



# FINDING DIRECTION:

EXPANDING CRIMINAL JUSTICE OPTIONS BY  
CONSIDERING POLICIES OF OTHER NATIONS

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Justice Policy Institute is a national nonprofit organization that changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities.

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## A LETTER FROM THE EXECUTIVE DIRECTOR

Dear Reader,

Two years ago, JPI was approached with an academic paper entitled, “The Use of Incarceration in the United States and other Western Democracies,” by Douglas B. Weiss, M.A. and Doris MacKenzie, Ph.D. At that time and amidst a growing economic crisis, U.S. Senator Jim Webb was rallying people behind the formation of a criminal justice commission that would examine current policies and practices, with an eye toward creating recommendations for ways the U.S. could safely reduce its incarceration rate. We believed the work of Dr. MacKenzie and Mr. Weiss was important to this effort, in that it placed the U.S. criminal justice system in a larger context, giving the proposed commission a broader range of possibilities to contemplate. While people in the United States might feel that “there’s no place like home,” in many ways it is not so different from other nations and it’s possible that policies that minimize the incarceration rate in other countries might also work in the U.S. With this belief as our guidepost, we undertook the creation of a policy report that uses many of the initial comparisons made by MacKenzie and Weiss, adding other comparisons of specific phases in the criminal justice system to uncover the kinds of policies that might work in the U.S. The result is a compelling rationale for a number of recommendations for policymakers to consider when seeking to change criminal justice policies in the U.S.

Regardless of what direction U.S. federal policymakers choose to follow, the need for examining its criminal justice system, which largely operates at state and local levels, remains as imperative as ever. Incarceration rates, while slowing, have a tremendous distance to fall before they approach those of even 10 years ago, let alone 20 or 30. The communities, families, and individual lives that are affected by criminal justice involvement multiply every year, as does the number of people who are victims of a system that does not work to protect public safety.

Now more than ever before, we live in a global community that makes it not only possible, but necessary to learn from both the successes and mistakes of other countries around the world. While our primary goal is to inform U.S. policymakers, those in other countries should be able to glean some lessons as well. We hope you will find *Finding Direction: Expanding Criminal Justice Options By Considering Policies of Other Nations* helpful to your work.

Sincerely,



Tracy Velázquez  
Executive Director



**25%**

of the world's pris-  
on population is in  
the United States.

## PART 1

# INTRODUCTION

The United States is home to the world's largest prison population. That the U.S. has only 5 percent of the world's population but holds 25 percent of the world's prisoners is becoming common knowledge, and is causing leaders – both governmental and from the independent sector – to more closely examine the criminal justice system.

Despite dropping crime rates and evidence that incarceration is neither the most effective nor the most efficient means of preserving public safety,<sup>1</sup> incarceration in the United States continues to grow; since 1980 the number of people in prison has increased 458 percent.<sup>2</sup> During this difficult economic time, the U.S. federal government and states alike have been looking to save scarce resources by significantly reducing incarceration rates. However, to date, alternatives to our current policies and practices which are contributing to these rates have not been implemented on a large scale.

As the United States considers reforms to its criminal justice system, some policymakers are comparing the U.S. to other countries to show the stark differences in incarceration and to demonstrate that other nations have protected public safety without imprisoning as large a percentage of their populations. Many of these other nations, particularly western democracies, handle law-breaking behavior in ways less reliant on incarceration, and have different approaches to addressing complex social issues while protecting public safety.

It is important to recognize that these alternative strategies, both to incarceration and for the

protection of public safety, are in-line with each nation's particular cultural and social environment. Criminal justice policies and practices do not exist within a vacuum, but rather are a product of larger social systems and political realities to which they are inextricably tied.<sup>3</sup> This poses a challenge for U.S. policymakers or advocates looking internationally for solutions to rising domestic incarceration rates. Conversely, policymakers may think other countries are too fundamentally different than the U.S., whether in terms of size, demographics, social welfare programs, or political structure, for their policies to be adopted.

It would be ill advised to insist the U.S. or any nation must become more like other western democracies in order to reduce its incarceration rates. However, there are sufficient similarities between the U.S. and western democracies to make a number of recommendations around policies that, if adopted, would effect a reduction in incarceration. In fact, some of the policies in place in the comparison nations are also in place in some states or jurisdictions in the U.S.

While each nation has a unique set of circumstances and realities that must be taken into account,

there is much to be gleaned from the policies and practices in other democratic nations. We hope this report will broaden the existing dialogue and create more momentum for the types of systemic reforms that will reduce the burden of over-incarceration on communities, states, and the country as a whole.

## WHAT THIS REPORT DOES AND DOES NOT DO

This report is not intended to be a comprehensive review of social, political, and economic structures that might create differences in incarceration or criminal justice practices. *It is also not a critique of U.S. society as a whole and does not argue for a complete overhaul of social and economic systems in favor of the social and economic systems of comparison nations.* For those reasons, it does not provide an analysis of social welfare systems, gun control, family structures, or immigration practices as possible reasons for differences in incarceration rates. Instead, this report will concentrate on current practices and structures that could realistically be changed, and models from other comparison nations that could be replicated or adapted, to reduce incarceration in the U.S.

For the purposes of this report, five comparison nations will be closely considered: Australia, Canada, Finland, Germany and England and Wales.<sup>4</sup> Although these nations have some varying social, political, and economic environments, they are all democratic nations with stable infrastructure and governments and established criminal justice systems which share a similar socio-cultural background. For the most part, these nations also have data available to compare and have been part of other comparative studies.

Perhaps most importantly, these countries also have far lower incarceration rates despite some of the similarities that will be discussed in this report. In addition, Finland and Germany both struggled with their use of incarceration in the early half of

the 20<sup>th</sup> century and subsequently made a concerted effort to reduce the number of people in prison.<sup>5</sup> Specific policies currently in place in those countries and perhaps a result of the effort to decarcerate are considered in this report. The experiences of other nations in specific criminal justice issues will also be included when particularly relevant.

Any discussion of a nation's criminal justice system and policies must include the social, political, and economic environment of the comparison nations and how those factors might contribute to the number of people incarcerated in a country. These demographic underpinnings serve to provide some context for the findings in this report, and show to what extent cross-national implementation of policies could work to reduce incarceration.

### THE CHALLENGE OF CROSS-NATIONAL COMPARISONS

- Not all countries define offenses in the same way.
- England and Wales are not represented in all areas of data, particularly in social factors, including funding structures. In those cases, this report uses the United Kingdom.
- The same offense may not be seen as having the same level of severity in each country.
- Reporting is inconsistent for international, longitudinal studies and detailed reports of the structural make-up of country-specific systems are not always readily accessible, often due to language barriers. Therefore, at times, certain comparison nations will be excluded from certain charts, and footnotes or other notes after charts will be included to explain variances in data collection.
- As with any cross-national comparison, building comparable data sets is a complex task because countries compile and define statistics differently.

## PART 2

# SIMILARITIES BETWEEN NATIONS MAKE POLICY OPPORTUNITIES POSSIBLE.

The countries presented in this report, including the United States, have a number of similarities that make it easier to make comparisons across nations and also consider that the policies of one nation could work in the other nations.

Although the comparisons are not perfect, there are some fundamental similarities that create similar social, political, and economic environments in which to consider criminal justice policies that might reduce the number of people in prison. In addition to the more fundamental principles that the comparison nations share, two specific social structures – education and employment – are also important to consider and also have some important similarities.

It is these similarities that help support comparisons of criminal justice policies and, also, provide the basis for developing unique models derived from the methods of other nations.

## FUNDAMENTAL SIMILARITIES PROVIDE THE GROUNDWORK FOR COMPARISON.

The comparison nations, the United States, Australia, Germany, Canada, Finland, and the United Kingdom (or England and Wales) share certain characteristics that make a comparison more feasible. These commonalities also provide the groundwork for consideration of cross-national policy implementation.

The list below is not exhaustive or philosophical in nature, but is intended to provide a picture of the larger social, political, and economic circumstances within which each nation operates and decides criminal justice policy.

### Democracy

Each of these nations subscribes to a classical notion of democracy or the idea that the country is ruled by the people. The Center for Systemic Peace and the Center for Global Policy developed a scale to determine levels of democracy of different nations.<sup>6</sup> The nations with the highest levels of democracy, which include all six of the nations in this report, have the following characteristics:

- Institutionalized procedures for open, competitive, and deliberate political participation;
- Choose and replace chief executives in open, competitive elections; and,
- Impose substantial checks and balances on the power of the chief executive.

One important facet of these characteristics is open elections in which all citizens are invited

to participate. In other words, by voting for a particular candidate for an office, the citizens can make powerful statements about the policies that they wish to see implemented. Citizens would have the power and authority to choose the candidates that would implement or change criminal justice policies.

Related to an established democracy and the freedom to participate in open elections is the ability of citizens to also freely express themselves and publicly debate issues of public policy. Although those debates – whether in the media, before legislatures, or in courtrooms – vary across nations and have differing impacts on policy, nonetheless, the ability to introduce new ideas is possible and encouraged.

### **Stability and Legitimacy**

All of the nations included in the report have a high level of stability and legitimacy within the international context. Indices developed by the Center for Systemic Peace and the Center for Global Policy,<sup>7</sup> which consider the threat of violence or war within or outside a nation, imports and exports, the authority of an elite class over the country, and other social indicators, including infant mortality rates, show that all six nations score very high in all areas. None of the nations appear to face overthrow or rapid, unexpected, or extreme changes in governance, which also makes it possible to plan or implement long term strategies to change social or criminal justice policies.

### **Large Economies**

All of the nations except for Finland are considered to be large, global economies and belong to the G-20. Nations in the G-20 differ on a variety of different levels, but all of them play a significant role in the global economy. Arguably, nations with large, strong economies have the resources to implement innovative policies.

### **Common Understanding of Human Rights**

With the United States being the exception in some areas, perhaps most importantly the Convention on the Rights of the Child, the six nations belong to the United Nations and have signed onto and/or ratified most of the conventions or agreements put forth by the United Nations.<sup>8</sup> A common understanding of human rights lays the groundwork for the implementation of domestic policies that are in concert with that understanding. Notwithstanding the absence of the U.S. from some United Nations agreements, there is still a general, common understanding of appropriate humane treatment.

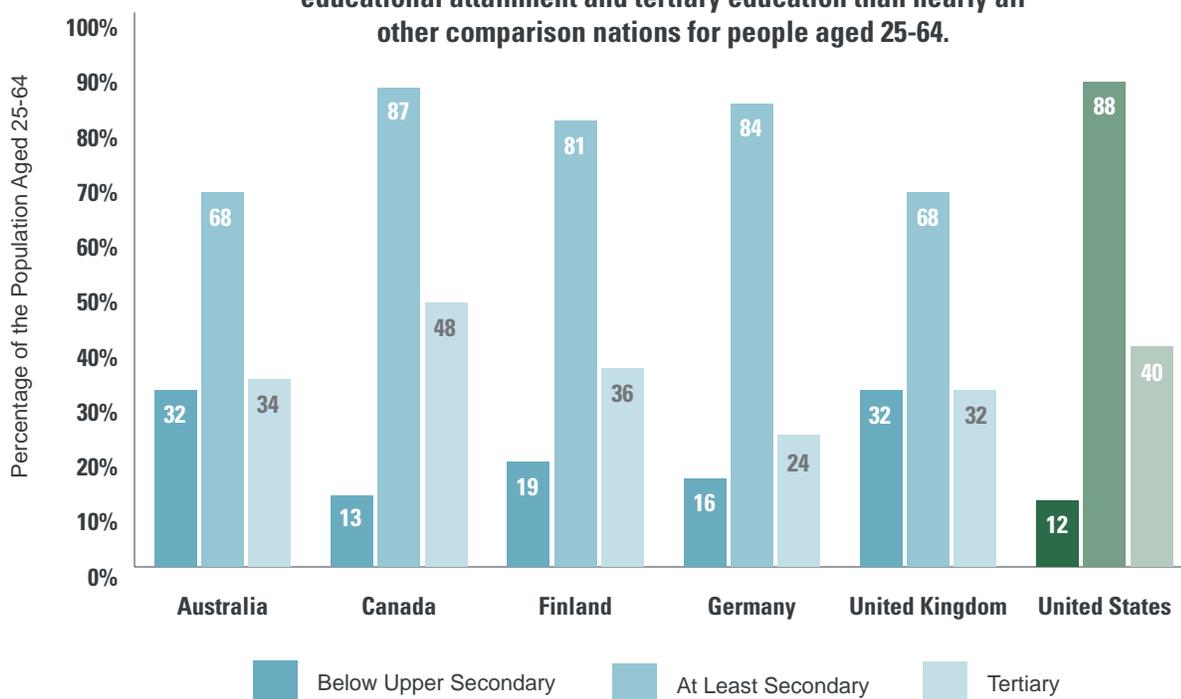
Within each of these comparable characteristics, there are some distinct differences in practice and policy, which are considered later, albeit not exhaustively, in this report as challenges to cross-national policy adaptation.

### **Valuing Education**

Using levels of educational attainment and spending as evidence shows that the comparison nations value education as a means of promoting general community well-being. Comparison nations had comparable levels of educational attainment on most levels for people aged 25-64, with the U.S. having slightly higher levels of at least secondary education. Aside from Canada, the U.S. also had slightly higher levels of tertiary educational attainment (i.e. education after the high school level, including occupational or theoretical education) than all other nations. The level of U.S. educational attainment is higher than four of the comparison nations, with approximately 40 percent of the population having completed tertiary education.<sup>9</sup> Only Canada has a greater percentage of the general population that has completed education after upper secondary education.

Spending on education across nations is also comparable. The comparison nations are within

**In 2007, the U.S. generally had higher levels of both secondary educational attainment and tertiary education than nearly all other comparison nations for people aged 25-64.**

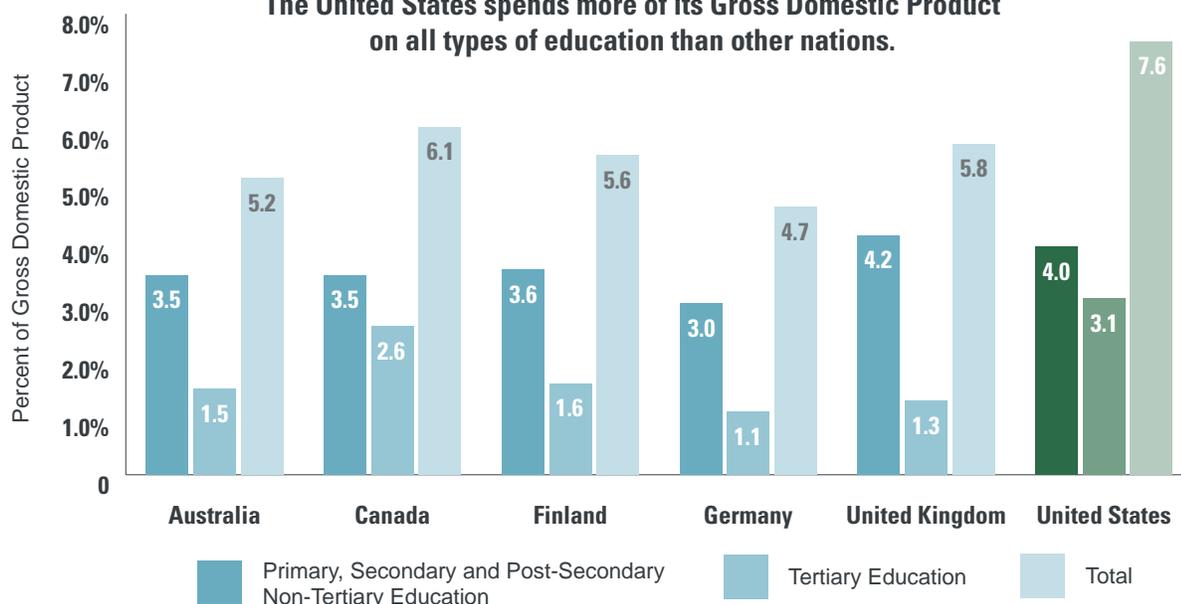


Source: Organization for Economic Co-Operation and Development Stat Extracts, Country Statistical Profiles Stat Extracts, 2010, Organization for Economic Co-Operation and Development Stat Extracts, "Education at a Glance, 2009", January 6, 2011. [http://www.oecd-ilibrary.org/education/education-at-a-glance-2009\\_eag-2009-en](http://www.oecd-ilibrary.org/education/education-at-a-glance-2009_eag-2009-en)

Upper Secondary Education: Corresponds to the final stage of secondary education in most OECD countries. The entrance age to this level is typically 15 or 16 years. There are substantial differences in the typical duration of ISCED 3 programmes both across and between countries, typically ranging from two to five years of schooling. ISCED 3 may either be "terminal" (i.e., preparing the students for entry directly into working life) and/or "preparatory" (i.e., preparing students for tertiary education).

Tertiary Education: includes all education after the upper secondary level, and may be theoretically-based or occupationally-based.

**The United States spends more of its Gross Domestic Product on all types of education than other nations.**



Source: Organization for Economic Co-Operation and Development, "Education at a Glance 2010," December 15, 2010. [www.oecd-ilibrary.org/education/education-at-a-glance\\_19991487](http://www.oecd-ilibrary.org/education/education-at-a-glance_19991487)

a 1.2 percentage point margin when comparing Gross Domestic Product (GDP) or national wealth for all primary, secondary and post-secondary non-tertiary education, with the U.S. and the United Kingdom spending slightly more.<sup>10</sup> The U.S. spends 1.5 percentage points more of its GDP on all types of education.

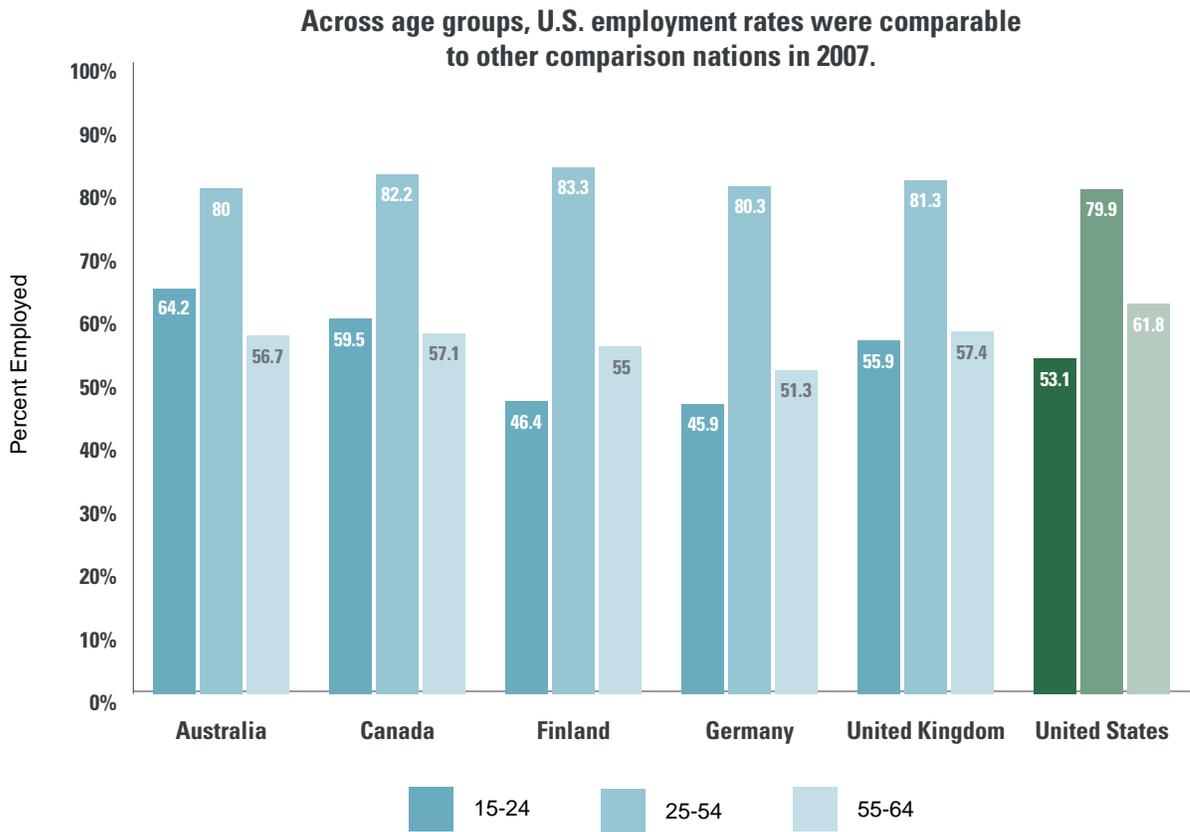
Levels of educational attainment and spending do not take into consideration quality of education generally, and barriers to educational attainment for certain communities, in any of the comparison nations, but nonetheless, such similarities are an important basis for comparison.

### Employment Rates

In 2007, the comparison nations also had similar rates of employment, serving as a signifier of the

general health of the economy. All nations were within a 3.4 percentage point range of employment rates for people aged 25-54.<sup>11</sup> The U.S. had higher levels of people between the ages of 55-64 employed, but that is likely due to differences in retirement age across nations. Even though these employment numbers do not take into consideration the rapid increase in unemployment since the economic downturn began in 2008 or the concentrated effect that unemployment has on specific communities, the overall picture of employment across nations suggests similar situations.

In addition, scholarly attempts to link unemployment with incarceration rates, particularly on an international scale, have yielded mixed results. As a result, differences in employment rates likely do not bear enough significance<sup>12</sup>



Source: Organization for Economic Co-Operation and Development Stat Extracts, *Country Statistical Profiles* Stat Extracts, 2010. <http://stats.oecd.org/viewhtml.aspx?queryname=18148&querytype=view&lang=e>

to be detrimental to cross-national policy consideration.

