policy reform will be better in Connecticut without Republican Governor Jodi Rell, who vetoed medical marijuana legislation and blocked other drug policy reforms, and in California without Arnold Schwarzenegger, who opposed most pragmatic efforts to reduce the state’s prison population and vetoed numerous harmreduction bills. The overall state prison population declined for the first time in thirty-eight years in 2009, a result in good part of an emerging bipartisan consensus that nearly bankrupt state governments can no longer afford to keep locking up ever more people, especially for nonviolent drug offenses.

The greatest challenge today is one that was best articulated a couple of years ago by the Latin American Commission on Drugs and Democracy, co-chaired by former presidents Cardoso of Brazil, Gaviria of Colombia and Zedillo of Mexico. It is to “break the taboo” on vigorous, honest and open debate about all drug policy options, including harm reduction, decriminalization and legalization. That’s what drug war advocates most fear—because they know the policies they advocate ultimately are indefensible on grounds of science, compassion, health or human rights. Breaking taboos requires courage, but it is an essential step on the path to broader drug policy reform.

Ethan Nadelmann is the executive director of the Drug Policy Alliance.

Beyond the Fair Sentencing Act
by MARC MAUER

his year’s historic vote in Congress to scale back the harsh and racially disparate mandatory sentences for federal crack cocaine offenses was a watershed event in the long campaign for a more rational approach to drug policy. The Fair Sentencing Act is expected to benefit about 3,000 defendants a year, with an average sentence reduction of twenty-seven months. Defendants convicted of possessing as little as five grams of crack—the weight of two pennies—no longer receive a mandatory five years in prison, and the quantity-based sentencing disparity between crack and powder cocaine offenses has been significantly reduced. The true value of the new law will be seen, however, only if it helps to open the door to more widespread drug policy reform.

As welcome as the reforms are, they leave in place the broad structure of mandatory sentencing for most drug offenses, under which judges have no discretion to consider mitigating circumstances such as the defendant’s age, parenthood or history of abuse. Such policies have produced outcomes as bizarre as the fifty-five-year prison sentence imposed in 2004 on Weldon Angelos, a 24-year-old music producer in Utah with no prior felony convictions. On three separate occasions, Angelos sold about $350 worth of marijuana to a police informant. At each sale, Angelos possessed a gun, which he neither used nor threatened to use. Yet under the terms of federal mandatory penalties, Judge Paul Cassell, a George W. Bush appointee, was required to impose what was essentially a life sentence, which he called “unjust, cruel, and even irrational.”

In recent years states across the nation have been re-
evaluating the excesses of their sentencing policies. In Michigan the extreme “650 Lifer Law,” whereby even a first-time offender convicted of selling 650 grams of heroin or cocaine would receive a sentence of life without parole (the same as for first-degree murder), was finally scaled back in the late 1990s after being on the books for twenty years. Former Republican Governor William Milliken, who had signed the law into effect, called it “the worst mistake of my career.” Similarly, the rollback of New York’s notorious Rockefeller Drug Law in 2009 marked a milestone after decades of campaigning.

The federal crack reform continues this incremental move toward more rational sentencing policies, but much work remains to be done. Drug courts, for example, have been shown to help divert low-level offenders into treatment rather than prison, but many of them impose strict criteria for admission, often focusing on cases in which prison terms would be unlikely to be imposed even without the program. School-zone drug laws, imposed with the inarguable goal of reducing drug sales to children, often apply as well to drug sales between consenting adults. This has a predictable racial impact, because large portions of densely populated urban areas, disproportionately comprising communities of color, lie within a school zone. In New Jersey, fully 96 percent of such penalties were imposed on African-Americans or Latinos, an outcome that in 2010 persuaded the legislature to restore discretion to judges in such cases.

The first test of the impact of the Fair Sentencing Act will come when the US Sentencing Commission votes on whether to apply the guideline changes retroactively to the thousands of people who committed their crack cocaine offense before the bill was signed. Along with that, the commission’s report on mandatory sentencing, due out next year, may help to strengthen the argument about excessive punishments.

