A close-up, high-contrast photograph of a hand gripping a vertical metal bar, likely from a prison cell. The hand is dark-skinned and the bar is metallic and textured. The background is blurred, showing more bars and a dimly lit interior.

# THE POOR GET PRISON

The Alarming Spread of the  
Criminalization of Poverty

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*by Karen Dolan with Jodi L. Carr*

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# FOREWORD

By Barbara Ehrenreich

In many ways, the American dialogue about poverty remains the same as it was in the early 1960s, when poverty was first “discovered” as a national problem. Liberals want the government to do more for the poor — through expanded social programs or raising the minimum wage - while conservatives emphasize self-reliance over government assistance. Both sides seem to agree that there is an intergenerational “cycle of poverty,” leading children born in poverty into lifetimes of economic difficulty, and that ways must be found to interrupt this cycle.

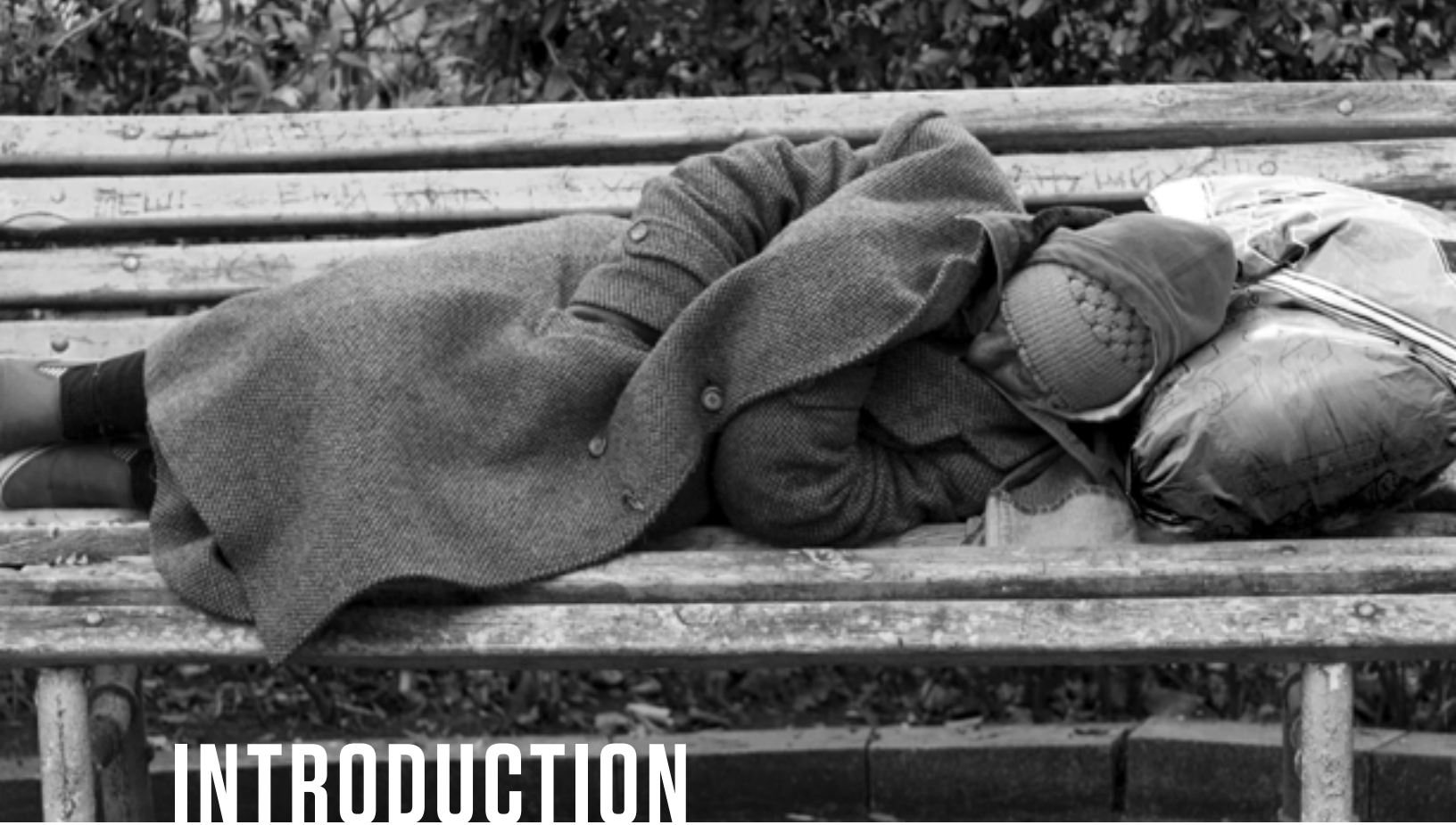
But many things have changed in the last 50 years, some of them so recently as to have gone largely unnoticed by pundits and policy makers. The poor, and especially poor people of color, have long been over-represented in the prison population. This used to be attributed to the fact that the poor are more likely to be tempted by criminal activities such as theft and drug dealing. Just in the last ten years, however, it has become apparent that being poor is in itself a crime in many cities and counties, and that it is a crime punished by further impoverishment. As Karen Dolan explains in this hard-hitting report, a simple traffic violation – such as a broken tail-light – can bring down a cascade of fees and fines, which mount quickly if not paid on time and can lead to incarceration.

The mid-00s were a turning point in the criminal justice system’s treatment of misdemeanors. Local governments increased the fees, fines and court costs they levied for minor transgressions, and at the same time, increased the number of possible misdemeanors to include truancy (for which parents can be punished), driving with an expired license (as is the case in Washington, DC), putting one’s feet up on a subway seat (in New York City), and a variety of other minor infractions. The latter two are grounds for immediate arrest, leading to the imposition of fines and court costs. If the defendant cannot pay, he or she may be jailed and, in the ugliest twist of all – later charged for the cost of room and board, then re-jailed for failing to pay that. If the defendant is put on probation, he or she must pay for the probation officer and anything else required for monitoring, like an ankle bracelet.

Ferguson, Missouri helped bring attention to the extent of “offender-funded” criminal justice services. The city was relying on fees, fines, and court costs for 20 percent of its budget, effectively turning it into an occupied territory, with a 95 percent white police force supporting itself by forcibly preying on a nearly 70 percent black population.

Who benefits from this “criminalization of poverty”? In the short-term, municipalities and counties may appear to benefit, as well as the private companies that increasingly provide probation services and operate detention facilities and prisons. In addition, the increasing barriers, such as drug testing and criminal record searches, to social benefits like public housing, SNAP, and TANF may also temporarily help relieve cash-strapped local governments. But the overall effect is to perpetuate poverty and even expand the poverty population, to no possible good effect. Poor and indigent people cannot afford to pay for the means to coerce and incarcerate them, and nothing is gained by repeatedly jailing them. The criminalization of poverty – and increasing impoverishment of people judged to be criminals — amounts to a system of organized sadism.

This is the real “cycle of poverty.” Poverty leads easily to criminal charges from unpaid debts, unrenewed licenses and the like. Criminal charges in turn lead to ever-mounting debt and, despite laws prohibiting debtors’ prisons, to incarceration. There is no mystery about where government needs to intervene — first, by stopping the persecution of people who are already struggling to get by, and second, by mitigating that struggle.



# INTRODUCTION

## Being Poor in a Hostile Nation

Poor people, especially people of color, face a far greater risk of being fined, arrested, and even incarcerated for minor offenses than other Americans. A broken taillight, an unpaid parking ticket, a minor drug offense, sitting on a sidewalk, or sleeping in a park can all result in jail time. In this report, we seek to understand the multi-faceted, growing phenomenon of the “criminalization of poverty.”

In many ways, this phenomenon is not new. The introduction of public assistance programs gave rise to prejudices against beneficiaries and to systemic efforts to obstruct access to the assistance. As University of California-Irvine professor Kaaryn Gustafson has noted, the intersections of race, income and gender bias were at play in the 1960s and 1970s as black, single mothers were targeted as criminal, lazy, promiscuous welfare cheats.<sup>1</sup> The 1980s saw this demographic become the emblem of all that is wrong with government assistance for the poor — the infamous *Welfare Queen*. Black, single mothers were fictionalized as criminally defrauding the taxpayer, taking in public assistance while driving Cadillacs, eating bon-bons, and presumably getting rich off of drug-dealing boyfriends. Thus the 1990s brought aggressive state attacks on welfare recipients as they were increasingly investigated for fraud and other suspected criminal activities. The welfare system became a system of criminalization and punishment, rather than a program to assist needy families.

