Research Involving Criminals and Prisoners

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Disclaimer

The views and opinions expressed in this presentation are those of the speaker and do not necessarily reflect the official policy or position of the Human Research Protections Office at the University of Maryland, Baltimore.

Regulations
45 CFR 46 Subpart C

§46.302 Purpose.

- Inasmuch as prisoners may be under constraints because of their incarceration which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research, it is the purpose of this subpart to provide additional safeguards for the protection of prisoners involved in activities to which this subpart is applicable.

Regulations
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§46.303 Definitions

- (c) *Prisoner* means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

Regulations
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- The majority of the IRB must not have an affiliation with the prison AND
- There must be a prisoner advocate on the IRB to review protocols involving prisoners

Regulations
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§46.305 Additional duties of the Institutional Review Boards where prisoners are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this part, the Board shall review research covered by this subpart and approve such research only if it finds that:

(1) The research under review represents one of the categories of research permissible under §46.306(a)(2);

(2) Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired;

(3) The risks involved in the research are commensurate with risks that would be accepted by nonprisoner volunteers;

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(4) Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides to the Board justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project;

(5) The information is presented in language which is understandable to the subject population;

(6) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on his or her parole; and

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- (7) Where the Board finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

Regulations
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§46.306 Permitted research involving prisoners

(i) Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(ii) Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(iii) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction, and sexual assaults) provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology, medicine, and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research; or

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(iv) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the IRB to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts, including experts in penology, medicine, and ethics, and published notice, in the FEDERAL REGISTER, of the intent to approve such research.

Why was there a need for regulations?

Case Studies – Use of Prisoners in Research

- Nazi Experiments
  - High-altitude experiments
  - Freezing experiments
  - Tested immunization compounds and sera for the prevention and treatment of contagious diseases, including malaria, typhus, tuberculosis, typhoid fever, yellow fever, and infectious hepatitis.
  - Bone-grafting experiments and experiments to test the efficacy of newly developed sulfa (sulfanilamide) drugs

Case Studies – Use of Prisoners in Research

- Nazi Experiments (cont'd)
  - Prisoners were subjected to phosgene and mustard gas in order to test possible antidotes
  - Serological experiments on Roma (Gypsies), in order to determine how different "races" withstood various contagious diseases
  - Sterilization experiments

    http://www.ushmm.org/wlc/en/article.php?ModuleId=10005168

Case Studies – Use of Prisoners in Research

- Stateville Penitentiary Malaria Study (1940s)
  - Prisoners were infected with malaria to test antimalarial drugs
  - Noted during the Nuremburg Trial

Case Studies – Use of Prisoners in Research

- MK-Ultra (early 1950s – 1973)
  - Mind control studies using drugs like LSD
  - Most records were purged/destroyed in the wake of Watergate
  - "Over 44 different college and universities were used in Project MKUltra. In addition, numerous hospitals, prisons, and pharmaceutical companies were paid by CIA front companies to conduct various experiments without raising suspicion."

    http://sometimes-interesting.com/2013/03/13/project-mkultra/

Case Studies – Use of Prisoners in Research

- Holmesburg Prison Experiments (1950s – 1974)
  - Tests involving toothpaste, deodorant, shampoo, skin creams, detergents, liquid diets, eye drops, foot powders and hair dye
  - Tests involving mind-altering drugs, radioactive isotopes and dioxin.

    http://articles.baltimoresun.com/1998-07-21/news/1998202099_1_holmesburg-prison-kligman-philadelphia