It is also important to remember that unemployment does not create crime. For example, even though the U.S. is experiencing a high

unemployment rate due to the economic downturn, crime rates are at 30-year lows. Within this climate it is particularly important to continue to invest in institutions related to job training and employment, thus ensuring less incarceration in the future.

## PART 3

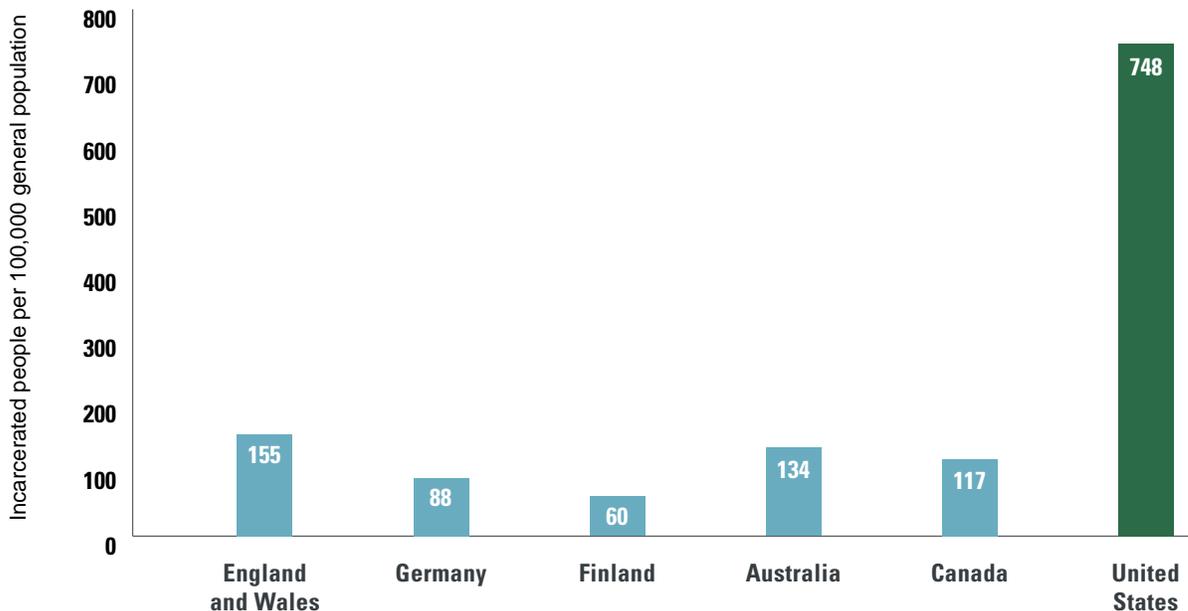
# THE U.S. LEADS THE WORLD IN INCARCERATION, BUT THIS IS NOT MAKING THE U.S. SAFER.

Maintaining or improving public safety is important to all countries. However, the tools that different nations use to promote public safety vary greatly across nations. While defenders of U.S. penal policies may argue its effectiveness in promoting public safety, other countries utilize different, effective public safety strategies that rely less on incarceration.

Although nations vary in what behaviors they consider to be “criminal,” crime rates are perhaps the most obvious measurement of public safety. Other nations have crime rates similar to or lower than the U.S. while using incarceration to a lesser degree than the U.S.

The U.S. incarcerates nearly 2.4 million people,<sup>13</sup> including people held pretrial and those sentenced for an offense; if they were all in one state, it would be the 36<sup>th</sup> most populated, between New Mexico and Nevada.<sup>14</sup> No other country in the world incarcerates as many people as the United States. China,

**In 2009, U.S. incarceration rates were 11 times higher than those in Finland.**



a country of 1.3 billion people—about four times as many people as the U.S.<sup>15</sup>—is second, incarcerating 1.6 million people.<sup>16</sup>

When comparing the total number of people incarcerated, including people held pretrial or remanded (see Glossary for full definition of remand) in each nation, the U.S. incarcerates approximately 26 times the number of people as England and Wales, 32 times as many as Germany, 711 times as many as Finland, 59 times as many as Canada, and 78 times as many as Australia.<sup>17</sup>

The U.S. incarceration *rate* also eclipses that of other comparison nations. The incarceration rate of the U.S. is 748 per 100,000 people in the population, which is about five times that of the England and Wales (155 per 100,000).<sup>18</sup>

In the U.S., the incarceration rate has been increasing steadily since around 1980. Comparing recent trends, incarceration rates from 1992 to 2007 increased 50 percent in the U.S., 68 percent in England and Wales and 46 percent in Australia; and

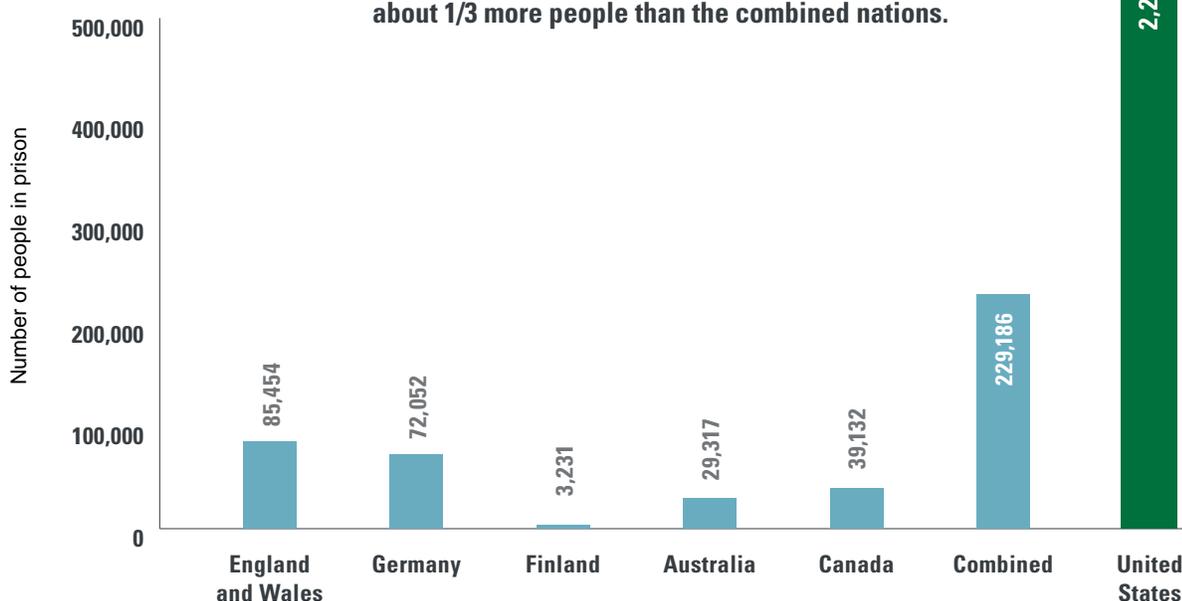
Finland actually reduced its incarceration rate by 33 percent.<sup>19</sup>

If an outcome of incarceration is improved public safety—which is a popular belief—then it would follow that the U.S. would have lower crime rates than other nations, but that is not clearly the case.

The International Crime Victimization Survey conducted through The Hague by the Ministry of Justice asks respondents about car theft, theft from a car, car vandalism, bicycle theft, motorcycle theft, burglary, attempted burglary, robbery, sexual incidents, personal thefts, and assault and threats. Results from the survey show that victimization rate is not correlated with rates of incarceration in the comparison countries (Germany was not included in the survey).<sup>20</sup> That is, having a higher incarceration rate, like

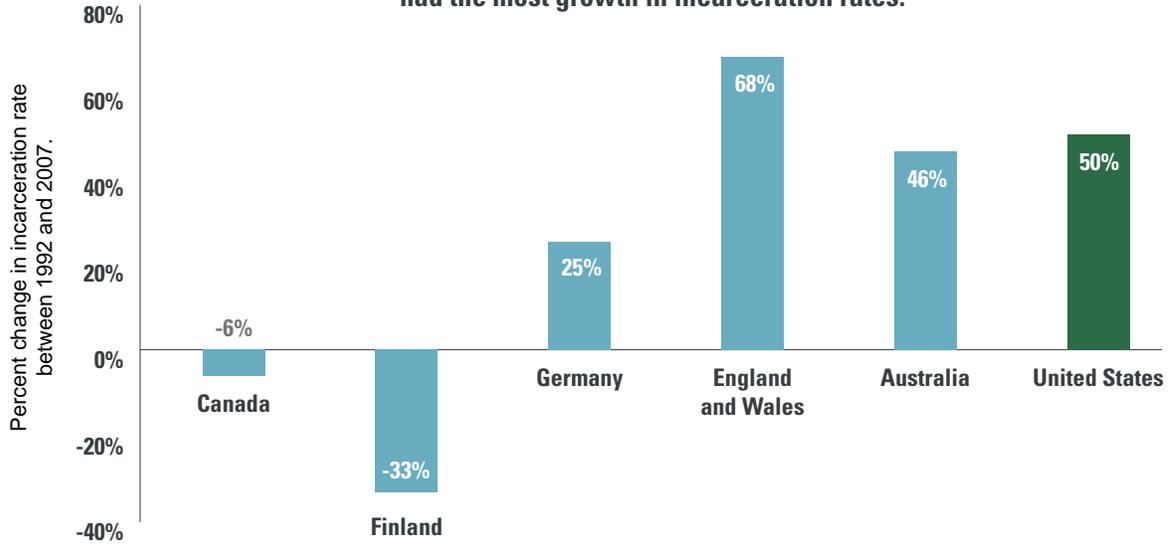


**In 2009, the United States incarcerated roughly 10 times as many people as all comparison nations combined, although it has only about 1/3 more people than the combined nations.**



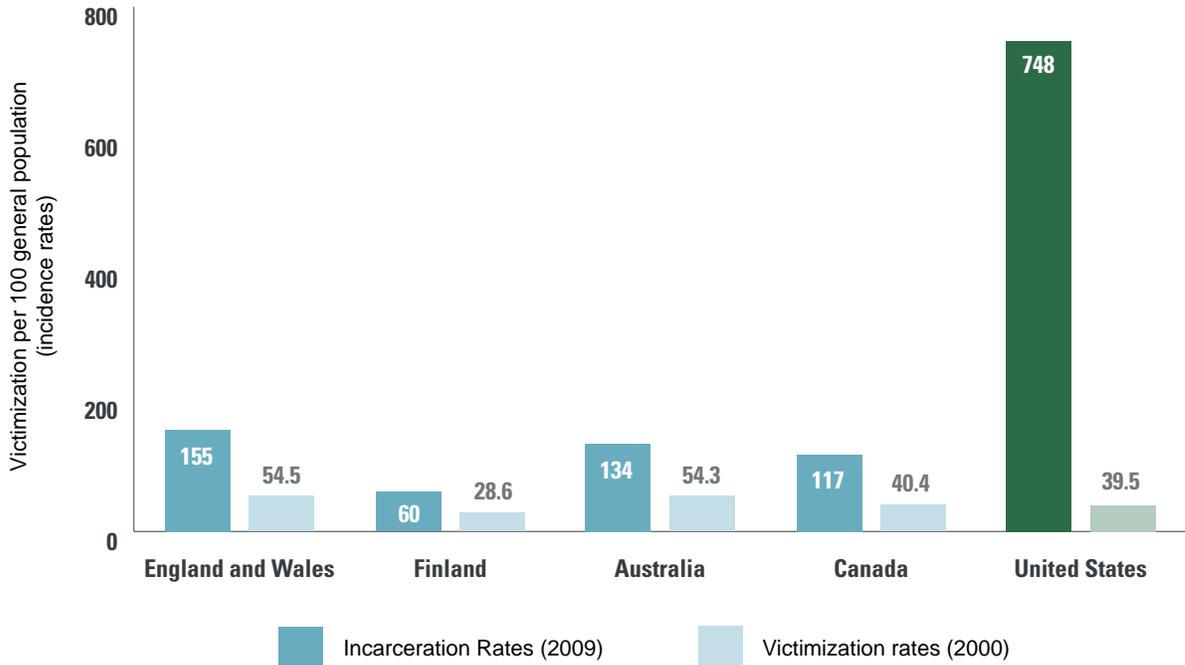
Source: International Centre for Prison Studies, "World Prison Brief: Country Profiles," January 5, 2011 [www.kcl.ac.uk/depsta/law/research/icps/worldbrief/](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/)

**Between 1992 and 2007, the U.S. and England and Wales had the most growth in incarceration rates.**



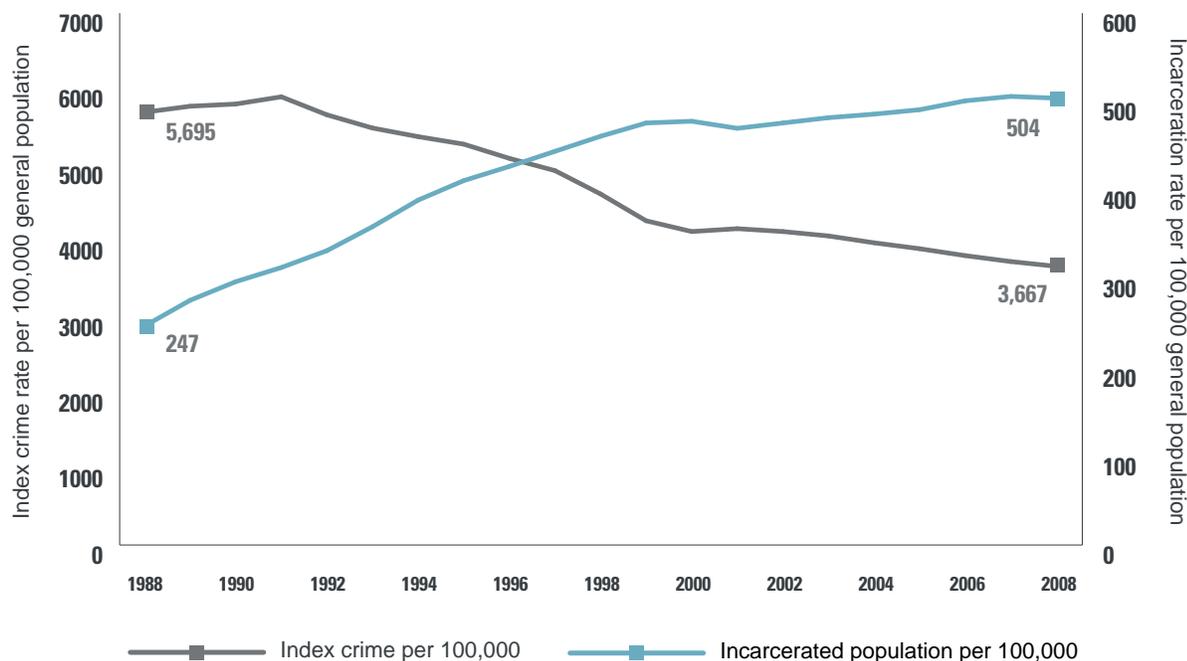
Source: International Centre for Prison Studies, "World Prison Brief: Country Profiles," January 5, 2010. [www.kcl.ac.uk/depsta/law/research/icps/worldbrief/](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/)

**Victimization rates in 2000 across nations do not correspond to recent incarceration rates.**



Source: John van Kesteren, Pat Mayhew, and Paul Nieuwebeerta Criminal Victimization in Seventeen Industrialised Countries: Key Findings from the 2000 International Crime Victims Survey. (The Hague: Ministry of Justice, 2000). <http://rechten.uvt.nl/icvs/pdf/files/Industr2000a.pdf>. The offenses included here are car theft, theft from car, car vandalism, bicycle theft, motorcycle theft, burglary, attempted burglary, robbery, sexual incidents, personal thefts, and assault and threats. Germany not included.

**Although the index crime rate is lower than it was in 1988, the U.S. incarceration rate is about twice the rate that it was in 1988.**



Source: William Sabol and Heather West, "Correctional Populations in the United States, 1997 and Prisoners in 2008." Filename: incrt.csv (Imprisonment rate), <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=13>, September 23, 2010; and Federal Bureau of Investigation, Uniform Crime Report 1988-2008 (Table 4), [www.fbi.gov/ucr/ucr.htm](http://www.fbi.gov/ucr/ucr.htm).

Note: Does not include jail populations.

the U.S., does not necessarily mean a lower rate of victimization.

In addition, experts from the National Research Institute of Legal Policy in Finland point out that across the world, crime rates and incarceration rates do not consistently correlate, and when looking at trends in Finland, Canada and the United States over the course of 25 years, it

becomes even more difficult to draw the conclusion that incarceration reduces crime. Between 1980 and 2005, Finland's reported crime rate went up while incarceration rates went down. In Canada, crime remained constant or went down slightly and incarceration rates remained somewhat stable, and in the United States, crime either remained flat or went down while incarceration increased dramatically.<sup>21</sup>

**High overall crime rates do not necessarily induce high prison rates and vice versa. Neither do high prison rates necessarily induce low overall crime rates and vice versa.**

— ANTHONY N. DOOB, PROFESSOR OF CRIMINOLOGY, UNIVERSITY OF TORONTO AND CHERYL MARIE WEBSTER, PROFESSOR OF CRIMINOLOGY, UNIVERSITY OF OTTAWA

In the United States, crime fell 36 percent from 1988-2008,<sup>22</sup> while incarceration rates increased 104 percent in the same period.<sup>23</sup> Research in the United States and evidence from other nations suggests that incarceration has minimal, if any, effect on reducing crime, and the relationship between the two is neither simple nor certain.<sup>24</sup> In fact, policy choices, such as the imposition of mandatory minimum sentences, are considered a more significant driver of high incarceration rates than crime rates.<sup>25</sup>

## PART 4

# THE U.S. JUSTICE SYSTEM OPERATES TO CREATE MORE INCARCERATION.

With its “tough on crime” politics and a belief in the deterrent effect of harsh sentences,<sup>26</sup> the United States has implemented criminal justice policies based on retribution instead of rehabilitation,<sup>27</sup> which have led the U.S. to rely on imprisonment as a way to address lawbreaking more than the comparison nations.

The U.S. seems to choose its current system of policing, sentencing and incarcerating over social investments and other positive methods of promoting public safety that may be more effective, especially in the long term. Changes in policy priorities and to the structure and operation of the criminal and juvenile justice systems can play a significant role in how many people are incarcerated.

## POLICING AND ARRESTS

The entry point into the criminal justice system is typically through law enforcement. While data for arrests—the most likely form of contact to result in future incarceration—were not readily available for all comparison nations, the United Nations keeps data about the number of people suspected, arrested, or cautioned by law enforcement. According to 2006 data, Finland has the highest rates of contact with the police and Canada has the lowest. The U.S.’s rate of contact with the police is approximately 52 percent higher than in Canada.<sup>28</sup>

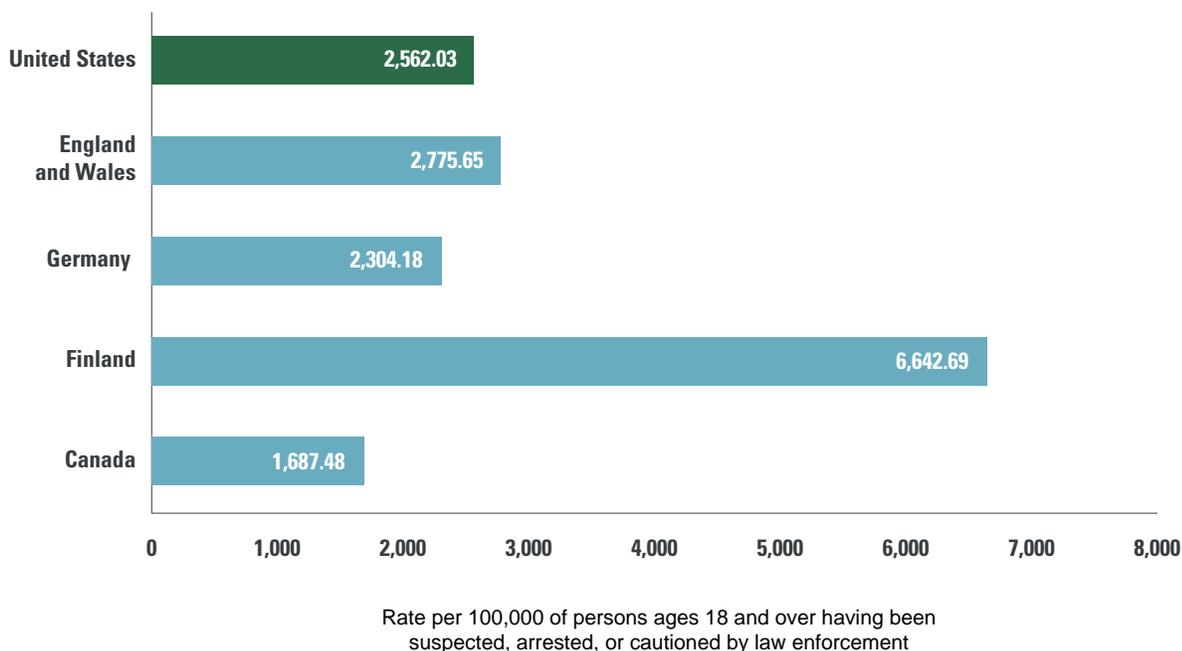
At the same time, the number of police per capita also does not neatly correspond to the number of contacts with police. Even though Finland has the highest number of contacts with police, they also

have the fewest police per capita of the comparison nations.<sup>29</sup>

Neither the rate of contacts nor the number of police per capita neatly correspond to incarceration rates. For example, Finland has a very high rate of contact with the police, but the lowest rate of incarceration. This may be due to a variety of factors, including policies like Finland’s strict penal codes related to traffic violations<sup>30</sup> which might increase contacts that don’t result in arrests. But, more likely, differences in the philosophy of the role of police and policing in communities accounts for the similarities in rates of contact, but differences in incarceration rates. In other words, although number of contacts with police may be similar across nations, the outcome is very different.

