


5-2021

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# ***“Specter of Reform: Understanding the Violent Crime Control and Law Enforcement Act of 1994 and its Role in Expanding the Modern Prison Industrial Complex”***

Timothy Nii-Okai Welbeck

*Made possible in part through the Arlen Specter Center Research Fellowship at Thomas Jefferson University.*

## **ABSTRACT**

## **KEYWORDS**

Senator Arlen Specter, mass incarceration, prison reform, 1994 Crime Bill

The United States incarcerates more of its citizens than any other nation in recorded history, and currently houses roughly 25% of the world’s prison population. Though the US prison population dipped in 2016 to its lowest rate since 1993, the sheer number of people under the supervision of the criminal justice system within the country is staggering. As of 2012, one in one hundred adults in the US are in jail or prison, which makes the US the nation with the world’s largest prison population. The US also leads the world in rate of incarceration. Thus, the nation’s prisons teem with bodies at the federal and state level. Whether one refers to this phenomenon as the carceral state, mass incarceration, or the prison industrial complex, the use of such terms endeavor to codify the notion America incarcerates too many people. The federalization of criminal law, culminating in the Violent Crime Control and Law Enforcement Act of 1994, which led to explosive federalization of the criminal code and laid the infrastructure for the mechanism for incarcerating people at explosive rates. This critical essay will interrogate the dynamics of the infamous Violent Crime Control and Law Enforcement Act of 1994 and its role in expanding the modern prison Industrial Complex, and will center the specific contributions of the late Senator Arlen Specter to interrogate his efforts to achieve more equitable criminal justice advocacy. A principal objective of *Specter of Reform* is to maneuver beyond intense racially-charged rhetorical debates of the modern prison industrial complex and to examine how various efforts aimed at reducing violent crime exacerbated the disproportionate rate of Black male incarceration.



Like many parents, Laura Anderson fears for her young son Xavier, yet her fear is not the typical concern that keeps parents up at night.<sup>1</sup> One afternoon, after arguing with several of his peers on the breezeway in his native Frenchtown, FL, he anxiously dashed into the house sobbing, frantically exclaiming he feared the police would come “get him.”<sup>2</sup> At six years of age, Xavier did not fully comprehend the mechanics of the criminal justice system in the US, but he fully understood that at the time he wondered whether the police would “get him,” his stepfather, John L. Anderson, sat inside a prison cell after an armed robbery conviction, and his biological father sat in jail across town awaiting trial.<sup>3</sup> Consequently, Ms. Anderson feared Xavier believed he will eventually join them, she even said as much, “His biological father is incarcerated. His stepfather is incarcerated, if somebody does not come along as a mentor or something and show him a different way, he is going to think that jail is the place where he will ultimately be too.”<sup>4</sup> In short, Ms. Anderson fears for her son, particularly how he will come to view “the specter of prison.”<sup>5</sup>

Ms. Anderson's predicament, as told to *Washington Post* columnist Michael Fletcher, had become common in her native Frenchtown by the time they spoke in the spring of 1999.<sup>6</sup> It goes without saying that Xavier based the majority of his assumption on personal experience, as such experiences stamped an indelible mark on his psyche. Within the span of eighteen months, this young man witnessed two men he called “Dad” fall under the supervision of the criminal justice system, then observed the precipitous decline in his quality of life that inevitably followed.<sup>7</sup>

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<sup>1</sup> Fletcher, Michael. “The Washington Post,” July 21, 1999. <https://www.washingtonpost.com/wp-srv/national/daily/july99/prisons12.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* (stating the cascading events following Mr. John L. Anderson’s arrest catapulted Mrs. Laura Anderson and her son Xavier into homelessness, forcing them to reside with friends and family until they could secure a modest garden apartment in Chattahoochee, FL a “sleepy hometown located 40 miles west of Tallahassee.” During this period, Xavier transferred school to three different schools and his teachers said he could not concentrate.)

Notwithstanding the tragedy of Xavier's story, the ramifications of his plight extend beyond the scope of the diminutive Florida hamlet several miles outside the city limits of Tallahassee. His plight and its perpetual ramifications also have implications for the contemporary carceral state more than twenty years later. A key factor deserving consideration derives from recent trends in regards to incarceration rates in the United States, how they potentially shaped Xavier's assumption, in addition to how they affect the nation as a whole.

Racial disparities pervade the US criminal justice system at every fundamental level.<sup>8</sup> By way of example, Black men have a greater likelihood for arrest than their White counterparts, face a higher rate of conviction than their White counterparts, receive stiffer sentences than their White counterparts for conviction of the same criminal offenses, even when controlling for prior criminal history.<sup>9</sup> Furthermore, Black men comprise 6.5% of the US population, yet make up 40% of the total male population of incarcerated people.<sup>10</sup> While this rate of incarceration is at a two-decade low, Black men are still "especially likely to be imprisoned."<sup>11</sup> Moreover, Black men have a 1 in 3 chance of incarceration at some point of their lifetime as compared to a 1 in 17 chance for their white counterparts.<sup>12</sup> These racial disparities of incarceration have links to racial discrimination along with the convergence of class considerations whereby the US criminal justice system allows for wealthy defendants to access more "adversary system

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<sup>8</sup> Welbeck, Timothy N. "An Epidemic Akin Unto Lynching Pt. 1." HuffPost. HuffPost, December 7, 2017. [https://www.huffpost.com/entry/epidemic-akin-unto-lynching-1\\_b\\_9189460](https://www.huffpost.com/entry/epidemic-akin-unto-lynching-1_b_9189460).

