

## **SWING STATES**

### **Crime, Prisons and the Future of the Nation**

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## INTRODUCTION

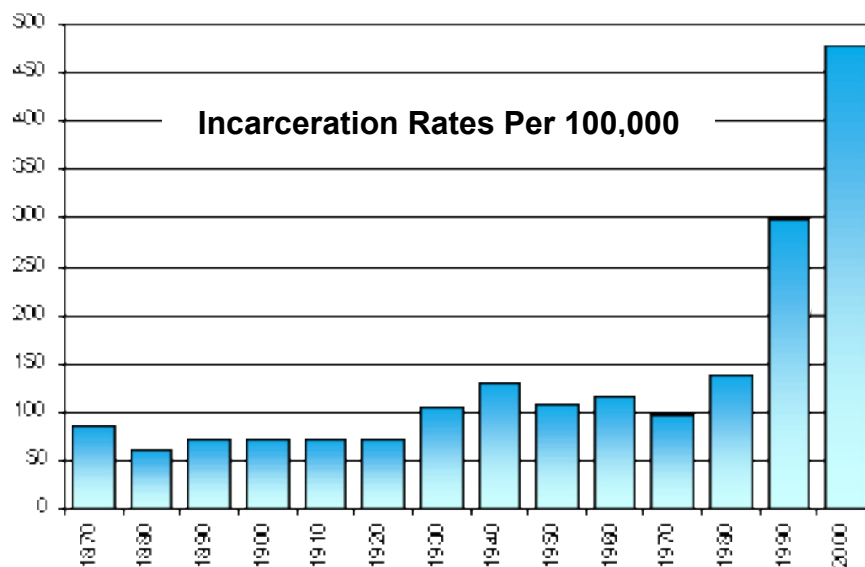
### Swing States: Crime, Prisons and the Future of the Nation

Prisons are a growing part of life in America. The United States currently holds 2.1 million people in prison or jail, and one in every 15 Americans born in 2001 is expected to serve at least a year in prison sometime during their lives.<sup>1</sup> In some towns, where factories have closed or jobs moved overseas, prisons are the largest employer and the economic lifeblood of the community. Adding people on probation and parole, there are nearly 7 million people under correctional supervision in America,<sup>2</sup> more people than in our eight least populous states combined. Organized differently, these people would have 16 votes in the United States Senate.

It has not always been like this. America opened its first walled penitentiary in Philadelphia in 1829.<sup>3</sup> For the next 150 years, the number of people in prison and jail climbed in rough proportion to the U.S. population.<sup>4</sup> Then around 1980 things changed. The U.S. started incarcerating people far out of proportion to its own historical standards or to any other nation at any other time. In the 1980's, fully 5% of the population growth in rural America was people being transported to prison.<sup>5</sup> By the 1990's, the U.S. was opening on average one new prison or jail every week. It took America 160 years to incarcerate its first million people, but just twelve years to incarcerate the second million.

**FIGURE 1: U.S. PRISON INCARCERATION RATE, 1870 TO 2003**

*It took America 160 years to incarcerate its first million people, but just 12 years to incarcerate the second million.*



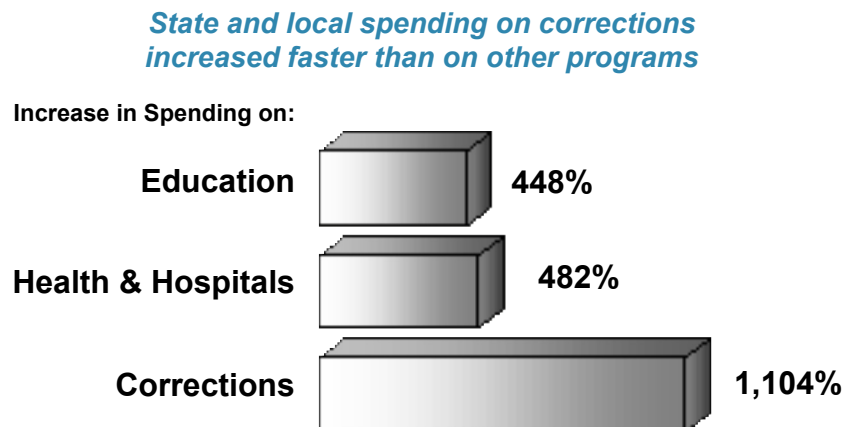
(Note: Data for 1900 and 1920 were unavailable so the average between the previous and next decade was used. The actual rates of 69 per 100,000 in 1904 and 52 per 100,000 in 1923 indicate such estimates are accurate to slightly high.)

Source: Cahalan, Margaret W., U.S. Department of Justice, Bureau of Justice Statistics. *Historical Corrections Statistics in the United States, 1850-1984* (1986). U.S. Department of Justice, Bureau of Justice Statistics Statistics, Prisoners series. This figure shows prisons only, not jails or juvenile facilities.

The increase in prison has not been distributed evenly through the population. Minority communities have disproportionately borne the brunt of America's incarceration growth. For example, African Americans constitute roughly 12% of the nation's population and 13% of the nation's drug users, but 58% of people in state prison for a drug crime. In comparison, whites constitute roughly 69% of the nation's population and 68% of the nation's drug users, but only 20% of people in state prison for a drug crime.<sup>6</sup> The combination of the sheer size and the racial disparities leads to shocking results. One in ten African American men in his twenties or thirties wakes up every morning behind bars.<sup>7</sup> A total of 4.7 million Americans are unable to vote due to felony disenfranchisement laws, including 1.4 million African American men.<sup>8</sup>

This heavy use of incarceration devours resources. Law enforcement has been the fastest rising expenditure in most state budgets since 1977. In 2001, the U.S. spent a record \$167 billion on prisons, law enforcement and criminal justice.<sup>9</sup> These expenditures limit our ability to educate our young, buy health insurance for our poor, care for our elderly, and create programs to prevent the next generation of young people from spending their lives in and out of jail. Between 1977 and 2001, state and local education spending—preponderantly primary and secondary schools—increased by 448%. Yet spending on corrections increased by 1101%.

**FIGURE 2: TOTAL STATE AND LOCAL EXPENDITURE, 1977 TO 2001**



Source: Bauer, Lynn U.S. Department of Justice, Bureau of Justice Statistics, Justice Expenditure and Employment in the United States, 2001 (May 2004), figure 3.

The investment in prisons might be worthwhile if it reduced crime, but the crime control impact has not been proportional to the investment. For the past decade, crime has generally declined, although for reasons generally unrelated to prisons.<sup>10</sup> The first reason for the decline is basic demographics. In the 1990's the baby-boom generation started to age from the crime-prone twenties and thirties into the more sedate forties and fifties. This demographic shift, all by itself, led to a natural decline in crime. The second reason was economics. The 1990's were a time of economic prosperity, with increases in employment and wages, and the expected decline in criminal behavior. Third, the epidemic of crack cocaine, which swept across America in the late 1980's started to subside. This unforeseen variable created chaos in communities where it hit, then

stabilized as people adjusted and drug markets accommodated the new product. At first crack was popular and new dealers established their turf with lethal violence. A few years later, crack's popularity declined and the dealers that had established their dominance no longer needed to earn it. The spike in crime headed downwards.

