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Introduction:

The Inescapability of Race In the Discussion of Prisons in Maryland and Nationwide

"WE MUST CONFRONT ANOTHER REALITY. NATIONWIDE, MORE THAN 40% OF THE PRISON POPULATION CONSISTS OF AFRICAN-AMERICAN INMATES. ABOUT 10% OF AFRICAN-AMERICAN MEN IN THEIR MID-TO-LATE 20S ARE BEHIND BARS. IN SOME CITIES, MORE THAN 50% OF YOUNG AFRICAN AMERICAN MEN ARE UNDER THE SUPERVISION OF THE CRIMINAL JUSTICE SYSTEM... OUR RESOURCES ARE MISSPENT, OUR PUNISHMENTS TOO SEVERE, OUR SENTENCES TOO LONG."

—Justice Anthony Kennedy, speaking at the American Bar Association, August 2003.

"THE SAD REALITY IN THE UNITED STATES IS THAT DESPITE REPRESENTING ONLY 5% OF THE WORLD'S POPULATION, AMERICA IMPRISONS MORE PEOPLE THAN ANY OTHER NATION. MOST ARE OF COLOR – MOST ARE POOR. MOST HAD INADEQUATE LEGAL REPRESENTATION AND MOST DROPPED OUT OR WERE PUSHED OUT OF SCHOOL. WE MUST BECOME DISTURBED BY THESE DISPARITIES AND MOVE TO ACTION."

—Reverend Jessie Jackson, Sr., Speaking in Chicago, Illinois, April, 2003.

Any discussion about the impact of incarceration in this country must acknowledge that the policies that have led the United States to have the world's largest prison population (2.1 million) and highest incarceration rate (701 per 100,000) have had a disproportionate impact on African Americans, Latinos and other communities defined as non-White.¹ The most recent figures from the Justice Department's correctional reporting agencies show that, in 2002, African Americans nationally were incarcerated at 7 times the rate of Whites and Latinos were incarcerated at 2.5 times the rate of Whites. African Americans and Latinos comprised 68% of all prisoners in 2002, even though African Americans and Latinos make up 25% of the US population.²

In August 2003, the Bureau of Justice Statistics reported that if incarceration rates continue at the 2001 level, one in 17 White men (5.9%), one in six Latino men (17%), and one in three African American men (32%) born in 2001 will serve time in prison at some point in their lifetime. That same study found that 5.6 million Americans are current or former prisoners; 39% of those are African Americans (2,203,000), even though African Americans

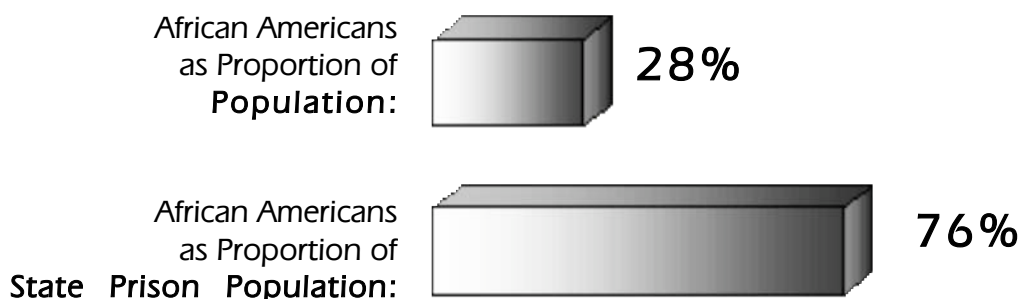
comprise only 12% of the national population.³ Also this summer, the Justice Policy Institute reported that one out of eight White male dropouts, and half of all African American male dropouts had prison records by their early thirties, and that nearly twice as many African American men in their early 30s have prison records (22 %) as Bachelors degrees (12 %).⁴

Unfortunately, these racial and ethnic disparities hold true for Maryland as well. Controversy has periodically flared up around the racial impact of law enforcement practices in Maryland, such as the disparate use of highway police stops on African American drivers, or the use of deadly force against African Americans in Prince George's County. These controversies have spurred on policy reforms which have been debated locally and in Annapolis on how to make the justice system fairer and more just.

This policy analysis will examine the impact of the national problem of racial and ethnic disparities in Maryland's criminal justice system. This policy brief will paint a general picture of the scale of overrepresentation of minorities in the state's prison system, focusing particularly on the overrepresentation of African Americans among the state's drug prisoner population.⁵ Although there is some debate among academics and scholars as to the cause of overrepresentation of people of color in Maryland's prison and jails, the fact that the growing use of incarceration in this state has disproportionately impacted the state's non-White citizens is undeniable. While the expansion of Maryland's prison system has affected all of its citizens, the state's prison and jail growth have had particularly damaging effects on Maryland's communities of color. Given the high costs of Maryland's current incarceration policies, the findings suggest that legislators should consider policies that will treat, rehabilitate and educate, rather than merely incarcerate, growing numbers of Maryland's minority citizens.

FIGURE 1: POPULATION AND PRISON STATISTICS FOR AFRICAN AMERICANS IN MARYLAND (2003)

African Americans comprise 76% of Maryland’s prisoners, yet only 28% of the state’s total population.



Source: Census Bureau and Maryland Department of Corrections (2003).

Methodology

This report was commissioned by Maryland’s Legislative Black Caucus for deliberation at their Fall Retreat. This policy brief summarizes and analyzes the data and findings from a variety of criminal justice agencies and research entities whose work is national in scope, including the U.S. Justice Department’s Bureau of Justice Statistics, the U.S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration, the Baltimore-based National Center on Institutions and Alternatives, Human Rights Watch, The Sentencing Project and previous studies by the Justice Policy Institute. The authors have also reviewed and summarized analyses from a number of sources in Maryland, including data from the Maryland Department of Public Safety and Correctional Services, Maryland’s Alcohol and Drug Abuse Administration, Maryland’s State Commission on Sentencing Policy, and the Maryland Justice Policy Institute. This report contains original research by Justice Policy Institute analysts on the state’s drug prisoner admissions from the National Corrections Reporting Programs—a national repository of data on the characteristics of state corrections systems.

Significant Findings

Finding I: Racial and ethnic minorities in Maryland are overrepresented in the state's incarcerated population versus their representation in the population at large.

