which is evident when looking at the recidivism rate, but the "lock 'em up and throw away the key" model continues to pervade the system.

In the U.S. District Court case of *United States v. Williams* (1990), the defendants, who were African American, had been referred to federal court where their crack distribution carried a sentencing range of 188 to 235 months under the guidelines. In contrast, being convicted on the same charge on the state level would result in a sentence of less than two years. This increases the chances of inmates being lost in the system. The federal penitentiary sends their inmates far and wide to serve their sentences in an effort to ostracize them to maximum.

In order to bring the impact of the War on Drugs closer to home it is imperative to explain its effect in Minnesota. In 2005, 4,366 individuals were sentenced for felony drug crimes, which is about an eight percent increase since 2004. This means that more people were incarcerated, with very little educational opportunities. The system is determining who will end up in prison by evaluating fourth grade reading scores. The War on Drugs was able to further its movement in 1994 when inmates were denied the opportunity to obtain Pell Grants. The message was clear when it was told, describing Frederick Douglass: If you teach a slave to read, he is no longer fit to be a slave. Jesse Jackson stated that you can either send them to the state penn or Penn State because we should seek to educate before we decide to incarcerate.

Large corporations that profit from the prison industrial complex make millions of dollars from inmates that pay under \$2.00 per hour for their labor. Incentives to offenders receiving extreme sentences for nonviolent offenses are abundant and the prison industrial complex is just one of the vicious tactics of the War on Drugs. If Reagan's policy truly sought to eliminate drug use, why are there so few treatment programs for inmates? Fifty percent of drug users want treatment but only 15% of them receive treatment.

"In well-to-do communities, drug abuse is primarily addressed as a social or health problem, and there is no shortage of treatment resources for those with the means to pay. But in low-income communities, those resources are in limited supply, and a criminal justice response-arrest, prosecution, and incarceration-becomes far more likely" (Mauer, 2004). There are many thriving businesses that would collapse if the drug trade was destroyed. We are talking about a

market that is worth billions of dollars. There is no war on drugs; there is a war on African Americans and poor people too.

According to the 2007 Report for Drug Offender Sentencing Issues, “the average prison sentence for drug offenses was 22.9 months in 1988. In 2005, it was 44.2 months”. The numbers have nearly doubled since 1988. The numbers will continue to grow because it has major payoffs. Its amazing how the War on Drugs has led to kids being administered drugs in school; it’s amazing how people addicted to crack are being introduced to methadone as a form of treatment.

Dr. Jawanza Kunjufu reminds us that alcohol and tobacco are drugs also. Take a look at the life expectancy rate for someone who smokes in comparison to someone who does not smoke; take a look at how many people pass away from lung cancer; take a look at how many people die from alcohol poisoning; take a look at how many people die from drinking and driving. The War on Drugs policy was beautiful on paper but the effects are ugly. The government is making too much money on the backs of the oppressed to really try to heal them from their sickness. The drug game has had a ripple effect that touches every city across America.

The people that are visibly selling drugs are not the importers; they are pawns. The government created laws that make it harder for youth to gain employment and it is sad but the drug world produces jobs for people that would not be gainfully employed otherwise. A diverse mix of job and wealth building opportunities in and near concentrated poverty neighborhoods and hyper-segregated schools would do a lot to dis-engage young people from the drug trade and engage them as responsible civic participants, workers and entrepreneurs.

Rather than close with a litany of complaints and blame-placing, I will close with a set of recommendations for the responsibilities we must accept to change the negative trajectories of poor black youth. There are numerous responsibilities to share – everyone can have a role.

The Department of Corrections must put an end to the punitive prison-industrial complex and stress the importance of rehabilitation and education. If the statistics show that most people incarcerated have the least education, then the answer is simple. Prisoners of the war should be allowed to join a union while incarcerated so they can have gainful employment upon reentry. Let them have a 401(k) plan. Giving them a certificate and \$100 when they leave does not help at all.

The corporate sector (jobs-wealth complex) that left the inner city as blacks arrived post World War II must commit to hiring, retention and promotion policies that ensure an equal opportunity to all Americans. People on public assistance face discrimination in the job search, but the enormity of the barriers they face pale in comparison to the discrimination faced by ex-offenders. Once people have done their time, they need to be offered a fair “second chance”. That is the only way to end our crazed pattern of recidivism.

Police must stop the incessant practices of racial profiling, harassment and brutality. The government and the public must understand that the police play the role they are trained and

encouraged to play by “we the people”. The “we” is whites and middle and owning classes of folks who have declared this war – and encouraged the government and its police to assault the black poor. Reflect on the disparate treatment for crack versus meth – it is a world of difference, and it is colored black or white.

A public health model is needed in the inner city – that addresses the traumatic multiple shocks that accrue from years of living with poor work and school choices, constantly swept away from kin and home by the tsunami of violent housing market shifts that over-concentrate black space only to divide it all up over and over again, and address the deep-set impact of living in and around high levels of violence and hopelessness. It is not just those directly caught in the war on drugs that need support for healing – entire communities are caught in it and need healing. Rather than focus on the individual maladies of black persons or families, it is important to treat the problem culturally and structurally – at its real roots. American Apartheid is the disease, the war on drugs one of its tools.

The media, of course, must stop sensationalizing drugs, violence and disorder in the black concentrated poverty communities and focus on the dynamic setting of our lives more holistically AND responsibly. That is a tall order for change, given the deeply disrespectful and racist role the media has played throughout the war.

Families, networks and individuals in the black community must also change. When you think about it – we always have the power within the community to organize to determine our own destiny – if we could just communicate and cooperate for long enough to define our community agenda and how to put it into effect until it yields its fruit. At the end of the day – we need to declare an end to this ineffective and destructive war immediately – and replace it not with another war – but with a commitment to peace and mutual prosperity. All RISE and Commit!

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## **Sentencing Trends: Analysis and Recommendations**

By Phil Carruthers<sup>1</sup>

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### **Changes in attitude have contributed to lengthened sentences**

The Council's research shows that average sentences have increased substantially over the last 20 years. This increase represents a fundamental change in attitude. Previously, common views of criminal justice policymakers were that the length of sentence was not as important as the speed and certainty of conviction, and deterrence and rehabilitation were the most important goals of sentencing. Over the last 20 years, the focus has moved to incapacitation of offenders and retribution as primary goals of sentencing. Retribution, the concept of just deserts for violating society's standards, is behind, for example, the lengthening of sentences for murder. In less than 20 years, the sentence for first-degree premeditated murder has gone from a 17-year minimum sentence to the current sentence of life without release enacted in 2005.

Incapacitation as a crime control strategy has become much more popular. Putting offenders in prison is seen as a way to get offenders off the streets and thereby increase public safety. Thus, drug offenders are seen not merely as drug users but as individuals likely to commit drug dealing, burglary, identity theft and other offenses to support their habit. A similar analysis has been applied to gang members, repeat offenders and those using guns to commit violent crimes. Minnesota adopted mandatory minimum sentences for repeat drug offenders and for gun crimes as well as career criminal and modified three-strikes sentencing laws. Incapacitation as a state policy is especially pronounced with sex offenses, where life imprisonment, life without release and indeterminate sentences have been enacted, in order to remove dangerous sex offenders from society where they could reoffend.

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<sup>1</sup> The opinions expressed are those of the author, not those of his employer or any organization.

There are various reasons for the more recent emphasis on retribution and incapacitation in sentencing policy. Public concern about crime, especially violent and sex crimes has increased. In addition, there is less confidence in rehabilitation as a successful strategy to combat crime. The feeling is, ‘if we can’t rehabilitate offenders, at least we can keep them off the street so they can’t prey on people.’”

There are repeat and dangerous offenders for whom incapacitation is an appropriate response. There are other offenders and offenses, for example lower level drug possession crimes, for which long sentences are excessive. The legislature should revisit the longer sentences for drug offenses enacted after State v. Russell, which struck down tougher penalties for crack cocaine.<sup>2</sup>

The question is which offenders should be subject to long sentences in order to incapacitate and sternly punish them, and which instead should be subject to a focus on rehabilitation, shorter sentences and sentencing alternatives. I will not attempt to solve this conundrum in this article, but the Council on Crime and Justice is particularly well suited to help sort this out. I encourage the Council to involve a wide range of groups in this discussion, including victim organizations, neighborhood groups, prosecutors, law enforcement and advocates for offenders. Without broad support, it will be difficult to enact sentencing changes and reforms. The expertise and experience of broadly representative individuals and groups will help develop better policy.

Prosecutors can be valuable allies in the search for good sentencing policies. Thus, prosecutors supported the increase in the theft thresholds enacted in 2007, which will mean that lower value thefts no longer will be felonies. Prosecutors successfully opposed the post-9/11 proposal to increase the sentence for Terroristic Threats proposed in 2002. Prosecutors are also involved in efforts to liberalize expungement and collateral consequence laws. Efforts to go around law enforcement and prosecutors in such efforts are unlikely to be successful, so it is better to involve them than not.

### **Longer sentences have not been the product of one ideology or party**

Harsher sentences have not been the result of one particular ideology or group. Instead, they have come from legislative advocacy from the whole spectrum of views and party politics. Some liberals blame conservatives for longer sentences, seeing conservatives as unforgiving and unwilling to invest in rehabilitation, while some conservatives believe liberals too often attempt to impose criminal penalties to regulate businesses and unpopular conduct, such as smoking or what they regard as politically incorrect behavior. Quite the contrary, my experience in the legislature was that groups, legislators and citizens of varying ideologies, attitudes and backgrounds have contributed to longer sentences. Virtually everyone, in my experience, regardless of ideology or political party, identifies a type of crime for which they believe the consequences are too low. Longer sentences for the following crimes, for example, were proposed by legislators and groups of varying ideologies and parties: drunk driving, crimes committed with guns, domestic abuse, cruelty against animals, unfair business tactics, crimes against the elderly and disabled, fraud, bias crimes, burglary, car theft, and sex offenses. Because

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<sup>2</sup> 477 N.W.2d 886, 889 (Minn. 1991).

so many have contributed to the current sentencing system, groups and individuals of all backgrounds, ideologies and parties have to be involved with efforts to change it.

### **Comprehensive study and recodification of criminal laws and penalties**

An appropriate task would be for a group of individuals from different backgrounds and points of view to propose a comprehensive recodification of Minnesota's criminal laws, which was last done in 1963. As noted by the Council on Crime and Justice, the criminal code has grown enormously since 1963. During that time, many new crimes have been created, felony sentences have been lengthened, and many offenses have been ratcheted up from misdemeanors to gross misdemeanors, and from gross misdemeanors to felonies. Many of these changes have been appropriate, but often the changes have been done incrementally without adequate consideration of the overall proportionality of sentences and the appropriate allocation of law enforcement, prosecution and correctional resources to handling offenders. As a result, the criminal statutes have at times become inconsistent, difficult to decipher and lacking proportionality in sentences.

A starting point for a recodification could be the Nonfelony Enforcement Advisory Committee (NEAC) Final Report issued in 1997. That group proposed a comprehensive recodification of the entire criminal code, from petty misdemeanors to felonies. See Report of the Nonfelony Enforcement Advisory Committee, January 1997; S.F. 409 introduced in 1997. The NEAC report did not receive serious legislative consideration because of the complexity and length of the recommendations, the feeling of some that the committee went beyond its mandate, and because of some controversial recommendations. But their effort should be studied to analyze what to keep in the present code and what to amend or delete. Recodification of the criminal code and a comprehensive analysis of sentencing length and proportionality are filled with many potential landmines. It has to be approached in a very politically sensitive way that involves many groups and is not seen as being preachy or ideologically based. The Council can work with a variety of groups and officials to initiate this effort.

### **Increased recognition of victims and their rights**

The passage and expansion of the Victim Rights Act, found in Chapter 611A of Minnesota Statutes, was an important development that has improved our criminal justice system. Victims, like defendants, are overrepresented by people of color, women and the vulnerable. Citizens from high crime neighborhoods frequently state they feel the criminal justice system does not take crime in their neighborhoods seriously enough. They often are the strongest advocates for strong enforcement of criminal laws, for too often they, their children, families and neighbors are directly affected by crime. The residents of high crime neighborhoods want the same things we all want: safe neighborhoods, decent shelter, good schools and economic opportunity.

A focus merely on offenders without looking at their victims can minimize those victims. While crime sometimes can be the product of an unfair society, we cannot forget the actual victims of crime who have directly suffered physical, emotional and economic harm at the hands of offenders. Thus, efforts to revamp or reform our criminal justice laws must directly involve victims and their advocates.

## Treatment and education for offenders

Because of increased skepticism about the effectiveness of rehabilitation, over the last 20 years resources for chemical dependency treatment and education for offenders have not kept up with the demand. This is a mistake, in my view. A huge percentage of crime is related to chemical dependency,<sup>3</sup> yet funds for chemical dependency treatment have not been adequate. The Minnesota Department of Corrections reports, “While the number of drug offenders sentenced to prison increases, funding for treatment funding has decreased.”<sup>4</sup> The Minnesota Supreme Court’s Task Force on Adult and Juvenile Alcohol and Other Drug Offenders states:

According to the Minnesota Department of Corrections, of the 8300 offenders currently in Minnesota prisons, 90% were diagnosed as chemically dependent or chemically abusive and were directed to complete chemical dependency treatment. Sixty percent of all offenders need primary treatment based on a chemical dependency diagnosis. Sixty-five percent of those referred for services never receive them.<sup>5</sup>

Society seems more willing to spend money on jails, workhouses and prisons rather than on chemical dependency treatment, which could help stop the cycle of crime. Eventually, almost all offenders get out of prison or the workhouse. It is in the best interests of both society and the offenders that they have access to chemical dependency treatment programs. These programs have varying levels of success, and we know offenders commonly will relapse. Opponents state that such programs are expensive and there is inadequate evidence of their success.<sup>6</sup> But we still should make chemical dependency treatment a priority. We need to do better long term studies of the effectiveness of treatment and whether some regimens work better than others. Culturally specific programs have higher rates of success for people of color.<sup>7</sup> Meth and heroin addiction, because of the severity of the addiction, may need longer and more intense treatment regimes. Despite the complexity and expense, treatment programs are critical.

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<sup>3</sup> For example, data collected from males arrested for any crime in 1998 in 35 cities showed the percentage testing positive for any drug ranged from 42.5 percent in Anchorage to 78.7 percent in Philadelphia. Female arrestees testing positive ranged from 33.3 percent in Laredo, Texas, to 82.1 percent in New York City. Predictably, males charged with drug possession or sales, and females arrested for prostitution, drug possession or sales, were among the most likely to have positive tests. Males and females arrested for stolen vehicles, robbery and burglary had high positive rates. Office of National Drug Control Policy, “Drug-Related Crime,” March 2000, at: <http://www.whitehousedrugpolicy.gov/publications/factsht/crime/index.html>

<sup>4</sup> “The Methamphetamine Epidemic: Impact on the Minnesota Department of Corrections,” a brochure of the Minnesota Department of Corrections, 2005.

<sup>5</sup> “Report of the Minnesota Supreme Court’s Task Force on Adult and Juvenile Alcohol and Other Drug Offenders,” February 3, 2006, at p. 22. The report explains, “The Minnesota Department of Corrections reports that 1700 offenders receive treatment each year. Although it estimates a yearly need of 2170 treatment beds, it currently has only 800. Information obtained by the Task Force from the Minnesota Dept. of Corrections (2005).” *Id.* at fn. 25.

<sup>6</sup> *See, e.g.*, Minnesota Legislative Auditor, Recidivism of Adult Felons, January 13, 1997 (study found that participants in a chemical dependency program at Stillwater prison had recidivism rates similar to those of other released inmates).

<sup>7</sup> Minnesota Department of Human Services, The Challenges and Benefits of Chemical Dependency Treatment (1993-1999).



Drug courts, mental illness courts and other treatment-oriented courts should be expanded. In Ramsey County, we have found them to be an important option for non-violent offenses where the defendant's chemical dependency or mental illness was the reason for the offense. These courts focus on treatment and aftercare, with judicial intervention when offenders relapse, which is to be expected with chemical dependency. Strategies used by effective substance abuse courts are based on best practices identified in drug court literature and include: comprehensive assessment, judicial supervision, intensive case management, chemical dependency treatment, accountability for offenders, frequent random urinalysis and supportive services. Depending on the offender's prior record and the seriousness of the current offense, an offender in Ramsey County who successfully completes substance abuse court may end up with little or no workhouse or prison time and possibly no criminal record.

There need to be increased training and educational opportunities for imprisoned offenders. Funds for vocational training and education programs in Minnesota prisons have not kept up with demand. Though disputed by some, there is evidence that offenders coming out of prisons are more likely to get a good job and not reoffend if they have marketable skills. "Participants in prison education, vocation and work programs have recidivism rates 20-60 percent lower than those of non-participants."<sup>8</sup> Offenders deserve opportunities to educate themselves. Not all will take advantage of those opportunities, and for some, education and training will not prevent recidivism. But it is worthwhile to give offenders a chance to change their lives for the better.

### **Sentencing Disparities**

Sentencing guidelines were established at the state and federal level in part to increase the equal treatment of offenders, so there are not wide disparities between similarly situated offenders. However, they have also resulted in rates of imprisonment for people of color in excess of their numbers in society. General trends of increased sentences have further increased these disparities. This is not just a problem in Minnesota but surrounding states as well. Addressing the problem is essential. Dealing with sentences for drug offenses probably will help with the problem, but we need to continually examine all parts of the criminal justice system to identify and work to eliminate discrimination. In addition, because the best way to deal with crime is to prevent it in the first place, partnerships between government, religious groups, neighborhood organizations and non-profits should actively explore ways to reduce crime, particularly in high crime neighborhoods.

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<sup>8</sup> The Nation, March 4, 2005; Steurer, S., Smith, L., & Tracy, A., The Three State Recidivism Study, Lanham, MD: Correctional Education Association, 2001 (study of three states including Minnesota). For a contrary view, see, e.g., Minnesota Legislative Auditor, Recidivism of Adult Felons, January 13, 1997 (found that participants in education programs at St. Cloud and Shakopee prisons had recidivism rates similar to those of other released inmates); Robert Allen "An Economic Analysis of Prison Education Programs and Recidivism," found at [http://www.economics.emory.edu/Working\\_Papers/wp/Allen.pdf](http://www.economics.emory.edu/Working_Papers/wp/Allen.pdf).

## Chronic Offenders

According to a 2001 report by the Legislative Auditor, in Minnesota about five percent of offenders are responsible for 19 percent of all criminal convictions and 37 percent of felony convictions.<sup>9</sup> This is older data (1995-2000), but in my experience, it continues to be the case. The criminal justice and social service systems need to do a better job of dealing with these repeat offenders, who cause a disproportionate demand on the criminal justice system. To deal with this, we need to be innovative and collaborative. There will be increased costs, but reducing the recidivism of this group will mean a safer society and less expense in the end. Specialty courts, such as mental health and substance abuse courts, can help by intervening early before they become chronic offenders. Undoubtedly many of these offenders have serious substance abuse problems and we should encourage and require alcohol and drug treatment. Intensive probation and reentry programs aimed specifically at chronic offenders would be valuable. There also will be offenders, despite our best efforts, who will keep committing crimes. As to them, more aggressive prosecution and longer sentences will continue to be needed.

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<sup>9</sup> Office of the Legislative Auditor, Chronic Offenders, February 2001, p. 13.

**Sentencing Policy and Criminal Justice in Minnesota: Past, Present, and Future**  
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This paper addresses the ways in which sentencing policy changes, especially the implementation of sentencing guidelines, have affected Minnesota's criminal justice system in recent decades, and how such policies and changes may affect the system in the future. The paper also considers how societal attitudes have shaped recent sentencing policy changes.

**1. How have sentencing policy changes in the past 50 years affected the justice system, including the racial disparities that now exist within the justice system?**

By far the most important sentencing policy change in the past fifty years was the decision to replace the former indeterminate sentencing system with sentencing guidelines. In 1980 Minnesota became the first state to adopt legally-binding sentencing guidelines, and it was the first state to employ a permanent, independent sentencing commission to develop and monitor the implementation of guidelines and make other recommendations related to sentencing. Minnesota also pioneered the practice of using guidelines and a permanent commission to develop sentencing policy which sets priorities in the use, and stays within the limits, of available prison capacity. It should be noted further that the "Minnesota model" of sentencing reform has been highly influential outside of the state. Nineteen states plus the District of Columbia and the federal courts now have some form of sentencing guidelines, and Minnesota's approach has also been endorsed by the American Bar Association and in early drafts of proposed revisions of the American Law Institute's Model Penal Code.

