

# **Reshaping a Fractured System: Arlen Specter's Footprint on the Criminal Justice System in the U.S.**

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## **Abstract**

The criminal justice system in the United States of America has been in peril since the beginning of the 1960's, spiraling downward as the rates of crime shot upward across the country. Such drastic changes to a major system within the United States brought the issue of criminal justice to the forefront of nearly every political agenda of politicians in office. This paper examines the work one such politician, the late Pennsylvania Senator Arlen Specter, performed in his fight against the crippling system. This paper evaluates the actions and policies Specter introduced, from his controversial Armed Career Criminal Act to the Bipartisan Justice Integrity Act, in order to fix the criminal justice system and protect those affected by it.

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## **I. Introduction**

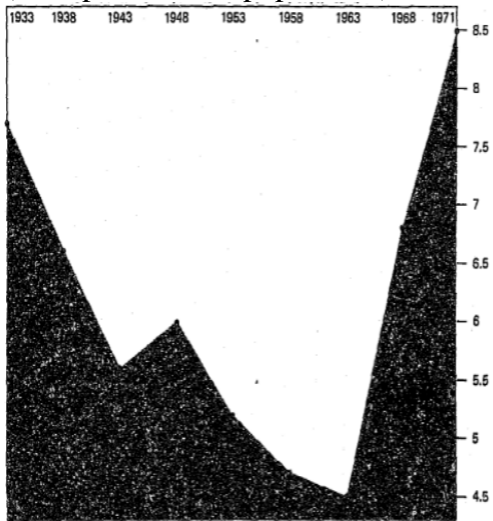
According to late U.S. senator Arlen Specter, “criminal justice in the United States is widely viewed as a failure,” one that has proven to be ineffective in reducing the increasing rates of violent crimes (Specter and Michel 1982). Crime rates had held steady across the United States throughout the decades following the 1930’s; however, all that changed when those rates drastically increased in the early 1960’s, splintering the system and waning the public’s trust. Changes in the overall crime that occurs in the United States is measured by the Index Crime Rate, published annually by the Federal Bureau of Investigation (FBI). Local governments report their crime rates to their states, who in turn report them to the FBI, where the data is included in the uniform crime reporting (UCR) programs (Crime and Justice 2000). The annual publication of this data gives a good indication of how much crime in the nation has changed over the last century.

According to the data provided by the index, the reported crimes of murder or non-negligent manslaughter, larceny, rape, robbery, aggravated assault, burglary, and motor vehicle theft were fairly steady between the 1930’s and 1950’s (Crime and Justice 2000). Between the years of 1933 to 1940, the rates of homicide, robbery, assault and burglary saw a 15, 51, 13 and 21 percent decrease respectively, as indicated in figure one. The rates of rape, however, saw a 41 percent increase during the said period (National Strategy 1974). Figures two through five summarize the 20 years that followed (1940-1963) during which rape, assault, and burglary rates rose slowly, while the rates of robbery virtually stayed the same. As the outlier of the group, homicide rates declined greatly (National Advisory Commission 1974). This period of relative steadiness in crime rates ended in the early 1960’s, when all five target crimes sharply increased. In fact, the rates of these crimes more than doubled between 1960 and 1971, with the exception of homicide, which saw an increase of 70 percent during the 11 year period (National Advisory

Commission 1974). In 1969, the U.S. National Commission on the Causes and Prevention of Violence, which was created to identify the causes and preventions of violence, found that these crimes were primarily taking place in large cities, although this central city phenomenon was slowly fading away as crime rates began rising faster in suburbs than in cities. The Commission also found that crimes were largely committed by males, typically those on the lower end of the occupational scale who come from poor neighborhoods (National Advisory Commission 1974). One of the most important statistics found, however, was that a large fraction of the crimes committed during this crime uptick were by members of the youth between the ages of 15 and 20, who saw the biggest increase in crime following the 1960's (National Advisory Commission 1974). Serious crimes, especially violent ones committed by the younger generation during this period increased at such a fast rate that by the end of the 1980's, violent crimes committed by young people had reached epidemic proportions (McDonald 2000). Homicide rates among the young had reached its highest levels by the 1970's, at which time rates among adolescents between the ages 14 and 17 had tripled, while the rates between 18 and 24 year olds doubled (McDonald 2000).

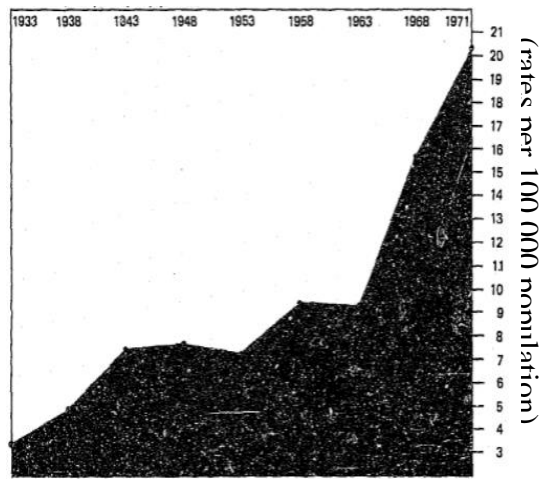
With so many different types of crimes rapidly increasing during the same period of time, the court's reliance on incarceration had risen far more than it ever had in the nation's history. The rapid rise in crime and mass incarceration both contributed to what many public officials have referred to as a broken justice system. The United States' justice system began to shift towards a more punishment-oriented system. The punishment based system had a negative effect on offenders across the country as it crippled and destroyed the lives of many, especially those who committed minor offenses, as harsher sentencing guidelines went into effect. Criminal justice in the United States became a system that was responsible for 25 percent of the world's

Figure 1: Murder and Non-Negligent Manslaughter known to the Police, 1933-1971 (rates per 100,000 population)



