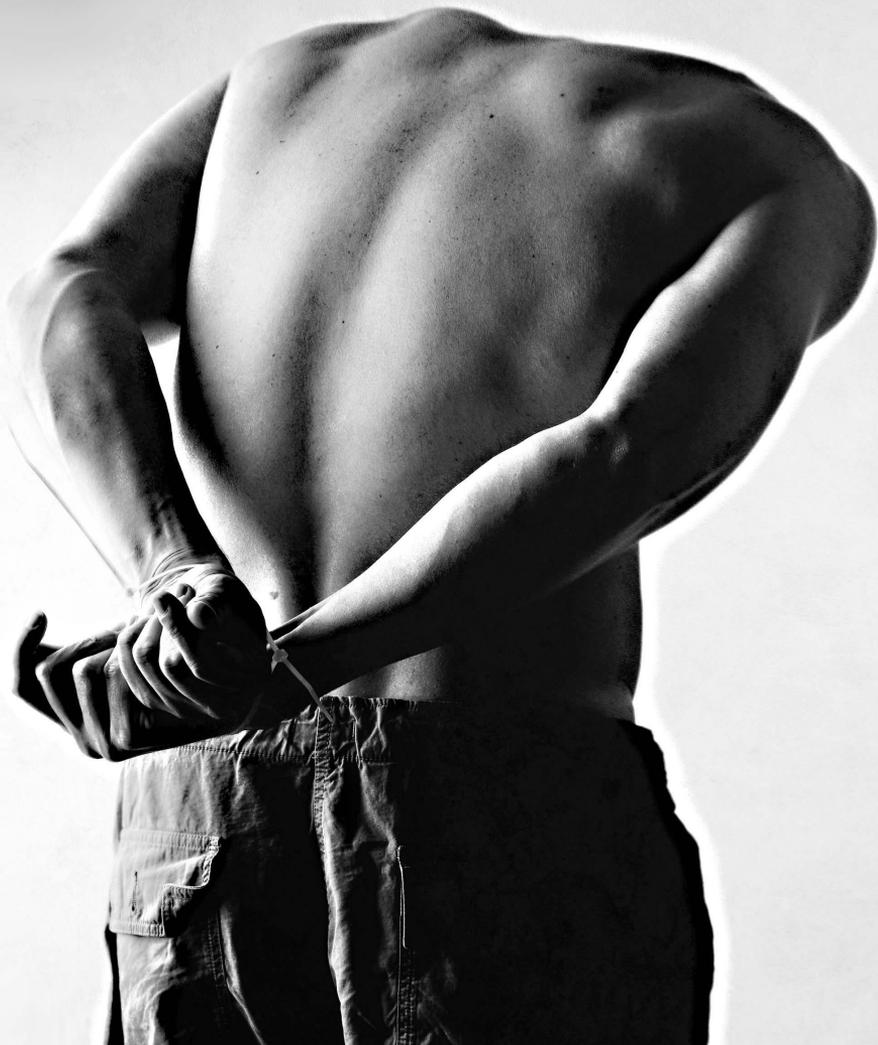
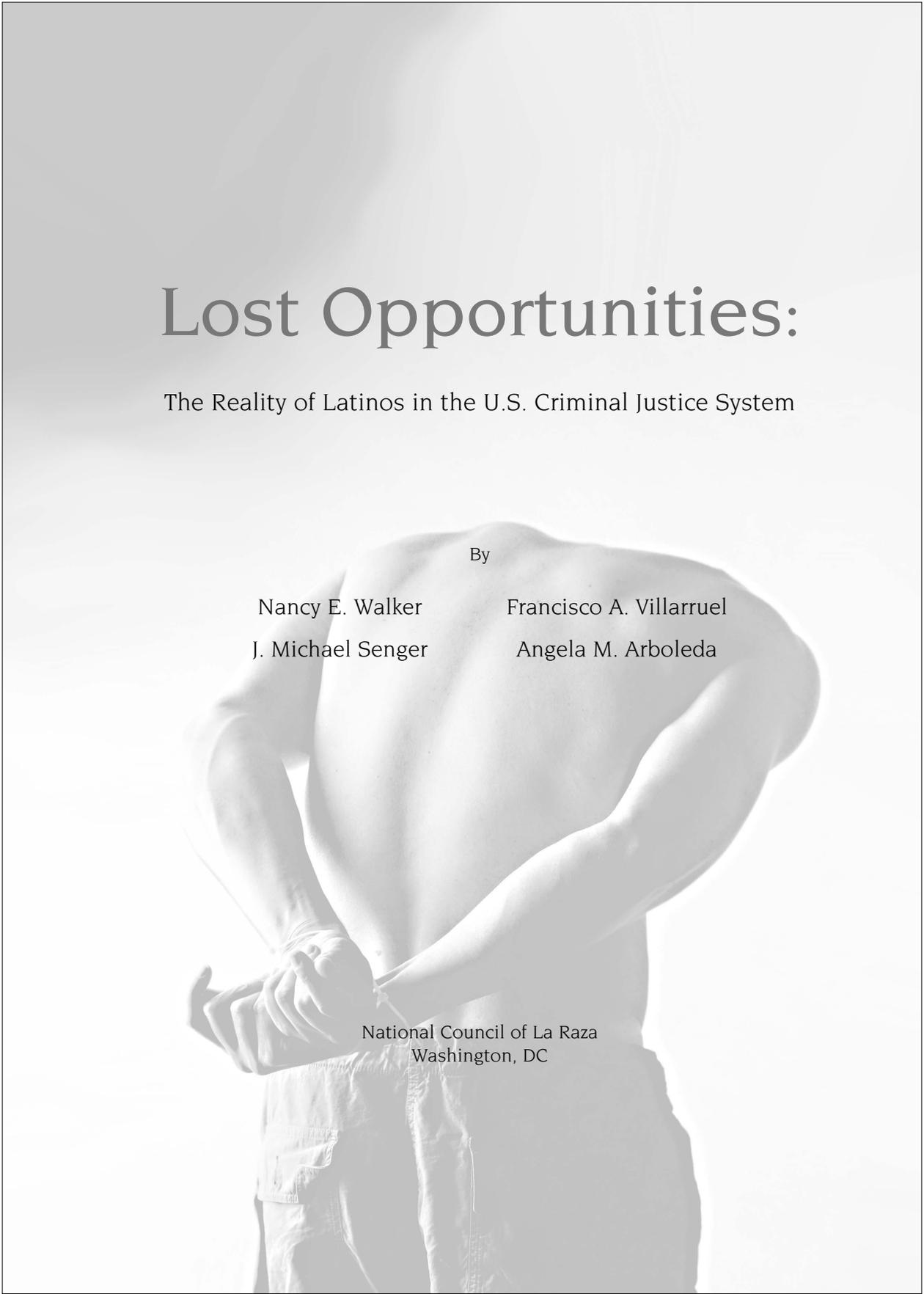


NCLR
NATIONAL COUNCIL OF LA RAZA

Lost Opportunities:

The Reality of Latinos in the U.S. Criminal Justice System





Lost Opportunities:

The Reality of Latinos in the U.S. Criminal Justice System

By

Nancy E. Walker

Francisco A. Villarruel

J. Michael Senger

Angela M. Arboleda

National Council of La Raza
Washington, DC

The **National Council of La Raza** (NCLR) is a private, nonprofit, nonpartisan, tax-exempt organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR has chosen to work toward this goal through two primary, complementary approaches: (1) capacity-building assistance to support and strengthen Hispanic community-based organizations, and (2) applied research, policy analysis, and advocacy. NCLR strengthens these efforts with public information and media activities and special and international projects. NCLR is the largest constituency-based national Hispanic organization, serving all Hispanic nationality groups in all regions of the country, with more than 300 formal affiliates who together serve 41 states, Puerto Rico, and the District of Columbia – and a broader network of more than 35,000 groups and individuals nationwide – reaching more than four million Hispanics annually.

The **Center for Youth Policy Research** (CYPR), a private nonprofit organization located in Traverse City, Michigan, is dedicated to advancing social policy affecting children and youth through excellence in consultation, education, empirical and legal research, policy analysis, publications, and training and technical assistance, particularly in the areas of juvenile justice and education. Currently, half of CYPR's social policy initiatives focus on Latino issues.

Michigan State University's (MSU) Office of University Outreach & Engagement, a division of the Office of the Provost, promotes university-wide outreach efforts. It partners with faculty and community teams to develop research projects that address a broad range of issues, provides service-learning opportunities for students and assists faculty in building civic engagement into their courses, develops assessment measures and conducts evaluations of outreach activities, consults with the private and public sectors and with MSU departments on usability and accessibility research, connects the MSU community to the performing arts, and supports the work of outreach research fellows.

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Contents

List of Tables	
List of Figures	
List of Boxes	
Acknowledgments	
Foreword – Raul Yzaguirre and Janet Murguia	
Introduction	
I. Latinos and the U.S. Justice System: A Stark Reality	
Media Portrayal of Latinos	
Latinos and Crime	
Barriers for Latinos in the System	
Why Are These Issues So Important?	
Purpose of this Book	
II. Data on Latinos in the U.S. Criminal Justice System	
Overrepresentation of Latinos in the Criminal Justice System	
Latinos Arrested and Detained	
Latinos and Sentencing	
Latinos in Prison	
Latinos in Jail	
Latinos Under Military Jurisdiction	
Latinos on Parole	
Latinos on Probation	
Latinos Sentenced to Death	
Latino Youth in the Criminal Justice System	
The Cumulative Effects of Disparate Treatment	
III. What Every Latino Should Know About the U.S. Criminal Justice System	
The Roles of the Federal and State Governments	

The Structure of the U.S. Criminal Justice System

Criminal Justice System Processes

Trends in Crime and Sentencing in the United States

How the Criminal Justice System Functions in the United States.

The Repercussions of Incarceration

IV. Factors Underlying Latino Overrepresentation in the Criminal Justice System

 Problems at the Arrest Stage

 Problems with Legal Representation

 Problems in Prosecution and Detention

V. Special Problems Associated with Prosecution of Substance Abusers and the Impact on Latinos

 The Problem of Substance Abuse in the United States

 Overreliance on Incarceration of Individuals Who Abuse Substances

 Factors Contributing to the Increase in Incarceration for Drug Offenses.

 Why Incarceration is the Wrong Solution for Nonviolent Drug Offenders

 Why Treatment and Prevention are the Right Solutions for Nonviolent Drug Offenders

 Latinos Suffer Disproportionately Under Current Policies

 Crime Policies Should Be Effective.

 Locating and Increasing Funding for Substance Abuse Programs

VI. Conclusions and Recommendations

 Framing a Foundation for Justice

 NCLR Recommendations

A Call for All Americans to Take Responsibility for
How the Criminal Justice System Treats People.

Appendices

 Glossary of Justice System Terms

 Economic Analysis of Incarceration versus Residential Treatment
 for Drug Offenders in the State of Michigan.

Index.

About the Authors Inside Back Cover

List of Tables

- Table 2.1 Over-count of “White” Prisoners in Selected Jurisdictions (1997)
- Table 5.1 Estimated Savings to the State of Texas: Diversion of Non-Violent Drug Offenders from Incarceration to Treatment
- Table 5.2 Michigan’s Estimated Five-Year Costs (Millions of Dollars) for Processing 5,713 Drug Offenders: Prison Model
- Table 5.3 Michigan’s Estimated Five-Year Costs (Millions of Dollars) for Processing 5,784 Drug Offenders: Residential Treatment Model
- Table 5.4 Comparison of Michigan’s Five-Year Costs (Millions of Dollars) for Processing 5,713 Drug Offenders: Prison Model versus Residential Treatment Model

List of Figures

- Figure 2.1 Imprisonment Rates per 100,000 U.S. Residents by Race/Ethnicity: 1990 versus 1997
- Figure 2.2 Percentage of Latinos in the General Population and in the Federal Criminal Justice System in the United States, 2002
- Figure 2.3 Average Time in Custody: Youth in State Public Facilities in 35 States, 1993
- Figure 2.4 Latino-to-White Ratio for Likelihood of Outcomes for Youth Charged with Violent Offenses in Los Angeles, 1996-1998
- Figure 3.1 Federal, State, and Local Components of the Criminal Justice System
- Figure 3.2 The Processes of Arrest and Conviction in the United States
- Figure 3.3 Persons in Prisons and Jails, 1980 and 2000
- Figure 3.4 Defendants in Cases Concluded in U.S. District Court: Total, Convicted, and Imprisoned, 1980-2002
- Figure 3.5 Four Measures of Serious Violent Crime, 1973-2002

- Figure 3.6 Drug Arrests by Age, 1970-2002
- Figure 3.7 Defendants in Cases Concluded in U.S. District Court:
By Offense, 1980-2001
- Figure 3.8 Direct Expenditure by Criminal Justice Function, 1982-2001
- Figure 5.1 Percent Change in Incarceration by Offense Type: Michigan,
1980-1999
- Figure 5.2 Percent Increase in Probation, Jail, and Prison Sentences for
Drug Offenses in Michigan, 1980-1999
- Figure 5.3 Treatment versus Incarceration: Average Annual Per Person
Costs: Federal and State, 2002
- Figure 5.4 Treatment versus Incarceration: Average Annual per Person
Costs: Michigan Department of Corrections, 1999-2000

List of Boxes

- Box 2.1 Concerns Regarding Data
- Box 4.1 Examples of Racial Profiling
- Box 4.2 The Crisis in Public Defense
- Box 4.3 The Case of “Luis”
- Box 4.4 Life in INS Detention
- Box 4.5 INS Detention Facts
- Box 5.1 Changes to Laws Regarding Federal Sentencing for Drug
Offenders
- Box 5.2 Casa Phoenix Provides Hope Through Treatment
- Box 5.3 A Sampling of Drug Treatment Funding Programs

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Foreword

Just after the Census began counting Hispanics more than two decades ago, the National Council of La Raza published *Hispanic Education: Selected Statistics*, its first compendium of data on Hispanic education.

At the time, Latinos were rarely included in large-scale education studies, and when they were included few publications provided specific statistics. Not surprisingly, the Hispanic community was also largely excluded from policy debates on education. Its status as an “invisible community” had real consequences. How, we wondered, could policy-makers, scholars, and practitioners fashion policies to ensure the responsiveness of the education system to Hispanics if even the basic facts about Hispanic educational status were unpublished, and therefore largely unknown? The answer, of course, is that they could not, and did not.

Our goals at the time were simple – we hoped that our report would draw attention to what we believed was an emerging crisis in Hispanic education. We expected that it might assist advocates and service providers to strengthen their case for Latino-focused education policies and programs. Yet, reaction from advocates, policy-makers, practitioners, and others exceeded our wildest expectations. Ultimately, thousands of copies of that piece (and its successors) were sold, reviewed in a number of scholarly journals, quoted on the floor of the U.S. Congress, and widely redistributed through a variety of clearinghouses.

Four years ago, the NCLR Board of Directors authorized the creation of a Criminal Justice Policy Project. Somewhat to our surprise, despite the fact that Latinos are now the nation’s largest ethnic minority group, we now face a situation with respect to the status of Hispanics in the criminal justice system disturbingly similar to that which we experienced with education statistics in the early 1980s. Latinos are virtually invisible in the majority of key studies and publications in the field, and a number of states and federal agencies neither collect nor publish Latino criminal justice data. Thus, not surprisingly, with a few notable exceptions, until recently Hispanics were rarely included in policy debates in the criminal justice field.

Over the past few years a small cadre of scholars has worked hard to collect, analyze, and publish data on various aspects of Latinos in the criminal justice system. Fortunately, these experts agreed to work with us on a collaborative project and, through a more than two-year effort, have made a significant contribution to our knowledge of these issues. Like our report on education 20 years ago, this book represents the first comprehensive compendium of data and analysis on a critical public policy issue – the status of Hispanics in the criminal justice system. And, like its predecessor, this report includes some sobering findings:

- Latinos represented almost 13% of the U.S. population in 2000, but constituted more than 31% of incarcerated individuals in the federal criminal justice system that year.
- Hispanics have one chance in six of being confined in prison during their lifetimes.
- Latinos are no more likely than other groups to use illegal drugs and less likely to use alcohol, yet are more likely to be arrested and charged with drug offenses and more likely to be detained before trial than other groups.

However, this volume also shows that:

- There is growing bipartisan and Latino community support for criminal justice system reforms.
- Successful community-based strategies for addressing criminal justice system issues that affect Latinos provide a model for states throughout the country to replicate.
- Substance abuse prevention and treatment are more cost-effective than incarceration.

In addition, 20 years ago, the integral connection between the overall well-being of the Hispanic community and the nation's social and economic prosperity was not as well-documented as it is now. Within that context, our expectations of this publication differ from its education predecessor in important ways. While we fully believe that it will generate a greatly-needed

focus on Hispanics in the criminal justice system and assist advocates and practitioners, we expect far more than that. We believe that this report will:

- Educate Hispanics and non-Hispanics alike about the need for criminal justice reform and the priority that these issues should have within the nation's overall public policy agenda.
- Generate unprecedented activity by national Latino advocates on criminal justice issues, given that it is a fact-based tool for public education and information and provides program and policy-maker guidance.
- Mobilize affiliates of the National Council of La Raza (NCLR) and other community-based organizations who recognize that the education, prevention, treatment, and rehabilitation programs they provide are far more effective alternatives to current policies that result in the incarceration of tens of thousands of low-level, first-time offenders.
- Promote the inclusion of Latino perspectives in criminal justice policy debates and encourage further data collection and disaggregation and Hispanic-focused research.
- Encourage researchers and analysts, both within and outside of the Latino community, to expand on the foundation that has been laid here and generate new studies on different aspects of Latinos and criminal justice issues, and their relevance to community-based programs and public policy.
- Serve as a call to action for everyone concerned about the future of the country. For as we note in this report, one in eight Americans is of Latino origin and almost half of Hispanics are under 25 years old. The nation needs these potential workers, taxpayers, business owners, and homeowners to ensure our economic prosperity and move our country forward. Now, more than ever, the investments we make today in ensuring equity and opportunity for Hispanics will pay valuable dividends for the country as whole in the very short term as well as the long term.

If we in the Latino and criminal justice reform communities do our part, and policy-makers respond, two decades from now we will be able to recall that, after the publication of this groundbreaking report, the result was the enactment of a series of policies that simultaneously reduced crime while decreasing rates of imprisonment; increased support for rational prevention and treatment alternatives to incarceration; and replaced the downward spiral of jail and recidivism with an uplifting system offering hope and opportunity for all Americans.

Raul Yzaguirre
President and CEO

Janet Murguia
Executive Director and COO

Introduction

The increase in the U.S. Hispanic population has been accompanied, to some degree, by growing interest in the community's overall social and economic status. There are research and data reports on concerns facing Latinos related to education, employment, health, immigration, and taxes, but one issue that has been overlooked consistently in the literature involves the growing number of Latinos who are coming into contact with the nation's criminal justice system.

Recent media reports have highlighted the increases both in the inmate population and in the construction of prison facilities in the U.S. over the past decade, but very few have focused on the share of prisoners who are Latino and on the range of issues that affect Latinos in the criminal justice system. Given that one in every eight Americans is Latino and that half of them are under 25 years old, this significant oversight must be corrected so that the nation can respond adequately, appropriately, and in its best interest to these issues.

To gain a better understanding of the story that the data tell, the factors related to the involvement of Hispanics in the criminal justice system, the most significant issues, and the best ways to address them, the National Council of La Raza (NCLR) commissioned this research. The book that resulted from these efforts, written by criminal justice research experts in collaboration with NCLR, offers a comprehensive look at the representation of Latinos in the nation's criminal justice system. It examines how the U.S. criminal justice system works, factors underlying the overrepresentation of Latinos in the system, and special problems associated with the prosecution and treatment of individuals with substance abuse dependency issues and their impact on Latinos. The discussion also provides analysis of these issues, as well as recommendations to stem the growing tide of Hispanic prisoners and inmates.

In Chapter I, the authors provide an overview of the disproportionate representation of Latinos in the criminal justice system. In addition, they lay out the relationship between public perceptions and negative media portrayals of Latinos, and the collective impact of these factors on the degree to which

Latinos are treated unfairly in the criminal justice system. The authors also discuss barriers for Latinos in the system, including personnel who, in too many cases, are neither bilingual nor culturally competent and a system that is too complex to navigate, particularly for recent immigrants. Moreover, they point out that the system exacerbates the poor socioeconomic status of Latinos, including low income and education levels, inadequate resources, and lack of health insurance. The chapter concludes with a discussion of the significance of these issues for the nation as a whole, underscoring that the Latino community's well-being is central to the future economic and social prosperity of the United States.

Chapter II presents a summary of quantitative data to provide a portrait of Latinos in the system. It lays out the stages, from arrest and detention to sentencing and parole, encountered by those who come into contact with the system, offering whatever data exist on Latinos. The chapter also includes available information on Latino youth in the criminal justice system, with a particular emphasis on the disparate treatment these young people face relative to their peers in similar circumstances.

The authors then turn to describing and outlining the U.S. criminal justice system in Chapter III, with a discussion of specific processes within the system. Within this context, the chapter also explores trends in crime and sentencing in the U.S. and documents particular factors that account for the growth of the U.S. prison population in past decades. The repercussions of incarceration, especially related to employment, education, voting, public assistance, immigration, and housing, are also examined.

In Chapter IV, the discussion identifies the factors associated with the overrepresentation of Latinos in the criminal justice system and demonstrates how Latinos face specific challenges at each stage of involvement with the system. In particular, concerns related to racial profiling, problems in prosecution and detention, disparities in legal representation, and problems with sentencing are addressed. The chapter also discusses how the complexities of immigration status and related issues further exacerbate the existing challenges for Latinos in the system.

One of the most troubling issues involves the prosecution and treatment of substance abusers. As the discussion shows in Chapter V, the problem of

substance abuse in the U.S. is growing among all groups, and there is a dearth of effective responses for reducing the incidence of use, while the social and economic costs to the nation for incarcerating nonviolent, low-level drug offenders are staggering. In particular, data on incarceration show that the vast majority of all offenders in prisons and jails are serving time for minor drug offenses, and that many of them are in dire need of substance abuse treatment. The discussion outlines the factors that have contributed to the increase in incarceration for drug offenses in the past two decades. The authors argue that incarceration is ineffective for nonviolent drug offenders and, as an alternative, suggest that treatment and prevention programs should be expanded. The discussion highlights the implications of current practices for Latinos and presents evidence that supports community-based treatment options, particularly for Hispanic substance abusers.

In Chapter VI, the authors offer a framework for reducing the proportion of Latinos in prison and for enhancing positive outcomes for Latinos, and the nation as a whole, with respect to the criminal justice system. First, the discussion presents data which show that progressive and fair reforms to the country's criminal justice system can be achieved through both policy and programmatic efforts. Second, based on this foundation, the book lays out recommendations for a range of stakeholders, from the federal government to researchers to national Latino organizations, to provide guidance on how collective efforts can lead to positive outcomes for Latinos. Finally, the authors challenge all Americans to take responsibility for shaping a criminal justice system that is both fair and less costly while simultaneously promoting community safety.

Latinos and the U.S. Justice System: A Stark Reality

According to the U.S. Department of Justice, if recent incarceration rates remain unchanged, an estimated one of every 15 persons in the United States (6.6%) will serve time in a prison during his or her lifetime.¹ In 2001, nearly 6.6 million people in the United States were under some form of correctional supervision, including probation, jail, prison, and parole.² In contrast, in 2000 only 2.1 million individuals in the United States earned postsecondary degrees at the associate, bachelor, and master degree levels *combined*.³ In other words, more than three times as many people are likely to be under correctional supervision in the United States this year than will graduate from higher education programs.

While there are limited data available on Latinos⁴ in the criminal justice system (as Chapter II documents), research and information to date show that, along with other persons of color, Latinos receive more severe treatment at all stages of the criminal justice system, beginning with police stops and ending with longer periods of incarceration, than similarly-situated White Americans.

For example, whereas 6.6% of all people in the U.S. will be confined in prison at some point during their lifetime, 9.4% of Hispanics – and 16% of Hispanic men – will be imprisoned during their lifetime.⁵ Thus, while individuals in the United

States collectively have one chance in 23 of being confined in prison during their lifetime, Hispanics have *one chance in six* of being confined in prison during their lifetime. Moreover, among men age 35 and older, Hispanics have a greater chance of incarceration than African Americans,⁶ the group of Americans with the highest incarceration rate. Furthermore, of all prisoners under the jurisdiction of the California Department of Corrections in 2002 – the nation’s largest prison system – 36.1% were Hispanic.⁷

As these statistics show, for too many Latinos in the United States the fairness, equality, and due process that are the hallmarks of the criminal justice system in the United States remain more a myth than a reality. In part, this situation exists because public perceptions regarding Latinos tend to be inaccurate, stereotypical, and negative.

