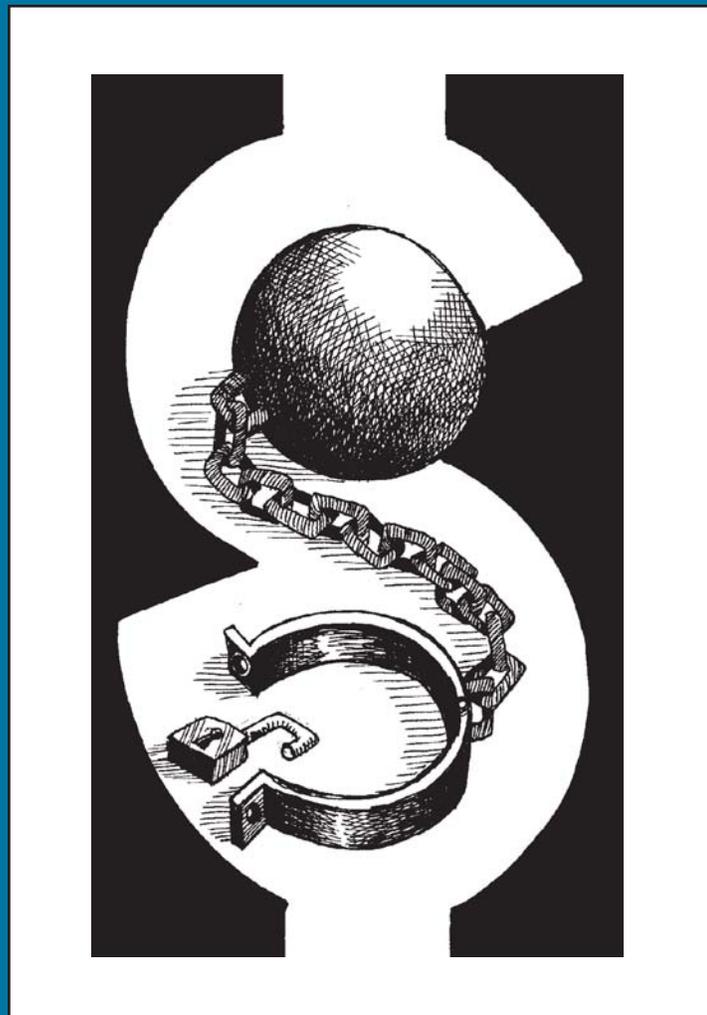


# Reform Cannot Wait

A Comprehensive Examination of the Cost of  
Incarceration in Ohio from 1991-2010





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### Reform cannot wait.

Over the last twenty years, numerous experts have studied Ohio’s criminal justice system and made recommendations for reform. Unfortunately, many of those recommendations have been ignored.

The result is that our criminal justice system is riddled with inefficient policies that increase cost, reduce safety, and contribute to racial disparities.

- Our criminal justice system is functioning well over capacity and over budget.
- We are funneling a significant number of low-level, low-risk offenders into the most costly placements and away from alternatives that cost less and are more effective.
- We waste resources on those who are least likely to pose some future risk to society, rather than focusing scarce resources on ensuring the

most dangerous are adequately supervised.

- We are sacrificing safety to continue funding costly, inefficient policies with failed results.
- Communities of color around the state carry the burden of an unbalanced criminal justice system.
- We fail to document how various programs function, rendering them impossible to audit for cost efficiency or success.

What follows is a survey of the many studies that have

analyzed Ohio’s criminal justice system, identified inefficiencies across program areas, and made recommendations to improve efficiency and fairness.

For the last twenty years, these inefficiencies have been allowed to continue and grow. Recommendations were not acted upon, with officials often claiming that more study is needed and putting the problem off for another day. **That day is here.** In light of the current budget crisis, these inefficiencies can no longer be ignored.

**This report was compiled and drafted by senior staff at the American Civil Liberties Union of Ohio. The ACLU of Ohio would especially like to thank the following staff and volunteers for their contributions to this report:**

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## Executive Summary

The recent report issued by the Council of State Governments in July 2010 sheds light on several areas within Ohio's criminal justice system that are in need of reform.

However, these findings are not new. For the last two decades, numerous well respected and credentialed experts have conducted similar studies but their findings have been largely ignored.

### **Incarceration & Costs**

Ohio is unnecessarily wasting money by failing to efficiently utilize all corrections options.

- Our criminal justice system is functioning over capacity and over budget. State prisons are currently at 133% of capacity. The fiscal year 2011 budget for the Department of Rehabilitation & Correction and Department of Youth Services combined is more than \$1.8 billion, which is more than all of general state government spending.
- Our reliance and spending on the most restrictive corrections settings has grown significantly in recent years. At year end 2007, 1 in 25 Ohio adults was under some kind of correctional control – be it prison, jail, probation, or parole. In 1982, the figure was 1 in 116.
- We are funneling an increasing number of low-level offenders into the most costly placements instead of alternatives that cost less

and are more effective.

- Our spending on the juvenile system is also out of balance. Ohio spends more than \$109,000 per year to incarcerate one juvenile but only spends about \$9,000 per year to educate a child.

### **Incarceration & Public Safety**

We are sacrificing the safety of the general public, corrections officers, and law enforcement by continuing to overspend on costly, out-of-date policies.

