

Substance Criminalization, Mass Incarceration, & Disenfranchisement

*An Addendum to the Surgeon General's Report
on Addiction*

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Introduction

Nearly half of federal prisoners incarcerated on September 30, 2015 had been sentenced for drug offenses, the most recent date for which federal offense data were available.

-US Department of Justice (Carson & Anderson, 2016)

The purpose of this paper is to argue that the Public Health Sector must undertake a detailed analysis of the United States criminal justice system in order to address the substance misuse epidemic highlighted in the Surgeon General's Report on Alcohol, Drugs, and Health. The Report identifies the modern substance misuse epidemic as a top public health priority, yet the Report fails to understand how the criminal justice system is built on the foundation of criminalizing substance use. The Report calls for criminal justice reforms to treat substance misuse as a disease, not a crime, yet it displays a poor understanding of how the criminal justice system functions and the punitive health outcomes this system enacts upon different communities through substance use criminalization. We, the Public Health Sector, cannot reform the criminal justice system if we do not understand it. An overview of general carceral statistics reveals that substance use criminalization has led to a mass incarceration and health services disenfranchisement epidemic which most severely impacts poor communities of color across the United States. This paper calls for an in-depth analysis of the criminal justice system, which accurately addresses the severe punitive impact on poor communities of color, by laying out the following:

- First, that the Surgeon General's Report does not display an accurate understanding of how the criminal justice system functions and that an analysis is necessary to ascertain this understanding.
- Second, that basic facts indicate that the criminal justice system has adversely and aggressively targeted and disenfranchised poor communities of color for substance related crimes, indicating that any analysis of the criminal justice system must explicitly account for race.
- Third, that the punishment imposed on those charged with substance-related crimes represents a public health epidemic in itself in the form of disenfranchisement from necessary public services, employment, and the vote.

The conclusion of these points is that the Public Health Sector must complete a thorough analysis of the criminal justice system which accounts for the noted systemic racism and works to understand the epidemic of disenfranchisement. Without doing so, not only will we fail to

make the necessary changes to the criminal justice system to address the substance misuse epidemic highlighted in the Surgeon General's Report, but we will also fail to ensure that millions are able to access necessary public health services across this country.

And We Must Address the Disparate Impact on Communities of Color

A point that must be addressed before we consider the arguments raised in this paper, is that the Surgeon General's Report has framed the substance misuse epidemic of today as a problem which affects "middle-age White Americans". On its first page, the Report states the following :

“For example, recent research has shown an unprecedented increase in mortality among **middle-aged White Americans** between 1999 and 2014 that was largely driven by alcohol and drug misuse and suicides, although this trend was not seen within other racial and ethnic populations such as Blacks and Hispanics. An analysis from the Centers for Disease Control and Prevention (CDC) demonstrated that alcohol and drug misuse accounted for a roughly 4-month decline in life expectancy among White Americans; no other cause of death had a larger negative impact in this population.” (Office of the Surgeon General, 2016, pp. 1–1)

The Report immediately indicates that the scope of our efforts must be to address an epidemic that White Americans are facing. While, yes, without question, we must address this epidemic and ensure that all folks who are harmed by the substance epidemic have access to a healthy path forward, we cannot view this epidemic through such a narrow lens. Substance criminalization policies, as will be pointed out in Chapters 3 and 4, have created a mass incarceration and public health services disenfranchisement epidemic that harms millions of people of color today. In our efforts to end the substance misuse epidemic, we must broaden our sights and seek to end and reform the mass incarceration and disenfranchisement caused by substance criminalization, policy reforms which cannot be viewed independently from the efforts outlined in the Surgeon General's Report. We must acknowledge, in our efforts to provide health equity to all folks, that this is not solely a problem facing “middle aged White Americans”, but a problem facing Black communities, Latino communities, Native American communities, poor communities, amongst others. By acknowledging this and taking the necessary steps to understand the health impact substance criminalization has on these communities, we the Public Health Sector, will be better empowered to ensure all folks have access to a minimum quality of health and life.

Criminal Justice Analysis is Necessary

'A war on drugs', and that utterance gave birth to this era where we decided to deal with drug addiction and drug dependency as a crime issue rather than a health issue
-Bryan Stevenson (DuVernay, 2016)

The Surgeon General has declared substance misuse a public health epidemic and calls for necessary criminal justice reform (Office of the Surgeon General, 2016). The Report on Addiction, while an excellent resource, seems though to lack an understanding of the ways in which the US Criminal Justice System is built on the criminalization of substance use and how this criminalization of substance use has lead to the mass incarceration and criminal disenfranchisement epidemic we face today as well. In this section, we will establish the need for a more in-depth analysis of the criminal justice system to address today's substance misuse epidemic by pointing out the following inconsistencies and contradictions within the Surgeon General's Report pertaining to the criminal justice system:

- The Report generally recommends criminal justice reform that is less punitive and more health-informed, while simultaneously recommending the use of Zero Tolerance Laws, which evidence shows have led to highly punitive results in poor, communities of color.
- The Report recommends law enforcement work with communities to find alternatives to "arrest and lockup" for nonviolent substance crimes, as though law enforcement agencies have not been and are not currently incentivized by the federal government and policies to do just that.
- The Report recommends the criminal justice system better integrates substance misuse treatment into their services, when many prisons profit from the very high rates of nonviolent substance use incarceration and recidivism and there is no independent authority in place to ensure that prisons are up to minimum health and safety standards.
- The Report recommends programs which help those leaving the criminal justice system reintegrate back into society, with no apparent awareness of the fact that those charged with substance use felonies are often prohibited from accessing the public services the Report is recommending.

These inconsistencies and contradictions indicate a poor understanding by the Surgeon General's Report of how the criminal justice system functions. In order to truly reform the criminal justice system, we must understand how it functions. As this section will lay out in greater detail, the Surgeon General's Report on Addiction does not possess this understanding, and therefore, it is necessary to undertake such an analysis. Without doing so, our efforts to fight the substance misuse epidemic today will ultimately fail.

Be Less Punitive, Except in Practice

The Surgeon General's Report recommends that state, local, and tribal governments “Implement criminal justice reforms to transition to a less punitive and more health-focused approach” Yet the Report recommends Zero Tolerance Laws without criticism, policies which have been utilized to highly punitive effect, especially in public school systems.

Public school district's have utilized Zero Tolerance policies for decades¹, and evidence points to Zero Tolerance Laws contributing to the school-to-prison pipeline in poor, communities of color.² Data collected by the U.S. Department of Education Office for Civil Rights from 2011 to 2012 indicate that Black youth are over three times more likely to be suspended than white youth and that a disproportionate number of Black students are referred to law enforcement and arrested as a result (U.S. Department of Education Office for Civil Rights, 2014). This study further indicates that Latino, Native American/Alaskan Native, and Disabled students are also disproportionately affected by school suspension and expulsion policies (U.S. Department of Education Office for Civil Rights, 2014). Not attending school is a known risk factor for delinquent behavior, (Teske, 2011) high suspension and expulsion rates help explain a 2003 Department of Justice Report noting that nearly 75% of State prisoners, 59% of Federal inmates, and 69% of jail inmates did not graduate high school (Harlow, 2003). A more recent DoJ Report indicates that from October 2011 to September 2012, nearly half of all convicted offenders had not graduated from high school (Motivans, 2015). These trends and statistics seem to indicate a social structure which push Black and other minority students out of schools and funnel those without high school educations into jails, a social structure of which Zero Tolerance Laws appear to be an integral component. An accurate analysis of Zero Tolerance Laws must take into account their role in the school-to-prison pipeline.