Minnesota-style guidelines have been widely praised and emulated not just as a means to reduce unacceptably large racial and other disparities in sentencing, but also because the more predictable, data-informed, and politically-independent nature of commission-based guidelines makes it easier for states to foresee and prevent overcrowded prisons, and set priorities in the use of limited prison space. It is no accident that Minnesota's prison populations grew much more

slowly in the 1980s than the national prison population, despite rapidly rising criminal caseloads and increased concentrations of race and poverty in Minnesota, and that our prisons remained at or below capacity while most other states experienced occasional or chronic overcrowding. The Guidelines emphasis on regulating prison sentences may have contributed to increased use of jail terms (which had already started to rise before the Guidelines went into effect); but even when jail inmates are taken into account, Minnesota's combined prison and jail incarceration rate per 100,000 state residents remains the second-lowest of all states.

However, the rate of racial disparity in Minnesota's custody populations (as measured by the ratio of the Black per capita incarceration rate to the White rate) is among the highest in the nation. Four national studies of prison populations in the 1980s and 1990s found that Minnesota's Black-to-White incarceration-rate ratios ranged from 19:1 to almost 23:1; in each study, these were the highest ratios of any state. More recent data from the Minnesota Department of Corrections, combined with Census population data by race, shows steadily falling Black:White prison ratios – the ratio declined from about 18:1 in 2001 to 11:1 in 2006. And recent national data show even lower ratios, when jail inmates are included and Hispanic inmates are counted separately rather than included in the Black and White race categories. On this basis, Minnesota's Black:White incarceration-rate ratio for 2005 (the most recent year with data) was 9:1. Of the 48 states reporting both prison and jail rates by race in 2005, 10 states had higher Black:White ratios than Minnesota, and three states had approximately the same ratio.

State sentencing policies, embodied in Guidelines rules defining offense severity, criminal history scores, and recommended prison-commitment and prison-duration rules, clearly have an impact on the racial composition of prisons. Guidelines rules emphasize using prison beds for serious crimes (especially, crimes of violence and sexual abuse), and for offenders convicted of less serious crimes but with substantial prior-conviction records. It is clear that, in the aggregate, Guidelines rules have a disproportionately severe impact on people of color, especially Blacks. In 2005 (the most recent year with complete data), 39 percent of Black offenders had recommended prison sentences under the Guidelines, versus 25 percent for Whites, 31 percent for Hispanics, 33 percent for Asians, and 35 percent for Native Americans. But racial differences in conviction offense severity are much smaller than racial differences in prior conviction records – in 2005 the mean (average) severity scores for Blacks and Whites were 3.9 and 3.8, respectively, but Black and White mean criminal history scores were 2.20 and 1.48. The most important contributors to these criminal history score differences were the custody status point (committing the current offense while under supervision or in custody for an earlier offense) and prior felony convictions.

There is almost no data on charging and plea bargaining processes in Minnesota, and it is possible that systematic biases in these processes exaggerate the conviction offense severity and/or criminal history scores of Black offenders. But there is reason to believe that severity levels and criminal history scores provide a fairly accurate measure of current and prior crimes. National studies have consistently found higher rates of Black offending, particularly for violent crime, and there is reason to believe that these patterns are even more pronounced in Minnesota. Racial disparity in arrest rates is very high in this state, especially for violent crime, and disparity in the underlying social correlates of crime is also high: in their rates of poverty, unemployment, and other socio-economic measures strongly associated with crime, the relative disadvantage of Blacks compared to Whites is much higher in Minnesota than for the nation as a whole.

To the extent that Guidelines offense severity and criminal history scores reflect actual offense behavior, it is difficult to argue that Minnesota sentencing policy is biased. Using

prisons for violent and repeat offenders is a very defensible choice, and one that helps to protect non-White citizens (most crime is intra-racial, so non-White offenders generally commit their offenses against other non-Whites). Using scarce prison space for large numbers of drug offenders is more debatable, and so was the greater severity formerly given to (mostly-Black) crack offenders under Minnesota drug laws and guidelines. But today drug offenders sentenced to prison are actually less likely to be Black than the average for all prison-bound offenders.

Minnesota judges have the power to depart from recommended Guidelines sentences, and in practice they often do so, especially to mitigate sentences (usually with the prosecutor's recommendation or acquiescence). My research has found little evidence of racial disparity in departure decisions, once other sentencing factors are taken into account. However, some of these factors are of questionable legitimacy, in particular, the tendency to give less severe sentences to offenders who plead guilty (which Black offenders do less often; again, we lack data on prosecutorial decisions and other factors which may discourage Black guilty pleas).

Finally, it is unlikely that fewer non-White offenders would be incarcerated if Minnesota had retained the prior indeterminate sentencing system. That system gave even greater weight to the prior conviction record, and there is no reason to believe that judges or parole officials under such a system would be more lenient toward non-White offenders.

## **2. How have societal attitudes shaped sentencing policy changes?**

Public opinion has played only a limited direct role in the development and implementation of Minnesota's Sentencing Guidelines. To some extent this was by design – independent sentencing commissions are valued not only for their expertise and research capacity but also because they promote a long-term, fiscally-responsible perspective and help to insulate sentencing policy development from short-term political pressures driven by sudden shifts in public opinion. However, the Legislature and the Guidelines Commission have taken steps to ensure that the public is informed of the Commission's work and that public input and perspectives are taken into account. And societal attitudes have certainly played an important indirect role in shaping the evolution of Minnesota's guidelines system over time. In particular, the widespread publicity given to certain violent crimes (the Minneapolis parking ramp rape-murders in 1988, several rape murder incidents outside the Twin Cities in 1991, and Dru Sjodin's abduction and murder in 2003) repeated led to sharply increased sentence severity for violent crimes and, most recently, a return to indeterminate sentencing for some sex offenders.

## **3. How will sentencing policy changes affect Minnesota's justice system in the future?**

Perhaps the most critical issue is whether indeterminate sentencing will be extended to other crimes. If that happens it may render sentencing not only more disparate, but also less predictable, making it much harder to foresee future prison-space shortages and set priorities in the use of available prison capacity. Legislators and other officials would then also feel more free to propose unreasonably long, "tough-on-crime" prison sentences, while passing responsibility for the increased human and financial costs on to the parole board – a body which would probably be more political and less expert than the Guidelines Commission.

## **The criminal justice system, the mental health system, and the preventive state**

Eric S. Janus

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For years, the criminal justice system and the mental health system have functioned as roughly complementary partners in the state's social control function. In a division of tasks with roots in formal law and informal practice, the criminal justice system has occupied the primary role for social control, while the mental health system serves as a secondary function, a "diversion" from the criminal justice system for individuals exhibiting antisocial behavior, who are "too sick to deserve punishment."<sup>10</sup> At its core, this division was accomplished through the formal doctrines defining incompetency and insanity, transferring control of individuals with serious mental impairments from the criminal justice to the mental health system. But informal practice, diversion often reached a broader group of impaired individuals, not formally "insane" or "incompetent," but suffering from mental impairments that seemed clearly associated with their antisocial behavior. The division between the two systems has never been hermetic, and some individuals have, over time, been subjected to both systems sequentially. Still, historically, the two systems were in rough equilibrium.

Beginning in the 1970s, the balance began to change. Abandoning the rehabilitation ideal, the criminal justice system moved to a more frankly punitive "just deserts" model, focused more on punishing and incapacitating, and less on addressing the root causes of criminal behavior. In part, the shift was manifested in the further cabining of an already crabbed notion that mental illness (like other individuating features) might be relevant to excusing or mitigating punishment. Mental illness came to

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<sup>10</sup> *Millard v. Harris*, 406 F.2d 964, 969 (D.C. Cir. 1968).

be associated with increased violence and risk, and correctional systems developed highly repressive “super-max” prisons, many of whose denizens were mentally ill.<sup>11</sup>

At the same time, the mental health system was itself undergoing important changes. Under the dual influences of newly developed pharmacological treatments for mental illness and the civil rights revolution, deinstitutionalization drastically reduced the populations of state mental hospitals. Unfortunately, community-based services for people with mental impairments did not grow apace, and many chronically mentally ill people were left without adequate services.<sup>12</sup>

Perhaps in response to these developments, at least some of the responsibility for dealing with persons with chronic mental illness shifted to the criminal justice system.<sup>13</sup>

[E]xperts believe that the proportion of prison inmates with mental illness is increasing. Nineteen of thirty-one states responding to a 1998 survey reported disproportionate increase in their seriously mentally ill population during the previous five years . . . [and] there is a consensus in corrections that the numbers also reflect a real change in the rate at which the mentally ill are being sent to prison.”<sup>14</sup>

Citing the changes in the mental health system as causes, an article in *Psychiatric Services* in 1998 reported that the proportion of jail and prison inmates suffering from “severe mental illness” could be as high as fifteen percent, and that “a greater proportion of mentally ill persons are arrested compared with the general population.”<sup>15</sup>

Over time, policymakers have tweaked the basic division of labor between the criminal and mental health systems. Various initiatives sought to loosen the criteria for civil commitment. Often, these initiatives were grounded in a *parens patriae* theory, making the argument that the civil rights/due process changes tightening civil commitment laws were cruelly allowing severely mentally ill people to “die with their rights on.”<sup>16</sup> But often enough, the impetus for the change was a police power-public protection rationale, such as that underlying “Kendra’s Law” in New York.<sup>17</sup> Laws like Kendra’s law reflect a more explicit partnership between the criminal justice system and the mental health system. This partnership is also reflected in the advent of Mental Health Courts. These initiatives attempt to coordinate mental health services with a “problem solving” approach that heavily involves a judge-defendant relationship in an attempt to address mental health issues that underlie criminal behavior.<sup>18</sup> These initiatives deploy the tools of mental health treatment and the coercive power of the criminal law interactively.

Beginning in the early 1990s, a separate but equally fundamental shift again displaced the boundaries separating the criminal and mental health paradigms for social control. If the first shift had the effect of

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<sup>11</sup> See David Lovell, Kristin CloyesCloys, David Allen & Lorna Rhodes, *Who Lives in Super-maximum Custody? A Washington State Study*, 64 FED. PROBATION 33, 35 (2000) (noting that a “disproportionate number of super-maximum custody prisoners have problems coping with prison due to mental illness, brain damage, or other factors; that needed treatment is not provided] in such settings; and that vulnerable inmates are further damaged by sensory deprivation and other disorientating features of the environment”).

<sup>12</sup> See generally, John Q. LaFond, Mary L. Durham, *BACK TO THE ASYLUM : THE FUTURE OF MENTAL HEALTH LAW AND POLICY IN THE UNITED STATES* (Oxford University Press 1992).

<sup>13</sup> Thanks to former student Josie S. Mines, whose work in the Scholarship for Equal Justice class several years ago expertly explored the plight of mentally ill prisoners in the criminal justice system.

<sup>14</sup> Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 HARV. C.R.-C.L. L. REV. 393 (2006).

<sup>15</sup> H. Richard Lamb, M.D. & Linda E. Weinberger, Ph.D., *Persons With Severe Mental Illness in Jails and Prisons: A Review*, 49 PSYCHIATRIC SERVICES 483, 483-92 (1998).

<sup>16</sup> See Darold A. Treffert, *Dying With Their Rights On*, 130 AM. J. PSYCHIATRIC REV. 1041 (1973).

<sup>17</sup> See N.Y. LEGIS. 408 at § 2 (1999).

<sup>18</sup> See Bruce J. Winnick & Susan Stefan, *A Dialogue ongenerally America’s Law Enforcement and Mental Health Courts*, 11 PSYCHOL. Project Act, PUB. POL’Y & L. 507 (2005). No. 106-515, 114 Stat. 2399 (2000); see also BUREAU OF JUSTICE ASSISTANCE, <http://www.ojp.usdoj.gov/BJA/grant/mentalhealth.html> (last visited Sept. 3, 2007).

criminalizing lots of what used to be considered the proper territory for the mental health system, this second shift worked in the opposite direction – recruiting the mental health mechanisms of law and psychiatry to control phenomena that were (and remain) squarely in the sphere of criminal law.

This development began almost simultaneously in Minnesota and Washington State in 1989 with the publication of reports by two state task forces. Both groups recommended the use of civil commitment – known in Minnesota as the psychopathic personality statute - to retain control over sex offenders at the ends of their prison terms. The Minnesota Task Force put it like this:

Even if statutory maximum sentences are imposed for sex offenders, there will come a time when they must be released from prison. The Task Force believes that there are a limited number of the most dangerous sex predators who should never be released to the community. The psychopathic personality statute is the only method currently available to maintain an indeterminate hold on a sex offender.<sup>19</sup>

These so-called “sexually violent predator” (SVP) laws have now spread to nineteen states and the federal government.<sup>20</sup> These nineteen states are currently holding roughly 2700 “sexually violent predators.” From this group, only around 250 have ever been fully discharged, and only around another 150 have been conditionally, or transitionally released. While Washington has civilly committed over 150 ‘sexually violent predators’ over roughly fifteen years, Washington has discharged only four individuals, and allowed only twelve to be conditionally released. In contrast, Minnesota has civilly committed nearly 350 “sexually violent predators” during the same time period without releasing a single individual.<sup>21</sup>

SVP laws lock people up because of their “risk” of committing a crime in the future. They are a form of “preventive detention,” and thus appear, on the surface, to violate prime principles of American jurisprudence. As Justice Jackson held in *Williamson v. United States*:  
Imprisonment to protect society from predicted but unconsummated offenses is so unprecedented in this country and so fraught with danger of excesses and injustice that I am loath to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which defendants stand convicted.<sup>22</sup>

Despite such misgivings, the constitutionality of SVP laws has been upheld, largely because these laws adopt the form of civil commitment laws, in which the deprivation of liberty is tied to mental disorder and dangerousness. The mental disorders common to sex offenders differ materially from those that are the traditional targets of civil commitment. Instead of targeting psychotic disorders that characterize incompetency, SVP laws target disorders that have as their defining essence antisocial behaviors.<sup>23</sup> In short, SVP laws authorize the deprivation of liberty based on risk.<sup>24</sup>

This is a fundamental conceptual shift. The criminal law bases its social control on *guilt*. Guilt is an individual characteristic, and is backward - looking. *Risk*, in contrast, is forward - looking and group-

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<sup>19</sup> ATTORNEY GENERAL TASK FORCE ON THE PREVENTION OF VIOLENCE AGAINST WOMEN, FINAL REPORT 22 (Feb. 15, 1989).

<sup>20</sup> See Monica Davey and Abby Goodnough, *Doubts Rise as States Hold Sex Offenders After Prison*, N.Y. TIMES, Mar. 4, 2007, § 1, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> 184 F.2d 280, 283, 95 L. Ed. 1379 (2d2<sup>nd</sup> Cir. 1950) (Jackson, J., while sitting as Circuit Justice).

<sup>23</sup> Eric S. Janus, *Sexually violent predator laws: psychiatry in service to a morally dubious enterprise*, 364 THE LANCET s1 at 50 (2004).

<sup>24</sup> Eric S. Janus, *FAILURE TO PROTECT: AMERICA’S SEXUAL PREDATOR LAWS AND THE RISE OF THE PREVENTIVE STATE* (Cornell University Press 2006).



based. The consequences of this shift are profound. I end this short essay with a description of a few of the consequences:

- While guilt is a bi-modal quality (one is either guilty or not), risk is a continuous variable. All human beings pose *some* risk of bad behavior, and none (given the inherent unknowability of the future) possesses 100% risk. Thus, unlike guilt, risk offers no bright-line thresholds for social intervention.
- Social scientists are hard at work developing “actuarial” instruments for measuring the risk of sexual violence associated with various personal “profiles.” With the increased availability of such tools, political pressure will increase to make full use of such data to protect the public. When tragedies occur (as they inevitably will), officials who ignored available risk-data will be held accountable. This dynamic will push our society more and more to reliance on “risk” as a basis for social control.
- Thus, we will see risk-based approaches spread. In the sex offender area, the spread is already robust, with widespread adoption by states of community notification regimes and, more recently, residential restrictions for sex offenders and electronic monitoring (GPS) requirements. Outside of the sexual violence area, we know that the federal government uses risk-based “scoring” methods to classify air travelers arriving from abroad. Pressure will grow to transfer the legal models and risk-assessment technology to other areas of social concern. Already in California, Governor Schwarzenegger is seeking to “treat gang leaders like high risk sex offenders.”<sup>25</sup> In rhetoric echoing the early days of SVP laws, Schwarzenegger seeks to extend preventive technologies to the “worst of the worst” gang leaders.<sup>26</sup>
- Switching from guilt to risk as the prime organizing principle for social intervention introduces confusing moral signals. Guilt is transparently a moral concept; through it, our society expresses its condemnation of antisocial behaviors. But risk is ostensibly a morally neutral term; risk purports to a natural quality, a “fact” about a person, rather than a moral judgment about a person. Risk-based thinking is highly utilitarian, encouraging us to find what works to deal with the risk. In risk-based thinking, the moral message (this behavior is bad) tends to get lost.
- Risk-based interventions, by their own logic, need broad-based screening surveillance, to facilitate the early identification of individuals whose personality makeup carries the risk of future harm. Since risk is broader than, and may precede harmful action, the surveillance must sweep broadly if it is to capture significant risk.
- Influenced by risk-based thinking, public policy discussions naturally gravitate toward addressing the “most dangerous” or the “worst of the worst.” Two somewhat contradictory consequences flow from this frame. First, the risk-thresholds for inclusion in these categories drift downward. As policymakers discover the obvious fact that interventions aimed only at the “most dangerous” allow (by definition) substantial risk to be unaddressed, they naturally seek to include greater and greater bands of risk in the “most dangerous” label. Second, the focus on the “worst of the worst” throws the most common forms of risk into the shadows. This is because most of the sexual

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<sup>25</sup> Press Release, Office of the Governor, Governor Schwarzenegger Announces Initiative to Combat Gang Violence (May 25, 2007), <http://gov.ca.gov/index.php?/press-release/6395/>.

<sup>26</sup> Speeches, Office of the Governor, Governor Schwarzenegger Announces Initiative to Combat Gang Violence (May 25, 2007), <http://gov.ca.gov/index.php?/speech/6399/>.

violence against women and children is committed by acquaintances and intimates - individuals who do not fall into the “worst of the worst” category.

- Many of the risk-based interventions rely on strategies of exclusion – they are based on the notion that we can identify persons who are risky, and protect ourselves from them by locking them away, or prohibiting them from living near us, or somehow making their presence in our proximity obvious (through pink license plates or internet postings). These strategies go counter to current theories that inmates being released from prison, need to be successfully reintegrated into society.<sup>27</sup>

### **50 Years of Mental Health Hope and Struggle: 1957-2007**

Mark Anderson and Lynda Cannova

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In the last 50 years there have been dramatic changes in systems of care for those with mental illness, and in how this care is financed. There have been exciting advances in the science of the brain that helps us understand what mental illness really is and how we can respond to it. But even with all the improvements in what we know and what we do, the lives of those with a mental illness has not improved nearly as much as they could have. We know much more now than we did fifty years ago, but our society’s institutions have not kept up so we continue to fall short. Where our health care systems have failed, our criminal justice system has taken on the burden with problematic consequences.

According to the Surgeon General's Report on Mental Illness, it is estimated that in an average one-year period, 22 to 23 percent of the U.S. adult population—or 44 million people—have diagnosable mental disorders. About 28 to 30 percent of the population has either a mental *or* addictive disorder. It is estimated that 9 percent of all U.S. adults have mental disorders experience some significant functional impairment. Five percent of adults are considered to have a “serious” mental illness. About half of those (or 2.6 percent of all adults) were identified as being even more seriously affected, that is, by having “severe and persistent” mental illness. This category includes schizophrenia, bipolar disorder, other severe forms of depression, panic

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<sup>27</sup> Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community.  
[www.reentry.org](http://www.reentry.org)

disorder, and obsessive-compulsive disorder. Today, only 60% of severely mentally ill persons receive treatment in a given year, leaving approximately 2.2 million severely mentally ill persons untreated (Torrey, 1997).

In 1957 mental health treatment was typically provided in large state hospitals and other institutions. This was the era when pharmaceutical treatment of mental illness was just beginning and an affordable community based mental health system did not exist. Patients were sent to these institutions for care and often spent many years there. Families could care for their family members in their own home, as had been done since time immemorial but, in an increasingly urbanized society, that style of care was less possible for many. These state run institutions were seen as humane alternatives to incarceration or homelessness.

According to the groundbreaking first Surgeon General's Report on Mental Health, "In the 1950s, the public viewed mental illness as a stigmatized condition and displayed an unscientific understanding of mental illness. Survey respondents typically were not able to identify individuals as "mentally ill" when presented with vignettes of individuals who would have been said to be mentally ill according to the professional standards of the day. The public was not particularly skilled at distinguishing mental illness from ordinary unhappiness and worry and tended to see only extreme forms of behavior—namely psychosis—as mental illness. Mental illness carried great social stigma, especially linked with fear of unpredictable and violent behavior."

