



EXECUTIVE SUMMARY

FINDING DIRECTION:

Expanding Criminal Justice Options By Considering Policies of Other Nations

Amidst a continued fiscal crisis and dropping crime rates, policymakers in the United States — the country now home to the largest prison population in the world — are considering reforms to the criminal justice system at all levels of government.

When it comes to criminal justice, there is much to be gleaned from the policies and practices in other democratic nations. 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.

A country's criminal justice policies and practices do not exist within a vacuum: they are a product of the

larger social systems and political realities to which they are inextricably tied.¹ For this reason, some policymakers may think other countries are too fundamentally different than the U.S. for these policies to be adopted.

While each nation has a unique set of circumstances and realities, there are certainly a number of other countries, such as those included in this report, with enough fundamental similarities to the U.S. that cross-national policy adoption could be considered. An

evaluation of the various similarities and differences can broaden the existing dialogue and create more momentum for the types of systemic reforms that will reduce the burden of over-incarceration on communities, states, and the country as a whole.

SIMILARITIES BETWEEN NATIONS MAKE POLICY OPPORTUNITIES POSSIBLE.

There are some fundamental similarities between the U.S. and the other five nations included in this report (Australia, Canada, Finland, Germany and England and Wales) in terms of social, political, and economic environments which allow us to consider criminal justice policies that might reduce the number of people in prison.

For example, all of the nations considered in this report are democracies² with large economies that are viewed as stable, legitimate governments³ across the world. All of the nations featured in the report also have a common understanding of human rights,⁴ if not a common adoption of international standards of human rights.

In addition to the more fundamental principles that the comparison nations share, significant similarities in two specific social structures – education and employment – are particularly relevant, as outcomes from education systems and job infrastructures can have an effect on public safety and incarceration. Higher rates of educational attainment, employment rates, and wages have a greater impact on reducing crime than incarceration.⁵ And yet, despite similar educational attainment and employment as the comparison nations, the U.S. continues to incarcerate so many more people. Specifically, the comparison nations have the following comparable characteristics related to education and employment:

- **Educational attainment in the U.S. is similar to other nations:** The U.S. generally had higher

levels of both secondary and tertiary educational attainment than nearly all other comparison nations for people aged 25-64. However, in terms of tertiary education, the level of U.S. educational attainment is higher than four of the comparison nations.⁶

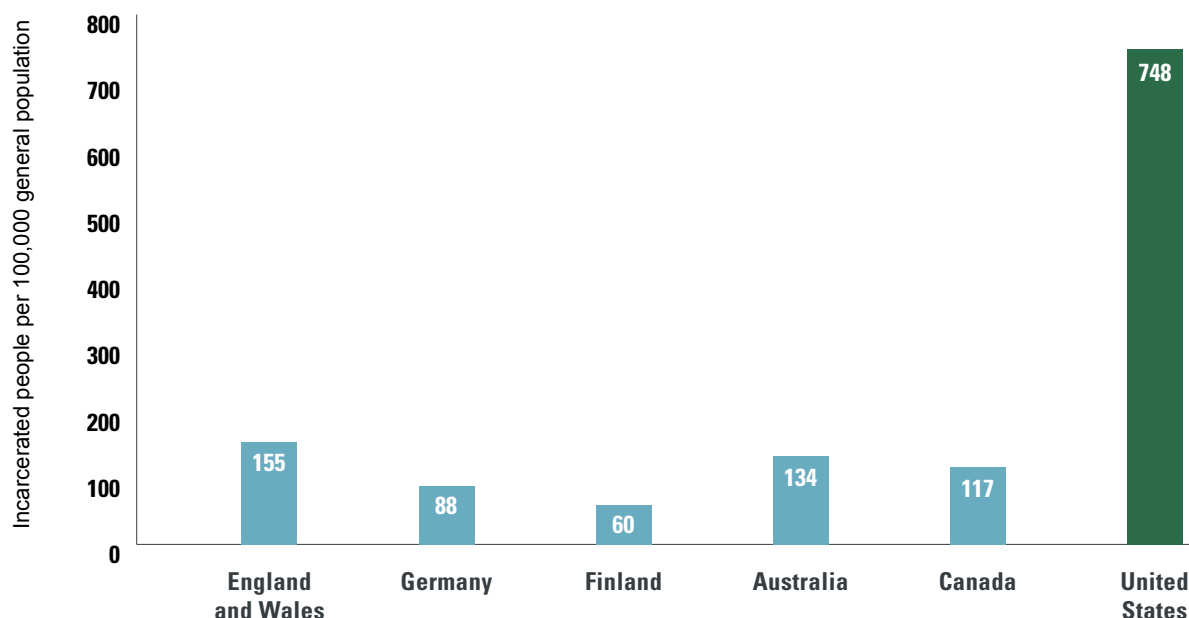
- **The U.S. has similar educational spending:** The U.S. spends more of its total Gross Domestic Product (GDP) or national wealth than most comparison countries on all primary and secondary education, and about as much on pre-primary education.⁷
- **All comparison nations have similar unemployment figures:** The employment rate in the U.S. in 2007 among people aged 25-54 was about 80 percent, which is similar to that in Australia and Germany and close to that of Canada, Finland, and the U.K.⁸