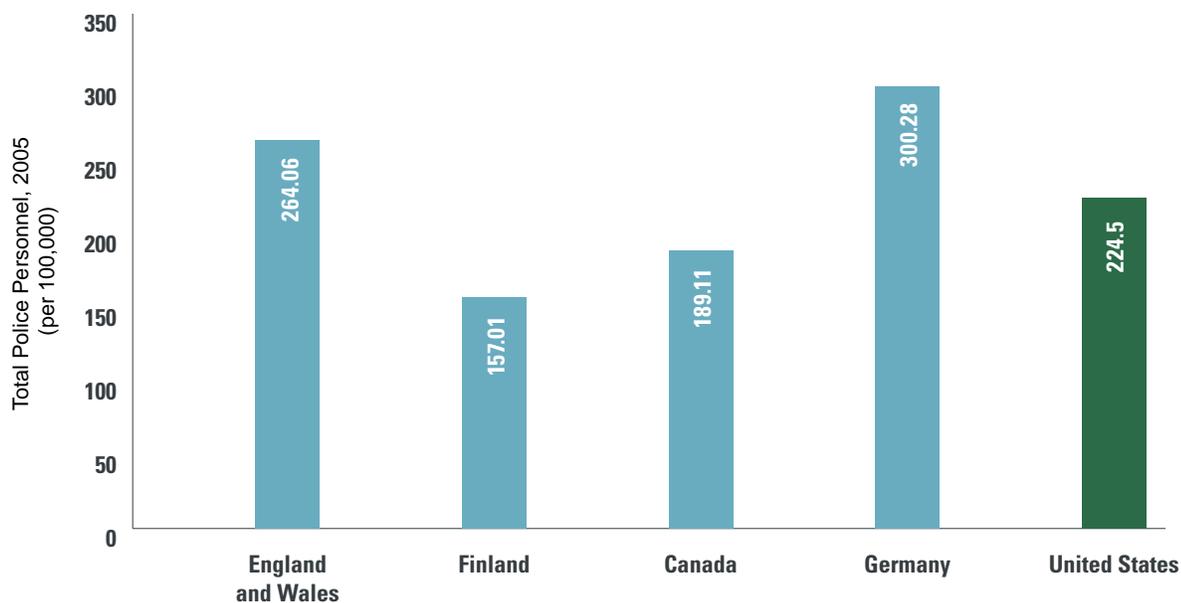
One contributing reason for this difference might be that European nations generally reject law enforcement policies that have “zero tolerance” for quality of life offenses, like graffiti, homelessness, or panhandling,<sup>31</sup> which are popular in U.S. cities. In the U.S., “zero tolerance” policies are driven by the theory that “broken windows” or the appearance of disorder fuels other crime. The result of these policies in the United States is people who

**In 2006, the U.S.'s rate of contact with the police was approximately 52 percent higher than in Canada, but 61 percent lower than Finland.**



Source: United Nations Office on Drugs and Crime, "The Tenth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (Tenth CTS, 2005-2006)" June 2010. [www.unodc.org/unodc/en/data-and-analysis/Tenth-CTS-full.html](http://www.unodc.org/unodc/en/data-and-analysis/Tenth-CTS-full.html). \*The figures included here are crimes recorded by police, England and Wales: <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb0610.pdf>

**The U.S. has more police per capita than Finland and Canada.**



Source: United Nations Office on Drugs and Crime, "The Tenth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (Tenth CTS, 2005-2006)" June 2010. [www.unodc.org/unodc/en/data-and-analysis/Tenth-CTS-full.html](http://www.unodc.org/unodc/en/data-and-analysis/Tenth-CTS-full.html). Note: Data for Australia not available.

have contact with police or who are arrested are frequently incarcerated in a pretrial detention facility, or jail for a period of time, thus contributing to incarceration rates. In other countries, police may record that they have contact with someone related to one of those offenses, but arrest and jail time would not be the outcome.

### POLICY OPPORTUNITY

**End “zero tolerance” policing:** Research by criminal justice expert, Judith Greene, comparing “zero tolerance” policing in New York City to a neighborhood policing strategy in San Diego found that both cities experienced significant reductions in crime. However, San Diego also experienced a 15 percent decrease in arrests,<sup>33</sup> suggesting that increasing arrests does not necessarily improve public safety. Similarly, other nations tend to refrain from using a law enforcement response to quality of life concerns, which may help keep arrests in check and, subsequently, incarceration. Panhandling, graffiti, littering and other minor offenses may best be handled by other agencies, like public service or sanitation.

**Change the philosophy of policing:** Currently, in the United States, policing practice is primarily guided by surveillance and arrests. Thus, more police have resulted not necessarily in safer communities, but more arrests and more incarceration. As a result of this approach to policing, some communities mistrust police, while still enduring high crime rates. A shift to a philosophy of policing similar to an approach adopted by San Diego that is neighborhood-focused and centered on the overall health of the community and the people who live there would promote public safety, limit fear of police, and reduce the number of people arrested and imprisoned.

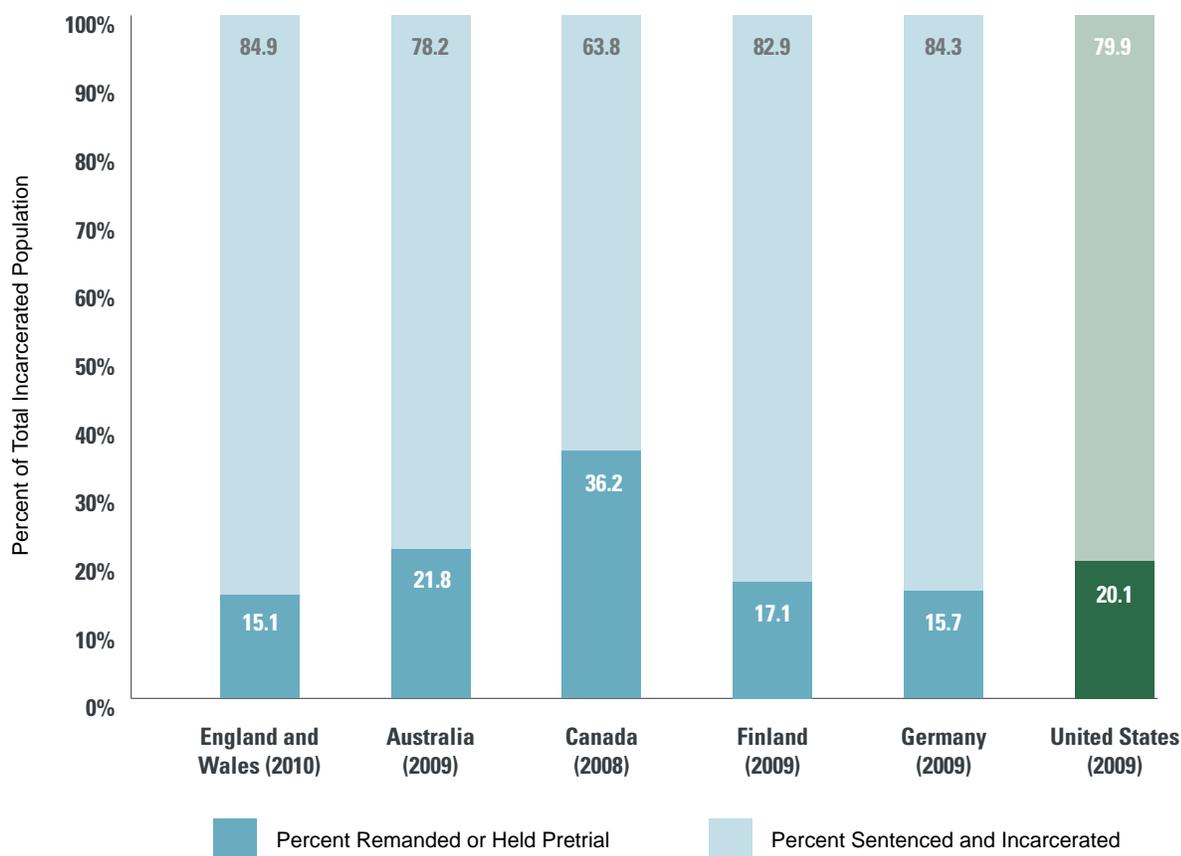
Given the increased likelihood of sentencing to prison in the United States once entering the system,<sup>32</sup> limiting arrests for less serious offenses, including quality of life offenses, could potentially reduce the number of people in prison in the U.S.

## PRETRIAL DETENTION AND REMAND TO CUSTODY

In the U.S., when a person is charged with an offense they may be detained in jail until their trial or they may be released to await their trial in the community through a variety of mechanisms which will be discussed later. In many other nations, people are said to be “remanded,” which is a summons to appear before a judge at a later date. If they are not released pretrial they can be “remanded to custody” until their court proceeding; if they are convicted, they can be remanded to custody prior to sentencing or during an appeal process. That some other nations include both those awaiting court hearings and those awaiting sentencing in their number of people “remanded to court” makes it an imperfect parallel with U.S. figures for pretrial detention; nonetheless, data collected by the International Centre for Prison Studies in London shows that a smaller percentage of the total number of people incarcerated in European nations are remanded to custody prior to trial or sentencing compared to in the United States. Canada holds the largest percentage of the total incarcerated population in pretrial detention—36 percent are remanded.<sup>34</sup>

Pretrial detention is associated with a higher likelihood of both being found guilty<sup>35</sup> and receiving a sentence of incarceration over probation,<sup>36</sup> thus forcing a person further into the criminal justice system. In the United States, this is particularly important because of the sheer numbers: with 20 percent of the total number of people incarcerated being pretrial, that means nearly 500,000 people

**Canada has the largest percentage of people remanded to incarceration of the total incarcerated population.**



Source: International Centre for Prison Studies, "World Prison Brief: Country Profiles," January 5, 2011 [www.kcl.ac.uk/depsta/law/research/icps/worldbrief/](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/)

each year are more likely to be found guilty and sentenced to incarceration, thus significantly adding to the total number of people in prison.

Each comparison nation has different thresholds for determining who will be released prior to trial. Nearly all comparison countries will hold a person pretrial to ensure return for trial. However, Canada, the United States, and England and Wales, will also hold a person pretrial to protect public safety.<sup>37</sup> Finland makes decisions about remand speedily and does so within four days of arrest. If a person is remanded to custody, they may request a new hearing every two weeks.<sup>38</sup>

If a person is not released on their own recognition, the court can set a monetary amount that can be paid in exchange for release, which is called bail.

The use of bail in Australia, Canada, the United States, and England and Wales likely contributes to the number of people held pretrial.<sup>39</sup> Germany has bail, but uses it infrequently, and Finland does not have a system of bail at all.<sup>40</sup> In addition, the United States is the only other nation besides the Philippines that permits commercial bail, or the practice of paying a third party to post bail on your behalf. This practice allows a third party, generally a corporation, to inherently make decisions in the bail process; because they make decisions based on a profit motive, public and individual well-being plays no role in deciding for whom they will post bail.<sup>41</sup>

Although the United States pretrial and detention practices are not notably different than those in the other comparison countries, it is worth considering

## PRETRIAL DETENTION AND REMAND TO CUSTODY

COUNTRY	REMAND PRISONERS AS PERCENTAGE OF TOTAL INCARCERATED POPULATION (2009) <sup>45</sup>	REASONS FOR REMAND INCARCERATION	
<b>Australia</b>	21.8 <sup>46</sup>	<ul style="list-style-type: none"> <li>• Risk of the person being a threat to themselves or others<sup>47</sup></li> <li>• High probability of the person not appearing for trial</li> <li>• Other factors such as the seriousness of the charge can also be taken into account<sup>48</sup></li> </ul>	
<b>Canada</b>	36.2 <sup>52</sup>	<ul style="list-style-type: none"> <li>• Ensure that the accused person does not flee</li> <li>• Protect the public if there is a high likelihood of reoffending</li> <li>• Maintain confidence in the administration of justice<sup>53</sup></li> </ul>	
<b>Finland</b>	17.1 <sup>56</sup>	<ul style="list-style-type: none"> <li>• High probability they will seek to escape or evade justice</li> <li>• Try to tamper with evidence or witnesses</li> <li>• Continue criminal activity</li> <li>• Not a resident of Finland and therefore may attempt to leave the country<sup>57</sup></li> </ul>	
<b>Germany</b>	15.7 <sup>62</sup>	<ul style="list-style-type: none"> <li>• Strong suspicion of flight risk</li> <li>• Suspicion that evidence may be tampered with</li> <li>• Strong risk of reoffending in the case of serious crimes<sup>63</sup></li> </ul>	
<b>England and Wales<sup>66</sup></b>	15.1 <sup>67</sup>	<ul style="list-style-type: none"> <li>• Suspicion that the person would not later surrender to custody</li> <li>• Would likely interfere with witnesses or otherwise obstruct justice</li> <li>• Already on bail at the time of the offense</li> <li>• If the court is convinced that the person should be in custody for his/her own safety<sup>68</sup></li> </ul>	
<b>United States</b>	20.8 <sup>73</sup>	<ul style="list-style-type: none"> <li>• Strong suspicion of flight risk</li> <li>• Potential to obstruct justice or intimidate a witness<sup>74</sup></li> <li>• Risk of danger to specific individuals or the community</li> <li>• The nature and circumstances of the crime<sup>75</sup></li> </ul>	

LOCATIONS OF PRETRIAL INCARCERATION	BAIL PRACTICES AND CONDITIONS
<p>Held in prison, but under less strict conditions than the general prison population so that they can access legal services and bail more easily<sup>49</sup></p>	<p>Bail can be set by the police or the court with the court having the ability to change or remove bail previously set by the police.<sup>50</sup></p> <p>Bail conditions vary by case but can include: attending court at the date and time agreed to, supervision, having a surety, home detention and abiding by a curfew.<sup>51</sup></p> <p>No commercial bail</p>
<p>People on remand are the responsibility of State and Territorial governments are responsible for pretrial incarceration. People are held in prisons, jails, or remand centers (facilities specifically meant to house people on remand).<sup>54</sup></p>	<p>Bail is set by the court.</p> <p>Conditions of bail can include: curfews, treatment for substance abuse, counseling for anger management and prohibition from firearms possession as well as monetary fine if the person does not appear in court or comply with bail conditions.<sup>55</sup></p> <p>No commercial bail</p>
<p>Legally required to be held in prisons, some of which are solely dedicated to remand inmates<sup>58</sup></p> <p>In practice, however, people are often held in police cells, even after their initial appearance in court.<sup>59</sup></p>	<p>No bail system, but most defendants are eligible for release on personal recognizance<sup>60</sup></p> <p>If a person is remanded to custody, they can request the court to reconsider and rule on their remand sentence every two weeks while awaiting trial.<sup>61</sup></p> <p>No commercial bail</p>
<p>Housed in prisons, at least some of which are specifically for people on remand<sup>64</sup></p>	<p>The bail system is infrequently used and normally is applied to wealthy defendants, requiring payment, however, the use of sureties is allowed.<sup>65</sup></p> <p>No commercial bail</p>
<p>Held in remand centers, which are housed within a prison service facility<sup>69</sup></p> <p>Law requires that people held on remand not come into contact with convicted persons.<sup>70</sup></p>	<p>Police officers can release a person on “street bail,” in order to allow them to avoid overnight detention at a police station if they agree to appear at the police station at a later time.<sup>71</sup></p> <p>Conditions of bail are set in 25-33 percent of cases and can include: restriction of residence, prohibition from contact with a specific person, geographical travel boundaries, curfews and reporting to authorities.<sup>72</sup></p> <p>No commercial bail</p>
<p>Held in prisons, local jails, or detention centers, some of which are specifically for people that are pretrial<sup>76</sup></p>	<p>Varies by case but common bail conditions include: reporting regularly to police or a pretrial services agency, supervision by a designated custodian, geographical restrictions, prohibition from contact with specific people and the use of electronic surveillance<sup>77</sup></p> <p>With the exception of four states, commercial bail is permissible.<sup>78</sup></p>

that in those nations people are released on their own recognizance more often and bail is a right, not a privilege, issued relatively infrequently within the guidelines of a few, specific offenses.<sup>42</sup>

Releasing more people pretrial would not only potentially reduce the number of people going to prison, but prevent people from losing connections to work, family and community while being held pretrial.<sup>43</sup> In addition, holding more people pretrial is not correlated with having higher rates of crime or victimization.

### POLICY OPPORTUNITY

**Increase releases pretrial:** Comparison nations other than Canada use pretrial detention less than the United States, without experiencing a negative impact on public safety.

**End commercial bail:** Comparison nations forbid paying a third party any sum in exchange for posting bail.<sup>44</sup> Private corporations contribute to the number of people held pretrial because they make bail decisions based on what is profitable, not the risk to public safety. States like Oregon, Illinois, Kentucky, and Wisconsin abolished commercial bail and require down-payments to the court, which are refunded only upon the person's appearance in court.

## SENTENCING

Sentencing practices, especially length of sentence,<sup>79</sup> are a significant factor, when considering the number of people in prisons. Sentencing determines both placement (in a prison or not), and the term of imprisonment. Combined, these two factors can quickly drive up an incarceration rate.

### The U.S. uses prison in response to offenses more often than comparison nations.

The United States sentences people to prison about twice as often as Canada, which in turn sentences

people to a term of incarceration more than three times as often as any other of the comparison nations. Comparatively, England and Wales, Germany, and Finland use fines far more often than any other response to an offense. Germany and Finland, in particular, use fines more than the U.S. uses a sentence of incarceration.<sup>80</sup>

The U.S. also uses “control of freedom” more often than any other nation, as well. This could include supervision in the community, or some other placement under the control of a correctional agency. The United States and Finland also appear to be the only nations in this comparison that sentence people to community service.

Germany and Finland use a special type of fine that is on a sliding scale, which creates accountability that takes into consideration ability to pay. These “day fines,” which were first developed and used in Finland in 1921,<sup>81</sup> are based on the seriousness of the offense and apply proportional punishment to all people, regardless of socio-economic status.<sup>82</sup> The fine is generally levied based on the amount of money a person earns on a given day and is then given over a period of days (e.g. a 20-day fine or a 10-day fine). In Germany, for example, punishments for certain crimes—mainly property crimes and assaults<sup>83</sup>—are assessed in these day fine units. Payment rates are high, but in the cases where payments are not made, community service is often a response; but sometimes, in Finland for example, a prison term of 90 days could be imposed. Recent concerns about the number of people going to prison for defaults led Finland to exclude non-payment of smaller fines

# 63 MONTHS

Average length of sentence of incarceration in the United States.



social services that can prevent crime and reduce victimization, instead of generating significant costs for incarceration.<sup>85</sup> Comparatively, many fines in the U.S. are applied regardless of whether or not a person can pay them; the penalty for not paying a fine in the U.S. is often incarceration.

