



Correcting Corrections in America™

CONGRESSIONAL ACTION MANDATED TO REDUCE RISING COSTS OF INCARCERATION

WHITE PAPER

Date:	January 31, 2014
Prepared By:	Out4Good Ltd. 44 Wall Street, 12 th Floor New York, NY 10005
To Cite:	Out4Good Ltd., (2014). Congressional Action Mandated to Reduce Rising Costs of Incarceration. Retrieved from website: http://www.out4good.org



Correcting Corrections in America™

About Out4Good Ltd.

Out4Good Ltd. ("Out4Good") is a nonprofit organization that helps improve the policy and decision-making processes of non-governmental organizations ("NGOs"), educational institutions, businesses, and government policy makers through its collection and analysis of relevant data. As a nationally recognized expert with regard to the policies of the U.S. Department of Justice's Federal Bureau of Prisons, Out4Good mentors and pairs other NGOs, educational institutions, businesses, and government policy makers in an effort to address the numerous issues that affect the incarcerated.

Out4Good Ltd.'s "Congressional Action Mandated to Reduce Rising Costs of Incarceration" White Paper

Copyright © 2014 Out4Good Ltd. All Rights Reserved.

This document and the trademark contained herein are protected by law. This representation of Out4Good Ltd. intellectual property is provided for noncommercial use only. Unauthorized posting of Out4Good Ltd. documents to a non-Out4Good Ltd. website is prohibited. Out4Good Ltd. documents are protected under copyright law. Permission is given to duplicate this document for personal use and use by the media only, as long as it is unaltered, complete, and properly cited. Permission is required from Out4Good Ltd. to reproduce, or reuse in another form, any of our research documents for commercial use. Please contact Out4Good Ltd. at info@out4good.org for information on reprint and linking permissions.

Out4Good Ltd.
44 Wall Street, 12th Floor
New York, New York 10005
(212) 684-4949
www.Out4Good.org

Our unique logo represents the bars of prison, which are not uniform in size, but rather randomly unequal - illustrative of the enormous diversity and inequality existing in our correctional system today. The colors used are the colors that represent us as a nation and they provide a sense of inclusiveness to all. We are all in this together as Americans - advocating needed change to bring sense to the sentencing, custody and release processes for our nation's incarcerated.

© Copyright 2014 Out4Good Ltd.

Congressional Action Mandated to Reduce Rising Costs of Incarceration

As our nation's attention, and that of its media, is focused on a hope-to-be rebounding economy, another escalating fiscal crisis is spreading across our country from sea to shining sea. There are now more people under correctional supervision in America than there were in the Gulag Archipelago under Stalin at its height.¹

As this plague spreads, like an uncontrollable pandemic throughout our country, the number "infected" is staggering. There are now 7.3 million individuals under the control of the criminal justice system in the United States: 2.3 million in prison, 800,000 on parole, and 4.2 million on probation. More than 10 million Americans are arrested each year with 600,000 of them imprisoned. Of the 700,000 incarcerated individuals released each year, 67% will be re-imprisoned within three years due to recidivism.²

New federal legislation is mandated to meet these challenges. All sides of the political spectrum have a stake and are affected by this mounting crisis. The three branches of government - executive, judicial, and legislative - are currently struggling with how to address these major issues. Our nation is truly at a precipice.

At the executive level, the U.S. Department of Justice ("Department of Justice"), through its agency the Federal Bureau of Prisons ("Bureau of Prisons"), is currently operating the nation's federal prisons at approximately 36 percent over rated capacity, with medium security facilities operating at 45 percent over rated capacity and high security facilities operating at approximately 51 percent over rated capacity. This overcrowding affects the safety and security of a large and growing number of staff and correctional officers, as well as the inmates themselves.³

¹ Gopnik, The Caging of America, *The New Yorker*.

² Ducker, A Plague of Prisons: The Epidemiology of Mass Incarceration in America.

³ Horowitz, Memorandum from Inspector General to the Attorney General and Deputy Attorney General: Top Management and Performance Challenges Facing the Department of Justice – 2013, p.4.

The Bureau of Prisons' population has increased by 50 percent from about 145,000 in 2000 to about 220,000 at the close of fiscal year 2013. According to the United States Government Accountability Office (GAO), projections indicate that this number of inmates shall increase to more than 235,000 by 2014; a 65 percent increase since 2000.⁴

Shocking as these numbers may be, they do not even come close to reflecting the true number of those tens of millions of Americans who are collaterally affected through hidden economic, social, and psychological costs of incarceration. With so many members of society becoming ensnarled within the criminal justice system's web, there is hardly a family or community that is not adversely impacted. Welfare, social services, and public safety systems; educational institutions; health care service providers; and the very family unit itself are being strained to their limits. Our government must immediately address and reduce these seemingly limitless costs of incarceration and post-incarceration recidivism.

