MASS INCARCERATION, COLLATERAL CONSEQUENCES & RACE: A LITERATURE REVIEW
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INTRODUCTION

“In 1833, that astute observer of criminal justice in the United States, Alexis de Tocqueville, famously noted that most “individuals on whom the criminal law inflicts punishments have been unfortunate before they became guilty.” Now we can see that the histories of personal and social misfortunes that send individuals to prison in the first place persist well beyond their period of confinement, continuing to punish them, their families, and their communities for many years afterward.”

These sentiments of Alexis de Tocqueville and Ernest Drucker are the essence of collateral consequences. According to data from the Pew Center on the States (Pew Center), “[T]he United States has 5% of the world’s population but 25% of the world’s prison population.” Importantly, between 1987 and 2007, the American prison population nearly tripled to 1,597,127 state and federal inmates. In 2008 the total number of inmates in the United States was, “[L]arger than the populations of Atlanta, Boston, Kansas City (Missouri) and Seattle combined.” It is this growth in the American prison population that is considered mass incarceration, which is the “lock ‘em up/tough on crime” policies and changes in the criminal justice system, that send thousands of people to prison everyday. It is the makeup of the prison population that leads to the purpose of the report. Incarceration is heavily concentrated among racial and ethnic minorities aged twenty to thirty. Among men the highest rate is black males aged twenty to thirty-four, among women the highest rate is black females aged thirty-five to thirty-nine. According to the Pew Center, this leads to the following statistics about “Who’s Behind Bars”:

- White men ages 18 or older -- 1 in 106
- All men ages 18 or older -- 1 in 54
- Hispanic men ages 18 -- 1 in 36
- Black men ages 18 or older -- 1 in 15
- Black men ages 20-34 -- 1 in 9
- White women ages 35-39 -- 1 in 355
- Hispanic women ages 35-39 -- 1 in 297
- All women ages 35-39 -- 1 in 265
- Black women ages 35-39 -- 1 in 100

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In North Carolina alone, fifty-seven percent of the state prison population is African-American despite the fact that African-Americans only make up 21.5% of the state population, with a ratio of blacks to whites in NC jails 5.4 to 1.

This report serves as a literature review of collateral consequences of mass incarceration, with an additional focus on race. Collateral consequences are direct and indirect consequences that former inmates encounter during and after leaving prison. Some researchers describe collateral consequences as a sort of double jeopardy, punishing former inmates more than once for a crime. The report focuses on the following collateral consequences:

- Civil Disabilities
- Employment
- Communities
- Marriage, Family, Children

There is no information in this report about the causes of mass incarceration as the focus is solely on the collateral consequences.

**COLLATERAL CONSEQUENCES**

1. **Civil Disabilities**

   **A. Public Benefits**

   “Hundreds of thousands of people released from U.S. prisons after felony drug convictions discover that serving time isn’t their only punishment. They are permanently denied the life-sustaining benefits of food stamps and other public assistance.”

   Restrictions on public benefits vary from loss of eligibility to the Supplemental Nutrition Assistance Program (SNAP, more commonly known as food stamps) to Temporary Aid to Needy Families (TANF). When viewed in the context of other collateral consequences of incarceration, most ex-offenders leave prison unemployed and stay unemployed for up to a year after completion of their sentence. Most African-Americans (males and females) formerly incarcerated are parents, thus public assistance such as food stamps is critical to support their families. How states handle loss of eligibility varies, with some taking more extreme and punitive actions than others. For example, Texas, “[H]as a

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lifetime ban on food stamps for people convicted of a drug felony – even though the state therefore loses out on federal funds that could be used to help people with drug felony convictions reestablish themselves as productive, lawful members of society." According to the UNC School of Government, 21 U.S.C.A. 862(a), "[B]ars anyone convicted of a controlled substance felony from participation in the Work First program, but provides that states may opt out of the bar or limit the period of prohibition." North Carolina opted out of the bar and limits the period of prohibition from entering the Work First program to six months after release from custody if no additional controlled substance abuse felony is committed, and any required substance abuse treatment is completed. In addition to Work First, this prohibition also applies to the SNAP/food stamps. The statute also notes that a person convicted of a higher felony is subject to a permanent ban from these benefits. North Carolina also permits county departments of social services to require those eligible for food stamps or Work First to complete substance abuse treatment as a condition for receiving benefits.

B. Public Housing

"[T]o contain this growth in prison population, the nation’s taxpayers invested $43.6 billion in 2001 in state and federal corrections expenditures. Yet they invest far from enough to assure that the more than 600,000 (often poor) prisoners released annually – and millions of other Americans have access to affordable housing. On the contrary, as a recent NPR series on housing described it, "For more than a decade the greatest increase in government-subsidized housing has come in the form of cells." Former prisoners can be excluded from public housing through, "[O]peration of law or by administrative decision-making giving advocates and policymakers more than one avenue for addressing current barriers to housing." The U.S. Department of Housing and Urban Development (HUD) contracts with local Public Housing Authorities (PHA) to administer Section 8

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11 Id.
12 Id.
13 Id.
15 Id. at 2.
or voucher programs. Local PHAs create its policies for eligibility in compliance with HUD requirements. In “Public Housing Policies that Exclude Ex-Offenders: A House Divided”, Kay Randolph-Back places PHA policies into three categories: Absolute Statutory Exclusions, Denying and Terminating Housing Assistance for Substance Abuse, and One Strike and You’re Out.

