Flawed Criminal Justice Policies
Flawed Criminal Justice Policies

At the Intersection of the Media, Public Fear and Legislative Response

SECOND EDITION

Edited by
Frances P. Reddington
and
Gene Bonham, Jr.

Carolina Academic Press
Durham, North Carolina
To my family.

FPR

To my wife, Marty, who has been my friend for life.

GB
Contents

Preface xv

Acknowledgments xvii

About the Contributors xix

Chapter 1 · Flawed Policy: Concepts and Issues in Criminal Justice Policy Making: General Propositions 3
   Gene Bonham, Jr.
   Introduction 3
   Policy Communities 7
   Elitist and Populist Models of Policy Making 8
      Evidence-Based Policy Making: The Interplay Between Theory, Research, and Policy 10
   Benefits and Criticisms of Evidence-Based Policy Making 12
      Best Practices in Criminal Justice Policy Making 14
   Policy Making Reform and Guidelines 14
   References 16

Chapter 2 · Police and the Use of Force: Dilemmas in Policy Making 19
   Anthony Gassaway
   Introduction 19
   Analysis and Definitions 20
   Media Impact on Public Perceptions 24
   Role of Use of Force Policy and Procedures 29
   Historical Background 30
   Las Vegas Metropolitan Police Department 38
   Conclusion 41
   References 42
      Cases Cited 46
### Chapter 3 · The War on Drugs: A Review of U.S. Drug Policy

*Michael N. Gomila and Robert D. Hanser*

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>47</td>
</tr>
<tr>
<td>A Historical Overview</td>
<td>49</td>
</tr>
<tr>
<td>America’s Romance</td>
<td>49</td>
</tr>
<tr>
<td>Dr. Hamilton Wright: The Father of Modern Drug Enforcement</td>
<td>51</td>
</tr>
<tr>
<td>The Harrison Narcotics Act</td>
<td>52</td>
</tr>
<tr>
<td>The Prohibition Unit: The Beginning of Enforcement</td>
<td>52</td>
</tr>
<tr>
<td>Harry Anslinger and the Marijuana Tax Act of 1937</td>
<td>53</td>
</tr>
<tr>
<td>The Modern War on Drugs</td>
<td>54</td>
</tr>
<tr>
<td>The Lessons of Prohibition</td>
<td>56</td>
</tr>
<tr>
<td>Crime</td>
<td>56</td>
</tr>
<tr>
<td>Introduction of Young Drinkers to More Potent Alcohol</td>
<td>56</td>
</tr>
<tr>
<td>Unnecessary Death Related to a Lack of Regulation</td>
<td>57</td>
</tr>
<tr>
<td>Increased Incarceration Rates</td>
<td>57</td>
</tr>
<tr>
<td>Corruption</td>
<td>57</td>
</tr>
<tr>
<td>The Lessons of the Current War on Drugs</td>
<td>58</td>
</tr>
<tr>
<td>Constitutionality Questions</td>
<td>59</td>
</tr>
<tr>
<td>States’ Rights and Legalization of Marijuana</td>
<td>59</td>
</tr>
<tr>
<td>Crime and Incarceration</td>
<td>60</td>
</tr>
<tr>
<td>Mass Commutation of Drug Offender Sentences</td>
<td>62</td>
</tr>
<tr>
<td>Loss of Tax Revenue</td>
<td>62</td>
</tr>
<tr>
<td>Racial Bias and Minority Communities</td>
<td>62</td>
</tr>
<tr>
<td>Emphasis on Treatment</td>
<td>63</td>
</tr>
<tr>
<td>Portugal: Lessons for Policy Reform</td>
<td>63</td>
</tr>
<tr>
<td>Conclusions: Possibilities for Policy Reform</td>
<td>64</td>
</tr>
<tr>
<td>References</td>
<td>64</td>
</tr>
</tbody>
</table>

### Chapter 4 · The Enforcement of Immigration Law by Police

*Robert D. Hanser and Michael N. Gomilla*

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>67</td>
</tr>
<tr>
<td>Section 287(g)</td>
<td>68</td>
</tr>
<tr>
<td>Going Beyond Section 287(g)</td>
<td>70</td>
</tr>
<tr>
<td>Recent State Developments with Immigration Enforcement</td>
<td>71</td>
</tr>
<tr>
<td>California and Senate Bill 54</td>
<td>72</td>
</tr>
<tr>
<td>Reasonable Suspicion Versus Probable Cause</td>
<td>73</td>
</tr>
<tr>
<td>The Impact on Police Community Relations</td>
<td>75</td>
</tr>
<tr>
<td>Lack of Resources</td>
<td>78</td>
</tr>
<tr>
<td>States’ Rights Versus Federal Rights in Responding to the Immigration Issue</td>
<td>81</td>
</tr>
</tbody>
</table>
## Legal Liabilities and Racial Profiling

