Assessing the Prison Problem in the United States

And How to Move Forward

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Section 1: Introduction

The United States is a world leader in a wide variety of capacities, ranging from University education, innovative health care, and political freedom. Yet, for all of its advantages, the United States has an internal problem that grows with every day: the prison problem. This thesis will first frame the issues associated with the prison system within the United States, address how the status quo is addressing these problems, and finally the thesis will present two policy proposals.

The first section of the thesis will address issue framing. The four main issues addressed are the uniquely high incarceration rate in the U.S., the budgeting problem associated with this burgeoning prison problem, prisoner classification, and inmate safety. This section of the thesis will address the history of each issue, the purported causes, and the various impacts associated with each issue.

The thesis will then move on to a section addressing the status quo's solutions. The two most topical solutions the status quo has proposed and implemented are the privatization of prisons and the statewide legalization of marijuana. This section will once again address the history of these solutions, while also addressing the solvency associated with each solution. Finally, this section will weigh the solvency of each solution to the four issues raised in the previous section.

Finally, the thesis will present two policy proposals. The first policy proposal is a nationwide legalization of marijuana, and the second policy proposal is to enact the Smarter Sentencing Act of 2013. This section will present the history and context of each of these policy

proposals, and weigh the solvency of each of them against the four issues raised in the issue framing section of the thesis.

Section 2: Issue Framing

Subsection 1: Incarceration Rate

The United States' incarceration rate is at a historically high level. Today, the facts are overwhelming. More than 2.2 million Americans are incarcerated currently, and more than two thirds of those released will be rearrested within three years, with half of those rearrested returning to incarceration.[1] The problem wasn't isolated to today, it has been developing for decades. According to the Bureau for Justice Statistics, "the number of adult federal and state prison inmates increased from 139 per 100,000 residents in 1980 to 502 per 100,000 in 2009 — an increase of 261 percent."[2] The problem is that since the 1990's crime has steadily decreased, but the incarceration rate has continued to rise.[3]

A global perspective reveals just how strong of an outlier the United States is when it comes to incarceration. China has nearly four times the population than the U.S., but currently only 1.6 million of its citizens are incarcerated, or 600,000 less prisoners than the U.S.[4] Additionally, with less than five percent of the world's population, the United States houses nearly a quarter of the world's prison population.[5] To understand how this clearly cyclical dilemma was established within one of the most advanced nations in the world, a brief history of the incarceration rate must be addressed.

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[1] Gudrais, Elizabeth. "The Prison Problem." Harvard Magazine. N.p., Mar. 2013. Web. 03 May 2015. <http://harvardmagazine.com/2013/03/the-prison-problem>

[2] Minton, Todd, and William Sabol. "Inmates Confined In Local Jails At Midyear, Average Daily Jail Population, And Incarceration Rate, 2000-2008."*Bureau of Justice Statistics*. N.p., 31 Mar. 2009. Web. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1535>

[3] Ibid.

[4] Liptak, Adam. "Inmate Count in U.S. Dwarfs Other Nations'." *The New York Times*. N.p., 23 Apr. 2008. Web. <file:///C:/Users/Austin/Downloads/americansinjail-nyt.pdf>

[5] Gudrais, Elizabeth. "The Prison Problem." Harvard Magazine. N.p., Mar. 2013. Web. 03 May 2015. <http://harvardmagazine.com/2013/03/the-prison-problem>

Heather Ann Thompson wrote in her journal article titled "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History" that the radicalization of the incarceration rate within the United States developed relatively recently, beginning in the 1970's. She writes:

> "Between 1970 and 2010 more people were incarcerated in the United States than were imprisoned in any other country, and at no other point in its past had the nation's economic, social, and political institutions become so bound up with the practice of punishment."[6]

Clearly, there was a far-reaching shift in public attitude towards crime beginning in the late 20th century that was without equivalency both internationally and historically. This paradigm shift has two possible independent variables that must be addressed.

The first of these independent variables that describes the drastic increase in incarceration is politically driven, specifically the development of a tough on crime mentality that received bipartisan support. In the early 1970's, the incarceration rate was one fifth what it was today.[7] According to Katherine Beckett and Theodore Sasson's book titled The Politics of Justice: Crime and Punishment in America, the increase of drug use and trafficking within the U.S. spurred public fear, which began to fuel political support for an increase in punishment.[8] Beckett and Sasson contend this increase in punishment came in the form of several policies aimed at locking away criminals. These policies included strict treatment of drug sentences with minimum

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[6] Thompson, Heather. "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History." The Journal of American History, 2010. Web. <http%3A%2F%2Fjah.oxfordjournals.org%2Fcontent%2F97%2F3%2F703.short>.

