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FEBRUARY 2001

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Too Little Too Late: President Clinton's Prison Legacy

POLICY REPORT



Too Little Too Late: President Clinton's Prison Legacy¹

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“We really need an examination of our entire prison policy.”
-President Bill Clinton, *Rolling Stone* interview, October 6, 2000

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“The proliferation of our prisons, however necessary, is no substitute for the hope and order in our souls.”
-President George W. Bush, Inaugural Address, January 20, 2001

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Introduction

Preserving law and order has historically been a Republican issue. Barry Goldwater, Lyndon Johnson's losing opponent in the 1964 presidential race, was the first to campaign on crime control in an attempt to counter the prevailing "liberal" mood of the 1960's. Following Goldwater's lead, Richard Nixon called for an increase in punitive crime control measures and a "war on drugs" that led to an increase in incarceration for low-level drug offenders.² The Republican National Committee's unleashing of the now famous "Willie Horton" advertisement during the race between Vice President George Bush and Massachusetts Governor Michael Dukakis solidified the rhetorical advantage held by Republicans in the law and order arena.

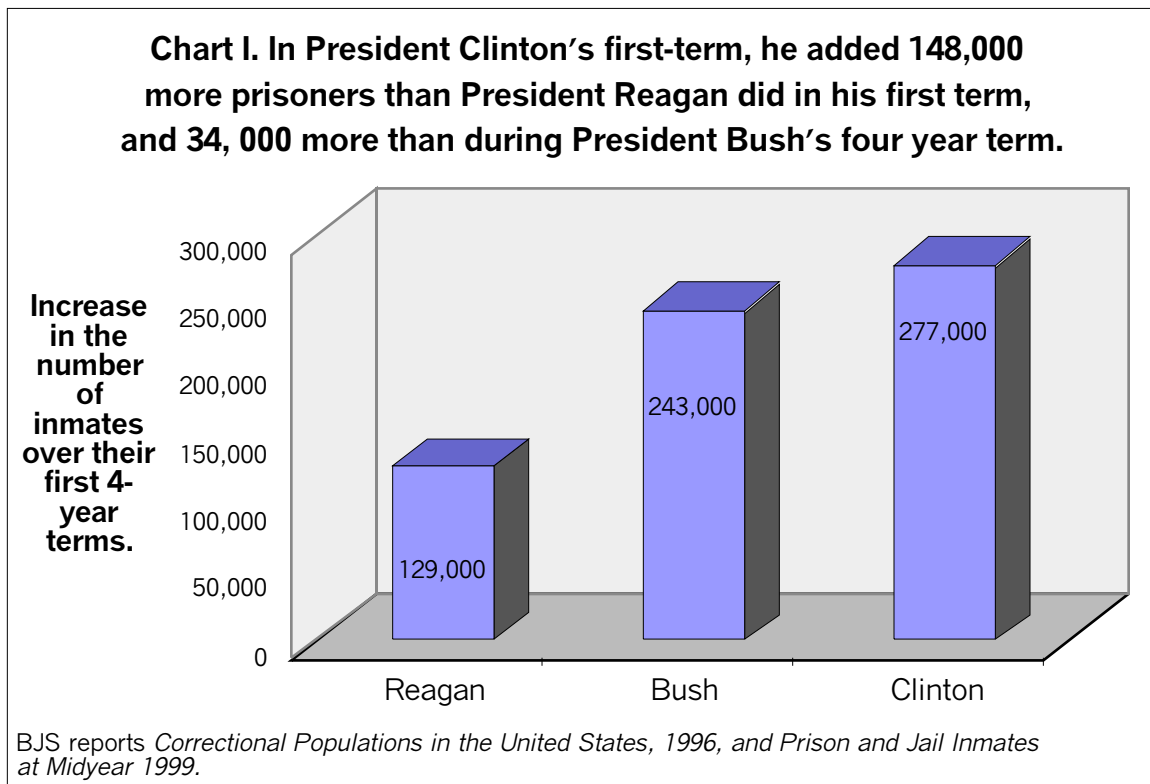
President Bill Clinton: The Incarceration President

When William Jefferson Clinton took office in 1993, he was embraced by some as a moderate change from the previous twelve years of tough on crime Republican administrations. Now, eight years later, the latest criminal justice statistics show that it was actually Democratic President Bill Clinton who implemented arguably the most punitive platform on crime in the last two decades. In fact, "tough on crime" policies passed during the Clinton

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Administration's tenure resulted in the largest increases in federal and state prison inmates of any president in American history.

