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The Presidential Politics of Prisoner Reentry Reform



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America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.

—President George W. Bush, 2004 State of the Union Address¹

I. Introduction

As the race to the White House heats up, the Democratic and Republican presidential candidates are predictably trading barbs about the efficacy of the other party's proposed policies. Behind the scenes, however, there is an unlikely issue that has support across party lines: prisoner reentry reform. This is perhaps unsurprising; with the number of inmates in America's prisons and jails soaring to 13.5 million people annually and rising,² and the reality that 95 percent of those prisoners will return to the community,³ "87 percent of Americans favor rehabilitative services for prisoners as opposed to punishment only."⁴

Yet, even with this support for prisoner reentry reform, the presidential candidates rarely, if ever, link the conditions to which prisoners are subjected in prisons and upon release to the broader themes of their party platforms. Part II of this article identifies three reasons the candidates should do so. First, treating prisoners humanely during incarceration and ensuring a more successful transition upon reentry is directly tied to the core moral principles of each party's base. Second, failing to support prisoners equates to a failure to support some of the veterans who have sacrificed their mental health and physical well-being in service to the United States. And third, the link between prisoner reentry reform and reduced criminal justice costs makes such reforms the fiscally responsible thing to do.

II. Why the Candidates Should Support Prisoner Reentry Reform

A. Morality and Prisoner Reentry

In each presidential election cycle, the parties seek to identify with voters on issues of morality. The Republicans have developed a base of "values voters" by campaigning on the themes of faith and family. The key moral themes championed by the Democrats relate to poverty and equality. As detailed below, the underpinnings of either party's

position should lead to support of prisoner reentry reform.⁵

1. The Republican Platform: Faith and Family In presidential debates, campaign stops, and their Web sites, the Republican candidates can often be found talking about their faith in God and the importance of the American family. The theme of the candidates' pronouncements of faith can be summarized in the statement of former Massachusetts Governor Mitt Romney, who proclaimed at a presidential debate in California, "I believe that every human life at every phase is unique, is beautiful, is a child of a loving God, period."⁶ For Governor Romney, this declaration served as an explanation of his position on abortion, which, along with gay marriage, is the issue for which it is most likely Republican candidates will invoke their religious beliefs. However, by failing to link faith to other issues, the Republicans risk critique that their proclamations are hollow or self-serving. Take, for example, an October 2007 *New York Times* editorial regarding the lack of support at that time for Republican candidate Mike Huckabee, the former governor of Arkansas:

Huckabee's problems say more about the leaders of the religious right than about him. They're united mainly by their hatred of abortion and gay marriage, and a desire to win. Considerations like who has the most Christian attitudes toward illegal immigrants don't register. And the fact that as governor Huckabee spent a lot of time trying to spend money on the needy doesn't go over all that well with the ones who believe that God's top priority is eliminating the estate tax.⁷

Regardless of whether it is fair, by speaking ardently in terms of faith for some policies but remaining silent for others, Republicans are vulnerable to such criticism. Those critiques are not just coming from the Left; with increasing frequency they are heard from the evangelical Christians upon which the Republican Party built its presidential victories in 2000 and 2004. According to the Pew Research Center, "[f]or the first time in many years, white evangelical identification with the Republican Party has dipped below 50 percent."⁸ A new generation of evangelicals are looking beyond abortion and gay marriage and

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asking for political leaders who will support “public policies that address problems of peace, health and poverty.”⁹

Prisoner reentry reform provides an opportunity for Republicans to broaden their reliance on faith in a way that will undermine the type of critique lodged above and address the concerns of evangelicals who identify with a more holistic view of faith. Take, for example, the notion that every person is a child of God. By speaking of this principle in terms of abortion only, Republicans risk a criticism lodged by Governor Huckabee, that for some Republicans being pro-life “begin[s] at conception and end[s] at birth.”¹⁰ To be consistent, Republicans must base policies on the idea that all people—including prisoners—are children of God. The need for consistency also holds true for Republican candidates who speak of the need to rebuild and strengthen the American family.¹¹ This discussion often arises in the context of gay marriage. Again, by talking of supporting families in the context of prisoner reentry reform, Republicans could decrease opponents’ ability to argue that their talk of strengthening families is mere anti-gay rhetoric. In the United States, at least 1.5 million children have a parent who is incarcerated.¹² “For these children, the experience of shame, stigma, and loss of financial and psychological support becomes a profound aspect of their life experience.”¹³ These children experience acute instability: “Nearly 60% of parents in State prison reported using drugs in the month before their offense, and 25% reported a history of alcohol dependence. About 14% of parents reported a mental illness, and 70% did not have a high school diploma.”¹⁴ If these parents are unable to obtain meaningful programming and treatment—either before entering prison or once incarcerated—the cycle of institutionalization in some families may continue for generations.¹⁵ It is estimated that “[c]hildren whose parents are incarcerated are five to six times more likely to be incarcerated than their peers.”¹⁶

A candidate who embraces prisoner reentry reform as an extension of faith may not be going too far out on a limb. The premise that even people who commit crimes are worthy of God’s love has roots in the Bible. For example, before being chosen by God to lead the Israelites, the Bible reports that Moses murdered an Egyptian and buried him in the desert.¹⁷ Likewise, Saint Paul is said to have been an accomplice to murder before his salvation.¹⁸ The Book of Hebrews even directs: “Be mindful of prisoners as if sharing their imprisonment.”¹⁹ Policies supporting rehabilitation and redemption, it seems, may be divinely inspired.

A candidate who draws a connection between faith and prisoner reentry reform will not stand alone. The two senior Republicans who have been the most vocal in their public support of such reforms are President George W. Bush and former presidential hopeful Senator Sam Brownback (R-KS). For President Bush, prisoner reentry reform has been an opportunity to expand faith-based initiatives. He made his position known in his 2004 State of the Union Address in which he stated:

In the past, we’ve worked together to bring mentors to children of prisoners, and provide treatment for the addicted, and help for the homeless. Tonight I ask you to consider another group of Americans in need of help. This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can’t find work, or a home, or help, they are much more likely to commit crime and return to prison. So tonight, I propose a four-year, \$300 million prisoner re-entry initiative to expand job-training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring, including from faith-based groups. America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.”²⁰

President Bush has stood firmly by this position. For example, he has proposed creating the Access to Recovery program, which would provide \$600 million to faith-based and community providers over a period of three years to aid people with chemical dependencies, and an additional \$150 million to provide grants to faith-based and community organizations that will mentor children with one or both parents in prison.²¹ In 2004 President Bush signed into law the Mentally Ill Offender Treatment and Crime Reduction Act, which provides grants to states and counties to link criminal justice agencies with local mental health services.²² In 2006 he approved an additional \$5 million in funding for the bill.²³ These actions have drawn kudos for President Bush from unlikely sources, including Democratic legislators and “liberal” media outlets such as the *New York Times*.²⁴ By supporting these reforms, President Bush has provided political cover to other conservatives who wish to do the same.

For Senator Brownback, prisoner reentry reform appears to have become a priority of his personal faith. Before leaving the 2008 presidential race, Senator Brownback described in a debate how he became interested in prisoner reentry reform. Senator Brownback voluntarily spent nights in prisons in Kansas so that he could speak directly to inmates about their experiences. He explained: “[Y]ou get a feel for it about how people have become loners and went to crime, in some cases, and then [are] caught and want to turn their lives around. . . . [R]ight now in the United States of America, if you go to prison, the chances of you going back are two-thirds, 66 percent. That is a travesty that that number is that high.”²⁵ Senator Brownback does not reserve his concern for those who have committed minor crimes. He has acknowledged that “many have committed horrific crimes. They owe a debt to society. But they need connections. They need people to invest in their lives.”²⁶ To put his beliefs into action, Senator Brownback has joined legislators from both parties in cosponsoring the Recidivism Reduction and Second Chance Act (“Second Chance Act”), along with prime sponsor and presidential candidate Senator Joseph Biden (D-DE); presidential candidates Senator Hillary Clinton (D-NY), Senator Christopher J. Dodd (D-CT), Representative

Dennis Kucinich (D-OH), and Senator Barack Obama (D-IL); Republican leaders Senator Arlen Specter (R-PA), Senator Orrin Hatch (R-UT); and twenty-nine other Republican members of Congress.²⁷ The bill would provide over \$190 million in funding primarily to state and local governments for reentry initiatives, research, drug treatment, education and employment training, and programming related to families and children of incarcerated parents, as well as for certain federal reentry initiatives.²⁸ For Senator Brownback, supporting the Second Chance Act is a matter not only of being pro-life but also of being “whole-life.”²⁹

The connection between faith and prison reform is touted not only by elected officials but also by influential members of the conservative Christian movement. Take, for example, Mark Earley, former state legislator and attorney general of Virginia, who focused his political career on socially conservative issues, including policies that were aimed at cracking down on crime through tougher sentencing laws.³⁰ After losing a bid for Virginia’s governorship, Mr. Earley took a position at Prison Fellowship, an organization focused in part on prisoners which describes itself as “a non-profit volunteer-reliant ministry focused on the mission of transformation through the grace and power of Jesus Christ.”³¹ Given his history as a proponent of tough-on-crime measures, the decision to focus his life on supporting prisoners was no easy fit. He explained his decision to the members of the Congressional Black Caucus:

“I’m 52 years old,” he said at the beginning of his remarks, “and for the first 48 years of my life, I didn’t think much about prisoners. And when I did, it was something like, I’m glad I’m not one, and I’m glad they are where they are.” . . . He went on: “I was elected to the Virginia Legislature and served 10 years, from ’87 to ’97, in the Senate of Virginia, and quite frankly, spent most of my time in the Legislature working on how to put more people in jail and keeping them there longer.” . . . Earley told the crowd that these policies helped increase the American prison population “tenfold in the last 30 years.” Unlike most politicians who say such things, Earley wasn’t bragging. He was apologizing.³²

At an American Bar Association conference on prisoner reentry issues held in Chicago in the spring of 2007, Mr. Earley explained that he now believes that “prisoners are stamped with the imprint of God”³³ and is committed to follow his faith by pushing for prisoner reentry reforms. Organizations like his are not shy about stepping into the political arena. For example, Prison Fellowship has given accolades to Governor Huckabee for developing a system of drug courts in Arkansas to divert offenders to substance abuse programs rather than prison, as well as establishing community-based corrections programs for nonviolent offenders.³⁴ For a candidate eager to prove his or her Christian bona fides, supporting prisoner reentry reform can be a step in the right direction.