While these factors are similar across nations and could help support cross-national policy implementation, there are some important differences related to wealth, in particular, that pose a challenge and by some accounts are strongly related to incarceration and crime rates.¹⁰ For example, the U.S. spends less on out-of-work maintenance or support than other comparison nations¹¹ and also has a greater income disparity than all other nations in the world, except Portugal, Turkey, and Mexico.¹²

High overall crime rates do not necessarily induce high prison rates and vice versa. Neither do high prison rates necessarily induce low overall crime rates and vice versa.

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In 2009, U.S. incarceration rates were 11 times higher than those in Finland.



Source: International Centre for Prison Studies, "World Prison Brief: Country Profiles," January 5, 2011 www.kcl.ac.uk/depsta/law/research/icps/worldbrief/

THE U.S. LEADS THE WORLD IN INCARCERATION, BUT THIS IS NOT MAKING THE U.S. SAFER.

The rate of incarceration in the U.S., at 748 per 100,000 people in the population, eclipses that of the comparison nations, and is about five times that of England and Wales (155 per 100,000).¹³

Although the U.S. incarcerates more people than any other comparison nation, it is not any safer. Victimization through car theft, theft from a car, car vandalism, bicycle theft, motorcycle theft, burglary, attempted burglary, robbery, sexual incidents, personal thefts, assault and threats is not correlated with rates of incarceration in the comparison countries (Germany was not included in the survey).¹⁴ That is, having a higher incarceration rate (like in the U.S.) does not necessarily mean a lower rate of victimization.

Research in the United States and evidence from other nations further indicates that incarceration has minimal, if any, effect on reducing crime, and the relationship between the two is neither simple nor certain.¹⁵ In fact, policy choices, such as the imposition of mandatory minimum sentences, are considered a more significant driver of high incarceration rates than crime rates.¹⁶

THE U.S. JUSTICE SYSTEM OPERATES TO CREATE MORE INCARCERATION.

With its "tough on crime" politics and a belief in the deterrent effect of harsh sentences;¹⁷ the United States has implemented criminal justice policies based on retribution and incapacitation instead of rehabilitation,¹⁸ which have led the U.S. to rely on imprisonment as a way to address lawbreaking more than the comparison nations. The U.S.'s current system of policing, sentencing

and incarcerating may come at the expense of other social investments and positive methods of promoting public safety that may be more effective, especially in the long term. Changes in policy priorities and to the structure and operation of the criminal and juvenile justice systems can play a significant role in how many people are incarcerated.

Policing and arrests

The entry point into the criminal justice system is typically through law enforcement. Finland has the highest rate of contact with police per person, but the fewest police per capita¹⁹ and the lowest incarceration rate of the comparison nations. By contrast, the U.S. has fewer contacts with police and fewer police per capita, but much higher incarceration rates. This difference may indicate a different approach to policing. For example, in the U.S., surveillance and arrest-heavy policing practices like “zero tolerance” might drive arrests, but in countries like Finland, policing appears to be focused on frequent contacts police for the purpose of promoting community well-being.