- Concluding Comments: Potential Reform and Likely Trends...
- References
- Cases Cited

## Chapter 5 · The Sentencing Revolution

*Barbara Belbot*

- Introduction
- The Sentencing Sea Change
  - The Indeterminate Sentencing Era
  - The Determinate Sentencing Era
  - Structured Sentencing
  - Abolishing Discretionary Parole Release
  - Long-Term Prison Sentences
- Summary of the Sentencing Revolution
- The Sentencing Sea Change Hits the Correctional System
  - The Impact of Sentencing Reforms on Incarceration Rates
- The Future of Sentencing Policy
- Conclusion
- References
- Cases Cited

## Chapter 6 · Solitary Confinement

*Scott Chenault and Benecia Carmack*

- Introduction
- Overview of Terms
- Historical Development of Solitary
- Solitary Confinement as Policy
  - Costs
  - Violence
  - Mental Illness
  - Civil Rights
- Future Considerations
  - Duration of Solitary Confinement
  - Days in Placement Before Review
  - Conditions of Confinement
  - Step-Down Programs
  - State Reforms
- Conclusion
Appendix A Office of the Inspector General U.S. Department of Justice 131
References 133
Cases Cited 136

Chapter 7 · The Death Penalty: Ultimate Punishment or Failed Public Policy?
Scott Vollum 137
Introduction 137
Deterrence 138
Incapacitation 141
Cost 143
Retribution 145
Proportionality 147
Justice & Social Catharsis 148
Innocence and Wrongful Conviction 150
The Decline of the Death Penalty and Lessons Learned 153
References 156
Cases Cited 163

Chapter 8 · Faulty Sex Offender Policies
Alissa R. Ackerman and Karen J. Terry 165
Introduction 165
The Emergence of Current Sex Offender Laws 166
Registration and Community Notification Laws 166
Making Our Communities Safer for Children 168
The Civil Commitment of Sexually Violent Predators 170
Faulty Policy 171
Civil Commitment 174
The Management of Sex Offenders in the Community — Moving Beyond Registration 175
Efficacy of the Sex Offender Laws 177
References 181
Cases Cited 184

Chapter 9 · “Getting Tough” and the Adultification of Juvenile Justice
Frances P. Reddington 185
Introduction 185
A Brief History of Juvenile Justice 186
Kent: The Case That Opened the Door 188
Chapter 10 · Deliberate Indifference? Individuals with Mental Illness in the Criminal Justice System

Jacqueline Buffington and Natalie Perron

Introduction
Definitions and Prevalence of Serious Mental Illnesses in the Criminal Justice System
Reasons for the Overrepresentation of Individuals with Mental Illness in the Criminal Justice System
Historical Events
System Failures: Traditional Approaches to Working with Offenders with Mental Illness
An Inadequate Mental Health System
Individuals with Mental Illness and Law Enforcement
Individuals with Mental Illness in Jails and Prisons
Acute Psychopathology
Conditions of Incarceration
Disciplinary Infractions
Use of Segregation
Lack of Services
Medications
Individuals with Mental Illness in the Courts
Incompetency to Stand Trial and Competency Restoration
The Not Guilty by Reason of Insanity Plea and the Guilty but Mentally Ill Verdict 222

Individuals with Mental Illness and Discharge Planning From
Jail & Prison 223
Lack of Adequate Discharge Planning 224
Lack of (Easy Access to) Community Services 225
Lack of Communication Between the Agencies Providing Services 226
Probation and Parole 226

Recommendations for Policy and Practice Involving Offenders
with Mental Illness 227

Criminal Justice-Specific Innovations 229
Diversion 229
Crisis Intervention Teams: Training and Beyond 230
Specialized Mental Health Units in Criminal Justice Agencies 232
Mental Health Courts 232
Specially Trained Probation/Parole Officers 233
Use Evidence-Based Practices 233

Program Evaluation 236
Criminal Justice–Mental Health Collaboration 237
Intercept 0: Community Services 238
Fast and Easy Access to Mental Healthcare 238
Facilitating Release of Information 239
Preparation and Communication 240
Cultural, Social, and Economic Reform 241
Increase Funding for Mental Healthcare 241
Decrease Stigma 242

Conclusion 243
References 244
Court Cases 255

Chapter 11 · Concealed Carry on College Campuses 257
Amy M. Memmer and Patricia P. Dahl