The Bureau of Prisons is composed of 119 institutions, 6 regional offices, 2 staff training centers, 22 residential reentry management offices (previously called community corrections offices), and a central office in Washington, D.C. In 2013, \$6.5 billion was spent on just salaries and operating expenses, exclusive of capital improvement and new facility costs.⁵ This sum represents one quarter of the Department of Justice's entire budget and some of these funds could be better-utilized addressing national safety issues rather than on continued mass incarceration of the nation's population. The Bureau of Prisons spends in excess of \$30,000 per prisoner annually at federal institutions. Extrapolating this basic information and applying it to the more than seven million individuals currently incarcerated and under correctional supervision in the United States by all levels of government - local, state, and federal - it becomes evident that more than \$100 billion is being spent annually to accommodate the confinement and correctional supervision of these individuals. There are projected to be 18,000 net new federal prisoners during the next three-year period.⁶ If one were to calculate the cost of capital improvements to build out additional prison facilities to house these individuals, that sum would be in excess of \$1 billion. Should one go further and calculate a similar cost to

⁴ U.S. Government Accountability Office, Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates (GAO-12-320), p. 1.

⁵ U.S. Government Accountability Office, Opportunities Exist to Enhance the Transparency of Annual Budget Justifications (GAO-14-121), p. 1.

⁶ U.S. Government Accountability Office, Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates (GAO-12-320), p. 1.

remedy the current 36 percent overcapacity within the federal prison system, that sum would be in excess of \$5 billion.

These Bureau of Prisons costs do not even include the \$1.5 billion spent in 2013 by the U.S. Marshals Service to house approximately 60,000 individuals per day during their pre-trial detention. Of these detainees, about 50,000 must be incarcerated daily in approximately 1,100 state, local, or private facilities due to the overcrowding of existing federal facilities.⁷ Another \$2 billion was spent by the U.S. government to house a daily minimum of 33,400 illegal immigrants pursuant to Congressional legislation inserted into Homeland Security's 2009 spending bill. This bed mandate, as it is known on Capitol Hill, has helped fuel a 72 percent rise in daily detentions since 2005 and has been very lucrative for non-government prison companies, which hold almost two-thirds of the detainees. Two publically traded companies that dominate the private prison market have roughly doubled their stock price since 2010.⁸ Another \$7 billion was spent in 2013 by the U.S. court system of which billions of dollars were expended for costs relating to criminal cases, pretrial services, and probation supervision.⁹

As this newly expanding prison industrial complex emerges in the beginning of this twenty-first century, it takes on the attributes of the birth, during the cold war of the last century, of the now trillion dollar military industrial complex. The United States spends more than any other country on its military; approximately \$739 billion in 2011, representing approximately 5% of its gross national product ("GNP") and 46% of the entire world's military budgets.¹⁰ All too similar to the military analogy, the United States makes up only 5% of the world's population but it now makes up 25% of the world's jailed prisoners. Our country has seven to ten times more prisoners than most other developed countries; 760 prisoners per 100,000 in the United States versus 63 per 100,000 in Japan, 90 in Germany, 96 in France, and 153 in Britain.¹¹

⁷ Horowitz, Memorandum from Inspector General to the Attorney General and Deputy Attorney General: Top Management and Performance Challenges Facing the Department of Justice – 2013, p. 5.

⁸ Selway & Newkirk, Full By Law, *Bloomberg Business Week*.

⁹ Koelemay, Chief Justice Labels Court's Budget's Single Most Important Issue in 2014, p. 426.

¹⁰ The Dragon's New Teeth, *The Economist*, pp. 28-32.

¹¹ Zakaria, Incarceration Nation. *Time*.