So-called welfare reform, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, ended federal cash aid programs and replaced them with time-limited, restrictive, state block-grants. New punishable behaviors were mandated and policed, all but erasing the already tenuous line between the welfare and criminal justice systems.

Today, when applying for welfare in the United States, many applicants are photographed, finger-

printed, drug-tested, interrogated, and asked to prove paternity of children.<sup>2</sup> Similarly, eligibility for public housing is restricted or denied if the applicant has a criminal record, including misdemeanors or a prior lease violation. Further, local Public Housing Authorities can be even more restrictive and evict occupants if a member of their family or another person residing in — or in some cases visiting — commits a crime, such as a misdemeanor drug offense.<sup>3</sup>

Poverty, in other words, is too often treated as a criminal offense.

As with other forms of criminalization, black women, men, and youth are disproportionately targeted and affected by creating obstacles to safety net assistance programs. Case studies of three cities in California (Lancaster, Antioch, and Palmdale) illustrate the profiling of black women in Section 8 housing. For example, in Antioch, African-Americans in 2008 were four times as likely as white Section 8 occupants to be targeted and searched by law enforcement as a result of noncriminal complaints.<sup>4</sup>

Twelve states now mandate drug testing for receipts of Temporary Assistance for Needy Families (TANF or “welfare”). According to the Center for Law and Social Policy (CLASP), at least 30 states have proposed legislation mandating drug testing for eligibility to receive welfare assistance. Some even extend this presumption of criminality into eligibility to receive other forms of economic assistance, such as food assistance and unemployment benefits.<sup>5</sup>

Additionally, welfare reform has produced more inroads for the criminalization of low-income and poor people through data compiled in these investigations. For example, food stamp records obtained by law enforcement officers are used to find and arrest people with outstanding arrest warrants.<sup>6</sup>

Not only are these incursions into one’s civil liberties being challenged as unconstitutional, they serve to further criminalize the status of being poor in the United States. On a practical level, the CLASP report finds these methods are costly, unnecessary, and ineffective.<sup>7</sup>

This form of criminalizing poverty — racial profiling and targeting of poor black and Latina single mothers trying to access public assistance — is a relatively familiar reality. Less well-known are the new and growing trends which increase this criminalization of being poor that affect or will affect hundreds of millions of Americans. These troubling trends are eliminating their chances to get out of poverty and access resources that make a safe and decent life possible.

In this report we will summarize these realities, filling out the true breadth and depth of this national crisis. The key elements we examine are:

- the targeting of poor people with fines and fees for misdemeanors and the resurgence of debtors’ prisons (the imprisonment of people unable to pay debts resulting from the increase in fines and fees);
- mass incarceration of poor ethnic minorities for non-violent offenses and the barriers to employment and re-entry into society once they have served their sentences;
- excessive punishment of poor children that creates a “school-to-prison pipeline”;

- increase in arrests of homeless people and people feeding the homeless and criminalizing life-sustaining activities such as sleeping in public when no shelter is available; and
- confiscating what little resources and property poor people might have through “civil asset forfeiture.”

If you are poor in America, you are criminalized at every turn. As Barbara Ehrenreich has put it, “When you leave the relative safety of the middle class, you might as well have given up your citizenship and taken residence in a hostile nation.”<sup>8</sup>





# SECTION 1

## The Rise of Debtors' Prisons in 21st Century America

*Poor people are facing more fines and fees for misdemeanors like traffic violations. When they are unable to pay these fines, they are suffering harsher outcomes. They often wind up in jail or prison, where they accrue additional debt due to charges for costs related to public defender services, room and board during lockup, probation and parole supervision, drug and alcohol abuse treatment, and DNA samples.<sup>9</sup>*

### How the American Debtors' Prison Made a Comeback

In 1833, the United States ended the longstanding tradition of debtors' prison. Prior to that time, citizens were placed in prison if they were unable to pay a debt. Over 100 years later, the U.S. courts dealt with this question again in *Bearden v. Georgia* (1983), a Supreme Court decision which held that it is unconstitutional to imprison those that cannot afford to pay their debt or restitution in criminal cases.<sup>11</sup>

The case of *Bearden v. Georgia* involved the story of an illiterate young man, Danny Bearden. In 1980, he was sentenced to three years of probation in connection to a burglary charge. He was ordered to pay \$750 in fines and restitution, \$200 of which was due immediately. Possessing only a high school education, Danny had recently lost his job and was having trouble finding a new one. He borrowed \$200 from his parents but was arrested a few months later for owing the court \$550. He languished in jail for two years before the Supreme Court's decision earned

*War veteran Stephen Papa returned from Iraq poor and homeless. He was able to secure employment, but continued to face further hardship after one night of drunkenness that led to a conviction for property destruction and resisting arrest. He faced fines and court fees of \$2,600, of which he was ordered to pay the first \$50 at the time of his sentencing. Because Papa fell \$25 short, he went to jail for 22 days and lost his job. Rather than allowing him to continue working in order to pay the fine, the judge sent him to jail for being poor.<sup>10</sup>*

him his freedom.<sup>12</sup> Bearden challenged the state of Georgia and won. The decision in *Bearden v. Georgia* ruled that debtors can be incarcerated only if the act of not paying their debt or restitution was “willful.”<sup>13</sup>

Despite this ruling, poor people have continued to be jailed for not paying their debts — and the trend is increasing. Sometimes, if a person is not able to afford the full amount of the fine or debt, they are permitted to make monthly installments. But on top of this, they often also face additional fees linked to privatized probation services.<sup>14</sup> When they are unable to pay, they are often placed in jail or prison with additional fines levied. It is an endless and vicious cycle targeting an already victimized sector of the population. In addition, it costs the taxpayer more money to keep people in jail or prison than if they were permitted to remain employed and pay their fine or debt overtime.<sup>15</sup>

## Increase in Criminal Fees

Figure 1.



National Public Radio (NPR), with assistance from New York University’s Brennan Center for Justice and the National Center for State Courts, conducted a year-long, state-by-state investigation into some of the many fines, fees, and court-related costs for which poor people have been charged and jailed. They found that since 2010, 48 states have increased criminal and civil court fees as governments passed on many costs of running the criminal justice system onto defendants.

A recent United States Department of Justice investigation into the Ferguson Police Department highlights Ferguson as a case in point. The Justice Department’s March 4, 2015 report states of Ferguson:

The City budgets for sizeable increases in municipal fines and fees each year, exhorts police and court staff to deliver those revenue increases, and closely monitors whether those increases are achieved. City officials routinely urge Chief Jackson to generate more revenue through enforcement.

....

Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety.

