

Social Science at Sentencing: An Annotated Bibliography

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May 2015

Recent research in criminology and other related social and behavioral sciences provides empirical evidence relevant to the purposes of sentencing and the court’s obligation to consider “the nature and circumstances of the offense and the history and characteristics” of your client when imposing a sentence. This publication identifies resources that may be helpful in plea negotiations and sentencing advocacy. Providing the court with social science and statistical data strengthens your arguments and helps undercut incorrect assumptions about (a) the sentencing guidelines; (b) how to best satisfy the purposes of sentencing, and (c) the relevance and significance of individual characteristics. We hope to update this publication on a regular basis as new relevant research becomes available. If you come across a relevant resource, please let us know so we can add it and share it with the rest of the Defender community.¹

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¹ If you have a resource to add to this list, please send us an email with the cite, a brief explanation of the relevance of the research to sentencing advocacy, and, if possible, a link or copy of the resource. You can reach us at Denise_Barrett@fd.org or Laura_Mate@fd.org. We are grateful for your assistance with this project.

I. Deterrence

A. General Deterrence

1. "The certainty of being caught is a vastly more powerful deterrent than the punishment." National Institute of Justice, *Five Things About Deterrence* (Sept. 2014), <http://www.nij.gov/five-things/pages/deterrence.aspx>. Flyer available here: <https://ncjrs.gov/pdffiles1/nij/247350.pdf>.
2. "Sending an offender to prison isn't a very effective way to deter crime. Prisons are good for punishing criminals and keeping them off the street, but prison sentences are unlikely to deter future crimes. Prisons actually may have the opposite effect." *Id.*
3. "[T]here is little evidence that increases in the length of already long prison sentence yield general deterrent effects that are sufficiently large to justify their social and economic costs." Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 *Crime & Just.* 199, 201 (2013).
4. "[L]engthy prison sentences cannot be justified on a deterrence-based, crime prevention basis." *Id.* at 202.
5. "[E]vidence in support of the deterrent effect of various measures of the certainty of punishment is far more convincing and consistent than for the severity of punishment. . . . The evidence in support of certainty's deterrent effect pertains almost exclusively to apprehension probability. Consequently, the conclusion that certainty, not severity, is the more effective deterrent is more precisely stated as *certainty of apprehension* and not the severity of the legal consequence ensuing from apprehension is the more effective deterrent. . . . Thus, this revised conclusion about the deterrent effect of punishment certainly should not be construed as implying that policies mandating severe legal consequences have been demonstrated to achieve deterrent effects." *Id.* at 201-202.
6. "[T]here is generally no significant association between perceptions of punishment levels and the actual levels of punishment that the criminal justice system achieves. This in turn implies that increases in punishment levels do not routinely reduce crime through general deterrence mechanisms, because the fundamental link between actual punishment levels and perceptions of punishment levels appears to be weak to nonexistent. . . . There may be some baseline level of deterrent effect generated by punishment-generating activities of the criminal justice system, but this level is apparently one that does not consistently increase with punishment levels or diminish with decreased punishment levels." Gary Kleck & J.C. Barnes, *Deterrence and Macro-Level Perceptions of Punishment Risks: Is There a "Collective Wisdom"?*, 59 *Crime & Delinq.* 1006, 1031-33 (2013).
7. "Empirical studies have shown that longer sentences have minimal or no benefit on whether offenders or potential offenders commit crimes. The National Academy of Sciences (NAS) concluded that 'insufficient evidence exists to justify predicating policy choices on the general assumption that harsher punishments yield measurable deterrent effects.' NAS pointed out that all leading surveys of the deterrence research have reached the same conclusion: that 'potential offenders may not accurately perceive, and may vastly underestimate, those risks and punishments' associated with committing a crime. Some researchers suggest that incarceration has even less of a deterrent effect for violent crimes. Unlike property crimes, which offer a financial incentive and can replace or supplement legal income, violent crimes are often crimes of passion, not premeditated. Therefore,

severe terms of incarceration may not affect an offender’s immediate decision to engage in criminal behavior.” Brennan Center for Justice, *What Caused the Crime Decline?* 26 (Feb. 2015), <https://www.brennancenter.org/publication/what-caused-crime-decline>.

B. Specific Deterrence

- “[T]here is little evidence of a specific deterrent effect arising from the experience of imprisonment compared with the experience of noncustodial sanctions such as probation. Instead, the evidence suggests that reoffending is either unaffected or increased.” Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 *Crime & Just.* 199, 201 (2013).