Embracing such reforms may even be a necessity if the Republicans hope to retain the White House in 2008. To do so they must shore up the support of their evangelical base and increase their foothold among voters who traditionally have not supported the Republican Party.

Regarding their support by evangelicals, Republicans are in danger of losing out to their Democratic counterparts, who some see as more willing to discuss policies related to civil rights and poverty reduction. For example, Rick Warren, pastor of a politically active evangelical church in Lake Forest, California, recently invited Senator Barack Obama to speak at his church.³⁵ The teachings of Bill Hybels, the founder of an association of over twelve thousand churches with tens of thousands of members, reflect what many evangelicals now expect of themselves and their leaders:

We have just pounded the drum again and again that, for churches to reach their full redemptive potential, they have to do more than hold services—they have to try to transform their communities. . . . If there is racial injustice in your community, you have to speak to that. If there is educational injustice, you have to do something there. If the poor are being neglected by the government or being oppressed in some way, then you have to stand up for the poor.³⁶

To buttress their support by evangelicals, Republicans may be well served to listen to these pastors and their congregations and develop policy proposals related to social injustice.

Beyond reaffirming their relationship with those who have supported the Republican Party in large numbers in the past, broadening their faith to include issues such as prisoner reentry reform may also serve to increase voter support for the party in minority communities, which are more likely to include families affected by increased incarceration rates. For example, African Americans make up 12.32 percent of the general population but 43.91 percent of the incarcerated population.³⁷ Incarceration and criminal justice issues have been identified by many African Americans as an issue of significant importance to their community, most predominantly in the publication of “The Covenant with Black America,” a collection of essays by African American leaders and scholars including Cornell West, a professor of religion at Princeton University; Marian Wright Edelman, president of the Children’s Defense Fund; and Wade Henderson, executive director of the Leadership Conference on Civil Rights.³⁸ The Covenant sets out ten priorities, including criminal justice reforms such as reducing incarceration rates.³⁹

The purpose of this work was to create “a national plan of action” that is directly related to engaging politicians in the 2006 and 2008 elections.⁴⁰ That included sponsoring both a Democratic and a Republican debate at historically black colleges.⁴¹ Several leading Republican candidates—including Mayor Rudolph Giuliani, Senator John McCain, former Massachusetts Governor Mitt Romney, and former

Senator Fred Thompson—failed to attend the Republican debate at Morgan State University.⁴² That failure, seen by some as proof that Republicans do not care about minority communities, was criticized by several candidates who did attend the debate. For example, Governor Huckabee stated: “Frankly, I’m embarrassed. I’m embarrassed for our party and I’m embarrassed for those who did not come, because there’s been a long divide in this country, and it doesn’t get better when we don’t show up.”⁴³

The two debates proved to be one of the few forums in which candidates from either party spoke about the impact of incarceration on minority communities, and they provided an example of how Republicans can improve strained relations with minority communities by tackling such issues head-on.⁴⁴ Frank conversations about the impact of incarceration rates on minority families—and how that links to the Republican call to strengthen families—are a critical component of any such dialogue. One out of every fourteen African American children has a parent who is incarcerated.⁴⁵ Likewise, “[a]bout 1 in every 5 African American children who come to the attention of child welfare agencies have a recently arrested parent compared to only 1 in 10 white children and only 1 in 20 Hispanic children.”⁴⁶ This level of incarceration results in significant secondary costs, such as an increased burden on the foster care system.⁴⁷

The good news for minority communities—and for Republican candidates who support prisoner reentry reform—is that this is an unnecessary reality. Studies indicate that programming opportunities that encourage positive familial relationships and reunification opportunities for prisoners and their families are linked to better behavior during incarceration and greater likelihood of success upon release.⁴⁸

Supporting policies like prisoner reentry reform may attract both traditional and new support for the Republican candidates because Republicans are at their best when they speak in terms of unity, rather than fear and division. The strongest critiques of the party’s use of faith has been that following September 11, 2001, the party has used religion to create a “political fundamentalism” that divides the American people and undermines democracy by creating a sense of intolerance for divergent views.⁴⁹ Turning toward a more unifying message may in fact increase support for the party. In a 2002 poll conducted by *U.S. News & World Report* and *Religion & Ethics Newsweekly*, of Christians who were asked “if their religion is the only one that is true, 77 percent said no, all religions have elements of truth.”⁵⁰ This sentiment is also reflected in a statement by the National Council of Churches USA:

[N]either the varied circumstances and historical contingencies that have shaped us, nor the differences of color, ethnicity, cultural background and religion among us, mitigate against the fact of our common humanity. This philosophical and scientific truth is reflected in our spiritual understandings, though our

specific words and concepts describing it may differ. Indeed, whether we speak of creation of the human being in the image of God, bearing the spark of the divine, possessing inherent worth as part of the universe, being at one with cosmic laws, or being sacred with all living things, we all value human life.⁵¹

Even with such direction, some may hesitate to extend their concept of the intrinsic value of all humans to prisoners. They need look no further than the New Testament for further inspiration:

Then the king will say to these on his right, “Come, you who are the blessed by my Father. Inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, *in prison and you visited me.*” Then the righteous will answer him and say, “Lord, when did we see you hungry and feed you, or thirsty and gave you drink? When did we see you a stranger and welcome you, or naked and clothe you? *When did we see you ill or in prison, and visit you? And the king will say to them in reply, ‘Amen, I say to you, whatever you did for one of these least brothers of mine, you did for me.’*”⁵²

Promoting policies that support prisoners and their families—who are arguably among the most vulnerable members of American society—provides the Republican presidential candidates a way to demonstrate that their notion of faith is inclusive of Americans from all walks of life, strengthen their base, and increase support for the Republican Party, all while remaining true to their party’s ideals.

2. The Democratic Platform: Poverty and Equality Like their Republican counterparts, the Democratic presidential candidates are focusing much of their domestic agenda on issues that have long been at the core of the party’s platform: reducing poverty and expanding equality.⁵³ A few are even talking specifically about the need for prisoner reentry reform. Former Senator John Edwards (D-NC), for example, spoke during a presidential debate of the need to “create an infrastructure for success for those who are charged and convicted for the first time, so that we help them with drug counseling, job counseling, job training, education—help them get back—back into the community with some chance of changing their lives.”⁵⁴ Senator Barack Obama has listed among his priorities for fighting poverty the reduction of recidivism by supporting ex-offenders.⁵⁵ In a position paper on civil rights and criminal justice, his campaign states, “Barack Obama recognizes that it is simply unacceptable to keep ignoring this [incarceration and postincarceration] crisis in American families and communities,” and describes plans to improve employment services and support for returning prisoners.⁵⁶ And Senator Joseph Biden is one of

the prime sponsors of the Second Chance Act. In a 2004 statement on the floor of the Senate in support of an earlier version of the bill, he explained:

All too often we think about today, but not tomorrow. We look to short-term solutions for long-term problems. We need to have a change in thinking and approach. It's time we face the dire situation of prisoners reentering our communities with insufficient monitoring, little [or] no job skills, inadequate drug treatment, insufficient housing, lack of positive influences, a [paucity] of basic physical and mental health services, and deficient basic life skills. The bill we introduce today is about providing a second chance for these ex-offenders, and the children and families that depend on them. It's about strengthening communities and ensuring safe neighborhoods.⁵⁷

Yet, for the majority of the Democratic candidates, it remains unclear whether the policies they have designed to promote equality will extend equally to poor people who have been or are incarcerated.⁵⁸ Take, for example, one of the key issues the Democrats utilize to tout their commitment to the poor: universal health care. The Democratic candidates have embraced health care reform as this campaign season's highest priority for reducing poverty and expanding equality.⁵⁹ Almost all of the Democratic presidential candidates have introduced plans they claim are universal and will cover all Americans.⁶⁰ However, none of the candidates has talked specifically about whether their proposed coverage of "all Americans" includes those who are incarcerated.

Currently, people who become incarcerated are cut off from public health benefits such as Medicare and Medicaid.⁶¹ "No U.S. correctional institution receives federal Medicaid or Medicare reimbursement for health services provided to prisoners, even though most prisoners would qualify for these benefits and many were enrolled in these programs before incarceration."⁶² As detailed below, the exclusion of prisoners from public benefits is not sound policy and should be rejected for the Democrats to meet their stated goals in the arena of health care reform.