For example, following the release of the national report on Latino youth in the justice system, *¿Dónde Está la Justicia?*, a California resident sent an email message to one of the report authors calling her a “flaming moron.” In defense of this attack, he boldly asserted that, “as everyone knows,” Latinos commit the majority of crimes in that state.⁸

Media Portrayal of Latinos

Unfortunately, the public’s negative perceptions and prejudices of minorities in general, and Latinos in particular, tend to be reinforced by media portrayals. Although rarely covered in the media,⁹ when Hispanics *are* shown they typically are portrayed as having problems, being criminals, or being a problem to mainstream White society. For example, when researchers at Pitzer College examined one week of television network programming in 1992, they found that 75% of Hispanic characters were depicted as being in a lower socioeconomic class versus 24% of Blacks and 17% of Whites.¹⁰ The study’s authors concluded: “In general, African Americans are portrayed positively on prime-time TV. . . . Latinos were more likely described as powerless and stupid.”¹¹ Portrayal of Latinos as “failures” was confirmed in two major studies, one an analysis of the 1955-1986 period by the Center for Media and Public Affairs and NCLR, and the other by the Annenberg School of Communications covering the 1982-1992 period.¹²

A 1989 study of fictional entertainment programs on television over the 1955-1986 period found that Latino characters were twice as likely as Whites, and three times as likely as African Americans, to be depicted as committing a TV crime. Only 32% of Hispanics were portrayed positively, compared to 40% of Whites and 44% of Blacks. By contrast, 41% of Hispanics were portrayed negatively, compared to 31% of Whites and 24% of Blacks.¹³

The Annenberg School of Communications analyzed 21,000 TV characters in its database for 1982-1992. The study found that for every 100 “good” White characters there were 39 “villains,” but for every 100 “good” Hispanic characters there were 75 “villains.”¹⁴

Similarly, an analysis of the 1992-1993 television season revealed that Latinos were twice as likely as Whites and three times as likely as Blacks to be portrayed in negative roles (18% vs. 8% and 6%, respectively). During that year, Latino characters also were four times as likely as either Whites or Blacks to commit a crime (16% for Latinos vs. 4% for both Whites and Blacks). Similarly, 9% of Hispanic TV characters engaged in violent behaviors – more than double the proportion of Whites and Blacks (4% and 3%, respectively).¹⁵

A 1999 study by the Tomás Rivera Policy Institute found that Latino men generally were portrayed in negative roles on television programs – for example, as gang members, drug dealers, or other criminals. Positive images were more common for Hispanic women, but still far from universal.¹⁶

On occasion, entertainment media have engaged in racist behavior, as the 1999 National Council of La Raza report, *The Mainstreaming of Hate: A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the '90s*, documents.¹⁷ During the summer of 1999, for example, *The Don & Mike Show*, a national talk radio program, telephoned El Cenizo (Texas) City Commissioner Flora Barton and aired their conversation without her permission. The show's hosts made the following comments:

*“Get on your burro and go back to Mexico! . . . My name is Señor Donnie and I'm an American and I want all your people to speak American. . . Eat me. Cómeme. . . Eat (bleep) and die. . . This is a free country. I can say anything I want.”*¹⁸

Because the media play a special role in informing Americans about each other, it is particularly disturbing that Latinos receive very unbalanced and negative news and TV coverage. According to a 2000 study by NCLR and the National Association of Hispanic Journalists, less than 1% (0.53%) of network television news stories focused on issues related to Hispanics.¹⁹ Of these stories, 80% focused on just four topics – immigration, affirmative action, crime, and drugs – stories in which Latinos were likely to be portrayed in negative roles.²⁰

Thus, rather than countering prejudicial stereotypes of Hispanic Americans, media portrayals of Latinos actually *reinforce* prejudices. The negative portrayals of Hispanics in both the news media and entertainment tend to confirm the worst stereotypes of this community and could arguably bias those working in the justice system – judges, attorneys, probation and parole officers, and court personnel. One would be hard-pressed to conclude that such harmful and stereotypical information does not contribute to the inequitable treatment of Latinos in the criminal justice system, especially given the fact that, generally speaking, Latinos are *less* likely than non-Hispanic Whites to commit crimes – including violent crimes and drug violations.²¹

Latinos and Crime

Stereotypical public attitudes and negative media portrayals of Latinos fly in the face of reality. Consider these facts:

- Data from the Department of Justice show that Latinos are less likely to be involved in violent crimes than their non-Hispanic counterparts.²²
- Contrary to the popular stereotype, even when convicted of crimes, the overwhelming majority of incarcerated Latinos are convicted for relatively minor, nonviolent offenses, are first-time offenders, or both.²³
- Despite the fact that Latinos are no more likely than other groups to use illegal drugs, and less likely to use alcohol,²⁴ Hispanics are more likely to be arrested and charged with drug offenses, and less likely to be given pretrial release. In fact, Latinos are almost three times as likely as non-Hispanic Whites to be detained before trial.²⁵

A number of polls have confirmed the basic finding that Latinos tend to be conservative on criminal justice issues.²⁶ One explanation for this finding is that Latinos are more likely than other racial and ethnic groups to be victimized by crime. For example, one study in Southern California found that violent crimes are disproportionately concentrated within the Latino community and directed against Latinos.²⁷

Research also suggests that the Latino community is increasingly open to progressive reforms in the criminal justice system. For example, one poll indicated that 83% of Hispanics supported placing youthful offenders in community prevention programs instead of prison, and 68% of Hispanics favored reduced prison sentences for nonviolent offenders.²⁸ Latinos were considerably more progressive than Whites on both of these issues. Similarly, other polling data demonstrate that Hispanics tend to support government interventions in education, job training, and youth development – often by margins that exceed those of any other racial or ethnic group.

One reason that Latinos tend to be more progressive than non-Hispanic Whites on justice system reform may be that they believe that the justice system treats them worse than it does others. The first multilingual poll of ethnic Californians' views on the criminal and juvenile justice systems²⁹ revealed that the 12 racial/ethnic groups polled believed that “people with darker skin or with foreign accents” were more often harassed and detained than other Americans. Additionally, they believed that California's justice system favors the rich and powerful. Moreover, the state's criminal justice system scored low on the most important criterion: its fairness. More than two out of three respondents indicated that they have only “some” or “very little” confidence in the fairness of the criminal justice system in California.³⁰

Furthermore, Latinos, like other persons of color, generally feel that the justice system is not “in touch” with their community. A 1999 study by the National Center for State Courts found, for example, that while only 39% of Whites surveyed agreed with the statement, “Courts are out of touch with what's going on in their communities,” 54% of Hispanics agreed that the statement was true.³¹ A study of the Rhode Island courts commissioned by the state's chief justice produced similar results:³²

- While 69% of White respondents believed that judges always or usually treat minorities with respect, only 28% of Latinos shared that belief.
- While 66% of Whites believed that attorneys always or usually treat minorities with respect, only 34% of Latinos shared that view.
- While 60% of Whites believed that court workers always or usually treat minorities with respect, only 22% of Latinos shared that belief.
- While only 14% of Whites believed that prosecutors always or usually insist on more serious charges against minorities than against Whites, 52% of Latinos held that view. In contrast, 49% of Whites expressed the opinion that such discrimination rarely or never happens.
- Only 17% of Whites believed that race always or usually makes a difference in case outcome. In contrast, 51% of Latinos held that view.

Barriers for Latinos in the System

Police making arrests, prosecutors filing serious criminal charges, judges handing down sentences, and persons working for the courts as probation officers too often ignore or do not consider that some Latinos, particularly those who may be recent immigrants, may not understand the complex legal system, may not be aware of their rights, or may need language assistance. To exacerbate this situation, other obstacles may surface in the system, including judges, court clerks, and probation officers who are neither culturally competent nor bilingual; assessment instruments that are culturally biased; and essential court documents that are not available in Spanish, for those who need them. As a result, compared to Whites, Latinos are more likely to get arrested, be charged with more severe crimes, be incarcerated, and serve longer sentences when charged with similar crimes under comparable circumstances. Thus, Latinos are overrepresented in nearly every aspect of the criminal justice system in the United States.

Additionally, the system often is frightening and incomprehensible to those Latinos with limited English proficiency. Latinos constitute the overwhelming majority of those persons detained and/or deported or removed from the United States by the Bureau of Citizenship and Immigration Services (BCIS).

Yet, too often there are insufficient personnel who are proficient in Spanish and English in agencies that are part of the criminal justice system.

Another set of issues affecting the experience of Latinos in the criminal justice system relates to both socioeconomic factors and related policy decisions. For example, data show that one in four Latinos in the U.S. is poor, compared to one in nine Whites, and Latinos are three times as likely as Whites not to have health insurance.³³ Among those who are poor, are uninsured, have substance abuse problems, and find themselves interacting with the criminal justice system, research suggests that their options may include incarceration or continued addiction, compared to someone who is not poor, has health insurance, and is able to receive private treatment and numerous other supports to address substance abuse. As a policy matter, the decision to treat drug problems as a criminal offense rather than as a public health concern weighs much more severely on the Latino community, compared to other groups. The result is that the criminal justice system in the United States, particularly as it operates in the Latino community, is neither fair nor just.

Why Are These Issues So Important?

Latinos constitute the largest and fastest-growing racial/ethnic group in the United States.

According to the U.S. Census, Latinos represented 12.5% of the U.S. population in 2000,³⁴ and the Latino population in the United States grew by 58% between 1990 and 2000. Moreover, the Latino population in the United States is expected to continue to grow at more than three times the rate of the total U.S. population during the next decade. Furthermore, while Latinos are especially concentrated in California, Texas, New Mexico, Arizona, New York, Florida, and Illinois, “nontraditional” areas of the country, including the South and the Northwest, have experienced significant growth in their Hispanic populations. Given these trends, it seems likely that the problems associated with Latinos in the system will increase rather than diminish, and increased fiscal pressure will be placed on state and local budgets already incapable of adequately supporting prevention and treatment programs.

Discrimination reduces or eliminates opportunities for Latinos to achieve success.

Latinos are especially affected by discrimination in all stages of the criminal and juvenile justice systems. Those disparities mirror barriers that Latinos face in other systems as well. For example:

- **Hispanics are less likely than non-Hispanic Whites to have graduated from high school.** In 2002, 57% of Hispanics age 25 and older had graduated from high school, compared with 88.7% of Whites at least 25 years of age.³⁵
- **Hispanics are much more likely than non-Hispanic Whites to be unemployed.** In March 2002, 8.1% of Hispanics in the civilian labor force aged 16 and older were unemployed, compared with only 5.1% of non-Hispanic Whites.³⁶
- **Hispanic workers earn less than non-Hispanic White workers.** Among full-time, year-round workers in 2002, 26.3% of Hispanics and 53.8% of non-Hispanic Whites earned \$35,000 or more.³⁷
- **Hispanics are more likely than non-Hispanic Whites to live in poverty.** In 2002, 21.4% of Hispanics were living in poverty, compared with 7.8% of non-Hispanic Whites.³⁸
- **Hispanics are discriminated against in housing inquiries.** When African Americans and Hispanics visit real estate or rental offices to inquire about the availability of advertised homes and apartments, they face a significant risk of receiving less information and less favorable treatment than comparable White customers. According to a survey of several thousand individuals conducted in 23 metropolitan areas during the summer and fall of 2000, Hispanic renters received consistently unfavorable treatment in 25.7% of their inquiries, while Hispanic homebuyers received consistently unfavorable treatment in 19.7% of their inquiries. This study reported that, of the racial/ethnic groups surveyed, only Hispanic renters faced essentially the same incidence of discrimination in 2000 as they had in 1989. In fact, as of 2000, Hispanic renters faced a higher incidence of discrimination than African American renters.³⁹

Another issue especially relevant for Latino and African American youth is that they tend to live in urban areas with few resources, and often lack sufficient opportunities for sports, recreation, or other activities that would deter them from coming into contact with the criminal and juvenile justice systems. All of these factors play an integral role in the overrepresentation of Latinos in the justice system.

Thus, improving the situation for Latinos in the criminal justice system requires implementing changes in *several* systems simultaneously.

Racial and ethnic disparities in the system are compounded by an unprecedented rate of construction of new jails and prisons throughout the country.

Latinos and other people of color are disproportionately likely to be incarcerated. As the number of prisons increases – and as new prisons are disproportionately populated by people of color – racial and ethnic disparities in the system will expand rather than diminish. For this reason, people of color (including Latinos) are more likely than non-Hispanic Whites to be negatively affected by prison expansion.

As the nation's largest minority group, the Latino community's well-being is central to the future economic and social prosperity of the U.S.

Latino workers constitute 11.1%⁴⁰ of the U.S. workforce, and almost 80%⁴¹ of Hispanic men are in the labor force, representing the highest workforce participation rate of any other group. Furthermore, the purchasing power of the U.S. Latino population is projected to reach \$926.1 billion by 2007,⁴² far outpacing other segments of the U.S. population in terms of growth. Latinos, therefore, are an essential part of this country's social and economic prosperity.

Purpose of this Book

The purpose of this book is to document current inadequacies in the U.S. criminal justice system, particularly as they pertain to individuals who are Latino/Hispanic. We summarize the workings of the criminal justice system, highlighting problems and proposing solutions relevant to justice system personnel, law enforcement, policy-makers, researchers, advocates, and

community groups. Our goal is to preserve the successes and fix the failures of the current system, thereby creating a system that genuinely is based on justice, a system that properly serves *everyone* in America, regardless of race or ethnicity.

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II

Data on Latinos in the U.S. Criminal Justice System

Current national, state, and county data systems do not accurately reflect how many Latinos are in the criminal justice system, as Box 2.1 describes. In a few cases, the forms permit Latinos to identify their *race* as “Hispanic” or “Latino.”¹ Many data systems, however, do not collect any information on ethnicity and only offer choices for race such as “White,” “African American,” and “Other” – choices that do not consider ethnicity. Analysis of Census data reveals that, with only these choices, more than 90% of Latinos reported their race as “White.”²

Table 2.1 lists the substantial overreporting of White inmates in several U.S. states because Latinos were counted as “White.” For these reasons, any data on Latinos in the criminal justice system – including the data in this book – must be interpreted with caution, particularly if ethnicity has not been separated from race. In most cases, the available data on Latinos represent an *undercount* of those in the system.

Table 2.1 | Over-Count of “White” Prisoners in Selected Jurisdictions (1997)

Jurisdiction	% “White” Prisoners Reported	Actual % White Prisoners	% “White” Over-Count
Federal	58.0	31.3	26.7
Arizona	79.6	48.8	30.8
California	30.1	30.1	0.0
Colorado	71.0	45.0	26.0
Florida	42.5	36.0	6.5
Idaho	80.9	68.8	12.1
New Jersey	25.8	17.7	8.1
New Mexico	83.0	28.9	54.1
New York	42.9	18.3	24.6
Texas	27.6	27.6	0.0
Utah	86.2	68.2	18.0

Source: Holman, B. (2001). *Masking the divide: How officially reported prison statistics distort the racial and ethnic realities of prison growth*. Alexandria, VA: National Center on Institutions and Alternatives.

Figure 4: Percent of prison population that is White, 1985 and 1997.

BOX 2.1 | Concerns Regarding Data

Many agencies operating in the criminal justice system do not collect data based on ethnicity, or inconsistently or incorrectly gather data on the race and ethnicity of their populations. For example, Latinos are counted with the “White” population or may be considered “Other.” This fact suggests that Latinos in the criminal justice system are seriously undercounted. The true extent of the overrepresentation of Latinos in the system probably is significantly greater than researchers have been able to document.

Research on prisons demonstrates that the failure to include either a Latino racial category or a means for separating ethnicity from race often results in dramatic overreporting of the percentage of “Whites” incarcerated, and therefore a significant underreporting of the percentage of Latinos incarcerated. For example, Holman (2001) reviewed data on prisoners held in U.S. facilities. By separating Latinos from the “White” category of prisoners, Holman found that the overcount of “Whites” in state systems ranged from 6% to 54%.³

Because government reports that provide data on problems in the system set the stage for appropriation of funds and implementation of new strategies to address those shortcomings, the gaps in Hispanic data are of particular concern. Without accurate numbers, the seriousness of the problems of overrepresentation and harsh treatment of Latinos in the system remains largely hidden from public view. As a result, it is difficult, if not impossible, to justify the critical need for system change — for example, building public support for crime prevention programs, eliminating racial profiling by police and disproportionately harsh sentencing, expanding substance abuse treatment, providing more bilingual services throughout the system, requiring cultural competency training for justice system personnel, improving risk assessment procedures, and improving the nature of interactions with the Bureau of Citizenship and Immigration Services (BCIS).

The full extent and seriousness of the disparate treatment of Latinos by the U.S. justice system can be comprehended only when accurate and complete data are available.

In this chapter we provide data from a variety of sources. Certain data are available from recent years; other data have not been updated. For comparison purposes, we provide U.S. Census Bureau information on Latinos, which corresponds to the data available from the Bureau of Justice Statistics for the same time frame.

Overrepresentation of Latinos in the Criminal Justice System

Latinos represented 12.5% of the general U.S. population in 2000,⁴ but they constituted more than 31% of incarcerated individuals in the federal criminal justice system that year.⁵ Latinos are overrepresented in prison, in jail, among those under military jurisdiction of the armed services, among individuals on parole, and among individuals on probation at the federal level.

Latino youth are also overrepresented in the justice system. Compared to non-Hispanic White youth, Latino youth are more likely to be arrested, detained, waived to adult criminal court, and incarcerated in jails and prisons for longer periods.⁶

Not only are Latinos overrepresented in the criminal justice system, they also are treated more harshly than non-Hispanic Whites, even when they are charged with the same types of offenses. Latinos are overrepresented and unfairly treated at every stage of the criminal justice system. From the moment of arrest through the adjudication process to sentencing, probation, parole, and capital punishment, Latinos are mistreated by the system – which targets them, gives them harsher sentences, and reduces their opportunities to successfully reenter society, as the discussion below shows.

Latinos Arrested and Detained

It is very difficult to find any information – let alone accurate information – on the number of Latinos arrested in the United States.⁷ The U.S. Department of Justice, Bureau of Justice Statistics' *Sourcebook of Criminal Justice Statistics, 2001* provides **no** data for arrests by ethnicity.⁸ The *Sourcebook* reports arrest data by offense charged, age group, and race. However, the race categories include only the following: White, Black, American Indian or Alaskan Native, and Asian or Pacific Islander. Data on Latino arrests, therefore, are completely hidden in this government database, with the exception of the data collected by the

Drug Enforcement Administration, which disaggregates its data by Hispanic and non-Hispanic categories.⁹

The *Compendium of Federal Justice Statistics, 2001* reports that 38.1% of arrests made by the Drug Enforcement Agency (DEA) by September 2001 were of Hispanic individuals. In other words, Hispanic individuals were arrested by DEA at a rate three times their proportion in the general population.¹⁰

Information provided by other sources indicates that Latinos are substantially more likely to be detained before trial than non-Hispanics. In 2001, for example, 91.9% of Hispanics were detained before trial compared with only 58.2% of non-Hispanics.¹¹ This statistic is particularly alarming given that Hispanic defendants are the *least* likely of all groups to have a criminal history. In 1996, 56.6% of Hispanic defendants had been arrested on at least one prior occasion, compared with 60.5% of White defendants and 75% of Black defendants.¹² In addition, only 8.6% of federal prisoners convicted of violent offenses in 2001 were Hispanic, a percentage considerably lower than the percentage of Hispanics in the general population (12.5%) in that year.¹³

The limited data available on arrests of Latino youth suggest that they are arrested significantly more often than non-Hispanic White youth for felonies. For example, in Los Angeles County in 1998, Latino youth were 1.8 times as likely to be arrested for felony offenses as non-Hispanic White youth. Specifically, Latino youth were:

- 2.2 times as likely to be arrested for sex offenses
- 2.0 times as likely to be arrested for drug offenses
- 1.9 times as likely to be arrested for violent offenses
- 1.8 times as likely to be arrested for other offenses
- 1.6 times as likely to be arrested for property offenses¹⁴

Between 1983 and 1991, the percentage of Latino youth in public detention centers increased by 84% nationally, compared with an 8% increase for White youth and a 46% increase for youth overall.¹⁵

Latinos and Sentencing

The majority of Latinos sentenced to prisons and jails are serving time for nonviolent offenses. From October 1, 1999 through September 30, 2000, for example, 129,320 individuals were incarcerated in federal prison; of these persons, 40,601 (31.4%) were Hispanic.¹⁶ However, of all individuals incarcerated at that time for *violent* offenses, only 7.5% were Hispanic, whereas 64.7% of the individuals incarcerated for public-order offenses were Hispanic.¹⁷

Yet, Hispanics are sentenced to federal prison more than twice as often as their numbers in the general population would warrant, despite the fact that they are less likely than their non-Hispanic counterparts to have a previous criminal record or to have been convicted of violent offenses.¹⁸ For those who are convicted of violent crimes, Latinos serve prison sentences that are, on average, 14 months longer than those served by non-Hispanics.¹⁹

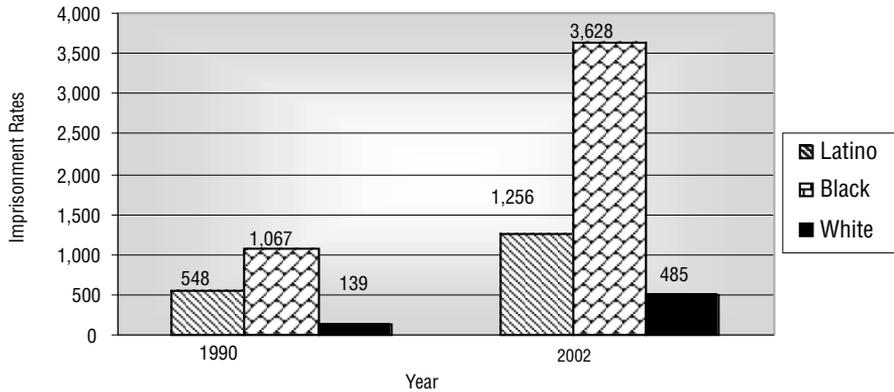
Latinos in Prison

Prisons are institutions run by the state or federal government for the incarceration of convicted criminals for periods of one year to life. Prisons range in degree of restrictiveness from minimum security work farms to maximum security solitary confinement.

According to the Bureau of Justice Statistics, 17% of Hispanic males will enter state or federal prison during their lifetime, compared with 5.9% of White males and 32% of Black males.²⁰ In other words, almost three times as many Latino men serve time in prison as do White men. In 1999, Hispanic men age 25 to 29 years were three times as likely as White men to be in prison (although still significantly less likely than Black men),²¹ so the trend for Latinos is worsening. While Latinos represented 11.4% of the U.S. general population in 1998, they constituted 14.5% of the state prison population and 30.3% of the federal prison population that year.²²

Figure 2.1 shows disparate rates of imprisonment per 100,000 residents by race/ethnicity for the years 1990-1997.²³ As this figure shows, imprisonment for people of color became *increasingly* disparate during this period, although this fact is accounted for by increasing imprisonment of Blacks rather than Latinos.

Figure 2.1 | Imprisonment Rates per 100,000 United States Residents by Race/Ethnicity, 1990 versus 2002



Source: U.S. Department of Justice. (2003). *Prisoners in 2002* (p. 9). Washington, DC: Bureau of Justice Statistics.

Latino youth are incarcerated in jails and prisons at rates significantly higher than White youth. Human Rights Watch reported that Latino youth were held in jails and prisons at two to three times the rates of White youth in nine states, three to six times the rates of White youth in eight states, and seven to 17 times the rates of White youth in four states.²⁴

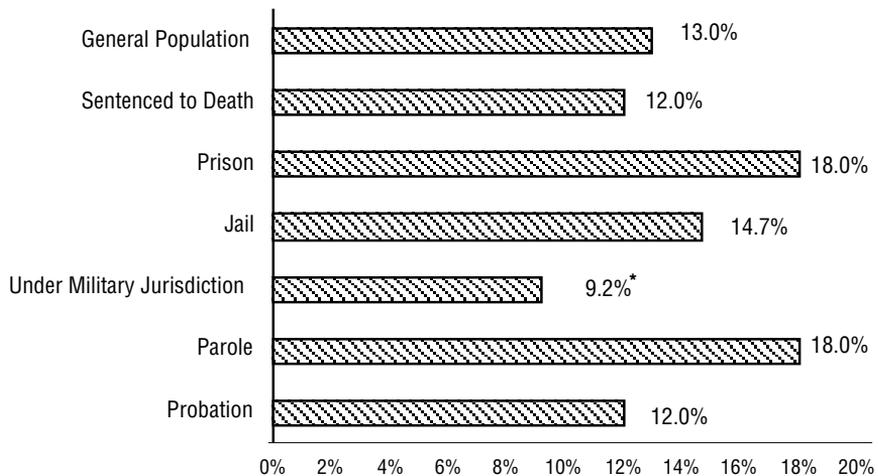
Information in the following sections comes from the U.S. Department of Justice, Bureau of Justice Statistics Internet report, *Correctional Populations in the United States, 1998*. Figure 2.2 summarizes these data and shows the disproportionate overrepresentation of Latinos in the system, who represented 11.8% of the general population that year.

Latinos in Jail

A person convicted of a minor crime, such as a misdemeanor, may be sentenced to a period of incarceration, usually less than one year, in a local jail. People in jail usually have been convicted of less serious offenses than people convicted of felonies. They also may be eligible to be released on a daily basis to continue their employment.

While Latinos represented 11.8% of the general U.S. population in 1998, they constituted 15.5% of local jail inmates (91,800 of 592,462).²⁵ Moreover, the percentage of Latinos admitted to local jails increased 8.4% from 1990 to 1998, while the percentage of admissions for non-Hispanic Whites and non-Hispanic Blacks remained constant (-0.01% and -0.03%, respectively).²⁶

Figure 2.2 | Percentage of Latinos in the General Population and in the Federal Criminal Justice System in the United States, 2002



Sources: U.S. Census Bureau. (2004). *2002 American Community Survey Profile*. Available at www.census.gov/acs/

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U.S. Department of Justice. (2002). *Sourcebook of Criminal Justice Statistics, 2002* (p. 491). Washington, DC: Bureau of Justice Statistics.

*data available only for 1998

Latinos Under Military Jurisdiction

Individuals serving in the Air Force, Army, Marine Corps, Navy, or Coast Guard may come under the jurisdiction of the military court system if they are charged with violating military rules.

In 1998, of the 2,426 individuals under military jurisdiction overall in the United States, 224 (9.2%) were Latino.²⁷ However, there were wide variations in the percentage of individuals under military jurisdiction in the various branches of the military. For example, 40.6% of the Marine Corps personnel (91 of 682) and 22.2% of the Coast Guard personnel (two of nine) under

military jurisdiction in that year were Latino; in contrast, 8.7% of Navy personnel (34 of 389), 7.7% of Army personnel (66 of 862), and 6.4% of Air Force personnel (31 of 484) under military jurisdiction in 1998 were Latino.²⁸

Latinos on Parole

Parole is the conditional release of a prisoner before the prisoner's full sentence has been served. Convicted persons generally are required to serve the imposed sentence (less 54 days per year "good-time" for sentences greater than one year, but not life imprisonment), followed by a term of supervised release. In the federal system, parole was abolished by the Sentencing Reform Act of 1984.²⁹ In the state systems, the decision to grant parole usually is made by a parole board, which has power to grant or revoke parole or to discharge the parolee altogether. Parole can be granted to a prisoner who has observed the rules of the correctional institution and who the system has determined will not jeopardize public welfare.

While Latinos represented 11.8% of the general U.S. population in 1998, they constituted 18.3% of the individuals on parole (128,892 of 704,964) for felonies, 18.4% at the state level (117,321 of 638,203) and 17.3% at the federal level (11,571 of 66,761).³⁰ By 2000, a larger percentage of Hispanics (21%) were on parole from state or federal courts.³¹

The increasing percentage of parolees who are Latino appears to be a positive trend. However, interpretation of this finding is not straightforward, due to changes in parole eligibility laws. As mentioned above, parole eligibility varies from state to state, and federal offenders are no longer eligible for parole. Thus, it is unclear whether the additional Hispanics on parole have resulted from proportionately more Hispanics being paroled, or because more Hispanics are being incarcerated, so proportionately more are available to be paroled.

Latinos on Probation

Probation is a sentence imposed for commission of a crime whereby the convicted criminal offender is released into the community under the supervision of a probation officer, in lieu of incarceration. The offender is subject to certain restrictions and conditions, such as drug testing or drug treatment.

While 11.8% of the general U.S. population were Latino in 1998, only 9.1% of individuals on probation in that year were Hispanic (311,350 of 3,417,613).³² Latinos constituted the same percentage of those on probation at the state level (9.1%, or 306,807 of 3,384,359); however, 13.7% of the individuals on probation at the federal level were Latino (4,543 of 33,254).³³

Hispanic adults were less likely than other racial/ethnic groups to be on probation in 2002. By the end of 2002, there were 3,995,165 adults on probation from state or federal courts. Of those, Hispanics constituted 12%, Whites 55%, and Blacks 31%.³⁴ Similarly, a smaller proportion of Latinos than other racial/ethnic groups was on parole from state or federal courts. In 2002, there were 753,141 adults on parole from state or federal courts; 18% were Hispanic, whereas more than a third (39%) were White and more than two-fifths (42%) were Black.³⁵

Latinos Sentenced to Death

Capital punishment is a sentence of death intended to be reserved for the most serious crimes. Depending upon the state, such crimes may include first-degree murder, killing a police officer, treason, and rape.

