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Introduction

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It is a pleasure to introduce the Seattle Journal for Social Justice Symposium issue, Jails and Prisons: Rights, Re-Entry, and Reform. This symposium brought together a spectrum of voices to discuss the most pressing issue facing people who are incarcerated and people rejoining communities, and the authors challenge us to consider how best to support the well-being and rights of people in prison; to encourage and support reform and restoration; and to facilitate reintegration of people who have experienced incarceration. This issue also incorporates consideration of people whose experiences with law and detention are rooted in family law and immigration – children and families whose lives are dramatically altered by their legal interactions, and whose interests also would be served by legal reforms.

Karlton "Knowledge" Daniel's poem, Mistaken Identity, sets the stage for this issue. Daniel tackles systemic antiblack racism head-on, describing the lies people in power use to frame and punish, and the failure of the constitution to provide adequate safeguards. He reminds us of the lengthy sentences in facilities that themselves create crime, where "they take your good and make it bad." Daniel takes the language of criminal law – conspiracy, Class A Criminal, mistaken identity – and turns it around to illustrate the criminal law's own failings. Daniel's poem is unflinching in its portrayal of the racism harms of punishment.

People released from prison face barriers to community reintegration, and, even once they serve their formal sentences, endure collateral consequences that are not part of the judicially-prescribed punishment. One such consequence is that people with criminal convictions experience housing insecurity and have difficulty securing rental residences, even

though access to safe and affordable housing is fundamental for reentering people. In Criminal Record Based Housing Discrimination Harms Public Safety, Professor Christopher Poulos narrates his own difficulties obtaining housing as a person with a criminal conviction history – while he was able to obtain national security clearance to intern at the White House during law school, he had considerably more trouble securing an apartment to live in while he interned. Still, as Professor Poulos notes, as a white man in a business suit, he had less difficulty than a friend of his who was Mexican-American. As Professor Poulos argues, barriers to reintegration, perversely, encourage reversion to illegal behavior, and those barriers are exacerbated by the already-limited supply of low-income housing. His solution is comprehensive – create robust law to prevent housing discrimination; subsidize housing for persons with criminal histories who need assistance, and expand housing voucher eligibility to include people who are not on community supervision; and creatively use public lands and vacant buildings to expand available housing.

What do you do when you experience a law-and-order era and are left with lengthy sentences and regret? Jennifer Smith and Jeremiah Bourgeois give us a roadmap in The Retroactive Application of Justice: Using Prosecutorial Discretion to Correct Sentences that No Longer Serve a Valid Purpose. The 1980s were such an era—several changes in Washington law drove sentencing increases and, expensively, aged the state's prison population, including the introduction of sentencing guidelines; the elimination of parole; and three-strikes-and-you're-out approaches to certain felonies. Those changes have engendered hardships for multiple interests – the state, now paying for lengthy sentences; individuals, disincentivized to seek and demonstrate rehabilitation, or be rewarded for it; and victims, who favor restorative approaches. These sentencing changes have not affected everyone equally – defendants face racial disparities throughout. The authors note the central role of prosecutors in criminal law and their historically limited ability to reduce confinement terms once they

are meted out. New Washington law offers prosecutors an avenue to move to reduce sentences, at which point the court is directed to consider the person's disciplinary record, evidence of rehabilitation, reduced risk of future crime, and changed circumstances since sentencing. As people mature, the recklessness of youth subsides, and the authors argue for increased encouragement for and recognition of the power of rehabilitation.

In Sentencing Alternative to an Insanity Defense, Michael Mullan observes the current difficulties that jurisdictions may face in incorporating mental illness into punishment decisions as he critiques Kahler v. Kansas, a recent Supreme Court case that upheld Kansas's abolition of the affirmative insanity defense. In Kahler, the prosecution and defense agreed that the defendant had, at the time of the multiple killings he committed, experienced depression – the question was what the law should do with his mental health information. The State of Kansas had, in response to insanity verdicts in cases involving the killing of police officers, abolished its excuse defense of insanity, limiting consideration of mental illness to the negation of mens rea during the guilt phase of a trial, and mitigation information during sentencing. Mullan notes that mental illness in theory would reduce a defendant's sentencing exposure, but that, because judges consider future dangerousness, may serve more as aggravating evidence that increases a sentence. Mullan notes other approaches that might better address mental health evidence, such as sentence reductions directly based on mental health evidence; as the Supreme Court has offered states more latitude to determine how mental illness should affect sentencing, Mullan gives us a helpful critique of Kahler and a framework for navigating a post-Kahler criminal law regime.

Multiple authors in this issue document the difficulties people who are incarcerated face. In Access Denied: How 28 U.S.C. § 1915(g) Violates the First Amendment Rights of Indigent Prisoners, Molly Guptill Manning illustrates why those problems prove hard to remedy, and tells us how to amend or repeal federal legislation to better permit people who are

incarcerated to seek relief for their conditions. The Prison Litigation Reform Act (PLRA) is another artefact of the law-and-order movement of the 1980s and 1990s, and, by design, created barriers for incarcerated people who wished to challenge their sentences or their prison conditions. While people who are unable to pay court costs normally can claim in forma pauperis status and avoid a filing fee, prisoners, and only prisoners, are still required to pay that fee, which has itself increased substantially since passage of the PLRA. Where a court has dismissed three or more of the incarcerated person's cases for being frivolous, malicious, or failing to state a claim, the incarcerated person must pay that entire filing fee up-front. Courts continuously uphold challenges to the fee requirements by reasoning that prisoners can work while incarcerated and save the money for fees, but Manning demonstrates that employment opportunities are limited, and pay is often nominal or nonexistent. Even where an incarcerated person is able to save, states may first take those savings to address LFOs and other expenses. Manning argues that incarcerated persons thus face serious impediments to remedying their incarcerative conditions through litigation, and outlines how the governing federal statute can be amended or repealed to remove barriers for people who are incarcerated.