First, the failure to provide appropriate medical treatment to prisoners may have tremendous negative consequences for public health, particularly in the poorest communities:

The National Commission on Correctional Health Care Report . . . to Congress estimated that rates of infectious diseases were dramatically higher among inmates and releasees compared to prevalence in the general population: five times higher for Acquired Immune Deficiency Syndrome (AIDS), nine times higher for hepatitis C, and four times higher for tuberculosis. Among the three chronic diseases studied, prevalence rates for asthma (8.5 percent) were higher among inmates, and, while lower for diabetes (4.8 percent) and hypertension (18.3 percent) the prevalence rates of these illnesses were still high.⁶³

In fact, by year-end 2005, over twenty-two thousand state and federal prisoners, and an untold number in local jails, were infected with HIV/AIDS.⁶⁴ Similar numbers of prisoners have been diagnosed as positive for hepatitis C.⁶⁵ There has been increasing alarm in the United States about the spread of drug-resistant staph infections, such as methicillin-resistant *Staphylococcus aureus* (MRSA), a potentially fatal infection that is often spread in jails and prisons and can be transmitted from there to the surrounding community.⁶⁶ "Every year, more than 1.5 million people are released from jail and prison carrying a life-threatening infectious disease."⁶⁷ In its report to the United States Senate, the Commission on Safety and Abuse in America's Prisons provided a real-world example of this problem and described how providing medical treatment to prisoners can help:

In New York City in the 1980s and early 1990s there was an epidemic rise in tuberculosis, including a dangerous jump in the incidence of multi-drug resistant tuberculosis. The rise in drug-resistant cases, in particular, was believed by many to be largely the result of poor treatment in prisons and jails. . . . With support from the Centers of Disease Control and Prevention, the city and state's coordinated response included establishing a Communicable Disease Unit in the jails at Rikers Island. The effort was a success. Between 1992 and 1998 tuberculosis cases declined 59 percent citywide, and the number of drug-resistant cases declined 91 percent.⁶⁸

The communities to which prisoners return are typically already underserved in health care and are disproportionately minority communities.⁶⁹ For this reason, the failure to provide medical care during incarceration puts these communities—the very communities Democrats argue have been left behind by Republicans who oppose universal health care—at dire risk of disease. If Democrats were to support plans that allow prisoners to remain on Medicare and Medicaid, they would significantly increase the chance that people who are incarcerated receive adequate medical treatment. In turn, that support would contribute to disease prevention for both inmates and their communities, thereby promoting greater health and well-being for the poorest Americans.⁷⁰

The second reason Democrats should include prisoners in their universal health care plans is that doing so would be a move toward remedying the persistent failure to provide services in poor communities where individuals with health problems that increase the likelihood of future incarceration often reside. This is perhaps most easily identifiable in the context of mental health and substance abuse.

In the United States, one in twenty-six adults has a serious mental illness.⁷¹ About one in thirteen American adults from the ages of eighteen to fifty-four has a clinically significant alcohol or drug disorder.⁷² These populations may significantly overlap; research indicates

that “over 70% of all substance abusing individuals suffer with some sort of mental illness.”⁷³ “Many people seek relief of their mental health symptoms by self-medicating with drugs and alcohol.”⁷⁴ As a result of the severe underfunding of community mental health and chemical dependency treatment services, people without the ability to pay for treatment are left without and often find themselves embroiled in the criminal justice system. As such, the national prevalence rates for prisoners with mental illness “are two to four times higher than rates among the general public.”⁷⁵ By “midyear 2005, more than half of all prison and jail inmates had a mental health problem,”⁷⁶ including “[a]t least 300,000 to 400,000 prisoners [with] a serious mental illness—a number three times the population of state mental hospitals nationwide.”⁷⁷ Likewise, approximately 55 percent of prisoners nationwide reported the use of drugs within one month of their offense,⁷⁸ at least 80 percent reported some past illicit drug use,⁷⁹ and almost two-thirds reported regular drug use.⁸⁰ Recidivism rates for the mentally ill and chemically dependent have been rising for years.⁸¹ Of those drug offenders who do recidivate, twenty out of twenty-nine do so by committing drug offenses.⁸² The mentally ill are more likely than other repeat offenders to be violent recidivists.⁸³

By supporting health care plans that treat mental illness and chemical dependency with the same rigor as other medical problems, the Democrats would be promoting the health and well-being of low-income communities while reducing crime and incarceration rates.⁸⁴ Democrats would also be promoting a continuity of care for medical, mental health, and chemical dependency treatment, which may greatly improve the likelihood that former prisoners will succeed upon release and, indeed, that they will survive at all. A study published in the *New England Journal of Medicine* reports that former prison inmates are 12.7 times more likely than the general population to die within a few weeks of their release from prison and 3.5 times more likely to die in their first two years of release; these deaths are predominantly due to drug overdose but also result from suicide, failure to treat chronic illness or mental illness, and other causes.⁸⁵ With treatment, however, mentally ill and chemically dependent prisoners stand a fighting chance. When mentally ill offenders have access to mental health treatment, recidivism rates can drop by over 27 percent.⁸⁶ Likewise, studies show that having access to Medicaid or Medicare increases participation in drug treatment programs, making it less likely that an ex-prisoner will recidivate.⁸⁷

Third, by promoting increased access to health care for prisoners, the Democrats could make their universal health care plans more financially viable. The economic consequences of the proposed plans are in play, as the Republican candidates are quick to attack those plans as fiscally irresponsible.⁸⁸ However, as explained by the Commission on Safety and Abuse in America's Prisons:

One example may demonstrate how a continued public health investment for prisoners can benefit everyone and reduce costs in the long run. Currently, many prisoners with hepatitis C do not receive treatment because correctional facilities cannot afford to provide anti-viral medication for everyone likely to benefit from it. . . . Instead, the public health system pays a much larger cost down the road when those untreated prisoners are released and are more likely to require liver transplants because they did not receive treatment earlier. With funding from Medicaid or Medicare, facilities would be able to treat nearly all infected prisoners when it is medically appropriate, most likely to benefit them, and most cost-effective.⁸⁹

Further, as explained in Part II.C, the reductions in recidivism that may result from increased access to health care for prisoners will reduce not only overall health care costs but also a wide array of criminal justice costs.

Finally, ensuring that prisoners are provided with meaningful health care and supporting other prisoner reentry initiatives allow an opportunity for Democrats to define what is moral, rather than merely responding to their Republican counterparts' pronouncements regarding morality. Senator Edwards has recognized the need to reinvigorate the Democratic Party's role in that debate: “Restoring our moral authority means leading by example and making clear that the hard challenges don't frighten us. There is no better opportunity than the challenge of poverty—the great moral issue of our time.”⁹⁰

Democrats are at their strongest when they run on their own moral principles, rather than merely pointing out how they are not Republicans, a point eloquently made by Senator John F. Kennedy in his speech accepting the Democratic nomination for president:

But we are not merely running against Mr. Nixon. Our task is not merely one of itemizing Republican failures. Nor is that wholly necessary. For the families forced from the farm will know how to vote without our telling them. The unemployed miners and textile workers will know how to vote. The old people without medical care—the families without a decent home—the parents of children without adequate food or schools—they all know that it's time for a change.⁹¹

Those invocations of real life and unity of purpose—reminders of how the commonalities among the American people are so much greater than the things that divide them—resonate with the American public. It was just such a speech that catapulted Senator Obama to the national spotlight at the 2004 Democratic National Convention and paved the way for his current presidential bid:

[F]or alongside our famous individualism, there's another ingredient in the American saga, a belief that we're all connected as one people. If there is a child on the south side of Chicago who can't read, that matters

to me, even if it's not my child. If there is a senior citizen somewhere who can't pay for their prescription drugs, and having to choose between medicine and the rent, that makes my life poorer, even if it's not my grandparent. If there's an Arab American family being rounded up without benefit of an attorney or due process, that threatens my civil liberties. It is that . . . fundamental belief: I am my brother's keeper, I am my sister's keeper that makes this country work. It's what allows us to pursue our individual dreams and yet still come together as one American family.⁹²

Senator Obama's speech aside, in recent years the Democratic Party has lost its voice on issues of morality, letting the Republicans restrict "morality" to debates on abortion and gay marriage.⁹³ To take back the White House in 2008, the Democrats must focus on their strengths, rather than merely pointing out Republican weaknesses. By insisting that the treatment of prisoners and their families is included as an issue of morality, they can show voters that they are who they strive to be: the party that "fight[s] for equal opportunities and justice for all Americans."⁹⁴

B. Supporting Prisoners Is about Supporting Veterans

The candidates from both parties are quick to pledge that when veterans return from war, they will be taken care of throughout their lives. They speak of a "sacred obligation" to treat veterans with the "honor they deserve."⁹⁵ But what of those veterans who return home and commit crimes?

Currently, veterans who are incarcerated are not provided with the types of services and support that they otherwise would be entitled to as a result of their military service. For example, incarcerated veterans are excluded from medical benefits that accrue to other veterans.⁹⁶ These policies provide a bright-line rule: if a veteran comes home and behaves, he or she is entitled to veterans' benefits; if he or she commits a crime, the right to supportive services he or she earned is lost during the term of incarceration.⁹⁷

What these policies do not address is the possibility that criminal activity by veterans results from the very sacrifice that the presidential candidates claim should never be forgotten.⁹⁸ The candidates seem to recognize that veterans, as a result of their service, will often encounter mental health problems, such as post-traumatic stress disorder (PTSD).⁹⁹ A study conducted by the University of California–San Francisco and the San Francisco VA Medical Center has shown that approximately one-third of veterans returning from Iraq received one or more mental health or psychosocial diagnoses.¹⁰⁰ Another study reported in the *New England Journal of Medicine* indicates that the rate of PTSD among veterans of the wars in Iraq and Afghanistan increased in a linear manner with increased exposure to combat.¹⁰¹ Studies also indicate that PTSD may result in drug and alcohol abuse by veterans.¹⁰²

Mental health and substance abuse problems experienced by veterans are linked to future incarceration. In a

Bureau of Justice study, thirty-five to forty-five percent of incarcerated veterans reported symptoms of mental health disorders in the previous twelve months, including mania, psychotic disorders, and major depressive episodes.¹⁰³ Three-quarters of veterans in state prisons reported past drug use and a quarter reported being on drugs at the time of the offense for which they were incarcerated.¹⁰⁴ Veterans are also more likely than nonveterans to report past intravenous drug use.¹⁰⁵ It is likely that a significant number of veterans with substance abuse issues may be self-medicating as a means of dealing with mental illness.¹⁰⁶

The reality is that veterans are disproportionately represented in the prison population, as compared to the population of the United States as a whole.¹⁰⁷ There is no exception for today's veterans. By 2004, veterans of the current conflicts in Iraq and Afghanistan already made up four percent of veterans in state and federal prisons.¹⁰⁸

If part of the sacrifice our veterans make can in some cases lead to incarceration, and the candidates truly believe that the sacrifices made by veterans should be honored, then the candidates should get serious about reforming American prisons or risk being saddled with the dreaded label "flip-flopper."¹⁰⁹ Given the nature of the crimes committed by some veterans, this issue provides a litmus test regarding the candidates' commitment to veterans. Veterans are more likely than nonveterans to be incarcerated for a violent offense, "including over a third who were serving sentences for homicide (15%) or rape/sexual assault (23%)."¹¹⁰ Veterans were also more likely to have victimized women and children than were other offenders.¹¹¹ In light of that reality, it is to date unclear whether the candidates will remain true to their vow to always stand by America's veterans.

