

**Working to Reform Policy while Building Community Support:
A Description of Concrete Measures that Could Reduce the Number of People Imprisoned
and Mitigate the Effects of Imprisonment on Our Communities**

*Think Piece for Project UNSHACKLE Meeting
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No One Told Me

No one told me that one day I'd be saving the grains of salt that accumulated in the bottom of a pretzel bag to season my food. No one told me. No one told me I'd be using industrial strength floor wax as nail enamel, applied to my breaking nails with q-tips that I obtained by trading off some other valued necessity. No one told me. No one told me that I'd have crayons soaking in baby oil to use for rouge, lipstick or eyeliner.

I was never told that instead of good old Elmer's Glue, I'd be using toothpaste as an adhesive. Applied to the back of my precious family photos, the toothpaste made the pictures stick to the corkboard near my bed provided by the county. I was never told that one day I'd be adapting a pair of county panties into a county "sports bra."

I certainly never thought I'd see the day when I'd make a solution of sugar, water, and deodorant to spray on my freshly curled hair; in a feeble attempt to replicate spritz, mousse, or holding spray.

I wasn't given a hint that my Dear Mother would die during my six months incarceration.

Then, when I volunteered to take a free HIV test administered by the prison health system, no one told me that I'd test positive for the virus. No one told me what or what not to do about it. No one told me how or how not to live. In fact, no one told me that I could continue to live.

In actuality, I had willed myself to die. But, day after day I kept waking up, ALIVE!

There was no literature provided for me, and no one told me to exercise more, increase my water or even to order extra vitamins on my commissary. I wasn't advised to increase my prayer efforts, meditate or keep positive thoughts or hope.

No one told me and in return I told no one. It was my very own dark secret and I dared not tell anyone for fear of being shunned, rejected, stigmatized and left alone.

So one day I was compelled to tell myself that living was more important than dying and that if I must live with HIV, then so be it. No one told me, but today I am prepared to tell you, DON'T PANIC! Life is Good. Grasp it. Claim it. Embrace it. Caress it. Salute it. And most of all Assert It.

— Waheedah El-Shabazz

Waheedah writes of the pain that so many people endure at the intersection of HIV and imprisonment – where fears of dying and fears of rejection intertwine in a grim reality of hopelessness. Where is God in this pain? Where is support? Where is life? Waheedah was diagnosed in a room in the Philadelphia county jails with no curtains. She was crying and everyone was walking by. She told me many times that she felt like killing herself. This is still where Waheedah's head was most days when I first met her. I have often wondered what would have happened to Waheedah if she had been diagnosed on the streets, still close to her addiction.

Would she have fallen back into using, physically willing herself to die? As it happened, she only had her thoughts. And in the midst of these thoughts, she met my colleague, John Bell, and found a community of activists. Shortly after her release, Waheedah joined our TEACH (*Treatment Education Activists Combating HIV*) Outside program to learn about living healthy with HIV, accessing the services she needed, and becoming active in local struggles around prison health care.¹ Over the five-week course, John Bell and I were able to walk alongside Waheedah as she grappled with her most distressing moments. We earned not just her respect as professionals, but also her trust as friends. Through this closeness, TEACH Outside became a new beginning for Waheedah. After graduating, she started doing activist work to change the health care in the Philadelphia jails. She found hope in this struggle for justice and found her voice beyond the threads of HIV and imprisonment that had once entwined her.

Identifying HIV Prevention Justice Issues through the Stories of Our Communities

My task in this think piece is to explore how imprisonment promotes people's vulnerability to HIV, and what concrete measures would reduce the number of people imprisoned and mitigate the effects of imprisonment on our communities. Addressing these concerns requires stepping close to the people most marginalized in this epidemic, and listening in their stories for which structural injustices are to be prioritized as HIV prevention justice issues. As such, Waheedah and her fellow TEACH Outside classmates will be my guides as I try to navigate this nexus of HIV and imprisonment. Each of their stories has impressed upon me that vulnerability to HIV infection is rooted not in the behaviors that can transmit HIV, but rather in people's entrapment in structures of socio-economic injustice that make it difficult, if not impossible, for them to protect their health. If work to end the AIDS epidemic is to be successful, this work must address these root causes fueling the AIDS epidemic in our communities.

In my years working alongside people with HIV who are currently/formerly imprisoned, I have met countless numbers of people wading through the post-imprisonment policies that restrict their access to services, benefits and jobs, people who are often suffering these struggles in silence without the support of community. From their vivid memories of loved ones dying, to their negative experiences with service providers, to their fruitless attempts at fighting for their needs, to their stories of family and friends abandoning them in the wake of their HIV diagnoses – every step they have taken to fight back and carve out a different path for their lives has been crushed. The cumulative impact of these experiences has left many convinced that things cannot change. Lifting the hold that HIV and imprisonment have had on their lives requires more than urgings not to fall prey to the despair that engulfs them most days. People need to be able to imagine a life beyond HIV and imprisonment; people need proof that things *can* change.

Responding to this demand for real change necessarily brings us to questions of how to reduce the number of people imprisoned and how to mitigate the effects of imprisonment on our communities. Waheedah's story and those of her fellow TEACH Outside classmates are thick with the desire to create the lives they want to live and with the need for genuine community support. This desire and this need have been *created*, in large part by policies and laws ushered in under the guise of the 'war on drugs,' revealing that HIV and imprisonment are not isolated crises that happen to overlap in some people's lives, but rather interdependent crises that are

¹ TEACH Outside was founded in 2000; Waheedah was a graduate of the Fall 2003 class.

together accelerating the destruction of our communities. Thus, it is absolutely critical that HIV prevention justice work incorporates a focus on:

- (1) What sentencing laws need to be repealed;
- (2) What reentry policies need to be revoked; and
- (3) How community support can be rebuilt.

