

## **Overview**

In a report documenting disproportionate trends in national incarceration, the Justice Policy Institute of Maryland observed, “In 2002, African Americans nationally were incarcerated at seven times the rate of Whites, and Latinos were incarcerated at two and one half times the rate of Whites. African Americans and Latinos comprised 68% of all prisoners in 2002, even though [they] make up 25% of the US population.”<sup>1</sup> The trends in the state of Maryland are even more alarming in relation to the rates of incarceration for drug offenses. African Americans make up 28% of the general population in Maryland, but 76% of the prison population is comprised of African American inmates. Ninety percent of all those imprisoned for drug offenses are African Americans.

## **The Policy**

House Bill 295 was a bipartisan bill that redirects nonviolent drug offenders from prison into treatment and prevents their return to prison for minor crimes. The law states that:

- An inmate may be released on parole at any time in order to undergo drug or alcohol treatment if the inmate is not serving a sentence for a crime of violence and has been determined to be amenable to drug or alcohol treatment;
- Upon successful completion by a defendant of any treatment ordered as a condition of probation, the offense will be taken out of the person’s records; and
- Before the revocation of any probation, “the court shall consider any evaluation or recommendation of any [licensed] health professional; consider relevant information about the defendant's drug or alcohol abuse; and make a finding...as to the defendant's amenability to treatment and the interest of justice.”

## **Impact**

The law became effective on October 1, 2004, so it is premature to identify any direct impacts the bill may have. Supporters project that it will decrease the number of African Americans and Latinos incarcerated in the state. California has a similar law, Proposition 36, the “Substance Abuse and Crime Prevention Act,” passed in 2000. Under SACPC, drug offenders are redirected to community treatment centers, saving the state millions of dollars and improving public health. Daniel Abrahamson, a co-author of Prop. 36 and director of the Drug Policy Alliance’s Office of Legal Affairs, reports, “The State Office of the Legislative Analyst originally predicted that savings of \$250 million would not be reached until the third or fourth year. We’ve exceeded

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<sup>1</sup> Justice Policy Institute, *Race and Incarceration in Maryland*, Executive Summary, October 30, 2003

those predictions in the first year.”<sup>2</sup> The bill will also help redefine drug addiction as a health issue and not a crime.

Another significant impact for activists in the Maryland area was the coming together of many organizations that had not collaborated previously. Forty-nine groups joined the campaign, representing such diverse issues and constituencies as: social justice; criminal justice; religious and community groups; civil rights; civil liberties; effective law enforcement; drug treatment; criminal defense; good government; employment, housing, and homelessness; urban issues; healthcare; and prison reform. Tara Andrews, of the Maryland Justice Coalition (MJC), believes that the relationship built between Democrats and Republicans during the course of the campaign, as well as the close collaboration with the governor’s staff, will have a positive influence on future efforts.

### **Key Players**

MJC’s Andrews remarks, “By the time it got done, a forensic scientist couldn’t have identified all the fingerprints on this bill.” The unusually wide variety of participants in The Campaign for Treatment Not Incarceration included the National Organization for Women, the Black Citizen Caucus, Democratic and Republican policymakers, Drug Policy Alliance, Maryland Criminal Defense Attorneys Association, Maryland Justice Coalition, Families Against Mandatory Minimums (FAMM), and the Justice Policy Institute.

### **Winning the Policy**

The Campaign for Treatment Not Incarceration began in 2002, when the Maryland Justice Coalition became aware of Republican Governor Bob Ehrlich’s bill to divert nonviolent drug offenders into treatment. A group of concerned people began meeting to promote sentencing reform in Maryland. In October 2003, Justice Policy Institute released *Race and Incarceration in Maryland*, a report that clearly linked incarceration rates of nonviolent offenders with race. It was published widely and used to gain support for the campaign.

Another key event was a presentation at the annual retreat of Maryland’s Legislative Black Caucus at the invitation of its chair, Obbie Patterson. Having garnered support from a host of organizations, weekly meetings were initiated in which 20 people were trained per meeting to approach legislators about the campaign—a total of 90 sessions were held. A strong selling point for the bill was that Maryland faced a fiscal crisis, legislators were interested in ways to reduce the state budget, and the campaign was able to show that treatment costs less than incarcerating nonviolent criminals.

Finally, the campaign was also very well backed financially. Funding was provided by the Open Society Institute, ABLE Foundation, JEHT Foundation, and JPI. This made it possible for the campaign to be staffed with a lobbyist and other key positions. “This was tremendously helpful,” says Vincent Schiradli, Executive Director of JPI. “We were able to keep some very important people in the loop and get them to attend meetings.”

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<sup>2</sup> Drug Policy Alliance, *Drug Policy News*, “CA Treatment Program a Success; Saves State \$275 Million in First Year,” July 17, 2003

Most of the opposition to the bill came from judges who were concerned that the bill would take too much discretion away from them. In the end, a middle ground was reached, giving prosecutors the option to direct offenders to treatment instead of prosecution and judges the discretion to divert convicted drug offenders into treatment.

### **Challenges**

The more successful this new policy is at avoiding incarceration for nonviolent drug offenders, the more treatment options will be necessary. This bill is projected to affect some 200,000 people, and the \$3 million dollars authorized is not enough to absorb the impact it will have on service providers. While service providers were a large part of the campaign and are willing to extend themselves, there are operational difficulties. Drug treatment can be a lengthy process, and recovery often takes more than one attempt. Funding to accommodate the population is an ever-pressing issue, especially because bed space must be available before a person is released for treatment. Efforts are being made to identify nontraditional service providers to be added to the referral lists.

### **Replicability**

This policy could have far-reaching effects if it becomes part of a national trend to decriminalize alcohol and drug addiction. In moving toward that goal, other localities can benefit from the experiences of the Maryland activists, who garnered a very broad base of support, produced the data that connected racial equity with fiscal practicality, and made new alliances in the process.