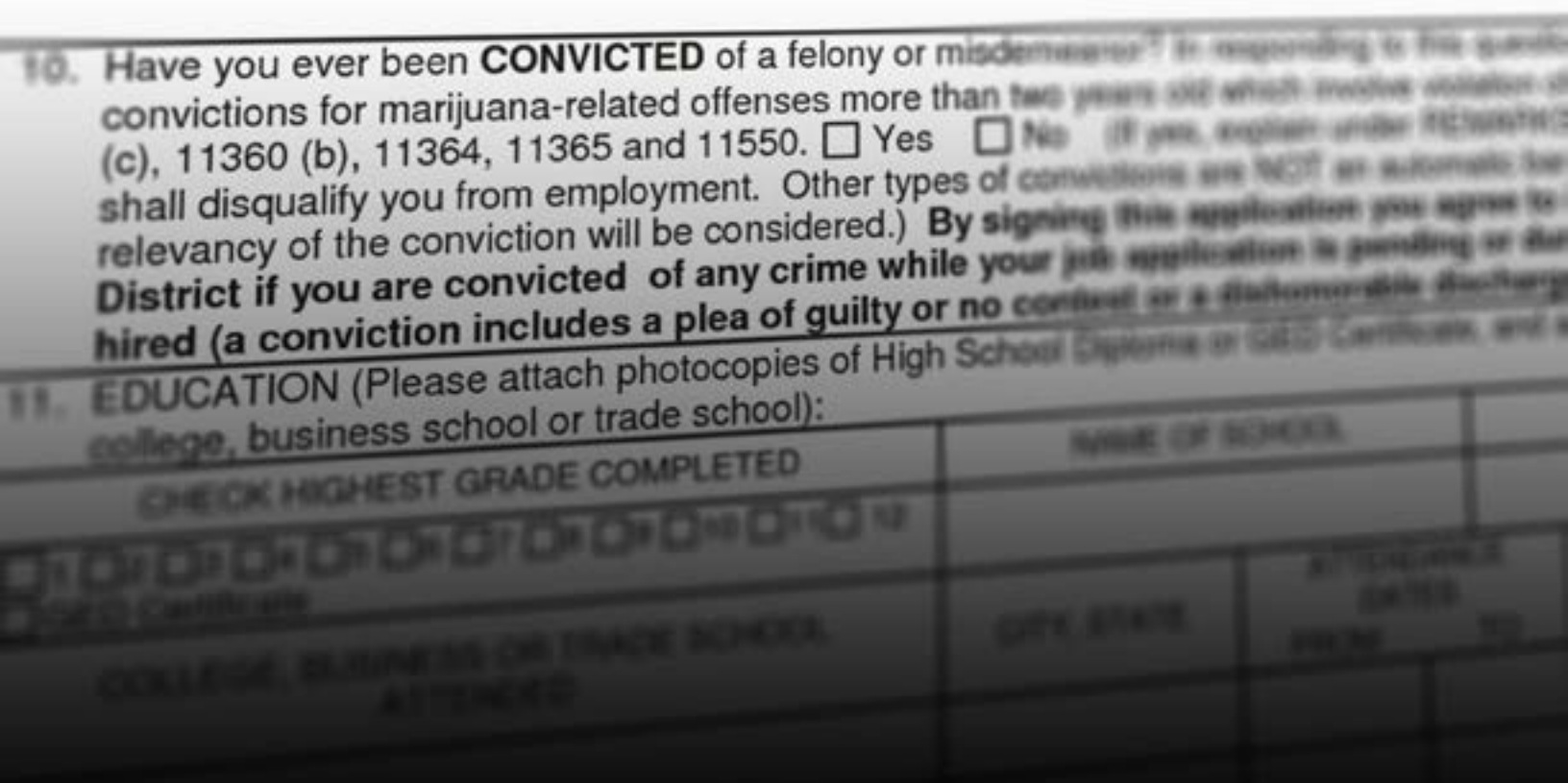
Most strikingly, the court issues municipal arrest warrants not on the basis of public safety needs, but rather as a routine response to missed court appearances and required fine payments. In 2013 alone, the court issued over 9,000 warrants on cases stemming in large part from minor violations such as parking infractions, traffic tickets, or housing code violations. Jail time would be considered far too harsh a penalty for the great majority of these code violations, yet Ferguson's municipal court routinely issues warrants for people to be arrested and incarcerated for failing to timely pay related fines and fees.”<sup>16</sup>

In Ferguson and other cities nationwide, poor and low-income people are facing harsher outcomes linked to their inability to pay fines and debts. When they are unable to pay, they go to jail or prison and accrue additional debt linked to payment for a public defender, room and board during lockup, probation and parole supervision, drug and alcohol abuse treatment, and DNA samples.<sup>17</sup> NPR noted that some of these previously free government services are constitutionally required, like the right to a public defender. In addition, technology, such as electronic monitors, aimed at helping defendants avoid jail time, is available only to those who can afford to pay for it.

The NPR investigation built on a 2010 Brennan Center report on the 15 states with the largest prison populations, which found that each of them had a practice of arresting people because they were unable to pay fines, fees, debts or because they did not attend hearings about these debts.<sup>18</sup>

## Policy Recommendations

- The 1983 *Bearden v. Georgia* Supreme Court ruling protecting defendants from going to jail because they are too poor to pay their fines must be enforced. Before non-payment or under-payment of a court fine or fee is treated as a civil contempt of court charge, it must first be determined by common standards whether or not the person has the ability to pay.
- Imprisonment should not be offered as a way of paying down court-imposed debt. If the debt cannot be paid, the fee should not be levied.
- States should not be allowed to arrest citizens for criminal justice debt before a debt hearing can take place to determine one's ability to pay.<sup>19</sup>



## SECTION 2

### Barriers to Reentry for Returning Citizens

*Barriers to employment and public services are increasingly affecting a larger sector of the U.S. population due to increasing numbers of arrests and convictions. Upon release, formerly convicted or arrested people face daunting obstacles to reentry into society. Barriers exist that make employment, access to mental health services, housing, childcare, and even access to food assistance prohibitive. Many formerly incarcerated people are not allowed to vote or to serve on a jury.*

A minor infraction, such as disorderly conduct, may lead to an arrest but not a conviction. This was the case for Precious Daniels, a Detroit healthcare worker who was arrested for disorderly conduct during a political protest. A college graduate, Daniels was released on \$50 bail and the misdemeanor charge was eventually dropped. But her record was not cleared, creating problems when she applied for a new job.<sup>21</sup>

Individuals who are arrested and are not convicted sometimes find out only after a background check that they must go through a series of steps to clear their arrest record, a process that is often costly and time consuming, especially for those in need of immediate employment.

Barriers to employment are increasingly affecting a larger sector of the U.S. population due to increasing numbers of arrests and convictions. According to the

*"I have worked hard to turn my life around. I have remained clean for nearly eight years, I am succeeding in college, and I continue to share my story in schools, treatment facilities and correctional institutions, yet I have nothing to show for it. .... I have had numerous interviews and sent out more than 200 resumes for jobs which I am more than qualified. I have had denial after denial because of my felony."*

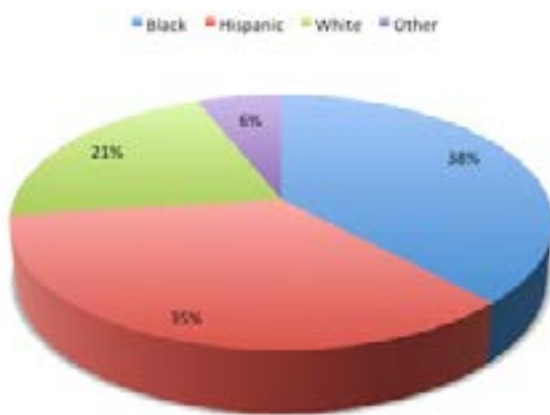
—Excerpt from a letter to the Department of Justice by "Jay," a 30-year-old man who, at age 21, was sentenced to 38 months in prison after losing control of his car after a night of drinking, killing his close friend.<sup>20</sup>

Federal Bureau of Investigation (FBI), law enforcement authorities have made an estimated quarter of a billion arrests over the last 20 years.<sup>22</sup> Approximately 77.7 million citizens are in the FBI's master criminal database. Simply put, about 1 out of 3 adult citizens can be located in the database, largely for nonviolent offenses. The combined state and federal prison population reached 1,574,741 in 2013, up 7 percent since 2003.<sup>23</sup>

For those who may have committed more serious criminal acts such as robbery or possession of an illegal substance, the consequences can lead to a lifetime of struggle. In many states, the criminal justice system can bar people who have committed these criminal acts from certain positions of employment. For example, in many states, the criminal justice system can bar people from selling houses or cars. In addition, people who have been arrested or convicted of a crime can be denied positions that require a certification or license, such as in the fields of cosmetology, accounting, healthcare, and plumbing. In most states, people with criminal histories cannot become barbers.<sup>24</sup>

**Figure 2.**

### Incarcerated People By Race in 2012



Source: "Facts about People in Prison," by The Sentencing Project. Retrieved from [http://sentencingproject.org/doc/publications/inc\\_Facts%20About%20Prisons.pdf](http://sentencingproject.org/doc/publications/inc_Facts%20About%20Prisons.pdf)

The intersectionality of race and class are prominent in the criminal justice system. According to the American Civil Liberties Union (ACLU) in 2011, 1 in every 15 black men and 1 in every 36 Latino men are incarcerated, compared to only 1 in every 106 white men.<sup>25</sup> According to the Center for American Progress, one in three black men will go to prison in their lifetime, and black people are nearly four times more likely to experience the use of force when stopped by the police.<sup>26</sup>

An estimated 70 million U.S. adults have arrests or convictions, creating significant barriers to during the application process. Indeed, according to the National Employment Law Project, "The likelihood of a callback for an interview for an entry-level position drops off by 50 percent for those applicants with an arrest or conviction history."<sup>27</sup>

More than 50 percent of employers say that they would feel very hesitant to hire an employee with a criminal history. Analysis has reflected that men with arrest records, even without conviction, earn lower salaries upon employment. Of the nearly 70 percent of employers who conduct background checks, barely half give applicants a chance to explain their prior arrests.<sup>28</sup> For Latino and black men, the prospects are even worse. In "[The Mark of a Criminal Record](#)" Devah Pager, a Sociology Professor at Harvard University, found that employers are more likely to hire a white male returning citizen than a black or Latino male with a clean record.