African American men are imprisoned at nearly eight times the rate of White men. In 2003, according to the Census Bureau, 28% of the Maryland's general population were African Americans, but according to the state's Division of Corrections, 76% of the prison population was comprised of African American prisoners [See Figure 1]. As noted above, nationally, African Americans are incarcerated at 7 times the rate of Whites but according to an analysis of Department of Public Safety data, African Americans in Maryland are incarcerated at nearly eight times the rate of Whites.⁶ As Figure 2 shows, while the proportion of the prison population that was African American remained about the same since 1973, as the prison population tripled, the growth in African American incarceration exceeded that of Whites by 26% (294% for Whites, 371% for African Americans). The proportion of the prisoner population that is White actually *declined* (from 26% to 22%) during the last 30 years, when the prison population grew four-fold.

From 1979 to 2003, Maryland's prison population increased by 16,763 inmates, more than tripling in population from 7,243 to 24,006 prisoners [See Figure 2]. The number of African American inmates mushroomed by 12,709 (from 5,529 to 18,238), making up 76% of the growth in Maryland's prison population during this 24 year span. Put another way, African Americans comprised three-quarters of the state's prison growth over the last 24 years.

While women represent only 5% of the state's prison population, women of color are also disproportionately impacted by the state's use of imprisonment. In an analysis done on Maryland's incarcerated population in 2002, Human Rights Watch showed that African American women are incarcerated at 4.2 times the rate of White women.⁷

FIGURE 2: CHANGE IN INCARCERATION BY RACE, 1973-2003

While the number of Whites imprisoned grew during the last three decades, African American imprisonment grew faster—and the proportion of Whites imprisoned declined.

NUMBER OF PRISONERS				
RACE	1973	1979	2003	%CHANGE
White	1,352	1,690	5,321	+294%
Black	3,869	5,529	18,238	+371%
Native American	—	11	12	+9%
Others	—	13	63	+385%
Total	5,221	7,243	24,006	+360%
INCARCERATION RATE (PER 100,000)				
RACE	1973	1979	2003	
White	42	53.4	156.9	
Black	467	656.7	1234.5	
Native American	—	259.5	77.8	
Others	—	—	—	
Total	—	178.5	453.2	

Source: Analysis by Frank Dunbaugh, Maryland Justice Policy Institute, in Racially Disproportionate Rates of Incarceration in the United States, 1 Prison Law Monitor 205 (March 1979), and an update for the Maryland Justice Coalition. 2003 data from the Maryland Department of Public Safety and Correctional Services, as of June 6, 2003. 2003 incarceration rates based on 2000 census data. Includes races shown as “Asian” [32] and “Unknown” [31], but not race “missing” [372]. Maryland does not count Latinos separately from their race, which is sometimes White, and sometimes black. Includes 372 prisoners whose racial identity is “missing”.

The scale of imprisonment has a larger impact in the African American community: half of all the young African American men in Baltimore are under criminal justice control. While incarceration rates provide the best way of comparing the use of incarceration among certain communities, these measures can underestimate the impact of the concentrated use of imprisonment on racial minority populations. Other national organizations have attempted to depict the real life impact of imprisonment on certain heavily affected communities by showing the scale of imprisonment and criminal justice control in those communities. Human Rights Watch showed in 2002 that, while less than 1 percent of White adult men are incarcerated in Maryland, 5.6% of the African American adult male population of the state was incarcerated—about one out of every 18 black males [See Figure 3].⁸ A study by the National Center on Institutions and Alternatives found that more than half of the young

men in Baltimore were in prison or jail, or on probation, parole or some other form of correctional supervision (e.g. out on bail or under pretrial release) on any given day in the early 1990s. While Baltimore City's African American population has increased since then, incarceration rates for Maryland's African American community have increased. As such, it is likely that today, an even higher proportion of young African American men are under some form of criminal justice control in Baltimore City.⁹

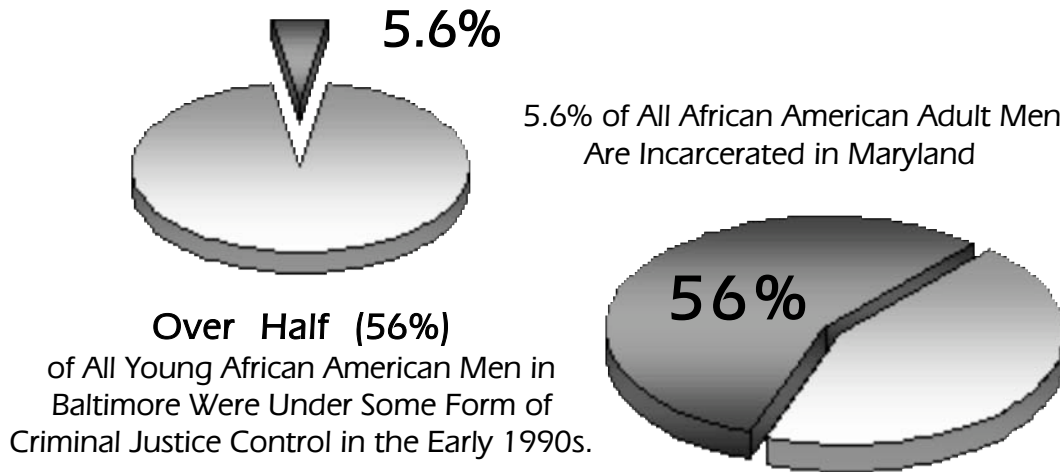
While data collection on Maryland's prison system masks disparity in the use of imprisonment for Latinos, there is evidence that Latinos are incarcerated at higher rates than Whites. According to the latest survey of correctional populations by the Bureau of Justice Statistics of the 50 states, Maryland is among jurisdictions that "does not distinguish the ethnicity of prisoners."¹⁰ But even among those states that do report the ethnicity of prisoners, the problem of accurately documenting the representation of Latinos in America's justice system still exists, as many Latinos are defined as White or African American by correctional reporting systems.¹¹ Disparity in the use of imprisonment may be masked, a problem that may affect a number of states with growing Latino populations, including Maryland. For example, an analysis JPI prepared for the Foundation for National Progress (MotherJones.com/prisons), found that Latinos were imprisoned at 3.8 times the rate of Whites (119 per 100,000 for Whites, and 451 per 100,000 for Latinos) in 2000. Up from 83 per 100,000 in 1980, this analysis shows that Latinos had the fastest growing incarceration rate during the two-decade period. On the other hand, Human Rights Watch's analysis of Maryland's incarcerated population found that Latinos were underrepresented, vis-à-vis their incarceration rate as a ratio of the state's total, White and African American incarceration rates. The difference between the two findings can be accounted for by their use of different methodologies to try to account for Latino representation in the system, and different definitions for incarcerated populations.