¹ “Zero Tolerance” gained popularity during the “War on Drugs” efforts of the ‘80s (Teske, 2011) (Smith, 2015). These policies were introduced in schools in response to a raised concern for school shootings in the early 90s (Smith, 2015). In 1994, the Gun-Free Schools Act was passed by Congress, pressing all states receiving federal funding for public schools to pass laws suspending any student found with a weapon in school for a minimum of one year (Smith, 2015). By 2000, Zero Tolerance Law was a ubiquitous aspect of the US Public School System, and they were applied to offenses as minor as truancy and speaking-too-loudly (Smith, 2015).

² The school-to-prison pipeline “refers to the over-representation of minority students, particularly African-American males, in the juvenile corrections system and, consequently, in the prison system (Smith, 2015). Studies have found that not graduating high school is a key risk factor for entering into the criminal justice system, as a 2003 DoJ Report points out that in 1997 : About 75% of State prison inmates, almost 59% of Federal inmates, and 69% of jail inmates did not complete high school (Harlow, 2003). A related survey found that almost 35% of incarcerated high school dropouts did so because of behavioral problems, academic problems, and loss of interest (Harlow, 2003). The introduction of Zero Tolerance in schools can be correlated to the near doubling of the annual student suspension rate from 1974 to 2001, from 1.7 million annually, to 3.1 million (Teske, 2011). Being in school is a protective factor against delinquent behavior \cite{Teske}, so policies which increase suspensions and expulsions, logically, would lead to increased rates of youth incarceration. Black students are, as noted in a 2003 study, 2.6 times as likely to be suspended than White students (Teske, 2011). In 2000, Black students made up 17% of the student population, yet 34% of the suspended population (Teske, 2011). Studies indicate that these disparities are not due to a significant difference in behavior amongst different racial communities, but due to referral bias by school officials (Teske, 2011). Further, a 2000 study noted that “Although youth of color make up one-third of the adolescent population, they represent two-thirds of all the youth detained in secure facilities” (Teske, 2011). The high rates of suspension and expulsion created by Zero Tolerance Laws, the adverse application of these punishments on Black and other students of color, and the large proportion of US prisoners who did not graduate high school are all defining aspects of the school-to-prison pipeline.

The Surgeon General's Report only mentions that there is evidence that Zero Tolerance laws can lower rates of youth drinking-and-driving and substance-related motor vehicle accidents, but offers no analysis of enforcement disparities (2016, pp. 3–22). As noted in one study promoting the utilization of Zero Tolerance underage drinking laws, “Future research should address the enforcement of zero tolerance laws. Because the burden of proof is quite low, these laws give police considerable latitude” (Zwerling & Jones, 1999). This research is necessary because law enforcement agents have the legal protection to search and seize any person they simply suspect of committing a drug crime, making it necessary to understand the ways racial profiling influences police behavior.³ For the Report to recommend Zero Tolerance Laws without mentioning the potential enforcement disparities paints a misleading picture. It is well-documented that law enforcement pulls over Black drivers at far higher rates than White drivers (Miller et al., 2017) (LaFraniere & Lehen, 2015) (Harris, 1999), regardless of offense, which implies it is necessary to research whether Zero Tolerance Laws pertaining to driving will be enforced at higher rates against Blacks than Whites. While data suggests that Zero Tolerance Laws can, in cases such as youth drinking-and-driving, result in decreased negative behavior, the Report presents no analysis of the ways in which those who are convicted of Zero Tolerance crimes are affected by the criminal justice system.

Recent trends indicate a growing awareness of the damages caused by Zero Tolerance Laws and efforts are underway to reform them. In 2014, the Obama Administration recommended the disuse of Zero Tolerance Laws within schools and provided recommendations for schools to undertake such reforms (Associated Press, 2014). The ACLU cites “Zero Tolerance” as a main factor in the school-to-prison pipeline (Ferrer, 2014) (“School-to-Prison Pipeline,” n.d.). The Surgeon General’s Report recommendation of Zero Tolerance Laws without criticism ignores a growing awareness of Zero Tolerance Laws as a highly punitive and dangerous practice.

While, yes, it is incredibly important to follow the guidance of the Surgeon General's Report and create less punitive, more health-focused solutions to substance use offenses, it is apparent that, in its recommendation of Zero Tolerance Laws, that the Surgeon General's Report is contradicting itself. It is vital that we understand the criminal justice system and the ways in which substance use is dealt with so that we can truly make criminal justice reforms that are less punitive and more health focused.

³ In *Terry v. Ohio*, the Supreme Court ruled that a law enforcement agent may search and seize an individual so long as they have “reasonable articulable suspicion” that the individual is dangerous or engaged in criminal activity, even in the absence of probable cause. Judge Roberts dissented this ruling, more familiarly known as “the stop-and-frisk rule”, by stating that “grant[ing] police greater power than a magistrate [judge] is to take a long step down the totalitarian path” (Alexander, 2012, Chapter 2)

Ignore the Financial Incentives, Find Alternatives to “Lockup and Arrest”

The Surgeon General's Report states that "Sheriff's offices, police departments, and county jails should work closely with citizens' groups, prevention initiatives, treatment agencies, and recovery community organizations to create alternatives to arrest and lockup for nonviolent and substance use related offenses" (2016, pp. 7–14). While such efforts are certainly necessary, to suggest that law enforcement agencies will just generally undertake such efforts is ignorant of both the financial incentives available to law enforcement agencies to pursue drug-related arrests and, further, the vast drug-related law enforcement infrastructure built entirely upon these incentives. Reductions in "lock up and arrest" cannot truly occur until both the system of incentives and the infrastructure it has built are dismantled entirely.

As a result of Nixon and Reagan era War on Drugs policies such as Byrne Grants⁴ and civil forfeiture policies⁵, many US law enforcement agencies resemble military outfits and they are mainly being utilized today to serve drug-related search warrants, primarily to communities of color. These policies provided law enforcement agencies willing to undertake massive numbers of substance-related arrests with large sums of federal financial aid and military equipment supply. As a result, not only were substance-related offenses the number one reason for arrest nationally in 2015 ("Persons Arrested," n.d.), but many law enforcement agencies became fully reliant on these forms of funding (Alexander, 2012, Chapter 2). What we see is that there are *many* law enforcement agencies and task forces that were born of these funding sources and serve little other purpose than to "hunt" for substance offenders.