## The High National Cost of Barriers to Employment

The Center for American Progress found that the employment rate dropped in 2008 because 1.7

million workers were ineligible for employment due to criminal records.<sup>29</sup> If the formerly incarcerated population and people with criminal histories had access to employment, they could make substantial economic contributions to their communities. The nation would see increased earnings that would result in a higher tax base coupled with reduced recidivism linked to employment. It costs more than \$80 billion annually to maintain the U.S. prison system, and unemployment for those with criminal records reduces GDP by as much as \$65 billion per year.<sup>30</sup>

**Figure 3.**



### **Beyond Unemployment: Barriers to Immediate Needs**

According to a report issued in 2012, 95 percent of the population in jail or prison will be released back to the community. For many of these ex-offenders or those arrested or not convicted, reentry into the community can be daunting.<sup>31</sup> Upon reentry into society, those released from jail are faced with multiple needs, including housing, employment, and childcare. In addition, many are released with physical and mental health issues and about 75 percent have histories of substance abuse. Those convicted of crimes face a multitude of [collateral consequences](#) in which they are barred from housing and other public benefits.<sup>32</sup>

The National Institute of Justice (NIJ) reports that collateral consequences, or an extra set of punishments, are placed on individuals with criminal convictions. According to a study funded by NIJ and conducted by the American Bar Association's (ABA) Criminal Justice Section, the ABA has documented over 38,000 collateral consequence statutes nationwide. These statutes place an abundance of roadblocks on those convicted of criminal offenses, including barriers to housing, employment, voting, and many public benefits. Interestingly, the ABA noted that of the 38,000 statutes, 80 percent can be used to deny employment.<sup>33</sup> Individuals trying to reenter society after arrest or incarceration typically need access to basic health, mental health, housing, and substance abuse and food assistance. Due to criminal records, they find themselves ineligible for the safety net services they need to survive.<sup>34</sup>

Almost 75 percent of returning citizens have histories of drug and alcohol abuse. The wait list for substance abuse programs is usually prohibitively long and returning citizens do not get the substance abuse assistance necessary for successful reentry. Access to income supports such as Temporary Assistance to Needy Families (TANF) and nutrition supports such as Supplemental Nutrition Assistance Program (SNAP) for people with drug convictions are conditional upon completing substance abuse programs.<sup>35</sup>



Additionally, we have a crisis in our local jails. Annual admissions have doubled in the past 20 years to almost 12 million people.<sup>36</sup> Most alarming is the lesser-known fact that out of the 733,000 people held in local jails at this time, three-fifths of them have not been convicted and many are there simply because they are too poor to post even a small bail while they await processing of their cases.<sup>37</sup>

Finally, returning citizens often have little or no work experience, no more than a high school education, insufficient social and family support, and are denied the right to vote. All of these factors make reintegration into society far more challenging than it needs to be.

## Policy Recommendations

[Ban the Box](#) and [Fair Chance Policies](#).<sup>38</sup> In 2004, a group of formerly incarcerated people in the Bay Area, All of Us or None, began a campaign to dismantle structural discrimination in the job application and hiring process. Dubbed the *Ban the Box* campaign, it seeks to end the practice of requiring job-seekers to check a box on application forms indicating prior arrests or convictions. Legal advocates at [The Southern Coalition for Social Justice](#) and other activist and research organizations such as [Jobs with Justice](#)<sup>39</sup> and the [National Employment Law Project](#)<sup>40</sup> have worked nationally to launch this campaign and to institute related [Fair Chance Policies](#), “best practices” models for any state, city, or region under this banner. These best practices suggest ways in which public employers can eliminate barriers to job applicants with criminal histories. It includes “banning the box” and provides appropriate language use, model policies, and provisions for applicants to provide supporting evidence of treatment and rehabilitation. It calls for these Fair Chance Policies to be expanded to private sector employers as well. As of February 2015, 14 states and dozens of municipalities had passed some version of “ban the box” legislation, and some corporations, including Target and Home Depot, have now stopped asking about criminal records in the initial stages of the job application process.<sup>41</sup>

- The Second Chance Reauthorization Act:<sup>42</sup> This legislation would reauthorize and improve the Second Chance Act of 2008. The bill outlines some paths for removing barriers to reentry. It calls for programs promoting family-based substance abuse treatment, community supports for reintegration, and career training. It relies on best practices proven effective for more successful reentry and less recidivism.
- Expand “Forgive or Forget:” There are two procedural protections which people with convictions may be afforded, known as Forgive or Forget. First, a criminal record may be expunged or sealed. Second, a record can be forgiven with a Certificate of Release which can relieve some of the collateral consequences of convictions. The eligibility requirements for these protections should be expanded to serve more people and to apply to more types of convictions.<sup>43</sup>
- Subsidize Legal Services: There is a strong need for additional legal aid to help people with criminal records overcome barriers to employment and obtain necessary services. According to Attorney Daryl Atkinson at the Southern Coalition for Social Justice,<sup>44</sup> access to these services could be mandated or provisions could be made for federal and state grants to provide pro-bono legal assistance.



# SECTION 3

## Probation Profiteering

*Private companies are profiting off the expanded number of people in the criminal justice system by charging fees for supervision and other costs related to probation. If the people under probation cannot pay, they often face jail time.<sup>45</sup>*

### The Good Intentions Behind Probation

The state of Georgia exemplifies the growing problem of the effects of privatizing probation. An article in the February 2015 edition of [The Atlantic](#) describes the practices in Georgia which have changed the justice system in that state into another form of debtor's prison. The incentivized system makes money by charging as many people as possible to keep them out of jail. Public officials in Georgia don't protect people too poor to pay the fines and fees from being imprisoned. In 2012, the Georgia private probation giant, Sentinel, is estimated to have relied on the money obtained through this predatory fine and fee practice for at least 40 percent of its revenue.<sup>47</sup> This practice is not confined to Georgia, but Georgia is instructional for how many poor people can be swept into this model.<sup>48</sup>

When adults commit misdemeanors or minor offenses,

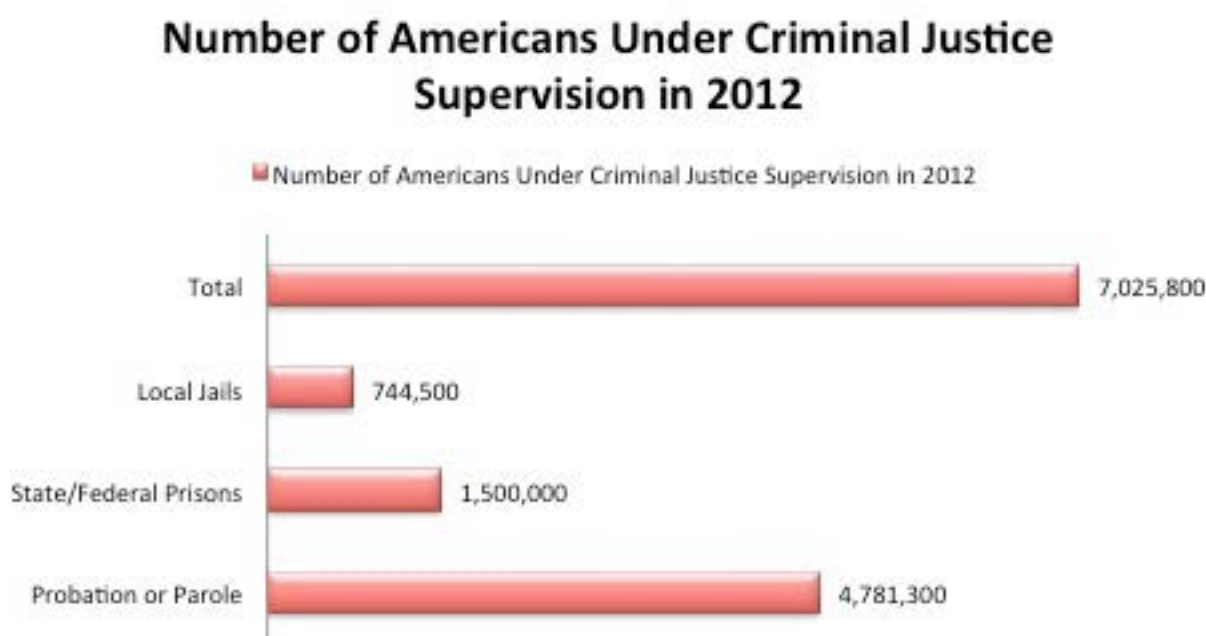
*After shoplifting a can of beer in 2012, Tom Barrett was fined \$200 and sentenced to 12 months probation. But the price tag for probation services was so high, Barrett couldn't pay and wound up in jail. These costs included: \$12 per day for an alcohol monitoring device, a \$50 set-up fee, and a \$39 monthly fee to a private probation company. In addition, Barrett did not have a public defender because he could not afford a \$50 fee. After two months, his Alcoholics Anonymous sponsor offered to help him start paying for his probation services and he was released. But as the probation costs mounted, Barrett had trouble paying his bills and he was called back to court. This time an attorney challenged the fees and he was able to avoid jail time. But the debts continued to make it difficult for Barrett to deal with his addiction problem and get back on his feet.<sup>46</sup>*