A 1999 analysis by CASA of Maryland and the Public Justice Center concluded that Maryland's Latino community faces "a crisis of unequal justice" citing large gaps in the delivery of government and legal services to Latino residents.¹² According to CASA of Maryland's Executive Director, Gustavo Torres, not much has changed since the issuance of this report four years ago.¹³

Although the absence of data on this important issue is deeply troubling, it is beyond the scope of this report to definitively analyze the representation of Latinos in Maryland's prisons. Maryland policymakers should prioritize conducting their own analysis to correctly identify the representation of Latinos in Maryland's prison system.

FIGURE 3: PREVELANCE OF INCARCERATION FOR AFRICAN AMERICAN MALES IN MARYLAND

One out of every 18 African American adult men (18-64) in Maryland were incarcerated in 2000, and previous studies showed that half of all young African American men in Baltimore were under criminal justice control.



Source: *Race and Incarceration in the United States—Human Rights Watch Press Backgrounder*. (2002). New York, New York: Human Rights Watch. Miller, Jerome G. *Hobbling a Generation: Young-African American Males in the Criminal Justice System of America's Cities*. Baltimore, Maryland: National Center on Institutions and Alternatives.

Finding II: As Maryland expanded its use of prison for drug offenses, African Americans have borne the brunt of imprisonment.

“BY REDUCING THE NON-VIOLENT DRUG OFFENDER POPULATION, THE STATE OF MARYLAND WOULD AFFECT MINORITIES WHO ARE DISPROPORTIONATELY INCARCERATED FOR NON-VIOLENT DRUG OFFENSES.”

—State Commission on Criminal Sentencing Policy, May, 2001

“WE MUST REVERSE THE TREND OF SIMPLY GIVING UP ON SO MANY YOUNG PEOPLE TRAPPED BY DRUG ABUSE AND DESPAIR... WE CAN CLOSE THE REVOLVING DOOR OF RECIDIVISM AND FOREVER OPEN THE DOOR OF HOPE AND OPPORTUNITY FOR ALL OF OUR PEOPLE.”

—Governor Robert L. Ehrlich, in his inauguration speech, January, 2003.

Maryland has a high rate of drug offender imprisonment—90% of the state’s drug prisoners are African American. By analyzing the data on the imprisonment of drug offenders in Maryland, we are able to explore the scale of racial overrepresentation in the state’s prison system. In 2003, 90% of the people imprisoned in Maryland for drug offenses were African American. Drug offenders represent 24% of all people imprisoned in Maryland, up from 5% of the prison population in the mid 1980s. Between 1986 and 1999, Maryland’s annual drug prison admissions—the number of people entering the correctional system each year for a drug offense—grew five-fold (from 992 to 5231). The state’s drug prison admission rate—the number of people admitted to prison for drug offenses, per 100,000 citizens—grew nearly five-fold—a 357% increase over the 13 year period. Maryland has the third highest proportion of its total annual prison admissions for drug offenses in the country, behind only New Jersey and New York. Nationally, 27% of prison admissions are for drug offenses, while 42% of Maryland’s prison admissions are for drug offenses.¹⁴

Several research entities, including the Maryland State Commission on Sentencing Policy, have suggested that African Americans are disproportionately incarcerated for drug offenses. To help understand the scale of this overrepresentation, it is important to consider what we know from state and national resources to be differences between indicators of drug use by different races, and drug incarceration.

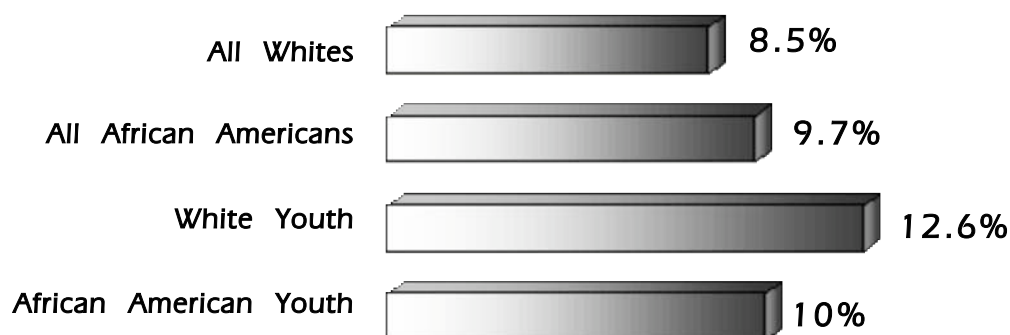
According to national data, Whites use drugs at similar rates to African Americans, and what disparity in use exists does not explain the level of overrepresentation seen in the prison system. Generally, Whites and African Americans have been shown to use illicit drugs at similar rates—and where there is some disparity in drug use, it comes nowhere close to the scale of overrepresentation in arrests and imprisonment. According to the U.S. Department of Health and Human Services,

Substance Abuse and Mental Health Services Administration (SAMHSA), in 2002, 8.5% of Whites, and 9.7% of African Americans reported using illicit drugs in the preceding month, and Whites and African Americans reported to be dependent on a substance at virtually the same rate (9.5% of African Americans, and 9.3% of Whites). Among youth age 12 to 17, 10% of African American youth, and 12.6% of White youth reported using illicit drugs within the preceding month.¹⁵

In a study done of arrestees at Baltimore City’s Central Booking facility in 2001, the Maryland Center for Substance Abuse Research found that 69% of White arrestees, and 78% of African Americans who were part of the survey tested positive for at least one drug. White arrestees used cocaine at virtually the same rate as African American arrestees, and they tested positive for opiates at a higher rate than African Americans. Whites tested positive at slightly lower rate for combined cocaine/opiate use, but at a significantly lower rate than African Americans for marijuana.¹⁶ While some caution needs to be applied to interpreting these results due to the small sample size of Whites (they analyzed the results of 54 Whites, and 245 African Americans), the fact that African Americans report drug use in this sample at only slightly higher rates than Whites provides a strong contrast to the scale of disparity in the state’s use of drug incarceration. *Data from the Maryland State Police and Maryland Department of Public Safety and Correctional Services shows that African Americans, who are 28% of the general population, comprise 68% of drug offense arrests in the state, and are 90% of those imprisoned for a drug crime in the state [See Figure 5].*¹⁷