Not only are these escalating economic costs now out of control, the global perception of America as the protector of democracy and individual freedoms has been inexcusably tarnished by its actions during the past decade at Guantanamo Bay. Today, numerous countries and global human rights organizations are claiming that the United States is a major violator of international law, as promulgated in the United Nations Universal Declaration of Human Rights ("UDHR"). By institutionalizing the mass incarceration of various segments of its society, the United States, by the collective actions of its three branches of government, is de facto depriving millions of individuals of their inherent dignity and equal and inalienable rights under UDHR Article 3. – life, liberty, and security of person; Article 5. – subjection to torture or cruel, inhuman or degrading treatment or punishment; and Article 8. – effective remedies for violations of fundamental rights.¹²

The Deputy Attorney General recently commented during a speech to the American Bar Association that the "unsustainable" cost of the prison system represents "a crisis that has the potential to swallow up so many important efforts in the fight against crime," and that "every dollar we spend at the Department of Justice on prisons and detention . . . is a dollar we are not spending on law enforcement efforts aimed at violent crime, drug cartels, public corruption cases, financial fraud cases, human trafficking cases, and child exploitation, just to name a few."¹³

Our country's leaders have failed to date to remedy these demanding incarceration related issues. The ever-increasing government spending associated with this problem is becoming a major financial burden enlarging a national debt that many believe could soon reach \$20 trillion precipitating a financial cataclysm.

The United States cannot support new ever-expanding military industrial type complexes, such as the prison industrial complex and the cost-exploding health care industry, which consumed \$2.7 trillion in 2012, representing 17.29% of our GNP.¹⁴ Our three branches of government must act immediately and take drastic steps to address these issues.

¹² United Nations, Universal Declaration of Human Rights.

¹³ Horowitz, Memorandum from Inspector General to the Attorney General and Deputy Attorney General: Top Management and Performance Challenges Facing the Department of Justice – 2013, p. 2.

¹⁴ Center for Medicare and Medicaid Services, Retrieved from <http://www.cms.gov>.

Action by the Executive Branch

In a speech delivered to the 2013 annual meeting of the American Bar Association, U.S. Attorney General Eric Holder stated that Americans must face the realities that its criminal justice legal system is broken. Recognizing that the mass incarceration of America has created an outsized, unnecessarily large prison population, the Attorney General said, “we need to ensure that incarceration is used to punish, deter, and rehabilitate, not merely to warehouse and forget.”¹⁵

The Bureau of Prisons, as part of the executive branch of the government, is responsible for the custody and care of federal prisoners. Its mission is to protect public safety and prepare inmates for reentry into society, which in turn reduces the crowding and high costs of confinement. Since parole is no longer an option for federal offenders, the Bureau of Prisons has limited authority to affect the length of an inmate’s prison term.¹⁶ Although it has some statutory authority from the legislative branch of the government to reduce the amount of time an inmate remains in prison, it has not been able, for the reasons set forth below, to effectively implement this authority and various related programs. This utilization failure has contributed to the escalating costs and ever-growing, not sustainable number of federal inmates.

To reduce a federal prisoner’s period of incarceration, the Bureau of Prisons utilizes three main mechanisms. The first is Good Conduct Time, the second is the Residential Drug Abuse Treatment Program (“RDAP”), and the third is Community Corrections (“Residential Reentry Centers”).¹⁷

Eligible inmates receive all of their potential Good Time Credit for maintaining clear conduct regarding institutional disciplinary regulations. This credit amounts to 54 days credited towards their sentence, per year served if an inmate has earned or is making satisfactory progress towards earning the GED; 42 days if not. As of the end of fiscal year 2011, about 87% of inmates had earned all of their available credit.¹⁸

¹⁵ Holder, Speech delivered to Annual Meeting of American Bar Association.

¹⁶ U.S. Government Accountability Office, Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates (GAO-12-320), p. 2.

¹⁷ *Ibid.*, p. 7.

¹⁸ *Ibid.*, p. 21.

Eligible inmates can participate in RDAP before release from prison, but those eligible for a sentence reduction are generally unable to complete RDAP in time to earn the maximum reduction of 12 months. During the fiscal years 2009 through 2011, more than 80% of those eligible for the maximum sentence reduction did not receive it. Timely program admission would result in future cost savings through additional sentence reductions. Additionally, the Bureau of Prisons estimates that allowing criminal aliens to participate in RDAP and earn sentence reductions could offer about \$25 million of additional cost savings each year.¹⁹

Residential Reentry Centers (“RRC”), commonly known as halfway houses, are utilized to facilitate an inmate’s reintegration into society. An Inmate may be transferred to an RRC for a period of time up to the final 12 months of his or her sentence. Of the 12 months authorized for RRC confinement, inmates may spend this time in RRCs and in detention in their homes for a period of time up to the lesser of six months, or 10% of their sentence. During the fiscal year 2010, approximately 29,000 inmates completed their sentences through RRCs after an average placement of only four months. The reasons attributed to this short period of time are that as of November 2011 there were only 8,859 estimated beds available at all the RRCs.²⁰ To permit a massive reduction in the number of prisoners housed at federal institutions, bed space of 29,000 beds would be required to permit the full 12 months authorized. RRCs currently have only 30% of the needed bed space. Even with this shortage of bed space at RRCs, in fiscal 2010 only 39% of the inmates placed at RRCs were granted home detention, which would materially reduce incarceration costs during that period of home detention. One major issue that undermines home detention is that the Bureau of Prisons does not know what the actual costs of home detention are since it does not require RRCs to separate the price of home detention services from the price of RRC beds according to the GAO’s February 2012 report.²¹

¹⁹ U.S. Government Accountability Office, Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates (GAO-12-320), p. 35.