Regarding Absolute Statutory Exclusions, federal law requires that PHAs have a lifetime ban for persons convicted of manufacturing methamphetamine on public housing premises, and a lifetime ban for persons subject to lifetime listing on state sex offender registries. Randolph-Back states that an issue with the second category, Denying and Terminating Housing Assistance for Substance Abuse, is that there is a, “[L]ack of information about how many families are denied access to public housing on this basis.” She continues that on a 2005 Government Accountability Office report, “[O]nly 17 of 3,330 PHAs responded to a request to provide data on the race of people denied public housing for drug-related activity.” The third category, the “one strike” approach is a source of controversy as there appears to be a lack of clear direction as to whether such a policy is a directive of HUD.

Randolph-Back mentions that, “[C]hapter 4 of HUD’s Public Occupancy Handbook, says that a criminal record should not automatically exclude an applicant from consideration. The PHA should determine whether the person should be a suitable tenant.” However, Human Rights Watch conducted field interviews and reviewed PHA policies finding that a, “[P]erson who committed a felony within the past five years would be automatically ineligible for housing assistance under every housing authority policy it reviewed.” Human Rights Watch also found through its investigations that in some PHAs, people with criminal records are not even allowed to complete applications. Because racial minorities are arrested and incarcerated at higher rates than whites, these types of

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17 Id.
18 Id. at 3-6.
19 Id. at 3.
20 Id. at 4.
21 Id.
22 Id. at 6.
23 Id.
24 Id. at 7.
housing policies affect those groups disproportionately. At the end of their investigation in 2004 Human Rights Watch concluded,

“[R]acial and ethnic minorities suffer disproportionately from exclusionary housing policies because of their overrepresentation among those who experience arrest and prosecution, those who currently live in poverty, and those who seek public housing. Human Rights Watch is not aware of any other country that deprives people of the right to housing because of their criminal histories.”

In addition to federal requirements, in North Carolina local PHAs have discretionary power to deny federally assisted housing for three years to any person arrested/charged with any criminal activity adversely affecting the health, safety, or right to peaceful enjoyment of residents, the owner, or PHA; or any felony, or Class A1 misdemeanor. The local PHAs also have discretionary power to terminate federally assisted housing for an indefinite period to anyone arrested/charged with illegal use of a controlled substance, whether it interferes with the health, safety or right of peaceful enjoyment of residents. This includes felonies Class C through I, and misdemeanors Class 1 through 3. Local PHAs must (mandatory requirement) deny federally assisted housing to any person arrested/charged with drug related criminal activity, including Class C-I felonies and Class A1 misdemeanors.

Important implications of these policies in North Carolinas are for juvenile proceedings. Because these policies also apply to any person living in the house, when a juvenile is arrested/charged with any of the named offenses, this can also cause the family to be evicted or denied admission to federally assisted housing.

C. Voting

“Most other Western democracies now allow inmates to vote while in prison. In Australia, where voting is legally mandated, a $100 fine is levied for failure to vote, even while in prison. But in the United States, disenfranchisement is a matter of state law for all but two states (Maine and Vermont) and Puerto Rico. Forty-eight states currently take away the right to vote for all imprisoned felons – some for their entire lifetimes.”

27 Id.
28 Id.
29 Ernest Drucker, A Plague of Prisons 137 (2011)
It is estimated that 5.3 million people are prohibited from voting as a result of a felony conviction.\textsuperscript{30} This equates to about one in every forty-one adults\textsuperscript{31}. Nearly half of those disenfranchised have already completed their prison sentences.\textsuperscript{32} This figure also includes the disenfranchisement of nearly 676,730 women\textsuperscript{33}. To put this issue into perspective, in the 2004 Presidential Election, incumbent President George Bush won the state of Florida by 350,000 votes. During that election it is estimated that 960,000 people in Florida were prohibited from voting due to felony convictions.\textsuperscript{34} In addition to forty-eight states prohibiting felons from voting while incarcerated, thirty-three states ban probationers or parolees from voting.\textsuperscript{35}

There is variation among the states regarding the restoration of voting rights. Currently, three states, Florida, Kentucky and Virginia impose a lifelong prohibition of voting rights for all persons with a felony conviction. Currently, Kentucky and Virginia have begun a process to permit restoration of voting rights after approval from the governor leaving Florida with what is considered the most punitive voting prohibition in the country. In Florida, felons have to apply for clemency after a five-year waiting period, and those convicted of certain violent offenses can apply for clemency after a seven-year waiting period.\textsuperscript{36} Even though most states offer a process to regain voting rights, some processes are too cumbersome for ex-offenders to navigate. For example, Mississippi only prohibits voting for persons convicted of certain types of felonies (e.g., murder, rape, statutory rape, embezzlement, timber larceny, bigamy, larceny or lease under rental agreement). The state permits felons to retain their right to vote in US Presidential Elections, however, to regain all other voting rights after completion of sentence, the individual must get his or her state representative to author a