FIGURE 4: RACE AND AGE OF PEOPLE REPORTING USE OF AN ILLICIT DRUG IN THE PAST MONTH

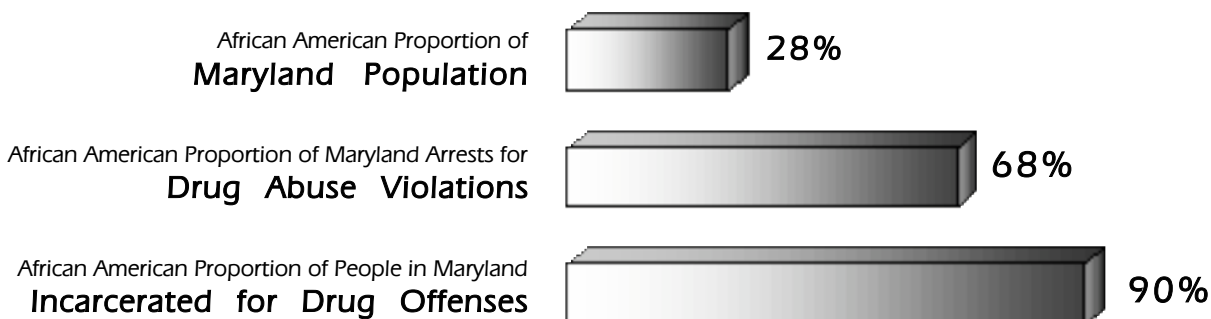
National Data Shows Whites and African Americans Generally Use Drugs at the Similar Rates.



Source: Substance Abuse and Mental Health Services Administration. (2003). Results from the 2002 National Survey on Drug Use and Health: National Findings (Office of Applied Studies, NHSDA Series H-22, DHHS Publication No. SMA 03–3836). Rockville, MD.

FIGURE 5: MARYLAND’S AFRICAN AMERICAN POPULATION, DRUG ARRESTS AND DRUG INCARCERATIONS

While Whites and African Americans In Maryland Use Drugs At Similar Rates, African Americans are 28% of the Population, but Represent 68% of those Arrested for Drug Offenses, and 90% of those Incarcerated for a Drug Offense.



Source: Maryland Arrest Data from Crime in Maryland—2001 Uniform Crime Report. Pikesville: Maryland (2002). Maryland prison data from Maryland Department of Public Safety and Correctional Services—Inmate Population (June 6, 2003), Offense Groups By Race; Population Figures from U.S. Census Bureau.

Analysis of Maryland Prison Admissions Data: African American prisoners have fueled the state’s growing drug prisoner population. JPI reviewed data on Maryland’s admissions to prison for drug offenses, as collected by the National Correctional Reporting Program (NCRP)—a national repository of data on the characteristics of state corrections systems.¹⁸ JPI analysts looked at the change in prison admissions for people whose most serious offense was a drug offense, from 1986 to 1999, which are, respectively, the earliest and the most recent year for which state-by-state data on prison admissions could be reviewed.

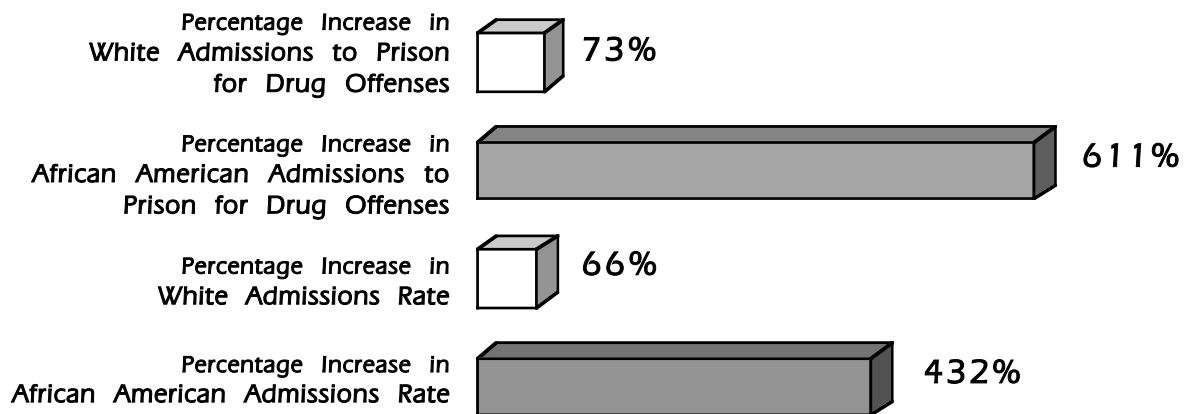
Nearly half of all African American prison admissions are for drug offenses. Forty-two percent of the people admitted to prison in Maryland are admitted for a drug offense, up from 16% in 1986. This is the third highest proportion of drug admissions in the country behind New Jersey and New York. In 1986, White and African American drug offenders represented similar proportions of all those sent to prison in the state (17% and 15%, respectively). But by 1999, nearly half (47%) of all African American prison admissions in Maryland were for drug offenses, compared with 21% for Whites.

The number of people admitted to prison in Maryland for a drug offense grew from 992 in 1986 to 5231 in 1999. But during that time, the number of White drug prisoner admissions increased by 225 (from 309 in 1986 to 534 in 1999), while the number of African American drug prisoner admissions increased by 3981 (from 652 to 4633). *As such, the increase in African American admissions to prisons for drug offenses was 18 times greater than the increase in White drug offender admissions. African American admissions for drug offenses represented 94% of growth of the state’s use of prison for drug offenses between 1986 and 1999.*

The African American rate of prison admissions for drug offenses grew at 8 times the rate of Whites over the period. The drug prisoner admission rate (the number of people admitted to prison for drug offenses, per 100,000 citizens in 1986 and 1999) in Maryland rose 357% (from 22 per 100,000 to 101 per 100,000). Again, there are two different story lines at work here. For Whites, the drug prison admission rate rose 66% (from 10 per 100,000 to 16 per 100,000), while for African Americans, the rate rose 432% (from 61 per 100,000, to 323 per 100,000) [See Figure 6].

FIGURE 6: INCREASE IN ADMISSION RATES BY RACE, 1986-1999

From 1986 to 1999 the rate of increase for African Americans being incarcerated for drug offenses was 8 times the rate of increase for Whites.



