

Mass Incarceration & Civil Rights in Arkansas



A Briefing Report of the
Arkansas Advisory Committee to the
U.S. Commission on Civil Rights

April 2020

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. These committees are composed of state/district citizens who serve without compensation; they are tasked with advising the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction. Committees are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state or district's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states/district.

Acknowledgements

The Arkansas Advisory Committee would like to thank each of the speakers who presented to the Committee during the September 7, 2018 Briefing of the Arkansas Advisory Committee in Little Rock, Arkansas; the Web Briefing on March 25, 2019; and the Community Forum on April 23, 2019 in Fayetteville, Arkansas; as well as the members of the public who submitted written testimony.

**Arkansas Advisory Committee to the
U.S. Commission on Civil Rights**

The Arkansas Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding mass incarceration in the state.

The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Arkansas. The contents of this report are primarily based on testimony the Committee heard during a public briefing on September 7, 2018; a web briefing on March 25, 2019; and a community forum on April 23, 2019. Primary areas of investigation included racial disparities, bias, juvenile justice, and post-release services.

From these findings, the Committee offers to the Commission recommendations for addressing these issues of national importance.

Arkansas Advisory Committee to the U.S. Commission on Civil Rights

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I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These advisory committees advise the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction.

On September 7, 2018, the Arkansas Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened a public meeting to hear testimony on civil rights and mass incarceration in the state of Arkansas. The Committee collected additional testimony via a web hearing, a community forum held in Fayetteville, and written testimony.¹ The Committee sought to examine whether incarceration rates in Arkansas raise disparate-impact concerns on the basis of race, color, disability status, national origin, and/or sex. Elements of interest include the state's growing prison population, identified as one of the fastest growing in the country,² and the disproportionately high incarceration rate of people of color relative to their representation in the general population.³

II. BACKGROUND

A. Mass Incarceration

Over the past forty years, while crime rates in the United States have either stabilized or declined, the nation's prison population has more than quadrupled in size.⁴ This increase has become commonly known as "mass incarceration." Research suggests this rapid growth may be attributed to an increase in the number of people being sentenced to prison time, as well as an increase in the average length of stay in prison.⁵ Tough-on-crime policies, including reduced use of probation, mandatory minimum sentencing, and enhanced penalties for felonies, are thought to have contributed to these factors.⁶ Some of these policies were a result of the "War on Drugs" in the

¹ See Appendix for hearing agendas and written testimony.

² Legislative Criminal Justice Oversight Task Force, *Report and Recommendations*, December 15, 2016, available at: https://csgjusticecenter.org/wp-content/uploads/2020/01/JR-in-AR_Final-Report.pdf.

³ Ashley Nellis, "The Color of Justice: Racial and Ethnic Disparity in State Prisons: 2016," The Sentencing Project, <http://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>. ("The Color of Justice")

⁴ "A Living Death: Life Without Parole for Nonviolent Offenses," American Civil Liberties Union, Nov. 2013, <https://www.aclu.org/files/assets/111213a-lwop-complete-report.pdf>. ("A Living Death")

⁵ Todd R. Clear and James Austin, *Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations*, 3 Harvard Law and Policy Review 312 (2009), <https://harvardlpr.com/print-%20archive/volume-3-2/>.

⁶ "A Living Death."

1980s, and related mandatory sentencing minimums for nonviolent drug offenses.⁷ Mass incarceration has become a major, nonpartisan policy concern throughout the United States, prompting a movement to ease bloated prison populations through probation reform and reduced sentences for nonviolent offenders.⁸

The State of Arkansas currently has the fifth largest incarceration rate in the U.S.⁹ Between 2004 and 2015, the State's prison population grew by 31% and some estimates project that it will continue to grow by an additional 28% over the next decade.¹⁰ Such growth would give the state one of the fastest growing prison populations in the nation.¹¹ Arkansas' incarceration rate is largely due to an increase in parole and probation revocations¹² and has resulted in significant overcrowding. In 2014, Arkansas had the capacity to house 13,794 prisoners in state prisons but held 17,340 people at the end of the year.¹³ Prisoners overburdened municipal jails due to a lack of space in state facilities.¹⁴

In addition to overcrowding, the state's incarceration rates are raising concerns as to the strain on the public fisc. Arkansas spends approximately half a billion dollars annually on corrections.¹⁵ These expenditures, combined with overcrowding and racial disparities in the incarcerated population, precipitated concern regarding Arkansas' growing prison population.

These issues have received some legislative attention. In April of 2015, Arkansas Governor Hutchinson signed Act 895, establishing the intent of the General Assembly to institute reforms "in order to address prison overcrowding, promote seamless reentry into society, reduce medical costs incurred by the state and local governments, aid law enforcement agencies in fighting crime and keeping the peace, and to enhance public safety."¹⁶ This Act also established a Legislative Criminal Justice Task Force (LCJTF), which, in December 2016, recommended that the legislature increase the availability of substance-abuse services to inmates, revise the Arkansas Sentencing

⁷ "A Living Death."

⁸ Ashley Nellis PhD, "The Color of Justice: Racial and Ethnic Disparity in State Prisons: 2016," The Sentencing Project, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>; Sentencing Reform and Corrections Act of 2017, S. 1917 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1917/text>.

⁹ "The Color of Justice."

