

# INVISIBLE PUNISHMENT

## Block Housing, Education, Voting

### POLICIES CALLED “IRRATIONAL, COUNTERPRODUCTIVE”

BY MARC MAUER

Dramatic increases in the nation's prison population fueled by the “war on drugs” and the disproportionate incarceration of African Americans are now all too familiar social trends. Black prison admissions for drug offenses increased almost 25-fold between 1983 and 1998, compared to a seven-fold increase for White admissions. In absolute numbers, the current inmate population of two million is a record high.

Because of the complex interaction of socioeconomic disadvantage, racial profiling and discriminatory sentencing policies, Black men between the ages of 18 and 65 are more than seven times as likely as White men to be in prison or jail, and 41 percent of young Black male high school dropouts are behind bars.

Much less understood, however, are the collateral consequences of sentencing policies. These consequences – termed “invisible punishments” by Jeremy Travis, former director of the National Institute of Justice – are legal barriers, many erected by Congress within the past decade, which are increasingly harming the economic, political and social well-being of African American communities in particular. These policies significantly affect the life prospects of the 600,000 prisoners of all races released back to the community each year, as well as the social and economic well-being of the low-income communities to which most of them return.

#### Socio-Economic Penalties

Buried in the federal welfare reform package passed by Congress in 1996 was a lifetime ban on the receipt of welfare and food stamp benefits for anyone convicted of a felony drug offense. States can choose to opt out of this provision, but 20 states enforce the ban in full. As a result, an

estimated 92,000 women today are ineligible to receive welfare benefits.

The rights to housing and to higher education benefits have also been taken away from drug offenders. Federal laws passed in 1996 and 1998 permit public housing agencies to deny housing to anyone who has ever engaged in “any drug-related” activity. After these laws were implemented, the number of applicants denied public housing because of “criminal backgrounds” doubled, from 9,835 to 19,405. And 1998 amendments to the Higher Education Act suspended eligibility for student loans for anyone convicted of a drug offense. In the 2000-2001 academic year, more than 9,000 students were found ineligible under this provision.

“In addition to there not being enough treatment programs and alternative sentencing approaches, there is also no or very limited access to affordable housing, temporary emergency public aid benefits, funds for higher education, or the possibility of better paying jobs or self-employment through occupational licensure,” said Sharron Matthews, Public Policy and Advocacy director for the Safer Foundation, a Chicago-based organization providing services to ex-offenders. “Providing more access in each of these areas is critical to a substance abuser's rehabilitation process during and post incarceration.”

The combined impact of these policies is irrational, counterproductive, and unjust. Since the barriers to public assistance, housing and higher education apply only to drug offenders, they create an anomalous situation in which a convicted armed robber can be released from prison and immediately qualify for welfare benefits and public housing, but a single parent convicted of a one-time drug sale cannot. And

the ban on higher education loans for drug offenders puts the race and class bias of these laws into bold relief. While the prohibition on student loans will not be a serious barrier to college for a convicted drug user from an affluent suburb, it may be an insurmountable obstacle for a student from a poor or working class community.

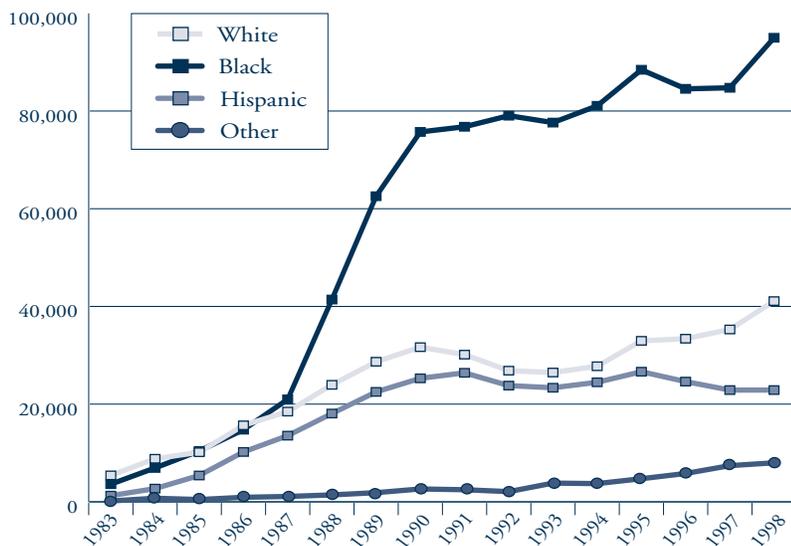
#### “Unfair and Discriminatory”

“The law is unfair and discriminatory, because it only causes difficulties for lower income students,” said Rep. Barney Frank (D.-Mass.) at an April press conference where he announced legislation to repeal the ban on college loans. “While I don't condone illegal drug use, I disagree with the idea of using the federal financial aid system to punish people who have been convicted of relatively minor drug convictions.”