Source: JPI analysis of the National Correctional Reporting Program, Prison Admission Data, Holman, Barry, Beatty, Philip, and Ziedenberg, Jason. *Poor Prescription 2*. (Forthcoming). Washington, DC: Justice Policy Institute.

Youth represent a significant proportion of the state’s drug prisoner admissions, and the disparity in drug imprisonment for adults is similar to that seen for youth. Among youth (age 15-29), of the 2106 drug prisoner admissions in 1999, 93% were African American, and only 204 young Whites were admitted for drug offenses that year—up from 146 in 1986. In other words, as the number of youth drug admissions increased by 287% (from 544 to 2106), and as African American drug prison admissions increased by 387% (from 387 to 1888), *African American youth represented 96% of the new prison admissions for drug offenses.* Among young people, the drug prison admission rate rose 356% during the period (from 46 to 212 per 100,000). But while the young White rate rose by 87% (from 18 to 34 per 100,000), the young African American rate rose by 399%. Put another way, the African American drug prison admission rate for youth rose at nearly 5 times the rate of Whites.

Thousands of Marylanders who need drug treatment services do not receive them every year. While Maryland has increased the number of people in its prisons for drug offenses and expanded its treatment capacity, there is still a great need for high quality drug treatment services. According to the most recent analysis by Substance Abuse and Mental Health Services Administration, 80,734 Marylanders aged 12 or older needed but did not receive treatment for an illicit drug problem in 2000. This figure does not include Marylanders who may be receiving some form of drug treatment, but are not in appropriately comprehensive or quality programs, or programs that provide the range of employment, vocational, family and medical services that many addicted people need to meet their needs.¹⁹

Finding III: While the reasons for minority overrepresentation are complex, several studies of Maryland’s criminal justice system have found evidence of disparate treatment.

“THE RESEARCH INDICATES THE EXISTENCE OF RACIAL DISPARITY IN SENTENCING. WITHOUT THE COOPERATION OF VARIOUS AGENCIES WITHIN THE CRIMINAL JUSTICE SYSTEM AND OTHER STAKEHOLDERS, THE PROBLEM OF DISPARITY WILL NEVER BE SOLVED. FOR EFFECTIVE IMPLEMENTATION, IT IS ESSENTIAL THAT THE STATE PROVIDES FINANCIAL SUPPORT AS WELL AS STAFF, EQUIPMENT, AND RESOURCES TO ACHIEVE THE RECOMMENDATIONS IN THIS REPORT.”

—Maryland State Commission on Sentencing Policy, 2001.

“SHOULD THEY NOT BE CONVICTED WHEN THEY SELL DRUGS TO OUR KIDS? EVERYBODY KNOWS THAT IT HAPPENS. I HAVEN’T HEARD ONE SHRED OF INFORMATION THAT PROVES THAT THERE IS DISCRIMINATION HERE. WHEN YOU PROVE THAT, I WILL BE RIGHT THERE, SIDE BY SIDE WITH YOU.”

—Senator Orrin Hatch (R-UT), speaking in opposition to federal legislation to make states collect data on the overrepresentation of minority youth in the justice system.²⁰

The reasons why 28% of Maryland’s general population is African American, but 76% of its prison system is African American are complex and multidimensional. Researchers have cautioned that no “overarching theory,” including disproportionate minority involvement in crime or discrimination in the criminal justice system, can wholly explain the reality of overrepresentation that exists in Maryland and around the country.

Some have simply said, setting aside whether or not Whites and racial and ethnic minorities actually *commit* crimes at the same rates, non-Whites are more likely to be imprisoned because they are more likely to be *arrested* for a criminal act. The nation’s leading criminologists have found that higher arrest rates, alone, do not account for the scale of the problem. Alfred Blumstein, a professor at Carnegie Mellon University and Director of the National Consortium on Violence Research found that 76% of the higher black imprisonment rate was accounted for by higher arrest rates for African Americans, while 24% could be attributed to racial bias or other factors.²¹ A study by Robert Crutchfield, George Bridges, and Susan Pitchford published in the *Journal of Research in Crime and Delinquency* found that the degree of racial disparity that could be attributed to the arrest rate varied greatly among states, with only 69% of the disparity being accounted for by arrest rates in the northeast states.²² Even here, these findings should be interpreted with caution in light of strong evidence that African Americans are arrested far out of proportion

of their actual rates of criminal behavior. The Sentencing Project's Marc Mauer notes that, if only 5% of the cases resulting in imprisonment were impacted by racial bias, a figure much lower than several studies suggest, it would still mean that of the 500,000 African American state prison inmates incarcerated in 1995, 25,000 of them would not be locked up absent this bias (the comparable figure today including people in jail would be 42,000). Nationally, scholars and researchers have noted a number of key reasons why communities of color are overrepresented in the corrections system, including:

1) Overrepresentation in the corrections system is one of a number of social categories or "extra-legal" factors affecting minorities where disadvantages accumulate, leading to criminal involvement and system contact. Ethnic and racial minorities, for example, have less access to high quality education, are more likely to come from families that are economically marginalized through high rates of unemployment and are less likely to be employed than Whites.²³

2) Minorities may be more likely to be arrested for certain behaviors than Whites, even though they commit crimes at similar rates. As shown in the section of this brief about drug use, Whites and African Americans use drugs at similar rates, but racial and ethnic minorities represent the vast majority of drug prisoners. Policing practices, like the targeting of minority neighborhoods to enforce drug laws, may have the unintended consequence of arresting disproportionately more people of color, even though Whites use and sell drugs at the same or higher rates. *If one is more likely to be arrested, one is more likely to be charged, convicted, and to build up a criminal history, which, under the state's sentencing guidelines, means that person is more likely to be sentenced to a term of incarceration.*

