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# UNLOCKING AMERICA

*Why and How to Reduce  
America's Prison Population*

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## Prologue

*"Mr. Libby was sentenced to 30 months of prison, two years of probation and a \$250,000 fine...I respect the jury's verdict. But I have concluded that the prison sentence given to Mr. Libby is excessive."—President George W. Bush. July 2, 2007.*

President Bush was right. A prison sentence for Lewis "Scooter" Libby was excessive—so too was the long three year probation term. But while he was at it, President Bush should have commuted the sentences of hundreds of thousands of Americans who each year have also received prison sentences for crimes that pose little if any danger or harm to our society.

In the United States, every year since 1970, when only 196,429 persons were in state and federal prisons, the prison population has grown. Today there are over 1.5 million in state and federal prisons. Another 750,000 are in the nation's jails. The growth has been constant—in years of rising crime and falling crime, in good economic times and bad, during wartime and while we were at peace. A generation of growth has produced prison populations that are now eight times what they were in 1970.

And there is no end to the growth under current policies. The PEW Charitable Trust reports that under current sentencing policies the state and federal prison populations will grow by another 192,000 prisoners over the next five years. The incarceration rate will increase from 491 to 562 per 100,000 population. And the nation will have to spend an additional \$27.5 billion in operational and construction costs over this five-year period on top of the over \$60 billion now being spent on corrections each year.<sup>1</sup>

This generation-long growth of imprisonment has occurred not because of growing crime rates, but because of changes in sentencing policy that resulted in dramatic increases in the proportion of felony convictions resulting in prison sentences and in the length-of-stay in prison that those sentences required. Prison populations have been growing steadily for a generation, although the crime rate is today about what it was in 1973 when the prison boom started. It is tempting to say that crime rates fell over the past dozen years because imprisonment worked to lower them, but a look at data about crime and imprisonment will show that prison populations continued to swell long after crime rates declined and stayed low. Today, whatever

is driving imprisonment policies, it is not primarily crime.

Prisons are self-fueling systems. About two-thirds of the 650,000 prison admissions are persons who have failed probation or parole—approximately half of these people have been sent to prison for technical violations. Having served their sentences, roughly 650,000 people are released each year having served an average of 2-3 years. About 40% will ultimately be sent back to prison as "recidivists"—in many states, for petty drug and property crimes or violations of parole requirements that do not even constitute crimes. This high rate of recidivism is, in part, a result of a range of policies that increase surveillance over people released from prison, impose obstacles to their reentry into society, and eliminate support systems that ease their transition from prison to the streets.

Prison policy has exacerbated the festering national problem of social and racial inequality. Incarceration rates for blacks and Latinos are now more than six times higher than for whites; 60% of America's prison population is either African-American or Latino. A shocking eight percent of black men of working age are now behind bars, and 21% of those between the ages of 25 and 44 have served a sentence at some point in their lives. At current rates, one-third of all black males, one-sixth of Latino males, and one in 17 white males will go to prison during their lives. Incarceration rates this high are a national tragedy.<sup>2</sup>

Women now represent the fastest growing group of incarcerated persons. In 2001, they were more than three times as likely to end up in prison as in 1974, largely due to their low-level involvement in drug-related activity and the deeply punitive sentencing policies aimed at drugs. The massive incarceration of young males from mostly poor- and working-class neighborhoods—and the taking of women from their families and jobs—has crippled their potential for forming healthy families and achieving economic gains.

The authors of this report have spent their careers studying crime and punishment. We are convinced that we need a different strategy. Our contemporary laws



and justice system practices exacerbate the crime problem, unnecessarily damage the lives of millions of people, waste tens of billions of dollars each year, and create less than ideal social and economic conditions in many sections of our largest American cities.

This report focuses on how we can reduce the nation's prison population without adversely affecting public safety. For this to happen, we will need to reduce the number of people sent to prison and, for those who do go to prison, shorten the length of time they spend behind bars and under parole and probation surveillance. People who break the law must be held accountable, but many of those currently incarcerated should receive alternative forms of punishment, and those who are sent to prison must spend a shorter period incarcerated before coming home to our communities. Our recommendations would reestablish practices that were the norm in America for most of the previous century, when incarceration rates were a fraction of what they are today.

We first summarize the current problem, explaining how some of the most popular assumptions about crime and punishment are incorrect. In particular, we

demonstrate that incarcerating large numbers of people has little impact on crime, and show how the improper use of probation and parole increases incarceration rates while doing little to control crime. We then turn to ideas about how to change this flawed system. We set out an organizing principle for analyzing sentencing reform, embracing a retributive sentencing philosophy that is mainstream among contemporary prison policy analysts and sentencing scholars.

Based on that analysis, we make a series of recommendations for changing current sentencing laws and correctional policies. Each recommendation is practical and cost-effective. As we show through examples of cases in which they have been tried, they can be adopted without jeopardizing public safety. If implemented on a national basis, our recommendations would gradually and safely reduce the nation's prison and jail populations to half their current size. This reduction would generate savings of an estimated \$20 billion a year that could then be reinvested in far more promising crime prevention strategies. The result would be a system of justice and punishment that is far less costly, more effective, and more humane than what we have today. ■

"Punishment Does Not Fit the Crime" Some Recent Examples				
"Offenders"	Prior Record	Crime	Description	Prison Sentence
Elisa Kelly George Robinson <i>Mother and stepfather<sup>1</sup></i>	None	Nine counts of contributing to the delinquency of a minor	Hosting drinking party for son's nine friends at parent's home	Original sentence of 8 years; later reduced to 27 months
Cecilia Ruiz <i>Single parent - two children ages 6 and 8<sup>2</sup></i>	None	Forgery	Deleting a DUI conviction from the county DUI data base	42 months
Jessica Hall <i>Unemployed mother of three children with Marine husband serving in Iraq<sup>3</sup></i>	None	Throwing a missile at an occupied vehicle	Threw a cup of McDonald's coffee at another car that cut her off while driving	24 months
Lewis "Scooter" Libby <sup>4</sup>	None	Perjury	Provided false testimony to U.S. Attorney (four counts)	30 months
Stephen May <sup>5</sup>	None	Child Molestation	Inappropriately touched two girls and a boy - there was no sexual activity or penetration	75 years
Genarlow Wilson <sup>6</sup>	None	Aggravated child molestation	17 year old male had consensual oral sex with a 15 year old girl at a party that was video taped.	10 years

<sup>1</sup> Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011. Philadelphia, PA: Pew Charitable Trusts, 2007.

<sup>2</sup> In some cities the percentages are higher. For example, in Baltimore, one in five young black men between ages 20 and 30 is incarcerated, and 52% are under some form of correctional supervision. Jason Ziedenberg and Eric Lotke. *Tipping Point: Maryland's Overuse of Incarceration and the Impact on Public Safety*. Washington, DC: Justice Policy Institute, 2005.

<sup>3</sup> Washington Post, July 4, 2007, pages A1, A11, "Penalties for Teen Drinking Parties Vary Widely in Area".

<sup>4</sup> Washington Post, June 30, 2007, page B4, Ex-Aide Given 3 1/2-Year Sentence.

<sup>5</sup> www.washingtonpost.com/wp-dyn/content/article/2007/02/17/AR2007021701560 hit

<sup>6</sup> Washington Post, July 4, 2007, page A4, "Bush Says He's Not Ruling Out Pardon for Libby".

<sup>7</sup> State of Arizona vs. Stephen May, Maricopa Superior Court, No. CR2006-030290-001 SE.

<sup>8</sup> abcnews.go.com/Primetime/LegalCenter/story?id=1693362&page=1.