II. Incapacitation

- A. “For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. . . . Drug policy research has . . . shown consistently that arrested dealers are quickly replaced by new recruits. . . . Arrests and imprisonments of easily replaceable offenders create illicit ‘opportunities’ for others.” National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 146 (Jeremy Travis et al. eds., 2014), http://nap.edu/catalog.php?record_id=18613. See also *id.* at 88 (“Most drug policy analysts agree that . . . imprisoning individual drug dealers seldom reduces the availability of drugs or the number of traffickers.”).
- B. “Unlike repeat violent offenders, whose incapacitation may protect the public from additional crimes by the offender, criminologists and law enforcement officials testifying before the Commission have noted that retail-level drug traffickers are readily replaced by new drug sellers so long as the demand for a drug remains high. Incapacitating a low-level drug seller prevents little, if any, drug selling; the crime is simply committed by someone else.” USSC, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* 131 (2004).

III. Increased Rates of Incarceration and the Crime Decline

- A. “Incarceration has been declining in effectiveness as a crime control tactic since before 1980. Since 2000, the effect of increasing incarceration on the crime rate has been essentially zero. Increased incarceration accounted for approximately 6 percent of the reduction in property crime in the 1990s (this could vary statistically from 0 to 12 percent), and accounted for *less than 1 percent* of the decline in property crime this century. Increased incarceration has had no effect on the drop in violent crime in the past 24 years. In fact, large states such as California, Michigan, New Jersey, New York, and Texas have all reduced their prison populations while crime has continued to fall.” Brennan Center for Justice, *What Caused the Crime Decline?* 15 (Feb. 2015), <https://www.brennancenter.org/publication/what-caused-crime-decline>.
- B. “[I]ncreased incarceration had some effect on reducing crime since 1990 – however, far lower than previously thought and becoming almost zero in the 2000s. Other factors that played a role in the crime decline were increased numbers of police officers, deploying data-driven policing techniques such as CompStat, changes in income, decreased alcohol consumption, and an aging population. A review of past research indicated that consumer confidence and inflation also played a role.” *Id.* at 10.

- C. “[C]rime trends are complicated. Surely no one is complaining about the recent decline, but no one fully understands it either. One thing is becoming clear: Increased incarceration’s role was minimal.” Oliver Roeder, *The Prisoner’s Dilemma*, FiveThirtyEight (Feb. 12, 2015), <http://fivethirtyeight.com/features/the-imprisoners-dilemma/>.
- D. “[I]t is no longer reasonable to even hypothesize that crime patterns can be explained in terms of punishment policies or imprisonment rates.” Michael Tonry, *Why Crime Rates Are Falling throughout the Western World* 53, 43 *Crime & Justice*, 2014, Minnesota Legal Studies Research Paper No. 14-41 (Oct. 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2520500.
- E. The Pew Charitable Trusts, *States Cut Both Crime and Imprisonment* (2013) (“Over the past five years, the majority of states reduced both crime and imprisonment rates. The relationship between crime and imprisonment is complex, but states are showing that it is possible to reduce them at the same time.”), <http://www.pewtrusts.org/en/multimedia/data-visualizations/2013/states-cut-both-crime-and-imprisonment>.
- F. The Pew Charitable Trusts, *Most States Cut Imprisonment and Crime* (Nov. 2014) (“[S]tates that reduced their imprisonment rates between 2008 and 2013 saw a greater average decline in their crime rates (13 percent) than states that increased imprisonment during those years (11 percent average decline in crime).”), <http://www.pewtrusts.org/en/about/news-room/news/2014/11/12/most-states-cut-imprisonment-and-crime>.

IV. Public Opinion on Sentences

- A. “The Guidelines and congressionally directed ranges are significantly harsher than community sentiment recommends.” Judge James S. Gwin, *Juror Sentiment on Just Punishment: Do the Federal Sentencing Guidelines Reflect Community Values?*, 4 *Harv. L. & Pol’y Rev.* 173, 195 (2010).
- B. “A strong majority, even among victims, believes prison is not always the best response to non-violent crime.” Public Opinion Strategies & The Mellman Group, *Public Opinion on Sentencing and Corrections Policy in America 2* (2012), http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/PEW_NationalSurveyResearchPaper_FINAL.pdf.
- C. “A survey of Iowa burglary victims found 81 percent wanted restitution, 76 percent wanted community service, and only 7 percent wanted a prisons sentence of a year or more.” Marc Levin, *Remember and Empower Victims of Crime*, The Hill (Apr. 11, 2014), <http://thehill.com/blogs/congress-blog/judicial/203241-remember-and-empower-victims-of-crime>, likely referencing (though not citing), Gene M. Lutz et al., Iowa Crime Research Initiative, *The 1997 Iowa Adult Crime Victimization Survey* (Apr. 1998), http://www.csbs.uni.edu/dept/csbr/pdf/CRI_Crime_Victimization_Survey-1998.pdf. Infographic available at <https://magic.piktochart.com/output/1635736-national-crime-victims-rights-we#/pikto-block-0>.
- D. “A national survey by the Pew Research Center finds that 67% of Americans say that the government should focus more on providing treatment for those who use illegal drugs such as heroin and cocaine. Just 26% think the government’s focus should be on prosecuting users of such hard drugs.” Pew Research Center, *America’s New Drug Policy Landscape 1* (Apr. 2014), <http://www.people-press.org/files/legacy-pdf/04-02-14%20Drug%20Policy%20Release.pdf>.