Of course, law enforcement was not irrelevant. Innovations like New York City's computerized crime mapping and the focus on "hot spot" communities offered improvements. Crucial to New York City's effort was the new practice of holding the police command structure accountable for reducing crime in their precincts.

Estimates of the impact of prisons on crime vary, but most credible researchers credit prisons with between 4% and 27% of the reduction in crime.<sup>11</sup> In general, the large-scale use of prison correlates poorly with reductions in crime. In this report, there is actually an inverse correlation. A careful look at who goes to prison helps to explain the disconnect between mass incarceration and public safety. The vast majority of new prison admissions during the 1980's and 1990's were people convicted of non-violent crimes. Confinement may be useful to incapacitate people who are actually or most likely to be dangerous—but it is a waste of resources on people who commit low-level, non-violent offenses. Drug addicts tend not to be deterred by sanctions and street level drug dealers or mules are instantly replaced to fill the demand. Trying to reduce these behaviors by locking people up is like bailing a boat with a leak. Other approaches yield similar or superior results at lower cost.

Nonetheless, prisons continue to grow. They grow when crime is rising—allegedly to control it—and they grow when crime is declining—allegedly to continue to keep it under control. In the last few years, in response to fiscal pressures, changing politics and the exploration of alternatives to incarceration, states have begun experimenting with change. Nearly half the states have passed some kind of reform intended to reduce crowding and relieve fiscal pressures. Despite this, the prison population increased by 40,983 people or 2.9% between 2002 and 2003.<sup>12</sup> The prisons just seem to grow, whether they are needed to or not, like weeds in the yard. It remains to be seen whether and how that growth can be controlled.

During this political season, the Justice Policy Institute (JPI) decided to examine the "swing states" in the upcoming presidential election. Just as these key electoral battlegrounds are a barometer for presidential preferences and the course the nation will take in coming years, prison policies in these swing states can shed light on the impact of recent prison growth and offer insights into future potential for creative reforms. Specific research questions include: What has happened to incarceration rates and crime rates in the targeted swing states? What has happened to funding for prisons and higher education in those states? What impact are these policies having on African American communities in those states? And, as Americans prepare to make their choices in the upcoming presidential elections, what impact will felony disenfranchisement laws have on the pool of eligible voters in these hotly contested states? The answer to those questions has serious impact America's direction in years to come.



(FIGURE 3 CONT.)

SWING		REPUBLICAN		DEMOCRAT	
Arizona Arkansas Florida Iowa Maine Michigan Minnesota Missouri Nevada	New Hampshire New Mexico Ohio Oregon Pennsylvania Washington West Virginia Wisconsin	Alabama Alaska Colorado Georgia Idaho Indiana Kansas Kentucky Louisiana Mississippi Montana	Nebraska North Carolina North Dakota Oklahoma South Carolina South Dakota Tennessee Texas Utah Virginia Wyoming	California Connecticut Delaware District of Columbia* Hawaii Illinois	Maryland Massachusetts New Jersey New York Rhode Island Vermont
Total Electoral Votes: 180		Total Electoral Votes: 190		Total Electoral Votes: 168	
*The District of Columbia was excluded in this study. Recent reorganization of the D.C. prison system made it impossible to compare trends over time.					

Source: *The New York Times 2004 Election Guide Online*

The Justice Policy Institute adopted these generally accepted classifications and the electoral map published by the New York Times,<sup>13</sup> and collected information about each of these states. Of course, the party labels are not necessarily congruent with the current leadership in each state or with the leadership over the historical timeframe of this research; they represent only the expected voting outcome of these states for the present presidential race. Nonetheless, the party labels create a logical grouping and the data speaks for itself.

JPI first compared states labeled “Republican,” “Democrat” and “Swing” on a variety of measures related to criminal justice and public safety. These measures include rates of incarceration and rates of crime, as well as social measures relating to education. Lastly, JPI identified information about the disenfranchisement of people convicted of felonies, since they could well make a difference in the upcoming presidential election. The data generally derives from official governmental sources over the roughly ten-year period leading to the most recent available data.

## Prisons and Crime

Between 1993 and 2002, the Democrat states added a total of 103,326 people to prison and jail. The Republican states added a total of 215,470 people to prison and jail. However, the Republican states had a larger growth in general population so a larger increase in confinement may be expected. In terms of growth per population, the Republican states experienced a prison growth of 31.7% compared to 16.8% in the Democrat states. Thus, rates of incarceration in Republican-leaning states grew nearly twice as fast as in Democrat-leaning states.

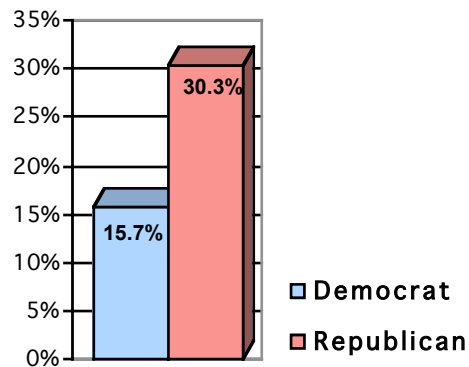
Yet Republican states did not enjoy the increased crime control that some might have expected. Indeed, Democrat states actually outperformed Republican states in terms of reductions of crime during the 1990’s. According to the FBI measures of crime, index crimes<sup>14</sup> per capita fell in Democrat states by 37.3% between 1993 and 2002, while index crimes per capita in Republican states fell by only 16.9%. This finding supports the observation of many criminologists, discussed above, that incarceration was responsible for only a fraction of the decline in crime in the 1990’s. A booming economy, stabilization of the crack trade, targeted law enforcement and demographics were bigger factors.



