

CRIMINAL JUSTICE REFORM:
LEARNING FROM THE PAST & PROMOTING GROWTH
FOR THE FUTURE

by

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Abstract

The year 2020 was unprecedented and a year that no one could have predicted. The raging COVID-19 pandemic ravaged everyone's lives in some way, shape, or form. It brought to light more pain and suffering beyond just the pandemic itself—as social inequalities that have been lingering all along were no longer in the shadows and were finally beginning to get the attention they warranted. These injustices included police brutality, racially targeted criminal justice practices, the inadequate treatment and rehabilitation of inmates, and the racist undertones in many statutes and laws. The goal of this paper is to recognize the positive reforms, analyze the root of problems in the CJ system with respect to race, drug laws, and sentencing, and investigate how to overcome the current barriers to promote equitable changes and reforms.

Introduction

The criminal justice (CJ) system in America is in place to keep order, defend the innocent, and prosecute those who are accused of a crime. It has a duty to uphold the civil rights and liberties listed in the Bill of Rights for all defendants to protect against an arbitrary and capricious government. The law, in theory, is to be applied fairly. In practice, however, it is often not. Despite this, the system has been plagued by several issues, including discrimination, sentencing disparities, mass incarceration, and more. Criminal justice reform is a vastly immense umbrella term that includes any movements or changes to improve the system. This thesis examines criminal justice reform in three areas: race, drug laws, and sentencing—all of which are interrelated.

As Ahrens (2020) explained, the United States has begun to come to terms with the unfortunate decisions in the past and the discriminatory policies that have overwhelmed the system and is now trying to rectify and reverse the damage. These three components that this paper addresses highlight areas that need attention and reform, but that is not to say that remedying just those three will entirely fix the broken system. It is a mere starting point for change. Some progress has already been made, including the passing of the *First and Second Step Act* in 2018. While there has been some movement in the late 20th century to early 21st century, there is still a long way to go. The improvement, as well as the shortfalls and areas of need, are discussed.

Race is among those issues that plays an unfortunate role in many parts of the criminal justice system. Black Americans are dramatically overrepresented and are targeted by law enforcement in certain areas, which leads to large disparities in treatment and outcomes. This area is one of the critical overarching concepts that tie into the others that

are also addressed in this thesis. The second concept is drug laws, which primarily over-incarcerate minorities and target lower-income areas. Drug laws make it difficult for offenders when they are released from prison and often times have put people away for lengthy sentences that have been argued are disproportionate to the crime committed. Harsh drug laws have severely impacted the criminal justice system, leading to mass incarceration, higher recidivism rates, and over-policing. Lastly, sentencing is in need of reform. The inconsistencies between states and districts have to led to disparities in treatment and length of sentences. Mandatory minimums, habitual offender laws, and three-strike laws impose heavy punishments on many people, leaving virtually no room for them to change their lives or reintegrate into society.

While the problem areas have been identified and recognized by many, there is no instant fix. Offenders are released back into society with no help and a track record that is hard to get rid of, which only increases their risk of recidivism. Gridlock in Congress is a large roadblock as well. Politicians do not agree on the best way to handle these issues. If there is not bipartisan support, then a bill will not pass. Beyond the federal government, states also can create and change laws, which is another roadblock. In addition, police departments also vary drastically in how they handle certain situations. The prisons are overcrowded and deciding to release people without getting rid of the records is like letting them “walk free” but with an imaginary ball and chain following them everywhere. If change is going to happen, all aspects of the system and those involved need to get on board. Finally, this thesis highlights possible changes that could be made and what changes may take longer to implement. The system is failing the public right now, and it is up to everyone to fix it.

Race

History

The connection between the criminal justice system and race and has long been a persistent problem, disadvantaging Blacks and other racial minorities. There seems to be a never-ending cycle of recidivism that is trapping citizens in the prison system. It has even been found that “[w]hile Black and White Americans use marijuana at about the same rate, Black Americans are 3.73 times more likely to be arrested or marijuana offenses” (Ahrens, 2020, p. 392). That is just one example of racial disparities, but there are many more. In the 1980s, cities all over the country, including New York City, started implementing *broken windows policing* that caused a skyrocket in minority arrests over minor infractions (Chronopoulos, 2020). The *broken windows theory* was motivated by the “Safe and Clean Neighborhoods Program” enacted by the State of New Jersey in the mid-1970s to improve community life in twenty-eight cities that specifically target run down neighborhoods, and behavior and conduct they deem is associated with criminals (Chronopoulos, 2020, p. 1087). Other policing techniques and laws targeting lower socioeconomic minority areas have continued to exacerbate the problem over the years; these include stop and frisk, aggressive policing, community policing, deciding what behavior to target, racial profiling, and quality-of-life policing (Chronopoulos, 2020).