\textsuperscript{30} Todd Clear, Imprisoning Communities 114 (2007).
\textsuperscript{31} Ernest Drucker, A Plague of Prisons 138 (2011).
\textsuperscript{32} \textit{Id.} at 139.
\textsuperscript{33} \textit{Id.} at 138.
\textsuperscript{34} \textit{Id.} at 139.
\textsuperscript{35} Christopher Uggen et.al, “Lost Voices: The Civic and Political Views of Disenfranchised Felons, in Imprisoning America 165 (Mary Patillo ed. Et.al., 2004).
bill restoring their right to vote and that bill must pass both house of the legislature. North Carolina denies the right to vote for a person convicted of any felony within the state or those convicted of a felony in another state. The right to vote is restored after completion of sentence, parole, and probation.

The rate of disenfranchisement of African-Americans is disproportionate due to the higher rate of incarceration of African-Americans:

- Nearly thirteen percent of African-American males are prohibited from voting as a result (1.4 million). Thus, about one in every eight black males is prohibited from voting.
- The rate of disenfranchisement for African-Americans due to a felony conviction is seven times higher than the national average.
- “In states that disenfranchise ex-offenders, as many as forty-percent of black men may permanently lose their right to vote.”
- “In eleven states some or all are barred from voting for life if they have ever had a felony conviction anywhere in the United States. This prohibits one-quarter to one-third of all black men from voting.”

The disproportionate rate of disenfranchisement for African-Americans has implications for communities as well. In “Imprisoning Communities”, criminal justice scholar Todd Clear cites a study of voter disenfranchisement patterns in Atlanta neighborhoods, which found,

“[A]n extremely high correlation between the portion of voters who are disenfranchised and the racial composition of the local area. Areas that are predominately black have a voter disenfranchisement rate three to four times higher than the rate in areas that are predominately white. The disenfranchisement effect contributes to a vicious cycle…that further disadvantages low-income communities of color. The first means by which this occurs is through decisions of resource allocation.…At a state level, beleaguered communities are affected through a diminished impact on public policy.”

Clear also cites previous research that disenfranchised black males tend to, “[C]oncentrate in poor neighborhoods, as we would expect, so that mass incarceration translates the denial of individual felon’s voting rights into disenfranchisement of entire communities.” As stated in previous sections,

38 UNC School of Government Collateral Consequences Assessment Tool available at http://ccat.sog.unc.edu/node/2955.
39 Marc Mauer, Mass Imprisonment and Disappearing Voters in Invisible Punishment 54 (Marc Mauer ed. Et.al., 2002).
41 Id. at 139.
42 Id. at 138.
43 Todd Clear, Imprisoning Communities 114 (2007).
44 Id.
as the rate of incarceration for black males continues to climb, it is estimated that, “[T]hree in ten of
the next generation of black men can expect to be disenfranchised at some point in their lifetime.\textsuperscript{45}

\textbf{2. Employment}

“Americans believe strongly that individuals determine their own economic success through hard work, ambition and other personal characteristics. Subject to reasonable restrictions then, former inmates should be able to pay their debt to society, work hard and chart a new and law-abiding course toward economic stability and even improvement. Unfortunately, the reality is different. Incarceration casts a long-lasting shadow over former inmates, reducing their ability to work their way up. The obstacles they face upon leaving prison compound the wages and skills lost during the period of incarceration itself. When inmates return home, they are suddenly confronted with all of the demands and responsibilities of everyday life, as well as the repercussions of their prior choices. Any professional work skills they had before may have eroded, and their social networks—the family and friends who might help them in finding and securing jobs—may well be frayed. On top of these challenges, many inmates emerge with substantial financial obligations, including child support, restitution and other court-related fees.\textsuperscript{46}”

Many re-entry programs exist on the premise that it is challenging for former inmates to reenter the community and that employment is critical to avoid recidivism\textsuperscript{47}. In “\textit{Marked: Race, Crime, Finding Work in an Era of Mass Incarceration}”, sociologist Devah Pager cites studies of state inmate populations that, “[R]eport 75 and 80 percent of parolees remain jobless up to a year after release from prison\textsuperscript{48}. With recidivism rates around 45% nationally, this is particularly troubling. A series of controlled studies provide similar results on the effect of incarceration on employment. One study in particular relying upon a large set of longitudinal data comparing male former prison inmates to otherwise similar individuals never incarcerated estimates, “[T]hat incarceration is associated with a 10 percent drop in wages and a flatter earnings trajectory than that of similarly skilled men who did not experience incarceration\textsuperscript{49}.” Another set relying upon a set of longitudinal data of juvenile delinquents found, “[T]hat incarceration has a strong and significant negative effect on later job stability, even after controlling for alcohol use, criminal activity, and prior criminal

\textsuperscript{45} Ernest Drucker, A Plague of Prisons 139 (2011).
\textsuperscript{48} Id. at 30.
\textsuperscript{49} Id.
Sociologist Deva Pager suggests the following categories of reasons for the adverse effect of mass incarceration upon employment:

- **Selection** – “The kinds of people who wind up in prison do not really want to work, or do not have sufficient skills to find a job. For example, employment problems predate incarceration. People in prison on average have low levels of education and spotty work histories, many struggle with mental health issues and substance abuse.”
- **Transformation** – “The experience of prison changes inmates in ways that make them less suited for the formal labor market. Specifically, large gaps in employment history puts them at a disadvantage.”
- **Credentialing** – “Stigma of incarceration poses barriers to finding employment.”

