

Criminal Justice Study

Part 1 – Pre-Incarceration

League of Women Voters
Of Pennsylvania
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Criminal Justice Committee

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Criminal Justice Study

- Adopted by LWVPA Convention, June, 2015.
- “Study of the criminal justice system, with the intention of creating a PA position on criminal justice, focusing on timely hearings and appropriate bonding, effective counsel from arraignment through sentencing, alternatives to incarceration, appropriate sentencing guidelines, the privatization of prisons, the use and misuse of prison labor, and conditions in our prisons.”

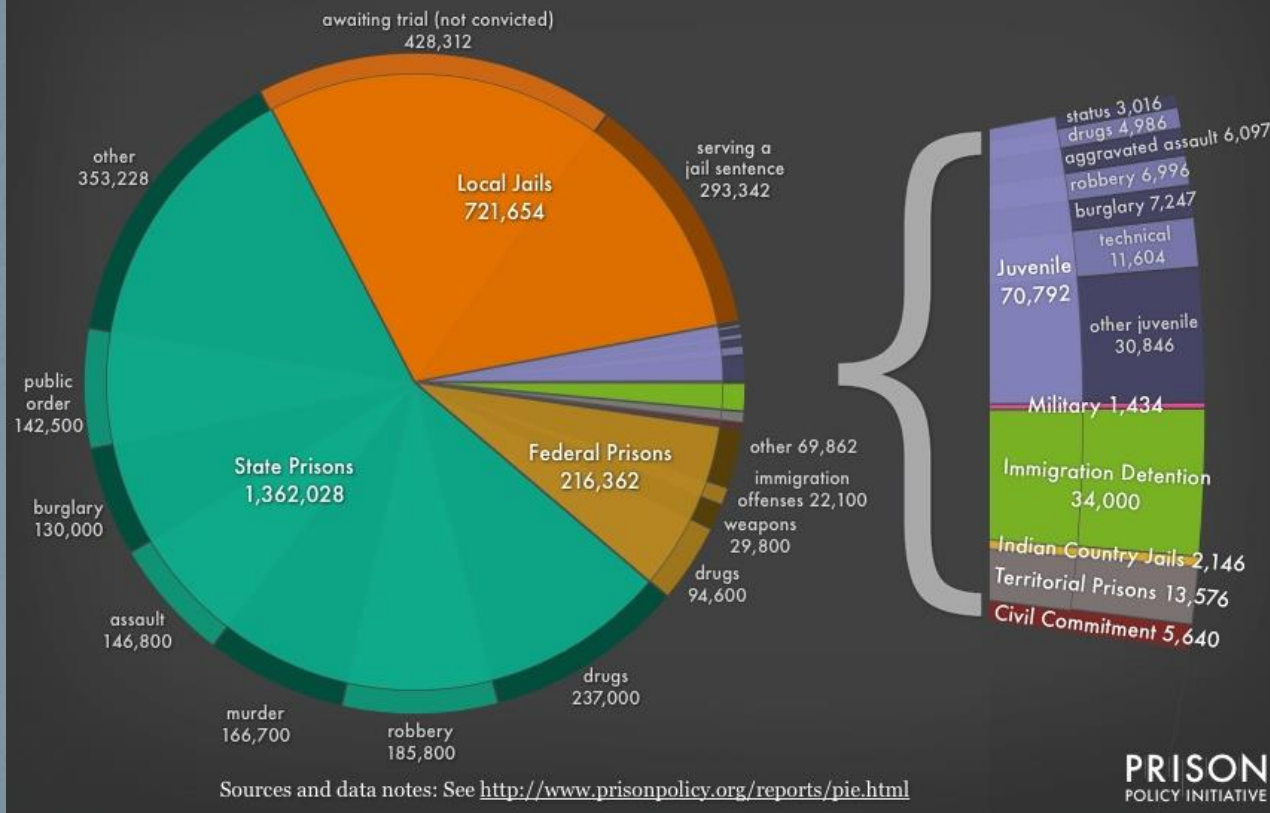
Crime – World Wide

- Increase in violent crime from 1960 to 2000.
- US incarceration rate 710 per 100,000 residents in 2012.
- “Developed nations” incarceration rate 130 per 100,000.
- Western Europe incarceration rates less than 100 per 100,000.