Introduction 257
Background Information 257
Bringing the Debate to Campus 261
Present Landscape 262
The Cost of Opting Out 264
Arguments: Pros and Cons 264
CONTENTS

Arguments for Concealed Carry on College Campuses 265
  The Deterrent Effect 265
  The Intervention Argument 267
Arguments against Concealed Carry on College Campuses 267
  Violent Attacks 268
  Escalation of Confrontations 268
  Suicides 270
  Accidental Discharge 270
  Juvenile Development 271
  First Amendment Freedoms 272
Perspectives 273
  Faculty/Administrators 273
  Law Enforcement 273
  Students 274
  Public Opinion 274
Tracking 275
  Tracking Data 275
Conclusion 276
References 277
Cases Cited 280

Index 281

Online Chapter • Policy Watch Special Issue: Treatment of Pregnant Incarcerated Women

   Stephanie Shipwash

   Introduction
   Shackling
   Prenatal Care
   Bonding
   Cost
   Recommendations
   Action
   Conclusion
   References
Preface

This book examines various aspects of the American criminal justice system and how policies that govern criminal justice procedures can sometimes be flawed. Basically a flawed criminal justice policy would not produce the desired effect intended by the policy, or may, in fact, produce unintended and negative consequences. While this book focuses somewhat on policies that may have produced negative and unintended consequences associated with our criminal justice system, it is not meant to imply that the criminal justice system is ineffective or unsuccessful. In fact, there currently exists a growing trend in our criminal justice system to improve policy creation and evaluation.

We asked the contributors to this book to write a chapter for this reader because of their expertise in certain critical areas of the criminal justice system, and because they also have some knowledge and insight into the role of public policy in their area of expertise. In addition, when we asked the contributors to write their chapters, we asked that they include both some recommendations for positive change as well as an overview of any positive progress that had or is occurring in their area of discussion. We believe that it would not be enough to simply point out flaws in how our system works, but that this reader also should offer recommendations on how to fix or improve the situation. Each chapter provides some discussion as to how flawed policy in a specific area can be addressed and remedied.

Chapter One opens the book with a discussion about criminal justice policy and how it evolves. It sets the stage for the rest of the chapters which follow. The basic framework provided in Chapter One will help the reader to examine each remaining chapter within the broader context of what is known about the policy making process and what is thought to work.

The remaining chapters focus on specific policy issues found in a certain segment of the criminal justice system today. Detailed analysis of a criminal justice policy and its consequences is provided by the contributors who then also provide suggestions for the creation of good, sound, evidence-based policy. Specific topics include the use of force, the War on Drugs, the enforcement of immigration laws, the sentencing revolution, solitary confinement, the death
penalty, sex offender policies, adultifying juvenile justice, mental illness and the criminal justice system, and conceal and carry on college campuses.

In addition, we are including an online component to this second edition. The online component consists of shorter essays on important topics that we will post periodically. We call this Special Issues Policy Watch. The essays address the major issues and current status of policy and/or procedure in criminal justice. Go to the book’s webpage on the publisher’s website (cap-press.com) to access these free supplements.

Frances P. Reddington
Gene Bonham, Jr.
May 29, 2018
Acknowledgments

Many people did a lot of work to make this book happen. First and foremost, no reader would happen without the collection of contributors who are at the heart of the work. The contributors to this reader are, in a word, exceptional.

We would like to acknowledge Carolina Academic Press for their support, and specifically Beth Hall, our editor, who kept us on task and offered us her support. From day one, she believed this was a work that needed to be done.

We would like to thank The University of Central Missouri for the support we receive. Putting together a reader of this nature takes a great deal of work, much of it very detail oriented and time consuming. We would like to thank two former Graduate Assistants from the Criminal Justice Department at the University of Central Missouri. Erica Lehmuth and Hillary McNeel both put in numerous hours checking references, creating indexes and helping to format the first edition. We thank them so much for their assistance—it really was invaluable to us and helped make this project possible.

And finally, we would like to acknowledge the people who work in the criminal justice field, those who make laws regarding criminal justice policy, those who cover criminal justice in the media, and the public who indicate that crime and the system designed to deal with this social issue remains a major American concern. We hope this work serves to raise awareness, foster discussion, and provides a little information as we move forward in finding what works best.
About the Contributors

Alissa R. Ackerman, Ph.D., is a criminal justice professor at California State University, Fullerton. She has published extensively on sex crimes policy and practice, with her work appearing in Criminal Justice & Behavior, Contemporary Justice Review, Sexual Abuse, and the Journal of Offender Rehabilitation. Her most recent book The New Campus Anti-Rape Movement will be published in 2018.