This is best embodied by the vast array of Special Weapons and Tactics (SWAT) Teams, paramilitary units trained in military tactics, supplied with military equipment, utilized to serve drug-related search warrants. There are an estimated 50,000 to 80,000 SWAT raids per year in

⁴ Byrne Grants were heavily utilized by the Reagan Administration to provide financial incentives to law enforcement agencies that undertook his War on Drugs (Alexander, 2012, Chapter 2). The Byrne Grants lead to the modern militarization of United States law enforcement. For example, in 1997, the Pentagon provided local law enforcement agencies more than 1.2 million pieces of military equipment (Alexander, 2012, Chapter 2). From 1997 to October of 1999, over 11,000 local police agencies, representing all 50 states, put in 3.4 million orders of military equipment from the Pentagon including hundreds of military aircraft, thousands of M-16 rifles, and hundreds of grenade launchers (Alexander, 2012, Chapter 2). President Obama reinforced the Byrne program, providing billions of dollars in new Byrne funding in the Economic Recovery Act of 2009 and the 1033 Program has begun retiring military equipment in use during wars in the Middle East by sending them to local law enforcement agencies (Alexander, 2012, Chapter 2). While there has been a recent push to utilize Byrne funds for drug treatment, a recent report indicates that in 2014 only 6% of Byrne Grant funds were utilized for "Drug Treatment and Enforcement", with 52% going to funding Law Enforcement agencies themselves (The National Center for Justice Planning, n.d.).

⁵ Civil drug forfeiture laws were designed to promote increased drug-related arrests by empowering law enforcement agencies to seize property of those arrested, regardless of conviction. As defined in a 2009 Department of Justice report on the Federal Assets forfeiture program, "Civil forfeiture is a proceeding brought against the property rather than against the person who committed the offense. Civil forfeiture does not require either criminal charges against the owner of the property or a criminal conviction" (Criminal Division U.S. Department of Justice, 2009). This grants law enforcement the ability to seize the property of someone arrested -- whether guilty or not -- for drug-related crimes. The more arrests the more assets seized. From 1988 to 1992, over \$1 Billion of assets were seized by Byrne-funded task forces, which does not include DEA and other federally funded task forces (Alexander, 2012, Chapter 2) (Albany, n.d.). Since 2007, this same set of agencies have collected over \$1 Billion dollars in each financial year except for once, in 2015 (Albany, n.d.) (Office of the Inspector General, 2016).

the United States -- that's anywhere from 137 to 220 raids *per day* (American Civil Liberties Union, 2015). A 2014 ACLU report found that nearly 80% of all SWAT raids were to serve a search warrant and that 62% of all SWAT raids were drug searches (American Civil Liberties Union, 2014). This means that, at the very minimum, *half* of all SWAT raids are utilized to serve warrants to those simply suspected of drug crimes. Further, the report found that when SWAT teams are deployed for hostage and barricade situations the target is generally White, yet SWAT drug searches primarily target Black and Latino people (American Civil Liberties Union, 2014). This means that, at minimum, tens-of-thousands of times per year, military units are deployed to handle drug-related suspects in communities of color.

While this addendum supports the Report's recommendation that law enforcement agencies partner with local communities to create alternatives to arrest and lockup, it ignores the fact that SWAT teams, among other task forces, primarily function, utilizing military tactics, to arrest and lockup people of color for drug-related crimes. An effort to reduce arrest and lockup must demand that policies that supply military equipment to law enforcement be abolished and that the military infrastructure built into drug-related law enforcement be dismantled. While there are amazing examples of law enforcement agencies across this country applying this Report recommendation today, the disuse of military police units to enforce drug laws can only truly occur through federal and state-level legislation. Without such political action, even with examples of law enforcement working to reduce arrest and lockup, hundreds of SWAT raids will happen each day. The reduction of arrest and lockup cannot be viewed as solely within the purview of law enforcement agencies and the communities they serve, as the Report implies, it must be tackled at the federal and state policy levels by removing the policies that incentivize police militarization and by dismantling the police military that does exist today.

Private Prisons, Carceral Treatment Programs, and a Lack of Prison Oversight

The Surgeon General's Report notes that "significant research supports the value of integrating prevention and treatment into criminal justice settings" (2016, pp. 7–14). Again, this is a very important step in addressing today's substance misuse epidemic, but it ignores the reality of the United States prison system. The existence of private prisons and the lack of any independent, federal authority to ensure minimum standards of health and safety within prisons means that prisons, many which profit off of incarceration and increased recidivism, are not held accountable to ensure the basic rights of their prisoners, let alone to provide evidence-based substance treatment programs.

It is highly important that proper substance misuse care be incorporated into the criminal justice system, especially given the alarming fact that just over half of all federal prisoners are

incarcerated for drug-related crimes and that, in 2014, nearly half-a-million people were incarcerated in federal and state prisons and local jails for drug-related offenses (The Sentencing Project, 2017). It appeared in August 2016 that the movement away from utilizing private prisons was underway, when Deputy Attorney General Sally Yates sent a memo to the Bureau of Prisons stating "the time has come to reduce & ultimately end [the Department of Justice's] use of private prisons" (Zorthian, 2016), but the 2016 election of President Donald Trump has revitalized the hopes of the private prison industry, as stock prices of The GEO Group and Corrections Corporation of America, the leading private prison corporations, have respectively nearly doubled ("Stock Information," n.d.) and tripled ("CCA - Stock Information," n.d.) over the three months following Trump's November election.

While the notion of any industry which profits from increased incarceration and recidivism, as private prisons do, should raise red-flags from a public health perspective, what is even more concerning is the fact that in the United States there is no independent authority to monitor prison conditions and ensure minimal health and safety standards are met. The judicial branch of the United States is responsible for ensuring constitutional and fair treatment of prisoners, but as a result of the Prison Litigation Reform Act of 1995, it became difficult to nearly impossible for prisoners to appeal carceral mistreatment to federal courts, essentially assuring a lack of carceral oversight (American Civil Liberties Union, 2011). It does not matter how many excellent evidence-based substance misuse treatment options the Surgeon General's Report recommends when prisons are not held up to any standards of transparency and accountability.

As a result of this lack of oversight, studies and audits of specific US prisons and jails have revealed such poor living conditions as to produce condemnations of human rights violations by the United Nations Human Rights Committee (Dizard, 2014). The following examples describe both the horrifying conditions existing in many private prisons today, but further the lack of any authority to oversee these conditions:

- In June of 2010, the State of Mississippi agreed to shut down Unit 32 of the Mississippi State Penitentiary at Parchman ("ACLU Strikes Deal To Shutter Notorious Unit 32 At Mississippi State Penitentiary," n.d.). The ACLU filed a lawsuit on behalf of Unit 32 prisoners who were being held in cells that would reach 120 degrees on summer days, with non-functional toilets, broken sewage pipes, and no proper treatment for inmates suffering from severely psychotic episodes. What is concerning is the fact that it took the ACLU to provide the necessary audit to shut down Unit 32, instead of an institutionalized authority. It raises concerns that other prisons are not being properly audited as well, such as another Mississippi State prison, Walnut Grove, which Federal Judge Carlton Reeves described in a 2012 settlement as "paint[ing] a picture of such horror as should be

unrealized anywhere in the civilized world” (Williams, 2016). Walnut Grove was not shut down until the summer of 2016 for budgetary reasons.

