

END MASS INCARCERATION NOW

by Ed Angelo

We often speak in sacred terms about our country being "the land of the free". Given that, is it not then sacrilegious that we have over 2.2 million of our citizens behind bars, admit to jails and prisons nearly 12 million per calendar year, and maintain upwards of seven million persons on probation or parole at any given moment?

And is it not the epitome of injustice that of the roughly 740,000 of our fellow citizens sitting in our local jails right this second, 60% are pretrial detainees not yet convicted, a substantial portion of whom are sitting for lack of a few hundred dollars to make bail? Reports abound about half of American families not having even \$400 in savings. For some this means no repair for the family car, while for too many others it means remaining in jail.

The bottom line is that pretrial freedom is bought by "them that's got, while "them that's not" stay behind bars. Amazing and unacceptable also is the fact that a majority of pretrial detainees will ultimately receive probation or have their charges dismissed.

Two other facts about pretrial detention are most disturbing:

- Evidence is clear that even a few days in jail can jeopardize a person's job, finances, family relationships and even cause eviction from their home; and
- Studies show that even short jail stays can lead to more criminal involvement in the future. A University of Pennsylvania law school study showed that those who were detained pre-trial were 30% more likely to commit a new felony in the 18 months after a bail hearing than the people who were released, and also 20% were more likely to commit a new misdemeanor. The results seem counterintuitive, but other research has found that jail and prison are "criminogenic": locking people up makes them prone, on average to reoffending. They can lose their jobs, housing, and sense of stability, leaving them worse off to the point of desperation.

We criticize totalitarian nations for their lack of reverence for freedom. So how do we square this smug attitude with the fact that Russia incarcerates only 450 of their citizens per 100,000, whereas 760 per 100,000 Americans suffer that fate. China, with 1.1 billion people—three times our population—imprisons 500,000 fewer persons than we do here in the US. The obscene and indefensible reality is this: the US comprises 5% of the world's people, but has amassed 25% of the world's incarcerated population!

Most appalling of all is the unvarnished truth that 90% of incarcerated Americans are poor, with a disproportionate percentage of them poor people of color.

While in prison, these individuals, the majority of whom are wayward young people between the ages of 18-28, are provided anaemic rehabilitation programs that are understaffed, underfunded, and unproven in terms of efficacy and evidence-based success. Thus we have recidivism rates nationwide ranging as high as 75% within 3-5 years, resulting in a revolving door of incarceration for far too many of our fellow citizens.

After their sentence has been served most return to the same dim economic and societal circumstances that undoubtedly contributed to their illegal conduct in the first place. But now they are additionally plagued by the stigma of a criminal conviction on their record and the resulting repercussions: diminished job prospects, ineligibility for programs that help many to escape poverty, fewer educational and training opportunities, greater challenges in finding affordable housing and often utter decimation of ties to their community and family.

Taxpayers, meanwhile, foot the exorbitant expense of this irrational, broken process—this desert of opportunity and human destruction that is our criminal justice system. Most citizens willingly shoulder their collective fiscal responsibility to help rehabilitate those who have fallen from grace. But not even one citizen celebrates his or her hard-earned money being squandered on a system that fails in virtually every category, resulting in a wasteland of human warehouses stretching across our nation where legions of our young—our hope and future—languish and atrophy in dark and desolate museums of fossilized hope.

It has not always been this way. From 1920 to 1970 our overall nationwide incarceration population held steady in the range of 180,000 to 200,000. Since 1970, with precipitous spikes upward with the Reagan War on drugs, the crack epidemic and even more so with the devastating Clinton crime bill of 1994 and welfare legislation of 1996, our incarcerated population has increased by over 500%, even though we have had a well-documented decrease in crime during that same period.

What's the price tag for this debacle? Using Pennsylvania as an example, our state spends way more on jails and prisons than we do on our colleges and universities. Lehigh County spends over \$28,000 per inmate per year and is the third worst county in Pennsylvania in pretrial detention, in a state that ranks 9th worst in the nation in that category, behind most of the states in the South, places where we have grown accustomed to seeing such disturbing statistics. We spend over \$28 million annually on corrections in Lehigh County!

This does not even include a substantial array of other more intangible costs that weave themselves into the societal fabric of generations to come well into the future: families destroyed, individuals rendered hopeless and rudderless, neighborhoods ravaged by more and more poverty as the destructive waves emanating from the epicenter of mass incarceration radiate outward to devastate entire communities.