This history of race being a major factor in outcomes of the individual in the CJ system has been ingrained in some law enforcement biases. Wide enforcement discretion for law enforcement officers, prosecutors, and judges has resulted in the disproportionate treatment of individuals based on race and class (Ristroph, 2019). Discriminatory law making that turns a blind eye to biases and creates a sense of color blindness led to the

creation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Peterson, 1985). This law was intended as a blanket statement to drug users and sellers that the government was going to crack down on drug crime but, instead, it just ignited a fire. Peterson (1985) explained that, “[l]egislators may criminalize or assign penalties to harmful behaviors that are common among preferred segments of the population (e.g., the lower classes or minorities), fail to criminalize or assign only slight penalties to harmful behaviors that are common among preferred segments of the population...” (p. 244). Basically, politicians were able to circumvent explicitly stating their biases by perpetuating them in bills through discrete wording. There were, however, other politicians who explicitly stated their intolerance, prejudice, outright racist views by wanting to correct minority groups they found “politically and morally disruptive” through legislation (Peterson, 1985, p. 348). It appeared that federal drug laws were intended as a social correcting tool within race and class (Peterson, 1985). This problem is deep rooted in societal norms that are implicitly biased and passed on without noticing.

The United States then declared a War on Drugs to combat the use of illegal drugs (Ahrens, 2020). However, this War did not help the problem or reduce drug use; instead, it aggravated the issue and caused mass incarceration of mainly Black Americans. It was basically permission for law enforcement and states to impose harsher sentences and discriminate against minorities. In Los Angeles, in the 1980s, the city tried to respond to the overwhelming increase in crack cocaine use by the militarization of the police (Murch, 2015). This not only worsened the problem, but it used crack cocaine as a scapegoat to continue to target and over-police Black neighborhoods, which further marginalized and

economically depressed these areas (Murch, 2015). The type of policing was not just in Los Angeles, as this aggressive racially motivated policing was used across the country.

The overcriminalization of drugs continued into the 1980s, with the increase of illegalized substances through The Violent Crime Control and Law Enforcement Act of 1994, which was sponsored at the time by Senator Joe Biden. It was intended to crack down on criminals by heavy policing and expanded definitions of what is criminal (Palmiotto, 1998). The “crime control model” was intended to have a CJ system that would process and convict criminals quickly, but this led to overpopulating the prison systems. In addition, state legislators were passing strict sentences for crack cocaine, among other drugs, and introduced mandatory minimums for these offenses (Ahrens, 2020).

These changes directly impacted minorities, by targeting the lower income areas and Black Americans. The system has tried to cast a false perception that Black Americans use and sell more drugs than White Americans, by choosing to incarcerate more Black Americans.

Black American Arrests

Part of the reason for the astronomical increase in Black arrests can be attributed to policing techniques and tactics that have been taught, integrated, and accepted as police practice for far too long. One of the techniques is racially profiling individuals based solely on their race, ethnicity, and skin color. Racial profiling is when law enforcement seeks a suspect based on their ethnicity, race, gender, and other physical characteristics. In theory, it is necessary at times to catch a criminal, if a crime has already been committed. On the other hand, it can easily be abused and manipulated into a discriminatory way of policing when they use it in a prejudiced and targeted way to assume someone has already

committed a crime based on their appearance, when there has either not been crime committed or overgeneralize a characteristic to a large group. This became a part of the structural law enforcement system in New York during the 1980s (Chronopoulos, 2017). The policing efforts expanded racial profiling to be able to “stop-and-frisk”. This is when an officer decides to pat someone down whom they believe looks suspicious, committed a crime, or by directly targeting minorities. Another one is broken windows policing, which was adopted by Commissioner William J. Bratton of the NYC Police Department (Chronopoulos, 2017). The broken windows policy directly targets run down areas for police to over-patrol and arrest individuals for disorderly behavior. However, this technique had been used since the post WWII era in 1945, by classifying certain behavior as undesirable, and, more specifically, used terms like “slum” and “urban blight” (Chronopoulos, 2017). Behaviors like asking for money, homelessness, and whatever else was classified as disorderly conduct allowed for the social reconstruction of NYC as well as many other areas by directly minorities. Ristroph (2019) also included unusual concerns being classified as criminal, including “drunkenness, vagrancy, and public order offenses” (p. 1960). Conduct was being defined as criminal that far expanded upon the previous crimes, which led to overcriminalization. These techniques greatly increased Black arrests, but this is not a collectively exhaustive list.

The U.S. incarceration rate is currently five times higher than it was in 1970 (Ristroph, 2019). One of the reasons why it increased was through the expansion of authority and discretion to police officers. The “noncustodial sanctions, police harassment and brutality, and social and civil disabilities associated with criminal records”, along with imprisonment, were a new form of oppression of minorities (Ristroph, 2019, p. 1957).

Convictions

The part of the CJ system that was rapidly gaining more discretion and power to make decisions was judges and prosecutors. This brought an entirely different problem to the disparate treatment of Blacks. In the late 19th and early 20th centuries, criminal laws began being codified, which transformed the amount of discretion given to judges and prosecutors (Ristroph, 2019). The common law allowed for expansion of the previous amount of judgment in prosecuting cases and punishments than ever before. Around the same time these changes were being made, police forces were rapidly increasing their numbers, which also made the pool of discretion wider.