Data as of 2012

How many people are locked up in the United States?

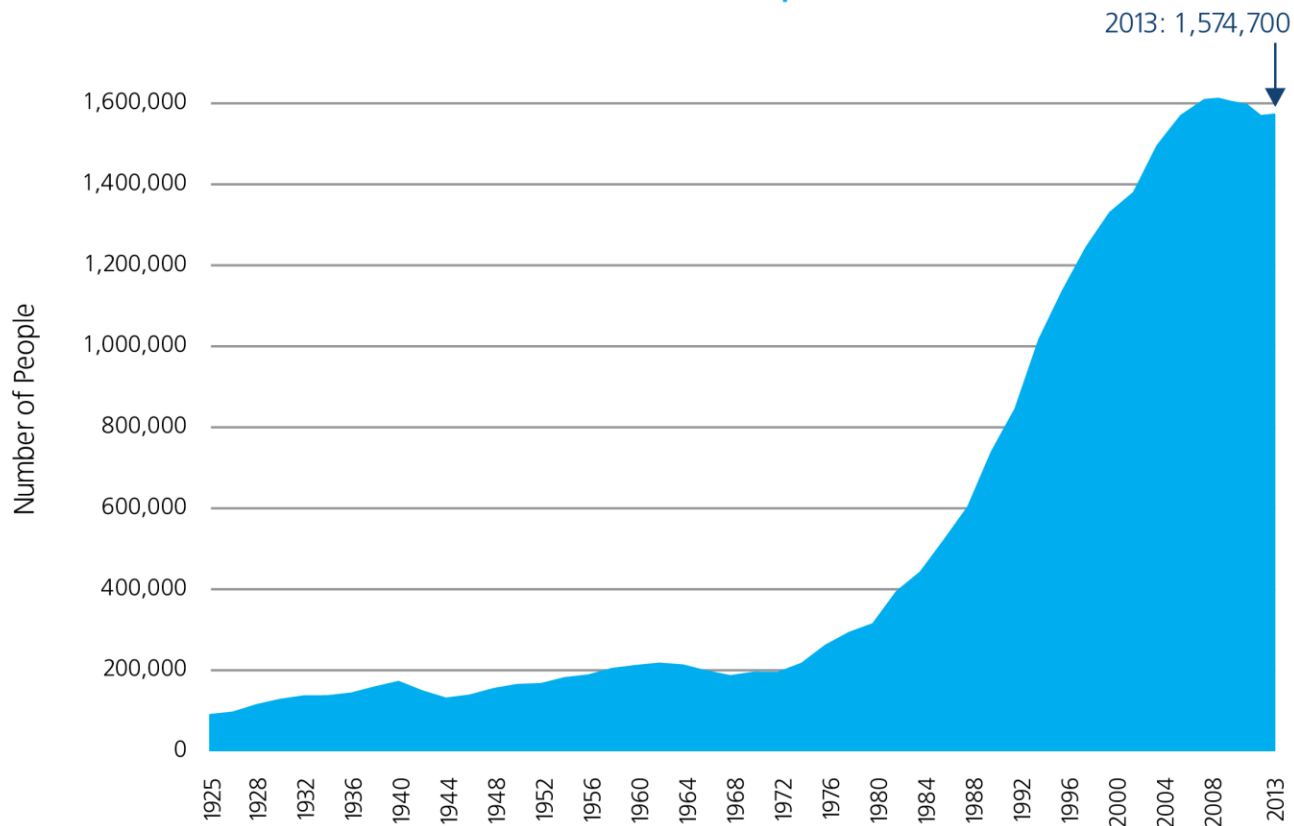
The United States locks up more people, per capita, than any other nation. But grappling with why requires us to first consider the many types of correctional facilities and the reasons that people are confined there.