¹⁰ Legislative Criminal Justice Oversight Task Force, *Report and Recommendations*, December 15, 2016, https://csgjusticecenter.org/wp-content/uploads/2020/01/JR-in-AR_Final-Report.pdf; Wendy Ware, "2016 Arkansas Prison Projections and Historical Corrections Trends," JFA Associates, http://adc.arkansas.gov/images/uploads/2016_Arkansas_Prison_Projections_and_Historical_Corrections_Trends.pdf

¹¹ Legislative Criminal Justice Oversight Task Force, *Report and Recommendations*.

¹² Ibid.

¹³ Justice Center. Justice Reinvestment in Arkansas: Overview: August 2016, https://csgjusticecenter.org/wp-content/uploads/2020/01/8.25.16_Justice-Reinvestment-in-Arkansas.pdf. ("Justice Reinvestment in Arkansas")

¹⁴ Justice Reinvestment in Arkansas.

¹⁵ "Arkansas Department of Corrections, Statistical Information: FY 2015," https://adc.arkansas.gov/images/uploads/Statistical_Information_2015_rev1.pdf.

¹⁶ S. 472, 90th Gen. Assemb. Reg. Sess. (Ark 2015), <https://www.arkleg.state.ar.us/Acts/Document?type=pdf&act=895&ddBienniumSession=2015%2F2015R>.

Standards, and fund strategies to reduce pressure on county jails.¹⁷ Additionally, the Criminal Justice Efficiency and Safety Act of 2017 (Act 423) seeks to improve the effectiveness of monitoring parolees and probationers and to reduce the term for minor parole offenses.¹⁸

However, questions of disparate racial impact persist consistent with the concerns raised by the Arkansas Committee. Nationally, one study found that Black Americans are incarcerated in state prisons at a rate 5.1 times that of Whites and that Latinos are imprisoned at 1.4 times the rate of Whites.¹⁹ Two potentially competing explanations for these disparities have been proposed.

First, the differential-selection thesis suggests disproportionate incarceration rates are due to the role of implicit bias,²⁰ stereotyping,²¹ and practices within the criminal justice system.²² Recent research suggests that increased discretionary powers of prosecutors contributes to racial disparities in prisons.²³ Approximately 95% of criminal cases are resolved through plea bargains with prosecutors, rather than in the courtroom.²⁴ The aforesaid studies show prosecutors are more likely to charge Black defendants under state habitual offender laws than White defendants.²⁵ Such disparities are particularly visible when it comes to arrests for drug offenses. Although research indicates people of all races use and sell drugs at similar rates, two-thirds of the individuals incarcerated for drug offenses are people of color.²⁶ Alternatively, the differential-involvement thesis hypothesizes that members of overrepresented populations commit more crime, including more crimes with a greater likelihood of apprehension and processing through

¹⁷ “Legislative Criminal Justice Oversight Task Force, *Report and Recommendations*.”

¹⁸ S. 136.91, 91st Gen Assemb. Reg. Sess. (Ark 2017), <http://www.arkleg.state.ar.us/assembly/2017/2017R/Acts/Act423.pdf>.

¹⁹ “The Color of Justice.”

²⁰ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Aug. 31- Sept. 8, 2001, *Durban Declaration and Programme of Action*, § III(A)(1) ¶ 72, U.N. Doc A/CONF.189/12 (Sept. 2001), available at <https://www.un.org/WCAR/durban.pdf>.

²¹ “The Persistence of Racial and Ethnic Profiling in the United States: a follow up report to the U.N. Committee on the Elimination of Racial Discrimination,” American Civil Liberties Union, August 2009, https://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf.

²² “The Color of Justice”

²³ Adam Gopnik, “How We Misunderstand Mass Incarceration,” *The New Yorker*, April 10, 2017, <http://www.newyorker.com/magazine/2017/04/10/how-we-misunderstand-mass-incarceration>.

²⁴ “How We Misunderstand Mass Incarceration.”

²⁵ “The Color of Justice.”

²⁶ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press 2010), 98-99; Drug use by race is found in “Summary of Findings from the 2000 National Household Survey on Drug Abuse. National Household Survey on Drug Abuse Series,” p. 21, <https://eric.ed.gov/?id=ED466907>; Two-thirds number comes from Marc Mauer, *The Changing Racial Dynamic of the War on Drugs*: April 2009, The Sentencing Project; Leah J. Floyd, Pierre K. Alexandre, Sarra L. Hedden, April L. Lawson and William W. Latimer, 2010, “Adolescent Drug Dealing and Race/Ethnicity: A Population-Based Study of the Differential Impact of Substance Use on Involvement in Drug Trade,” *Am J Drug Alcohol Abuse*, 2010 Mar; 36(2): 87–91; Roger Clegg, “Why Do People Keep Claiming All Races Use Drugs at the Same Rate?” *National Review*, 2014; Results from the 2016 National Survey on Drug Use and Health, <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2016/NSDUH-DetTabs-2016.htm#tab1-29B>.

the criminal justice system.²⁷ For instance, because many members of overrepresented populations are poor, differential poverty rates may account for some of the disparity in incarceration rates.²⁸ Other societal factors may include differences in birth weight, lead exposure, literacy rates, parental employment, or community characteristics²⁹ The differential-involvement and differential-selection theories are not mutually exclusive and both, together, may aid in understanding the complex problem of racial disparities in incarceration.³⁰ The committee was unable to explore evidence bearing on the differential-involvement thesis.