Those who wish to show that their support for veterans is unwavering should champion reforms in at least two areas: restoring benefits to incarcerated veterans and providing funding for mental health and substance abuse diversion programs.

First, the candidates could promise to reverse laws that prohibit incarcerated veterans from receiving benefits and other services during the term of incarceration. The candidates talk about ensuring robust benefits for veterans, but federal law prohibits veterans from receiving medical benefits while incarcerated¹¹² despite the fact that the majority of imprisoned veterans would qualify for such benefits but for their incarceration.¹¹³ That reform could significantly improve the conditions under which veterans are incarcerated as well as their likelihood of successfully reintegrating upon release.

For example, if not so restricted, prisoners could utilize veterans' benefits to obtain mental health treatment during a term of incarceration. The current reality is that, once incarcerated, almost two-thirds of mentally ill prisoners go without any form of treatment.¹¹⁴ Mentally ill prisoners who receive little or no treatment are at great risk of harm, are particularly "vulnerable to assault, sexual abuse, exploitation, and extortion,"¹¹⁵ and are more likely to

engage in self-harm, such as self-mutilation and suicide.¹¹⁶ Mentally ill prisoners are often severely punished for behaviors that stem from their mental illnesses, including placement in solitary confinement.¹¹⁷ Isolation can cause the mentally ill to rapidly decompensate and has been described as “the mental equivalent of putting an asthmatic in a place with little air to breathe.”¹¹⁸

Certainly, subjecting veterans suffering from mental illness to these types of conditions does not align with the candidates’ pledge to ensure proper treatment and full support of veterans. The obvious alternative is to guarantee veterans’ benefits even to those who are incarcerated, to ensure proper access to necessary services such as mental health care and substance abuse treatment. Access to such services can have real consequences for a veteran’s future. Providing meaningful mental health treatment has been shown to significantly reduce recidivism rates, with studies showing drops of over 20 percent.¹¹⁹ Likewise, studies have shown a reduction of more than 6 percent in recidivism rates where meaningful chemical dependency services are provided to prisoners.¹²⁰ Chemical dependency treatment has also been shown to decrease, at least in the short term, the probability of alcohol dependency by 15 percent and drug dependency by 22 percent.¹²¹

Second, the candidates should propose funding packages for diversion programs so that offenders with mental illness or substance abuse problems can be diverted into treatment rather than sent to prison. Governor Huckabee, for example, has been a proponent of diversion programs: “In our state, we established over 20 drug courts that gave people an alternative course, rather than just putting them in prison, giving them the opportunity to get what they really needed, which is off the addiction.”¹²² Senators Biden and Clinton also recommended the implementation of drug courts in a presidential debate,¹²³ and Representatives Kucinich and Ron Paul (R-TX), Senator Dodd, and former Senator Mike Gravel (D-AK) have each discussed the need to decriminalize addiction and focus on rehabilitation rather than incarceration.¹²⁴ By providing diversion opportunities, the candidates would increase the likelihood that veterans with mental illness and/or chemical dependency problems would be assisted early on and that such interventions would reduce the chances that a veteran would deteriorate to the point where he or she may engage in criminal conduct and be subjected to lengthy criminal sentences.

Perhaps at no other time in recent history has it been so clear that Americans have a responsibility to the men and women who are fighting in Iraq and Afghanistan. Abandoning those of them who are unable to cope with the traumas of war is unbecoming not only of a candidate but also of a grateful nation.

C. Investing in Prisoner Reentry Is Fiscally Responsible

A major theme in each of the presidential debates has been fiscal responsibility, with a focus on tax cuts and reductions in spending.¹²⁵ What prisoner reentry reform

represents is a third option: expenditures in the short term that will result in significant spending cuts and tax savings in the long term.

A meta-analysis of all available rigorous evaluations of evidence-based adult and juvenile corrections programs and community prevention efforts conducted by the Washington State Institute of Public Policy (WSIPP) evidences the economic benefit of each dollar spent on prison treatment and services. For example, the return on investment for educational and employment services in prison ranges from \$9,439 to \$13,738 per participant.¹²⁶ Similar savings accrue for treatment services. The per-participant cost benefits for mental health treatment are estimated at \$10,299 for every dollar spent, and the cost benefits for drug treatment programs range from \$7,835 to \$10,054 for every dollar spent.¹²⁷ The economic benefits are far-reaching:

35 percent stem from the effect that the reduced incidence of a disorder has on the person’s economic earnings in the job market; 50 percent are linked to fewer health care and other costs incurred; 7 percent are due to the lowered costs of crime; and 8 percent are for miscellaneous benefits.¹²⁸

The savings to taxpayers that could be achieved by this programming are substantial. The WSIPP studies determined that a 20 to 40 percent increase in education and employment programming and drug and mental health treatment for adults and juveniles, along with proven prevention programs, could save Washington’s state and local taxpayers “between \$1.9 to \$2.6 billion” in direct prison and criminal justice system costs between 2008 and 2030.¹²⁹ Those figures do not include other societal benefits, such as avoided costs to victims.¹³⁰ If those figures are extrapolated nationally by prison population rates, taxpayer savings across the country could reach upwards of \$213 billion.¹³¹

What is less easy to calculate is the ripple effect these investments may have on poor and minority communities that are often hard-hit by the revolving door of crime. Senator Obama has written of the possibilities if former prisoners have received the services needed to enable them to find work upon release:

[C]rime in many communities would drop; that as a consequence more employers would locate businesses in these neighborhoods and a self-sustaining economy would begin to take root; and that over the course of ten or fifteen years norms would begin to change, young men and women would begin to imagine a future for themselves, marriage rates would rise, and children would have a more stable world in which to grow up.¹³²

There are indicators that the public understands that improving programming and treatment will be expensive. For example, “[w]hen asked about spending for various social problems, 56 percent of the respondents to a 2002

National Opinion Research Center (NORC) Poll said this country is spending too little to deal with drug addiction.”¹³³

The alternative to these investments is not an elimination of spending but rather a continuation of spending on prison expansion and other criminal justice costs. By 2003, national expenditures for criminal justice reached \$185 billion annually.¹³⁴ The federal government’s expenditures on corrections alone increased by 925 percent between 1982 and 2003.¹³⁵ Absent meaningful reform, America’s prison population is projected to continue to rise, resulting in the incarceration of nearly eight million people by 2010.¹³⁶ Where reforms have been put in place, those projections are significantly altered. For example, an initial round of reentry reforms in Washington State passed in 2007 has reduced the forecast of the prison beds the state would need by the year 2020 by an entire prison.¹³⁷ With incarceration rates on the rise across the country, and the cost of building each prison at approximately \$250 million plus millions more in operational costs each year, prisoner reentry reform is a financial opportunity the candidates cannot afford to ignore.¹³⁸

III. Conclusion

Prison reentry reform fits within the moral principles embraced by each party’s base, bolsters support for some of the most vulnerable of our nation’s veterans, and is fiscally responsible given the cost savings related to reduced crime and lower incarceration rates. It will take someone with the strength of character to acknowledge the commonality in the parties’ positions—that both parties care about morality, about veterans, and about our country’s economic viability—to bring about meaningful reform. And it will take a candidate with the political courage to take on a difficult and complex topic, not because it is the politically expedient thing to do, but because it is the right thing to do. In an era where candidates seem prone to rely on sound bites and finger-pointing, that may just be the candidate for whom Americans are searching.

Notes

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¹ President George W. Bush, State of the Union Address (Jan. 20, 2004), at <http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html>.

² THE COMM’N ON SAFETY AND ABUSE IN AMERICA’S PRISONS, CONFRONTING CONFINEMENT 11, 19, 70 (2006) [hereinafter CONFRONTING CONFINEMENT].

³ See *id.* at 11, 19.

⁴ *Id.* at 12 (citing a poll released by Zogby International in April 2006).

⁵ In discussing the Parties’ focus on “values,” the author does not mean to suggest that the Republicans have a corner on the market of faith. Cf. Republican Presidential Debate in Simi Valley, California (May 3, 2007) [hereinafter, 5/3/07 Rep. Debate], at <http://www.msnbc.msn.com/id/18478985/> (New York Mayor Rudolph Giuliani: “Neither party has a monopoly on virtue or vice. That’s just a fallacy that we sometimes fall into.”). Each party’s candidates have discussed their faith publicly. See *id.*; Democratic Presidential Debate in Hanover, New Hampshire (Aug. 26, 2007) [hereinafter, 8/26/07 Dem. Debate], at http://www.cfr.org/publication/14313/democratic_debate_transcript_new_hampshire.html?breadcrumb=%2Fcampaign2008%2Fspeeches. Nor does the author suggest that only Democrats care about issues of poverty and equality. Cf. Republican Presidential Debate in Manchester, New Hampshire (June 5, 2007) [hereinafter, 6/5/07 Rep. Debate], at http://www.cfr.org/publication/13549/republican_debate_transcript_new_hampshire.html?breadcrumb=%2Fcampaign2008%2Fspeeches (Senator Sam Brownback, explaining that the Republican concept that every life is sacred “applies to somebody that’s in poverty”). Rather, the author seeks to discuss morality in the terms most often applied by the parties and candidates themselves.

⁶ 5/3/07 Rep. Debate, *supra* note 5.

⁷ Gail Collins, *Who Doesn’t Heart Huckabee?* N.Y. TIMES, Oct. 25, 2007. Governor Huckabee describes his faith in a broad fashion. For example, on his campaign Web site he states: “My faith is my life—it defines me. My faith doesn’t influence my decisions, it drives them. For example, when it comes to the environment, I believe in being a good steward of the earth.” *Mike Huckabee for President—Issues*, at <http://www.mikehuckabee.com/index.cfm?FuseAction=Issues.Home>.

⁸ David D. Kirkpatrick, *The Evangelical Crackup*, N.Y. TIMES MAGAZINE, Oct. 28, 2007, at 43.