Barbara Belbot, J.D., Ph.D., is a Professor of Criminal Justice at the University of Houston-Downtown. She holds a J.D. from the University of Law Center and a Ph.D. from Same Houston State University. Dr. Belbot has published articles and books on criminal-justice-related topics. Her primary research interests are institutional corrections, corrections law, and civil liability issues for criminal justice professionals.

Gene Bonham, Jr., Ph.D., is currently a Professor in the Department of Criminal Justice at the University of Central Missouri where he teaches both undergraduate and graduate criminal justice classes. He holds a Master's degree in Administration of Justice from Wichita State University and a Ph.D. in Criminal Justice from Sam Houston State University. His work experience includes ten years as a state parole officer and almost ten years as Director of Community Corrections in Kansas, where he was responsible for operations of a multi-county adult and juvenile Community Corrections Act program. Currently Dr. Bonham's research interests include program evaluation, civil liability in corrections, restorative models, as well as systems and policy analysis. He has co-authored two books and published numerous articles in his areas of interest.

Jacqueline Buffington, Ph.D., is a forensic clinical psychologist and an associate professor at the University of Minnesota Duluth Criminology Department, where her focus of teaching and research is offenders with mental illness. She completed her masters and doctorate at Sam Houston State University in Texas, a postdoctoral fellowship at the University of Virginia Medical School’s Institute of Law, Psychiatry, and Public Policy, and worked at several state forensic psychiatric hospitals. In addition to being a professor, she has been performing forensic evaluations (e.g., competency to stand trial, sanity at the time of the
offense) for the past 12 years. She has trained hundreds of law enforcement
officers, jail officers, and community members on mental illness and de-
escalation. She consults on a variety of projects for the 6th Judicial District
Courts in Minnesota, including the area’s treatment courts.

**Benecia Carmack, J.D., M.B.A.** is an Assistant Professor with the Criminal Justice
Department of the University of Central Missouri. She teaches Criminal Law and
Criminal Procedure, White Collar Crime, Legal Aspects, Innocence Case Review
Course, Introduction to Criminal Justice, Evidence and Courtroom Procedure,
and serves as Undergraduate and Internship Coordinator. She previously served
as municipal judge for the city of Clinton, Missouri in Henry County for over
sixteen years. While serving as a municipal judge she was a board member of the
Missouri Municipal and Associate Circuit Judges Association for four years. She
graduated from University of Missouri at Kansas City Law School and also holds
a Master in Business Administration from the University of Central Missouri.

**Scott Chenault, Ph.D.**, is an Associate Professor of Criminal Justice at the University
of Central Missouri. His primary research is in the area of correctional staff and
programming. He has published research in the *Journal of Qualitative Criminal
Justice and Criminology*, the *Journal of Criminal Justice Education*, and in the
Sociology journal *Symbolic Interaction*.

**Patricia Dahl, Ph.D.**, is an associate professor in the Criminal Justice and Legal
Studies Department at Washburn University. Dr. Dahl received her master’s
degree in criminal justice and her Ph.D. in Public Administration/Criminal
Justice from the University of Colorado in Denver. Prior to teaching at the
college level, Dr. Dahl worked in the criminal justice field for 20 years at the
county, state and federal level in Colorado. Her research interests include the
juvenile justice system, institutional corrections, and crime victims.

**Anthony Gassaway, M.S.** has served as an Assistant Professor of Criminal Justice
at the University of Central Missouri since July of 2014. Prior to that
appointment, he was employed in various capacities with the U.S. Marshals
Service, Department of Justice for approximately 31 years. During his tenure
in the U.S. Marshals, he was assigned to numerous projects which required
the creation, review, and revision of agency policies, to include those regarding
the use of force and intermediate weapons. He additionally created several of
the agency’s intermediate weapon programs (expandable baton, OC spray, Taser)
and also served as the agency’s subject matter expert in federal court
proceedings regarding the use of intermediate weapons and restraint devices.
His final agency assignment was as the Chief Deputy U.S. Marshal for the
Western District of Missouri. He received a Master’s Degree in Criminal Justice
CONTRIBUTORS

from the University of Central Missouri in 2008 and a Bachelor’s Degree in Criminology from Indiana State University in 1983.