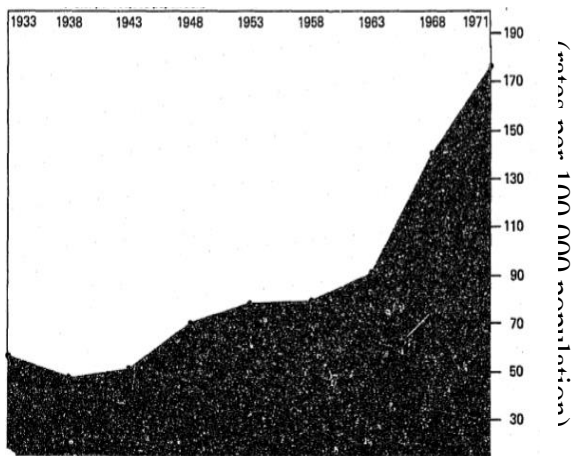
Source: *A National Strategy to Reduce Crime* (1974)

Figure 2: Rapes known to the Police, 1933-1971 (rates per 100,000 population)



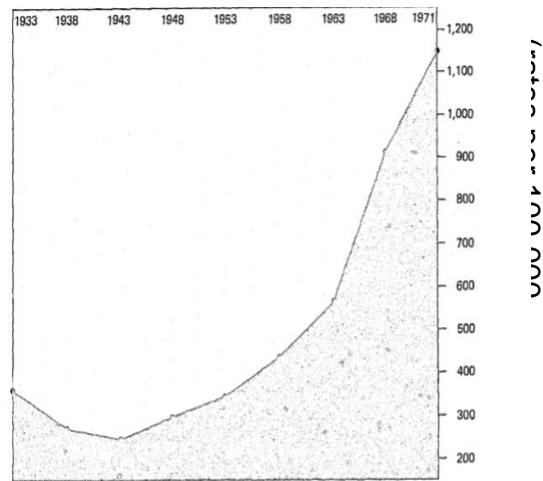
Source: *A National Strategy to Reduce Crime* (1974)

Figure 3: Assault known to the Police, 1933-1971 (rates per 100,000 population)



Source: *A National Strategy to Reduce Crime* (1974)

Figure 4: Burglary Known to Police, 1933-1971 (rates per 100,000 population)



Source: *A National Strategy to Reduce Crime* (1974)

prison population, despite the nation only having five percent of the world's population (Webb 2009). The justice system became the unfortunate perpetrator of overcrowded prisons, uneven and insufficient sentencing, unremarkable reentry programs, and sometimes even corruption, following the increase in crime in the 1960's. With such a high number of issues plaguing the system, it is not a surprise that the reform of the fractured system was at the forefront of so many political campaigns. One such politician was Senator Arlen Specter, a man who spent a substantial portion of his career trying to fix the criminal justice system in the country.

Before he became one of the most important and influential United States senators in modern history, Arlen Specter first had to overcome a number of obstacles while growing up as the son of Russian-Jewish immigrants in depression-era Kansas (Fitzgerald, 2010). He spent his youth performing jobs such as selling cantaloupes from door to door and loading scrap iron onto railroad freight cars, strenuous work that helped him learn his now famous work ethic (Dubois 2012). He used this work ethic throughout his entire career, leading him to be at the center of some of the most important political events and decisions in the last few decades. Specter first gained national attention after he successfully prosecuted a powerful local union, Teamsters 107, during his days as an assistant district attorney. His success with this case, as well as his reputation as a lawyer, also garnered him the attention needed to be recommended as co-counsel on the Warren Commission that was established in 1963 to investigate the assassination of President John F. Kennedy. While doing so, he once again gained national attention as the architect of the "Single Bullet Theory," which suggested that the bullet that administered the non-fatal wound to the president also wounded Governor John Connally of Texas, leading to the conclusion that there was one lone gunman (Specter 2013). Following the investigation, Specter was elected district attorney in 1965 and held the position for two terms until 1973. He returned

to practicing law until 1980, at which time he was elected to represent Pennsylvania in the United States Senate. He continued to represent Pennsylvania for five terms, becoming the state's longest serving senator, during which time he wrote several pieces of legislation in an attempt to fix the criminal justice system.

## **II. Battling Criminal Justice as District Attorney**

Specter had major ambitions for what he wanted to accomplish during his time in office, which led him to double his staff, as he needed more labor to accomplish his goals for the city. With this extra labor, he created special squads to investigate crack gangs, narcotics, and rape (Levin 1984). While his staff focused on the work they were assigned, Specter turned his attention towards some of the larger issues concerning him, such as fixing the justice system.

### **Plea Bargaining**

Throughout his two terms in the district attorney's office, Specter took part in one of the major changes in the criminal justice system. That change was a move towards increasing punitiveness in the system, thereby taking a step towards increasing use of punishment as the primary response to a person's crimes. While punitive justice in the United States' criminal justice system dates back to colonial times, there was a shift towards a more rehabilitative form of justice over time. It was not until the drastic increase in crime in the 1960's and 1970's that the focus shifted back towards more punitive measures. With the increase in drugs, riots, and gangs, the public desired swift justice for criminals. One of the punitive measures taken in many jurisdictions was the abolishment of plea-bargaining in order to prevent lenient sentencing. A plea bargain is an agreement between the prosecutor and the defense attorneys, where the defendant agrees to plead guilty in exchange for some compromise demanded by the prosecutor.

Specter once again gained national attention when he created policies that seemingly banned plea-bargaining in order to eliminate the problem of variant guilt associated with plea-bargaining (White 1971). While Specter himself did not believe that his policies actually abolished plea-bargaining, he did suggest that his policies led to less plea-bargaining in Philadelphia (Alschuler 1983). Specter's policies, which affected Philadelphia and Pittsburgh, set up an accelerated trial system that substantially reduced the pressures for negotiating a plea deal and replaced plea-bargaining with bargaining for the right to a jury trial (Alschuler 1968). Specter's policies worked in the Philadelphia and Pittsburgh areas. Only 27 percent of all criminals convicted in Philadelphia in 1965 pleaded guilty. For the same year, this statistic was only 25 percent in Pittsburgh. Before Specter's policies came into effect, 58 percent of convictions in Philadelphia were from guilty pleas, with 74 percent in Pittsburgh. The percentage of convictions based on guilty pleas in Philadelphia and Pittsburgh after the implementation of Specter's policies were extremely low compared to those in other major cities such as Chicago, Manhattan, Cleveland, and San Francisco, where the percentage of convictions based on guilty pleas during the same period ranged from 85 to 97 percent (Alschuler 1983). Alschuler (1983) found that with these new policies, defendants also had a higher chance of acquittal; 40 percent of the defendants in Philadelphia that participated in non-jury proceedings between 1968 and 1974 were acquitted, which is much higher than the 34 percent acquitted in jury trials. Additionally the acquittal rates in these cities greatly exceeded the rates of most of the other American cities, due in part to the judges in the area being able to closely consider all of the evidence, allowing them to acquit defendants when the evidence failed to establish guilt beyond a reasonable doubt.