The issue of selection is important as a common argument against the notion that incarceration erodes job skills is that people unable to find employment when they leave prison were probably unemployable before entering prison. Sociologists Bruce Western, Becky Pettit, and Josh Guetzkow, comment that although it is, “[D]ifficult to calculate precisely the economic effect of imprisonment… the young, unskilled minority men who are most likely to go to jail have poor job opportunities, even in the absence of incarceration.” This assessment comes from a number of studies that compare wages of men formerly incarcerated with other similar men (with the exception of a criminal record). Results of the research,

“Estimate that the ex-convicts earn between 10 and 30 percent less than similarly situated workers who have not been to prison or jail. Still when very stringent comparisons are employed, several studies find no loss of earnings among ex-convicts. This research implies that men at high risk of incarceration have such poor job prospects, prison time confers no additional economic penalty.”

Importantly, Western, Pettit, and Guetzkow mention that the economic effects on poor and minority communities are complicated and that the life course or community methodologies for this type of employment comparison could be utilized. The life course approach, “[P]laces the effects of incarceration in the context of the life course of young men as they try to make the transition from school to stable employment….and argues that the experience of incarceration is a punctuating event that can interrupt a young

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51 Id. at 31.
52 Id.
53 Id. at 32.
55 Id. at 176.
56 Id. at 175.
man’s transition into stable employment." The community approach, “[E]xamines the impact of incarceration not just on individuals, but on the communities from which individuals are drawn.”

Credentialing, negative credential, or the criminal credential, all mean the same thing -- whereas a college degree or professional license may be the type of credential one would want, the mark of previous incarceration becomes a criminal credential preventing many former inmates from finding employment. Devah Pager suggests that the effects of the criminal credential are both legal and social exclusion. The formal exclusion comes in the form of federal and state laws, “[T]hat restrict ex-offenders from a range of labor market activities.” The types of professional restrictions placed on those with criminal records vary, but all states have at least some form of restriction, with some of the restrictions straightforward and logical. For example, barring violent offenders from working in childcare. However, Pager argues that that the list of number of barred occupations is increasing over time, and that,

“Blanket restrictions on occupations, with no attention to individual circumstances or qualifications of the application in question demonstrate wide ranging consequences of the criminal credential extending even to some of the most basic forms of low wage work.”

For example, there are legal restrictions on ex-offenders in the following occupations in some states for employment as: septic tank cleaners, embalmers, billiard room employees, real estate agents, plumbers, eyeglass dispensers, and barbers. Legal restrictions on employment affect minorities disproportionately. Pager comments,

“Many of the restricted jobs are in occupations traditionally important for African Americans. The public sector, for example, has in the past played a central role in black social mobility. These career jobs become largely off-limits, however, for the growing number of blacks with conviction records. Likewise, hospitals, which have been a major source of low-wage job growth, especially for blacks, are often the target of employment bans for ex-offenders. The large numbers of blacks returning from prison, therefore, face an ever-shrinking pool of eligible jobs from which to transition out of crime.”

North Carolina, for example, has discretionary power to deny or revoke licensing to persons convicted of any felony for the following professions: cosmetology, barbers, pest control, dental hygienists, driving instructors,

58 Id. at 177.
60 Id.
61 Id.
62 Id.
and taxi drivers. In addition to the effect of legal restrictions, sociologists Western, Pettit, and Guetzkow pose the question, “Does incarceration increase black-white inequality?” They analyzed the black-white earnings gap based on lifetime risk of incarceration and average earnings.

“Our estimate suggests that 22.3 percent of black men have prison records by ages 30-34, in contrast to 3.2 percent of white men. The earnings gap between black and white men under age thirty is around 18 percent. Following the statistical studies, we can assume that prison or jail time lowers earnings by around one-tenth. Some simple calculations show that the black-white earning gap would be reduced from 18 to 12 percent if blacks and whites were incarcerated at the same rate.”

Importantly, employment and wage figures typically exclude those incarcerated (mostly poor and minority), thus the earnings gap may be much more extreme.

It is the widespread availability of criminal records online and in grocery stores in the form of newspapers that makes it easy for employers and landlords to access criminal records. Research shows that the criminal credential carries significant weight with employers. According to Western, Pettit, and Guetzkow, “[S]urveys show that employers would rather hire welfare recipients or inexperienced applicants than ex-convicts.” A field experiment conducted in Milwaukee found that, “[E]x-offenders are one-half to one-third as likely as equally qualified non-offenders to be considered by employers,” leading to the conclusion that this is “clear evidence to the barriers imposed by a criminal record. This conclusion is further supported by data from the Pew Center, which found,

“When number of years of work experience also is statistically controlled, the estimated effect of incarceration on all of the above outcomes does not change much. This implies that incarceration’s effect on economic outcomes has much more to do with having been convicted and imprisoned than it does with the work experience lost while imprisoned. In other words, having a history of incarceration itself impedes subsequent economic success.”