While this three-pronged focus is critical for identifying potential campaigns, it is just as important to remember that these distinctions are quite meaningless in the lives of people who are currently/formerly imprisoned. People are wading through legal, policy and support crises simultaneously; they are wading through these crises at this very moment. Thus, as we move forward with identifying concrete campaigns to reduce the number of people imprisoned and mitigate the effects of imprisonment on our communities, we should not and cannot separate the campaign goals from the process of campaign organizing. As my work in TEACH Outside has shown me, and Waheedah's own struggle is testament to, campaigns to address sentencing reforms and post-imprisonment burdens are means of building community support; and community support projects provide the direction and nuance necessary to win changes in sentencing laws and reentry policies. As such, this think piece seeks not only to identify potential campaigns to address the toll that imprisonment has taken on our communities, but also to underscore the importance of wedding work to reform sentencing laws and reentry policy with work to build community support.

The Toll of the 'War on Drugs' on Our Communities

Under the auspices of the 'war on drugs', drug policy in the 1980s began by pushing mass imprisonment over drug treatment, and bringing in a slew of laws and regulations designed to restrict the rights of people once they were released from prison. Currently more than 1 out of every 100 adults is confined in an American jail or prison, with the daily jail/prison census exceeding 2.3 million.² This four-fold jump in prison population since 1980 is the direct result of increased policing, prosecution, and sentencing for drug-related crimes.³ These policies have formed a multidimensional process of exclusion from participation in social activities, further institutionalizing the structures of racism and classism already woven into the fabric of United States society and history, and paving the way for the criminalization of poverty and homelessness that has characterized the urban renewal projects in many United States cities.⁴

The hallmarks of drug-related sentencing 'reforms' have been:

- ⇒ *Mandatory Minimum Sentencing Laws*. The *Anti-Drug Abuse Acts* of 1986 and 1988 included provisions for severe mandatory minimum drug sentences, which removed the sentencing judge's discretion to consider factors about the individual and the offense that would normally have been integral to the sentencing process. Mandatory minimums dictate a person's sentence solely based on the weight of the drug; severity of a sentence

² Pew Center on the States, Public Safety Performance Project. "One in 100: Behind Bars in America 2008." http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf (accessed April 17, 2008): 5.

³ Marc Mauer. *Race to Incarcerate, revised and updated*. New York: The New Press (2006): 91.

⁴ Toby Seddon. "Drugs, crime and social exclusion: Social context and social theory in British drugs- Crime research." *British Journal of Criminology* 46 (2006): 82.

is increased if a person is also in possession of a firearm. Within the federal system, there is no possibility of parole at any point during a person's Mandatory minimum sentence.⁵ While these federal laws generally served as models for state-level sentencing laws, New York's *Rockefeller Drug Laws* of 1973 were quite influential in the formulation of federal mandatory minimum laws.

- ⇒ *Mandatory Sentencing Guidelines*. With the passage of the Sentencing Reform Act of 1984, Congress established the United States Sentencing Commission in an attempt to regulate sentencing disparities among judges. The United States Sentencing Commission wrote guidelines that included sentencing ranges for all convictions. Under these guidelines, the circumstances of a case could be considered at sentencing, allowing judges the discretion to hand down a sentence at the high or low end of the range. Effective in 1987, the drug sentencing guidelines were quickly increased to match the sentences required under federal mandatory minimums, removing judicial discretion at sentencing.⁶
- ⇒ *3-Strikes Laws*. A further outgrowth of the mandatory minimum sentencing were '3-Strikes Laws,' mandating life in prison for a third felony conviction, without eligibility for parole until a considerable time into a person's sentence, generally twenty-five years. Beginning in California, twenty-six states and the federal government now have '3-Strikes Laws' on the books. Additional state-initiated provisions include severe mandatory sentences for people selling drugs near specific locations like schools.⁷

The effect: more people are serving longer sentences for mostly nonviolent crimes that could arguably be better addressed through drug treatment programs. At present, about 80% of people in U.S. prisons report histories of addiction, and only about 15% of them are receiving drug treatment.⁸

The 'war on drugs' has always primarily affected poor people of color. While drug use is equal across race lines, people of color are arrested, convicted and sentenced at dramatically higher rates than white people. Black people represent 14% of all illicit drug users but account for 37% of the people arrested for drug offenses and 56% of those imprisoned for drug offenses.⁹ Sentencing 'reform' has also increased these racial disparities. One of the most widely-cited sentencing reforms is that five grams of crack carries the same mandatory five-year sentence as five-kilograms of powder cocaine; black people have consistently represented 80-85% of those charged with crack offenses.¹⁰ With 35% of black men between the ages of 25 and 34 currently

⁵ Marc Mauer and Ryan S. King. 2007. "A 25-Year Quagmire: The 'War on Drugs' and Its Impact on American Society." http://www.sentencingproject.org/Admin/Documents/publications/dp_25yearquagmire.pdf (accessed April 27, 2008).

⁶ Families Against Mandatory Minimums, "The case against mandatory sentences." <http://www.famm.org/Repository/Files/PrimerFinal.pdf> (accessed April 28, 2008): 11-2.

⁷ Ibid.