Incarceration Rates

- US has 25% of all prisoners in the world but only 5% of the world's population.
- 1 of every 248 Pennsylvanians is incarcerated.
- Incarceration rates have begun to fall with a decrease in crime rates and an increased emphasis on criminal justice reform.

U.S. State and Federal Prison Population, 1925-2013



Source: Bureau of Justice Statistics Prisoners Series.

Impact on Minorities

- Arrests, convictions, and sentences have been harsher for minorities.
- Minorities have greater incarceration rates than whites in the US and also in Pennsylvania.

US Incarceration Rates by Race

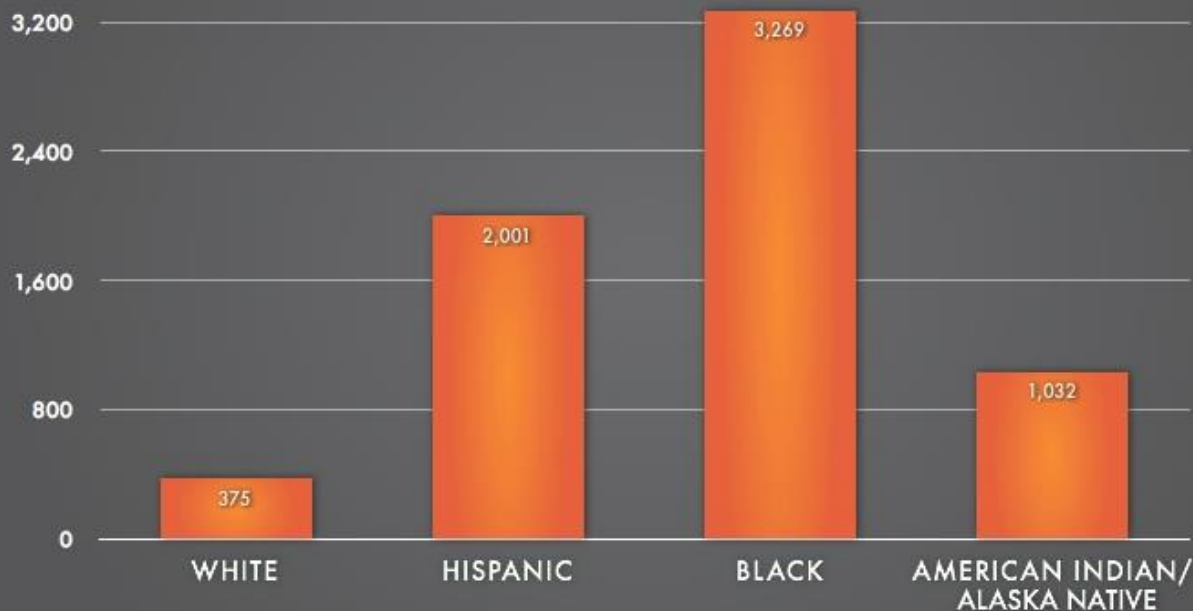
2010 Data

Race	Percentage of US population	Percentage of Incarcerated population	Incarceration Rate (per 100,000)
White	64 ⁰ %	39 ⁰ %	45 ⁰
Hispanic	16 ⁰ %	19 ⁰ %	831
African-American	13 ⁰ %	40 ⁰ %	2,306

PA Incarceration by Race

PENNSYLVANIA INCARCERATION RATES BY RACE/ETHNICITY, 2010

(Number of people incarcerated per 100,000 people in that group)



Crime in the U.S.

