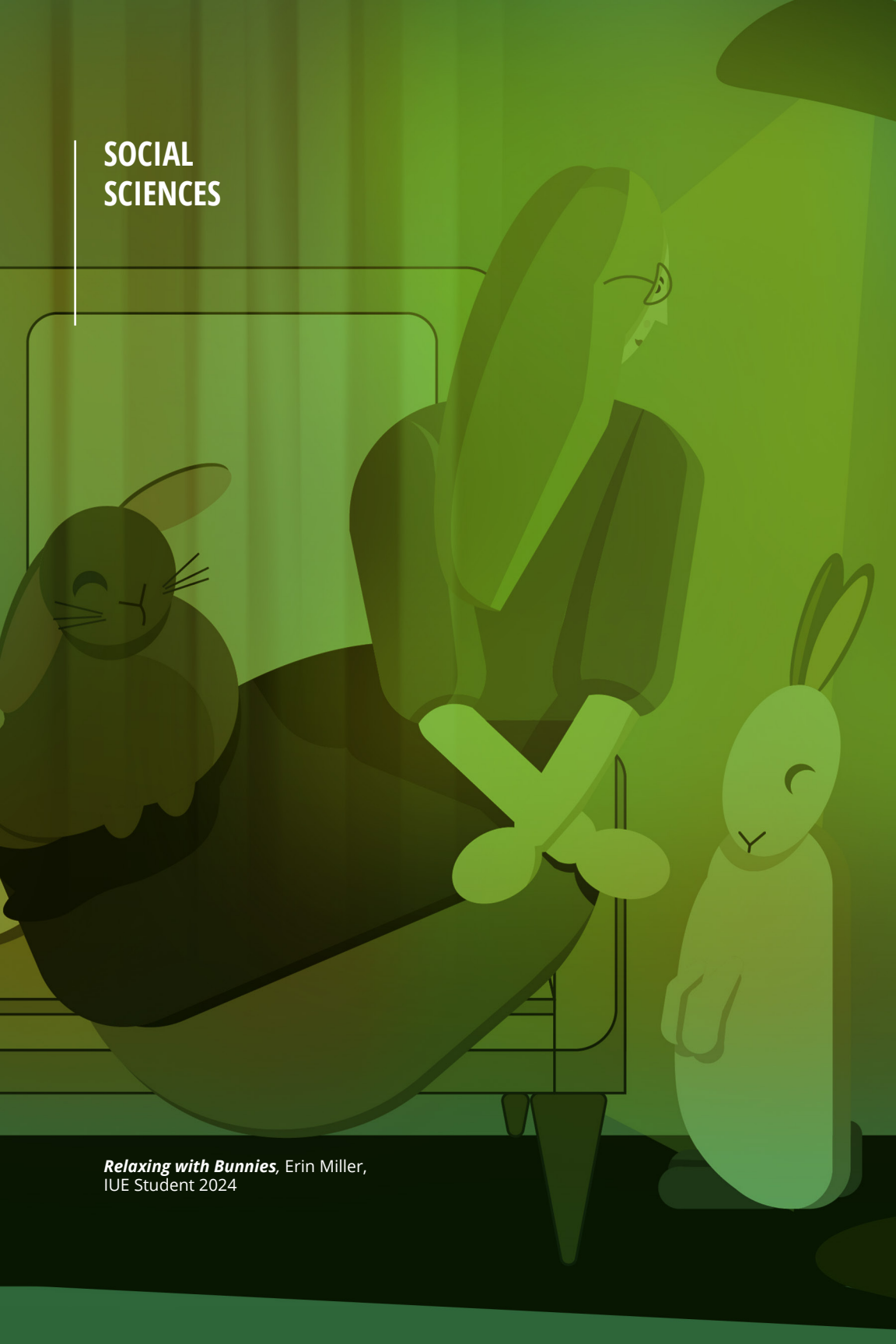


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TIME FOR CHANGE: A LOOK INTO SENTENCING REFORM

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Abstract

There is a prodigious amount of information that illustrates the issue, cause, effect, and plausible solutions regarding sentencing reform. Sentencing reform is a widely discussed and controversial topic in the United States. There are two million people in the nation's prisons and jails—a five-hundred percent increase over the last forty years (The Sentencing Project, 2022). Many argue that President Nixon's "War on Drugs" coupled with other "Tough on Crime" legislation have resulted in this mass incarceration. Prisons are now overcrowded, with a disproportionate number of inmates being African American or Hispanic and many of them incarcerated on nonviolent, low-level drug offenses. This paper will look at previous research regarding criminal justice reform and recommended solutions to change the current sentencing structure.