Ristroph further explains that this mass incarceration has been caused by more than just high imprisonment rates, including... “police stop, arrests, misdemeanor convictions, the use of criminal records, noncustodial sanctions, and so on” (2019, p. 1952). Prosecutors were hungry to make convictions, regardless of how they get there—via a guilty plea, plea bargaining, or winning a trial. Divulging deeper into the causes of mass incarceration reveals the problem of adjudication. This encompasses the prosecutorial discretion being exercised by prosecutors on defendants to plead guilty regardless of whether they committed the alleged crime or not to avoid a lengthy sentence if they lose at trial. This evokes fear into defendants, who usually have very little understanding of the CJ system.

Convictions do not always entail prison sentences. Although prison populations have gone from “100 per 100,000 in 1970 to a high of about 750 per 100,000 in 2008”, incarceration does not emulate everything that is happening (Ristroph, 2019, p. 1991). Since most defendants who are found or plead guilty do not go to prison and have their sentences converted into probation, this places a disproportionate burden on minorities

(Ristroph, 2019). These alternative sentences in hindsight are a great alternative to prison, but they have fees, time, and intense restrictions that can directly affect against minorities. This leads to infractions or breaking a rule that can send them straight back to the prison sentence and tack on more time.

Prisons are dirty, drug and disease infected dens that mostly do not rehabilitate inmates. If anything, it deteriorates their mental health and wellbeing, while also creating roadblocks for them to return to a normal life if and when they are released. There is not enough professional treatment or care for the inmates. Isolating techniques of solitary confinement are still used for punishments, including minor infractions of prison rules. In 2014, 18 states reported that their prisons were operating at full capacity, and nationally the capacity rate for all correctional facilities was 103.9% (Nowotny et al., 2020). There are compounding issues in prisons because many prisoners have underlying health conditions, whether from drug use or socioeconomic reasons, that have led to a poor diet and lack of exercise, making them particularly vulnerable to other diseases. In the past year, COVID-19 has exposed the need for progressive criminal justice reform because the conditions of many prisons are inhumane and terrorizing to inmates, while not providing them proper care (Nowotny et al., 2020). America has this false notion that locking someone away and doing nothing else is sufficient to prevent them from recidivating. That it is far from the truth. This pandemic has only further exploited the already known fact that prisons and jails are incubators for diseases. According to one researcher, “[s]eventy-one percent of Americans polled in a November 2017 survey agreed that ‘incarceration for long periods is counterproductive to public safety due to the absence of effective rehabilitation programs in prisons’ (Gramlich, 2018, as cited in Berryhill, 2020, p. 486).

Only in the face of COVID-19 have some jails and prisons started to mitigate prison populations by converting nonviolent misdemeanor prison sentences into parole, probation, or just dropping the charge (Nowotny et al., 2020). Approximately 11% of the prison population is 55 and over, which puts them at direct risk for experiencing bad symptoms from the virus (Nowotny et al., 2020). This directly impacts minorities within the prison system, who make up majority of the population and are at direct risk of getting the virus.

Sentencing- General

Under the realm of sentencing, wide discretion has been an issue that has allowed prosecutors and judges to overly prosecute and punish. One attempted reform was legislatures' creating sentencing guidelines; however, those were a failed plan. It was an attempt to limit discriminatory discretion of judges; however, they were harshly affecting minorities with mandatory minimums (Berryhill, 2020). The reason for this is judges just cannot go below the minimums, but they could use their prejudice against someone or a class of people to go over the maximum and sentence them to a lengthy prison sentence.

An example of mandatory sentencing by legislatures is seen with regard to crack cocaine. In the 1980s, Congress voted on the use of mandatory minimums for crack cocaine use. There was almost a unanimous vote, including the Congressional Black Caucus, to sponsor a bill in support of Ronald Reagan's 1986 Anti-Drug Abuse Act (Murch, 2015). This bill resulted in a "100:1 disparity for crack versus powder cocaine in federal drug cases, resulting in the disproportionate incarceration of large numbers of Black offenders" (Murch, 2015, p. 163). What was confusing was that Black Americans were supporting a bill that disproportionately affected the Black community but, at the time,

there were “divisive punishment campaigns” and support for locking away criminals, but communities were at odds with each other on how to handle this new drug epidemic. The use of militarized policing methods in Los Angeles was thought to help get rid of drugs and gangs, so community members and elected officials were in support of it at the time (Murch, 2015). Prosecutors are also given a wide array of discretion to charge offenders with certain crimes. They also have no one reviewing their decisions regularly unless explicit issues drew public outcries. In the states, for example, California passed the Street Terrorism Enforcement and Prevention (STEP) Act in 1988, which required additional charges for convicted people who have and have had gang affiliation, resulting in from one to five years in state prison per charge (Murch, 2015). This led to mass incarceration of minorities in California since it was trying to crack down on gang activity, and therefore disproportionately affected Black communities by putting them away for longer because of an affiliation.