Ultimately, the scope of reform can be measured only by our ability to level the playing field in addressing substance abuse. While the war on drugs has been waged for decades, it is actually two very distinct wars. In well-heeled communities substance abuse is treated as a public health problem best addressed by prevention and treatment. In low-income communities of color, it is far more likely to be considered a criminal justice problem, one best addressed with more police, prosecutors and prisons. We have a better model at hand; the challenge is to implement it more broadly and equitably.

Marc Mauer is the executive director of The Sentencing Project and the author of Race to Incarcerate.

Decriminalizing Poverty
by BRUCE WESTERN

America’s drug policy aims to reduce illicit drug use by arresting and incarcerating dealers and, to a lesser extent, users. Whatever its merits (and there are some), the policy is deeply flawed because it is unjust. It applies only to the disadvantaged. As such, it reflects massive deficits in the areas of treatment, education and employment.
Drugs are intensively criminalized among the poor but largely unregulated among the rich. The pot, coke and ecstasy that enliven college dorms, soothe the middle-class time bind and ignite the octane of capitalism on Wall Street are unimpeded by the street sweep, the prison cell and the parole-mandated urine tests that are routine in poor neighborhoods.

The drug war is nitro to the ghetto’s glycerin. In neighborhoods of mass unemployment, family breakdown and untreated addiction, punitive drug policy (and its sibling, the war on crime) has outlawed large tracts of everyday life. By 2008 one in nine black men younger than 35 was in prison or jail. Among black male dropouts in their mid-30s, an astonishing 60 percent have served time in state or federal prison.

The reach of the penal system extends beyond the prison population to families and communities. There are now 2.7 million children with a parent in prison or jail. There are 1.2 million African-American children with incarcerated parents (one in nine), and more than half of those parents were convicted of a drug or other nonviolent offense.

In the absence of any serious effort to improve economic opportunity, particularly among young men with little schooling, drug control has become our surrogate social policy. For all the billions spent on draconian criminalization, addiction remains a scourge of the disadvantaged in inner cities and small towns, drugs are still plentiful and the drug trade remains a ready but risky source of casual employment for low-education men and women with no legitimate prospects. Though drugs are at the center of an array of serious social problems in low-income communities, things are made worse by a dysfunctional policy in which arrest, imprisonment and a criminal record have become a normal part of life.

The most important lesson policy-makers can take from this historic failure of social engineering is that the drug problem depends only a little on the narcotics themselves, and overwhelmingly on the social and economic context in which they are traded and taken.

Addiction exacts a toll not because the latest drug is more addictive or more potent than its predecessors but because there is too little treatment, few family or community supports, and acute economic insecurity in low-income households. The drug trade—with all its volatility and violence— is not a mainstay of economic life because of the ghetto-fabulous drug culture and its promise of conspicuous wealth. It succeeds because there is no work for men and women who dropped out of school, who have never held a legitimate job and who read at an eighth-grade level. America doesn’t have a drug problem. It has a poverty problem.

Change, however, is in the air. The states are broke and probation reforms are successfully reducing reimprisonment for drug and other violations. Libertarians on the right and left are finding common ground on decriminalization. Hard times, it seems, are forcing reform on a profligate policy.
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nities will continue to offer more than going straight. Our best research shows that criminal justice reform must be buttressed by drug treatment, education and employment. These measures complement one another. A less punitive drug control regime acknowledges relapse as a likely stage on the road to recovery. Keeping people out of prison can carry a steep social cost unless they're meaningfully occupied. In this context, school and work are as important for the stability and routine they provide as for the opportunities they expand.

The drug war made an enemy of the poor. A successful ceasefire must do more than lift the burden of criminal punishment. It must begin to restore order and predictability to economic and family life, reducing vulnerability not just to drugs but to the myriad insecurities that characterize American poverty.