Such policies were also seen throughout various other jurisdictions across the United States. One notable example was in July of 1975 when the Attorney General of Alaska, Avrum Gross, issued a policy that forbade all district attorneys across the state from participating in plea bargaining (Rubinstein 1979). Gross aimed for his policy to “clean up the least just aspect of the criminal justice system” (Rubinstein 1979). However, while recommendations for sentencing reduced between 12 to 14 percent following the introduction of the policy, it also increased the chances of receiving a sentence longer than 30 days by six percent and had little effect on violent crimes (Rubinstein 1979). Plea banning policies also went into effect in places such as El Paso, Texas; Queens and Bronx, New York; New Orleans, Louisiana; Oakland, California; New Philadelphia, Ohio; and numerous other cities.

### **Drug Rehabilitation in Philadelphia**

The nation’s attention quickly turned towards the sudden surge of drugs in the 1960’s, especially with its connection to the increase in crime. Specter observed that many individuals with substance abuse issues had committed crimes in order to acquire drugs that would feed their addiction. However, Specter did not deem it fit to incarcerate them, but rather thought it best to help fix their addiction problems, becoming one of the first prosecutors to focus on intervention and drug and alcohol prevention (DuBios 2012). In search for an alternative to incarceration of nonviolent offenders whose crimes were drug and alcohol related, he also became one of the first to open a residential drug treatment program in Philadelphia with the help of several other distinguished businesspeople, politicians, community leaders, and people in recovery (founders included Joan Specter, Michael Baylson, Judge Paul Dandridge, Congressmen Will Green, and eighteen others). Gaudenzia House was founded in 1968 to help rehabilitate people struggling with addiction with the goal of ensuring that they did not end up incarcerated as a result of their



substance abuse. What started as a single house in Philadelphia has since grown to 90 facilities across Pennsylvania, Maryland, Delaware, and Washington D.C., which serve over 17,500 individuals through 161 drug and alcohol treatment programs (Gaudenzia 2018). These programs include special treatments for those suffering from co-occurring mental illness and substance abuse as well as expecting mothers and parents. Over the decades since its opening, Specter continued to sponsor and advance the field of drug and alcohol treatment and support the expansion and success of Gaudenzia House.

### **III. Senatorial Mission to Fix the Justice System**

Upon entering the Senate in 1980, Specter thrived in ways unprecedented from most other freshmen senators. Within the first month of being in the Senate, the Pennsylvania senator was named the spokesperson for Republican freshman, a position that made him their main connection to the White House (Levin 1984). Within the first year of his senatorial career, Specter had co-founded a children's caucus and saved the juvenile justice prevention program (Levin 1984). Despite his position as a moderate Republican, an increasingly rare breed in the habitually divided Senate, Arlen Specter was still one of the most crucial voices and votes on almost all of the important issues presented during his time. He often crossed party lines to ensure the bills he supported were passed. During his time in the Senate, many of the issues Specter tackled were a continuation of the work he began during his time as district attorney.

#### **ACCA: Mandatory Sentencing for Career Offenders**

One of the many issues that he continued to work on from his days as district attorney was that of increasing punitiveness in the criminal justice system as a result of the worsening crime epidemic. This time around, however, Specter focused more on adopting mandatory sentencing policies that would keep certain offenders incarcerated for extended periods of time through the

creation of the Armed Career Criminal Act (ACCA), which was documented as one of his greatest accomplishments during his early senatorial career.

In 1965, President Johnson created the Commission on Law Enforcement and Administration of Justice upon noting the increasing urgency of the country's crime problem. Among the commission's findings, it was noted that "offenders who were convicted of violent crimes continued to commit crimes and constituted the hard core of the crime problem (Bureau of Alcohol, tobacco and Firearm 1992)." These offenders, known as 'career criminals,' are people who have committed a crime after already having committed past crimes and been convicted of two previous felony convictions. Career criminals are responsible for a majority of the crime that occurs across the United States. Despite only making up 10 percent of the criminal population in the country, career criminals commit 70 percent of the nation's crimes (Specter 1989). More specifically, career criminals account for 60 percent of the nation's murders, 75 percent of rapes, 63 percent of robberies, and 65 percent of all aggravated assaults (Specter 1986). These 10 percent of criminals are responsible for a large fraction of the 23.5 million (one in four) households that have been affected by a violent crime. They continued to affect more households after relapsing into their criminal behavior when released from prison (Bureau of Alcohol, Tobacco and Firearms 1992). Senator Specter believed that "the approach for these hardened-violent offenders is to throw away the key," meaning to put them away for life (Bureau of Alcohol, Tobacco and Firearms 1992).