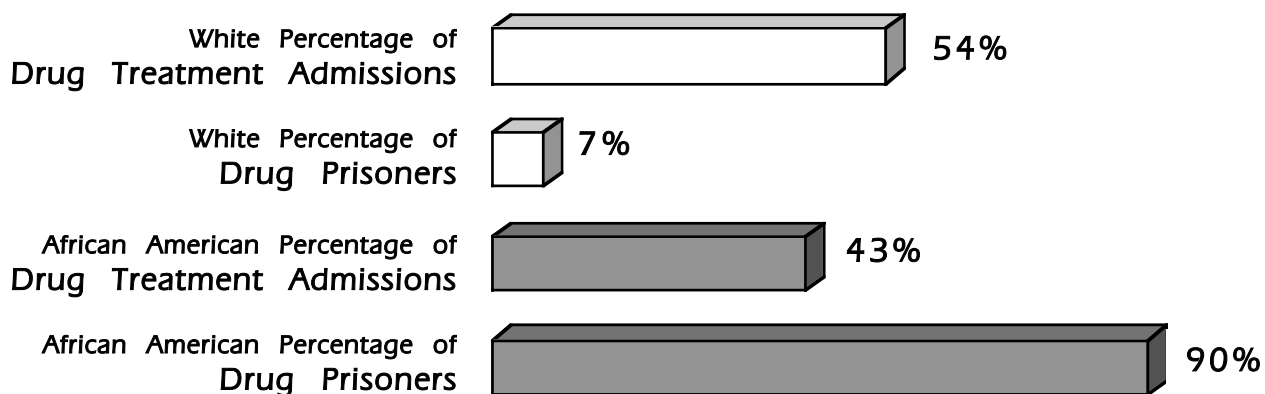
3) Whites, by the nature of their economic status, may have access to better legal representation, who more vigorously advocate for their release. Studies in the juvenile justice system have shown that White youth are twice as likely as African American youth to retain private counsel, and youth represented by private attorneys are less likely to be convicted and less likely to be tried as adults than youth represented by either public defenders or appointed counsel.²⁴ The Council of State Governments has recommended that states wishing to impact racial disparity in imprisonment should increase funding to improve the quality of indigent defense and sentencing advocacy.²⁵

4) Whites may have better access to high quality treatment and complementary services to avoid crime and prison, while racial and ethnic minorities may face a "treatment gap." While Whites and African Americans use drugs at similar rates, Whites were 54% of all drug treatment admissions, and less than 10% of the states drug prisoners. In contrast, African Americans were 43% of drug treatment admissions, and 90% of the state's drug admissions. Half of all White and Hispanic treatment patients successfully completed treatment in Maryland, while less than third of African American patients did so. Maryland's Alcohol and Drug Abuse

Administration says that “environmental and social factors,” such as access to a job, private health care and higher income play a role in lower success rates for African American drug treatment admissions.²⁶

FIGURE 7: INCARCERATION VS. TREATMENT BY RACE

While Whites Comprise the Majority of Marylanders in Treatment, African Americans Are the Majority of the State’s Drug Prisoners



Source: Outlook and Outcomes In Maryland Substance Abuse Treatment—Fiscal Year 2002; Baltimore, Maryland: Alcohol and Drug Abuse Administration Leadership, 2003.

5) Race may influence the decision-making of criminal justice professionals, including officers of the court. Racial bias in prosecutorial decision-making has also been studied. One study concluded that at virtually every stage of pretrial negotiation, Whites are more successful than non-Whites at getting charges reduced to misdemeanors or infractions.²⁷ Studies of the federal sentencing guidelines designed to minimize bias, found that in fact they increased racial disparities significantly by transferring discretion from the judge to prosecutors, who may be more susceptible to political pressures.²⁸ As Figure 8 reveals, while African Americans make up 59% of those arrested for rape in Maryland, they make up 69% of those imprisoned for rape, whereas Whites make up 39% of rape arrests and only 30% of those imprisoned for rape. Conversely, Whites are more likely to be charged with “sexual offenses” than African Americans (55% vs. 44%), a charge carrying lower penalties than rape, suggesting that the use of arrest and charging discretion by law enforcement and prosecutors inures to the benefit of White defendants.

FIGURE 8: MARYLAND IMPRISONMENT AND ARREST DATA BY RACE AND OFFENSE, 2003

In Maryland, Whites Are More Likely to Be Arrested for Gender Crimes That Carry Shorter Sentences.

OFFENSE	AFRICAN AMERICAN		WHITE	
	% ARRESTED	% IMPRISONED	% ARRESTED	% IMPRISONED
Rape	59%	69%	39%	30%
Sexual Offense	44%	45%	55%	54%

Source: Imprisonment data is for 2003, and arrest data is for 2001. Maryland Department of Public Safety and Correctional Services (June 6, 2003); *Crime in Maryland—2001 Uniform Crime Reports* (2002).

In Maryland, some studies have shown that there are some points in the system where there is disparate treatment for White and African American offenders. Several researchers for the Maryland Sentencing Commission have studied the impact of the state’s sentencing guidelines, and found evidence that it treats some offenders in a disparate manner.

African Americans and Hispanic drug offenders serve longer sentences than Whites. A 1997 analysis for the Maryland Sentencing Commission by Claire Souryal and Charles Welford found that while offense seriousness was the main predictor of sentencing outcome, race was a factor influencing the incarceration decision, and was “particularly strong among individuals convicted for drug offenses and sentenced in compliance with the sentencing guidelines.” The report found that “Black and Hispanic defendants convicted of drug offenses were more likely to receive longer sentences than White defendants.”²⁹

African Americans have 20% longer sentences than Whites due to judicial discretion under the sentencing guidelines. A 2001 paper by researchers from the John F. Kennedy School of Government and the National Bureau of Economic Research, and the University of Maryland Department of Criminology attempted to isolate whether the discretion of judges to sentence an offender to penalties available at the higher end of the sentencing grid were informed by race. “We find that African Americans have 20% longer sentences than Whites, on average, holding constant age, gender and recommended sentence length from the guidelines. . . . [C]onsiderable racial disparity can be attributed to judicial discretion. . . . We found that judges in Maryland tended to sentence people in the part of the guidelines grid with longer recommended sentences, who tend to be African American.”³⁰

Maryland’s Sentencing Commission and the Council of State Governments acknowledge racial overrepresentation and disparity in the system and suggest some possible remedies. While sentencing commission researchers contend that the state is on the “cutting edge” of the disparity issue compared to other states, they recommended things the state could do to reduce racial overrepresentation and disparity in the system. Based on a series of recommendations from the Council of State Governments, the Maryland Sentencing Commission suggested that if the state wished to impact racial overrepresentation in the corrections system, it could:

- 1) **Conduct racial/ethnic impact statements.** Similar to fiscal impact statements, or “fiscal notes”, racial/ethnic impact statements would help assure that pending sentencing legislation did not have an unintended negative impact on racial/ethnic minority defendants prior to their adoption.
- 2) **Decrease the number of nonviolent drug offenders in prison.** Maryland could adopt the recommendation of the Council of State Governments and reduce its nonviolent drug offender population by 5% a year for 10 years, for a net reduction of 50% and increase its use of community based sanctions for non-violent offenders.
- 3) **Increase funding for indigent defense and sentencing advocacy.** This would provide low income minorities “access to attorneys with reasonable caseloads, sentencing consultants and diagnostic services,” and divert minority low-income offenders from prison.
- 4) **The legislature could reconsider mandatory sentencing policies,** particularly for drug offenses, that have led to the incarceration of many low-level offenders.