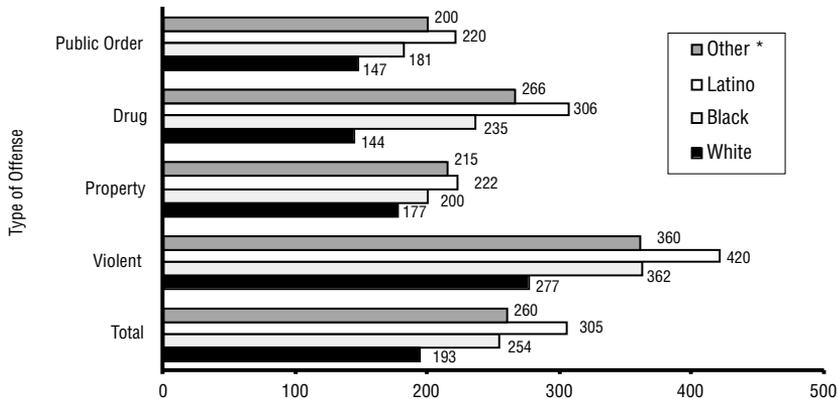
Of prisoners under sentence of death in 2002, Hispanics accounted for 11.5%, compared to 54.3% of Whites and 43.7% of Blacks. Although the number of Hispanics under sentence of death is proportionately smaller than that of other racial/ethnic groups, that number rose from 361 to 364 during 2002. Eighteen Hispanics were received under sentence of death, nine were removed from death row, and six were executed. Nearly three-quarters of the Hispanics held were in three states: California (126), Texas (114), and Florida (29).³⁶

Latino Youth in the Criminal Justice System

Latino youth also experience harsh treatment in the justice system, as described in a 1993 report from the National Council on Crime and Delinquency.³⁷ Among youth with *no* prior admissions to state facilities, Latinos received more severe sentences than Whites in several crime categories:

- For youth charged with drug offenses, the admission rate for Latino youth was 13 times the rate for White youth.

Figure 2.3 | Average Time in Custody: Youth in State Public Facilities in 35 States, 1993



Source: National Council on Crime and Delinquency. (1993). *The Juveniles Taken Into Custody Research Program: Estimating the Prevalence of Juvenile Custody Rates by Race and Gender*. Washington, DC: Robert DeComo, Ph.D.

NOTE: "Total" category contains offenses not depicted. White and African American categories do not include youth of Hispanic origin. Rates are calculated per 100,000 youth age ten to the upper age of juvenile court jurisdiction in each state. States include AK, AR, AZ, CA, DE, GA, IA, ID, IL, IN, KY, LA, MA, MD, ME, MN, MO, MS, ND, NE, NH, NJ, NY, OH, OK, OR, SC, SD, TN, TX, UT, VA, VT, WI, WV.

*Category defined as "other" includes American Indian and Asian.

- For youth charged with violent offenses, the admission rate for Latino youth was more than five times the rate for White youth.
- For youth charged with property offenses, the admission rate for Latino youth was almost two times the rate for White youth.
- For youth charged with public-order offenses, the admission rate for Latino youth was 1.3 times the rate for White youth.

As Figure 2.3 shows, in every offense category, the average length of incarceration was longer for Latino youth than for any other racial/ethnic group (including African Americans).

The Cumulative Effects of Disparate Treatment

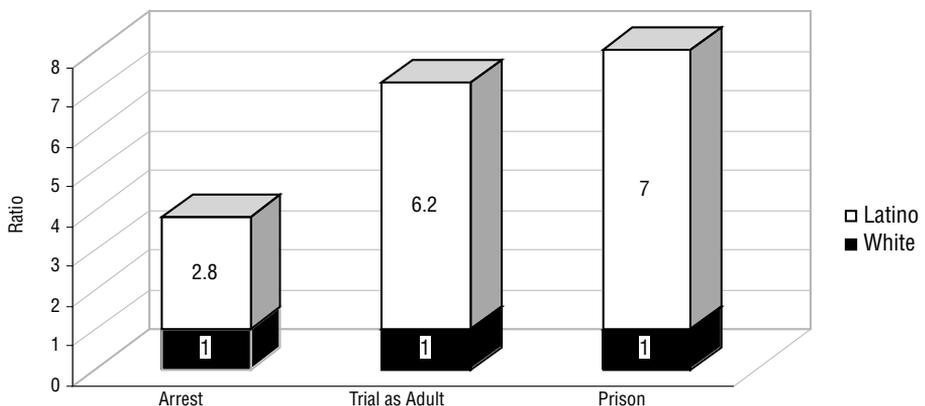
Not only do racial and ethnic disparities occur at several points in the justice system, they also accumulate over time. Initial disparities at arrest are compounded by disparities that occur later in the process. When added together, these disparities, even if they are relatively small at each stage, can produce large, negative effects.

For example, as Figure 2.4 shows, in Los Angeles during the period 1996-1998, Latino youth were:

- Arrested 2.8 times as often as White youth
- Prosecuted as adults 6.2 times as often as White youth
- Imprisoned or held in detention 7.0 times as often as White youth

Thus, a Latino youth who committed a violent offense in Los Angeles during the period 1996-1998 was, in total, seven times as likely as a non-Hispanic White youth to be confined in the California Youth Authority (CYA), while that same Latino youth was “only” 2.8 times as likely as a non-Hispanic White youth to have been arrested.³⁸ Thus, as Figure 2.4 shows, racial disparities *accelerate* as a youth moves into the adult system.

Figure 2.4 | Latino-to-White Ratio for Likelihood of Outcomes for Youth Charged with Violent Offenses in Los Angeles, 1996-1998



Source: Adapted from Males, M., & Macallair, D. (2000). *The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California*. Washington, DC: Building Blocks for Youth.

As this chapter documents, the percentage of Latinos in prison in the United States is almost three times their proportion of the national population. Moreover, Latinos are overrepresented at *most* phases of the criminal justice system: in prison, in jail, among those under military jurisdiction of the armed services, among individuals on parole, and among individuals on probation at the federal level.

In addition, persons of color are seriously underrepresented among prison staff. For example, fewer than 11% of Federal Bureau of Prisons staff are Hispanic.³⁹ The trend for hiring Latino staff is discouraging as well, as demonstrated by New York's Attica prison, the site of a massive bloody rebellion in 1971. Attica had only one Hispanic staff person at the time of the rebellion, although 63% of the prisoners were African American or Latino.⁴⁰ Twenty-four years later in 1995 (the latest year with complete data), only seven of the 854 staff were Latino,⁴¹ or less than 1%. In other words, one Hispanic staff person had been hired at Attica, on average, only once every four years, and Attica is not unique in this regard.

More disturbing still is the fact that the justice system's failure to include either a Latino category or a means for separating ethnicity from race often results in dramatic overreporting of the percentage of "Whites" incarcerated, and therefore a significant *underreporting* of the percentage of Latinos incarcerated. In other words, current statistics allow us to see only the "tip of the iceberg"; in reality, the situation may be more dire than we can at present document.

Endnotes

1. Persons of Hispanic/Latino heritage can be of any race.
2. Holman, B. (2001). *Masking the divide: How officially reported prison statistics distort the racial and ethnic realities of prison growth*. Alexandria, VA: National Center on Institutions and Alternatives.
3. *Ibid.*
4. Therrien, M., & Ramirez, R. R. (2001, March). *The Hispanic population in the United States: Population characteristics: March 2000*. Current Population Reports. Report P20-535. Washington, DC: U.S. Census Bureau.
5. U.S. Department of Justice, Bureau of Justice Statistics. (2002, August). *Compendium of federal justice statistics, 2001*, Table 7.10 (p. 100). Washington, DC.
6. Villarruel, F. A., & Walker, N. E. (2002). *¿Dónde está la justicia?* Washington, DC: Building Blocks for Youth.
7. According to Barry Holman, Director of Public Policy, National Center on Institutions and Alternatives, "Counting Hispanic Latinos as Whites hides the magnitude of incarceration of people of color. What has been rather antiseptically referred to as a 'racial disparity' is really a gaping divide between Whites and non-Whites that far outstrips minority levels in the population or in committing crime." Quoted in the press release: *New study: Prison census counting Hispanics/Latinos as Whites hides racial reality behind bars*. Washington, DC: June 2001.
8. U.S. Department of Justice, Bureau of Justice Statistics. (2003, April). *Sourcebook of criminal justice statistics, 2001*. Washington, DC.
9. Changes in data collection procedures used in the 2000 Census may correct this problem. At the time the manuscript for this book was prepared, no *Sourcebook* arrest reports were available online using data from the 2000 Census.
10. U.S. Department of Justice, Bureau of Justice Statistics. (2002, August). *Op. cit.* Table 1.4 (p. 18).
11. *Ibid.* Table 3.5 (p. 45).
12. Arboleda, A. (2002, July). *NCLR Statistical Brief #1: Latinos and the federal criminal justice system*. Washington, DC: National Council of La Raza.
13. U.S. Department of Justice, Bureau of Justice Statistics. (2002, August). *Op. cit.* Table 4.5 (p. 61).
14. Villarruel & Walker (2002). *Op. cit.*
15. *Ibid.*

16. U.S. Department of Justice, Bureau of Justice Statistics. (2002, August). *Op. cit.* Table 7.10 (p. 100).
17. *Ibid.*
18. Arboleda. (2002, July). *Op. cit.*
19. *Ibid.*
20. U.S. Department of Justice, Office of Justice Programs. (2003). *Criminal offender statistics*. Washington, DC: Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/crimoff.htm>
21. Arboleda. (2002, July). *Op. cit.* Blacks constituted nearly 40% of the federal prison population in 1999, nearly four times their percentage of the general population. See U.S. Department of Justice, Bureau of Justice Statistics. (2000, May). *Compendium of federal justice statistics 1999*, Table 7.10 (p. 100). Washington, DC.
22. U.S. Department of Justice, Bureau of Justice Statistics. (2002). *Correctional populations in the United States, 1998: A BJS Internet Report*, Table 5.9: Prisoners under state and federal jurisdiction, by gender and Hispanic origin, 1998. Report #NCJ 192929. Washington, DC.
23. Imprisonment rates rose for all racial/ethnic groups during that period: Latinos (+35%), Whites (+36%), and Blacks (+63%).
24. Human Rights Watch. (2002). Table 7. Available at <http://hrw.org/backgrounder/usa/race>.
25. *Correctional populations in the United States, 1998: A BJS Internet Report*. *Op. cit.* Table 2.3: Gender, race, and Hispanic origin of local jail inmates, midyear 1990 and 1995-1998.
26. *Ibid.*
27. *Ibid.* Table 8.5: Number of prisoners under military jurisdiction, by officer/enlisted status, gender, race, and Hispanic origin, December 31, 1998.
28. *Ibid.*
29. The Comprehensive Crime Control Act of 1984 established the U.S. Sentencing Commission, which was directed to establish a regime of determinate sentences for the federal courts. This regime came into existence effective November 1, 1987. All persons sentenced in the federal courts for offenses committed after November 1, 1987 receive determinate sentences and are not eligible for parole. Post-release supervision, termed "supervised release," is provided for in the sentence under the jurisdiction of the court. The U.S. Parole Commission still exists and has jurisdiction over (a) persons sentenced in the federal courts for offenses committed before November 1, 1987, (b) state defendants accepted into the federal witness protection program, (c) remaining indeterminate sentence D.C.

Code felony offenders, and (d) military code offenders serving sentences in Bureau of Prisons facilities. In addition, the Parole Commission makes prison-term decisions in foreign transfer treaty cases for offenses committed after November 1, 1987, and supervises all new-law D.C. Code determinate sentence felony offenders released on supervised release.

30. *Ibid.* Table 6.6: Adults on parole, by gender and Hispanic origin, 1998.
31. Arboleda. (2002, July). *Op. cit.*
32. *Correctional populations in the United States, 1998: A BJS Internet Report.* *Op. cit.* Table 3.7: Adults on probation, by gender and Hispanic origin, 1998.
33. *Ibid.*
34. U.S. Department of Justice, Bureau of Justice Statistics. (2003, August). *Probation and parole in the United States, 2002.* Washington, DC: Glaze, L. E.
35. *Ibid.*
36. U.S. Department of Justice, Bureau of Justice Statistics. (2004, February). *Capital punishment, 2002.* Washington, DC: Bonczar, T. P, & Snell, T. L.
37. National Council on Crime and Delinquency. (1993). *The juveniles taken into custody research program: Estimating the prevalence of juvenile custody rates by race and gender.* Washington, DC: DeComo, R.
38. Males, M., & Macallair, D. (2002). *The color of justice: An analysis of juvenile adult court transfers in California.* Washington, DC: Building Blocks for Youth.
39. Federal Bureau of Prisons *Quick facts and statistics.* Available at www.bop.gov
40. Wagner, P., & Heyer, R. (2003, Septembr 25). *Thirty-two years after Attica.* Available at <http://www.alternet.org/story/16830/>
41. *Ibid.*

III

What Every Latino Should Know About the U.S. Criminal Justice System

In order to interact effectively with the criminal justice system, it is important to understand generally how the system is organized and functions, as well as its specific processes and procedures. Also, it is helpful to become familiar with trends in crime and sentencing in the United States and the multiple repercussions of incarceration.

The Roles of the Federal and State Governments

The United States government is *federalist*,¹ which means the federal government shares its power with the states. Government is further divided into three co-equal branches: the *executive*, the *legislative*, and the *judicial*. This is true for both the federal government and each of the states.

The federal government has only those powers that are given to it in the United States Constitution. The Congress, along with the executive branch, sets *national* policy. Congress passes laws that define criminal behavior, the executive branch enforces those laws, and the judicial branch adjudicates individual enforcement of those laws. The Congress, as the national legislative body, operates independently of the state legislatures.

The power of each of the 50 state governments is spelled out in the constitution of each state. Each state is separate and equal with respect to any other state and the federal government.

What act or activity constitutes a crime is a matter of definition. Both federal and state laws define crimes. Federal laws are passed by Congress and signed by the president; state laws are passed by a state's legislature and signed by the governor.

States are said to possess the "*police power*," which is a broad power to enforce standards to protect public welfare and safety. The power and responsibility to investigate alleged criminal acts lies with the police, whose power lies within the executive branch of the government. The police obtain information concerning criminal activity from several sources: citizens report crimes; victims report crimes; crimes are committed within the view of the police; and the police develop their own sources of information through investigation.

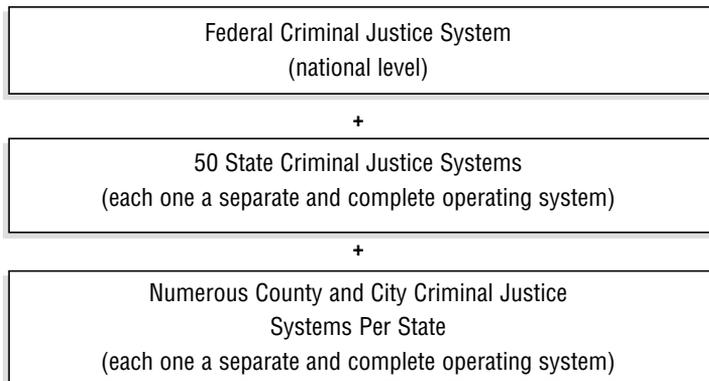
The Structure of the U.S. Criminal Justice System

The criminal justice system includes the agencies and processes by which a government enacts laws to promote public safety and welfare, investigates crime, brings charges against individuals, makes arrests, adjudicates or tries individuals, and imposes and carries out sentences on convicted individuals.

The United States does not have just one criminal justice "system." Instead, the U.S. system consists of several hundred components organized into three levels of service, as depicted in Figure 3.1.

In the United States, the criminal justice system consists of a group of public agencies at each level – federal, state, and county – that collectively are responsible for promoting order and protecting public safety. These systems include several different elements: the police, prosecutors, defense attorneys, judges, prisons, jails, and probation and parole officers.

Figure 3.1 | Federal, State, and Local Components of the Criminal Justice System*



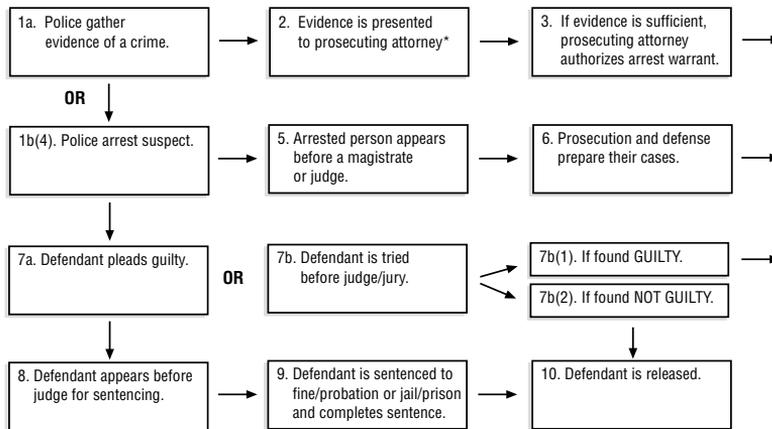
* The discussion and figure in this section refer to the 50 U.S. states, plus the District of Columbia, but not to United States territories.

Criminal Justice System Processes

In the state system, once the police have gathered sufficient evidence to charge a person with a crime, they present their evidence to a *prosecuting attorney*. He or she reviews the information and, if the information is sufficient, authorizes the issuance of an *arrest warrant*. The arrest warrant empowers the police to *apprehend* the person named in the warrant and bring that person before a *magistrate* or *judge*, who is an officer of the judiciary branch of the government.

Figure 3.2 depicts the processes involved in arresting and convicting an individual in the United States.

Figure 3.2 | The Processes of Arrest and Conviction in the United States



* At the federal level, the case is referred to a grand jury.

In the federal system, the evidence of a crime is presented to a **Grand Jury**, which reviews the evidence to determine whether an indictment should be issued against a person. The arrest warrant is then based on the decision of the Grand Jury.

There are exceptions to this procedure, of course. Generally, a police officer has the inherent authority to arrest a person who commits a *misdemeanor*² in the officer's presence. Further, a police officer can arrest without a warrant if there is reason to believe that a *felony*³ has been committed and that the suspect may flee while the officer obtains the arrest warrant. In most states, for nonviolent misdemeanors, a person has the right to be released pending trial, either for a reasonable *bond* or on his or her own *recognizance*.

A person has certain rights within the criminal justice system. These rights are said to attach or apply at various points in the criminal justice system. Among those rights are the following:

1. A person has the right to the *presumption of innocence*. The prosecuting attorney must prove to a jury *beyond a reasonable doubt* that the person committed the crime charged.
2. A person has the right to remain silent. This means that a person, even before arrest, cannot be compelled to talk, either to the police or the prosecuting attorney. A defendant cannot be forced to testify at trial, and, if the defendant remains silent, the prosecutor cannot argue to the jury that the defendant must be guilty because he or she remained silent.
3. A person has the right to be represented by *counsel* at all stages of the criminal justice process. This right to counsel generally attaches at the time a person is arrested. If a person cannot afford an attorney, the government must provide him or her with an attorney at its expense. However, the right to counsel does not attach in misdemeanor cases where the only punishment is a fine.
4. A person has the right to confront those who testify against him or her – that is, to attend all hearings held in the case, to cross-examine witnesses brought by the government, and to have the person’s own witnesses brought in to testify (even if they are required to testify by *subpoena*).
5. A person has the right to a speedy *trial*.
6. A person has the right to a public trial before a *jury* properly selected or before an impartial judge, sitting without a jury.

Once a person has been arrested, the first court proceeding usually is an *arraignment* or a *preliminary hearing*. At the arraignment or preliminary hearing, the charges brought against the person charged are read, matters of bond are determined, *defense counsel* is appointed (if the defendant is *indigent*), and a *plea* is considered. A person usually has three options regarding a plea: he or she can plead guilty, thus waiving all rights; he or she can plead not guilty, in which case the matter proceeds; or the person can stand mute (enter no plea)

and the Court will enter a not-guilty plea for him or her and the case will go on. In some instances the defendant can plead “no contest,” which is taken as a guilty plea, so a *sentence* is imposed.

In felony cases, a defendant has a right to a *preliminary examination*. A preliminary examination is a hearing before a lower court or magistrate at which only two issues are addressed:

1. Was a crime committed?
2. Are there reasonable grounds to believe that this defendant committed the crime?

The preliminary examination is conducted without a jury. Often, only the prosecutor introduces evidence and calls witnesses. Defense counsel can *cross-examine* the witnesses and challenge the evidence. The purpose of the preliminary examination is to ensure that the prosecutor has a real case to proceed against the *defendant*. It tests the state’s case. If the judge determines that there is insufficient evidence against the defendant, then the judge can refuse to bind the defendant over for trial, and the defendant is released. If, however, the judge answers both fundamental questions in the affirmative, then the case is bound over (or transferred) to the higher court for trial before a different judge and/or jury.

During a trial with a judge and jury, the judge will instruct the jury on the law, but the jury has the sole responsibility to determine the facts. In other words, the judge explains the laws relevant to the case being tried but does not decide whether the elements of the case asserted by the prosecution and defense are factual. Determining which elements of the case actually occurred is the jury’s responsibility.

At trial, the *burden of proof* is on the prosecutor. He or she must convince the jury, beyond a reasonable doubt, that the defendant is guilty. Generally, this means that there must be a unanimous decision by the jurors for guilt. Normally, the past criminal history of the defendant may not be brought before the jury unless the defendant testifies and puts his or her character at issue. In *capital cases*, those cases where the *death penalty* is possible, the Court

will first try the question of guilt or innocence. Only after the jury finds the defendant guilty will the jury hear testimony as to whether the death penalty should be imposed.

A defendant generally has no obligation at trial to prove his or her innocence. However, once the prosecutor has established the bare facts to support a conviction, what is referred to as a *prima facie* case, it is usually necessary for the defense to come forward with some facts to refute the prosecution's evidence.

If found guilty, the defendant is referred to the *probation* department for preparation of a *pre-sentence report*. Often, the defendant will be interviewed, as will the victim. Information about the *criminal history* of the defendant will be gathered and reviewed. Other relevant information will be examined. Ultimately, a recommendation for sentencing will be made to the judge. In some states this process is very formal, with certain events being assigned points. The sentence recommendation is determined by applying a defendant's score to a preestablished *sentencing guideline* established by the legislature or the court administrator. A judge may deviate from these sentencing guidelines only if he or she puts the reasons for doing so on the record.

A sentence may include *incarceration* in *jail* or *prison*. If sentenced to jail, the defendant often stays under the jurisdiction of the sentencing judge and the sentence is for one year or less. Any sentence for longer than one year entails commitment to the *Department of Corrections*; in this case, the defendant is sent to prison. The *parole board* or commission, an agency within the Department of Corrections, determines whether a person serves the whole sentence in prison. In lieu of prison or jail, a person may be sentenced to *probation*, which is a period of supervised release.

In almost all cases of convictions for felonies in state courts, a defendant has the right to appeal his or her conviction to a higher court.

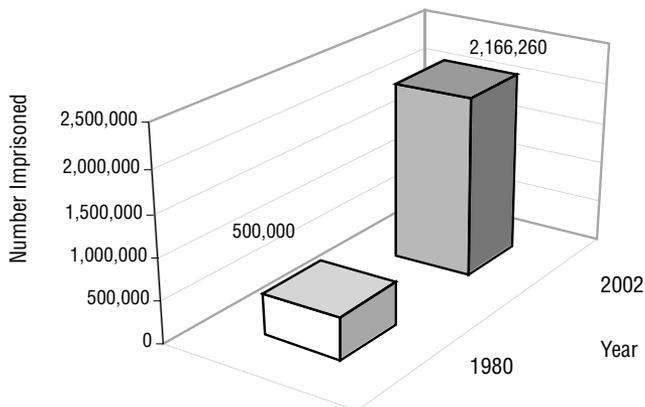
Trends in Crime and Sentencing in the United States⁴

Understanding current trends in crime and sentencing helps one to assess how well the criminal justice system is functioning. This section discusses five important trends.

The U.S. justice system has grown explosively during the past two decades.

In 1980, approximately 500,000 men and women were in prison and jail combined (see Figure 3.3); today, more than two million people are in prison and jail combined,⁵ representing a 400% increase in individuals incarcerated in the United States during the past 20 years. Moreover, on December 31, 2001 state prisons were operating between 1% and 16% above capacity, while federal prisons were operating at 33% above capacity.⁶ The Bureau of Justice Statistics reported that approximately one of every 143 U.S. residents was in state or federal prison or a local jail as of December 31, 2002.⁷ The prisoner increase for 2002 over 2001 was equal to an additional 700 inmates every week during the year.⁸

Figure 3.3 | Persons in Prisons and Jails, 1980 and 2002



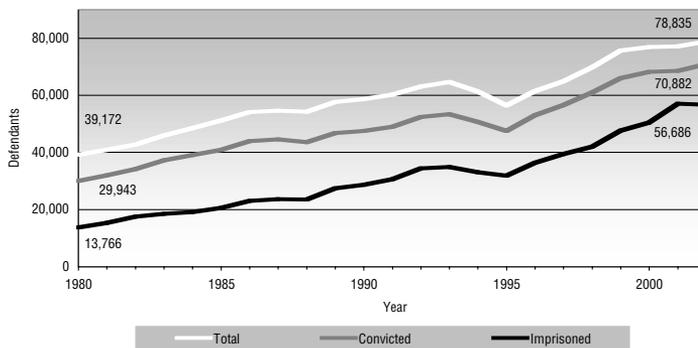
Source: U.S. Department of Justice. (2003). *Prisoners in 2002*. Washington, DC: Bureau of Justice Statistics.

According to the U.S. Department of Justice, Bureau of Justice Statistics, in 1998:

- State courts convicted 927,717 adults and federal courts convicted 50,494 adults of felonies.
- Of all felons convicted in state courts, 68% were sentenced to a period of confinement:
 - 44% to state prisons
 - 24% to local jails
- Felons sentenced to a state prison had an average sentence of five years, of which they were likely to serve just over two years before release.
- The average sentence to local jail was six months.⁹

The proportion of individuals convicted in federal court who are sentenced to prison has been increasing since 1980, as Figure 3.4 illustrates. While approximately 30,000 defendants were convicted in U.S. district court in 1980,

Figure 3.4 | Defendants in Cases Concluded in United States District Court: Total, Convicted, and Imprisoned, 1980-2002



Sources: U.S. Department of Justice. (2003). *Federal Criminal Case Processing, 2001 with Trends 1982-2001, Reconciled Data: Key Crime & Justice Facts at a Glance*. Washington, DC: Bureau of Justice Statistics. Available at www.ojp.usdoj.gov/bjs

U.S. Department of Justice. (2002). *Sourcebook of Criminal Justice Statistics, 2002* (Tables 5.24 and 5.25). Washington, DC: Bureau of Justice Statistics.

NOTE: Includes all cases handled by U.S. district court judges and Class A misdemeanors handled by U.S. magistrates. Imprisoned includes those defendants sentenced to both imprisonment and some form of community corrections, e.g., home detention. Beginning with 1994, the data reported are based on the federal fiscal year beginning October 1; prior years' data are based on the calendar year.