Although Republicans are normally thought to hold the tough on crime mantle, in President Clinton's first-term (1992-1996), 148,000 more state and federal prisoners were added than under President Reagan's first term (1980-1984), and 34,000 more than were added under President Bush's four-year term (1988-1992).³ [See Chart I]

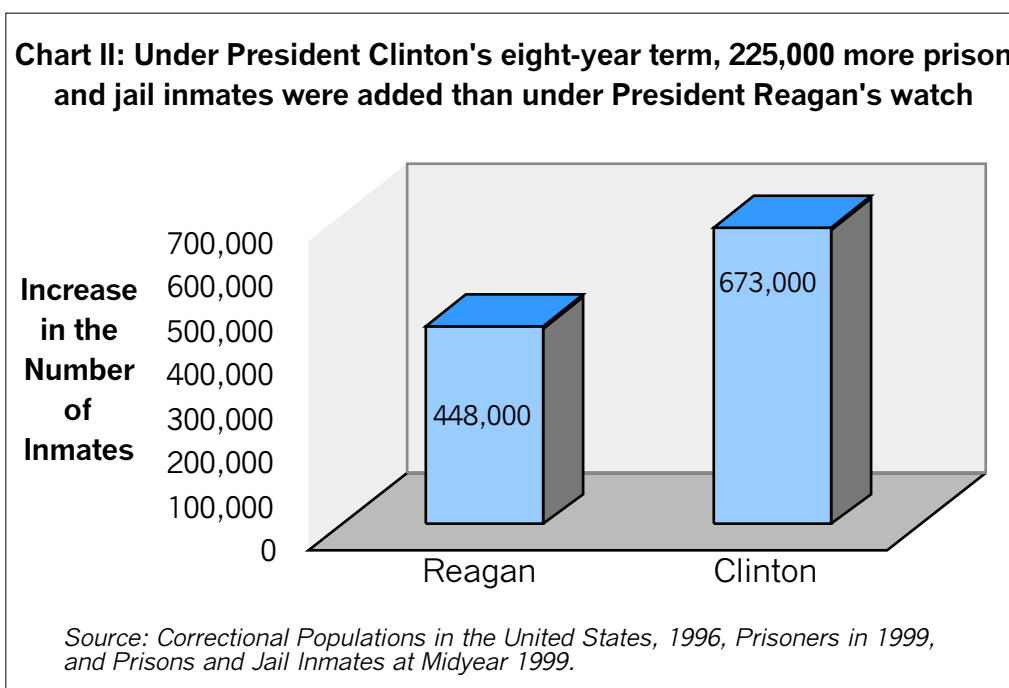


When President Clinton Stole the “Get Tough on Crime” Show

When President Bill Clinton included “the war on crime” as a major tenet in both his 1992 and 1996 presidential campaigns, the past ten years had already witnessed the largest incarceration increase in the nation's history.⁴ During his 1992 campaign, to illustrate his resolve, President Clinton actually interrupted his campaigning to return to his home state of Arkansas to oversee the execution of mentally retarded death row inmate Ricky Ray Rector.⁵

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Throughout its tenure, the Clinton administration consistently supported increased penalties and additional prison construction. The Violent Crime Control and Law Enforcement Act of 1994 provided state and municipal governments with \$30 billion to add 100,000 new police officers, to build more prisons, and to employ more prison guards, as well as funding for crime prevention programs.