Michael Gomila, Ph.D. is a project monitor for the State of Louisiana’s Office of Behavioral Health. In his role with the agency, he is the state representative for substance abuse services and oversees forensic behavioral health programming. Dr. Gomila has a vast amount of experience in the administration of substance abuse and psychiatric facilities having managed both inpatient and outpatient behavioral health units in North Carolina and Louisiana. Dr. Gomila teaches as an adjunct professor within the Criminal Justice Department at the University of Louisiana at Monroe. As a matter of coincidence, Dr. Gomila has ties to the issue of drug policy through his family history. His distant relative (Frank R. Gomila, M.D. from New Orleans, LA) lent expert testimony to the hearings surrounding the Marijuana Tax Act of 1937, which led to the criminalization of marijuana.

Robert Hanser, Ph.D., is the Coordinator of the Department of Criminal Justice at the University of Louisiana at Monroe. Rob is a past administrator of a regional police training academy and has been the director of Offender Programming for LaSalle Corrections for nearly 7 years. Rob has written several textbooks and numerous other publications related to his various fields of interest.

Amy Memmer, J.D., is an assistant professor in the Criminal Justice and Legal Studies Department at Washburn University and the director of the Washburn University Legal Studies Program. Ms. Memmer received a law degree and a master’s degree in criminal justice from Washburn University. She is licensed to practice law and is a State approved mediator for the State of Kansas. Previously, she worked for the Kansas Supreme Court, the U.S. Department of Justice Civil Rights Division, the Kansas Court of Appeals, and the Shawnee County District Attorney’s Office.

Natalie Perron, MSW, LGSW, has her Bachelor’s degree in Criminology from the University of Minnesota Duluth and her Master’s degree in Social Work from The College of Saint Scholastica. She has worked with both inmates in a prison re-entry program and with victims as a sexual assault advocate. Most recently, she has been assisting offenders with mental illness in a jail diversion program. She is currently employed as a research assistant on the Duluth Sexual Assault Kit Initiative, a joint project between the Duluth Police Department and the Program for Aid to Victims of Sexual Assault that is committed to testing old sexual assault evidentiary kits from unsolved cases.

Frances P. Reddington, Ph.D., is a professor of Criminal Justice at the University of Central Missouri. She earned her Ph.D. in Criminal Justice from Sam Houston State University. Her main areas of research interest include all aspects of juvenile
justice. She has published in the areas of: juvenile law, juvenile law in Texas, juveniles in adult jails, transfer of juveniles to the adult court, juveniles and the age of criminal responsibility, training of juvenile probation officers, the use of charter schools, and the role of Guardians ad Litem in abuse and neglect cases in juvenile court. She has served as a consultant for the National Institute of Corrections and the Office of Juvenile Justice and Delinquency Prevention in the area of juvenile justice staff training. Dr. Reddington is a past chair of the Academy of Criminal Justice Sciences Juvenile Justice Section and past chair of the Student Affairs Committee of the American Correctional Association. She is a past editor for Youth Violence and Juvenile Justice: An Interdisciplinary Journal. She has been on the Board of Directors for both the Missouri Juvenile Justice Association and the Missouri State CASA (Court Appointed Special Advocate) Association and is on the board of the Missouri Corrections Association. She is currently researching in the area of juvenile justice policy.

Stephanie Shipwash, M.S., finished her Master’s Degree in Criminal Justice in 2017 from the University of Central Missouri. Prior to graduate school, she was in the United States Air Force and worked in logistics and was also a victim advocate for sexual assault survivors. She received her Bachelor’s Degree in Criminal Justice from Appalachian State University in 2009.

Karen Terry, Ph.D., is a Professor at John Jay College of Criminal Justice in New York City. She holds a doctorate in Criminology from Cambridge University. Her primary research interest is sexual offending and victimization and sex offender policy. Her current research focus is on abuse of children in an institutional setting, and she was the principal investigator for two studies on sexual abuse of minors by Catholic priests in the United States.

Scott Vollum, Ph.D., is Department Head and Associate Professor in The Department of Anthropology, Sociology & Criminology at the University of Minnesota Duluth. At this time, his primary areas of academic interest and research are violence, the death penalty, restorative justice, media and crime, and moral disengagement. He is currently working on a variety of research projects including an evaluation of a restorative justice program for domestic violence offenders, an examination of death penalty attitudes and the impact of wrongful convictions in capital cases, and a qualitative study of people who kill. He is author of the book Last Words and The Death Penalty: Voices of the Condemned and Their Co-Victims and co-author of the book The Death Penalty: Constitutional Issues, Commentaries and Case Briefs. His previous research has been published in a variety of scholarly journals, his most recent (“Gender Politics and The Walking Dead: Gendered Violence and the Reestablishment of Patriarchy”) in the journal Feminist Criminology. He lives in Duluth, MN with his son Kai and their dogs Milo & Cooper.