Pretrial detention and remand to custody

Pretrial detention is associated with a higher likelihood of both being found guilty²⁰ and receiving a sentence of incarceration over probation,²¹ pushing a person further into the criminal justice system. A smaller percentage of the total number of people incarcerated in each European nation (England and Wales, 15.1 percent; Finland, 17.1 percent; Germany 15.7 percent) are remanded to custody prior to trial or sentencing compared to in the United States (20.8 percent). (Some other nations include in their “remanded to court” numbers both those awaiting court hearings and those who have been tried and are awaiting sentencing, so it is an imperfect parallel with U.S. figures for pretrial detention.) One contributing factor to the number of people the U.S. holds pretrial is that it is the

only nation of the comparison nations that allows commercial bail, meaning that a business can, for a fee and at their discretion, provide the funds for the financial release of a person from detention.

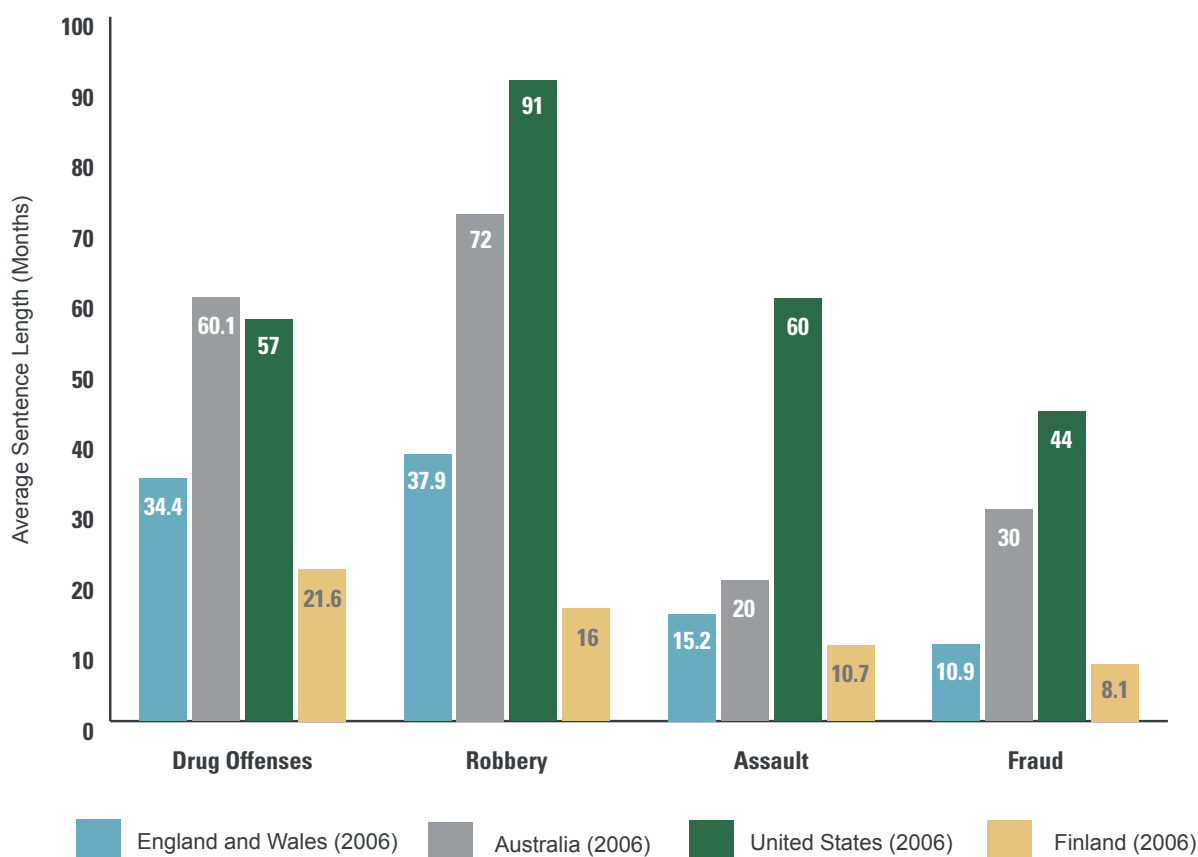
Sentencing

Sentencing practices are a significant factor in the number of people held in U.S. prisons. 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.²² Comparison nations use fines and community-based placements more often than the U.S.²³ For people who are sentenced to incarceration, the average sentence length in the U.S. (63 months)²⁴ is higher than that in Australia (36 months)²⁵ and Germany (between one and two years).²⁶ Length of sentence is a significant part of the reason why the U.S. has so many more people in prison.²⁷

Punitive response to drug use

In 2006, 24 percent of the people in state and federal prisons in the U.S. were there because their most serious offense was a drug offense,²⁸ a higher percentage than in the comparison nations. Yet, people in the United States do not necessarily use drugs more than people in other countries, and rates of imprisonment for drug offenses are not correlated with patterns of drug use. For example, Canadians self-report using cannabis at a higher rate than U.S. residents, and all other drugs at similar rates, yet the U.S. continues to lock up a higher percentage of its residents in prison for drug offenses; only 5.6 percent of Canada’s prison population is incarcerated for a drug offense compared to 24 percent in the U.S. In contrast, other nations rely first on a public health strategy to address drug abuse, including treatment services and harm reduction, rather than mandatory minimum sentencing or other criminal justice responses.

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.

Parole and reentry

This report looks at three aspects of release from prison: conditional release practices, surveillance practices, and reentry services. Each area affects the number of people in prison, by determining first who is released and then what conditions outside of prison might contribute to a person being incarcerated again.