Keywords: sentencing reform, imprisonment, overcrowded, discrimination, mass incarceration, nonviolent, low-level drug offenses, The Sentencing Project

Jalila Jefferson-Bullock (2016), an associate professor at Arizona Summit Law School, discussed the issue of sentencing reform in her article "Taking a Closer Look: A Case for Sentencing Reform." Jefferson-Bullock (2016) explained how the current sentencing laws are not conducive to the rehabilitative model that the American prison system was built on. Additionally, Jefferson-Bullock (2016) wrote that "today's

lengthy criminal sentences simply do not comport with any theories of criminal punishment” further explaining that the criminal justice system is left with prisons that are overcrowded and offenders who “reenter society lacking contributable and marketable skills due to excessive periods of unfruitful incapacitation” (Jefferson-Bullock, 2016, p.p. 221, 223). Once offenders become incarcerated, they are not provided with adequate rehabilitative services that would help them to become productive members of society. This is even more concerning for individuals who are spending multiple years incarcerated. Upon release from incarceration, many of these individuals are not prepared to live life outside of the prison walls.

The Sentencing Project (an advocacy group that supports decarcerating and eliminating racial disparities), wrote an article titled, “How Many People are Spending Over a Decade in Prison?” which seemingly agrees that lengthy prison sentences do more harm than good. Expanding on the previously acknowledged harms, The Sentencing Project adds that lengthy prison sentences accelerate health problems and often destroy the family unit. The Sentencing Project (2022) provided a look into research that has shown that criminal behaviors typically do not last longer than ten years and therefore suggested that sentencing offenders to terms longer than 10 years is arbitrary and unnecessary.

As with the previous two articles, Subramanian et al. (2020) agreed that sentencing reform is necessary to change the current issue of mass incarceration. Subramanian et al. (2020) wrote an article titled, “A Federal Agenda for Criminal Justice Reform” acknowledging that there was a huge racial, social, and economic injustice with current sentencing laws. Subramanian et al. (2020) took it one step further by offering an entire agenda which would provide a solution to end mass incarceration and the current disparities in the criminal justice system. Another article titled, “Ending Mass Incarceration: A Presidential Agenda,” written by Gawert et al. (2019) provided their own idea of

an agenda. This article recognizes that some effort has been made to reform sentencing with the passage of the FIRST STEP Act but also recognizes that this single bill alone is not enough.

Beto O'Rourke (2019), a former Texas State Representative, wrote an article in which he told his own personal experience and offered insight into the disparities which individuals face when it comes to the criminal justice system. One such disparity is apparent when individuals of a lower economic class become incarcerated, they become "stuck behind bars" because they are unable to make bond. O'Rourke (2019) looked at just one more type of injustice for individuals who are incarcerated. While each of these authors provided their own ideas of the problem, the one thing that they can all agree on is that sentencing reform is necessary to end mass incarceration and racial, social, and economic injustices within our criminal justice system.

Causes

Each of the articles attribute the need for sentencing reform to mass incarceration caused by lengthy prison sentences. Jefferson-Bullock points out that "Oddly, the principle of punishment radically changed, while the punishment distribution tool remained unaffected in the 1980's and 1990's" (Jefferson-Bullock, 2016, p. 221). This radical change that the author is referencing began in 1984 with the passage of the Comprehensive Crime Control Act which implemented mandatory minimum sentences. At that time, there was a major change in the way that sentencing was addressed. Other legislation that was passed such as the Anti-Drug Abuse Act of 1986 and the "three strikes laws" also added to those mandatory minimums. Subramanian et al. agrees that "The crisis of overcriminalization and an excessive reliance on punitive enforcement feed the problem of mass incarceration" (Subramanian et al., 2020, p. 6).