The effect of the criminal credential has been shown to be worse for African-Americans. University of North Carolina Chapel Hill Law Professor Joseph Kennedy cites one such study that found the, “[E]xistence of a
criminal record reduced an African-American job applicant’s chance of being called back for an interview by 60%. A white person with criminal record had as good of a chance of getting a call back as an African American without one. The criminal credential has the effect of leaving ex-offenders with a feeling of double jeopardy, being punished more than once for the same crime. A growing issue in this area is that many employers may be violating federal laws with the use of criminal background checks and overbroad hiring restrictions. Because African-Americans and Latinos make up a disproportionate number of all arrests in the United States, it follows that the, “[P]ractice of screening out applicants with criminal records excludes a much larger share of African-American candidates.” According to the U.S. Equal Employment Opportunity Commission (EEOC), it is unlawful to absolutely bar employment based on the mere fact that an individual has a conviction record. Though Title VII does not completely bar the use of criminal history in employment decisions, the EEOC, “[H]as provided a strong and clear framework for assessing criminal records when making employment decisions.” The individualized assessment framework is the following:

- the nature and gravity of the offense or offenses
- the time that has passed since the conviction, and/or
- completion of the sentence; and the nature of the job held or sought

In 2010 a series of major lawsuits were filed in response to exclusionary practices. The companies involved include:

- Accenture
  A global technology company with over 180,000 employees in the United was sued for rejecting job applicants with criminal records when a criminal record has no bearing on fitness or ability to job performance.
- First Transit
  Largest transit provider with 15,500 employees sued for a blanket policy prohibiting employment to people convicted of a felony or having served at least one day in jail.
- Burlington Northern Santa Fe Railroad Co
  Railway company with 38,000 employees sued over blanket policy prohibiting employment to anyone convicted of a felony in the previous seven years.
- U.S. Census Bureau

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73 Id.
74 Id. at 6.
75 Id. at 6.
76 Id. at 6.
77 Id. at 9.
78 Id.
79 Id.
80 Michelle Rodriguez & Maurice Emsellem, 65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment, 10 (2011).
Sued for disparate impact on minority applications by excluding people with criminal records from temporary positions. Complaint alleges “[R]oughly 700,000 people were eliminated by the screening practice.”

- **RadioShack**

  Investigated by the Office of Attorney General in New York after the state found that the online application procedure automatically rejected applications that answered “yes” to the question, “Have you been convicted of a felony in the past 7 years,” not permitting applicants to complete the application.

In addition to these lawsuits, the National Employment Law Project (NLEP) found hundreds of ads in major cities posted on Craigslist that violate the EEOC criminal history policy. NLEP put the types ads that either violate or likely violate the EEOC policy into four categories: (1) no arrests/clean or clear records; (2) no felony misdemeanor convictions; (3) no felony convictions; and (4) no convictions within a specified timeframe. Major companies posting such ads include Domino’s Pizza, Omni Hotel, and Adecco USA.

### 3. Communities

“With only weak public institutions responsible for overseeing the transition of returning inmates, the burden of reentry process falls largely on families, communities, and a patchwork of social service agencies. There is reason to believe however that, like government supports, this informal system has weakened in effectiveness over time. Longer periods of absence (due to increasing sentence length) are associated with weaker ties to family and community, as the barriers to communication and involvement are substantial. Strained or severed ties with family and friends reduce the availability of informal sources of support for the transition from prison to home. Further, the scale of reentry imposes heightened burdens on families and communities. The neighborhoods most affected by high levels of incarceration and ex-offender absorption are often those already struggling with serious problems of joblessness, single-parent families, and poverty.”

The Addition by Subtraction theory is used to explain the premise behind incarceration. Essentially, it describes that when the alleged bad apples are removed from communities, the communities are better.

However, many criminologists and sociologists argue that mass incarceration actually leaves communities worse in that they become, “[L]ess capable of sustaining informal social control that undergirds public safety.” Informal social control is the level of involvement residents feel in their community, for example,

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81 Id. at 10.
82 Id. at 11.
83 Id. at 13.
84 Id.
willingness to call the police when they see a crime occurring in the neighborhood and overall interaction among community members and concern for one another’s well being\textsuperscript{88}. A study of Chicago neighborhoods showed that, “[I]nformal social controls – voluntary associations, kin/friend networks, and local organizations – can reduce crime\textsuperscript{89}.” However mass incarceration has been found to have a destabilizing and adverse effect on neighborhoods and informal social controls. A research study supporting this notion found empirical associations between incarceration and positive and negative effects on communities. Specifically, that “[R]esidents were more willing to engage in informal social control as incarceration increased, but they exhibited weaker feelings of attachment to their neighborhoods, and they were not influenced to change either their levels of involvement in voluntary associations or their neighboring activities\textsuperscript{90}.” Thus, although incarceration rates are correlated to a decrease in crime rates within neighborhoods, they are not correlated to an increased feeling of, “[I]nteractions and high levels of attachment both of which foster informal social control\textsuperscript{91}.”

