

Dec 20th, 2011

Posted by [Vanita Gupta, Center for Justice](#) at 2:37pm



[Criminal Law Reform](#)

[Criminal Justice Reform 2011 – The Good, the Bad, and the Work Ahead](#)

As 2011 comes to end, we're taking a look back at the year in criminal justice. Over the next few days, we'll run a series of blog posts on the developments, good and bad, that have shaped our justice system – from overincarceration and sentencing policy to the treatment of prisoners and capital punishment. [Read the series here.](#)

It is said that you can tell a lot about a society by how it treats its most vulnerable members. In the United States, a good measure might be how we treat those who come in contact with our criminal justice system, for they are often the very same. In 2011, the American Civil Liberties Union made the fight against overincarceration a top organizational priority with the launch of our [Safe and Fair Campaign](#). It was the perfect time to do so: after decades of “tough on crime” policymaking, there is now an opening to shift to being smart on crime, and to make policy based on facts and evidence, rather than emotion and politics. America's criminal justice system should keep communities safe, treat people fairly, and use fiscal resources wisely. It should use prison as a last resort. While we are having some success in breaking our addiction to mass incarceration, we still have a long way to go.

The good news:

- [A new report](#) out from the Bureau of Justice Statistics (BJS) this month revealed that the number of adults behind bars, on probation, or on parole in the U.S. declined 1.3% in 2010, the second consecutive year of decline since BJS began reporting this data since 1980.
- The same report revealed that the total U.S. prison population fell to 1.6 million, a decline of 0.6 percent during 2010 – the first decline in the total prison population in nearly four decades. 10,881 fewer people were in state prisons in 2010 – the largest yearly decrease since 1977.
- The BJS also reported that half of all state departments of corrections reported decreases in their prison population during 2010. California had 6,213 fewer prisoners in 2010; Georgia 4,207 fewer.
- Budget shortfalls prompted [many states across the country](#) to realize that alternatives to incarceration can make us safer, cost less money, and keep communities more whole.
- The United States Sentencing Commission took another step toward creating fairness in federal sentencing by voting to [retroactively apply the new Fair Sentencing Act \(FSA\) guidelines](#) to individuals sentenced before the law was enacted. This decision will help ensure that over 12,000 people — 85 percent of whom are African-Americans — will have the opportunity to have their sentences for crack cocaine offenses reviewed by a federal judge and possibly reduced.

The bad news:

- Despite the decline reported by BJS, at the end of 2010 there were still 7.1 million people, or one in 33 adults, under adult correctional supervision in the U.S. It is a sad statement that criminal justice reformers are celebrating a downward trend that still results in one in 33 under correctional control in the U.S.
- 2011 marked the [40th anniversary of President Nixon's War on Drugs](#). Sadly, the war rages on. This, in large part, explains why a [recent study](#) found that one in three people are arrested in this country by the time they reach the age of 23.

- While many states are indeed decreasing their prison populations, a few are actually increasing them. For all the hoopla around Texas's 2007 reforms and the fact that [Texas recently closed a prison](#), the state actually *increased* its prison population by 2,400 prisoners in 2010. And Arkansas increased its prison population by 996.
- The [racial disparities in the criminal justice system](#) remain staggering: right now, one in every 15 African-American males over 18 is incarcerated.
- The decline in incarceration rates has not resulted in an improvement in prison conditions, as declining state budgets have deprioritized basic programming in prison.
- States are increasingly looking to the [private prison industry](#) to run their prisons as a way to cut costs and cut corners, even though private prisons serve only their own interests.
- Even though the new FSA guidelines will be applied retroactively, the sentencing disparity between crack and powder cocaine offenses remains an unfair and racially-biased 18-to-one.
- The U.S. Senate [failed to adopt \(by 3 votes\) an important amendment](#) a few months ago that would have created a bipartisan commission to study our criminal justice system and suggest reforms. Shame on the U.S. Senate for being unwilling to take this modest step toward reform.

The fiscal crisis has provided an opening for advocates to work with unlikely bedfellows to push through legislation and administrative reforms that would decrease the number of people in prison. But fiscal-based arguments cannot alone drive reform. If we want fewer people to be [needlessly harassed by police](#) or touched by the criminal justice system, the War on Drugs as we know it must end. Lawmakers must pass meaningful state and federal sentencing reform that would make our criminal justice system a little less punitive and a little more rational across all offense levels. In 2012, the new agenda for public safety must involve a broader approach to keeping communities safe and healthy that does not rest purely on criminal justice sanctions.

There is no doubt that breaking our decades-long addiction to incarceration and our complacent attitudes to the racial disparities in the system will require nothing short of a seismic shift in thinking in this country. What we need now is the courage and outrage to effect that change. For criminal justice reform and civil rights advocates, that is the work ahead.