- E. The federal system is out of step with most states; most states have worked to reduce reliance on incarceration. “[B]etween 2007 and 2013, many states made research-driven policy changes to control prison growth, reduce recidivism, and contain costs. While the federal imprisonment rate continued to rise during that period, the state rate declined.” Pew Charitable Trusts, *Growth in Federal Prison System Exceeds States’* (Jan. 2015), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/01/growth-in-federal-prison-system-exceeds-states>.
- F. Conservative and progressive organizations have joined together in support of criminal justice reform aimed at reducing the “overcriminalization” and “overincarceration” problems in the United States. The Coalition for Public Safety: Advancing Criminal Justice Reform, <http://www.coalitionforpublicsafety.org/#>.

V. Collateral Consequences

- A. The Collateral Consequences Resource Center provides news and commentary about collateral consequences of conviction. <http://ccresourcecenter.org/>.
- B. The ABA collected information about the collateral consequences of a criminal conviction and created an interactive tool which can be searched and sorted by categories and keywords: The National Inventory of the Collateral Consequences of Conviction, <http://www.abacollateralconsequences.org/>. “The Coalition will work across the political spectrum to pursue a comprehensive set of federal, state, and local criminal justice reforms to reduce our jail and prison populations and associated costs; end the systemic problems of overcriminalization and overincarceration — particularly of low-income communities and communities of color; ensure swift and fair outcomes for both the accused and the victim; and make communities safe by reducing recidivism and breaking down barriers faced by those returning home after detention or incarceration.” *Id.*

VI. Age

- A. The “Age-Crime Curve”: “It is well established that antisocial and criminal activity increases during adolescence, peaks around age 17 (with the peak somewhat earlier for property than for violent crime), and declines as individuals enter adulthood.” Gary Sweeten et al., *Age and the Explanation of Crime Revisited*, 42 *J. Youth & Adolescence* 921 (2013).
- B. The “age-crime curve” applies across offense type. See Melissa Kearney et al., *The Hamilton Project, Ten Economic Facts about Crime and Incarceration in the United States* 6 (2014) (“55 percent of offenders committing crimes against persons (such as assault and sex offenses) were ages eleven to thirty. For crimes against property (such as larceny-theft and vandalism) and crimes against society (including drug offenses and weapon law violations), 63 percent and 66 percent of offenders, respectively, were individuals in the eleven-to-thirty age group.”), http://www.brookings.edu/~media/research/files/papers/2014/05/01%20crime%20facts/v8_thp_10crimefacts.pdf.
- C. Recidivism rates decline with age. See USSC, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, Ex. 9 (2004), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf.
- D. The Office of the Inspector General reviewed the criminal history of a random sample of aging inmates “who were released from BOP custody between FY 2006 and FY 2010” and found that only 15 percent

“were re-arrested for new crimes within 3 years of their release,” and that “the re-arrest of aging inmates within [the] sample generally declined with age. For example, 34 of 181 released inmates (19 percent) age 50 to 54 were re-arrested for a new crime compared to no re-arrests for released inmates age 70 and older.” Office of Inspector General, U.S. Dept. of Justice, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, 39 (May 2015), <https://oig.justice.gov/reports/2015/e1505.pdf>.