Drug Laws

History

Drug regulation in America came into being in 1914 at the federal level with early legislation that mandated restraints, punishments, and began classifying drugs as criminal (Ahrens, 2020). The intent at the time of targeting various drugs and criminalizing them was to regulate the minorities that the public officials at the time believed were involved with them. Even though it has been shown that Whites and Blacks in America use drugs at around the same rate, the racism and discrimination were clear in these drug laws. In the 1930s, many states enacted statutes criminalizing cocaine and marijuana. Cocaine use was thought to be linked to Blacks, while marijuana use was linked to immigrants from Mexico,

which further ingrained the racist roots of drug laws targeting minorities and immigrant communities. In 1937, the Marijuana Tax Act was passed that explicitly made all consumption and uses of marijuana illegal under federal law (Ahrens, 2020). It was not until the 1970s when marijuana became a prominent issue linked to Black communities and police started to crack down on it. The 1980s and 1990s, focus shifted to include the criminalization of crack cocaine that was linked to minority communities (Ahrens, 2020). This is not to say that it was not used by all races and in all areas, because it was. However, the police were mostly targeting Black and other minority areas to enforce the drug laws. For example, the crack epidemic exploded in the 1980s in New York, as “[a]rrests for minor infractions increased by 125.8 percent between 1981 and 1987” (Chronopoulos, 2020, p. 1092). Legislators across the country were responding to the War on Drugs by increasing maximum penalties for drug offenses and the introduction of mandatory minimum sentences, specifically for marijuana and crack cocaine.

The disparate treatment was fueled by the desire for legislators to classify drug users as “less than” in society. Instead of addressing the underlying problem of addiction that was running rampant in the United States, legislators exacerbated the problem by ignoring the medical condition of dependency on drugs and putting offenders often times in inhumane conditions in prison, only for them to be released and recidivate. The marijuana and cocaine laws have far impacted the incarcerated individual beyond just themselves; their families and communities suffer the most. This has left children to grow up without a father or mother, has put families in poverty from the lack of incomes, has taken away their children from them, has prevented them from returning to certain jobs, and has directly impacted their financial security and wellbeing (Ahrens, 2020).

Murch (2015) explained how, in the 1980s in Los Angeles, law enforcement was able to manipulate the system to use oppression of minorities by responding to the public outcry on the cocaine “drug crisis” by classifying it as “[s]tate-sponsored and moral panic-driven discourse of the [crack epidemic]” (p. 162). This deviation in the language changed the intent to pursue crack cocaine users and dealers to allow for the militarization of police, instead of rehabilitation and preventative methods of dealing with substance abuse crises. It also alleviated public pressure from upper-class citizens who were afraid of the drug crisis because they did not want the crack cocaine in “their neighborhood.” In Los Angeles, mandatory minimums, strict enforcement of laws, eradication of gangs, and targeting minority communities were all authorized by the drug laws in the 1980s that were motivated by Ronald Reagan’s War on Drugs (Murch, 2015). The number of minorities in the California Department of Corrections from 1982 to 1995 was increasing at astonishing rates, which marks the culminating consequences of mass incarceration. The number of Blacks incarcerated during these times “[i]ncreased from 12,470 to 42,296, while Latino incarceration grew from 9,006 to 46,080” (Murch, 2015, p. 172). Prison populations were surging.

Disparate Treatment of Drug Laws on Minorities

The discriminatory drug laws, specifically pertaining to marijuana and crack cocaine, have disproportionately affected racial and ethnic minorities, particularly women. Women in prison populations were eight times the number of women incarcerated in state and federal prisons and county jails for drug law sentences in 2005 then they were in 1980 (McCurdy, 2019). The women being absent from the household had a direct impact on families, leading to financial instability and loss of parental rights. The Anti-Drug Abuse

Act of 1986 led to the passage of the “[m]ost notoriously discriminatory federal criminal laws, also known as the 100 to one crack to powder disparity” (McCurdy, 2019, p. 193). This extreme drug law led to crack cocaine charges getting a mandatory minimum sentence of 5-years. The Boggs Act, which was enacted in 1951, created these mandatory minimum requirements for drug laws in state legislatures. Crack cocaine was analogous with minority communities and poorer areas, which led to direct discrimination against these people. It was more widely available in less affluent areas and with minority communities because crack cocaine is cheaper to make (McCurdy, 2019). Richer Whites who could be caught with far more grams of power cocaine could still receive a shorter sentence, just because of the drug classification. As one could see, these drug laws are associated with racism and incentivized with targeted motives of the population they want behind bars.

Since mandatory minimums are the bare minimum that a judge can go, it prohibits them by restricting their judicial independence and discretion from going less than the “going rate.” Even if a punishment is egregious to the crime that was committed, the punishment cannot be minimized. This pressure of having to face a long sentence forces those who are innocent to plead guilty to a crime they did not commit in order to avoid the worst-case scenario (McCurdy, 2019). This is especially true with minorities, who cannot afford to take the risk of going to trial. Even worse than a mandatory minimum would be losing at trial and the judge sentencing beyond the mandatory minimum in the form of a trial penalty, which involves a judge imposing a more severe punishment on an offender for wasting the court’s time with a trial. This also gives the power to prosecutors since judges cannot take the defendant’s background, criminal record, or probability of recidivating into account. Prosecutors receive some of the least amount of oversight in the

criminal justice system because they are at the helm of the ship. Oversight for prosecutors is a quintessential necessity to ensure fair and equitable motives, practices, and charges that are being put forward; however, this is rarely evaluated. Prosecutors could have a bias against a certain demographic of people, but it can be difficult to prove until substantial evidence and years of corruption come to light. This has allowed for dishonorable and unscrupulous behavior in the courtroom that leads to mass incarceration of Blacks in the prison system.