With the invention of new pharmaceuticals, that made it possible to moderate the extreme behavior of many who lived in these institutions, it was thought that allowing patients to leave and be treated in the community would be more humane.

President John Kennedy supported the Community Mental Health Act of 1963 which provided federal financing to states to develop community mental health centers. These community mental health centers developed as an important part of our mental health system, and formed an important core of a growing community mental health movement. But they were never adequately funded and so were never able to provide community based mental health care for all those who had been deinstitutionalized. Deinstitutionalization reduced the population of state and county mental hospitals from a high of about 560,000 in 1955 to well below 100,000 by the 1990s. De-institutionalization has eliminated over 90% of former state psychiatric hospital beds (Sigurdson, 2000). But an adequate community based mental health system has even today not been created.

On July 30, 1965 Medicare, a federal single payer system for those over 65 and, after 1972 for those with a disability, was created. Its companion program Medicaid was also created to cover long term care for the elderly and others and care for mothers and children who met income guidelines. Unfortunately Medicare, to this day, discriminates against mental health coverage, charging a 50% co-pay for mental health care and a 20% co-pay for medical and surgical care. In addition, there was no Medicare coverage for pharmaceutical care outside the hospital setting for the first 4 decades of the program. And Medicaid is moving to a managed care model that has not worked well with this population.

The development of a wide variety of pharmaceuticals led to an increased reliance on pharmaceutical care rather than hospital care for mental health as well as medical and surgical care. After the failed 1992 national health care reform effort, managed care became the standard way to organize care including mental health care. This business model of mental health treatment helped further medicalize mental health care by disconnecting it from support services. The rise in reliance on pharmaceutical care, combined with managed care led to a decrease in talk therapy and a failure to provide needed support services to those who were de-institutionalized. In fact it would not be an understatement to say that pharmaceutical companies took on a growing role in defining care options. In mental health this led to the colloquialism, “off his meds,” to refer to someone who was exhibiting symptoms of psychiatric illness.

In speeches to medical societies in the 1940s and 1950s, Bill W., the founder of Alcoholics Anonymous, noted the important role played by leading psychiatrists in the development of AA. And yet there developed a split between the treatment of mental illness and the treatment of substance abuse and addiction. The varying stigma associated with these two sets of disorders and the public’s and the health care community’s failure to understand their inter-relationship led to a situation where patients with co-occurring mental illness and substance abuse or addiction we bounced back and forth between these systems because neither system was fully able to treat both disorders. This is now changing due to the new brain science that is clarifying the underlying disease processes at work and making possible the identification of effective dual-diagnosis treatments.

After the Vietnam War, military veterans fought for years to gain the recognition of the diagnosis of post traumatic stress disorder, PTSD, as a diagnosable and treatable mental health disorder. Later it was recognized that other sufferers of trauma, sexual assault, torture, children who witness violence, and others, could also be affected by PTSD. During the current conflicts in Iraq and Afghanistan, it is being recognized that combat and operational stress are treatable disorders and that their immediate treatment can lower rates of PTSD in warriors who experience the stress of life in the combat zone. In addition, military health care providers are seeing the importance of traumatic brain injury, TBI, and this is leading to the recognition of the importance of treatment of this disorder throughout the health care system.

Consumer movements like those that lead to the recognition of PTSD have also grown up with a number of other mental health disorders. Consumer organizations, and organizations of family members of those with mental illness, have played an important role in recent years in raising awareness among policy maker and health care leaders in the need to treat mental illness.

Beginning in the 1960s, the feminist movement helped re-define women’s mental health. Communities of color pressed for respect for cultural differences in mental health care and began to insist on cultural competence by mental health providers so that providers would have the ability to develop rapport and a healing relationship with their patients and clients.

As society changed its view of mental illness, the courts became more understanding of mental health related issues. Civil commitment proceedings were reformed and criminal mental health courts created.

There was a growing understanding of the relationship between children's and adult mental health. School districts have become much more aware of the barriers to success in education that mental illnesses create for children. And yet schools are not health care institutions and their failure to adequately respond to the needs of children with a mental illness has contributed to the overwhelming majority of children in our juvenile justice system having a diagnosed mental health disorder.

The American's with Disabilities Act, ADA, which took effect on July 26, 1992, supported parents and consumers' insistence on an appropriate response to mental illness in the workplace and public accommodations.

Particularly since 1990, advances in brain science, brain scans, growing understanding in brain biochemistry, advances in psychological therapy, electrical brain stimulation, and the role of the genome in brain development and functioning are bringing important new understandings to health care providers, policy makers and the public.

There is an increased understanding that the mind/body split that 18<sup>th</sup> century philosophers detailed is a fiction. The brain is a real part of the body and the brain and other organs of the body interact in numerous ways so that a health care system that does not treat the brain with the body is outmoded. This new understanding is reflected in the Mental Health Parity Act of 1996 which broke down some of the discrimination against mental health care. So called full parity between mental health, substance abuse treatment and medical and surgical treatment has been under consideration by congress since the mid 1990s and appears closer than ever to passage this year. And at the state level, 1997 saw passage of uniform mental health benefits in all the major public health care program benefit sets. Mental health parity has already been the law in Minnesota since the 1990s.

Today there is an overwhelming need to update all health care, public safety, criminal justice and social service institutions to utilize the new insights that science provides. These systems, which in many cases are based on models that are centuries old, must be updated based on this new knowledge.

In spite of all the progress made in the mental health system in the last 50 years, our current mental health system reflects a social and political mental health injustice. Mental health care providers report that our capacity for emergency psychiatric care is regressing to a time 40 years ago when providers had to accompany patients to the emergency room and wait with them for care. Criminal justice professionals report that 60-75% of those in some of our jails have a mental illness. There are more persons with mental illness in jails and prisons than in all state hospitals combined. Many have identified this situation as the *criminalization* of the mentally ill.

Due to the decreasing number of inpatient beds and the lack of needed community based mental health providers, many people struggling with severe mental illness find themselves repeatedly and unnecessarily in mental health crisis. Many of them will end up committing suicide, as crime victims, and encountering the police. Clearly reform is needed. There is a need for comprehensive and effective long-term care environment for this high risk population. People with severe mental illness are frequently turned away from treatment facilities and often wind up

in jail or are homeless due to lack of treatment. These individuals often have to go through the criminal justice system to get the treatment they need.

In the current situation a large percentage, estimated at 30%, of the population in the criminal justice system is on psychotropic medications to treat severe mental illness; the historic and continuing decline in inpatient beds in mental health hospitals and hospital psychiatric wards; the lack of community based programs to provide long term support to people with severe mental illness needed to avoid repeated hospitalizations, homelessness, suicide, and the number of people who die each year because of the inadequacy of our prevention systems make this proposal profoundly important. Besides these disastrous results our current view of mental health as a social welfare and public safety issue promotes actual loss of liberty when someone who is mentally ill but untreated commits a crime and ends up incarcerated, often being forced into treatment that could easily have been given on a preventive basis in the community.

Research has proven that mental illness is a biological brain disease and not a lifestyle choice. When someone is sick, whether from disease that can be seen under a microscope or from one that strikes the mind invisibly, treatment is required. Unfortunately the current system for providing treatment for those with psychiatric disorders remains dangerously troubled. There is inequity in laws concerning the mentally ill in that they are not guaranteed the right to high quality treatment given to people with other organic but not behavioral illnesses. To be equitable, the mentally ill should have the same right to get treatment as people with any other debilitating disease or disorder. If mental illnesses are not understood as medical conditions, then equity is not a feature of laws and services. People with severe heart conditions or diabetes and cancer can access treatment by going to a doctor's office or hospital, while the mentally ill are often turned away from treatment facilities. Appropriate response to this population can help save lives, save law enforcement, court, incarceration and health care costs, reduce homelessness, and improve the lives of people with severe mental illness and the lives of their loved ones.

Since the 1970s police departments across the country have seen a sharp increase in calls involving persons with mental illness (Torrey, 1997). It is estimated that between 7-10% of law enforcement contacts involve persons with mental illness (Bailey 2001, Hails & Borum, 2003). Research also indicates that in police encounters, persons with mental illness are more likely to be arrested than those who are not (Teplin, 2000). This high rate of law enforcement contact with persons with mental illness has led to incidents that have resulted in injury or death for the mentally ill. For example in Los Angeles, over a six-year period confrontations with the mentally ill ended in 25 fatal shootings by police (Bailey 2001). One study in a large law enforcement agency found that "suicide by cop" accounted for 11% of all officer-involved shootings (Lamb, Weinberger, DeCuir, 2002).

Recent strides by science in the understanding brain and biological factors that contribute to mental illnesses make these illnesses diagnosable and successfully treatable. This progress has not been matched by public policy in guiding our response to mental illness. Law enforcement response to mental health crisis involves a great deal of discretion in determining the outcome. Police decisions at a scene often determine whether a person will enter the mental health or the

criminal justice system; yet officers often have very little training in identifying and working with persons exhibiting mental illness.

Police officers are called on to respond to mental health crisis situations while ensuring officer safety, public safety and on scene resolution or transport to the mental health system. Police need specialized response programs to respond appropriately and effectively.

Persons with mental illness face many risk factors which impact their chances of encounters with law enforcement and for incarceration, including dual-diagnosis with chemical dependency, homelessness, and treatment non-compliance (Munetz, Grande & Chambers, 2001). It is estimated that between 20-30% of the adult homeless population suffers from a severe mental illness (Sigurdson, 2000). In addition 80-90% of mentally ill offenders are estimated to have co-occurring substance abuse problems (Sigurdson, 2000). Disordered thinking and paranoid delusions can lead to nuisances as perceived by the public and even criminal, sometimes dangerous, behavior.

Along with the reports of increased police involvement, reports of large numbers of mentally ill persons in U.S. jails and prisons began appearing in the 1970s (Lamb & Weinberg 1998, Torrey, 1997). Approximately 685,000 persons with severe mental illness are admitted to U.S. jails every year and between 6-15% of jail inmates have a severe mental illness (Hails & Borum, 2003; Lamb & Weinberg, 1998). The U.S. Department of Justice estimates that in 1998 there were 283,800 mentally ill offenders in U.S. prisons and jails, representing 16% of state prison inmates, 7% of federal inmates, and 16% of those in local jails (Ditton, 1999). The incarceration of persons with mental illness has become so rampant that professionals in the field claim that jails and prisons have become mental health facilities (Faust 2003, Howd 1998, Torrey 1997). This has major implications for criminal justice funding, for the cost of imprisonment often exceeds the cost of appropriate mental health care in the community (Sigurdson 2000). Mentally ill offenders are considered to have the highest rate of recidivism of any group of offenders (Sigurdson 2000).

Law enforcement has a professional responsibility to respond to persons with mental illness who are experiencing crises. There are two common law principles that create the opportunity for police officers to become involved with persons with mental illness. The first is that the police have the authority and responsibility to ensure public safety. Secondly, officers have a *parens patriae* obligation to protect persons with disabilities who cannot care for themselves (Lamb et al., 2002). Police have the authority to initiate a psychiatric emergency apprehension when a person poses a danger to themselves or others or if unable to provide for his or her own basic physical needs necessary to protect oneself from harm (Teplin, 2000). Police officers are often the first responders to people in crisis, but often lack the training necessary to respond appropriately (Patch & Arrigo, 1999).

Police officers typically have three options when encountering a person with mental illness who is creating a disturbance or is in crisis: 1) resolve the situation informally at the scene; 2) transport the person to a mental hospital; or 3) arrest the person (Teplin, 2000). Law enforcement response to persons who are apparently mentally ill involves a lot of discretion in determining the outcome (Patch & Arrigo, 1999). The decisions that police make at a scene

involving a person exhibiting mental illness often determine whether a person will enter the mental health system or the criminal justice system. Depending on other community resources, police officers are often the only responders to situations involving persons with mental illness who are experiencing crisis. This is why police officers are often referred to as “street-corner psychiatrists” (Teplin, 2000) or gatekeepers (Patch & Arrigo, 1999).

This role that police officers take on as “street-corner psychiatrists” can be problematic because they often have very little training in identifying and working with persons exhibiting mental illness. Sometimes police do not have the training necessary to distinguish between whether someone’s behavior is a manifestation of mental illness or it is unlawful behavior (Hails & Borum, 2003). When asked, police officers will often identify that they feel unprepared to respond to such situations (Hails & Borum, 2003) and identify that they would like to receive training in how to recognize mental illness, how to respond to situations, and what community resources are available for persons with mental illness (Lamb et al., 2002). Also, research indicates that police interactions with persons exhibiting mental illness are different from interactions with persons who are not apparently mentally ill. Teplin conducted a study in 1980 in which it was found that persons with mental illness have a 67% greater chance to be arrested than those who apparently were not mentally ill (2000).

There is also a concern regarding the use of excessive force with persons with mental illness. As discussed above, interactions between police and persons with mental illness have unfortunately led to death and injury for both persons with mental illness and involved police officers. Although more research is needed, national data indicates that force is more likely to be used with persons with mental illness. Police training in the use of interpersonal skills for de-escalation, the use of less lethal weapons, such as tasers, and other tactics are all issues that impact the use of force by police officers.

When police officers do try to initiate a psychiatric response, by transporting a person for emergency apprehension, they often face barriers. Due to the cuts in funding experienced by the mental health system, many hospitals have a limited number of psychiatric beds. Some programs also have regulations on whom they will accept, such as not accepting persons who are considered dangerous or if they have a co-occurring substance abuse problem (Teplin, 2000). Sometimes officers will transport a person for hospitalization or psychiatric evaluation, just to have the person back on the streets with in hours--creating a revolving door for criminal justice response. In addition, when officers transport a person to the hospital, they sometimes will face a long wait to transfer the individual, which takes the officer away from their patrol duties. In addition, psychiatric care may be more available in the jails than in the community system. Given the barriers officers often face when trying to initiate a psychiatric hospitalization, sometimes arrest is viewed as a simpler and more reliable way to resolve some situations (Teplin, 2000). This is often referred to as “mercy bookings” and is used both when officers do not feel like they have any other realistic choice and also when they believe that it is in the person’s best interest, for they will receive shelter and possibly mental health services provided by the system (Sigurdson, 2000; Torrey, 1997).

There is growing evidence that formal collaboration between law enforcement and the mental health system is critical for the best law enforcement response to persons with mental illness



(Klein, 2002; Gentz & Goree 2003; Lamb et al 2002; Sigurdson 2000; Steadman, 2000 & 2001; Teplin, 2000; Thompson 2003). Police-based diversion programs, involving collaboration with the mental health system have emerged. As compared to court-based diversion, police-based diversion happens before booking and the filing of charges and involves police making direct referrals to community-based mental health or substance abuse programs as an alternative to arrest and detention (Steadman, et. al. 2000). Diversion programs have been shown to work in both decreasing subsequent hospitalizations and recidivism (Sigurdson, 2000).

The Barbara Schneider Foundation was born out of a tragedy that occurred on June 12, 2000. Local police, called in on a noise complaint, shot Barbara Schneider to death in her own home. Six police officers entered her Minneapolis apartment when she was having a mental health crisis. The police were untrained to deal with this call as a health care intervention and rather than de-escalating the crisis they confronted her with force. She had a deadly weapon and she did not back down, as is not uncommon with individuals in mental health crisis.

The mental health community responded by building a long term dialogue with law enforcement and they partnered to prevent such tragedies from re-occurring. In fact the crisis of Barbara Schneider's death has lead to training in for those responding to individuals in crisis for police, jailers, paramedics, nurses, mental health professionals and social service providers by Barbara Schneider Foundation and their partners in the community. There is a growing awareness of the need to improve our response to mental illness and to build collaborations across all the institutions that respond to those at risk for mental health crisis. This growing consumer lead movement is challenging all the systems in health care and criminal justice to make urgently needed changes. It is this growing voice of those who themselves struggle with a mental illness that provides hope that fairness for those with mental illness can prevail over the forces of ignorance, denial, discrimination, greed and stigma.

## **Changes in the Mental Health System**

By Sue Abderholden, Executive Director of NAMI Minnesota

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### **Introduction**

Today, people often refer to the “broken mental health system.” This infers that of course that there was a system at one time. A statement on a 1980’s flyer produced by NAMI sums it up best: “People who suffer from mental illness: we used to lock them up and throw away the key. Now we just drop them off on the street.”

In 1957 across our nation, there were about 565,000 people with mental illnesses in psychiatric hospitals or institutions. It’s important to acknowledge that institutions themselves are not a mental health system. For the most part, institutions were closing at that time because of lack of treatment and substandard conditions.

Today, the number of people with mental illnesses living in hospitals or institutions is well under 40,000. This significant reduction reflects the change in the way our society generally views mental illnesses and other disabilities; that people belong in communities and not institutions.

The community movement began in 1946 with the passage of the National Mental Health Act which created the National Institute of Mental Health (NIMH) and charged the organization with three broad functions:

- Provide funding to states in order to develop programs to address mental illness and thus reduce the need for institutional care;
- Develop and promote training for mental health professionals; and
- Promote and conduct mental health research

During the 1950's antipsychotic medications were introduced which also offered hope for recovery and a life in the community. This was followed by passage of several pieces of legislation, including one in 1963 that created Community Mental Health Centers. President Kennedy held out the promise for a life in the community in a 1963 speech stating that "If we launch a broad new mental health program now, it will be possible within a decade or two to reduce the number of patients under custodial care...reliance on the cold mercy of custodial isolation will be supplanted by the open warmth of community concern and capability."

Minnesota's experience reflected what was happening across the country. We went from having 9,000 people in the institution in 1963 to just 1,500 in 1978 and to just a few hundred today. While the Minnesota legislature did, like other states, increase its funding for mental health services, it never came close to meeting the needs of people who were being discharged from the institutions. According to an old NAMI (then called the Mental Health Advocates Coalition of Minnesota) newsletter, "the community programs that would have smoothed the way for 'de-institutionalized' patients trying to make it outside the hospital wards simply did not exist."

The promise for a life in the community could only be realized if there was access to and coordination between treatment, medications, employment, housing, peer supports and other community services. But the promise has never been fully funded or coordinated. This broken promise was recognized as early as 1968, when the National Institute of Mental Health released data demonstrating that there was little follow-up care being provided to patients who were discharged from the institutions. The media also followed this issue closely, exemplified by an airing of a public television documentary in 1980 entitled "Back Wards to Back Streets."

### **Attitudes**

There is a great deal of stigma associated with mental illness. The Surgeon General's report on mental health identified stigma as one of the major barriers that discourage adults from seeking treatment. One study found that people live with their symptoms for ten years before seeking treatment.

How our society views mental illness impacts recovery. If people believe that mental illness is the fault of an individual or their family, few people will readily come forward to acknowledge the illness or obtain treatment. Negative or stereotypical views of mental illness compound this problem. Kathy Cronkite, who has lived with depression states in her book that when we talk about mental illness we conjure up "images of bedlam, of maniacs running uncontrolled or lunatics gibbering on the sidewalk."

A 1996 survey found that 71% of people believed that mental illness was due to emotional weakness, 65% thought it was caused by bad parenting, 45% believed it was the person's fault and 35% believed it was the consequence of sinful behavior. Only 10% thought it had a biological basis. Clearly these attitudes increase the difficulty of people's willingness to obtain the treatment, services and supports needed for recovery.

African Americans face additional barriers seeking and receiving appropriate treatment for mental illnesses. The first barrier is additional stigma. Dr. Anelle Primm, of the American Psychiatric Society Association stated, "We are not supposed to seek help for our mental

illnesses. ... Being African American in this society and culture carries a certain stigma with it. Then to admit to having a mental illness - that adds additional stigma.” Add to this a lack of African American mental health professionals, and is it not surprising that the Surgeon General’s report on mental illness found that, “...the percentage of African Americans receiving treatment from any source was only about half of that of whites.”

The Wilder Research report entitled, “*Racial and Ethnic Disparities in Children’s Mental Health*,” addresses the elevated level of stigma regarding mental illness in the African American community. The report states that, “Several factors can contribute to increased perceptions of stigma, including a greater tendency to assume that mental illness is due to personal failure.” Additionally, the report asserts that parents fear the consequences of a mental health diagnosis. They fear that their child will be labeled and removed from the regular classroom or removed from their home and placed in a residential program.

Stigma also served to prevent people with mental illnesses from being welcomed back to their communities when the institutions closed. In nearly every community across the country neighbors fought to have any residential facilities – including very small ones – from being located in their neighborhood. “NIMBY” known as “not in my back yard” became a common term used by advocates to refer to community opposition.

### **Impact on the Justice System**

The lack of a funded and coordinated mental health system and the prevailing stigma surrounding mental illness has resulted in an increasing reliance on our justice system as the safety net. Some might say our jails and prisons are our largest treatment centers, but it would be incorrect to imply that real treatment – evidence-based and effective – is being – or even can be - truly carried out in correctional facilities.