III. OVERVIEW OF TESTIMONY

In order to evaluate concerns regarding disparate impact in mass incarceration on the basis of race, color, or other federally protected category, the Committee hosted a public hearing in Little Rock in September of 2018, a web-based hearing in March of 2019, and a community forum in Fayetteville in April of 2019. The Committee also solicited written testimony from the public on the topic. Through these efforts, the Committee heard testimony from community members, researchers, advocates, attorneys, legislators, and law enforcement officials. Additionally, the Committee hosted a webinar and heard from four individuals on potential disparities in mass incarceration rates and recommendations to address those concerns. Testimony focused on current data regarding individuals impacted by mass incarceration in Arkansas and related civil rights. The Committee notes that, where appropriate, all invited parties who were unable to attend were offered the opportunity to send a delegate or, at a minimum, to submit a written statement. The Committee also received a number of written statements from the public offering supplemental information, which are included in Appendix B. It is in this context that the Committee submits the following findings and recommendations.

A. Public Safety

Panelists' testimony regarding current research on incarceration in Arkansas suggested that Arkansas is spending more than other states on incarceration while obtaining worse public safety and security results.³¹ Jonathan Blanks, a research associate at Cato Institute, noted that in the state

²⁷ Alfred Blumstein, "On the Racial Disproportionality of United States' Prison Populations," *Journal of Criminal Law and Criminology* 73:3 (Fall 1982):1259-81; Alex R. Piquero and Robert W. Brame, "Assessing the Race-Crime and Ethnicity-Crime Relationship in a Sample of Serious Adolescent Delinquents," *Crime & Delinquency* 54:3 (July 2008): 390-422.

²⁸ Joan McCord, Cathy Spatz Widom, and Nancy A. Crowell, eds., *Juvenile Crime, Juvenile Justice* (National Academy Press, Washington, D.C., 2001), 237-38.

²⁹ *Juvenile Crime, Juvenile Justice*, 239.

³⁰ *Juvenile Crime, Juvenile Justice*, 229.

³¹ Jonathan Blanks Testimony, *Briefing Before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, Little Rock, Arkansas, September 7, 2018, transcript* (hereinafter cited as Little Rock Briefing), p. 91, lines 4-5.

of Arkansas, both crime and incarceration rates are increasing.³² Panelist and Ph.D candidate Megan Kurten highlighted the fact that Arkansas has a rate of incarceration 50% higher than the national average.³³ Attorney Larry Froelich added that if Arkansas had maintained the same rate of incarceration as 1971, there would be no more than 3,500 people in the system, rather than the current 19,000-plus incarcerated Arkansans.³⁴ Blanks noted that if incarceration effectively improved public safety, there would be a decrease in crime rates as incarceration increased. As this is not the case, Blanks suggested that spending additional money to obtain such a poor outcome is inefficient public policy at best and counterproductive policy at worst.³⁵

B. Funding Disparities

In addition to questioning the effectiveness of incarceration from a public safety standpoint, panelists pointed out that the State spends three times as much to incarcerate a single individual for one year than to educate a single student.³⁶ The State of Arkansas spends approximately \$8,000 per K-12 student per year, while the Arkansas Department of Corrections spends \$24,000 per inmate per year.³⁷ The National Association of State Budgets found that nearly 75% of corrections spending happens at the state level, where dollars are drawn from a general fund available for a range of public needs, including health care, housing, public assistance, and education.³⁸ With less discretionary money available to invest in other services, such as education, as panelist Leta Anthony of the Central Arkansas ReEntry Coalition suggested, the issue is “not the amount that is spent but more so how that money is being spent.”³⁹

Community members additionally highlighted the fact that the state has funded increases to prosecutors’ offices but not the public defenders’ offices—court appointed criminal defense attorneys. Madeline Porta, a public defender in New York City and Arkansas, pointed out that the prosecutors receive substantially more funding than do public defenders, even though prosecutors also have access to the police department’s resources, while public defenders must use their own budgets to fund investigations.⁴⁰ Jaden Atkins, a law student, suggested that with unequal and

³² Jonathan Blanks Testimony, Little Rock Briefing, p. 91, lines 1-3.

³³ Megan Kurten, Testimony, *Web Briefing Before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, March 19 2019, transcript*, (hereinafter cited as Web Briefing), p.3, lines 3-5.

³⁴ Larry Froelich Testimony, *Community Forum of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, Fayetteville, Arkansas, April 23, 2019, transcript*, (hereinafter cited as Fayetteville Community Forum), p. 4, lines 25-28.

³⁵ Jonathan Blanks Testimony, Little Rock Briefing, p.91, lines 8-10.

³⁶ Jonathan Blanks Testimony, Little Rock Briefing, p. 91, lines 4-5; Leta Anthony Testimony, Little Rock Briefing, p. 19 line 21.

³⁷ John Sarna Testimony, Little Rock Briefing, p.138, lines 9-14.

³⁸ Steven Hawkins, “Education vs. Incarceration,” *The American Prospect*, Dec. 6, 2010, <https://prospect.org/article/education-vs-incarceration>.

³⁹ Leta Anthony Testimony, Little Rock Briefing, p. 19, line 21.