- E. “Research shows that many interventions are effective, not all persons follow the trajectory of the aggregate age-crime curve, turning points divert individuals from paths of persistent offending, offenders can be responsive to changes in local life circumstances, and ‘maturing out’ is something that happens across the lifespan for different reasons at different ages. For public policy this is a promising story, as one need not simply wait for age to have its effect, but can pursue strategies to accelerate desistance from crime.” Gary Sweeten et al., *Age and the Explanation of Crime Revisited*, 42 *J. Youth & Adolescence* 921 (2013).
- F. Factors that may help a person desist from crime include reduced exposure to antisocial peers, stability in home life, less victimization or witnessing violence, meaningful social relationships, community supervision, and improved impulse control. *Id.*
- G. A report by the Office of the Inspector General found that “aging inmates are more costly to incarcerate than their younger counterparts due to increased medical needs. [The OIG] further found that limited institution staff and inadequate staff training affect the BOP’s ability to address the needs of aging inmates. The physical infrastructure of BOP institutions also limits the availability of appropriate housing for aging inmates. Further, the BOP does not provide programming opportunities designed specifically to meet the needs of aging inmates.” Office of Inspector General, U.S. Dept. of Justice, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, i (May 2015), <https://oig.justice.gov/reports/2015/e1505.pdf>.
 - 1. “[A]ging inmates experience delays receiving medical care.” For example, at one institution the OIG found that “the average wait time for inmates, including aging inmates, to be seen by an outside medical specialist for cardiology, neurosurgery, pulmonology, and urology to be 114 days.” *Id.* at 18.
 - 2. “All inmates are expected to perform activities of daily living, including dressing, cleaning their cells, and moving around within the institution. However, staff told [the OIG] that aging inmates often cannot perform these activities on their own because of their medical conditions and staff is not responsible for ensuring inmates can accomplish these activities.” *Id.* at 19.
 - 3. “[W]hile Social Workers are uniquely qualified to address the release preparation needs of aging inmates, such as aftercare planning and ensuring continuity of medical care, the BOP, which employs over 39,000 people, has only 36 Social Workers nationwide for all of its institutions.” *Id.* at ii.
 - 4. “Institution staff is not adequately trained to identify the signs of aging, which mistakenly can be viewed as reflecting disciplinary issues rather than a need for medical or mental healthcare.” *Id.* at 22.
 - 5. “Lower bunks are limited due to the overcrowding of BOP institutions.” *Id.* at 24. “[T]he lack of lower bunks may prevent or delay aging inmates from receiving lower bunks.” *Id.*

6. "Overcrowding also limits the BOP's ability to move aging inmates to the institutions that best address their medical needs." *Id.* at 25.
7. "There are no programs, and limited activities, specifically designed or appropriate for aging inmates." *Id.* at 31.
8. "The BOP does not address the specific release needs of aging inmates." *Id.* at 35.

VII. Child Abuse & Neglect

- "Child abuse and neglect appear to influence the course of development by altering many elements of biological, cognitive, psychosocial, and behavioral development; in other words, child abuse and neglect "get under the skin" to have a profound and often lasting impact on development. Brain development is affected, as is the ability to make decisions as carefully as one's peers, or executive functioning; the ability to regulate physiology, behavior, and emotion is impaired; and the trajectory toward more problematic outcomes is impacted." Institute of Medicine & National Research Council, *New Directions in Child Abuse and Neglect Research* 154 (Anne Peterson et al. eds., 2013), <http://www.iom.edu/Reports/2013/New-Directions-in-Child-Abuse-and-Neglect-Research.aspx>.

VIII. Childhood Bullying

- A. "[B]eing bullied [by peers] has similar and in some cases worse long-term adverse effects on young adults' mental health than being maltreated [by adults]." Suzet Lereya, et al., *Adult Mental Health Consequences of Peer Bullying and Maltreatment in Childhood: Two Cohorts in Two Countries*, *Lancet Psychiatry* (Apr. 28, 2015), <http://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366%2815%2900165-0/fulltext>.
- B. "Individuals who were bullied in childhood were more likely to have poorer physical and psychological health and cognitive functioning at age 50." Kings College London, *Impact of Childhood Bullying Still Evident After 40 Years*, *ScienceDaily* (Apr. 17, 2014), <http://www.sciencedaily.com/releases/2014/04/140417212510.htm>.

IX. Childhood Trauma and Early Life Stress

- A. Childhood trauma could be mistaken for ADHD. Rebecca Ruiz, *How Childhood Trauma Could Be Mistaken for ADHD*, *Atlantic* (July 7, 2014), <http://www.theatlantic.com/health/archive/2014/07/how-childhood-trauma-could-be-mistaken-for-adhd/373328/>. "Inattentive, hyperactive, and impulsive behavior may in fact mirror the effects of adversity, and many pediatricians, psychiatrists, and psychologists don't know how – and don't have time – to tell the difference." *Id.*
- B. "[I]t is clear that adverse childhood experiences have a profound, proportionate, and long-lasting effect on emotional state, whether measured by depression or suicide attempts, by protective unconscious devices like somatization and dissociation, or by self-help attempts that are misguidedly addressed solely as long-term health risks." Vincent J. Felitti & Robert F. Anda, *The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders, and Sexual Behavior: Implications for Healthcare 7*, in *The Hidden Epidemic: The Impact of Early Life Trauma* (2009) (R. Lanius and E. Vermetten, eds.), http://www.cestudy.org/yahoo_site_admin/assets/docs/LaniusVermetten_FINAL_8-26-09.12892303.pdf.