20 years later nearly 70,000 defendants were convicted in that system. Similarly, whereas fewer than 20,000 defendants were imprisoned in 1980, 20 years later that number had mushroomed to approximately 50,000.

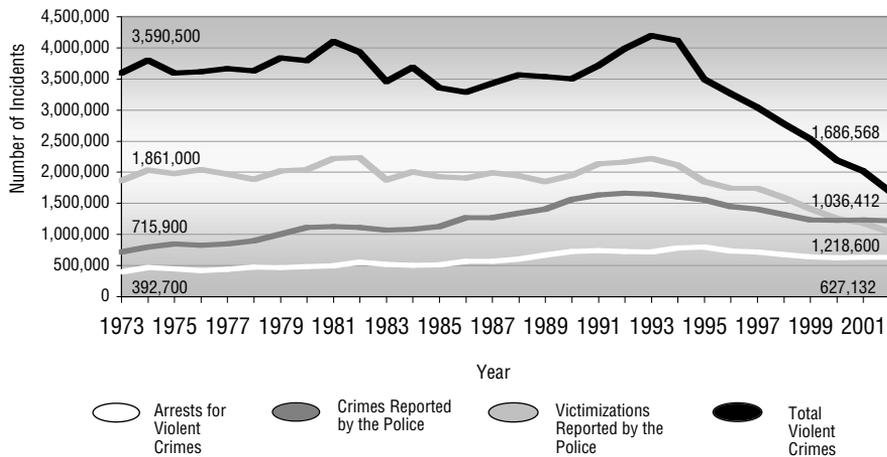
As of August 2002, the United States had more than two million people in federal and state prisons and local jails – a national inmate population that exceeds that of any other country in the world.¹⁰ Stated another way, one person of every 143 U.S. residents is behind bars.

According to the Criminal Justice Alliance,¹¹ as of February 2002, the Federal Bureau of Prisons (BOP) planned to build 29 new prisons at a cost in excess of \$100 million *each*. The annual cost of operating each additional facility was estimated in 2002 to be \$25 million. If federal prison expansion proceeds at this pace, it is estimated that BOP's discretionary appropriations will reach approximately \$5.075 billion by 2006.¹²

Violent crime in the United States declined during the last decade and does not account for increases in the prison population.

Increases in the prison population are attributable to political decisions to “get tough on crime,”¹³ increased funding for corrections and correctional facilities, and passage of “mandatory minimum” sentencing laws – including “three strikes you’re out” laws,¹⁴ which have resulted in the increasingly disproportionate representation of minorities in the system.

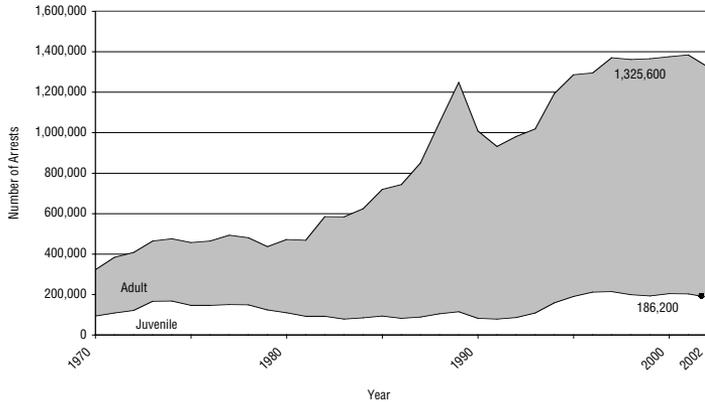
As Figure 3.5 illustrates, data from the U.S. Department of Justice, Bureau of Justice Statistics show that serious violent crime levels have declined by 50% in the United States since 1993. At the same time, however, arrests for violent crimes have nearly doubled.

Figure 3.5 | Four Measures of Serious Violent Crime, 1973-2002

Source: U.S. Department of Justice. (2003). *Key Crime & Justice Facts at a Glance*. Washington, DC: Bureau of Justice Statistics. Available at www.ojp.usdoj.gov/bjs

Note: The serious violent crimes included are rape, robbery, aggravated assault, and homicide. (For related data about homicide trends, see Homicide Trends in the U.S.). *The National Crime Victimization Survey* was redesigned in 1993. Beginning with 1994, the data reported are based on the federal fiscal year beginning October 1; prior years' data are based on the calendar year. However, in this figure the data for 1993 have been adjusted to allow for a comparison with data collected after the redesign.

As stated above, several factors are associated with the growth in the number of individuals incarcerated in the United States. One factor that has contributed greatly to increases in incarceration rates is the explosion in arrests for drug-related offenses since 1970. The “war on drugs”¹⁵ of the 1980s is yet another trend that has had a disparate impact on Latinos and other communities of color. As Figure 3.6 shows, drug arrests for adults were nearly three times higher in 2002 than they were in 1970. Drug arrests for juveniles also increased substantially during that period.

Figure 3.6 | Drug Arrests by Age, 1970-2002

Source: U.S. Department of Justice. (2003). *Drugs and Crime Facts: Drug Law Violations*. Washington, DC: Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/dcf/enforce.htm>

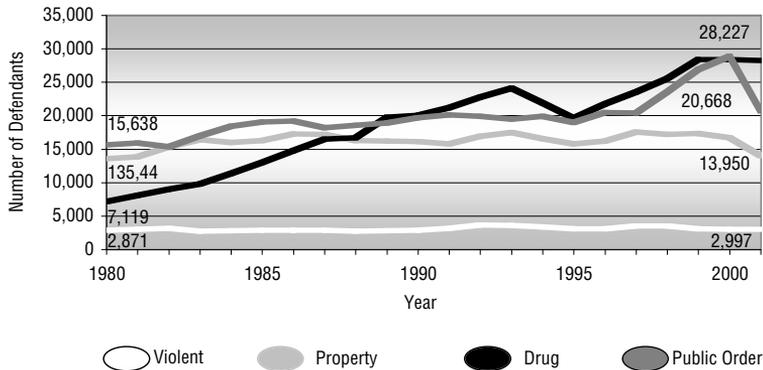
U.S. Department of Justice. (2003). *FBI, The Uniform Crime Reports (UCR)*. Washington, DC: Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/glance/tables/drugtab.htm>

NOTE: Drug abuse violations are defined as state or local offenses relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs including opium or cocaine and their derivatives, marijuana, synthetic narcotics, and dangerous non-narcotic drugs such as barbiturates.

Juveniles are defined as persons less than 18 years of age. Adults are defined as person 18 years old and older.

Moreover, as Figure 3.7 shows, of cases decided in federal district court since 1980, drug cases increased at the greatest rate. While cases involving violent crimes remained nearly constant and cases involving property crimes climbed slightly from 1980 to 2001, cases involving drug offenses more than tripled.

**Figure 3.7 | Defendants in Cases Concluded in U.S. District Court:
by Offense, 1980-2001**



Sources: U.S. Department of Justice. (2003). *Compendium of Federal Justice Statistics, 2002*. Washington, DC: Bureau of Justice Statistics, Key Crime & Justice Facts at a Glance. Available at www.ojp.usdoj.gov/bjs

U.S. Department of Justice. (2003). *Federal Criminal Case Processing, 2001: with Trends 1982-2001, Reconciled Data* (Table 5). Washington, DC: Bureau of Justice Statistics.

NOTE: Includes all cases handled by U.S. district court judges and Class A misdemeanors handled by U.S. magistrates. Prior to 2001, public order offenses included violation of laws concerning weapons; immigration; taxes; bribery; perjury; national defense; escape; racketeering and extortion; gambling; liquor; mailing or transporting of obscene materials; traffic; migratory birds; conspiracy, aiding and abetting, and jurisdictional offenses; bigamy; disorderly conduct on the U.S. Capitol grounds; civil disorder, and travel to incite to riot; regulatory laws and regulations in agriculture, antitrust, labor law, food and drug, and motor carrier. After 2001, public order offenses *excluded* weapons and immigration violations. To allow for comparison, this figure includes data on weapons and immigration violations for 2001.

The greatest increases in the federal prison population were in the nonviolent crime categories of drug and immigration offenses.

Of particular significance to Latinos, the most dramatic recent increases in the federal prison population were in nonviolent crime categories, specifically immigration and drug offenses. The U.S. Department of Justice attributes the

61% growth in the number of prison inmates in the federal system from 1995 to 2001 largely to the increase in the number of drug offenders (accounting for 48% of the total growth) and immigration offenders (accounting for 21% of the total increase) incarcerated.¹⁶ Analysis of the decade 1990 to 2000 shows that immigration offenses jumped from 1,728 in 1990 to 12,266 in 2000, a 610% increase.¹⁷ Drug offenses more than doubled from 30,470 in 1990¹⁸ to 84,944 in 2003,¹⁹ a 179% increase. The percentage of individuals sentenced to the Federal Bureau of Prisons who were drug offenders skyrocketed from 16.3% in 1970 to 54.7% in 2002.²⁰

Bureau of Immigration and Customs Enforcement (ICE)²¹ detainees are the fastest-growing sector of the nation's booming prison population. As of December 31, 2002, ICE held 8,748 persons in detention.²²

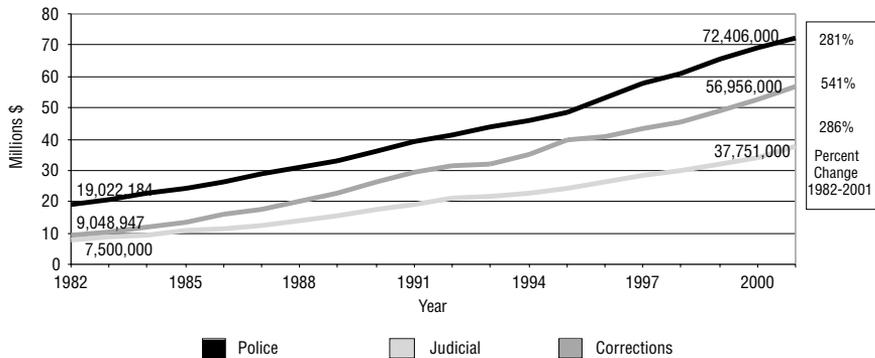
As of January 2004, 32.1% of federal prison inmates were Hispanic; of those, 71.1% were U.S. citizens and 28.9% were noncitizens.²³ Of those who were not U.S. citizens, 16.5% were citizens of Mexico, 2.1% were citizens of Colombia, 1.4% were citizens of Cuba, 2.0% were citizens of the Dominican Republic, and 6.9% were citizens of other countries.²⁴

An important difference between the noncitizen and citizen populations of the Bureau of Prisons is that only 1.5% of immigrant prisoners were sentenced for violent offenses as compared with 15% of U.S. citizens who were in federal prisons.²⁵ In addition, the average length of time that immigrants are being held in detention has increased significantly in the six-year period for which data are available – from 4.6 months in 1991 to 15.1 months in 1997.²⁶

Given these facts, it may not seem surprising that direct expenditures for each of the major criminal justice functions (police, corrections, judicial) have increased dramatically during the past two decades, as Figure 3.8 shows.

Mandatory minimum sentence laws often result in low-level, nonviolent drug offenders – rather than more dangerous individuals – being sentenced to extended time in prison.

In recent years it has been popular for legislatures to provide specifically-defined mandatory minimum sentences for drug offenses. As a result, a low-

Figure 3.8 | Direct Expenditure by Criminal Justice Function, 1982-2001

Source: U.S. Department of Justice. (2003). *Justice Expenditure and Employment Extracts: Key Crime and Justice Figures at a Glance*. Washington, DC: Bureau of Justice Statistics. Available at www.ojp.usdoj.gov/bjs

level, nonviolent drug offender may be sentenced to extended time in prison – including in some cases a life sentence – while a person convicted of a violent crime or a mid- or high-level criminal act, such as a “kingpin,” may spend less time in prison.

For example, during 1999 U.S. attorneys prosecuted 84% of the persons referred to them for drug offenses. Suspects involved with opiates and marijuana – substantial numbers of whom were Hispanic – were among those *most* likely to be charged and sentenced. Suspects investigated solely for being part of a drug conspiracy (e.g., “kingpins”), on the other hand, were among those most likely to be *declined* for prosecution.²⁷

It is important, of course, for offenders to be punished, but it is equally important that the punishment fit the crime. The use of mandatory minimum sentences restricts the authority of the judge to fashion a sentence to the particular needs or circumstances of the crime committed and the defendant.

People of color are incarcerated in the United States at disproportionately high rates compared to their White counterparts, even when the crime is the same.

While the majority of the federal prison population is White, both Latinos and Blacks are overrepresented among the prison population. Approximately 70% of the new inmates admitted into the prison population between 1985 and 1997 were minorities, despite the fact that minorities constituted only 25% of the total U.S. population at that time.²⁸ Chapters II and IV provide additional information about these disparities.

How the Criminal Justice System Functions in the United States

Individuals regularly turn to elements of the criminal justice system for assistance. On a daily basis, they interact with police officers controlling traffic or patrolling neighborhoods. Less often, but more than anyone would wish, they call the police to report a crime. People everywhere can call 911 and expect a public servant to offer assistance. On occasion, police work with individuals who have been the victims of crimes to file complaints or deliver victim impact statements at sentencing hearings.

Often, the justice system responds with the highest degree of professionalism. Victims are comforted, crimes are solved, and perpetrators are brought to justice, even if it means tracking them across state lines. Police officers stay outside, day and night, in all types of weather, so they will be available for people in need. In the name of duty, officers direct traffic and confront dangerous situations. Many are heroes. Dedicated judges, prosecutors, and public defenders work long hours to administer justice fairly and effectively.

Sadly, however, the justice system sometimes fails to live up to expectations. Individual police officers have engaged in brutality against suspected offenders, brutal or corrupt police officers often go unpunished, 911 operators may not speak the caller's language, high-level drug "kingpins" win short sentences while low-level drug couriers serve decades in prison, and racial or ethnic stereotypes too often taint decision-making.

In addition, the justice system sometimes fails to operate strategically. Policy-makers can get stuck in their old ways or caught up in the rhetoric of being "tough on crime." Sometimes they fail to prioritize or adjust with the times, or

they choose policies that are inconsistent with findings from contemporary research. For example, all across the United States expensive new prisons are being built while drug treatment programs are inadequately funded – despite research studies showing that substance abuse treatment is less expensive and more effective than incarceration.²⁹

Specific shortcomings of the system compromise the delivery of justice to all individuals and limit its ability to be fair and equitable. These shortcomings in the criminal justice system have far-reaching consequences for all individuals in the United States, including the hundreds of thousands of Latinos who come into contact with the system annually. For the Latino population, in particular, the results can include:

- Undermined confidence in the justice system
- Fear and mistrust of the police and other system personnel
- Failure to report crimes
- Reluctance to answer questions asked by justice system personnel
- Doubting the guilt of individuals who have been lawfully convicted
- Failure to serve as a witness or on a jury
- Questioning the integrity of the entire justice system

Ultimately, the lack of trust that results from cumulative system shortcomings can work against the very safety and public order that the justice system is designed to promote.

The Repercussions of Incarceration

There are significant consequences for both Hispanics and non-Hispanics who have been incarcerated. Having a criminal record severely restricts a person from holding certain jobs, finding housing, qualifying for student federal financial aid, accessing public benefits, and engaging in civic duty. All of these barriers make it almost impossible for returning youth and adults to rebuild their lives and contribute to the well-being of their families, the development of their communities, and the improvement of society as a whole. Consider

the following:

Employment. Some states have legal employment prohibitions against people with criminal records, but they vary from state to state, and from occupation to occupation. Even if there is no law prohibiting employment, employers often refuse to hire or retain people with criminal records – or people who they even suspect might have a criminal record.³⁰

- Employment rates generally are 15-25% lower for ex-prisoners than for the general population.³¹ A survey of employers conducted in 2001 revealed that employers' stated willingness to hire ex-offenders is very limited, as is their actual hiring of such workers.³² The Urban Institute reported that a survey of employers in five major cities across the country revealed that two-thirds of all employers indicated they would not knowingly hire an ex-offender, and at least one-third checked the criminal histories of their most recently hired employees.³³
- Incomes for ex-prisoners in one study were 26-28% lower after incarceration than for the general population.³⁴
- Oftentimes, a felony record disqualifies an applicant from health care, skilled trade, and public-sector jobs.³⁵ At least six states (Alabama, Delaware, Iowa, Mississippi, Rhode Island, and South Carolina) permanently bar ex-offenders from public employment. Most states also impose restrictions on hiring ex-offenders for particular professions including law, real estate, medicine, nursing, physical therapy, and education.³⁶

Education. Under the 1998 reauthorization of the Higher Education Act of 1965, students who have prior convictions for possession or sale of controlled substances cannot obtain Pell grants or student loans.³⁷

- In 2002, more than 43,000 college students faced possible denials of federal student aid as a result of the Higher Education Act drug ban.³⁸
- Without Pell grants or student loans, low-income students with prior drug convictions who are trying to straighten out their lives typically cannot attend college.³⁹

Voting. The right to vote is guaranteed to all U.S. citizens by the Fifteenth

Amendment to the U.S. Constitution. It is a fundamental right that gives voice to millions of citizens and is the basis for the democracy that Americans cherish. However, in the United States – unlike many other democracies – serving time in prison often results in *permanent* loss of the ability to vote. The Sentencing Project estimated that one in 50 Americans (or 4.7 million adults) has currently or permanently lost the ability to vote because of a felony conviction.⁴⁰ Of these individuals, nearly three-quarters (73%) are *not* in prison, but are on probation or parole or have completed their sentences⁴¹

- According to the Mexican American Legal Defense and Educational Fund (MALDEF), approximately one-half million of the individuals disenfranchised by state laws are Latino. Furthermore, Latinos have disproportionately higher rates of disenfranchisement despite their presence in the voting-age population.⁴²
- Only two states (Maine and Vermont) and Puerto Rico allow convicted felons to vote even when they are in prison. The remaining states prohibit convicted felons from voting, at least temporarily.⁴³ The Sentencing Project reports that 35 states prohibit felons from voting while they are on parole, and 31 of these states exclude felony probationers as well.⁴⁴ Seven states deny the right to vote to all ex-offenders who have completed their sentences. Seven others disenfranchise certain categories of ex-offenders and/or permit application for restoration of rights for specified offenses only after a waiting period (e.g., five years in Delaware and Wyoming, and three years in Maryland).⁴⁵

Public assistance. The 1996 federal welfare reform law imposed a lifetime ban on Temporary Assistance for Needy Families (TANF) and food stamp benefits for people whose felony drug convictions occurred after August 22, 1996 – regardless of their circumstances or subsequent efforts at rehabilitation – unless their state affirmatively passes legislation to opt out of the ban.⁴⁶

- In Texas (as well as other states), women convicted of a state or federal felony offense for using or selling drugs are subject to a *lifetime* ban on receiving cash assistance and food stamps. The Sentencing Project found that, during the late 1990s, 4,700 women in Texas were affected by this ban – 61% of whom were African American or Latina.⁴⁷

- Parents who are reentering the community after incarceration often need public benefits in order to reunify their families, pay rent, and buy food, clothes, and other necessities.⁴⁸

Immigration. An increasing list of more than 50 different crimes now can trigger deportation, including crimes that are considered misdemeanors under state law. For those immigrants with families, including citizen children, the separation means family dissolution, economic hardship, and trauma.⁴⁹

- “Mixed status” families – those with citizen children and noncitizen parents – represent 9% of all American families with children.⁵⁰
- Immigrant parents become entangled in the criminal justice/immigration systems in a number of ways. An immigrant who is applying for lawful permanent residence or citizenship could be detained and/or placed in deportation proceedings if the application or fingerprints check reveal a criminal history based on an old conviction record that can now be considered grounds for removal, even though he or she completed a criminal sentence.⁵¹

Housing. Safe, decent, and affordable housing is critical to the well-being of parents and children. Parents returning to the community after incarceration will be unable to regain custody of their children if they cannot find appropriate housing.⁵²

- Private housing may be difficult to secure. Landlords typically require potential tenants to list employment and housing references and to disclose financial and criminal history information. In addition, most individuals leave prison without enough money for a security deposit on an apartment.⁵³
- Public housing may not be an option for returning prisoners. Federal housing policies permit – and in some cases require – public housing authorities to deny housing to individuals who have engaged in certain criminal activities. For example, anyone who is found to be abusing alcohol or illegal drugs is ineligible for public housing. Individuals who have been evicted from public housing because of drug-related criminal activity cannot reapply to live there for three years. To compound matters,

family members living in public housing may not welcome a returning prisoner.⁵⁴

- Even shelters for the homeless may not be an option for formerly incarcerated individuals. All federally-funded shelters require that individuals be homeless for at least 24 hours before they are eligible for a bed. One study from the late 1980s estimated that as many as one-fourth of all homeless individuals had served time in prison. A California study found significant gaps between the needs of parolees and available services: there were only 200 shelter beds for more than 10,000 homeless parolees, four mental health clinics for 18,000 psychiatric cases, and 750 treatment beds for 85,000 released substance abusers.⁵⁵

Understanding these repercussions may help mobilize Latino communities to advocate for needed system reforms.

Endnotes

1. ***Italicized words and phrases appearing in bold print*** in this section are defined in the Glossary (see Appendix A).
2. A misdemeanor is a less serious crime, usually punishable by fine and/or a jail sentence of one year or less.
3. A felony is a more serious crime, punishable by incarceration in prison longer than one year.
4. The information in this section is drawn from reports published by the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics between 1970 and 2000.
5. U.S. Department of Justice, Bureau of Justice Statistics. (2002). *Sourcebook of criminal justice statistics, 2001*. Washington, DC.
6. Beck, A., & Harrison, P. (2003, August). *Prisoners in 2002*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
7. U.S. Department of Justice, Office of Justice Programs. (2003, July 27). *U.S. prison population rises 2.6 percent during 2002*. Press release. Washington, DC: Bureau of Justice Statistics.
8. *Ibid.*
9. U.S. Department of Justice, Bureau of Justice Statistics. (2002). *Correctional populations in the United States, 1998: A BJS Internet Report*.
10. Editorial. (2003, April 24). Behind Bars: Too many in prison; too little care and prevention. *Houston Chronicle*. Houston, TX.
11. The Criminal Justice Alliance, now defunct, was a broad-based coalition aimed at eliminating the overreliance on incarceration by promoting criminal justice reform. The coalition was dissolved in 2002 and a new working group, the Criminal Justice Roundtable, was established to share information among civil rights, criminal justice, and religious organizations working on criminal justice issues. The Roundtable is housed at the Open Society Institute's Washington, DC office.
12. Office of Management and Budget. (2002). *Analytical perspectives: Budget of the United States government, fiscal year 2002*. Available at <http://www.Whitehouse.gov/omb/budget/fy2002/spec.pdf>.
13. The "get tough on crime" movement started in the 1970s as a result of public perception of an increase in violent crime. Over time, "get tough on crime" policies have been applied to other crimes, resulting in the disproportionate imprisonment of nonviolent, nondangerous offenders. This has led to incarceration rates for minorities far out of proportion to their percentage of the U.S. population.

14. "Three-strikes" laws were put into place ten years ago with two primary goals: to reduce crime by incarcerating repeat offenders for long periods of time, and to dissuade individuals with criminal records from committing new crimes. "Three-strikes" laws were designed to make communities safe by reducing violent crime. However, violence has not decreased in states that have implemented these laws as compared to states that do not have "three-strikes" laws.
15. The "war on drugs" began in the early 1980s as a response to the "drug crisis" that was in part fueled by public opinion. As a result, low-level, nonviolent drug offenders are given long sentences that, to date, have produced no measurable reductions in drug-related crimes or in substance abuse addiction.
16. Beck, A., & Harrison, P. (2003, August). *Op. cit.*
17. Beck, A., & Harrison, P. (2001, August). *Prisoners in 2000*, Table 19. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
18. *Ibid.* Table 19.
19. Federal Bureau of Prisons. *Quick facts*. (2003, August). Available at <http://www.bop.gov/fact0598.html>
20. *Ibid.*
21. Formerly called U.S. Immigration and Naturalization Service.
22. U.S. Department of Justice, Office of Justice Programs. (2003, July 27). *Op. cit.*
23. Federal Bureau of Prisons. *Quick facts and statistics*. Available at www.bop.gov
24. *Ibid.*
25. Greene, J. (2001, September). Bailing out private jails. *The American Prospect*. Available at http://www.prospect.org/web/page_wv?section=root&name=ViewPrint&articleId=5871
26. Sabol, W. (1999, June). *Time served in prison by federal offenders, 1986-97*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
27. U.S. Department of Justice, Office of Justice Programs. (2001, August). *Federal drug offenders, 1999, with trends 1984-99*. Washington DC: Bureau of Justice Statistics.
28. *Sourcebook of criminal justice statistics, 2001*. *Op. cit.*
29. See, for example, Walker, N. E., Villarruel, F. A., Judd, T., & Roman, J. (2003, April). *Drug policies in the State of Michigan: Economic effects*. Washington, DC: Justice Policy Institute.
30. Community Legal Services, Inc. and Center for Law and Social Policy, *Every door closed: An action agenda*, Washington, DC, 2003, based on Amy Hirsch, Sharon Dietrich, Rue Landau, Peter Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein, *Every door closed: Barriers facing parents with criminal records*,

Washington, DC: Center for Law and Social Policy, 2002.

31. Western, B., Kling, J. R., & Weiman, D. F. (2001, January). *Crime & delinquency: The labor market consequences of incarceration*. Paper #450. Princeton, NJ: Princeton University Department of Economics - Industrial Relations Section. [Originally prepared for the Urban Institute Re-Entry Roundtable, October 12-13, 2000.]
32. Holzer, H. J., Raphael, S., & Stoll, M. A. (2003). *Employer demand for ex-offenders: Recent evidence from Los Angeles*. Manuscript available from Harry J. Holzer at jhj4@georgetown.edu
33. Travis, J., Solomon, A. L., & Waul, M. (2001, June). *From prison to home: The dimensions and consequences of prisoner re-entry*. Washington, DC: The Urban Institute.
34. Western, B., Kling, J. R., & Weiman, D. F. (2001, January). *Op. cit.*
35. *Ibid.*
36. Travis, Solomon, & Waul. (2001, June). *Op. cit.*
37. Community Legal Services, Inc. and Center for Law and Social Policy, *Every door closed: An action agenda*. (2003). *Op. cit.*
38. *Ibid.*
39. *Ibid.*
40. Fellner, J. (1998). *Losing the vote: The impact of felony disenfranchisement laws in the United States*. Washington, DC: The Sentencing Project.
41. *Ibid.*
42. Demeo, M., and Ochoa, S. A. (2003, December). *Diminished voting power in the Latino community: The impact of felony disenfranchisement laws in ten targeted states*. Los Angeles, CA: Mexican American Legal Defense and Educational Fund.
43. *Ibid.*
44. The Sentencing Project. Briefing Sheets. *Felony disenfranchisement laws in the United States*. Available at: <http://www.sentencingproject.org/pdfs/1046.pdf>
45. *Ibid.*
46. Community Legal Services, Inc. and Center for Law and Social Policy, *Every door closed: An action agenda*. (2003). *Op. cit.*
47. Allard, P. (2002, February). *Life sentences: Denying welfare benefits to women convicted of drug offenses*. Washington, DC: The Sentencing Project.
48. Community Legal Services, Inc. and Center for Law and Social Policy, *Every door closed: An action agenda*. (2003). *Op. cit.*
49. *Ibid.*

50. *Ibid.*

51. *Ibid.*

52. *Ibid.*

53. Travis, Solomon, & Waul. (2001, June). *Op. cit.*

54. *Ibid.*

55. *Ibid.*

IV

Factors Associated with the Overrepresentation of Latinos in the Criminal Justice System

Some individuals argue that overrepresentation and disproportionate confinement of people of color result from differential crime patterns among minorities. They suggest that if people of color commit proportionately more crimes than Whites, are involved in more serious incidents, and have more extensive criminal histories, they *will* be overrepresented in secure facilities, even if system decision-makers engage in no discrimination.¹

Although there are some racial/ethnic differences in criminal behavior for some types of offenses, those differences do not explain the *significant* overrepresentation of minorities in the justice system.² One study based on extensive self-reporting and interviews concluded that delinquent behavior is a relatively commonplace aspect of adolescence for a large segment of American youth, without regard to race or ethnic background.³ While Black youth in this study were one-third more likely than White youth to commit a violent offense by the time they were age 17, these differences were not sufficient to explain the huge difference in incarceration rates between White youth and Black and Latino youth. Black youth were incarcerated at five times the rate of White youth, and Latino youth were incarcerated at two and a half times the rate of White youth.⁴

In fact, overrepresentation in the criminal justice system is a complex social problem with multiple causes including some practices that are biased and some practices that, though well-intended – e.g., "tough on crime" and "war on drugs" – nonetheless have discriminatory effects.