This is not the first time our jails, for example, have ended up taking in large numbers of people with mental illnesses. E. Fuller Torrey, M.D. has pointed out in numerous papers that this also happened in the 1820’s. Massachusetts actually created the first mental hospital in response to the large numbers of people with mental illnesses who were in their local jails. Dorothy Dix’s work to build psychiatric hospitals began when she came upon people with mental illnesses in the jails whose treatment and care was horrific.

What can be learned from the experiences of the 1800’s is that when alternatives were provided, fewer people with mental illnesses ended up in jail. It is not surprising then that when the alternative at the time – state institutions – were taken away, people with mental illnesses again began filling up our jails and prisons. An English researcher in the 1930’s named Penrose actually promoted a theory that there is a stable number of people who need “confinement” for a period of time and that there is an inverse relationship between prison and psychiatric hospitals.

There have been numerous reports and articles, particularly during the last 30 years, detailing the increasing numbers of people with mental illnesses in our criminal justice system. In 1976 there was an article in the American Journal of Psychiatry entitled “Occurrence of psychiatric disorders in a county jail population” followed by “From the Hospital to the prison: a step forward in deinstitutionalization?” in a 1979 publication of Hospital and Community Psychiatry.

A City Pages article published in 1993 quoted Department of Corrections' staff stating that only 2 to 4% of inmates had a mental illness. Others knew, however, that this had to be a very low estimate but the ranges varied greatly across the country with some research stating it was between 6 to 8% and others that it was closer to 15 to 20%. By 1999 the U.S. Department of Justice was reporting that about 16% of the people in prisons or jails had a serious mental illness. The release of a study by the U.S. Department of Justice's Bureau of Justice Statistics (BJS) in 2006 showed that 64% of local jail inmates, 56% of state prisoners and 45% of federal prisoners had symptoms of serious mental illnesses. As in other data from the criminal justice system, African Americans are overrepresented.

It should be noted that the numbers of young people with a mental illness in the juvenile justice system are even higher. Young people who come into this system are more likely to have a mental illness, live in poverty, be uninsured and be a minority. Most of the studies put the prevalence rate around 70%. The Minnesota Council of Child Caring Agencies found that Caucasian youth were more likely to be placed in residential treatment and group homes while youth of color were more likely to be placed in corrections or foster care.

The increasing numbers of people with serious mental illnesses in our criminal justice system has seriously strained the resources and staff. Police and sheriffs often cite their frustrations with having to respond to people with mental illnesses, often for public nuisance crimes but other times for a psychiatric crisis. Judges are overwhelmed with the volume of cases, often repeat offenders whose untreated mental illness results in numerous appearances before the court. Jail staff feel particularly lacking in the training and education needed to keep these individuals safe, including those who may be at risk for suicide. Local budgets are strained by the costs of providing medication. Prisons are also not well equipped to address the needs of these inmates.

While our criminal justice system is overwhelmed with these increasing costs and pressures, the money that we do spend is extremely ineffective. People with mental illnesses do not fair well once they come into contact with the criminal justice system. The person who responds to the mental health crisis decides what path a person will take. If it is a police officer, particularly one who has not received any training, the person will most likely end up in jail instead of an emergency room. Some studies find that people with mental illnesses are much more likely to be arrested – perhaps even twice as likely – after coming into contact with police. Sometimes the encounter involves the use of weapons, causing injuries or even death to the individual. If they have benefits, such as Social Security or Medicaid, they lose them once in jail. Reapplying for benefits is not easy and so once released into the community he or she may not have any way to pay for medications, treatment, housing, etc. This leads to a revolving door.

People with mental illnesses are likely to have longer sentences, so they spend more time in prison. Their mental illnesses can make them more vulnerable, increasing the likelihood that they will be assaulted or victimized. Many do not want to take their medications in prison for fear that they will be singled out. Statistics show that someone with a mental illness is more likely to end up in segregation or isolation, which is an extremely detrimental environment for someone with a serious mental illness and can even exacerbate their symptoms.

What was most disturbing about the recent DOJ report was that for many of the current inmates with mental illnesses this was their second or third time being incarcerated. Thus, the very issues that landed them in the criminal justice system were not being effectively addressed and discharge planning at all levels is either nonexistent or inadequate.

### **Moving Forward**

In a 1993 article published by the American Correctional Association, the authors stated that “incarcerating mentally ill offenders without case management, rehabilitation services and careful disposition planning is unacceptable from both a financial and a human resource perspective.” Fast forward to the substantive and widely acclaimed Consensus Project report published in 2002. Nearly a decade later similar recommendations are being put forward to address this very important issue.

While it may seem like déjà vu all over again, many advocates believe that there is movement to both change the mental health system and address the increasing criminalization of mental illness.

First there continues to be movement forward in increasing access to mental health services. Minnesota has developed a comprehensive array of mental health services under its Medical Assistance program covering not only basic medications and treatment but also other community supports such as Adult Rehabilitation Mental Health Services (ARMHS), Assertive Community Treatment Teams (ACT), Children’s Therapeutic Services and Supports (CTSS) and Intensive Residential Treatment Programs (IRTS). Community Behavioral Health Hospitals are being developed across the state to replace old institutional beds. Community Support Programs continue to exist and new programs for supported employment and supportive housing are being developed. Crisis teams and crisis homes are also being developed across the state. The 2007 legislative session resulted in over \$34 million in new dollars for mental health treatment for both children and adults and in creating a uniform mental health benefit set across Medical Assistance, MinnesotaCare and General Assistance Medical Care.

Second, attitudes towards mental illness are changing. A more recent survey found that 63% believed that mental illness is primarily due to a brain disorder. This is an increase over past years.

Third, some of the recommendations from the Consensus Project report are being implemented in Minnesota. 911 dispatchers in a few communities ascertain if it is a mental health crisis and send out mental health crisis teams. Mental health screenings are now required to be conducted on people going into jails. Some police, particularly in Minneapolis, have received Crisis Intervention Training. County attorneys are more willing to look at pre-trial diversion. There are now two mental health courts in Minnesota, Hennepin and Ramsey. Discharge planning is being done for some people with mental illnesses leaving the prisons, and from a handful of jails.

While this is a hopeful picture, it is not a rosy one. There is still much work to be done before people can access the right services at the right time. The criminal justice system will continue to be overwhelmed and over utilized until there are:

- Enough mental health professionals and psychiatrists, including culturally specific providers
- No waiting lists for community services and inpatient treatment
- 24 hour crisis teams available in every community
- Employment supports and affordable safe housing options
- Ways to coordinate between programs including effective options for case management and care coordination
- Excellent dual diagnosis treatment programs
- Family supports and families are included in decision making for youth
- Comprehensive strategies for screening and early intervention
- No limitations on access, in other words true mental health parity

It is, therefore extremely important that the rock solid recommendations of the Consensus Project be implemented in Minnesota. We must look at everything from contact with law enforcement to the courts, to incarceration to reentry. We must look at effective training for all staff and professionals in the criminal justice continuum. The criminal justice system cannot solely rely on an improved mental health system to reduce the numbers of people with serious mental illnesses in its web. It, too, must be committed to decriminalizing mental illness. It will take the two systems, working together, to truly address this issue.

## **Early Childhood Development as Economic Development and Crime Prevention<sup>28</sup>**

Arthur Rolnick and Rob Grunewald  
Federal Reserve Bank of Minneapolis

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*Rob Grunewald conducts regional economic research and has co-authored articles on the economics of investing in early childhood education, which have gained national attention. Grunewald holds a bachelor's degree in economics and religion from St. Olaf College in Northfield, Minn., and is a graduate student in applied economics at the University of Minnesota.*

In comments to business leaders in Omaha, Neb., regarding income inequality in the United States, Federal Reserve Chairman Ben Bernanke said, "Although education and the acquisition of skills is a lifelong process, starting early in life is crucial. Recent research—some sponsored by the Federal Reserve Bank of Minneapolis in collaboration with the University of Minnesota—has documented the high returns that early childhood programs can pay in terms of subsequent educational attainment and in lower rates of social problems, such as teenage pregnancy and welfare dependency."<sup>29</sup>

The research cited by the chairman is contained in several papers we have written over the past four years on the economic benefits of investments in early childhood education. We have argued that investments in human capital prior to kindergarten provide a high public return. Such investments – especially for at-risk children – can have a substantial impact on the success of children's futures as students, workers, and citizens in democratic society. That is, the

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<sup>28</sup>This article is partially based on a commentary previously published in *Education Week*: Arthur Rolnick and Rob Grunewald, "Early Intervention on a Large Scale," *Education Week* 26, no. 17, (January 4, 2007): 32, 34-36.

<sup>29</sup> Chairman Ben S. Bernanke, "The Level and Distribution of Economic Well-Being," Remarks before the Greater Omaha Chamber of Commerce, Omaha, Neb., February 6, 2007.  
<http://federalreserve.gov/BoardDocs/Speeches/2007/20070206/default.htm>



most efficient means to boost the productivity of the workforce 15 to 20 years down the road is to invest in today's youngest children. According to James Heckman, Nobel laureate economist at the University of Chicago, "Enriching the early years will promote the productivity of schools by giving teachers better-quality students. Improving the schools will in turn improve the quality of the workforce."<sup>30</sup>

The high returns to investments in early education accrue not only by boosting labor productivity, but also by reducing costs to society, such as remedial education and crime. The cost of crime in the United States is estimated at almost \$1.3 trillion per year, or \$4,818 per person. Research shows that investments in high-quality early education appear to reduce future crime and are more cost effective than additional spending on police or incarceration.<sup>31</sup> Aside from comparing returns on investment with other types of crime prevention and education spending, we contend that investing in early childhood development yields a much higher return than most government-funded economic development initiatives.

For well over 20 years, government leaders at the state and local levels have invested in economic development schemes with public dollars that are at best a zero-sum game. In the name of economic development and creating new jobs, virtually every state in the union has tried to lure companies with public subsidies. Previous studies have shown that the case for these so-called bidding wars is shortsighted and fundamentally flawed. From a national perspective, jobs are not created—they are only relocated. The public return is at most zero. And the economic gains that seem apparent at state and local levels are also suspect because they would likely have been realized without the subsidies. In other words, what often passes for economic development and sound public investment is neither.

We don't pretend to have all the answers to economic development, but we're quite certain that investing in early childhood education is more likely to create a vibrant economy than using public funds to lure a sports team by building a new stadium or attracting an automaker by providing tax breaks. Several longitudinal evaluations all reach essentially the same conclusion: The return on early childhood development programs that focus on at-risk families far exceeds the return on other projects that are funded as economic development. Cost-benefit analyses of the Perry Preschool Program, the Abecedarian Project, the Chicago Child-Parent Centers, and the Elmira Prenatal/Early Infancy Project showed annual rates of return, adjusted for inflation, ranging between 7 percent and 18 percent. The Perry Preschool Program and Chicago Child-Parent Centers provided preschool at ages 3 and 4, Abecedarian provided full-day care and education for children a few months old through age 4, and the Elmira Prenatal/Early Infancy Project provided home visits by a nurse to high-risk mothers during pregnancy until the child turned age 2.

The benefits attributed to these early education programs include reductions in special education and crime, and increases in tax revenue. Reductions in the cost of crime played a large role in boosting overall rates of return, particularly for the Perry Preschool Program. Only the

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<sup>30</sup> James J. Heckman and Dimitriy V. Masterov, "The Productivity Argument for Investing in Young Children," Early Childhood Research Collaborative, Discussion Paper 104, August 2006, 43. <http://www.earlychildhoodrc.org/papers/DP104.pdf>

<sup>31</sup> *Ibid.*, 4.

Abecedarian Project did not include cost reductions due to decreases in crime because differences in crime rates between the treatment and control groups were not statistically significant.<sup>32</sup>

The study of the Perry Preschool Program showed a decrease in the percentage of adults at age 40 who were arrested five or more times from 55 percent for the control group to 36 percent for the treatment group, a drop of 35 percent.<sup>33</sup> In the Chicago Child-Parent Center study, the percentage of juveniles arrested decreased from 25 percent for the comparison group to 17 percent for the treatment group, a reduction of 33 percent.<sup>34</sup> The Elmira Prenatal/Early Infancy Project study showed the mean number of child arrests by age 15 dropped by 50 percent; meanwhile, the mean number of mother arrests decreased by 69 percent.<sup>35</sup>

In each study, the drop in crime led to reduced costs for incarceration, police protection and courts. Furthermore, the costs to the victims of crime decreased, including loss of property and suffering. Added together across all four longitudinal studies, the savings to crime alone could justify increased investment in high-quality early education.

In addition to the longitudinal studies, a meta-analysis by Washington State Institute for Public Policy creates an average composite of 53 early education programs to compare the return on investment with other intervention programs for youth. The results for early childhood education for 3- and 4-year-old children, the Nurse Family Partnership, and home visiting programs for at-risk mothers and children compared favorably with other intervention program types reviewed by the authors, including several parole supervision programs for juvenile offenders.<sup>36</sup>

These findings, promising though they are, pose a challenge: Small-scale early childhood development programs for at-risk children have been shown to work, but can their success be reproduced on a much larger scale? There are reasons to be skeptical; some recent attempts at scaling up early childhood development programs have been disappointing. However, it's our view that those programs failed in large part because they were based on old models that were ill-suited to get results. It's time to seriously reconsider how to effectively help at-risk children and their families. Based on a careful review of past and current programs, we believe that large-scale efforts can succeed if they are market-based and incorporate four key features: focus on at-risk children, encourage parental involvement, produce measurable outcomes, and establish a long-term commitment.

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<sup>32</sup> The lack of a crime effect is likely due to relatively low crime rates in the study area compared with other parts of the country. See Jean Burr and Rob Grunewald, "Lessons Learned: A Review of Early Childhood Development Studies," Federal Reserve Bank of Minneapolis, 2005, 13.

<http://www.minneapolisfed.org/research/studies/earlychild/lessonslearned.pdf>

<sup>33</sup> High/Scope Educational Research Foundation Web site <http://www.highscope.org/Content.asp?ContentId=219>, accessed on Aug. 22, 2007.

<sup>34</sup> A. J. Reynolds, J. A. Temple, D. L. Robertson, and E. A. Mann, "Age 21 cost-benefit analysis of the Title I Chicago Child-Parent Centers." *Educational Evaluation and Policy Analysis* 24(4), (Winter 2002): 267-303.

<sup>35</sup> L. A. Karoly, et al., *Investing in Our Children: What We Know and Don't Know About the Costs and Benefits of Early Childhood Interventions*. RAND (2001), 126.

<sup>36</sup> Burr and Grunewald, 31.

Achieving these characteristics in large-scale programs requires the flexibility, innovation, and incentives that are inherent in markets. For some, this is a radical idea, but many middle- and upper-class families have long benefited from the power of markets for early childhood education by choosing the early learning centers that their children attend and by demanding results from those providers. This demand and supply system works. Why not give the same purchasing power to those of lesser means? Our idea is to use the strength of the market by empowering at-risk parents with resources to access high-quality early education. Qualified early education providers would compete for the scholarship children; parents would make the decision about where to enroll their children. This market-based approach is in contrast to the more conventional approach of either increasing the funding of existing programs or adding early childhood programs to the public school curriculum.

To establish a successful, long-term commitment to early childhood development, we have proposed a permanent scholarship fund for all families with at-risk children.<sup>37</sup> Similar to endowments in higher education, earnings from an endowment for early childhood development would be used to provide scholarships for children in low-income families who aren't able to afford a quality early childhood program. The scholarships would cover child tuition to qualified programs plus the cost of parent mentoring to ensure parental involvement. Scholarships would be outcomes-based, meaning that they would include incentives for achieving measurable progress toward the life and learning skills needed to succeed in school.

Parent mentoring would include parent education; information about available financial, health, and human-services resources; and guidance on selecting an early-childhood-development program. Research shows that reaching children with multiple risk factors as early as possible is essential; even age 3 may be too late. So we suggest that while scholarships would pay tuition for a child to attend an early-childhood-development program beginning at age 3, the parent-mentoring program could start as early as prenatal.

What would such a permanent scholarship fund cost? In Minnesota, we estimate that a one-time outlay of about \$1.5 billion—about the cost of two professional sports stadiums—would create an endowment that could provide scholarships on an annual basis to the families of children in Minnesota living below poverty. With the endowment's funds invested in corporate AAA bonds, earning about 6 percent to 7 percent per year, we estimate that \$90 million in annual earnings would cover the costs of scholarships, pay for program monitoring and assessments, and supplement existing revenue sources as needed for early childhood screening and teacher-training reimbursement programs.

Compared with the billions of dollars spent each year on high-risk economic development schemes, this type of an investment in early childhood programs is a far better and more secure economic development tool. We are confident that early childhood development investments driven by a market-based approach that focuses on at-risk children, encourages parental

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<sup>37</sup> For a detailed description of the scholarship fund, see Arthur Rolnick and Rob Grunewald, "A Proposal for Achieving High Returns on Early Childhood Development," working paper, Federal Reserve Bank of Minneapolis, March 2006. <http://www.minneapolisfed.org/research/studies/earlychild/highreturn.pdf>

involvement, produces measurable outcomes, and secures a long-term commitment will lower crime, create a stronger workforce, and yield a high public return.

### **Crime and Justice Position Paper**

By Bill Green

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In today's schools we deal with children in age only. The challenges faced in classrooms have engulfed our youngest students. They are battle-hardened--unafraid of bad grades, inappropriate behavior, or teacher remonstrations. That is our new reality.

Schools have become incubators for corrections. Research shows that minority youth are disproportionately the recipients of discipline, setting off a chain of disenfranchisement and formal consequences labeled the "school-to-prison pipeline." When children fail to achieve in school, we most often hand them off to the correctional system where they find far fewer opportunities to succeed. Indeed, state leaders can predict future prison populations by gauging student success in third grade. If a child fails to read by third grade, every indicator points to future correctional activity.

Society as a whole pays many times over. We forego tax revenue because the student is unable to earn a decent living. We pay for incarceration for those who turn to crime because they couldn't find decent-paying jobs. But we pay the dearest price for squandering the future of millions of young people.

Reporters who cover the crime beat often cover the same ground in education. Ann O'Connor, formerly of the Minneapolis Star Tribune, once told me that in both arenas you see the same people, places, and situations, over and over again. And that just doesn't give our kids much of a chance. They become an easy target to predatory gangs, and survival instincts trump education almost every time.

The real tragedy is that children would like to be children. They want to grow up at a pace most of us enjoyed and took for granted. An increasing number of our children experience lives that are more complex than they were even ten years ago. That, in turn, creates a greater challenge for education. Teachers risk further isolating the child by seeking additional resources (i.e. special education) to help that child overcome challenges.

In a community where the streets are sometimes very dangerous, parents choose, understandably, not to have their child walk those streets. It's not that they feel that the school isn't a safe environment or even a valuable educational experience. It's the threat posed by *getting* to school.

Understanding that their children might encounter danger, parents sometimes hope to empower them by actually giving them weapons for the journey to school and back. Many times, students forget about the knife in the backpack or pocket and it ultimately falls out in the school safe zone. The teacher may realize that it wasn't brought to school as a threat, but has no alternative under the Zero Tolerance law to do anything but report the incident. Subsequently, the principal is forced to suspend these students, thereby casting them right back into the very streets that the parents sought to protect them from in the first place. So a law that everyone can agree was of noble intent – to keep weapons out of schools – creates more trauma for the student when all is said and done.

The ideal education model uses the community for all types of support structure. Ironically, in communities of crime and poverty, the school becomes an island by separating from the community in order to create a safe environment for learning. The school must then go it alone without the support of the usual assistance, oftentimes operating on a reality that parallels their own.

Here are some examples.

At one school, a student was late for class because he waited for the police to arrive at his home so that he could translate for his parents about the details of a dead body found on their property. Does that kid come to school ready to learn?

At another school students practiced drills in the event that they ever heard gunshots. When it ultimately occurred, the children did as trained, but the ensuing discussion was riveted around the caliber of the weapon that was fired. Are we teaching kids the right stuff?

But even those who come ready to learn are at risk by societal influences. At one of our high schools, there were two African American students in IB. The teacher tutored them together on the weekends but eventually warned me that he would soon lose one of the kids. It seems his buddies waited for him outside, pressuring the IB scholar to let loose and shoot hoops with them. The kid quit IB soon after that. Why? Because despite loving parents and strict school regimens, the streets beckon with a clarion call: We've got your back.

All kids want to belong to something that makes them feel special and secure, and the predatory nature of gangs finds their soft spots. These kids get callous to survive. A line has been crossed;

being from the ghetto means willing to resort to violence. This was a neighborhood of 31 murders in one year. Why would we expect anything different?