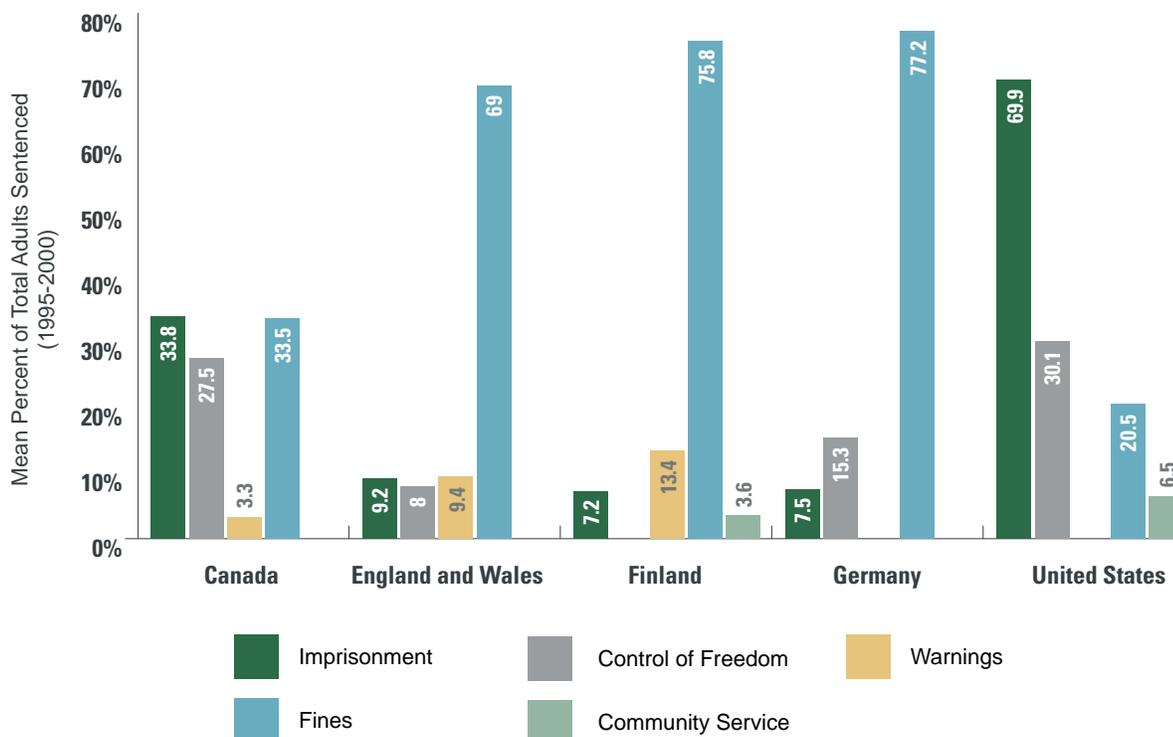
### The U.S. sends people to prison longer for similar types of offenses

U.S. research shows little to no correlation between time spent in prison and recidivism rates.<sup>86</sup> In other words, a longer sentence does not necessarily reduce the chances that a person will commit an illegal offense again (unless a person is

from a prison penalty and to reduce the number of possible days spent in prison for default to 60 days.<sup>84</sup>

Regardless of the relatively low level of default, the fine system raises money that can be reinvested in

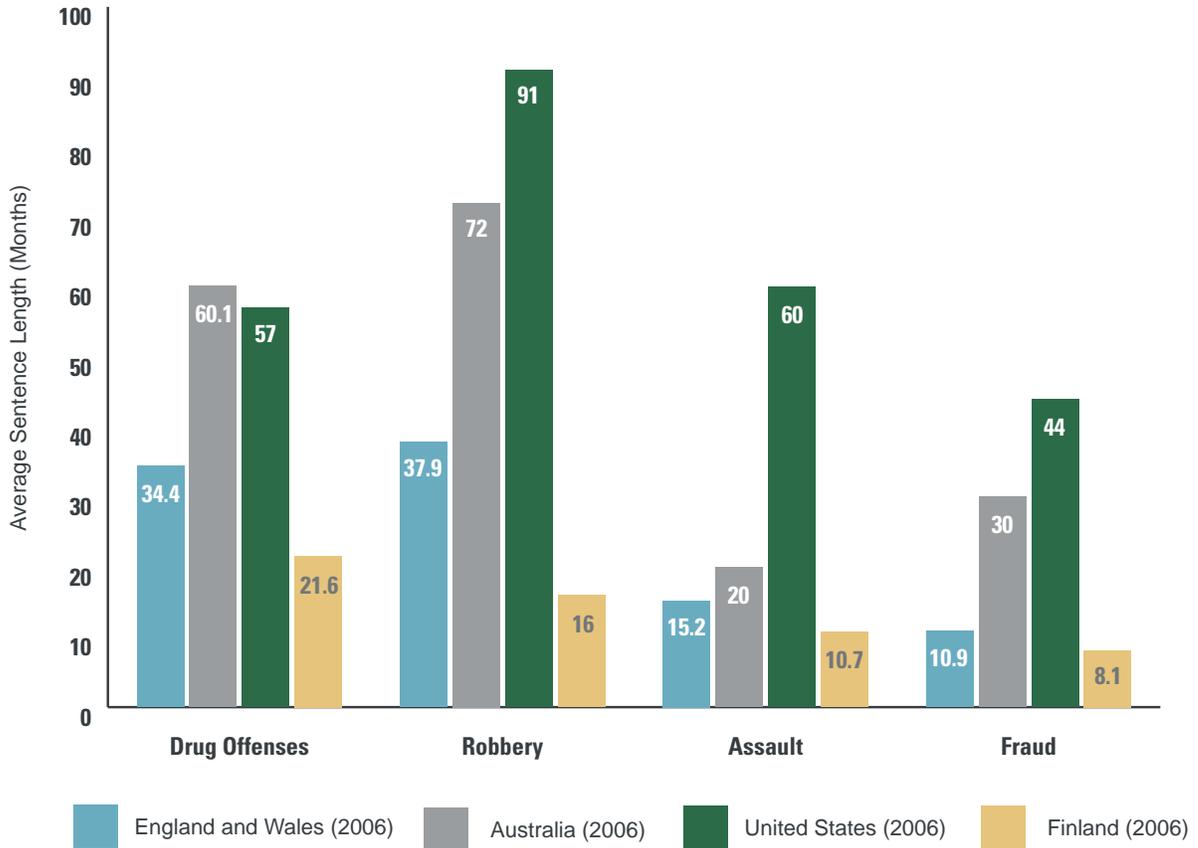
**Despite similar crime rates, the U.S. relies most heavily on incarceration as a sentencing option.**



Source: Kauko Aromaa and Markku Heiskanen, eds. *Crime and Criminal Justice Systems in Europe and North America 1995-2004* (Helsinki: The European Institute for Crime Prevention and Control, 2008). [www.heuni.fi/Etusivu/Publications/HEUNIreports/121552427763](http://www.heuni.fi/Etusivu/Publications/HEUNIreports/121552427763); Jan van Dijk, John van Kesteren, and Paul Smit, *Criminal Victimization in International Perspective: Key findings from the 2004-2005 ICVS and EU ICS* (The Hague: WODC, Tilburg University, UNICRI, United Nations Office on Drugs and Crime, 2007) [www.unicri.it/www/analysis/icvs/pdf\\_files/ICVS2004\\_05report.pdf](http://www.unicri.it/www/analysis/icvs/pdf_files/ICVS2004_05report.pdf)

Note: Combinations of sentences are possible, so percentages per nation do not always add to 100 percent.

**The U.S. gives longer sentences for similar types of offenses.**



Source: Tom Bonczar State Prison Admissions, 2006: Sentence Length by offense and admission type (Washington, DC, Bureau of Justice Statistics: 2010) <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2174>; Marcelo F. Aebi and others, European Sourcebook of Crime and Criminal Justice Statistics, Fourth Edition (Zurich, Switzerland, Ministry of Justice, 2010). [www.europeansourcebook.org/ob285\\_full.pdf](http://www.europeansourcebook.org/ob285_full.pdf); Prisoners in Australia, 2006 (Canberra, Australian Bureau of Statistics, 2006) [www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02006?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02006?OpenDocument).  
 Robbery: Defined as "Robbery, extortion and related offences" in Australia. Assault: Defined as "Violence against the person" in England and Wales. Fraud: Defined as "Fraud: Defined as "Deception and related offences" in Australia and "fraud and forgery" in England and Wales.

imprisoned until death). Yet, in addition to a more extensive reliance on incarceration in the United States, the U.S. also tends to give longer sentences, further serving to increase the U.S. incarceration rate.

The average sentence length for all sentences in the U.S. (63 months)<sup>87</sup> is higher than that in Australia (36 months)<sup>88</sup> and Germany (between one and two years).<sup>89</sup> Differences in sentencing for drug offenses, in particular, likely contribute to this disparity in average sentences. People convicted of drug offenses in the U.S. receive an average sentence of five years compared to just 32 months in England and Wales. While data was not available by offense type

for Germany, the U.S. sentences people to prison for longer than Finland, Australia or England and Wales for robbery, assault, and fraud.

When comparison nations do give a sentence of incarceration, the sentence is usually shorter than in the U.S.<sup>90</sup> In the U.S., many believe that longer prison sentences remove people from the community so that they cannot engage in illegal behavior, and that the threat of severe punishment would deter this participation, thus protecting public safety. However, countries with lower prison populations and shorter prison sentences do not necessarily have higher rates of victimization<sup>91</sup> or reported crime.<sup>92</sup>

The lack of evidence that there is a measurable, consistent correlation between public safety and incarceration across comparison nations indicates that there is opportunity to consider that less incarceration and shorter sentences might yield similar public safety results without the expense or negative impact to people and communities.

## POLICY OPPORTUNITIES

**Day fines (structured fines):** Based on the seriousness of the offense, day fines apply proportional punishment on all people, regardless of socio-economic status. The fine is generally levied based on the amount of money a person earns on a given day and are designed to hold a person accountable, but not to be so burdensome that they cannot realistically be paid. Officials that manage the day fines also frequently follow-up with people scheduled to pay them to determine if the financial situation has changed or if there are other barriers to payment. Responses for non-payment include community service, day reporting centers, home confinement, and half-way houses. Staten Island, New York, Maricopa County, Arizona, and Iowa have all implemented structured fine programs.<sup>93</sup>

**Shorten sentences:** Shorter sentences of incarceration for all offenses would significantly reduce the number of people in prison without sacrificing public safety. A shorter amount of time in prison could be accompanied by community-based alternatives that are designed to facilitate reentry.

## PUNITIVE RESPONSE TO DRUG USE

A country's or locality's response to certain behaviors can play a large part in its incarceration rate. The growth in the U.S. prison population has been fueled, in part, by the increase in incarceration for drug offenses. Between 1980 and 2006, the number

of people incarcerated for drug offenses in state and federal prisons increased 1,412 percent from 23,900 to 361,276.<sup>130</sup> In 2006, 24 percent of the people in state and federal prisons were there because their most serious offense was a drug offense.<sup>131</sup>

This is in contrast to other countries where people convicted of drug offenses make up a smaller percentage of the prison population. This difference has less to do with the percentage of people who use drugs in these countries and more to do with their philosophy on drug use, specifically whether they take a public health or criminal justice position. Countries such as Canada and Australia have a much lower percentage of their prison population taken up by people convicted of drug offenses than the U.S., but all countries used in this report have significantly lower drug imprisonment numbers and percentages.<sup>132</sup>

### Drug use is not necessarily higher in the U.S. than in comparison nations.

People in the United States do not necessarily use drugs more than people in other countries, and rates of imprisonment for drug offenses are not correlated with patterns of drug use. For example, Canadians self-report using cannabis at a higher rate than U.S. residents, and all other drugs at similar rates, yet the U.S. continues to lock-up a higher percentage of its residents in prison for drug offenses; only 6 percent of Canada's prison population is incarcerated for a drug offense compared to 24 percent in the U.S.

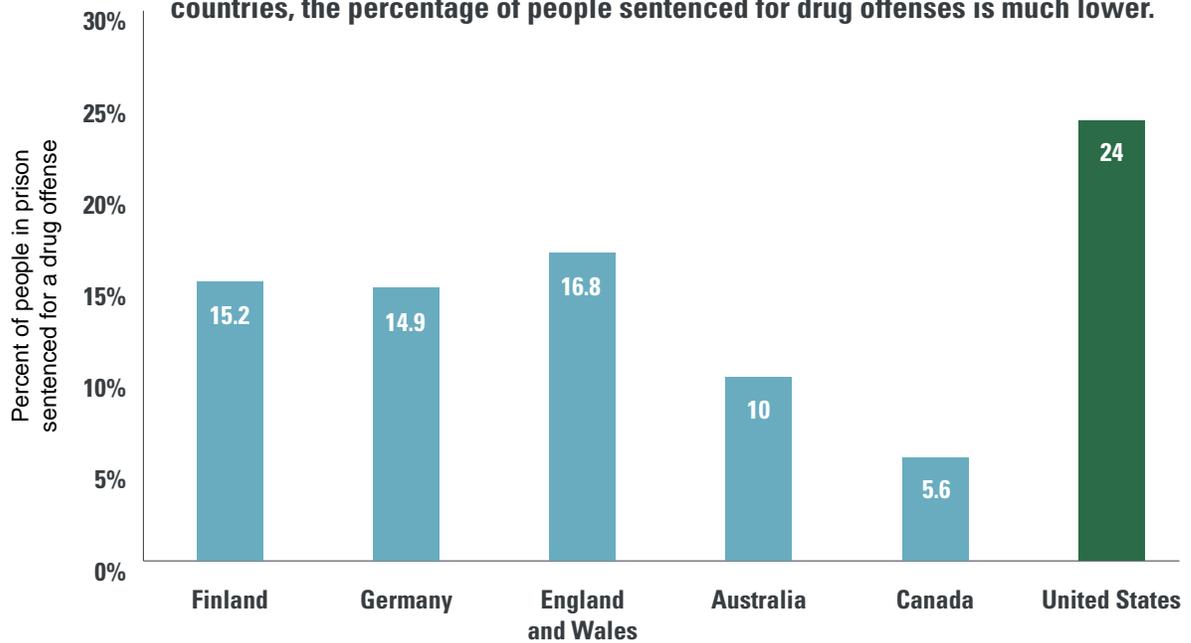
While it is worth comparing drug arrests and imprisonment across countries, an additional factor to consider is that some countries consider drug addiction a public health problem before they consider it a criminal justice problem. Comparing the number of drug arrests in the United States to those in Germany, for example, is not likely to be a fair comparison because the types of drugs and the

## SENTENCING

COUNTRY	SENTENCING APPROACH FOR ADULTS
<b>Australia</b>	Territories have control over their own sentencing regimes but generally incarceration is used as a last resort, with fines and community service being commonly administered. <sup>95</sup> Western Australia is the only territory to use mandatory minimum sentences for some non-violent and non-sexual crimes. <sup>96</sup> Some other territories have minimums in place for serious crimes. <sup>110</sup>
<b>Canada</b>	Sentences must be proportional to the seriousness of crime and responsibility of the person; minimum intervention approach followed; mandatory minimums used with restraint and mostly in the case of murder. <sup>102</sup> Sentences of incarceration can also include a term of probation. <sup>103</sup>
<b>Finland</b>	Sentences range from 14 days to 15 years (with multiple offenses), or life, during which time a portion of the sentence can be served on parole. <sup>107</sup> Sentences must be proportional to seriousness of crime in question and responsibility of the offender. <sup>108</sup>
<b>Germany</b>	Courts generally have a range of sentences to choose from; Imprisonment for minor offenses is discouraged; Mandatory minimums are in place for serious offenses. <sup>113</sup>
<b>England and Wales<sup>118</sup></b>	Emphasis on fines and community service; incarceration only used in cases of serious crimes. <sup>119</sup> Mandatory minimums applied to repeat offenders of specific crimes and very serious crimes. <sup>120</sup>
<b>United States</b>	States have control over individual sentencing regimes with a general pattern of emphasis on retribution and incarceration. <sup>124</sup> Mandatory minimum sentences applied to various offenses, including drug possession and gun possession. <sup>125</sup> Sentences can include a term of probation that place limits on freedom.

SENTENCING APPROACH FOR JUVENILES	AVERAGE CUSTODIAL SENTENCE LENGTH <sup>94</sup>	ALTERNATIVES TO INCARCERATION
Community-based alternatives and fines emphasized; incarceration is normally the sentence of last resort. <sup>98</sup> Western Australia's mandatory minimum sentencing does extend to juveniles. <sup>99</sup>	36 months <sup>100</sup>	Fines, community service, suspended sentence, probation, educational or rehabilitative programs, home detention. <sup>101</sup>
Custodial sentences only given in case of serious violent offense; emphasis placed on community supervision programs. <sup>104</sup>	4 months <sup>105</sup>	Fines, restitution, community service, suspended sentence, probation, intermittent imprisonment. <sup>106</sup>
Persons under 18 years cannot be sentenced to imprisonment except in cases where there is an important reason for doing so. <sup>109</sup> Fines or community service are normally imposed instead. <sup>110</sup>	10.1 months <sup>111</sup>	Fines, suspended sentence, community service, no penalty. <sup>112</sup>
Courts follow a minimum intervention approach, placing emphasis on diversion and suspended sentences rather than imprisonment. <sup>114</sup>	6-12 months <sup>115</sup>	Fines (Day Fine System), <sup>116</sup> suspended sentence, diversion. <sup>117</sup>
Incarceration only used in the most serious cases; fines, community service, and referrals to youth offender panels used in lieu of custodial sentences. <sup>121</sup>	13 months <sup>122</sup>	Fines, community service, suspended sentence, probation (England and Wales). <sup>123</sup>
Focus on punishment rather than rehabilitation leads to use of custodial sentences, including the possibility of a life sentence without parole in federal cases and in 44 states. <sup>126</sup> In many states, juveniles can be tried in adult courts. <sup>127</sup>	63 months <sup>128</sup>	Fines, community service, community substance abuse or mental health treatment, intermittent imprisonment, home detention, boot camps, suspended sentence. <sup>129</sup>

**In the United States, people sentenced to more than a year for drug offenses accounted for nearly one-quarter of the prison population in 2008. In other countries, the percentage of people sentenced for drug offenses is much lower.**



Sources: United States: William Sabol, Heather West, and Matthew Cooper, *Prisoners in 2008* (Washington, DC: Bureau of Justice Statistics, 2009). <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf> Includes both people in both federal or state prisons, Finland, Germany, UK: Council of Europe, *Annual Penal Statistics – SPACE 1 – 2008* (Strasbourg, France: Council of Europe, 2010). [www.coe.int/t/dghl/standardsetting/prisons/SPACE/PC-CP\(2010\)07\\_E%20SPACE%20Report%201.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/SPACE/PC-CP(2010)07_E%20SPACE%20Report%201.pdf) Canada: Laura Landry and Maire Sinha, "Adult Correctional Services in Canada, 2005/2006," *Juristat 28*, no. 6 (June 2008). [www.statcan.gc.ca/pub/85-002-x/85-002-x2008006-eng.pdf](http://www.statcan.gc.ca/pub/85-002-x/85-002-x2008006-eng.pdf), Sentenced only, does not include remand. Australia: Australian Bureau of Statistics, *Prisoners in 2008*, Australia (Canberra, Australia, Australian Bureau of Statistics, 2008). [www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/4517.0Main%20Features22008?opendocument&tabname=Summary&prodno=4517.0&issue=2008&num=&view=](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/4517.0Main%20Features22008?opendocument&tabname=Summary&prodno=4517.0&issue=2008&num=&view=)

quantities for which a person can be arrested are distinctly different. In other words, that the United States considers drug use a criminal justice problem changes how it is observed and counted, and also has a unique impact on the prison population.

### **Drug use is seen as a public health problem and not a criminal justice problem in comparison nations.**

Drug policies in the United States, and increasingly in the United Kingdom, are shaped around the belief that drugs fuel crime and reducing drug use is accomplished by penalizing drug-related behaviors. On the other hand, drug policies in Germany, Finland and Canada are meant to reduce drug use through a public health modality that includes treatment and the encouragement of healthy lifestyles. Although these countries do continue to target traffickers and people that possess large

amounts of drugs, people who use drugs and possess small quantities are likely to receive treatment over prison in recognition that drug abuse is a public health problem.

The attitudes and practices in drug policy vary across nations and range from a first response of treatment and prevention to enforcement and interdiction. Current U.S. approaches focus more on enforcement than treatment and, often, when there is treatment available, it is within the context of the criminal justice system. Indicative of the lack of attention that the U.S. gives to treatment and prevention is a study released by The National Center on Addiction and Substance Abuse at Columbia University. The study found that substance abuse and addiction cost localities, states, and the federal government \$467.7 billion in 2005, but slightly less than 2 percent of those expenditures were on treatment

and prevention. The remaining funds went toward managing the consequences of substance addiction, including homelessness, crime, domestic violence, and child abuse.<sup>133</sup>

- **Mandatory minimum sentences:** While other comparison countries have mandatory minimum sentences, they are usually focused on firearms and specific, violent offenses, especially sex offenses.<sup>134</sup> The United States and the United Kingdom have mandatory minimum sentences for drug offenses. In the case of the United Kingdom, the mandatory sentence is for trafficking, but in the United States a mandatory sentence can be for possession of illicit substances, as well. Some of the harshest mandatory sentences in the U.S. were implemented in the 1980s and involve possession offenses, many related to crack cocaine. In 2010, the United States passed historic federal legislation reducing the disparity in sentencing for cocaine versus crack from 100 to one to 18 to one, which is, perhaps, indicative of a willingness to review the consequences of mandatory minimum sentences.<sup>135</sup>
- **Treatment systems:** The availability and affordability of treatment is a primary difference between the U.S. and other countries.

Comparison countries have nationally supported or subsidized health care systems, which usually include some access to drug treatment or treatment of other physical or mental health problems that can catalyze drug use.<sup>136</sup> The United States has treatment facilities, but they are often only available to people who can afford private insurance to pay for them out of pocket, or through the limited capacity of the criminal justice system, which maintains a punitive structure that impedes recovery.

- **Harm reduction:** Many nations use a harm reduction approach to certain aspects of drug addiction in their countries.<sup>137</sup> The Netherlands has, since the 1970s, relied on harm reduction as a primary response to drug use. This approach focuses on the minimization of risks and hazards of drug use by emphasizing health care, prevention, and regulation of individual use, while directing enforcement measures largely against organized crime (i.e. trafficking). Dutch drug policy takes a market separation approach to enforcement (hard drugs vs. soft drugs) with criminal penalties focusing on hard drug violations.<sup>138</sup>

The percent of people in the U.S. that report drug use in the last year is not necessarily greater than the percent of people that report drug use in the last year in other countries.

	<b>CANNABIS</b>	<b>OPIATES</b>	<b>COCAINE</b>	<b>AMPHETAMINES</b>
<b>United States</b>	12.30%	0.58%	<b>2.80%</b>	1.60%
<b>England and Wales</b>	7.40%	<b>0.98-1%</b>	2.30%	1%
<b>Canada</b>	<b>17%</b>	0.21-0.42%	2.30%	1%,
<b>Finland</b>	3.60%	0.23%	0.50%	0.6
<b>Germany</b>	4.70%	0.14-0.29%	0.7	0.50%
<b>Australia</b>	10.60%	0.4	1.90%	<b>2.70%</b>

Sources: United Nations Office on Drugs and Crime, *World Drug Report 2009* (Vienna, Austria: United Nations Office on Drugs and Crime, 2009). [www.unodc.org/documents/wdr/WDR\\_2009/WDR2009\\_eng\\_web.pdf](http://www.unodc.org/documents/wdr/WDR_2009/WDR2009_eng_web.pdf)

Note: The age ranges change slightly per each drug and each country.

The Netherlands is a good example of a country using a harm reduction approach to drug use. In the 1980s, the Netherlands became one of the first nations to offer a needle exchange program to curbe the spread of Hepatitis and HIV/AIDS among its population. Additionally, under the market separation approach “coffee shops” were developed as a safe location for individuals to engage in the use of soft drugs (i.e. cannabis) without their behavior having criminal or legal repercussions.<sup>139</sup> Although the Netherlands has historically had more relaxed criminal enforcement policies compared to other European democracies, approximately 18.6 percent of its prison population is still incarcerated for a drug offense.<sup>140</sup>

- **Decriminalization:** Not all nations consider all drugs to be illegal. For example, in the Netherlands, cannabis is legally permitted, but other drugs, like opiates, are not treated as leniently.<sup>141</sup> It is not necessarily a crime to consume or possess drugs in other countries, but it may still be considered a crime to deal or distribute them.