²⁰ Ibid., p. 33.

²¹ Ibid., p. 20.

As evidence of the Bureau of Prisons' current concerns and efforts to reduce its overcrowded conditions and rapidly expanding costs, its director, Charles E. Samuels, Jr., issued a letter to all federal prisoners, dated January 27, 2012, stating the agency's directive that "it is critical that you begin your preparation for reentry today...and make every effort to prepare for release."²² The director further went on in his letter to state that his agency's goal is to help the inmates successfully prepare for release from prison and become productive citizens. It is very clear that to implement these objectives, the agency immediately needs and requires both judicial and legislative action.

Until new legislation is enacted by the U.S. Congress ("Congress") to alleviate the numerous issues caused by the mass incarceration of America, various national and international organizations are advocating that the executive branch's Department of Justice immediately exercise its discretion with regard to existing laws.

According to an in-depth report by Human Rights Watch ("HRW") and Families Against Mandatory Minimums ("FAMM") titled "The Answer is No – Too Little Compassionate Release in US Prisons," the Department of Justice acknowledges that its ever-expanding prison population and escalating multi-billion dollar budget are not sustainable.²³ Even Bureau of Prisons director Samuels has stated to Congress that housing elderly prisoners can cost two and three times that of younger prisoners.

In what seemed to be an effort to address such budgetary issues raised in the HRW and FAMM report, the Bureau of Prisons issued new policy guidelines, first in April 2013, and then again in August 2013, for the "compassionate release" from incarceration of qualifying prisoners under legislation enacted by Congress almost 30 years ago in 1984. According to Attorney General Holder, due to the rising cost for housing prisoners, the revised policies to this too-little-used existing law were implemented to allow greater numbers of older, non-violent, federal inmates to get early releases. It is noteworthy that the Department of Justice and Bureau of Prisons' apparent motivation for the policy changes were cost reductions not the concept of compassion upon which the 1984 legislation was based.

²² Samuels, Memorandum for All Bureau Inmates, January 27, 2012.

²³ Human Rights Watch, *The Answer is No: Too Little Compassionate Release in US Federal Prisons*.

The Bureau of Prisons expansion of its policy guidelines regarding compassionate release were touted by Director Samuels, in a Bureau of Prisons memorandum to all inmates dated December 9, 2013, as “my continued commitment for the Bureau of Prisons to do all we can to provide you a safe living environment as well as opportunities to prepare for a successful return to the community.”²⁴ This memorandum specifically noted the addition of some non-medical circumstances that could be the basis for compassionate release requests, and that the process for considering such requests were being expedited by removing the requirement for Regional Directors to review the request permitting wardens to now send approved requests directly to the Central Office of the Bureau of Prisons. Although these additions were widely promulgated as progressive, the Bureau of Prisons had in fact frustrated any benefit to inmates by issuing, four days prior to Director Samuels' memorandum, Interim Rule Changes for its regulations on compassionate release requiring an opinion of the United States Attorney in the district in which the inmate was sentenced and the approval of the Attorney General and Deputy Attorney General.²⁵

Even though Attorney General Holder has praised bills before the Senate Judiciary Committee that could make sentencing more flexible for lower-level offenders and he touts, in one speech after another, his department's efforts to address the issues of mass incarceration, federal judges such as John Gleeson, judge of the United States District Court for the Eastern District of New York, recently stated that “Prosecutors routinely threaten ultra harsh, enhanced mandatory sentences that no one, not even prosecutors themselves thinks are appropriate.” Judge Gleeson went on to say that the way prosecutors use this hammer “coerces guilty pleas and produces sentences so excessively severe they take your breath away.”²⁶

²⁴ Samuels, Memorandum for All Bureau Inmates, December 9, 2013.

²⁵ FR Doc No: 2013-29076 Interim Rule Change: 18 U.S.C. § 3582: Compassionate Release

²⁶ Eckholm, Prosecutors Draw Fire for Sentences Called Harsh. *New York Times*.