courts sentence adults to live in the community under supervision<sup>49</sup> for a fixed period of time referred to as probation. Under active supervision, probationers report regularly to a probation officer either in person or by mail or phone to ensure they are meeting the court's predetermined benchmarks for good behavior while continuing to live in the community. Some probationers meet with probation officers solely because they have to pay fines and court ordered fees. If probationers fail to pay these fees or do not follow the court's rules of conduct, they can face jail time.

The number of probationers has ballooned over the past decades (see Figure 7.) State courts sentenced 816,525 adults to probation in 1977, 3,826,209 in 2000, and more than 4 million in 2010.<sup>50</sup> (see Figure 7.) As the number of probationers increased, states started using a lower percentage of their budgets to fund probation programs. State funding for probation services has decreased as well, so state courts have increasingly turned to private corporations to provide probation services.<sup>51</sup>

**Figure 4.**



Source: "Facts about People in Prison," by The Sentencing Project. Retrieved from [http://sentencingproject.org/doc/publications/inc\\_Facts%20About%20Prisons.pdf](http://sentencingproject.org/doc/publications/inc_Facts%20About%20Prisons.pdf)

### **Shifting Costs of Probation**

According to Human Rights Watch, state-run probation services are no longer providing the needed supervision over misdemeanor cases, leaving it up to local officials to establish ways to supervise their probationers.<sup>52</sup> These local officials are increasingly turning the task over to private probation companies. In fact, local jurisdictions see this shift as a win-win for both parties.

There is no cost to the taxpayer, since the private probation companies do not charge the local jurisdictions any fees. The cost of the service is passed onto the probationer in the form of monthly supervisory fees. When the probationer cannot afford the cost to be supervised, he or she can face

jail time. It is a vicious cycle. Once a person is released from jail, he is placed on probation, accruing additional supervisory fees imposed by the private probation companies. In fact, probationers usually end up paying more in additional fees than the actual debt they owe for the crime committed.<sup>53</sup>

What exacerbates this cycle is that the poor people who are most affected by the probation system are not aware of their rights: namely, that it is unconstitutional to be sent to jail for the inability to pay a fee or debt. Without a lawyer present because of the misdemeanor charge, these defendants are not offered an explanation of their options and are not aware of the consequences of choosing probation over jail time.<sup>54</sup> Many states fail in oversight of allowing probationers to be sent back to jail simply for being unable to keep up the costs associated with their probation.<sup>55</sup>

Further, the Human Rights Watch report discussed how the fee structures established by these probation companies are discriminatory against offenders who are poor. Inherently, those who are least able to afford the fees are faced with the greatest financial burden. If an offender is financially secure, he or she is able to pay fines and fees associated with the probation and are knowledgeable of rights by virtue of being able to afford a private lawyer. The report noted, “In fact, the business of many private probation companies is built largely on the willingness of courts to discriminate against poor offenders who can only afford to pay their fines in installments over time.”<sup>56</sup>

The rise in private probation companies and offender-funded probation services began to gain traction in the 1970s. Florida opened its first private probation firm in 1975, and in 1976 it passed a law authorizing other state-approved entities to provide probation services. In 1989, Tennessee and Missouri passed state laws that legally allowed private entities to provide probation services.<sup>57</sup> Since then, private probation companies have expanded their services to more than 25 states throughout the United States, including Georgia, Tennessee, Alabama, Mississippi, Florida, Colorado, Utah, Washington, Missouri, Michigan, Montana, Nevada, Oklahoma, Massachusetts, California, New Hampshire, Oregon, Texas, New Mexico, North Dakota, Wisconsin, Wyoming, Delaware, Connecticut, Nevada, Indiana, and Idaho. In addition, at least 44 states offer offender-funded probation services.<sup>58</sup>

Most studies on offender-funded probation services conclude that this practice only extends probationers’ entanglement with the criminal justice system.<sup>59</sup>

“Individuals stay enmeshed in the criminal justice system for longer and face incarceration for longer—not for new crimes, but for technical violations of probation conditions, including payment conditions...Extending probation for a failure to pay off criminal justice debt makes future interaction with the criminal justice system more likely...”<sup>60</sup>

When probationers do not pay their fees on time, they breach their probation contract, which further limits their ability to end their probation time. Federal law disqualifies offenders in breach of their probation contract from a range of social security benefits, including Temporary Assistance for Needy Families (TANF), The Supplemental Nutrition Assistance program (SNAP), and Supplemental Security Income for the elderly and disabled.<sup>61</sup> In some states, these offenders may even lose their driving privileges and right to vote. These added stressors only prolong the probation period and often land probationers in jail. Of course, this is especially true for people who live in poverty.

## Policy Recommendations

Human Rights Watch made more than 20 policy prescriptions that, if implemented, would help safeguard the rights of probationers. The following is a summary of the most important recommendations in the HRW report:

- State and federal courts should make sure that probation companies uphold probationers' rights by adhering to the rights upheld in the U.S. Supreme Court's 1983 ruling in *Bearden v. Georgia*.
- Legislation should ensure that local courts, not probation companies, determine whether an offender has the means to pay their fines and debt.
- Local courts should hold private probation companies to high standards by: ensuring that the private probation companies publish information regarding their yearly revenue, including a breakdown of fees collected from each probationer during a fiscal year; and requiring the private probation companies to record the number of arrest warrants they issue each year and the cause for each arrest.<sup>62</sup>



# SECTION 4

## School-to-Prison Pipeline

*The vicious cycle of criminalization of poverty often starts very early in poor people's lives. Poor black and Latino schoolchildren are much more likely to face harsh disciplinary measures that can place them on a track into the criminal justice system.*

Across the country there is a growing epidemic of armed police officers arresting juveniles at schools for minor infractions and misbehavior. According to one complaint lodged by a resident from Louisiana with the U.S. Department of Justice, police have unlimited authority to detain, frisk, and arrest schoolchildren. A parent sends their child to school to learn. A parent does not send their child to school with the expectation of the child being arrested on or off school grounds for minor misbehavior infractions. A school is supposed to be a safety net to aid in the improvement of the lives of children, not to support the violation of this safety net. In some states, police officers are permanent fixtures on school grounds.<sup>63</sup>

### School-to-Prison Pipeline Effect

The ACLU defines the school-to-prison pipeline as "... policies and practices that push our nation's schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice system. This pipeline

*"One of the first things I saw was a huge differential in minority students, black male students in particular, in terms of suspensions and arrests," says [Robert Runcie, the Superintendent of Florida's Broward County Public Schools.] Black students made up two-thirds of all suspensions during the 2011-2012 school year despite comprising only 40 percent of the student body. And while there were 15,000 serious incidents like assaults and drug possession reported that year, 85 percent of all 82,000 suspensions were for minor incidents—use of profanity, disruptions of class—and 71 percent of all 1,000-plus arrests were for misdemeanors. The last statistic, says Runcie, "was a huge red flag."*

