

RAPID RESPONSE

# Beyond Bars

*A Path Forward From 50 Years  
of Mass Incarceration in the  
United States*

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**Edited by**

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and Jason A. Smith



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# President's welcome

*Shirley A. Jackson*

Throughout its 72-year history, the Society for the Study of Social Problems (SSSP) has been supported by scholars, practitioners, and student members and the work they do to advance knowledge of social problems found in a multitude of spaces. This edition of *Agenda for Social Justice 21* focuses on five decades of mass incarceration in the United States. The authors cover an array of problems that include housing, prison labor, economic sanctions, education, voting rights, and families, stemming from mass incarceration. These require not only attention but responses to reform a decades-old issue. As an organization committed to social justice, we strive to engage in research and share knowledge. The point of any agenda is to set a path for how to move forward or achieve a purpose. The 2023 SSSP conference theme, “Same Problem Different Day: Recognizing and Responding to Recurring Social Problems,” and this edition of *Agenda for Social Justice 21* do just this. As scholars committed to moving us in a direction of solutions, the work presented gives us a roadmap for how and where we might go from here. I commend all of the authors and the editorial team for their insightful and important contributions to the SSSP.

# Editorial introduction

*Kristen M. Budd*

*Research Analyst, The Sentencing Project*

It is better to prevent crimes than to punish them. This is the fundamental principle of good legislation, which is the art of conducting men to the maximum of happiness, and to the minimum of misery, if we may apply this mathematical expression to the good and evil of life.

Cesare Beccaria, *On Crimes and Punishments*<sup>1</sup>

This series of edited books—The Agenda for Social Justice, The Global Agenda for Social Justice, and the Rapid Response Volumes—is our contribution to making widely available scholarship and the best scientific evidence produced by academics, applied researchers, and experts in the field. It is a project in public sociology spurred by the passion of Professor Robert Perrucci, the 48th President of the Society for the Study of Social Problems (SSSP),<sup>2</sup> who challenged us to bring our knowledge outside the academy and our professional organizations into the public sphere. He called for us to be activists in the form of writing for the public to advance an agenda for social justice. With this volume, we—the Justice 21 Committee of the SSSP who serve to curate and realize these volumes—continue to respond to Dr. Perrucci’s call to infuse the public discourse with science-based alternative visions for the future. It is a future in which we work toward solving social problems to create a more equitable, inclusive, and just world.

This rapid response volume, produced by SSSP in partnership with The Sentencing Project, is a call to arms to

end mass incarceration and respond to the devastation it has caused in the United States. The year 2023 marks five decades since the United States embarked on a failed experiment by using mass incarceration as the primary strategy to control crime and the communities experiencing it. Instead of heavily investing in solutions to prevent crime, the United States opted to put more of its citizens in prison for longer and longer periods. Since 1973, the prison population has grown 500 percent and disproportionately affects Black Americans. While political rhetoric and public demand to be “tough on crime” ebbs and flows, the number of Americans in our prisons and jails and the massive probation and parole population are a result of misguided sentencing laws and policies. These laws and policies did not produce the panacea of crime reduction that one would have expected from one of the world’s leaders in incarceration.

*Beyond Bars: A Path Forward from 50 Years of Mass Incarceration in the United States* is a solutions-driven agenda for social justice to address the harms of mass incarceration and chart new pathways to improve community safety and the criminal legal system. Reflecting on the work of renowned criminologist Cesare Beccaria, it is better to prevent crimes than to punish them, and punishment should not exceed what is necessary. It is time for the United States to reverse course on its failed sentencing laws and policies. It is time to end mass incarceration.

This volume includes nine topical chapters examining different facets and ramifications of mass incarceration in the United States. It also includes one think piece about the end of mass incarceration and our opportunities for reform. The contributors are an impressive group of scholars from public and private universities, including graduate students, postdoctoral students, and university faculty at all ranks. There are independent scholars and applied researchers. This group also includes the past and current Executive Director of The Sentencing Project and the current President of the SSSP.

While each chapter in this volume can stand alone, in combination they define a social problem related to mass incarceration, rigorously survey the evidence, and then propose timely and practical solutions. Readers will learn

about problems related to the severity and cost of punishment (for example, life sentences, monetary sanctions), problems during imprisonment (for example, prison labor, access to higher education), problems with release and reentry (for example, parole, housing instability, employment challenges), other persistent punishments like the exclusion from voting, and the collateral consequences for children of incarcerated parents. Because mass incarceration intersects and contributes to so many social problems, we would be remiss not to note that this volume's coverage of mass incarceration in the United States is far from complete. While making a contribution to public sociology and providing a vision for a better future without mass incarceration, we acknowledge the need for more discussion.

As the Chair of the Justice 21 Committee of the SSSP and on behalf of The Sentencing Project, where I work as a Research Analyst, I hope this volume will spur public discussions, inform law and policy makers, provide advocates and advocacy organizations with research from the field, teach students about the deleterious effects of mass incarceration on justice-impacted individuals and our communities, and so much more. We hope that our readers will use this evidence and these solutions to pivot away from mass incarceration—to find new avenues to improve the health of our communities and the lives of our community members—in order to elevate the humanity of all Americans and our capacity for change.