- Overcrowded detention facilities pose an increased safety risk for inmates and corrections officers.
- If the state were to reserve the most restrictive placement settings for only the offenders in need of greater supervision, then corrections officers would have a more manageable sized population to oversee. Additionally, a lower population would allow better use of currently strained programs in those settings.
- Housing lower level adult or juvenile offenders in the most restrictive placements decreases the likelihood of successful rehabilitation and increases risk of recidivism.
- By failing to correlate offender risk with degree of placement, the state is squandering money that could be better spent elsewhere.
- Over-criminalization results in the added consequence of creating a growing class of low-level felony ex-offenders

who are closed off from education, employment, and housing — all of which are essential to rehabilitation. This is especially critical for those with mental health or substance abuse problems.

### **Incarceration & Fairness**

Current sentencing policies not only result in increased costs and decreased safety, but research clearly demonstrates that inefficiencies are highest among racial minorities who face harsher sentences than their white counterparts do for similar offenses.

- African Americans account for only 12% of Ohio's total population, yet they account for approximately 45% of those incarcerated.
  - Youth of color accounted for an estimated 21% of Ohio's juvenile population in 2007, yet they represented 49% of all children adjudicated delinquent for felony offenses and 64% of those committed.
  - In 1999, Ohio's incarceration ratio of blacks to whites was 28% higher than the national average.
  - We fail to document the effectiveness of many program areas. More data collection is needed in order to move towards a data-driven, results-based system.
- The current fiscal crisis provides an opportunity to act on the wisdom of the last twenty years and take action.



## Incarceration & Costs

### Highlights:

- **The cost of incarcerating an inmate exceeds the cost of community programs including rehabilitation, parole and probation.**
  - The average cost per inmate per day was \$66.31 in 2010, and has risen since 2007.
  - Average daily costs for a person on probation is \$3.42.
  - Community substance abuse treatment costs on average \$20,000 less per year than incarceration.
  - Moving 10% of prisoners to parole would save state agencies \$3 billion per year nationally.
- **Nevertheless, community corrections programs are underfunded.**
  - Seven times as many new dollars went to prisons as went to the dominant community corrections programs, probation and parole.
  - The average probation officer is responsible for about 100 offenders.
  - Parole officers are assigned on average 60 offenders.
- **Low-level offenders continue to be incarcerated, despite improved technology and programs to encourage their re-entry.**
  - 10,000 low level property and drug offenders were sentenced to state prison in 2008 at a cost of \$189 million.
  - Sort offenders by risk to public safety, calculated by assessing two factors:
    - “Static” factors (such as an offender’s age at time of first arrest)
    - “Dynamic” factors (such as an offender’s current drug use)
  - Utilize “intermediate” sanctions for parolees and probationers who violate conditions of their release, such as day reporting centers, electronic monitoring systems, and community service.
  - Allow inmates to earn credits by completing rehabilitation or education programs, and demonstrating good behavior.
- **Incarceration of youth also creates a severe financial burden.**
  - On average, it costs \$330.33 per day to incarcerate a juvenile.
  - Savings could be realized if fewer youth were sent to secure residential facilities by funding community-based and diversion programs.

### Investing in Community Corrections

For decades, Ohio has operated under policies that have relied heavily on incarceration and enforcement, while programs focused on rehabilitation and re-entry into society have received less support.

While incarceration appeals to many as a way of punishing those who break laws, research conducted nationally and in Ohio shows that it may be less efficient and effective than relying on community programs for low-level offenders.

In Ohio, the recently released Council on State Governments report found that corrections spending rose 21% between 2001-2008 from \$1.04 to \$1.27 billion.

According to the Ohio Department of Rehabilitation and Correction, the average cost to incarcerate a person per day is \$66.31. **With an inmate population in August 2010 of 50,920, this means the daily cost is about \$3,376,505.**

In 2008, the state of Ohio spent nearly \$1,766,000,000 on corrections, with 51,160 sentenced prisoners, marking a 1.5% increase from 2007. Additionally, research suggests that about 30% of the change in incarceration rates over the last 30 years is attributable to increases in state resources to build more prison beds, with crime rates accounting for 32% to 44% of the increase. Thus,



## Incarceration & Costs

decreasing spending on incarceration would have a reciprocal effect on incarceration rates.

More individuals are being incarcerated for lesser offenses. In 2009, 7,653 individuals were incarcerated for fifth degree felonies, which accounted for the largest group of felony commitments in Ohio. 6,541 were committed for fourth degree felonies. Together, the two groups make up 54% of felony commitments.

During the past quarter-century, the number of prison and jail inmates nationally has grown by 274%. In 1982, 72% of offenders were managed in the community, with about 28% behind bars. At the end of 2007, the numbers were essentially reversed, with 69% locked up and 31% on probation or parole.

Probation and parole, the dominant community corrections programs, have had larger population growth than prisons but far smaller budget growth. Seven times as many new dollars went to prisons as went to probation and parole. In 2008, the Pew Center estimated that nationally it cost on average \$3.42 per day to supervise someone on probation; nationally, it costs \$78.95 per day to incarcerate someone, which is more than 20 times as high.

There have been significant advances in community supervision. Sophisticated risk assessment tools now help determine which offenders require the most supervision and what sort