⁸ Rachel Maddow, *Pushing for Progress: HIV/AIDS in Prisons*. (Washington, DC: National Minority AIDS Council, 2002) 25. Marc Mauer and Ryan S. King. 2007. "A 25-Year Quagmire: The 'War on Drugs' and Its Impact on American Society."

http://www.sentencingproject.org/Admin/Documents/publications/dp_25yearquagmire.pdf (accessed April 27, 2008).

⁹ Marc Mauer and Ryan S. King. 2007. "A 25-Year Quagmire: The 'War on Drugs' and Its Impact on American Society." http://www.sentencingproject.org/Admin/Documents/publications/dp_25yearquagmire.pdf (accessed April 27, 2008).

¹⁰ Marc Mauer, *Race to Incarcerate, revised and updated*. New York: The New Press (2006): 171.

incarcerated, on probation or on parole,¹¹ it is hardly an overstatement to say that an entire generation is behind bars. The impact of these racial disparities on communities has been further intensified by the disproportionate toll that the ‘war on drugs’ has taken on women. Since 1980, eight times as many women are incarcerated (compared to the four-fold increase for men), most of them for petty drug crimes or theft, and self-defense against abuse. 75% of these women are mothers, two-thirds with children under the age of eighteen. Looking at this impact on family structures from the other direction, an estimated 1.5 million children have at least one parent in prison.¹² These racial and gender statistics overlap seamlessly with class statistics.¹³

Alarming as these statistics might be, they cannot provide a picture of the lived experience of communities who are rapidly losing their fathers and mothers, their caregivers and providers. Families are left to cope with financial stress, childcare issues, and diminishing support structures in the wake of their loved ones’ imprisonments. The loss of a loved one’s income is compounded by prison collect call fees, expenses for prison visits, and lawyer fees, creating an often impossible financial situation for family members. This financial stress makes it more difficult for incarcerated parents to stay connected with their children, undermining family formation and leading to a gradual dissolution of family bonds over the five, ten, twenty years of a parent’s imprisonment. The social stigma of having a loved one in prison often serves to further disconnect these families from desperately needed communities of support, whether this disconnection happens because of outright community hostility or self-imposed silence to avoid that hostility.¹⁴ Finally, the sheer need for companionship may mean that those imprisoned and those left behind take new partners, relationships that often remain shrouded in silence out of a desire to honor one’s commitment to the pre-imprisonment relationship.¹⁵

When loved ones are released from prison, family and community infrastructure is seldom improved. Loved ones face a series of “invisible punishments,”¹⁶ those laws and regulations that diminish the rights of people who are formerly imprisoned, including restrictions on:

- ⇒ *Voting Rights*. 48 states have some restriction on voting rights for people with felony convictions, with seven states having a lifetime ban resulting in the permanent disenfranchisement of 5.3 million Americans. An estimated 13% of black men are currently unable to vote because of these restrictions, as compared with a 2% rate in the general American population.¹⁷
- ⇒ *Employment*. As the restrictions placed on hiring teachers, child care workers, and medical professionals with criminal records have increased, so, too, has the ease for conducting background checks in professions without such restrictions. The increasingly

¹¹ Ernest Drucker, “Drug prohibition and public health: 25 years of evidence.” *Public Health Reports* 114 (1999): 21. Black males born in 2001 or later have a 32% likelihood of imprisonment at some point in their lifetime (Marc Mauer, *Race to Incarcerate, revised and updated*. New York: The New Press (2006): 138).

¹² Marc Mauer, *Race to Incarcerate, revised and updated*. New York: The New Press (2006): 204-5.

¹³ *Ibid.*, 177.

¹⁴ Donald Braman. “Families and Incarceration.” *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. Eds. Mauer, Marc and Meda Chesney-Lind. New York: The New Press (2002): 117-8, 121-2, 122-3, 131.

¹⁵ amfAR. “HIV in Correctional Settings: Implications for Prevention and Treatment Policy.” http://www.amfar.org/binary-data/AMFAR_PDF/pdf/000/000/185-1.pdf (accessed April 27, 2008): 2.

¹⁶ Jeremy Travis, “Invisible Punishment: An Instrument of Social Exclusion,” in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, Mauer, Marc and Meda Chesney-Lind, eds. New York: The New Press (2002): 15-36.

¹⁷ Marc Mauer. “Mass Imprisonment and the Disappearing Voters.” *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. Eds. Mauer, Marc and Meda Chesney-Lind. New York: The New Press (2002): 50-1.

public nature of criminal records, facilitated both by new technologies for tracking arrests, convictions and time served and expanded access to this information, has created severe barriers for people trying to find work after imprisonment.

- ⇒ *Educational Loans*. The Higher Education Act of 1998 suspended eligibility for student loans and other educational assistance for anyone convicted of a drug-related offense.
- ⇒ *Public Housing*. Statutes enacted in the 1990s enable public housing agencies and Section 8 providers to deny housing to individuals who have engaged in ‘any drug-related criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises [by others].’
- ⇒ *Welfare Assistance*. Among the many changes ushered in through the welfare reform law of 1996 was the requirement that states permanently ban individuals with felony drug convictions from receiving cash assistance and food stamps. Under the law, violations of parole or probation also result in a temporary ineligibility for benefits.¹⁸

These punishments operate totally independently of the criminal justice system; are not proportional to a person’s crime; and are generally indefinite restrictions for which people who are formerly imprisoned have no course of redress. As such, these “invisible punishments” make it nearly impossible for loved ones to secure jobs, find housing, receive financial assistance, and support their families once released from prison. Excluded from society’s traditional means of sustaining oneself, the imprisonment cycle almost inevitably continues. According to a June 2002 study by the Bureau of Justice, two-thirds of loved ones will be rearrested within three years of their release, further eroding their family and community infrastructures.