In 2001, Portugal decriminalized all drug use and possession – but not trafficking or distribution – based on research that decriminalization of drugs reduces drug use, which in turn, can decrease drug-related crime.<sup>142</sup> While drug possession is still illegal, the sanctions are not meted out through a criminal process. Instead, the person is summoned before a Commission of Dissuasion of Drug Addition, which is a panel made up of social workers and counselors that meets outside of court. The Commission assesses the person’s drug use habits and determines the appropriate response. Most often the person

will receive a fine, treatment, or probation,<sup>143</sup> but could also be told to refrain from certain types of bars or concerts.<sup>144</sup>

According to a 2009 report by the Cato Institute, by removing the threat of imprisonment and re-allocating resources to treatment, Portugal has successfully decreased drug-related deaths, disease transmission, all drug use among youth aged 15-19 and lifetime cannabis use among people 15-64.<sup>145</sup> Between 2002 and 2008, the percent of Portugal’s prison population that was sentenced for a drug offense also went down 20.5 percentage points from 41.8 percent<sup>146</sup> to 21.3 percent.<sup>147</sup>

A second study released in 2010 found that any increases in reported drug use in Portugal were consistent with increases in neighboring countries, while there was reduced drug use among youth, increased admission to treatment, a reduced burden on the criminal justice system, reductions in deaths related to opiate use, reductions in deaths from infectious diseases, and increases in drug seizures.<sup>148</sup> Such results indicate that decriminalization will not have a widespread detrimental impact on public health or public safety.



## FOUR PILLARS: SWITZERLAND AND VANCOUVER, CANADA

Switzerland was the first country to adopt the four pillars approach to reducing substance misuse. In the 1980s, Switzerland became increasingly concerned about the use of drugs that are injected and the spread of HIV. Previous policy focused on abstinence, but the desperation of the situation led researchers and policymakers to change their approach. Rather than focusing on eradication, they experimented with the concept of *managing* the drug problem. This shift in policy incorporated a shift in language as well—substituting the term “risk reduction” for the controversial “harm reduction.” The philosophy behind the term considers that drug users still have rights, including the right to life. Therefore, in practice, risk reduction means using controversial treatments such as prescription heroin.

With this change in attitude, Switzerland established the Four Pillars model of drug policy. The four pillars of Switzerland’s drugs policy are:

- prevention
- treatment
- risk reduction
- enforcement

Legally, the Four Pillars Model was introduced at the community-based level by field workers in the 1980s. In 1994, the federal government cited the policy as the national strategy. In 2008, it was passed as federal law. The Swiss model has had positive results including reduced numbers of heroin users, cases of HIV, and deaths.

In response to concerns about overdoses, the spread of disease, inadequate treatment and the relationship between illegal behavior and drug addiction, the city of Vancouver, Canada adopted its own version of the four pillars approach in 2005. Vancouver took a cooperative approach that involves private businesses, government agencies, non-profit organizations, and advocacy groups. It is not only community-based, but customized to address the needs of specific communities. An evaluation of one aspect of the Four Pillars Policy, the Supported Employment Project, found that the project’s work to secure temporary employment for people in recovery has been successful in preparing people for permanent employment. For example, only 25 percent of people in the program relapsed at the end of their term of employment.

Germany also has a Four Pillars policy, and similar harm reduction practices can be found in the UK and the Netherlands.

**1,412%**  
Increase in the  
number of people  
in U.S. prisons  
for drug offenses  
since 1980.

Sources: The Swiss Four Pillars Policy: An Evolution From Local Experimentation to Federal Law, [www.great-aria.ch/pdf/Infos/Beckley\\_Briefing\\_2009.pdf](http://www.great-aria.ch/pdf/Infos/Beckley_Briefing_2009.pdf)

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## PUNITIVE RESPONSE TO DRUG USE

COUNTRY	LAW	INTENTION OF LAW	DECRIMINALIZATION
<b>Germany</b>	Germany's Action Plan on Drugs and Addiction and Narcotics Act of 1981 <sup>149</sup>	Prevent and treat addictions to illicit substances, as well as harm reduction and decreasing the supply of drugs	
<b>Finland</b>	Narcotics Act of 1993, National drug strategy of 1997	Combat demand for illicit drugs and focus on early intervention and drug addiction prevention <sup>151</sup>	
<b>Australia</b>	Drugs, Poisons, and Controlled Substances Act of 1981, National Drug Strategy: Australia's integrated framework 2004-2009 <sup>152</sup>	Prevent and reduce the harmful effects of substance use through national educational campaigns, treatment, and criminal penalties <sup>153</sup>	Decriminalization laws for cannabis exist in all eight Australian territories. Some territories have "cannabis cautioning schemes" that provide for civil penalties, while others mandate "prohibition with cautioning and diversion to treatment" plans. <sup>154</sup>
<b>England and Wales</b>	Misuse of Drugs Act, made law in 1971, Drug Trafficking Act of 1994	Prevent the non-medical use of controlled substances through criminal penalties <sup>157</sup>	
<b>Canada</b>	Controlled Drugs and Substances Act (CDSA), made law in 1996, Bill C-15 (mandatory minimums)	Prevent use and sale of drugs through criminalization and penalties <sup>160</sup>	Cannabis is not fully decriminalized in any province; however cannabis for medical purposes can be bought and sold with legal permission. <sup>161</sup>
<b>United States</b>	State laws vary, but are generally referred to as the "War on Drugs"  Mandatory minimum sentencing, school zone laws	Penalize drug use and drug-related behaviors through the criminal or juvenile justice systems	Cannabis is not fully decriminalized in any state, however some states allow cannabis to be bought and sold through authorized vendors for medical purposes. <sup>164</sup>

TREATMENT MEASURES	PUNITIVE MEASURES
Possession of small amounts of narcotics, open access to treatment <sup>150</sup>	Possession of larger amounts of narcotics is a criminal offense (dealing, distributing, intent to sell).
	Possession, distribution, and manufacture are criminal offenses. Conviction and sentence depends on the type and quantity of drug.
Access to drug courts vary by Australian Territory; however most courts provide a Drug Treatment Order which includes a suspended custodial sentence and a treatment program focused on addressing substance abuse. <sup>155</sup>	Penalties cover a broad range, but for possession of drugs not related to trafficking, one is subject to a maximum fine of \$3000 and/or one year of imprisonment, and the most severe penalty- for persons convicted of trafficking commercial quantities of drugs- is a maximum fine of \$500,000 and/or life imprisonment. <sup>156</sup>
Often available and monitored through Dedicated Drug Courts for minor nonviolent offenses <sup>158</sup>	Possession, distribution, and manufacture are criminal offenses. Conviction and sentence depends on the type and quantity of drug. Prison sentences can reach life imprisonment for trafficking. Police often handle cases in their jurisdiction. <sup>159</sup>
Available through Drug Treatment Courts— judicially mandated treatment programs that offer an alternative to jail time for nonviolent offenses. <sup>162</sup>	Mandatory minimum prison sentences for certain drug offences, and heightened maximum penalties. <sup>163</sup>
Often available after involvement in criminal or juvenile justice systems in prison, community-placement, or drug courts	Possession, distribution, and manufacture are criminal offenses. Conviction and sentence depends on the type and quantity of drug, includes mandatory minimums. Possession of even small amounts of drugs can lead to a prison sentence.

## PRISONS ARE THE NEW ASYLUMS IN ALL OF THE COMPARISON NATIONS

Among the six countries discussed in this report, recent research shows alarming proportions of people in prison that have a mental illness. While the numbers vary from nation to nation, there is a common theory that the deinstitutionalization of the mental health sector has led to the incarceration of more people with mental illness than ever before.<sup>165</sup> For the United States, the lack of resources in community-based mental health treatment is evident in low numbers of mental health personnel—especially as a ratio to mental health patients—and a low budget allocation in comparison to most of the other countries.<sup>166</sup> Worse yet, a U.S. Department of Justice survey found that more than half of the U.S. prison and jail population have symptoms of a mental health disorder but less than one-third report receiving treatment while incarcerated.<sup>167</sup>

Some research finds even more daunting numbers in the other countries:

- A news report from Germany estimated that 88 percent of incarcerated people have a mental illness or personality disorder.<sup>168</sup>
- A survey of the New South Wales prison population in Australia found that 78.2 percent of men and 90.1 percent of women had a psychiatric condition upon arrival there.<sup>169</sup>
- The Prison Reform Trust, an advocacy group in the United Kingdom, found that 72 percent of males and 70 percent of females in prison have at least two mental health disorders.<sup>170</sup>
- In Canada, an annual report from the Office of the Correctional Investigator found that the number of people being admitted to prisons with mental health issues had increased by 71 percent and 61 percent for men and women, respectively, between 1997 and 2007,<sup>171</sup> with one in four new admissions to the federal corrections system having a mental health problem.<sup>172</sup> About 37 percent of men and 50 percent of women in prison in the Pacific region of Canada living with a mental health problem.<sup>173</sup>
- A 2000 study from Finland that followed life results for a group of males born in 1966 found that “one-third of violent and one-fourth of nonviolent male offenders had at least one hospital admission due to a psychiatric disorder before the age of 32,” suggesting that some of the males in the study had gone untreated.<sup>174</sup>

Though reported numbers may be lower in Canada and Finland, there is still concern about the disparity between the high rates of people with mental health issues in prison and the much lower rates found in the general population of all six countries.<sup>175</sup>

## POLICY OPPORTUNITIES

**Eliminate mandatory minimum sentencing for drug offenses:** No other comparison nation has mandatory sentencing for possession of small amounts of illegal substances. Such broad sentencing structures are significant contributors to the number of people in prison in the U.S.

**Provide treatment first:** Treatment for drug addiction outside the justice system should be widely available and affordable for people who need it.

**Use a public health response to drug-related offenses:** In cases in which the offense is related to the personal use of drugs, treatment should be the first response rather than incarceration.

**Harm reduction:** Needle-exchange programs, for example, not only help prevent the spread of disease, but also give people a safe place to use drugs, thus reducing chances that they will become involved in other illegal activity.

## PAROLE AND REENTRY

Parole, reentry and supervision policies and practices have some commonalities, however, the details about how each of these systems works are somewhat difficult to uncover. In other words, there is no central, international repository for parole and reentry information and statistics.

Nonetheless these practices have an important effect on the number of people in prison. This section attempts to aggregate information and compare statistics to show how differences in parole, reentry, and supervision affect prison population. In particular, this section includes a summary of some of the philosophies and policies associated with these criminal justice practices related to three areas of interest:

1. **Early, conditional releases** from prison to parole or supervision can reduce the number of people in prison.
2. **Surveillance practices** and “tail ‘em, nail ‘em, jail ‘em” philosophies of supervision can send people back to prison for violations of supervision (i.e., failing to report to a parole officer, difficulty keeping steady employment, etc.).
3. **Reentry services** and practices can help people successfully return permanently to their communities, thereby reducing the number of people entering prison.

## Releasing more people to supervision would reduce the number of people in prison.

Release processes across comparison nations vary and appear to be uniformly complicated. Some nations, including Finland, Australia, and Germany, have automatic parole dates after some proportion of the sentence is served. For example, in Finland, the general rule is that a person who has not been in prison in the previous three years is paroled after serving half of the sentence.<sup>176</sup> Recently, Finland also implemented a “supervised probationary period” for people in prison with long sentences who need more support and services while in the community.<sup>177</sup>

Other nations, including England and Wales, allow the courts to make some decisions about the proportion of the sentence served in prison and the Parole Board to determine eligibility for parole in other cases. Canada also tends to rely on Parole Boards to determine eligibility for parole. In the U.S., “truth in sentencing” and mandatory minimum sentencing laws in some states have eliminated the ability of parole boards to determine release eligibility.

Australia and Finland, the only two nations considered here with automatic parole dates after a certain proportion of the sentence is served, also have the highest release rates. The other comparison nations which use a more discretionary release

## FIVE THINGS TO KNOW ABOUT SUPERVISION IN OTHER NATIONS

All of the comparison nations have some type of supervision practice when a person is released from prison. As will be discussed, there are differences in the way supervision is carried out across nations. But perhaps more importantly, there are differences in the general implications of supervision that stretch across the entire section.

Here are five things to know about parole, reentry, and supervision in the comparison nations:

1. Automatic releases before the end of a sentence are routine in Australia, Finland, and Germany.
2. People are rarely held in prison until they complete the entire sentence.
3. Reentry services are more automatically, widely, and routinely available.
4. People released from prison without supervision are not excluded from receiving services or the support of a parole agency.
5. Although all nations commonly use the word parole to describe the conditional release of a person from prison, probation is sometimes used to describe the agency that provides supervision.

strategy have more similar rates of release.<sup>178</sup> Despite these differences in conditional release rates, crime rates do not vary significantly across nations.

Some states in the U.S. are using different release mechanisms, some of which are already in use in countries like Finland. For example, medical leave is possible in some states, by which people in prison who are very ill can be released and some states are relying more frequently on risk assessments to determine eligibility as soon as it is possible within the rubric of mandatory sentences.

### **Surveillance practices are likely to contribute to the number of people in prison.**

While preventing new offenses from occurring is important, it is also important to ensure that people are not returning to prison for violations of parole that include missing appointments with parole officers, being unemployed, or failing a drug test.<sup>179</sup> In the U.S., for example, approximately 16 percent of people on parole are returned to prison because parole was revoked for a violation of the conditions of parole.<sup>180</sup>

The philosophy that guides parole practice may have a significant effect on the number of people

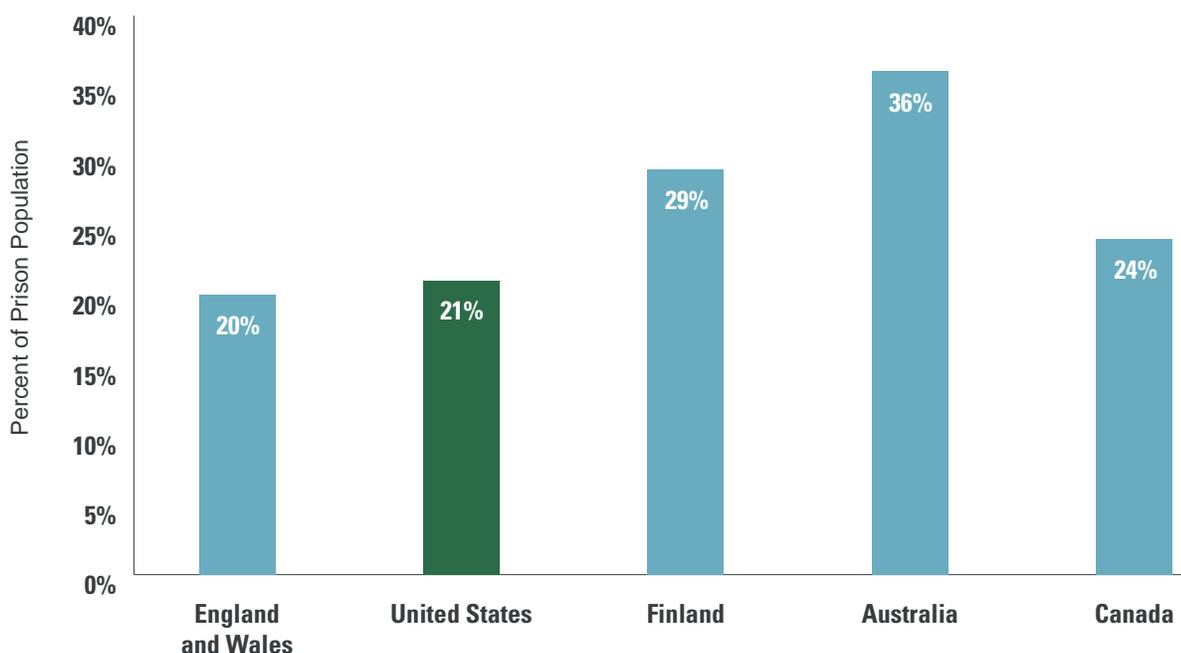
who are returned to prison for parole violations. For example, the United States and England and Wales use a supervision-heavy parole system which relies on frequent contact and lots of rules which must be obeyed. While some U.S. jurisdictions are increasing the availability of other resources, such as job training, drug treatment and program referrals, these vary greatly between different states and even different cities. In other words, the parole system seems to be designed to catch a person doing something wrong, rather than provide the services to prevent an offense.

By contrast, Germany and Finland primarily use parole and probation services as a way of ensuring that the person leaving prison is receiving appropriate services and treatment to help ensure reintegration into the community.<sup>181</sup> In fact, in Finland, only one in five people on parole have a supervision or surveillance component to their release (although that does not mean they do not have access to services through a parole officer) and even in the cases of new offenses, the person does not necessarily go back to prison.<sup>182</sup> Canada and Australia use a more combined parole modality that uses both supervision and service.

Even though the U.S. as a whole tends to use a surveillance-heavy approach for parole, some states are increasingly shifting toward a more balanced, supportive parole system that incorporates more reentry services. Under budgetary pressure and realizing that prison populations were growing while people were being returned to prison for violating parole, Kansas, Georgia, and New Jersey began instituting a philosophy shift in parole and incorporating graduated responses to behaviors that violate parole.<sup>183</sup>

A universal shift to a parole system in all states and localities that includes more of a social work modality rather than one focusing on policing and surveillance modality would ensure that fewer people return to prison for technical violations, thus reducing the number of people in prison. Such a shift will also facilitate the delivery of more reentry services, as discussed in the next section.

### Of the comparison nations, Australia and Finland release the highest proportion of its prison population to supervision in 2006.



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## POST RELEASE SUPERVISION (PAROLE)

COUNTRY	AGENCY THAT DELIVERS POST-RELEASE SUPERVISION SERVICES	APPROACH TO POST-RELEASE SUPERVISION
<b>Australia</b>	The State or Territory Department of Corrective Services delivers parole services via community corrections staff. <sup>184</sup>	Designed to assist people moving back into the community with supervision and advice from parole officers. Large caseloads have led to more risk management strategies <sup>185</sup> over service due to some people on parole having insufficient contact with officers. <sup>186</sup>
<b>Canada</b>	The Correction Service of Canada <sup>190</sup> Local police jurisdictions through Integrated Police-Parole Initiative <sup>191</sup> Some community-based agencies and individuals <sup>192</sup>	Parole is considered the bridge between incarceration and returning to the community by providing help and supervision during a gradual release process. <sup>193</sup> Public safety is the foremost consideration taken into account when making parole decisions and risk management strategies are used to formulate release plans. <sup>194</sup> Parole officers are expected to fulfill a dual role of enforcement agent and counselor. <sup>195</sup>
<b>Finland</b>	Probation Service delivers parole services – assigning conditions of release and supervision requirements. <sup>200</sup> Different authorities, communities, workplaces, and private persons often assist the Probation Service with providing services. <sup>201</sup>	The goals of supervision and community sanctions are to help people adopt lives without crime, promote the reintegration of sentenced people back into society, and to reduce the chance of recidivism. <sup>202</sup> Minimal focus is placed on risk management or supervision strategy – approach emphasizes reintegration.

