

FACTSHEET: SENTENCING

Other nations protect public safety without imprisoning as large a percentage of their population, handle law-breaking behavior in ways less reliant on incarceration, and have different approaches to addressing complex social issues. This factsheet, derived from the longer report, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, considers the criminal justice policies of five nations, Australia, Canada, Finland, Germany and England and Wales, alongside those of the U.S.

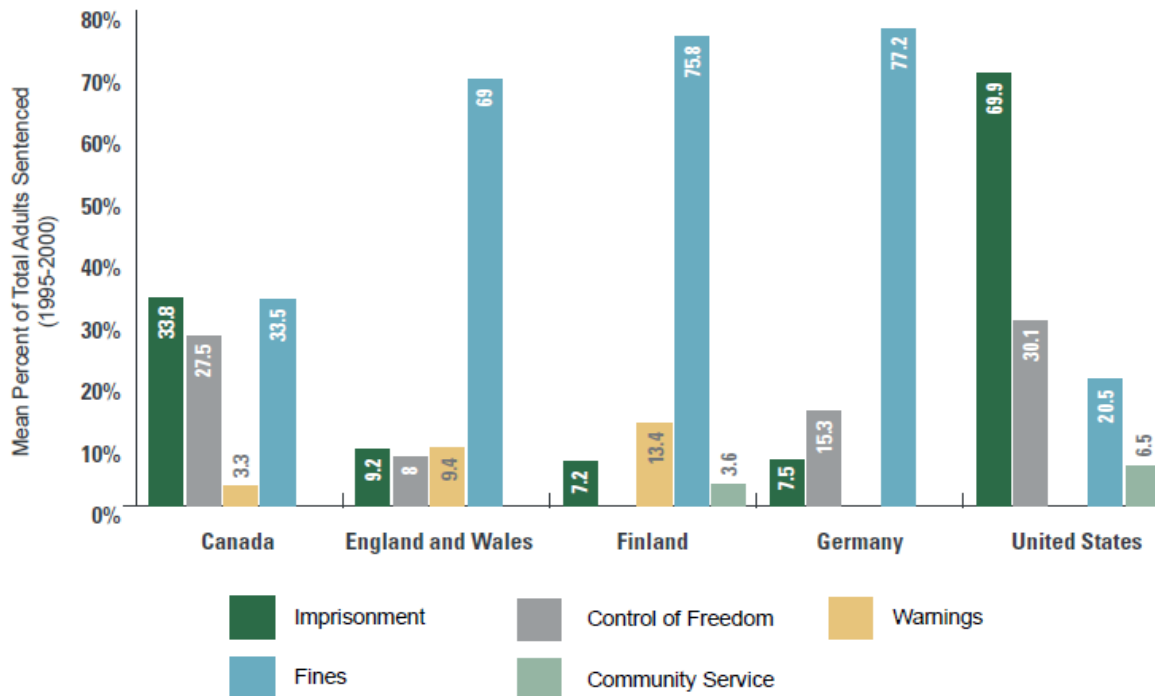


Sentencing practices, especially length of sentence,¹ are a significant factor when considering the number of people in prisons. Sentencing determines both placement (in a prison or not), and the term of imprisonment. Combined, these two factors can quickly drive up an incarceration rate.

The U.S. uses prison in response to offenses more often than comparison nations.

The United States sentences people to prison about twice as often as Canada, which in turn sentences people to a term of incarceration more than three times as often as any other of the comparison nations. Comparatively, England and Wales, Germany, and Finland use fines far

Despite similar crime rates, the U.S. relies most heavily on incarceration as a sentencing option.



Source: Kauko Aromaa and Markku Heiskanen, eds. *Crime and Criminal Justice Systems in Europe and North America 1995-2004* (Helsinki: The European Institute for Crime Prevention and Control, 2008). www.heuni.fi/Etusivu/Publications/HEUNIreports/1215524277763; Jan van Dijk, John van Kesteren, and Paul Smit, *Criminal Victimization in International Perspective: Key findings from the 2004-2005 ICVS and EU ICS* (The Hague: WODC, Tilburg University, UNICRI, United Nations Office on Drugs and Crime, 2007) www.unicri.it/www/analysis/icvs/pdf_files/ICVS2004_05report.pdf

Note: Combinations of sentences are possible, so percentages per nation do not always add to 100 percent.

more often than any other response to an offense. Germany and Finland, in particular, use fines more than the U.S. uses a sentence of incarceration.²