The Intersection of the AIDS Crisis and the ‘War on Drugs’ in Our Communities

It was in the midst of this full-spectrum attack on communities through the racially biased sentencing laws and reentry policies that the AIDS crisis broke in the 1980s. While AIDS is still largely tracked by risk behaviors associated with the bodily fluids that can transmit HIV (blood, semen, vaginal fluids, breast milk), there is now a growing body of research documenting the reality that people in communities hardest hit by the policies of the ‘war on drugs’ knew from the start of the AIDS epidemic: HIV risk and vulnerability are far more accurately assessed by markers like poverty and socio-economic injustices that impinge upon people’s abilities to protect their health.¹⁹

The ‘war on drugs’ has been a war on relationships, a war on people’s parents, spouses, partners and caretakers. These are precisely the relationships that form the basis of strong and vibrant communities; these are the relationships people depend on for assistance and support in times of need. In the wake of a partner’s imprisonment, a mother may suddenly be saddled with the impossible burden of making ends meet to keep a roof over her children’s heads and food in their bellies. If sex work feels like her only viable source of income, immediate needs like feeding her children and having a safe place to sleep are likely to take priority; long-term health

¹⁸ Jeremy Travis, “Invisible Punishment: An Instrument of Social Exclusion,” in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, Mauer, Marc and Meda Chesney-Lind, eds. New York: The New Press (2002): 22-4.

¹⁹ Arthur M. Fournier and Cynthia Carmichael, “Socioeconomic influences on the transmission of human immunodeficiency virus infection - The hidden risk.” *Archives of Family Medicine* 7 (1998): 214-217; Merrill Singer “AIDS and the Health Crisis of the United States Urban Poor – The Perspective of Critical Medical Anthropology.” *Social Science and Medicine* 39 (1995): 931-948.

consequences like risk for HIV infection might not even register in the midst of such pressing crises. Moreover, the sudden imprisonment of a partner poses a threat to what might have otherwise been a committed relationship, particularly if a partner will be imprisoned for a lengthy sentence, as is common under the ‘war on drugs’ sentencing reforms. The beginning of concurrent relationships, whether by the imprisoned partner or the partner remaining on the outside, can increase a couple’s risk for exposure to HIV infection.²⁰

As the ‘war on drugs’ has progressed, more and more people have been put in the position of making such impossible decisions. And because of the racial bias that has infused the increased policing, prosecution, and sentencing of the last twenty-five years, the health crises created by the ‘war on drugs’ have most impacted communities of color, particularly black communities. As such, the new sentencing laws and post-imprisonment punishments ushered in by the ‘war on drugs’ have become primary forces fueling the black AIDS epidemic in the United States. And their impact has been profound. By every measure, black people are being infected, getting sick and dying from AIDS at much greater numbers than any other racial/ethnic group. According to Centers for Disease Control and Prevention statistics, 49% of all new HIV infections and 50% of new AIDS diagnoses are in black people. Black women account for 66% of new HIV/AIDS cases among women in the United States, and AIDS is the leading cause of death among black women ages 25 to 34.

Furthermore, by targeting people at highest risk for HIV, the ‘war on drugs’ has also dramatically increased the number of people with HIV behind bars. Each year, as many as one in four people with HIV pass through a correctional facility.²¹ Because of drug use in prison and because of sex – whether by choice or by coercion – HIV transmission risk in prison is real. This risk is not being addressed, as access to condoms, clean needles, anti-rape interventions and other harm reduction tools remain scarce in jails and prisons throughout the country.

The magnitude of the overlapping HIV and prison crises is only further exacerbated by the devastating combination of inadequate health care and HIV stigma people face while imprisoned. The hallmarks of for-profit prison health care are frequent lapses in medications, poor access to emergency care, and fees for medical visits/prescriptions, all of which compromise people’s abilities to take care of themselves. Moreover, nearly every step people with HIV take to access health services runs the risk of breaking their confidentiality.²² The impacts of inadequate health care and HIV stigma are only intensified by the lack of comprehensive HIV education and support in prison. In prison systems without HIV education and support programs, people are left saddled with the understanding that HIV is a death sentence, both physically and socially. And in the current system, they are often correct. Whether people decide to seek medical care or refuse it, their lives are on the line – from the HIV or from the discrimination they face in their facilities. Thus, once released, people with HIV are generally sicker than when they entered prison. And they rarely have the referrals for medical care, housing, or drug treatment they need, problems only compounded by the series of post-

²⁰ amfAR. “HIV in Correctional Settings: Implications for Prevention and Treatment Policy.” http://www.amfar.org/binary-data/AMFAR_PDF/pdf/000/000/185-1.pdf (accessed April 27, 2008): 2.

²¹ Theodore M. Hammett, Mary Patricia Harmon and William Rhodes, “The Burden of Infectious Disease Among Inmates of and Releases From US Correctional Facilities, 1997.” *American Journal of Public Health* 92 (2002): 1791.

²² For example, correctional officers may find out protected health care information like someone’s HIV status when a person puts in a ‘sick call slip’ to see the prison medical staff, and people frequently have their HIV meds called out by name in medication lines.

imprisonment punishments they face. Delay in receiving HIV treatment can mean a swift deterioration of the immune system; lack of housing means living in a shelter or on the streets; and lack of drug treatment leads to high rates of relapse and can hasten the road back to prison.