⁹ *Id.* at 40. See *id.* at 44 (reporting that many younger evangelicals support “public policies that address health care, race, poverty and the environment.”).

¹⁰ Collins, *supra* note 7.

¹¹ See, e.g., Republican Presidential Debate in Durham, New Hampshire (Sept. 5, 2007) [hereinafter, 9/5/07 Rep. Debate], at http://www.cfr.org/publication/14142/republican_debate_transcript_new_hampshire.html?breadcrumb=%2Fcampaign2008%2Fspeeches (Senator Brownback: “[T]he lead thing we need to do is rebuild the family in this country.”); 6/5/07 Rep. Debate, *supra* note 5 (Senator John McCain, regarding a need to “protect the family”); 5/3/07 Rep. Debate, *supra* note 5 (Governor Romney: “But we have to encourage moms and dads, because the best work, the most critical work for the future of America is the work that goes on within the four walls of the American home.”).

¹² CHRISTOPHER J. MUMOLA, U.S. DEP’T OF JUST., INCARCERATED PARENTS AND THEIR CHILDREN 1 (2000) [hereinafter MUMOLA, INCARCERATED PARENTS] (“Parents held in U.S. prisons had an estimated 1,498,800 minor children in 1999, an increase of over 500,000 since 1991.”). See also JEREMY TRAVIS ET AL., URBAN INST., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 13 (2001) (“Sixty-five percent of female prisoners have a child below the age of 18.”).

¹³ Marc Mauer, Lessons of the “Get Tough” Movement in the United States, Presented at International Corrections and Prison Association 6th Annual Conference, Beijing, China 6 (Oct. 25, 2004), at <http://www.sentencingproject.org>.

¹⁴ MUMOLA, INCARCERATED PARENTS, *supra* note 12, at 1. See also *id.* at 5 (“Parents in State prison were more likely to be serving a sentence for drug offenses (24%) than nonparents (17%)”);

- id.* at 7 (“[A] majority of parents in State prison used drugs in the month before their offense.”); *id.* at 8 (“1 in 3 mothers in State prison committed their crime to get drugs or money for drugs.”); *id.* at 9 (“About 1 in 7 parents in State prison reported indications of a mental illness.”); TECHNICAL ASSISTANCE RESOURCE CENTER OF THE ANNE E. CASEY FOUNDATION, REENTRY: HELPING FORMER PRISONERS RETURN TO COMMUNITIES 45 (2005).
- ¹⁵ See, e.g., PAULA M. DITTON, U.S. DEP’T OF JUST., MENTAL HEALTH TREATMENT OF INMATES AND PROBATIONERS 6 (1999) (in state prison facilities, 55 percent of mentally ill prisoners and 47 percent of other prisoners “reported a history of family incarceration”). Although available studies do not distinguish between consequences resulting from incarceration of parents and those resulting from other factors that create instability, there is “some evidence to suggest that children of incarcerated parents are at high risk of future delinquency and/or criminal behavior” and “[t]wo studies have found that children of offenders are significantly more likely than other children to be arrested or incarcerated.” TRAVIS ET AL., *supra* note 12, at 39. But see SUSAN D. PHILLIPS AND JAMES P. GLEESON, CENTER FOR SOCIAL POLICY & RESEARCH, JANE ADDAMS COLLEGE OF SOCIAL WORK, UNIV. OF ILL. AT CHICAGO, CHILDREN, FAMILIES, AND THE CRIMINAL JUSTICE SYSTEM 4 (July 2007) (“Among children in in-home [foster] care, arrest was no more common among children of arrested parents than among children of never-arrested parents.”).
- ¹⁶ OR. DEP’T OF CORRS. *The Children of Incarcerated Parents Project*, (May 2003), at http://egov.oregon.gov/DOC/PUBAFF/docs/oam/2003_childrens_project.pdf at 1.
- ¹⁷ See *Exodus* 2:11-15; *Acts* 7:23-38.
- ¹⁸ See *Acts* 7:54-60; *Acts* 8:1-3; *Acts* 9:1-19.
- ¹⁹ *Hebrews* 13:3 (New American Bible).
- ²⁰ State of the Union Address, *supra* note 1.
- ²¹ See Republican National Committee, *Faith & Values*, at <http://www.gop.com/Issues/FaithAndValues/>.
- ²² Mentally Ill Offender Treatment and Crime Reduction Act, 42 U.S.C. § 3797aa (2004). See also *Mentally Ill Offender Treatment and Crime Reduction Act Becomes Law*, at http://www.apa.org/releases/S1194_law.html.
- ²³ \$5 million for Mentally Ill Offender Act, CORRECT CARE, Fall 2005, at 12.
- ²⁴ Chris Suellentrop, *The Right Has a Jailhouse Conversion*, N.Y. TIMES MAGAZINE, Dec. 24, 2006 (quoting Representative Stephanie Tubbs Jones, D-OH, stating that it was “the only thing that George W. Bush has ever said at a State of the Union that made me stand up and cheer.”); *id.* (quoting Representative Danny Davis, D-IL, “I always tell people that when he said that, I was the first person to applaud, even though I was on the Democratic side of the aisle.”); *id.* (“Certainly in terms of rhetoric, Bush has done more to advance the interests of prisoners than either Jimmy Carter or Bill Clinton.”). It seems, however, that President Bush’s commitment to prisoner reentry reform is not shared throughout the administration. An October 31, 2007, *Washington Post* article describes Vice President Dick Cheney’s office “kill[ing] proposals to increase . . . transition assistance for prisoners.” Peter Baker, *With Book, Gerson Is Back to Fight for GOP’s Identity*, WASHINGTON POST, Oct. 31, 2007, at A04.
- ²⁵ Republican All-American Presidential Forum in Baltimore, Maryland (Sept. 27, 2007) [hereinafter, 9/27/07 Rep. Debate], at <http://www.pbs.org/kcet/tavissmiley/special/forums/transcript.html>.
- ²⁶ Neal Peirce, *Political Odd Couple Pushes Prisoner Re-entry Breakthrough*, STATELINE.ORG (Oct. 14, 2007) at <http://www.stateline.org/live/details/story?contentId=247106>.
- ²⁷ H.R. 1593, 110th Cong. (2007); S. 1060, 110th Cong. (2007).
- ²⁸ See S. 1060, 110th Cong. (2007); H.R. 1593, 110th Cong. (2007). At the date of publication, H.R. 1593 had passed the House and S. 1060 had passed the Senate Judiciary Committee. See <http://www.govtrack.us/congress/bill.xpd?bill=h110-1593>; <http://www.govtrack.us/congress/bill.xpd?bill=s110-1060>.
- ²⁹ Cf. 6/5/07 Rep. Debate, *supra* note 5. See also Republican Presidential Debate in Columbia, South Carolina (May 15, 2007) [hereinafter 5/15/07 Rep. Debate], at http://www.cfr.org/publication/13338/republican_debate_transcript_south_carolina.html?breadcrumb=2%2Fcampaign2008%2Fspeeches (“I think we can explain it when we look at it for what it is: a beautiful child of a loving God, that we ought to protect in all circumstances in all places, here in the womb, somebody that’s struggling in poverty, a family that’s struggling. We should work and look at all life, be pro-life and whole-life for everybody.”).
- ³⁰ Suellentrop, *supra* note 24.
- ³¹ See Prison Fellowship, *Welcome to Prison Fellowship*, at http://www.prisonfellowship.org/default_pf_org.asp. Prison Fellowship’s work has been the subject of an ongoing court battle regarding the use of Christian-based prerelease services for prisoners in Iowa’s Newton Correctional facility. See *Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc.*, __ F.3d __, 2007 WL 4225236 (8th Cir. Dec. 3, 2007) (Prison Fellowship’s pre-release services amounted to “religious indoctrination” in violation of the Establishment Clause).
- ³² Suellentrop, *supra* note 24.
- ³³ Mark Earley, Closing Remarks at the ABA Commission on Effective Criminal Sanctions Spring Conference: “Overcoming Legal Barriers to Reentry” (May 1, 2007).
- ³⁴ See Wilberforce Forum, *A Matter of Justice*, at <http://www.wilberforce.org/article.asp?ID=251>.
- ³⁵ Kirkpatrick, *supra* note 8, at 44.
- ³⁶ *Id.* at 44-45.
- ³⁷ See Human Rights Watch, *Incarcerated America* (April 2003), at <http://www.hrw.org/backgrounders/usa/incarceration/> [hereinafter *Incarcerated America*] at 2. See also THOMAS P. BONCZAR, U.S. DEP’T OF JUST., PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974-2001, at 1, 5 (2003) (in 2001, “[t]he rate of ever having gone to prison among black males (16.6 percent) was over twice as high as among adult Hispanic males (7.7 percent) and over 6 times as high as among adult white males (2.6 percent)”; *id.* at 1 (“About 1 in 3 black males, 1 in 6 Hispanic males, and 1 in 17 white males are expected to go to prison during their lifetime, if current incarceration rates remain unchanged.”); PAIGE M. HARRISON & ALLEN J. BECK, U.S. DEP’T OF JUST., PRISONERS IN 2004, at 8 (2005) (“Expressed in terms of percentages, 8.4 percent of black males age 25 to 29 were in prison on December 31, 2004.”).
- ³⁸ THE COVENANT WITH BLACK AMERICA (Tavis Smiley ed., 2007).
- ³⁹ See *The Covenant with Black America*, at <http://www.covenantwithblackamerica.com/>.
- ⁴⁰ See *id.*
- ⁴¹ 9/27/07 Rep. Debate, *supra* note 25; Democratic All-American Presidential Forum in Washington D.C. (June 28, 2007) [hereinafter 6/28/07 Dem. Debate], at <http://www.pbs.org/kcet/tavissmiley/special/forums/transcript.html>.
- ⁴² 9/27/07 Rep. Debate, *supra* note 25.
- ⁴³ *Id.* Republicans are not the only candidates criticized for a lack of connection with minority communities. For example, Senator Barack Obama has faced questions about whether he is “authentically black enough.” See Democratic Presidential Debate in Charleston, South Carolina, and via YouTube (July 23, 2007) [hereinafter, 7/23/07 Dem. Debate], at http://www.cfr.org/publication/13876/democratic_debate_transcript_cnnyoutube.html?breadcrumb=2%2Fcampaign2008%2Fspeeches.