Crime Control Impact:

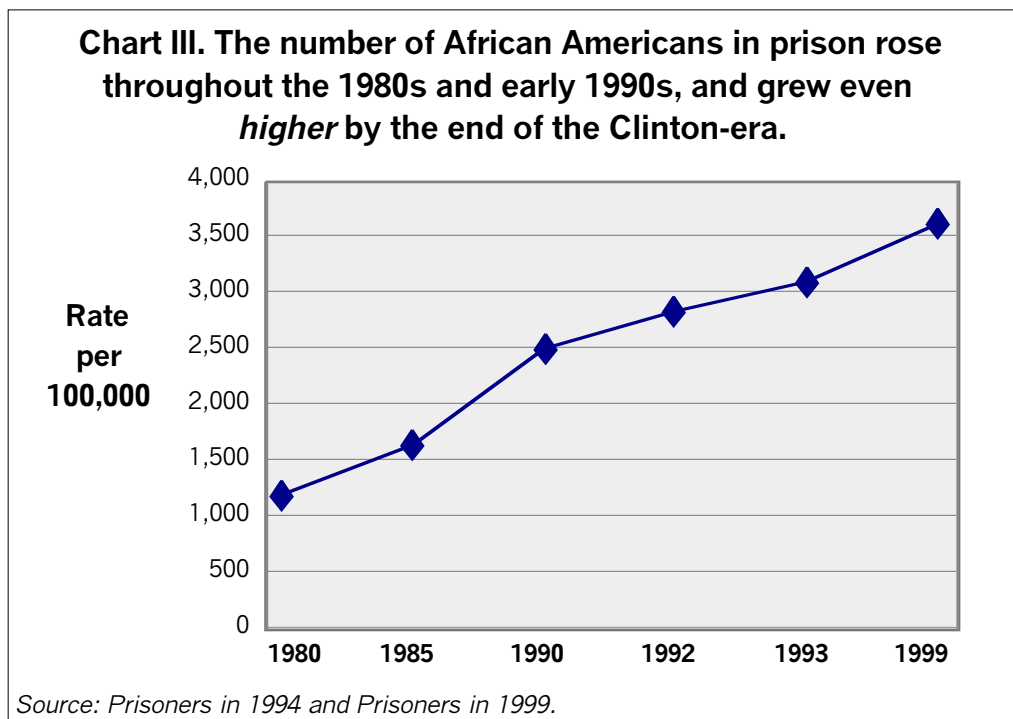
A shift in resources from communities to corrections

The money and resources spent by governments and private interests on the criminal justice system is so large that it is having a profound impact on our economy, and as a result, our society. In 1994, just two years after President Bill Clinton took office, there were 1.4 million prison and jail inmates in the U.S. and by 1997, the criminal justice system employed more than two million people,⁶ and cost taxpayers more than \$70 billion a year. One estimate suggests that by 2002, the criminal justice system will cost taxpayers more than \$200 billion annually.⁷ Today, there are more people working in the criminal justice system than are working in community and social service occupations (like employment, vocational, mental health and substance abuse counseling).⁸ Ironically, these are the occupations that are most likely to be geared towards preventing crime,

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and helping to rehabilitate ex-offenders, as opposed to occupations that are designed to arrest, prosecute, detain and imprison. *With two million people behind bars in the U.S., and 4.5 million people on probation and parole, America ends the Clinton-era with at least 8.5 million people who are either under the control of the correctional system or working for the criminal justice system.*

While everyone is affected by the nation's quadrupling of the prison population, the African American community has borne the brunt of the nation's incarceration boom. From 1980 to 1992, the African American incarceration rate increased by an average of 138.4 per 100,000 per year. *Still, despite a more than doubling of the African American incarceration rate in the 12 years prior to President Clinton's term in office, the African American incarceration rate continued to increase by an average rate of 100.4 per 100,000 per year.* In total, between 1980 and 1999, the incarceration rate for African Americans more than *tripled* from 1156 per 100,000, to 3,620 per 100,000. (See Chart III)



Incarceration Outstrips Education

President Clinton consistently touted education as a priority for his administration but he enacted laws that increased prison funding and had the consequence of reducing higher education funding. For example, in 1996 he stated

Today, more than ever before in the history of the United States, education is the fault line, the great Continental Divide between those who will prosper and those who will not in the new economy. If all Americans have access to education, it is no longer a fault line, it is a sturdy bridge that will lead us all together from the old economy to the new...Because of costs and other factors, not all Americans have access to higher education. Our goal must be nothing less than to make the 13th and 14th years of education as universal to all Americans as the first 12 are today.