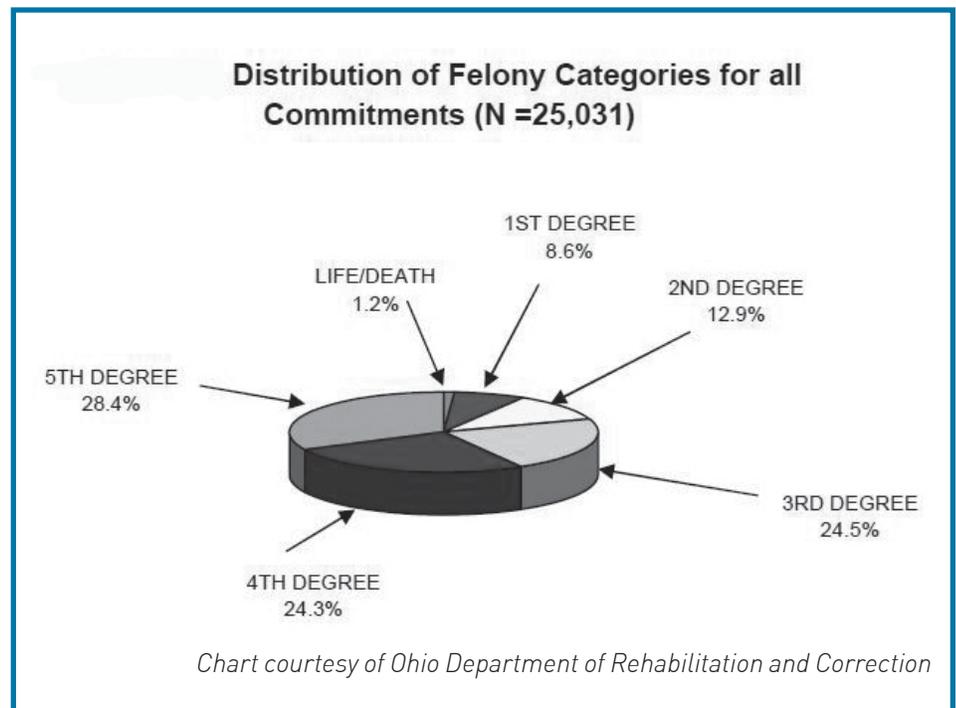
of monitoring and services they need. Global positioning systems, rapid-result drug tests and other technology can track offenders' whereabouts and behavior. Offender supervision, treatment and re-entry programs are incorporating solid research on how to cut recidivism.

The Justice Policy Institute discusses community corrections solutions in great detail in their study, "Pruning Prisons: How Cutting Corrections Can Save Money and Protect Public Safety." They propose that state and federal agencies would save roughly \$3 billion per year if they reduced the prison population by 10% by moving individuals into the parole system.

However, in 2007, approximately 26% of people on parole nationally returned to prison for a technical violation. In Ohio

during 2007, this number was 549 individuals. A technical violation takes place when an adult fails to comply with the rules of parole, conditional release, or community supervision. A technical violation does not include committing a new offense.

Further research has shown that, of the approximately three in five people who return to prison within three years of the start of their parole or probation, 70% committed only technical violations. If Ohio returned only half as many people to prison for technical violations, through measures such as shifting the modality of supervision to one of support and service, it could save \$5,119,425 (the cost of incarceration minus the cost of parole). **Ohio is lagging behind states like Texas, Kansas, Maryland, Ne-**





## Incarceration & Costs

### vada, New Jersey and Georgia, all of whom have initiatives to increase the likelihood of a prisoner's successful reentry.

Since 2004, at least 13 states have adopted legislation creating or expanding community corrections options for nonviolent offenders. Drug courts break the cycle of crime and addiction with frequent drug tests, a continuum of treatment services and increasing penalties for violations.

Reforms to parole systems in other states include:

1. Use of actuarial risk assessment instruments to help identify people who can be more safely supervised in the community.
2. Improved case planning, beginning as soon as possible in one's prison term, to ensure that people receive the services and treatment they need to be eligible for parole.

Community-based alternatives to prison can ensure that people stay in the community with educational and employment opportunities, family, and other support systems.

Additionally, the state must provide resources to ensure that those in community corrections are best poised to succeed.

Managing offenders in the community, when done well, produces appreciable cost savings and public safety outcomes. However, staffing is stretched thin, and the average probation officer now has about 100 offenders on his or her

caseload; parole tends to be slightly lower, at about 60 offenders per officer.

The Justice Policy Institute issued the following recommendations to improve outcomes for people on parole:

1. Shift supervision modality from a law-enforcement operation to one more focused on helping people succeed in the community;
2. Develop systems of graduated responses to supervision behavior that include positive incentives, treatment, and non-incarcerative sanctions;
3. Match intensity of supervision to the level of risk and needs of the individual.

Non-incarceration programs for low-level offenders may be effective for an array of different types of offenders. By mid-fiscal year 2009, the DRC estimates that community corrections programs targeting offenders convicted of failure to pay child support had demonstrated a 12% decrease in incarceration for counties, and a 44% increase in the amount of child support paid by participating offenders.

Additionally, increasing investments in community-based treatment, improving diversion from prison, and ensuring that those leaving prison have adequate care will reduce the financial burden of imprisoning people with a mental illness. **As many as 56% of individuals in state prisons, 45% in federal prisons and 64% of individuals in local jails are**

**living with a mental health problem.** Comparatively, approximately 26.2 % of all adults suffer from depression, anxiety, schizophrenia or other diagnosable mental health disorders.

In terms of reducing the length of stay, states are opting to use "earned time" or credits that shorten an inmate's term to control the prison numbers. These credits can be gained by completing rehabilitation or education programs, demonstrating good behavior, or meeting some other benchmark. Nevada applied this philosophy with success in 2007.

### Provide Treatment for Substance Abuse

From 1996 to 2002, the number of those in jail for drug offenses increased by approximately 47 percent, from 111,545 to 164,372. **The cost of incarcerating drug offenders in state or federal prisons amounts to a staggering \$8 billion per year.** However, there is little evidence to suggest that high rates of incarceration affect drug use rates or deter drug users.

In the report "Disparity by Geography: The War on Drugs in America's Cities," The Sentencing Project makes the following recommendations:

1. Shift funding priorities from enforcement and incarceration (which currently receives two-thirds of the federal drug control budget) to emphasize demand-reduction. This includes



## Incarceration & Costs

making funding available for public treatment options.