- **Early, conditional release:** Finland, Germany, and Australia release the greatest percentage of their prison populations to some type of supervision. These nations also provide automatic parole dates after some proportion of

the sentence is served; in England and Wales, the U.S. and Canada, a Parole Board generally decides who is released, based on a variety of discretionary factors.

- **Surveillance practices:** England and Wales and the United States use a supervision-heavy parole system which relies on frequent contact and compliance with a set of conditions, which if not followed can result in reincarceration. Such a philosophy may have a significant effect on the number of people who are returned to prison for parole violations. By contrast, Germany and Finland primarily use parole and

probation services as a way to ensure that the person leaving prison is receiving appropriate services and treatment to help with reintegration into the community.²⁹

- Reentry services:** Reentry services may help reduce barriers to obtaining employment, housing, or other services that reduce the chances that a person commits a new offense while out of prison. A fundamental difference between reentry services in the U.S. and in comparison nations such as Australia, Canada, Germany, and Finland is that reentry services are part of and are paid for by the parole system and viewed as either the primary function of parole or as a significant part of parole. Most people leaving prison in those nations are on parole. In contrast, in the U.S., many people are released from prison at their end of sentence rather than to parole, making them ineligible for many services available to people on parole. When a person is on parole, reentry and social services are inconsistent, vary greatly across localities, and are frequently administered, if not paid for, by nongovernmental organizations.

Juvenile justice

A single repository of comparable data for the detention or confinement of youth is difficult to obtain because not all comparison nations conceptualize juvenile justice in the same way. However, comparing only the number of youth under the age of 18 held in secure confinement shows that the U.S. holds almost six times as many youth in secure confinement as all other comparison nations.³⁰ In addition, on any given day as many as 7,500 youth can be found in adult lockup facilities in the United States,³¹ a practice that other comparison nations do

not follow. Depending on the state, youth as young as six can be held criminally responsible in the U.S. Such a low age of criminal responsibility likely adds to the total number of youth held in secure facilities in the U.S.



DIFFERENCES ACROSS NATIONS PRESENT SOME CHALLENGES TO IMPLEMENTING POLICY.

