

People Convicted of Violent, Nonviolent, and Sex Offenses

Much of today’s public attention on mass incarceration reform focuses on reducing sentences for or releasing the so-called “non-non-nons,” the nonviolent, non-serious, non-sex offenders. While this works as a starting point, it is an insufficient premise for truly overhauling the system, both because of the assumptions built into it and because of the data it ignores.

The first problem with this premise is pure numbers. Fully 54% of people incarcerated in state prisons in the US are there for violent crimes, so cutting our incarceration rates in half would require releasing some “violent criminals.” In order to return to America’s incarceration rate of the early 1970’s—or what Western Europe has today—roughly

80% of incarcerated people would have to be let go.¹⁸⁴ Accomplishing that goal will require a full rethinking of how we approach crime and punishment.

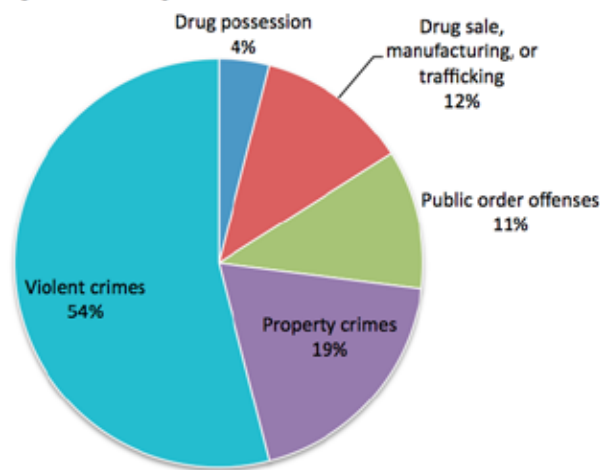
How do we decide who gets released? That brings us to the next problem: centering the debate on the “non-non-nons” frames it as being about those “good” people deserving of freedom and those “bad” people who should rot in prison. The “non-non-nons” may be the kind of low-hanging fruit that get a debate started and achieve short-term advocacy victories, but there is also a risk that enabling their release makes it much harder to move into the territory of the violent, serious, and sex offenders.

Finally, there are inherent problems in these classifications. For instance, the definition of a violent crime is constantly expanding. When the Bureau of Justice Statistics reports on crime, they use six seemingly clear-cut categories: murder, manslaughter, rape or sexual assault, assault, robbery, and “other.”¹⁸⁵ But civil rights activist Van Jones points out that anyone found carrying a gun while committing a crime, even if the gun never gets used, is automatically included in the

“violent” category.¹⁸⁶ In 2009, South Carolina legislators, as part of an omnibus crime bill, redefined 22 crimes as “violent” that qualify for enhanced penalties.¹⁸⁷ When it comes to federal immigration law and what violent crimes serve as cause for deportation, the net has been cast wider and wider. From 1988, when “aggravated felony” was defined solely as murder and drug or

weapons trafficking, today the category includes 20 different offenses. These include “moral turpitude,” possession of marijuana with intent to distribute, and petty theft with a prior jail term, as well as any attempt or conspiracy to commit any of the crimes on the list.¹⁸⁸ And that doesn’t begin to touch the concept of “aging out of crime”; studies have shown that criminal behavior is largely a feature of youth or early adulthood, so even someone who was violent at the time of incarceration is likely no longer a threat in middle age.¹⁸⁹ In short, not all “violent criminals” are created equal.

Why are People in State Prisons?



184 <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

185 BJS, “Prisoners in 2012.”

186 <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

187 Gottschalk, p. 167

188 Maureen Sweeney: “Fact or Fiction: The Legal Construction of Immigration Removal for Crimes,” *Yale Journal on Regulation*, 2010. http://digitalcommons.law.umaryland.edu/fac_pubs/708/

189 <http://www.nytimes.com/2015/03/22/sunday-review/too-old-to-commit-crime.html>

Similarly, the term “nonviolent offense” implies that these people pose no danger to anyone, but that is not necessarily the case. Four-fifths of people in state prisons serving time for a “nonviolent” offense meet at least one of the four

criteria that define a “serious” offender. In federal prisons, the number is 55%. Only ¼ of those incarcerated in federal prisons and 1/5 in states are serving time for a first offense. Much attention has been focused on the drug war and how it sweeps up many innocent people, a topic covered at greater length on p. 27. Even so, some scholars and law enforcement leaders believe that drug charges often serve as surrogates for more serious, violent crime where there wasn't enough evidence to indict. By one

calculation, less than 6% of people held in state prisons and 2% in federal prisons are “unambiguously low-level drug offenders.” People in jail exclusively for possession,

without also being involved in sale or transport, make up just 4% of state and federal drug offenders and just 1% of all incarcerated people.¹⁹⁰ What this means is that any given “nonviolent offender” may or may not be a threat to public safety.