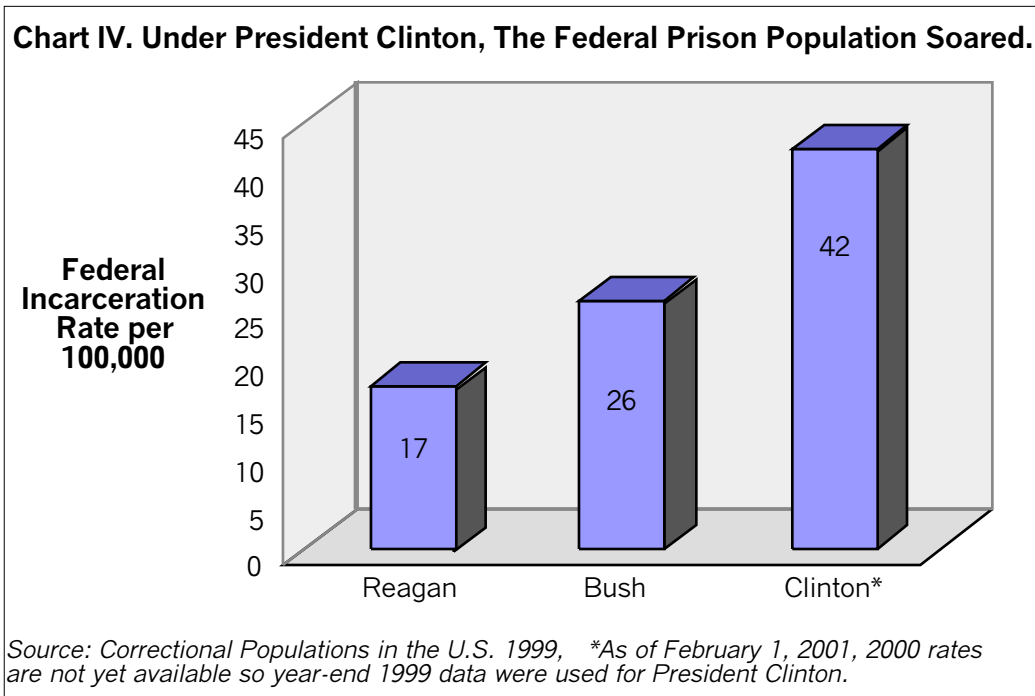
-President Bill Clinton, Princeton University Commencement Address

Yet, by signing the Violent Crime Control Act and Law Enforcement Act of 1994, which provided prison construction funds to the states, President Clinton's policies had already helped shift funds from higher education to corrections. By 1995, state expenditures for prison construction grew by \$926 million, while expenditures for university construction fell by an equivalent \$954 million.⁹ That year, more was actually spent by states around the country building prisons (\$2.6 billion) than building universities (\$2.5 billion).¹⁰

President Clinton's Prison Legacy

Unlike state prison systems, the President and Congress have direct control of the federal prison population. Under President Reagan's eight year term, the number of prisoners under federal jurisdiction rose from 24,363 (1980) to 49,928 (1988), and under President George Bush's four-year term, the federal system grew to 80,259 (1992). However, under President Bill Clinton, the number of prisoners under federal jurisdiction *doubled*, and grew more than it did under the previous 12-years of Republican rule, *combined* (to 147,126 by February, 2001).¹¹ As of December 31, 1999, a year prior to the completion of his term in office,¹² the Clinton Administration already well outstripped the Reagan and Bush Administrations with a federal incarceration rate of 42 per 100,000. This was more than double the federal incarceration rate at the end of President Reagan's term (17 per 100,000), and 61% higher than at the end of President George Bush's term (25 per 100,000). (See Chart IV) Fifty-eight percent of these inmates (63,448) are serving time for drug offenses—a 62% increase since 1990.