Acknowledging the complicated interplay of national politics, economics, and social factors is important: differences like the extent and availability of social welfare, political culture, fear of crime, social inequality, and public confidence in the government and social institutions³² all correlate with incarceration rates.

This report focuses on those differences that might be particularly relevant in a policy debate in the United States and, to some degree, may realistically be changed to create an environment that supports less incarceration. Those areas include:

- Structure of justice system:** The U.S. has an adversarial system that encourages conflict and incentivizes winning. At the same time, the United States distributes resources in favor of prosecution, budgeting over twice the

amount of money for prosecution as it spends on public defense.³³ In other nations, prosecutors are more neutral parties and the funding structures are more equally divided. England and Wales allocates approximately four times

7,500

youth can be found in adult lockup facilities in the United States on any given day.

as much funding for public defense as it does for prosecution, while Finland spends more money on both sides but allocates more towards public defense than prosecution.³⁴

- **Elections of court personnel:**

In the U.S., many prosecutors and judges are elected by citizens or are nominated and confirmed through a political process by other elected officials. Pressure to be reelected can influence courtroom decisions. In a 2001 poll of U.S. state judges, 46 percent indicated that campaign contributions influence judicial decisions.³⁵ In other comparison nations, judges and prosecutors are more likely to be civil servants, insulated from the media and political pressure.

- **Media influence:** In the U.S. and the U.K., in particular, the media has significant influence over policymakers;³⁶ in those nations the media must create the most dramatic story to sell papers or win viewers. In nations like Finland, news is almost exclusively sold by subscription, eliminating the competition for daily attention.³⁷
- **Spending priorities:** Comparison nations in this report all invest more heavily in education and social services as a proportion of the Gross National Product when compared to spending

on law and order. Canada, Germany, and Finland spend over three times as much on public education as they do on corrections, but the U.S. spends just over twice as much. The United States spends the lowest percent of its Gross Domestic Product on social services of the comparison nations. Aside from the United Kingdom, the United States spends the least amount of its GDP allocated for out-of-work income maintenance per unemployed person over the age of 15.³⁸ In 2005, the U.S. also had the highest level of income inequality of all the comparison nations.³⁹

- **Federalism:** In countries like the U.S., Canada, and Australia, in particular, some functions of the criminal justice system operate at the state, province, county, city, or otherwise local level. In other words, it can be difficult to implement one single policy across the entire nation. However, decentralized systems of government can also make innovation on a small scale possible.

CERTAIN COMMUNITIES BEAR A DISPROPORTIONATE BURDEN OF INCARCERATION IN ALL COMPARISON NATIONS.

Communities that bear the disproportionate impact of the criminal justice system often become part of a cycle of criminal justice system involvement that is difficult to exit and, as a result, harms families and communities. While the communities that experience disproportionate contact with the criminal justice system vary greatly from nation to nation, the effect is the same.

In the United States race and ethnicity are frequently the bars by which disproportionality is measured. In other nations, race and ethnicity are not

considered or counted in the same way; instead, they often keep track of whether a person in prison is “foreign born” or indigenous. The information available about the communities most affected by criminal justice system includes:

- **United States (2008):** African Americans make up 37 percent of the number of people in prison, but 12 percent of the general population.⁴⁰ One recent study found that African Americans make up .6 percent of the entire world’s population, but African American males *alone* make up 8 percent of the world’s prison population.⁴¹
- **Australia (2006):** Indigenous people (including Aborigines and Torres Islanders) make up 24 percent of the people in prison,⁴² but 2 percent of the general population.⁴³
- **Canada (2006):** Aboriginal people made up 24 percent of the people admitted to custody in the provinces and 18 percent of the people admitted to federal custody, but 4 percent of the general population.⁴⁴
- **Germany (2008):** “Foreign born” people make up 26.3 percent of the people in prison, including people held pretrial,⁴⁵ but 12.9 percent of the general population.⁴⁶
- **Finland (2008):** “Foreign born” people make up 9.5 percent of the people in prison, including people held pretrial,⁴⁷ but 3.4 percent of the general population.⁴⁸