The families and communities of prisoners are being increasingly penalized as well. More than 1.5 million children today have a parent in prison, including one of every 14 Black children. Due to an unprecedented surge in the numbers of women incarcerated in the United States – from 12,000 in 1980 to 93,000 today – more than 125,000 children have a mother in prison. Prisoners' children are among the country's most vulnerable citizens. Many of these children end up in state foster care systems. For those who are reunited with their mothers, the welfare, public housing and education loan bans, along with the difficulties ex-prisoners experience in gaining regular employment, greatly increase the prospects that these children will live in dire poverty.

Families of prisoners bear extraordinary economic burdens and often they are the families least able to absorb them. Not only do families lose the income of their loved

Number of drug-related admission to U.S. prisons



Source: Rand Drug Policy Research Center, June 2001

one, but they also have to bear significant expenses related to supporting and maintaining contact with the incarcerated family member. For example, when prisoners call home, they are required to make the calls collect, allegedly for security reasons.

Because of sweetheart profit deals between phone companies and corrections systems, those calls cost families as much as 10 times the rate for persons in the free world. Many families are forced to have their phones disconnected because they can no longer afford telephone service, or make the difficult decision to refuse to accept the collect calls. The cumulative impact of these social and economic burdens adds increasing strains to family and community ties in inner city neighborhoods throughout the country.

### Political Penalties

Mass imprisonment has significantly diminished the political power of African American and other minority communities as well. As a result of laws in 48 states and the District of Columbia that restrict the voting rights of convicted felons, an estimated 4.6 million persons are now unable to vote, including 1.4 million Black men. In a dozen states, the disenfranchisement laws apply not only

to persons currently serving a felony sentence, but to former offenders as well. Today, whether intended or not, felon disenfranchisement laws disproportionately prevent African Americans from exercising the right to vote.

Another longstanding policy with a negative political impact on communities of color is the method of counting the national census. For census purposes, prisoners are considered to be residents of the county in which they are incarcerated rather than their home communities. In most states, the majority of prisoners are from low-income urban neighborhoods but are housed in rural prisons. These dynamics serve to artificially inflate the populations of these rural communities. In Coxsackie, N.Y., for example, prisoners comprise 3,000 of the town's total population of 7,000 people. The net effect is to increase the power and influence of rural communities, since the census is used to determine political apportionment and a variety of federal and state funding formulas. Conversely, the urban neighborhoods that are home to most prisoners lose these same benefits, thereby reducing their ability to address many of the social problems contributing to crime and neighborhood disorder.

### Need for Reform

The invisible punishments adopted by Congress and other legislative bodies have received little public scrutiny and have been largely hidden from view. The welfare ban, for example, was incorporated as part of the federal welfare reform package after exactly two minutes of floor debate. Proponents of these policies argue that they send a message to drug users and sellers that their activities will not be tolerated, but there is little evidence that these laws have had any effect on drug availability or use. There is, however, mounting evidence that the policies create substantial barriers to former offenders attempting to reestablish themselves as responsible members returning to their communities, and that they place enormous burdens on the families and communities least able to absorb them.

As more constituencies have become aware of the destructive effects of invisible punishments, a movement for reform has grown. Nine states, including populous ones like New York, have elected to opt out of the welfare ban, and an additional 21 others now provide exemptions for persons such as offenders participating in treatment programs. Grassroots organizing around the felon disenfranchisement issue has led to seven states scaling back their voting prohibitions in recent years.

These are all steps in the direction of reversing policies that do far more harm than good. Invisible punishment is not just a criminal justice issue; it is a deeply troubling civil rights issue that demands redress. ■

*Marc Mauer is assistant director of The Sentencing Project, a national organization that promotes criminal justice reform. He is the co-editor of Invisible Punishment: The Collateral Consequences of Mass Imprisonment (The New Press). Readers of FOCUS can order copies of Invisible Punishment at a 20 percent discount. (Regular price: \$26.95 clothbound). To order, call 800-233-4830. For more on the disenfranchisement of ex-felons, see Mauer's "Polls Closed to Many Black Men," in the May 2001 FOCUS.*