MECHANISMS OF RELEASE DECISIONS	TERMS AND CONDITIONS OF PAROLE
<p>For federal offenses, there is often a non-parole period. If the sentence is less than 10 years, the person is <b>automatically</b> released after the non-parole period without the discretion of government officials. If the sentence is over 10 years, the Minister makes the release decisions.<sup>187</sup> At the state or territory level, there are similar practices related to non-parole periods and State or Territory Parole Boards make parole release decisions in states or territories.<sup>188</sup></p>	<p>Varies by jurisdiction and individual cases, but common conditions include: reporting to the parole officer, keeping changes of address or job up to date, requesting permission for travel (domestic and international), counseling for financial, emotional or marital problems and drug addiction treatment and testing.<sup>189</sup></p>
<p>The Parole Board of Canada handles parole decisions for all Federal cases, State and Territory cases not under the jurisdiction of Ontario or Quebec (which have their own Parole Boards).<sup>196</sup></p> <p>Release decisions are made based on three major factors: criminal history, institutional behavior and benefit from release plan programs.<sup>197</sup></p>	<p>Standard conditions apply to every person paroled and include: reporting to parole supervisor, staying within specific geographic boundaries, reporting changes in financial, housing, or family situations; additionally, for people on day parole, they must return to the penitentiary at the specified date and time.<sup>198</sup></p> <p>Special Conditions take into account individualized risk and include conditions such as abstinence from alcohol and drugs or more stringent geographical/travel limitations.<sup>199</sup></p>
<p>People who have not been in prison at some point in the prior three years of the current offense, can be released after serving <b>half of the sentence</b>. If the offense was committed when under 21 years of age, the corresponding time is one-third. Otherwise, people sentenced to prison can be released on parole when they have served two-thirds of their sentence or half of the sentence if the offense was committed when the person was under 21 years of age.<sup>203</sup> On certain conditions, people serving life sentences can be released after serving 5/6 but at least three years of the sentence. Helsinki Court of Appeal decides on the release.</p> <p>Only one out of every five people on post-release supervision are court ordered to supervision by the Probation Service; supervision is generally used if the parole period is more than one year, if the offense was committed when the person was under 21 years of age, or if the person requests supervision.<sup>204</sup></p>	<p>People ordered to supervised release are required to participate in the formation of a supervision plan and to attend meetings with an assigned supervisor.<sup>205</sup> During these meetings, the supervised person is required to provide information related to work, housing, education, and his/her current financial situation.<sup>206</sup></p> <p>The supervised person is prohibited from attending supervision meetings under the influence of alcohol, but is otherwise not restricted from using alcohol unless agreed to in the supervision plan.<sup>207</sup></p>

## POST RELEASE SUPERVISION (PAROLE)

COUNTRY	AGENCY THAT DELIVERS POST-RELEASE SUPERVISION SERVICES	APPROACH TO POST-RELEASE SUPERVISION
<b>Germany</b>	<p>Nearly all probation services are government run and under the jurisdiction of the respective state, with the exception being of Baden-Württemberg, which has contracted probation services through a private provider named NEUSTART.<sup>208</sup></p>	<p>Less emphasis is placed on supervision as in other nations. The court does not require supervision in every case and parole officers are expected to assist and look after the person on parole.<sup>209</sup> Even though compliance is monitored, not every new offense leads to a revocation of parole. Revocations only happen when the person shows that the expectations on which the parole was based have not been fulfilled.<sup>210</sup></p>
<b>England and Wales</b>	<p>The Probation Service, located within the Ministry of Justice, is in charge of providing parole services.<sup>215</sup> Services are chiefly delivered through probation staff but the private and voluntary sector are increasingly involved in the provision of services.<sup>216</sup></p>	<p>Both the Parole Board and the Probation Service are principally concerned with protecting public safety by managing the risk posed by releasing individuals on parole. The Probation Service highlights enforcement of parole conditions as a top priority.<sup>217</sup> Emphasis on risk management and supervision indicates a system based on surveillance and control rather than rehabilitation.<sup>218</sup></p>
<b>United States</b>	<p>Parole service provision varies widely by jurisdiction. Supervision can be handled by a parole supervision agency which may be overseen by the Parole Board, housed under the State Department of Corrections, or within a separate state agency.<sup>223</sup></p> <p>Other State and Federal level agencies, community organizations, non-profit organizations, and local law enforcement are often involved in providing parole services.<sup>224</sup></p>	<p>Focus is primarily on strengthening surveillance, limiting risk, and promoting punishment as opposed to emphasizing rehabilitation. Recently, however although recently there has been some indication that States are becoming more interested in treatment strategies that would reduce recidivism.<sup>225</sup></p>

MECHANISMS OF RELEASE DECISIONS	TERMS AND CONDITIONS OF PAROLE
<p>Incarcerated persons are automatically considered for parole after serving one half of their sentence if they have no previous sentences and the sentence is less than two years or after serving two-thirds of their sentence in other cases not involving a life sentence.<sup>211</sup></p> <p>Those serving a life sentence are automatically considered for parole after serving 15 years in prison.<sup>212</sup> Parole decisions are made by the court system.<sup>213</sup></p>	<p>Terms and conditions of parole vary by case; some examples are: supervision by a probation officer, community service, reparations for the injury caused, instructions regarding place of residence and regular reporting to a court.<sup>214</sup></p>
<p>The Parole Board makes parole decisions and attempts to help rehabilitate people where appropriate, however the main factor considered in parole decisions is the risk to public safety.<sup>219</sup></p> <p>People with a determinate sentence are allowed to apply as early as six months before the half way-point of a sentence.<sup>220</sup> People with an indeterminate sentence such as a sentence to life can be considered for release by a Parole Board after serving the minimum amount of prison time required for their particular offense.<sup>221</sup></p>	<p>Conditions vary by case but general requirements include: meeting with supervising officer, staying out of legal trouble, maintaining up to date records regarding address and phone number, being on time for supervised appointments and having probation staff home visits.<sup>222</sup></p>
<p>Varies by jurisdiction but parole decisions are often made by state level parole boards.<sup>226</sup> In other places, courts determine sentencing by using mandatory minimum sentences.</p> <p>The method of making parole decisions can vary but an increasingly dominant paradigm involves using risk assessment tools to estimate the person's chances of returning to prison.<sup>227</sup></p>	<p>Conditions vary by jurisdiction but can generally be divided into standard and special conditions.<sup>228</sup></p> <p>Standard conditions can include: restrictions on changing residence, maintenance of employment or enrollment in educational programs and home or work visits.<sup>229</sup></p> <p>Special conditions can include: participation in drug or alcohol treatment programs and psychological treatment programs.<sup>230</sup></p>

## PAROLE INNOVATION IN THE UNITED STATES

**Kansas:** In 2001, people whose parole was revoked for violating conditions of parole made up 44.4 percent of prison admissions. In order to reduce the number of people returning to prison for violating the terms of parole, Kansas began by implementing evidence-based practices and relying more heavily on risk and needs assessments. Rather than focusing on the quantity of meetings with people on parole, parole officers were to focus on quality, using a strengths-based approach and the community as a resource for services and supports. Parole officers use a case management strategy, rather than a law enforcement, surveillance strategy when working with people on parole. As a result of the state's efforts, parole revocations resulting from violating the terms of parole decreased to 39 percent of admissions to prison in 2004.

**Georgia:** Even though Georgia had made efforts to build a "Results Driven Supervision" process, people were still returning to prison for technical violations of parole. To address this issue, Georgia undertook a variety of changes to its parole system, but one of the most sweeping was a matrix of violations that ensured that the response to a behavior was proportionate to the seriousness. For example, failing to appear for a meeting did not have the same response as an arrest for a felony. The matrix also includes a system of rewards for following the conditions of parole. The Board of Pardons and Paroles made an effort to change the general tone of parole by changing language used by parole officers and in policies and providing training. As a result of these efforts, parole revocations dropped approximately 11 percent.

**New Jersey:** The State found that parole revocations were contributing to prison overcrowding and half of the people returning for parole revocations had not committed a new offense. To help address the issue, New Jersey began by clarifying the mission, vision, and goals of parole to state the importance of promoting successful reentry into the community. Specific tools include graduated responses to violations of parole, tying services, supports, and resources to the community and community organizations, and changing expectations for staff to promote case management over surveillance. Staff are evaluated on their ability to carry out a service-based philosophy along a rubric called the "Performance Assessment Review" system. From 2003 to 2004, New Jersey decreased parole revocations 22.3 percent.

Source: National Institute of Justice, "Parole Violations Revisited: Innovations in Four States," January 14, 2011. [www.paroleviolationsrevisited.org/4states](http://www.paroleviolationsrevisited.org/4states)

**16%**  
of people on parole in the U.S. are returned to prison because parole was revoked for a violation of the conditions of parole.

## SUPERVISION AND UNCONDITIONAL RELEASE

In the United States, approximately 200,000 people are released from prison without supervision because it is the end of their sentence or under some other type of mandatory release.<sup>231</sup> Because supervision, or parole, is usually the only or best way to have access to services like housing, employment assistance, or other reentry services, people who are released without supervision are left on their own to reintegrate into their communities.

By contrast, in Finland, everyone who is released from prison has access to those services regardless of whether or not they are supervised closely by a parole officer. Only one in five people released from prison in Finland are supervised. Finland also allows people who are released from prison to request supervision.<sup>232</sup>

### Widely available reentry services prevent returns to prison.

Reentry or reintegration programs after any type of release from prison, whether it be through parole services or not, can play an important role in helping people effectively integrate back into their communities and stay out of prison. Reentry services may help reduce barriers to obtaining employment, housing, or other services that reduce the chances that a person commits a new offense while out of prison.

Determining what proportion of people released from prison commit a new offense, or recidivate, is difficult because it is measured a number of different ways, including re-arrest, re-conviction and re-imprisonment, during different time periods, for different groups of people, or for type of offense. A comparison of rates across nations is not possible

for two reasons. First, the United States tends to incarcerate more and “less risky” cases, while other comparison nations imprison less and when they do, it’s in the cases with the highest risk of committing a new offense. Second, comparison nations measure recidivism differently. These particular differences make it difficult to say with certainty that one approach to preventing recidivism is more effective than another in absolute terms. A summary of the findings from those studies includes:

- A report from the **United States** Department of Justice followed 300,000 people from 15 states after they were released from prison, and found that 46.9 percent of people released from prison were reconvicted and 25 percent of the people who left prison in 1994 returned to prison in the subsequent three years.<sup>233</sup>
- A longitudinal study in **Finland** examining those who returned to prison within 5 years of being released, shows that 59 percent returned to prison within that timeframe.<sup>234</sup>
- A **Canadian** study of people in federal prison released between April 1, 1996 and March 31, 1997 shows a reconviction rate of 41 percent within the next two years.<sup>235</sup>



## REENTRY

COUNTRY	GOVERNMENT AGENCY	REENTRY APPROACH	
<b>Australia</b>	Attorney General's Department	Rehabilitative theory largely influenced by Canada <sup>244</sup>  Focus on tailoring programming to individual client needs	
<b>Canada</b>	Correctional Service of Canada (CSC)	Cognitive Behavioral Treatment <sup>246</sup>  Employ social learning techniques  Positive reinforcements  Treatment interventions should be used primarily with high risk offenders  Personalized treatment and interventions	
<b>Finland</b>	Ministry of Justice - Criminal Sanctions Agency	Rehabilitative focus with strong emphasis on eliminating social marginalization <sup>250, 251</sup>	
<b>Germany</b>	Federal Ministry of Justice	Rehabilitation and re-socialization – with large emphasis on in-prison rehabilitation services <sup>254</sup>	
<b>England and Wales</b>	Ministry of Justice - National Offender Management Service (NOMS)	Rehabilitative theory focused on individual treatment <sup>256</sup>  (Behavioral treatment largely influenced by Canadian approach)	
<b>United States</b>	Department of Justice - Office of Justice Programs	Evolved from a sociological approach – programs/treatment focus largely on the community and things around the offender (i.e. jobs, housing, education) and less inclined to treat the individual (i.e. behavioral modification) <sup>258</sup>	

## SPECIAL PROGRAMS/SERVICES

Prison and Community Corrections falls under the responsibility of state and territory jurisdictions<sup>245</sup>—each operates independently and under different frameworks—leading to a wide variation in programs and services. Each jurisdiction provides its own services and programming, some targeting special populations.

Ex: Australian Capital Territory’s Corrective Services collaborates with local Aboriginal Organizations in providing reentry services specifically for Indigenous people

National programs focused on women and aboriginal population<sup>247</sup>

CORCAN – special operating agency focused purely on employment training, skills development, and placement<sup>248</sup>

Design and implantation of reentry programming largely directed by Provincial Branches of CSC with services varying by Province.<sup>249</sup>

Community Sanction Work – short term programs designed to change criminal behavior motivations by connecting people to the community through service work<sup>252</sup>

2001-2009 WOP Program in Kerava Prison – male prisoners under 30 participated in a holistic rehabilitation program that began during incarceration and continued after release with the focus of advancing an individual’s commitment to and occupation role in society<sup>253</sup>

Day Fines<sup>255</sup> – in lieu of short term incarceration an individual is fined based on the calculation of offense and the cost of an individual’s day of freedom (the amount of income an individual would have forfeited if incarcerated for a day)

NOMS Alliances<sup>257</sup>:

Corporate Sector – provide offenders with sustained work opportunities

Civic Society – provide equality of access to mainstream local services, authorities, and organizations

Faith, Voluntary, & Community Sector – build meaningful faith and community networks/ relationships post-release

Since 2001 with the formation of the White House Office of Faith-Based and Community Initiatives, increased federal funding has been granted to Faith-Based Reentry Initiatives & Services<sup>259</sup>

\*Note – all countries provide reentry services that address housing, education, health issues, financial management, and job service needs.

- In the **United Kingdom**, a study of 50,085 adults released from custody in the first quarter of 2007 (Jan. 1 – March 31), showed that 39 percent committed another offense at least once during a one-year follow-up period where the offense resulted in a court conviction.<sup>236</sup>
- A four-year longitudinal study of people who had previously been sanctioned with a prison term in **Germany** showed that 46.9 percent were sanctioned again within those four years.<sup>237</sup>

Although it is difficult to say whether one approach works better than another given research about recidivism across nations, it is apparent that people who do return to prison after release are likely to do so soon after they are released. In addition, providing services to people coming out of prison in the United States, generally, has been shown to be effective in preventing them from returning to prison,<sup>238</sup> thus providing such services widely and consistently can yield positive benefits.

A fundamental difference between reentry services in the U.S. and in comparison nations such as Australia, Canada, Germany, and Finland is that reentry services are part of and are paid for by the parole system and viewed as either the primary function of parole or as a significant part of parole. The two charts included in this section of the report show that in those nations rehabilitation, attachments to the community, employment, and other connections are priorities of parole or probation services and their staff. Consequently, those services are also paid for by those agencies. (See Conditional Release and Reentry charts included in this section for additional details.)

In contrast, reentry and social services in the United States are inconsistent, vary greatly across localities, and are frequently administered, if not paid for, by nongovernmental organizations. With some notable exceptions included in the section prior to this one, parole offices are first tasked with

surveillance and then, secondarily, connecting people coming home from prison with services.

### **Of the reentry initiatives in place in the U.S., there is little attention to mental or behavioral health**

The United States also has a fundamentally different reentry philosophy. The reentry model is sociological,<sup>239</sup> that is, concerned less with mental health and behavior and focused more on addressing environmental issues such as housing, education, and jobs. While comparison nations may address these issues, as well, their reentry practices are also influenced by psychological principles, addressing some of the individual issues that culminated in incarceration. The combined sociological and psychological approach to reentry includes social learning techniques, positive reinforcements, and individualized treatment such as behavior modification therapy<sup>240</sup> in addition to connecting people to services like housing or jobs.<sup>241</sup> Comparison nations, Australia, Germany, Finland, and England and Wales, take such a rehabilitative approach to reentry, emphasizing both individual behavior and societal influences.<sup>242</sup>

Aside from philosophical differences in the approach to reentry, other nations have innovative methods of reducing the chances that a person returns to prison. For example, Finland has a short term program that is designed to connect people to the community through service work. By creating a sense of investment in the community, it is thought that a person will be less likely to commit another offense.<sup>243</sup>

Although some reentry services are better than none at all, more effective models that include mental health and address specific behaviors may prove to be more cost effective for reducing the number of people returning to prison and more likely to improve life outcomes overall.

## POLICY OPPORTUNITIES

**Increase conditional releases to parole:** Nations like Australia, Finland, and Germany routinely release people from prison after they have served a certain portion of their sentence. Short of sweeping changes to parole that increase conditional releases, releases on medical parole, which is also used by comparison nations, and increases in the use of good time credits for early release would reduce the number of people in prison.

**Shift parole from a supervision modality to one of service and social work:** A social work orientation related to parole will help a person access the services, like education and employment counseling that are integral to ensuring that a person is successful outside prison so that they do not return.

**Routinely include mental health and behavioral services in reentry:** Other nations successfully put into practice an approach to reentry that includes both mental and behavioral health, as well as sociological factors like housing, employment, and education. Such a holistic approach could be cost effective in terms of keeping people from returning to prison and improving life outcomes.

**Ensure delivery of reentry services to all people returning to the community from prison, even if they are not on parole:** In comparison nations, everyone leaving prison participates in services to reconnect them to jobs, education, housing, and the community. By comparison, in the U.S. whatever reentry services are available are offered in conjunction with parole supervision. Yet, about 100,000 people leave prisons in the U.S. at the end of their sentence, but are not on parole and are not likely to receive reentry services. Delivery of services to all people leaving prison, regardless, of whether or not they are on parole, is important to ensuring successful reentry to the community.

## JUVENILE JUSTICE

Young people are still developing mentally, physically and socially.<sup>260</sup> To what extent this immaturity is considered when a youth comes in contact with systems of law and order varies both within the United States and between the United States and other countries. As treatment and other supportive services have been shown to yield positive benefits for youth and society,<sup>261</sup> a nation's use of harsh sanctions against youth engaging in unlawful or delinquent behavior demonstrates that the primary motive of the justice system is to punish young people rather than to rehabilitate them.

A single repository of comparable data for the detention or confinement of youth is difficult to obtain because not all comparison nations conceptualize juvenile justice in the same way. However, comparing only the number of youth under the age of 18 held in secure confinement shows that the U.S. holds almost six times as many youth in secure confinement as all other comparison nations.<sup>262</sup> In addition, on any given day as many as 7,500 youth can be found in adult lockup facilities in the United States,<sup>263</sup> a practice that other comparison nations do not follow.

The age of criminal responsibility, i.e. when a person is judged to understand whether a behavior or action is illegal or wrong, varies greatly between comparison nations. The age at which a child is considered to be criminally responsible determines whether or not a child can be referred to either the juvenile or criminal justice systems. This is particularly important in the U.S., where a youth can be tried as an adult. Depending on the state, youth as young as six can be held criminally responsible in the U.S. Such a low age of criminal responsibility likely adds to the total number of youth held in secure facilities in the U.S.

Although the United States founded the juvenile court at the turn of the 20<sup>th</sup> century and it served as

a model for other nations, the principles of rehabilitation and age-appropriate responses that guided it have been severely eroded; this is reflected in the number of youth held in secure facilities, tried as adults, held in adult jails, and given life without parole sentences.

**Other nations place a greater focus on pro-social options instead of incarceration for young people.**

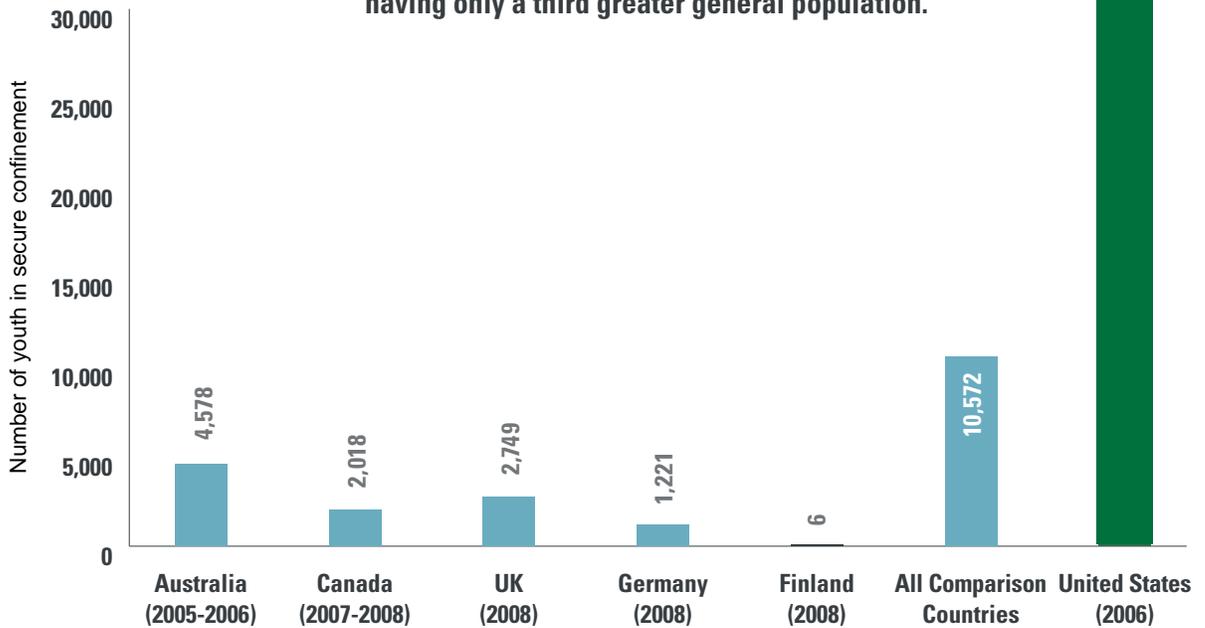
Serving time in a juvenile facility in the United States has been found to be a risk factor for later involvement in the adult criminal justice system,<sup>267</sup> as well as a host of other negative social outcomes.<sup>268</sup> Limiting the contact that youth have with secure confinement, both by using community-based alternatives and decreasing their overall contact with the justice system, should reduce the number of people in prison in the long term.