Although O'Rourke does agree that the so called "War on Drugs," was an epic failure and that it must be ended in order to end mass

incarceration, he takes a slightly different approach insinuating that there is an increased number of offenders who are stuck behind bars simply because they cannot afford to post bail. O' Rourke does provide additional reasons as to why American prisons are currently overcrowded citing "over-policing of black and brown neighborhoods, to a judicial process marked by unequal resources, to prisons that set people up for a failure rather than productive reentry" (O'Rourke, 2019, p. 62).

Consequences

The consequences of mass incarceration are already abundantly clear as each of these articles discussed how the criminal justice system and individuals themselves have been affected. Jefferson-Bullock (2016) wrote that the evidence is abundantly clear citing:

Criminologists, judges, political leaders, social scientist, other impartial observers, and even President Obama point to wasted fiscal resources, overcrowded prisons and court dockets, growing recidivism rates, and overly punitive punishment as significant failures that must be corrected by sentencing reform immediately.

The author provides an array of consequences that have resulted from mass incarceration. Jefferson-Bullock (2016) discussed that when there is a lack of rehabilitative services, there is an increased risk of recidivism. The lack of programming also allows for too much idle time in which offenders only can socialize with other offenders. Jefferson-Bullock also discussed consequences of prison overcrowding such as the increased risk of spreading communicable diseases and the inability to manage chronic illnesses.

Taking a closer look at the consequences of lengthy sentences on the family unit is the fact that families are being torn apart. The Sentencing Project (2022) explained that those individuals who

are serving lengthy sentences are at an increased “risk of marital dissolution and of losing contact with their children” (The Sentencing Project, 2022, p.2). Diving even farther into the consequences that families are often faced with, O’Rourke wrote that individuals who are incarcerated are “unable to work, pay taxes, raise their kids, or contribute to society” (O’ Rourke, 2019, p. 61). Children are being raised in single parent homes and are at an increased risk of engaging in risky behavior themselves. Offenders often lose their jobs resulting in a loss of income which places a significant financial burden on the offender’s family. Ultimately, the consequences are severe not just for the offender but on the family as well.

Solutions

The one area these authors did not lack was providing clear and precise solutions to address mass incarceration. The one solution that they all agreed on was repealing mandatory minimums. The Sentencing Project (2022) and Subramanian et al. (2020) went one step further to include “applying these reforms retroactively” which would also include those who are currently incarcerated (The Sentencing Project, 2019, p.2). Grawert et al. (2019) suggested “ending the use of prison entirely for lower-level offenses” (Grawert, et al., 2019, p.2). With so many people incarcerated for lengthy sentences, The Sentencing Project (2022) has recommended “creating a judicial review process within a maximum of ten years of imprisonment” (The Sentencing Project, 2022, p. 2). Grawert et al. (2019) and O’ Rourke (2019) also suggested eliminating the federal prohibition on marijuana, but O’ Rourke (2019) also included expunging the records of those with marijuana convictions to lower incarceration rates. Expunging records for individuals who have been convicted of marijuana charges could reduce the issues that many offenders face with reentry. Subramanian et al. (2020) and O’ Rourke (2019) both agree that more needs to be done to address reentry. By addressing the reentry needs of offenders

and offering more rehabilitative services, recidivism rates could drop dramatically.

Conclusion

There is one common theme throughout each of these articles. Each of the authors discussed how mass incarceration was an enormous problem with significant consequences and agreed that there is a need for sentencing reform. The authors provided several ways to address the current sentencing laws and offered ideas on ways to reduce the number of individuals incarcerated. Eliminating minimum sentences laws, eliminating lengthy sentences, and creating rehabilitative programs for those incarcerated is essential in lowering the number of people incarcerated and preparing those incarcerated to become productive members of society. ■

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