<sup>9</sup> Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System," May 1, 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>; Accord Jackson, Michael. "The Myth of the Black-on-Black Crime Epidemic." Demos, July 29, 2013. <https://www.demos.org/blog/myth-black-black-crime-epidemic>.

<sup>10</sup> *13<sup>th</sup>*. Directed by Ava DuVernay and Spencer Averick. Performed by Michelle Alexander, Cory Booker, Gina Clayton, Jelani Cobb, Angela Davis, Henry Louis Gates, Van Jones, Brian Stevenson, et cal. October 7, 2016. Accessed December 17, 2018.

<sup>11</sup> Gramlich, John. "Black Imprisonment Rate in the U.S. Has Fallen by a Third since 2006." Pew Research Center. Pew Research Center, August 6, 2020. <https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/>. (stating among other things, "were 2,272 inmates per 100,000 black men in 2018, compared with 1,018 inmates per 100,000 Hispanic men and 392 inmates per 100,000 white men. The rate was even higher among black men in certain age groups: Among those ages 35 to 39, for example, about one-in-twenty black men were in state or federal prison in 2018 (5,008 inmates for every 100,000 black men in this age group).")

<sup>12</sup> *13<sup>th</sup>*. Directed by Ava DuVernay and Spencer Averick. Performed by Michelle Alexander, Cory Booker, Gina Clayton, Jelani Cobb, Angela Davis, Henry Louis Gates, Van Jones, Brian Stevenson, et cal. October 7, 2016. Accessed December 17, 2018.

replete with constitutional protections.”<sup>13</sup>In his work, *No Equal Justice*, David Coles explained these double standards as such:

The rhetoric of the criminal justice system sends the message that our society carefully protects everyone’s constitutional rights, but in practice the rules assure that law enforcement prerogatives will generally prevail over the rights of minorities and the poor. By affording criminal suspects substantial constitutional rights in theory, the Supreme court validates the results of the criminal justice system as fair. That formal fairness obscures the systemic concerns that ought to be raised by the fact that the prison population is overwhelming poor and disproportionately black.<sup>14</sup>

This exceptional likelihood for incarceration can have devastatingly disruptive impacts in various communities, whereby some criminologists theorize incarceration rates may reach a “tipping point” that begins to destabilize the community and subsequently become a factor that increases crime.<sup>15</sup>Hence, the current “specter of prison” Ms. Anderson feared twenty-one years ago continues to come get young men like Xavier, despite some of its stated goals of curbing crime.

This critical essay will interrogate the dynamics of the infamous Violent Crime Control and Law Enforcement Act of 1994 and its role in expanding the modern prison industrial complex. It will center the specific contributions of the late Senator Arlen Specter to interrogate his efforts to achieve more equitable criminal justice advocacy, beginning with reforming the insanity defense and endeavors to reduce

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<sup>13</sup> Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” May 1, 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>. (stating the experiences of poor and minority defendants within the criminal justice system often differ substantially from that model due to a number of actors, each of which contributes to overrepresentation of such individuals in the system.”)

<sup>14</sup> Cole, David, *No Equal Justice: Race and Class in the American Criminal Justice System*, 8-9 (1999); Accord Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” May 1, 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

<sup>15</sup> Fletcher, Michael. “The Washington Post,” July 21, 1999. <https://www.washingtonpost.com/wp-srv/national/daily/july99/prisons12.htm>. (quoting Dina R. Rose, a sociologist at Jay College of Criminal Justice, as saying, “Until recently, nobody has really thought about incarceration in the aggregate, many people assume that incarceration reduces crime. But when incarceration gets to a certain density, that is when you see the effects change.”)

violent crime via targeting career criminals. A principal objective of *Specter of Reform* is to maneuver beyond intense racially-charged rhetorical debates of the modern prison industrial complex and to examine how various efforts aimed at reducing violent crime exacerbated the disproportionate rate of Black male incarceration.