**FIGURE 4: INCARCERATION VS. CRIME RATE CHANGES, 1993-2002**

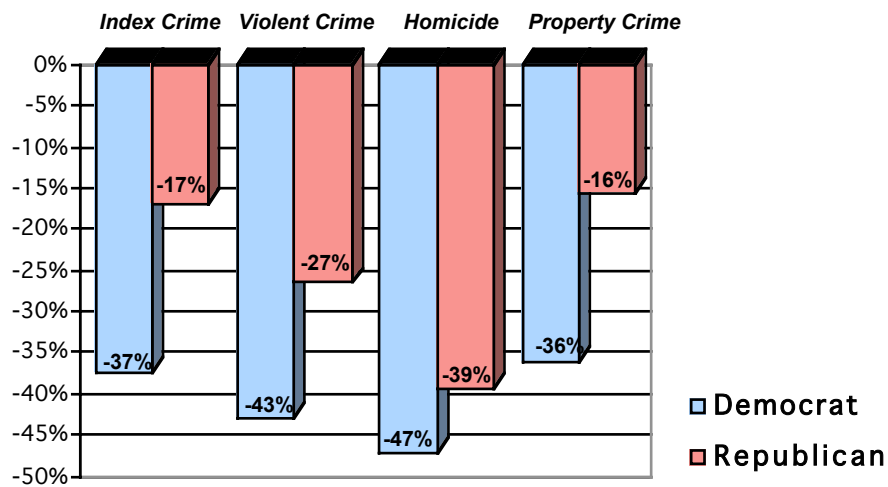
*Republican states put more people in prison and jail...*

**Increase in Incarceration Rate  
Per Capita, 1993-2002**



*But Democrat states experienced greater declines in crime...*

**Decrease in Crime  
Per Capita, 1993-2002**



*Incarceration was only responsible for a fraction of the decline in crime in the 1990's. A booming economy, stabilization of the crack trade, targeted law enforcement and demographics were bigger factors.*

Source: U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports. Changes were calculated from reports of 1993 and 2002 data. U.S. Department of Justice, Bureau of Justice Statistics, series on Prisoners and Probation and Parole. Changes were calculated from reports of 1993 and 2002 data.



The largest growth in prison of all occurred in the federal government. The Federal Bureau of Prisons grew by 90% between 1993 and 2002. The reason for this growth was partly related to the absorption of inmates from the District of Columbia and partly due to post September 11 activity, especially with immigrants. However, these considerations do not nearly account for the 83,801 individuals added to the federal prison system during this period.

At least part of the growth of the Federal Bureau of Prisons may relate to the federal government's relative insensitivity to budget limitations compared to the states. Corrections constitutes a significant portion of state budgets and many states are constitutionally required to balance their budgets on an annual basis. On the other hand, the Bureau of Prisons constitutes a tiny fraction of the federal budget and the U.S. government is less restrained by deficits. A few hundred million dollars of needless prison spending can easily go unnoticed.

In terms of prisons, crime and other criminal justice measures, the Democrat and Republican states show clear tendencies and offer clear alternatives. As Table 1 indicates, the swing states tend to fall in between Democrat and Republican states.

**TABLE 1: PRISON GROWTH AND CRIME RATE CHANGES, 1993-2002**

	PRISON GROWTH		CHANGE IN CRIME RATE (Percent per Population)			
	<i>Individuals Added to Prison System</i>	<i>Prison &amp; Jail Growth (% per pop.)</i>	<i>Index crime</i>	<i>Violent Crime</i>	<i>Homicide</i>	<i>Property Crime</i>
<b>Democrat States</b>	<b>112,692</b>	<b>15.7%</b>	<b>-37.3%</b>	<b>-42.9%</b>	<b>-47.2%</b>	<b>-36.1%</b>
<b>Republican States</b>	<b>248,617</b>	<b>30.3%</b>	<b>-16.9%</b>	<b>-26.5%</b>	<b>-39.4%</b>	<b>-15.6%</b>
<b>Swing States:</b>						
Arizona	17,509	26.1%	-12.6%	-21.3%	-16.2%	-11.6%
Arkansas	5,770	37.3%	-13.5%	-28.4%	-48.5%	-11.4%
Florida	44,934	24.6%	-34.8%	-35.9%	-38.9%	-34.7%
Iowa	5,100	71.5%	-10.1%	-12.0%	-36.0%	-9.9%
Maine	950	37.9%	-15.9%	-14.3%	-33.1%	-15.9%
Michigan	15,303	22.9%	-28.5%	-31.3%	-31.1%	-28.0%
Minnesota	4,346	39.8%	-19.4%	-18.2%	-35.0%	-19.5%
Missouri	17,192	67.3%	-9.6%	-27.5%	-48.2%	-6.5%
Nevada	7,267	13.8%	-27.5%	-27.4%	-20.0%	-27.5%
New Hampshire	1,598	36.5%	-23.7%	16.8%	-54.1%	-25.8%
New Mexico	5,569	62.7%	-18.9%	-20.4%	2.0%	-18.6%
Ohio	12,164	19.6%	-8.5%	-30.4%	-23.5%	-5.7%
Oregon	9,112	74.6%	-15.5%	-41.8%	-55.7%	-12.9%
Pennsylvania	25,724	52.9%	-13.3%	-3.9%	-26.1%	-14.7%
Washington	10,446	37.1%	-14.3%	-32.9%	-41.3%	-12.5%
W. Virginia	3,824	108.2%	-1.1%	12.0%	-54.5%	-2.2%
Wisconsin	17,999	95.5%	-19.5%	-14.6%	-35.5%	-19.8%
<b>Swing States Total/Average</b>	<b>204,807</b>	<b>38.8%</b>	<b>-19.3%</b>	<b>-26.2%</b>	<b>-32.8%</b>	<b>-18.4%</b>
<b>Federal BOP</b>	<b>83,801</b>	<b>90.3%</b>	<b>na</b>	<b>na</b>	<b>na</b>	<b>na</b>

Source: U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports. Changes were calculated from reports of 1993 and 2002 data. U.S. Department of Justice, Bureau of Justice Statistics, series on Prisoners and Probation and Parole. Changes were calculated from reports of 1993 and 2002 data.

## Health Care

Health care is a concern for all Americans, and it is also a major line item in most state budgets. But spending on health has not been able to keep up with spending on law enforcement. In 1995, states spent 9.7% of their budgets on health care. By 2001, spending on health had declined to 7% and spending on law enforcement had risen to match it.<sup>15</sup> Thus, state spending on health has dropped even as the population has been aging and new technologies have improved treatments. As Figure 2 indicates, since 1977, corrections expenditures (up 1101%) have increased by more than twice as fast as spending on health care (up 482%).<sup>16</sup>

The shift from health care to law enforcement is especially ironic because drug abuse, a primary concern of law enforcement, is in many ways a public health problem. Treatment is often delivered via public health agencies and therapies typically include medical or psychological components. Some failures to control drug abuse, such as the spread of tuberculosis and AIDS, also ultimately affect health budgets and health services. Health systems might be able to do more to prevent or solve these problems, but they are unable to compete for resources.

Many private citizens lack access to affordable health care. In the Democrat states, on average, 8.5% of children lack health insurance. Among the Republican states, the average is 11.4%.<sup>17</sup> As Table 2 indicates, the swing states average 10%.