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Clinton Justice Department: Fastest Growing Agency

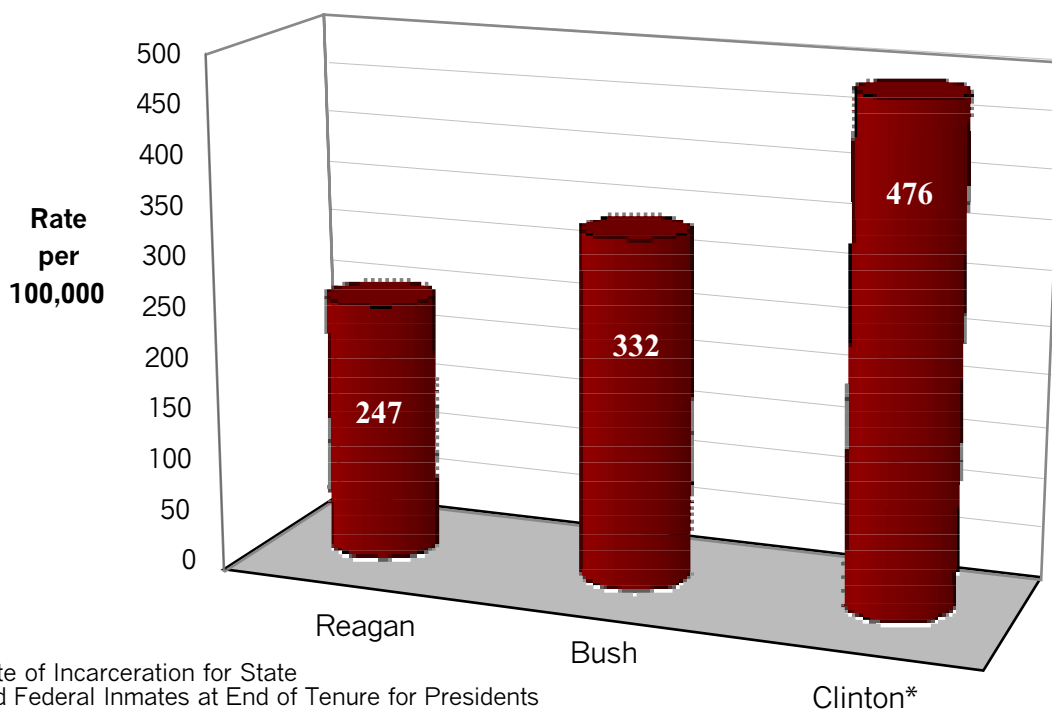
“During the Clinton administration, the Department of Justice grew faster than any other agency of the federal government.”

-The Washington Post, February 9, 2001.

An analysis by the Transactional Records Access Clearinghouse in January 2001, mapped out growth of the criminal justice sector, versus the decline in other federal government departments. The 1999 federal payroll had 25 percent fewer civilian employees—in relation to population—than it did in 1992. Meanwhile, the number of federal criminal investigators increased from 1 for every 30 federal employees in 1992, to 1 for every 20 twenty employees by 1999. Measured in constant dollars, from 1993 to 1999, spending on the Environment Protection Agency declined 15 percent, the Energy Department was down 28 percent, and NASA dropped by 21 percent. During the same period, spending on the Justice Department rose by 72 percent, leading the pack of a handful of federal agencies that had saw their budgets rise.¹³

In the last days of his presidency, President Bill Clinton told a reporter from *Rolling Stone* magazine that mandatory minimum sentences were “unconscionable” and “we

Chart V. America ends the Clinton-era with a higher incarceration rate than experienced under the Bush and Reagan administrations.