The United States incarcerates more of its citizens than any other nation in recorded history. A nation that touts itself as the bastion of liberty, extolling itself as “the land of the free” houses roughly 25% of the world’s prison population.<sup>16</sup> As of 2012, one in one hundred adults in the US are in jail or prison, which makes the US the nation with the world’s largest prison population.<sup>17</sup> By the end of 2015, the US had over 6.7 million people under some form of supervision of the criminal justice system, which included 2.2 million people incarcerated in federal, state, or local prisons.<sup>18</sup>

The US also leads the world in rate of incarceration<sup>19</sup> imprisoning 655 of every 100,000 people.<sup>20</sup> The nation’s prisons teem with bodies at the federal and state level. For example, in the ten years between 1984 and 1994, the state of California alone constructed eight new maximum-security correctional facilities in order to accommodate increases in its state population of incarcerated people, most of which house nonviolent offenders.<sup>21</sup> Also, in 1970 the total population of incarcerated people in the US was 196,429, in 1980 it was 315,974, and in the year 2000 the total population of

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<sup>16</sup> *13<sup>th</sup>*. Directed by Ava DuVernay and Spencer Averick. Performed by Michelle Alexander, Cory Booker, Gina Clayton, Jelani Cobb, Angela Davis, Henry Louis Gates, Van Jones, Brian Stevenson, et al. October 7, 2016. Accessed December 17, 2018.

<sup>17</sup> Wasif, Rebecca, “Reforming Expansive Crime Control & Sentencing Legislation in an Era of Mass Incarceration: A National and Cross-national Study,” 27 U. Miami Int’l & Comp. L. Rev. 174 (2020) (The United States has more literal people in prison than any other nation in the world, including China, a nation with nearly three times the population of the US).

<sup>18</sup> “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” May 1, 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

<sup>19</sup> Grawert, Ames, Taryn A. Merkl, and Lauren-Brooke Eisen. “The History of Mass Incarceration,” November 4, 2020. <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>.

<sup>20</sup> Jackson, Michael. “The Myth of the Black-on-Black Crime Epidemic.” Demos, July 29, 2013. <http://www.demos.org/blog/7/29/13/myth-black-black-crime-epidemic>.

<sup>21</sup> Schlosser, Eric. “The Prison-Industrial Complex.” The Atlantic. Atlantic Media Company, June 16, 2020. <https://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669/>. See Index A for more information regarding incarceration trends from 1980-2000.

incarcerated people in the United States was 1,331,278.<sup>22</sup> Today, that number is 2,148,000.<sup>23</sup>

While the US prison population dipped in 2016 to its lowest rate since 1993, the sheer number of people under the supervision of the criminal justice system within the country remains staggering.<sup>24</sup> Whether one refers to this phenomenon as the carceral state,<sup>25</sup> mass incarceration,<sup>26</sup> or the prison industrial complex,<sup>27</sup> the use of such terms endeavor to codify the notion America incarcerates too many people. For a nation that comprises merely 5% of the world's population, but houses 25% of the world's prison population either speaks to the broader pathology and criminality of said nation's population, or it suggests a fundamental flaw in how the nation imprisons people. This colossal growth of incarceration in the late-twentieth century US requires contextual analysis on political, social, economic, and cultural fronts.<sup>28</sup>

Moreover, considering the American criminal justice system harbors inherent, pervasive racial disparities, it should surprise few that the United States presently has more Black men in prison than it had enslaved people in 1850.<sup>29</sup> As noted by civil rights attorney and legal scholar Michelle Alexander:

[T]he collapse of Jim Crow has less to do with the basic structure of our society than with the language we use to justify severe inequality. In the era of [purported] colorblindness, it is no longer socially permissible to use race, explicitly, as justification for discrimination, exclusion or social contempt.

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<sup>22</sup> Bureau, US Census. "Statistical Abstract of the United States: 2003." The United States Census Bureau, October 6, 2015. <https://www.census.gov/library/publications/2003/compendia/statab/123ed.html>.

<sup>23</sup> Wagner, Wendy Sawyer, and Peter Wagner. "Mass Incarceration: The Whole Pie 2020." Mass Incarceration: The Whole Pie 2020 | Prison Policy Initiative, March 24, 2020. <https://www.prisonpolicy.org/reports/pie2020.html>. (stating the US prison population consists of 1,291,000 inmates in state prisons, 631,000 inmates in local prisons, in addition to 226,000 inmates in federal prisons and jails).

<sup>24</sup> Correctional Populations in the United States, 2016. "Bureau of Justice Statistics (BJS). Accessed December 17, 2018. <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6226>.

<sup>25</sup> Berger, Dan. "Finding and Defining the Carceral State." *Reviews in American History* 47, no. 2 (2019): 279-285.

<sup>26</sup> Grawert, Ames, Taryn A. Merkl, and Lauren-Brooke Eisen. "The History of Mass Incarceration." Brennan Center for Justice, November 4, 2020. <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>.

<sup>27</sup> Basti, Kara Gotsch and Vinay, and Ashley Nellis. "Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons." The Sentencing Project, August 2, 2018. <https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/>.

<sup>28</sup> Berger, Dan. "Finding and Defining the Carceral State." *Reviews in American History* 47, no. 2 (2019): 279-285.

<sup>29</sup> Alexander, Michelle. *The New Jim Crow* (revised). New Press, 2012.