Rancorous discourse has displaced civil discussion in even polite societies. Problem solving, compromise and resolution have been viewed as weak and therefore wrong.

It's no accident that the murder rate, escalating foreclosures, the achievement gap and poverty visit the same neighborhoods. These neighbors have a right to be angry. The system has let them down.

In visiting the juvenile detention center downtown, I learned that a number of kids were candidates for special ed. But a student who didn't read well, or at all, would prefer suspension over being labeled as special education. In effect, we created the culture of anti- education.

What a paradox! Public education, historically, was the institution that created the middle class. America was the place where people could get an education without having to pay for it. It used to be that only the elite had the resources to be educated, but public education meant that everyone had the opportunity to learn.

In the wake of the Civil War, when missionaries and abolitionists moved to the South to educate the freed men and women, they found that former slaves had already begun schools. If there were a slave on the plantation who had learned to read, it was being taught to others, even at great peril of being discovered. The antebellum society feared educated blacks because power might be commensurate with knowledge.

As a result of the work of these former slaves who were teaching their kids to read, there came a belief that society should educate all of its citizens. Poor whites also benefited from that spirit.

African Americans have overcome some of the severest obstacles in their paths only to spiral down again, this time by more quiescent forces.

If we are to achieve in the future, our communities must offer opportunity. Schools are a reflection of the conscience of society. What society values depict how well its institutions nurture all of its young which, in turn, become an investment in a vital and enlightened future. But as telling as they are, schools cannot singularly transform society without the sustained and concerted will of a society that truly values transformation. Simply put, if a society wants better, it must do better. Otherwise, fear will trump reason, leaving us with a future that is at once certain and insecure.

## **Imperiled Black Families and the Growth of the Prison Industrial Complex in the U.S.**

Rose M. Brewer, Ph.D.

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My focus here is specifically on Black family structure, and even though the analysis of racial/ethnic families in the U.S. includes multiple groups, my research and writing centers on Black families. I contend that these families are the most imperiled by the growth of the prison industrial complex in the United States (although many communities, especially Brown and Native are at risk).

Additionally, I argue in these remarks that crime policy, prison policy, the structural growth of the prison industrial complex in the U.S. and racial/ethnic family structure are deeply interconnected. I contend that crime and justice policies in their articulation have little, if any, systemic edge and critique of societal structures. This must change. Responses to crime have been almost completely reduced to individualistic explanations that collapse a structural problem into individual and community misbehavior. I mince no words here. The source of the incarceration ills are not fundamentally rooted in bad African American families, men, women or children, but in a set of broad scale policy and societal shifts that put at risk for incarceration large segments of the African American population. This holds no less true for the state of Minnesota where the incarceration rate for Blacks is 26.8 times that for whites. Minnesota is also a state where Black women are imprisoned at five times their population rate (Levy-Pounds, 2001). This translates into the fact that 25% of the women incarcerated in Minnesota are Black with broadscale consequences for Black family structure. In fact research has shown these things are true about family structure and the growth of the prison, industrial complex:

1. Over half of incarcerated Black men with children lived with those children before incarceration. Any emotional and economic support provided by the fathers has

- been removed. Family's structure is destabilized by the removal of these fathers (Roberts, 2004).
2. The growth of female headed families is connected to the deep sex ratio imbalances and the loss of marriageable men in many Black communities. (Wilson, 1987). This is an important factor in the growth of female, single parent family structures.
  3. The explosive rate of Black female incarceration is creating an even greater family structure crisis, destabilizing fragile families further. These women have traditionally held families together. They are less able to do so today given removal from households through incarceration. This growth in female incarceration in states like Minnesota is fueled by mandatory sentencing laws, giving long sentences to mothers. The majority of Black women are locked up for nonviolent property and drug crimes (Terborg-Galloway, 2005).
  4. The explosive growth of foster care thus flows from the increasing fragility of Black families in the wake of mass incarceration. About half of all children in foster care today are Black and a disproportionate number have incarcerated parents (Roberts, 2004).
  5. As more and more Black juveniles are sucked into the criminal justice system, another hit is taken on Black families. The removal of these young people from families can be as jarring to the family structure as the removal of mothers and fathers (Roberts, 2004).

### Rethinking the Framing of Crime and Justice Policy in the Wake of Mass Incarceration

I'd like to turn once again to the questions given to the respondents and turn the assumptions on their head. My fundamental point is that it is not family structure per se that is causative in the explosion in crime and incarceration, BUT the devastating impact of crime and prison policy on Black family structures. These policies have to be transformed if healthy Black and other racial ethnic families will be built. Indeed, it is imperative that crime and justice policies craft a systemic analysis targeting deeply rooted racialized inequality in the U.S. These historical inequalities have taken new form in the 21<sup>st</sup> century, what Loic Wacquant (2002) refers to as the movement from slavery to mass incarceration.

The mass incarceration of African Americans goes far beyond individual culpability and Black family incapacity. It is a structural reality that places the societal commitment to racial, gender, and class justice in the U.S. off the agenda. In fact, what has occurred is the growth of a prison industrial complex in the state of Minnesota, the country, and increasingly, globally.

Davis (2005) describes the prison-industrial complex as:  
a vast set of institutions from the obvious ones, such as the prisons and the various places of incarceration such as jails, "jails in Indian country," immigrant detention centers, and military prisons to corporations that profit from prison labor or from the sale of products that enable imprisonment, media, other government agencies...  
( 2005:69).

And as Davis powerfully asserts,

The law does not care whether this individual had access to good education or not, or whether he/she lives under impoverished conditions because companies in his/her



communities have shut down and moved to a third world country, or whether previously available welfare payments have vanished. The law does not care about the conditions that lead some communities along a trajectory that makes prison inevitable (2005: 94)

The basic number facts are chilling as well. Roberts (2004) provides the following data in her important essay:

The US has the largest prison population in the world and over half of it black. The number of incarcerated Americans increased 500% in the last thirty years, from fewer than 200,000 inmates to 1.2 million in 1997. (2001 :1010).

In a decade that number has doubled again to over 2.2 million people. These numbers are fueled by locking up young black men. The standard explanation is that Black men commit a large proportion of the crime. This preferred explanation, of course, is imbedded in the ideology that bad family culture or bad seed individual behaviors are driving the numbers. The evidence does not support this. Indeed, longer prison sentences for drug dealing, a very broad arrest net for minor violations in the state of Minnesota and nationally, have fueled the gross expansion of the prison population, especially the Black male imprisoned population. And as sobering is the increasingly number of Black women caught up in mass incarceration. Their numbers are increasing more quickly than the Black male population (Davis, 2005). In fact crime is down overall and sentencing and drug policies that target nonviolent crimes have fueled the bulk of the growth in mass incarceration matched by the growth in the private prison and the development of prisons for profit (Davis, 2005; Terborg-Galloway, 2005).

Of course the roots of mass incarceration among the Black population are deeper than crime policy per se. Indeed, Black vulnerability to crime and the subsequent deleterious impact on family structure is the end product of a more insidious process of educational exclusion, poor if any job possibilities, and the general economic crisis in the context of 21<sup>st</sup> century racism in U. S. society. The confluence of these social forces are crucial to the assault on Black family structures and the growth of families headed by women.

And today there is a new wrinkle to changing Black family structure. As the number incarcerated women increases, the risk of foster care for Black children has gone up dramatically. Dorothy Roberts (2002) sheds key light on this issue. Her research indicates that while young black children are about 17 percent of the nation's youth, they are now about half of the children in foster care. This explosion in foster care has been fueled by the destabilization of families and the mass incarceration of Black men and women.

Thus we're dealing with punitive policy for Black families. Indeed as Roberts notes, the explosion of foster care and imprisonment "work in tandem with one another." We do know that incarceration, the growth of the prison industrial complex, gender, race and poverty have a devastating impact on Black family structures. With regard to the implications for Black families in Minnesota, former Minnesota Department of Corrections Commissioner, Cheryl Ramstad Hvass, observed "that a lot of children are without fathers because of these numbers and this increases their own chances for being incarcerated." I would add too that many children are without mothers because of incarceration --with untold consequences for these families.

Again the racial/ethnic family structure questions must be turned on their heads. Rather than assuming family structure is the core contributor to the growth in crime and incarceration,

policy makers must consider the sobering fact that these families and communities are being devastated because of the mass incarceration of over a million black men and women. Rather than the overarching assumption that family structure leads to crime and incarceration, the question must be how have deeply rooted systemic racial, class, and gender inequalities led to the racialization of crime and the lock-up in the United States of the largest number of people in the world? The toll such incarceration has placed on families is chilling. At base is the punitive state, the state that locks away men, women, boys and girls far too often for the most minimal of crimes.

In sum, crime and justice policy and the growth of the prison industrial complex over the past few decades have produced deep consequences for Black families. We must view this systemically. To say the problem lies overwhelmingly within the cultural practices and values of Black families is a profound misspecification.

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**Crime, Justice, and Families**  
Mitchell B. Pearlstein, Ph.D.

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Before beginning, permit me three caveats.

First, when talking about the importance of re-institutionalizing marriage, particularly in inner-cities, the *only* kind I've ever advocated are healthy, non-violent, low-conflict, equal regard marriages.

Second, in no way is my intention to single out or gang up on single moms, as I've always sought to make it clear that I respect and empathize with the very large number of unmarried women who are, in fact, raising their children successfully, even heroically, under often very hard circumstances. I also always try to acknowledge that life is inescapably messy. I'm quick to point out, for instance, that my wife and I are each in our second (and last) marriage. She was a single mom for a long time after her divorce and before we met. My three stepsons have turned out great despite it all. You get the idea.

And third, even though fatherlessness increases the odds against children doing well, it does not inevitably consign them to troubled lives. Many kids growing up with only one parent at home (or in other "nontraditional" arrangements) are doing very well, while many other kids, growing up with both their biological parents are not doing well at all. But in the main – and the point is central – growing up without a father at home, especially in tough neighborhoods, invites trouble.

To the three questions posed.

## 1. How has family breakdown affected the way the justice system looks today?

More than 40 years ago – which is to say, not long after the Council on Crime and Justice came to be – Daniel Patrick Moynihan wrote what remains the definitive passage on the connection between family breakdown and crime. “From the wild Irish slums of the 19<sup>th</sup> Century Eastern seaboard, to the riot-torn suburbs of Los Angeles,” the scholar and future senator argued,

there is one unmistakable lesson in American history; a community that allows a large number of men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any set of rational expectations about the future – that community asks for and gets chaos. Crime, violence, unrest, disorder – most particularly the furious, unrestrained lashing out at the whole social structure – that is not only to be expected; it is very near to inevitable. And it is richly deserved.

The more I’ve thought about these linked issues, for decades now, the more I’ve grasped how miles beyond sad they are, starting with millions of young American men, disproportionately of color, whose lives are crippled barely after they’ve begun. What a calamity for themselves, their families, and our country.

Yet as severe as Moynihan’s strictures were in 1965, it’s incumbent to recognize the immense degree to which families have continued to weaken and fall apart. Back then, about 5 percent of all American babies were born out of wedlock, with the number for African American children at about 25 percent. In updated and localized contrast, 43.6 percent of all births in Minneapolis in 2005 were to unmarried women, with the corresponding number for U.S.-born African American women a hard-to-grasp 86.6 percent.

I know of no sphere of life – not a single statistical category – in which boys and girls who grow up in single-parent homes do as well, on average, as kids who grow up under the same roof with their married biological parents. The same bad news (frequently even worse news) applies to children living in stepfamilies. A recent report of the National Marriage Project at Rutgers University sums things up succinctly: “The trend toward single-parent families is probably the most important of the recent family trends that have affected children and adolescents. This is because the children in such families have negative life outcomes at two to three times the rate of children in married, two-parent families.” Criminal behavior, of course, is one of those outcomes.

## 2. How have societal attitudes shaped family breakdown?

Sociologists Kathryn Edin and Maria Kafalis, in a detailed and sympathetic study of single mothers, *Promises to Keep*, write about how all aspects of family life “have shifted dramatically to the left since 1960 – shifts which now mean that having sex, establishing a common household, and having children have all become decoupled from marriage.” In the ‘60s, they write, two-thirds of all Americans thought that sex before marriage was morally wrong. By the ‘80s, that proportion had fallen by half, to one-third. Similarly, in the ‘60s, half of Americans believed that married couples who didn’t get along should stay together for the sake of their

children. Only about one-fifth now believe unhappy parents should tough it out and remain married.

This is not to say, Edin and Kafalis take pains to add, that low-income women believe that having children outside of marriage is ideal. In fact, they claim that surveys show (surprisingly, it seems to me) that low-income women are *more* likely than middle-class women to say they believe that children raised by two married parents are better off than children raised by one parent alone. However, and the following point is central to Edin and Kafalas's analysis, "these abstractions are largely irrelevant to their lives," as the poor women spoken about here "must calculate the potential risks and rewards of the actual partnerships available to them and, given their uncertain future prospects, take a 'wait and see' attitude toward the relationships with the men who father their children." Meaning, they are not quick to marry.

More harshly to the point, Edin and Kafalas argue that this approach "makes enormous sense, as the men in the neighborhood partner pool – the only men they can reasonably attract, given their own disadvantaged place in the marriage market – are of fairly uniformly low quality."

What do Edin and Kafalas mean by the uncommonly acerbic stricture for an academic study of "low quality" men? Dispiriting descriptions like the following are repeated throughout their book.

It is the drug and alcohol abuse, the criminal behavior and consequent incarceration, the repeated infidelity, and the patterns of intimate violence that are the villains looming largest in poor mothers' accounts of relational failure. About one in three mothers we talked with said that crime, usually drug dealing, and the almost inevitable spell in jail or prison were what broke them apart. More than a third blamed their partner's alcoholism or drug addiction for the strain on the relationship. Four in ten said their relationship broke down because their child's father couldn't manage to stay faithful. An even higher proportion – nearly half – said that they could no longer take the chronic abuse they suffered at his hands. Taken together, fully two-thirds of the mothers said they've had a relationship disintegrate for one or more of these reasons, and about half have encountered these problems with more than one man.

### **3. How will family breakdown affect the justice system in the future?**

Might one expect matters to improve any time soon? Not if answers to a survey question that has been asked of thousands of high school students over nearly three decades continue on their same injurious trajectory. Starting in the mid-to-late 1970s, national samples of high school seniors have been asked if they agreed that "having a child without being married is experimenting with a worthwhile lifestyle and not affecting anyone else." Going back to 1976-80, 41.2 percent of boys said yes, while a smaller proportion, 33.3 percent of girls said yes. By 2001-03, however, the proportion of boys agreeing with the claim had grown to 55.5 percent, with the proportion of girls agreeing having grown even faster to a near-identical 54.8 percent. It's understandable that 17 and 18-year-old kids are not familiar with arcane research about families. But what upside-down media and other cultural messages are they absorbing to believe that out-of-wedlock births don't affect *anyone*?

We must regain our public voice about the importance of marriage. The final report, for example, of the (Hennepin County) African American Men Project in 2002 was brave about many things; marriage, unfortunately, was not one of them. While it contained much that was on target about the importance of fathers, it was virtually mute on the very much fastened importance of marriage.

Marriage is so diminished in many parts of the United States that crime is but an additional nail. Yet if marriage is to revive in the very communities which need it most, crime will indeed – somehow – need to recede. Yet other than a spiritual revival of the most introspective and animating kind, I just don't see it happening. I don't see it happening unless and until people collectively grab their heads and say, "My God, we can't keep on doing this any longer. We can't keep committing suicide."

**Same-Sex Intimate Partner Violence: Current Barriers to Service & Future Goals for Community Agencies**

Ashley Taranto

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The issue of domestic violence has received considerable attention within the past 30 years; however, the majority of the focus has been placed on heterosexual relationships. Very little research and attention has focused on the nature of intimate partner violence within same-sex relationships. Failure to examine same-sex/intimate partner domestic violence has often historically been centered around issues such as social stigma, homophobia, discrimination, and the often quoted gender-based myth that only men are aggressors and women are victims. Unfortunately, the life experiences of LGBT domestic violence victims have long been silenced and ignored as a result.

The research that does exist on same-sex intimate partner violence indicates that it occurs at the same frequency among same-sex couples as it does among heterosexual couples. The levels of violence are just as severe and detrimental in same-sex relationships as in heterosexual relationships. Power, coercion, sexual and/or physical assault, economic control, psychological abuse, threats, and emotional abuse are all components of same-sex domestic violence as they are heterosexual domestic violence. Reasons why same-sex victims of intimate partner violence remain in abusive relationships mirror the reasons why heterosexual victims stay: fear, isolation, lack of resources, coercion, feelings of guilt, and promises of reform. Same-sex victims of domestic violence have an increased risk of leaving abusive relationships due to fears of being "outed", isolation from the community, and a lack of LGBT-specific services.

When talking of same sex intimate partner violence, there are a number of unique challenges that these victims face whereby their abuse may be trivialized or discounted due to myths or assumptions regarding LGBT persons. Just a few of these false assumptions are that 1) men are never victims of intimate partner violence and women are never perpetrators of abuse, 2) the "myth of mutual battering" that assumes any battering activity is mutual assault among same-sex couples or the abuse is not severe because it is equivocated among "equals", either two men

or two women. This lack of understanding has led to a significant number of cases where criminal justice systems professionals, for example, have not recognized the dynamics of the abuse of power and control in these relationships and therefore have not offered the appropriate legal resolution to the case nor the appropriate domestic violence specific resources to the victims.

There are a number of barriers to service that same-sex survivors must face that their heterosexual counterparts do not. Some of these barriers are found within community programs and shelters in which service availability is limited to those within the LGBT community, particularly for gay male and transgender survivors. Other common barriers can be found within the criminal justice system. Current issues range from limited involvement by police enforcement in calls for service to same-sex domestic abuse, to the ability for those involved in a same-sex relationship to obtain civil protection orders. Additional issues include fears of making the LGBT community “look bad” when reporting violence, the fear that when accessing services, victims must face issues of homophobia and heterosexism by those that they are working with, the fear that they won’t be believed by systems that are designed to serve and support the primary binary of male abuser/female victim, the prospect of having to “come out” in order to receive domestic violence services, and finally the existence of a double-stigma for same-sex survivors: first as a “victim”, second, as being “LGBT”. Survivors of same-sex intimate partner violence have to face this secondary abuse through bias from others in society when seeking help for their situations

It is important to note that within the last 10 years, many states, including Minnesota, have altered laws to be more gender neutral, affording protection to anyone who has been abused or threatened by someone they've lived with or had an intimate dating relationship with, regardless of the gender of either party. Out of all of the states, however, only Hawaii’s domestic violence law explicitly mentions same-sex couples. Conversely, some very conservative states have gone to great lengths to define that only opposite gendered persons who have been married, lived together or had a child together can be considered "domestic violence victims." Montana, Arizona, New York, Louisiana, South Carolina, and Virginia have laws that specifically prevent same-sex victims from obtaining a civil protection order. The other 40 states and the District of Columbia have laws written in gender neutral language that the courts could interpret in favor of same-sex couples, but, however, do not specifically mention same-sex couples.

It is highly unfortunate that very little focus and attention has been placed on same-sex intimate partner violence because many people's lives could benefit from improved research, understanding and increased awareness of the issue. Future research should focus on a variety of topics including the dynamics of intimate partner/same-sex domestic violence, help-seeking behaviors, correlates, and interventions. Especially deficient is research about children living within same-sex couple households where one partner is experiencing intimate partner violence. Similarly, research on the use of self-defensive, retaliatory, and aggressive behaviors among same-sex victims could be useful in making more accurate assessments of the context of violence, thus enabling more useful interventions by law enforcement.

When looking to the future of LGBT intimate partner violence prevention, the focus should serve to increase education of this issue, increase advocacy for LGBT survivors, review and revise old policies and programs, and to effectively implement new ones. Same-sex couples are in need of education and advocacy about relationship violence as many are unaware of the existence, let alone the magnitude, of LGBT intimate partner violence. Factual information for

these survivors would help to both reduce the stigma of same-sex persons who are experiencing partner abuse and to empower victims and perpetrators to professional assistance.

Agencies providing services to victims of intimate partner violence need to confront and deal with both external and internalized homophobia and heterosexism so as not to preclude LGBT survivors from using necessary services. Reducing the stigma of victimization as well as sexual orientation will serve to increase help-seeking behaviors of same-sex intimate partner violence victims. Shelters and community outreach programs that use gender-neutral terminology when working with ALL clients, and are sensitive to the needs of LGBT abuse victims, are crucial to increasing the help-seeking behaviors of victims of same-sex intimate partner violence. Finally, the development of accurate and effective tools to identify primary aggressors in same-sex relationships is crucial to creating additional levels of community safety through the means of effective law enforcement and accurate criminal prosecution.