Rate of Incarceration for State and Federal Inmates at End of Tenure for Presidents Reagan, Bush, and Clinton Source: *Correctional Populations in the United States, 1996 and Prisoners in 1999*, *As of February 1, 2001, 2000 rates are not yet available so year-end 1999 data were used for President Clinton.

really need a re-examination of our entire prison policy.”¹⁴ With a state, federal and jail inmate population that has grown by over 673,000 inmates since 1993, President Bill Clinton managed to contradict the last eight years of his stance on crime control in one sentence. President Clinton devoted two consecutive campaigns to “getting tough on crime,” signing into law a bill that included the largest increase in crime control funding ever,¹⁵ and promoting measures that revoked sentencing discretion from federal judges. In his last days in office—when he could no longer make lasting criminal justice policies—President Clinton repudiated one of the major tenets of his approach to crime control.

President Bush’s Challenge

Recently Republican Governors in New York and New Mexico have called for an easing of the war on drugs and for diversion of non-violent drug offenders from prison. Voter initiatives that will send thousands of drug offenders into treatment instead of prison passed by double-digit majorities in both Arizona and California.

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During the final year of George W. Bush, Jr.'s term as Governor of Texas, the State's prison population became the largest in the nation, edging out California's, even though 13 million more people live in California than in Texas.¹⁶ In 1999, as Governor, George W. Bush, Jr. signed more death warrants than any other governor in the U.S.¹⁷ Having shown his conservative mettle on the crime issue, and having spoken of his own tribulations with alcohol abuse and a past conviction for drunk driving, President Bush's challenge is now to help others who are caught up in the criminal justice system to achieve the same kind of redemption he has. Based on his campaign platform, and a sober analysis of bi-partisan support for criminal justice reform, the authors recommend that President Bush begin his presidency by breaking with the policies of the last administration in two ways:

1. Deliver on his \$1 billion promise for drug treatment.

During the 2000 presidential campaign, Bush-Cheney 2000 issued a brief on drug policy that promised to provide an additional \$1 billion for states to expand local drug treatment programs. Following through quickly on this promise will help states marshal resources to treat drug abuse through model programs, and will help the President emphasize prevention over prison. The administration might consider providing matching funds to states that follow the Arizona and California models—diverting less serious offenders into rigorous sentencing options like drug treatment, employment/restitution programs, and community service.¹⁸

2. End the Crack/Powder Cocaine sentencing disparity.

“One of the things that we have got to make sure of in our society is that our drug-prevention programs are effective. And I think a lot of people are coming to the realization that maybe long [mandatory] minimum sentences for first-time users may not be the best way to occupy jail space and/or heal people from their disease. And I'm willing to look at that.”

—President George W. Bush, on Inside Politics, CNN, January 18, 2001.

In 1986 and 1988, two federal sentencing laws were enacted that made the punishment for distributing crack cocaine 100 times greater than the punishment for powder cocaine. The result of these laws is that persons convicted of federal crack offenses, who tend to be African American, receive much harsher penalties than those convicted of powder

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cocaine charges, a much larger portion of whom are white. For example, someone convicted in federal court of distributing 5 grams of crack cocaine automatically receives a 5-year, mandatory minimum sentence, while it takes 500 grams of powder cocaine to trigger a 5-year mandatory sentence.

Despite the fact that about 2/3 of crack cocaine users are white or Hispanic, 84.5% of defendants convicted of crack possession in federal court in 1994 were African American, 10.3% white, and 5.2% Hispanic according to data from the United States Sentencing Commission. Trafficking offenders were 4.1% white, 88.3% black, and 7.1% Hispanic.¹⁹

By contrast, powder cocaine offenders were more racially mixed. Defendants convicted of simple possession of cocaine powder were 58% white, 26.7% black, and 15% Hispanic. The powder trafficking offenders were 32% white, 27.4% black, and 39.3% Hispanic.