Rather, we use our criminal-justice system to associate criminality with people of color.<sup>30</sup>

This level of discriminatory animus that finds its way into the prison industrial complex continued in part because of the stigma affixed to those deemed criminal and thereby worthy of the punishment our criminal system doles out. Those released on parole face constant monitoring from agents within the criminal justice system, encounter routine discrimination in the workplace, housing market, government benefits, school applications, and more; and one may easily argue “a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or [B]lack person living ‘free’ in Mississippi at the height of Jim Crow.”<sup>31</sup> As Michelle Alexander argues, “criminals...are the one social group in America we have permission to hate...criminals are the new whipping boys ...entitled to no respect and little moral concern.”<sup>32</sup> The novel coronavirus, known across the globe as COVID-19, has offered further examples of this reality, in that the virus has had “a uniquely devastating impact on prisons and jails across the country.”<sup>33</sup> According to *COVID and Corrections: A Profile of COVID Deaths in Custody in Texas*, a study conducted by Michele Deitch, Alycia Welch, William Bucknall, and Destiny Moreno, at the TDCJ Rufus H. Duncan Unit (N6) in Diboll, TX, 6% of the population has died from complications secondary to contracting COVID-19.<sup>34</sup> Moreover, the study also found 80% of people who died in jails from COVID were not convicted of a crime.<sup>35</sup> These affronts to basic human dignity—discrimination in most facets of society, inhumane treatment during a deadly pandemic, et cetera—occurred in part because many Americans simply believe incarcerated people deserve such treatment.<sup>36</sup>

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<sup>30</sup> Alexander, Michelle. “The New Jim Crow.” *The American Prospect* 22.1 (2011): A19-21. Print.

<sup>31</sup> Alexander, Michelle. *The New Jim Crow* (revised). New Press, 2012.

<sup>32</sup> *Id.*

<sup>33</sup> Michele Deitch, Alycia Welch, William Bucknall, and Destiny Moreno, *COVID and Corrections: A Profile of COVID Deaths in Custody in Texas*, Lyndon B. Johnson School of Public Affairs, November 2020.

<sup>34</sup> *Id.* At 6.

<sup>35</sup> *Id.*

<sup>36</sup> Muenester, Bettina, and Jennifer Trone. Rep. *A Report on the Deliberations of The Interdisciplinary Roundtable on Punitiveness in America*. New York, NY, 2015.

Gross numerical data referencing the rate of imprisonment of Black people indicates that historically Black people have been incarcerated at much higher rates than White people beginning as early as 1923.<sup>37</sup> Despite marginal progress in abrogating discriminatory legislative policy in the nation, the disproportionate representation of Black males in the criminal justice system has increased immensely in recent decades and has reached the point where currently the total population of Black males imprisoned exceeds that of their White counterparts.<sup>38</sup> United States Justice Department statisticians project that more than one in every four (25%) Black males born in the year 2002 will enter into state or federal imprisonment during some point in their lives.<sup>39</sup> US crime statistics document a relatively similar rate of crime between White people and Black people,<sup>40</sup> and thus a disproportionate rate of arrests and convictions<sup>41</sup> of Black people is readily explained by racial bias<sup>42</sup> in the criminal justice system at every fundamental level. For example, Black people are twice as likely to be arrested during encounters with law enforcement; black offenders receive sentences 10% longer than white offenders convicted of committing the same crime; when controlling for severity of crime, prior criminal history, and other relevant factors, White men between the ages of 18-29 are 38% less likely to be imprisoned as their Black counterparts.<sup>43</sup>

Much of the sharp increase in the imprisonment of Black males in recent years has direct links to overall increases in the nation's prison population.<sup>44</sup> For instance, by the end of 2002, there were 3,437 sentenced Black males incarcerated per 100,000 Black

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<sup>37</sup> Collins, Catherine Fisher. *The Imprisonment of African American Women: Causes, Conditions, and Future Implications*. Jefferson, NC: McFarland, 2004. Accord Free, Marvin D. *African Americans and the Criminal Justice System*. New York, NY: Garland Pub., 1996.

<sup>38</sup> Mauer, Marc. *The Crisis of the Young African American Male and the Criminal Justice System: Prepared for the U.S. Commission on Civil Rights, April 15-16, 1999, Washington, D.C.* Washington, D.C.: The Sentencing Project, 1999.

<sup>39</sup> Fletcher, Michael. Why Crime is Falling/High Incarceration May Fuel Crime, July 17, 1999. <https://www.washingtonpost.com/wp-srv/national/daily/july99/prisons12.htm/>.

<sup>40</sup> "Uniform Crime Reporting (UCR) Program." FBI. FBI, September 10, 2018. <https://www.fbi.gov/stats-services/crimestats/>.

<sup>41</sup> Jones, Van. "Are Blacks A Criminal Race? Surprising Statistics." HuffPost. HuffPost, December 7, 2017. [https://www.huffpost.com/entry/are-blacks-a-criminal-rac\\_b\\_8398](https://www.huffpost.com/entry/are-blacks-a-criminal-rac_b_8398).

<sup>42</sup> Jackson, Michael. "The Myth of the Black-on-Black Crime Epidemic." Demos, July 29, 2013. <http://www.demos.org/blog/7/29/13/myth-black-black-crime-epidemic>.

