

InterNational
PRISONER'S
FAMILY
CONFERENCE

ADVOCACY IN ACTION
COALITION

**The Mass Incarceration Continuum:
The Human Rights Issue of the 21st Century
In the United States
White Paper**

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On behalf of the InterNational Prisoner's Family Conference
Advocacy in Action Coalition
September 30, 2015

Brief Statement

Mass Incarceration in the United States is the Human Rights issue of the 21st Century. The United States out ranks countries worldwide in punitive prison policies. Approximately 10 million individuals combined are incarcerated, serving probation, on parole, or under community supervision in this country. Therefore, it is imperative that this issue be acknowledged as a prominent issue on the national agenda.

How to Reference this document (APA):

Advocacy in Action Coalition of the International Prisoner's Family Conference [AIA] (2015). *The Mass Incarceration Continuum: The Human Rights Issue of the 21st Century in the United States White Paper*. Retrieved from <http://prisonersfamilyconference.org/>

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MASS INCARCERATION CONTINUUM

Although much has been written about the collateral consequences of mass incarceration, hyper-incarceration, and harsh sentencing policies, little, if any has been written about the broad spectrum of this social dilemma. There is a need to examine this social phenomenon from micro to macro levels—rather than independent of its widespread consequences. As such, we holistically define the *Mass Incarceration Continuum*ⁱ in this white paper. The range of this continuum includes, but is not limited to:

- Arresting of minor children (as young as five years of age) for behavioral issues in a school setting known as *School Criminalization* and resulting in the *School to Prison Pipeline*;
- Inequitable representation of minorities and the economically challenged;
- The use of incarceration to warehouse the mentally ill rather than address their core mental health issues;
- The growing geriatric prisoner population and in-prison hospice care;
- Implementation of draconian measures such as: 3 Strikes Laws (that have greatly impacted low-level criminals); Mandatory Minimum Sentencing, Zero Tolerance school discipline policies; Life without Parole [LWOP]; Law of Parties/Felony Murder Law, and Civil Commitment, to name a few;
- Cruel and unusual punishments (e.g. sentencing juveniles to life in prison; excessive use of lengthy solitary confinement; continued use of the *Death Penalty*); and
- Industrializing mass imprisonment to profit private corporations.

These issues ultimately include the *Symbolic Imprisonment and Grief*ⁱⁱ of prison-families who are stigmatized, criminalized, marginalized, and subjected to the collateral consequences of mass incarceration. Symbolic Imprisonment, as Hart-Johnson (2014) indicated, is a state of psychological and physical confinement or restricted social engagement perpetuated by social stigma, feeling outcast, and treated as a criminal through association with the incarcerated. Therefore, the *Mass Incarceration Continuum* is defined as the expansion of criminalization in our society that impacts the most vulnerable citizens over their life span. To address the full scale continuum, the Advocacy in Action Coalition maintains there must be a strategic focus on the following key areas:

ENSURE INDEPENDENT OVERSIGHT OF THE ENTIRE CRIMINAL JUSTICE SYSTEM

The Advocacy in Action Coalition calls for the establishment of citizen oversight committees comprised of members empowered to effect change in areas such as:

- Holding criminal justice officials accountable for adhering to prescribed laws and maintaining integrity at all levels of the judicial system;

- Ensuring transparency through independent audits and the use of random site visits;
- Ensuring independent monitoring of parole hearings to assure decisions reflect recognition of the human capacity for positive change and rehabilitation; and
- Ensuring probation and parole officers administer fair, realistic and reasonable requirements of their clients (returning citizens).

ENSURE HUMANE TREATMENT OF PRISONERS AND THEIR FAMILIES

- Ensure the consistent availability of in-person visitation and only offer video visitation as an option;
- Ensure family involvement on issues of medical and mental health care for prisoners, adhering to privacy and confidentiality guidelines;
- Address unique needs of specific groups (e.g. gender, juveniles, physically challenged, and other distinctive qualities); and
- Ensure punitive segregation housing units (prisoner isolation) are only used as last resort, providing recurrent face to face documented supervision and reasonable time limits.

ENSURE EQUITABLE AND REASONABLE SENTENCING

- Abolish the Death Penalty in all states;
- Modify Zero Tolerance School Discipline Policies (i.e. School Criminalization);
- Ensure equal application of the law for all races and socioeconomic classes at all levels of the criminal justice system;
- Warrant valid substantiated reasoning for any/all parole denials; and
- Reinstitute and/or consistently apply the “good time” incentive program for “time served.”

ENSURE EFFECTIVE REENTRY

- Assure effective reentry planning and preparation for all prisoners that embraces the family’s integrated support role;
- Provide re-entry preparation from *entry to release*; and
- Provide effective coordinated reentry services and contiguous support post-release.