Possible Directions for Sentencing Reform and Reentry Policy Reform

Prioritizing the lives of people who are living with/at risk for HIV means stepping into the nexus of HIV and imprisonment. In states across the country, individuals and organizations are responding to the treatment, care and support needs of people with HIV who are imprisoned, and their needs upon release. Their struggles to combat health care inadequacies and HIV stigma in prison are far from over, but they remain ongoing. Thus, as the think pieces prepared by Barry Zack and Mary Sylla discuss, a major next step in addressing the immediacy of the AIDS crisis inside prisons is the widespread institutionalization of HIV prevention programs, including work to address rape in prison.²³ Without ready access to harm reduction tools and anti-rape interventions, it will be impossible for people who are imprisoned to protect themselves against HIV infection.

But comprehensively addressing the AIDS crisis in prisons requires not only work to mitigate people's risk for HIV transmission, but also work to challenge those systems and structures that have put people at risk for HIV in the first place. As such, two critical HIV prevention concerns are:

- (1) How to reduce the number of people imprisoned; and
- (2) How to mitigate the effects of imprisonment on communities.

As discussed above, the AIDS crisis for people who are currently or formerly incarcerated has been *created*. The drug-related sentencing reforms of the 'war on drugs' have dramatically increased the number of people currently imprisoned, disrupting the relationships and institutions that once held their communities together in times of need. Post-imprisonment punishments further disrupt community infrastructure by making it nearly impossible for people who are formerly incarcerated to access the care and support they need even when they return to their communities. People are wading through decades of tough on crime legislation designed to limit their access to social services and prevent them from getting much needed support. These experiences have left many convinced that services simply do not exist. And they are often right. Thus, sentencing reform and reentry policy reform is necessary if one is to take seriously the depth and intricacies of how grief has subsumed hope, how people can imagine no future, how even the present is difficult to live through.

Effectively reducing the number of people imprisoned and mitigating the effects of imprisonment on communities necessitates a multidimensional approach, including legislative work to repeal unjust sentencing laws and restrictions placed on people with criminal records; advocacy to funnel money allocated for policing and prisons into community-restoration projects like addiction programs, education, jobs, and housing; and comprehensive education focused on building people's skills to access these services once released. Individuals and organizations in communities across the country have long-since stepped forward to fill some of these service

²³ For more information on ongoing work to address rape in prison, please see *Stop Prisoner Rape* at (<http://www.spr.org/en/contact.asp>).

gaps and training needs; this difficult work has recently received much needed financial support with the passage of the Second Chance Bill, which will increase funding for mentoring programs, drug treatment, job training, and services for children of imprisoned parents.²⁴ But even with this infusion of support for constructive, community-centered approaches, ‘war on drugs’ sentencing laws and post-imprisonment punishments have remained largely intractable barriers. As such, reforming these policies is among the most pressing HIV prevention justice concerns.

Sentencing Reform. By the mid-1990s, drug policy in the United States had begun to shift somewhat from an imprisonment to a treatment model of addressing drug use and addiction. The last decade has seen the rise of drug courts and alternative sentencing options like diversion-to-treatment for people with low-level sentences. But these strategies remain both insufficient and incomplete. Rarely do they include the a comprehensive plan to address the multitude of post-imprisonment restrictions people will face in building new lives, which present significant triggers for future drug relapses.²⁵ Moreover, none of these strategies have lifted the stringent mandatory minimum sentencing laws instituted in the 1980s. As such, the United States has continued to see ever-rising arrests, convictions and prison sentences for drug-related offenses.²⁶ The national coalition Families Against Mandatory Minimums (FAMM) has identified three strategies for comprehensively reforming the ‘war on drugs’ sentencing policies that easily map onto HIV prevention justice concerns.

⇒ *Restore Judges’ Discretion to Fit the Punishment to the Individual.* As discussed above, mandatory minimum sentences have removed judges’ discretion in considering circumstances specific to a case at sentencing. Abolishing mandatory minimum sentencing laws and restoring judicial discretion at sentencing would provide for flexibility in sentencing, as well as the possibility of defendants to appeal the decision if deemed too harsh (and for prosecutors to appeal if deemed too lenient). The goal of restoring judicial discretion is not only so that this discretion is possible in future cases, but also so that prior mandatory minimum sentences can be reviewed retroactively.

⇒ *Support Sentencing Guidelines.* In 2005, the U.S. Supreme Court made the United States Sentencing Commission’s guidelines advisory, not mandatory. As such, judges are now able to exercise discretion above or below the suggested sentence range based on circumstances in a case. These now advisory guidelines, however, do not trump federal-level drug offenses for which a mandatory minimum is triggered, nor do these guidelines trump state-level mandatory minimums. And this change to sentencing guidelines was not made retroactive, so there is currently no means for reviewing prior drug sentences unless battles are waged to reform the guidelines for specific drug-related sentences, like the recent victory around crack cocaine sentencing guidelines (see below).

²⁴ For more information on the Second Chance Act, including how the campaign was built, what successes it entails, and what compromises had to be made to pass the bill, see: (<http://www.sentencingproject.org/NewsDetails.aspx?NewsID=591>).