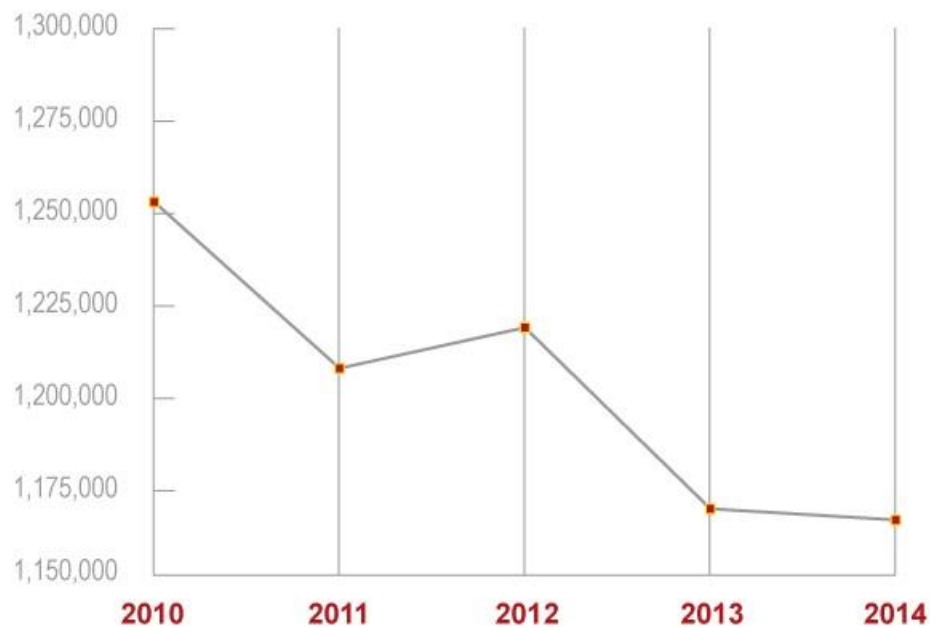
- Increase in violent crime from 1960 until 2000.
- In PA, violent crime rate in 1960 was 99 persons per 100,000.
- In 1996, it was 480 persons per 100,000.
- In 2012, it has fallen to 348 per 100,000.

US Violent Crime Trends

Violent Crime Offense Figure

Five-Year Trend, 2010-2014

Estimated
number of offenses

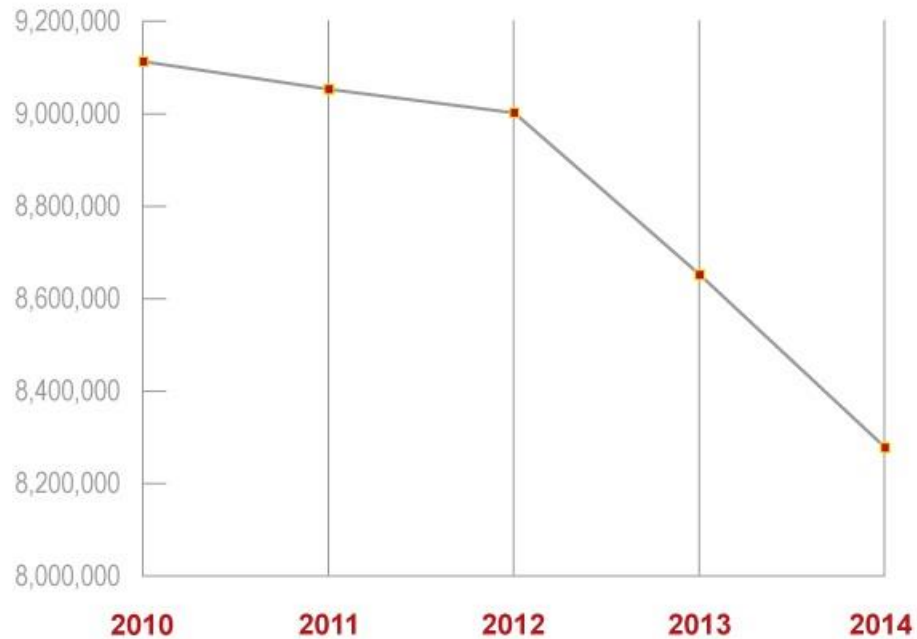


US Non-Violent Crime Trend

Property Crime Offense Figure

Five-Year Trend, 2010-2014

Estimated
number of offenses



Consensus Questions

1. Pennsylvania's justice system should be fair.

1 2 3 4 5

2. Pennsylvania's justice system should treat everyone with dignity.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Bail and Bonding