—Excerpted from "Reversing Broward County's School-to-Prison Pipeline," by Bryce Wilson Stucki in *The American Prospect*, December 4, 2013 issue.

reflects the prioritization of incarceration over education.” This policy continues to place priority on excessive penalization of student behavior over education, especially for certain sectors of society.<sup>64</sup>

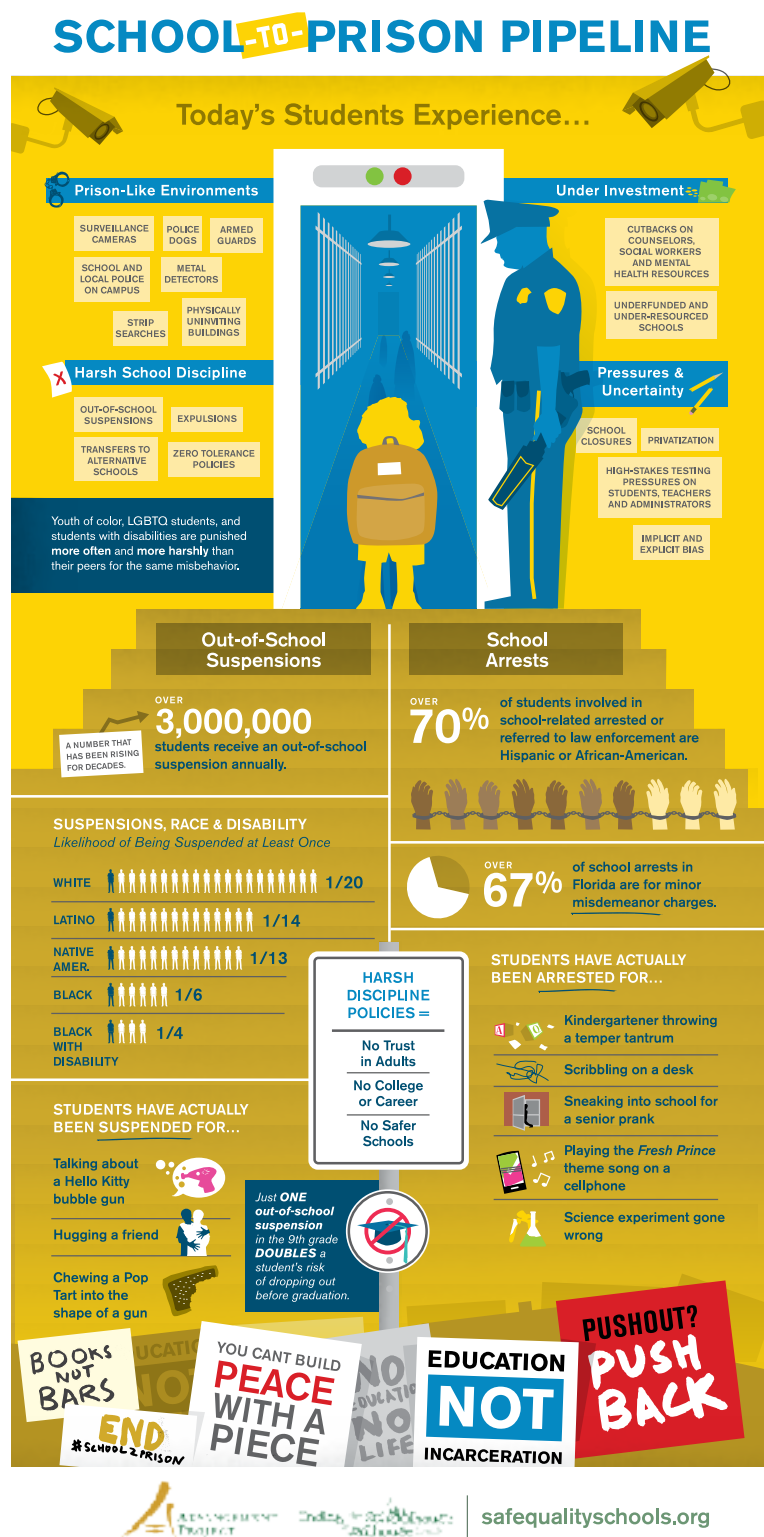
The ACLU identified five factors that influence whether a student has a greater chance of being incarcerated: failing public schools, zero-tolerance and other school discipline concerns, policing school hallways, court involvement and juvenile detention, and disciplinary alternative schools. This approach to education produces adverse effects on students that may last a lifetime.<sup>65</sup> Although students and teachers are affected in unsafe schools, actions such as expulsion and arrest do not make schools any safer. According to the American Psychological Association (APA), the above practices do more harm to academic achievement for all students. In addition, the APA stressed that those excluded will be “... held back, drop out, and become involved with the juvenile and criminal justice systems.” The APA noted that the school discipline rate has doubled since the 1970s.<sup>66</sup>

The Annie E. Casey Foundation’s 2014 Kids Count Data Book reports that not only was there an uptick in child poverty since the recession,<sup>67</sup> but also that evidence suggests school districts and individual schools are becoming increasingly segregated as poverty and wealth become more residentially concentrated.<sup>68</sup> This reality may decrease the likelihood that low-income and poor children will encounter educational opportunities in schools where the pipeline is absent.

A nationwide study by the U.S. Department of Education Office for Civil Rights found that students from two groups are disproportionately represented in the pipeline: racial minorities and children with disabilities. According to the report, black students are 3.5 times more likely to be suspended or expelled over their white peers. Whereas black students represent only 16 percent of the student population nationwide, they make up approximately 32-42 percent of students who are suspended or expelled.<sup>69</sup>

The infographic below, reprinted from The Advancement Project,<sup>70</sup> tells the story of many of the ways the school-to-prison pipeline acts to criminalize poor youth and youth of color.

Figure 5.



## Policy Recommendations

Various governmental agencies and nongovernmental organizations are working to reform K-12 education and reverse the effects of the school-to-prison pipeline. The U.S. Department of Justice and Education's Supportive School Discipline Initiative targets the detrimental disciplinary policies that drive at-risk youth toward the criminal justice system. The initiative consists of four components:

- Building consensus for action among federal, state, and local education and justice stakeholders
- Collaborating on research and data collection needed to shape policy, such as evaluations of alternative disciplinary policies and interventions
- Developing guidance to ensure school discipline policies and practices are in line with the federal civil rights laws
- Promoting awareness and knowledge about evidence-based and promising policies and practices<sup>71</sup>



# SECTION 5

## The Criminalization of Homelessness

*With high poverty rates and the increase in targeting poor people with fines, fees, and arrests, there has also been a rise in homelessness in some states. On any given night, an estimated 600,000 people in this country are homeless. Arguably the worst economic hardship, homelessness is also increasingly treated as criminal behavior. Homeless people — and even those assisting homeless people — are being targeted by the*

### The Hardships of Being Homeless

What if you could not sit down, eat, sleep, stand, place a few possessions, or perform necessary human functions without fear of being locked up? This is the harsh reality facing a growing number of homeless people in the United States. People without homes are increasingly targeted, criminalized, and arrested for nothing other than being people with unavoidable human behaviors and nowhere to perform them privately.

The National Law Center on Homelessness and Poverty (NLCHP) recently published a comprehensive report on the national homelessness crisis. The report focused on the growing ways in which the mere act of being without a home is considered a criminal act in a number of cities nationwide. [No Safe Place](#) examined policies pertaining to the criminalization of homeless in nearly 200 cities

*“I’m 53 years old and I’m half-crippled, so no one wants to give you a job.” Franklin, a homeless veteran, is unsuccessfully looking for work every morning. Franklin lives in the woods off a highway in South Florida. Choking up, tells the reporter: “Sleeping out here with the sand and the bugs, man, it’s real tough.” To survive, he resorts to asking for money. He has received four tickets so far for standing on an exit ramp asking for money. Franklin says he managed to pay the other three citations from money he asked for on the street, but he didn’t think he could get the \$64.50 required by this citation. He pulls in an average of \$10 per day. He said he’s got to pay it. “It’s either that or jail, which, I’m probably going to wind up in jail.”<sup>73</sup>*



across the nation. Researchers at the center found that the criminalization of life-sustaining activities is increasing at alarming rates. Furthermore, these punitive policies are not only ineffective, but costly to taxpayers.