Finally, effective and consistent program evaluation tools are needed to ensure the effectiveness and efficacy of established programs and services to all victims of intimate partner violence. Existing protocols need to be examined for heterosexist language which presumes that the perpetrator is male and the victim is female. Similarly, agency staff and personnel should attend workshops which focus on the needs of victims of same-sex intimate partner violence to increase awareness and skill levels in order to properly assist LGBT survivors. Efforts should be made by service providers to target victims of same-sex intimate partner violence and include that population in programs, especially since gay and lesbian victims often do not have the same legal recourse as their heterosexual counterparts. Reinforcing the need for all agencies to be gender-neutral in their outreach to victims will not only improve the overall quality of services the agencies provide, but will make them a more viable option to victims of same-sex intimate partner violence.

It took the women's movement nearly twenty years to increase public awareness of domestic violence as a serious problem and to fully develop widespread resources for heterosexual women. Continued efforts to provide same-sex specific services, training to mainstream service providers and continued work with criminal justice systems professionals will serve to increase understanding and awareness of the issue.

Once again, through extensive research and community feedback, it has been shown that greater attention and commitment should be placed on providing same-sex victim services and treatment and that such agencies should strive to become more culturally aware of both the specific barriers to service often faced by LGBT clients and the ways in which those barriers impact the everyday lives of LGBT clients. When working together toward the common goal of the development of safe and effective service provision strategies for all victims of domestic violence, it has been shown that ALL communities are safer, including the LGBT communities.



**Where is Home?:  
Mass Incarceration in the Context of Incessant Displacement**  
Mindy Thompson Fullilove, Robert E. Fullilove, Rodrick Wallace<sup>38</sup>

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### **Introduction**

In the 1980s in the United States, rates of incarceration soared (Golembeski & Fullilove, 2005). The imprisonment of millions is a story of neighborhoods under stress: There is an often-cited statement that 75% of the people in New York's prisons come from 7 poor minority

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neighborhoods in New York City. Those are also the neighborhoods to which people return upon release from incarceration.

Criminologists have long studied the relationships between neighborhoods and crime, noting specifically the link to socially disintegrated neighborhoods. Neighborhood integration denotes strong and functional social bonds that people can use to solve tasks of collective living, including the inhibition of anti-social behavior (in the broadest sense of the term) (Leighton, 1959). When such bonds are ruptured, local people lose their ability to control crime and law-breaking increases. Widespread criminal activity feeds on itself, producing more disorder, less control and more law-breaking, in a downward spiral that can last for decades before stabilizing.

Students of social disintegration have noted that the destabilization of social systems follows on the heels of many factors, including war, economic reorganization, and development. These are processes that cause upheaval in the population and the rupture of social bonds. The current wave of mass incarceration in the US has both arisen from such social disintegration and become an engine of it. Specifically, mass incarceration has followed social disintegration in inner-city neighborhoods. As people were taken out of the neighborhoods and put in prison, their loss as members of the social structure produced a further rupture of bonds (Johnson and Raphael, 2005). The burdens of neighborhood and family were shifted to a smaller number of people who were in a greater state of disarray. The return of people to the neighborhoods requires reintegration into the social order that arose in their absence. This, too, is destabilizing for the functioning of the social system (Ross & Clear, 2002).

These facts are well known. What is less well understood is that all of these ruptures are taking place against an background of incessant displacement. Serial processes of community displacement have been operating in US urban space over the past 60 years, slowly pushing poor and minority communities from the center city to the edge of the city or its oldest suburbs. A study of reentry in Chicago found that over half of men returning from prison went to live in 7 of Chicago's 77 neighborhoods (Visher & Farrell, 2005). People returning from prison had different reasons for selecting the neighborhood to which they returned. More than a third said they moved to a different neighborhood than the one they left because of instability: friends and family had moved away (25%) or they had lost their home (11%). The study reports:

In focus groups we held with residents from four of these seven communities [to which returning people went], participants noted the composition of the neighborhoods had changed over the years. They described their communities as places that used to be "good areas" before becoming overridden with drugs and gangs following the "white flight" to the suburbs that began in the 1950s. Now, long-term residents are being forced out by increased rents and property taxes as gentrification occurs, and they feel disenfranchised from the community. Further they noted a lack of local leadership that could help promote the interests and well-being of their community. (p. 4)

The work that our group, the Community Research Group, has conducted in conjunction with Dr. Rodrick Wallace supports and extends these focus group observations. Indeed, more policies than white flight and gentrification can be cited as part of the process of neighborhood change, community displacement and social disintegration. These observations are based on our work on

urban renewal in 5 US cities (Newark, NJ, Roanoke, VA, St. Louis, MO, Pittsburgh PA, and San Francisco, CA) (Fullilove, 2004), planned shrinkage in New York City (D. Wallace & Wallace, 1998), and displacement in Essex County (R. Wallace & Fullilove, 2007).

## **Policies of displacement**

### Segregation and redlining

Underlying policies of forced displacement are the policies of American Apartheid, that is, the geographic separation by race. Such policies are rooted in the post-reconstruction era (1876-1910), during which Southern whites used economic, social and physical violence to force African Americans into peonage and debt slavery. These policies developed into a complex system of physical separation that grew to include public transportation, schools, hospitals and residential neighborhoods. Some of these features of American Apartheid were instituted in the North as well. Among them was the practice of confining African Americans to circumscribed ghetto areas. As used here, “ghetto” refers to place in which members of a group are forced to live and are prevented via legal, social or political processes from moving to other areas.

The word “ghetto” is not a synonym for slum but policies were put in place to deprive ghetto areas of resources, thus giving them an impoverished air. Among these was the “redlining” policy introduced in 1937 by the Homeowners Loan Corporation (HOLC) to protect investment by indicating which urban areas offered the safest opportunities. According the HOLC algorithm, new buildings with white inhabitants merited an “A” rating, while old buildings with non-white inhabitants received a “D.” Redlining, which was applied over the existing patterns of segregation, imposed serious hardship on ghetto neighborhoods because it made it difficult to get money for investment. This meant that the built environment deteriorated more rapidly than it might have, given adequate and continuous maintenance. This had major implications for risk for “blight” status under the urban renewal program that started in 1949.

### Urban renewal

The federal Housing Act of 1949 established a series of programs that are often referred to as “urban renewal.” This law enabled cities to clear large tracts of land for “higher uses.” The federal government subsidized the acquisition of the land so that it could be sold to developers for a fraction of its worth. At the heart of setting up an urban renewal plan was a city’s declaration that an area was “blighted.” We have estimated that 1600 of the programs’ 2500 projects were directed at African American neighborhoods, often clearing tracts of 100 acres or more. It is estimated that 600,000 black people were displaced by this program, losing not only their financial investments but also their collective accomplishments as communities.

### Deindustrialization

The United States was an industrial power at the time of World War II, but much of its industrial sector has since moved overseas to countries with lower wages and fewer environmental regulations. This process, which began almost immediately after WWII, has led to factory closings and the elimination of decently-paying unskilled jobs. Because of the catastrophic effect on local job markets, people have had to move to secure new employment. Major industrial cities like Pittsburgh have suffered substantial population losses.

### Catastrophic disinvestment

Urban renewal forced displacement of black people, who often resettled into areas that were more intensely segregated by race and by class than the neighborhoods that had been destroyed. Not only was segregation continued but also so was redlining. In many places, redlining was intensified into policies of disinvestment that actively removed public and private resources like banks, supermarkets and city services from designated areas. The best studied of these policies is the “planned shrinkage” policy of New York, which closed fire stations in the 1970s and allowed poor, minority neighborhoods to burn down (D. Wallace & Wallace, 1998). Though not called planned shrinkage elsewhere, disinvestment reached catastrophic levels in many American cities. Disinvestment undermined the integrity of the housing stock and led to policy-driven contagious urban decay, a devastating process that moves relentlessly across the urban landscape and that can be stopped only by massive investment in every neighborhood.

### HOPE VI

Federal housing projects are linked into this process in many ways. Housing projects were an important social reform when first introduced in the 1930s. They offered clean, decent housing for poor and working families. Indeed, housing projects developed in that era were often models of design. However, by the 1990s the federal government judged many housing projects to be “distressed communities,” a label that was applied to an array of housing types and conditions. Reminiscent of urban renewal and the appellation of “blight,” “distressed housing communities” were slated for destruction, to be replaced by mixed-income units. While this was sold to the public as an improvement, the HOPE VI interventions lead to forced displacement in a number of ways: they did not include 1-for-1 replacement of the public housing; they displaced residents before constructing new units; and they excluded people who were deemed “unfit” because of criminal records, drug use or other “strikes” which rendered them ineligible for government assistance for housing.

### Gentrification

Gentrification refers to the transformation of neighborhoods by an influx of wealthier residents who gradually displace the earlier, and poorer, inhabitants. Gentrification is often thought of as a “natural” process reflecting the inexorable workings of the market. More accurately, gentrification reflects an inversion of the map of redlining. In highly schematic form, one can envision that previously “red” areas are now marked “green” for investment, and previously green areas are downgraded to red. The populations of the areas are then exchanged.

### Mass criminalization

The growth in the prison system in the US since the 1970s has achieved impressive, tragic proportions. Specifically, in 1970, the number of inmates doing time in state and federal prison systems was estimated to be approximately 200,000. In 2006, the number held in these facilities grew to slightly less than 1.5 million, with an additional 760,000 or so held in local jails (bringing the total number of inmates in such facilities to approximately 2.2 million). Thus, the US rate of incarceration of its own citizens in 2006 was 750 per 100,000 (The Sentencing Project, 2006).

Of particular significance is the population that cycles in and out of jails, that is, facilities that house those who have been arrested until they have been either tried, convicted, released from custody, or sent to prison. Jails in the United States are a uniquely urban phenomenon: in 2003,

there were 940 jails, but 50 of these facilities that are located in urban areas held 31 percent of all jail inmates that year (Freudenberg, 2007).

As noted earlier, most inmates will leave jail or prison. The Sentencing Project estimates that since 1998, every year approximately 600,000 are released from these facilities, but more than 100,000 prisoners are being released without any form of community correctional supervision (Sentencing Project, 2007). Sadly, this failure to provide appropriate supervision results in all too many cases in former inmates committing crimes within the neighborhoods to which they return and in the re-arrest and subsequent incarceration of approximately two-thirds of all re-entering prisoners (Bureau of Justice Statistics, 2002).

### **The costs of forced displacement**

There are many costs to forced displacement. Fullilove (2004) has proposed the term “root shock” to convey the seriousness of these processes. Root shock is defined as the traumatic stress reaction to the loss of all or part of one’s emotional ecosystem. Although careful attention and resources could lead to a successful recovery, that has not been the case. Rather, upheavals have followed one upon the heels of the other, acting synergistically to undermine individual and collective functioning.

Our intent in this analysis was to demonstrate how deeply public policies related to housing and urban development have influenced the social structure of poor communities of color throughout the United States in the latter half of the 20th century. Policy makers and other professionals who work in the field of prison reform must understand how much the history of disinvestment, abandonment, and displacement have complicated the tasks of helping people return from prison. While criminologists have long followed the process of social disorganization, its geography and the relationship of that geography to public policy deserves attention.

Crime can not be controlled or contained in communities subject to public policies of recurrent forced displacement (R. Wallace & Wallace, 1995). It is, however, also clear that deterioration in public health and public order caused by such policies cannot and will not be contained within the populations directly subject to them, but will poison the well for all, by a great variety of mechanisms of spatial and social diffusion. The wealthy suburbs surrounding Newark, Roanoke, St. Louis and Pittsburgh are deeply implicated in the fate of the poor, wherever they reside.

The incessant displacement of the past 50 years, and the accompanying housing destruction that has been a hallmark of the policies that led to forced relocation, has created the social context of the US policies of mass incarceration. A serious effort to stop on-going displacement is essential to any efforts to aid people returning from prison. To that end, we propose 7 tasks for the nation’s neighborhood recovery agenda: 1) help every family by strong; 2) end forced displacement of minority communities; 3) bring manufacturing jobs back to the US; 4) rebuild community networks in devastated neighborhoods; 5) rebuild low-income housing; 6) end mass criminalization of minority and poor people; and 7) enforce anti-discrimination laws.

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## **Welfare Reform in the last 50 years**

Deborah Schlick

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What most people mean when they say “welfare” is cash assistance – income support to very poor families with children. During the Depression the United States federalized what had been local mother’s pensions (primarily intended for the widows of soldiers) and created Aid to Dependent Children. The nation launched that program in an era in which the citizens had a commonly held assumption that the primary role of women in our society was to raise children and manage a household.

But what has happened to those assumptions in the last fifty years?

- The Women’s Movement successfully questioned the narrowly focused role for women.
- The decade just before the Council on Crime and Justice was founded – the 1950s -- was the era of our nation’s highest rate of teen births ever. It was followed by a decade of increasing divorce rates and declining marriage rates. In fact since the 1960s the number of children being born outside of marriage has grown steadily – across all income groups, but most pronounced in low income households. All suggest a society in transition about the imperative to marry.
- One wage earner can no longer support a family at a modest middle income lifestyle.

And what has not happened?

- We have not ended racial discrimination – nor have we come to a common understanding of how historical discrimination carries forward a current reality.
- We continue to rock back and forth between cultural values of charity to those in need and a sense of justice that sees poverty as the punishment for poor individual choices. Rarely is the most powerful social value one of economic justice.

## **The History of Welfare in Minnesota<sup>39</sup>**

The history of Minnesota's public welfare programs in the last 50 years have been shaped primarily by the nation's expansions and contractions of public assistance. So what has happened in the last 50 years?

### The 1960s – Major new investments to end poverty:

- 1 The numbers of families turning to AFDC (the Depression-era program since changed and renamed Aid to *Families* with Dependent Children) grows -- cially between 1964 and 1969, as welfare rights movements mount successful legal challenges to racially discriminatory policies.
- 2 Brand new programs targeted specifically for the poor are created: Food Stamps and Medical Assistance programs are launched at the federal level.

### The 1970s – The investments pay off

U.S. poverty rates fall – from 22.4% in 1959 to hovering just below 12% through the 1970s. Minnesota's rates are always lower than national averages.

### The 1980s – the seeds of welfare reform

A political backlash on public assistance programs continues to grow: before Willi Horton, the “welfare queen” image is born – an African American woman in the cities living in luxury thanks to welfare fraud. Eligibility rules get stricter. Families become legally responsible for any overpayments made to them in error – including when the system miscalculates their benefits.

In Minnesota in 1986 the legislature appears headed to a special session, unable to resolve a heated debate about whether or not to raise the size of the monthly AFDC grants. To break the deadlock and avert special session, Gov. Perpich convenes a bi-partisan commission to contemplate an overhaul of the state's welfare system. The commission recommends a new welfare program that would expect and reward work.

### The 1990s: A decade of experimentation

The federal government grants 36 states waivers to federal welfare rules in the 1990s. In 1994 Minnesota wins a waiver to demonstrate in seven counties a pilot trial – *The Minnesota Family Investment Program* – that carries forward the work of the bipartisan commission. The goals are to reduce dependency and reduce poverty. The strategy is make sure work pays.<sup>40</sup>

### 1996 – Congress acts

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- *Reforming Welfare by Rewarding Work*, Dave Hage, University of Minnesota Press, 2004.
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- *State Implementation of Major Changes to Welfare Policies 1992-1998*, Office of the Assistant Secretary for Planning and Evaluation, United States Department of Health and Human services.



<sup>40</sup> Waiver Policies, U.S. Health and Human Services, 1999. at [http://aspe.hhs.gov/HSP/Waiver-Policies99/Table\\_A.htm#n2](http://aspe.hhs.gov/HSP/Waiver-Policies99/Table_A.htm#n2).



In August 1996, Congress enacts federal welfare reform. The Personal Responsibility and Work Reconciliation Act ends the 65-year-old federal cash assistance program to poor families and replaces it with the Temporary Assistance to Needy Families (TANF) block grant, inviting the states to create their own programs. The state programs must require work and must limit assistance to no more than five years for at least 80% of the families served.

In 1998 Minnesota launches a new statewide program based on its MFIP pilot. Though watered-down, it retains the goal of helping to move families out of poverty.

The new century – retreat

In 2003 the State retreats on its anti-poverty goals for MFIP, making cuts to the grants of the most vulnerable families, providing less transitional support as families go to work, introducing a program whose intent is to divert families newly applying to welfare into the job market and introducing harsher penalties and more universal work requirements that no longer recognize incapacitating illness or crisis as exemptions from the requirements. At the same time the child care assistance program sees its funding slashed and its scope narrowed to the very poorest families.

The new century: the short era of state experimentation ends

In 2006, five years late on reauthorizing the federal welfare block grant (TANF), Congress finally acts, focusing changes in the formula that measure states’ performance. The changes, according to Congressional Budget Office forecasts, will result in 47 of the 50 states failing to reach their performance targets and therefore saving the federal government money because of penalties to the states’ TANF block grants. It is therefore, primarily a gamble on state failure.

Although the "welfare reform" of the late 1990s was launched with a presidential candidate's promise "to end welfare as we know it," in the long view, we did not dismantle the program we had known for more than two generations. We only redecorated a structure whose fundamental architecture endures. The program is still fundamentally a way to provide income to mostly single mothers with children, with states allowed to determine some of the particulars.

**The social forces that shape our welfare program are myths, fears and conflicted values about charity and individual initiative.** The myths are wrong but powerful.

The Myth	The Reality
Families spend their whole lives on welfare.	<b>Tenure on welfare is short.</b> In Minnesota (like most of the rest of the nation) more than half the families who turn to cash assistance use it for less than two years. Since Minnesota introduced a five year time limit in 1998, more than 200,000 families have used the program but only about 10,000 have reached the time limits
The families that stay on a long time are unmotivated and unwilling to work.	<b>It’s about disability – usually untreated or undertreated.</b> Work requirements and time limits have revealed that the families who reach time limits struggle with multiple disabilities and challenges – mental illness, severe chronic illness, low IQs and learning disabilities.

	<ul style="list-style-type: none"> <li>• “MFIP recipients with multiple serious work barriers are less likely to find jobs, more likely to lose cash assistance because of non-compliance, and more likely to exhaust their 60 months of eligibility for federal cash assistance. . . . These families are likely to be living in deep poverty.”<sup>41</sup></li> <li>• 44% of the parents who left MFIP because of time limits were discovered in follow up screenings to warrant referral for diagnosis and treatment of mental illness.<sup>42</sup></li> </ul>
Welfare is all about people of color, immigrants and Native Americans.	<b>The largest racial group on cash assistance is white.</b> 40% of the parents on cash assistance in MN are white. <sup>43</sup>
We need work requirements and time limits to get people off welfare and in jobs.	<b>The labor market – not welfare rules – has the biggest influence on the number of families turning to MFIP.</b> The numbers of families on cash assistance in Minnesota (and the United States) started declining more than three years before welfare policies changed. Welfare caseloads starting dropping in 1995, 1996 and 1997 during a labor shortage when employers were hiring at high rates -- before national and statewide welfare reform was launched. “The relationship between general economic growth and caseload decline is fairly clear and widely documented.” <sup>44</sup>
<b>The Myth</b>	<b>The Reality</b>
Why work when you can live like a “welfare queen” off a big fat welfare check?	<b>Cash grants keep a family at an income the federal government recognizes as deep or extreme poverty.</b> The cash grant in Minnesota has not increased since 1986. A family of 3 receives \$532 a month – well below the cost of rent for a two-bedroom apartment in the metro area.
Poor women have babies to collect ever larger welfare checks.	<b>The birth rate is unaffected by the size of the welfare grant.</b> The average size of families on welfare in the United States dropped from 4 people in 1969 to 2.9 by 1992 <sup>45</sup> -- as welfare grants increasingly lost their buying power. The average family size on MFIP is 3. <sup>46</sup> In 2003 Minnesota introduced a “family cap” rule – families already on welfare would not see an increase in their grant if they had an additional baby. The result – the number of families with babies younger than a year has <i>increased</i> from 17.6% in October 2000 to 18.7% six years later. <sup>47</sup>
Immigrants are driving up our	<b>The immigrants who qualify for assistance are refugees</b>

<sup>41</sup> *Ibid.*

<sup>42</sup> *The Welfare Time Limit in Minnesota, Minnesota Department of Human Services, July 2003.*

<sup>43</sup> *Characteristics of December 2005 Minnesota Family Assistance Programs, MN Department of Human Services, Sept. 2006.*

<sup>44</sup> *AFDC/TANF Caseload Decline 1993-1996, Minnesota Department of Human Services, Evaluation Notes January 2002.*

<sup>45</sup> U.S. House Ways and Means Committee, 1994, *Green Book*, p.401.