⁴⁰ Madeline Porta Testimony, Fayetteville Community Forum, p. 57, lines 18-20.

inadequate resources, the public defenders' office isn't able to adequately serve impoverished populations.⁴¹

Panelist and noted Professor Ilya Somin brought up the issue of civil-asset forfeiture. In Arkansas, law-enforcement agencies keep money and personal property seized because they believe it was used in a crime.⁴² Somin contends that this creates a "policing for profit" model that leads to a decrease in resources for preventing violent crime, as police officers spend more time seizing property and less time preventing violence.⁴³

C. Racial Disparities

According to data from the Arkansas Department of Corrections and the Bureau of Justice, Black Americans make up 16% of the state of Arkansas's overall population⁴⁴ but 43.5% of the state's prison population.⁴⁵ This overrepresentation relative to the percentage of the population is exacerbated by disparities in the length of prison terms for Inmates of Color: Latino men serve roughly 17.8 years, Black men serve an average sentence length of 9.53 years, while White men serve 7.98 years.⁴⁶ Black women serve an average sentence length of 6.92 years, while White women serve roughly 6.13 years.⁴⁷ These disparities are also apparent in the juvenile system. According to the Arkansas Division of Youth Services Annual reports, during the years 2012 to 2015, the number of Black youth entering the prison system increased from 20% to close to 50%.⁴⁸ Panelist and political science Ph.D candidate at American University, Megan Kurten, offered that Black Americans are six times more likely to be imprisoned for a drug charge than their White counterparts.⁴⁹ Larry Froelich added that this is true even though White people have higher rates of drug usage.⁵⁰

Panelists maintained that a disparity exists at every level of the system, from arrests through probation and parole, and release.⁵¹ According to a 2016 report of the Arkansas Department of

⁴¹ Jaden Atkins Testimony, Fayetteville Community Forum, p. 58, lines 14-15, 22.

⁴² Ilya Somin Testimony, Web Briefing, p. 12, lines 6-10, 21-23.

⁴³ Ilya Somin Testimony, Web Briefing, p. 12, lines 25-28.

⁴⁴ "QuickFacts: Arkansas, United States Census Bureau, accessed march 27, 2019, <https://www.census.gov/quickfacts/fact/table/AR/RHI225218#RHI225218>.

⁴⁵ Zachary Crow Testimony, Little Rock Briefing, p.11, lines 1-2; Arkansas Department of Corrections, *Annual Report*, FY 2018, https://adc.arkansas.gov/images/uploads/ADC_FY18_Annual_Report_BOC_Approval_12_20_2018_Edit_3-28-19.pdf.

⁴⁶ Zachary Crow Testimony, Little Rock Briefing, p.12, lines 15-16.

⁴⁷ Zachary Crow Testimony, Little Rock Briefing, p.12, lines 23-25.

⁴⁸ Zachary Crow Testimony, Little Rock Briefing, p.11, lines 22-25; p.12, lines 19-22.

⁴⁹ Megan Kurten Testimony, Web Briefing, p.5, lines 4-6.

⁵⁰ Larry Froelich Testimony, Fayetteville Community Forum, p.6, lines 4-6.

⁵¹ Zachary Crow Testimony, Little Rock Briefing, p.9, lines 17-19.

Community Correction, 67% of those on probation are White, while 33% are people of color.⁵² Kurten's explanation for these differences is that Black Americans are less likely to be both eligible and approved for parole.⁵³ Beth Zilberman, a law professor and immigration attorney, brought up the disparate impact on undocumented individuals in Arkansas, who are often detained in Louisiana, even for minor crimes. This unique distance makes it hard for their lawyer to work on their case and get them released.⁵⁴

D. Bail

Jon Comstock, an attorney and former Arkansas-state judge, highlighted the fact that someone who is detained pre-trial rather than posting bail is more likely to be sentenced to longer terms of probation or longer terms of imprisonment.⁵⁵ Additionally, community activist Elizabeth Couer pointed out that pre-trial detention greatly increases the number of people incarcerated. She cited data from Washington County Jail, where 508 of the 677 people incarcerated had not yet been sentenced.⁵⁶ Jerry Oberton, a social worker, supported this, pointing out that, on average, there are 600 people in incarcerated pre-trial at any given time in his county jail.⁵⁷

Judge Comstock added that decisions about bail are not supported by social science in terms of effectiveness.⁵⁸ He suggested that there are better ways to get folks to come back to court without having to incarcerate them if they can't post bail, such as sending reminders, providing assistance with transportation, facilitation community support including relatives and helping to identify social service providers that may meet particular needs identified.⁵⁹ Curt Clark, Chairman of the Arkansas Professional Bail Bondsman and Licensing Board, cited a 2.6% failure to appear rate in 2018 and the fact that a portion of bail funds support the public defenders offices.⁶⁰

E. Civil Rights and Disparate Impact

The Committee took particular note throughout the hearing of various factors that may contribute to disparate impact. For example, Panelist Rodney Engen explained that someone may

⁵² Zachary Crow Testimony, Little Rock Briefing, p.13, lines 15-16.; Arkansas Department of Corrections, *Annual Report: FY 2016*, https://adc.arkansas.gov/images/uploads/2016_Annual_Report_Directors_Edits_+_BOC_Approval_2_2_2017x1Final.pdf.

⁵³ Megan Kurten Testimony, Web Briefing, p.5, lines 4-6.

⁵⁴ Beth Wilderman Testimony, Fayetteville Community Forum, p. 48, lines 6-10.

⁵⁵ Jon Comstock Testimony, Fayetteville Community Forum, p.7, lines 14-17.

⁵⁶ Elizabeth Couer Testimony, Fayetteville Community Forum, p.53, lines 3-5.

⁵⁷ Jerry Overton Testimony, Fayetteville Community Forum, p.20, line 20.

⁵⁸ Jon Comstock Testimony, Fayetteville Community Forum, p. 9, lines 14-15; p. 10, lines 19-20.

⁵⁹ Jon Comstock Testimony, Fayetteville Community Forum, p. 15, line 15; p. 16, lines 9-10.