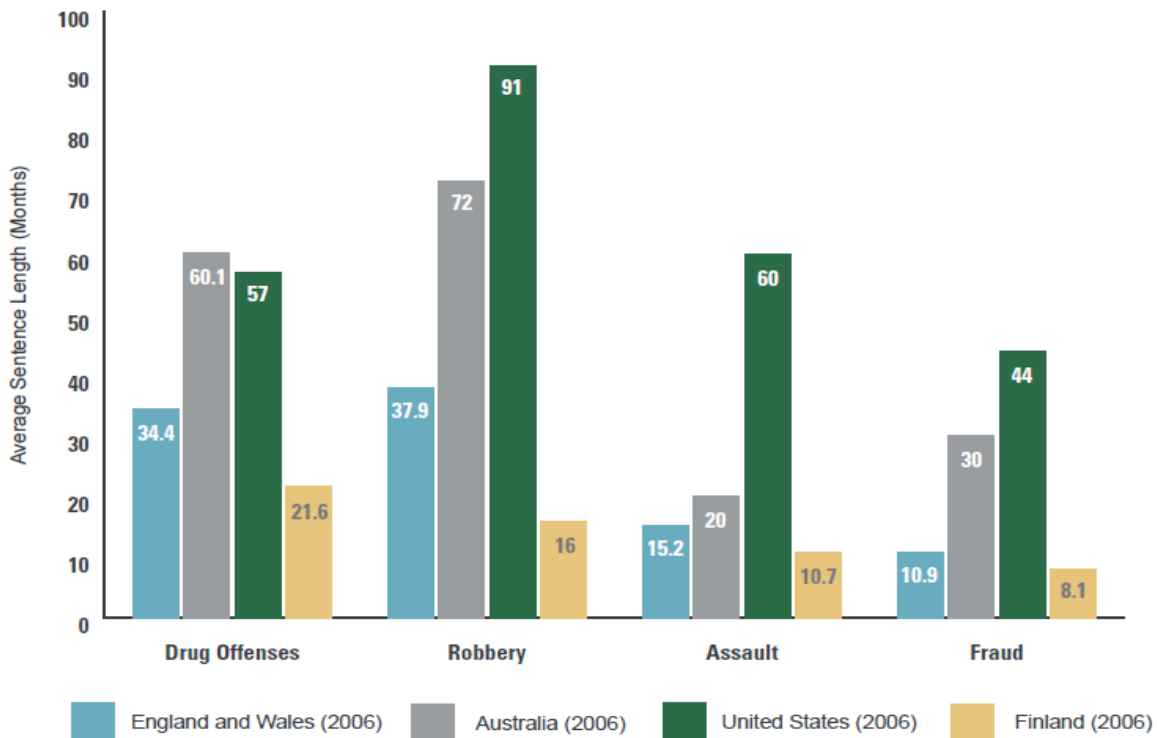
The U.S. also uses “control of freedom” more often than any other nation, as well. This could include supervision in the community, or some other placement under the control of a correctional agency. The United States and Finland also appear to be the only nations in this comparison that sentence people to community service.

Germany and Finland use a special type of fine that is on a sliding scale, which creates accountability that takes into consideration ability to pay. These “day fines,” which were first developed and used in Finland in 1921,³ are based on the seriousness of the offense and apply proportional punishment to all people, regardless of socio-economic status.⁴ The fine is

generally levied based on the amount of money a person earns on a given day and is then given over a period of days (e.g. a 20-day fine or a 10-day fine). In Germany, for example, punishments for certain crimes—mainly property crimes and assaults⁵—are assessed in these day fine units. Payment rates are high, but in the cases where payments are not made, community service is often a response; but sometimes, in Finland for example, a prison term of 90 days could be imposed. Recent concerns about the number of people going to prison for defaults led Finland to exclude non-payment of smaller fines from a prison penalty and to reduce the number of possible days spent in prison for default to 60 days.⁶

Regardless of the relatively low level of default, the fine system raises money that can be reinvested in social services that can prevent crime and reduce victimization, instead of generating significant costs for incarceration.⁷

The U.S. gives longer sentences for similar types of offenses.