To accomplish this, Specter, in co-sponsorship with New York senator Alfonse D'Amato, penned the Armed Career Criminal Act that was signed into law in 1984 as part of the Comprehensive Crime Control Act of 1984. The Armed Career Criminal Act requires the application of a minimum of a fifteen-year prison sentence for recidivists who were convicted of

robbery or burglary while in possession of a firearm, if they had already been convicted of three felonies (Doyle 2015). Specter chose robbery and burglary as the crimes for this statute because they are the most prevalent street crimes, as well as the most easily identifiable (Specter 1981). Under the Armed Career Criminal Act, the three prior state or federal conviction for a violent felony would have to had occurred on three separate occasions in order to prompt the statute into effect (Doyle 2015). In 1986, the act was amended to include violent crimes (murder, rape, robbery, aggravated assault.) and serious drug offenses (manufacture, distribution or possession with intent to sell of a controlled substance) when included into the Anti-drug Abuse Act of 1986 (Specter 1987). In order to qualify within the Armed Career Criminal Act, such violent crimes are required to be punishable by a prison term exceeding one year, while serious drug offenses are required to be punishable by a maximum prison term of ten years (Davis 2008). The Armed Career Criminal Act also spawned the establishment of the United States Sentencing Commission, a new independent agency of the judicial branch that is responsible for establishing sentencing guidelines for federal law (Hall and Mercier 2018). The establishment of the Sentencing Commission saw an increase in federal penalties for the cultivation and sale of multiple drugs, as well as the establishment of mandatory minimum sentences, thereby guaranteeing that people who commit certain crimes must be sentenced to a set amount of jail time (Hall and Mercier 2018).

**Figure 5: Prior Felony Convictions**



*Source: Bureau of Alcohol, Tobacco and Firearms 1992*

A 1991 study of the Armed Career Criminal Act by the Bureau of Alcohol, Tobacco and Firearms, the agency tasked with enforcing the statute, showed the success of the act since it was initiated. Under the act, the ATF had successfully investigated and convicted 471 career criminals as of 1991. These criminals committed a total of 3,088 crimes, totaling 655 felony convictions each (Bureau of Alcohol, Tobacco and Firearms 1992). The accumulation of data presented through the conviction of these offenders through the Armed Career Criminal Act (shown in figure 5) provided a clearer image of just how much crime these offenders committed. By reviewing the FBI's criminal records of all 471 career criminals, it was determined that on average each criminal committed 1.4 robberies, two burglaries, and one other crime (theft, escape forgery, kidnapping, etc.). One out of three criminals were convicted of murder or attempted murder, aggravated battery, rape, or a crime against a child, while eight out of 10 had a felony narcotics conviction, eight of 10 had a firearm violation or assault with a deadly weapon conviction, and one out of 20 was convicted of a felony crime against a police officer (Bureau of

Alcohol, Tobacco and Firearms 1992). Fortunately, the Armed Career Criminal Act prevented these violent criminals from being released on parole or probation and causing harm and suffering to more households across the nation. As Senator Lehtinen, a strong supporter of the act, stated, “the ACC statute provides an invaluable tool for identifying and prosecuting hardcore, violent, repeat offenders who are otherwise frequently escaping persecution at a local level (Bureau of alcohol, tobacco and firearms 1992).” So invaluable in fact, that according the Bureau of Justice Statistics, the Armed Career Criminal Act is responsible for the conviction of nearly 600 career criminals each year (Ayotte 2016).

The Armed Career Criminal Act did have its faults, namely its residual clause regarding “crimes that involved conduct that presents a serious potential risk of physical injury to another” (Armed Career Criminal Act 2015). This clause required the judge to examine any risk of harm that could potentially have been presented in the crime committed, taking into account a speculative understanding of how such crimes usually occur. In doing so, the judge presiding over the case undermines the judicial process that requires a judgement that derived from what actually occurred, not from what might have happened. The 2015 case, *Johnson v. United States*, resulted in the Supreme Court striking the clause down for its unconstitutional vagueness that jeopardized defendant’s liberties and due process rights (Armed Career Criminal Act 2015). In addition, while the statute has worked tirelessly in getting dangerous career criminals away from society, it has in effect contributed to the escalating overpopulation problem within prisons of all levels. According to the Bureau of Justice Statistics, United States prisons only held around 213,000 people within their walls in 1960. Only five decades later the number of people incarcerated in the nation’s prison has risen 500 percent to a staggering 2.3 million inmates (The Sentencing Project 2018). While the Armed Career Criminal Act is not solely responsible for this

dramatic increase, the act, along with other ‘three strike’ provisions, played a major role in the explosion of the prison population across the country.

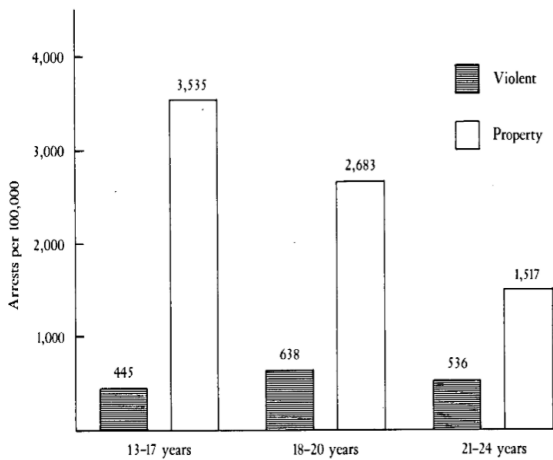
### **Juveniles in the Criminal Justice System**

For the past few decades, crime in the United States had been the domain of juveniles, specifically males between the ages of 18 and 20 (Zimring 1979). According to the United States Senate Subcommittee on Juvenile Justice and Criminal Law (1983) a juvenile is a person under the age of 18 or a person up to the age of 21 who committed an act of juvenile delinquency prior to his eighteenth birthday. As with all crime rates in the United States in the 1960’s, acts of juvenile delinquency had increased beyond that of the population of the youth in the country (Zimring 1979).