[7] Gudrais, Elizabeth. "The Prison Problem." Harvard Magazine. N.p., Mar. 2013. Web. 03 May 2015. <http://harvardmagazine.com/2013/03/the-prison-problem>

[8] Beckett, Katherine, and Theodore Sasson. *The Politics of Injustice: Crime and Punishment in America*. Thousand Oaks, CA: Pine Forge, 2000.

sentencing, longer sentences for violent and repeat offenders, and an increase in the application of life sentencing. For comparison, the United States currently has 41,000 inmates serving life sentences without parole, and England has only 41.[9]

A second independent variable that affects the incarceration rate is the availability of guns in the United States. Due to the constitutional protection afforded gun owners in the form of the Second Amendment, guns can be easily obtained in the United States. Using data from the National Incident Based Reporting System, Lisa Stolzenberg and Stewart D'Alessio regressed gun availability by state with violent crimes in the same states. The authors found that there was a positive correlation between high gun availability and high violent crime rates.[10] This suggests that the high levels of gun availability in this country is associated with the higher violent crime rates. This information paired with the increase in punishment for violent crimes offers a strong hypothesis for the drastic increase in incarceration from 1970 to the present.

Subsection 2: State Budgeting

While the first issue addressed a national problem, the second issue that will be addressed is a state by state issue. With the burgeoning prison population, states are finding it very difficult to first maintain the corrections budget and second to justify the weight of the prison cost on the budget. Today, most state prison populations are at historic highs. In 36 states the prison population has more than tripled since 1978.[11] According to the Census Bureau's Annual Survey

[9] Gudrais, Elizabeth. "The Prison Problem." Harvard Magazine. N.p., Mar. 2013. Web. 03 May 2015. <http://harvardmagazine.com/2013/03/the-prison-problem>

[10] Stolzenberg, Lisa, and Stewart D'Alessio. "Social Forces." *Gun Availability and Violent Crime: New Evidence from the National Incident-Based Reporting System*. Oxford Journals, 2000. Web. 03 May 2015. <http://sf.oxfordjournals.org/content/78/4/1461.short>

[11] Kyckelhahn,, Tracey. Rep. no. December 2012. Bureau of Justice Statistics, n.d. Web. <http://files.givewell.org/files/criminaljustice/BJS%20state%20correctional%20expenditures.pdf>.

of State Government Finances, "between 1982 and 2001 total state corrections expenditures increased each year, rising from $15 Billion to $53.5 Billion"[12] This presents two unique problems for states: first it creates a heavy burden upon its taxpayers, and second it forces states to prioritize prison maintenance over other areas within the budget.

The burden of the prison population is felt heavily by taxpayers. Among all 50 states, Shawn Fisher estimated the total cost of the prison problem on taxpayers at $77 Billion in his article titled "Mass Incarceration: The Further Compromise of Public Safety."[13] For a specific state's perspective, Fisher outlines the cost to taxpayers in Massachusetts alone at $517,569,158 annually. This is fundamentally counterintuitive to the purpose of incarcerating criminals in the first place. The government removes criminals from society to eradicate any burden they may impose on other members of the culture. However, forcing citizens to bear the burden of such an extreme cost to feed and house the very burden society aims to remove seems fallacious. Additionally, governments are finding it hard to justify these costs to their taxpayers. The costs may be justified if recidivism was decreased and the incarceration rate was in decline, but that isn't the case.

The second problem the high cost of prison maintenance presents states is budget reprioritization. For most states the maintenance of prisons is the third largest category within the budget behind education and health care. Recently, states are opting to increase their corrections budgets often at the expense of the education budget.[14] This is problematic for states for several reasons. By underinvesting in education, states are crippling their future prospects. Investing in

[12] Ibid.
[13] Fisher, Shawn. "Mass Incarceration: The Further Compromise of Public Safety." *Journal of Prisoners on Prison* 23.2 (2014): n. pag. Web. <http://www.jpp.org/documents/back%20issues/11%20JPP%2023-2%20Fisher.pdf>
[14] Ibid.

education boosts long term economic growth, and exacerbates the economic health of many low income neighborhoods. Two of the biggest risk factors for incarceration are the lack of education and poverty.[15] By investing in ballooning prison costs at the expense of education, states are only exacerbating the current incarceration problem by making a cyclical path to imprisonment for its citizens.

Subsection 3: Prisoner Classifications

While the first two issues addressed were external, the following two issues are internal to the prison system. Prisoner classification is the method of sorting criminals based upon the acts they have committed. The rationale behind the methodology is based upon three factors: internal security, external security, and inmate needs. The prison system places the highest priority on security, and subsequently classifies prisoners based upon inmate needs. Internal security references the likelihood of inmate misconduct or violence within the prison. Prisons can alter an inmate's type of housing, level of supervision, and mix of fellow inmates to reduce the threat of internal security. External security references the probability of escape, and prisons can transfer high risk inmates to facilities with perimeter hardening such as fences or gun towers. And finally, inmate needs references any medical or health requirements such as the necessity of chemotherapy.[16]