Source: Tom Bonczar State Prison Admissions, 2006: Sentence Length by offense and admission type (Washington, DC, Bureau of Justice Statistics: 2010) <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2174>; Marcelo F. Aebi and others, European Sourcebook of Crime and Criminal Justice Statistics, Fourth Edition (Zurich, Switzerland, Ministry of Justice, 2010). www.european-sourcebook.org/ob285_full.pdf; Prisoners in Australia, 2006 (Canberra, Australian Bureau of Statistics, 2006) www.abs.gov.au/AUSSTATS/abs@nsf/DetailsPage/4517.02006?OpenDocument.
 Robbery: Defined as “Robbery, extortion and related offences” in Australia. Assault: Defined as “Violence against the person” in England and Wales. Fraud: Defined as “Fraud: Defined as “Deception and related offences” in Australia and “fraud and forgery” in England and Wales.

Comparatively, many fines in the U.S. are applied regardless of whether or not a person can pay them; the penalty for not paying a fine in the U.S. is often incarceration.

The U.S. sends people to prison longer for similar types of offenses

U.S. research shows little to no correlation between time spent in prison and recidivism rates.⁸ In other words, a longer sentence does not necessarily reduce the chances that a person will commit an illegal offense again (unless a person is imprisoned until death). Yet, in addition to a more extensive reliance on incarceration in the United States, the U.S. also tends to give longer sentences, further serving to increase the U.S. incarceration rate.

The average sentence length for all sentences in the U.S. (63 months)⁹ is higher than that in Australia (36 months)¹⁰ and Germany (between one and two years).¹¹ Differences in sentencing for drug offenses, in particular, likely contribute to this disparity in average sentences. People convicted of drug offenses in the U.S. receive an average sentence of five years compared to just 32 months in England and Wales. While data was not available by offense type for Germany, the U.S. sentences people to prison for longer than Finland, Australia or England and Wales for robbery, assault, and fraud.

When comparison nations do give a sentence of incarceration, the sentence is usually shorter than in the U.S.¹² In the U.S., many believe that longer prison sentences remove people from the

community so that they cannot engage in illegal behavior, and that the threat of severe punishment would deter this participation, thus protecting public safety. However, countries with lower prison populations and shorter prison sentences do not necessarily have higher rates of victimization¹³ or reported crime.¹⁴

The lack of evidence that there is a measurable, consistent correlation between public safety and incarceration across comparison nations indicates that there is opportunity to consider that less incarceration and shorter sentences might yield similar public safety results without the expense or negative impact to people and communities.

Policy Opportunities

Day fines (structured fines): Based on the seriousness of the offense, day fines apply proportional punishment on all people, regardless of socio-economic status. The fine is generally levied based on the amount of money a person earns on a given day and are designed to hold a person accountable, but not to be so burdensome that they cannot realistically be paid. Officials that manage the day fines also frequently follow-up with people scheduled to pay them to determine if the financial situation has changed or if there are other barriers to payment. Responses for non-payment include community service, day reporting centers, home confinement, and half-way houses. Staten Island, New York, Maricopa County, Arizona, and Iowa have all implemented structured fine programs.¹⁵

Shorten sentences: Shorter sentences of incarceration for all offenses would significantly reduce the number of people in prison without sacrificing public safety. A shorter amount of time in prison could be accompanied by community-based alternatives that are designed to facilitate reentry.