**TABLE 2: HEALTH INDICATORS**

	<b>Health &amp; Hospitals Change in Spending (inflation adjusted) 1990-2000</b>	<b>Criminal &amp; Civil Justice System Change in Spending (inflation adjusted) 1990-2000</b>	<b>Children Without Health Insurance 2001</b>
<b>Democrat States</b>	<b>15.8%</b>	<b>31.7%</b>	<b>8.5%</b>
<b>Republican States</b>	<b>38.2%</b>	<b>57.2%</b>	<b>11.4%</b>
<b>Swing States:</b>			
Arizona	66.1%	55.7%	15.0%
Arkansas	37.8%	109.8%	11.0%
Florida	41.4%	52.9%	16.0%
Iowa	33.2%	49.9%	6.0%
Maine	52.0%	26.1%	8.0%
Michigan	-3.7%	29.3%	7.0%
Minnesota	-8.0%	57.3%	6.0%
Missouri	39.0%	56.0%	6.0%
Nevada	76.9%	99.6%	17.0%
New Hampshire	-16.6%	14.3%	6.0%
New Mexico	44.7%	62.0%	16.0%
Ohio	41.3%	62.3%	9.0%
Oregon	118.1%	82.7%	11.0%
Pennsylvania	54.0%	73.0%	8.0%
Washington	85.5%	67.1%	10.0%
West Virginia	18.7%	85.5%	10.0%
Wisconsin	31.3%	64.6%	4.0%
<b>Swing States Total/Average</b>	<b>36.8%</b>	<b>58.0%</b>	<b>9.8%</b>
<b>U.S. Total/Average</b>	<b>29.3%</b>	<b>45.0%</b>	<b>10.2%</b>

Spending data obtained from the U.S. Census Bureau, *Survey of Government Finances* in July 2004.  
Information on children's health insurance, 2004 Kids Count Data Book: *State Profiles of Child Well-Being*,  
the Annie Casey Foundation, (2004).<sup>18</sup>

## Education

Education is a path away from crime and towards a better life. Yet as Figure 2 indicates, between 1977 and 2001, state and local spending on corrections increased more than twice as much as spending on education (1101% compared to 448%).<sup>19</sup> The bulk of this education spending goes to public primary and secondary schools, so young children lose the most in this trade-off. The prison system, however, always has room for children after they fail. Among people who drop out of high school, half of African American men and 13% of white men can be expected to serve time in prison by their early thirties.<sup>20</sup>

In the Democrat states, more children are staying in school. The percentage of children in those states who dropped out of high school decreased an average of 8.3% between 1991 and 2001. In Republican states, the percentage of children who dropped out of high school increased by an average of 1.0% during the same period.<sup>21</sup> Additional effort to retain students on the brink could keep them in the mainstream, but such efforts tend to be cut when budgets are tight.

The expenditure trends are even starker in higher education. Between 1985 and 2002, state expenditures from general fund revenues on corrections grew by 183% compared to a 35% increase in higher education.<sup>22</sup> Thus, general revenue spending on corrections increased five times as much as spending on higher education. This imbalance exists in Democrat states, Republican states and every single swing state. National priorities appear to have shifted from educating people to participate in the modern era to locking them up if they fail.

Prison has become a more common experience among some minorities, notably African American men, than attending college. Between 1980 and 2000, three times as many African American men were added to the prison systems as were added to the nation's colleges and universities. Nearly twice as many African American men in their early thirties have been to prison (22.4%) as have obtained a Bachelor's Degree (12.5%).<sup>23</sup> The unifying experience of this generation is not graduation but confinement.

**FIGURE 5: COLLEGE DEGREES VS. PRISON STAYS FOR AFRICAN AMERICAN MEN**

*Twice as many African American men in their early thirties have been to prison as have obtained a Bachelor's Degree.*



Source: Western, Bruce, Schiraldi, Vincent and Ziedenberg, Jason, Education and Incarceration, Washington, DC: Justice Policy Institute (2003).

The choices are ironic because the cost of a year in prison exceeds the cost of a year at a private university. The average cost of locking a person in prison for a year was \$22,650 in 2001.<sup>24</sup> The national average annual cost of undergraduate tuition in 2000 at a public university was \$4,800. At a private college the cost of tuition was \$14,000.<sup>25</sup>

Nationwide, \$57 billion is spent annually on incarceration.<sup>26</sup> The question arises whether this is the best use of these funds. If just ten percent of this expenditure could be redirected out of the prison system, it could fund approximately 100,000 new teachers in primary or secondary schools. Just ten percent of the funds America spends annually on prisons and jails could create a full tuition scholarship to state college for more than one million high school graduates.

**TABLE 3: STATE SPENDING ON CORRECTIONS VS. HIGHER EDUCATION**

*States spending on corrections increased faster than spending on higher education*

	<i>Corrections Spending Growth, General Fund, Adjusted for Inflation 1985-2002</i>	<i>Higher Ed. Spending Change, General Fund, Adjusted for Inflation 1985-2002</i>	<i>High School Drop-outs Change 1991-2001</i>
<b>Democrat States</b>	<b>164.7%</b>	<b>27.9%</b>	<b>-8.3%</b>
<b>Republican States</b>	<b>174.4%</b>	<b>38.6%</b>	<b>1.0%</b>
<i>Swing States:</i>			
Arizona	169.5%	47.9%	0.0%
Arkansas	208.0%	31.3%	0.0%
Florida	205.7%	75.2%	0.0%
Iowa	101.3%	44.8%	25.0%
Maine	117.6%	79.6%	33.3%
Michigan	244.0%	27.1%	-11.1%
Minnesota	159.7%	29.3%	-28.6%
Missouri	257.0%	25.2%	0.0%
Nevada	134.4%	127.9%	-6.7%
New Hampshire	192.7%	9.8%	12.5%
New Mexico	71.8%	56.9%	20.0%
Ohio	210.4%	33.6%	0.0%
Oregon	349.5%	53.3%	22.2%
Pennsylvania	404.7%	28.8%	0.0%
Washington	122.9%	21.0%	0.0%
West Virginia	149.7%	14.9%	-16.7%
Wisconsin	312.1%	29.6%	75.0%
<b>Swing States Total/Avg.</b>	<b>219.9%</b>	<b>38.5%</b>	<b>3.2%</b>
<b>U.S. Total/Avg.</b>	<b>183.0%</b>	<b>34.8%</b>	<b>-0.2%</b>

Source: State Expenditure Report, Washington, DC: National Association of State Budget Officers. Alaska is excluded because data are unavailable. 2004 Kids Count Data Book: State Profiles of Child Well-Being, the Annie Casey Foundation, (2004).<sup>27</sup>

## Disenfranchisement

It goes without saying that voting is fundamental to a democracy. Modern history is filled with the expansion of the franchise, as more countries gain the right to vote and more people within nations gain the right to vote. The United States stands out as it marches backwards. Nationally, approximately 4.7 million Americans are denied the right to vote as a result of a felony conviction, and the number continues to rise in tandem with the expansion of the criminal justice system.<sup>28</sup>

In 48 states and the District of Columbia, people in prison cannot vote. Thirty-five states forbid people convicted of felonies from voting while they are on parole, and 31 states forbid voting while people are on probation. Seven states impose a lifetime ban on voting for anyone who has been convicted of a felony, even if the sentence has long since expired.<sup>29</sup> However, as the experience in Florida after the 2000 election demonstrated, errors can be made in determining exactly who is correctly or incorrectly removed from the voter rolls.