The issue with prison classification is that most prisons in the United States seek to classify prisoner based upon their crimes, but much research suggests this isn't the strongest

[15] Gudrais, Elizabeth. "The Prison Problem." Harvard Magazine. N.p., Mar. 2013. Web. 03 May 2015. <http://harvardmagazine.com/2013/03/the-prison-problem>

[16] Austin, James. "REDUCING PRISON VIOLENCE BY MORE EFFECTIVE INMATE MANAGEMENT: AN EXPERIMENTAL FIELD TEST OF THE PRISONER MANAGEMENT CLASSIFICATION (PMC) SYSTEM." *U.S. Department of Justice*(n.d.): n. pag. 1995. Web. <https://www.ncjrs.gov/pdffiles1/Digitization/146243NCJRS.pdf>

independent variable affecting prison violence. Ineffective prison classification can increase the danger for both inmates and employees of the prison, and the issue is one that must be addressed. Jon Sorenson, in his article titled "Conviction Offense and Prison Violence: A Comparative Study of Murderers and Other Offenders" conducted a survey of 231 inmates in a medium security prison, and found that inmates who had committed violent offenses weren't any more likely to commit violence within a prison than an inmate with a nonviolent crime. Additionally, Sorenson conducted a review of inmate data from three state prisons in the 1980's and determined that the offense for which the inmate was incarcerated for "was not significantly related to the likelihood of misconduct."[17]

For Sorenson, age was the most statistically significant independent variable upon violence in prisons. His research demonstrated that for each yearly increase in an inmate's age, there was associated a five percent decrease in the incidence of violent crime within the prison. He concluded as inmates grow older, they grow less aggressive at a linear rate.[18] Additionally, a study conducted by Gerald Gaes and William McGuire confirms Sorenson's hypothesis. Gaes and McGuire studied the impact both age and density of population had on violence rates within prison. They found that, "with older prison populations, as density increased, the infraction rates decreased; in the unit housing younger offenders, a small increase in density was associated with a large increase in infractions."[19] Clearly there is a high correlation between age and violence in prisons. Yet, according to the U.S. Department of Justice National Institute of Corrections

[17] Sorensen, J., and M. D. Cunningham. "Conviction Offense and Prison Violence: A Comparative Study of Murderers and Other Offenders." *Crime & Delinquency* 56.1 (2009): 103-25. Web. <http://cad.sagepub.com/content/56/1/103.full.pdf>
[18] Ibid.
[19] Gaes, G. G., and W. J. Mcguire. "Prison Violence: The Contribution of Crowding Versus Other Determinants of Prison Assault Rates." Journal of Research in Crime and Delinquency 22.1 (1985): 41-65. Web. <http://jrc.sagepub.com/content/22/1/41.full.pdf+html>

(DJNIC), age is one of the least determining factors behind prisoner classification. In a case study of four state's classification systems, the DJNIC concluded that the severity of the conviction was the strongest determining factor, followed by history of violence and escape.[20]

This information paired with Sorenson's research suggests the prison system isn't classifying its prisoners correctly. While intuitively it makes sense to separate violent crime offenders from each other, Sorenson's research suggests there is a disconnect from life outside the walls and life inside the walls of a prison. Prisons are tasked with regulating the life prisoners live within the walls, and should therefore classify its prisoners based upon the strongest determining factors of violence. The final issue this thesis framed may demonstrate the impact of such policy.

Subsection 4: Prisoner Safety

While prison isn't intended to be a pleasant living situation, there are limits to the strife everyday prisoners undergo. Prison is meant to restrict liberty, to strip freedom in response for an act against society. Therefore prisoners have less rights than ordinary citizens. However, they don't lose all of their rights, and they at all times retain their humanity. Acts of violence within prisons, either physical or sexual, should be condemned and hindered at all possible by prison administration. Most acts are inevitable and unpreventable, but in no circumstances should a prison foster or enable the ability of one inmate to strip the humanity from another. Therefore, prisoner safety should be a high priority of the prison administration.

[20] Thigpen, Morris, Larry Soloman, Susan Hunter, and Madeline Ortiz. "Prisoner Intake Systems: Assessing Needs and Classifying Prisoners."*National Institute of Corrections* (2004): n. pag. Web. <http://static.nicic.gov/Library/019033.pdf>

In the book Prison Violence: The Dynamics of Conflict Fear and Power written by Kimmett Edgar, Ian O'Donnell, and Carol Martin, the authors conducted two studies. The first, called a "victimization study" was to determine the prevalence of violence within prisons, and the second "the conflicts study" sought to detail the methods prisoners utilized to deal with prison assault. The authors concluded from the victimization study that violence isn't only high in prison, its routine and expected. In fact it's become a part of the social structure.[21] There are several studies that confirm this troubling fact. One conducted by Nancy Wolff and Cynthia Blitz attempted to quantify the rate of violence, however they admitted the actual rate of violence was likely much higher than the visible rate of violence. For Wolff and Blitz, violence for men and women in prison was relatively the same, occurring at a rate of 346 per 1000 inmates.[22] The fact that one in every three inmate should expect to be assaulted is striking, seeing as the threat of violence is ubiquitous at all times.