<sup>43</sup> Id.

<sup>44</sup> Bureau, US Census. "Statistical Abstract of the United States: 2003." The United States Census Bureau, October 6, 2015. <https://www.census.gov/library/publications/2003/compendia/statab/123ed.html>.

males in the United States, compared to 1,176 sentenced Hispanic males incarcerated per 100,000 Hispanic males and 450 White males incarcerated per 100,000 white males.<sup>45</sup> This trend, the disproportionate rate of Black male imprisonment, is rampant at the federal and state level.

America's prison population increased exponentially between the four-decade period spanning from the late 1960s through the late 2000s, and most of that period's increase in prison population did not coincide with a congruous rise in crime rates.<sup>46</sup> In short, America began to incarcerate more people despite the fact that these people were not committing more crimes. From generation to generation, American society has regularly perceived and depicted Black people as dangerous, suspicious and criminal, affixing the stigma of criminal to those who descended from those once deemed property. It then makes sense that Black people routinely bear the brunt of flagrant racial disparities within the criminal justice system ultimately leading up to incarceration.<sup>47</sup>

While legal scholar Michelle Alexander, the late Judge A. Leon Higginbotham, the late legal theorist Derrick Bell, criminologist Katheryn J. Russell-Brown, and numerous other legal scholars have rightfully observed that the history of "racialized" laws and "racialized" law enforcement harkens back to the arrival of the first slave ship in Virginia circa 1619,<sup>48</sup> much of the modern epidemic of mass incarceration and the racial implications it perpetuates have a more recent point of origin informed by this protracted history. The arc of this history bends forward in the direction of the 1994 Crime Bill, though said policy initiatives had other stated aims.

The late Senator Arlen Specter joined the ranks of the 95 Senators who voted in favor of H.R. 3555,<sup>49</sup> and thereby passing the 1993-1994 amendment to the Omnibus Crime Control and Safe Streets Act of 1968. While the bill received some sharp criticism at the time,<sup>50</sup> it mostly received broad support at the time (including among many

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<sup>45</sup> Id.

<sup>46</sup> *13<sup>th</sup>*. Directed by Ava DuVernay and Spencer Averick. Performed by Michelle Alexander, Cory Booker, Gina Clayton, Jelani Cobb, Angela Davis, Henry Louis Gates, Van Jones, Brian Stevenson, et al. October 7, 2016. Accessed December 17, 2018.

<sup>47</sup> See Lee, Jin H. "Abolish the Death Penalty." *Trayvon Martin & the Death Penalty: Criminalization of the Black Community*.

<sup>48</sup> Id. At 12.

<sup>49</sup> H.R. 3355 (1994) (enacted).

<sup>50</sup> Denniston, Lyle. "New Law Puts Heat on Crack Dealers Clinton Signs Measure to Fight Cocaine Use; Blacks Decry Disparity." *baltimoresun.com*, October 23, 2018. <https://www.baltimoresun.com/news/bs->

prominent Black leaders<sup>51</sup>) in part because of measures such as “three strikes,” mandatory life sentences for repeat offenders, expansion of eligibility for death penalty offenses, \$9.7B in funds to hire 100,000 new police officers, increased funding for state prisons, et cetera. It has since received widespread criticism as the purported catalyst for the policy infrastructure that further contributed to the explosion of the nation’s prison population.<sup>52</sup> More particularly, the Act’s greatest contributions to the expansive growth of the US prison population was its allocation of more money to prisons and harsher sentencing guidelines.<sup>53</sup>

Undoubtedly, Senator Specter’s service as a Philadelphia prosecutor, coupled with this impressive legal acumen and his unrelenting work ethic compelled him to sign off on a crime bill slated to dramatically curtail violent crime nationwide.<sup>54</sup> Previously, said legal acumen and tireless work ethic allowed Senator Specter to make considerable contributions to criminal justice reform both statewide and nationally, many of which are still celebrated today.<sup>55</sup> These types of reforms and innovations include prosecuting city officials engaged in corruption, implementing the accelerated rehabilitation disposition program, active prosecution of law enforcement officers accused of brutality and racial discrimination. More specifically, Senator Specter’s criminal justice reform efforts initially centered on reworking the insanity plea as an affirmative defense under federal law, and the passage of the Armed Career Criminal Act.<sup>56</sup>

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[xpm-1995-10-31-1995304052-story.html](http://www.nbcnews.com/news/nbcblk/analysis-black-leaders-supported-clinton-s-crime-bill-n552961) (stating, “Civil rights organizations had led a telephone campaign to pressure the president to veto the bill. At a rally last week in Chicago, the Rev Jesse L Jackson said that Mr. Clinton had the chance, ‘with one stroke of your veto pen, to correct the most grievous racial injustice built into our legal system.’”)

<sup>51</sup> Analysis: Black Leaders Supported Clinton’s Crime Bill.” NBCNews.com Accessed December 17, 2018. <http://www.nbcnews.com/news/nbcblk/analysis-black-leaders-supported-clinton-s-crime-bill-n552961>.