Astoundingly—after considering all of the above—studies and statistics clearly demonstrate that mass incarceration increases crime! That's right: mass incarceration causes more crime, as it stamps the scarlet letter of "convict" upon so many of our young, leaving an already hobbled segment of our nation even more debilitated than before entering our jails and prisons.

Therefore, we propose a dramatic, heroic and immediate reduction in our incarceration population through the following measures:

- End ALL bail for all misdemeanors and non-violent felonies, unless clear and compelling and specifically stated reasons, on the record, justify pretrial detention;
- Observe a "presumption" of liberty and release from custody, instead of the presently used strong presumption of incarceration;
- This "presumption" of liberty should overlay each and every decision made regarding liberty or the deprivation of liberty throughout the criminal administration process, including the areas stated below;
- Pennsylvania Sentencing Statutes, as well as the Sentencing Guidelines used by all Common Pleas Judges in rendering sentences upon convicted defendants, must be adjusted downward substantially in accordance with evidence-based studies and findings that show very clearly that it is the immediacy and certainty of punishment which deters future crime, **NOT INORDINATELY LENGTHY SENTENCES**;
- Evidence-based analyses—not the "seat-of-the-pants" reflexes of Judges—must govern and determine lengths of sentences;
- The extreme deleterious impact of mass incarceration upon our communities—and upon our nation—must be factored into sentencing;
- Sentencing procedures must make adjustments for tempering the harsher sentences that

- evidence indisputably shows are doled out to people of color and the poor;
- Probation/Parole Violation procedures are nearly totally devoid of regulation; at the same moment, same day, same circumstances, but different Judges and courtrooms, highly disparate punishments are meted out, resulting in glaring, often draconian results for some and more leniency for others; limits must be imposed upon a Judge's power to order more jail/prison time on minor probation/parole infractions;
 - The harsh practice of taking away "street time" must be ended; for example, if a person is sentenced to 2-4 years on January 1, 2020 his or her sentence should be done January 1, 2024, irrespective of violations; Judges should not possess power to extend time on the original maximum sentence;
 - We must end the "debtors prison" created by how the criminal justice system incarcerates poor people for failure to pay fees and costs; the US Supreme Court and PA Courts have consistently decreed that poverty shall not be punished through the Dickensian debtors prison we have institutionalized in this nation; litigation should be pursued by a coalition of interested groups, organizations and individuals, including but not limited to the ACLU, NAACP, prison society organizations, equal justice organizations and the like;
 - A new, more enlightened and informed philosophy must become the foundation for our incarceration policies; akin to beating our swords into plowshares, we must commence immediately the process of converting our jails and prisons into places of refuge for the dispossessed, mentally ill and drug addicted, emphasizing redemption and rehabilitation over excessive punishment; society has allowed retribution—revenge—to dominate our criminal justice system, a system of injustice spawned and promoted to a large extent by politicians seeking to please voters by demonstrating how tough they are on crime; politicians also play to the fears and often racist tendencies of their constituents, leading to harsh but illogical results, leaving all of us less safe, the former inmate less rehabilitated and the taxpayer paying the freight;
 - We must use more Diversion Programs to route misdemeanor and minor felony charges and nonviolent offenses into other forms of disposition that do not result in criminal conviction and the destruction of the offender's life and opportunity;
 - More Diversion Programs for misdemeanors and minor felonies will free our law enforcement personnel to pursue serious violent offenders and more prolific drug dealers;
 - We must resist legislative attempts to bring back mandatory sentencing, which have been declared unconstitutional, in most cases, by the United States Supreme Court and Pennsylvania courts; there are still many PA legislators clamoring for a rebirth of mandatory sentencing legislation with corrective language and terms they hope will withstand constitutional scrutiny; mandatory sentencing has unfairly provided prosecutors with immense power to coerce convictions through plea-bargaining and have thereby contributed significantly to mass incarceration.

Bryan Stevenson has said "the opposite of poverty is justice". Indeed, crime emanates from and is often caused by poverty. But we have now arrived at a point where the criminal justice system itself creates and exacerbates poverty. Change must come.

Considering the destruction of lives and whole communities it has caused, the further impoverishment of the "least among us" it has engendered, along with its unsettling echoes of slavery and Jim Crow, mass incarceration has become the most pressing civil and human rights issue of our time.

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