Action by the Judicial Branch

In a pair of 5-to-4 decisions handed down on March 21, 2012, the U.S. Supreme Court addressed some of these incarceration issues in an attempt to effectively expand judges' supervision of the criminal justice system. The two cases, *Lafler v. Cooper* and *Missouri v. Frye*, addressed the unregulated and informal deal making used by prosecutors and defense lawyers during plea negotiations. Currently, 97% of all federal and 94% of all state cases are adjudicated by a plea. Contributing to the exploding prison population and costs are the de facto mandatory sentencing guidelines imposed upon judges by the legislative branch's Congress and the harsh and lengthy sentences handed out by courts should a defendant elect to go to trial and be found guilty. "Criminal justice today is for the most part a system of pleas, not a system of trials," Justice Anthony M. Kennedy wrote for the majority. "The right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea-bargaining takes in securing convictions and determining sentences."²⁷

"The Supreme Court's decision in these two cases constitute the single greatest revolution in the criminal justice system since *Gideon v. Wainwright* provided indigents the right to counsel," said Wesley M. Oliver, a law professor at Widener University, referring to the landmark 1963 decision.²⁸

Just as the Miranda warning evolved from a 1966 U.S. Supreme Court case wherein police must inform a criminal suspect before being interrogated that the suspect has the right to remain silent, the right to have an attorney present during questioning, and the right to have an attorney appointed if the suspect cannot afford one;²⁹ the *Lafler* and *Frye* cases most likely will result in courts developing a series of standardized questions to ask defendants prior to their entry of a plea or advising the court that they are prepared to go to trial. The answers to these questions by the defendant, on the record and in open court, will need to satisfy the judge that the defendant has been advised of all plea negotiations between the government and defendant's counsel. The judge will then make a specific finding that the defendant had adequate assistance of counsel. Should the court find otherwise, the defendant will not be allowed at that time to proceed because historically defendants have received lengthy sentences if found guilty at trial

²⁷ *Missouri v. Frye*, No. 10-444.

²⁸ Liptak, Justices ruling expands rights of accused in plea bargaining. *The New York Times*.

²⁹ *Miranda v. Arizona*, 384 U.S. 436.

due to Congress's statutory sentencing guidelines. It is these sentencing guidelines and the use of them by the courts that has overburdened the prison system and caused the development of the prison industrial complex of today that is costing Americans more than \$100 billion annually. Justice Antonin Scalia said in a pair of dissents in the cases that expanding constitutional protections to this area of the law under these decisions "opens a whole new boutique of constitutional jurisprudence," calling it "plea-bargaining law." He also stated "the court leaves all of this to be worked out in further litigation, which you can be sure there will be plenty of."³⁰

The decisions in the Lafler and Frye cases reveal in some detail the concerns of the U.S. Supreme Court that plea-bargaining, and the resulting plea by defendants in almost all criminal cases, leads to judges' imposition of lengthy and costly sentences under Congress's mandatory sentencing guidelines. The exploding number of pleas that result in these convictions correlate with the 50% rise in federally incarcerated individuals since 2000. Not only has the current wide scale use of plea-bargaining resulted in widespread and long-term incarcerations, but also courts have found that many of these pleas and resulting sentences were in violation of an individual's Sixth Amendment rights.

Serious questions face the judiciary on how it can continue to discharge its constitutionally mandated duties on the limited financial resources provided to it by Congress. U.S. Supreme Court Chief Justice John G. Roberts said that the federal courts are having to find ways to match "the Judiciary's limited resources to the many demands of justice" in order to enable the court system "to discharge their responsibilities with wisdom, diligence, and care."³¹ The federal courts are currently functioning at their lowest staffing levels since 1997, having lost 1,200 staff during fiscal year 2013 and a total of 3,100 since 2011, despite significant workload increases. Further reductions would have serious consequences, leading to "unvindicated rights," Chief Justice Roberts said.³²

Since Congress has failed to date to adequately address the escalating incarceration issues described above, the nation's courts have been impeded from deviating from the enacted legislative sentencing guidelines and therefore, the courts themselves are now addressing these inherent problems.

³⁰ Missouri v. Frye, No. 10-444

³¹ Koelema, Chief Justice Labels Court's Budget's Single Most Important Issue in 2014, p. 427.

³² Ibid., p. 426.