### **Why are people homeless?**

- 76 percent ban begging in defined public spaces<sup>74</sup>
- A majority of cities — 53 percent — prohibit sitting or lying down in defined public spaces<sup>75</sup>
- 43 percent of cities have made it illegal to sleep in vehicles<sup>76</sup>

Just as poverty is caused by a lack of money, homelessness is caused by the lack of affordable housing. Since the 1970s, federal funding for affordable housing has been on the decline. Almost 13 percent of our nation's affordable housing has been permanently lost since 2001, according to NLCHP's report. In the wake of the recession and the foreclosure crisis of 2009, there are more low-income renters without homes as well as a decreasing number of beds in emergency shelters in major cities.

The National Low-Income Housing Coalition (NLICH) has calculated a housing wage, defined as "... The hourly wage a full-time worker must earn to afford a decent two-bedroom rental home at HUD-estimated Fair Market Rent while spending no more than 30 percent of income on housing costs."<sup>77</sup>

The NLICH's recent report *Out of Reach* finds that, "In the United States, the 2014 two-bedroom Housing Wage is \$18.92. This national average is more than two-and-a-half times the federal minimum wage and 52 percent higher than it was in 2000. In no state can a full-time minimum wage worker afford a one-bedroom or a two-bedroom rental unit at Fair Market Rent."<sup>78</sup>

### **Criminalization of Necessary Human Activities**

Despite the lack of affordable housing, many U.S. cities have criminalized life-sustaining activities, such as sleeping, sheltering, sitting, asking for help, sharing food, and even resting. According to NLCHP:

- 34 percent of cities prohibit public camping (i.e., creating some type of shelter from the elements) and 57 percent apply this ban in defined public spaces.
- 18 percent prohibit public sleeping citywide and a third prohibit it in defined public spaces.
- 24 percent ban begging citywide and 76 illegal to share food with a homeless person.

To enforce these draconian rules, police conduct sweeps of areas where homeless people live, confiscating shelter, clothing, and even medication.<sup>79</sup>

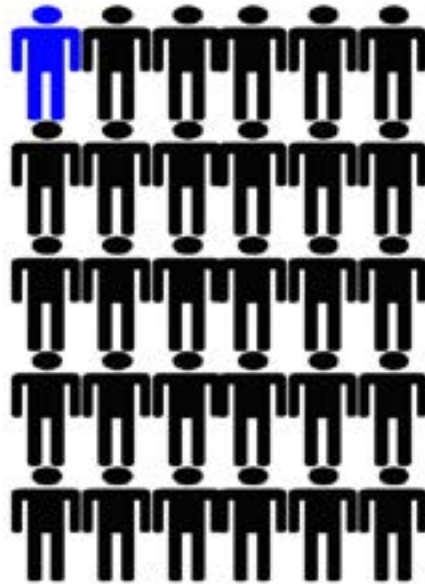
### **Homeless Children and Unaccompanied Youth**

Among our nation's homeless population are an increasing number of children. From 2012 to 2013, the United States experienced an eight percent increase nationwide in the number of homeless children, according to a National Center on Family Homelessness report *America's Youngest Outcasts*. The report found that homelessness among children in the United States is at a historic high. Two and a half million children are now homeless each year: one in every 30 children in the US.<sup>80</sup>



**Figure 6.**

1 in 30 children in the United States are  
Homeless



*Source: Created by Joshua Serrano from “America’s Youngest Outcasts: A Report Card on Child Homelessness,” by American Institutes for Research. Accessed at: <http://www.homelesschildrenamerica.org/mediadocs/282.pdf>*

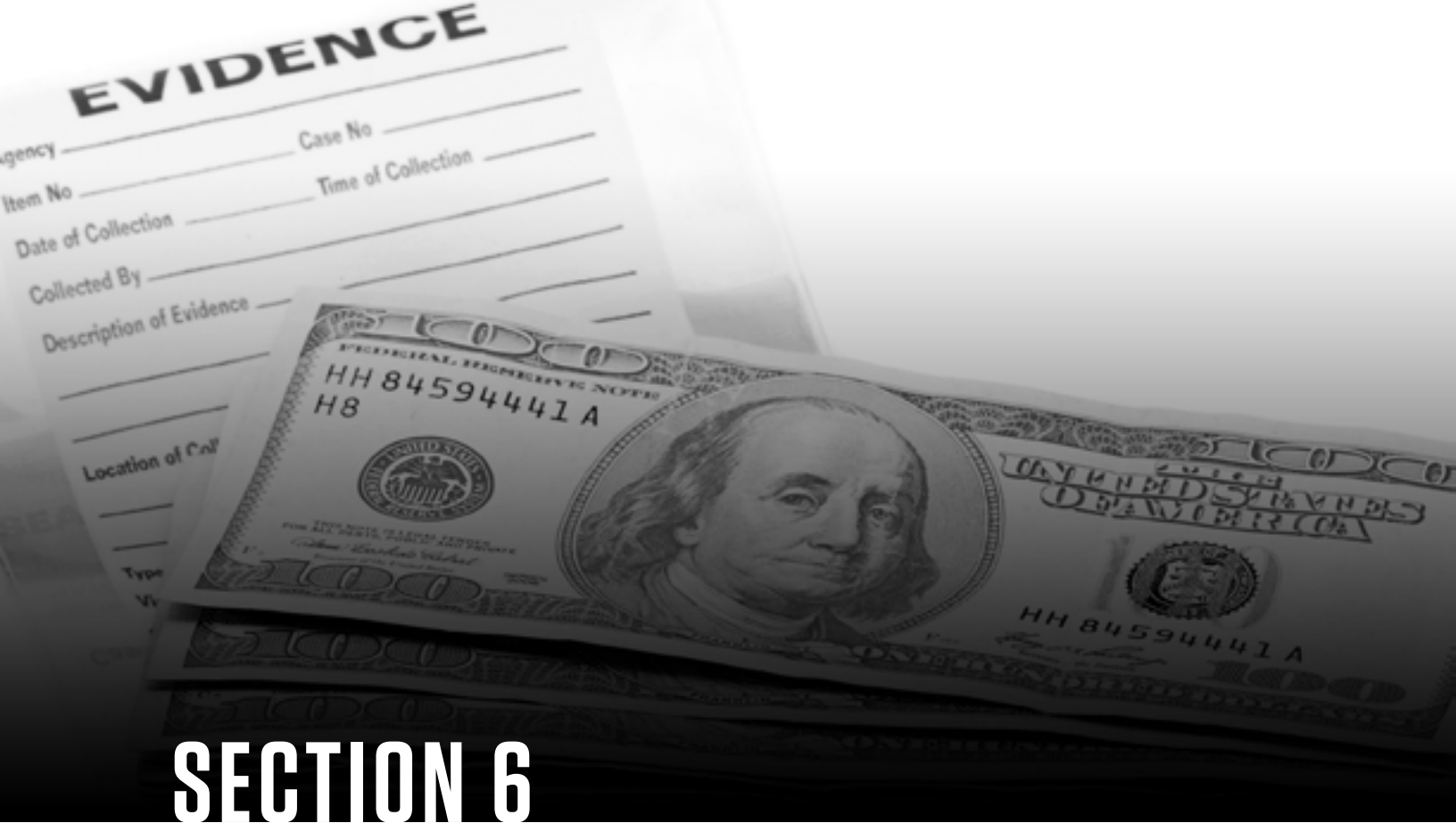
Unaccompanied youth ages 12 to 17 who are living alone on the streets are criminalized even further than homeless adults and accompanied children. Approaches used to address the needs of unaccompanied youth without homes tend to be punitive rather than service-based. In addition, some cities have curfew laws that particularly impact unaccompanied homeless youth.<sup>81</sup>

**Policy Recommendations (drawn from the National Law Center on Homelessness and Poverty and the National Center on Family Homelessness at American Institutes for Research):<sup>82</sup>**

- The federal government should invest in affordable housing at the scale necessary to end and prevent homelessness.
- State governments should enact and enforce the Homeless Bill of Rights legislation that explicitly prohibits the criminalization of homelessness.
- Local governments should stop criminalizing homelessness and focus on creating education and employment opportunities.
- All homeless families should receive a comprehensive needs assessments and access to family-oriented services that incorporate trauma-informed care, mental health care, and parenting support.