The racial imbalance in other parts of the justice system trickles into disenfranchisement as well. Among the 4.7 million people who have lost the right to vote, 1.8 million are African American. An estimated 13% of men, 1.4 million individuals, are unable to vote.<sup>30</sup> Thus, the people who are most affected by the justice system have no right to express their opinion at the ballot box.

**AN ESTIMATED 1.7 MILLION PEOPLE IN THE 17 SWING STATES WILL BE UNABLE TO VOTE IN THE PRESIDENTIAL ELECTION OF 2004 DUE TO FELONY CONVICTIONS.**

In the Democrat states, a total of 846,486 people lost their right to vote as the result of a conviction. Those lost voters constitute 1.2% of the total electorate and 5.4% of the African American electorate. In Republican states, 2,074,837 people lost their right to vote.<sup>31</sup> They constitute 3.0% of all voters and 8.6% of African American voters. These people will be excluded from helping to decide the next President of the United States as well as the individuals who represent them in the legislature. In the swing states, a total of 1,757,617 people, or 2.6% of all voters, will be excluded from this pivotal presidential election. The swing state of **Florida** disenfranchises nearly as many people (827,207) as all Democrat states combined (846,486).

In eleven states, including 9 swing states, the margin of victory in the 2000 presidential election was smaller than the number of people excluded from the electoral process as a result of a conviction. In **New Mexico**, 214 times more people were excluded than decided the election. In **Iowa**, 24 times more people were disenfranchised than Al Gore's margin of victory.

**TABLE 4: THE ELECTORAL IMPACT OF FELON DISENFRANCHISEMENT IN 2000**

*In over half of the swing states in 2000, the number disenfranchised exceeded the margin of victory.*

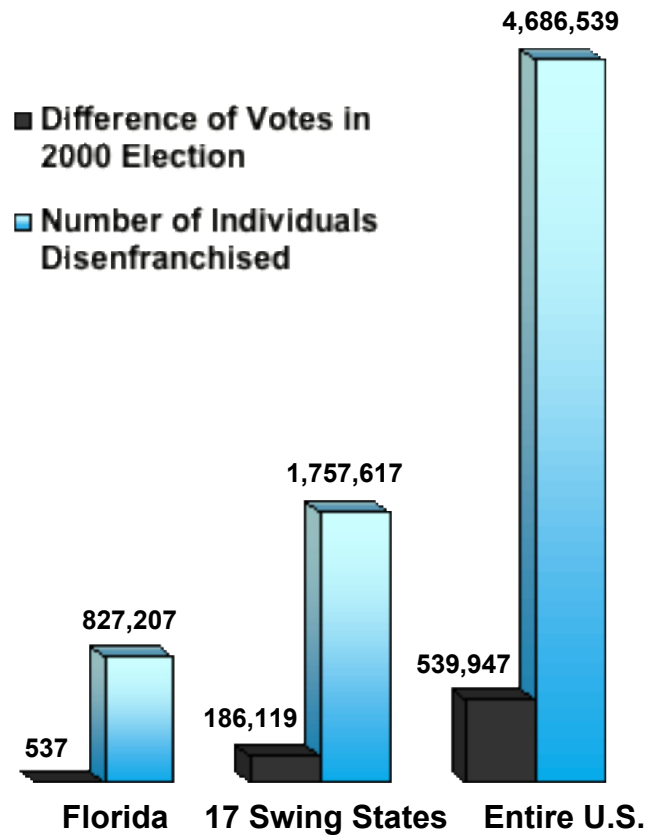
	<i>Felons Disenfranchised in 2000</i>	<i>% Voters Disenfranchised in 2000</i>	<i>% Black Voters Disenfranchised in 2000</i>	<i>Bush/Gore Difference in Votes</i>	<i>Winner in 2000</i>
<b>Democrat States</b>	<b>846,486</b>	<b>1.2%</b>	<b>5.4%</b>	<b>5,388,810</b>	<b>Gore</b>
<b>Republican States</b>	<b>2,074,837</b>	<b>3.0%</b>	<b>8.6%</b>	<b>5,418,567</b>	<b>Bush</b>
<b>Swing States:</b>					
<b>Arizona*</b>	<b>140,870</b>	<b>3.9%</b>	<b>12.9%</b>	<b>79,382</b>	<b>Bush</b>
Arkansas	50,416	2.6%	7.9%	51,696	Bush
<b>Florida*</b>	<b>827,207</b>	<b>7.0%</b>	<b>16.0%</b>	<b>537</b>	<b>Bush</b>
<b>Iowa*</b>	<b>100,631</b>	<b>4.6%</b>	<b>24.9%</b>	<b>4,130</b>	<b>Gore</b>
Maine	NA	NA	NA	31,385	Gore
Michigan	49,318	0.7%	2.8%	194,621	Gore
Minnesota	41,477	1.2%	8.4%	57,900	Gore
<b>Missouri*</b>	<b>83,012</b>	<b>2.0%</b>	<b>7.2%</b>	<b>78,695</b>	<b>Bush</b>
<b>Nevada*</b>	<b>66,390</b>	<b>4.8%</b>	<b>17.1%</b>	<b>21,590</b>	<b>Bush</b>
New Hampshire	2,416	0.3%	1.5%	7,282	Bush
<b>New Mexico*</b>	<b>78,400</b>	<b>6.2%</b>	<b>24.7%</b>	<b>366</b>	<b>Gore</b>
Ohio	47,461	0.6%	2.9%	176,426	Bush
<b>Oregon*</b>	<b>11,307</b>	<b>0.4%</b>	<b>3.1%</b>	<b>6,765</b>	<b>Gore</b>
Pennsylvania	36,847	0.4%	2.8%	201,103	Gore
<b>Washington*</b>	<b>158,965</b>	<b>3.6%</b>	<b>14.3%</b>	<b>138,681</b>	<b>Gore</b>
West Virginia	8,875	0.6%	2.6%	38,620	Bush
<b>Wisconsin*</b>	<b>54,025</b>	<b>1.4%</b>	<b>10.8%</b>	<b>5,396</b>	<b>Gore</b>
<b>Swing States Total</b>	<b>1,757,617</b>	<b>2.6%</b>	<b>8.4%</b>	<b>186,119</b>	<b>Gore</b>
<b>*States where the number of disenfranchised EXCEEDED the margin of victory.</b>					

Source: Uggen, Christopher and Manza, Jeff, Denying Felons and Ex-Felons the Vote: The Political Consequences, Past and Future, (Institute for Policy Research, Northwestern University, Policy Briefs, February 2002). Vote counts for each state from CNN.<sup>32</sup>

**Florida** was the site of the most significant distortion. The 2000 presidential election was decided by just 537 votes in **Florida**, but 827,207 people lost their right to vote as a result of a felony conviction. African Americans, who overwhelmingly vote Democrat, made up 256,392 of the voters disenfranchised in that pivotal election. The large numbers of people whose votes were discounted—as well as the questionable quality of the process for enforcing the rules—has led to vigorous debate over whether disenfranchisement decided the election in **Florida**, and hence the presidency. Sociologists Jeff Manza and Christopher Uggen calculated that without the felon disenfranchisement, Al Gore would have won the popular vote in Florida by 90,000 votes.<sup>33</sup>

**FIGURE 6: FELON DISENFRANCHISEMENT**

*Sociologists calculate that without the felon disenfranchisement, Al Gore would have won the popular vote in Florida by 90,000 votes in 2000.<sup>34</sup>*





## THE SWING STATES

The swing states reveal a nation being pulled in different directions. The Republican and Democrat states, as a group, showed clear and competing trends in incarceration. Republican states used incarceration more heavily and spent more money on it than Democratic states. The Democrat states, however, showed better results in terms of reductions in crime as measured by the FBI.