<sup>46</sup> *MFIP Facts and Figures, Minnesota Department of Human Services, April 2006.*

<sup>47</sup> Data provided from Minnesota Department of Human Services, December 2006.

welfare costs and they come here because they don't want to work.	<p><b>and asylees – people brought from war-torn or devastated regions at the invitation of the federal government.</b></p> <ul style="list-style-type: none"> <li>• 11% of the families on public assistance are non-citizens – and they are here with the permission of the federal government.<sup>48</sup></li> <li>• The work rates among immigrants are among the highest of all families on MFIP.<sup>49</sup></li> </ul>
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### How will welfare reform affect the justice system in the future?

The short answer: not much.

Why? Because our fundamental assumption about the welfare system in recent decades has been that we can use program rules and requirements to change behavior that presumably will result in changing families' economic situation. The program, however, has less influence on the decisions families make than we would assume. For instance, since 1985 Minnesota has had four major changes to its welfare program:

1. the last years of the old AFDC program,
2. the pilot MFIP experiment,
3. the statewide implementation of MFIP; and then
4. the introduction of the Diversionary Work Program (which is intended to redirect applying families from the welfare program into jobs).

Each of these efforts had very different program designs, incentives and disincentives. What is notable is that all of them experienced the same pattern: most families were off and on the program inside two years.

Welfare policies are also the most common explanation for why increasing numbers of children are born to unmarried parents. I would argue that the changes in when people marry, why they marry and when and why they have and keep children is a social transformation that has cut across income and class lines and is much bigger than a response that very low income people have to welfare rules.

What intertwines the fate of the criminal justice system and the welfare system is that both are products of the same societal forces: fear, prejudice and the fact that few members of the public have direct interaction with the two systems.

Both the criminal justice and welfare systems suffer when fear is the driver. Both have their best opportunities in policies that grow out of hope and ambition.

Both systems should worry if:

<sup>48</sup> *Characteristics of December 2005 Minnesota Family Assistance Programs, MN Department of Human Services, Sept. 2006.*

<sup>49</sup> *December 2002 Characteristics of Racial/Ethnic Immigrant Groups On the Minnesota Family Investment Program, MN Department of Human Services.*

fear continues to be allowed to be the driver of political direction, we will continue to see both systems create policies designed in reaction to public fear – policies most in danger of being shaped by myth rather than actual experience.

Both systems could take hope if:

new energy to diminish poverty continues to grow and the discussions about how to address poverty are taken out of the context of the welfare system (which is so freighted with entrenched public assumptions). In that instance, we could see the possibility of marshalling growing public discomfort with the wrongs of poverty into opening real economic opportunity.

At a smaller scale, welfare policy could possibly influence the criminal justice system in the following ways:

Developments that could portend potentially *bad* news for criminal justice

- Welfare grant benefits do not increase. (They have not done so since 1986.)  
*Consequence:* More children in Minnesota grow up in deeper poverty and we continue the brew for crime.
- Strong work requirements without giving people the tools to get and keep jobs continue.  
*Consequence:* In doing so, we continue to create the desperation that inspires crime.

Developments that could portend potentially *good* news for criminal justice

- The retirement of baby boomers creates a situation in which the State realizes it cannot just import labor but must also open opportunity to those we have marginalized– parents on welfare as well as men and women leaving prisons.
- We diminish the degree to which we have built a welfare system around women and recognize that for children to thrive, both their parents – whether or not both have custody – need access to economic supports and opportunity.
- We embrace the means to support poor families as part of the mainstream safety net – expanded tax credits, a safety net for the marginally employed that unemployment insurance currently does not catch, income and service support to disabled parents in poverty struggling to raise healthy thriving children, etc.

## **What Influence Have the News Media Had on Crime and Justice in Minnesota?**

Gary Gilson

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The news media have done an inadequate job of reporting on and analyzing the justice system, including corrections policies.

As a result, the public is poorly informed and receives little help in thinking about, and exerting an influence on, this crucial piece of public business.

Why?

Because the daily news media rarely pay attention to ideas. Instead they concentrate on incident rather than condition, and in reporting on incident they focus mainly on conflict, rarely on solutions.

The idea that imprisonment should provide opportunities for rehabilitation enjoyed some popularity in the 1960s and 1970s, but justice and corrections professionals, with the support of the public, turned away from that proposition and instead embraced, at the worst, imprisonment as merely punitive or, at best, as merely warehousing.

Some fringe periodicals and broadcast documentaries have paid attention to these matters, but they have exerted scant influence.

A rise in crime rates and in public fear of crime 30 years ago solidified public opposition to what the majority came to see as “coddling criminals.” People easily forgot — if they ever knew — that it costs more per year to incarcerate a prisoner than to send a young person to a top-rated

college. Society and its elected representatives seem to prefer to prosecute criminals than to prevent crime.

This ostrich-like posture has helped produce 1) neglect of basic human needs in impoverished neighborhoods and 2) generation after generation of young people of color, who disproportionately populate our corrections facilities and who have little or no reason to hope that they will ever find a better place.

Here are some ways in which the news media, among others, have failed to lead the way to improvements:

- \* The media's sensationalizing of crime news has contributed to this skewed view of reality. In fact, crime rates have dropped dramatically in recent years, yet appropriations for more and more jails and prisons have risen.

- \* The idea that the United States supports what some critics call the profit-making prison-industrial complex has received hardly any attention in the mainstream news media.

- \* In the 1970s Fair Trial/Free Press Councils were organized in several states, designed to address the tension between conflicting Constitutional rights. Representatives of the courts, prosecution and defense, law enforcement and the news media met and drafted guidelines to prevent conviction before trial by either law enforcement or the news media.

For example, the parties agreed that police and prosecutors should not release, and news outlets should not publish, so-called confessions of guilt before trial. Arresting officers and prosecutors should not announce to the press and public, before trial, "This is the man who committed the crime." Such statements should be introduced only as evidence in a trial. Further, police and prosecutors should not provide, and news outlets should not publish, records of a defendant's prior arrests. Pre-trial knowledge of those records could prejudice potential jurors.

What came of these agreements?

Almost as soon as they were adopted, both sides – law enforcement and news media – began to violate them. They have proved almost totally ineffective. The motivation of law enforcement – to help insure conviction – and the motivation of the news media – to compete for audience with sensational details – have overridden the noble goals of the Fair Trial/Free Press councils.

Even the New York Times, which supposedly has ethical standards among the highest in the news business, does not hesitate these days to publish stories that virtually convict a defendant before trial.

The public needs the news media to provide more reporting, more context, more analysis. Those who profit by stirring fear can easily exploit an ill informed public.

The news media can play a healing role. They may insist that they are not therapists, but they need not be. They need merely seek out and tell truths they have ignored for far too long. For

example, how do people who are likely to wind up in jail and prison live in their neighborhoods from day to day? What are their hopes? Obstacles? What help can they get? Who among them has overcome deprivation, and how? Where are the stories of redemption?

During the late 1960s, when black ghettos in major cities across the country were exploding in violence between angry residents and the police, I was a reporter exploring causes and effects of the riots in Detroit and in the Watts section of Los Angeles. White people acted terrified of poor blacks and of what came to be known as their revolution of rising expectations. Wherever I went I would approach unemployed young black men on ghetto street corners; many freely admitted to me that they regularly committed crimes, and I would ask, “What do you want from your life?”

Their answers revealed anything but revolutionary tendencies. Uncannily, most of them said essentially the same thing: “I want a job where I sit at a desk and wear a white shirt and a tie, and I want a little house with a white picket fence.”

Most people would recognize that as The American Dream.

The waste of human potential; the cost of ignoring human need; the failure to devote journalistic resources to helping all of us know the truth about where we all live and who we all are — all of these contribute to the polarization of our society, and they help keep us from increasing our abundance and contentment.

One of the fitful innovations in the American journalism — something called Public Journalism, or Civic Journalism — established a foothold in the 1990s, when some newspapers were willing to invest money and staff to research subjects that went beyond normal newsroom agendas for newsgathering.

One aspect of this new departure was for newsrooms to solicit from the public ideas for what was worthy of coverage. This generated praise from some news people who realized that they did not know everything and that their reporting could benefit from input from non-regular sources. It also generated criticism from other news people who said that to ask the public to act as editors amounted to an abandonment of journalistic independence.

Now the argument is moot; newspapers are not spending money on such projects.

One of the most successful such projects deserves special attention, and it should be a model for continuing endeavors along these lines. It can easily be adapted to media exploration of the justice and corrections systems.

In Charlotte, N.C., the newspaper decided, upon the urging of citizens who felt disfranchised, to publish a series it called Taking Back Our Neighborhoods. The paper explored five neighborhoods, three of them black, all of which had been ignored for decades.

Reporters and editors soon learned that reporters were not welcomed or trusted in neighborhoods where none was ever seen except to cover a sensational crime. The remedy, editors decided, was to spend time in these neighborhoods and do stories about everyday life.

Some reporters balked at assignments they considered “fluff.” When one editor insisted, a reporter barked, “If you want fluff, I can do fluff,” and he went about his assignment. That editor admitted later that she, too, was skeptical about the project.

But in the end, she said, the results were spectacular: She said she learned more about the town she lived in than she had ever known. And the neighborhood residents, seeing that the newspaper was showing an interest in more than crime, began to trust reporters and to give them tips on serious stories of corruption.

That is what can happen when news organizations allocate their resources to what some call live-in journalism: the kind of reporting you can do when you invest time, money and curiosity in a community, and come away with context and understanding.

This approach holds great promise for journalism and for communities. Without it, or some form of in-depth reporting, we may be doomed to news as a commodity, the staple of which is diverting entertainment. We cannot afford to be diverted.



## **Our New Permanent Punishment Machine**

Robert Sykora

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In the offbeat Broadway hit *Hairspray*, an angry mother waves her finger and shrieks at her daughter: “you’re permanently, positively punished, Penny Pingleton!” She resolves to make her daughter forever wear a sweater with a large capital P so all will know of her transgression.

Whether it’s a capital P or any other scarlet letter, we know what Penny Pingleton’s mother did not: permanent punishment is destructive. Almost inevitably it causes unemployment, homelessness and increased dependency on government. Permanent punishment is unfair and unjust, especially for those who haven’t done anything wrong.

Yet over the past ten years we’ve built a Permanent Punishment Machine. We didn’t intend it. It evolved by increment on its own, patched together from a string of benign intentions.

The Permanent Punishment Machine starts up with an arrest. Imagine: because of a mistake or misunderstanding (or, if you’re black, because of racial profiling by police), you’re arrested. Maybe a prosecutor decides to charge you with a crime; maybe not. Maybe you are charged, only later to have the charge dismissed. Maybe you’re exonerated. In Hennepin and Ramsey counties, almost 60% of 2004’s misdemeanor charges led to dismissals or not guilty verdicts<sup>50</sup>. All of these events generate government records, which in days past meant papers that lived in file cabinets for a while, accessible to the public. It’s a good thing these records are public: secret police reports would quickly create the secret police; secret court documents would create Star

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<sup>50</sup> Minnesota State Court Administrator’s Office, 2004; *see also* “Low Level Offenses in Minneapolis: An Analysis of Arrests and their Outcomes”, November 2004, found at <http://www.crimeandjustice.org/Pages/Publications/Reports/LowLevelOffenseStudy.pdf> for 2001 data showing that only 21.9% of arrests for selected low level offenses resulted in conviction.

Chambers. We all want public access to records of police behavior and prosecutors' and judges' track records.

But thanks to the arrival of the internet, the meaning of "public records" has expanded enormously. Commercial data harvesters now easily scoop up electronic government records and sell them on the world-wide web. Once there, the records become irretrievable and uncorrectable. The result: permanent punishment.

Our current data laws evolved in a world of paper records. Paper records aren't easily disseminated, can quickly be corrected in case of error, and a judge can effectively expunge them. In our new world, electronic records aren't so easily controlled. Records of your arrest on Tuesday morning can be available to the entire planet by Tuesday afternoon. Even if you can hire a lawyer and get a judge's order to expunge the official record, the unofficial record likely will live forever on the internet. Landlords, employers, and business colleagues will take a pass when your name comes up on their screen. This permanent punishment will damage you profoundly, even though you are innocent.

Of course, it's much worse if you get convicted. Pay your fine, serve your time, pay restitution, work your way through counseling, keep your probation officer happy, and pay your debt to society – for what? There's no forgiveness, no reconciliation. The punishment never stops so you lose the incentive to become a contributing member of your community. We create a permanent underclass when we allow collateral consequences – lost jobs, lost housing, social marginalization – to be triggered by relentless internet availability of police and court records. This causes not only human tragedy, but also a self-perpetuating public safety problem: people with nothing to lose tend to break the law to survive. In other words, our permanent punishment machine lacks not only compassion, but common sense.

If you are poor and a person of color, it's even worse. You're much more likely to be clobbered by the criminal justice system. The ugly truth in the United States is that 412 out of every 100,000 white people are incarcerated while 2,290 of every 100,000 black people are locked up<sup>51</sup>. Severe racial imbalance like this is the result of an incompletely-understood tangle of cultural causes as well as simple race bias. The criminal justice system's race problem is dramatically magnified when its daily record-keeping is globally disseminated by profit-making data harvesters.

Our new Permanent Punishment Machine is part of a radically changed social contract. New technologies have wildly increased our abilities to keep track of each other electronically. Our mistakes and humiliations are now digitally recordable with a simple cellphone video camera. Any dope can do it. It costs nothing and takes very little skill to post that damning video clip on web sites like YouTube. Once on the web, not only can my many pratfalls live forever, they can be copied and reproduced limitlessly by any of the millions upon millions of people with access to the internet. The consequences can be unforgiving, cruel, and reputation-destroying.

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<sup>51</sup> Brookings Institution Metropolitan Policy Program, *Minding the Gap: Reducing Disparities to Improve Regional Competitiveness in the Twin Cities*, 2007, page 4.

Whether it makes sense for us to treat each other in this way is a fair question but it's a question asked too late. For the past decade we've gleefully put new technologies in place without adequate contemplation about their unintended consequences. We've made our techno-bed, now we haven't much choice but to sleep in it.

It's deeply wrong, though, for the advantaged to remain passive when we see disadvantaged people suffering disproportionately from the unintended consequences wrought by our fancy new technologies. Ho-hum, some say with a shrug, what're you gonna do? The horse is out of the barn.

Here's a tip: barn doors can be fixed. Future horses can be kept happily in their paddocks. We can start by addressing the most unjust situations: those where a person is arrested and never charged with a crime. The Minnesota Legislature can follow the lead of our Supreme Court, which in 2005 changed its own rules to restrict bulk harvesting of its data in cases that have not resulted in conviction, while still keeping records public for *ad hoc* searches<sup>52</sup>.

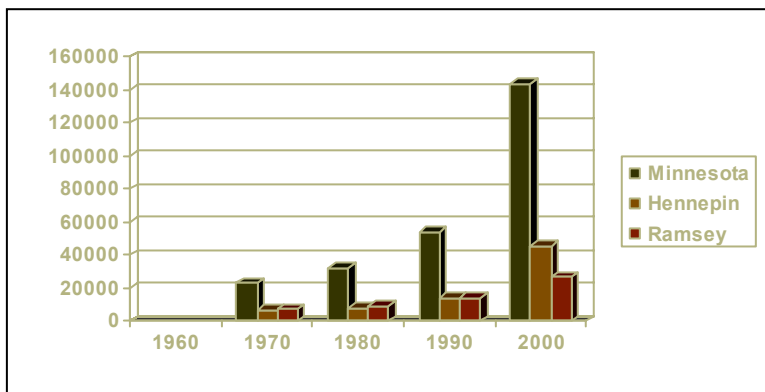
People of good heart and benign intentions created the Permanent Punishment Machine; surely, we have the ability to disable it as we work together

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<sup>52</sup> Rule 8, Subd. 3, *Rules of Public Access to Records of the Judicial Branch*, Minnesota Supreme Court, 2005.

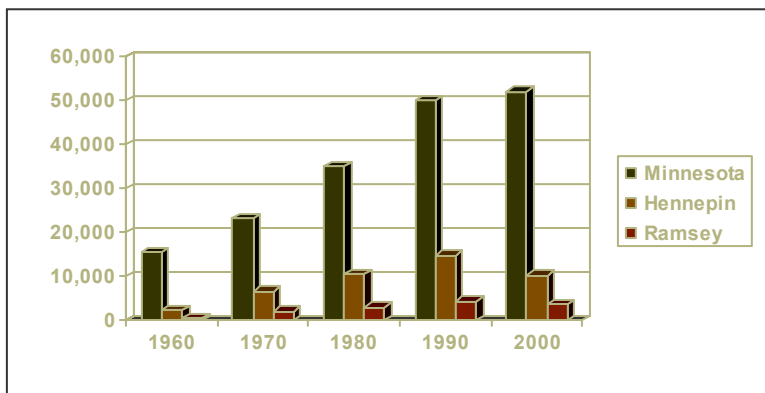
**APPENDIX B:  
RETROSPECTIVE DEMOGRAPHIC DATA**

**HISPANIC POPULATION**



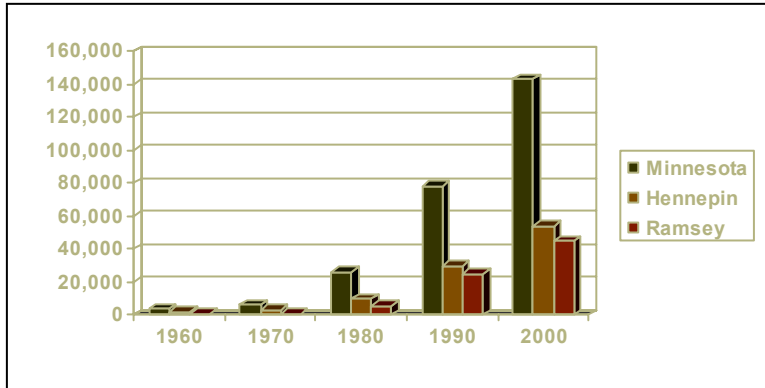
Source: U.S. Census Bureau 1960; 1970; 1980; 1990; 2000.

**AMERICAN INDIAN POPULATION**



Source: U.S. Census Bureau 1960; 1970; 1980; 1990; 2000.

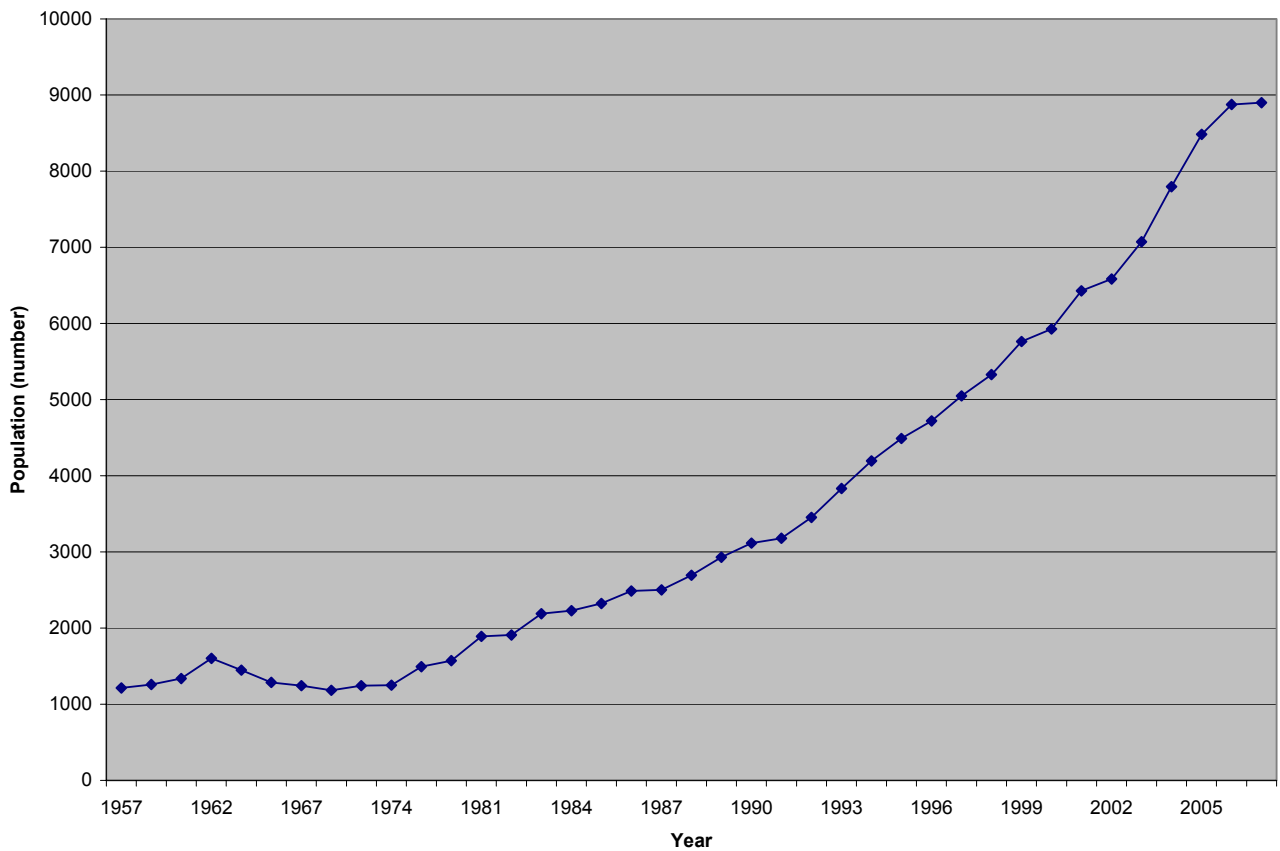
**ASIAN POPULATION**



Source: U.S. Census Bureau 1960; 1970; 1980; 1990; 2000.