To be certain, shortcomings in the current criminal justice system (described in Chapter III) contribute to the problems of overrepresentation and disparate treatment of Latinos. In addition, broad societal factors may play a role as well. For example, as noted in Chapter I, media portrayal and public perceptions of Latinos, as well as perceptions of Latinos who have been incarcerated, also provide contexts for the politics of racial and ethnic imbalances in the criminal justice system in the United States. In addition, as the section below outlines, problems at each stage of the criminal justice system, from arrest to sentencing, contribute to overrepresentation of Latinos in the system.

Problems at the Arrest Stage

The overrepresentation of Latinos in the criminal justice system begins at the earliest stage; that point at which law enforcement officials make decisions about what areas to target for crime and which people to stop for suspected crime. In many urban areas, city police departments have chosen to target "high crime" areas, which also tend to be disproportionately populated by minorities. Further, whether in "high crime" areas or not, local and federal law enforcement officers often use race and ethnicity as factors in determining whether a person or group of people are suspected of criminal activity. These law enforcement tactics result in a disproportionate number of people of color being arrested as compared to Whites.

Law enforcement targets "high crime" neighborhoods. Some law enforcement practices contribute to the overrepresentation of Latinos in the criminal justice system. For example, a study funded by the National Institute of Justice pointed out that the San Jose Police Department (SJPD) in California assigned a higher number of officers to areas with relatively large minority populations because of the greater number of calls for police service and reported crimes in those areas. The SJPD argued that the relative greater assignment of officers to minority neighborhoods produced greater exposure to the risk of traffic stops among the residents of those neighborhoods and

accounts for the disproportionate representation of minorities among persons stopped.⁵ Because areas described as "high crime" often include poor neighborhoods with residents who are people of color, minority populations come to the attention of police more often than do Whites.

Racial profiling is discriminatory. Racial profiling is another law enforcement practice of particular concern to the Latino community, and arguably plays an important role in the overrepresentation of Latinos in the criminal and juvenile justice systems. Racial profiling occurs when law enforcement officials rely on race, ethnicity, national origin, or religion to establish a probable cause for suspecting an individual of a crime. Racial profiling is carried out in the streets and in the workplace – traffic and pedestrian stops, searches and seizures, and workplace raids. Latinos have been systematically targeted for "dragnet" tactics by local and state law enforcement officers, and those same tactics have been applied and used, as a matter of formal policy, by some federal law enforcement agents.⁶ The National Council of La Raza has received reports from Latino individuals claiming to have been victimized by police and federal agents overstepping the bounds of the Constitution in the name of drug and immigration enforcement.⁷ In recent years, too many Latinos have been prey to this discriminatory practice, as Box 4.1 illustrates.⁸

The use of racial profiling and designating minority neighborhoods as "high crime" areas not only violates civil rights, but also hampers effective law enforcement. Specifically, when ethnicity is used to select which individual to subject to routine or spontaneous investigatory activities, then that individual – along with family members, friends, and neighbors – loses trust in the integrity of law enforcement. As a result, public safety is placed in jeopardy because members of these communities fear harassment and abuse by the police and, therefore, are less likely to seek police help when they legitimately need it, e.g., to report a crime, serve as a witness or on a jury, or otherwise cooperate with law enforcement agencies.

Problems in Prosecution and Detention

Once Latinos are brought into the criminal justice system by discriminatory law enforcement tactics such as racial profiling, prosecutorial decisions further negatively affect Latinos. As explained below, this is particularly true for

individuals who are arrested for drug offenses, as disproportionate numbers of Black and Latino individuals are arrested for these offenses.

The justice system "playing field" is uneven. In any criminal prosecution, the state has all of the sophisticated investigative and forensic resources to support prosecution, while an indigent person has a court-appointed attorney and whatever resources a judge is willing to provide. These resources often are inadequate. This situation is of particular concern because Hispanics tend

BOX 4.1 | Examples of Racial Profiling

- A training film once used by the Louisiana State Police Department explicitly exhorted officers to use traffic stops to conduct narcotics searches of "males of foreign nationalities, mainly Cubans, Colombians, Puerto Ricans, or other swarthy outlanders."⁹
- According to an article in the *New York Times*, a review of 37 INS worksite raids in the New York City district showed that agents frequently cited skin color, use of Spanish, foreign accents, and clothing "not typical of North America" as primary evidence that workers were likely to be undocumented. The *Times* story confirmed that the INS explicitly uses ethnicity to guide its enforcement efforts, a tactic the agents had denied using.¹⁰
- On January 15, 2002 the *New York Times* reported a follow-up story that began in April 1998, in which four young men of color on their way to a North Carolina college to showcase their basketball skills in hopes of getting a scholarship were pulled over for speeding on the New Jersey Turnpike. The two White New Jersey troopers publicly admitted that they stopped the vehicle because its occupants were Black and Latino. According to the troopers, their supervisors told them to focus on black- and brown-skinned drivers because they were more likely to be drug-traffickers. The troopers fired 11 shots at the vehicle when the driver put the van in reverse as the officers approached on foot, wounding three of the young men in the process. According to the latest *New York Times* account, the State of New Jersey recently paid \$12.9 million in damages to the four victims.¹¹
- A New Jersey state trooper admitted using ethnicity as a basis for stopping Hispanic drivers and charging them with driving while impaired, a lawyer testified in court. When the state trooper was asked why he stopped a particular driver he said, "Because he's Mexican." He added that he believed that Hispanics who are driving probably are drunk.¹²
- In the early 1990s, an investigation of the practices of the Volusia County, Florida Sheriff's Department revealed that, although Hispanics and Blacks accounted for only 5% of the drivers on a portion of Interstate 95 that ran through the county, they constituted nearly 70% of drivers stopped on that stretch of highway. Hispanics and Blacks were not only stopped more than Whites, they were stopped for longer periods of time than Whites.¹³
- On October 22, 2001, four Hispanic businessmen were escorted off a Delta flight after passengers alerted airline staff that the men appeared to be Middle Eastern.¹⁴
- In November 2003, the Mexican American Legal Defense and Educational Fund (MALDEF) settled a racial profiling case against the City of Rogers, Arkansas where the police violated Latinos' civil rights and engaged in racial profiling. The lawsuit alleged that Latinos were improperly stopped and investigated based on their ethnicity and perceived immigration status.¹⁵

to be significantly overrepresented among the indigent population. For example, in an analysis of 24 counties participating in the California Healthcare for Indigents Program (CHIP) during fiscal year 1996-97, the state found that 52% of the indigent population were Hispanic, whereas only 30% of the general population of those counties were Latino.¹⁶

Behavior is "over-criminalized." Legislatures at both the federal and state levels have responded to social problems by classifying more and more behaviors as criminal. For example, currently, behavior involving substance abuse is often dealt with as criminal, which can interfere with treatment and remediation. Since a significant proportion of Hispanics who come into contact with the criminal justice system do so because of drug-related issues, the criminal characterization of drug problems directly impacts Latinos. This often means that low-level drug users serve lengthy sentences in jail or prison, rather than being given the opportunity for rehabilitation, as Chapter V documents.

Individuals are charged with more serious crimes than the facts warrant.

Prosecuting attorneys often overcharge individuals. In other words, they charge a person with a more serious crime than the facts warrant. For example, a person arrested for illegally possessing a controlled substance will be charged with "possession of a controlled substance with intent to deliver" as opposed to being charged with simple "possession" or "use." This places the individual in a precarious position – either plea-bargain the charges down to something more manageable or face the possibility of conviction for a crime carrying a much more serious sentence. With mandatory minimum sentences in drug cases, the outcome often is determined when the prosecutor files charges, *not* when the judge hears the case.

Disparities in Legal Representation

The U.S. Supreme Court has held that the U.S. Constitution guarantees a criminal defendant facing significant jail time or prison the right to an attorney, and if the defendant cannot afford one he/she has the right to be represented by a lawyer paid by the government – i.e., public counsel. Given that a large percentage of Latinos in the criminal justice system are poor, a large percentage of Latino criminal defendants receive court-appointed attorneys. Often these court-appointed attorneys are overworked, underpaid, and without the resources to match the case put on by the prosecutor.

Latinos are disproportionately represented by publicly-appointed counsel. Disparities in legal representation have serious consequences for Latinos, especially at the state level. While Hispanics in federal prison in 1999 were less likely than African Americans, and about as likely as Whites, to have public counsel (56% for Hispanics, 65% for Blacks, and 57% for Whites), Hispanics in state prison in 1999 were more likely than Whites (but less likely than African Americans) to have publicly-financed attorneys (73% for Hispanics, 77% for Blacks, and 69% for Whites).¹⁷

Public defenders are overworked. A Bureau of Justice Statistics special report on defense counsel in criminal cases reported that from 1994 to 1998, workloads rose more than spending for the Defender Services Division. The number of criminal representations grew 25% during that period, while spending grew by only 20%.¹⁸ The American Bar Association has argued for two decades that public defenders have too many cases and lack support personnel,¹⁹ as the examples in Box 4.2 illustrate.

This disparity in legal representation has real consequences. Of defendants found guilty in federal district courts, 88% with publicly-financed counsel received jail or prison sentences, compared to 77% of defendants with private counsel.²⁰

BOX 4.2

The Crisis in Public Defense

According to the National Legal Aid & Defender Association:

- In Wisconsin, more than 11,000 people annually are not represented because anyone with an annual income of more than \$3,000 is deemed able to afford a lawyer.
- In Bucks County, Pennsylvania, the public defender's office handled 4,173 cases in 1980. In 2000, with the same number of attorneys, the office handled an estimated 8,000 cases.
- In Lake Charles, Louisiana, the public defender's office has only two investigators for the 2,550 new felony cases and 4,000 new misdemeanor cases assigned to the office each year. Indigent clients in Lake Charles typically meet their public defender for the first time an average of 281 days – more than nine months – after arrest.
- In Virginia, a juvenile charged with a felony who cannot afford a lawyer gets an attorney who is paid the equivalent of only 90 minutes of work because of the \$112 per-case fee cap.

The disparity is even more striking at the state level. From 1994 to 1998, of those defendants found guilty in large state courts, 71% with public counsel were sentenced to incarceration, compared to only 54% of defendants with private attorneys.²¹

In addition, publicly-financed counsel often do not grasp the implications of criminal conviction for immigrants. Immigration law is complex and, in recent years, subject to frequent changes. Indeed, immigration law is a specialty area. In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). These two laws together expanded the definition of what constitutes an "aggravated felony" under immigration law. This definition is important to immigrants; if an immigrant is convicted of an "aggravated felony" as defined in the law, then he/she must be deported. This term used to be reserved for serious crimes, specifically crimes with sentences of five years or more. Since 1996, the term "aggravated felony" has included any crime for which the sentence could be one year or more in prison, even if the defendant is not sentenced to *serve* time in prison.

When examining the legal representation that Latinos receive in the criminal justice setting, publicly-financed counsel often do not have sufficient knowledge of the immigration laws and the impact of criminal convictions on immigrant defendants. As a result, Latinos often suffer additional immigration consequences of which they were never adequately advised. This has a dramatic impact not only on the immigrant defendant but also on the defendant's family.

Problems with Sentencing

Sentencing is arguably the most important stage of the criminal justice system. While policing strategies help determine who will be subject to the criminal process in the first place, and prosecutorial choices help determine who will be granted leniency from the full force of the law, sentencing is where those earlier decisions play out.²²

"Mandatory minimums" result in sentences that are too harsh. A mandatory minimum sentence is the minimum term of imprisonment that the sentencing court is statutorily required to impose for a specific criminal

offense. Mandatory minimum sentences for drug offenses range from five years to life imprisonment, depending on the type and/or quantity of drugs involved.²³ Mandatory minimum sentences have eroded the ability of judges to fashion sentences to fit the particular crimes and persons coming before them. For example, if a judge believes that a particular defendant – and society – would benefit from the defendant being sentenced to residential substance abuse treatment and community service rather than incarceration, under mandatory minimum laws the judge is prohibited from ordering the sentence he or she finds most appropriate.

Biased attitudes affect treatment in the system. Overrepresentation also results from the bias of decision-makers in the criminal justice system. For example, researchers found that probation officers consistently attributed Black youths' delinquency to *poor attitudes* and *negative personality traits*.²⁴ Their depictions of delinquency by White youth, on the other hand, focused on how *social environments* contributed to criminal activity. The probation officers' sentence recommendations in this study were directly influenced by these attributions. Because court officials relied more heavily on information regarding negative individual traits than on severity of the current offense or prior delinquency history, Black youth were likely to be overrepresented in the system. Although discrimination may not have been intended, probation officers' practices nonetheless discriminated against youth of color.

Too many people convicted of nonviolent crimes are held in jails and prisons. Longer, harsher sentences, coupled with reduced use of time off for good behavior and reduced availability of parole, dramatically increase the number of persons who are convicted of nonviolent crimes being held in jails and prisons. Today, more than two million people in the United States are in prison or jail,²⁵ representing a 400% increase in individuals incarcerated in the United States during the past 20 years. Approximately 16% of men serving time in a state or federal prison are Latino,²⁶ and more than 32% of those held on drug charges in federal prison are Latino.²⁷ Yet, serious violent crime levels have declined by 50% in the United States since 1993.²⁸

Problems with Access to Services

While Latinos may share common language and cultural values – such as the importance of close family ties and extended family relationships – their histories and experiences in the U.S. are not identical. Differences among Latino subgroups – such as Puerto Ricans, Dominicans, Cubans, Salvadorans, Mexicans, and Peruvians – cover a wide range of variables including immigration status, fertility rates, family structure, socioeconomic status, and education. Linguistically- and culturally-appropriate services are needed to ensure that Latinos of different specific ethnicities who are in the criminal justice system receive appropriate attention and information in order to prevent imprisonment or detention when it is not necessary.

Bilingual services are inadequate. As the Spanish-speaking population of the United States increases, the need for bilingual services for individuals in the justice system also increases. Individuals who have limited English proficiency are cut off from communicating with decision-makers in the system if bilingual staff and services are not available. In addition, justice system cases involving medical or mental health emergencies require immediate communication. It is particularly important to communicate with individuals in the language that has the least likelihood of resulting in misunderstanding during such emergencies. Also, interpretation of the results of various types of assessments (e.g., risk, psychological, and educational) may be mistaken if those working in the criminal justice system do not have the appropriate language skills. Finally, without bilingual services, it is difficult, if not impossible, to communicate about criminal justice system procedures, needed treatment, counseling services, and after-care plans with family members who do not speak English.

Despite these problems, many jurisdictions with a high proportion of Spanish-speaking residents do not have sufficient bilingual staff and do not provide justice system documents in Spanish. For example, in Hayes County, Texas Latinos constitute more than 35% of the county's population, and 45% of the county's youth population. Yet, a justice system officer in Hayes County reported in November 2002 that none of the justice system documents in Hayes County were available in any language other than English.²⁹ The Federal

Bureau of Prisons reported that, as of August 2003, Hispanics accounted for 31.9% of its inmates but only 10.9% of its staff.³⁰

Staff working with Latinos often are not culturally competent. The lack of culturally-competent criminal justice personnel has a direct negative impact on the Latino community. Two in five (39.1%) Latinos in the U.S. are foreign-born, which suggests that they have strong and direct links to their communities of origin, as well as to cultural values and norms, which may not always be understood by criminal justice system personnel. In addition, those immigrants who may have experienced autocratic or corrupt legal and law enforcement systems before immigrating to the United States oftentimes also struggle to understand or trust justice system procedures in this country. Yet, judges, prosecutors, public defenders, correctional facility personnel, probation officers, and parole officers often are not trained in the language or ethnic background of the defendants with whom they interact. Cultural insensitivity of justice system personnel can have serious consequences for Latinos, including misinterpretation of culture-specific behaviors, which may result in imposition of longer sentences or other harsh outcomes as the case of "Luis," described in Box 4.3, illustrates:

BOX 4.3 | **The Case of "Luis"**

Luis, a 15-year-old Latino with no previous record, was arrested for possessing less than one-half ounce of marijuana. During Luis' disposition hearing, the judge ordered him and his caseworker into chambers. As the judge talked to Luis, he noticed that the youth was not looking directly at him. The judge ordered the youth to look at him, which Luis did. But, as time progressed, Luis looked down again. The loss of eye contact infuriated the judge, whose words and tone of voice became harsher. The caseworker attempted to explain that Luis' downcast eyes were a sign of respect in his culture – youth who are being reprimanded in Luis' culture bow their heads to show their embarrassment at their actions. He explained that "staring down" authority figures is considered to be highly disrespectful. The judge, however, took Luis' downcast eyes as an admission of guilt, and sentenced him to two years in a juvenile facility.

Source: Confidential. Information on the case of "Luis" is available from Francisco A. Villarruel, Professor of Family and Child Ecology, Michigan State University, fvilla@msu.edu

NOTE: Reprinted with permission from Building Blocks for Youth initiative, Youth Law Center, Washington, DC.

Assessment instruments often are unfair or inadequate. Assessment tools – such as risk assessments, psychological evaluations, and educational tests – may not provide accurate information about Hispanic individuals. The tests may not be culturally fair, and they may not be appropriate for the individuals being assessed. The problem is compounded when personnel who may not be culturally competent attempt to draw conclusions from such tests.

Issues with Immigration Status

The intersection of criminal and immigration law is not well understood by many, even among those in the legal community. First, as was discussed above, in the criminal justice system there can be an immigration consequence to receiving a criminal conviction – namely, deportation. Many criminal lawyers are not aware of these consequences and therefore do not advise immigrant defendants of this serious impact.

Second, immigration law is extremely complicated. Within the Immigration and Nationality Act (INA), there are both criminal immigration laws and civil immigration laws. If an immigrant violates a civil immigration law, the impact on that immigrant can be the same as if he/she had violated a criminal law, i.e., detention and deportation. For an immigrant sitting in a jail cell, the fine distinction between having violated a criminal law or having violated a civil law does not matter. In fact, many immigrants who are detained for violating civil immigration laws are housed alongside criminals who have been convicted of criminal violations.³¹

These and other changes in immigration laws have increased the number of immigrants in the criminal justice system, which has a significant impact on the Latino community at large.

Immigrants often lack legal counsel. As discussed earlier, the impact is significant for Latino immigrants who do not have adequate legal representation in their criminal proceedings. The impact is just as significant and devastating for immigrants who do not have adequate legal representation in immigration proceedings, as a violation of immigration laws can trigger detention and deportation.

Since 1903, when the U.S. Supreme Court decided *Yamataya v. Fisher*,³² it has been recognized that noncitizens³³ have a Fifth Amendment right to procedural due process in deportation proceedings. Not until 1975, however, in *Aguilera-Enriquez v. INS*,³⁴ was it established that procedural due process included a right to counsel. But even then, the Court said that the burden was on the noncitizen to show that lack of effective counsel prejudiced him or denied him fundamental fairness.

Courts review this question on a case-by-case basis, usually denying the right to counsel. Recently, in *Mejia Rodriguez v. Reno*,³⁵ the Court held that ineffective assistance of counsel did not violate the Fifth Amendment due process rights where the noncitizen was otherwise deportable.

Today, a noncitizen in a deportation proceeding can be represented by counsel *so long as it is not at the expense of the government*. Persons subject to deportation are to be given a list of resources available to them from which they can obtain legal services, either at no cost or at their own expense. The bottom line, however, is that noncitizens in deportation proceedings have no right to appointed counsel.

Recent immigration laws have resulted in increased mandatory detention.

In 1996 the U.S. immigration laws were so dramatically changed that many of the legal protections that legal immigrants had – such as due process – were severely limited or stripped away altogether.³⁶ Also as a result of these statutory changes, the Bureau of Prisons and INS were required to detain significantly more nonviolent immigration offenders. Immigrants are now being deported for minor infractions, deemed "aggravated felonies," such as shoplifting and high school fights,³⁷ even if these infractions were committed before 1996. In fact, the 1996 law *requires* deportation for such petty offenses, no matter how long ago they occurred.³⁸ Many of these individuals are held in detention while awaiting deportation; this contributes to the growing number of Latinos held in prisons and detention facilities. Moreover, U.S. law mandates that all of the 5,000 to 6,000 individuals arriving annually and seeking political asylum must initially be held in detention if they are not in possession of a visa or proper entry documentation.³⁹

Yet, despite these sweeping changes in immigration law, Latino immigrants taken into custody are provided with little information about their legal rights and about whether, or when, they will be deported. Oftentimes, the detention facilities offer few (if any) bilingual services, and staff members frequently are not culturally competent. Box 4.4 provides one example of life in INS detention.

The INS once was a powerful government agency, with a budget that exceeded that of the Federal Bureau of Investigation (FBI),⁴⁰ as Box 4.5 documents. However, as a result of the September 11, 2001 terrorist attacks on the U.S., the INS was abolished. Now the function of enforcing immigration laws rests within the jurisdiction of the Department of Homeland Security (DHS).

BOX 4.4 | Life in INS Detention

The U.S. government locked 16-year-old Alfredo López Sánchez, a Mayan boy from Guatemala, alone in a hotel room for five weeks with nothing to read, no one to talk to, and no change of clothes while the INS worked to deport him. He washed his underwear in the sink with hand soap each night. "Each day the maid comes in and changes the sheets. The bed gets clean clothes, but I don't" Alfredo told his lawyer.

Alfredo was held by the INS in at least four locations, including a Florida county jail, a juvenile detention center in Pennsylvania, and the hotel room. Alfredo never has been charged with any crime, but he has been held in jails and shackled and handcuffed to chains around his waist, because he has been labeled a "threat risk." Although he suffers from post-traumatic stress disorder, he has been moved eight times without prior notification of his lawyer (including being flown between Miami and Pennsylvania five times). Alfredo said that he ran away from home after seeing his alcoholic father beat his mother so badly that she fell on top of her youngest baby, who died. Alfredo then left home and hitchhiked and walked to the U.S.

Alfredo speaks a rare dialect called Southern Low Mam; he understands little Spanish and almost no English. A woman who speaks his language was ready to offer him a home in Miami, as were two other families, but the INS refused to release him, saying he was a flight risk. A U.S. District Court Judge in Miami disagreed with the INS determination, but noted that the court cannot "dictate to the INS where to place a juvenile alien." Alfredo was dragged out of court in shackles, weeping. He was transferred to Berks County Youth Center in Leesport, Pennsylvania – 1,200 miles from his attorney (who was informed after the fact) and from the only interpreter currently available for his language in the U.S.

Source: Elsner, A. (2002, March 12). *U.S. immigration agency a harsh jailer of children*. London: Reuters News Service.

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As the information in this chapter documents, overrepresentation and mistreatment of Latinos in the U.S. criminal justice system is a complex social problem with multiple causes. Addressing these causes – both those that are intentionally discriminatory and those founded on good intentions that nonetheless have discriminatory effects – requires changing current justice system policies and practices.

BOX 4.5 | **Immigration Detention Facts**

Before 2002, the Immigration and Naturalization Service (INS) was responsible for the enforcement of immigration laws. In 2002 the INS was subsumed by the Department of Homeland Security (DHS), which now divides enforcement responsibilities between the Bureau of Immigration and Customs Enforcement (ICE) and the Bureau of Customs and Border Patrol. Each year INS/DHS detains thousands of criminal and noncriminal aliens at approximately 100 facilities across the country. These facilities include: (1) DHS-owned and -operated Service Processing Centers, (2) contracted centers run by private corrections companies, (3) Bureau of Prisons (BOP) facilities, and (4) local jails scattered across the country.⁴¹ Although the DHS handles most of the detentions of immigrants, the Bureau of Prisons also experienced rapid growth in its custody of immigrants, especially of individuals who had violated only civil immigration laws. Historically, a violation of a civil law would not result in detention or imprisonment; however, violations of civil immigration laws increasingly result in such a deprivation of liberty.

Nationals of 194 countries were apprehended in fiscal year 2003. Undocumented immigrants from Mexico predominated, accounting for 52% of the total.⁴² The next largest source countries were Cuba, Honduras, El Salvador, Guatemala, the People's Republic of China, Haiti, Jamaica, the Dominican Republic, and Brazil.⁴³ Thus, the overwhelming majority of undocumented immigrants detained by the INS were Latinos.

The DHS detained approximately 231,500 undocumented immigrants during fiscal year 2003. Approximately half, (115,000) of the individuals detained during fiscal year 2003 had criminal records.⁴⁴ Thus, slightly more than half of the undocumented immigrants detained did not have a criminal history and could not be charged with any crime; their only violation of the law was being present in the United States without legal documentation (which is a noncriminal offense). Nevertheless, such individuals often were detained without bond or individual custody hearings – sometimes for months – in secure detention facilities, including adult jails and prisons, contracted by the DHS.⁴⁵ Thus, thousands of Latino undocumented immigrants with no criminal record were commingled with felons, sometimes for long periods.

Latinos taken into custody by the DHS are often denied a hearing, access to legal representation, and contact with relatives. Undocumented immigrants have no right to government-appointed counsel, and undocumented immigrant children have no right to a guardian *ad litem*. Children held in detention – numbering more than 4,000 each year⁴⁶ – often are denied due process, access to legal services, humane conditions, privacy, and any real understanding of what is happening to them,⁴⁷ as the case of Alfredo López Sánchez, described in Box 4.4, illustrates. Nonetheless, children detained by the INS were held to the same standard of proof as adults in their immigration "removal" (deportation) proceedings.