A more unifying lens with which to consider disproportionality in criminal justice systems the world over may be poverty and social marginalization. Loïc Wacquant, professor of sociology at the University of California, Berkeley, argues that incarceration is not simply a means of punishment, but also an instrument of social control and management of certain groups of people.⁴⁹ In the

United States, the concentrated impact of the social control of prison falls on people of color who are also poor, but in other nations, like Finland, “foreign born” people who are also poor may be those who are disproportionately affected by criminal justice systems. Cross-nationally, criminal justice systems seem to operate to affect some groups more than others.

CONCLUSIONS AND RECOMMENDATIONS

While researching this report, it became clear that some nations, including the United Kingdom, Australia, and to some degree, Canada have adopted some of the policies of the United States. As a result, their prison populations are growing, too. Other nations may find some of the information in this report useful, but the recommendations included here are aimed at U.S. policymakers and advocates.

More, better data is needed for better comparisons: In an increasingly global society, nations should be able to compare criminal justice, juvenile justice, and social data. This is important not only for determining if innovation can be adopted cross-nationally, but also to get a snapshot of the health and well-being of a nation’s people.

More, better comparative research is needed for better comparisons: Research that controls for certain social or economic variables would be very useful in drawing more concrete conclusions about the impacts of different policies on public safety and community well-being as well as on social and economic costs. Such research should also be accessible and user-friendly for policymakers and the public and allow the U.S., in particular, to evaluate its policies and determine if incarceration and punitive measures are truly the best way to maintain a safe, healthy society.

In addition to general recommendations for further research, these specific policies emerged from the

research as showing promise in the United States:

Change the philosophy of policing: A shift to a philosophy of policing that is neighborhood-focused and centered on the overall health of the community and the people who live there would promote public safety, limit fear of police, and reduce the number of people arrested and imprisoned.

Use day fines instead of incarceration: Germany and Finland both use a day fine system based on the seriousness of the offense and apply proportional punishment on all people, regardless of socio-economic status.⁵⁰ The fine is generally levied based on the amount of money a person earns on a given day.

End commercial bail: In the U.S., states like Oregon, Illinois, Kentucky, and Wisconsin abolished commercial bail, instead requiring down-payments to the court which are refunded when a person returns for trial. This can be a better way to protect public safety and reduce the number of people unnecessarily held pretrial.

Provide more treatment for more people outside the criminal justice system: Treatment for drug abuse should be widely available outside the criminal justice system and affordable for people who need it. In cases in which the offense is related to the personal use of drugs, treatment should be the first response rather than incarceration.

Scale back sentence lengths, especially for drug offenses: No other comparison nation has mandatory sentencing for possession of small amounts of illegal substances. Such broad sentencing structures are significant contributors to the number of people in prison in the U.S. and are not the best or most cost-effective way to protect public safety.

Make parole about providing services, not supervision: Refocusing parole towards social work rather than policing will help people access the

services like education and employment counseling that are integral to ensuring that a person is successful outside prison so that they do not return.

Include a behavioral or mental health component to reentry services: Other nations successfully put into practice an approach to reentry that includes both mental and behavioral health, as well as sociological factors like housing, employment, and education. Such a holistic approach could be cost effective in terms of keeping people from returning to prison and improving life outcomes.

Raise the age of criminal responsibility: Raising the age of criminal responsibility would have a significant effect on the number of youth in secure custody in the U.S. and reinforce the concept that youth are not developmentally the same as adults and should therefore not be treated as such.

End transfers of youth to adult courts: No other comparison nation transfers as many youth to adult criminal courts as the United States at such young ages. This has a negative impact on community and individual well-being, as it decreases the chance a youth will be able to avoid future justice involvement and increases the risk of harm to the child while in custody.

Invest in positive institutions: The U.S. would do well to prioritize spending on strengthening and expanding institutions like education and employment, especially as they have been shown to not only decrease incarceration, but also improve public safety.

ENDNOTES

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