THE MASS INCARCERATION CONTINUUM IS A HUMAN RIGHTS ISSUE

Despite fluctuations in crime policies, in general, overall crime rates have dropped, yet, incarceration rates in the United States have continued at exponentially high levels since the 1970’s (Phelps, 2011). The United States is the international leader of mass incarceration. The

United Nations (2005), which establishes human rights and international standards for prisons, maintains that the United States should be accountable, as with all nations, for ensuring that (pp. 4 -17):

- All prisoners have a fundamental right to the highest attainable standards for timely services to assess, diagnose and treat prisoners' medical and mental health needs;
- All prisoners have the right to communicate with and have access to their families and the outside world;
- Prisoners have the right to be assigned to facilities as close as possible to their home vicinity;
- States should be accountable for ensuring impartial, unbiased, and independent oversight of prisons, to ensure frequent inspections with transparent public dissemination of findings;
- Special populations such as, females, juveniles, mentally ill, shall not be discriminated against and shall be protected against all forms of exploitation. The unique needs of special populations shall be addressed and provided;
- Juveniles should be guaranteed the human rights afforded to adults and shall not be subjected to corporal punishment, capital punishment, or life imprisonment without possibility of release;
- The primary purpose of prisons shall be to rehabilitate and prepare eligible prisoners for successful reentry and not be used for profitability and personal gain; and
- The death penalty should be abolished in all states.

While we acknowledge sanctions are necessary for the safety and security of society, incarceration must not violate basic human rights, as indicated above, or discount the constitutional rights of prisoners or their families, as substantiated through the following case lawⁱⁱⁱ:

In *Turner v. Safley* (Justia, U.S. Supreme Court, 2015), the U.S. Supreme Court made clear that “[p]rison walls do not form a barrier separating inmates from the protections of the Constitution.” *Individuals retain certain fundamental rights, even when incarcerated.* The Constitution protects these rights for good reason. Incarceration can have a drastic effect on a person. Oftentimes, a prisoner’s connections to their family or religious community may be their only source of hope. Stripped of these connections, a person will not only endure more difficulties during incarceration, but may also lack the community ties necessary to assist them upon release (Justia, U.S. Supreme Court, 2015).

Additionally, as noted earlier, prisoners should retain access to both medical and mental health care, and segregation (cruel and unusual punishment) should only be used in extreme cases^{iv} as last resort (Cornell University Law School, 2015):

The failure to provide prisoners with access to needed health care too often results in tragedy. It also violates the U.S. Constitution. Nearly forty years ago, the U.S. Supreme Court ruled in *Estelle v. Gamble* that ignoring a prisoner's serious medical needs can amount to cruel and unusual punishment, noting that "[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical torture or a lingering death [...] ... In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose."

It behooves us as a nation to ensure that eligible prisoners return to society as prepared citizens to contribute to the safety, security, and stabilization of our communities.

PROPOSED CRIMINAL JUSTICE REFORM & RESOLUTION

The Advocacy in Action Coalition maintains *The Mass Incarceration Continuum* is evidence of a system that overtly devalues and devastates human lives^v, wastes taxpayer dollars^{vii} and diminishes the quality of life and safety in our communities.^{viii}

The United States' burgeoning prison populations comprised of men, women, and children, coupled with the impunity of criminal justice officials, resulting from long-term self-governance, has created an autonomous system, allowing officials at all levels to assert autocratic rule in a country that boasts human rights and democracy.^{ix}

We have created a *carceral* state. Human rights are violated by criminal justice system officials charged with upholding the law, resulting in wrongful convictions^{x,xi} and excessive and inequitable^{xii} sentencing that consistently fuels the *Mass Incarceration Continuum*, especially for racial minorities and the poor.^{xiii} The lack of accountability among criminal justice officials has created an environment of distrust and disrespect toward law enforcement personnel.^{xiv}

Additionally, the dependency on privatization of prisons to grow economies is placing a focus on revenue generation over prisoner rehabilitation.^{xv} Recidivism continues at an alarmingly high rate^{xvi} without application of effective reentry strategies. This is in direct contradiction to credible research and best practices upholding human rights, once vigorously protected by our Constitution and embraced by the United Nations.^{xvii,xviii}

The Advocacy in Action Coalition urgently calls for practical steps to begin substantial resolution to include, but not be limited to:

- Formation and implementation of independent empowered citizen oversight committees at all levels of criminal justice (policing; courts; prisons; probation/parole);
- Assurance of humane and respectful treatment of all prisoners and their families at all levels of criminal justice;
- Assurance of respectful face to face family visitation with incarcerated loved ones;

- Provision of timely medical and mental health care commensurate with the quality of community health care for all prisoners with inclusion of families in the planning and delivery of services;
- Recognition of a human's capacity for change and rehabilitation, by ensuring equitable and reasonable sentencing and prohibiting repeated unsubstantiated parole denials;
- Abolition of life without parole sentencing, especially for juveniles; the unjust *law of parties/felony murder rule* and the use of the death penalty;
- Assurance of effective parole preparation for all prisoners from initial incarceration through community re-entry that embraces participation of supportive families throughout the process, and
- The elimination of all “for profit” criminal justice related contracts that demand human lives as inventory.

As a leader of the free world, we are obligated to ensure the processes of our criminal justice system are administered to all humans with equality and dignity, instilled with the principles of basic human rights. The enormity of *The Mass Incarceration Continuum* requires immediate meaningful legislative intervention. The *Advocacy in Action Coalition* calls upon our legislators to promptly embrace and promote genuine integrity, equitable, and humane treatment throughout the entirety of the criminal justice system.