The classification system addressed earlier may be one explanation for the prevalence of violence within prison systems. However, there are likely multiple factors at play. Edgar, O'Donnell, and Martin's second study, the conflicts study, attempted to answer why the threat of violence is so prevalent within prisons. The authors revealed the importance of a power structure built with "the currency of fear" within prisons. Often, these power structures form along racial lines.

[21] Edgar, Kimmett, Ian O'Donnell, and Carol Martin. *Prison Violence: The Dynamics of Conflict, Fear and Power*. Cullompton, UK: Willan, 2003. Print.
[22] Wolff, N., C. L. Blitz, J. Shi, J. Siegel, and R. Bachman. "Physical Violence Inside Prisons: Rates of Victimization." *Criminal Justice and Behavior* 34.5 (2007): 588-99. Web. <http://cjb.sagepub.com/content/early/2007/04/04/0093854806296830.abstract>

The formation of prison "gangs" is quite common in prison, and the five major gangs that appear throughout prisons in the United States are structured along racial lines.[23] Mark Flesher and Scott Decker detail the influence and power of prison gangs in their article titled, "An Overview of the Challenge of Prison Gangs." They argue that it is these racially segregated gangs which are responsible for much of the drug trafficking and violence within prisons. The gang leader within the prison directs members of the gang to inflict fear upon others in order to remain dominant within the institution.[24] The authors cite importation theory, that prisoners bring philosophies they experiences outside the prison to structure their lives within. Prison gangs present a direct challenge to prisoner safety.

While prison assault is a major issue, one of the biggest and most life threatening forms of assault is often the least reported: prison rape the spread of HIV. In fact, James Robertson calls this issue the most ignored public health crisis in America in his article "Rape among Incarcerated Men."[25] According to his article, 7-12% of responding male inmates had been raped at least 9 times during their time in prison. This doesn't account for unreported rapes as well. The Bureau of Justice Statistics estimates nearly 70,000 cases of rape occur every single year within prison, a percentage much higher than outside of prison.[26]

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[23] Gaes, G. G., and W. J. Mcguire. "Prison Violence: The Contribution of Crowding Versus Other Determinants of Prison Assault Rates." Journal of Research in Crime and Delinquency 22.1 (1985): 41-65. Web. <http://jrc.sagepub.com/content/22/1/41.full.pdf+html>

[24] Fleisher, Mark, and Scott Decker. "An Overview of the Challenge of Prison Gangs." *Corrections Management Quarterly* 5.1 (2001): 1-9. Web. <http://www.d.umn.edu/~jmaahs/Correctional%20Continuum/Online%20Readings/prison%20gangs_decker.pdf>

[25] James E. Robertson. AIDS Patient Care and STDs. August 2003, 17(8): 423-430. <http://online.liebertpub.com/doi/abs/10.1089/108729103322277448>

[26] Fellner, Jamie. "US: Federal Statistics Show Widespread Prison Rape." Human Rights Watch, 16 Dec. 2007. Web. 03 May 2015. <http://www.hrw.org/news/2007/12/15/us-federal-statistics-show-widespread-prison-rape>

This is both a human rights issue and a health issue. Inmates don't deserve to live in fear of sexual assault, but even more terrifying is the potential for the rampant spread of HIV. According to a press release by the Bureau of Justice Statistics, HIV prevalence in prison from 2001-2010 dropped from 194 per 10,000 to 146 per 10,000.[27] While this is good news, the problem clearly exists, and it is extremely difficult to document and track. This issue isn't isolated internally within prisons as well. Hundreds of thousands of prisoners are eventually released from prison. If they were raped, and unknowingly contracted HIV, they could spread what was a prison problem to the general public. Therefore, the incidence of rape in prisons allows these institutions to become nesting grounds for the spread of HIV around the United States.[28]

[27] McCarthy, Kara. "RATES OF HIV/AIDS AND AIDS-RELATED DEATHS IN PRISON CONTINUE TO DECLINE." Bureau of Justice Statistics, 13 Sept. 2013. Web. 03 May 2015. <http://www.bjs.gov/content/pub/press/hivp10pr.cfm>

[28] Vetstein, Richard. *Rape and AIDS in Prison: On a Collision Course to a New Death Penalty*. N.p.: n.p., 1996. Web. <http://heinonline.org/HOL/LandingPage?handle=hein.journals/sufflr30&div=60&id=&page=>