“[I]t is not the task of penal reform—or of the movement against the death penalty—to present to the public whatever it will accept. The task, rather is to argue for a punitive policy that is humane, feasible, and effective, whatever the crime and whoever the offender and regardless of the current climate of public opinion.”

- Hugo Adam Bedau, Professor of Philosophy and anti-death-penalty activist, died 2012.¹⁹⁸

And then there is the third “non,” the non-sexual offender. Sex crimes scare Americans; in a 2005 Gallup poll, more respondents said they are “very concerned” about child molestation (66%) than terrorism or violent crime.¹⁹¹ This has led to ballooning incarceration rates, lifetime registration requirements (with extensive associated restrictions in housing¹⁹², employment, and



Photo by Dr. Avishai Teicher, Creative Commons License

so on), and a legal ability to forcibly commit sex offenders to “civil treatment centers” indefinitely after the end of their prison terms¹⁹³. “No other industrialized democracy

¹⁹⁰ Gottschalk, p. 169.

¹⁹¹ <http://www.gallup.com/poll/16123/crystal-meth-child-molestation-top-crime-concerns.aspx>

¹⁹² <http://www.npr.org/2014/10/23/358354377/aclu-challenges-miami-law-on-behalf-of-homeless-sex-offenders>;
<http://www.oregister.com/articles/offenders-611517-sex-law.html>

¹⁹³ <http://csgjusticecenter.org/reentry/media-clips/a-system-that-is-clearly-broken/>

imposes such lengthy criminal sanctions on sex offenders or keeps them so ensnared long after they have completed their criminal sentences.”¹⁹⁴ But “sex crime” is an extremely broad category that runs the gamut from “making obscene phone calls to urinating in public to consensual sex between teenagers to the rape and murder of a child.”¹⁹⁵ This last is the fear that runs through any parent’s mind, but it is, in fact, exceedingly rare — “a thin sliver” of all sexual offenses committed in the United States.¹⁹⁶ Furthermore, most sex offenders do not reoffend.¹⁹⁷

All of which brings us back to our starting point: reducing sentences for the non-non-nons is a place to start, but it is not an end in and of itself—especially if it goes hand-in-hand with increasing penalties for violent, serious, and sex offenders.¹⁹⁹ Across-the-board reform calls for deep reflection on our society’s values, creativity, courage, and acting from data rather than from fear.

Facts and Figures

Sex Offenses: Crime and Punishment:

- Rape and sexual assault rates peaked in the 1980’s and have fallen since then, in line with national crime rates. Meanwhile, convictions for sex offenses increased by 400% between 1993 and 2000.²⁰⁰
- 10–20% of people in state prison are currently serving time for sex offenses, though in some states it’s almost 30%.²⁰¹

- The number of people serving time for possession of sexually explicit materials, usually child pornography, in federal prisons increased more than sixtyfold (6000%) between 1996 and 2010, compared to a 60% increase in drug offenses over the same period.²⁰²

Sample Partner Organizations

- JustLeadershipUSA
- Californians for Safety and Justice
- ACLU
- Brennan Center for Justice
- Human Rights Watch
- Amnesty International
- Justice Policy Institute
- Open Society Foundation



Photo by Bill Whitaker, Creative Commons License

¹⁹⁴ Gottschalk, p. 197

¹⁹⁵ Gottschalk, p. 197

¹⁹⁶ Eric Janus, *Failure to Protect: America’s Sexual Predator Laws and the Rise of the Preventive State*, 2006, p. 2.

¹⁹⁷ Gottschalk, p. 210-211

¹⁹⁸ Qtd in Gottschalk, p. 194.

¹⁹⁹ Such as the position laid out by Senate Judiciary Committee Chair Chuck Grassley in late April 2015, <http://freebeacon.com/issues/grassley-signals-openness-to-some-sentencing-reform/>

²⁰⁰ Qtd in Gottschalk, p. 194.

²⁰¹ Velazquez, “Pursuit of Safety,” Vera Institute. <http://www.vera.org/pubs/pursuit-safety-sex-offender-policy-united-states-0> Because of differences in how sex crimes are classified, it’s hard to compare these figures to the data above.

²⁰² Gottschalk, p. 199