- C. Center for Youth Wellness, *A Hidden Crisis: Findings on Adverse Childhood Experiences in California* (2014), https://chronicleofsocialchange.org/xpanel/wp-content/uploads/2014/11/Embrgoed_CYW_HiddenCrisis_Report_1014.pdf.
- D. “[C]hronic, toxic stress like poverty, neglect and physical abuse — can have lasting negative impacts. A team of researchers recently showed these kinds of stressors, experienced in early life, might be changing the parts of developing children’s brains responsible for learning, memory and the processing of stress and emotion.” University of Wisconsin-Madison, *Early Life Stress Can Leave Lasting Impacts on the Brain*, ScienceDaily (June 27, 2014), <http://www.sciencedaily.com/releases/2014/06/140627133107.htm>.

X. Environmental Issues

A. Lead Paint Exposure

- A house or apartment built before 1978 is highly likely to have lead paint. As the Centers for Disease Control acknowledged in 2012, there is “no safe level of lead for a child.” Lead paint exposure, even in low levels, increases a child’s risk of dropping out of school and becoming involved in the juvenile justice system. Lead paint poisoning can cause “lifelong learning and behavior problems.” Coalition to End Childhood Lead Poisoning (CECLP), <http://www.greenandhealthyhomes.org/home-health-hazards/lead>. See Advisory Committee on Childhood Lead Poisoning Prevention of the Centers for Disease Control and Prevention, *Guidelines for Measuring Lead in Blood Using Point of Care Instruments* (2013), http://www.cdc.gov/nceh/lead/ACCLPP/20131024_POCGuidelines_final.pdf.

B. Pesticide Exposure (Urban & Rural)

1. “From infancy on, the children of the mothers with the highest levels of organophosphates were at the greatest risk for neurodevelopmental problems. That association was present at every stage the researchers checked in on the kids. At 6 months, they were more likely to have poorer reflexes. At 2, they were at higher risk for pervasive developmental disorder, an autism-related condition, like Asperger’s, in which children have trouble connecting to others. At 5, they were more likely to be hyperactive and have trouble paying attention. At 7, they scored lower on IQ tests, by an average of seven points—the equivalent of being a half-year behind their peers.” Susan Freinkel, *Warning Signs: How Pesticides Harm the Young Brain*, *The Nation* (Mar. 11, 2014), <http://www.thenation.com/article/178804/warning-signs-how-pesticides-harm-young-brain>.
2. Findings from studies on of the effects of organophosphate pesticides on brain development are “‘very similar to what we learned about lead twenty-five to thirty years ago.’ The lead studies found similarly subtle but important brain impacts among kids who weren’t visibly sick from exposure. In addition to lower IQs, they were at higher risk for attention and behavioral problems as well as dyslexia. They had a harder time in school and were more likely to drop out. ‘Further follow-up showed that at 17 or 18, they were more likely to be in trouble with the law.’” *Id.*
3. “Results of this study showed that higher prenatal CPF exposure, as measured in umbilical cord blood plasma, was associated with decreases in cognitive functioning on two different WISC-IV indices, in a sample of urban minority children at 7 years of age.” Virginia Rauh et al., *Seven-Year*

Neurodevelopmental Scores and Prenatal Exposure to Chlorpyrifos, a Common Agricultural Pesticide, 119 *Envtl. Health Persp.* 1196, 1200 (2011).

4. *See generally*, Environmental Health Perspective, a monthly journal of peer-reviewed research and news published with support from the National Institute of Environmental Health Sciences, National Institutes of Health, <http://ehp.niehs.nih.gov/>; Center for Environmental Research & Children's Health, <http://cerch.org/publications-2/directory-of-publications/> (listing Center's publications by exposure and health effect); Columbia Center for Children's Environmental Health, <http://ccceh.org/our-research> (listing Center's research by exposure and health effect).