As a part of the 1994 crime bill that President Clinton signed, the U.S. Sentencing Commission—a body designed to develop and oversee federal sentencing guidelines—was directed to study the effects of these laws. In 1995, they recommended equalizing the quantity of crack and powder cocaine that would trigger a mandatory sentence. Congress rejected that recommendation, which marked the first time it had done so since the establishment of the commission. President Clinton followed Congress and *signed the rejection* into law.

Groups ranging from the Cato Institute to the Rand Corporation have urged the federal government to revisit the cocaine sentencing disparity and mandatory minimums. As President Bush struggles to unite a fractured body politic, this bi-partisan issue is an excellent way to bring people together around criminal justice reform. Having already proven he can be tough on crime, President Bush must now prove that he is able to be smart on crime as well.

This report was funded by a generous grant from the Center on Crime, Communities and Culture of the Open Society Institute. Special thanks to Gregory Caldwell of CJCJ, Doug McVay of Common Sense for Drug Policy, Marc Mauer from the Sentencing Project, and Dr. William Chamblis from George Washington University, for their editorial and research assistance.

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- 1 Authored by Lisa Feldman, Vincent Schiraldi, and Jason Ziedenberg.
- 2 For more detailed information see William Chambliss' 1999 book *Power, Politics, and Crime*, Westview Press, Boulder, CO, 1999.
- 3 In total, 673,000 inmates were added to state and federal prisons, and jail, during President Bill Clinton's two terms in office. In George W. Bush's one term in office, 343,000 state and federal prison and jail inmates were added. Under President Ronald Reagan's two terms in office, 448,000 state and federal prison and jail inmates were added nationwide. In Chart I, we only compared the first four years of President Clinton with the first four years of President Reagan's term, and President Bush's four-year term for consistency.
- 4 *Correctional Populations in the United States, 1996*. Washington, D.C.: Bureau of Justice Statistics, 1999.
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- 6 Sidra Lea Gifford. "Percent Distribution of employment and payrolls for the justice system by level of government." Washington, D.C.: Bureau of Justice Statistics, 2000.
- 7 W. Chambliss, *Power, Politics, and Crime*, 1999.
- 8 According to the Bureau of Labor Statistics, in 1999, there were 1,404,540 people working in community and social service occupations, and 463,360 working in Farming, Fishing and Forestry Occupations—"National Occupational Employment and Wage Estimates" Washington, D.C.: Bureau of Labor Statistics, 2000.
- 9 National Association of State Budget Officers (NASBO), 1995 State Expenditures Report (Washington, D.C.: NASBO, April 1996),77 Table A-6;98, Table A-22
- 10 *From Classrooms to Cellblocks: A National Perspective*, Justice Policy Institute, Washington D.C., Feb. 1997
- 11 Federal prison population counts from Hill, George and Paige Harrison. *Prisoners Under Jurisdiction of State or Federal Correctional Authorities*. Washington, D.C.: Bureau of Justice Statistics, 2000. February 2001 population figure from Federal Bureau of Prisons website, www.bop.gov.
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- 16 There were 163,190 people incarcerated in Federal and State correctional facilities in Texas at year-end 1999. From 1990 to 1999 the rate of incarceration in Texas increased by 98,081 prisoners, a 172.7% increase over nine years. Beck, Allen. *Prisoners in 1999*. Washington, D.C.: Bureau of Justice Statistics, 2000.
- 17 According to the National Coalition to End the Death Penalty, 40 people were executed in Texas in 2000. Virginia, with 11 executions, had the second highest number.
- 18 "Governor Bush Announces Additional "Tools for Parents": A New Plan of Action to Reverse The Tragic Increase in Teen Drug Abuse: Proposes \$2.767 Billion in New Funding." Bush-Cheney 2000. www.bush2000.com
- 19 *Crack Cocaine Sentencing Policy: Unjustified and Unreasonable*. Washington, D.C.: The Sentencing Project, 2000, <http://www.sentencingproject.org/brief/1003.htm>.