The resulting economic effect of today's plea-bargaining reality, and the legislatively enacted sentencing guidelines, is that "the late twentieth century's counterproductive revolution in the law of criminal procedure may be trimmed around the edges, but it will not be undone. And today there is little sign even of trimming around the edges."³³ Only through a drastic change in the federal criminal statutes by Congress, the legislative branch of government, can yet another economic disaster for the American taxpayer be averted.

Action by the Legislative Branch

Congress must enact changes to the federal criminal statutes, which will lead to a reduction in the prison population, its associated skyrocketing costs, and recidivism. Legislatures in several states have already successfully addressed many of the issues currently plaguing the federal prison system. It is possible to cut both crime rates and costly incarceration rates because over the past ten years, numerous states have done it including Maryland, Nevada, New Jersey, New York, North Carolina, South Carolina, and Texas.

In some states, legislative bodies are even tackling the issues associated with the privatization of their entire prison systems. In February 2012, the State of Florida's Senate voted to privatize the state's prison facilities in southern Florida, which would have created one of the largest private prison operations in the country. The vote was hotly contested with one side claiming that such a public-private partnership would result in significant savings for the taxpayers while the other side claimed that such a vote would reward private prison operators that donate to the Republican Party and lead to job losses. Even though the state was facing a \$2 billion budget deficit, the vote on the plan failed. State workers and unions mobilized claiming that this vote was the final battle to save state jobs.³⁴

Numerous experts in the field of corrections believe that federal criminal statutes need to be enacted or amended to effectuate change by developing a uniform risk assessment tool to assess the risk of recidivism to be utilized by corrections, probation and parole authorities, and the courts. All offenders could be classified into three categories: low, medium, or high-risk of recidivism.

³³ Stuntz, *The Collapse of American Criminal Justice*, p. 302.

³⁴ McWhirter & Campo-Flores, Florida to vote on privatizing prisons, *Wall Street Journal*.

With such a tool in place and at the disposal of court system personnel, pre-trial officers and caseworkers, fact-based placement recommendations could be made to the sentencing judge. The matrix of these recommendation options for low risk individuals could include sending the defendant to prison, diverting to some form of treatment facility, home confinement, or community supervision. Although home confinement is not normally viewed as a true form of punishment, under new legislation and the Federal Bureau of Prisons' regulations that would implement any such new laws, home confinement would have to be explained in such a way that it is viewed and treated as an alternative to the high cost of incarceration.

With adequate and novel legislation in place, the court system and its judges would be able to sentence individuals who entered pleas, or were found guilty after a trial, based upon a review of a standardized fact-based risk assessment of that individual. Armed with that information, the judge would be empowered by the federal criminal statutes enacted by Congress to divert low-risk, non-violent, low-repeat offenders to home detention, treatment facilities, or halfway houses. As discussed above, the economic savings to the nation's taxpayers, utilizing such novel legislation could be in the billions of dollars based upon the current rate of growth of the expanding prison industrial complex.

Confirming that new approaches in criminal legislation relating to incarceration save billions of dollars, the state of Texas, which still has the fourth highest incarceration rate in the country, has avoided \$2 billion in taxpayer costs by reducing the number of individuals that are required to be incarcerated after pleading guilty to, or being found guilty of, a crime.³⁵ Although the state legislature touts a tough stand on crime, it is also cognizant of the need to control the high cost of incarceration. The Texas lawmakers have balanced their crime controlling efforts by "aligning corrections spending to strengthen cost-effective community corrections programs that prevent re-offending, fostering the use of evidence-based supervision practices in all probation departments, and enacting targeted sentencing reforms."³⁶

³⁵ Council of State Governments Justice Center, *Justice Reinvestment in Texas: Assessing the impact of the 2007 Justice Reinvestment Initiative*, p. 2.

³⁶ Right on Crime.

In the state of New York, the Empire Center for New York State Policy recommended to the legislature that prison populations be consolidated. In its plan of action, it recommended that rather than keeping unneeded correctional facilities open and retaining their staffs, that the state should use alternatives to prison incarceration that reduce recidivism and operating costs.³⁷

Arizona was the first state to implement a performance-based probation funding in 2008. This incentive-based approach gives a participating share of the state's savings to the probation offices that generate said savings. A reduction in the number of individuals incarcerated translates into big savings for the taxpayers of Arizona. This plan gives the cost-saving generating probation office additional funds to utilize for drug and recidivism reduction programs and victim services.³⁸