- The suicide of Idaho resident Scot Noble Payne made transparent another avenue through which prison conditions are inhumane and unmonitored (Associated Press, 2007). Sent to a privately-owned Texas prison to serve his sentence, Payne's suicide note revealed the horrific living conditions of the prison. Documents investigated by The Associated Press revealed that the State of Idaho did little to nothing to monitor the treatment of prisoners sent to out-of-state facilities, despite continued complaints from prisoners and their families. The Idaho Department of Correction's health care director made an inspection of the facility after Payne's suicide and deemed that the facility "the worst facility he had ever seen" and was "unacceptable" and "beyond repair". Despite this, the only reassurances Idaho received from the GEO Group, which ran the prison, was that they were working to address their concerns (Associated Press, 2007).
- A 2014 Report from the Human Rights Clinic of the University of Texas School of Law indicated that summer temperatures are so extreme in state-run prisons that it threatens the health and lives of both prisoners and staff (Dart, 2014). The report found that heat indexes can reach around 150 degrees and that since 2007, at least 14 state prisoners have died from extreme heat exposure. The report found that 92 correctional officers in 2012 suffered from health-induced injuries or illnesses. The report was submitted by the Human Rights Clinic to different United Nations bodies and the Texas Civil Rights Project filed lawsuits on behalf of many inmates, highlighting the lack of any prison oversight authority (Dart, 2014).

Incorporating effective, evidence-based substance misuse treatment plans is incredibly important to helping the hundreds-of-thousands of prisoners incarcerated for drug-related offenses, but it will be next to impossible to ensure the implementation of these programs within prisons if there aren't even the accountability and transparency measures needed to ensure prison conditions don't constitute human rights violations. It cannot be the responsibility of private citizens, the press, and non-profits alone to fight for humane living rights in prisons across the country. In order to enact the criminal justice reform described in the Surgeon General's Report, it is necessary to hold a better understanding of the ways in which prisons are held accountable, and that strategies are developed to create the necessary oversight structures to not only ensure that effective, evidence-based programs are utilized in prisons, but also to ensure all prisons provide, at minimum, humane living conditions.

Coordinate Services That People Are Banned From

The Surgeon General's Report further notes that "In addition, community re-entry is a particularly high-risk time for relapse and overdose. Criminal justice systems can reduce these

risks and reduce recidivism by coordinating with community health settings to ensure that patients with substance use disorders have continuing access to care upon release" (2016, pp. 7–15). Again, this highlights a very powerful way that the substance misuse epidemic can be addressed, but it is misleading to suggest this is simply an issue of coordination. As will be discussed in a later section of this paper, a major problem that faces those convicted of drug-related felonies, after release from prison find they are not eligible for public services such as housing, food stamps, and welfare, are subject to discriminatory employment policies, are stripped of the right to vote, and face harsh parole requirements that lead to increased recidivism due to parole violations. Coordinating health settings will do little to help individuals who are legally prohibited from accessing public health services, discriminated against in the housing and employment process, and reincarcerated for parole violations. This issue will be discussed in greater detail in the section *The Public Health Epidemic of Drug Criminalization Disenfranchisement*.

We Must Undertake an Analysis of the Criminal Justice System

These contradictions and inconsistencies display a lack of understanding of how the criminal justice system operates. The suggestions made throughout the Report represent excellent options for fighting the substance misuse epidemic, but they are not feasible without an accurate and thorough understanding of the criminal justice system. This indicates that in order to reform the criminal justice system to address the substance misuse epidemic, an in-depth analysis of the criminal justice system must be undertaken by the public health community. While the points raised in this chapter should be accounted for in a more full analysis, they do not constitute an in-depth enough analysis. In the following chapters, it will be established that basic statistics show that the criminal justice system is racially oppressive, adversely affecting poor communities of color. This point is raised to indicate that in order to undertake a meaningfully accurate analysis of the criminal justice system, the analysis must account for and seek to understand this racial disparity.

The Mass Incarceration Epidemic

*Prison Population, 1970 : 196,429 Prison Population, 2010: 1,605,127
(The Sentencing Project, 2017)*

“No other country in the world imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid” -Michelle Alexander (2012, p. 6)

Incarceration rates in the United States have increased dramatically over the past several decades. In order to address the substance misuse epidemic of today, we must acknowledge how substance criminalization is a foundational piece of the criminal justice system resulting in a mass incarceration epidemic -- an epidemic which disparately impacts poor communities of color across the United States. In this section we will highlight how substance-related criminalization has been an integral piece of the massive increase in incarceration, how despite similar rates of illicit substance use across races this mass incarceration epidemic has most severely impacted Black and Latino men and their communities, and how this disparate and massive incarceration epidemic has left poor communities of color worse off than before. The conclusion of this information is that our analysis of the criminal justice system must account for the high rates of substance-related incarceration, for the disparate impact on Black and Latino men, and for the damages caused by this system not only on the individuals incarcerated, but on the communities it has torn apart.

The War on Drugs & The Rise Of Substance Criminalization

First declared by Richard Nixon, helmed by Ronald Reagan, and indefinitely institutionalized by Bill Clinton with the 1994 Crime Bill, the War on Drugs was waged to address "public enemy number one", illicit drugs (Alexander, 2012, Chapter 1). Law enforcement agencies were empowered through federal policies such as Byrne Grants, the 1033 Program, and civil forfeiture laws and Supreme Court rulings to weaken the 4th amendment to undertake massive numbers of drug arrests. Prosecutors were given inordinate power through the passage of mandatory minimum sentencing policies, giving prosecutors the ability to choose the punishment for the crime, leading to a steep increase in the number of accused pleading guilty to avoid harsh sentences regardless of their actual guilt (Alexander, 2012, Chapter 1). The for-profit prison industry boomed, the prison-industrial complex was born, and Trump administration Attorney General Jeff Sessions recommitted the federal government to continuing to utilize private prisons (Schuppe, 2017).

As a result, the United States Prison population has exploded. In 1970, there were just under 200,000 people in United States prisons total. In 2014, there were over 300,000 people in prison *just for drug-related crimes* (The Sentencing Project, 2017). Out of the over 2 million people in prisons and jails, 1 in every 5 has been incarcerated for a substance-related offense (Rabuy & Wagner, n.d.). From 1980 to 2014, the state prison substance-related population increased eleven-fold, the jail substance-related population increased ten-fold, and the federal prison substance-related population increased twenty-fold. Further, the number of individuals on probation and parole tripled and quadrupled respectively (The Sentencing Project, 2017). The number of prisoners serving life sentences increased from 34,000 in 1984 to nearly 160,000 in 2012 and, today, the United States has the highest incarceration rate of any nation on Earth, including Russia and China (The Sentencing Project, 2017).