REFERENCE

- Cornell University Law School (2015). *Estelle v. Gamble (No. 75-929) Argued: October 5, 1976*. Retrieved from <https://www.law.cornell.edu/supremecourt/text/429/97>
- Hart-Johnson, A. (2014). Symbolic Imprisonment, Grief, and Coping Theory: African American women with incarcerated mates (doctoral dissertation). Retrieved from ProQuest database. (3670212).
- Justia U.S. Supreme Court (2015). *Turner v. Safley, 482 U.S. 78 (1987)*. Retrieved from <https://supreme.justia.com/cases/federal/us/482/78/case.html>
- Moffit, T. (1993). Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy. *Psychological Review*.100(4),674-701.
- Phelps, M. (2011). Rehabilitation in the punitive era: The gap between rhetoric and reality in U.S. prison programs. *Law & Society*, 45(1), 33-68.

United Nations (2005). *Human rights and prisons: A pocketbook of international human rights standards for prison officials*. Retrieved from <http://www.ohchr.org/Documents/Publications/training11Add3en.pdf>

NOTES

ⁱ Tate, M. (2014) Personal Communication. Coined phrase detailing the continuum of mass incarceration.

ⁱⁱ Hart-Johnson, A. *The Symbolic Imprisonment of African American Women: A Legacy of Mass Incarceration*. DC Project Connect and Extant One Publication, Inc.: Washington DC. www.dcprojectconnect.com

ⁱⁱⁱ American Civil Liberties Union, Civil Liberties in Prison (<https://www.aclu.org/issues/prisoners-rights/civil-liberties-prison>)

^{iv} American Civil Liberties Union, 2015. *Medical and Mental Health Care*. (<https://www.aclu.org/issues/prisoners-rights/medical-and-mental-health-care>)

^v “The Social and Moral Cost of Mass Incarceration in African American Communities” Dorothy E. Roberts, *Stanford Law Review* Vol. 56, No. 5, 2004; Stanford Law Review Symposium: Punishment and Its Purposes (Apr., 2004), pp. 1271-1305 [https://www.law.upenn.edu/cf/faculty/roberts1/workingpapers/b56StanLRev1271\(2004\).pdf](https://www.law.upenn.edu/cf/faculty/roberts1/workingpapers/b56StanLRev1271(2004).pdf)

^{vi} “After Prison: The Effects of Mass Incarceration in the United States,” Northwestern University Institute for Policy Research, Policy Briefing, June 7, 2015 <http://www.ipr.northwestern.edu/events/briefing/after-prison.html>

^{vii} “The Price of Prisons: What Incarceration Costs Taxpayers,” The Vera Institute of Justice and the Pew Center on the States’ Public Safety Performance Project, January 2012 – updated July 20, 2012 <http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>

^{viii} “The Effects of High Imprisonment Rates on Communities,” Todd R. Clear, Professor Criminal Justice John Jay College; University of Chicago Press, *Crime and Justice* Vol. 37 No. 1 (2008) Pgs. 97 – 132 <http://myweb.fsu.edu/bstults/cj5625/readings/clear-cj-2008.pdf>

^{ix} “The Cultures of Impunity,” Paul Starr, *The American Prospect*, July 24, 2015 <http://prospect.org/article/cultures-impunity>

^x National Registry of Exonerations University of Michigan School of Law, <http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx>

^{xi} National Innocence Project <http://www.innocenceproject.org/cases-false-imprisonment>

^{xii} “Excessive Sentencing; NACDL’s Proportionality Litigation Project” (video); National Association of Criminal Defense Lawyers in conjunction with the Foundation for Criminal Justice and the Ford Foundation <http://www.nacdl.org/ExcessiveSentencing/>

^{xiii} “Sentence Review in Louisiana: Appellate Review of Excessive Sentencing in Non-Capital Cases,” Eric V. Anderson, *Louisiana Law Review*, Vol. 42 No.3 1982 (Especially Conclusion on p. 1097) <http://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=4656&context=lalrev>

^{xiv} Center for Prosecutor Integrity, <http://www.prosecutorintegrity.org/>

^{xv} “Private Prisons and Their Negative Effect on States and Local Governments,” Brandon Bailey, POLS 2212, November 30, 2013, under supervision of Ralph Durham, Instructor, Kennesaw State University – Georgia http://www.academia.edu/8634207/Private_Prisons_and_their_Negative_Effect_on_States_and_Local_Government

^{xvi} “Rehabilitate or Punish,” The American Psychological Association Monitor on Psychology, p. 46, Etienne Benson, 2003 <http://www.apa.org/monitor/julaug03/rehab.aspx>

^{xvii} “A Brief History of Human Rights,” <http://www.humanrights.com/what-are-human-rights/brief-history/declaration-of-independence.html>

^{xviii} “Rights as Prisoners in General,” Center for the Study of Human Rights in the Americas; University of California at Davis, <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/rights-of-guantanamo-prisoners-as-prisoners-in-general>