2. Rethink the role that law enforcement officers have in addressing substance abuse, especially in communities of color. Police can focus on more serious offenses, or even partner with social service providers to place persons needing assistance in the proper setting.
3. When appropriate, prosecutors should use their authority to seek alternatives to incarceration for drug offenses, particularly if a defendant has a documented history of untreated drug abuse.

Rehabilitation should be offered outside and inside of detention facilities to those who need it. Substance abuse treatment delivered in the community is one of the most cost-effective ways to prevent crime and costs approximately \$20,000 less than incarceration per person per year.

Devoting more resources to social services may lessen drug use as well. Counties that spend a larger proportion of their budgets on policing or the judicial system imprison more people for drug offenses than counties that do not.

The overall drug admission rate for the 10 counties nationally with the highest percent of people living in poverty is six times higher than for the 10 counties with the lowest poverty rates.

The 10 counties with the highest unemployment rates had

drug admission rates that were, on average, nearly four times that of the counties with the lowest rates of unemployment.

Private prisons are often touted as a possible cost-saving measure for states wishing to decrease incarceration funding, but not willing to shift the funds to community programming.

However, a report from Ohio Policy Matters compared public and private detention facilities and found that there was no appreciable cost savings.

Private prisons are typically given a select and far less challenging inmate population than a public institution with similar costs and the same security level. If private prisons were given a typical sampling of prisoners with complex medical and security needs, it is evident they would not be more cost-effective than state facilities as an initial glance at comparative statistics would suggest.

In addition, many factors prevent private institutions from functioning on a level comparative to their state-run counterparts. For example, oversight and accountability are more of a challenge. Furthermore, the ideal of competition between private corrections vendors leading to lower prices for the state is not realized when, as is often the case, there are few to choose from. Finally, when private companies are involved, there is the possibility of bankruptcy, in which the state would abruptly be financially respon-

sible once again.

### Addressing Juvenile Incarceration

States needlessly spend nearly \$5.7 billion a year incarcerating nonviolent youth. Juveniles are incarcerated at an alarming rate in Ohio. The current average cost to incarcerate one juvenile per day in DYS is \$330.33. **The majority of youth in residential facilities have been adjudicated for nonviolent offenses, including drugs (8.6%), technical violations (13.3%) and status offenses (6.6%).**

The range of community-based disposition alternatives should be increased to reduce the number of nonviolent, non-chronic offenders sent to DYS.

Especially for youth, there is a growing number of evidence-based alternatives that cost less and are more effective than incarceration, such as Multisystemic Therapy. Treatment-oriented supervision in the community can lower recidivism rates by 16%.

Non-prescriptive guidelines concerning the kinds of offenders and stages in their “careers” at which a DYS confinement could be replaced by an alternative disposition should be developed using the data collected in this study and similar data about DYS admissions cohorts.

### Seek Life in Prison Without Parole Instead of Capital Punishment

The use of capital punishment



## Incarceration & Costs

by Ohio poses significant costs. While the state has an interest in punishing those found guilty of serious crimes, there may be more efficient ways than continuing to use capital punishment.

Since its inception in 1996, the option of sentencing a defendant to life without parole has been frequently used by jurors. This option actually costs less than the death penalty. Studies in New York, North Carolina, Texas, California, and Florida have confirmed that judicial systems in which the maximum sentence is death are more expensive than those in which the maximum sentence is life without parole, in large part because the legal process from arrest to execution is complex

and lengthy. For example, in 2003, more than a quarter of all death row inmates (59 of 213) had been on death row for 15 years or longer.

However, the additional litigation and costs do not guarantee an infallible justice system. In "A Broken System," a national study of death penalty cases from 1973 to 1995, Columbia University researchers found an overall error rate of 68% reversible errors in almost seven out of every ten capital cases. **Indeed, nearly 40% of Ohio's death penalty cases have been overturned by the federal appeals court.**

**As of 2005, 17 people on Ohio's death row have had their convictions reversed and are**

**awaiting retrial.** Yet, Ohio is second in the country— only behind Texas — in executing people. At least four Ohio death row inmates have ultimately been found innocent and released in the past 25 years because of prosecutorial and judicial misconduct, including the withholding of exculpatory evidence and the denial of the right to cross-examine prosecution witnesses. Collectively, the four spent 61 years in prison for crimes they did not commit.

Flaws in the capital punishment system pose a significant cost to the state and legal system. While the cost of litigating such appeals is staggering, the potential cost of executing an innocent person may be even greater.

### What Is Ohio Senate Bill 22?

S.B. 22 presents a clear first step towards criminal justice reform in Ohio. It awaits floor votes by the General Assembly.

SB 22 will:

- Increase earned credit programs. S.B. 22 revises earned credit programs, which results in less prison time. Certain prisoners will have the opportunity to participate in programs such as education, vocational training, prison industry employment and substance abuse treatment.
- Increase use of community based corrections.
- Revise drug penalties for marijuana and eliminate the sentencing disparity between powder and crack cocaine.
- Increase intervention and diversion programs in lieu of incarceration.
- Implement an inmate reentry plan by guiding the inmate's rehabilitation program during imprisonment and assess needs upon release.
- Reform medical release to address the health concerns of inmates.
- Classify only those under supervised release as "escaped" who are purposefully breaking the law, attempting to break the law, or fail to return for a period in excess of nine consecutive months.
- S.B. 22 is expected to result in a total savings of about \$13.7 million in annual incarceration costs
- Local governments will also likely realize some long-term savings in correctional expenditures.