The U.S. relies heavily on incarceration and the justice system instead of treatment, rehabilitation, or restorative justice for youth in conflict with the law, although options like those exist in the U.S. (see text box “Innovation and Promising Policies in the U.S.”). U.S. policy tends to first find fault in the youth for committing a crime, while other nations tend to ask why the crime was committed and what services can and should be provided to help the young person have more positive life outcomes. Finland and Germany, in particular, take a very different approach to youth who have committed some offense:

- Finland focuses heavily on welfare, using “Care Orders” that connect youth to social services and supports.<sup>269</sup> In 2007, only



**The U.S. has almost 6 times as many youth in secure confinement as all comparison nations combined, despite having only a third greater general population.**



Sources: Australian Institute of Health and Welfare, Canberra, Juvenile justice in Australia 2005-06, [www.aihw.gov.au/publications/juv/jjia05-06/jjia05-06-c03.pdf](http://www.aihw.gov.au/publications/juv/jjia05-06/jjia05-06-c03.pdf), 2007, Secure Confinement, [www.kcl.ac.uk/depsta/law/research/icps/downloads/Lessons\\_from\\_abroad.pdf](http://www.kcl.ac.uk/depsta/law/research/icps/downloads/Lessons_from_abroad.pdf), Includes Detention Facilities, Long Term Secure, Bootcamp, Sickmund, M., Sladky, T.J., Kang, W., & Puzanchera, C. (2008). “Easy Access to the Census of Juveniles in Residential Placement.” Available: <http://ojjdp.ncjrs.gov/ojstatbb/ezacjrp/>, Council of Europe, Annual Penal Statistics – SPACE I – 2008 (Strasbourg, France: Council of Europe, 2010), [www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/prisons\\_and\\_alternatives/statistics\\_space\\_i/PC-CP\(2010\)07\\_E%20SPACE%20Report%20I.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/PC-CP(2010)07_E%20SPACE%20Report%20I.pdf)

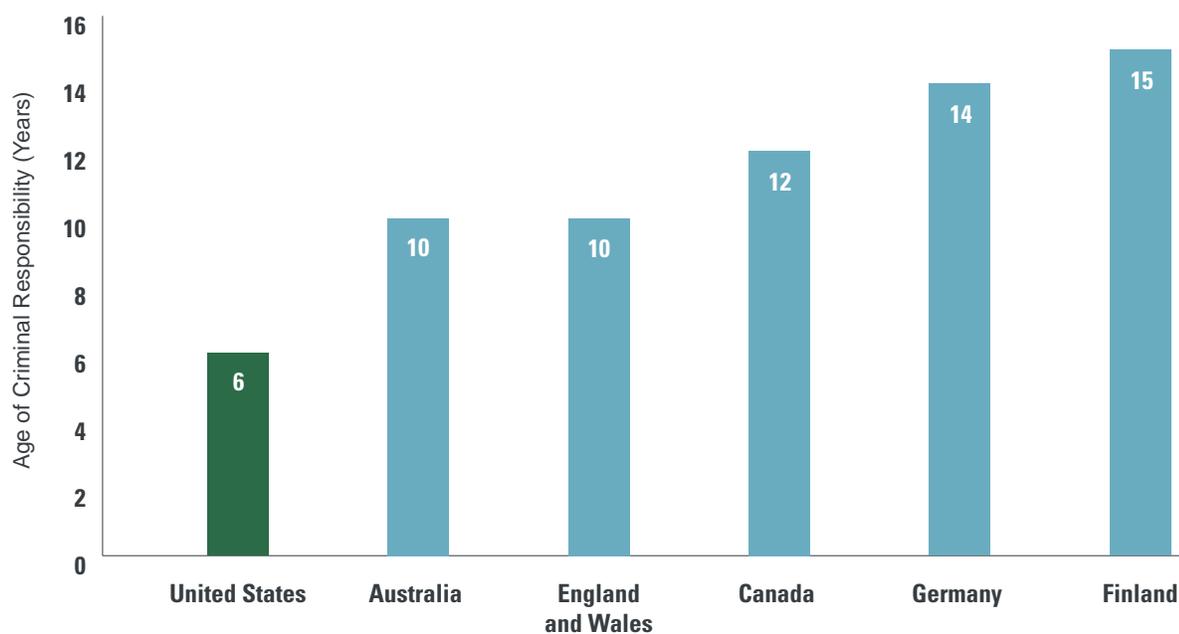
three people under the age of 18 were in custody.<sup>270</sup> By viewing crime or status offenses as a symptom of larger social problems as evidence of individual emotional or behavioral issues, Finland is able to successfully avoid

incarcerating youth in prisons. This attitude of rehabilitation and treatment toward young people can also be seen in the adult system, and contributes to low incarceration rates in the country.

### CONVENTION ON THE RIGHTS OF THE CHILD

United Nations Convention on the Rights of the Child, ratified by every country except the United States and Somalia,<sup>264</sup> sets out guidelines for protecting the rights of youth in the criminal justice system and ensuring appropriate treatment given their age and cognitive development. These include: children should not be put in prison with adults; when detained, they should be able to keep in contact with their families; they should not be treated cruelly when they break the law; and they should not be sentenced to death or life imprisonment without possibility of release.<sup>265</sup> While not all of the countries consistently have been found in compliance with the Convention (Finland, Germany, and the UK have repeatedly been criticized by the UN for insufficient distinctions between the adult and juvenile systems),<sup>266</sup> the ratification of the Convention shows a sustained effort to increase voice, agency, and protections for youth in the juvenile justice system.

### U.S. law allows for very young children to be charged with crimes.



\* Age of criminal responsibility varies by state

Source: John Muncie, *The 'Punitive Turn' in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and the USA* (London: The National Association for Youth Justice, 2008); Canadian Department of Justice [www.justice.gc.ca/eng/pi/yj-ji/prt/hps.html](http://www.justice.gc.ca/eng/pi/yj-ji/prt/hps.html); The age of criminal responsibility (Canberra: The Australian Institute of Criminology, 2005) [www.aic.gov.au/publications/current%20series/cfi/101-120/cfi106.aspx](http://www.aic.gov.au/publications/current%20series/cfi/101-120/cfi106.aspx).

## INNOVATION AND PROMISING POLICIES IN JUVENILE JUSTICE FROM THE U.S.

In some ways, the United States is a leader in developing innovative practices and policies to address the needs of youth who come in contact with the law. These innovations are not available to all youth, but where they are, they have been effective.

**Juvenile Detention Alternatives Initiative (JDAI):** Founded in 1992 in response to the rapidly growing number of youth in pre-adjudication detention facilities, JDAI works directly with localities across the U.S. to reduce the number of youth in detention. Participating cities reported reduced numbers of youth in detention, lower youth crime rates, and reductions in racial disparities.<sup>275</sup>

**Models for Change:** Established by the John D. and Catherine T. MacArthur Foundation, Models for Change seeks to institute systemic and lasting reforms in juvenile justice systems in four core states that can be used as models for other states. Models for Change also established three action networks to reduce disproportionate minority contact, improve juvenile indigent defense, and better address mental health.<sup>276</sup>

**Missouri Model:** Missouri began by investing in community-based alternatives to incarceration for youth and then changed the philosophy and operation of its long-term secure confinement facilities to provide counseling and education in a more home-like setting.<sup>277</sup> In 2006, Missouri's recidivism rate was 8.7 percent, lower than other states.<sup>278</sup> The state also realized significant cost savings, spending approximately \$94 for each youth aged 10-17, compared to the surrounding eight states that spent, on average, \$140 per young person.<sup>279</sup>

**Changing the Fiscal Architecture:** States including Ohio, New York, and Illinois changed the funding structure of their juvenile justice systems so that counties within the states have a financial incentive to place youth in community-based alternatives, rather than the state-run youth correctional facilities. Although the specific strategies differ, the states have sent fewer youth to long-term secure confinement and realized cost savings.<sup>280</sup>

**Evidence-Based Practices:** Although there are many community-based alternatives to incarceration for youth, there are six that have been rigorously evaluated and have been shown to reduce recidivism, improve life outcomes for youth, and save taxpayer dollars. These include Multi-Systemic Therapy, Functional Family Therapy, Aggression Replacement Training, Family Integrated Transitions, Coordination of Services, and Victim Offender Mediation.<sup>281</sup>

**Roper v. Simmons:** In 2004, the United States Supreme Court declared the death penalty for people who committed their offense while under age 18 unconstitutional.<sup>282</sup>

**Graham v. Florida:** In 2010, the U.S. Supreme Court rejected life sentences without the possibility of parole for youth not convicted of homicide.<sup>283</sup>

# 7,500

youth can be found in adult lockup facilities in the United States on any given day.

- Instead of detention, the German system focuses heavily on “educative and disciplinary measures” that provide for social and economic supports and reparation for the offense.<sup>271</sup> Sentences of educative measures are often available to people up to the age of 21 for a first offense. Recognizing that “harsher sanctions do not reduce recidivism and, conversely, that ‘mildness pays off’”<sup>272</sup> these nations are able to craft systems that help steer potentially troubled young people to a positive, pro-social path instead of starting a cycle of incarceration.

Policies centered on interventions based on risk are steeped in a philosophy of fixation on what transgressions young people might commit.<sup>273</sup> Instead of a proactive, welfare and health-based approach that seeks to ensure success and support, the justice system is used as an authoritarian tool that metes out punishment and establishes a system of correctional control.

Of course, the U.S. is home to a large number of innovative and successful programs and services for youth that come into contact with the law that focus on rehabilitation and improving life outcomes,<sup>274</sup> but these programs are not widely available to all who need them. At the same time, jurisdictions in the U.S. continue to transfer youth to adult courts, imprison youth for status offenses like running away, and house youth in jails that also house adults. Shifting the response to youth who come into conflict with the law back to what

was established by the juvenile court and is still reflected in the practices of many comparison nations would reduce the number of youth in juvenile secure confinement, as well as in prison populations.

## POLICY OPPORTUNITIES

**Raise the age of criminal responsibility:** Raising the age at which a child can be referred to the juvenile or criminal justice system from six years of age to one that is more reflective of a youth’s development would have some effect on the number of youth in secure custody in the U.S. and would begin to change the culture of punitiveness towards children.

**End transfers to adult courts:** No other comparison nation transfers as many youth to adult criminal courts as the United States or at such young ages. Youth transferred to adult courts are at risk of sexual assault, are not guaranteed education or other rehabilitative services, and are more likely to be rearrested for another offense later in life than a youth who was not transferred.<sup>284</sup>

**Provide services first:** Finland’s system of “Care Orders” connect youth with services, like treatment, counseling, education, or other services before punitive measures are used. Germany’s responses to youth that come into contact with the law combine education, accountability and restoration before incarceration.



## PART 5

# DIFFERENCES ACROSS NATIONS PRESENT SOME CHALLENGES TO IMPLEMENTING POLICY.

Although there are similarities between the U.S. and the comparison countries that would support reforms to reduce prison populations, some characteristics of the U.S. create an environment that supports incarceration and makes implementing policies from other nations a challenge.

International scholars have carefully analyzed the differences between nations that explain differences in incarceration. The list of potential factors includes, but is not limited to: extent and availability of social welfare; political culture; fear of crime; social equality or inequality; and public confidence in the government and social institutions.<sup>285</sup> (see Appendix for additional reading)

While the complicated interplay of national politics, economics, and social factors is important, this report's focus is on differences which might be particularly influential in a criminal justice policy debate in the United States and, to some degree, may realistically be changed. Differences included in this report are political and governmental structures, the role of the media, and funding structures related to social institutions. While they do not necessarily create insurmountable barriers to incorporating other countries' policies and practices, it may be that the U.S. needs to be innovative and customize them so that they best fit this country's culture and socio-political climate.

## POLITICS AND GOVERNMENT STRUCTURE

The basic construction of the political systems in comparison nations play a role in the way policies are implemented, creating opportunities and challenges. Both the specific roles of particular stakeholders and larger institutional structures play an important role in the ways that the justice system operates.

### Federalism: States, provinces, and localities

The structure of the governments of the comparison nations is also important to the way that policies are implemented. In countries like the U.S., Canada, and Australia, in particular, some functions of the criminal justice system operate at the state, province, county, city, or otherwise local level. In other words, it can be difficult to implement one single policy across the entire nation. This, of course, allows for innovation at the local level, but also presents a challenge in implementing a promising practice consistently and effectively across all jurisdictions. Canada is a notable exception, however, because even though criminal

justice policies are carried out at the provincial level, criminal justice policies are made at the federal level, making policies less susceptible to local pressures or perceptions.<sup>286</sup>

By contrast, smaller countries like Germany and Finland that maintain national control of aspects of the criminal justice system, including parole, pre-trial decisions, and juvenile justice functions, have more control over the implementation of a single policy, but potentially less opportunity for innovation in a smaller jurisdiction.

### Role of justice officials

Prosecutors, judges and government officials play different roles within the justice systems of different countries, which in turn, affects the number of people in prison in those nations. Some of those differences include:

- **Adversarial systems:** The U.S. and the U.K. both have adversarial court systems that require the prosecution and defense to appear before a court to essentially dismantle the other side's case before a relatively passive jury and judge. In Germany and Finland, the prosecutor plays a more neutral role. The inherent confrontational nature of this system creates a competition to convince the judge and jury,

thus potentially putting pressure on the prosecutor to have a guilty verdict.

- **Role of the prosecutor:** In the U.S. and the U.K., the prosecutor represents the state and has broad discretionary powers in the judicial process, including setting the charge. The prosecutor is generally encouraged to win on behalf of the state and, in the U.S. may be re-elected based on the number or types of wins. By contrast, in Germany and Finland, the prosecutor is a more neutral party, bearing a closer resemblance to the judge, doing investigation and arbitration, creating less confrontation in courtrooms.<sup>287</sup>
- **Resources for public defense:** The United States devotes proportionally fewer funds to public defense<sup>288</sup> than do the comparison nations in this study. The United States spends .0002 percent of its per capita GDP on public defense per person. Comparatively, the United Kingdom budgets .20 percent per person of its per capita GDP to defend people who cannot afford private counsel. Furthermore, the United States distributes resources in favor of prosecution, budgeting over twice the amount of money for prosecution as it spends on public defense.<sup>289</sup> By contrast, the United Kingdom allocates approximately four times as much funding for public defense as it does for prosecution, while Finland spends more money on both sides but allocates more towards public defense than prosecution.<sup>290</sup> Fewer resources for public defense likely affects quality of council and means more people may be found guilty and sentenced to prison.

Penal severity instead is closely associated with public sentiments (fears, levels of trust, and punitiveness), the extent of welfare provision, differences in income inequality, political structures, and legal cultures.

— TAPIO LAPPI-SEPPÄLÄ, NATIONAL RESEARCH INSTITUTE OF LEGAL POLICY, HELSINKI

### Elections of court personnel

In the U.S., many prosecutors and judges are elected by citizens or are nominated and confirmed through a political process by other elected officials. Political processes for prosecutors and judges

make getting elected and being reelected a central concern for such officials. For this reason, the goal of creating fair, cost-effective policies, may take second place to satisfying the perceived desires of the constituents, appease the media, and respond to campaign financiers. In particular, the following issues are raised related to elected justice officials:

- **Perceived pressure from the media and the public:** In-depth interviews with state legislators about the risk of people who have committed sex offenses revealed that legislators monitor the media's coverage of events in order to be responsive to constituent complaints or concerns. Such perceived complaints or concerns can affect how elected judges and prosecutors make decisions related to criminal justice as well, perhaps exacting harsher penalties in response.
- **Campaign financing from private sources:** In a 2001 poll of state judges, 46 percent indicated that campaign contributions do influence judicial decisions.<sup>291</sup> For example, money received from private prison corporations as campaign contributions may influence judges to sentence more people to prison than other community-based alternatives.
- **Term limits:** Elected officials usually face term limits and at some point will return to the private sector for work, thus making the influence of potential employers, such as law firms, academic institutions or businesses, an additional factor in decision-making in the courtroom.<sup>292</sup>

Comparatively, criminal justice administrators in many European countries are appointed by the Ministry of Justice and are career civil servants, allowing them to be less influenced by external pressures than court personnel in the U.S. In Germany, for example, criminal justice policy is the result of a bargaining process among insulated government officials. Similarly, Finnish penal reform is designed

and implemented by a small group of professional and academic criminal justice experts with close ties to several Ministers of Justice, allowing policy to remain apolitical and potentially less punitive.<sup>293</sup>

More important, the government and the opposition rarely make crime issues a central part of their political platform [in Canada].

— ANTHONY N. DOOB, PROFESSOR OF CRIMINOLOGY, UNIVERSITY OF TORONTO AND CHERYL MARIE WEBSTER, PROFESSOR OF CRIMINOLOGY, UNIVERSITY OF OTTAWA

## MEDIA DEFINES CRIME AND POLICY IN MANY COMPARISON NATIONS

For many in the comparison nations, including policymakers, the media are the primary source of information about the criminal justice system and public safety. The media also have a significant influence in the social construction of crime, or the way that crime and crime policy are understood by people. And the way crime is defined contributes to the level of fear that people have about crime and how they want to respond to it, which includes incarceration. The way the media affects policymakers and the public varies across nations and helps explain some of the difference in policy implementation related to incarceration.

Understanding how media influences criminal justice policies is critical in determining what reforms can be sustained. The media, the government, and the public all constantly reinforce each other. Through the media, policymakers perceive that there is a problem with crime, and respond with punitive policies. These responses reinforce with the public and the media the existence of a crime problem; in turn, people are led to believe that they

should be afraid, leading them to demand even harsher criminal penalties.

Given the influence that the media has over policy and public perception, particularly in the U.S. and the U.K.,<sup>294</sup> the content of media stories is important. The media, especially traditional television and print media, must sell papers or gain viewers to satisfy advertisers. Media stories therefore must create the most interest and drama, regardless of whether or not those stories truly capture the entire context of the story. For example, the following research in the U.S. shows how the media follows the “If it bleeds, it leads”<sup>295</sup> philosophy:

- U.S. television news covers crime on a level similar to that of the Presidency or Congress, devoting about 13 percent of all stories.<sup>296</sup>
- In every case where the media devotes a substantial portion of its coverage to crime news, the crime rate as a whole was decreasing and violent crime remained a small percentage of crime as a whole.<sup>297</sup>
- Research on media in Australia, Canada, and Great Britain has shown misrepresentation and distortion of crime news, particularly through a disproportionate emphasis on violent crime.<sup>298</sup>
- One study of British newspapers found that over 60 percent of the articles about crime examined referred to violent acts, while only 12 percent dealt with theft or other property crimes.<sup>299</sup>

Comparatively, in Finland, newspapers are sold almost exclusively by subscription, thereby reducing newsstand competition and the drive for catchy, dramatic headlines. The presence of one dominant daily paper further reduces competition.<sup>300</sup> Thus, the influence that the media has on policymakers and the public to encourage fear and drive punitive responses to crime is more limited.

## Media influence on policymakers

Not only do policymakers rely on the media to determine how their constituents are reacting to crime or public safety issues during a campaign, they also use the media to make policy decisions, especially in the U.S.

A 1991 survey of St. Louis gang members, law enforcement officials, and policymakers determined that while most gang members and law enforcement officers got their information from first- and second-hand experiences, the majority of policymakers reported that the mass media were their primary sources of information about gangs.<sup>301</sup> In-depth interviews with policymakers about their sources of information about sex offenders also highlight the importance of the media in the formulation of opinions.<sup>302</sup> In particular, legislators stated that they received information from other government agencies through news stories, but that they also stayed on top of the media’s coverage of events in order to be responsive to constituent complaints or concerns.

Comparatively, research in Canada suggests that imprisonment rates in that country have remained stable as rates in the U.S. and the U.K. have increased because of the absence of media influence on criminal justice policymakers. In Canada, criminal justice policies are made at the federal level and put into practice at the provincial level, thus media influence at the local level has far less of an impact on a federal policymaker many miles away.<sup>303</sup>

## ECONOMICS AND SPENDING

The economic environment of the comparison nations is perhaps most indicative of the way nations invest in incarceration versus other social institutions, like education or social welfare. Shifting monetary investments away from incarceration and toward other positive social institutions, in the case of the U.S., is also a possibility for creating more opportunity for the adoption of cross-national criminal justice policies.

The United States spends proportionally less on education compared to the criminal justice system compared to other Western Democracies, other than the United Kingdom.

	2005 PUBLIC EDUCATION SPENDING (% OF GDP)	2005 LAW & ORDER EXPENDITURE (% OF GDP) <sup>304</sup>	RATIO OF PUBLIC EDUCATION TO LAW & ORDER SPENDING	2005 SOCIAL SPENDING (% OF GDP) <sup>305</sup>
<b>Australia</b>	4.3	--	--	17.1
<b>Canada</b>	4.7	1.5	3.13	16.5
<b>Finland</b>	5.9	1.2	4.92	26.1
<b>Germany</b>	4.2	1.2	3.00	26.7
<b>United Kingdom</b>	5	2.6	1.92	21.3
<b>United States</b>	<b>4.8</b>	<b>2.2</b>	<b>2.18</b>	<b>15.9</b>

Source: Organization for Economic Co-Operation and Development Stat Extracts, "Country Statistical Profiles," Stat Extracts, 2010, <http://stats.oecd.org/viewhtml.aspx?queryname=18148&querytype=view&lang=en>.

CIA World Factbook. Country Comparisons: Military Expenditures. [www.cia.gov/library/publications/the-world-factbook/rankorder/2034rank.html](http://www.cia.gov/library/publications/the-world-factbook/rankorder/2034rank.html)

## Spending priorities

Perhaps one of the most telling differences between comparison nations is amount of money spent on law and order compared to other social institutions.

The U.S. spends a comparable amount of its Gross Domestic Product (GDP) on education in relation to the other nations in this study. However, when comparing the ratio of spending on education to spending on law enforcement, United Kingdom and the United States spend proportionally less on education than comparison nations. In addition, Canada, Germany, and Finland spend over three times as much on public education as they do on corrections, but the U.S. spends just over two times as much.