Juvenile crime in the country had increased to such an extent that juveniles accounted for nearly half of all property crimes and almost one third of all violent crimes in the 1970’s despite only making up nine percent of the nation’s population (Zimring 1979). Juveniles tend to commit specific crimes at certain ages, typically starting off with petty theft before working their way up to more violent and dangerous crimes as they age (Specter 1989). For juveniles under the age of 17, property crimes such as burglary, larceny and motor-vehicle theft are more commonly committed, while violent crimes, such as homicide, rape, robbery, and assault, tend to peak around the age of 18 (Zimring 1979). While it is widely believed among the general public that murder and rape are the most committed crimes due to the media’s high-profile reporting, robbery and assault are actually the crimes most often committed by juvenile offenders, with said crimes making up 90 percent of all juvenile arrests (Zimring 1979). Data collected in 1975, seen below in figure 6, compares the arrest for property crimes with those for violent crimes. It shows that property crimes are concentrated in the earlier years of a juvenile’s life while violent crimes

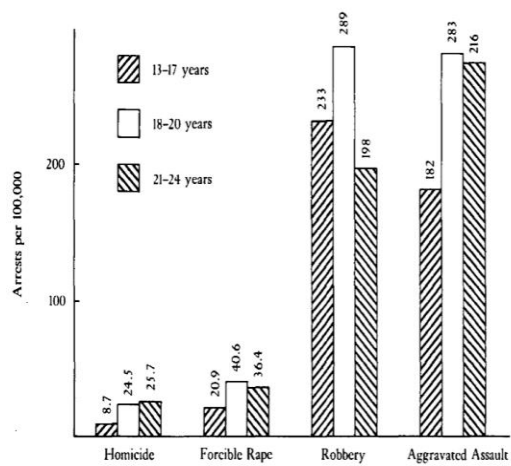
are concentrated towards the last years of their adolescence. The number of arrests for these crimes, within both age groups is substantial, especially among those under eighteen; while juveniles between the ages of 18 and 20 experience a higher rate of arrest for crimes such as robbery and assault, the number of arrests of juveniles under the age of eighteen for the same offenses exceeds the absolute number of the arrests of juveniles over 18 (Zimring 1979).

**Figure 6: Arrest Rates by Ages of Violent and Property Offenses (1975)**



Source: Bureau of Justice Statistics

**Figure 7: Arrest by Age - Violent Crimes (1975)**



Source: Bureau of Justice Statistics

Juvenile Crime rates continued to get worse after the initial increase in the 1960's, especially the murder rates among juvenile offenders. Following the sharp increase in crime rates from the 1960's to the 1970's, the overall crime rate in the United States began to decline; however, the murder rates among juveniles increased 172% from 1985 to 1994 (Fox 1996). During this time, males between the ages of 14 and 24 made up approximately eight percent of the country's population yet accounted for 48 percent of its murders. This increase was not specific to homicides, however, as it spilled over to other violent crimes, such as rape, robbery, and aggravated assault, which rose 46 percent among juveniles during this period (Fox 1996).

While juveniles committed a large percentage of the crimes in the country, Senator Specter believed that the youth should have a fair system that saw beyond the crimes they committed and would not only fight juvenile crime, but fight for the youth. In order to accomplish such a system, Specter believed that the root cause of these criminal actions would have to be discovered so that the justice system could take the actions necessary to help the children rather than simply punish them. One of the major causes behind said juvenile delinquency was drugs, which became far more widespread in the 1960's and continued to get worse as more dangerous drugs were introduced throughout the following decades. The National Institute of Justice (1995) found that there were three common factors that affected the criminal behavior of juveniles, all of which related back to the drug industry. The first is known as use-driven crimes, which are crimes committed as a result of ingesting drugs and the effect they have on one's thought process and behaviors. The second factor relates to economic and compulsive driven crimes, which are committed by a person who needs money to support his or her drug habit and can include crimes such as theft and prostitution. The third factor regards crimes that result from the structure of the drug system, including crimes such as the production, manufacture, transportation, and sale of drugs. It can also include any violence that is related to the production and sale of drug, such as a turf war (National Institute of Justice 1995). Similarly, the abuse of alcohol plays into the cause of criminal activity among juveniles, with it being involved in a substantial fraction of all violent crimes as it impairs one's judgements and inhibitions (McDonald 2000). In addition, the youth have greater access to guns, specifically handguns, which have played a major role in the increase of juvenile murders since 1984, the rates having quadrupled since that time (Fox 1996).



It is, however, not just a child's access to drugs and weapons that drove them towards a life of crime; many of these children were victims of their circumstances. It was of Senator Specter's opinion that the abuse that many juvenile offenders experienced while growing up led them to their life of crime and that the violent acts used on them had made them more likely to use those same acts of violence against other people (University of Pittsburgh 2018). According to the United States Department of Health and Human Services, approximately 650,000 children were being physically, sexually, emotionally, or psychologically abused by their parents or caretaker in 1980, a number that jumped to over a million within six years and to 2.9 million by 1992. That is 43 out of every 1,000 children experiencing abuse at the hands of those responsible for protecting them (Ards and Myers 2001). In their study, Ards and Myers (2001) collected data on the youth (ages 11 through 17) up until the age of 21 through 27 to determine the relationship between child abuse and juvenile delinquency. The results concluded that juvenile delinquency derives from their attitude toward violence which originates in part from their experience of child abuse (Ards and Myers 2001). While stuck in this abusive cycle, those who experience physical abuse are more likely to commit similar violent acts against other people. Similarly, those who were sexually abused while growing up are more likely to become sexually violent when they enter an intimate relationship. In an attempt to end these abusive cycles, Senator Specter penned the Juvenile Detention Employees Clearance Act of 1983, which required individuals who act as caretakers of children to have a criminal background check (University of Pittsburgh 2018). This precautionary check is one way to make sure that young children are placed in a safe environment in which they would not be entering an abusive cycle and would have an outlet to get help if it was needed.

Specter also believed that to reduce and combat violent crime among juveniles, they must be held at separate prisons than adult offenders (Specter 1989). Placing a child in a prison with adult inmates could have a catastrophic effect on the child, including sexual abuse, physical abuse, and even death. According to Senator Specter, placing a juvenile with such hardened criminals and exposing them to that level of violence could actually increase the chances of them committing more violent crimes in the future as well as increase their chances of becoming a career criminal as they grew older (University of Pittsburgh 2018). To prevent this from occurring, he proposed the Juvenile Incarceration Protection Act of 1983 that would provide safe treatment centers and prisons for juvenile offenders (University of Pittsburgh 2018).