Unsurprisingly, the swing states tend to fall between the Democrat and Republican states, and they show significant diversity. In some cases, neighboring swing states are moving in tandem and in other cases they are taking opposite courses. States are the laboratories of democracy, so the experiments are worth watching. The swing states will pull the nation in their own direction by their own internal policy decisions, and they will influence the Presidential elections by communicating what they want from national leadership.

### Pennsylvania and Ohio

**Pennsylvania** and **Ohio** are noteworthy because they are moving in opposite directions when it comes to correctional policy. In **Ohio**, sweeping sentencing reforms were introduced in 1996. They prompted longer prison terms for people convicted of multiple or violent crimes but they supported community sanctions instead of prison for people convicted of less serious crimes. **Ohio** also increased its capacity in the community to supervise and redirect people under justice control. For people eligible for parole, **Ohio** adopted a risk assessment instrument that permitted parole for people who present lower risk while denying parole for people who present greater risk. The number of people paroled nearly doubled (from 3,224 in 1995 to 6,150, the year after the reform) *without* increasing crime in the community. The number of people in prison in **Ohio** actually declined by more than 2,000 people between 1998 and 2003, allowing the state to close the century-old 1,724-bed Orient Correctional Institution. The prison closure avoided \$16 million in needed repairs and \$41.9 million annually in operating costs.<sup>35</sup>

**Pennsylvania** has continued to rely on prisons. Its incarceration rate increased by 53% between 1993 and 2002, more than twice as fast as **Ohio's**, putting it in the upper range of swing states. As **Ohio** has been paroling people convicted of non-violent crimes who have improved their behavior while in custody, Pennsylvania has clamped down. The average length of stay in **Pennsylvania** prisons is 5.75 years compared to 2.5 years nationwide.<sup>36</sup> Even more noteworthy, the length of stay in **Pennsylvania** prisons increased in recent years even though the national average has been declining. **Pennsylvania** is a jurisdiction that nominally allows parole but the conditions are so strict that the function has changed. People convicted of low-level drug crimes that might be diverted in other jurisdictions or paroled after 18 months are serving multi-year terms in **Pennsylvania**. As a result, the system continues to grow.

**Pennsylvania** also stands out because general revenue spending on corrections increased *fourteen* times as fast as spending on higher education between 1985 and 2002 (see Table 3). In a nation that generally favored prisons over higher education, **Pennsylvania's** penchant was among the strongest. It increased spending on corrections by 405% during those years, compared to a 210% increase in **Ohio**. Unless recent decisions in Pennsylvania are altered, these contrasts will only increase in years to come.

The differences are especially important because **Pennsylvania** is confronting an upsurge in heroin abuse in rural communities that are not accustomed to such problems. Heroin killed more people than any other drug in Allegheny, Beaver, Butler, Washington and Westmoreland counties in 2003.<sup>37</sup> Some county officials, despairing of a response based on incarceration, are seeking reforms based on diversion, treatment and rehabilitation.<sup>38</sup> **Pennsylvania** may soon find itself at a decision point: whether to increase the use of prison or increase the availability of treatment. Early returns suggest the direction the state may take: in 2003 **Pennsylvania** cut roughly 20 percent of its community-based treatment dollars.<sup>39</sup>

## The Midwest

The northern Midwest also provides interesting contrasts. **Michigan, Minnesota** and **Wisconsin** all had respectable declines in crime but **Wisconsin** stands out with a 95% increase in rate of incarceration between 1993 and 2002. **Michigan** and **Minnesota** increased their rates of incarceration by 22.9% and 39.8% respectively during those years, which puts them near the range of the national average, but **Wisconsin** was near the top.

**Michigan's** relative incarceration is likely to drop still further with the recent repeal of some of the nation's harshest mandatory minimum prison sentences.<sup>40</sup> Before the change, convictions for a variety of drug offenses received stiff mandatory penalties based solely on the weight of the drugs involved. The individual's prior record, personal addiction or role in the offense were statutorily irrelevant, so the laws swept up drug mules and first-offenders in a very broad net. Ironically, the "drug kingpins," for whom the long sentences were intended, could often use their knowledge of others to trade information in return for lower sentences. Recognizing this irrationality, **Michigan's** Republican controlled House and Republican controlled Senate passed a law that the Republican governor signed on Christmas Day 2002. The new statutory scheme moderated prison terms and considered some circumstances of each case. This modification and others like it were expected to generate \$41 million in savings in 2003 alone.

**Wisconsin** has been struggling under its 95% increase in incarceration. It has spent millions of dollars shipping people to prisons out of state, which increases costs, creates hardship for family members and exposes the state to unreliable quality control and legal liability. Its corrections budget increased by 312% between 1985 and 2002, twice as much as the neighboring state of **Minnesota**. **Wisconsin's** higher education budget increased by one-tenth as much as the corrections budget and the number of children who dropped out of high school increased by 75%. High school drop-out rates declined in both **Michigan** and **Minnesota**.

## The West

To the west, **Washington** has led reform efforts by reducing sentence lengths and increasing the speed of release for people convicted of drug and property crimes.<sup>41</sup> The Democratic governor, working in close collaboration with the Department of Corrections, developed new systems in 2002 to divert people suffering from drug problems into treatment. Most importantly, **Washington** used part of the prison cost savings to fund improved treatment and supervision for people returning from prison.

**Washington's** reform contrasts with the neighboring state of **Oregon**. Although the states are demographically similar and experienced similar declines in crime in the 1990's, **Washington's** rate of incarceration and corrections spending increased half as much as **Oregon's** between 1993 and 2002, (37% versus 75% rise incarceration and 123% versus 350 rise in corrections spending).

**Washington** enacted these reforms even though it disenfranchises 14 times as many voters as the neighboring state of **Oregon**. **Oregon** also allows voters to vote by mail-in ballots over a span of days, which makes participation easier and more likely.