<sup>52</sup> Lussenhop, Jessica. “Clinton Crime Bill: Why Is It so Controversial?” BBC News. April 18, 2016. Accessed December 17, 2018. <http://www.bbc.com/news/world-us-canada-3602717>.

<sup>53</sup> Wasif, Rebecca, “Reforming Expansive Crime Control & Sentencing Legislation in an Era of Mass Incarceration: a National and Cross-national Study,” 27 U. Miami Int’l & Comp. L. Rev. 174 (2020)

<sup>54</sup> Staff, TCR, Michael Gelb, Susan Radcliffe, and Andrea Cipriano. “An Appreciation of Arlen Specter: Pragmatist on Criminal Justice.” The Crime Report, October 19, 2012.

<http://thecrimereport.org/2012/10/19/2012-10-arlen-specter-key-capitol-figure-on-criminal-justice/>. (quoting Judge Paul Michel, a former Arlen Specter senatorial aide, in describing Senator Specter as, “legal scholar and a workhorse...He often worked on issues that didn’t bring him press coverage or political contributions, and he did it more than anybody else.”)

<sup>55</sup> *Id.* (stating “[T]he big-city-prosecutor-turned U.S. Senator, may have been the most influential single member of Congress on criminal-justice issues over the last three decades.”)

<sup>56</sup> Laine, Evan Edward. *Arlen Specter: Scandals, Conspiracies, and Crisis in Focus*. Pittsburgh: University of Pittsburgh Press, 2021.

Motivated by the acquittal of John Hinckley following his failed assassination attempt of President Ronald Reagan, Senator Specter led the charge to reform the legal standards governing the plea of insanity in criminal proceedings.<sup>57</sup> At the conclusion of the Hinckley trial, Judge Barrington Parker offered jury instructions regarding the use of an insanity defense by stating:

The burden is on the Government to prove beyond a reasonable doubt either that the defendant was not suffering from a mental disease or defect on March 30, 1981, or else that he nevertheless had substantial capacity on that date both to conform his conduct to the requirements of the law and to appreciate the wrongfulness of his conduct. If the Government has not established this to your satisfaction, beyond a reasonable doubt, then you shall bring a verdict of not guilty by reason of insanity.<sup>58</sup>

The Hinckley acquittal sparked national outrage, prompted quandaries as to the propriety of the insanity defense, along with critiques about the ease of abusing the affirmative defense in criminal proceedings.<sup>59</sup> In 1982, Senator Specter introduced Senate bill 2658, which proposed shifting the burden of proof from the prosecution to the defense, limiting the insanity defense where a defendant had a preexisting mental impairment, limiting the use of expert witnesses to testify as to whether the defendant was insane under the definition of the law.<sup>60</sup> This measure did not pass; however, Congress ultimately passed the Insanity Defense Reform Act (IDRA), which adopted all the changes proposed by Senator Specter two years prior.<sup>61</sup> These reforms further cemented Senator Specter's reputation as a leading voice in reforms for the criminal code, and his push to pass the §540 Armed Career Criminal Act ("ACCA").<sup>62</sup>

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<sup>57</sup> Id.

<sup>58</sup> Id.; See also "The John Hinckley Trial: Transcript Excerpts," <http://www.famous-trials.com/johnhinckley/543-excerptshinckley>

<sup>59</sup> Callahan, Lisa, Connie Mayer, and Henry J. Steadman. "Insanity Defense Reform in the United States — Post-Hinckley." *Mental and Physical Disability Law Reporter* 11, no. 1 (1987): 54-59. Accessed February 22, 2021. <http://www.jstor.org/stable/20784052>.

<sup>60</sup> Laine, Evan Edward. *Arlen Specter: Scandals, Conspiracies, and Crisis in Focus*. Pittsburgh: University of Pittsburgh Press, 2021.

<sup>61</sup> Id.; Accord 18 U.S. Code § 17.; See also Fed. R. Evid. 704(B).

<sup>62</sup> Staff, TCR, Michael Gelb, Susan Radcliffe, and Andrea Cipriano. "An Appreciation of Arlen Specter: Pragmatist on Criminal Justice." *The Crime Report*, October 19, 2012. <http://thecrimereport.org/2012/10/19/2012-10-arlen-specter-key-capitol-figure-on-criminal-justice/>. See also (18 U.S.C. §924(e) (U.S.S.G. 4B1.4) (mandating requires a 15-year mandatory minimum if the defendant has three prior convictions for "violent felonies" committed on separate occasions)

Senator Specter theorized that “a relatively small number of career criminals commit a very large number of the crimes in this country” and a significant reduction of crime would result from targeting these career criminals.<sup>63</sup> This theory emerged from a foundation of Senator Specter’s anecdotal evidence from the Senator’s time as a prosecutor in one of the nation’s largest cities, a city which faced a surge in violent crime during Senator’s tenure as a prosecutor.<sup>64</sup> Acting on this theory and increasing concerns of prison overpopulation releasing people convicted of violent crime, Senator Specter sponsored the ACCA, which mandated 15-year mandatory minimum for defendants with three prior convictions for “violent felonies” (i.e. armed robbery) committed on separate occasions.<sup>65</sup> Senator Specter even visited President Reagan to foster support, and eventually secured the president’s support after signaling the bill would create mandatory sentencing for three time offenders.<sup>66</sup>