The facts do not lie about the racism in the criminal justice system. Drug offenders comprise approximately 45 percent of prison populations (McCurdy, 2019). Mass incarceration of minorities has been studied and implicitly shown that this is an imminent problem that needs to be remediated. McCurdy (2019) stated:

African Americans and Latinos make up 30 percent of our populations; they make up 60 percent of our inmates. About one in every 35 African American men, one in every 88 Latino men is serving time right now. Among White men, that number is one in 214 (p. 222).

Minorities are treated disproportionately by these drug laws and reform is needed now. The failed attempt at deterrence by creating strict drug laws has led to mass incarceration.

Sentencing

History

Disparities and disproportionate treatment of minorities are found within the sentencing stage of the CJ system. After the implementation of drug laws that over-criminalized marijuana and crack cocaine, mandatory minimums and sentencing guidelines followed suit. Richard Nixon created the War on Crime to appease the middle and upper-

class Whites who felt frightened by drugs and urban crime (Berryhill, 2020). Mandatory minimums were first created with the intent to prevent discriminating against Blacks; however, it did quite the opposite. Judges still used racial biases when sentencing Blacks by lengthening their sentences beyond the minimum (Berryhill, 2020). Forced plea bargains by prosecutors entrap many defendants into these harsh sentences in fear of losing at trial. Sentencing issues are a direct result of congressional statutes that have been integrated into federal and state legislation to penalize drug users.

Sentencing Guidelines

There was a bipartisan movement in the 1970s for legislators to come together and crack down on crime. This enacted truth-in-sentencing, which eliminated good behavior credits for early release and paroles (Crutchfield, 2017). Sentencing guidelines were put in place and included mandatory minimums, truth in sentencing, longer sentences, and more. Eradicating good time served created a backup in the prison system since inmates were no longer eligible for parole. The intent of this enactment was to reform racial biases by prohibiting anyone from getting special treatment and released early; however, the actual effect was the polar opposite, as this led to mass incarceration and racial disparities in prisons (Crutchfield, 2017). Criminal justice reform was actually further perpetuating the problem,

intending to rid the system of arbitrary and subjective decision making, which was thought to produce unwarranted racial and social class disparity in jails and prisons, joined with get-tough-on-crime advocates to change practices (Crutchfield, 2017, p. 333).

Some of these other changes to sentencing were determinate sentencing, which removed a subjective parole board, strict sentencing guidelines, and outlawing parole. These concrete laws gave no room for discretion or taking defendant's background, socioeconomic status, marriage status, or living situation into account. This caused racial disparities against minorities by locking them up for a definite amount of time. One clear example was the crack cocaine versus powdered cocaine disparity that had a direct correlation to Blacks and Whites—leaving Black crack cocaine users to higher mandatory minimum sentences (Crutchfield, 2017). In legislators' attempt to rid the system of any subjective matters that could be biased, they exacerbated the issue. These longer sentences left Blacks imprisoned for years, and with no positive outlooks or opportunities when finally released, if they even were released.

In 1984, Congress passed the Sentencing Reform Act, whose intent was to solve inequalities and disparities in federal sentencing; this created a Sentencing Commission that created federal sentencing guidelines (McCurdy, 2019). The determinate sentences that were being created were not proportional to each individual's punishment, as judges could not give leniency and reduce the sentence due to mitigating or compelling factors. The sentencing structure was guided on four principles, in numerical order of importance: punishment, deterrence, incapacitation, and rehabilitation (McCurdy, 2019). The ideology at this time conveys that the retributive approach to punish (because committing crimes is bad to society) was more important than anything else. Criminal justice officials were not concerned with recidivism or the rehabilitation of these individuals, which adds to the causes of mass incarceration. When you are not treating the source of an issue, it becomes disastrous, and history keeps repeating itself.

Multiple attempts for Congress to reevaluate past laws in the 1990s left the lingering issue to prevail in the 2000s. In 1994, legislators remediated part of the bill—by illuminating the 100 to one ratio for cocaine sentencing (McCurdy, 2019). It was not until 2005 when Stephen Breyer, a U.S. Supreme Court Justice, reviewed the 1986 Anti-Drug Abuse Act in *United States v. Booker*, 543 U.S. 220, where he deemed that there needed to be a more cohesive plan to eliminate mandatory minimums (McCurdy, 2019).

While there has been some sentencing reform in the late 1990s and 2000s, which will be further analyzed in the next section, there is still a long way to go for equality in the CJ system.