- ⁴⁴ See generally 9/27/07 Rep. Debate, *supra* note 25; 6/28/07 Dem. Debate, *supra* note 41.
- ⁴⁵ See Mauer, *supra* note 13. See also MUMOLA, INCARCERATED PARENTS, *supra* note 12, at 3 (“Nearly half of all imprisoned parents were black.”); HARRISON & BECK, *supra* note 37, at 8 (“Black females (with an incarceration rate of 170 per 100,000) were more than twice as likely as Hispanic females (75 per 100,000) and 4 times as likely as white females (42 per 100,000) to be in prison on December 31, 2004.”).
- ⁴⁶ PHILLIPS & GLEESON, *supra* note 15, at 2.
- ⁴⁷ See MUMOLA, INCARCERATED PARENTS, *supra* note 12, at 1 (“10% of mothers and 2% of fathers in State prison reported a child now living in a foster home or agency”). The average length of sentences for parents in state prisons is twelve years. See *id.* at 6. Under such circumstances, use of foster care is often unavoidable. The link between the lack of access to parents and future incarceration is worth noting. For example, a quarter of mentally ill state prisoners lived in a foster home, agency, or institution as children. See DITTON, *supra* note 15, at 6. See also DORIS J. JAMES & LAUREN E. GLAZE, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 4 (Sept. 2006) (estimating that eighteen percent of state prisoners with mental health problems previously lived in foster homes, agencies, or institutions).
- ⁴⁸ See, e.g., TRAVIS ET AL., *supra* note 12, at 39.
- ⁴⁹ See, e.g., DAVID DOMKE, GOD WILLING? (2004).
- ⁵⁰ Exploring Religious America, RELIGION & ETHICS NEWSWEEKLY, Apr. 26, 2002, at <http://www.pbs.org/wnet/religionandethics/week534/cover.html>. See also *id.* (“[Ninety] percent of Americans tell pollsters they believe in God or a higher power. Sixty percent say they pray every day.”).
- ⁵¹ National Council of Churches USA, *Diversity & Community*, at <http://www.nccusa.org/news/diversityandcommunity.html>.
- ⁵² Matthew 25:34-40 (New American Bible) (emphasis added).
- ⁵³ See, e.g., 6/28/07 Dem. Debate, *supra* note 41 (Senator John Edwards: “. . . [T]his issue of poverty in America is the cause of my life.”); 7/23/07 Dem. Debate, *supra* note 43 (Representative Kucinich: “We need to have a country which recognizes that there is an inequality of opportunity.”); *id.* (New Mexico Governor Bill Richardson: “The key is going to be also attacking poverty, bringing people together, dealing with those kids in the ghettos that are heavy users of gun violence and they are victims of gun violence, to make sure that this country attacks the core problems of poverty, having child care, bringing parents together.”).
- ⁵⁴ 6/28/07 Dem. Debate, *supra* note 41. See also *id.* (Senator Edwards: “You know, when you have young African American men who are completely convinced that they’re either going to die or go to prison, and see absolutely no hope in their lives; when they live in an environment where the people around them don’t earn a decent wage; when they go to schools that are second-class schools compared to the schools in wealthy suburban areas, they don’t see anything getting better, there are lots of things that we need to do.”).
- ⁵⁵ See *Fighting Poverty*, at <http://www.barackobama.com/issues/fightingpoverty/>.
- ⁵⁶ See Barack Obama: *Creating Equal Opportunity and Justice for All*, at <http://my.barackobama.com/page/-/HQPpress/Fact%20Sheet%20Howard%20Convocation%20Final%20IH.pdf>.
- ⁵⁷ Joseph R. Biden, Jr., *Floor Statement: Second Chance Act* (Oct. 27, 2005), at <http://biden.senate.gov/newsroom/details.cfm?id=249255&>.
- ⁵⁸ See Suellentrop, *supra* note 24 (“[T]he issue [of prisoner reentry reform] is not a top priority for the [Democratic] party.”).
- ⁵⁹ See, e.g., 8/26/07 Dem. Debate, *supra* note 5 (Senator Clinton: “I think [health care reform is] the highest domestic priority that we have right now.”); *id.* (Senator Edwards, threatening to cut health care coverage for members of the U.S. Congress if universal health care is not passed by July 1 of his first year as president); Democratic Presidential Debate in Manchester, New Hampshire (June 3, 2007) [hereinafter 6/3/07 Dem. Debate], at http://www.cfr.org/publication/13520/democratic_debate_transcript_new_hampshire.html?breadcrumb=72Fcampaign2008%2Fspeeches (Senator Obama, listing Iraq as the first priority of his administration and health care as the second).
- ⁶⁰ The exception is Senator Joseph Biden, whose plan would provide universal coverage to children but not adults. See *Four Practical Steps toward Health Care for All*, at <http://www.joe-biden.com/issues/?id=0003> (Senator Biden calling for coverage of all children, as a “path” to universal health care for all Americans).
- ⁶¹ 42 U.S.C. § 1396d(a)(27)(A); 42 C.F.R. § 435.1008. Although some states choose to suspend, rather than terminate, Medicaid benefits during incarceration, in the majority of states those benefits are in fact terminated. See Cara Matthews, *Spitzer Signs Bill to Help Prisoners Re-enter Society*, GANNETT NEWS SERV., July 25, 2007 (New York law allowing suspension rather than termination); Liz Lipton, *Medicaid Eligibility Termination Plagues Former Inmates*, 36 PSYCHIATRIC NEWS, No. 17 (2001) (majority of states terminate Medicaid enrollment upon incarceration).
- ⁶² CONFRONTING CONFINEMENT, *supra* note 2, at 50.
- ⁶³ UNDER SECRETARY FOR HEALTH, DEPT. OF VETERANS AFFAIRS, INFORMATION LETTER: GUIDELINES AND RECOMMENDATIONS FOR SERVICES PROVIDED BY VHA FACILITIES TO INCARCERATED VETERANS RE-ENTERING COMMUNITY LIVING ¶ 2.d (June 27, 2006) [hereinafter INFORMATION LETTER].
- ⁶⁴ LAURA M. MARUSCHAK, U.S. DEP’T OF JUST., HIV IN PRISONS, 2005, at 1 (2007).
- ⁶⁵ ALLEN J. BECK & LAURA M. MARUSCHAK, U.S. DEP’T OF JUST., BUREAU OF JUST. STATS., HEPATITIS TESTING AND TREATMENT IN STATE PRISONS 1 (Apr. 2004).
- ⁶⁶ See, e.g., Diane Krieger Spivak, *Inmates Sue Jail over ‘06 MRSA Diagnoses*, POST-TRIBUNE (Gary, Indiana), Oct. 27, 2007 (regarding federal lawsuit filed against an Indiana county jail alleging that unsanitary jail conditions resulted in inmates contracting MRSA); Bob Roehr, *Study: Conditions in LA County Jail Fostered Spread of CA-MRSA*, DERMATOLOGY TIMES, Oct. 1, 2007 (detailing how jail conditions can promote the colonization and activation of a MRSA infection); Rick Anderson, *Contagion in the Jail*, SEATTLE WEEKLY, Dec. 7, 2005 (detailing ongoing spread of MRSA to inmates and jail staff in a jail in King County, Washington, and how the disease combined with necrotizing fasciitis to cause an inmate’s death).
- ⁶⁷ CONFRONTING CONFINEMENT, *supra* note 2, at 38 (internal citation omitted).
- ⁶⁸ *Id.* at 47 (internal citations omitted).
- ⁶⁹ *Id.* at 38-39, 47; Anderson, *supra* note 66.
- ⁷⁰ A focus on disease prevention is also championed by Governor Huckabee. 9/27/07 Rep. Debate, *supra* note 25 (“The first problem with our current health care system is that it’s upside down. It focuses on intervention. We wait until people are catastrophically ill, and then we spend enormous amounts of money trying to fix them. We need to be putting the money on the preventive side. Prevention is a lot less expensive than is intervention.”).
- ⁷¹ STEVE AOS ET AL., WASH. STATE INST. FOR PUB. POL’Y, EVIDENCE-BASED TREATMENT OF ALCOHOL, DRUG, AND MENTAL HEALTH DISORDERS: POTENTIAL BENEFITS, COSTS, AND FISCAL IMPACTS FOR WASHINGTON STATE 4 (2006) [hereinafter AOS ET AL., EVIDENCED-BASED TREATMENT]. “Serious mental illnesses” were defined for the purposes of this study as including “schizophrenia and other non-affective psychosis, manic depressive disorder, severe forms of major depression, and panic disorder.” *Id.*
- ⁷² *Id.* Further, in a 2004 national survey, “110 million Americans age 12 or older (46% of the population) reported illicit drug use at least once in their lifetime; 15% reported use of