Endnotes

1. See, for example, the statement made by Senator Orrin Hatch in the *Congressional Record* of May 19, 1999: "These kids are committing crimes. Just because you would like the statistics to be relatively proportionate – if that isn't the case because more young people commit crimes from one minority classification than another – it doesn't solve the problem by saying states should find a way of letting these kids out. . . . I haven't one shred of information that proves there is discrimination here." (§ 5572).
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3. *Ibid.*
4. *Ibid.*
5. Walker, S. (2001). *Searching for the denominator: Problems with police traffic stop data and an early warning system solution*. Washington, DC: Justice Research and Policy.
6. Waslin, M. (2003, February). *Immigration enforcement by local police: The impact on the civil rights of Latinos*. Washington, DC: National Council of La Raza.
7. Over the past four years, Angela Arboleda, NCLR Civil Rights Policy Analyst, has compiled a list of racial profiling incidents that have come to NCLR's attention via phone and email.
8. Letter to Congress from Raul Yzaguirre, February 12, 2004. "Co-sponsor the End Racial Profiling Act of 2004."
9. *U.S. v. Thomas*, 787 F. Supp. 663, 676 (E.D. Tex. 1992).
10. Sachs, S. (2001, May 1). Files suggest profiling of Latinos led to immigration raids. *New York Times*. Available online.
11. Kocieniewski, D. (2002, January 15). Jersey troopers avoid jail in case that highlighted profiling." Associated Press. Available online.
12. Lawyers testify that state troopers profiled Hispanic Drivers. (2002, September 19). Associated Press. Available online.
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14. Report on Hate Crimes and Discrimination Against Arab Americans, 2003. American-Arab Anti-Discrimination Committee.
15. *Lopez v. the City of Rogers*, U.S. District Court Case No. 01-5061.
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20. *Ibid.*
21. *Ibid.*
22. Weich, R. H., & Angulo, C. T. (2000). *Justice on trial: Racial disparities in the American criminal justice system*. Washington, DC: Leadership Conference on Civil Rights Education Fund.
23. For more information on mandatory minimum sentences, see the website of Families Against Mandatory Minimums (FAMM), available at www.famm.org [fact sheet section]. Families Against Mandatory Minimums is a national nonprofit organization founded in 1991 to challenge inflexible and excessive penalties required by mandatory sentencing laws. FAMM promotes sentencing policies that give judges the discretion to distinguish between defendants and fit the punishment to the crime. FAMM's 25,000 members include prisoners and their families, attorneys, judges, criminal justice experts, and concerned citizens. FAMM can be contacted at 1612 K St., N.W., Suite 700, Washington, DC 20006; phone (202) 822-6700; fax (202) 822-6704.
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30. Federal Bureau of Prisons. (2003, August). *Quick Facts*. Available at <http://www.bop.gov/fact0598.html>

31. Federal Bureau of Prisons. (2004, September) *Quick Facts*. Available at <http://www.bop.gov/>
32. *Yamataya v. Fisher*, 189 U.S. 86 (1903).
33. A noncitizen is a person who is present in the United States either legally or illegally. Legal Permanent Residents (green card holders) can face deportation as a result of a criminal conviction, the same as those who are undocumented.
34. *Aguilera-Enriquez v. INS*, 515 F.2d 565 (6th Cir.) (1975).
35. *Mejia Rodriguez v. Reno*, 178 F.3d 1139 (11th Cir.) (1999).
36. The Criminal Justice Alliance. (2002, February). *The Federal Bureau of Prisons: Understanding growth; Containing costs*. Washington, DC.
37. *Ibid.*
38. *Ibid.*
39. *Ibid.*
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46. According to the Criminal Justice Alliance (2002), in 1999, there were 4,607 juveniles in INS custody. Of those, 3,619 were boys and 988 were girls. The average age was 16 years.
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V

Special Problems Associated with Prosecution of Substance Abusers and the Impact on Latinos

Despite the fact that Latinos are no more likely than other groups to use illegal drugs, and *less* likely to use alcohol,¹ they are more likely to be arrested and charged with drug offenses, and less likely to be given pre-trial release. According to data provided by the United States Sentencing Commission, Hispanics accounted for 43.4% of the total drug offenders convicted in 2000 – more than three times the proportion of Latinos in the general population.² Nearly three-quarters of Latino federal prison inmates are incarcerated for drug offenses, the largest proportion of any group.³ In 1999, one-quarter of defendants charged with a drug offense in the federal system were identified as noncitizens.⁴ Two-thirds of the noncitizens charged with drug offenses were prosecuted in eight of the 94 federal judicial districts: Western Texas, Southern Texas, Arizona, Southern California, Eastern New York, Southern Florida, New Mexico, and Central California – all jurisdictions with significant Latino populations.⁵ Yet, according to federal health statistics, drug use rates per capita among minorities and White Americans are remarkably similar.⁶

National studies indicate that Latinos, African Americans, and Whites have approximately the same rate of alcohol-related automobile accidents,⁷ yet Latinos are disproportionately confined for alcohol-related offenses. For example, a recent

analysis indicated that Latinos constitute 39.2% of Texas prison offenders for “Traffic/Driving While Intoxicated” offenses,⁸ although they constitute just 32% of the total population in the state.⁹ Research suggests that racial profiling may be a significant factor associated with this disproportionate figure.¹⁰

Once convicted, Latinos do not receive lighter sentences than other offenders, even though the majority of Hispanic offenders have no criminal history. In addition, Latinos who need substance abuse treatment are particularly *unlikely* to receive it. For example, while one in four state or federal prisoners in Texas has participated in drug treatment programs, Hispanics are the *least* likely to have received such programming.¹¹

Why are Latinos in the United States so overrepresented and so harshly treated for drug offenses compared to non-Hispanic Whites? The answer to this question is complex, involving such factors as racial profiling and policies favoring the “war on drugs,” “get tough on crime” attitudes, and outright discrimination.

The following subsections briefly summarize research on substance abuse and the trend toward overreliance on incarceration as a policy response; identify the major factors underlying this trend; and explain why incarceration is an often inappropriate response, and why various alternatives make more sense.

The Problem of Substance Abuse in the United States

Use of mind-altering substances is common in the United States. The *2002 National Survey on Drug Use and Health* conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the United States Department of Health & Human Services reported that 120 million Americans aged 12 or older reported being current drinkers of alcohol and that 19.5 million Americans (8.3% of the population aged 12 or older) were current illicit drug users.¹² Rates of current illicit drug use were *lowest* for Asians (3.5%) and Hispanics (7.2%), higher for Whites (8.5%) and Blacks (9.7%), and highest among American Indians/Alaska Natives (10.1%) and persons reporting two or more races (11.4%).¹³

Undeniably, substance abuse is a major problem in the United States. SAMHSA's *2002 National Survey on Drug Use and Health* reported the following facts for people aged 12 or older in the United States in 2002:¹⁴

- 22.0 million Americans were classified with substance dependence or abuse (9.4%).
 - 3.2 million were classified with dependence on or abuse of *both* alcohol and illicit drugs, 3.9 million were dependent on or abused illicit drugs but not alcohol, and 14.9 million were dependent on or abused alcohol but not illicit drugs.
 - The rate of substance dependence or abuse was highest for American Indians/Alaska Natives (14.1%), lowest for Asians (4.2%), and roughly comparable for Hispanics (10.4%), African Americans (9.5%), and Whites (9.3%).
- 18.6 million (7.9%) *needed* treatment for an alcohol problem and 7.7 million (3.3%) *needed* treatment for an illicit drug problem.
- However, only 3.5 million (1.5%) *received* some kind of treatment for a problem related to the use of alcohol or illicit drugs in the 12 months prior to being interviewed in 2002.
- Of the 17.1 million people who needed but did not receive alcohol treatment, an estimated 761,000 (4.5%) reported that they felt they needed treatment for their alcohol problem. Of these, 266,000 (35%) reported that they had made an effort but were unable to get treatment.

Between 1988 and 1995, Americans spent \$57.3 billion on drugs – \$38 billion on cocaine, \$9.6 billion on heroin, \$7 billion on marijuana, and \$2.7 billion on other illegal drugs and on the misuse of legal drugs.¹⁵

The societal costs of drug usage are staggering. By 1998, drug abuse in the United States cost society \$143.4 billion per year, with costs increasing at 5.8% annually.¹⁶ At this rate, the cost of drug abuse in the United States in 2004 is estimated to be \$201.3 billion. These costs include health care, lost productivity, criminal justice system expenses, costs related to reducing the supply of drugs, and social welfare costs.

In addition, the website of the Bureau of Justice Statistics reports the following facts:

- Approximately three million violent crimes occur each year in which victims perceive the offender to have been drinking at the time of the offense.
- Two-thirds of victims who suffered violence by an intimate (a current or former spouse, boyfriend, or girlfriend) reported that alcohol had been a factor. Among spouse victims, three of four incidents were reported to have involved an offender who had been drinking.
- For about one in five violent victimizations involving perceived alcohol use by the offender, victims also reported they believed the offender had been using drugs as well.¹⁷

The public has expressed concern over the problem of substance abuse, as evidenced by public opinion polls. However, confidence in these polls must be tempered by the fact that public concern with drug and crime issues sometimes shifts dramatically in strikingly short periods of time – not based upon actual changes in drug use, but rather in response to public campaigns. For example, between July and September of 1989, in the wake of an anti-drug campaign initiated by the first Bush administration, the percentage of poll respondents reporting that drugs were the nation's biggest problem rose from 15% to 64%.¹⁸ This increase outweighed any change in reported incidence of drug use during these months. Yet, by 1992, when drug-related emergency room visits had reached record high levels, only 10% of poll respondents identified drugs as the nation's biggest problem.¹⁹

Overreliance on Incarceration of Individuals Who Abuse Substances

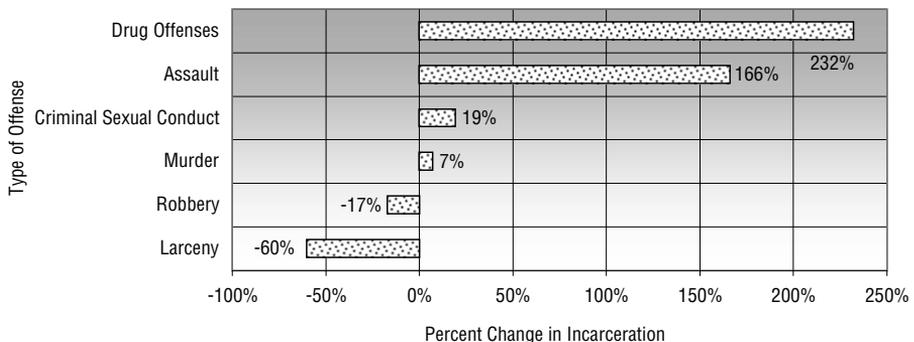
Nationwide, 80% of all offenders in prisons and jails – about 1.4 million individuals – are substance abusers, and two-thirds of the three million probationers under court supervision are involved with alcohol or drugs.²⁰ In 2000, approximately 57% of the federal prison population was confined for crimes relating to drugs.²¹ This percentage constitutes only the “tip of the iceberg,” however, as many more individuals convicted of non-drug-related crimes committed those offenses while under the influence of drugs or

alcohol. Studies show that half of all prisoners were under the influence of alcohol or drugs at the time of their offense.²²

In addition, the majority of individuals in prison for drug violations are not “kingpins,” but rather “low-level” substance users. For example, of the 58,000 drug convictions won by local prosecutors during the past five years in Harris County, Texas, 77% involved less than one gram of a drug – a weight commonly associated with personal use. Of these offenders, 35,000 were sent to jail or prison.²³ The Bureau of Prisons reported that 21.2% of its total incarcerated population was identified in 1993 as low-level drug law violators, defined as individuals with no current or prior record of violence, no involvement in sophisticated criminal activity, and no prior commitment to prison. Yet, the average sentence for this group was 6.75 years in prison.²⁴

Consistent with federal statistics, state-level data also indicate that, in recent years, the prison population increasingly has consisted of individuals convicted of drug-related offenses. For example, data from the State of Michigan, illustrated in Figure 5.1, show that from 1980 to 1999, convictions

Figure 5.1 | Percent Change in Incarceration by Offense Type, Michigan, 1980-1999

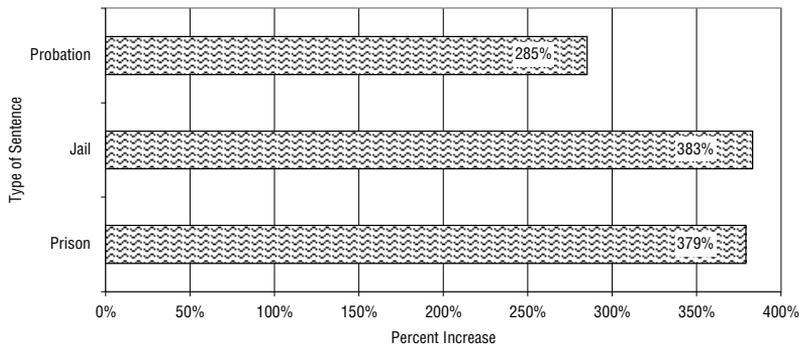


Source: Walker, N.E., Villaruel, F.A., Judd, T., & Roman, J. (2003, April). *Drug Policies in the State of Michigan: Economic Effects*. Washington, DC: Justice Policy Institute.

for drug violations increased 232%, from 529 to 1,736; convictions for other offenses either grew by significantly smaller percentages or fell.²⁵ Moreover, during 2001, of the 5,734 individuals in prison for drug offenses in Michigan, 4,019 were convicted for offenses involving 50 grams or less of drugs.²⁶

Yet, as Figure 5.2 shows, during that time prison sentences given for drug offenses increased 379%, from 551 to 2,639. During the same period, jail sentences handed down for drug offenses increased 383%, from 324 to 1,564, and probation sentences given for drug offenses increased 285%, from 1,835 to 7,056.²⁷

Figure 5.2 | Percent Increase in Probation, Jail, and Prison Sentences for Drug Offenses in Michigan, 1980-1999



Source: Michigan Department of Corrections. Statistical Reports (1980, 1985, 1990, 1995, 1999).

NOTE: This figure depicts cases brought before the courts, not individuals sentenced to prison, jail, or probation. Multiple dispositions for the same offender, from the same sentencing county in the same year, were counted as follows: (1) dispositions for the same offender which occurred three or more months apart were counted separately; (2) dispositions for the same offender which occurred less than three months apart were counted only once, according to the following sequence: (a) The most severe disposition was counted; (b) if of equal severity, then the disposition with the longest minimum term was counted; (c) if equal minimum terms, then the disposition with the longest maximum term was counted.

Factors Contributing to the Increase in Incarceration for Drug Offenses

In recent years, the justice system approach to the problem of substance abuse increasingly has focused on incarceration as the option of choice. Research suggests that two factors have contributed substantially to the disproportionate incarceration of low-level, nonviolent offenders in the past 20 years: the so-called “war on drugs” and “get tough on crime” policies, as described in Chapter III.

The “War on Drugs.” The “war on drugs” is a nationwide trend that began in the early 1980s as a means to combat drug trafficking and use of drugs. As a result, an increasingly large percentage of those serving time in prison have been convicted for nonviolent drug offenses.

The years 1984 to 1999 constituted a transition period for the federal government’s efforts to curtail illegal drug activity. During this period several federal laws seriously impacted federal sentencing for drug offenders, as Box 5.1 illustrates.²⁸

Before these laws were enacted, three-quarters of convicted drug offenders received a prison sentence; by the 1990s the incarceration rate for this group

BOX 5.1 | Changes to Laws Regarding Federal Sentencing for Drug Offenders

- The Sentencing Reform Act of 1984 abolished parole for federal offenders, reduced the amount of “good time” an inmate could earn, and required the development and use of sentencing guidelines that would structure the decisions of federal judges, among other things.
- The Comprehensive Crime Control Act of 1984 established a five-year minimum sentence for defendants using a firearm while committing a drug trafficking offense and a one-year minimum sentence for defendants convicted of selling drugs near a school or playground.
- The Anti-Drug Abuse Act of 1986 established five-, ten-, and 20-year minimum sentences for persons convicted of drug trafficking offenses.
- The Anti-Drug Abuse Act of 1988 established five-year minimum sentences for simple possession of five grams or more of crack cocaine and a 20-year minimum sentence for convicted persons who engage in a continuing criminal enterprise.
- The Violent Crime and Law Enforcement Act of 1994 exempted certain first-time, nonviolent drug offenders from otherwise applicable statutory minimum penalties.

had risen to 89%. The median sentence in 1986 was 24 months. Thirteen years later, in 1999, the median sentence had nearly doubled – to 41 months. Of those convicted in 1999, 62% were subject to statutorily prescribed minimum sentences.

The “Get Tough on Crime” Movement. The “get tough on crime” movement has resulted in justice system changes as well. For example, California’s controversial “three-strikes” rule mandates extended prison sentences for individuals convicted of their third “serious” or “violent” offense. Under this rule, more individuals are being incarcerated, sometimes for such “serious” offenses as stealing \$153 worth of videotapes, for which Leandro Andrade was sentenced to 25 years to life in prison.²⁹ In addition, as Chapter III documents, the Federal Bureau of Prisons is in the process of substantially expanding the facilities it operates, including building nearly 30 new prisons at a cost in excess of \$100 million each,³⁰ another response to the “get tough on crime” movement.

Thus, federal and state prisons and county jails are inundated with individuals convicted of low-level drug offenses, as well as those whose non-drug-related crimes occurred because they used substances.

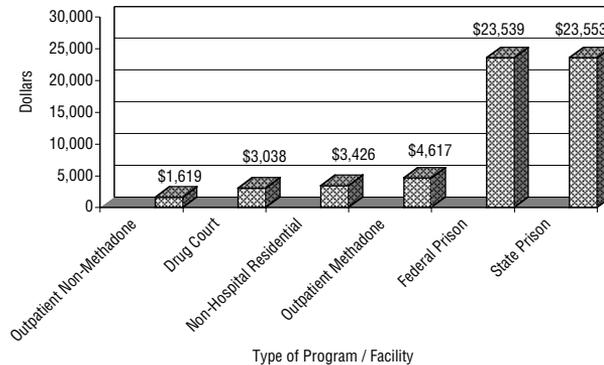
Why Incarceration is the Wrong Solution for Nonviolent Drug Offenders

Incarceration should be reserved for the most serious crimes. Incarcerating nonviolent drug offenders is a poor and simplistic solution to the problem of substance abuse. Time and time again incarceration of nonviolent drug offenders, many of whom have severe drug addiction problems, has proven to be an excessively expensive solution that does not reduce or deter crime and disrupts family life. Incarceration is the wrong solution for nonviolent drug offenders for three primary reasons:

1. Incarceration is Expensive

- **Incarceration is an inordinately expensive “solution” to the problem of substance abuse.** In fact, compared to short- and long-term treatment and drug court, incarceration is the most expensive alternative, as Figure 5.3 illustrates.

Figure 5.3 | Treatment versus Incarceration Average Annual Per Person Cost: Federal and State, 2002



Sources: The National Drug Court Institute. (2004). *The Cost of Treatment in Drug Court*. Alexandria, VA. Substance Abuse and Mental Health Services Administration (SAMHSA). (2003). *Alcohol and Drug Services Study: ADSS Cost Study*. Rockville, MD.

NOTE: The 2002 outpatient non-methadone figure was calculated by multiplying average daily cost per person in 2002 (\$11.24) times average number of days in treatment (144) = $\$11.24 \times 144 = \$1,619$.

The 2002 drug court figure was calculated by adding 4% inflation for years 2001 and 2002: $\$2,809 \times 1.04 \times 1.04 = \$3,038$.

The 2002 non-hospital residential figure was calculated by multiplying average daily cost per person in 2002 (\$76.13) times average number of days in treatment (45) = $\$76.13 \times 45 = \$3,426$.

- Incarceration typically removes an individual's ability to afford substance abuse treatment.** Although some prisoners participate in work-release programs, most do not. Incarceration therefore typically removes individuals from gainful employment. When they return from prison to the community – even after serving a sentence for “less than a gram” – many have trouble finding a job or a place to live because they are labeled “felons.” A felony conviction carries a high cost for the individual, the family, and the community, as Chapter III documents. The estimated average lifetime loss of income due to conviction is \$82,408.31 As a result, it becomes increasingly difficult for a formerly incarcerated person to afford substance abuse treatment.

- **Incarceration of low-level, nonviolent drug offenders yields enormous repercussions as people reenter society.** In some states (e.g., Texas) women convicted of a state or federal felony offense for using or selling drugs are subject to a lifetime ban on receiving cash assistance and food stamps. No other offense results in losing benefits.³²

2. *Incarceration is Ineffective*

- **Studies show an alarmingly high rate of recidivism throughout the nation.** According to one Bureau of Justice Statistics study, more than 67% of prisoners released from prison in 1994 were rearrested within three years, and almost 52% were back in prison for a new offense or for violations of the terms of release.³³
- **Incarceration does not necessarily deter crime.** According to a study by The Urban Institute, high rates of recidivism “translate into thousands of new victimizations each year.”³⁴ Individual rates of re-offending after incarceration are high. Nearly two-thirds of all released prisoners are expected to be rearrested within three years.³⁵
- **Illegal substances are available in prison.** Although incarceration reduces access to drugs for most individuals, prisons are not drug-free zones; some prisoners do have access to drugs.³⁶ Incarceration therefore does not necessarily remove an individual from drug use.

3. *Incarceration Disrupts Family Life*

- **Locking up nonviolent offenders destroys families.** Prison grossly disrupts family functioning. For the thousands of prisoners who are parents, the effects are particularly far-reaching. Consider, for example, that more than half of the men incarcerated in Texas (54.7%), and nearly two-thirds of the women (65.3%), are parents of minor children.³⁷ Although 90% of fathers in prison in Texas report that their children reside with the other parent, only 28% of incarcerated mothers report this to be the case.³⁸ While their parents are in prison, children often end up with grandparents, aunts and uncles, or even in state foster care programs. Sadly, those children are five times more likely to serve prison time when they grow up.³⁹

- Incarceration removes individuals from community and family support systems that could assist them in seeking and staying in treatment. Treatment programs generally are more successful when family, friends, and employers support the person needing treatment. A person who is incarcerated, however, is surrounded by other individuals with untreated substance abuse problems – a climate likely to *encourage* drug use, rather than eliminate it.

Why Treatment and Prevention are the Right Solutions for Nonviolent Drug Offenders

Treatment has been proven to be a better solution than incarceration to the problem of substance abuse. It is cost-effective; reduces the likelihood of new crimes, thus making communities safer; and keeps families together.

Moreover, treatment is a rational solution to the problem of substance-related crime.

1. Treatment is Cost-Effective

- **Treatment is more cost-effective than incarceration.** Federal estimates, seen in Figure 5.3, show the relative cost-effectiveness of treatment compared to incarceration. In addition, treatment also can reduce crime costs. A study by the Rand Corporation showed that for every dollar spent on drug and alcohol treatment, a state can save \$7 in reduced crime costs.⁴⁰ When health care savings are added in, total estimated savings can exceed costs by a ratio of 12 to 1.⁴¹ Additionally, focusing resources on treatment instead of incarceration will eliminate costs associated with new prison construction.
- **Community-based substance abuse treatment yields results and savings.** A major study conducted by the Washington State Institute for Public Policy showed that case management and community-based substance abuse treatment realized similar savings. For case management, the benefit-to-cost ratio was \$1.56 of benefits per dollar of cost, while for treatment the benefit-to-cost ratio was \$3.30 of benefits per dollar of cost. Drug treatment programs in prisons provided cost savings similar to community-based substance abuse treatment. Recidivism rates for all three were positive.⁴²

- **Programs for youth offenders also produce similar savings.** The Washington State Institute study also found that various juvenile therapeutic models are far less costly than juvenile incarceration. For each program participant, taxpayers can save up to an average of \$16,000, and the average benefit-to-cost ratio for each dollar spent on these therapeutic programs is \$28.57. Such programs have very low recidivism rates as well.⁴³

In addition, an economic analysis conducted in February 2002 by the former Criminal Justice Alliance estimated cost savings in the federal justice system if a proportion of the individuals incarcerated were confined in halfway houses for the final months of their sentence. According to this analysis, if all federal inmates were confined in halfway houses rather than in locked facilities for the full final six months of their sentences, it would free approximately 6,000 prison beds. If low-level drug violators were confined in halfway houses for the final eight months, it would free approximately 2,000 additional beds. Such reclassification would eliminate the need for construction of approximately eight new federal prisons at a cost of roughly \$100 million each⁴⁴ – thus producing construction cost savings of \$800 million and combined operational expense savings of roughly \$200 million per year.⁴⁵

Many state analyses underscore the financial advantage of treatment as an alternative to incarceration for drug-related offenses:

- A 2001 **New York State** study reported that the annual cost of incarceration per person was \$30,500, but the cost of inpatient drug treatment was \$20,000. Outpatient drug treatment costs were as low as \$4,300.⁴⁶
- **California**, too, has recognized the benefit of diversion programs for nonviolent drug offenders. In November of 2000, California voters passed Proposition 36, a groundbreaking treatment-instead-of-incarceration initiative that has become a model for other states. Proposition 36, subsequently enacted into law as the Substance Abuse and Crime Prevention Act of 2000 (SACPA), diverts low-level, nonviolent drug offenders convicted solely of possession for personal use into community-based treatment instead of incarceration. The

state's Legislative Analyst's Office estimated that the measure would divert more than 30,000 drug offenders per year to treatment, save California taxpayers approximately \$1.5 billion (net) over five years, and prevent the need for a new prison slated for construction. Within the first six months, Proposition 36 diverted more than 12,000 individuals into treatment instead of prison. The decline in incarceration of female nonviolent drug offenders has been so significant that many lawmakers are considering closing one or two of the four women's prisons, which will help to shrink California's budget deficit.⁴⁷

- **Texas** estimates it saves \$770,000 for every 100 offenders who use a prison diversion program (such as a drug court or a treatment program) for a period of two and a half years, rather than prison or state jail.⁴⁸ In fact, Texas realized cost savings of \$29.9 million as a result of diverting prison/jail-bound offenders into a multicomponent state drug program.⁴⁹ Moreover, only 7% of those who completed the state substance abuse program recidivated within two years, compared to a recidivism rate of 25-31% for those who failed to complete the treatment program.⁵⁰

Texas logged 17,234 arrests for drug possession in 2000, but current drug courts have the capacity to serve only 855 drug offenders – less than 5% of those arrested for drug possession. At the same time, incarcerating individuals who could qualify for less expensive drug court or residential treatment is costing the state dearly. Texas could save more than \$183 million *per year* by diverting drug offenders from prison to treatment, as Table 5.1 shows.