This indicates that since 1980, the United States criminal justice system has massively increased total rates of incarceration and the length of sentences, and that this has been, at minimum in part, by a massive increase in substance-related incarceration rates. It is clear that substance criminalization is a pillar of the criminal justice system and this mass incarceration epidemic.

Black, Latino, & White Illicit Drug Use Rates Are The Same

Before noting how the criminalization of substance use has disparately impacted communities of color, we must first note that the rates of illicit substance use are roughly the same across racial demographics. 2001, 2003, and 2006 studies from the US Department of Health and Human Services found that Black, Latino, and White folks use illegal drugs at nearly identical rates (Alexander, 2012, p. 264). Thus, we should expect to see substance-related jail, prison, parole, and probation populations to match the demographic breakdown of the general US population, which, as accounted for in the 2010 US census is 63.7% non-Hispanic White, 12.2% Black, and 16.3% Hispanic (Jones, Humes, & Ramirez, 2011). As we will see, this is not the case.

Yet Black & Latino Folks Are Punished More Frequently

Instead we see, as reported by a Department of Justice report, that in 2015 there were approximately the same number ($n = 68,000$) of Black and White inhabitants of State prisons who were charged with substance-related crimes and that there were more Black inhabitants ($n = 35,190$) and more Latino inhabitants ($n = 35,081$) than White ($n = 19,981$) in Federal prisons who were charged with substance-related crimes (Carson & Anderson, 2016). We would expect, based on illicit drug use rates and general demographic data, to see between double to triple the number of White substance-related prisoners compared to the number of combined Black and Latino substance-related prisoners. Instead, we see that there were twice as many Black and

Latino substance-related prisoners (n = 176,000) in the state and federal prison system as there were White substance-related prisoners (n = 88,000) (Carson & Anderson, 2016).

This Trend Holds Generally As Well

While it is important, in our effort to tackle the substance use epidemic of today, that we understand the ways in which disparities exist in regards to substance use criminalization, it is important to note that these disparities exist across the entire criminal justice system. For folks born in 2001, Black men and Black women are respectively about 6 times more likely to be incarcerated in their lifetime than white men and white women, and Latino men and Latina women are respectively over 2 times more likely to be incarcerated in their lifetime than non-Hispanic white men and non-Hispanic white women (The Sentencing Project, 2017).

This can partially be explained by the fact that Black folks are often arrested at rates far higher than white folks. In Ferguson, Missouri, where riots were held after a white police officer killed, Michael Brown, an unarmed Black teenager, Black folks are three times as likely to be arrested than white folks (Heath, 2014). A USA Today report analyzing FBI data on law enforcement arrest rates found that there are at least 1,581 police departments across the country that arrest Black folks at even more disparate rates than Ferguson, with at least 70 departments arresting Black folks at rates of at least ten times greater than white folks (Heath, 2014). The same report noted that one town, Dearborn, MI, actually arrested more Black folks from 2011 to 2012 (n = 4,500) than the number of Black folks actually living in town (n = 4,000) (Heath, 2014). While one could posit this means that Black folks are committing more crime than White folks, racial profiling and the concentration of poor Black communities in city regions can explain this discrepancy. The War on Drugs provides the best example of this discrepancy. While Blacks and whites have long utilized illicit substances at similar rates, Black folks have been incarcerated at far higher rates, as Marc Mauer of the Sentencing Project put it, *"because police find drugs where they look for them"* (Mauer & Cole, 2011).

And there are so many more factors which a thorough analysis of the criminal justice system must identify. In a 2013 report to the United Nations Human Rights Committee, the Sentencing Project identifies that "The United States in effect operates two distinct criminal justice systems: one for wealthy people and another for poor people and minorities" (The Sentencing Project, 2013). This report identifies that racial bias by law enforcement, Supreme Court rulings removing 4th amendment rights, the poor quality of public defense, the inordinate power given to prosecutors through mandatory minimums and the ability to form all-white juries, the racial bias of white jurors, the racial disparities in sentencing, especially capital punishment, the high cost of legal fees, amongst other factors, help to explain the disparate incarceration rates which

Black, Latino, poor folks, and other minorities face (The Sentencing Project, 2013). Perhaps the most disturbing factor, is that in *McKleskey v. Kemp*, the Supreme Court ruled that no matter how much evidence suggests there is racial bias in the criminal justice system, that such evidence is not a viable legal defense in an individual case where this bias is playing out (The Sentencing Project, 2013). We cannot claim to understand the disparate ways in which substance criminalization operates, until we understand how the criminal justice functions as a whole works to disparately impact poor communities of color. These examples have been provided, not to represent an exhaustive list of factors, but to illuminate that there is so much that we must uncover and understand before we can claim the capacity to reform the criminal justice system.

And This Approach Has Failed the Communities Impacted the Most

"The rate of incarceration is so high, so socially concentrated, we're no longer incarcerating the individual, but we are incarcerating whole social groups."
-Bruce Western (Lay, Western, von Baldegg, & Coates, n.d.)

It is difficult to measure the efficacy of The War on Drugs in reducing crime rates. A 1997 study indicated that for every 10% increase in incarceration, crime rates fell by 9%, but multiple 2006 studies indicate that for the same 10% increase in incarceration, the crime rate reduction is minimal to none (Clear, 2008). A meta-analysis of such studies suggests that "more recent studies using more complete data sets and more reliable methods tend to produce smaller overall estimates of the crime-reduction effects of prison growth" (Clear, 2008). So, while it is difficult to definitively state the success or failure of The War on Drugs in generally reducing crime rates, it is important to note the severely negative, destructive impact that mass incarceration has had in many poor communities of color across the nation.

As Todd Clear points out, men are 15 times more likely to be in prison than women, Black folks are nearly 7 times as likely to go to jail than White folks, those who dropout of high school are three times more likely to go to jail than graduates, and around 69% of those in prison are under the age of 40 (2008). Combining these facts with the reality that many of America's residential areas are segregated by race and social class, it is easy to understand that young Black men living in poor communities with low high school graduation rates are at severely high risk of being incarcerated (Clear, 2008). Studies found that in many poorer neighborhoods of Cleveland and Baltimore, that on any given day one in every five men aged 18-44 were behind bars, which does not account for the fact that on any given day certain men will be released and others will be incarcerated (Clear, 2008). In some areas of Brooklyn, nearly one in three boys aged 16-24 is sent to prison each year (Clear, 2008). Across the country, poor Black communities lose their young men to the criminal justice system.