Criminologists also find that, “[C]rime is not only a consequence of social disorganization but also one of the causes of it\textsuperscript{92}.” The theory of coercive mobility as described by criminal justice scholar Todd Clear and sociologist Dina Clear,

“[S]uggests that high rates of incarceration can destabilize communities in ways that make them vulnerable to crime. This argument draws upon social disorganization theory, which has long held that in areas where residents are highly outwardly mobile, crime will flourish because those locations will lack the stable infrastructure that is required as a foundation of informal social control\textsuperscript{93}.”

The theory of coercive mobility is mobility caused by the removal of people to prison and their return to the community upon release\textsuperscript{94}. Clear and Rose find support for this theory through several studies completed in Tallahassee, Florida, which showed that people that have their own experience with incarceration, or have a

\textsuperscript{88} Todd Clear, Imprisoning Communities 154 (2007).
\textsuperscript{89} Id. at 75.
\textsuperscript{90} Jane Lynch & William Sabol, “Effects of Incarceration on Informal Social Control in Communities” in Imprisoning America 157 (Bruce Western, et.al. eds., 2004).
\textsuperscript{91} Id. at 158.
\textsuperscript{92} Todd Clear, Imprisoning Communities 85 (2007).
\textsuperscript{94} Jane Lynch & William Sabol, “Effects of Incarceration on Informal Social Control in Communities” in Imprisoning America 137 (Bruce Western, et.al. eds., 2004).
close family member or friend who have been incarcerated have low opinions of both informal social control and formal control such as law enforcement and the criminal justice system. High incarceration adversely affects the community’s view on the criminal justice system in that people feel their community is being unfairly targeted. These feelings can create an oppositional culture. A study of poor, black neighborhoods in Buffalo, New York found a, “[P]ervasive sense of cynicism among those he interviewed. They describe the conundrum they face, choosing between cooperation with the police and support for their family members – a “darned if you do and darned if you don’t” situation.” These views are not specific to one race; nonblacks are just as likely as black to have negative opinions of informal social control. Furthermore, research shows that people will stop socializing in their neighborhoods when they feel that area is targeted for police surveillance and “[H]ave reputations for as hotspots for prisoners.” Two additional results of the studies include:

- Neighborhoods with the highest levels of incarceration in one year had higher-than-expected crime rates in the following year, compared with other Tallahassee neighborhoods and controlling for poverty, racial composition, and mobility.
- A third study in which over one hundred residents and civic leaders in two high-incarceration neighborhoods were interviewed, showed that those who live or work in areas can point to a number of ways in which the incarceration experience has damaged the quality of life in their neighborhood.

High incarceration neighborhoods tend to suffer the most destabilization due to significant numbers of residents consistently leaving for prison and reentering. Thus, when communities that are already struggling for assets deal with this type of flux with exit and reentering, they suffer disruptions twofold, the disruptions of the exiting, and the disruptions of large numbers of ex-convicts reentering. It is this type of destabilization in high incarceration neighborhoods that leads to residential mobility. Residential mobility results when family members move closer to their incarcerated loved ones or choose to move the recently released former prisoner.

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96 Id.
97 Todd Clear, Imprisoning Communities 112 (2007).
98 Id.
100 Todd Clear, Imprisoning Communities 75 (2007).
101 Id.
out of the neighborhood to avoid bad influences or simply move because they view the neighborhood as “deteriorating”.103

Because of the rate of incarceration for African-Americans and Latinos, the effects of coercive mobility and social disorganization are greater in these neighborhoods. As census research supports, poor men of color tend to live in racially and economically homogenous neighborhoods. According to some studies, “Depending upon the size of the neighborhood and the method of counting, studies have estimated that up to 25 percent of the adult male residents in particular neighborhoods are locked up on any given day, up to 13 percent of adult males enter prison or jail in any given year, and up to 2 percent of all residents enter prison in any given year.”104 In addition to the decrease in informal social control, high incarceration neighborhoods experience a disruption to families. As discussed in the following section, there is an increase in single-parent families, less supervision for children, and an increase in mothers on welfare.105

A study of North Carolina counties in 1995-2007 analyzed the impact of adult incarceration on child poverty.106 Results from the study showed a reduction of political power in communities (as discussed in the voting section of this report), as a result of disenfranchisement and the fact that most prisons are built in rural areas, these high incarceration area communities have less voting power, which can result in their needs being ignored. Additionally, the research determined the occurrence of community multiplier effects; specifically, that high incarceration neighborhoods lost spending power due to the loss of income in the neighborhood. This leads to fewer businesses in the area that could remain solvent, and a worsening of poverty.107 In addition to businesses the community multiplier effect also reaches non-businesses such as libraries, churches and community centers that can provide supports critical to low income communities.108

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103 Todd Clear, Imprisoning Communities 74 (2007).
108 Id. at 383.
4. Marriage, Family & Children

“When most families in a neighborhood lose fathers to prison, the distortion of family structure affects relationship norms between men and women as well as between parents and children, reshaping family and community across generations. And while families in poor neighborhoods have traditionally been able to employ extended networks of kin and friends to weather hard times, incarceration strains these sustaining relationships, diminishing people’s ability to survive material and emotional difficulties. As a result, incarceration is producing deep social transformations in the families and communities of prisoners – families and communities, it should be noted, that are disproportionately poor, urban, and African American.”