XI. Family Ties

- A. Fathers who maintain relationships with children are less likely to recidivate. Solangel Maldonado, *Recidivism and Parental Engagement*, 40 *Family L. Q.* 191 (2006) ("The literature ... suggests that exconvicts who share close relationships with their children are less likely to recidivate than those who do not.").
- B. "The single best predictor of successful release from prison is whether the former inmate has a family relationship to which he can return. Studies have shown that prisoners who maintain family ties during imprisonment are less likely to violate parole or commit future crimes after their release than prisoners without such ties." *Id.* at 196-97.
- C. Parents with "less time to serve reported more frequent contact with their children" than those serving longer prison sentences. "About half (47%) of parents who expected to be released within six months reported at least weekly contact with their children, compared to 39% who expected to be released in 12 to 59 months, and 32% in 60 or more months." Lauren E. Glaze & Laura M. Maruschak, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, *Parents in Prison and Their Minor Children* (2010), <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>.
- D. The results of one recent study "strongly suggest that the experience of incarceration leads to a substantially higher divorce risk among offenders who are married when they enter prison." Robert Apel et al., *The Impact of Imprisonment on Marriage and Divorce: A Risk Set Matching Approach*, 26 *J. Quant. Crim.* 269 (2009). "In our data, by the fifth year post-release, imprisoned men have a divorce probability that is 56.8% higher than comparable, convicted but non-imprisoned men. In light of our methodological approach, we are inclined to attribute this finding to the causal effect of first-time imprisonment on divorce." *Id.* at 291. "Considering the (by now) well-established protective role that marriage plays in the criminal career (in the male criminal career, at least), as well as cross-national expansion in the use of incarceration as the predominant form of crime control, an important social concern is the degree to which widespread use of prison may actually backfire by worsening the life chances of offenders returning to the community after they have paid their debt to society." *Id.* at 289.

XII. Mental Illness

- A. "In addition to their often untreated illness, mentally ill prisoners are more likely than other prisoners to incur disciplinary infractions and suffer punishment as a result, and they are also more likely to be victimized, including sexual victimization, in the course of their confinement." National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 223 (Jeremy Travis et al. eds., 2014), http://nap.edu/catalog.php?record_id=18613, citing numerous studies.

See also Bureau of Justice Statistics, Department of Justice, *Prison Rape Elimination Act of 2003-PREA Data Collection Activities, 2013 2* (June 2013) (“Inmates with a history of mental health problems reported higher rates of sexual victimization than other inmates in 2011–12.”).

- B. “Among state and federal prison inmates, an estimated 6.3% of those identified with serious psychological distress reported that they were sexually victimized by another inmate. In comparison, among prisoners with no indication of mental illness, 0.7% reported being victimized by another inmate.” Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12* (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.
- C. “[P]ersons with mental disabilities who are behind bars are at heightened risk of physical mistreatment by staff.” Human Rights Watch, *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US Jails and Prisons 2* (May 2015). “There are no national statistics on the prevalence of staff use of force against inmates in general, or inmates with mental disabilities in particular, in the more than 5,100 jails and prisons in the United States. Experts we consulted for this report said that force is used disproportionately against prisoners with mental illness.” *Id.* at 44.

XIII. Neighborhoods

- A. “[P]oor children who grow up in some cities and towns have sharply better odds of escaping poverty than similar poor children elsewhere.” David Leonhardt, et al., *The Importance of Place: An Atlas of Upward Mobility Shows Paths Out of Poverty*, N.Y. Times The Upshot (May 3, 2015), <http://www.nytimes.com/2015/05/04/upshot/an-atlas-of-upward-mobility-shows-paths-out-of-poverty.html?rref=upshot>. An interactive feature allows you to focus on specific counties. *The Best and Worst Places to Grow Up: How Your Area Compares*, N.Y. Times The Upshot (May 4, 2015), <http://www.nytimes.com/interactive/2015/05/03/upshot/the-best-and-worst-places-to-grow-up-how-your-area-compares.html>.
- B. “[N]eighborhoods matter for children’s long-term outcomes.” Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates 4* (May 2015), http://www.equality-of-opportunity.org/images/nbhds_paper.pdf. “Where children grow up affects their outcomes in adulthood in proportion to the time they spend in the place.... Our results highlight that it is exposure during childhood that appears to matter most, up to the early twenties – and that at least 50% of the variation in intergenerational mobility across the U.S. reflects the causal effects of childhood exposure.” *Id.* at 80. More information is available here: <http://www.equality-of-opportunity.org/>.

XIV. Parental Incarceration

- A. “It is not the case that [incarcerated parents] were already disengaged from their children’s lives. For example, in 2007, approximately half of parents in state prisons were the primary provider of financial support for their children – and nearly had lived with their children prior to incarceration.” Melissa Kearney et al., The Hamilton Project, *Ten Economic Facts about Crime and Incarceration in the United States 14* (2014). http://www.brookings.edu/~media/research/files/papers/2014/05/01%20crime%20facts/v8_thp_10crimefacts.pdf