Examples of Criminal Justice Reform

Ahrens (2020) has called for the complete restructuring of America's criminal justice system because of past criminal justice forms that were failures: "[t]he response to decades of mass incarceration that has positioned the United States as the world's foremost incarcerator—is going to need to involve structural changes in criminal processes as well as substantive changes in criminal law" (p. 387). In the 21st century, the U.S. has seen the most bicameral legislation and bipartisan support for reforming the criminal justice system. Presidential pardons and Governors' power to grant clemency in criminal cases have caused thousands of individuals have had their sentences reduced. This is just one small piece of the puzzle, as you have to also fix the underlying problem that is causing mass incarceration of Blacks.

Another major change was the elimination of the 100:1 crack and power cocaine disparity being reduced to 18:1 in 1994, which also catapulted attention to addressing mandatory minimums and sentencing guidelines later on (McCurdy, 2019). In 2005, the

U.S. Supreme Court revitalized progressive reform initiatives to fully address the crack and powder cocaine disparities in *United States v. Booker* (McCurdy, 2019). This caused the Sentencing Commission to release new guideline suggestions to Congress in 2007 to increase the amount of crack cocaine to require a five-year mandatory minimum and remove the mandatory minimum for low level possessions of crack cocaine (McCurdy, 2019). This was a fair attempt to reduce racially targeted laws, but the laws are still targeting minorities, just a to a lesser extent. Slowly, progress is happening.

In 2008, under President George W. Bush's efforts to invest in problem solving courts and other reentry programs to better reintegrate prisoners back into society, the Second Chance Act was passed by Congress and signed into action (McCurdy, 2019). This bill allocated grants to these organizations and programs to help fight recidivism. Mental health, drug, veterans' treatment, and other courts were all created to help combat the mass incarceration crisis. President Barack Obama wanted to address the racism in the law and fix inequities, as he stated how, "[a]n estimated seventy million Americans – roughly a third of the adult population – have some type of criminal record, which can trigger a whole host of stigmas and restrictions..." (2017, p. 818). The United States spent an average of \$81 billion on the criminal justice system to operate back in the early 2000s, when a large portion of the money could be allocated into social programs, education, and other alternatives to help youth and to provide them with better opportunities that help them avoid the prison system (Obama, 2017). In 2010, the Fair Sentencing Act was enacted, which reduced the 100 to one disparity to eighteen to one and abolished the five-year mandatory minimum for crack cocaine (McCurdy, 2019).

President Donald Trump signed the First Step Act into action in December 2018 to remediate bail reform, marijuana reform, and civil asset confiscation (Berryhill, 2020). This bill was pivotal to making changes for Black Americans. Some of the specifications of the bill included reducing mandatory minimums, giving judges the ability to use discretion in the figure of a “safety value” to go below a mandatory minimum, and to retroactively apply the Fair Sentencing Act of 2010 (McCurdy, 2019). The last major aspect was huge since this meant offenders who have been behind bars for years may now be finally released. The mandatory minimum laws were changed in this bill for the federal *three strikes laws* that required a life sentence to now be a twenty-five year sentence, and two strikes now warrant twenty to fifteen year sentences (McCurdy, 2019). This bill has released more than 1,000 people.

There have been recent efforts to break the application of economics to the criminal justice system, as there has been a false belief that the connection between effective punishments and economics will be rational (Lecture & Hylton, 2018). Legislatures have thought they were acting economically by using the criminal justice system as a deterrent to crime; however, that has had the adverse reaction, leading to one of the largest budgets to run the system in the world. This creates motivation to monopolize the CJ system through private prisons that are for-profit and hire lobbyists to put more emphasis on locking more people up (Lecture & Hylton, 2018). Reformers are trying to eradicate private prisons, and any other for-profit thresholds controlling on how the system is run.

Marijuana Decriminalization’s Impact

The United States began the fight to decriminalize marijuana in the 1970s because of the predominant use of the substance in society. The reforms started with lessening

possession charges of marijuana to a civil violation that only required a \$100 fine in the state of Oregon—5 years later, 10 more states instituted similar statutes (Single, 1989). Widespread Marijuana reform that eliminates unnecessary penalties is quite difficult, as it is classified as a Schedule I Controlled Substance by the federal government, which makes it difficult to lessen restrictions and even to study by scientists. Decriminalization of marijuana laws have helped to change the targets of police, as they are able to focus on other more serious illegal drugs and perpetrators. Critics of these policy changes are concerned with increased use and the social costs of legalizing these drugs—both of which were subsequently not supported by research (Single, 1989). At one time many people and politicians believed that marijuana was a gateway drug that led to increased drug use and being exposed to more dangerous drugs; but after decades of research and refuting that claim, fourteen states have marijuana legalized for either medicinal, recreational, or both uses (Ahrens, 2020). This major shift in state legislators' decisions to prosecute other crimes and drugs that they deem more important has helped to reverse some of the prejudicial and discriminatory laws targeting Black Americans. The disconnect between the states and the federal government still reigns supreme today, as marijuana has not been legalized federally.