    See also Acres of Skin by Allen M. Hornblum

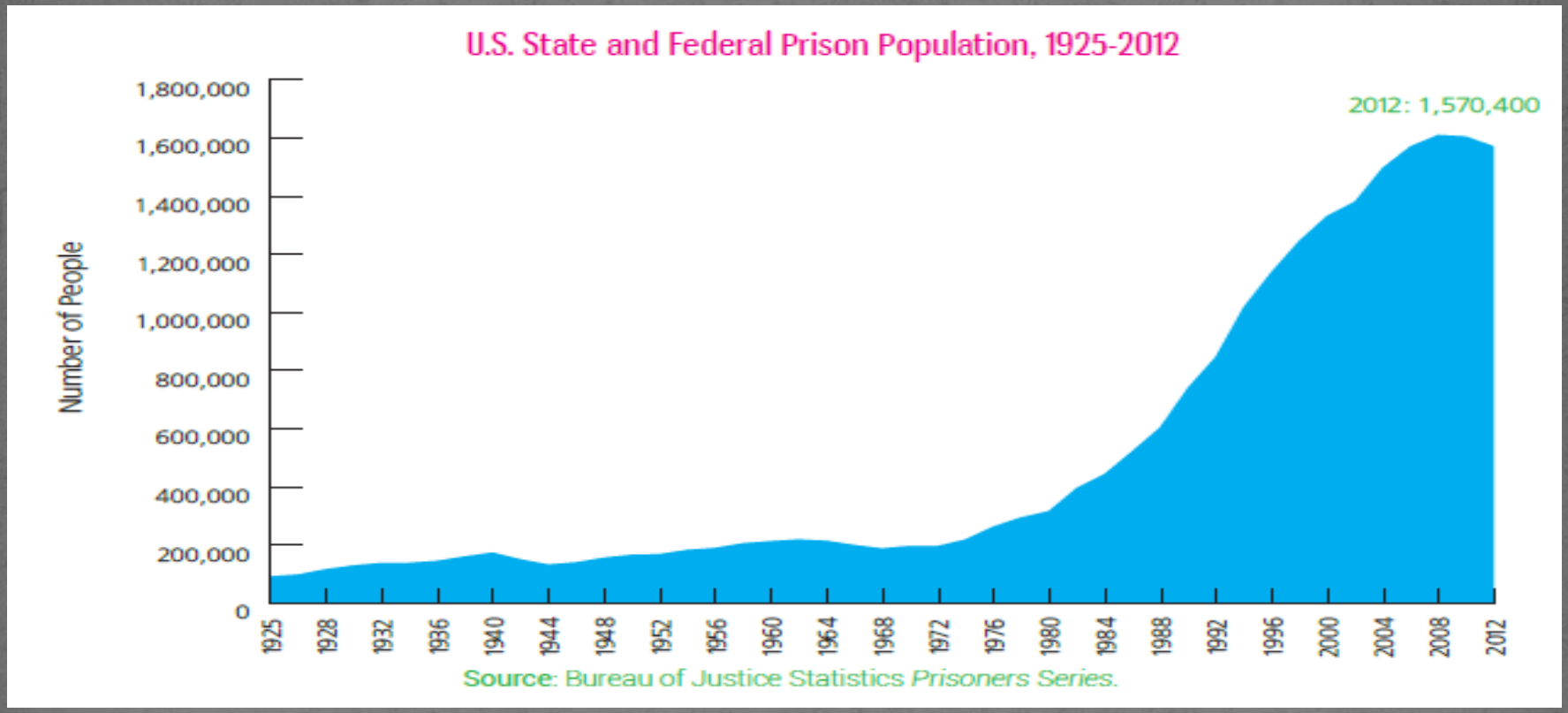
Case Studies – Use of Prisoners in Research

- Washington State Penitentiary (1960s)
  - Radiation experiments
  - Used X-rays on the testicles of 64 prisoners to determine the dose needed to make them sterile

    http://www.hcn.org/issues/8/250

Why does this matter today?

Statistics


U.S. State and Federal Prison Population, 1925-2012
2012: 1,570,400
Number of People
1,800,000
1,600,000
1,400,000
1,200,000
1,000,000
800,000
600,000
400,000
200,000
0
1925
1928
1932
1936
1940
1944
1948
1952
1956
1960
1964
1968
1972
1976
1980
1984
1988
1992
1996
2000
2004
2008
2012
Source: Bureau of Justice Statistics Prisoners Series.