**To improve the lives and opportunities of unaccompanied youth, officials should:**

- Eliminate curfew laws.
- Exempt runaway youth from “Child in Need of Services” statutes that do not provide appropriate services.
- Limit the circumstances under which runaway youth can be taken into custody, set very brief time limits for such custody, and prohibit housing of runaway youth with delinquent youth or adults.  
Provide opportunities for young people to avoid court involvement, through diversion programs, counseling, treatment, family mediation, housing assistance, and other services, as well as adequate time to meet treatment goals.
- De-classify running away and truancy as status offenses. Assign responsibility for the care and support of runaway youth to the social service system rather than the juvenile justice system and prohibit housing runaway youth in secure detention facilities.



## SECTION 6

### Confiscating Poor People's Property through Civil Asset Forfeiture

*Even if people who lack sufficient resources for a decent standard of living are able to find employment, pay parking tickets, keep a roof over their heads, and find a safe school for their kids, a little-known but widespread practice called Civil Asset Forfeiture can wreak havoc on their lives. Law enforcement officials use this legal tool to confiscate property that they assert has been involved in certain criminal activity — even if the owner of the property is innocent.*

According to a study by the Institute for Justice, under current “civil asset forfeiture” laws, police officers and prosecutors can seize someone’s private property, like a car or a home, without a warrant, conviction, or charges of committing a crime. In most states, law enforcement relies solely on reasonable suspicion that the property was used during the commission of a crime. Federal, state, and local police departments liquidate the assets they have seized and can use the proceeds to fund their departmental budgets and operations.

- Under current Civil Asset Forfeiture laws, your property is guilty until you prove it innocent; the owner’s innocence does not prove the property’s innocence.

*Nelly Moreira from Washington, DC used her 2005 Honda Accord to get to her three jobs. In March 2012, Moreira’s son was pulled over for a minor traffic stop while driving her car. The stop turned into a pat down, which resulted in authorities finding a handgun on him. He was arrested, and the police seized the car. After she borrowed enough money to pay the \$1,020 bond fee, Moreira was still denied access to her car. The bond fee was only the cost of starting the process of recovering her property from the state government. Moreira spent a year in a legal battle to free her impounded vehicle, while struggling to make car payments.<sup>83</sup>*

- The burden to prove the property's innocence, including legal fees and time, falls on the owner, regardless of if they are innocent or guilty.
- A piece of property does not share the constitutional rights of a person. There is no right to due process and, in most states, no presumption of innocent until proven guilty.

The ACLU reports that civil asset forfeiture practices are riddled with racial profiling and disproportionately impact low-income black or Latino groups. In general, law enforcement practices fuel racial inequalities in the criminal justice system by systematically targeting people of color.<sup>84</sup>

Over the years, the Drug Enforcement Administration has helped train police to profile highway travelers for potential drug couriers. "This profile is based on associating people of color with crime, creating a phenomenon known as "driving while black or brown," reports the ACLU. Similarly, in urban areas, young minorities are routinely stopped and frisked — which is perfectly legal after a Supreme Court ruling stated that police only need a reasonable cause for suspicion to stop and search individuals. A very clear incentive exists for police departments to engage in racial profiling.

- Police departments are increasingly dependent on revenue from civil asset forfeitures for regular operational costs. "By targeting minority communities whose voices and political power are marginalized, law enforcement agencies can exploit the power of forfeiture without many Americans ever learning of the practice."<sup>85</sup>
- As reported by Sarah Stillman in the *New Yorker*, civil asset forfeitures are overwhelmingly targeted to low-income people. She reports that most asset and cash seizures are usually small amounts from people who may not be entitled to a public defender and have trouble affording a lawyer. This makes getting their property back almost infeasible given the high financial burden of seeking legal council, which is often more expensive than the value of the property seized.<sup>86</sup>
- The Justice Department explicitly bans racial profiling in civil asset forfeitures, but in 400 federal court cases examined by *The Washington Post* where people who challenged their asset seizures won money back, the majority were either black, Hispanic or another minority.<sup>87</sup>

By allowing law enforcement to use seized property to cushion their department's budgets, law enforcement has a dangerous incentive to take property. According to the Institute for Justice, "The report finds that by giving law enforcement a direct financial stake in forfeiture efforts, most state and federal laws encourage policing for-profit, not justice." In addition, the Department of Justice has shared over \$4.5 billion<sup>88</sup> in forfeited assets with more than 8,000 state and local law enforcement agencies.<sup>89</sup>

U.S. Attorney General Eric H. Holder, Jr. ended the U.S. Department of Justice's Equitable Sharing program, which provided a loophole to circumvent state law and make civil asset seizures easier for local and state police departments. Equitable Sharing enabled local and state police to make civil asset seizures and then have them "adopted" by Federal agencies, which share in the proceeds of asset seizures.<sup>90</sup>

Figure 11.



Holder's move won't end abuses entirely because civil asset forfeiture is currently legal to varying degrees in all 50 states, but it will prohibit local police agencies from circumventing state laws. Holder's reforms only curb the Federal government's role in civil asset forfeitures.<sup>91</sup>

**Policy Recommendation:**

- Civil asset forfeiture should be ended in all 50 states. According to the American Civil Liberties Union, civil asset forfeiture is a threat to civil liberties and property rights, and state and federal civil asset forfeiture laws should be reformed.<sup>92</sup>

# CONCLUSION

With the explosion in protests ignited by the police killing of an unarmed young black man in Ferguson, Missouri, some aspects of the criminalization of poverty are getting increased attention. More people's eyes were opened to the reality that if you are poor, you are more likely to be arrested, jailed, and even killed.

The Ferguson and St. Louis stories and the 2014/2015 Department of Justice investigation of the Ferguson Police Department and municipal court<sup>94</sup> also helped expose the increase in court fines and fees targeting the poor. According to an NPR investigation, the city of Ferguson collected \$2.6 million in such fines and fees in 2013, most of them for traffic violations and other low-level offenses. This collection of fines and fees was Ferguson's second-largest source of income.<sup>95</sup>

We need to build on the momentum of the Ferguson protests to tackle the intersections of poverty, race, and gender bias that collude to make life exceptionally difficult for the 15 percent of our population living in poverty, the additional 2.3 million incarcerated, and the tens of millions more living close to the edge of poverty.

The U.S. Department of Justice investigation into the Ferguson Police Department revealed deeply flawed criminal justice system that disproportionately affects people of color and low-income people. Ferguson is but a microcosm of a broken criminal justice system nationwide.

At the federal, state, and municipal levels, we must address and find ways to correct the findings of significant injustices found in the investigation.

We are a nation that has turned its welfare system into a criminal system. We criminalize life-sustaining activities of people too poor to afford shelter. We incarcerate more people than any other nation in the world.<sup>96</sup> And we institute policies that virtually bar them for life from participating in society once they have done their time. We have allowed the resurgence of debtors' prisons. We've created a second-tier public education system for poor children and black and Latino children that disproportionately criminalizes their behavior and sets them early onto the path of incarceration and lack of access to assistance and opportunity.

*"Just over a year ago, Tonya DeBerry was driving her 4-year-old grandson in her daughter-in-law's car. A St. Louis County police officer saw that the license plates were expired and pulled her over. He ran a background check and saw an arrest warrant for multiple unpaid traffic tickets in Ferguson. Among those old violations were tickets for driving with a suspended license — lost for earlier unpaid tickets — and driving with no registration, insurance or proof of inspection.*

*DeBerry was arrested and handcuffed in front of her grandson. After someone came to pick up the boy, she was taken to jail. 'Just traffic tickets. No criminal act. Nothing,' says DeBerry, 52, who doesn't work and depends on a disability check and food stamps. "If you have the money, you would never go through that type of situation. If you don't have the money, it's jail, jail."*

—Excerpted from Shapiro, Joseph. 8 February 2015 "Civil Rights Attorneys Sue Ferguson Over 'Debtors Prisons.'" National Public Radio

The events in Ferguson sparked what could be the next civil rights movement in this country. A democratic society that purports “freedom and justice for all” can’t coexist with one that profiles, criminalizes and blames poor, black and Latino communities. We need to take collective responsibility for our hostile nation where the poor get prison.

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