Section 3: Efficacy of Status Quo Solutions

Subsection 1: Privatizing Prisons

The privatization of prisons in the United States began out of necessity. The bourgeoning of the prison population began in the 1970's and soon federal and state prisons were beginning to fill. Starting in the 1980's under Presidents Reagan and Bush Sr., the federal government began to contract its prison population to private facilities. This policy accelerated in the 1990's under Bill Clinton due to pressures to shrink the federal deficit.[29] Today, the policy has taken hold. Eighteen corporations house 27,000 prisoners in 27 states.[30] However two companies, Correctional Corporation of America and Wackenhut, control 75% of the private prison population.[31]

While the privatization of prisons may seem like an apparent money saving method to address the prison problem, there are many problems that are created from the policy for little benefit. The theory is that private prisons will garner gains through better efficiencies.[32] Yet, a 1996 report by the U.S. General Accounting Office suggested the illusory nature of these claims. The GAO conducted four studies seeking to answer whether private prisons were more efficient than public prisons. The results in two of the studies showed no statistical difference in efficiency, the third study showed a 5% increase in efficiency for private, and the fourth showed

[29] Palaez, Vicky. "The Prison Industry in the United States: Big Business or a New Form of Slavery?" Global Research (n.d.): n. pag. Web. 10 Mar. 2008. <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slave
[30] Ibid.
[31] Logan, Charles H. *Private Prisons: Cons and Pros*. New York: Oxford UP, 1990. Print.
[32] Mason, Cody. "Too Good to Be True Private Prisons in America." The Sentencing Project (2012): n. pag. Web. <http://sentencingproject.org/doc/publications/inc_Too_Good_to_be_True.pdf>

that the cost of one private facility was the same as two public facilities.[33] While the third and fourth studies showed promise in the efficiency of private prisons, the first two studies shed doubt. This is an issue because the GAO research showed that many private prisons offer even less adequate services than public prisons, and for minimal to no efficiency gain.[34]

Private prisons have less adequate services than public prisons because they seek to make a profit, and cut corners to do so.[35] According to Russell Boraas, a private prison administrator in Virginia, "the secret to low operating costs is having a minimal number of guards for the maximum number of prisoners." While this may save money, it comes at the expense of the prisoners. Food quality is at its lowest in private prisons compared to public prisons, because this is an area that can easily be manipulated by the corporations.[36] Other areas of note that have been marginalized by the need of private corporations to cut costs are staff, training, and programs.[37]

Finally, one of the biggest problems with privatized prisons is one that isn't often seen: lobbying efforts. Private prisons rely on large prison populations in order to maintain the efficiency they need to return profits. While this may not seem like a problem with the large incarceration rate in the United States, private corporations ensure the incarceration rate remains high through lobbying for tough on crime legislation.[38] Therefore, while private prisons were seen as a solution to the problem, they may in fact be exacerbating the problem.

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[33] McCullom, Bill. *PRIVATE AND PUBLIC PRISONS Studies Comparing Operational Costs And/or Quality of Service*. Rep. no. B-261797. GAO, Aug. 1996. Web. <http://www.gao.gov/archive/1996/gg96158.pdf>
[34] Mason, Cody. "Too Good to Be True Private Prisons in America." The Sentencing Project (2012): n. pag. Web. <http://sentencingproject.org/doc/publications/inc_Too_Good_to_be_True.pdf>
[35] Palaez, Vicky. "The Prison Industry in the United States: Big Business or a New Form of Slavery?" Global Research (n.d.): n. pag. Web. 10 Mar. 2008. <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slave
[36] Ibid.
[37] Mason, Cody. "Too Good to Be True: Private Prisons in America." *Sentencing Project* (2012): n. pag. Web. <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=262862>
[38] Ibid.

Private prisons may alleviate the budget problem for states and the federal government, but they don't assist with the other three issues framed in this thesis. Their lobbying efforts only aim to increase or stabilize the incarceration rate in the United States. Secondly, their reliance on large prison populations insures high density within its populations. The aforementioned Gerald Gaes and William McGuire article concludes that high density leads to high assault rates. This ensures that private prisons don't address the issues of prisoner classification and inmate safety. Clearly, the status quo still requires reform.

Subsection 2: Legalization of Marijuana

Even 10 years ago it was widely thought that legalizing marijuana would lead to an increase in crime, and therefore an increase in the prison population. However, the status quo has given researchers data to address this theory when Colorado recently legalized recreational marijuana. Antagonists to the policy assumed that crime would increase as a result of this policy, however recent data and studies show otherwise. According to data from the Denver Police Department, violent crime (including homicide, sexual assault, robbery, and aggravated assault) fell by 6.9% in the first quarter of 2014, compared with the same period in 2013. Property crime (including burglary, larceny, auto theft, theft from motor vehicle and arson) dropped by 11.1%.[39] Yet, this may still be a coincidence and these numbers require further examination.

A study performed by Robert Morris, Michael Tenyeck, and J.C. Barnes regressed legalized medical marijuana rates with state crime rates collected by the FBI in the same areas.