⁶⁰ Curt Clark Testimony, Fayetteville Community Forum, p. 69, line 24.

unconsciously attribute criminality with a race and therefore see that race as more culpable and dangerous.⁶¹ Panelist Jonathan Blanks detailed how this implicit bias may affect individual policing behavior through profiling. Panelist Rizelle Aaron illustrated this principle in connection with sobriety checkpoints.⁶² Checkpoints are mostly stationed in minority communities, he explained, rather than in locations where people are more likely to drink and drive, such as a bar or stadium.⁶³ Panelist David Montague further drew the connection between the concepts of personal bias and institutional bias, explaining how prosecutorial discretion, evidenced by disparities in sentencing, allows for bias in the criminal justice system, even in states with mandatory-sentencing guidelines.⁶⁴ Jordon Woods, professor of law at the University of Arkansas, pointed out the disparate impact of the criminal justice system on the LGBTQ⁶⁵ community. Sexual minorities are incarcerated at a rate three times that of heterosexuals.⁶⁶

Panelist Tommy Norman, a police officer with over two decades of experience, highlighted his view of implicit bias in policing and recommended the importance of working through one's biases. Norman suggested that one of the most effective ways to reduce arrests was for officers to spend time getting involved in communities, out of uniform, especially when the officer and community have different identities.⁶⁷ Norman's ideas were echoed by Panelist Dr. Elena Quintana, who also talked about the importance of building relationships between communities and police officers, especially youth of color who may feel especially profiled.⁶⁸

F. Juvenile Justice

Mass incarceration in Arkansas also impacts juveniles, and up to 60% of Arkansas's incarcerated youth come from Black and Brown communities.⁶⁹ Panelist Herman Williams, the former Assistant Director of Arkansas Division on Youth Services (DYS), described the credible reports of abuse under DYS custody. This makes more difficult the successful rehabilitation and reintegration of young people back into their communities.⁷⁰ Moreover, many of these instances of abuse are unacknowledged, making the impacts of the criminal justice system that much more

⁶¹ Rodney Engen Testimony, Little Rock Briefing, p.127, lines 21-24.

⁶² Jonathan Blanks Testimony, Little Rock Briefing, p. 129, lines 15-16; p.93 lines 11-17.

⁶³ Rizelle Aaron Testimony, Little Rock Briefing, p.105, lines13-25.

⁶⁴ David Montague Testimony, Little Rock Briefing, p.73, lines 21-23.

⁶⁵ Various initialisms are currently used in literature. For the sake of convenience and consistency, LGBTQ is used herein.

⁶⁶ Jordan Woods Testimony, Fayetteville Community Forum, p. 38, lines 3-8.

⁶⁷ Tommy Norman Testimony, Web Briefing, p.7, lines 24-33.

⁶⁸ Elena Quintana Testimony, Web Briefing, p.10, lines 38-41.

⁶⁹ Herman Williams Testimony, Little Rock Briefing, p.22, lines 9-11; Debra Poulin Testimony, Little Rock Briefing, p. 146, lines 14-17; Mayo Johnson Testimony, Little Rock Briefing, p. 157, lines 4-8.

⁷⁰ Herman Williams Testimony, Little Rock Briefing, p.22, lines 9-11.

damaging for minority communities. Williams suggests that this stems from deeply rooted systemic oppression in the criminal justice system.⁷¹

Panelist Debra Poulin, Legal Director of Disability Rights Arkansas (DRA), testified that systemic oppression arises from the school-to-prison pipeline in which harsh school discipline policies channel Youth of Color out of the education system and into the prison system very early.⁷² Likewise, Kurten testified that although students of color make up only one-fourth of the school population in Arkansas, they received 56% of punitive actions in 2017.⁷³ Maria Vaezzehrcks, a community mother, testified that Black children are more likely to be seen as aggressive, which may help to explain why Black students represent 39% of in-school arrests nationally.⁷⁴

Panelists described underlying issues compounding the issue of juvenile incarceration. Poulin described advocating for a large number of children who, as early as kindergarten, are being expelled, suspended, and excluded from school for mental-health issues and development disabilities, like autism.⁷⁵ DRA's recent research findings describe a lack of mental health therapy in many juvenile facilities. For example, a high number of juveniles have been removed from an educational setting and put into a criminal-justice institution, rather than receiving proper mental health screening and services.⁷⁶ Professor Woods also noted that being homeless under the age of 18 is one major indicator of interacting with the juvenile-justice system, which may explain the greater numbers of LGBTQ youth incarcerated after being banished from their homes for coming out.⁷⁷

G. Alternatives

1. Restorative Justice

Many panelists and community members offered testimonies on initiatives to reduce mass-incarceration and/or recidivism rates. As Panelist Dr. Elena Quintana pointed out, the majority of people who are incarcerated will leave prison; therefore, they need to be prepared to rejoin their communities.⁷⁸ As Gladys Tiffany, director of a local community organization indicated, alternatives to imprisonment, especially restorative justice programs, are extremely effective but often lack specific data for communities to decide what program would be a best fit.⁷⁹

⁷¹ Herman Williams Testimony, Little Rock Briefing, p.24, lines 1-3.

⁷² Debra Poulin Testimony, Little Rock Briefing, p. 146, lines 14-17.

⁷³ Megan Kurten Testimony, Web Briefing, p. 6, lines 4-5.

⁷⁴ Maria Vaezzehrcks Testimony, Fayetteville Community Forum, p. 25, lines 15-19.