### **Restructuring the Prison System within the United States**

Prisons in the United States are a major component within the criminal justice system as they have the ability to both contain and breed criminals. During his time in the Senate, Specter undertook several important issues regarding the prison systems, from prison space for those confined to prison for life to rehabilitation programs to give second chances to those being released.

With the increasing number of criminals being sentenced to prison as a result of the increasing crime rates, it is no surprise that both state and federal prisons began to run out of space for incoming prisoners. As a result, dangerous criminals who do nothing but plague society with crime have escaped imprisonment and continued to cause harm to those around them. According to Specter (1989), there were between 200,000 to 400,000 dangerous career criminals in the United States. However, due to insufficient space in prisons and jails criminals were continuously being released before their sentences were completed or they were not being sentenced at all (Specter 1989). Prisons had become so crowded that in 1983 20 percent of the

prisoners who were serving a life sentence were released after just three years or fewer (Bureau of justice statistics 1986). That same year, over half of the convicted murderers were released after serving fewer than seven years of their sentence, far fewer than the 15 to 25 years or life sentence typically sentenced for the crime. Additionally, over half of all rapists, robbers, arsonists, and burglars only served between 1.5 to four years of their sentences (Bureau of Justice Statistics 1986). In fact, according to the Bureau of Justice Statistics, offenders who committed violent crimes typically served just under half of the sentences they were served (Greenfeld 1995). It became such a problem that the National Governors Associations for Criminal Justice and Public Protection Committee deemed that the construction of prisons was the number one criminal justice priority, stating that “States and localities must have adequate prison and jail space to confine offenders who are deemed to be a serious risk to the public” (Specter 1983). In an attempt to combat this growing problem, Specter led a \$1.4 billion expansion program in 1990 for the Bureau of Prisons that allowed the inmate capacity of the bureau to increase significantly (Specter 1994). Similarly, Illinois senator, Jerry Weller sponsored an amendment that permitted the states to use prison grant money to expand and operate juvenile correctional facilities (Library of Congress 2018).

Prisons in the United States, however, continued to overflow with inmates who arrived by the thousands each week. With 89,586 inmates in the federal prison system in 1993, a 12 percent increase from the previous fiscal year, the system was operating at 36 percent overcapacity (Specter 1994). Specter determined that a new approach would be needed if the overpopulation issue within prisons were to be fixed. For this new approach, Specter turned to the privatization of prisons. Senator Specter introduced the Federal Prison Privatization Act of 1994, in order to clarify the Justice Department’s authority to contract private firms to construct,

operate, and maintain prisons and other federal correctional facilities (Specter 1994). Private prisons are not a new concept in the United States, dating all the way back to the colonial era when criminals were confined to private ships because there was no place to keep them on land. Private prisons continued to be a common entity within the country up until the 1950's when scandals regarding prisoner abuse led to the public administration of prisons (Ramirez 1994). However, the movement was revitalized in the 1980's, and as of 1994, seventeen states have legalized privatized prisons and contracted to firms, leading to a total of 84 private facilities (Specter 1994). Interest in privatized prisons continued to grow over the following decade, leading up to 2018 where now 27 states hold privatized facilities that house seven percent of the nation's state prisoners and 18 percent of the federal prisons (Pelaez 2018).

With the success of solving some of the prisons' overcrowding problems, however, there also arises certain issues within the privatized prison industry. While some facilities do put effort into housing their inmates properly and ensuring they have all the necessary programs, many of these for-profit facilities tend to hire less qualified correctional officers, which jeopardizes the safety of the inmates within the facility as well as the civilians in the surrounding communities (American Federation 1995). Furthermore, private prisons have become increasingly known for being profit-hungry companies who strategically place politicians in office to ensure policies are passed that benefit their business. Private prisons are one of the several industries that have become infamous for spending millions to influence legislation. Two of the biggest companies in this industry, GEO and the Correctional Corporation of America, have spent \$10 million on candidates and \$25 million on lobbying efforts since 1989 alone (Cohen 2015). According to Schlosser (1998), after the dramatic rise in crime, the United States developed what is known as a prison-industrial complex, which replaced the notion of public service with the greed of higher

profits. Through this complex, corporations within the private prison industry contributes campaign funds to politicians that support them. Should the politicians win their election, many join committees that draft legislation that will benefit the private prison industries. These politicians become part of a “subgovernment” that exist when “decision making within a given policy arena rests within a closed circle or the elite of the government bureaucrats, agency heads, interest groups, or private interest that gain from the allocation of public resources,” thereby mixing government interest with private business (Selman and Leighton 2010:80) Through the strategic placing of political figures and policy making, private prison companies, specifically GEO and Corrections Corporation of America, have been able to acquire \$3.3 billion dollars annually (Cohen 2015). To maintain this revenue stream, prisons need a continuous stream of product, which in their case would be inmates. These prisons thrive on the incarceration of citizens, as the more people who are sentenced to prisons and jails, the more money they make. This is exemplified in some of the policies that private prison companies have supported, such as California’s three strike rule and Arizona’s illegal immigrant laws (Cohen 2015). The reintroduction of private prisons within the United States has been shown to lead to greater levels of incarceration: even as violent crimes fell 20 percent since 1991, prison populations rose 50 percent (Schlosser 1998).

Strictly placing a criminal in prison, however, is not the absolute final solution; because, while it removes dangerous career criminals from society, it does nothing to reduce the criminal behavior of the offenders after being released. Senator Specter had long acknowledge that he worked on addressing crimes on many fronts, including imposing a tough sentence on career criminals. However, he had also long since acknowledge that the justice system must take a more realistic effort for rehabilitation when it is possible, such as when it regards first time and