This demands that we ask what the impact of these staggering levels of male youth are in these communities. We must ask what damages that these high rates of incarceration of young men have had on communities as a whole. While such an analysis is outside the scope of this paper, there are a few ways that we can begin to understand how detrimental this disparity is from a public health perspective, and these questions raised should not be considered exhaustive:

- We must consider the impact on children in these communities that face male hyper-incarceration levels. While it is difficult to attempt to measure the impact of father's being incarcerated on their children, we can consider it in the context of Adverse Childhood Experience scores (ACEs). The ACEs study was first conducted to measure the relationship between traumatic childhood experiences and health behaviors and outcomes (Centers for Disease Control, n.d.). ACEs measure 10 categories of childhood trauma, accounting for abuse, neglect, and household dysfunction. Two categories of note in this case are Parental Separation and Having a Family Member Incarcerated. Given that incarceration increases the chances of divorce or partner separation (Siennick, Stewart, & Staff, 2014), in communities where a majority of men have criminal records, this means that a significant number of children live in single-parent households with a parent in prison, giving them an ACE score of, at minimum, 2. The ACEs study found that folks with a score of 2, compared to folks with a score of 0, are 4 times more likely to suffer from alcoholism, 2.4 times more likely to suffer depression, 2.3 times more likely to miss substantial amounts of work due to mental illness, and 3 times more likely to have ever attempted suicide (Centers for Disease Control, n.d.). The study found a dose-response relationship between the score and negative health outcomes, where scores of 4 or greater result in extremely high risk of negative health outcomes including getting an STD, bronchitis, heart disease, stroke, and the outcomes listed previously (Centers for Disease Control, n.d.). This means that in communities where a majority of young men have been incarcerated, elevated ACEs is likely such a common individual occurrence as to be considered a community-level affliction. We must then ask, given the high rates of substance criminalization in these communities, if substance criminalization is a major cause of negative health outcomes in these communities.
- As will be pointed out in the following chapter, once incarcerated and/or convicted of a felony, folks have a much harder time getting a job. The felony label, which many non-violent substance related crimes give folks, makes finding employment nearly impossible because employers can screen out all job candidates with felony charges. This means that there are many young men without jobs, and unemployment has been linked to increased criminal activity (Bausman & Goe, 2004). It has been a common rhetorical tool (Skiba, 2017) of some politicians to reference the high crime rates in cities such as Chicago to highlight increased levels of crime across the nation, which skirts around a distinction that can be better understood in the context of mass incarceration.

National crime rates remain near a 20-year low, though there is a noted spike in murder rates, which a recent Brennan Center study notes is almost entirely due to spikes in Chicago, Baltimore, and Washington D.C (Grawert, Friedman, & Cullen, 2016). The study notes that increases in murder rates across America's major cities can be correlated to high levels of unemployment and poverty (Grawert et al., 2016). In communities, such as in Chicago, Baltimore, and D.C., where a majority of men have a criminal record and are thus unable to find employment, we must ask to what degree has substance criminalization lead to higher rates of unemployment, poverty, and, thus, violent crime. We must ask and determine if part of the answer to crime in cities where hyper-incarceration is occurring, is to stop incarcerating folks for non-violent substance-related crimes.

So, regardless whether or not mass incarceration can be credited with decreasing overall crime rates, of which there are very valid arguments that it has not, in specific localities, it has been utterly destructive, and this destruction must be better understood and addressed. In this sense, substance criminalization and, generally, mass incarceration, is an epidemic which severely harms these communities. From a public health perspective, in which equitable access to basic levels of health and well-being is the metric, the criminal justice system is severely failing these communities.

We Have To Be Careful

"Today there are more African-American adults under correctional control - in prison or jail, on probation or parole - than were enslaved in 1850, a decade before the Civil War began."
-Charles Blow (2013)

Our criminal justice system is far more punitive towards people of color than White folks in regards to substance-related crimes. As noted in the introduction to this paper, the Surgeon General's Report openly notes in the first page that the substance misuse epidemic of today is one that mainly affects middle-aged White people.

Yes, we must do everything that we can to ensure that this population, middle-aged White people, is able to overcome this epidemic, but, the Surgeon General's Report immediately, on its first page, frames this epidemic as an issue facing White America. Because the substance criminalization epidemic adversely affects non-Whites, it would be easy to address the White substance misuse epidemic without ever really diving into necessary criminal justice reform to protect all peoples. We cannot continue to view substance use treatment solely through the lens of treating White Americans, which the Surgeon General's Report explicitly does. Substance criminalization has lead to a mass incarceration epidemic that disparately impacts poor

communities of color, where the United States incarcerates more Black folks than South African Apartheid, where the United States incarcerates more Black folks than were enslaved in pre-Civil War 1850. So, yes, we must do everything we can to end the substance misuse epidemic, but we must be conscious of who our efforts will benefit and ensure that we work for the benefit of all communities impacted by substance use and substance-related criminalization.

The Criminal Justice System Is Racially Oppressive, It Must Be Analyzed As Such

All of this information, which just scratches the surface, tells us that the criminal justice system utilizes substance criminalization to disparately and harshly impact poor people of color, to the point that in many communities it is a severe epidemic. We must undertake a thorough analysis of the criminal justice system, and this analysis must account for these racial and socioeconomic disparities. If we fail to account for these disparities, then we will fail to understand and address the negative health impact that substance criminalization and mass incarceration has had on the individuals and the communities that have been the most affected.

The Public Health Epidemic of Drug Criminalization Disenfranchisement

"In this brave new world, punishment for the original offense is no longer enough; one's debt to society is never paid"
-Jeremy Travis (Alexander, 2012, p. 142)

While the massive number of folks in prison for substance-related crimes is alarming, what awaits these individuals when they are released is hardship beyond reasonable expectation. Different federal and state policies disenfranchise those convicted of substance-related felonies from utilizing public housing, food stamps, education loans, employment, and the vote. As we undertake an analysis of the criminal justice system, it is important that we understand how various policies function to punish those convicted of substance-related crimes. In this chapter, we will overview some of the ways in which individuals convicted of substance-related crimes are punished for the purpose of highlighting that the collection of these policies represents a public health epidemic in itself. There are too many people who are unable to access food, shelter, a livelihood, and fair representation. This disenfranchisement is inextricable from substance criminalization policies, and thus, must be considered in any analysis of the substance use and the criminal justice system.

The Felony Drug Ban on Food Stamps & Cash Assistance

In 1996, Bill Clinton signed the *Personal Responsibility and Work Opportunity Reconciliation Act*, which banned those convicted of drug-related felonies from receiving federal assistance through food stamps (SNAP) and cash assistance (TANF) benefits (The Sentencing Project, 2015a). Bizarrely, this ban is specifically for drug-related offenses only. While states were provided the option to modify or opt out of this ban entirely, as of 2015, 15 states still fully ban and 23 states have a modified ban on TANF benefits, while 9 states still fully ban and 25 states have a modified ban on SNAP benefits (The Sentencing Project, 2015a). These bans have affected the lives of hundreds of thousands of individuals, disparately impacting women and their children.

About 85.9% of all TANF beneficiaries are women and women are twice as likely to utilize SNAP benefits at some point their life as men are (The Sentencing Project, 2015a). While there are far fewer women in prison than men, the rate at which women are incarcerated has increased

at a higher rate since 1980 than it has for men (The Sentencing Project, 2015a). In 1980, there were 26,378 women U.S. prisons and jails, which multiplied to 215,332 women in 2014 (The Sentencing Project, 2015b). Approximately, one in four women in prison were incarcerated for a substance-related offense (The Sentencing Project, 2015b). A Sentencing Project report estimated that between 1996 and 2011, in states where there was a full TANF ban, 180,000 women were affected by the ban (The Sentencing Project, 2015a).