⁷⁵ Debra Poulin Testimony, Little Rock Briefing, p.142, lines 23-24; p. 143, lines 1-3.

⁷⁶ Debra Poulin Testimony, Little Rock Briefing, p.146, lines 1-16.

⁷⁷ Jordan Woods Testimony, Fayetteville Community Forum, p. 38, lines 16 – 21.

⁷⁸ Elena Quintana Testimony, Web Briefing, p. 9, lines 24-26.

⁷⁹ Gladys Tiffany Testimony, Fayetteville Community Forum, p. 54, lines 7-9; p. 55, lines 12-13.

Several speakers discussed the effectiveness of youth programs over juvenile detention, especially diversionary programs.⁸⁰ These programs could help to address juvenile incarceration rates and the school-to-prison pipeline.⁸¹ Federal Office of Juvenile Justice and Delinquency Prevention studies show that ending juvenile detention would help more than the current system.⁸² Panelist Dr. Quintana explained that young people need a system that helps them process their trauma and envision a better future.⁸³ Kara Venca, from Arkansas's Division of Youth Services, discussed current changes in some Arkansas courts through the Act of Restoring Families (Act 189)⁸⁴ that are helping to make this shift.⁸⁵ Act 189 redirects funding to community-based programs and individualized treatment plans to reduce the number of children removed from their families.⁸⁶

Panelists noted restorative justice has been demonstrated to be an effective model for adults as well, not just juveniles; at the adult level, similar programs that continue to address trauma help to reduce crime. Individuals who have gone through childhood trauma are the most likely to act out; addressing this trauma, rather than recreating or exacerbating it through the justice system, can help stop recidivism.⁸⁷ Further, research shows that programs where parents are sentenced to spend time with their children rather than to a prison sentence have significantly reduced recidivism rates.⁸⁸ Incarcerating parents, especially for petty crime, creates inter-generational trauma that leads to young people with previously-incarcerated parents becoming incarcerated themselves at higher numbers, according to panelist Dr. Quintana.⁸⁹

Dr. Quintana also suggested “restorative justice” as an effective measure for reducing recidivism among adults. Restorative justice helps people learn how best to be in relationships with others and function positively within a community by resolving conflict between someone who was harmed and the person who committed the harm.⁹⁰ It includes addressing underlying trauma in the perpetrator, promoting connection to positive people, and being held accountable for harm caused.⁹¹ Dr. Quintana testified that this method has been shown to create more healing for the victim than the typical punitive system.⁹² Panelist and formerly incarcerated Ruby Welch echoed

⁸⁰ Brentt Tumey Testimony, Little Rock Briefing, p.40 lines 20-22; Jonathan Blanks Testimony, Little Rock Briefing, p. 99, lines 6-11.

⁸¹ Debra Poulin Testimony, Little Rock Briefing, p.146, lines 14-17; Mayo Johnson Testimony, Little Rock Briefing, p.157 lines 4-8; Herman Williams Testimony, Little Rock Briefing, p.26, line 10.

⁸² Elena Quintana Testimony, Web Briefing, p.10, lines 8-12; Office of Juvenile Justice and Delinquency Prevention, *Alternatives to Detention and Confinement Literature Review*, <https://www.ojjdp.gov/mpg/litreviews/AlternativesToDetentionandConfinement.pdf>.

⁸³ Elena Quintana Testimony, Web Briefing, p.10, lines 13-14.

⁸⁴ Act of Restoring Families, S. 152, 92nd Gen. Assemb. (Ark 2019).

⁸⁵ Kara Venca Testimony, Fayetteville Community Forum, p.7, lines 2,5.

⁸⁶ Kara Venca Testimony, Fayetteville Community Forum, p.13, lines 17-26.

⁸⁷ Elena Quintana Testimony, Web Briefing, p.9, lines 7-15.

⁸⁸ Elena Quintana Testimony, Web Briefing, p.11, lines 23-28.

⁸⁹ Elena Quintana Testimony, Web Briefing, p.11, lines 17-21.

⁹⁰ Elena Quintana Testimony, Web Briefing, p.8, lines 17-24, 33-38.

⁹¹ Elena Quintana Testimony, Web Briefing, p.10, lines 22-23.

⁹² Elena Quintana Testimony, Web Briefing, p.9, lines 33-37.

part of this sentiment when her husband's killer was up for parole and she asked for him to be released, saying that having him in prison can't bring back her husband.⁹³ Quintana explained that being held accountable to the one harmed also helps the person who harmed to receive investment to being more functional in a community, helping him/her to not harm again.⁹⁴ Panelist Megan Kurten added that after a restorative-justice program, those who do re-offend are more likely to commit a lower level and less violent crime.⁹⁵

2. *Reentry Services*

Some panelists contend that there are not enough resources provided to individuals both while they are incarcerated and after release, including vocational and mental-health services.⁹⁶ An attorney and formerly incarcerated individual both suggested programs that include various skill training programs in prison in addition to wrap around services upon release will help formerly incarcerated individuals to productively contribute to their community.⁹⁷ Panelist Leta Anthony, chair of the Central Arkansas ReEntry Coalition, echoed the importance of services for re-entry but underscored the difficulty of knowing what services are available and in which counties.⁹⁸ The need for these services was supported by Brentt Tumey, who explained that releasing individuals back into the same environment that played a role in their incarceration with no additional services will likely increase the chances of recidivism.⁹⁹ Ruby Welch, founder of the non-profit Formerly Incarcerated Leaders Overcoming Negative Stigmas, highlighted the additional barriers faced by people with a felony record when re-entering a community.¹⁰⁰