²⁵ Analyzing the inadequacies of current drug diversion programs is critical, since some ongoing evaluations of these strategies show discouraging results (i.e. re-imprisonment, despite drug treatment). Unless these negative evaluations are contextualized within the multitude of forces that can fuel addictions, it is likely that we will see a slowing or even defunding of diversion-to-treatment strategies.

²⁶ Marc Mauer and Ryan S. King. 2007. “A 25-Year Quagmire: The ‘War on Drugs’ and Its Impact on American Society.” http://www.sentencingproject.org/Admin/Documents/publications/dp_25yearquagmire.pdf (accessed April 27, 2008).

⇒ *Use ‘Smart-on-Crime’ Approaches.* One of the most devastating effects of the ‘war on drugs’ has been the criminalization of what is a medical and social issue. As such, positive changes to drug policy are necessary if the logic of the ‘war on drugs’ is to be reversed. This requires not only the institution/expansion of diversion to treatment options, but also the redirection of funds to expand supportive services. Programs that provide housing, drug treatment, education and employment offer a vital and currently missing safety net for people struggling in the communities hardest hit by HIV and imprisonment. Recognizing that addiction, like HIV vulnerability, is often fueled by socio-economic injustices, such ‘smart-on-crime’ approaches offer the possibility of addressing the root causes of addiction.²⁷

Currently, FAMM’s work is focused on repealing the crack cocaine federal mandatory minimum. Effective November 1, 2007, the US Sentencing Commission amended the federal sentencing guidelines to reduce the severity of crack cocaine offenses; this decision is being applied retroactively, allowing for all those sentenced under the previous federal guidelines to file motions to have their sentences reduced in accordance with the new guidelines. As tremendous as this victory is, this change has no impact on the federal mandatory minimum for crack cocaine (5 grams=5 years, 50 grams=10 years), nor on state-level mandatory minimum/drug sentencing laws. Thus, the struggle around mandatory minimum sentences for crack cocaine and other drugs continues.

As we consider how to best move forward with concrete campaign work around sentencing reform to address the root causes of HIV vulnerability, FAMM and the Drug Policy Alliance (DPA) are important allies. Both have ongoing national-level campaigns, as well as several active state-level coalitions. Moreover, both offer state-by-state assessments of mandatory minimum/drug sentencing laws that could guide campaigns implemented by HIV and prison advocates at the local level:

⇒ *DPA:* <http://www.drugpolicy.org/statebystate/>; and

⇒ *FAMM:* http://www.famm.org/Repository/Files/82751_Positive%20Trends.pdf.

In the interest of providing ease of entry for new Project UNSHACKLE coalition members who may feel passionate about sentencing reform but lack organizing experience, the ability to connect with FAMM and DPA campaigns seems invaluable. Thus, a suggested next step would be to approach FAMM and DPA about the logistics of such an alliance, including identifying people at FAMM and DPA who would be able to direct Project UNSHACKLE coalition members to campaigns in their region, as well as suggested background information we should incorporate into the Project UNSHACKLE toolkits.

Reentry Policy Reform. Post-imprisonment restrictions remain some of the most insidious outgrowths from the ‘war on drugs’ logic to criminalize the drug use of a few. Often added haphazardly as ‘riders’ to various bills, post-imprisonment restrictions show little consideration for the merit of permanently disenfranchising someone, for instance, based on a single drug possession charge. Moreover, the impact of most of these post-imprisonment restrictions is difficult, if not impossible, to measure, because the process of enforcing the restrictions is often

²⁷ For more information on *Families Against Mandatory Minimums’* strategies for reforming the ‘war on drugs,’ please see <http://www.famm.org/ExploreSentencing/TheIssue.aspx>

left to the discretion of employers, housing counselors or welfare caseworkers. What is certain, though, is that people's social exclusion does not cease at the conclusion of their mandatory minimum sentences; post-imprisonment restrictions have ensured that people are often permanently excluded from the political and social dimensions of American society. It is precisely this comprehensive process of social exclusion that is at the root of HIV vulnerability in communities most heavily impacted by imprisonment.

Because of the haphazard enactment and subjective enforcement of post-imprisonment restrictions, the process for policy reform often requires tackling these restrictions one by one. Legislative reform must be combined with comprehensive education and monitoring of service gatekeepers at each stage if policy reforms are to have a meaningful impact on the discretion currently exercised in approving or denying access to services. Considering some of the most devastating post-imprisonment restrictions, there are several next steps to consider in advancing reentry policy reform as an HIV prevention justice concern. These include:

- ⇒ *Lifting the Ban on Public Housing.* Through the Housing Opportunity Program Extension Act of 1996, the federal government authorized public housing authorities to obtain criminal record information and drug treatment records for all housing applicants. In what is called the 'one-strike initiative,' housing authorities were granted the ability to deny admission to public housing and immediately evict housing tenants (without any grievance procedure) on the basis of past or current drug use. Most legal challenges to these housing policies have failed, and because of this, advocates have begun to focus on local community-organizing campaigns aimed at getting public housing authorities to use what little discretion they have in housing admissions and lease development. But a national campaign focused on modifying federal public housing laws remains a critical issue to be explored.²⁸
- ⇒ *Lifting the Ban on Benefits.* The ban on cash benefits and food stamps enacted through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has been more successfully challenged across the country. States are able to pass laws to either opt out or narrow the lifetime ban on benefits; over half of the states have already been called to do so through the legal and legislative organizing work of local activists. The passage of such laws is most effective when combined with community-organizing work that ensures that letters announcing the modifications to the benefits law are mailed to all state residents who have ever applied for public assistance, and education is conducted with staff at local welfare offices to ensure fair and consistent application of the new law.²⁹
- ⇒ *Eliminate Barriers to Employment After Release.* Most states allow employers to disqualify potential job applicants on the basis of any criminal record, regardless of the seriousness of imprisonment history and how much time has passed since a person was last imprisoned. Moreover, such disqualifications based on criminal record absolve potential employers from having to consider applicants on the basis of their work histories or qualifications for the job being sought. Legal and legislative action is needed to address this discretion in hiring practices, including laws to prevent employers from

²⁸ Drug Policy Alliance. "Collateral Consequences: Denial of Basic Social Services Based Upon Drug Use." http://www.drugpolicy.org/docUploads/Postincarceration_abuses_memo.pdf (accessed April 28, 2008): 2-3.