- B. “The best evidence produced thus far links paternal incarceration to childhood mental health and behavioral problems, problems that are strongly linked to difficulty in school, trouble finding work, and becoming involved in crime. Paternal incarceration increases behavioral problems by one third to one half a standard deviation and is global in nature, influencing both externalizing behaviors and internalizing behaviors in roughly equal measure. Using conservative estimates and a variety of stringent modeling strategies, we show that the influence of mass incarceration has increased racial disparities in externalizing problems by up to 26% and in internalizing problems by up to 45%.” Sara Wakefield & Christopher Wildeman, *Mass Imprisonment and Racial Disparities in Childhood Behavioral Problems*, 10 *Criminology & Pub. Pol’y* 793, 806 (2011).
- C. Sara Wakefield & Christopher Wildeman, *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality* (2013), as summarized in a blog posting, by Holly Yettick, *Parental Incarceration Has Worsened Disparities Between Black, White Children*, *Education Week* (Apr. 18, 2014), http://blogs.edweek.org/edweek/inside-school-research/2014/04/a_quarter_of_black_babies.html.
1. “Wakefield and Wildeman write that the five-fold increase in children with incarcerated parents that has occurred since 1980 has largely been fueled by locking up nonviolent offenders who tend to have family ties and histories of employment.”
 2. “‘In most instances,’” Wakefield and Wildeman state, “‘the removal of a parent makes a bad situation worse.’”
 3. “[C]hildren whose fathers have been incarcerated fare worse than similar children whose fathers have not been locked up. For instance, they have higher rates of problems with mental health and behavior.”
 4. “[C]hildren with incarcerated parents are also more likely than similar children to end up homeless. Wakefield and Wildeman conclude that the black-white gap in childhood homelessness would have been 26 percent to 65 percent smaller had mass imprisonment never occurred.”
 5. “[C]hildren of incarcerated fathers are more likely to die before the age of 1. ‘According to our estimates,’ the authors write, ‘the effects of parental incarceration on children’s risk of infant mortality are comparable to the effects of maternal smoking on this risk.’”
 6. “‘The prison is not the place to solve problems that have very little to do with crime,’ Wakefield and Wildeman conclude. ‘[W]e do not therefore suggest that putting parenting programs in prison is the way to improve the lives of children with incarcerated parents. . . . Prisons are as ill-equipped to facilitate quality family functioning as they are at tackling serious mental illness or drug addiction.’”
- D. Children of incarcerated parents are more likely to experience financial hardship, residential instability, changes in caregiver arrangements, and trauma associated with the loss of a loved one, all of which may translate into short- and long-term mental and physical health issues, poor academic performance and achievement, substance abuse, and delinquency.” Akiva M. Liberman & Jocelyn Fontaine, *Urban Institute, Reducing Harms to Boys and Young Men of Color from Criminal Justice System Involvement* 10 (Feb. 2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000095-Reducing-Harms-to-Boys-and-Young-Men-of-Color-from-Criminal-Justice-System-Involvement.pdf>.

XV. Post-Traumatic Stress Disorder

- “Persons involved in the criminal justice system and those with mental disorders are at significantly higher risk of trauma exposure and development of Posttraumatic Stress Disorder (PTSD) compared with the general population. The high rates of trauma exposure among individuals involved in the criminal justice system suggest that PTSD may be an important risk factor for justice-system involvement and criminal recidivism.” This is true for women, veterans, and others who either experience or witnessed violent acts. The results of this study, in combination with other research, “provide compelling evidence that PTSD deserves attention in developing interventions to reduce justice system involvement of persons with mental disorders.” Naomi Sadeh & Dale McNeil, *Posttraumatic Stress Disorder Increases Risk of Criminal Recidivism Among Justice-Involved Persons with Mental Disorders*, 42 *Crim. Just. & Behav.* 573, 574, 583 (2015).