These efforts to curtail the spread of violent crime reflected national sentiments prevalent at the time. By way of example, the Figgie Report on Fear of Crime—America Afraid, Part One—General Public, found, among other things, “The fear of crime is slowly paralyzing American society,” in addition to finding 40% of surveyed adults feared becoming a victim of a violent crime.<sup>67</sup> This fear concentrated among those with more formal education.<sup>68</sup> Senator Specter addressed these fears in his continued advocacy for ending violent crime, making remarks such as “the approach to these

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<sup>63</sup> See Arlen Specter and Charles Robbins, *Passion for Truth: From Finding JFK's Single Bullet to Questioning Anita Hill to Impeaching Clinton* (New York: William Morrow & Company, 2000), 287.

<sup>64</sup> *Id.*

<sup>65</sup> Laine, Evan Edward. *Arlen Specter: Scandals, Conspiracies, and Crisis in Focus*. Pittsburgh: University of Pittsburgh Press, 2021. (stating the ACCA originally included harsh sentencing mandating for “career criminal,” but Congress reduced the sentence declaring that offenders “shall . . . be sentenced to a term of imprisonment of not less than fifteen (15) years nor more than life . . .”).

<sup>66</sup> *Id.* (stating President Reagan associated the bill with his film career, and reportedly said, “Oh yeah. That’s like Cagney going up the river to Sing-Sing, three-time loser,” to which Senator Specter replied, “[I]t’s sort of like that, Mr. President, not exactly.”) Accord Senator Arlen Specter Oral History Interview, Part 4,” C-SPAN, February 21, 2011, <http://www.c-span.org/video/?306994-4/senator-arlen-specter-oral-history-interview-part-4>.

<sup>67</sup> Rep. *Figgie Report on Fear of Crime - America Afraid, Part One - The General Public*. New York, NY: Research and Forecasts, Inc, 1980. (stating, “The study reveals that 4 out of 10 Americans are highly fearful that they will become victims of violent crime (murder, rape, robbery, assault); 4 of 10 also feel unsafe in their everyday environments due to fear of crime.”)

<sup>68</sup> Laine, Evan Edward. *Arlen Specter: Scandals, Conspiracies, and Crisis in Focus*. Pittsburgh: University of Pittsburgh Press, 2021.

hardened violent offenders is throw away the key."<sup>69</sup> The ACCA endeavored to quench these fears. Upon its reintroduction in 1984, the legislation absolved its federalism concerns by attaching mandatory sentencing requirements to convictions of persons with three prior convictions for robbery or burglary subsequently violated a federal firearm statute.<sup>70</sup>

The federalization of criminal law, pursuant to the Commerce Clause, has led to expansive growth in federal law enforcement, which now includes more than 3,000 crimes within the federal criminal code.<sup>71</sup> The Commerce Clause currently “forms the broadest base of Congressional power,”<sup>72</sup> and over the past few decades, Congress has wielded that power that power to transform federal law enforcement by “enacting a determinate sentencing scheme, mandatory sentencing statues, and criminal statutes that essentially duplicate state codes.”<sup>73</sup>The rapid expansion this power created has led to a near 70% increase in federal criminal case filings in the decade between 1980 and 1990, and currently criminal cases consume half of the judicial economy at the federal level.<sup>74</sup> These expansions not only grew the number of federal offenses, they also blurred traditional lines dividing prosecutorial authority between state and federal governments.<sup>75</sup> By way of example, mandatory minimums, which limit prosecutorial discretion, represent one of the most impactful forms of expanded crime legislation which has emerged from this increased federalization of the criminal code.<sup>76</sup> The national trend toward federalization met some resistance as federal courts demonstrated a willingness to invalidate federal criminal legislation evinced in part by the Fifth Circuit holding part of the Gun-Free School Zones Act unconstitutional in

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<sup>69</sup> Laine, Evan Edward. *Arlen Specter: Scandals, Conspiracies, and Crisis in Focus*. Pittsburgh: University of Pittsburgh Press, 2021; Accord <sup>69</sup>“Protecting America: The Effectiveness of the Federal Armed Career Criminal Statute,” *Bureau of Alcohol, Tobacco and Firearms, United States Treasury*, March, 1992, <https://www.ncjrs.gov/pdffiles1/Digitization/137208NCJRS.pdf>

<sup>70</sup> Id. (stating the revised legislation supplanted a state firearm violation with a federal firearms charge)  
<sup>71</sup> Chippendale, Stephen, "More Harm Than Good: Assessing Federalization of Criminal Law" (1994). *Minnesota Law Review*. 2363.