Country	Sentencing Approach for Adults	Sentencing Approach for Juveniles	Average Custodial Sentence Length ¹⁶	Alternatives to Incarceration
Australia	Territories have control over their own sentencing regimes but generally incarceration is used as a last resort, with fines and community service being commonly administered. ¹⁷ Western Australia is the only territory to use mandatory minimum sentences for some nonviolent and non-sexual crimes. ¹⁸ Some other territories have minimums in place for serious crimes. ¹⁹	Community-based alternatives and fines emphasized; incarceration is normally the sentence of last resort. ²⁰ Western Australia's mandatory minimum sentencing does extend to juveniles. ²¹	36 months ²²	Fines, community service, suspended sentence, probation, educational or rehabilitative programs, home detention. ²³
Canada	Sentences must be proportional to the seriousness of crime and responsibility of the person; minimum intervention approach followed; mandatory minimums used with restraint and mostly in the case of murder. ²⁴ Sentences of incarceration can also include a term of probation. ²⁵	Custodial sentences only given in case of serious violent offense; emphasis placed on community supervision programs. ²⁶	4 months ²⁷	Fines, restitution, community service, suspended sentence, probation, intermittent imprisonment. ²⁸
Finland	Sentences range from 14 days to 15 years (with multiple offenses), or life, during which time a portion of the sentence can be served on parole. ²⁹ Sentences must be proportional to seriousness of crime in question and responsibility of the offender. ³⁰	Persons under 18 years cannot be sentenced to imprisonment except in cases where there is an important reason for doing so. ³¹ Fines or community service are normally imposed instead. ³²	10.1 months ³³	Fines, suspended sentence, community service, no penalty. ³⁴
Germany	Courts generally have a range of sentences to choose from; Imprisonment for minor offenses is discouraged; Mandatory minimums are in place for serious offenses. ³⁵	Courts follow a minimum intervention approach, placing emphasis on diversion and suspended sentences rather than imprisonment. ³⁶	6-12 months ³⁷	Fines (Day Fine System), ³⁸ suspended sentence, diversion. ³⁹
England and Wales⁴⁰	Emphasis on fines and community service; incarceration only used in cases of serious crimes. ⁴¹ Mandatory minimums applied to repeat offenders of specific crimes and very serious crimes. ⁴²	Incarceration only used in the most serious cases; fines, community service, and referrals to youth offender panels used in lieu of custodial sentences. ⁴³	13 months ⁴⁴	Fines, community service, suspended sentence, probation (England and Wales). ⁴⁵
United States	States have control over individual sentencing regimes with a general pattern of emphasis on retribution and incarceration. ⁴⁶ Mandatory minimum sentences applied to various offenses, including drug possession and gun possession. ⁴⁷ Sentences can include a term of probation that place limits on freedom.	Focus on punishment rather than rehabilitation leads to use of custodial sentences, including the possibility of a life sentence without parole in federal cases and in 44 states. ⁴⁸ In many states, juveniles can be tried in adult courts. ⁴⁹	63 months ⁵⁰	Fines, community service, community substance abuse or mental health treatment, intermittent imprisonment, home detention, boot camps, suspended sentence. ⁵¹

Justice Policy Institute is a national nonprofit organization that changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. To read the full report, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, please visit www.justicepolicy.org.

¹ Alfred Blumstein and Allen J. Beck, "Population Growth in U.S. Prisons, 1980-1996," *Crime and Justice*, 26, 1999, 17-61.

² Kauko Aromaa and Markku Heiskanen, eds. *Crime and Criminal Justice Systems in Europe and North America 1995-2004* (Helsinki: The European Institute for Crime Prevention and Control, 2008). www.heuni.fi/Etusivu/Publications/HEUNIREports/1215524277763; Jan van Dijk, John van Kesteren, and Paul Smit, *Criminal Victimization in International Perspective: Key findings from the 2004-2005 ICVS and EU ICS* (The Hague: WODC, Tilburg University, UNICRI, United Nations Office on Drugs and Crime, 2007) www.unicri.it/www/analysis/icvs/pdf_files/ICVS2004_05report.pdf

³ George Cole and Christopher Smith, eds. "Day Fines in Germany: Could the Concept Work in the United States?" in *The American System of Criminal Justice, 11th edition* (Belmont, CA: Thomson Wadsworth, 2007).

⁴ U.S. Department of Justice, "How to Use Structured Fines (Day Fines) as an Intermediate Sanction" (Washington, DC: Bureau of Justice Assistance, 1996). www.ncjrs.gov/pdffiles/156242.pdf.

⁵ U.S. Department of Justice, *How to Use Structured Fines*, 1996.

⁶ Tapio Lappi-Seppälä, "Changes in Penal Policy in Finland," in *Punitivity. International developments., Vol. 1: Punitiveness – global Phenomenon?* Helmuth Kury & Evelyn Shea (Eds) (Germany, 2011).

⁷ According to the Public Safety Performance Project (*One in 100: Behind Bars in American 2008*), one year of incarceration costs on average \$23,876.

⁸ Lin Song and Roxanne Lieb, *Recidivism: The Effect of Incarceration and Length of Time Served* (Olympia, WA: Washington State Institute for Public Policy, 1993). www.wsipp.wa.gov/rptfiles/IncarcRecid.pdf

⁹ Tom Bonczar *State Prison Admissions, 2006: Sentence Length by offense and admission type* (Washington, DC, Bureau of Justice Statistics: 2010) <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2174>.

¹⁰ These figures do not include sentences of life without parole, life plus additional years nor death.

¹¹ Jörg-Martin Jehle, 2009.