To achieve the cost reductions generated by the probation offices in Arizona, these offices implemented evidence-based practices that reduced the rate of probation revocations. By looking at who had been previously revoked and examining the specific reasons for the revocations, the analysis showed that there were a lot of technical violators who missed scheduled meetings or who just did not conform to some of the minor rules and regulations of probation. Sending back to prison an individual on probation is costly and adds to the state's prison population. By restructuring the probation process to deal with minor infractions and missed appointments, less people had to return to prison. In Mohave County, Arizona alone, the cost savings were \$1.7 million.³⁹

During 2013, growing bipartisan support in Congress for cost cutting prison reform has acted as a catalyst for the introduction of numerous bills for amendments to existing legislation or new legislation. Some of these bills are the Federal Prison Reform Act of 2013, S.1783 and its counterpart H.R.2656; the Second Chance Reauthorization Act of 2013, S.1690 and its counterpart H.R.3465; the Justice Safety Valve Act, S.619 and H.R.1695; the Smarter Sentencing Act of 2013, S.1410; the Prisoner Incentive Act of 2013, H.R.2371; and S.1675.

³⁷ Empire Center for New York State Policy, *Blueprint for better budget: A plan for action for New York State*.

³⁸ Boehm, Probation Changes Could Solve Prison Dilemma: Shift funds to front end of system to save money, says expert, *Pennsylvania Independent*.

³⁹ Mohave county leads state with reduced probation revocations, *Arizona Rural Times*.

Although only eleven percent (11%) of the bills introduced in the House of Representatives make it past committee, and only three percent (3%) of said bills become enacted in law, the prison cost and population reduction issues addressed in bills such as H.R. 2656 and H.R. 2371 must be attended to, and expanded upon, if there is to be any hope of the urgently needed legislative change with regard to our nation's prison system.

Conclusion

The mass incarceration of America is operating "as a tightly networked system of laws, policies, customs, and institutions that operate collectively to ensure the subordinate status of a group defined largely by race."⁴⁰ Tragically, this truly American phenomenon is not just limited to black men. There are 2,500 juvenile offenders currently serving life sentences in prison without the possibility of parole. The United States is reprehensibly unique in that it is the only country in the world where children are sentenced to die in prison.⁴¹

The horrific result of our government's failure to curb the ever-expanding incarceration of Americans is that such mass incarcerations are today a fundamental fact just as slavery was the fundamental fact in the United States prior to President Lincoln's issuance of the Emancipation Proclamation in 1863. Large segments of our society are being afflicted with this rapidly spreading, and morally devastating, disease. For example, more than one half of all African-American men who did not finish high school go to prison at some time in their lives. There are now "more black men in the grip of the criminal-justice system - in prison, on probation, or on parole - than there were during slavery."⁴² "Today's mass incarceration defines the meaning of blackness in America: black people, especially black men, are criminals. That is what it means to be black."⁴³

⁴⁰ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

⁴¹ Krafo, *Here Are All The Countries Where children Are Sentenced To Die in Prison*, *Huffington Post*.

⁴² Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

⁴³ Gopnik, *The Caging of America*, *The New Yorker*.

The fact that incarceration costs are rapidly expanding, are unsustainable, and need to be reduced is quite clear. Both conservative and liberal members of Congress are jumping on the cost reduction bandwagon. Many legislators are advocating not only their historic tough on crime policies, but they are also now advocating being tough on crime spending by supporting more cost-effective approaches to public safety.⁴⁴

While the executive branch's Bureau of Prisons and the judicial branch's courts are attempting to deal with the existing laws effecting prisons and the country's growing incarceration crisis, the legislative branch must amend our nation's criminal statutes to permit the implementation by the executive branch of a more economically balanced approach to incarceration consistent with the rulings of the U.S. Supreme Court.

As gloomy a picture as the federal criminal justice system portrays, there are some success stories based upon the accomplishments of various cities and states that are aggressively addressing these incarceration issues. One such success story is that of the city of New York where a significant decrease in incarceration has occurred due to the cooperation and efforts of prosecutors, judges, and correction department officials. While the nation's inmate population has increased since 2001, New York City's has dropped 36 percent. This occurred even with an overall population increase in New York City of approximately one million during the same time period. This plaudable achievement has been credited to the city's use of community-based alternative programs designed to keep offenders out of jail and reduce the high rate of recidivism.⁴⁵ As is evidenced by New York City's fact-based results, positive changes can rapidly occur within the federal criminal justice system if government lawmakers intend to do so.

Immediate action by Congress to address the mass incarceration of America at the federal level is appropriately mandated.

⁴⁴ Ross, Smart on crime, *National Liberator*

⁴⁵ Shallwani, Fewer Inmates Counted, *Wall Street Journal*.