- a drug within the past year; 8% reported use of a drug within the past month." BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *DRUG AND CRIME FACTS: DRUG USE* (2005).
- ⁷³ SALLY WYNN, *DUAL DIAGNOSIS*, JOURNAL OF ADDICTIVE DISORDERS 1 (2002), at <http://www.breining.edu> (internal citation omitted).
- ⁷⁴ *Id.* at 2 (internal citation omitted).
- ⁷⁵ CONFRONTING CONFINEMENT, *supra* note 2, at 43. See also TRAVIS ET AL., *supra* note 12, at 11 ("[A]n estimated 16 percent [of released prisoners] suffer from mental illness.").
- ⁷⁶ JAMES & GLAZE, *supra* note 47, at 1.
- ⁷⁷ CONFRONTING CONFINEMENT, *supra* note 2, at 38 (internal citation omitted).
- ⁷⁸ BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *DRUG AND CRIME FACTS: DRUG USE AND CRIME* (2006) ("In 2002, 55% of convicted jail inmates reported they had used illegal drugs during the month before their offense, unchanged from 1996."); DORIS J. WILSON, U.S. DEP'T OF JUSTICE, *DRUG USE, TESTING, AND TREATMENT IN JAILS*, 1 (2000) ("Over half of jail (55%) and State inmates (57%) said they had used drugs in the month before the offense."); *id.* at 2 ("55 percent of convicted jail inmates were using drugs in the month prior to the offense."); CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUSTICE, *SUBSTANCE ABUSE AND TREATMENT, STATE AND FEDERAL PRISONERS*, 1997, 1 (1999) [hereinafter MUMOLA, *SUBSTANCE ABUSE*] ("In 1997, 57 percent of U.S. prisoners were using drugs within a month of their offense.").
- ⁷⁹ MUMOLA, *SUBSTANCE ABUSE*, *supra* note 78, at 1 (In 1997, 83 percent of all prisoners in the United States reported past drug use); WILSON, *supra* note 78, at 2 (approximately 82 percent of all inmates admitted to drug use); TRAVIS ET AL., *supra* note 12, at 25 (nationally "[e]ighty percent of the state prison population report a history of drug and/or alcohol use, including 74 percent of those expected to be released within the next 12 months.").
- ⁸⁰ Nora D. Volkow, *Treat the Addict, Cut the Crime Rate*, WASHINGTON POST, Aug. 19, 2006, at A17 ("It is estimated that 70 percent of the people in state prisons and local jails have abused drugs regularly, compared with approximately 9 percent of the general population."); WILSON, *supra* note 78, at 1 (in 1998, 70 percent of jail inmates reported regular drug use); *id.* (reporting that two-thirds of jail inmates were actively involved with drugs prior to their admission to jail); *id.* at 2 (64 percent of jail inmates reported regular drug use); MATTHEW R. DUROSE & CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., *PROFILE OF NONVIOLENT OFFENDERS EXITING STATE PRISONS* 1 (2004) ("Nearly two-thirds of nonviolent offenders discharged from prisons indicated they had been using illegal drugs in the month preceding the commitment offense . . ."). Figures for alcohol dependence are lower than those for drug dependence. See *id.* at 1 ("About 1 in 4 nonviolent releasees were alcohol dependent prior to imprisonment."); MUMOLA, *SUBSTANCE ABUSE*, *supra* note 78, at 5 ("24 percent of State prisoners reported experiences that are consistent with a history of alcohol abuse or dependence.").
- ⁸¹ Nationally, "felony recidivism rates for drug . . . offenders have been increasing since 1986." ROBERT BARNOSKI, WASH. STATE INST. FOR PUB. POL'Y, *SENTENCE TRENDS FOR ADULT FELONS IN WASHINGTON: OPTIONS TO ADDRESS PRISON OVERCROWDING* 3 (2004). See also DITTON, *supra* note 15, at 5 (nationwide, 52 percent of state prisoners with mental illness "reported three or more prior sentences to probation or incarceration . . .").
- ⁸² Of those who do recidivate, twenty out of twenty-nine do so by committing drug offenses. *Id.* at 4. See also TIMOTHY HUGHES & DORIS JAMES WILSON, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., *REENTRY TRENDS IN THE U.S.* (2003) (rearrest rates for drug offenders increased from 50.4 percent in 1983 to 66.7 percent in 1994 and reconviction for drug offenders rose from 35.3 percent to 47.0 percent in the same period); PATRICK A. LANGAN, & DAVID J. LEVIN, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., *RECIDIVISM OF PRISONERS RELEASED IN 1994*, 8-9 (2002) (of prisoners released in 1994, within the first three years from release 30.3 percent were rearrested for drug offenses; of 1994 releasees who had been incarcerated for a drug offense, 41.2 percent were rearrested for a drug offense within three years); TRAVIS ET AL., *supra* note 12, at 26 ("an estimated two-thirds of untreated heroin abusers resume their heroin/cocaine use and patterns of criminal behavior within three months of their release") (citing H.K. WEXLER ET AL., NAT'L INST. OF JUST., *A CRIMINAL JUSTICE SYSTEM STRATEGY FOR TREATING COCAINE-HEROIN ABUSING OFFENDERS IN CUSTODY* (1998)).
- ⁸³ DITTON, *supra* note 15, at 5. See also *id.* at 1 ("About 53% of mentally ill inmates were in prison for a violent offense" as of midyear 1998). Of those incarcerated for violent offenses, mentally ill prisoners "were more likely to report that the victim of the offense was a woman, someone they knew, and under age 18." *Id.* at 4.
- ⁸⁴ Several Democratic candidates have called for mental health parity. See, e.g., Democratic Presidential Debate in Orangeburg, South Carolina (Apr. 26, 2007) [hereinafter 4/26/07 Dem. Debate], at http://www.nytimes.com/2007/04/27/us/politics/27debate_transcript.html (Senator Biden: "[W]e have let the country down in the way in which we have not focused on mental illness."); *id.* (Senator Clinton: "There should be mental health parity in this country, and we don't have it."); *id.* (Senator Edwards calling for "mental health parity"); *Creating a Healthcare System That Works*, <http://www.barackobama.com/issues/healthcare/> (Senator Obama supporting mental health parity); H.R. 676, 110th Cong. § 204 (2007) (Representative Kucinich's proposed plan: "The program shall provide coverage for all medically necessary mental health care on the same basis as coverage for other conditions.").
- ⁸⁵ Ingrid A. Binswanger, et al., *Release from Prison—A High Risk of Death for Former Inmates*, 356 N. Engl. J. Med. 157-65 (2007).
- ⁸⁶ STEVE AOS ET AL., WASH. ST. INST. FOR PUB. POL'Y, *EVIDENCE-BASED ADULT CORRECTIONS PROGRAMS: WHAT WORKS AND WHAT DOES NOT 3* (Jan. 2006) [hereinafter AOS ET AL., *WHAT WORKS*].
- ⁸⁷ See, e.g., Matthews, *supra* note 61 ("A recent study by Hunter College found that in the year after being released from a New York City jail, women with Medicaid coverage were more likely to participate in a residential drug-treatment program and less likely to be rearrested.").
- ⁸⁸ For example, Mayor Giuliani frequently refers to the Democrats' plans as "socialized medicine." See, e.g., 6/5/07 Rep. Debate, *supra* note 5; 5/3/07 Rep. Debate, *supra* note 5.
- ⁸⁹ CONFRONTING CONFINEMENT, *supra* note 2, at 50 (internal citation omitted).
- ⁹⁰ See John Edwards for President: *A National Goal: End Poverty within 30 Years*, at <http://johnedwards.com/issues/poverty/>.
- ⁹¹ Senator John F. Kennedy, Address at the Memorial Coliseum in Los Angeles, California, Accepting the Democratic Party Nomination for the Presidency of the United States (July 15, 1960), at <http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/JFK+Pre-Pres/Address+of+Senator+John+F.+Kennedy+Accepting+the+Democratic+Party+Nomination+for+the+Presidency+of+the+U.S.+July+15+1960.htm>.
- ⁹² Barack Obama, Keynote Address at the 2004 Democratic National Convention, at <http://www.americanrhetoric.com/speeches/convention2004/barackobama2004dnc.htm>.
- ⁹³ See, e.g., DOMKE, *supra* note 49, at xi (" . . . Democrats in Congress also bear responsibility for the course of events because of their consistent acquiescence to the administration's rhetoric and demands. Had leading Democrats been able to articulate a compelling alternative moral vision for the nation, regularly asked tough questions of the administration, or at least insisted upon appropriate deliberations about some of the administration's post-September 11