In terms of health services, Cristy Park, a staff attorney with Disability Rights Arkansas, emphasized the barriers facing inmates seeking to receive mental-health treatment in prison, such as the lack of adequate therapy, restrictions on medications, and a general lack of addressing basic health-care needs, for folks with physical and mental disabilities.¹⁰¹ Sarah Moore testified that, according to the Center for Disease Control, with one in four incarcerated individuals suffering from a mental illness, treatment programs are a more cost-effective way to keep folks out of jail.¹⁰² Moore pointed out that this work can begin with children, through teaching them how their brains work and how to appropriately cope with mental illness.¹⁰³ Nancy Kahanak added data from North

⁹³ Ruby Welch Testimony, Little Rock Briefing, p.27, lines 14-20.

⁹⁴ Elena Quintana Testimony, Web Briefing, p.10, lines 1-4.

⁹⁵ Megan Kurten Testimony, Web Briefing, p.23, lines 4-6.

⁹⁶ Brentt Tumey Testimony, Little Rock Briefing, p.35-40; LeTonya Laird Austin Testimony, Little Rock Briefing, p.151, lines 18-29.

⁹⁷ LeTonya Laird Austin Testimony, Little Rock Briefing, p.150 line 23; Brentt Tumey Testimony, Little Rock Briefing, p.37, lines 22-23.

⁹⁸ Leta Anthony Testimony, Little Rock Briefing, p.18, line 20-24.

⁹⁹ Brentt Tumey Testimony, Little Rock Briefing, p.40, lines 22-28.

¹⁰⁰ Ruby Welch Testimony, Little Rock Briefing, p. 28, lines 5-12.

¹⁰¹ Cristy Parks Testimony, Fayetteville Community Forum, p.44, lines 9-15; p. 45, lines 18-25.

¹⁰² Sarah Moore Testimony, Fayetteville Community Forum, p.61, lines 19-20.

¹⁰³ Sarah Moore Testimony, Fayetteville Community Forum, p.63, lines 1-8.

Dakota and Utah, where folks with addiction and mental-health concerns receive treatment rather than imprisonment, help people to reintegrate back into their communities after release, which helps to reduce recidivism.¹⁰⁴ Joe Bruton, a professional at Pathway to Freedom, explained that his program begins at 18 months in prison and culminates 12 months after release. In addition to the program, participants join pro-social groups, and the resulting impact is recidivism rates as low as 10%.¹⁰⁵

Panelists Jerome Green and Stormy Cubb of Shorter College shared the impacts of college programs on reducing recidivism. President Green shared Arkansas Department of Corrections' statistics that show that each year of post-secondary education reduces the likeliness of recidivism by 20%.¹⁰⁶ Stormy Cubb added that 31 of the inmates who participated in the Shorter College went on to college when released.¹⁰⁷ President Green also shared that their program in juvenile facilities helps the students to see themselves as college students, and set expectations they need to meet.¹⁰⁸

IV. FINDINGS & RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹⁰⁹

Below, the Committee offers to the Commission a summary of concerns identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to the State of Arkansas and to the nation as a whole.

A. Findings

- 1) The United States' prison population has quadrupled in the past forty years as crime rates have declined.
- 2) Arkansas has the fifth highest rate of incarceration in the country and faces overcrowding in state prisons and municipal jails. Arkansas is spending money to incarcerate people at over 50% of the national average while the crime rate continues to increase. This increased incarceration creates more spending that strains the public fisc.

¹⁰⁴ Nancy Kahanak Testimony, Fayetteville Commuinty Forum, p.28, lines 5-7.

¹⁰⁵ Joe Bruton Testimony, Fayetteville Commuinty Forum, p.66, lines 22-26.

¹⁰⁶ Jerome Green Testimnoy, Little Rock Briefing, p.132, lines 18-22.

¹⁰⁷ Stormy Cubb Testimony, Little Rock Briefing, p.136, lines 1-2.

¹⁰⁸ Jerome Green Testimony, Little Rock Briefing, p.134, lines 13-20.

¹⁰⁹ 45 C.F.R. § 703.2.

- 3) Panelists described several financial concerns stemming from mass incarceration.
 - a. Prosecutors receive more money than public defenders and have access to police departments resources. Panelists suggested this lack of equal resources leaves the public defenders unable to adequately serve impoverished populations.
 - b. “Policing for profit” through civil-asset forfeiture diverts resources away from preventing violent crime.
 - c. Money bail requirements increases incarceration as populations who cannot afford it are detained pre-trial. Pre-trial detention may correlate with with longer sentencing. Some studies have suggested alternatives to cash bail may be more appropriate.
- 4) Racial disparities in prison populations show people of color on average serving longer sentences more often and receiving parole less frequently than their White counterparts. These racial disparities may be due to bias or differences in populations’ behaviors. LGBTQ communities also face increased rates of incarceration compared to their cisgender and/or heterosexual counterparts.
- 5) Juvenile populations also face disparate rates of incarceration compared to adults.
 - a. 60% of Arkansas’s incarcerated youth are from Black and Brown communities.
 - i. A school-to-prison pipeline may fuel this disparate impact.
 - b. The Division of Youth Services receives many reports of abuse in their custody that often go unacknowledged.
 - c. Many juveniles are incarcerated because of mental health behavioral issues.
 - d. LGBTQ youth are at a greater risk for incarceration if they are forced to leave their homes after coming out.
- 6) Panelists described the need for re-entry services to help formerly incarcerated individuals rejoin their communities.
 - a. Skills and vocational training within prison and upon release can help individuals contribute to their communities.
 - b. Education can help reduce recidivism, as each year of post-secondary education reduces the likeliness by twenty percent.
- 7) Testimony addressed alternatives to mass incarceration.
 - a. Restorative justice programs offer an alternative to incarceration that teach individuals how to positively interact within a community by addressing the harmed caused and resolving underlying trauma.
 - b. Alternative sentencing methods, such as parents spending more time with their children, helps to reduce recidivism.
 - c. Adequate mental health care can help reduce recidivism rates and even stop crime when children are taught how to cope with heir trauma.