²⁹ Ibid., 4-6.

seeing arrests that did not lead to convictions, and laws requiring employers to assess applicants' qualifications and abilities to perform a job regardless of criminal record. But, again, community-organizing work must accompany these legal and legislative strategies if such reforms are to be enforced.³⁰

⇒ *Restore Voting Rights to People with Felony Convictions.* Given the variation among voting restrictions state-by-state, restoring voting rights for people with felony convictions involves local legislative and legal organizing work. But as with all of the above post-imprisonment barriers, local community-organizing work must accompany any legislative changes if protection of voting rights is to be ensured. Moreover, targeted voter registration, including in county jail systems where people might be charged but not sentenced, is an equally important component of this work.³¹

The Legal Action Center has recently completed a two-year study on the legal obstacles that formerly incarcerated people face when they attempt to reenter society. Their *'After Prison: Roadblocks to Reentry'* includes state-by-state report cards, as well as advocacy toolkits for taking on concrete campaign work to address post-imprisonment restrictions.³² The Legal Action Center also provides resources for mounting campaigns around specific restrictions, including:

⇒ *Housing:* <http://www.lac.org/toolkits/housing/housing.htm>;

⇒ *Benefits:* <http://www.lac.org/toolkits/TANF/TANF.htm>; and

⇒ *Employment:* <http://www.lac.org/toolkits/standards/standards.htm>.

Given the challenges around achieving changes to these post-imprisonment restrictions, these resources are, at minimum, guides for mapping out the direction of potential HIV prevention justice campaigns to address reentry policy. As with work around sentencing reform, building an alliance with the Legal Action Center to facilitate ease of entry for new Project UNSHACKLE coalition members who lack organizing experience seems an important option to consider.

The Right to Vote Campaign³³ is a national collaboration of the American Civil Liberties Union, the Brennan Center for Justice at NYU School of Law, and the Sentencing Project. Working closely with state and local partners, the Right to Vote Campaign is committed to lifting voting barriers for people with felony convictions through policy reform, litigation, public education, and voter registration. If Project UNSHACKLE decides to focus HIV prevention justice campaign work on voting rights for people with felony convictions, the Right to Vote Campaign seems an invaluable resource. Given the Right to Vote Campaign's already collaborative structure, again, a logical first step would be to approach the Campaign about the possibility of building an alliance at a national level and through state and local partners.

Towards a New Vision for Criminal Justice Policy. Sentencing laws and post-imprisonment restrictions are not isolated policies, but are, rather, symptoms of the deeper logic of racism and classism underlying United States society. Thus, it is critical to ensure that Project

³⁰ Legal Action Center. "Standards for Hiring People with Criminal Records." <http://www.lac.org/toolkits/standards/standards.htm> (accessed April 28, 2008).

³¹ The Sentencing Project. "Felony Disenfranchisement." <http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=4> (accessed April 28, 2008).

³² Legal Action Center. "After Prison: Roadblocks to Reentry. A State-by-State Report Card." <http://lac.pmhclients.com/index.php/lac/126> (accessed April 28, 2008).

³³ For more information on the Right to Vote campaign, please see <http://www.sentencingproject.org/RightToVote.aspx>

UNSHACKLE campaign work always remains attentive to and in conversation about these broader systems of injustice that promote HIV vulnerability and, as such, are the fundamental targets of HIV prevention justice work. The vision of ‘smart-on-crime’ strategies advanced in FAMM’s framing of drug policy reform depends upon a quite radical shift of criminal justice policy away from punishing individuals towards healing our communities. The challenges that have been faced thus far in reforming post-imprisonment restrictions highlight the obstacles to be anticipated if such a shift toward community healing is not actively incorporated in Project UNSHACKLE campaign development. And while a 2002 Open Society Institute national study on attitudes towards the criminal justice system demonstrated that the current approaches to crime and punishment are in fact *not* supported by the majority of people in the United States,³⁴ the task of eradicating the roots of stigmatizing approaches to currently/formerly imprisoned people who are at risk for HIV remains an ever-pressing challenge.

Working with Critical Resistance, both at the national level and in its local coalitions, seems an important next step for developing the resources and strategies Project UNSHACKLE coalition members will need to ground HIV prevention justice work in a vision of healing rather than punishment. Critical Resistance positions itself as a national grassroots coalition struggling for “the creation of genuinely safe, healthy communities that respond to harm without relying on prisons and punishment.”³⁵ Similarly, Project UNSHACKLE campaign development should actively seek out alliances with coalitions working at the local, regional and state-levels, like California’s Justice Now,³⁶ which may provide Project UNSHACKLE coalition members additional means for becoming involved in campaigns to address not only the legacy of drug-related policy reform, but also to advance a restorative approach to criminal justice policy in the communities in which they live. In our work, we can also seek out and publicize concrete stories of community successes at the grass roots in promoting neighborhood safety and health with creative, non-punitive strategies and programs. Success in “decarcerating” our society will need to be built on new narratives and story lines replacing the failed ones of “lock ‘em up and throw away the key.”