The TANF and SNAP ban is generally justified as a drug use deterrent and a protection against welfare fraud (The Sentencing Project, 2015a). In regards, to welfare fraud, this is a crime that occurs at incredibly low rates and it is already illegal. In regards to substance use deterrence, people sell drugs to make income, and it is questionable whether or not banning individuals from cash assistance and food stamps would deter folks from continuing to sell drugs to make ends meet (The Sentencing Project, 2015a).

TANF and SNAP benefits are provided to ensure that individuals and families that cannot afford the basic necessities have the resources to get them. As noted previously, substance criminalization has a severe localized effect in many poor communities of color. Further research must be done to determine the impact of the TANF and SNAP ban in these communities where substance-related incarceration is concentrated and where these public benefits are of great importance.

The Impossibility of Public Housing

President Bill Clinton stated during his term that "If you break the law, you no longer have a home in public housing, one strike and you're out" (Alexander, 2012, p. 145). This zero tolerance policy was solidified in law by the Anti-Drug Abuse Act of 1988 and the Quality Housing and Work Responsibility Act of 1998, which "not only authorized public housing agencies (PHAs) to exclude automatically (and evict) drug offenders and other felons; it also allowed agencies to bar applicants *believed* to be using illegal drugs or abusing alcohol - whether or not they had been convicted of a crime" (Alexander, 2012, p. 145).

The Housing and Urban Development Department (HUD) subsequently developed a set of guidelines, the *One Strike Guide*, which called for PHAs to "'evict drug dealers and other criminals' and 'screen tenants for criminal records'" by calling on PHAs to "'take full advantage of their authority to use stringent screening and eviction procedures" (Alexander, 2012, p. 145) Further the Guide indicated that PHA ratings and funding would be tied to the implementation of these screening procedures, punishing PHAs who did not commit to "cleaning house" (Alexander, 2012, p. 145).

This guide has long been controversial. The *One Strike Guide* included a clause, the "no-fault" clause, which deemed that a tenant be evicted if any guest of the tenant engages in substance-related or any other criminal activity on or off the premises, regardless of the tenant's knowledge of the activity (Alexander, 2012, p. 146). This clause was struck down by the Ninth Circuit Court of Appeals in 2001 but was reversed by the U.S. Supreme Court in 2002. In communities where mass incarceration has the greatest effect, where sometimes over half of men have a criminal record, and where poverty is ubiquitous and the need for public housing is greatest, this "no fault" policy forces families to excommunicate members with criminal records for fear of losing their homes, thus destroying support networks and increasing rates of homelessness (Alexander, 2012, pp. 144–148).

In 2015, HUD released guidelines taking a step back from the *One Strike Guide*, informing PHAs that they do not need to follow "One Strike" policies and that they must keep in mind the legal rights of applicants and tenants (U.S. Department of Housing and Urban Development Office of Public and Indian Housing, n.d.). While this release indicates a positive step, the release is merely a change in tone, as the discriminatory policies implemented by the Quality Housing and Work Responsibility Act, most notably *CFR 24, Part 5, Subpart I*, remain untouched ("Title 24, Subtitle A, Part 5, Subpart I," n.d.). As long as these policies remain in place, poor communities most impacted by the mass incarceration epidemic will continue to suffer increased homelessness and family division.

The Impossibility of Employment

On nearly every job application, there is box which asks if the applicant has ever been convicted of a past crime or felony. For any person convicted of a substance-related felony, they are put at a great disadvantage when seeking work. While the question of whether or not it is unconstitutional to discriminate against convicted criminals in the hiring process does not explicitly fall within the purview of the 1964 Civil Rights Act, the significantly higher rates at which Blacks and Latinos are arrested compared to Whites means these hiring policies disparately impact people of color. A 2012 New York Times article points out how the fact that Blacks and Latinos are arrested and convicted at far higher rates than Whites for substance-related crimes, despite similar rates of usage, puts the Equal Employment Opportunity Commission in quite a bind, because employers are less likely to hire individuals with a criminal record and because Blacks and Latinos are arrested at higher rates than Whites for crimes they commit at the same rates, meaning that discriminating against criminals in the hiring process discriminates against people of color (Mandelbaum, 2012). It is difficult for the EEOC, then, to determine whether or not criminal discrimination should also be considered racial discrimination.

Many have hoped to remove this discrimination by "banning the box", not allowing employers to ask about criminal record on the initial application. But a 2016 study found that removing the box appears to lead to a severe *increase* in racial discrimination. This study revealed that when employers are not allowed to ask about criminal history on an initial application, they are more likely to discriminate against young Black and Latino men because the employer makes more generalized determinations of the likelihood an individual may have a criminal record (Doleac & Hansen, 2016).

This means that either individuals with criminal records are discriminated against in the job hunting process by virtue of "the box" or that young Black and Latino men are discriminated against by employers utilizing stereotypes in the hiring process. Regardless, people of color released from the criminal justice system are discriminated against in the hiring process.

The Impossibility of Education

Education is a pathway for individuals to improve their life, and often a necessity to pursuing many career paths, but being convicted of substance-related offenses also limits individuals abilities to receive federal financial aid for education. Federal financial aid is especially important in poorer communities, where the rising cost of secondary education creates an insurmountable barrier to entry. Studies have found that federal financial aid increases the rate of college attendance and graduation of low-income students, by allowing students to attend four-year colleges and not needing to work in addition to pursuing their education (Johnson, 2014).

All substance-related offenses result in temporary suspension of ability to receive federal aid for education, and three possession offenses or one distribution offense results in a complete ban from federal financial aid for education (Federal Student Aid, 2016). For those currently incarcerated in federal or state prisons for drug-related offenses, they are ineligible for federal student loans but do qualify for certain educational assistance programs, though they have a low chance of receiving them. As stated on the U.S. Department of Education website, "if you are in a federal or state institution you can get a Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS), but you probably won't because; priority for FSEOGs must be given to those students who also will receive a Federal Pell Grant (for which you're not eligible), and because the logistical difficulties of performing an FWS job while incarcerated would likely be too great for you to be awarded FWS funds" ("Students With Criminal Convictions," 2017). Whether a temporary suspension or an indefinite ban, substance-related offenses result in the loss of access to educational financial aid.

This means that for communities most affected by the mass incarceration epidemic, communities of color that already have low high-school graduation levels, there is now another set of barriers to overcome. In cities such as Chicago, "young black men are more likely to go to prison than to college" (Alexander, 2012, p. 190). This is illuminated by the fact that in 2001, there were more Black men in Illinois state correctional facilities for substance-related offenses, than there were Black men enrolled in Illinois public universities (Alexander, 2012, p. 190). With the high cost of education today, federal financial aid is often the only pathway that allows individuals to receive a college education. By limiting and banning access to financial aid for substance-related offenses, the communities who are most impacted by the mass incarceration epidemic are thus the most harmed by these policies.