Issues with Criminal Justice Reform

The solution to fix the system is not a “one size fits all” type of issue; it is complex. This will require bicameral support in Congress, federal and state funding, and systemic structural changes. It cannot be done overnight and must start with retroactively fixing the issues at hand before creating future laws. This means dealing with the current prison

populations—increasing treatment programs, bail reform, eradicating corruption, decriminalizing marijuana, releasing and/or paroling inmates who have disproportionate sentences, and more. The movement towards a more equitable system means dealing with impediments to reform—groups and individuals who do not want the system to change, checks and balances on judges’, prosecutors’, and police departments’ practices and actions, and addressing the shortage of funding (Berryhill, 2020).

Prosecutors and judges face outside lobbying groups that are putting pressure on them to be tough-on-crime (Berryhill, 2020). This puts the emphasis on plea bargaining and a crime control method that just focuses on gaining convictions. The United States spent \$100 billion on policing, but officers have little racial bias training (Berryhill, 2020). Some, but not all, police departments are using their funds to create a prejudice and tough-on-crime culture that causes degradation of the Black communities with higher arrest rates.

Increased community involvement by police officers, known as community policing, is believed to build the bridge between society and police to help lower crime rates. This tactic is backed by support that shows it can increase citizen satisfaction with police and approval of police, but there is no evidence that this reduces crime (Berryhill, 2020).

There have been movements in the recent 2000s to restrict police officer’s discretion and provide more adequate training (Ristroph, 2019). However, completing both of those tasks is far from easy. Lobbyist groups advocate to shut those bills down, arguing that police officers have correct training and know how to exert their discretion. In some jurisdictions, this may be accurate, but without more discretion, one cannot over generalize one way or another about restricting discretion. In cases when there is an abhorrent abuse

of power, it can usually be traced back to the poor training and unconscious biases of the department—some may claim that these are not isolated incidents and that all police departments have ingrained issues. Regardless of where one falls on the argument of whether police departments are systemically destined to abuse their power, one thing is for sure: a majority of police departments are deprived of proper training, which leads to horrific tragedies that should have never happened (Ristroph, 2019). There have to be limitations in place that are a balance to allow police officers to protect themselves while acting ethically, in good-faith, and exerting reasonable force that is not racially motivated, prejudiced, or biased in any way. The funding and training programs that are already in place is another challenge. Research and proper planning by highly qualified individuals should be responsible for redesigned police academy trainings, but even professionals do not all agree on what should and should be taught.

Another potential reform could cut incarceration budgets and stop any new prisons or jails from being built (Berryhill, 2020). Funds could be then allocated into problem solving courts and other social programs for inmates to better rehabilitate back into society by remediating and treating their underlying substance abuse, mental illnesses, and other ailments that are causing them to offend. This tactic of prohibiting prisons from being built has been used in parts of New York to show to the criminal justice system that there are no more beds or space for inmates, which forces them to deal with the overpopulation by releasing individuals who do not need to be locked up (Berryhill, 2020).

Pfaff (2019) argued that the First Step Act (FSA), was a great addition to the CJ system with reforms promoting equitable solutions and retroactively expanding good time served credits, but that there needs to be a “Second Step Act” enacted. The FSA made

monumental changes to the federal CJ system, but was not applicable to the states unless states took it upon themselves to pass similar legislation (Pfaff, 2019). In progressive states like New York and California, similar legislation has been passed, but this is not enough for large scale change. A successful “Second Step Act” would need to include two major components: (1) focusing on state prisons and jails, as they account for 90% of all inmates and (2) using mass media to influence states on making progressive reforms in their legislatures (Pfaff, 2019). There is immediate need for funding for public health and social programs to rehabilitate offenders back into society. The \$200 million funding could be decreased from traditional incarceration methods and a portion channeled into new innovative and scientific based problem-solving courts to help recidivism and lower costs overtime (Pfaff, 2019). One way to increase support for this proposed bill would be to hire analysts and researchers to run studies and publish their research to demonstrate how making economically better decisions and creating new state legislation would help deal with mass incarceration while lowering recidivism and overall costs (Pfaff, 2019).

Failed reform efforts have been attempted in the past and it is important to not be ignorant to these and to accept the failures by learning from the mistakes and false preconceived notions that led to these arbitrary decisions. The modern penal system that is in place today was created based on common beliefs at the time, “[t]he invention of penitentiaries was the results of reformers’ efforts to make the institution that punished crime less arbitrary, cruel, and capricious” (Crutchfield, 2017, p. 330). To a modern progressive today, this idea is preposterous but, back then, going from barbaric and heinous practices that caused suffering and pain without any sense of due process—this was a reform. Times have evolved, and we are well beyond these archaic and dark times, and we

must have a call to action for new reforms. Another example of what would have been argued was a reform at the time was Richard Nixon's War on Crime that targeted certain demographics like Blacks and instituted harsher sentences for these individuals for marijuana and crack cocaine charges (Crutchfield, 2017). Criminologists and even everyday people look back at this and wonder how these tactics could have been implemented since it was the farthest thing from reform, but the majority supported this movement. Even many Black communities wanted a tough-on-crime mentality because they thought it would help (Murch, 2015). These two movements in the past have shown us what not to do, and the long-term effects of tough-on-crime legislation and culture has created a mess that newer generations now must fix. The problem right now is continuing to eradicate prejudiced laws and undo the damage caused by these democratized institutions and racism that has been ingrained in the law for decades.