Bruce Western, a professor of sociology at Harvard University, is the author, most recently, of Punishment and Inequality in America.

The Verdict on Drug Courts
by TRACY VELÁZQUEZ

According to the National Survey on Drug Use and Health, about 9 percent of Americans are addicted to drugs and/or alcohol, and less than a quarter of these receive substance abuse treatment. Another study estimates that 37 percent of those who do are referred by the criminal justice system. Because of the lack of accessible, community-based resources, many people gain access to the treatment they need only after being arrested.

In recent years, the use of drug courts—court-regulated treatment and supervision programs that serve as alternatives to incarceration for people arrested for a drug-related offense—has increased dramatically. There are now nearly 2,500 across all fifty states. But though they have helped a small percentage of people struggling with addiction, drug courts may be widening rather than shrinking the net of criminal justice control. And they have helped delay the expansion of community-based treatment-on-demand that will best reduce addiction and the harms it causes.

How so? Without drug courts in the mix, some addicts might have received the help they needed without getting involved in the justice system. Before, if a person was arrested for possession, the prosecutors might have dismissed charges, put him in touch with a social worker or issued a warning or referral for treatment. A clear and growing demand for community treatment might have pushed policy-makers to expand resources. Now well-meaning police, prosecutors and judges send people to drug court, and given the lack of other options, people are often grateful for the opportunity to get treatment.

The real catch, though, is that generally a person must plead guilty to participate, with the conviction reduced or overturned only if he or she is successful. Disobeying court rules or experiencing a relapse—which is a natural part of recovery—can result in jail time. And when people fail drug court, they face traditional sanctions. In this way, participants become vulnerable not just to incarceration but to the pervasive aftereffects of a criminal conviction—which can include difficulty finding employment,
being banned from benefits like public housing and food stamps and denied the right to vote. In addition, some drug courts have come under fire for "cherry-picking" participants, misdirecting resources to people who might have succeeded with a less intensive and expensive intervention. Those with felony or violent offenses or records are often excluded, even if they are the ones who would benefit most.

We know that community-based treatment is about nine times more cost-effective than drug courts. A study in Washington State found that drug treatment in the community produces $18.52 in public safety benefits in terms of reduced crime for every dollar spent, whereas treatment in prison produced only $5.88 in benefits, and drug courts less than $2.10 in benefits for every dollar spent.

Expanding people’s access to treatment before they become involved in the justice system will help increase public safety, save money and improve people’s life outcomes. Shifting the way we think about addressing drug use away from “back end” solutions like drug courts and toward a public health model will have a positive and lasting impact on people, save money in the long run and create a healthier and safer society for all of us. You shouldn’t have to get arrested in order to beat an addiction.

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Restoring Lost Liberties
by DAVID COLE

ince September 11, 2001, much attention has been paid to the threats to liberty and equality occasioned by the “war on terror.” But precisely because they are unexceptional, the threats created by the “war on drugs” may well be more significant and long-lasting.

The cost of the drug war can be measured in many ways: lives lost, futures ruined, crimes produced, or state and federal resources wasted in a near-futile effort to stanch the flow of drugs into and through the United States. But these traditional measurements do not tell the whole story. One cost that is more difficult to quantify but no less significant is the effect on our civil liberties. Since the 1970s the Supreme Court has consistently eased the tension between constitutional rights protections and the mandate to enforce the drug laws by diminishing the protections—often in ways that have a disproportionate impact on members of minority groups. In short, the drug war has been waged not only on drug traffickers and users but on liberty and equality.

In cases involving searches for drugs, the Court has created exception after exception to the general rule that searches and seizures must be preceded by probable cause and a warrant. It has upheld the right of the police to ask for “consent” to a search without any articulable basis for suspicion, and without informing the individual that he has a right to say no. It has approved the use of “bus sweeps,” in which police approach people in remote areas on long-distance bus rides to increase the likelihood that they will obtain such consent, again with-