XVI. School-to-Prison Pipeline

- A. “Sixty years after the *Brown* decision, de facto segregation persists because of a complex web of factors rooted in our nation’s long history of discrimination. But segregation is only one of the issues faced by students of color. Increasingly, minority children are drawn into the so-called school-to-prison pipeline – the phenomenon in which draconian disciplinary policies force students out of the educational system and into the criminal justice system.” Dennis Parker, *Segregation 2.0: America’s School-to-Prison Pipeline*, MSNBC (May 17, 2014), <http://www.msnbc.com/msnbc/brown-v-board-students-criminalized>. See also New York Civil Liberties Union, *A, B, C, D, STPP: How School Discipline Feeds the School-to-Prison Pipeline* (2013), <http://www.nyclu.org/publications/report-b-c-d-stpp-how-school-discipline-feeds-school-prison-pipeline-2013>.
- B. “Black students are suspended and expelled at a rate three times greater than white students. On average, 5% of white students are suspended, compared to 16% of black students. American Indian and Native-Alaskan students are also disproportionately suspended and expelled, representing less than 1% of the student population but 2% of out-of-school suspensions and 3% of expulsions.” U.S. Dep’t of Educ. Office for Civil Rights, *Civil Rights Data Collection, Data Snapshot: School Discipline 1* (Mar. 2014), <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.
- C. Disproportionately high suspension rates for students of color begin as early as preschool. “Black children represent 18% of preschool enrollment, but 48% of preschool children receiving more than one out-of-school suspension; in comparison, white students represent 43% of preschool enrollment but 26% of preschool children receiving more than one out of school suspension.” *Id.*
- D. “Black students represent 16% of student enrollment, 27% of students referred to law enforcement, and 31% of students subjected to a school-related arrest. In comparison, white students represent 51% of students enrolled, 41% of referrals to law enforcement, and 39% of those subjected to school-related arrests.” *Id.* at 6.
- E. “[R]esearch suggests that the substantial racial disparities of the kind reflected in the CRDC data are not explained by more frequent or more serious misbehavior by students of color.” U.S. Dep’t of Just. & U.S. Dep’t of Educ., *Dear Colleague Letter: Nondiscriminatory Administration of School Discipline 4* (2014) (citing multiple sources), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

- F. “The increasing use of disciplinary sanctions such as in-school and out-of-school suspensions, expulsions, or referrals to law enforcement authorities creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been termed the ‘school to prison pipeline.’ Studies have suggested a correlation between exclusionary discipline policies and practices and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement; decreased academic achievement; increased behavior problems; increased likelihood of dropping out; substance abuse; and involvement with juvenile justice systems.” *Id.*
- G. “When controlling for campus and individual student characteristics, the data revealed that a student who was suspended or expelled for a discretionary violation was nearly three times as likely to be in contact with the juvenile justice system the following year.” Tony Fabelo et al., Council for State Governments Justice Center & Public Policy Research Institute, *Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* xii (2011), http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.
- H. “Black, Latino, American Indian and Native-Alaskan students attend schools with higher concentrations of first-year teachers at a higher rate (3 to 4%) than white students (1%).” U.S. Dep’t of Educ. Office for Civil Rights, *Civil Rights Data Collection, Data Snapshot: Teacher Equity 1* (Mar. 2014), <http://ocrdata.ed.gov/Downloads/CRDC-Teacher-Equity-Snapshot.pdf>.
- I. Annie E. Casey Foundation, Kids Count Data Center (data on education indicators, searchable by city and state), <http://datacenter.kidscount.org/data#USA/2/8/10,11,12,13,14,15>.
- J. “[T]here is evidence that the presence of school resource officers increases arrests and court referrals for low-level issues that would otherwise have been handled informally by schools.” Akiva M. Liberman & Jocelyn Fontaine, Urban Institute, *Reducing Harms to Boys and Young Men of Color from Criminal Justice System Involvement* 10 (Feb. 2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000095-Reducing-Harms-to-Boys-and-Young-Men-of-Color-from-Criminal-Justice-System-Involvement.pdf>, citing C. Na and D.C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, *J. Qtly.* 30 (2013). See also Libby Nelson & Dara Lind, *The School-to-Prison Pipeline, Explained*, *Vox* (Feb. 24, 2015), <http://www.vox.com/2015/2/24/8101289/school-discipline-race>.

XVII. United States Sentencing Commission

- A. USSC, *2014 Sourcebook of Federal Sentencing Statistics*, <http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/2014/sourcebook-2014>.
- Archive of earlier Sourcebooks: <http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/annual-reports-sourcebooks-archives>.
- B. USSC, Interactive Sourcebook of Federal Sentencing Statistics, <http://isb.ussc.gov/Login>.
- C. USSC, *Quick Facts*, <http://www.ussc.gov/research-and-publications/quick-facts>.
1. Drug Trafficking
 2. Crack Cocaine Trafficking
 3. Powder Cocaine Trafficking
 4. Oxycodone Trafficking

5. Marijuana Trafficking
 6. Methamphetamine Trafficking
 7. Heroin Trafficking
 8. Theft, Property Destruction, and Fraud
 9. Section 924(c) Offenders
 10. Felon in Possession of Firearm
 11. Alien Smuggling
 12. Illegal Reentry
 13. Offenders in the Federal Bureau of Prisons
 14. Career Offenders
 15. Native Americans in the Federal Offender Population
 16. Women in the Federal Offender Population
 17. National Defense
 18. Mandatory Minimum Penalties
- D. USSC, *Results of Survey of United States District Judges January 2010 through March 2010* (June 2010), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf.
- E. USSC, *Results of 2014 Survey of United States District Judges: Modification and Revocation of Probation and Supervised Release* (Feb. 2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20150225_Judges_Survey.pdf.