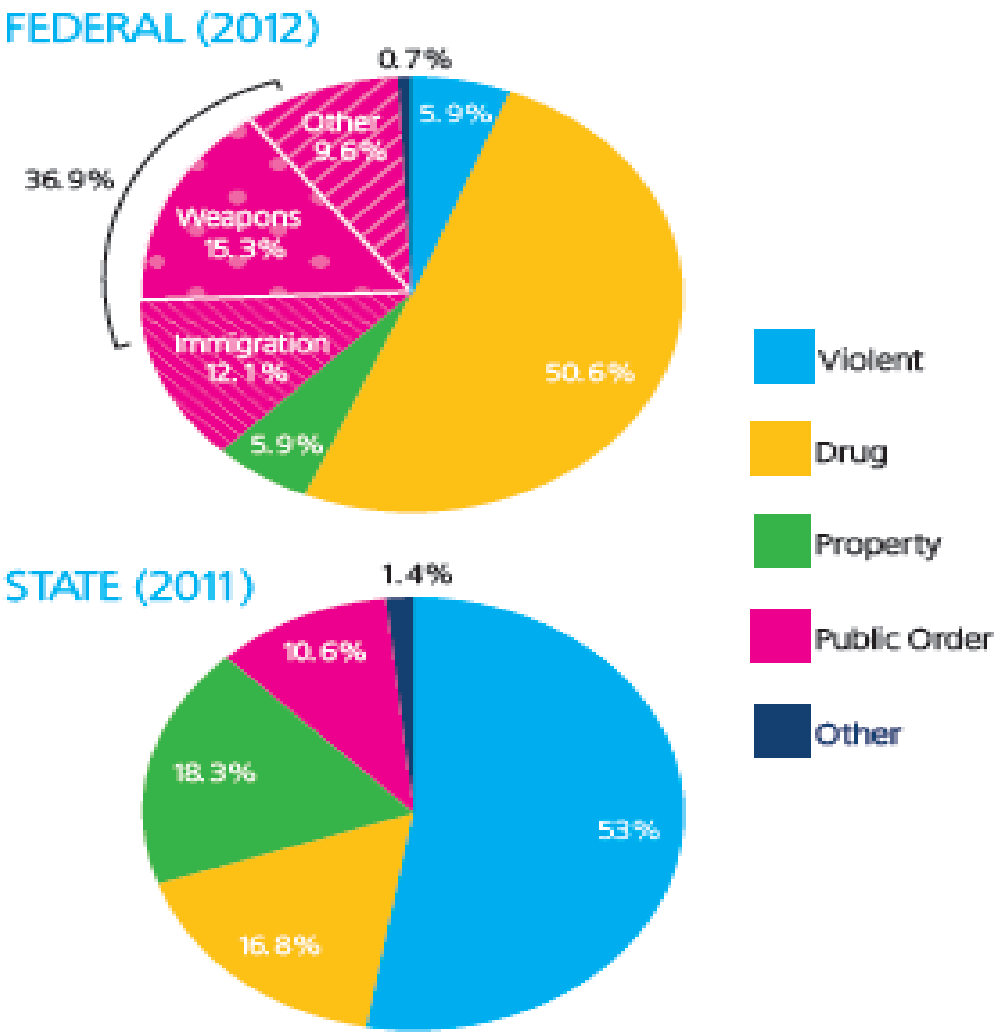
Statistics

- About 6,937,600 offenders were under the supervision of adult correctional systems at yearend 2012, declining by about 51,000 offenders during the year.
- The decrease during 2012 was the fourth consecutive year of decline in the U.S. correctional population.
- In 2012, about 1 in every 35 adults in the United States, or 2.9% of adult residents, was on probation or parole or incarcerated in prison or jail, the same rate observed in 1997.
- An estimated 1 in every 50 adult residents was supervised in the community on probation or parole at yearend 2012, compared to 1 in every 108 adults incarcerated in prison or jail.
  - http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4843