Finding IV: The overrepresentation of people of color in Maryland’s prison system, and the growth of the system has had an effect on the states’ economic, social and political life—and these effects are concentrated among communities of color.

“STUDIES WHICH USE A PUBLIC-HEALTH APPROACH TO SYSTEMATICALLY ASSESS THE IMPACT OF MASS INCARCERATION POLICIES SHOW THE HUGE SCALE OF THE HARM THE DYNAMIC OF MASS INCARCERATION POLICIES—ESPECIALLY THOSE DRIVEN BY DRACONIAN DRUG LAWS—IS DOING TO SPECIFIC BLACK COMMUNITIES AND BLACK AMERICA AS A WHOLE. FURTHER INTENSIFYING THE NEGATIVE COLLECTIVE IMPACT OF MASS-INCARCERATION, LITTLE SUPPORT IS EXPRESSED FOR THE COMMUNITIES AND FAMILIES MOST AFFECTED BY THE DYNAMIC. EACH PRISONER’S FAMILY MUST CARRY ITS OWN BURDENS AND FIND WAYS TO COMPENSATE FOR THE LOSS. WHEN THIS PHENOMENON OCCURS ON A LARGE SCALE AND FOR AN EXTENDED PERIOD OF TIME, IT MAY SIGNIFICANTLY DAMAGE THE MENTAL AND PHYSICAL HEALTH OF INDIVIDUALS, FAMILIES AND ENTIRE COMMUNITIES—AND CREATE OR INTENSIFY THE VERY SOCIAL CONDITIONS THAT ENABLE CRIME TO FLOURISH.”

—Ernest M. Drucker, professor of epidemiology and social medicine and professor of psychiatry at Montefiore Medical Center and the Albert Einstein College of Medicine in New York, as cited by the National Urban League, State of Black America (2003).

While the causes and reasons for racial and ethnic overrepresentation in the prison system cannot be definitely answered, it is clear that the growing prison system, three quarters of which is African American continues to have an impact on Maryland’s economic, social and political life, and this can be quantified in a number of ways. For example, while the state arrested 55,000 people for drug offenses in 2001, and imprisoned 5,550 for drug offenses this year, the millions spent on the drug war have failed to eliminate the scourge of drug and alcohol addiction: the Alcohol and Drug Abuse Administration says that drug and alcohol addiction cost Maryland citizens about \$5.6 billion annually (including crime costs, medical care, lost wages, and dependence on social welfare programs).³¹ More directly, the cost of the prison system has impacted the states’ economy and social fabric in a significant way.

As the state struggled to reduce its budget shortfall and makes cuts to other government services, the costs of maintaining Maryland’s corrections system looms large on the fiscal horizon. This legislative session, Maryland joined the rest of the states in wrestling with the worst state budget shortfalls since World War II. Maryland closed a \$1.2 billion dollar budget shortfall for fiscal year 2004 by making significant cuts to higher education spending and K-12 education. While many things are responsible for the state’s poor finances, including rising health care and education costs, Maryland

appropriated new funds for prisons as its incarcerated population grew over the decades. Between 1985 and 2001, Maryland’s spending on corrections grew from \$612 million to just under a billion dollars (\$920 million in 2003-4).³² As such, growth in corrections spending represented 25% of the budget shortfall that the state was grappling with earlier this year—when significant cuts were made to education and other social services, and legislators debated bringing in slot machines to rescue the state’s finances. To be clear, while prisons are not wholly responsible for the state’s fiscal woes, the increase in prison spending represents large new annual costs that force the state to choose between classrooms and cellblocks, particularly in tough economic times.

FIGURE 9: MARYLAND CORRECTIONS SPENDING GROWTH, AS A PERCENTAGE OF STATE BUDGET SHORTFALL

Change in annual Spending On Corrections 1985-2001	Estimated State Budget Shortfall for FY 2004 (January 2003)	Correctional Spending Growth as a Percentage of State Budget Shortfall
\$300 million	\$1.2 billion	25%

Source: Corrections spending from State Expenditure Reports, 2001; 1985 (2002; 1986), The National Association of State Budget Officers, and State Budget Shortfalls from the Center on Budget and Policy Priorities ("State Budget Deficits," January 2003), and news articles. Baseline years were adjusted for inflation to compare with 2001 spending.

According to the "Review of Maryland's Tax Structure" published by Maryland's Department of Legislative Services, Office of Policy Analysis on July 17, 2003, Maryland ranks 42nd amongst all states on the percent of personal income spent on education, and 21st among all states on percent of personal income spent on the Department of Public Safety. This year, \$30.6 million was cut from the Teacher’s Salary Challenge program that augments the salaries of teachers in low-performing, high-risk school districts.³³ Higher education sustained a 20% cut totaling \$200 million dollars.³⁴ Cuts to higher education have resulted in a 21% increase in tuition at the University of Maryland.³⁵

At the same time these cuts were made to education in Maryland, the budget for Maryland's Department of Public Safety and Correctional Services actually increased slightly, and there was a \$77 million capital expenditure authorized to add prison beds to the corrections system.³⁶

Ex-Prisoners and the specific communities they are from are impacted by the effects of prison.

“CRIMINAL AND SUBSTANCE ABUSE HISTORIES PUT RETURNING PRISONERS AT A DISADVANTAGE BOTH SOCIALLY AND ECONOMICALLY, AND STATE AND LOCAL LAWS AND POLICIES MAY HINDER, RATHER THAN HELP THE RE-ENTRY PROCESS.”

—The Urban Institute, 2003.

The Impact on Baltimore

According to the Urban Institute³⁷, of the 9,448 people released from prison in Maryland in 2001, 91% were male, and not surprisingly, 76% were African American. Nearly seven in 10 will return to Baltimore County or City. About half had served two years or less in prison, but even a short sentence can impact the people incarcerated, as well as their families and communities when they return.