[39]CRIME IN THE CITY AND COUNTY OF DENVER BASED ON UCR STANDARDS. Apr. 2010. Raw data. Denver. < http://www.denvergov.org/Portals/720/documents/statistics/2014/UCR_Citywide_Reported%20_Offenses_2014.pdf

Their findings suggested that legalizing marijuana, at least for medical purposes, wasn't associated with an exacerbating effect on crime. In fact, the study found a correlation between the legalization of marijuana for medical purposes and a decrease in crime.[40] The researchers concluded:

> "The central finding gleaned from the present study was that MML (medical marijuana legalization) is not predictive of higher crime rates and may be related to reductions in rates of homicide and assault. Interestingly, robbery and burglary rates were unaffected by medicinal marijuana legislation, which runs counter to the claim that dispensaries and grow houses lead to an increase in victimization due to the opportunity structures linked to the amount of drugs and cash that are present."

The reasoning behind these findings is due to the correlation between alcohol and marijuana use. It has long been attested that increased availability to marijuana will decrease alcohol consumption, and therefore decrease violent crime.[41]

The public is becoming increasingly more accepting of the drug, as a recent gallop pole revealed that for the first time a majority of Americans favored the legalization of marijuana.[42] If this research is true, the legalization of marijuana effort by the status quo in areas such as Colorado and Washington D.C. would have a positive effect on the prison problem. The effect of

[40] Morris RG, TenEyck M, Barnes JC, Kovandzic TV (2014) The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006 < http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0092816>
[41] Miron, Jeffrey. The Budgetary Implications of Marijuana Prohibition. Rep. N.p., June 2005. Web. <http://www.cannabis-commerce.com/library/Miron_Report_2005.pdf>
[42] Ibid.

a nationwide policy that would legalize recreational marijuana is addressed in the policy proposal section.

Section 4: Policy Proposals

Subsection 1: Nationwide Recreational Marijuana Legalization

While a nationwide policy for the legalization of marijuana is controversial, the research is available to suggest it would alleviate many of the issues framed in this thesis. The first issue that this policy would address is the budget implications of prohibition. Prohibition entails direct enforcement costs, correction costs, court costs, and prevents the taxation of the highly lucrative product.

According to a study by Jeffrey Miron, a professor at Harvard University, state and local enforcement operations spend $1.71 billion in police costs to arrest for marijuana possession in 2000. Secondly, the Miron report outlines that judiciary costs to states and localities totaled $2.94 billion for prosecuting marijuana possession. Finally, the Miron report outlines that states and localities spent $484 million to house these prisoners in corrections.[43] According to this report, simply legalizing marijuana would save the states' criminal justice system roughly $5 billion annually. Miron also outlines the budgetary effect this policy would have on the federal government. According to his research, total federal expenditures for marijuana enforcement totaled $2.4 billion in 2003.[44] Therefore, a marijuana legalization policy would save the entire criminal justice system of the United States roughly $7.4 billion annually in enforcement costs. This doesn't even address the revenue that could be claimed by taxing the product.

[43] Miron, Jeffrey. The Budgetary Implications of Marijuana Prohibition. Rep. N.p., June 2005. Web. <http://www.cannabis-commerce.com/library/Miron_Report_2005.pdf>
[44] Ibid.

To estimate the total tax revenue available after legalizing marijuana, the Miron report calculated three items: current expenditure on marijuana nationally, expenditures likely to occur after legalization, and finally estimates the tax revenue associated with the estimated expenditures. The Office of National Drug Control Policy estimates that in 2000 U.S. residents spent $10.5 billion on marijuana.[45] Using statistics from the Netherland's marijuana expenditure statistics (where the drug is legalized), the Miron report concluded that under legalization the total expenditures for marijuana nationwide would decrease to $7.9 billion.

Finally, Miron applied a modest sin tax that would raise the price of marijuana by 50%, and concluded that total tax revenue from a nationwide marijuana legalization policy would be $6.2 billion per year.[46] Coupling this with the estimate of total savings, the nation would be reducing their budgets by $13.6 billion per year. This money could be reallocated to the federal corrections system. For example, it could be used to upgrade or create new facilities or, establish prisoner programs to reduce recidivism. In this way, the effect a marijuana sin tax would have upon the criminal justice system would be exponential. This clearly addresses the issue of budgetary problems associated with the prison system. Yet, the legalization of marijuana would also decrease the incarceration rate and prison population significantly as well.

According to the US Department of Justice, 12.7% of state inmates and 12.4% of federal inmates housed in prisons are serving time for marijuana charges. Legalizing the drug would alleviate this burden upon the prison system, and reduce the prison population from roughly 1.5

[45] Rhodes, William. Rep. N.p., 2012. Web. <https://www.whitehouse.gov/sites/default/files/page/files/wausid_report_final_1.pdf>.
[46] Miron, Jeffrey. The Budgetary Implications of Marijuana Prohibition. Rep. N.p., June 2005. Web. <http://www.cannabis-commerce.com/library/Miron_Report_2005.pdf>

million to 700,000.[47] This would decrease prison density, therefore decreasing prison violence. Additionally, it would allow the justice system to focus on more violent and more serious crimes. Crimes with victims other than the perpetrator.