Increase in Prison Population Causes

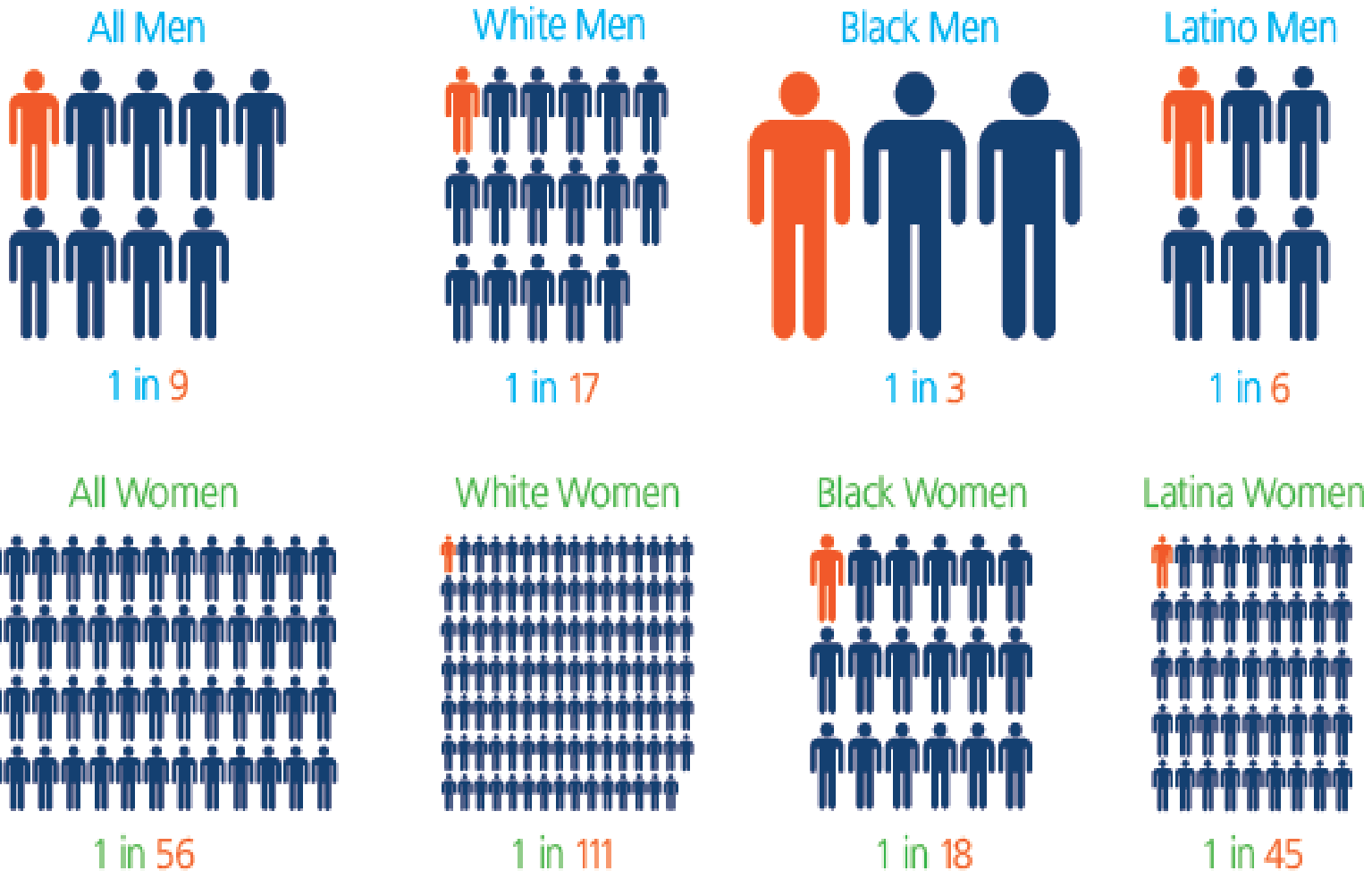
- Mandatory minimum sentencing
- Parole agencies intent on sending people back to prison
- Three-strike laws
- For-profit prisons
- Closing of large state mental institutions
- War on Drugs

State & Federal Prison Population by Offense



Source: Carson, E.A. and Golinelli, D. (2013). *Prisoners in 2012*. Washington, D.C.: Bureau of Justice Statistics; Carson, E.A. and Sabol, W.J. (2012). *Prisoners in 2011*. Washington, D.C.: Bureau of Justice Statistics.

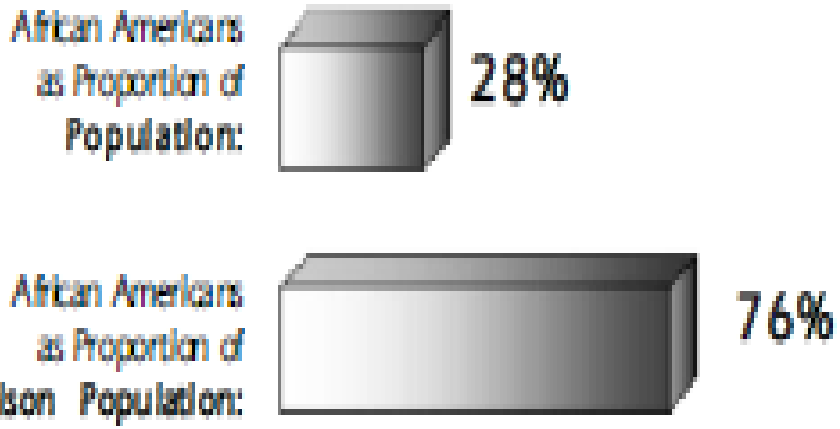
Lifetime Likelihood of Imprisonment



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, D.C.: Bureau of Justice Statistics.