Moreover, reduction of existing sentences in Texas could produce immediate cost savings. A reduction of the average sentence from 4.5 years to 4.0 years could cut the prison population by approximately 18,000 inmates per year, which would save the state more than \$113 million per year.⁵¹

Table 5.1 | Estimated Savings to the State of Texas: Diversion of Non-Violent Drug Offenders from Incarceration to Treatment

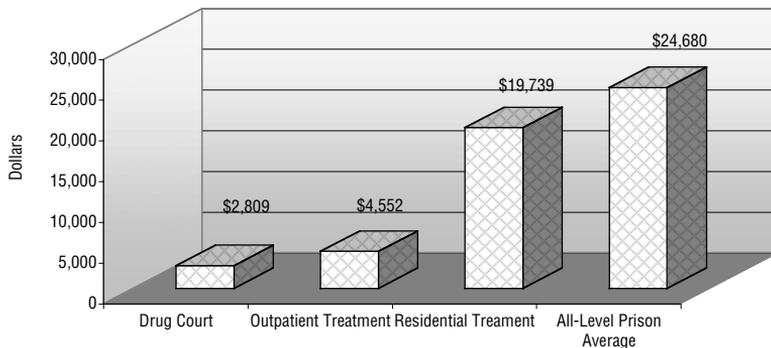
Cost of Drug Treatment Programs		Benefits of Drug Treatment Programs	
Item	Cost	Item	Cost
Cost of providing drug treatment to non-violent drug offenders	\$52,840,788	Reduction in current incarceration costs	\$ 77,935,920
		Reduced health costs, increased earnings, reduction in direct crime-related costs	\$158,522,364
[1] Total Cost to the State of Texas	\$52,840,788	[2] Total Benefit to the State of Texas	\$236,448,284
		Net Gain to the State of Texas: [2] Total Benefit – [1] Total Cost	\$183,607,496

Source: Steward Research Group. (2003, May 22). Racial disparities in the Texas criminal justice system. Report prepared for the NAACP Texas State Conference and NAACP National Voter Fund. Austin, TX.

- **Michigan** spent approximately \$160 million in 2002 to incarcerate nearly 6,000 drug offenders.⁵² The state spends \$77 per day to hold a person in prison, while residential drug treatment programs cost just \$45 per day. Outpatient drug treatment can cost even less – as little as \$10 to \$12 per day.⁵³

Figure 5.4 provides average annual costs of treatment versus incarceration in the State of Michigan (1999-2000).

Figure 5.4 | Treatment versus Incarceration Costs: Average Annual Per Person Costs, Michigan Department of Corrections, 2002



Sources: Michigan Department of Corrections. (2003). *Annual Report 2002* (p.21). Available at www.michigan.gov/corrections

The National Drug Court Institute. (2004). Available at www.ndci.org

NOTE: The \$4,552 average annual cost per client for outpatient treatment was calculated by multiplying the average 2000-2001 per diem cost (\$12) x 365 days per year and adding 4% for inflation for 2000-2001. The \$19,739 average annual cost per client for residential treatment was calculated by multiplying the average 2000-2001 per diem cost (\$52) x 365 days per year and adding 4% for inflation for 2001-2002.

As these figures illustrate, both outpatient and residential treatment for substance abuse are far more cost-effective than incarceration. In fact, an analysis of drug policies in the State of Michigan published in 2003 revealed that the state could save more than \$178 million over a five-year period by diverting to treatment programs just half of the individuals currently sentenced to incarceration.⁵⁴ (See Appendix B for calculations leading to this conclusion.)

2. Treatment Makes Communities Safer

- **Use of alternatives to incarceration, such as drug treatment programs, reduces crime rates.** Researchers have found that, all else being equal, drug treatment programs significantly reduce the drug-related crime rate. For example, one study of approximately

3,500 drug users found that, after drug treatment, “crime days per month” decreased by .78 for the sample as a whole, by .64 for those in outpatient treatment, and by .57 for those who were on parole.⁵⁵ For the full sample, the .78 decrease in “crime days per month” corresponded to an 18% reduction in crime attributable to a reduction in heroin use after treatment, a 33% reduction in crime attributable to a reduction in the use of other drugs, and a 9% reduction attributable to decreases in alcohol consumption.

Another example is provided by the State of Texas. As of 2003, Texas drug court participants had significantly lower two-year recidivism rates for arrest (19.5% versus 46.9%) and incarceration (1% versus 19.7%) compared to offenders not participating in the drug court program.⁵⁶ Prisons cannot make the same claims.

- **Drug courts significantly decrease recidivism.** Drug courts are another alternative to imprisonment. A drug court is a special court bringing the full weight of all interveners (judges, prosecutors, defense counsel, substance abuse treatment specialists, probation officers, law enforcement and correctional personnel, and others) to bear, forcing the offender to deal with his or her substance abuse problem. To date, throughout the nation there are more than 1,200 drug courts in existence or being planned, and more than 300,000 drug-using offenders have participated in drug court programs. The majority of studies show that drug courts can be remarkably successful in reducing recidivism rates and producing significant cost savings compared to traditional adjudications.⁵⁷

The latest report on drug courts from the Office of Justice Programs at the U.S. Department of Justice shows that recidivism rates continue to be significantly reduced (by 2% to 20%) for graduates of substance abuse treatment programs. Interestingly, recidivism also is reduced even for individuals who begin but do not complete the program.⁵⁸ As these data indicate, substance abuse treatment programs constitute one important step toward ending the cycle of recurrent crime.

- **Treatment provides lasting benefits.** The five-year National

Treatment Improvement Evaluation Summary, funded by SAMHSA of the U.S. Department of Health & Human Services, found that treatment led to significantly reduced substance use, with benefits lasting a full year after treatment; increased employment and income; improved mental and physical health; decreased criminal activity; decreased homelessness rates; and decreased at-risk behaviors that could lead to HIV/AIDS infection.⁵⁹ This comprehensive study provides compelling evidence that treatment works over the long term.

3. *Treatment Keeps Families Together*

- **Multi-systemic programs involving the family, community-based service providers, and government agencies are leading to reduced recidivism and to ensuring stable reintegration.** La Bodega de la Familia and its government partners, the New York State Division of Parole and the New York City Department of Probation, engages and supports families of drug users on parole and probation. The Bodega model draws on family strengths to help reduce drug abuse and increase adherence to conditions of parole and probation, and takes into consideration linguistic ability and cultural references necessary to reach the Latino community. One study indicated that illegal drug use among participants declined from 80% to 42% and that participants were less likely than a comparison group to be arrested and convicted.⁶⁰
- **Community-level treatment and prevention programs reunite families.** The Bureau of Justice Statistics estimates that 1.5 million children in the U.S. had a parent in a state or federal prison in 1999 – an increase of 500,000 since 1991.⁶¹ Because the family provides a better support system for recovering drug offenders than the prison population, community-based organizations that provide family-based treatment and prevention services – including substance abuse, mental health, and parental interaction programs – should result in faster recovery rates and lower rates of recidivism.

4. *Treatment Should Be Expanded*

- **Encouraging treatment rather than incarceration appears to be consistent with Congress' intent.** In 1994, Congress enacted a mandatory minimum "safety valve"⁶² which recognizes that "serious punishment should be reserved for serious offenders and that harsh mandatory minimum sentences sometimes inadvertently subject nonserious offenders to unduly harsh punishment."⁶³
- **Only a fraction of those in need of substance abuse services actually receive them while incarcerated.** Although prisons may offer substance abuse counseling and intervention, the need for services currently far exceeds most facilities' ability to provide them. The National Center on Addiction and Substance Abuse at Columbia University (CASA) estimates that more than 800,000 people in the criminal justice system would benefit from substance abuse treatment, while fewer than 150,000 receive it.⁶⁴ Similarly, U.S. Bureau of Justice surveys conducted in 1997 and 1998 showed that only about 12% of state and 10% of federal prisoners had participated in programs focusing on substance abuse treatment.⁶⁵ Of course, community-based treatment is not appropriate for every individual; in-prison treatment, therefore, *must* be available for those offenders with substance abuse dependency who require incarceration.

Latinos Suffer Disproportionately Under Current Policies

Changes in federal sentencing laws, described in Box 5.1, have had substantial impact on the Hispanic community. Because Latinos are disproportionately charged with drug offenses, and prison has become the sentence of choice for such offenses, more and more Latinos are being incarcerated for low-level drug crimes.

By 1999, nearly half (46%) of those charged with a drug offense in the federal system were identified as Hispanic.⁶⁶ At the same time, U.S. attorneys prosecuted 84% of the persons referred to them for drug offenses.⁶⁷ Matters involving suspects investigated solely for being part of a drug conspiracy (e.g., "kingpins") were among those most likely to be *declined* for prosecution,

whereas suspects involved with smaller quantities of opiates and marijuana – primarily Hispanics – were among those most likely to be charged.⁶⁸

Too many of the nonviolent individuals who are imprisoned are Latinos, who face serious barriers in accessing the treatment services that are available. For example, in Texas, Hispanic females compose the smallest percentage of the population receiving substance abuse treatment as an alternative to incarceration – only 4%, compared with 11.8% for White females and 5.4% for Black females.⁶⁹ In addition, Hispanic federal prisoners are the least likely of all racial/ethnic groups to receive any type of substance abuse treatment. Approximately one-third (36%) of Hispanic federal prisoners received substance abuse treatment or participated in a program to address their substance abuse dependency.⁷⁰

Initiatives such as California's Proposition 36 are a step in the right direction, but they are not a panacea, especially for Hispanics. Although Proposition 36 so far has proven to divert nonviolent offenders into treatment programs, participation of Latinos in these programs is lagging behind that of their White and Black counterparts. Latinos composed 36.6% of all drug offenders in prison in California on December 31, 2002, but only 31% of clients eligible for Proposition 36 programs during 2001-2002.⁷¹ In some jurisdictions, the percentage of Latinos participating is shockingly low. For example, the San Francisco Department of Public Health reported in September 2001 that a mere 3% of the participants in their Treatment Access Program (TAP) were Latino.⁷²

Why are Latinos not benefiting equally from the treatment options offered by systems set up by laws such as Proposition 36? One reason is that many of the participating agencies are not equipped to provide substance abuse services to individuals with limited proficiency in English. The San Francisco Department of Public Health considers non-English monolingual and limited-English-proficient clients to fall into the "key triage" priority group, yet only 3% of TAP's clients are Latino.⁷³

A Different Vision: “Smart” and “Tough” Drug Policies

For the reasons stated in this chapter, incarceration of most nonviolent drug offenders does not make sense. Imposing excessive sentences on drug offenders may sound “tough,” but it is not a “smart” approach. Crime and drug

BOX 5.2 | Casa Phoenix Provides Hope Through Treatment

If he were not in treatment at the Association for the Advancement of Mexican Americans, Inc.* (AAMA) Casa Phoenix program, 17-year-old José, who started doing drugs at the tender age of 13, might be serving a 10- to 20-year prison sentence for being caught under the influence of and in possession of drugs.

Once a star pupil, José's addiction stripped him of his good grades, as well as of his rewarding football, band, and Spanish honor society memberships - and, consequently, his self-respect. He found himself using drugs to escape his depression and ultimately selling drugs to support his addiction.

During the week of Thanksgiving 2003, just a few days after being caught, José nearly overdosed and almost struck his mother, who tried desperately to stop him.

Today, almost three months in recovery, this mild-mannered, respectful youth not only has hope for a second opportunity and a new life, he also has an appreciation for his health, his family, and the future goals he hopes to achieve.

“Reality set in,” says José. “Here (at Casa Phoenix) I learned about the consequences of drugs in my future, my health and towards the people I love. Thanks to treatment, I now understand the kind of damage I was doing to my body and the kind of example I was setting my little brother (age 10). It hurts to think that he might follow in the example I was setting for him,” says José.

Once he is out of treatment, José will face a judge who will decide his fate. He hopes that he won't be tried as an adult and dreams of the opportunity of finishing his last year of high school and of going on to college. He'll be the first in his family to do so.

Regrettably, AAMA's Casa Phoenix program is one of only a few treatment programs of its kind available. Thousands of Hispanic youth in similar situations never have such an opportunity available to them.

In fact, three out of four (76%) Hispanics incarcerated in prisons and jails nationwide are serving time for nonviolent drug offenses. According to the Texas Commission on Alcohol and Drug Abuse (TCADA), in 2000 there were approximately 2.8 million Texans in need of treatment. Programs funded by TCADA served just over 1% of these individuals.

“Without this program, all of the youth who've come through here would be lost,” says José's counselor Richard Cain, a former prison inmate who now is a Licensed Chemical Dependency Counselor at AAMA's Casa Phoenix program.

* The Association for the Advancement of Mexican Americans, Inc. (AAMA) is one of NCLR's affiliates in Texas. Founded in 1970, AAMA is committed to the advancement of at-risk and disadvantaged youth and families through innovative programs that provide alternative education, social services, and community development. Key programs include the George I. Sanchez High School, the first Hispanic-accredited alternative high school in the State of Texas; an Alcohol and Drug Abuse Program; an AIDS Awareness Program; and Barrios Unidos, a gang intervention program.

policies should be guided by principles of fairness and equality and should be driven by results that are measurable and, most importantly, that yield success. The vast majority of those incarcerated are low-level, nonviolent offenders. Racial and ethnic minorities, including Latinos, are disproportionately affected, even though research shows that they are no more likely than Whites to use drugs. While in prison, most individuals do not have access to treatment and rehabilitation services, resulting in a high recidivism rate. “Getting tough on crime” alone, therefore, is too simplistic a solution to the complex problem of substance abuse.

Instead, the criminal justice system should shift its focus and resources to emphasize alternatives to incarceration. Treatment costs approximately 10% of the amount incarceration costs,⁷⁴ *and* is more effective. Approaches such as mandatory treatment and rehabilitation have been shown to reduce recidivism and can be paid for through lower prison costs, including a reduction in the number of prison facilities constructed. Such a policy shift is “tough” because it holds offenders fully accountable for their crimes, but is also “smart” because it reduces crime, saves money, helps to keep families together, and has strong potential to return individuals to productive lives. Thus, investing in treatment by reallocating a portion of the associated cost savings into community-based treatment alternatives is being both “tough and smart on crime.”

Locating and Increasing Funding for Substance Abuse Programs

Although treatment approaches are less expensive than incarceration, they do have a financial cost. Moreover, currently there are not enough programs available to treat individuals with substance abuse problems, including Latinos. In addition, sometimes those services that are available are not culturally or linguistically appropriate for Latinos. Therefore, funding for and expertise to implement a sufficient number of culturally and linguistically appropriate programs must be made available.

Community-based organizations (CBOs) with proven records of success and located in Latino neighborhoods often are particularly effective in providing treatment services to Hispanics because their staff are familiar with issues Latinos face, are culturally competent, and can provide services and written materials in Spanish. Box 5.2 describes one such program.

BOX 5.3 | A Sampling of Drug Treatment Funding Programs

■ Substance Abuse Prevention and Treatment (SAPT) Block Grant

Sponsoring Agency: SAMHSA

The SAPT Block Grant, the cornerstone of the states' substance-related programs, accounts for approximately 40% of public funds expended on substance prevention activities and treatment services. This grant program disburses funds to the states, territories, and the District of Columbia based on a congressionally-mandated formula.

■ Drug Court Discretionary Grant Program (DCDG)

Sponsoring Agency: Bureau of Justice Administration (BJA)

DCDG provides financial and technical assistance to states, state courts, local courts, units of local government, and American Indian tribal governments to develop and implement treatment drug courts that effectively integrate substance abuse treatment, mandatory drug testing, sanctions and incentives, and transitional services in a judicially supervised court setting with jurisdiction over nonviolent, substance-abusing offenders.

■ Residential Substance Abuse Treatment for State Prisoners (RSAT) Program

Sponsoring Agency: Bureau of Justice Administration (BJA)

The RSAT Formula Grant Program assists states and units of local government in developing and implementing residential substance abuse treatment programs within state and local correctional and detention facilities.

■ Targeted Capacity Expansion Program

Sponsoring Agency: SAMHSA's Center for Substance Abuse Treatment

The Targeted Capacity Expansion Program is intended to expand substance abuse treatment capacity in targeted areas for a targeted response to treatment capacity problems and/or emerging trends. This program is designed to address gaps in treatment capacity by supporting rapid and strategic responses to demands for substance abuse treatment services in communities with serious, emerging drug problems, as well as communities with innovative solutions to unmet needs.

■ SAMHSA Conference Grant Program

Sponsoring Agency: SAMHSA

The purpose of the Conference Grant Program is to support up to 75% (to a maximum of \$50,000) of the total direct costs of domestic conferences developed for knowledge synthesis and dissemination. The goal of SAMHSA's knowledge synthesis and dissemination activities is to improve the quality of the nation's substance abuse treatment and prevention services and systems. Conferences supported will involve coordinating, exchanging, and disseminating knowledge to improve the provision of effective treatment, recovery, early intervention, and prevention services for individuals who suffer from, or are at risk for, problems related to mental illness and/or substance abuse.

One funding source for treatment is the U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA). SAMHSA's Center for Substance Abuse Treatment (CSAT) was created in October 1992 with a congressional mandate to expand the availability of effective treatment and recovery services for alcohol and drug problems.⁷⁵ CSAT supports a variety of activities aimed at fulfilling its mission: "To improve the lives of individuals and families affected by alcohol and drug abuse by ensuring access to clinically sound, cost-effective addiction treatment that reduces the health and social costs to our communities and the nation."⁷⁶ CSAT's initiatives and programs are based on research findings and the general consensus of experts in the addiction field that, for most individuals, treatment and recovery work best in a community-based coordinated system of comprehensive services. Because no single treatment approach is effective for all persons, CSAT encourages providing multiple treatment modalities, evaluating treatment effectiveness, and using evaluation results to enhance treatment and recovery approaches.

SAMHSA provides formula-based and discretionary grant allotments to each state and U.S. territory. The block grants available to the states from this program currently exceed \$1.7 billion annually.⁷⁷

In 2003, total substance abuse funds distributed to each of the 50 states ranged from a low of \$5.2 million (North Dakota) to a high of \$287.9 million (California).⁷⁸ Discretionary funding specifically for substance abuse treatment varied widely as well, with some states (e.g., North Dakota) receiving less than \$225,000 and others (e.g., Arizona, California, Florida, New York, and Texas) receiving more than \$10 million each.⁷⁹

Most of the SAMHSA discretionary-funded resources are provided at the local level. For example, in Texas, 90% of the treatment funds are in the Governor's Office, so community-based organizations need to apply and compete locally for those resources.⁸⁰

SAMHSA provides a listing of drug-related funding opportunities, training and technical assistance, equipment procurement programs, and other resources from public and private organizations. Samples of funding opportunities are provided in Box 5.3.

In addition, private foundations at the local, state, and national levels sometimes provide funding for substance abuse programs.

Finally, regardless of the specific funding source, it is imperative that the value of treatment as an alternative to incarceration be championed at the highest levels of the government. The president, the Congress, and the judiciary all should be encouraged to support treatment as an alternative to incarceration.⁸¹

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VI

Conclusions and Recommendations

This book documents troubling trends in the criminal justice arena which have significant implications for both the Latino community in the United States and the nation as a whole. For 2003 – the year in which the Census Bureau officially documented that Hispanics have emerged as the largest minority group in the country – the data show that Latinos in prison constitute *three times* their share of the total U.S. population. One in four federal prison inmates is Latino, even though fewer than one in eight U.S. residents is Latino.

The evidence presented shows that, compared to Whites, Latinos are:

- More likely to be arrested
- More likely to be subjected to racial profiling
- Charged with more severe crimes
- No more likely to use illegal drugs and less likely to use alcohol, but *more* likely to be arrested and charged with drug offenses
- More likely to be detained before trial
- More likely to be represented by overworked public defenders

- Incarcerated more often
- More likely to serve longer sentences when charged with similar crimes under comparable circumstances
- As youth, more likely to be incarcerated in jails and prisons, and for longer periods
- More likely to be portrayed as criminals by the media

Given demographic shifts showing that Latinos are the largest and fastest-growing minority population in the country, and given the fact that fairness, equality, and due process are the intended hallmarks of the U.S. criminal justice system, such findings constitute a travesty of justice.

Overrepresentation and harsh treatment of Latinos in the criminal justice system require immediate redress. Justice demands no less.

Moreover, reducing the overall prison population – and the share that is Latino – is essential to the nation's economic future. Almost half of Latinos are under 25 years old. Consequently, the U.S. workforce is, and increasingly will be, dependent on Hispanics to enter their prime working years prepared to contribute to the nation's productivity and growth – not to be locked behind bars.

In addition, as the evidence has shown, encouraging treatment rather than incarceration, especially for minor drug offenders, produces cost savings without compromising public safety or increasing recidivism.

For all of these reasons, the National Council of La Raza (NCLR) believes that concrete steps must be taken specifically to reduce the proportion of Latinos in prison and, more generally, to enhance positive outcomes for the Latino community and the nation as a whole. Toward that end, we offer suggestions for building upon elements of the current criminal justice system which are working well and provide a set of specific policy recommendations for further strengthening the system.

Framing a Foundation for Justice

The good news in this sea of discouraging findings is that major reforms *are* within reach politically. There are several reasons for making this bold claim.

Some states are beginning to recognize that being “tough on crime” without also being “smart on crime” comes at too high a cost, especially when budgets are shrinking rapidly.

We live in a climate that encourages politicians to be “tough on crime” because it is perceived that the public demands it. Particularly in an era rife with terrorism, the public wants to be and feel safe, so public attitudes favoring being “tough on crime” are understandable.

However, as explained in Chapter V, some states are saving millions of dollars by instituting crime policies that are not only “tough” but also “smart.” States such as California and Texas have realized significant costs savings – without compromising public safety – by using alternatives to incarceration.

Toughness must not come at the expense of justice, fairness, and equity, nor should being “tough on crime” waste the public purse. Alternatives to incarceration exist and others can be created – alternatives that serve justice *and* save resources.

The public supports criminal justice reforms.

In November 2000, California voters passed Proposition 36, a groundbreaking treatment-instead-of-incarceration initiative that has become a model for other states. Proposition 36, subsequently enacted into law as the Substance Abuse and Crime Prevention Act of 2000 (SACPA), diverts low-level, nonviolent drug offenders convicted solely of possession for personal use into community-based treatment instead of incarceration.

Latino communities support sensible justice system reforms.

As a group, Latinos are notoriously tough on crime, but there is substantial and growing interest in sensible criminal justice system reforms within Latino communities. For example, one poll indicated that 83% of Hispanics support placing youthful offenders in community prevention programs instead of prison, and 68% of Hispanics favor reduced prison sentences for nonviolent offenders.¹

Latinos understand that confronting the root causes of crime would in fact prevent crime from occurring in the first place. A June 2004 poll² of 1,000

adults representing all Hispanic subgroups in all regions of the country revealed that Hispanics are much more likely to support tougher approaches *to dealing with the causes* of crime (74%) than tougher approaches *to* crime (22%). They favor measures that deter crime by emphasizing job and vocational training, providing family counseling, and increasing the number of neighborhood activity centers for young people.

Focusing on treatment rather than incarceration for many cases involving drugs or alcohol also is consistent with Latino attitudes. A 2003 statewide poll of 600 likely California voters who identified themselves as of Hispanic or Latino origin found that:

- 85% opposed jailing someone for marijuana possession.
- 65% opposed incarcerating a person under the age of 25 convicted for the first time of selling a small amount of marijuana to an adult.
- 58% opposed jailing someone for possession of cocaine, heroin, or methamphetamine; of that 58%, most supported mandatory treatment for such offenders.³

There is growing bipartisan support for criminal justice reforms.

Since crime, punishment, and community safety affect all Americans regardless of ideology and party affiliation, it is only appropriate that policy-makers work together to find ways to reform the criminal justice system so that it can fulfill its mandate: To isolate dangerous individuals and keep them from harming the community and to punish those who break the law, while maintaining civil and human rights standards of respect and dignity.

The 108th Congress has demonstrated willingness to work across party lines with the goal of reforming the criminal justice system. Consider, for example, the "Prison Rape Elimination Act of 2003" (S.1435), which unanimously passed the Senate in July of 2003 and was signed into law on September 3, 2003. It directs the Bureau of Justice Statistics to carry out, annually, a comprehensive

statistical review and analysis of the incidence and effects of prison rape. In a statement about the need for such legislation, Senator Kennedy said:

“Prison rape has devastating physical and psychological effects on its victims. Infection rates for HIV, other sexually transmitted diseases, tuberculosis, and hepatitis are far greater for prisoners than for the population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases, and often giving potential death sentences to its victims because of AIDS.”

Additionally, in his 2004 State of the Union address, President George W. Bush acknowledged that the country had to invest in those individuals who were reentering society after serving a prison sentence. He said:

“This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can’t find work, or a home, or help, they are much more likely to commit crime and return to prison . . . America is the land of second chance, and when the gates of the prison open, the path ahead should lead to better life.”

As a result, a bipartisan group in the House of Representatives introduced the “Second Chance Act of 2004” (H.R. 4676), an important first step in addressing the reentry crisis. Its aims are reducing recidivism, increasing public safety, and helping states and communities better address the growing population of individuals returning to society.

Elements of the current system frame the foundation for sensible criminal justice reforms. These elements include:

- **Legislation, executive orders, and administrative regulations help to improve criminal justice system services.** In the United States, legislation, executive orders, and administrative regulations can improve the quality of services provided in the criminal justice system. For example, on August 11, 2000, President Bush signed Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.” This Executive Order requires federal agencies to examine the services they provide, identify any need for services for those with limited English proficiency (LEP), and develop and implement a system for providing those services so that LEP persons have meaningful access

to them. To assist federal agencies in carrying out these responsibilities, the U.S. Department of Justice issued a policy guidance document, “Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency” (LEP Guidance). This LEP Guidance sets forth the compliance standards that recipients of federal financial assistance must follow to ensure that their programs and activities normally provided in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI. These documents can serve as essential tools for improving services to individuals with limited English proficiency who are in the system.

- **The system increases local control, which provides many opportunities to experiment and learn.** Although change at the federal level does occur, it can be exceptionally difficult to achieve. Typically, change at the county and state levels can be achieved with more manageable effort. For example, justice system personnel in Santa Cruz County (California) and Multnomah County (Oregon) were successful in adopting strategies to eliminate disproportionate representation and disparate treatment of youth of color, including Latinos.⁴ Personnel developed “culture fair” risk assessment procedures, worked with staff to ensure more equitable processing of youth of color, hired staff to reflect the demographic diversity of each county, and developed alternatives to detention programs in communities of color. These changes would have been far more difficult – if not impossible – to attain at the federal level.
- **Federal agencies can provide special services to assist the justice process.** For instance, under the Civil Rights of Institutionalized Persons Act (CRIPA),⁵ the U.S. attorney general is authorized to conduct investigations and litigation relating to conditions of confinement of persons in state- or locally-operated institutions. CRIPA covers persons, including juveniles, in prisons, jails, nursing homes, juvenile correctional facilities, developmental disability and mental retardation facilities, and mental health facilities. The statute does not cover private facilities, nor does it authorize the attorney general to represent individuals or to address specific individual cases.

The attorney general carries out responsibilities under CRIPA through the Special Litigation Section of the Civil Rights Division, Department of Justice, which investigates institutions to determine whether there is a pattern or practice of violations of residents' federal rights.

A person institutionalized in a covered facility may file a complaint with the Special Litigation Section alleging that his or her federal rights are being violated. The Section conducts an investigation to determine whether the complaint is representative of a widespread practice or pattern of violations of federal rights. It seeks voluntary compliance by the facility in resolving the issue or, if necessary, litigates to obtain a judicially enforceable resolution designed to improve conditions in the facility concerned.