Before discussing the effects of mass incarceration on children, it is important to begin with a review of research on the effects of the parent left behind, which ultimately affects the care and stability of the family as a whole. The relationship statistics for incarceration are as follows:

- “Risk of divorce is high among men going to prison, reaching 50 percent within a few years after incarceration.”
- “Unmarried couples in which the father has been incarcerated are 37 percent less likely to be married one year after the child’s birth than similar couples in which the father has never been incarcerated.”
- “The marriage rate for men incarcerated in prisons and jails is lower than the American average. For blacks and Hispanics, it is lower still.”
- “Harvard economist Adam Thomas found that going to prison substantially reduces the likelihood of getting married. The effects hold across all racial and ethnic groups, but are strongest for black males over 23 years old, whose likelihood of getting married drops by 50 percent following incarceration.”

The reason for these low marriage rates vary, but ethnographic and ecological research tends to focus on the idea that in part women decide to marry based on the economic stability, trustworthiness, and social respectability of partners, and incarceration undermines all of that. Interestingly, one study shows that, “[L]arge numbers of female-headed families are found in counties receiving the most returning prisoners.” Another study shows when men that do engage in post-release relationships with women they are more likely to not get married, but instead cohabitate and that, “[T]hese unconventional living arrangements contribute to intergenerational family dysfunction. Cohabitation is associated with previous parental divorce, suggesting an

111 Id.
112 Id.
113 Todd Clear, Imprisoning Communities 97 (2007).
114 Bruce Western et.al., “Incarceration and the Bonds Between Parents in Fragile Families” in Imprisoning America 23 (Mary Patillo et.al, eds., 2004).
115 Id.
intergenerational pattern, and it carries the risk for future abuse or neglect. It follows then that because of the low marriage rates and high rates of divorce, there would also be a higher rates of single parent households. Data from a 2000 study reports:

- “White women aged 25-34 in lowest third of the educational distribution, about 8 percent were single parents in 1965 as compared with 19 percent in 2000.”
- “Among black women aged twenty-five to thirty-four with the same level of education, the proportion of single parents increased from 29 to more than 50 percent in thirty years from 1965 to 2000.”
- “This growth (in single parent families) was matched by rapid growth in size of the male penal population. Prison population, numbering 200,000 in 1974 increased to 1.33 million by 2001. Adding jail inmates to these figures yields a total penal population of 1.97 million inmates.”
- “Because incarceration is concentrated among young, poorly educated minority men, the growth in the prison population over the past twenty years emerges as a suspect in explaining, at least in part, the growing number of single-parent families in disadvantaged communities.”

One study found that marriage and residence with the parent was rare even after controlling for,

“[D]emographic characteristics, economic variables, relationship skills, and fathers’ violence and drug and alcohol abuse.” Thus, the effects of incarceration on marriage and parenting affect not only relationships prior to incarceration, but continue once the offender leaves and reenters the community. As the next section details, this has a domino effect on children of incarcerated parents.

The effects of parental incarceration are clear, “1 in every 28 children in the United States has a parent in jail or prison. Just twenty-five years ago, the figure was only 1 in 125.” Other statistics on incarcerated parents show the bigger picture:

- “A national survey of prisoners’ children conducted by the Bureau of Justice Statistics in 2008 found that state and federal prisons held an estimated 809,800 parents of 1,706,600 minor children. A majority of state (55 percent) and federal (63 percent) prisoners have children under the age of eighteen, and many more have adult children and grandchildren.”

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116 Todd Clear, Imprisoning Communities 97-98 (2007).
117 Bruce Western et.al., “Incarceration and the Bonds Between Parents in Fragile Families” in Imprisoning America 21 (Mary Patillo et.al, eds., 2004).
118 Id.
119 Id.
120 Id. at 40.
“One-fourth of juveniles convicted of crime have children; locking up these fathers increases the chances of divorce and damages their bonds with their children.”

“In the U.S. at the time of arrest and incarceration, 43 percent of the fathers and 64 percent of the mothers reported living with their children prior to admission to the criminal justice system.”

“Almost three out of five African American high school dropouts will spend some time in prison, a rate five times higher than for equivalent whites. Two fifths of those African-American high school dropouts are fathers who were living with their children before they entered prison.”

“By 2000 over a million black children, 9% of those under 18 had a father in prison or jail.”

Research shows that children of incarcerated parents are at risk for lower educational achievement, suffer psychological, behavioral, and physical development issues and difficulties, and have an increased risk for substance abuse. Research also shows these children have an increased risk of contact with the juvenile justice system. The Child Welfare League of America projects that, “Approximately 50 percent of the children of incarcerated children will enter the juvenile system before their eighteenth birthday.”

Furthermore, research suggests with parental incarceration is associated with aggressive behavior in boys and, “[A]n increased likelihood of being expelled or suspended in school.” However, it is important to note that when assessing the risk factors for this group of children, it is difficult for these studies to control for factors that existed prior to a parent’s incarceration.