- Speedy trial is constitutionally guaranteed.
- Release of accused before trial depends on judge's evaluation of the following
 - Does accused pose a risk to society?
 - Does accused pose a risk of not appearing for trial?

Bail and Bonding

Pennsylvania Code Rule 524 “the amount of monetary (bail) shall not be greater than is necessary to reasonably ensure the defendant’s appearance and compliance with the conditions of bail.”

Bail and Bonding

Defendants may be released on their own recognizance (ROR) with no money posted.

Defendants may be released with their own assets posted as bail.

Defendants without sufficient assets may use a commercial bonding company to secure bail.

Defendants may stay in jail awaiting trial.

Bail and Bonding

Often seriousness of crime affects bail amount.

Number of charges affects bail amount.

Ability of defendant to pay sometimes affects bail amount.

Bail and Bonding

- Assessment protocols now being used in some states to determine who might be at risk of absconding or who might be a danger to the community.
- Assessment protocols show greater reliability than judges' evaluations.

Bonding Companies

- Charge approximately 10% of bail they post.
- This fee is not returned to the defendant even when he/she appears for trial (Bail secured by a defendant's own assets is returned in whole.)
- Bonding agents allowed to enter homes or places of business without warrants to bring in defendants who have failed to show for trial.

Bail and Bonding

- High cost of bail particularly hard on poor defendants who may lose jobs while incarcerated waiting for trial.
- Suspects held without bail (or with bail too high to pay) may settle for a plea bargain even if innocent.
- In US, 60% of inmates in local jails are awaiting trial – sometimes for months.

Bail and Bonding

- In US, twice as many defendants whose bail is backed by commercial bonding company abscond.
- In US, 90% of defendants with traditional bail (their own assets) show for trial.
- In US, 90% of defendants released on their own recognizance come to their trial.

Consensus Questions

3. Pennsylvania should ban for-profit commercial bail companies.

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4. Pennsylvania should use a research-based assessment protocol to determine whether an accused poses a danger to society or might fail to appear for a trial.

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5. Ability to pay should be a factor in setting bail.

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1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

6. Magistrates or bond courts setting bail should be required to track and report monthly and yearly rates or percent statistics on such categories as type of bail, amount of monetary bail, cost to arrestee of bail, cost to county of those retained in jail, appearance rates (the percent of offenders that show up at court), the re-arrest rates of offenders released to the community, and conviction rates.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Effective Counsel

- Legal counsel for accused is protected by the Sixth Amendment of the US Constitution.
- US Supreme Court found that the Sixth Amendment requires “effective” counsel.
- Counsel is “ineffective” if it falls below objective standards of reasonableness.

Effective Counsel

- Criminal defendants who cannot afford a lawyer have one appointed for them.
- Pennsylvania is the ONLY state that does not provide state funds to pay for public defenders for the indigent.
- Public defenders' offices are funded by county governments.

Effective Counsel

- In PA procedures and policies for public defenders vary from judicial district to judicial district.
- Some districts have fewer resources than others for investigators, forensic experts, and space for meeting with clients.

Effective Counsel

- Information about case loads, staffing, resources, difficult to find because each judicial district is supported separately.
- No state oversight or training of public defenders.
- PA 2011 Task Force recommended PA adopt American Bar Association's recommended principles for public defender system.

ABA Recommended Practices

- Public defender system should be independent of local judiciary and elected officials.
- Where caseload is high, public defense system should have both a defender office and active participation of the private bar.
- Clients should be screened for eligibility and defense counsel assigned as soon as possible.