B. Recommendations

- 1) The U.S. Commission on Civil Rights should issue the following recommendations to the Arkansas Department of Youth Services:
 - a. DYS should create a task force to investigate and address reports of abuse of juveniles in their custody.
 - b. According to the results of the report, DYS should establish best practices to ensure a smooth re-entry of juveniles into their communities.
 - c. DYS should investigate the applicability of best-practice alternatives to any school-to-prison pipeline that might exist.
 - d. DYS should research how to implement mental-health and counseling services in their facilities.
- 2) The U.S. Commission on Civil Rights should issue the following recommendations to U.S. Department of Justice, Civil Rights Division, Policy and Strategy Section:
 - a. The Division should establish a working committee to review the possibility of restorative justice programs as an alternative to imprisonment.
 - b. The Division should investigate existing, and support additional, community programs as an option instead of sentencing guidelines alone.
 - c. The Division should establish a working group to examine re-entry and educational services available after incarceration.
 - d. The Division should work with states and local non-profits to establish effective services to help individuals return and contribute to their communities.
- 3) The U.S. Commission on Civil Rights should issue the following recommendations to U.S. Department of Justice, Civil Rights Division, LGBTI Working Group:
 - a. The Working Group should conduct an analysis of LGBTQ youth in the juvenile justice system and of LGBTQ adults in the prison system.¹¹⁰
 - b. Based on the results, the Working Group should work with states to create services needed for this population.
- 4) The U.S. Commission on Civil Rights should issue a letter to both the Arkansas Governor and the Arkansas Legislature requesting them to:
 - a. Review the findings and recommendations contained within this report; and
 - b. Further investigate identified areas of concern within their jurisdiction and take appropriate action to address them.
 - c. Report on the effectiveness of the legislative and task-force recommended reforms.
 - d. Recommend the legislature conduct a racial impact analysis before making changes to state criminal and/or sentencing laws to ensure they do not disproportionately impact people of color.

¹¹⁰ See <https://williamsinstitute.law.ucla.edu/press/press-releases/doj-proposes-roll-back-of-data-collection-on-crime-victimization-of-lgbt-youth/> (limitations on current data-collection).

- 5) The U.S. Commission on Civil Rights should issue the following recommendations to the State of Arkansas, Office of the Governor:
 - a. The Governor should continue to direct efforts to build diverse police forces, and study the potential discriminatory impact of predictive policing and facial recognition tools.
 - b. The Governor should work with the Arkansas Commission on Law Enforcement Standards and Training to offer police officer training that builds officers' skills related to problem-solving strategies, conflict mediation techniques, and de-escalation tactics.
 - c. The Governor should promote criminal justice diversion and community-based treatment options.
 - d. The Governor should direct the Arkansas Department of Education to support teachers with resources to ensure nondiscriminatory discipline in schools.
 - e. The Governor should provide judicial officers with additional latitude for handling pretrial detention, and study cash bail systems in an effort to reduce the number of people held before trial because they cannot afford bail.
 - f. The Governor should fund and direct the appropriate entities to continue to implement Acts 895 and 423 (see page 4) and the recommendation of the Legislative Criminal Justice Task Force.

V. APPENDIX

- A. Briefing Agenda and Transcript: September 7, 2018, Little Rock, Arkansas
- B. Web Briefing Agenda and Transcript: March 25, 2019
- C. Community Forum Transcript: April 23, 2019, Fayetteville, Arkansas
- D. Written Testimony:
 - 1. Wayne Burt
 - 2. Anonymous
 - 3. Jonathan Blanks
 - 4. Minister Ime Elugbe
 - 5. Jerome Green
 - 6. Rita Sklar

Documents available at:

September 7, 2018 Hearing in Little Rock:

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt000000jDUIAA2>

March 25, 2019 Web Conference:

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt000000rEM6AAM>

April 23, 2019 Community Forum in Fayetteville:

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt00000013VGoAAM>

VI. COMMITTEE MEMBER STATEMENTS

A. Robert Steinbuch, Chair

Statement of Robert Steinbuch, Chair.

It has been a distinct honor and humbling privilege to serve as a member, then Vice-Chair, and finally Chair of the Committee. When a thoughtful and committed group of individuals such as those on this Committee act collectively, the final product will often not fully reflect any individual's ideal preferences. I believe the issues raised in the report are worthy of further analysis and investigation and the report is a valuable addition to that discussion. As the report states, however, while the Committee identified two potentially competing explanations for the issues raised in the report, the Committee was only able to explore one of them. Accordingly, I feel it premature to make or endorse any findings and recommendations, as the investigation of the alternative theory could likely result in different findings and recommendations.

**Arkansas Advisory Committee to the
United States Commission on Civil Rights**



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