sometimes second time offenders, as well as juvenile offenders (Specter 1989). Specter firmly believed that many of the offenders within the prison system are a product of their limited education and job training skills. As a result of these limitations, when the offenders leave prison many will be returning back to a life of limited opportunities, limited even further by their inability to read or perform common trades necessary to acquire a job, which is why education programs among inmates have become of such increasing importance. According to Stephen Steurer (1991), the executive director of the Correctional Educational Association, eight out of the 10 inmates lack a high school diploma and more than 75 percent of them are functionally illiterate with 20 to 40 percent of these individuals having an educational disability. Furthermore, 40 percent of inmates in the prison system were unemployed at the time of their arrest, while 12 percent of them were working part-time. With a lack of education or training, these offenders are unlikely to acquire a job once released and will most likely return to a life of crime for their survival. Specter (2001) stated that “the investment in education for offenders is a pittance compared with the social cost of fighting a generation of violent incorrigibles. And make no mistake: an illiterate without a trade or skill will probably return to a life of crime. Rehabilitation is important for humanitarian reasons, to bring the juveniles or first and second offenders back into society as a contributing citizen.” In working with people such as the Bureau of Prisons Director, Michael Quinlan and Secretary of Education, Fred Cavazos to expand the government’s role in correctional education, Specter penned an amendment for the Crime Bill that would promote correctional education by supplying marketable job training, job skills, and basic literacy to prisons at the state and local levels (Specter 1991). This amendment would have authorized a grant program that would have allowed the Bureau of Prisons to make grants to states in order to expand their correctional education programs (Specter 1991). This program was

finally brought to light as a 1998 amendment to the Higher Education Act of 1965, called Grants to States for Workplace and Community Transition Training for Incarcerated Individuals, commonly referred to as the Specter Grant Program. These federal grants provided post-secondary vocational training for offenders who are within five years of their release to achieve a GED or a high school diploma (Department of Corrections 2010). Specter grants were of a great service to many state prisons, especially after the 1994 Crime Bill prevented inmates from receiving federal aid, such as Pell grants, to help further their education. Through the Specter grant program, the state of Minnesota received \$150,000 each year, which was put towards partnering with state colleges and universities that provided teachers and class materials for the inmates (Clarke 2014). Florida used their Specter grants to support various vocational programs such as web design, culinary art, and landscape irrigation, among numerous other trade skills that gave the inmates an upper hand in lawfully earning their way once they were released from prison (Clarke 2014). The grant program had worked in reducing recidivism among the offenders who participated. The inmates who completed these programs and received a Specter vocational certificate or a diploma from one of the partnering colleges had significantly lower rates of returning to crime and being incarcerated within three years of being released, as compared to those who did not complete a program (Department of Corrections 2010). Unfortunately, Congress failed to renew the funding for the program in 2011 and the years following, causing state prisons around the country to scramble to find alternative funding for their correctional education programs. While leftover grant money from previous years carried many states over for a few extra years, many states like West Virginia had to cut over half of their courses. Similarly, states such as Oklahoma, were down to their last semester of funding just three years after losing such critical funding (Clarke 2014).

The federal government did not actually cancel inmates' chances to post-secondary education when they failed to renew the funding of the Specter grants; while the SKILLS Act repealed the statute that authorized the grants, it set in place a different funding initiative that was introduced to congress in 2014 and was referred to the committee (Clarke 2014).

Additionally, in 2015 former United States Secretary of Education, Arne Duncan, Former Attorney General, Loretta Lynch, and several other federal and state officials announced the pilot program for prisoners to receive Pell grants in order to pursue post-secondary education (Fabel 2015). While education for inmates was hit with a major setback upon the cancelation of the Specter grant program, new strides towards ensuring offenders have the opportunity to learn continue to be taken.

Specter furthered his rehabilitations and re-entry efforts for prisoners when he co-authored the Second Chance Act (enacted in 2008) with Illinois senator, Danny Davis, which authorized \$330 million over two years in order to expand assistance for incarcerated individuals (Criminal Justice Transition Coalition 2008). With this act, federal grants were awarded to government agencies and nonprofit organizations that provided employment assistance, substance abuse treatment, housing, family programming, mentoring, victim support, and other services for offenders who were returning to the community upon their release from prison or jail (National Institute of Justice 2018). With these grants, offenders have the assistance needed to ensure that they do not return to a life of crime, and instead, would have the opportunity to find employment, housing, and an otherwise unavailable support system.

Arguably, the most important rehabilitation programs belonged to juvenile offenders. Specter believed that automatically placing a juvenile in prison, especially for small crimes, resulted in more harm than good. Rather, they should be placed through a rehabilitation program



where they are re-directed into more productive pastimes and are taught important skills that will help them become productive and lawful citizens in the future (University of Pittsburgh 2018). In an effort to combat juvenile crime, Specter co-sponsored several rehabilitation programs, such as the Juvenile Drug Prevention Act, Juvenile Prevention Detention Standards Act of 1985 and the Juvenile Incarceration Protection Act of 1985, in order to protect juveniles and ensure them a better future. With the help of rehabilitation and prevention programs, the youth were far less likely to become career criminals. Therefore, by providing rehabilitation programs to juvenile offenders, the population of career criminals in the United States were expected to decrease.

### **Equality within the Criminal Justice System**

Similar to most people, the obstacles that Specter faced while growing up shaped his views and aspirations as a politician. Despite the pain and anger it caused him as a child, Specter credited the challenges he faced while growing up in a Jewish household and the anti-Semitic bullying it provoked as the inspiration for his passion for civil rights (Fitzgerald 2010). The United States has always had a history of treating African-Americans unfairly. The U.S. government has, however, made great strides in the last century to correct its errors and ensure equal treatment under the law. Unfortunately, despite these efforts, inequalities have grown rather than decreased in regards to the criminal justice system and incarceration rates. Incarceration rates are so disproportionate that African-Americans are six times more likely to be incarcerated than white citizens, with Hispanics being two times more likely (Subcommittee on Crime and Drugs 2009). On any given day, one in 12 black men are in prison or jail, often with unfair and disproportionate sentences to the crimes that were committed (The Sentencing Commission 2018). This is in large part due to certain sentencing guidelines that impose mandatory minimum penalties, such as crack cocaine, whose disparities with powder cocaine cause one of the most

significant discrepancies in incarceration rates between African-Americans and whites (Subcommittee on Crime and Drugs 2009). According to the Subcommittee on Crime and Drugs (2009), of which Specter was a member, this disparity disproportionately targeted black communities. As a result, despite only 25 percent of African-Americans being crack users, they make up 81 percent of the people convicted of crack offenses. In an attempt to remedy this situation, Senator Dick Durbin introduced the Fair Sentencing Act that changed the ratio of powder-crack cocaine from 100:1 to 18:1 and lowered the statutory mandatory minimum penalty for the simple possession of crack cocaine (Albonetti 2016). This act addressed the disproportionate sentencing policies regarding the convictions for crack cocaine offenses by restructuring the drug quantity table which was directly associated with the calculations of the offense level in the sentencing table (Albonetti 2016). Considering crack cocaine disproportionately affected the African-American community, the Fair Sentencing Act was estimated to reduce disparities in imprisonment length among groups of drug offenders, and had succeeded in doing so, according to a report by Congress in 2010 which stated that statutes, penalties, and disparities were all reduced as of 2010 (U.S. Sentencing Commission 2010).