ABA Recommended Practices

- Defense counsel should be provided with sufficient time and a confidential space to meet with client.
- Defense counsel's workload should be controlled to permit attorneys to render quality representation.
- Defense counsel's ability, training and experience should match the complexity of the case.

ABA Recommended Practices

- The same attorney should continuously represent the client until completion of the case.
- There should be parity between defense counsel and the prosecution with respect to resources, and defense counsel should be included as an equal partner in the justice system.

ABA Recommended Practices

- Defense counsel should be provided with and required to attend continuing legal education.
- Defense counsel must be supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Effective Counsel

- To date, none of the recommendations of the 2011 PA Task Force has been adopted.

Consensus Questions

7. Pennsylvania should provide state funding for public defenders' offices throughout the Commonwealth at a level that would provide resources to adequately defend indigent accused and to assure consistency from judicial district to judicial district.

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8. Pennsylvania should enact the American Bar Association recommendations for public defenders' offices.

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9. Pennsylvania should provide training, continuing education, and state oversight of public defenders' offices, collecting and collating all relevant data on case loads and outcomes.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

10. Public defenders should have a limited case load which if exceeded would enable the office to hire more lawyers or to contract with lawyers outside the office.

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11. Prosecutors and judges should ensure that all professionally recommended procedures for reliability of witnesses, testimony, and evidence are adhered to.

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1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

12. Where professionally recommended procedures (as opposed to past practice) have not been adhered to, defense counsel should be provided with state funding for investigators and expert witnesses to challenge reliability.

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13. Prosecutors should not be allowed to consider testimony and evidence that derives from practices other than best or recommended procedures during either plea bargaining or trials.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Alternatives to Incarceration

LWVUS Position: The LWVUS believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime.

Alternatives to Incarceration (ATI)

- Alternatives to Incarceration have the potential to reduce recidivism and to save taxpayers money.
- Often suggested for non-violent offenders.
- PA state level ATIs
 - Recidivism Risk Reduction Incentive (RRRI)
 - State Intermediate Punishment (SIP)
 - Boot Camp

Incarceration for Non-Violent Crimes

- In PA state prisons, 12.3% of inmates guilty of technical violations of parole (such as missing a meeting with a parole officer).
- In PA state prisons, another 35% of inmates guilty of non-violent offenses.

Recidivism Risk Reduction Incentive

- Recidivism Risk Reduction Incentive (RRRI) enables eligible, non-violent offenders to reduce their minimum sentences by completing recommended programs and maintaining good behavior in prison.
- Released RRRI participants' recidivism rate is lower than that of released prisoners not in the program.

State Intermediate Punishment

- State Intermediate Punishment (SIP) is designed for offenders convicted of drug-related offenses.
- Recidivism rates after three years lower for SIP participants than for those not in the program.

Boot Camp

- Boot Camp available to qualified young offenders (usually for drug offenses).
- Boot Camp involves 25 months of incarceration, first few months in a state prison before a minimum security facility.
- During 2014, all three of these ATIs (RRRI, SIP, and Boot Camp) were operating at less than capacity.

Alternatives to Incarceration

- County Intermediate Punishment (CIP) operating on the local level may have
 - Probation
 - House arrest
 - Electronic monitoring
 - Intensive supervision
 - Drug testing and treatment for addiction
 - Day reporting
 - Community service

County Intermediate Punishment

- Prisoners under County Intermediate Punishment (CIP) usually have to pay for the services such as electronic monitoring, drug testing, and probation supervision.
- For poor offenders, these costs can be prohibitive.

Problem Solving Courts

- Drug Courts
- Mental Health Courts
- Instead of incarceration, participants receive rehabilitation, treatment, counseling, while under close supervision monitored by a judge.

Problem Solving Courts

- In PA, only 32 of 60 judicial districts have Drug Courts.
- In PA, only 19 of 60 judicial districts have Mental Health Courts.