# Incarceration & Public Safety

## Highlights:

- **Ohio's prisons are overcrowded, posing a serious safety risk.**
  - Ohio's prison population has nearly quintupled since 1975.
  - At the beginning of 2008, Ohio was among the United States' eight largest correctional agencies and growing.
  - In 2008, both full-service jails and twelve day jails were filled over their recommended capacity.
    - More than half of the offenders residing in Ohio's jails have yet to be sentenced for either felonies or misdemeanors, as of 2008.
- **Lawmakers have been forced to cut vital programs, such as education and health care, to compensate for Ohio's spending on corrections.**
  - Between 1985 and 2000:
    - Ohio's corrections budget skyrocketed while increases in higher education spending lagged.
    - Spending on prisons grew at 5.5 times the rate of higher education.
    - African-American men were added to Ohio's prison system at 38 times the rate they were added to Ohio's colleges.
- The cost of capital punishment diverts resources away from effective crime fighting strategies, such as schools, roads, and prevention programs, making us less safe.
- Decreasing incarceration while increasing social programs often enhances safety.
  - States that reduce their incarceration rates see large drops in violent crime.
  - Cutting community programs increases crime.
- **Youth are particularly vulnerable to safety risks.**
  - Ohio detains and incarcerates a greater percentage of its adolescent population than two-thirds of the 50 states.
  - Research suggests that imprisoning youth can have severe detrimental effects, including:
    - Disrupting families;
    - Prompting suicidal behavior; and
    - Increasing the likelihood of later illegal behavior.
  - Community alternatives to incarceration have been shown to yield up to \$13 in benefits to public safety for every dollar spent.

## Jail Overcrowding

Ohio prisons are dangerously overcrowded with steady increases over the past 35 years. **Since 1975, the prison population in Ohio has nearly quintupled.** Currently, Ohio prisons are operating at 133% of their capacity, with projections showing that they will be at 141% capacity by 2018.

According to the ODRC, the inmate to correction officer ratio in August 2010 was 6.9 to 1. With cuts in personnel and the steady rate of incarceration, this overcrowding could pose a serious risk to the safety of both prisoners and guards.

When there are too few guards to oversee prisoners, it becomes more difficult to properly supervise inmates. In addition, inmates often become more agitated because they are unable to participate in activities because there are too few supervisors. This type of frustration can damage the prison environment and cause violence and dangerous situations.

Ohio jails are equally overcrowded. According to ODRC, both full-service jails and twelve day jails were filled over their recommended capacity (111% and 102%, respectively). This parallels the 2007 data that indicates that full-service jails and minimum security jails were then over recommended capacity as well.

**It is also worth noting that more than half of the offenders**



## Incarceration & Public Safety

**residing in Ohio's jails have yet to be sentenced for either felonies or misdemeanors.**

Overcrowding in prisons and jails can also pose a public health risk that can increase costs and liability for the state.

In its annual report on jails, the ODRC noted that 89% of jails met 80% of the selected minimum standards.

When these minimum standards are not met, the Bureau of Adult Detention may respond to complaints. Interestingly, out of the 146 complaints received in 2008, more than 40 (itself more than double the number from any other category of complaint) came as a result of medical treatment inadequacies.

**As the prison and jail populations age, demand for medical services will also increase. The average cost associated with an older prisoner is \$70,000 — two to three times that of a younger prisoner.**

While most prisoners tend to be relatively young, the number of older prisoners is increasing. In addition, overcrowding increases the likelihood of contagious disease outbreaks and other health concerns.

**Unacceptable conditions in jails or prisons can lead to court-ordered reforms, which in some cases have cost millions of dollars.** In 2007, a class action lawsuit charged DYS with excessive use of force and isolation; inadequate health care, mental health care, and educational services for youth;



poorly trained staff; an unsafe living environment; and an inadequate grievance system.

A settlement was reached in April 2008, which requires better mental health services, more educational opportunities, better medical and dental services, increased training for employees as well as hiring up to 115 more juvenile correctional officers, revising the use of force and isolation, and supporting evidence-based community programs for low-risk offenders. The Youth Law Center estimates that this will increase the DYS budget by \$20 to \$30 million a year.

**Increased Spending on Incarceration Harms Safety**  
**At the beginning of 2008, Ohio was among the United States' eight largest correctional agencies and growing. This is neither the result of an**

**increase in crime nor a surge in the population at large.** Rather, it stems from a wave of questionable public policy choices, such as mandatory minimums and other sentencing changes.

Without accompanying tax hikes, lawmakers have been forced to cut or limit other vital programs such as education and health care. Put in perspective, **states collectively increased their spending on corrections by more than 315% between 1987 (\$10.6 billion) and 2007 (\$44 billion), while spending on higher education rose just 21% over the same period.** In 2007, Ohio spent 7%, up 2.5% from 1987, on corrections as a percentage of total general fund expenditures. Between 1985 and 2000, spending on prisons grew at 5.5 times the rate of higher education. For every dollar spent on higher education, Ohio spent 69 cents



## Incarceration & Public Safety

on corrections.

The effect these policies have on people of color is particularly alarming. In 2000, the Justice Policy Institute estimated there were more African-American men in Ohio's prison system (23,200) than there were in Ohio's colleges (20,074). This overall number does not include the large numbers of black men held in Ohio jails. Additionally, between 1980 and 2000, African-American men were added to Ohio's prison system at 38 times the rate they were added to Ohio's colleges.

In its report on the death penalty, the League of Women Voters also notes that the exorbitant costs of capital punishment are actually making America less safe because badly needed financial and legal resources are being diverted from effective crime fighting strategies, such as schools, roads, and prevention programs.