Statistics in Maryland

African Americans comprise 76% of Maryland's prisoners, yet only 28% of the state's total population.



Source: Census Bureau and Maryland Department of Corrections (2008).

Things to Think About When Doing Research with Prisoners

Research issues in prisons

- "Gaining access to a prison or jail system,"
- "Establishing research rigor within the constraints of prison or jail security regulations,"
- "Maintaining access and interest over periods for longitudinal studies, and"
- "Establishing relationships with interfacing systems (corrections, media, philanthropic) in such a way that they are supportive and preserve appropriate research autonomy"
- Distrust of outsiders by prison staff and prisoners
  - http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1455477/

Needed knowledge

- Knowledge of the prison
- Knowledge of the culture
  - Listen while “inside”; gain trust of prisoners who serve as informants in the ethnographic sense
- Knowledge of criminal justice
  - Criminal justice consultant

Potential Areas of Study

§46.306 Permitted research involving prisoners

- (iii) Research on conditions particularly affecting prisoners as a class
  - Infectious diseases (TB, Hepatitis B & C)
    - Hepatitis B in prison – 8 – 43%; 4.9% in general US population.
  - Sexually transmitted diseases
    - AIDS is the second leading cause of death in prisons
  - Diabetes (aging of the population)
  - Mental Illness & Addiction
    - "In addition, approximately 75 percent of people with serious mental illnesses in the criminal justice system have a co-occurring substance abuse disorder"
      - Statistics from http://www.ncbi.nlm.nih.gov/books/NBK19877/

Things to Think About When Doing Research with Those Engaging in Illegal Activities

Studying Those Engaging in Criminal Acts

- Need to protect the participant…
  - "Certificates of Confidentiality are issued by the National Institutes of Health (NIH) to protect the privacy of research subjects by protecting investigators and institutions from being compelled to release information that could be used to identify subjects with a research project. Certificates of Confidentiality are issued to institutions or universities where the research is conducted. They allow the investigator and others who have access to research records to refuse to disclose identifying information in any civil, criminal, administrative, legislative, or other proceeding, whether at the federal, state, or local level."

    http://grants.nih.gov/grants/policy/coc/background.htm

Studying Those Engaging in Criminal Acts

- Need to protect the participant…
  - If it is an observational study, determine whether local authorities will be notified of the study. (Notifying could put participants at greater risk of being arrested if seen with study staff. Not notifying could put study staff at risk of being interrogated and/or arrested)

Studying Those Engaging in Criminal Acts

- …and the study team (when doing observational studies of street crimes)
  - Consider working in teams
  - Don't give personal contact information (have designated cell phones and public meeting places for the study)
  - Provide adequate training for situations that may arise as a result of the study (interaction with police, potential victimization by participants, etc.)

Examples of Issues Related to Types of Crimes Committed

- Prostitution
  - Women who engage in prostitution tend to have been abused and may suffer from PTSD as a result
  - Issues related to drug addiction and STDs
- Drug Users
  - Mental health issues
  - Potential for blood born diseases (HIV, hepatitis C, etc.)
- Murderers
  - May not want to talk about the crime if appeals are not exhausted

Examples of Issues Related to Types of Crimes Committed

- Child Molesters
  - If interviewing in a prison setting, extra care would need to be taken if their crimes were not already known to other prisoners (tends to be more likely to be victimized as a result of the type of crime)

Ethical Issues for Prisoners in Research

- Informed Consent
  - Autonomy
  - Education
    - 2004 data: 41% of inmates in the nation's state and federal prisons and local jails and 31 % of probationers had not completed high school or its equivalent (http://www.ncbi.nlm.nih.gov/books/NBK19877/)
- Coercion
  - Compensation
  - Lack of free will in prison
- Respect for Persons
  - Should not be used as a population of convenience

Questions????

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