Mentally Ill Prisoners

- A majority of mentally ill prisoners also abuse alcohol and drugs.
- Few mentally ill prisoners have committed serious crimes or pose a risk to the community.

Mentally Ill Prisoners

- In a criminal case, when an individual with mental illness is incapable of assisting in his own defense, a judge orders competency restoration treatment, which takes place at one of only two state forensic hospitals.
- If a defendant's competency is restored, the criminal case may proceed; if not, the criminal charges are dismissed and the person is released or, if a danger to self or others, civilly committed.

ACLU of Pennsylvania Lawsuit

- In 2015 ACLU of PA brought lawsuit against Department of Human Services indicating that a large percentage of prisoners with mental illnesses languish in county jails for months without treatment.
- Federal courts have found that delays of longer than seven days between a court's commitment order and hospitalization for treatment are unconstitutional.
-

ACLU of Pennsylvania Lawsuit

- Pennsylvania appears to have the longest wait times in the nation.
- Wait times for patients committed by Philadelphia courts to the state forensic hospital in Norristown have averaged 397 days for individuals transferred this year, with some people waiting as long as 589 days.
- In some cases, they spend more time waiting in the county jail for a forensic bed than they would have if they'd been convicted of the underlying crime.

ACLU of Pennsylvania Lawsuit

- Lawsuit settled in January, 2016.
 - DHS will add nearly 200 new treatment opportunities for severely mentally ill inmates.
 - DHS will provide additional supportive housing opportunities in Philadelphia.
 - DHS will evaluate every person on waiting list or being served by the forensic system at the two state hospitals within 60 days to determine if they are receiving the appropriate level of service.

Juvenile Incarceration

- Juveniles who are tried as adults and are sentenced to detention are 13% less likely to complete high school.
- They are 15% more likely to be incarcerated as adults for violent crimes.
- Programs such as probation and drug and alcohol treatment with community service and victim restitution more successful than detention.

Restorative Justice

- Crime is an offense against an individual or a community.
- Victims and perpetrators have the opportunity to explain how the crime has affected them.
- With a facilitator, a plan for healing the harm is established and agreed to.
- Both victim and offender are understood to have value to the community and both must be restored as is possible.

Consensus Questions

14. Pennsylvania judges should receive ongoing training in alternatives to incarceration.

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15. Pennsylvania should encourage alternatives to incarceration for non-violent offenders.

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16. Pennsylvania should develop problem solving courts accessible to all judicial districts.

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1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

17. Pennsylvania should eliminate the use of prison for technical parole violations.

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18a. Pennsylvania should bear the cost of the prison/jail system and not charge prisoners.

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18b. Costs of being incarcerated should be based on a sliding scale according to an individual's ability to pay.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

19. Pennsylvania should divert people with medical conditions, such as mental health or drug abuse away from the criminal justice system altogether and provide treatment programs.

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20. Pennsylvania should implement programs proven to reduce the rate of recidivism.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

21a. Pennsylvania should pay for the costs of alternatives to incarceration, including electronic monitoring, supervision, etc. rather than asking the individual to pay.

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21b. Pennsylvania should charge the individual for the cost of alternatives to incarceration based on his/her ability to pay.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

22. Pennsylvania should explore the use of restorative justice.

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23. Pennsylvania should use the money saved from fewer incarcerations to increase funding for alternatives.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Appropriate Sentencing

Sentencing guidelines and mandatory minimums were enacted with the intent of discouraging crime and making sure that those convicted of the same crimes would receive the same punishment.

Mandatory Drug Sentences

LWVUS position: opposes mandatory minimum sentences for drug offenses.

Drug Sentences

- Mandatory sentences greater for crack cocaine than for powder cocaine.
- Disproportionately affected the African-American community.
- African-American drug users sentenced to prison 10 times more often than whites.