The U.S. is also an outlier on spending for social services for the general public. The average percent of GDP spent on social services is 20.5 percent in the OECD, and only South Korea, Mexico, and Turkey, spend a smaller percentage of their GDP on social services.<sup>306</sup> These figures begin to tell the tale of the American experience of incarceration over the past few decades. Instead of focusing funds toward ensuring that people do not enter

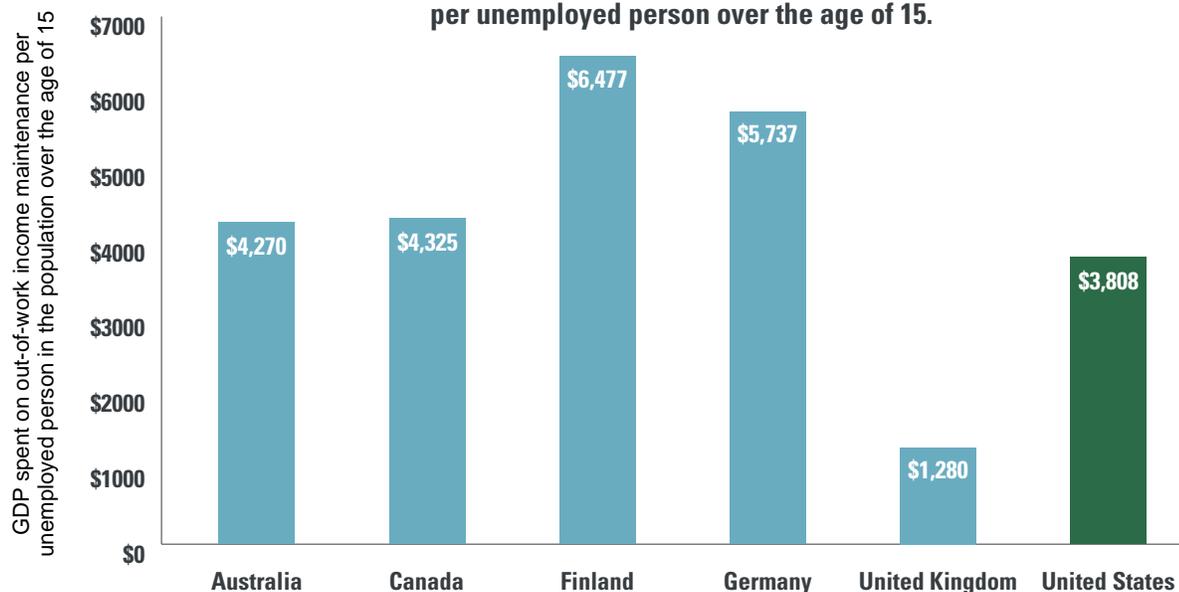
the justice system in the first place, the U.S. directs a greater portion of its GDP toward policing, incarceration, and the justice system. In FY2008, for example, the U.S. spent \$18.65 billion on prisons; this translates into 88 percent of all law and order spending on corrections.<sup>307</sup>

This level of spending indicates that financial priorities for both the U.S. and the United Kingdom lie with the criminal justice system as a means of addressing social problems over other institutions despite evidence that those institutions, particularly education, are an effective means of improving public safety and reducing the number of people in prison.<sup>308</sup>

## Social supports

The comparison nations also vary in terms of the level of social support given to people who are out of work. Although this is not the only aspect of a social support or welfare system in a nation, it is one that U.S. policy already includes and could be expanded upon. Scholars indicate that the availability of social welfare is correlated with incarceration rates.<sup>309</sup>

**Aside from the United Kingdom, the United States spent the least of its GDP allocated for out-of-work income maintenance per unemployed person over the age of 15.**



Sources: Organization for Economic Co-Operation and Development Stat Extracts, *Country Statistical Profiles* Stat Extracts, 2010. January 7, 2011. <http://stats.oecd.org/Index.aspx?DatasetCode=LMPEXP>

Of the Gross Domestic Product spent on out-of-work maintenance or support, the U.S. spends less than any other nation except the U.K. per person out of work in 2007.<sup>310</sup> As a result, people who are unemployed may face greater obstacles in meeting basic human needs in the U.S. than in comparison countries.

In response to recent declining economic conditions, the U.S. did substantially increase its unemployment assistance, however, it is likely that it is still not to the same degree as nations like Finland.

### Individual economic prosperity

All comparison nations have a fairly high and comparable level of median income. Median income across nations indicates similar levels of prosperity for individuals, with a \$3,973 range of wages between comparison nations, with the U.S. median income the highest at \$26,990 and Finland the lowest at \$21,010. The median income in the U.S. is approximately 6.5 percent higher than Canada, the nation with the next highest median wage.<sup>311</sup>

However, despite an overall similarity in median wages for all citizens in each nation, the wages of the people that earn the least is more varied. The median income of the lowest earners is 21 percent lower than the next lowest median income in Germany.

Simply examining median wages alone ignores a more significant difference between nations: income disparities. The GINI coefficient measuring income disparities is a more robust and accepted way of comparing levels of prosperity because of differences in standards of living, wages, currency valuation, and other differences in measuring individual wealth across nations. Of the 30 nations in the Organisation for Economic Co-operation and Development (OECD), only Portugal, Turkey, and Mexico have greater income inequality than the U.S.<sup>312</sup>

Although higher wages are generally shown to coincide with lower crime rates, other cross-national research indicates that income disparities are

In 2005, the U.S. had both the highest wages and the highest level of income inequality of the comparison nations.

2005 STATISTICS	MEDIAN INCOME (USD)	MEDIAN INCOME OF LOWEST 10 <sup>TH</sup> OF EARNERS (USD)	INCOME INEQUALITY (GINI COEFFICIENT)
<b>Australia</b>	23,017	8,200	.301
<b>Canada</b>	25,341	7,982	.317
<b>Finland</b>	21,010	9,048	.27
<b>Germany</b>	22,020	7,410	.30
<b>United Kingdom</b>	24,652	9,291	.335
<b>United States</b>	26,990	5,818	.381

**Source:** Organization for Economic Co-Operation and Development Stat Extracts, *Country Statistical Profiles* Stat Extracts, 2010. <http://stats.oecd.org/viewhtml.aspx?queryname=18148&querytype=view&lang=en>

correlated with higher crime rates.<sup>313</sup> Tapio Lappi-Seppälä of the National Research Institute of Legal Policy (Finland) found a strong correlation between income inequality and incarceration rates among Western countries.<sup>314</sup>

While income disparities may have a strong correlation with incarceration rates and crime rates

in Western countries, it is important to note that people with less income do not necessarily commit more crime, but due to a number of reasons, including law enforcement practices and access to public defense resources, this group may be more likely to be negatively impacted by justice systems.<sup>315</sup>



## PART 6

# CERTAIN COMMUNITIES BEAR A DISPROPORTIONATE BURDEN OF INCARCERATION IN ALL COMPARISON NATIONS.

In every nation included in this report there are communities who are disproportionately affected by incarceration. The specifics of such disproportionality are masked by the averages and national pictures in this report; but nonetheless, the overarching commonality is that all nations struggle with the disproportionate impact of the criminal justice system on some communities.

Although the communities that experience disproportionate contact with the criminal justice system vary greatly from nation to nation, the effect is the same. These communities often become part of a cycle of criminal justice system involvement that is difficult to exit and, as a result, systematically dismantles families and communities.

In the United States, race and ethnicity are frequently the measures of disproportionality. However, in other nations, race and ethnicity are not considered or counted in the same way, but include, instead, whether or not a person in prison is “foreign born” or indigenous. The information available about the communities most affected by criminal justice system includes:

- **United States (2008):** African Americans make up 37 percent of the number of people in prison, but 12 percent of the general population.<sup>316</sup> One recent study found that African

Americans make up .6 percent of the entire world’s population, but African American males *alone* make up 8 percent of the world’s prison population.<sup>317</sup>

- **Australia (2006):** Indigenous people (including Aborigines and Torres Islanders) make up 24 percent of the people in prison,<sup>318</sup> but 2 percent of the general population.<sup>319</sup>
- **Canada (2006):** Aboriginal people made up 24 percent of the people admitted to custody in the provinces and 18 percent of the people admitted to federal custody, but 4 percent of the general population.<sup>320</sup>
- **Germany (2008):** “Foreign born” people make up 26.3 percent of the people in prison, including people held pretrial,<sup>321</sup> but 12.9 percent of the general population.<sup>322</sup>
- **Finland (2008):** “Foreign born” people make up 9.5 percent of the people in prison, including people held pretrial,<sup>323</sup> but 3.4 percent of the general population.<sup>324</sup>

Further consideration of cross-national policy implementation to reduce disparities in criminal

# 8%

of the world’s prison population is African American.

justice systems in the comparison nations also requires a broader consideration of the commonalities between communities that are most affected. The groups who are disproportionately affected by criminal justice systems in all comparison nations could also be considered socially alienated or marginalized groups. Social marginalization is created through the continued ostracism of members of certain communities—often communities of color—through various social institutions,<sup>325</sup> like education or employment. One significant manifestation of social marginalization is poverty.

Social marginalization is a risk factor for incarceration, but incarceration also contributes to or causes social marginalization by creating a system of social control. Loïc Wacquant, professor of sociology at the University of California, Berkeley, argues that incarceration is not simply a means of punishment, but also an instrument of social control and management of certain groups of people.<sup>326</sup> In the United States, the concentrated impact of the social control of prison falls on people of color who are also poor, but in other nations, like Finland, “foreign born” people who are also poor may be disproportionately affected by criminal justice systems. Cross-nationally, the disproportionate incarceration of people who are socially marginalized is because criminal justice systems seem to operate either intentionally or otherwise to affect some groups more than others.

In addition, it is important to remember that although people of color make up a significant number of people who are socially marginalized in each of the comparison nations, not everyone who is socially marginalized is also a person of color. Arguably, however, nations that are more homogenous may have fewer people who are socially marginalized.

## POLICY IMPLICATIONS

Drawing broad conclusions and making policy recommendations aimed at reducing social marginalization of communities is complicated by these vast differences in experiences of these groups. In other words, policy solutions related to reducing the number of people in prison who are “foreign born” in Germany are not likely to work for indigenous people in Australia.

What is considered diverse in one nation should not be used to define diversity in another and should not be used as a reason to discount policies from other nations. Nor should the prevalence of one group in one nation, but not in another, prevent the consideration of cross-national policy implementation. However, in order for policies to work to reduce the disproportionate impact of incarceration of the criminal justice system on some communities over others, policies may need to be customized or implemented in specific communities for them to work.

### POLICY OPPORTUNITIES

In terms of reducing disparities for socially marginalized communities, the United States may be the most innovative. Juvenile justice initiatives, like the Juvenile Detention Alternatives Initiative (discussed in the textbox “Innovation and promising policies in juvenile justice from the U.S.”) and state initiatives like Wisconsin’s Commission on Reducing Racial Disparities in the Wisconsin Justice System are promising first steps at examining the problem and then providing practical solutions.

However, much work is left to be done. In particular, investing in institutions like education and employment, especially in underserved communities, may serve to address social marginalization, especially as it is related to income inequality and may serve to reduce the number of people in prison.<sup>327</sup>

## PART 7

# CONCLUSIONS AND RECOMMENDATIONS

United States policymakers can find direction for potential criminal justice policies to reduce incarceration by looking to other nations.

Other nations may find some of the information in this report useful, but the recommendations included here are aimed at U.S. policymakers and advocates.

**More, better data is needed for better comparisons:** In an increasingly global society, nations should be able to compare criminal justice, juvenile justice, and social data. This is important not only for determining if innovation can be adopted cross-nationally, but also to get a snapshot of the health and well-being of a nation's people.

**More, better comparative research is needed for better comparisons:** Research that controls for certain social or economic variables would be very useful in drawing more concrete conclusions about the impacts of different policies on public safety and community well-being as well as on social and economic costs. Such research should also be accessible and user-friendly for policymakers and the public and allow the U.S., in particular, to evaluate its policies and determine if incarceration and punitive measures are truly the best way to maintain a safe, healthy society.

In addition to more general recommendations for further research, these specific policies emerged

from the research as showing promise in the United States:

**Change the philosophy of policing:** A shift to a philosophy of policing that is neighborhood-focused and centered on overall well-being of the community and the people who live there would promote public safety, limit fear of police, and reduce the number of people arrested and imprisoned.

**Use day fines instead of incarceration:** Germany and Finland both use a day fine system based on the seriousness of the offense and apply proportional punishment on all people, regardless of socio-economic status.<sup>328</sup> The fine is generally levied based on the amount of money a person earns on a given day.

**End commercial bail:** In the U.S., states like Oregon, Illinois, Kentucky, and Wisconsin abolished commercial bail, instead requiring down-payments to the court which are refunded when a person returns for trial. This can be a better way to protect public safety and reduce the number of people unnecessarily held pretrial.

**Provide more treatment for more people outside the criminal justice system:** Treatment for drug

addiction should be widely available outside the criminal justice system and affordable for people who need it. In cases in which the offense is related to the personal use of drugs, treatment should be the first response rather than incarceration.

**Scale back sentence lengths, especially for drug offenses:** No other comparison nation has mandatory sentencing for possession of small amounts of illegal substances. Such broad sentencing structures are significant contributors to the number of people in prison in the U.S. and are not the best or most cost-effective way to protect public safety.

**Make parole about providing services and not supervision:** Refocusing parole towards social work rather than policing will help people access the services like education and employment counseling that are integral to ensuring that a person is successful outside prison so that they do not return.

**Include a behavioral or mental health component to reentry services:** Other nations successfully put into practice an approach to reentry that includes both mental and behavioral health, as well as sociological factors like housing, employment, and

education. Such a holistic approach could be cost effective in terms of keeping people from returning to prison and improving life outcomes.

**Raise the age of criminal responsibility:** Raising the age of criminal responsibility would have some effect on the number of youth in secure custody in the U.S. and reinforce the concept that youth are not developmentally the same as adults and should therefore not be treated as such.

**End transfers of youth to adult courts:** No other comparison nation transfers as many youth adult criminal courts as the United States at such young ages. This has a negative impact on community and individual well-being, as it decreases the chance a youth will be able to avoid future justice involvement and increases the risk of harm to the child while in custody.

**Invest in positive institutions:** The U.S. would do well to prioritize spending on strengthening and expanding institutions like education and employment, especially as they have been shown to not only decrease incarceration, but also improve public safety.

# GLOSSARY OF TERMS

**Age of Criminal Responsibility** - when a person is judged to understand what a behavior or action is illegal or wrong

**Bail** -the release, prior to trial, of a person accused of a crime, under specified conditions designed to assure that person's appearance in court when required (can also refer to the amount of bond money posted as a financial condition of pretrial release).

**Boot Camps** - in-prison programs that resemble military basic training and emphasize vigorous physical activity, drill and ceremony, manual labor, and other activities that ensure that participants have little, if any, free time. Strict rules govern all aspects of conduct and appearance. Correctional officers' act as drill instructors, initially using intense verbal tactics designed to break down program participants' resistance and lead to constructive changes.

**Commercial Bail** - the practice of paying a third party to post bail on your behalf.

**Drug Courts** - a separate court system that diverts nonviolent, substance abusing individuals from prison and jail into treatment.

**GDP (Gross Domestic Product)** - the yearly output or value of goods and services produced by labor and property within a country.

**Gini Coefficient** - most commonly used measure of inequality; the coefficient varies between 0 (reflects complete equality) and 1(indicates complete inequality).

**GNI (Gross National Income)** - *also referred to as Gross National Product (GNP)*; the total value of goods and services produced (both domestically and abroad) within one nation's economy in a year.

**Index Crimes/Offenses** - murder, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft and arson.

**Mandatory Minimum** -a minimum fixed sentence for a specific crime required by law, regardless of the level of culpability of the person convicted and other mitigating factors.

**Parole** -the supervised release into the community of an individual who has completed part of his or her sentence.

**Per Capita** - a unit of population or a person; when applied to a number such as GNI, it shows how much each person

would account for/have if the number divided equally.

**Probation** - a court-ordered sanction placing certain conditions on a convicted individual while allowing him or her to remain in the community under supervision.

**Remand Imprisonment** – Generally a term used outside of the United States to describe people who are deprived of their liberty following a judicial or other legal process but have not been definitively sentenced by a court for the current offense. Typically, they will be involved in one of five stages of the legal process: the investigation of the offense to determine if a case will be brought to court; awaiting trial, during the trial; after a conviction, but before sentencing; or awaiting a final sentence during an appeal process.<sup>329</sup>

**Recidivism** - the return to criminal activity of persons previously convicted of crimes. *Recidivism rate* refers to the percentage of those who return to crime, once sentence has been served.

**Reentry Programming** - involves the use of programs targeted at promoting the effective reintegration of people back to communities upon release from prison and jail; programming often involves a comprehensive case management approach and is intended to assist people in acquiring the life skills needed to succeed in the community and become law-abiding citizens.

**Rehabilitation** - programming intended to reform an individual so that he or she can lead a productive life free from crime. Rehabilitation programs can take many forms including: psychological analysis, drug and alcohol treatment, educational programs, vocational training, relationship counseling, anger-management therapy, religious study, and any other service required to meet the needs of particular incarcerated individuals.

**Restorative Justice** - a theory and application of justice that emphasizes the way in which crimes hurt relationships between people who live in a community. Crime is seen as something done against a harmed party and a community, not simply as a violation against the state. Restorative justice involves the community in preventive and intervention programs, and requires the individual to take responsibility for his or her actions.

**USD** - United States Dollars.

# APPENDIX:

## ADDITIONAL READING

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Some jurisdictions in the U.S. have already implemented policies that are similar to ones in other nations.

POLICY OR APPROACH	COUNTRY THAT DOES IT	U.S. JURISDICTION
<b>Community-Based Policing</b>	<i>Finland:</i> Finnish police have a lot of contact with people in the community without higher incarceration rates.	<i>San Diego, California:</i> Police in San Diego adopted a neighborhood policing strategy to reduce “quality of life” offenses, like graffiti and loitering. San Diego’s crime and arrest rates dropped.
<b>No Commercial Bail</b>	<i>All comparison nations:</i> No other comparison nations permit commercial, for-profit bail in which a 3 <sup>rd</sup> party, usually a bailbondsmen, posts bail on behalf of a person in jail.	<i>Oregon, Illinois, Kentucky, and Wisconsin</i> abolished commercial bail and require down-payments to the court, which are refunded only upon the person’s appearance in court.
<b>Limited Use Of Mandatory Minimum Sentences</b>	<i>Canada and Australia</i> both only use mandatory minimums for violent offenses, usually murder. <sup>1</sup> In Australia, the Western Territory is the only territory to use mandatory minimums for nonviolent offenses. <sup>2</sup>	<i>Michigan:</i> In 2002, Michigan ended the practice of using mandatory minimums for drug offenses. <sup>3</sup>  <i>U.S. federal government:</i> In 2010, the United States scaled back mandatory minimum sentencing related to crack cocaine, reducing the disparity in sentencing for cocaine versus crack from 100 to one to 18 to one. <sup>4</sup>
<b>Treatment, Not Incarceration</b>	<i>Switzerland:</i> The Four Pillars approach to drug use focuses on prevention, treatment, harm reduction, and enforcement in that order of priority. <sup>5</sup>  <i>Vancouver, Canada:</i> The Four Pillars policy in Vancouver follows a similar model to Switzerland and includes other life skills, like job preparation. <sup>6</sup>	<i>California:</i> The Substance Abuse and Crime Prevention Act of 2000 (SACPA), or Proposition 36, went into effect in California in 2001 in order to reduce the use of incarceration for people charged with nonviolent offenses, reduce drug-related crime and increase public health. It requires the use of drug treatment as an alternative to incarceration for for adults convicted of non-violent offenses and for drug possession for personal use. From its passage in November 2000 to December 2005, the rate of people incarcerated for drug possession in California dropped by 34.3 percent, from 89 to 58 people per 100,000. Implementation of SACPA may not be the sole cause of this rapid decrease; there were, however, no other major public policy changes during this time. <sup>7</sup>

POLICY OR APPROACH	COUNTRY THAT DOES IT	U.S. JURISDICTION
<b>Day Fines</b>	<p><i>Germany and Finland:</i> In lieu of short-term incarceration an individual is fined based on the calculation of offense and the cost of an individual's day of freedom (the amount of income an individual would have forfeited if incarcerated for a day).<sup>8</sup> The fine is meted out in day increments, for example a 20-day fine or a 60-day fine. Defaulting is rare, but responses to default can include jail.</p>	<p><i>Maricopa County, Arizona; Bridgeport, Connecticut; Staten Island, New York; various counties in Oregon; and Polk County, Iowa</i><sup>9</sup> all tried a version of day fines during the 1990s with various levels of success.<sup>10</sup></p>
<b>Increase Conditional Release</b>	<p><i>Australia:</i> If the federal sentence is less than 10 years, the person is <b>automatically</b> released after the non-parole period without the discretion of government officials. If the sentence is over 10 years, the Minister makes the release decisions.<sup>11</sup> At the state or territory level, there are similar practices related to non-parole periods.<sup>12</sup></p> <p><i>Finland:</i> People who have not been in prison at some point in the prior three years of the current offense, can be released after serving <b>half of the sentence</b>. If the offense was committed when under 21 years of age, the corresponding time is one-third. Otherwise, people sentenced to prison can be released on parole when they have served two-thirds of their sentence or half of the sentence if the offense was committed when the person was under 21 years of age.<sup>13</sup> On certain conditions, people serving life sentences can be released after serving 5/6 but at least three years of the sentence.</p>	<p><i>Mississippi:</i> In 2008, the state legislature passed a law allowing people serving sentences for non-violent offenses and people who have not committed multiple offenses to become eligible for parole after serving 25 percent of their sentence,<sup>14</sup> which scales back a 1995 law that required people in prison to serve 85 percent of their sentence.<sup>15</sup></p>
<b>Parole Services Over Supervision</b>	<p><i>Finland:</i> Supervision is required in only one out of five cases, but services are available to all people released from prison.</p> <p><i>Canada:</i> Cognitive Behavioral Treatment approach is used to address a person's individual responses to their environment, as well as the environment itself.<sup>16</sup></p>	<p><i>Kansas, New Jersey and Georgia</i> have implemented initiatives designed to create a service-centered, graduated response approach to parole with less concentration on surveillance. All have reduced parole revocations.<sup>17</sup></p>

POLICY OR APPROACH	COUNTRY THAT DOES IT	U.S. JURISDICTION
<p><b>Youth Development Approach to Juvenile Justice</b></p>	<p><i>Finland:</i> Finland focuses heavily on welfare, using “Care Orders” that connect youth to social services and supports. In 2007 only three people under the age of 18 were in custody.</p> <p><i>Germany:</i> Instead of detention, the German system focuses heavily on “educative and disciplinary measures” that provide for social and economic supports and reparation for the offense.<sup>18</sup> Sentences of educative measures are often available to people up to the age of 21 for a first offense.</p>	<p><i>Missouri:</i> Missouri invests in community-based alternatives to incarceration for youth and uses its long-term secure confinement facilities to provide counseling and education in a more home-like setting.<sup>19</sup> In 2006, Missouri’s recidivism rate was 8.7 percent, lower than other states.<sup>20</sup> The state also realized significant cost savings, spending approximately \$94 for each youth aged 10-17, compared to the surrounding eight states that spent, on average, \$140 per young person.<sup>21</sup></p> <p><i>District of Columbia:</i> In 2009, the District of Columbia opened the New Beginnings Youth Development Center to serve youth committed to the care of the Department of Youth Rehabilitative Services. The facility and the continuum of care built around it are similar to the Missouri Model.</p>

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