Since 1980, with the enactment of CRIPA, the Special Litigation Section has investigated more than 300 facilities in 39 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands.

Recommendations

Given the magnitude of the disparities experienced by Latinos at every stage of the criminal justice system, no single set of policy interventions or program innovations will be sufficient to address the problem. Instead, NCLR believes that virtually every sector of American society – including institutions inside and outside the criminal justice system – needs to become part of the solution. Thus, in contrast to typical NCLR policy reports that call for specific legislative, regulatory, and/or community-based actions, this book outlines a series of directions for key societal sectors to ensure systemic reforms of the American criminal justice system.

- 1. National, state, and local Latino organizations should champion criminal justice causes in ways that organize, educate, and mobilize the community to pressure all levels of the justice system to be accountable for the way the system treats Latinos.** Concerned community members who come together to educate and organize themselves can more effectively pressure the justice system to be accountable to Latino communities for the way the system treats its members. Communities should require the use of performance-based

outcomes in making decisions regarding funding and expansion of local programs. States should support community-based organizations that are knowledgeable of and responsive to Latino communities in criminal justice reform efforts, including providing drug treatment program services, public education and support for Latino families, cultural competency training, and translation. Community-, state-, and national-level Latino advisory groups should be impaneled to guide policy-making and implementation of programs and services in the law enforcement and justice systems. Latinos also should hold more visible positions and play more substantive roles in state criminal justice advisory groups. Toward this end, Hispanic organizations should:

- Conduct hearings on how states collect data on Latinos in the justice system, as well as on ICE procedures and treatment of Latinos.
- Organize coalitions of advocacy and service groups nationally and at the local and state levels with the purpose of educating one another, sharing successful strategies, and collaborating on advocacy campaigns.
- Host community meetings that present facts regarding the problem of disproportionate representation of Latinos in the vicinity and accounts of the experiences of Latinos in the system – and help those who attend the meetings to develop action plans to address the problem and then to implement those plans.
- Form Latino advisory groups to guide policy-making and implementation in the law enforcement and justice systems. Call for Hispanics to be appointed to state advisory groups on criminal justice in numbers reflective of the proportion of Hispanics in the state.
- Support appropriations that provide the Department of Justice's Special Litigation Section with adequate resources to fulfill its task of pursuing "pattern and practice" lawsuits against police agencies nationwide that commit widespread abuses.
- Encourage each of the 94 U.S. attorney's offices to create civil rights units whose sole responsibility is the enforcement of civil rights laws.

- Develop public service announcements (PSAs) for Latinos and air them on radio and television programs.
- Continue to advocate for elimination of negative and stereotypical media portrayals of Latinos. Improve accuracy in news reports – particularly reports of crimes – and special programs covering issues affecting or involving Hispanics, particularly coverage of harassment, hate violence, and law enforcement abuses. Latino organizations can also implement public education and media strategies to raise awareness of the issues discussed in this report using public service announcements, websites, and fact sheets.

2. Racial profiling throughout the justice system should be banned, and sanctions for those who violate this ban should be enforced.

Americans must be constantly vigilant about abuses of authority in the enforcement of the law, including federal immigration laws. Efforts to end racial profiling and encourage community policing therefore must be encouraged.

- The president, attorney general, and Congress should declare and enforce a ban on racial profiling by all federal agencies and require collection and publication of ethnic/racial data by all federal law enforcement agencies.
 - Law enforcement agencies should be required to document all law enforcement contacts by race and ethnicity, including contacts not resulting in arrest, in order to monitor whether – and, if so, when – law enforcement practices and procedures result in racial and ethnic disparities.
 - Congress and state and local jurisdictions should appropriate sufficient funds for police departments to develop effective community policing programs.
- 3. Alternatives to incarceration for nonviolent offenders, including low-level drug offenders and youth offenders, should be designed, implemented, adequately funded, and regularly assessed.** To reduce the prison population, control and decrease prison costs, and encourage positive outcomes for offenders, approaches should include:

- Regulating or amending provisions giving prosecutors “direct file” authority to prosecute youth in adult criminal court.
- Requiring that waiver decisions be individualized and made by judges.
- Encouraging the United States Sentencing Commission to recommend, and Congress to enact, legislation for nonviolent, low-level drug offenders which promotes alternatives such as drug courts, substance abuse treatment programs, and other strategies that do not rely solely on incarceration.
 - Substantially redressing the crack/powder ratio disparity by raising the crack thresholds and maintaining the powder thresholds. NCLR commends the Commission’s 1995 recommendations to Congress which called for the elimination of the difference in crack and powder sentence thresholds. NCLR recognizes that current law constrains the Commission from resubmitting this recommendation; in this context, therefore, we urge that the ratio be equalized as much as possible by raising to the greatest allowable extent the level that triggers penalties for crack cocaine.
 - Resisting proposals that would lower the powder thresholds. NCLR believes that the only proper way of equalizing the ratio is by raising the crack threshold, and not by lowering the powder threshold, and notes that reducing the powder threshold would have a disproportionate, negative impact in the Latino community, according to the Commission’s data. NCLR notes further that although this action might be perceived as reducing sentencing inequalities, it would have the perverse effect of substantially increasing incarceration levels.
 - Making more widely available alternative methods of punishment for first-time, nonviolent, low-level drug offenders. Under 18 USC Section 3553(a), penalties should not be more severe than necessary and should correspond to the culpability of the defendant. Where current law prevents judges from imposing just sentences for such offenders, the Commission should recommend that Congress enact appropriate reforms.

- The Administration should request, and Congress should appropriate, more resources for the Substance Abuse and Mental Health Services Administration (SAMHSA) at the Department of Health & Human Services, especially SAMHSA's Center for Substance Abuse Treatment (CSAT).
 - The Department of Justice should increase grants for comprehensive state and local prison drug treatment programs.
- 4. Decisions regarding the incarceration or detention of immigrants should be based on the same criteria as decisions regarding other individuals in the system, by:**
- Reestablishing and maintaining traditional policies that reserve to the federal government's Bureau of Immigration and Customs Enforcement exclusive jurisdiction over immigration law, thus preserving scarce state and local law enforcement resources for criminal law enforcement.
 - Expanding the authority of, and providing sufficient resources to, the Department of Homeland Security's ombudsman to receive, investigate, and implement sanctions to address complaints of discrimination or abuse in the enforcement of federal immigration laws.
 - Developing guidelines that prohibit probation departments, prosecutors, and judges from inappropriately taking immigration status into account in decisions about detention, transfer of youth to adult court, and sentencing.
- 5. Availability of services in Spanish – including both oral interpretation and translation of materials – 24 hours a day, seven days a week should be established in every jurisdiction with a significant Hispanic population.** Without appropriate language services, the criminal justice system cannot guarantee that Latinos are afforded due process under the law. Providing language services will increase the likelihood that Spanish-speaking individuals and their families can successfully navigate the system and should facilitate rehabilitation.
- For states that have a commission for Hispanic or Spanish-speaking affairs, engage the commission to protect the rights of Latinos who are

brought before the justice system by providing translation/interpretation assistance when needed. Also ensure that the commission works with the Department of Justice to translate all documents and to facilitate cultural sensitivity programming for Latino populations in the state.

- Ensure that all jurisdictions have all documents available in Spanish in order to minimize interpretive errors. The written materials should be at the level of reading proficiency of the local population. In addition, translation should not be literal, but rather culturally and linguistically appropriate. In order to achieve these ends, hire a professional translator/interpreter rather than use institutional staff members who speak Spanish.
 - Mandate use of certified interpreters/translators at all proceedings.
 - Establish a program with Hispanic-serving institutions (HSIs)⁶ and other institutions of higher education to increase the number of bilingual professionals in the juvenile justice system. Undertake similar efforts with non-HSIs.
- 6. The number of culturally competent Latino and bilingual professionals in federal, state, and local criminal justice agencies should be increased.** When the system is more “user-friendly,” the goals of fairness and justice are more likely to be achieved. This can be done by:
- Recruiting, hiring, and training more U.S. attorneys, public defenders, and advocates who are Latino, or who speak Spanish and are culturally competent, to direct and conduct services for Latinos; and ensuring that the numbers of Latino employees at all levels closely reflect the numbers of Latinos served by criminal justice agencies, both public and private.
 - Assisting agencies to increase their understanding of and presence in local Latino communities through such programs as community policing; and employing more bilingual professionals who have demonstrated competencies across Latino communities to work with state agencies in ensuring the accuracy of information from families who are predominantly Spanish-speaking.

- Ensuring that hiring practices, job performance reviews, and promotion policies include consideration of a candidate's ability and experience in working well with persons of differing races, cultures, and languages.
 - Working with community leaders and national Hispanic organizations to develop and implement a training program in cultural competence aimed at increasing participants' understanding of the unique issues and challenges confronting Latinos within their respective jurisdictions.
 - Securing additional funding to ensure that law enforcement, justice system, education, and mental health professionals are adequately trained in the Spanish language and in cultural competence regarding specific Latino ethnic groups.
 - Ensuring that Latinos who have been in the justice system are included as integral parts of training programs for system personnel.
- 7. Systematic, uniform data collection procedures to determine the proportion of Latinos being processed at each stage of interaction with the justice system in each county in the United States should be established.** Without consistently applied sound data collection methods, racial and ethnic profiles of the U.S. prison population will continue to be inaccurate and it will be impossible to track and address disparities based on profiles or to know whether adequate services are being provided for Latinos.
- Pass federal legislation requiring each state's prosecutor's office to collect and publish data disaggregated by race and ethnicity. For each case, require the prosecutor to document the race/ethnicity of the victim and defendant; the basis for the initial charging decision; the basis for the prosecutor's bail recommendation; each plea offer made, accepted or rejected; and the basis for the prosecutor's sentencing recommendations.
 - Require all states to gather data in a manner that includes a "Latino" or "Hispanic" identifier. Conduct an audit of states to ensure that adequate procedures are used to distinguish between ethnicity and race.
 - Develop a systematic, uniform monitoring procedure to determine the percentage of Latinos being processed at each stage of interaction with the justice system in each county in the United States. Conduct a census

of institutions (public and private, adult and youth) to determine current incarceration/detention of Latinos.

- Provide training to personnel in each of the 50 states and the District of Columbia regarding how to collect data on Latinos in the system, and link federal funding to compliance with data collection requirements.
 - Designate a national Latino institution to become a national repository for data pertaining to Latinos in the justice system and to release periodic reports that document progress on issues pertaining to Latino involvement in the justice system. Require states to provide data annually.
- 8. Research studies whose findings can be utilized to first identify and then eliminate overrepresentation and disparate treatment of Latinos in the system should be funded and implemented.** Charitable foundations and agencies should fund researchers who conduct longitudinal studies of Latinos in the U.S. justice system. To ensure maximum impact of such research, investigators should link with professional organizations that can disseminate relevant research findings on Latinos in the justice system through their policy divisions.
- Fund research that tracks trends over time using both quantitative and qualitative methods (such as focus groups of individuals who have experience with the system, including youth).
 - Focus on studies providing evidence of disparity of treatment, not just overrepresentation of persons of color in the system, and on evaluations that provide promising approaches for reducing those disparities.

A Call to Action: Take Responsibility for How the Criminal Justice System Treats All Americans

At year-end 2001, more than 6.6 million U.S. adults were under some form of correctional supervision, including probation, jail, prison, and parole.⁷ Of these, nearly one million (997,000) were Hispanic.⁸ If recent incarceration rates remain unchanged, 6.6% of U.S. residents will serve time in prison during his or her lifetime.

In contrast, in 2000 only 2.1 million individuals in the United States earned postsecondary degrees at the associate, bachelor, and master degree levels

combined.⁹ When our society places more than three times as many people in some form of correction as we graduate from institutions of higher education each year, our priorities are misplaced. If the United States continues to rely so heavily on incarceration as a “solution” to the problems of crime and substance abuse, particularly for individuals of color, the nation stands to lose a significant proportion of the next generation – the individuals who should guide our future. This not only is a travesty of justice, it also undermines our commitment to equal opportunity and our future economic security.

In order to reverse these trends, all Americans need to understand that the criminal justice system extends beyond the issues of crime and its aftermath. When the justice system is viewed solely through this restricted lens, far-reaching economic, social, and political impacts of criminal justice policies are too easily shielded from public scrutiny. Consider, for example, the findings of a comprehensive analysis of the impact of substance abuse on state budgets published in 2001 by the National Center on Addiction and Substance Abuse at Columbia University (CASA).¹⁰ Researchers found that of every dollar spent on the problem of substance abuse and addiction, 96 cents went toward dealing with the *consequences* of these problems and only 4 cents was used for *prevention and treatment*.¹¹ No rational person can square this distribution of funds with the knowledge that every \$1 invested in treatment reduces the costs of drug-related crime, criminal justice costs, and theft by \$4 to \$7, and, when health care savings are added in, total estimated savings can exceed costs by a ratio of 12 to 1.¹²

In response to NCLR’s focus on prevention and treatment, some might argue that using alternatives to incarceration could mean risking an increase in the criminal population. To the contrary, the data convincingly demonstrate that *not* having alternatives *guarantees* increasing the criminal population.

NCLR calls on *all* Americans – Hispanic and non-Hispanic alike – to take responsibility for how those in the criminal justice system fare and to support reforms that make the system fair, less costly, and more effective. Implementation of the recommendations offered here would go a long way toward achieving that goal.

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5. Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. sec. 1997a et seq.
6. HSIs are nonprofit accredited colleges, universities, or systems in which total Hispanic student enrollment constitutes a minimum of 25% of the total enrollment, including full-time and part-time students, whether at the undergraduate or graduate level or both. HSI Associates are nonprofit accredited colleges, universities, or systems in which at least 1,000 Hispanic students are enrolled, or a minimum of 10% of the total enrollment is Hispanic, including full-time and part-time students, whether at the undergraduate or graduate level or both (see <http://www.hacu.com/members/list/HIS.htm>).
7. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. (2004). *Criminal offender statistics*. Available at www.ojp.usdoj.gov/bis/crimoff.html. Washington, DC.
8. *Ibid.*
9. National Center for Education Statistics. (2003). *Degrees conferred by sex and race*. Available at <http://nces.ed.gov/fastfacts/> Page viewed March 13, 2003.
10. National Center on Addiction and Substance Abuse at Columbia University (CASA). (2001). *Shoveling up: The impact of substance abuse on state budgets*. New York, NY.
11. *Ibid.*
12. Rydell, C. P., & Everingham, S. S. (1994). *Controlling cocaine: Supply versus demand programs*. Santa Monica, CA: Rand Corporation.

Appendix A

Glossary of Justice System Terms*

Apprehend

To take into custody or arrest, or to seize in the name of the law.

Arrest Warrant

A document issued by a judge or magistrate, on the basis of probable cause, directing a law enforcement officer to take an individual into custody and bring the person to court. This document permits the police to deprive an individual of liberty by virtue of legal authority.

Beyond a Reasonable Doubt

The standard used by a jury to determine whether a criminal defendant is guilty. The jury must begin with the presumption that the defendant is innocent. In order to convict the defendant of the crime or crimes charged, the jury must be convinced “beyond a reasonable doubt” that the defendant is guilty. “A reasonable doubt” is the belief that there is a real possibility that a defendant is *not* guilty. It is the doubt that prevents a person from being firmly convinced of a defendant’s guilt.

Bail Bond

A written promise given to a court, secured by a sum of money or property, guaranteeing that a defendant will appear in court in the future.

Burden of Proof

The duty of a party in a lawsuit to persuade the judge or the jury that enough facts exist to prove the allegations of the case. Different levels of proof are required depending on the type of case (for example, “beyond a reasonable doubt,” “by a preponderance of the evidence.”) Typically, in a criminal case, the state must prove whatever allegations are included in the complaint in order to convict the defendant. In criminal cases, as every person is presumed

* Adapted from Garner, B. A. (Ed.). (1999). *Black’s Law Dictionary (seventh edition)*. St. Paul, MN: West Group.

to be innocent until the contrary is proved, the burden of proof rests on the prosecutor (unless a different provision is expressly made by statute).

Capital Offense

A criminal offense punishable by death (also referred to as *capital punishment*), such as murder.

Counsel

An attorney who advises and represents a party in a legal proceeding. In a criminal case, both the *defendant* and the *state* are represented by counsel.

Criminal History

The official record of an individual's previous criminal convictions.

Cross-Examination

The questioning of an opposing party's witness about matters brought up during the direct examination. Every party in a lawsuit has a right to cross-examine a witness produced by the opposing party in order to test whether the witness has knowledge of the things testified to, as well as the witness's memory and motives. The purpose of cross-examination is to test the credibility of a witness who has been called and given evidence.

Death Penalty

The punishment of death for a defendant convicted of committing a capital crime. Also known as *capital punishment*.

Defense Counsel

An attorney who represents an individual charged with a crime.

Defendant

In criminal cases, the person accused of the crime.

Department of Corrections

The governmental agency that administers a jurisdiction's prisons and parole system. Departments of Corrections exist at both federal and state levels.

Direct Examination

The initial questioning of a witness by the party that called the witness. Direct examination consists of questions asked in a direct form – that is, a form that does not suggest the answer. “Where were you on July 18th?” is an example of a direct question.

Evidence

Testimony, documents, photographs, maps, videotapes, results of laboratory tests, exhibits, and other items presented in court for the purpose of proving or disproving a question under inquiry.

Evidence in Chief

In a criminal trial, testimony, exhibits, and other items presented in court by the state to prove its case against the defendant.

Executive Branch

The branch of government charged with administering and carrying out the law. The other two branches of government are the *judicial branch* and the *legislative branch*.

Federalism

The relationship and distribution of power between the national and regional governments within a federal system of government. The United States has a federalist government.

Felony

A serious crime usually punishable by imprisonment for more than one year or by death. Examples include murder, rape, arson, burglary, and treason.

Grand Jury

A group of people (often numbering 23) who are chosen to sit permanently for at least a month – and sometimes a year – and who consider whether evidence is strong enough to hold a suspect for trial. If the grand jury finds that the evidence is strong enough, it returns a bill of indictment charging the suspect with a specific crime.

Guardian ad Litem

A person, usually a lawyer, appointed by the court to appear in a lawsuit on behalf of a minor party (that is, a child) or a party determined to be incompetent.

Incarceration

The act or process of confining a person; imprisonment.

Indictment

The formal written accusation of a crime, made by a grand jury and presented to a court for prosecution against the accused person.

Indigent

A poor person. In a criminal case, a person who is too poor to hire a lawyer and who, upon indictment, becomes eligible to be represented by a court-appointed attorney and to receive a waiver of court costs.

Information

A formal criminal charge made by a prosecutor without a grand-jury indictment. The information is used to prosecute misdemeanors in most states. About half the states allow its use in felony prosecutions as well.

Jail

A place where persons awaiting trial or those convicted of misdemeanors are confined. Also known as a *holding cell* or *lockup*.

Judge

A public official appointed or elected to hear and decide legal matters in court. Judges may serve in various kinds of courts: for example, circuit court, district court, probate court, or bankruptcy court.

Judicial Branch

The branch of government responsible for interpreting the laws, applying the law to a specific set of facts or circumstances, and administering justice. The other two branches are the *executive* and *legislative*.

Judiciary

A system of courts or a body of judges.

Jury

A group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them. In criminal cases, the jury decides whether the defendant is *guilty* or *not guilty*. In capital cases, the jury also decides whether a defendant who is found guilty will be punished by being put to death.

Legislative Branch

The branch of government responsible for enacting laws. The other two branches are the *executive* and *judicial*.

Magistrate

A judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases. For instance, in a criminal case, a magistrate often will issue search warrants and set bail.

Mandatory Minimum Sentence

A sentence set by law with no discretion for the judge to individualize punishment specifying the least amount of time that a defendant must serve in jail or prison before becoming eligible for parole. A mandatory minimum sentence does not give the judge discretion to order probation.

Misdemeanor

A crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement (usually for a brief term less than one year) in a place other than prison (such as a county jail).

Parole

The release of a prisoner from imprisonment before the full sentence has been served. Although not available under some sentences, parole usually is granted for good behavior on the condition that the parolee regularly reports to a supervising officer for a specified period.

Parole Board

A governmental body that decides whether prisoners may be released from prison before completing their sentences.

Plea

An accused person's formal response of "guilty," "not guilty," or "no contest" to a criminal charge.

Police Power

A state's right, subject to due process and other limitations, to establish and enforce laws protecting the public's health, safety, and general welfare, or to delegate this right to local governments. Under this power, the government may intervene in the use of privately owned property and incarcerate an individual.

Preliminary Examination

A hearing to determine whether a crime has been committed and whether there is reasonable cause to believe that the defendant charged committed the crime.

Preliminary Hearing

A criminal hearing (usually conducted by a magistrate) to determine whether there is sufficient evidence to prosecute an accused person. If sufficient evidence exists, the case will be set for trial or bound over for grand jury review, or an *information* will be filed in the trial court.

Pre-sentence Report

A probation officer's detailed account of a convicted defendant's educational, criminal, family, and social background, conducted at the court's request as an aid in passing sentence. A pre-sentence report often contains a recommended sentence.

Presumption of Innocence

The fundamental legal principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence.

Prima Facie Case

In a criminal case, the minimum facts necessary for the state to meet its burden of proof in establishing the guilt of the defendant.

Prison

A state or federal facility of confinement for convicted criminals, especially felons. Also termed *penitentiary*, *penal institution*, or *adult correctional institution*.

Probation

A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the person to jail or prison.

Prosecuting Attorney

A public official appointed or elected to represent the state in criminal cases in a particular judicial district. Also termed public *prosecutor*, *state's attorney*, or *district attorney*.

Racial Profiling

Targeting certain persons to be stopped, questioned, or arrested because of their race or because of noncriminal behaviors associated with their cultural heritage.

Recognizance

A bond or obligation, made in court, by which a person promises to perform some act or observe some condition (such as to appear in court when called, to pay a debt, or to keep the peace). Most commonly, a recognizance takes the form of a bail bond that guarantees an unjailed criminal defendant's return for a court date.

Sentence

The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.

Sentencing Guidelines

A set of standards for determining the punishment that a convicted criminal should receive, based on the nature of the crime and the offender's criminal history.

Subpoena

A written document commanding a person to appear before a court or other tribunal, or to produce certain documents or other physical evidence, subject to a penalty for failing to comply.

Trial

A formal judicial examination of evidence and determination of legal claims in an adversary proceeding. A criminal trial involves determining whether the state's claim of a defendant's guilt can be supported at a particular level of certainty (for example, *beyond a reasonable doubt* or *by a preponderance of the evidence*).

Appendix B

Economic Analysis of Incarceration versus Residential Treatment For Drug Offenders in the State of Michigan

Table 5.2 calculates the cost of incarcerating drug offenders over a five-year period, assuming that nothing changes during that five-year period – that is, that the average daily census of drug offenders stays at 5,713 (the average daily census in December 2002).

Table 5.2 | Michigan's Estimated Five-Year Costs (Millions of Dollars) for Processing 5,713 Drug Offenders: Prison Model

	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
Number of Prisoners at \$27,985*	5,713	5,713	5,713	5,713	5,713	
Cost at \$27,985 in year 1 and 4% inflation (years 2-5)	\$159.9M	\$166.3M	\$172.9M	\$179.8M	\$187.0M	\$865.9 M

* The Michigan House Fiscal Office reports that the state appropriated \$27,985 per person incarcerated in 2001-2002.

Table 5.3 calculates the cost of a Residential Treatment Model. This model assumes that 50% of those currently incarcerated for drug offenses (2,856 of 5,713) are diverted to year-long residential treatment, and that a daily average of 2,857 individuals are incarcerated.

Table 5.3 | Michigan's Estimated Five-Year Costs (Millions of Dollars) for Processing 5,784 Drug Offenders: Residential Treatment Model

	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
Number of Prisoners	2,857	2,857	2,857	2,857	2,857	
Cost for prisoners at \$27,985 in year 1 and 4% inflation (years 2-5)	\$80.0M	\$83.2M	\$86.5M	\$89.9M	\$93.5M	\$433.1M
Number of Individuals in treatment	2,856	2,856	2,856	2,856	2,856	
Cost for treatment at \$16,425* in year 1 with 4% inflation (years 2-5)	\$46.9M	\$48.8M	\$50.7M	\$52.8M	\$54.9M	\$254.1M
Total	\$126.9M	\$132.0M	\$137.2M	\$142.7M	\$148.4M	\$687.2M

* \$45 per diem x 365 days/year.

Table 5.4 reveals that, accepting the assumptions made, the Residential Treatment Model would save the State of Michigan \$178.7 million over a five-year period, as compared with the Prison Model.

Table 5.4 | Comparison of Michigan's Five-Year Costs (Millions of Dollars) for Processing 5,713 Drug Offenders: Prison Model versus Residential Treatment Model

	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
Cost of Prison Model	\$159.9M	\$166.3M	\$172.9M	\$179.8M	\$187.0M	\$865.9M
Cost of Residential Treatment Model	\$126.9M	\$132.0M	\$137.2M	\$142.7M	\$148.4M	\$687.2M
Savings from Using Residential Treatment Model	\$33.0M	\$34.3 M	\$35.7 M	\$37.1 M	\$38.6M	\$178.7M

About the Authors



Nancy E. Walker, PhD, MLS, is President and Senior Research Fellow of the Center for Youth Policy Research and adjunct professor at Michigan State University. She has published numerous scholarly articles, law reviews, and policy analyses and is primary co-author of two books, *The Child Witness: Legal Issues and Dilemma* and *Children's Rights in the United States: In Search of a National Policy*. Formerly, Dr. Walker was a faculty member at Creighton University and a visiting professor in the Psychology-Law Program at the University of Nebraska - Lincoln.



J. Michael Senger, JD, is Senior Staff Attorney of the Center for Youth Policy Research and has been in the private practice of law in Michigan for more than 20 years. He drafted legislation for ten years, first for the Office of the Legislative Counsel of the U.S. House of Representatives and later for the U.S. Senate Committee on Commerce, Science, and Transportation. Mr. Senger also served as Legislative Counsel to the District of Columbia Council, as General Counsel of the District of Columbia Law Revision Commission, and as Probate Judge for Leelanau County, Michigan.



Francisco A. Villarruel, PhD, is Professor of Family and Child Ecology, Outreach Fellow, and Research Associate to the Julian Samora Research Institute at Michigan State University. He has published several scholarly articles on youth and is co-author of three books: *Making Invisible Latino Adolescents Visible*; *Community Youth Development: Programs, Policies, and Practices*; and *Promoting Community-Based Programs for Socialization and Learning*. Organizations throughout the United States seek Dr. Villarruel's expertise on Latino issues.



Angela M. Arboleda, BA, is the Civil Rights Policy Analyst at the National Council of La Raza (NCLR). Ms. Arboleda is responsible for developing policy analyses, advocacy activities, and research on civil rights and criminal justice issues affecting Latinos in the United States. She often is the sole voice discussing the impact of criminal justice policy decisions on the Latino community at the national level. Ms. Arboleda is the author of *Latinos in the Federal Criminal Justice System* – a statistical brief on the status of Latinos in prison – and co-author of several publications on Latino civil rights issues, the most recent being, *District of Columbia Responses to Youth Violence: Impact on the Latino Community*.