**Research has shown that over the last 10 years, states that have reduced their incarceration rates have seen some of the largest drops in violent crime.** Similarly, making budgetary cuts in services that increase opportunities for education and rehabilitation and strengthen communities may result in increases in crime. A Harvard University study recently found that only 10 percent of the crime decline in the 1990s was due to increased use of incarceration.

More prison spending brings lower public safety returns in that, once the most egregious offenders are committed, more incarceration means more resources are spent imprisoning non-violent offenders and those who are less likely to commit additional crimes.

**Overincarceration Places Our Children's Future at Risk**  
**Ohio detains and incarcerates a greater percentage of its adolescent population than two-thirds of the 50 states and the District of Columbia.** The caseload of the juvenile justice system has increased by over half a million cases in the last 20 years.

Imprisoning youth can have severe detrimental effects on their long-term economic productivity and the economic health of communities. Youth who are imprisoned have higher recidivism rates than youth who

remain in communities due to suspended opportunities for education. Reports of increased suicidal behavior, stress-related illness and psychiatric problems also persist.

A review of the last 10 years of data on incarceration and crime trends shows no correlation between states that increase the number of youth in juvenile facilities and crime. In fact, states that significantly lowered the number of youth incarcerated were more likely to see bigger drops in crime than states that increased their correctional populations.

The incarceration of youth can reduce their educational and vocational outcomes, disrupt their families, introduce them to delinquent peers they may not have met otherwise, and expose them to traumatic experiences, all of which increase the likelihood of later illegal behavior.





### Changing the system Ohio House Bill 235

In response to the problems in the juvenile justice system, advocates have been working with legislators on a reform bill. In June 2009, H.B. 235 was introduced in the Ohio House of Representatives. This proposed legislation focuses on eliminating mandatory sentence enhancements and restoring discretion to Ohio juvenile court judges to treat children on a case-by-case basis by:

- Eliminating the mandatory transfer of youth to adult court (called "bindover").
- Eliminating mandatory Serious Youth Offender (SYO) disposition (which blends juvenile and adult sentences).
- Raising the eligibility for SYO from age 10 to age 14.
- Limiting eligibility for bindover and SYO to only felony offenses of violence.
- Allowing a juvenile court to grant judicial release to children in custody of the Ohio Department of Youth Services after the expiration of their minimum term.

support and evaluate new and different approaches to reduce crime and recidivism among young people. Ohio must invest in intermediate interventions, not buildings.

The most effective programs at reducing recidivism rates and promoting positive life outcomes for youth are administered in the community, outside of the criminal or juvenile justice systems. Some of these programs have been shown to reduce recidivism by up to 22% and may yield up to \$13 in benefits to public safety for every dollar spent.

Juvenile justice agencies should also take the lead in cooperation with schools to develop effective education programs that focus on conflict resolution and dispute resolution, on how the principles of law can operate to everyone's

benefit, and on the positive power of legal institutions.

To achieve long-term public safety gains, money saved on incarceration should be invested in social institutions that build strong communities, including education, employment training, housing, and treatment.

Policymakers should take care to not rely on the "tough-on-crime" rhetoric of the past, but instead on the research that shows that locking up more youth does not keep our communities safe. They must create and fund research to evaluate effective programs and policies in juvenile justice.

They must also develop,



# Incarceration & Fairness

## Highlights:

- **Drug laws have a disproportionate impact on people of color, and have led to an over-incarceration of African Americans and Hispanics.**
  - Drug offenses accounted for over a quarter of total commitments in 2009.
  - People of color accounted for 47.37% of the number of commitments.
  - Though they use and sell drugs at similar rates to whites, as of 2003, twice as many African Americans as whites were incarcerated for drug offenses in state prisons in the U.S.
  - African Americans experienced a 465% increase in rates of admission to prison for drug behaviors between 1986 and 1996.
    - Whites experienced only a 115% increase.
  - The number of drug-related offenses resulting in incarceration more than doubled most other crimes and surpassed the second-highest offense by almost one thousand.
  - In Ohio, blacks are arrested, convicted and sentenced to prison almost 10 times as frequently as whites.
- Ohio's incarceration ratio of blacks to whites is 28 percent higher than the national average.
- Research suggests that there is racially disparate application of mandatory minimum sentences.
- **Black youth are overrepresented at nearly every point in the juvenile justice system**
  - Significant racial disparity exists in the relative number of:
    - Cases resulting in confinement in secure juvenile correctional facilities.
    - Arrests followed by number of diversions.
    - Cases transferred from the juvenile system to adult court.
- **The capital punishment system disproportionately punishes African Americans.**
  - 51.25% of the 160 inmates on Ohio's death row at year end 2009 were African-American.
  - If a homicide victim is white, the perpetrator is 3.8 times more likely to receive a death sentence, and 6 times more likely to be executed than if the victim was a person of color. Equal numbers of whites and blacks are homicide victims.
- **More needs to be done to gather, retain, and analyze data from the criminal justice system to expand the understanding of racial disparities.**
  - Nearly every study was united in the call for Ohio to keep accurate data on race.
  - The Ohio Supreme Court should establish a task force on racial bias in the legal system.