¹² Tom Bonczar *State Prison Admissions, 2006, 2010*; Marcelo F. Aebi and others, *European Sourcebook of Crime and Criminal Justice Statistics, Fourth Edition* (Zurich, Switzerland, Ministry of Justice, 2010). www.europeansourcebook.org/ob285_full.pdf; *Prisoners in Australia, 2006* (Canberra, Australian Bureau of Statistics, 2006) www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02006?OpenDocument. Robbery: Defined as "Robbery, extortion and related offences" in Australia. Assault: Defined as "Violence against the person" in England and Wales. Fraud: Defined as "Fraud: Defined as "Deception and related offences" in Australia and "fraud and forgery" in England and Wales.

¹³ John van Kesteren, Pat Mayhew, and Paul Nieuwebeerta, *Criminal Victimization in Seventeen Industrialised Countries: Key Findings from the 2000 International Crime Victims Survey*. (The Hague: Ministry of Justice, 2000). <http://rechten.uvt.nl/icvs/pdffiles/Industr2000a.pdf>. The offenses included here are car theft, theft from car, car vandalism, bicycle theft, motorcycle theft, burglary, attempted burglary, robbery, sexual incidents, personal thefts, and assault and threats. Germany not included.

¹⁴ Tapio Lappi-Seppälä, *Global Trends and Local Exceptions*, 2009.

¹⁵ U.S. Department of Justice, "How to Use Structured Fines, 1996).

¹⁶ These figures do not include sentences of life without parole, life plus additional years, nor death.

¹⁷ George Zdenkowski, "Sentencing in Australia," *Legaldate*, May 2009, Vol. 21 Issue 2, p5-7.

¹⁸ Kate Warner, *Mandatory Sentencing and the Role of the Academic* (Brisbane, International Society for the Reform of Criminal Law: 2006). www.isrcl.org/Papers/2006/Warner.pdf

¹⁹ Kate Warner, *Mandatory Sentencing and the Role of the Academic*, 2006.

²⁰ Australian Institute of Criminology, "Sentencing Juveniles," August 2009.