<sup>72</sup> See Nevada V. Skinner, 884 F.2d 445, 450 (9<sup>th</sup> Circ. 1989)

<sup>73</sup> Chippendale, Stephen, "More Harm Than Good: Assessing Federalization of Criminal Law" (1994). *Minnesota Law Review*. at 461-462.

<sup>74</sup> Id. at 456 (also stating criminal cases in some federal districts amount to 80% of the total caseload).

<sup>75</sup> Id.

<sup>76</sup> Id.



United States v. Lopez.<sup>77</sup> Nevertheless, the 1994 Crime Bill set the stage for explosive federalization of the criminal code.

Hindsight has provided key insights into how the 1994 Crime Bill achieved some of its stated aims, while having significant unintended consequences. While some key figures from the time have voiced regret over said consequences (e.g. President William Jefferson Clinton,<sup>78</sup> Secretary Hillary Clinton,<sup>79</sup> President Joseph Biden,<sup>80</sup> Representative Charles Rangel,<sup>81</sup> et cetera), Senator Specter was not afforded similar opportunities as the tide of public sentiment has shifted. Notwithstanding, Senator Specter's legislative record and public advocacy demonstrate a willingness to pursue more equitable means of handling incarceration.<sup>82</sup>

For example, Senator Specter's support of H.R. 1593, The Second Chance Act of 2007 (alternatively called The Recidivism Reduction and Second Chance Act) is a codification of Senator Specter's efforts to balance the need to secure public safety with the goal of successfully allowing for formerly incarcerated people to reintegrate into communities upon their release.<sup>83</sup> Senator Specter co-sponsored this legislation as the then Ranking Member of the Senate Judiciary Committee, and it provided funding via Pell grants to local governments and organizations to provide "literacy classes, job training, education programs and substance abuse rehabilitation programs for inmates," and endeavored to reduce recidivism by 66%.<sup>84</sup> Additionally, Senator Specter

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<sup>77</sup> Id. at 466.

<sup>78</sup> Frank, Thomas. "Bill Clinton's Crime Bill Destroyed Lives, and There's No Point Denying It | Thomas Frank." *The Guardian*. Guardian News and Media, April 15, 2016. <https://www.theguardian.com/commentisfree/2016/apr/15/bill-clinton-crime-bill-hillary-black-lives-thomas-frank>.

<sup>79</sup> "Hillary Clinton Apologizes for Husband's Crime Bill - CNN Video." CNN. Cable News Network, April 15, 2016. <https://www.cnn.com/videos/politics/2016/04/14/brooklyn-democratic-debate-hillary-clinton-sorry-1994-crime-bill-6.cnn>.

<sup>80</sup> Haltiwanger, John. "Biden Played Key Role in Pushing US to Take Hardline Stances on Crime in 1990s, and Now He's Apologizing as 2020 Looms." *Business Insider*. Business Insider, January 22, 2019. <https://www.businessinsider.com/biden-apologizes-for-pushing-hardline-laws-on-crime-immigration-in-1990s-2019-1>.

<sup>81</sup> Karni, Annie, Nick Gass, and Brianna Gurciullo. "Bill Clinton Can't Stop Talking about Himself." *POLITICO*, April 12, 2016. <https://www.politico.com/story/2016/04/bill-clinton-hillary-campaign-221862>.

<sup>82</sup> Moreover, the breadth of the late Senator's public career does not the type demonstrate discriminatory animus underlying the implementation of much the legislation he backed during his tenure in the Senate.

<sup>83</sup> See H.R. 1593

<sup>84</sup> H.R. 1593," March 12, 2008. Office of Senator Patrick Leahy (D-Vt.). <https://www.leahy.senate.gov/press/hr-1593-the-second-chance-act-of-2007>.



simultaneously sat on the Criminal Law and Juvenile Justice subcommittees of the Senate Judiciary Committee, and in that capacity advocated for legislation designed to allow for young offenders to receive educational training and resources targeted toward their ultimate rehabilitation.<sup>85</sup>

These examples showcase how the arc of Senator Specter's public advocacy and legislative record elucidated his desire to bend the mechanisms of the criminal justice system to lean towards fundamental fairness, equity, and the cause of justice. The impact of those policies, if now applied could have lasting effects in reforming our penal system and overhauling the method of sanctioning citizens.

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<sup>85</sup> "Criminal Justice." Arlen Specter Senatorial Papers - Criminal Justice. Accessed November 17, 2020. <http://arlenspecter.library.pitt.edu/committee-on-the-judiciary/criminal-justice/>.

## Index

**Table A.1 (Incarceration trends)**

Number of Incarcerated People Sentenced under State and Federal Jurisdiction per  
100,000 citizens

Year	Number of Incarcerated Persons
2000	478
1999	476
1998	461
1997	444
1996	427
1995	411
1994	389
1993	359
1992	332
1991	313
1990	297
1989	276
1988	247
1987	231
1986	217
1985	202
1984	188
1983	179
1982	171
1981	154
1980	139

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*Source:* United States Bureau of Justice Statistics: Correctional Populations in the United States 1997, and Incarcerated People 2002