Bibliography

Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press.

Boehm, E. (2010, February 10). Probation Changes Could Solve Prison Dilemma: Shift funds to front end of system to save money, says expert. *Pennsylvania Independent*. Retrieved from <http://www.paindependent.com/research/detail/probation-changes-could-solve-prison-dilemma>

Center for Medicare and Medicaid Services. (2012). Retrieved from <http://www.cms.gov>

Council of State Governments Justice Center. (2009). Justice Reinvestment in Texas: Assessing the impact of the 2007 Justice Reinvestment Initiative. Retrieved from http://justicereinvestment.org/files/Texas_Bulletin.pdf

The Dragon's New Teeth. (2012, April 07). *The Economist*, 28-32.

Ducker, E. (2011). *A Plague of Prisons: The Epidemiology of Mass Incarceration in America*. New York: New Press.

Eckholm, E. (2013, December 5). Prosecutors Draw Fire for Sentences Called Harsh. *New York Times*.

Empire Center for New York State Policy. (2010). Blueprint for better budget: A plan for action for New York State. Retrieved <http://www.empirecenter.org/Documents/PDF/Blueprint-Final17.pdf>

FR Doc No: 2013-29076 Interim Rule Change: 18 U.S.C. § 3582: Compassionate Release (12.5.13)

Gopnik, A. (2012, January 30). The Caging of America. *The New Yorker*, 73.

Holder, E. (2013, August 12). Speech delivered to Annual Meeting of American Bar Association, San Francisco, CA.

Horowitz, M. (2013, December 11). Memorandum from Inspector General to the Attorney General and Deputy Attorney General: Top Management and Performance Challenges Facing the Department of Justice – 2013. U.S. Department of Justice. Retrieved from <http://www.justice.gov/oig/challenges/2013.htm>

Human Rights Watch. (2012, November 30). *The Answer is No: Too Little Compassionate Release in US Federal Prisons*. Retrieved from <http://www.hrw.org/sites/default/files/reports/us1112ForUploadSm.pdf>

Koелеmay, J. (2014). Chief Justice Labels Court's Budget's Single Most Important Issue in 2014. Bureau of National Affairs (vol. 94, no. 14). Retrieved from <http://pub.bna.com/lw/2013FedJudYearEndReport.pdf>

Krafo, S. (2013, September 20). Here Are All The Countries Where children Are Sentenced To

Die in Prison. Huffington Post. Retrieved from http://huffingtonpost.com/2013/02/20/juvenile-life-without-parole_n_3962983.html?view=print&comm_ref=false

Liptak, A. (2012, March 21). Justices ruling expands rights of accused in plea bargaining. *The New York Times*. Retrieved from <http://www.nytimes.com/2012/03/22/us/supreme-court-says-defendants-have-right-to-good-lawyers.html?pagewanted=all>

McWhirter, C., & Campo-Flores, A. (2012, February 04). Florida to vote on privatizing prisons. *Wall Street Journal*.

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966)

Missouri v. Frye, No. 10-444, (2012). U.S. Supreme Court.

Mohave county leads state with reduced probation revocations. (2010, February 2010). *Arizona Rural Times*. Retrieved from <http://azruraltimes.com/2010/02/17mohave-county-leads-state-with-reduced-probation-revocations>

Right on Crime. (2012). Retrieved from <http://http://www.rightoncrime.com/>

Ross, P. (2012, February-March). Smart on crime. *National Liberator*, 8.

Samuels, C. (2012, January 27). Memorandum for All Bureau Inmates. U.S. Department of Justice.

Samuels, C. (2013, December 9). Memorandum for All Bureau Inmates. U.S. Department of Justice.

Selway, W. & Newkirk, M. (2013, September 30). Full By Law. *Bloomberg Business Week*, 37.

Shallwani, P. (2013, December 27). Fewer Inmates Counted. *Wall Street Journal*.

Stuntz, W. (2011). *The Collapse of American Criminal Justice*. Cambridge, Massachusetts: The Belknap Press of Harvard University Press.

United Nations. (1948). *Universal Declaration of Human Rights*. New York: United Nations.

U.S. Government Accountability Office. (2012). *Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates (GAO-12-320)*. Washington, DC: U.S. Government Printing.

U.S. Government Accountability Office. (2013). *Opportunities Exist to Enhance the Transparency of Annual Budget Justifications (GAO-14-121)*. Washington, DC: U.S. Government Printing.

Zakaria, F. (2012, April 02). Incarceration Nation. *Time*, 18.