Mandatory Drug Sentences in PA

- Mandatory minimum sentences for
 - 1 gram of heroin
 - 2 grams of cocaine
 - 2 pounds of marijuana
- In Ohio, offenders can hold as much as 10 times those weights before mandatory sentencing is enforced.

Sentencing

- By 1998, 24 states, including Pennsylvania had adopted “three strikes” sentencing laws.
- Most of these required life without parole after a third felony, even if the crimes were non-violent.
- Pennsylvania has never implemented its three-strike law for non-violent felonies.

Mandatory Minimum Sentences

- Supporters argue that these are useful in deterring crimes involving the possession of drugs or firearms.
- Northwestern University Law School study in 2013 found that “decades of empirical research... have established that policies rooted in the deterrence theory framework....have been shown to have little empirical support.”

Mandatory Minimum Sentences

- Pennsylvania Commission on Sentencing's 2009 comprehensive analysis found that "mandatory minimum sentencing laws have not made Pennsylvanians safer. They have not reduced or deterred crime."
- "Neither length of sentence nor the imposition of mandatory sentence per se, was a predictor of recidivism."

Mandatory Minimum Sentences

- In 2013, the US Supreme Court ruled that some mandatory minimum sentences were unconstitutional, finding that they can be applied only when the specific elements of a crime have been found true beyond a reasonable doubt by a jury.

Mandatory Minimum Sentences

- In 2015, Pennsylvania's Supreme Court issued an opinion that found unconstitutional the state's Drug Free School Zones Act.
- The Court's reasoning applies to nearly all of the state's drug- and gun-related mandatory minimum sentencing laws and therefore these laws may be challenged in court.

Plea Bargaining

- 97% of criminal cases are decided through plea bargaining rather than through trial.
- Judges are not involved in the negotiations of plea bargains.
- Conservative estimates are that 4 to 6% of defendants agreeing to plea bargains are “factually innocent.”

Plea Bargaining

- Accused may agree to a plea bargain
 - To be released from jail (if unable to pay bail)
 - To plead guilty to a lesser crime (Prosecutors may indicate that the accused will be tried for the most serious offense possible. The accused may decide that pleading guilty to a lesser crime is safer than risking a trial.)

Commutation

- Commutation of sentences can result in shorter times served, reduction of fees, or other penalties.
- In Pennsylvania, an applicant must be approved unanimously by the Board of Pardons, the Governor, and the Secretary of State.
- Only 6 individuals have had their life sentences commuted in the last 15 years.

Pardons

- A pardon “wipes the slate clean.”
- Pardons are rarely granted but are particularly important for those who have been falsely imprisoned.
- Pennsylvania has no law that would guarantee an individual who has been erroneously incarcerated recourse to compensation.

Life Without Parole

- PA has 5,400 inmates sentenced to life in prison without parole, many over 55.
- Crime rate nationwide for those over 50 is 2%.
- In New York recidivism rate for those over 65 is only 4%.

Consensus Questions

24. Plea bargaining should be monitored by a judge.

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25. To enable judicial oversight of the plea bargaining process, public defenders and prosecutors should file summaries of each meeting, conversations and correspondence in which negotiations for a plea bargain take place.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

26. Pennsylvania should not have mandatory minimum sentences.

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27. Pennsylvania should not have mandatory minimum sentences for non-violent offenses.

1 2 3 4 5

28. Pennsylvania should review sentencing guidelines to achieve fairer sentences.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

29. Pennsylvania should eliminate its “three strikes” law.

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30. Pennsylvania should eliminate “life without parole” sentences.

1 2 3 4 5

31. Any sentencing reforms should be made retroactive.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

Consensus Questions

32. Those who have been imprisoned and subsequently found innocent should have recourse to compensation.

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33. The pardons and commutations programs should be revitalized and depoliticized so that prisoners who have served at least 10 years with good behavior have a real chance of being released.

1 2 3 4 5

1 = Strongly Disagree, 2 = Disagree, 3 = Neutral, 4 = Agree, 5 = Strongly Agree

END OF PART I