www.aic.gov.au/crime_community/demographicgroup/youngpeople/sentencing.aspx#nsw

- ²¹ Law Council of Australia, *The Mandatory Sentencing Debate* (Canberra: Law Council of Australia, 2001). www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=91B75434-1E4F-17FA-D2BA-B6D5A60592A7&siteName=lca
- ²² Australian Bureau of Statistics, *Prisoners in Australia, 2006* (Canberra, Australian Bureau of Statistics, 2006) www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02006?OpenDocument.
- ²³ Judicial Conference of Australia, *Judge for yourself: A Guide to Sentencing in Australia* (Adelaide: The Judicial Conference of Australia, 2007). www.sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/judge_for_yourself_a_guide_to_sentencing_in_australia.pdf
- ²⁴ Department of Justice Canada, "Fair and Effective Sentencing – A Canadian Approach to Sentencing Policy," October 2005. www.justice.gc.ca/eng/news-nouv/nr-cp/2005/doc_31690.html
- ²⁵ John Howard Society of Alberta, *Sentencing in Canada* (Edmonton, Alberta: John Howard Society of Alberta: 1999) www.johnhoward.ab.ca/pub/pdf/C33.pdf
- ²⁶ Donna Calverly, *Youth Custody and Community Services in Canada, 2004/2005* (Ottawa, Canada: Juristat, Canadian Centre for Justice Statistics, 2007).
- ²⁷ Includes 10 provinces and territories.
Life sentences recoded to 25 years for mean calculation.
Michael Marth, "Adult Criminal Court Statistics, 2006/2007," *Juristat* 28, no. 5 (2010). www.statcan.gc.ca/pub/85-002-x/85-002-x2008005-eng.pdf
- ²⁸ John Howard Society, *Sentencing in Canada* (Edmonton, Canada: John Howard Society of Alberta, 1999). www.johnhoward.ab.ca/pub/pdf/C33.pdf
In the case of custodial sentences of ninety days or less, the court can order that a sentence be served intermittently (non-consecutively). For example, a court may direct a person to serve prison time on weekends or certain days, while being under a probation order when not in custody.
- ²⁹ Ministry of Justice, Finland, "Justice System of Finland," January 16, 2011. Finland Courts, "Imprisonment and Community Service," January 16, 2011. www.oikeus.fi/16073.htm
- ³⁰ Matti Joutsen, Raimo Lahti and Pasi Pölönen, *Criminal Justice Systems in Europe and North America: Finland* (Helsinki, Finland: The European Institute for Crime Prevention and Control, 2001).
- ³¹ Section 1 of the Conditional Sentences Act, as amended by Act 1989/992. Soon after the adoption of this amendment, the Supreme Court decided a case involving its application. In the case, the court had sentenced the defendant for attempted manslaughter to two years of imprisonment. He had been under 18 at the time of the offence. In view of the circumstances of the offence and the offender, the Supreme Court took the view that, despite the seriousness of the offence and the length of the sentence imposed, there were no "weighty reasons" for ordering the sentence imposed unconditionally (Supreme Court decision no. 1991:185, 20 December 1991).
Matti Joutsen, Raimo Lahti and Pasi Pölönen, *Criminal Justice Systems: Finland*, 2001.
- ³² Matti Joutsen, Raimo Lahti and Pasi Pölönen, *Criminal Justice Systems: Finland*, 2001.
- ³³ Personal Communication with Tuomo Niskanen
A. Kuhn, "Incarceration Rates: The United States in an International Perspective," *Criminal Justice Abstracts* 30, no. 2 (1998): 321-353. www.ncjrs.gov/App/Publications/abstract.aspx?ID=173492
- ³⁴ Judicial System, "Penalties," January 2010. www.oikeus.fi/16068.htm
It is possible for a defendant to be found guilty but nevertheless receive no penalty if the court is convinced that the person will change their behavior without a penalty
- ³⁵ Serious offenses in the German Criminal Code includes all drug offenses in which more than minor amounts of drugs are involved., Cornelius Nestler, "Sentencing in Germany," *Buffalo Criminal Law Review* 7, no. 1 (2003): 109-38. <http://wings.buffalo.edu/law/bclc/bclrarticles/7/1/nestler.pdf>
- ³⁶ Frieder Dünkel, *Juvenile Justice in Germany* (Greifswald, Germany: University of Greifswald, 2005). www.rsf.uni-greifswald.de/fileadmin/mediapool/lehrstuehle/duenkel/JuvenileJustice.pdf
- ³⁷ Exact mean not available.
Jörg-Martin Jehle, *Criminal Justice in Germany*, 2009).
- ³⁸ George Cole and Christopher Smith, eds. "Day Fines in Germany: Could the Concept Work in the United States?" in *The American System of Criminal Justice, 11th edition* (Belmont, CA: Thomson Wadsworth, 2007).

³⁹ Diversion could include requirements for community service, reparations, training courses, apology to harmed parties, mediation, or fines depending on the seriousness of the crime.

Frieder Dünkel, *Juvenile Justice in Germany*, 2005).

⁴⁰ The information presented applies only to England and Wales.

⁴¹ The Sentencing Council for England and Wales, "About Sentencing." www.sentencingcouncil.org.uk/about-sentencing.htm

⁴² The Sentencing Council for England and Wales, "About Sentencing." www.sentencingcouncil.org.uk/about-sentencing.htm

⁴³ The Sentencing Council for England and Wales, "About Sentencing." www.sentencingcouncil.org.uk/about-sentencing.htm

⁴⁴ *Sentencing Statistics: England and Wales 2008 Statistics Bulletin* (London: Ministry of Justice, 2008).

www.justice.gov.uk/publications/docs/sentencing-stats-2008.pdf

⁴⁵ The Sentencing Council for England and Wales, "About Sentencing." www.sentencingcouncil.org.uk/about-sentencing.htm

⁴⁶ James Austin and others, *The Use of Incarceration in the United States: National Policy White Paper*, 2001.

⁴⁷ Christopher Mascharka, "Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences," *Florida State University Law Review* 28, no. 4 (2001): 935-75.

www.law.fsu.edu/journals/lawreview/downloads/284/Masharka2.pdf

⁴⁸ Lia Monahon, *Until They Die a Natural Death: Youth Sentenced to Life Without Parole in Massachusetts* (Lynn, MA: Children's Law Center of Massachusetts, 2009). www.clcm.org/UntilTheyDieaNaturalDeath9_09.pdf

⁴⁹ Lia Monahon, *Until They Die a Natural Death*, 2009).

⁵⁰ Tom Bonczar *State Prison Admissions, 2006, 2010*.

⁵¹ National Governor's Association, *Sentencing Options: Baseline Information for Policymakers* (Washington, DC: National Governor's Association, 2003). www.nga.org/cda/files/0309sentencing.PDF