**Arizona** voters led the nation in 1996 when they passed Proposition 200, a landmark ballot initiative that diverted people convicted of drug crimes from prison to treatment. The Arizona Supreme Court reported that the policy saved the state over \$2.5 million in its first year of operation. Since that time, Arizona has created a sentencing commission and pioneered a transition program that allows people in prison to be released three months earlier than their prior earliest release date.<sup>42</sup> This transition program provides rehabilitative services that are funded in part by savings derived from the early release. These measures helped keep the increase in **Arizona's** incarceration rate half as high as neighboring **New Mexico** (26.1% compared to 62.7%). **New Mexico** is also noteworthy because it disenfranchises nearly a quarter (24.7%) of voting-age African Americans, one of the highest rates in the nation. Al Gore won in New Mexico in 2000 with a margin of victory of just 366 votes. But 78,400 people were barred from voting.

Other enterprising swing states followed **Arizona's** lead in sentencing people convicted of drug crimes to treatment rather than incarceration. In **Missouri**, SB 5 allows courts to sentence people convicted of nonviolent crimes to drug treatment instead of prison; in **Colorado**, SB 318 provided \$2.2 million for drug treatment and allowed judges to sentence people convicted of possessing less than one gram of any controlled substance to treatment instead of incarceration; and in **Louisiana**, SB 108 authorized the establishment of job intervention programs for people convicted of certain offenses.<sup>43</sup>

## CONCLUSION AND RECOMMENDATIONS

In the past three decades, states throughout America ratcheted up punishment like never before, incarcerating record numbers of Americans and spending record amounts to do so. In recent years, however, the tide has started to turn. States are recognizing that prisons consume great fiscal and human resources, and they are starting to explore new directions.

They are bolstered in these efforts by shifts in public opinion. Punitive sentiment reached its zenith in the mid-1990's. By 2001, people started to change their tone. Twice as many Americans surveyed in 2001 believed we should be "attacking the social and economic problems that lead to crime" rather than "improving law enforcement with more police, prisons and judges."<sup>44</sup> Voters in **California** who passed Three-Strikes-You're-Out with a 72% majority in 1994 appear to have changed their view: current polls indicate 76% support for a ballot initiative that limits application to violent crimes.<sup>45</sup> This partly reflects a change in mood and an increased attention to exactly who is subject to these very long sentences.

Support for change cuts across party lines and ideological affiliations. Last year, Reagan-appointed Supreme Court Justice Anthony M. Kennedy publicly lamented the United States' overuse of incarceration. He told the American Bar Association that "Our resources are misspent, our punishments too severe, our sentences too long." In **Texas** in 2003, the Republican-controlled legislature passed a law that the Republican governor signed diverting 4,000 people accused of nonviolent drug offenses from prison into treatment annually.

To strengthen that trend and to return some balance to a system that has swung dramatically in a punitive direction, the Justice Policy Institute offers the following recommendations:

### 1. Return Balance to the Criminal Justice System

Over the past three years, reports by the Justice Policy Institute, the Sentencing Project, Families Against Mandatory Minimums and the Vera Institute of Justice have all charted an emerging trend among states—including many swing states—of enacting policies to reduce their prison populations, abolish mandatory sentencing laws, increase drug treatment, and improve reentry services for people returning from prison to their home communities.<sup>46</sup>

As the discussion of the swing states indicates, states are beginning to move in this direction. **Colorado, Delaware, Maine, Michigan, and Washington** have all either repealed mandatory sentences or otherwise reduced sentence lengths.<sup>47</sup> **Texas, Ohio, Colorado and Nevada** have confronted the mounting problem of people being returned to prison for technical violations of parole or probation by expediting release processes.<sup>48</sup> One-third of the admissions to prison in recent years have been people returned to custody for violating conditions of release.<sup>49</sup> The challenge is to help people succeed at the difficult transition from prison to the community instead of revoking their release and sending them back. **Maryland's** Republican governor recently signed legislation that diverts people from prison into treatment and expedites parole consideration for people sentenced before the new reform.

## PROMISING APPROACHES...

- **Sentencing Reforms:** To return discretion to judges and ensure that low-level offenses do not receive excessive punishment.
- **Release Reforms:** To reward participation in rehabilitative programs and ensure that prison exits at least keep pace with prison admissions.
- **Supervision Reforms:** To minimize returns to prison for technical violations and to help people succeed in the community.

These are all promising moves in the right direction, but their impact remains doubtful. In 2003, the nation's prison population continued its upward rise, increasing by 2.9% or 40,983 people. Determined energy and sustained commitment is needed to craft solutions commensurate with the problem.

## 2. Restore the Vote

As Table 4 indicates, an estimated 1.7 million people in the 17 swing states will be unable to vote in the Presidential election of 2004 due to felony convictions. By contrast, the 2000 Presidential election was decided in these 17 states by just 186,000 votes. Public opinion research reveals that the majority of Americans support the restoration of the vote to people who have run afoul of the law.<sup>50</sup> Up to 80% would restore the franchise after the sentence has been completed. Similarly, 61%-68% would restore the franchise to people on probation or parole that are not currently in prison. Americans believe that losing the right to vote should not be part of the penalty paid for breaking the law, and that encouraging people to participate in pro-social activities, such as voting, encourages other lawful behaviors. Americans should not be cut off from a basic right such as voting because they have broken the law.

## 3. Examine the Role and Influence of the Federal Government

Although the Federal Bureau of Prisons has been the fastest growing prison system in recent years, the vast majority of imprisonment in America still occurs in state prisons and county jails. Still, the federal government has an important role to play both by leading by example and by providing resources to support creativity in states as they attempt to curb their prison populations and rein in costs.

To lead by example, Congress should pass, and the President should sign legislation that abolishes the harsh mandatory sentences it enacted in the 1980's. The states are starting to move in this direction, and Justice Kennedy specifically recommended doing so. Federal policymakers should realize that there is strong public support for the notion that sentencing discretion should be returned to judges, and that punishment should be proportional to the offense and the offender.

Equally important, however, is the federal government's ability to encourage innovation through federal funding. In the 1990s, the federal government allocated \$2.7 billion to the states to fund prison construction in return for reducing good time credits and abolishing parole. States responded with the most ambitious prison construction effort in the history of the world.

Just as the President and Congress set that direction in the 1990s, they can set a direction now that encourages states to return balance to their criminal justice systems by promoting treatment and prevention instead of incarceration, and graduated sanctions instead of parole revocations. The federal government can fund research to evaluate the outcomes of state generated innovations, and help to expedite the spread of success. Lastly, the federal government can help to change the debate. President Bush started in that direction in his state of the union address when he offered support for people in prison and described America as the land of the “second chance.” The swing states can work to define that tone and show which way they want the nation to move.