Conclusion

The system is failing the public right now in terms of racial inequities, drug laws, and sentencing and it is up to everyone to fix it. Throughout this thesis, many inquisitions into the realm of the CJ systems and how it can better serve its primary function of rehabilitation were addressed. As a society, we have come along way and have realized over time that retributive and deterrent methods of incarceration are problematic for a number of offenders. There are solutions to help lower recidivism, stop discriminating against Black Americans, and fix the broken system. It will not be easy, and it will take widespread support, but change has already happened. Americans must continue to advocate for Black communities, as they have faced the brunt of it and have been tormented by these laws and police practices for decades. Mandatory minimums and determinate

sentencing will soon be a thing of the past. The system will shift its focus away from nonviolent individuals who use marijuana to focus on the bigger threats – those who are a direct threat to society.

Through community programs, substance abuse treatment, mental health treatment, and other educational and life skills programs, the CJ system can help better integrate inmates back into society. When the number of inmates is lower, this equates to lower prison costs. The less the government allocates to the prison system, the more funding that can go towards educational and health and wellness of citizens. There is a correlation between higher educational standards and lower levels of incarceration. This is where the funding should be going. In time, our society can evolve through demands and implementation of new practices and policies. As a country, we are moving in the right direction.

References

- Ahrens, D. (2020). Retroactive legality: Marijuana convictions and restorative justice in an era of criminal justice. *The Journal of Criminal Law and Criminology*, 110(3), 379-440. doi:10.2307/48573787
- Berryhill, E. (2020). Unintended consequences: An analysis of six proposals to reform the U.S. criminal justice system. *University of Louisville Law Review*, 58(3), 485–513.
- Chronopoulos, T. (2020). The making of the orderly city: New York since the 1980s. *Journal of Urban History*, 46(5), 1085–1116. <https://doi-org.proxy006.nclive.org/10.1177/0096144217705459>
- Crutchfield, R. D. (2017). Current criminal justice system policy reform movements: The problem of unintended consequences. *Indiana Journal of Law and Social Equality*, 5(2), 330-354.
- Lecture, W., & Hylton, K. N. (2018). Whom should we punish, and how? Rational incentives and criminal justice reform. *William & Mary Law Review*, 59(6), 2513–2573.
- Levin, M. (2018). Finding smart ways to be tough on crime: A perspective on federal criminal-justice reform. *Texas Review of Law & Politics*, 23(2), 327–334.
- McCurdy, J. (2019). The First Step Act is actually the “next step” after fifteen years of successful reforms to the federal criminal justice system. *Cardozo Law Review*, 41(1), 189–241.
- Murch, D. (2015). Crack in Los Angeles: Crisis, militarization, and Black response to the

- late twentieth-century War on Drugs. *Journal of American History*, 102(1), 162–173. <https://doi-org.proxy006.nclive.org/10.1093/jahist/jav260>
- Nowotny, K., Bailey, Z., Omori, M., & Brinkley-Rubinstein, L. (2020). COVID-19 exposes need for progressive criminal justice reform. *American Journal of Public Health*, 110(7), 967–968. <https://doi-org.proxy006.nclive.org/10.2105/AJPH.2020.305707>
- Obama, B. (2017). The president’s role in advancing criminal justice reform. *Harvard Law Review*, 130(3), 812–866.
- Palmiotto, M. J. (1998). The 1994 Violent Crime Control and Law Enforcement Act: An evaluation. *Justice Professional*, 10(4), 407-414.
- Peterson, R. D. (1985). Discriminatory decision making at the legislative level: An analysis of the Comprehensive Drug Abuse Prevention and Control Act of 1970. *Law and Human Behavior*, 9(3), 243–269. <https://doi-org.proxy006.nclive.org/10.1007/BF01044504>
- Pfaff, J. F. (2019). A Second Step Act for the states (And counties, and cities). *Cardozo Law Review*, 41(1), 151–187.
- Ristroph, A. (2019). An intellectual history of mass incarceration. *Boston College Law Review*, 60(7), 1949–2010.
- Single, E. (1989). The impact of marijuana decriminalization: An update. *Journal of Public Health Policy*, 10(4), 456-466. doi:10.2307/3342518

Vita

I am a senior at Appalachian State University graduating in May 2021 with a Bachelor of Science in political science with honors distinction, a concentration in pre-professional legal studies, and a minor in both criminal justice and philosophy. Throughout my college career I have been a member of Appalachian's Division I Field Hockey Program. I have been a member of Phi Alpha Delta Law Fraternity, International serving as both Vice President and President. I have served as a member on student conduct hearings for academic integrity and minor level infractions for the Student Conduct Board. The Government and Justice Studies Department has allowed honored me as a GJS Fellow given to the top academic achieving students in the political science and criminal justice programs. On top of that I have worked a summer job throughout college. My hobbies include running, working out, cooking, watching football, going to sporting events, hiking, and going to the beach. Next year I will be attending Florida State University College of Law to pursue my J.D.