Not only are inequalities in the justice system a result of unfair mandatory sentences, they also fall on the shoulders of those who prosecute the offenders. Decisions that are made by United States attorneys on who they choose to prosecute and for which crimes have a major impact on the disparities within the criminal justice system. A prosecutor might choose to prosecute a minority for a minor offense to which they would not normally prosecute a white offender, simply because they are influenced by the color of his or her skin, contributing to the disproportionate number of minorities in prisons and jails for minor crimes. To prevent this unfair treatment from occurring, Specter, in partnership with Senators Joe Biden, Ben Cardin,

and John Kerry, introduced the Bipartisan Justice Integrity Act. This act established ten federal districts to evaluate the issues of racial and ethnic fairness within the practices of United States attorney offices (Criminal Justice Transition Coalition 2008).

Senator Specter's passion for civil rights spanned his entire life and led him not only to fight for the rights of African-Americans throughout the country, but for all those whose rights had been challenged, such as Jewish-Americans and immigrants, women, the LGBT community, and many more. With the passion created through unfortunate experiences as a child, Specter fought in the Senate for over three decades to ensure minorities were protected and their civil rights were not encroached upon.

### **Modern Criminal Justice: Post 9/11**

The attacks on September 11, 2001, changed the United States and affected countless people within the nation. Seemingly overnight the criminal justice system changed as a result of the worst act of terrorism committed on American soil. While his efforts had already been focused on combating terrorism throughout the 1990's, Specter became even more determined to fight this menace. He became heavily involved in formulating and implementing both the Foreign Intelligence Surveillance Act (FISA) and the U.S. Patriot Act, which were the acts that changed the modern criminal justice system. Specter was also the chief sponsor behind the 2005 reauthorization of the Patriot Act, which renewed the act for four more years (U.S. Congress 2012). Specter was so determined to protect the United States from further attacks that within thirty days of the attack, he drafted the legislation that established the Department of Homeland Security, with the legislation having been co-sponsored by Senator Joseph Lieberman (U.S. Congress 2012). He also authorized the Terrorism Prosecution Act that authorized United States courts to take criminal action for the assault, maiming, or murder of Americans anywhere in the

world. While Specter was truly dedicated to keeping his country and its citizens safe, he believed in limitations when it came to invading the privacy of private citizens and businesses. Specter believed that certain surveillance programs performed by the National Security Agency, which eavesdropped on communications without warrants, were a violation of privacy and unconstitutional. In an attempt to fix this problem, Specter offered a bill that would require the Attorney General to obtain the approval of the FISA court for each communication interception and provide “a statement of the facts and circumstances” to the secret court (Babington 2006). Although the bill was not accepted, Specter continued to publicly protest against the government’s invasion of privacy against its citizens through means such as wiretapping. While he did not agree with many of the actions the government took to ensure the protection of the United States, Specter continued to fight for the safety of his country through ways in which he believed were constitutional. In the face of immense tragedy, society and the policies that govern it are guaranteed to change in a desperate attempt to prevent further calamity. While these changes might have been to protect the citizens, when done outside the limits of the law it was important for people like Arlen Specter to have stepped forth in protest to protect the integrity of the criminal justice system.

#### **IV. Conclusion**

Over the last few decades, the American criminal justice system has changed drastically, from how offenders are viewed by the public and the governments to how they are punished in the courts. Through the actions he took and the legislations he introduced and promoted, Arlen Specter was a major factor in the changes made to the country’s criminal justice system. Specter alone did not change the system; he was one among many who established procedures, legislations, and policies that was part of the bigger change occurring in the system. Through

these changes, Arlen Specter promoted a lot of positive developments and outcomes within the system. These ranged from banning plea bargaining that produced justice by cutting off the prosecutors' opportunity to coerce the defendants to plead guilty to his Armed Career Criminal Act, which removed dangerous career criminals from society and thus ended their reign of terror over American citizens. His actions also benefited both innocent citizens and offenders with his grants and re-entry programs, giving many a second chance and a better life once they were released from prison or jail. However, while his intentions may have been sincere and honest, many of his legislations and policies did have negative consequences, as well as contradicted many other legislations that he introduced or supported. Specter's Armed Career Criminal Act, while effectively removing dangerous criminals from the streets, hurt offenders who committed minor offenses as a result of its mandatory minimum sentence guidelines and dramatically increased the prison population in local, state, and federal prisons. His promotion of private prisons also hurt offenders across the country, as the profit hungry corporations who ran the prisons were more interested in higher profits than they were in public service. As a result, they strategically placed politicians in office to have policy written to benefit them, which more often than not led to higher rates of incarceration, as inmates were these prison corporations' source of income.

Throughout his career as both the district attorney of Philadelphia and the Senator for Pennsylvania, Arlen Specter created policy and legislation that affected the American criminal justice system. While a few of his actions may not have turned out as expected and have hurt the criminal justice system, much more of his actions have only benefited American society and the justice system for the better, often giving offenders better opportunities and protecting society from violent acts of crime. The late senator Arlen Specter took part in many changes that

occurred since the 1960's, both during his time as district attorney and during his time in the Senate in his effort to make a change in the fractured system which led him to become one of the most important and influential people in the restructuring of the American criminal justice system.

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