# Incarceration & Fairness

## Drug Law Disparities

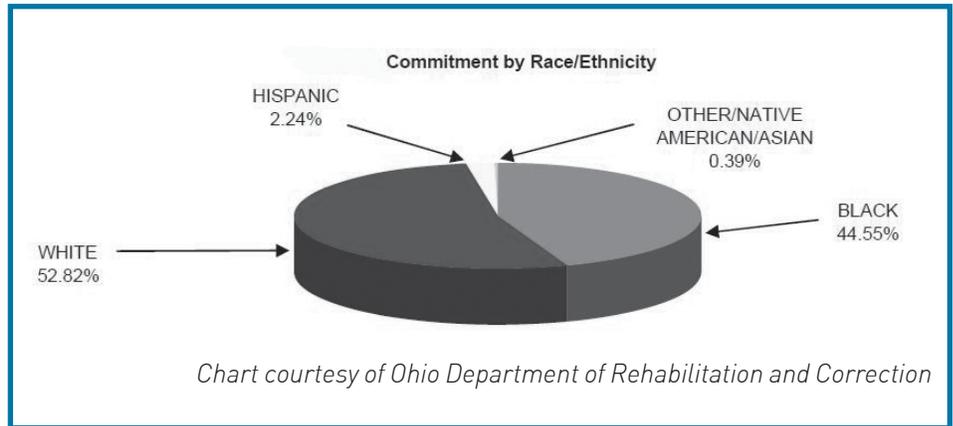
Over the past several decades the U.S. and Ohio have enacted policies that target drug use in a way that disproportionately targets people of color.

In 2009, African Americans and Hispanics accounted for 47.37% of the number of commitments in Ohio (45.20% and 2.17% respectively), which is disproportionate to their demographics in the state. Drug offenses accounted for 27.7% of the total commitments in Ohio.

Drug-related offenses were the most frequent offense that resulted in incarceration, more than doubling most other types and surpassing the occurrence of the second-highest commitment offense by nearly one thousand.

Over-incarceration is not just an Ohio phenomenon. 7.3 million adults are under some form of correctional control in America. Black adults are 4 times as likely as whites and nearly 2.5 times as likely as Hispanics to be under correctional control. One in 11 black adults (9.2 percent) was under correctional supervision at year end 2007.

Though they use and sell drugs at similar rates to whites, as of 2003 twice as many African Americans as whites were incarcerated for drug offenses in state prisons in the U.S. African Americans accounted for 53% of sentenced drug offenders in state prisons in 2003.



Whites experienced a 115% increase in rates of admission to prison for drug behaviors between 1986 and 1996, while African Americans experienced a 465% increase.

In the Ohio Commission on Racial Fairness' landmark 1999 report, they noted the ratio of incarcerated blacks to whites in Ohio is 28% higher than the national average. Ohio ranks in the top ten in terms of states with the largest amount of people in correctional control.

## Why Do These Disparities Exist?

While tens of millions of people use illicit drugs, prison and policing responses to drug behavior have a concentrated impact on a subset of the population.

**Regardless of crime in a particular jurisdiction, police often target the same neighborhoods to make drug arrests, which can increase the disproportionate incarceration of people of color.**

Moreover, the extreme variation in city-level drug

arrests suggests that policy and practice decisions, and not overall rates of drug use, are responsible for much of this disparity. Unlike violent offenses such as murder, rape, or armed robbery, where police respond to crime reports, drug law enforcement is not necessarily offense-driven, but results from priorities established by local law enforcement and political leadership.

Coupled with targeted enforcement by police is the use of draconian laws such as mandatory minimums.

A report by the United States Sentencing Commission noted that of the over-60 criminal statutes that contain mandatory minimum penalties, only 4 frequently result in convictions. They all relate to drug and firearms offenses.

Since the power to determine the charge of conviction rests exclusively with the prosecution for the 85 % of the cases that do not proceed to trial, mandatory minimums transfer sentencing power from the court to the prosecution.



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As a result, they are not uniformly applied, which creates unwarranted disparity in sentencing. **Mandatory minimums disrupt the finely calibrated sentences of the sentencing guideline system.**

An example of the negative impact of mandatory minimums is the disparity between crack and powder cocaine. Previously, the disparity was 100-1, with severe punishments in place for possession of small amounts of crack cocaine. Recently, Congress enacted a law which changed the disparity to 18-1.

While that marks an improvement, the disparity still exists. In addition, the disparity remains in Ohio state law.

Despite crack cocaine being no more dangerous than powder cocaine, those who possessed crack cocaine received penalties far greater than those who had equal amounts of powdered cocaine. And because crack is widely used among black drug users, black communities reaped disproportionate consequences.

A Special Report to Congress found that African-Ameri-

cans accounted for 88% of those convicted for federal crack offenses, while just 4% of those convicted were white.

As a result of both the statutory and guideline differentiation between the two forms of cocaine, the resulting sentences for offenses involving crack cocaine are significantly longer than those for similar offenses involving powder cocaine for any quantity of drug. Since the penalties are completely based on quantity, they fail to take into account proportionality and lead to incarceration of low-level offenders who may be better served in rehabilitation or other community programs.

Lawmakers should reject addressing disparities by increasing mandatory minimums or other penalties for drug offenses. This would only worsen the over-incarceration of low-level offenders.

## Racial Disparities in the Juvenile Justice System

There is a direct correlation between the way adults of color and juveniles of color are sentenced for criminal violations in Ohio. In 1996, 54.7% of the Department of Youth Services population were minorities. Black juvenile males represented 50.21% of that population, while black juvenile females represented 48.89%.

Although minority youth accounted for an estimated 21% of Ohio's 2007 juvenile population, they represented 49% of all

## A Tale of Two Cities

### Growth in Drug Arrests from 1980-2003

In its report, "Disparity by Geography: The War on Drugs in America's Cities," the Sentencing Project notes that Toledo was one of six cities that had an increase in drug arrests over 500%. The below chart compares Toledo to Columbus from 1980-2003.