Working to Reform Policy while Building Community Support

Realizing this new vision for criminal justice policy requires that we wed policy reform work and work to build community support in Project UNSHACKLE. Even if campaigns to reform sentencing laws and reentry policies are successful, even if these campaigns are accompanied by comprehensive community-organizing work to ensure that gatekeepers comply with the reforms, these new laws on their own cannot undo all of the damage that the ‘war on drugs’ has caused. Communities have endured a crippling 25-year assault, leaving them totally fractured if not almost dissolved. Funds, laws, and education will not solve the problem if there is no community for these funds, laws, and education to reach. Thus, HIV prevention justice work to counter the lasting impact of ‘war on drugs’ policies also requires a comprehensive project of community-building.

³⁴ Peter D. Hart Research Associates, Inc. for the Open Society Institute. “Changing Public Attitudes toward the Criminal Justice System.” http://www.soros.org/initiatives/justice/articles_publications/publications/hartpoll_20020201/Hart-Poll.pdf (accessed April 28, 2008).

³⁵ For more information on *Critical Resistance*, please visit <http://www.criticalresistance.org/article.php?id=51>

³⁶ For more information on *Justice Now*, please visit <http://www.jnow.org/contact.html>

A critical first step in this project is the creation of supportive spaces for people who are just coming home. This approach may seem too incremental to people not immersed in the crises created by the ‘war on drugs,’ but this step is necessary because people are all too often starting with nothing. These smaller networks of people form the building blocks of vibrant community infrastructure. As such, effort must be invested in providing Project UNSHACKLE coalition members with the resources for advancing community-building work as part of an HIV prevention justice agenda to address sentencing laws and reentry policy. These resources should include linkages to local organizations working towards community restoration, including support projects run by people who are formerly imprisoned and faith-based mentoring programs.

As this community-building work progresses in the various efforts pursued by Project UNSHACKLE coalition members, it is important to emphasize that community-building work is not and cannot be seen as separate from policy-reform work. Just as these communities will be centers for reflecting on the trauma of imprisonment, so, too, must they be centers for devising strategies to challenge the mechanisms of structural oppression. To position community-building as detached from policy-reform would just introduce more divisiveness, more hierarchy, into an already dehumanizing system. Moreover, without the direction of people who are formerly incarcerated, legislative work, advocacy and education will all lack the nuanced approach necessary to be truly transformative HIV prevention justice campaigns. As the think piece presented by Rose Braz discusses, only with people who are currently/formerly incarcerated can this work unravel the layers of oppression and dehumanization in the criminal justice system that promote HIV vulnerability. Thus, effort must be invested in developing materials on building relationships with people who are currently/formerly imprisoned and supporting their leadership in Project UNSHACKLE campaigns.

Focusing HIV Prevention Justice Campaigns through the Stories of Our Communities

My experiences with Waheedah and her fellow TEACH Outside classmates has demonstrated to me time and time again that working within the community and by fostering hope, the promise of a future beyond imprisonment can become real to people here and now. As such, I see the process of campaign organizing as important not only for ensuring victory in reforming these root causes of HIV vulnerability, but also for what might be gained in working towards these victories. The policies ushered in by the ‘war on drugs’ have created a logic that focuses on problems, with resolutions only being possible ten, twenty, thirty years down the road. Countering this logic requires not only focusing on the feasibility of solutions to the HIV and imprisonment crises, but also demanding that these solutions are possible *now*.

Like others in the one-third of people who *are not* rearrested within three years of their release from prison, Waheedah has not seen the total reformation of sentencing laws or reentry policies. But by being part of a movement working towards these changes, she has gained the community support and hope desperately needed in the midst of the HIV and imprisonment crises. Through her involvement in this work, she has become a leader in struggles that are actively working to mitigate the effects of imprisonment on their members in the course of broader campaign work to reduce the number of people imprisoned. As such, I believe one of the greatest insights that Project UNSHACKLE can provide new coalition members is that the process of reforming the policies that promote HIV vulnerability can *itself* be a means of

reducing the number of people imprisoned and a means of mitigating the effects of imprisonment on individuals, families and communities.

Laura McTighe began work at the intersection of HIV, imprisonment, addiction and faith over ten years ago in the Philadelphia restorative justice and AIDS activist movements. As founding Director of Prison Services for Philadelphia FIGHT, Laura spent five years living and working alongside people with HIV who were formerly imprisoned. In collaboration with John Bell and Jeanette Moody, she developed TEACH Outside, a community organizing program supporting people through the difficult transition home and building their leadership in movements to end the AIDS epidemic and transform the criminal justice system. She has had the privilege of mentoring and collaborating with TEACH Outside graduates in addressing prison health care policies, post-imprisonment restrictions, and threats to community support networks.

In her research and organizing, Laura continues to focus on building community-led responses to address the HIV and imprisonment crises. During her Masters of Theological Studies, she has combined work in liberation theology and storytelling to speak to the vigor and imagination that persist in the midst of suffering. Soon to be finishing her graduate studies, Laura will be joining CHAMP to launch Project UNSHACKLE. She is also completing a manuscript exploring HIV/AIDS, gender justice and economic justice through the stories of Muslim women living with HIV.

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