Catch-22 : Debtor's Prison

Debtor's Prison is any detention facility utilized to incarcerate individuals for the failure to pay debt. In the 1830s, U.S. Congress outlawed the use of debtor's prisons at the federal level and many states followed suit (Hager, 2015). A series of Supreme Court rulings in the '70s and '80s ruled that an individual may not be incarcerated for being too indigent to pay back debt (Hager, 2015). Despite these rulings deeming Debtor's Prison illegal and unconstitutional, today, they are being utilized at an alarming rate.

In the 1983 case *Bearden v. Georgia*, the Supreme Court ruled that judges cannot incarcerate individuals too poor to pay their fees and debts, but that judges can use their discretion to determine if individuals really are too poor or if they have the means and are "willfully" refusing (Shapiro, 2014). A major issue is that "too poor to pay" and "willfully refusing to pay" were not well-defined in the case, leading to a wide discrepancy of who is punished and who is not. Often times, judges determine people's ability to pay based on their appearance in court, with one judge stating that if individuals have tattoos or nice jackets on, then he determines they have the means to pay (Shapiro, 2014). Even more disturbing is that some judges have been reported to tell individuals to use their welfare or TANF money to pay their fees (Shapiro, 2014).

This becomes alarming when combined with the fact that almost every state can charge individuals money for being incarcerated. "In at least 41 states, inmates can be charged room and board for jail and prison stays; in at least 44 states, offenders can get billed for their own probation and parole supervision; and in 49 states, there's a fee for the electronic bracelet that monitors people when they're out of jail" (Shapiro, 2014). Further, in 43 states, individuals can be charged for a public defender (Shapiro, 2014). This introduces a totally new problem for poor individuals released from prison with a substance-related offense. Not only may they be

ineligible for public housing, TANF, SNAP, employment, and educational assistance, but they may also be slapped with legal fees that they must pay, else be returned to prison.

And The Vote...

The right to fair representation, the right to have an equal voice in the political process, is the defining characteristic of democracy. In the U.S., 48 states and the District of Columbia completely ban prisoners for a felony offense from voting (Alexander, 2012, p. 158). Further, many states do not allow ex-prisoners the right to vote for years or for the rest of their life, and the barriers to reinstate voting eligibility for those that qualify are often so burdensome and costly as to represent a full ban on voting (Alexander, 2012, pp. 158–9). By disqualifying the folks and communities most impacted from by the mass incarceration epidemic from voting, it removes the most vital voting bloc to actually ending and reversing the mass incarceration system.

An estimated 6 million people were disenfranchised from voting in the 2016 presidential election (Uggen, Larson, & Shannon, 2016). The 2000 election of George W. Bush highlights the massive impact that disenfranchisement can have. The election was decided by Florida, where Bush won by a mere 537 votes (“2000 Presidential General Election Results,” 2001). If the 600,000 former felons in the state had been allowed to vote, it has been widely argued that Al Gore would've been elected President of the United States (Uggen et al., 2016). Florida, today, is the state that most harshly disenfranchises its citizens, accounting for over a quarter of all disenfranchised individuals nationally (Uggen et al., 2016).

Further disturbing, is not only do poor communities of color lose their voting power through massive amounts of substance-related criminalization, but further, those incarcerated are counted in the population of the location where they are incarcerated, not where they live. As most prisons are in rural areas of America, this means that the political representation of rural (generally White) regions, is bolstered by a prison population pulled primarily from communities of color in cities. So not only do these communities live individual votes, but the power of their remaining votes is weakened by the decrease in population in their jurisdiction (Alexander, 2012, p. 192).

For many communities most adversely affected by the mass incarceration and public services disenfranchisement epidemics highlighted in this paper, voting is the only political power they have to make change. Yet, we see, that these communities are stripped of the little political power they have, reducing their ability to enact the political changes necessary to overcome these epidemics.

Disenfranchisement is an Epidemic Inextricable From Substance Criminalization

In sum, this means that for certain individuals, a non-violent, substance related felony can result in, when released on parole, being banned from cash assistance, food stamps, public housing, student loans, and voting, as well as finding it nearly impossible to find employment, while simultaneously being forced to pay fees for their incarceration else risk being thrown back in prison. The criminal justice system actively deprives individuals access to housing, food, work, and representation while simultaneously punishing them for this lack of access. A great challenge that we face, as pointed out in the Surgeon General's Report, is that we must "coordinate services" to ensure that folks released from prison are able to reintegrate into society. Currently, these policies are coordinated to ensure folks return to prison.

Given the concentration of substance-related criminalization in poor communities of color, it should become all the more alarming that these communities access to public housing, financial assistance, food assistance, employment, and voting is highly restricted and that they are thrown back in prison for the "crime" of being poor. In the mission of health equity, it is, at best, unacceptable for entire communities to be stripped of these services so severely and to be punished for what they do not have. The policies and laws in place which work to disenfranchise people must be better understood and documented, and must be reformed in their entirety.

Conclusion

The unfortunate reality we must face is that racism manifests itself not only in individual attitudes and stereotypes, but also in the basic structure of society.

-Michelle Alexander (2012, p. 184)

The Surgeon General's Report on Alcohol, Drugs, and Addiction is an important document. It highlights a public health epidemic that must be addressed. It notes that criminal justice reforms must be undertaken to treat addiction as a health issue, not a criminal one. But, as this paper points out, the Surgeon General's Report does not appear to have a solid understanding of how substance criminalization is institutionalized in our justice system. To say we must "reform" the criminal justice system is to say that we must transform it from what it is today to what we believe it must become. An accurate, clear, and thorough understanding of the criminal justice system today is a necessary component to understanding the transformative path we wish to undertake. Without such an understanding, we are bound to fail in our endeavor.

The connection between the mass incarceration and public services disenfranchisement epidemics and the addiction epidemics raised by the Surgeon General's Report are made clear by modern policies which criminalize opioid addiction, such as the Washington Court House in Fayette County, Ohio, which has made it a misdemeanor to overdose, with punishment of \$1,000 and up to 6 months in prison (Roth, 2017). To understand that it is harsh and wrong to punish someone for opioid addiction today is to understand that it has been harsh and wrong to punish millions of individuals and communities over the past fifty years for non-violent, substance-related offenses. And, that if we understand that we must transform the criminal justice system for the benefit of those suffering from the substance epidemics raised in the Surgeon General's report, that we must understand our equal obligation to transform the criminal justice system for the betterment of all individuals and all communities that are negatively impacted by any and all substance epidemics.

Yes, we must seek to address the addiction epidemics raised in the Surgeon General's Report. Yes, we must focus on the communities highlighted in the Report. But, it is necessary to widen the scope of these efforts to include the individuals and the communities harmed by substance criminalization. Analyses of the intersection of substance health and the criminal justice system must be taken to ensure our efforts to address today's substance epidemics reach all communities negatively impacted. It is through these efforts to better understand the intersection of substance and the criminal justice system that we will be able to make meaningful transformations that ensure all individuals and all communities access to health and well-being.

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