Research on the impact of parental incarceration also shows a direct relationship to child poverty, and a lack of future upward economic mobility. As discussed earlier, children of incarcerated parents are more likely to be raised in single-parent (typically single mother) families, in low-income neighborhoods. The Pew

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123 Todd Clear, Imprisoning Communities 95 (2007).
125 Todd Clear, Imprisoning Communities 95 (2007).
130 Todd Clear, Imprisoning Communities 98 (2007).
133 Anne M. Nurse, “Returning to Strangers: Newly Paroled Young Fathers and Their Children” in Imprisoning America 91 (Mary Patillo et al eds., 2004).
Center cites a study that examined the financial stability of a family before, during and after the incarceration of a parent. The study found that the income of the child’s family decreased twenty-two percent while the father was incarcerated compared to the year prior to incarceration, and though the family’s income increased after the release, the income was still fifteen percent less than prior to entering prison. Because research data shows that the majority of people arrested and incarcerated are mostly poor and minorities, it follows that many of these families were already struggling before a parent entered prison. One anecdotal story tells of a mother with a son incarcerated. She spends nearly twenty percent of her monthly income of $530 dollars on her telephone bill due to accepting jail phone calls. She also spends about $150-$200 dollars every few weeks to take a two day trip to take her son’s children to see their father in prison.

In North Carolina, research cited by law professor Joseph Kennedy reports that, “Data of North Carolina’s 100 counties showed that mass incarceration significantly increased child poverty especially in counties with a high proportion of non-white residents.” A second North Carolina study found that mass incarceration affects child poverty by, “[E]ngendering losses of family purchasing power.” This research shows that, “Most of those incarcerated were breadwinners at the time of their arrest.” This creates a spillover effect on the parent left behind because now that parent’s earning potential is limited due to the need of balancing single parenting and employment. This is related to the future upward mobility of these children. The Pew Center cites the Economic Mobility Project data that shows, “[P]arental income is one of the strongest indicators of one’s own chances for upward economic mobility.” The data also shows:

- “Forty-two percent of children who start out in the bottom fifth of the income distribution remain stuck in the bottom themselves in adulthood.”

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139 Id. at 381.
141 Id.
"Among those who start at the bottom of the income ladder, 45 percent remain there in adulthood if they do not have a college degree, while only 16 percent remain if they obtain a degree."142

"Children who start in the bottom of the income ladder quadruple their chances of making it all the way to the top if they have a college degree."143

This data is critical as all other collateral consequences research shows that mass incarceration creates a disruption for families and communities, and puts children of incarcerated parents at risk for behavioral issues at school in addition to psychological, emotional and physical difficulties, all of which make completing school even more difficult. This is especially the case for minorities. The Pew Center comments that future upward mobility is more challenging for African American children, “[H]aving parents at the bottom of the income ladder is even more of a barrier for African Americans, 54 percent of whom remain in the bottom themselves as adults.”144

It is important to note that while a few studies attempted to control for variables that may affect marriage and stability of the family, there is the argument that it is difficult to judge whether or not children of incarcerated parents or the mothers left behind are “worse off” without the incarcerated parent145. As one study comments,

“Although a substantial body of research finds that father absence is a key cause of child poverty, former convicts may have little to offer their children or the mothers of their children. The data analysis shows that men who have been to prison or jail have lower rates of employment and education, have poor relationship skills, are more likely to abuse drugs or alcohol, and more likely to be violent.”146

The researches in this particular study continue that the argument should be qualified in two ways, the first is life change. The life change methodology suggests that incarceration changes a person in a way that may “exacerbate” problems, increase risk of unemployment, and limit education147. The second is that marriage

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142 Id. at 49.
143 Id. at 50.
144 Id. at 21.
145 Bruce Western et.al., “Incarceration and the Bonds Between Parents in Fragile Families” in Imprisoning America 41 (Mary Patillo et.al, eds., 2004).
146 Bruce Western et.al., “Incarceration and the Bonds Between Parents in Fragile Families” in Imprisoning America 41 (Mary Patillo et.al, eds., 2004).
147 Id.
can have a positive effect on a person upon release, in that it provides the type of social support and network to keep men out of trouble and focused\textsuperscript{148}.

**CONCLUSION**

The collateral consequences of mass incarceration affect not only the inmate or former inmate but family and communities as well. Each area of collateral consequences overlaps with the others and actually creates a web or domino like effect. Within communities of high incarceration many of the families are there experiencing the exact same problems. All of these collateral consequences do not bode well for recidivism. According to the Pew Center \textsuperscript{1} in 2.3 inmates return to prison within three years of release\textsuperscript{149}. In North Carolina, the adult rearrest rate\textsuperscript{150} is thirty-six percent within two years after release\textsuperscript{151}. In 2010 the nation saw its first overall decline in state prison populations in 38 years, however, a handful of states saw an increase\textsuperscript{152}. North Carolina was one of the states with a slight increase\textsuperscript{153}. Research reviewed for this report seems to conclude that the overall effect of mass incarceration appears to be a recycling of people in and out of the criminal justice system. Importantly, in many cases former inmates are in worst positions than they were before entering prison, and children, families, and communities are damaged in the process.

\textsuperscript{148} Id.
\textsuperscript{150} North Carolina calculates a rearrest rate that does not include conviction or reincarceration.
\textsuperscript{153} Id.