The impact on Housing

Federal laws passed in 1996 and 1998 permit public housing agencies to deny housing to anyone who has ever engaged in “any drug-related activity.”³⁸ After these laws were implemented, the number of applicants nationally who were denied public housing because of criminal background checks doubled from 9,835 to 19,405. The Baltimore Public Housing Authority considers arrests that did not lead to conviction as part of its admissions criteria, and while the rehabilitation of applicants are also considered, bars on entering public housing for a drug-related arrest may operate as lifetime bans.³⁹ Barriers to affordable housing can affect ex-prisoners’ safe transition back to their neighborhoods, and may inhibit them from reuniting with their families under one roof.

The Impact on Healthy Communities

Nearly a third of state prisoners report having a learning or speech disability, a hearing or vision problem, or a mental or physical condition.⁴⁰ With 9,500 people leaving prison annually, many prisoners return to their communities with health problems they contracted on the inside. But due to the kinds of jobs (and health insurance) most ex-prisoners can access, and the paucity of public health services, few are readied to get the health services they need on the outside. For example, while 9,500 people leave prison annually, the state prepared 476 health discharge plans for people leaving prison in 2002.⁴¹

The Impact on Employment and Local Economies

Researchers have shown that prison time can have a significant impact on labor market prospects for returning prisoners. In his study of youth (16-24) jailed prior to 1980, Richard Freeman of the London School of Economics and the National Bureau of Economic Research found that jail reduced work time over the next decade by 25-30% when compared with arrested youths who were not incarcerated. Meanwhile youth who were convicted or charged with a crime but not jailed did not experience the “massive long-term effects on employment” of incarceration. For those who were incarcerated, Freeman found

two-thirds of their future unemployment is a result of having been locked up. According to Freeman, “having been in jail is the single most important deterrent to employment” with “the effect of incarceration on employment years later being substantial and significant.”⁴² The impact of prison on the workforce prospect of ex-prisoners affects not just their personal income, but that of their children, families and the neighborhoods they are from.

In Maryland, having a felony conviction may mean one is excluded from certain kinds of employment (such as home health care and nursing), and employers are free to inquire about arrests not leading to convictions. The state has no standards for prohibiting employment discrimination by private employees based on conviction records.⁴³ Furthermore, in tough economic times, returning prisoners who do not have the skills needed for a changing, technologically advanced labor market are competing for smaller pool of low skilled jobs, with the growing ranks of those forced off the public assistance rolls.

The Impact on the Family

As the Urban Institute has shown nationally, mass incarceration has an impact not only on those imprisoned, but their children and families as well.⁴⁴ Research has shown that children with parents in prison are more likely to exhibit low self-esteem, depression, emotional withdrawal, and inappropriate or disruptive behavior in the school. Some studies have shown that children of incarcerated parents are at a higher risk of becoming delinquent or engaging in criminal behavior. These impacts are linked to the larger effect of incarceration on the family, which can include the loss of financial and emotional support as well as the social stigma of having a family member imprisoned, and the loss of child care which enables other family members to work.⁴⁵

The Impact on Democracy

Despite recent changes to the state’s felony disenfranchisement law, 40,900 ex-felons will remain disenfranchised when the new law takes effect next year. In an electorally competitive state like Maryland, the disenfranchisement of ex-prisoners will continue to have a disproportionate impact on the voting power of communities of color.⁴⁶

Conclusion and Recommendations

“WE MUST WORK TOGETHER TO GET NON-VIOLENT DRUG OFFENDERS OUT OF JAIL AND INTO TREATMENT PROGRAMS, WHERE THEY BELONG.”

—Governor Robert Ehrlich, in his inaugural speech, January, 2003.

The data contained in this report should serve as a clarion call to citizens and policy makers in Maryland. African Americans in Maryland are being funneled into prisons at alarming rates that are not wholly explained by differences in actual crime. A substantial portion of those sent to prison in Maryland are being incarcerated for nonviolent and drug offenses. And the state is facing another year of budget shortfalls after a year in which education and other needed services experienced significant cuts while corrections received a slight increase.

The good news for Maryland policy makers is that members of the public are increasingly willing to support the kinds of correctional options recommended by the Maryland Sentencing Commission, the Council of State Governments and the Justice Policy Institute in previous reports. According to a poll released in February 2002 by Hart Research Associates, three-quarters of Americans approved of sentencing nonviolent offenders to probation instead of imprisonment, and a substantial majority of the public supports eliminating mandatory sentencing laws and returning sentencing discretion to judges. Likewise, separate public opinion polls conducted by Parade Magazine and ABC News released in February and March 2002, respectively, found that three quarters of Americans favored sentencing nonviolent offenders to alternatives to incarceration like probation and drug treatment rather than prison. Public opinion research undertaken in 1998 at the University of Maryland’s survey research center found that nearly 60 percent endorsed giving judges discretion in sentencing non-violent offenders.

In an effort to achieve the kind of balanced approach to crime that public opinion and best practices support, the Justice Policy Institute offers the following recommendations, most of which correspond with the Sentencing Commission’s and Council of State Government’s recommendations:

- **Divert non-violent and drug offenders from prison into treatment**
- **Return sentencing discretion to judges by abolishing mandatory sentences**
- **Modernize parole practices to expedite processing and reduce unnecessary returns to custody**
- **Create “racial and ethnic impact statements” for all criminal justice legislation modeled after fiscal notes now required for such legislation**

States from Washington to Texas, from California to Connecticut and from Kansas to Arizona have made concerted efforts over the last several years to divert non-violent offenders and drug offenders out of incarceration and into treatment. Michigan, Louisiana, Alabama and North Dakota have reformed their mandatory sentencing laws by returning discretion to judges for non-violent offenders. Ohio and Texas have streamlined and modernized their parole practices by using objective criteria and creating alternatives to re-incarceration for offenders who violate technical (non-criminal) conditions of parole.

Half of Maryland's prisoners are incarcerated for non-violent offenses. As we have shown, Maryland ranks third nationally in the percent of its inmates entering prison for drug offenses and the imprisonment of drug offenders profoundly contributes to the state's racial disparities. Nearly a third of those entering Maryland's prisons every year are incarcerated for parole violations and 58% of those revokees are imprisoned for technical (i.e. non-criminal) parole violations.⁴⁷ Taking sensible steps to reduce the incarceration of non-violent offenders and increasing treatment availability not only makes fiscal sense, but will aid the state in digging out of the profound racial and ethnic disparities plaguing its system.

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