## ENDNOTES

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- <sup>2</sup> Glaze, Lauren and Palla, Seri, U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States, 2003* (July 2004). The exact figures are: 1,387,269 in prison; 691,301 in jail; 4,073,987 on probation; 774,588 on parole; the total is 6,889,800 (accounting for people with multiple statuses).
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- <sup>4</sup> Cahalan, Margaret and Parsons, Lee Anne, U.S. Department of Justice, Bureau of Justice Statistics, *Historical Corrections Statistics in the United States, 1850 – 1984* (December 1986).
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- <sup>8</sup> The Sentencing Project, *Felony Disenfranchisement Laws In The United States*, (May 2004). Accessed on July 31, 2004 at <http://www.sentencingproject.org/pdfs/1046.pdf>.
- <sup>9</sup> Bauer, Lynn U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States, 2001* (May 2004).
- <sup>10</sup> In general, see e.g., Blumstein, Alfred and Wallman, Joel, ed., *The Crime Drop in America*, Cambridge University Press, (2000).
- <sup>11</sup> Spellman, William, *The Limited Importance of Prison Expansion*, in Blumstein, Alfred and Wallman, Joel, ed., *THE CRIME DROP IN AMERICA*, Cambridge University Press, (2000).
- <sup>12</sup> Harrison, Paige and Karberg, Jennifer, U.S. Department of Justice, Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear 2003* (May 2004).
- <sup>13</sup> The New York Times' map is available on its web page, accessed July 31, 2004 at [http://www.nytimes.com/packages/html/politics/2004\\_ELECTIONGUIDE\\_GRAPHIC/](http://www.nytimes.com/packages/html/politics/2004_ELECTIONGUIDE_GRAPHIC/) Many sources offer similar maps, and the classifications are generally consistent.
- <sup>14</sup> FBI "Index Crimes" include: larceny-theft, motor vehicle theft, murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, and burglary. The FBI often groups these index offenses into violent crimes and property crimes.
- <sup>15</sup> Bauer, Lynn U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States, 2001* (May 2004). Gifford, Lea and Lindgren, Sue U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States, 1995* (November 1999).
- <sup>16</sup> Bauer, Lynn U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States, 2001* (May 2004), figure 3.
- <sup>17</sup> *2004 Kids Count Data Book: State Profiles of Child Well-Being*, The Annie Casey Foundation, (2004). In this health insurance measure, "average" refers to the average among the states not the average of the population within the states. The 2004 data book was accessed at <http://www.aecf.org/kidscount/databook/>.
- <sup>18</sup> Survey of Government Finances Resources is available at <http://www.census.gov/govs/www/estimate.html>. See note 17 for limitations of child health insurance data.
- <sup>19</sup> Bauer, Lynn U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States, 2001* (May 2004), figure 3.



<sup>20</sup> Western, Bruce, Schiraldi, Vincent and Ziedenberg, Jason, *Education and Incarceration*, Washington, DC: Justice Policy Institute (2003).

<sup>21</sup> *2004 Kids Count Data Book: State Profiles of Child Well-Being*, The Annie Casey Foundation, (2004). In the school drop-outs measure, “average” refers to the average among the states not the average of the population within the states. The 2004 data book was accessed at <http://www.aecf.org/kidscount/databook/>.

<sup>22</sup> State Expenditure Report, 2002 (2003); 1985 (1987). Washington, DC: National Association of State Budget Officers. Note that as the following states did not list budget data with NASBO for the 1985, we used 1986 figures for Washington, DC, Mississippi, Nevada, New Hampshire, North Carolina, Texas and West Virginia. For Oklahoma, we used 1987 data. We applied the appropriate 1986 and 1987 multipliers for these states to calculate spending figures adjusted to 2002 dollars.

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<sup>24</sup> Stephan, James, Department of Justice, Bureau of Justice Statistics, *State Prison Expenditures, 2001 (June 2004)*.

<sup>25</sup> U.S. Department of Education. National Center for Education Statistics. *What Students Pay for College: Changes in the Net Price of College Between 1992–93 to 1999–2000*, NCES 2002–174, by Laura Horn, Christina Chang Wei, and Ali Berker. Project Officer: Dennis Carroll. Washington, DC: 2002.

<sup>26</sup> Bauer, Lynn U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment in the United States, 2001 (May 2004)*, table 3.

<sup>27</sup> See notes 21 and 22 for details.

<sup>28</sup> The Sentencing Project, *Felony Disenfranchisement Laws In The United States*, (May 2004). Accessed on July 31, 2004 at <http://www.sentencingproject.org/pdfs/1046.pdf>.

<sup>29</sup> *Id.* The exceptions are Maine and Vermont.

<sup>30</sup> *Id.*

<sup>31</sup> Source: Christopher Uggen and Jeff Manza. 2002. “Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States.” *American Sociological Review* 67:777-803.

<sup>32</sup> CNN vote count accessed July 30, 2004 at <http://www.cnn.com/ELECTION/2000/results/>

<sup>33</sup> Uggen, Christopher and Manza, Jeff, *Denying Felons and Ex-Felons the Vote: The Political Consequences, Past and Future*, (Institute for Policy Research, Northwestern University, Policy Briefs, February 2002).

<sup>34</sup> Uggen, Christopher and Manza, Jeff, *Denying Felons and Ex-Felons the Vote: The Political Consequences, Past and Future*, (Institute for Policy Research, Northwestern University, Policy Briefs, February 2002).

<sup>35</sup> Greene, Judith and Schiraldi, Vincent, *Cutting Correctly: New State Policies for Times of Austerity*, (Justice Policy Institute, February 2002), pp. 3, 20.

<sup>36</sup> Camp, Camille Graham and Camp, George, *The Corrections Yearbook: Adult Correction 2002*, Criminal Justice Institute, Inc., (July 2004).

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<sup>38</sup> Prine, Carl, *Judge offers offenders rehab instead of jail cell*, Pittsburgh Tribune Review (February 9, 2003).

<sup>39</sup> Wool, Jon and Stemen, Don, *Changing Fortunes or Changing Attitudes? Sentencing and Corrections Reforms in 2003*, (Vera Institute of Justice, March 2004), p. 7.

<sup>40</sup> Greene, Judith, *Smart on Crime: Positive Trends in State-Level Sentencing and Corrections Policy* (Families Against Mandatory Minimums, November 2003), p. 11.

<sup>41</sup> Wool p. 7 and Greene, p. 14.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, p. 8

<sup>44</sup> Peter D. Hart Research Associates commissioned by the Open Society Institute, February 2002.

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<sup>47</sup> Wool, Jon and Stemen, Don, *Changing Fortunes or Changing Attitudes? Sentencing and Corrections Reforms in 2003*, (Vera Institute of Justice, March 2004), p. 7.

<sup>48</sup> Id.

<sup>49</sup> Harrison, Paige and Karberg, Jennifer, U.S. Department of Justice, Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear 2003* (May 2004), p. 6.

<sup>50</sup> Pinaire, Brian, Heumann, Milton and Bilotta, Laura, *Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons* (Sentencing Project 2002). *Study Finds Most Americans Support Voting Rights for Ex-Felons* (Institute for Policy Research, Northwestern University, Newsletter, Fall 2002, Volume 24, Number 1).

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