### APPENDIX C: PRISON POPULATION DATA

#### Adult Prison Population: 1957-2007



Source: MN DOC, 1957-2007.

**APPENDIX D:  
MINNESOTA CRIMINAL SENTENCING ENHANCEMENTS 1987-2005**

1987	<ul style="list-style-type: none"> <li>• Enhanced penalties for selling or distributing specific amounts of a controlled substance.</li> <li>• Doubled the maximum prison penalty normally applicable to the crime of selling types of drugs to a minor or using a minor to sell them.</li> </ul>
1989	<ul style="list-style-type: none"> <li>• Sentencing guidelines doubled for all crimes in the higher severity levels.</li> <li>• Time increased from 17 to 30 years before parole eligibility for life sentence for a conviction of first-degree murder.</li> <li>• Life without parole sentence created for conviction of first-degree murder following a conviction for a heinous crime.</li> <li>• Sentences increased for dangerous and career offenders. Judges may impose an aggravated departure up to the statutory maximum if the offender fits into a dangerous offender category. Increased sentence if the judge finds the offender has more than four prior felony convictions and the current offense is part of a pattern of criminal conduct.</li> <li>• Increased sentence for sex offender if the court finds the offender is a danger to public safety and needs long-term treatment or supervision based on an assessment that concludes the offender is a patterned sex offender. Long-term supervision when the offender reaches mandatory release date also required.</li> <li>• Penalties substantially increased for controlled substance crimes; five degrees of controlled substance crimes created.</li> <li>• Statutory maximum penalty is mandatory for second and third-degree murder when there is a prior conviction for a heinous crime (40 years for second degree and 25 years for third).</li> </ul>
1990	<ul style="list-style-type: none"> <li>• Enhanced penalties for repeat DWI offenders.</li> <li>• Reference for prosecution as an adult provided for juveniles committing felony offenses as part or subsequent to the delinquent act of escape from local juvenile correctional facilities.</li> <li>• Controlled substance law change removed language which made selling or possessing a certain amount of a controlled substance a fourth-degree crime and by doing so elevated it to a third-degree offense.</li> </ul>
1991	<ul style="list-style-type: none"> <li>• Enhanced penalties for DWI offenders.</li> <li>• Increased penalties for the sale or possession of certain controlled substances.</li> <li>• Consecutive mandatory minimum terms of imprisonment provided for certain drug-related offenses.</li> <li>• Enhanced penalties for firearms violations in public housing, school, or park zones.</li> <li>• Increased penalties for furnishing persons with dangerous weapons, for unlawfully furnishing firearms to minors, and for unlawful possession of pistols by minors.</li> <li>• Increased penalties for crimes committed while belonging to a gang.</li> </ul>
1992	<ul style="list-style-type: none"> <li>• Increased penalties for sale or possession of powder cocaine to be identical to the</li> </ul>

	<ul style="list-style-type: none"> <li>penalties for sale or possession of crack cocaine.</li> <li>Life imprisonment for certain repeat sex offenders added. Includes persons convicted of first-degree criminal sexual conduct who have had two previous first, second, or third-degree criminal sexual conduct convictions. Prior to this law, sentences could have been as low as three years.</li> <li>Life sentence without the possibility of release added for first-degree murder while committing forcible criminal sexual conduct.</li> <li>Under the patterned sex offender statute, judges are required to order at least a doubling of the presumptive sentence for a person with the appropriate criminal history. The possibility of conditional release halfway through the sentence is eliminated.</li> <li>A mandatory 30-year sentence is imposed for repeat first or second-degree criminal sexual conduct convictions involving injury, force, or use of a weapon and an aggravating factor.</li> <li>A minimum departure of twice the presumptive guidelines sentence is required for certain first-time sex offenders, such as those convicted of offenses involving injury and an aggravating factor.</li> <li>Good time eliminated for inmates sentenced for crimes committed after August 1, 1993. The sentencing court now is required to pronounce a term of imprisonment and a term of supervised release. The term of imprisonment cannot be shortened but may be increased as a result of disciplinary infractions during incarceration.</li> <li>Mandatory supervised release period of at least five years is set for sex offenders and at least ten years for repeat sex offenders.</li> </ul>
1993	<ul style="list-style-type: none"> <li>The following felony offenses were created: shooting from a car; recklessly firing a gun in a municipality or school; and owning, possessing or operating a device to convert any firearm into an automatic weapon.</li> <li>Life imprisonment without the possibility of parole established for killing a peace or correctional officer.</li> <li>Increased penalties for stalking or a pattern of repeated harassment.</li> </ul>
1994	<ul style="list-style-type: none"> <li>Mandatory prison sentence for three-time violent offenders of at least the term required under the sentencing guidelines. The court must impose a longer minimum sentence if that is otherwise required by law.</li> <li>Felony penalty created for assaulting a child under age four that results in multiple bruises or harm to the child's head, eyes, or neck.</li> <li>Statutory maximum doubled to ten years for furnishing a minor with a gun.</li> <li>Certain sexual contact with a child under age 13 made first rather than second-degree criminal sexual conduct.</li> <li>Juveniles age 16 and 17 charged with first-degree murder automatically stand trial in adult court.</li> <li>Established the presumption to try 16 and 17-year-olds as adults if the offense is a serious or violent felony or if the juvenile used a firearm while committing a felony. Juveniles face adult trial unless they prove they warrant a juvenile hearing.</li> <li>A new category of juvenile offender called the extended jurisdiction juvenile created. Serious juvenile offenders receive a stayed adult sentence which may be imposed if the court determines that the offender's behavior requires an adult sanction.</li> <li>Increased penalties for repeat DWI offenders.</li> <li>Current sexual psychopath civil commitment law recodified with updated language and new provisions relating to sexually dangerous persons.</li> </ul>
1995	<ul style="list-style-type: none"> <li>Statutory maximum sentence lengthened to 40 years for persons sentenced under the patterned sex offender law if certain conditions exist.</li> <li>Expansion of court's ability to conclude that a sex offender is a danger to public safety and therefore eligible for sentencing as a patterned sex offender.</li> <li>Definition of violent crime expanded allowing increased sentences for certain dangerous felony offenders.</li> <li>Provisions of second-degree murder expanded to include persons who are restrained under an order for protection who unintentionally cause the death of a person protected under</li> </ul>

	the act.
1996	<ul style="list-style-type: none"> <li>• New mandatory prison sentence of 18 months for felons caught in possession of a firearm.</li> <li>• Mandatory jail time for certain categories of domestic abusers.</li> </ul>
1997	<ul style="list-style-type: none"> <li>• Increased penalties for sale or possession of heroin to be identical to the penalties for sale or possession of cocaine.</li> <li>• New mandatory prison sentence of 10 years for assaults against peace officers or correctional employees, including use of deadly force.</li> <li>• Mandatory consecutive sentences for assaults in state correctional facilities.</li> <li>• Witness-tampering statute amended to create a new aggravated first-degree crime with a statutory maximum of 20 years.</li> </ul>
1998	<ul style="list-style-type: none"> <li>• Mandatory minimum for felon in possession of a gun increased from 18 months to five years.</li> <li>• Methamphetamine crimes treated same as heroin offenses.</li> <li>• Life without parole for first-degree murder committed in the course of kidnapping.</li> <li>• Penalties increased for drive-by shooting crimes.</li> <li>• Penalties increased for crimes committed for benefit of a gang.</li> </ul>
1999	<ul style="list-style-type: none"> <li>• Penalties increased for some adulteration crimes.</li> <li>• New counterfeited intellectual property, felony dishonored check, and identity theft crimes.</li> <li>• Penalties increased for possession and dissemination of pornographic works.</li> </ul>
2000	<ul style="list-style-type: none"> <li>• Twelve-year presumptive sentence for first-degree criminal sexual conduct.</li> <li>• New mandatory one-year/one-day prison sentences for offenders failing to register as sex offenders; two-year mandatory prison sentences for second or subsequent offenses.</li> <li>• New crime to tamper with, steal, or transport anhydrous ammonia (substance used to produce methamphetamine).</li> <li>• New possession or sale of stolen and counterfeit checks crimes.</li> </ul>
2001	<ul style="list-style-type: none"> <li>• New criminal sexual conduct third and fourth-degree crimes by correctional employees.</li> <li>• Penalties increased for possession and dissemination of pornographic works.</li> <li>• Penalties increased to 40 years for fleeing peace officer resulting in death.</li> <li>• New fraudulent drivers' licenses and ID card crimes.</li> <li>• New pet cruelty crimes.</li> </ul>
2002	<ul style="list-style-type: none"> <li>• Fifty percent longer sentence for crimes committed in furtherance of terrorism.</li> <li>• Presumptive sentence of 7 1/2 years for some second degree criminal sexual conduct.</li> <li>• New crime for aiding an offender, taking responsibility for criminal acts.</li> <li>• New criminal damage to property of critical public service facilities.</li> <li>• New criminal sexual conduct third and fourth degree crimes by special transportation service workers.</li> <li>• New felony driving while impaired crime.</li> <li>• New crime for harassing or stalking victims under age 18, committed with sexual or aggressive intent.</li> <li>• New insurance fraud, employing runners.</li> <li>• New murder in the first degree in furtherance of terrorism.</li> <li>• New crimes related to real or simulated weapons of mass destruction.</li> </ul>
2003	<ul style="list-style-type: none"> <li>• Increased penalties for identity theft if eight or more victims or amount stolen is over \$35,000.</li> <li>• New crime for possession of methamphetamine precursors.</li> </ul>
2004	<ul style="list-style-type: none"> <li>• Blood alcohol concentration level reduced to .08 for DWIs, criminal vehicular homicide, and injury offenses (effective August 1, 2005).</li> </ul>
2005	<ul style="list-style-type: none"> <li>• Mandatory life sentences for most dangerous sex offenders; some are life without possibility of release.</li> <li>• Life without release for premeditated first-degree murder.</li> <li>• Increased penalties for sale of meth and possession of meth precursors.</li> <li>• Increased penalties for domestic assault by strangulation.</li> </ul>



	<ul style="list-style-type: none"> <li>• Increased penalties for crimes committed for the benefit of a gang when the victim is a child.</li> <li>• New crime for trafficking in persons.</li> <li>• Increased penalties for identity theft related to possession and dissemination of child pornography.</li> <li>• Increased penalties for interference with privacy.</li> <li>• Expansion of harassment and stalking crime to include harassment through the use of wireless and electronic communication.</li> </ul>
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Source: Minnesota Department of Corrections, 2005.

Minnesota Department of Corrections. (2005). Minnesota criminal sentencing enhancements 1987-2005. Retrieved from <http://www.corr.state.mn.us/publications/documents/sentenceenhancements.pdf>.

## APPENDIX E: PROSPECTIVE DEMOGRAPHIC DATA

### Hennepin County Males 18-30 Years

	2000	2010	2020	2030
Total	110,799	109,496	108,372	107,070
Black	11,078	16,189	19,494	20,261
American Indian	1,198	1,676	1,689	1,731
Asian	7,220	10,587	11,352	12,396
Hispanic	9,672	11,690	15,000	17,052
White (not Hispanic)	81,630	69,354	60,837	55,630

Source: US Census Bureau 2000; Hazel Reinhardt, 2007.

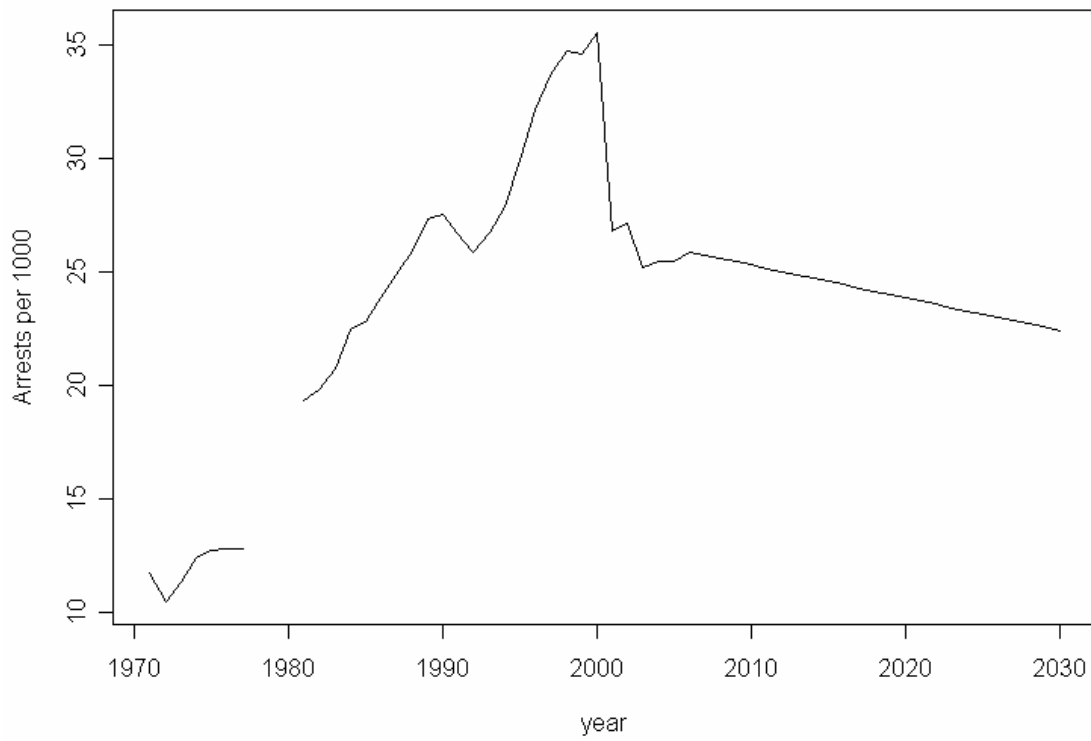
### Ramsey County Males 18-30 Years

	2000	2010	2020	2030
Total	50,604	48,928	47,330	45,776
Black	3,991	5,816	7,000	7,279
American Indian	447	629	633	649
Asian	4,836	7,084	7,596	8,294
Hispanic	4,251	5,136	6,591	7,492
White (not Hispanic)	37,079	30,263	25,510	22,062

Source: US Census Bureau 2000; Hazel Reinhardt, 2007.

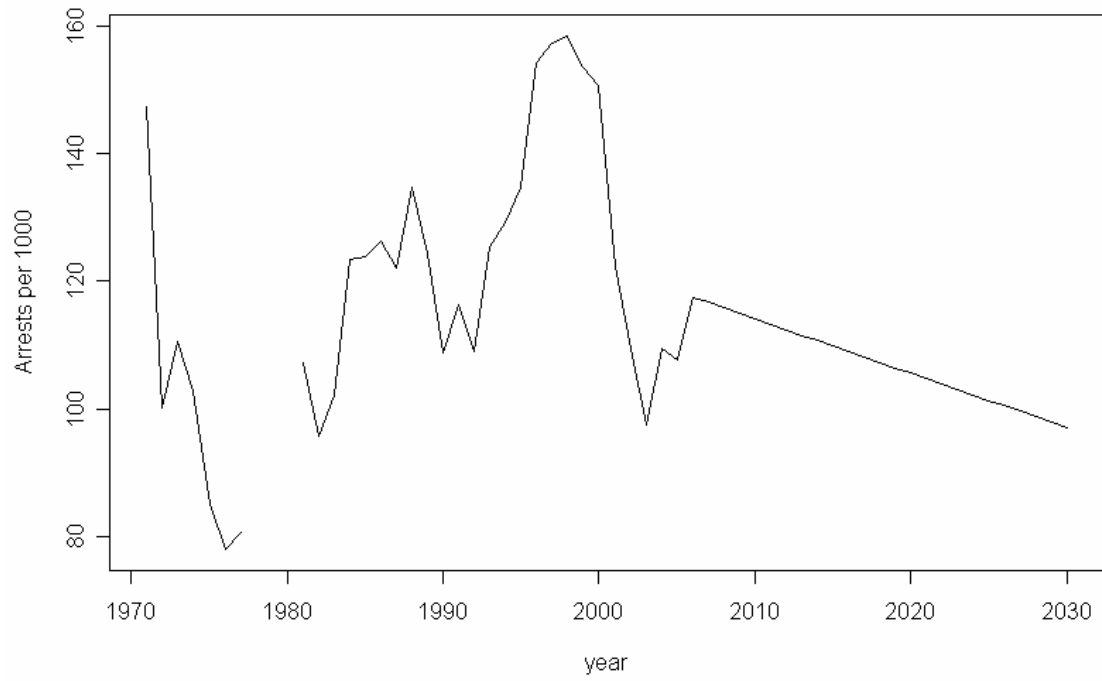
**APPENDIX F:  
PROSPECTIVE CRIME DATA**

**MN White Arrest Rate 1971-2006, projected to 2030**



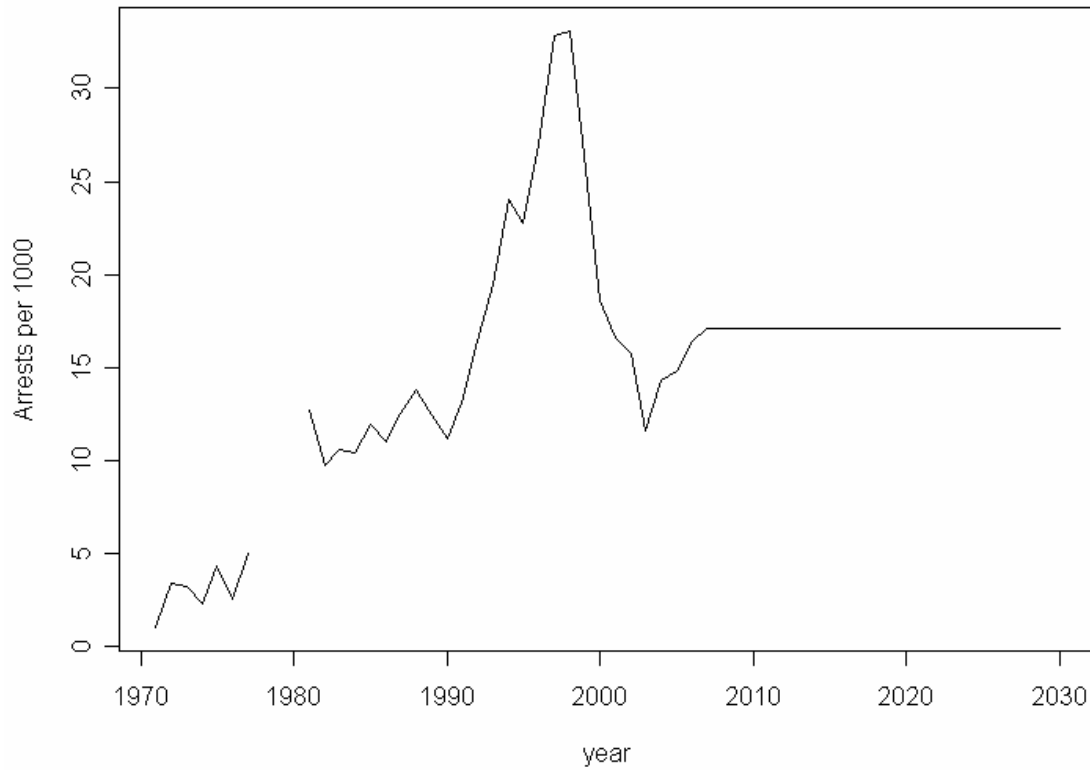
year	arrests
2010	121759
2015	121853
2020	121178
2025	119801
2030	117892

**MN American Indian Arrest Rate 1971-2006, projected to 2030**



year	arrests
2010	7770
2015	8118
2020	8384
2025	8554
2030	8671

### MN Asian Arrest Rate per 1000, projected to 2030



year	arrests
2010	3722
2015	4262
2020	4758
2025	5199
2030	5587