	<u>Toledo</u>	<u>Columbus</u>
% increase in drug arrests	701%	168%
% increase in drug arrests as % of all arrests	6.7%	4.4%
% increase in proportion of blacks arrested	884%	293%
% increase in proportion of whites arrested	218%	41% decrease



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children adjudicated delinquent for felony offenses, and 64% of those committed to the Department of Youth Services at adjudication. In 2006, for every one white child in custody, there were four children of color.

Despite the higher proportion of incarcerated minority youth, a Bowling Green State University report asserts that **“differences in delinquent behavior are insufficient to account for disparities between minority and white youth in detention and confinement.”**

Actually, the average number of prior court referrals for minority males sent to DYS is about three; for white males, about five.

Racial inequities persist at all stages of the juvenile justice system. Between 1997 and 1999, there were 24,412 black youth cases referred to the court (as opposed to 13,562 white youth cases); 88% of black youth cases referred were handled officially (vs. 81% for whites); 76% of black youth cases handled officially were adjudicated as delinquent (vs. 77% for whites); and 8% of black youth cases (1,366 cases) adjudicated as delinquent were committed to DYS (vs. merely 3% of white cases).

According to a report by Case Western Reserve University, **analysis of the racial disparity ratios for each stage of processing and for each offense group reveals that about 87% of the racial disparity in DYS place-**

**ments is attributed to racial differences in the number and types of cases referred to the court.** The remainder of the overall disparity occurs in the disposition stage of the juvenile justice system. The report explains the remaining 13% of racial disparity in cases referred to the court by claiming that black cases are marked by both more serious offenses and a prior criminal history.

Ohio also has mandatory statutes that require juveniles accused of some crimes to be tried as adults. It is one of only 15 states that remove the transfer decision from judges for certain types of offenses. In 2007, 315 youth — three-quarters of whom were African American — were prosecuted as adults in Ohio’s criminal courts.

### **Invest in Social Programs to Reach Minority Communities**

Both adult and juvenile offenders in the African American community face significant hurdles in receiving rehabilitation, education, and other vital services.

The Justice Policy Institute has noted that differences in the availability of drug treatment for African Americans compared with whites make it more likely that African Americans will continue to struggle with drug addiction.

**In addition, since the 1980s, states with larger African American populations, on average, spend less on social**

**welfare programs.**

As outlined in other sections of this report, it is critical that all Ohioans have access to these services in order to reduce costs of incarceration and ensure greater public safety.

The state should lead the way in developing diversion programs specifically tailored to prevent African American males from entering the justice system. These “alternative” programs may be specifically designed for African American males that are conceptualized, planned and proportionately staffed by African American males. There should also be equal minority access to all diversion programs, whether they are targeted for African Americans or not. The state should also establish societal re-entry/reintegration programs specifically for juvenile offenders and communities.

### **Racial Disparities in Capital Punishment**

There also appears to be a racial disparity in which offenders are given the death penalty, and the race of their victim.

From 1983 until December 31, 2009, the State of Ohio has doled out 256 capital sentences. On average, there have been 9.5 capital sentences issued per year since 1983. As of 2009, of the 33 individuals actually executed by the state of Ohio, 33.3 % were African American and 66.7 % were white.

Of the 160 inmates on death



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row at year-end 2009, 82 (or 51.25 %) were African-American and 71 (44.38 %) were white. This is vastly different from racial demographics in Ohio. In terms of victim demographics, 76 (or 32.3 %) were African American and 145 (61.7 %) were white.

According to the American Bar Association's 2007 report, all fifteen of the white death row inmates and four of the black death row inmates were executed for the murder of white victims. Five of the black death row inmates were executed for the murder of black victims. **As of 2007, no white death row inmate has been executed for the murder of a black victim.**

The League of Women Voters also notes in its report that Amnesty International USA found that murderers of whites are about six times more likely to be executed than murderers of blacks, although about equal numbers of blacks and whites are homicide victims.

Congress' General Accounting Office also found in 1990 that research then available revealed "a pattern of evidence indicating racial disparities in the charging, sentencing, and the imposition of the death penalty" at the state level. Another report concluded that the death penalty sanction of the Anti-Drug Abuse Act of 1988 has been imposed on 90% minorities.

## Ohio Must Collect

### Better Data on Race

Nearly all of the previous studies of Ohio's criminal justice system were united in the call for improved data collection on race. Many researchers noted the difficulty in assessing the true extent of racial disparities when information was incomplete or simply did not exist. Below is a compilation of data that should be collected:

1. Statistical data on race should be collected on pretrial bond decisions.
2. Statistical data on race should be maintained in connection with sentences in all criminal cases.
3. Law enforcement agencies should maintain statistical data as to race in connection with all arrests.
4. The state should collect and maintain data on the race of defendants and victims, on the circumstances of the crime. This data should be collected and maintained with respect to every stage of the criminal justice process, from reporting of the crime through sentencing.
5. State statutes and agency policies need to be reviewed in order to provide for a consistent policy with respect to youth records. The availability of better information is necessary if the monitoring of race differences in informal sanction processes is to be achieved.

The data collection should also include funding from the

state and federal governments to aid officials at the county level to comply.

In addition, the Ohio Supreme Court should engage a person or entity with the necessary skill and experience to design meaningful methodologies for the collection and compilation of relevant data as to race at all relevant stages of the criminal justice system, and to monitor the collection and compilation of the data.

**There must also be mechanism to provide accountability and transparency in the process so the public is kept aware of trends, and officials who do not comply with data requirements are held responsible.**

Officials should also consider establishing a sentencing commission, as recommended by the Governor's Committee on Prison and Jail Crowding, to research and review sentencing patterns in Ohio courts.



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