Subsection 2: Enact Smarter Sentencing Act of 2013

The second policy proposal is a more comprehensive approach to reducing the prison population than the first proposal. The Smarter Sentencing Act of 2013 is a piece of legislation proposed in the Senate by Minority Whip Dick Durbin, but has been delayed and rejected by the Republican tough on crime majority. This bill seeks to reduce the prison population and the accompanying cost of the prison population by enacting three reforms:

1. Make the Fair Sentencing Act of 2010 Retroactive
2. Reduce the five, 10, and 20-year mandatory minimum sentences for certain federal drug crimes to two, five, and 10-year terms
3. Expand the existing "safety valve" exception for federal drug offenses

However, this bill would only apply to federal crimes. Hopefully, with the passage of this law, the policies within will diffuse to state level legislatures as well.

The first reform the Smarter Sentencing Act of 2013 would introduce is retroactively applying the Fair Sentencing Act of 2010. This act deals with cocaine weights that trigger specific sentences. Mandatory minimum sentences for cocaine exploded in 1986 when Congress

[47] Pierre, Allen. "Decriminalizing Pot Will Reduce Prison Population, Have No Adverse Impact On Public Safety, Study Says." *Decriminalizing Pot Will Reduce Prison Population, Have No Adverse Impact On Public Safety, Study Says*. U.S. Department of Justice, 21 Nov. 2007. Web. 03 May 2015. <http://norml.org/news/2007/11/21/decriminalizing-pot-will-reduce-prison-population-have-no-adverse-impact-on-public-safety-study-says>

passed the Anti-Drug Abuse Act, which delineated penalties for drugs and amounts of drugs.[48] This act created mandatory minimum sentences, which are sentencing floors which judges must abide by, ultimately mitigating the judge's discretion upon the case. Specifically for cocaine, this law enacted separate penalties for crack and powder cocaine. Despite little to no chemical differences, crack cocaine was sentenced 100 to 1 times harsher than powder cocaine.[49] As a result of the harsher penalties for crack cocaine, thousands of defendants (an overwhelming majority of which were African-American) were sentenced to minimum sentences of 20 years to life.[50]

Insert the Fair Sentencing Act of 2010. This law aimed at creating balance between the sentencing for crack, which was extremely harsh, and the sentencing for powder cocaine. Under the old law, 5 grams of crack led to a minimum of 5 years in prison, and 50 grams led to 10 years minimum. After the Fair Sentencing Act of 2010, these limits increased to 28 grams for 5 years and 280 grams for 10 years. At the time of passage, there were nearly 30,000 federal inmates (83% of which are African-American) serving sentences for crack cocaine, or nearly 15% of the federal prison population.[51] Unfortunately, the FSA didn't include a retroactive clause, and the legislation didn't help them in any way.

Passage of the Smart Sentencing Act of 2013 would retroactively apply the FSA of 2010 to these 30,000 inmates. This would result in the reduction of 15,915 months in prison, and a

[48] 21 U.S.C.A. § 841(b)(1)(C) (West 2009) (current version at 21 U.S.C.A. § 841(b)(1)(C) (West 2010)).
[49] Kimbrough, 552 U.S. at 97; United States v. Doe, 2013
[50] Dan Weikel, War on Crack Targets Minorities Over Whites, L.A. TIMES, May 21, 1995, http://articles.latimes.com/1995-05-21/news/mn-4468_1_crack-cocaine
[51] Lazarus, Jeff. "Making the Fair Sentencing Act Retroactive: Just Think of the Savings." *Cleveland State Law Review* (2013): n. pag. Web. <http://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2703&context=clevstlrev

savings for the federal government of $38 million.[52] This would reduce density, help the federal budget, and reduce the disproportionate punishment placed upon African Americans due to harsher penalties for crack cocaine than powder cocaine. This enactment makes sense, and was the original intent of the FSA of 2010 in the first place.

The second provision of the SSA of 2013 is to reduce the five, 10, and 20-year mandatory minimum sentences for certain federal drug crimes to two, five, and 10-year terms. This movement has gained ground from the federal government recently, as Attorney General Eric Holder asked the U.S. Sentencing Commission (USSC) to avoid activating minimum sentences when charging low drug crimes.[53]

Unfortunately, the former Attorney General's actions aren't binding upon the USSC, and a law like the SSA of 2013 would be required to ensure this policy was activated. This reform would transform the possession of 10 grams of some drugs with a prior felony conviction from a minimum of 20 years in federal prison to a minimum of 10.[54] This provision is significant because it reprioritizes the government's punishment from the low level offenders to a priority to punish the higher level offenders such as dealers. Judge William Witkins, appointed by President Reagan and served as the first chair of the USSC, said the following about this unintended consequence:

> "There are few Federal judges engaged in criminal sentencing who have not had the disheartening experience of seeing major players in crimes before them immunize

[52] Ibid.
[53] Riddel, Kelley. "Holder Bypasses U.S. Sentencing Commission in Mandatory Minimums, Angers U.S. Attorneys." N.p., n.d. Web. <http://www.washingtontimes.com/news/2014/apr/10/holder-bypasses-us-sentencing-commission-mandatory/>
[54] Ibid.

themselves from the mandatory minimum sentences by blowing the whistle on their minions, while the low-level offenders find themselves sentenced to the mandatory minimum prison term so skillfully avoided by the kingpins."[55]

Hopefully this provision of the bill will shift the punishment from the lower level criminals to the higher level ones.

The final provision of the SSA of 2013 is to expand the existing "safety valve" exception for federal drug offenses. The "safety valve" is a policy that allows federal judges to sentence below the mandatory minimum sentences for defendants that meet the following criteria:

1. The person has one criminal history point under the sentencing guidelines

AND

2. All of the following are true about the person:
    a. (S)he "came clean" and confessed her involvement in the crime to the prosecutor
    b. (S)he did not possess a gun or weapon
    c. (S)he used no violence or threats of violence
    d. (S)he was not a leader, organizer, manager, or supervisor, and
    e. No death or serious bodily injury resulted from crime.[56]

[55] Johnson, Carrie. "Judge Regrets Harsh Human Toll Of Mandatory Minimum Sentences." *NPR*. NPR, 16 Dec. 2014. Web. 03 May 2015. <http://www.npr.org/2014/12/16/370991710/judge-regrets-harsh-human-toll-of-mandatory-minimum-sentences>
[56] 18 U.S.C. § 3553(f)

The SSA of 2013 would expand this provision to include an OR clause beneath the first criteria that reads: The person has two criminal history points under the sentencing guidelines AND has not been convicted of a crime of violence, a firearm offense, a sex offense, a federal terrorism offense, racketeering, or investing drug proceeds. This provision gives judges more discretion, and allows them broader applicability of the safety valve. In fact, it would apply to 820 additional cases per year.[57]

The overall impact of this comprehensive policy is significant. A conservative estimate of the total impact this bill would have on the federal justice system would be a savings of at least $2.7 billion, and a reduction in 262,000 bed years over 10 years.[58] This policy would address the issues framed in this thesis by reducing the density within prison, and reducing the budget impacts upon the federal government. Hopefully, if this policy is enacted the policies will be diffused to the state level as well, and even more savings will be realized.

[57] Statement of Judge Patti Saris, Chair, U.S. Sentencing Comm'n, submitted to the U.S. Senate Judiciary Committee for the Hearing on "Reevaluating the Effectiveness of Mandatory Minimum Sentences," Sept. 18, 2013, at 10 available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20130918_SJC_Mandatory_Minimums.pdf.

[58] 1 Julie Samuels, Nancy LaVigne & Samuel Taxy, STEMMING THE TIDE: STRATEGIES TO REDUCE THE GROWTH AND CUT THE COST OF THE FEDERAL PRISON SYSTEM App. A (The Urban Institute 2013), available at http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf

Section 5: Conclusion

The prison problem in the United States is unique within the United States, and is burgeoning with each day. The incarceration rate is increasing even though the crime rate isn't decreasing, and this has significant impacts upon state and federal budgets. Consequently, states have cut crucial areas of their budgets, such as education, which only cyclically exacerbate the original problem. Additionally, prisons are finding it tough to reduce violence within prisons, and the classification system may be one explanation for the prevalence of violence within prisons.

Yet, the status quo is attempting to address these issues through some policies. The first of these policies is the privatization of prisons. The theory behind this policy is increased efficiency and reduced costs. However the efficiency is suspect, and comes at the expense of vital services for inmates. The second of these policies is the statewide legalization of marijuana, which unlike the privatization of prisoners does address many of the issues raised by this thesis. By reducing the prison population, cutting costs, and raising tax revenue, this policy helps state governments immensely.

Finally, the thesis presented two policy proposals, with the first of these proposals addressing a nationwide legalization of marijuana. The research indicates a massive decrease in the prison problem would result from this policy. Along with saving states and the federal government billions in corrections costs, the policy would raise billions in tax revenue. It would also signal a shift in penalizing crimes with tangible victims other than the perpetrator themselves. The second policy proposal is the enactment of the Smarter Sentencing Act of 2013,

which has three provisions. These are to make the Fair Sentencing Act of 2010 retroactive reduce the five, 10, and 20-year mandatory minimum sentences for certain federal drug crimes to two, five, and 10-year terms, and finally to expand the existing “safety valve” exception for federal drug offenses. Hopefully, if these policy proposals are implemented the United States can begin to move beyond its prison problem.