- policies, their views might have received substantial airing by news media and resonated with a considerable portion of the American public.”)
- ⁹⁴ See *Our Party*, at <http://www.democrats.org/ourparty.html>.
- ⁹⁵ See, e.g., 9/5/07 Rep. Debate, *supra* note 11 (Governor Huckabee: “We’ve got a responsibility to the honor of this country and to the honor of every man and woman who has served in Iraq and ever served in our military to not leave them with anything less than the honor that they deserve.”); 6/3/07 Dem. Debate, *supra* note 59 (Senator Obama: “And part of the reason is because they have been trying to keep the costs down of this war and have not fully factored in the sacred obligation that I think we have to make sure that every single veteran has the services that they need.”).
- ⁹⁶ 38 C.F.R. § 17.38.
- ⁹⁷ Of course, problems brought to light regarding treatment at the Walter Reed Army Medical Center raise questions as to the treatment of even those veterans who do not become incarcerated. See, e.g., Mark Benjamin, *The Pentagon’s Chronic Neglect of Iraq Vets*, SALON.COM (Apr. 25, 2007), at http://www.salon.com/news/feature/2007/04/25/walter_reed_groups/.
- ⁹⁸ See, e.g., 9/5/07 Rep. Debate, *supra* note 11 (Governor Romney: “But the honor that we have for men and women who serve in armed forces is a place of honor we will never forget, and nothing compares to it. People who are willing to put their life on the line for American freedom are in a league of their own, and we owe them their—our respect. And the sacrifice they make is something we’ll never forget.”).
- ⁹⁹ See, e.g., 6/3/07 Dem. Debate, *supra* note 59 (Governor Richardson: “And today a lot of our vets coming back from Iraq and Afghanistan, PTSD, mental health. We cannot do enough to help them.”); *id.* (Senator Obama, referring to veterans with PTSD: “We also need—and I want to make sure that this is emphasized—that, when they come home, we are treating them with the dignity and honor that they deserve.”).
- ¹⁰⁰ See *Mental Illness Appears Common among Veterans Returning from Iraq and Afghanistan*, SCIENCE DAILY, Mar. 13, 2007, at <http://www.sciencedaily.com/releases/2007/03/070313114409.htm>.
- ¹⁰¹ See generally, CHARLES W. HOGE, M.D., ET AL., COMBAT DUTY IN IRAQ AND AFGHANISTAN, MENTAL HEALTH PROBLEMS, AND BARRIERS TO CARE, 351 N. ENGL. J. MED. 13-22 (2004).
- ¹⁰² See *Stress & Substance Abuse: A Special Report*, National Institute on Drug Abuse (Sept. 12, 2005), at <http://www.drugabuse.gov/stressanddrugabuse.html> (listing studies linking PTSD among veterans and substance abuse).
- ¹⁰³ MARGARET E. NOONAN & CHRISTOPHER J. MUMOLA, U.S. DEP’T OF JUST., VETERANS IN STATE AND FEDERAL PRISON, 2004 at 6 (2007).
- ¹⁰⁴ *Id.* at 5.
- ¹⁰⁵ *Id.* See also Anna Badkhen, *Shelters Take Many Vets of Iraq, Afghan Wars*, BOSTON GLOBE, Aug. 7, 2007 (detailing the experience of an Iraq veteran who suffered a traumatic brain injury and mental health issues as a result of his combat experience, who reported that he was using heroin and engaging in criminal activity to support his drug habit within two months of his return home from the war).
- ¹⁰⁶ See WYNN, *supra* note 73.
- ¹⁰⁷ According to the Department of Veterans Affairs, in July 2007 there were an estimated 23,977,000 veterans in the United States. See http://www1.va.gov/vetdata/docs/4X6_summer07_sharepoint.pdf. Therefore, veterans make up less than 8 percent of the U.S. population. See *CIA Factbook*, at <https://www.cia.gov/library/publications/the-world-factbook/print/us.html>. In contrast, veterans make up ten percent of state prisoners. See NOONAN & MUMOLA, *supra* note 103, at 1. That figure does not include veterans who are incarcerated in federal prisons or county or local jails.
- ¹⁰⁸ NOONAN & MUMOLA, *supra* note 103, at 1.
- ¹⁰⁹ A number of current presidential candidates have already been accused of flip-flopping on a variety of issues. See, e.g., 6/5/07 Rep. Debate, *supra* note 5 (Senator McCain regarding his position on supporting religious conservatives such as the Reverend Jerry Falwell; Governor Romney regarding abortion, immigration, and gays in the military); 5/15/07 Rep. Debate, *supra* note 29 (Governor Romney regarding taxes; Mayor Giuliani regarding gun regulations, immigration, and abortion).
- ¹¹⁰ NOONAN & MUMOLA, *supra* note 103, at 4. See, e.g., Dan Barry, *Death in the Chair, Step by Remorseless Step*, N.Y. TIMES, Sept. 16, 2007 (detailing the execution of Daryl Holton, a veteran who murdered his four children).
- ¹¹¹ NOONAN & MUMOLA, *supra* note 103, at 4.
- ¹¹² Compare <http://www.johnmccain.com/Informing/Issues/Ocb5d2aa-f237-464e-9cdf-a5ad32771b9f.htm> (“John McCain strongly believes that it is our duty as a nation to provide our veterans, who dedicated their careers, risked their personal safety, and sometimes sacrificed their lives in order to protect us, with the benefits that we have promised them and that they have earned.”), with 38 C.F.R. § 17.38 (prohibiting “hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services.”).
- ¹¹³ See INFORMATION LETTER, *supra* note 63, at ¶ 2.b. (“In 1998, 12 percent of [people released from prison] were veterans, and an estimated 80 percent of those veterans were eligible for VA services.”).
- ¹¹⁴ JAMES & GLAZE, *supra* note 47, at 1, 9; TRAVIS ET AL., *supra* note 12, at 11 (“[F]ewer than one-third of exiting prisoners receive substance abuse or mental health treatment while in prison.”). But see DITTON, *supra* note 15, at 1, 9 (only 60.5 percent of prisoners in state facilities receive any form of mental health treatment); BECK & MARUSCHAK, *supra* note 65, at 3 (estimating that about 79 percent of mentally ill state prisoners receive mental health therapy on a regular basis).
- ¹¹⁵ Sasha Abramsky & Jamie Fellner, Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, September 2003, at 56, at <http://www.hrw.org/reports/2003/usa1003/>.
- ¹¹⁶ CONFRONTING CONFINEMENT, *supra* note 2, at 44.
- ¹¹⁷ See Abramsky & Fellner, *supra* note 115, at 56-69.
- ¹¹⁸ Madrid v. Gomez, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).
- ¹¹⁹ STEVE AOS ET AL., WASH. STATE INST. FOR PUB. POL’Y, EVIDENCE-BASED POLICY OPTIONS TO REDUCE FUTURE PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES 9 (2006) [hereinafter AOS ET AL., PUBLIC POLICY OPTIONS]. See also AOS ET AL., WHAT WORKS, *supra* note 86, at 3 (estimating a 27.4 percent reduction in recidivism rates where mentally ill prisoners are housed in therapeutic communities).
- ¹²⁰ See AOS ET AL., WHAT WORKS, *supra* note 86, at 3. The importance of appropriate aftercare is highlighted in this analysis; without aftercare, the decrease in recidivism drops to 5.3 percent. *Id.* See also AOS ET AL., PUBLIC POLICY OPTIONS, *supra* note 119, at 9 (estimating recidivism reductions of 6.3 percent for participation in cognitive-behavioral treatment in prison or in the community, 9.3 percent for drug treatment in the community, and 5.7 percent for drug treatment in prison); Volkow, *supra* note 80, at A17 (describing a work release project in Delaware sponsored by the National Institute on Drug Abuse where prisoners who participated in prison-based treatment and postrelease care “were seven times more likely to be drug-free and three times more likely to be arrest-free after three years than those who received no treatment”); *id.* (“The Substance Abuse and Mental Health Services Administration reports that substance-abuse treatment cuts drug abuse in half and reduces criminal activity by as much as 80 percent.”).

- ¹²¹ AOS ET AL., EVIDENCE-BASED TREATMENT, *supra* note 71, at 4.
- ¹²² 9/27/07 Rep. Debate, *supra* note 25.
- ¹²³ 6/28/07 Dem. Debate, *supra* note 41 (Senator Biden, calling for diversion programs); *id.* (Senator Clinton: “[W]e need diversion, like drug courts.”).
- ¹²⁴ Democratic Presidential Debate in Philadelphia, Pennsylvania (Oct. 30, 2007), at http://www.cfr.org/publication/14673/democratic_debate_transcript_philadelphia.html?breadcrumb=%2Fcampaign2008%2Fspeeches (Senator Dodd: “We’re locking up too many people in our system here today. We’ve got mandatory minimum sentences that are filling our jails with people who don’t belong there. My idea is to decriminalize [marijuana], reduce that problem here. We’ve gone from 800,000 to 2 million people in our penal institutions in this country. We’ve got to get a lot smarter about this issue than we are, and as president, I’d try and achieve that.”); 9/27/07 Rep. Debate, *supra* note 25 (Representative Paul: “[Drug addiction] is a disease, and we should orient ourselves to this.”); 6/28/07 Dem. Debate, *supra* note 41 (Senator Dodd: “All of a sudden there may be addicts that need help and assistance. To deprive them of that because they have an illness, it seems to me, [is] the wrong direction to be going in.”); *id.* (Senator Gravel: “When will we learn? When we learn that the issue of drugs is a public health issue. Addiction is a public health issue, not a criminal issue where we throw people in jail and criminalize them to no advancement to the people.”); *id.* (Representative Kucinich: “We need to have the emphasis, with respect to drug offenses, on rehabilitation, not incarceration.”).
- ¹²⁵ See generally 9/27/07 Rep. Debate, *supra* note 25; 9/5/07 Rep. Debate, *supra* note 11; 8/26/07 Dem. Debate, *supra* note 5; 7/23/07 Dem. Debate, *supra* note 43; 6/28/07 Dem. Debate, *supra* note 41; 6/5/07 Rep. Debate, *supra* note 5; 6/3/07 Dem. Debate, *supra* note 59; 5/15/07 Rep. Debate, *supra* note 29; 5/3/07 Rep. Debate, *supra* note 5; 4/26/07 Dem. Debate, *supra* note 84.
- ¹²⁶ See AOS ET AL., PUBLIC POLICY OPTIONS, *supra* note 119, at 9.
- ¹²⁷ See *id.*
- ¹²⁸ See AOS ET AL., EVIDENCE-BASED TREATMENT, *supra* note 71, at 5.
- ¹²⁹ See AOS ET AL., PUBLIC POLICY OPTIONS, *supra* note 119, at 12, 14.
- ¹³⁰ *Id.*
- ¹³¹ See WILLIAM J. SABOL, ET AL., U.S. DEP’T OF JUST., PRISON AND JAIL INMATES AT MIDYEAR 2006 at 14, Appendix Table 2 (June 2007) (listing Washington State’s prison population at 16,633 and the prison population for all states at 1,365,438). This extrapolation assumes that cost savings per prisoner are equivalent in each state.
- ¹³² BARACK OBAMA, THE AUDACITY OF HOPE 259 (2006).
- ¹³³ BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, DRUGS AND CRIME FACTS: PUBLIC OPINION ABOUT DRUGS (2003), at <http://www.ojp.usdoj.gov/bjs/dcf/poad.htm>.
- ¹³⁴ KRISTEN A. HUGHES, U.S. DEP’T OF JUST., JUSTICE EXPENDITURE AND EMPLOYMENT IN THE UNITED STATES 1 (2006).
- ¹³⁵ *Id.* at 2.
- ¹³⁶ See BONCZAR, *supra* note 37, at 7.
- ¹³⁷ Compare AOS ET AL., PUBLIC POLICY OPTIONS, *supra* note 119, at 1 (predicting that Washington would need two new prisons by 2020 and possibly a third by 2030); Caseload Forecast Council, Adult Corrections Caseload Forecasts Year in Review: June 2005 through March 2007, at <http://www.cfc.wa.gov/Pubs/Adult%20Corrections%20YIR%202007.doc>; with Caseload Forecast Council, Corrections Adult Inmate Populations 3 (June 21, 2007), at <http://www.cfc.wa.gov/Web/AdultInmate.pdf>.
- ¹³⁸ See AOS ET AL., PUBLIC POLICY OPTIONS, *supra* note 119, at 1, 4, 13.