Many people who have not been convicted of any crimes spend years in facilities that, in every sense, resemble prisons, and that, often, afford people even fewer protections. In An End to Inhumane Detention: Washington Must Ban Private Detention Centers and Strengthen Protections for Detained Immigrants, Ariana Headrick documents the many unacceptable hardships endured by immigrants in detention centers, and advocates the elimination of private detention centers as a way to ensure both that detention centers are politically accountable and that fewer people will be held in detention. As Headrick narrates, the Northwest ICE Processing Center illustrates the constellation of problems that people who are detained endure – physical and verbal abuse at the hands of the officers

who are supposed to protect them; inadequate medical care; poor nutrition; overcrowding; lack of access to family and counsel; and devastatingly, lack of adequate COVID-19 safety measures. Washington would not be a pioneer – Headrick notes that California banned new private detention center contracts as of 2019 – but she also urges Washington to honor its current trend toward protecting its immigrants by adopting measures to more stringently regulate immigration detention centers, ensuring that the public facilities remaining provide care, visitation with family and lawyers, and protect personal liberty and privacy.

During the past several years, an increasing number of children from the Northern Triangle – Guatemala, El Salvador, and Honduras – have fled poverty and violence and have arrived, unaccompanied, in the United States. These young people often have experienced trauma – at home, during their journeys, and upon arrival. In Children Beyond Borders: Extending Protections for Abandoned, Abused, and Neglected Unaccompanied Children and Youth, Rosa Aguilar tells us about the distances these children travel, and the complicated immigration systems they must navigate even while trying to process the effects of their own trauma. While there are avenues for easing the burdens on these young immigrants, those avenues can be themselves difficult to traverse. Aguilar focuses on one such remedy – the provision of Special Immigrant Juvenile Status (SIJS) to children – and argues that this status was intended by Congress to provide a pathway for juvenile immigrants to lawful permanent residence. Children are denied that status, however, where the United States Citizenship and Immigration Services fails to consent, which it may do if it finds that a minor primarily is seeking an immigration benefit rather than relief from abuse, neglect, or abandonment. Aguilar argues that this denial option is not aligned with other immigration measures for unaccompanied minors, however, and proposes both an elimination of the consent requirement and an increase in the number of SIJS grants to immigrant youths.

Incarceration and supervision are not the only burdens of a criminal conviction or a delinquency determination. In Footing the Bill for Juvenile Justice: The Impacts of Legal Financial Obligations on Washington Youth, Tori Sullivan Lavoie outlines the sorts of legal financial obligations (LFOs) that also attend criminal convictions, and argues to eliminate them entirely for juveniles. While LFOs – restitution, fees, and other court costs – may present inconvenience for financially-supported young people, they present significant burdens for young people who do not have economic means, and the debts trail them into adulthood, where they serve as barriers to jobs and housing. In Washington State, as Lavoie tells us, juveniles enjoy more consideration than in many states – state legislation limits LFOs on juveniles to situations where the LFO is expressly authorized by statute, although restitution, for example, has no statutory limit. Most troubling for young people, outstanding LFO balances can bar a young person from sealing a juvenile record. At the same time, while a state may impose LFOs to offset the costs of criminal law, low collection rates mean that LFOs are ineffective as funding methods, and juveniles are poorly situated to pay their assigned costs. Lavoie outlines the specific statutory changes that would get us to a better result – where juveniles no longer would face the imposition of LFOs, period.

In Stopping the Flow: Eliminating the School-to-Prison Pipeline in Washington State, Emily Justin argues for an end to the use of exclusionary disciplinary procedures in Washington schools. Justin illustrates the disparate, disproportionate effects of these disciplinary practices on students of color; students with disabilities; students who have experienced trauma; and, particularly, students with intersecting identities that place them in more than one of these categories, and shows that the disparate imposition of exclusionary discipline starts in preschool and carries through to high school. These policies, particularly as paired with zero-tolerance measures, impede academic engagement and performance, and lead to higher drop-out rates, as children are left without school structure. These children become

more at risk for eventual criminal law intervention. Justin shows us that the abolition of such punishment practices will lead to better outcomes – fewer kids out of school, and fewer kids ultimately in incarcerative facilities.

Jamie Wilson opens her article, Juvenile Dependency Proceedings: Dismantling Families Without Probable Cause, with a provocative observation – we value children more than we value personal property, but removing children from a home currently does not, in practice, require court approval. Wilson notes that in theory, authorities require a court order to remove a child from the child's family unless they are in danger of imminent harm, but that authorities commonly remove first and obtain a court order later. Child removal has serious, lasting consequences for the child and for the family – while the Constitution and the state legislature recognize the importance of the family unit, children are removed without prior judicial approval even where no imminent danger presents. Removal also generates disparate impacts by race and class – dependency statutes are facially neutral, but they are not applied in a neutral fashion, and Wilson documents disparities from reporting to investigating to reunification. Wilson argues to use an existing framework – the search warrant process – as a basis for rewriting dependency statutes to create greater impediments to removal, offering children and families similar protections to property.

People who are incarcerated; young people; and immigrants are some of the most vulnerable members of our society; we are proud to offer the voices of these authors as they work to transform the law to support our communities.