## Notes

1. Beccaria, C. (1963) *On Crimes and Punishments*. Indianapolis: Bobbs-Merrill.
2. Perrucci, R. (2001) "Inventing Social Justice: SSSP and the Twenty-First Century." *Social Problems*, 48(2): 159–167. <https://doi.org/10.1525/sp.2001.48.2.159>



# Acknowledgments

*Kristen M. Budd*

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We, the editors, would like to thank the SSSP administrative and executive offices for their continued support and encouragement to curate these volumes. We are grateful to The Sentencing Project not only for their contributions to this rapid response volume, but their continued work to end mass incarceration. Policy Press, and their publishing partners, are excellent collaborators and we thank them for helping us bring this book to life. I, as lead editor, would also like to personally extend my sincerest gratitude to my fellow Justice 21 committee members who partnered on this volume: David C. Lane, Glenn W. Muschert, and Jason A. Smith. It is always a team effort to fight for social justice.

# Foreword

*Marc Mauer*

*Former Executive Director, The Sentencing Project*

The chapters in this volume demonstrate the breadth of challenges to American society brought about through the advent of mass incarceration. It is now clear that the cumulative effects of this experiment in social control cause more harm and create more disadvantage than any purported public safety benefits it has produced.

It now behooves us to try to both understand how such a dramatic shift in public policy came about and to frame a strategy for moving forward to advance a more compassionate and effective approach to building strong communities.

In broad terms, mass incarceration and its impacts were birthed by two failures in the development of public policy. First was the failure to examine the causes of the problem at hand in the early 1970s. Crime rates had been rising since the mid-1960s, though the extent of that increase is difficult to gauge given the sparsity of criminal justice data during that period. Nonetheless, we know that murder rates—the most well-documented offense—had been rising steadily through that period. So it was not unreasonable for policy makers and the public to be concerned about this problem. What was not reasonable, though, was the narrow vision with which policies were adopted to address this situation—essentially, a commitment to punishment as the primary approach to creating public safety. From this assumption developed the “tough on crime” movement, designed to send more people to prison and to keep them locked up for longer periods of time.

A more thoughtful analysis of this problem could have identified the key factors contributing to the rise in crime of that period. These included the rise of the “baby boom” generation into the high crime rate years of 15–24; increasing urbanization and its attendant stresses; and, high rates of unemployment among disadvantaged youth, particularly African Americans. Such an analysis could have made clear that it was not the lack of effective punishments that had produced rising crime rates, but rather the failure to invest in the social supports necessary to enhance opportunity in disadvantaged neighborhoods.

The second problem in the development of mass incarceration policies was the failure to assess the long-term consequences of the “invisible punishments,” as Jeremy Travis has termed them, that now accompany criminal convictions to a dramatic effect. Not only was such an analysis not undertaken in the 1970s, but lawmakers at all levels of government began to expand the range of collateral consequences of conviction, despite the absence of any demonstrated positive effect for public safety goals.

The political motivations producing mass incarceration cannot be disentangled from the racial assumptions underlying them. Building on centuries-old stereotypes of Blacks and crime, the image of the “criminal” to be deterred was broadly perceived as a young Black man. Such framing contributed to racially discriminatory drug policies, a declining faith in rehabilitation, and the dehumanizing imagery of individuals caught up in the justice system.

We are now at a moment when there is a ray of hope that we can begin to undo the broad range of collateral effects of mass incarceration and their deleterious impact on families and communities. Policy makers, criminal justice practitioners, advocacy organizations, and others have come together to scale back the most egregious policies in this regard. The pace of change is still quite modest given the scale of the problem, but nonetheless represents a shift toward rationality after decades of reflexively punitive policies.

If we are truly committed to reversing these trends, though, not only must we chip away at these consequences of criminal law involvement but we will also need to challenge

the underlying assumption propelling mass incarceration—that the imposition of punishment should represent the primary approach to producing public safety. This feature of mass incarceration has blinded us to any serious consideration of alternative measures to strengthen the capacity of families and communities to build healthier environments for all. The potential impact of alternatives is backed by a wealth of research, as well as being premised on a more compassionate and healing approach to building community. Such policies are the ones we would wish for our own children. It is long past time to broaden our vision so that it becomes the method of choice for all children.

# Mass incarceration's lifetime guarantee

Ashley Nellis

## The problem

The year 2023 marks 50 years since the era of mass incarceration began and there are now more people serving life sentences *alone* than the entire prison population at its start. This chapter focuses on the proliferation of life imprisonment<sup>1</sup> as a major, unchecked tactic of mass incarceration and calls for a radical downgrade in the severity of American punishment.

There have been extensive social, moral, and fiscal costs associated with the large-scale, decades-long investment in mass imprisonment. High levels of imprisonment destabilize entire communities, leading to the dissolution of informal networks that are known to serve as barriers to neighborhood crime. Trust in law enforcement deteriorates as community members experience elevated levels of victimization and the loss of community members, friends, and family members to incarceration. An esteemed group of criminologists writing for the National Academies of Science is only one of the many who have concluded that it is misguided changes in sentencing law and policy, rather than crime, that has accounted for most of the increase in correctional supervision.<sup>2</sup>

Mass incarceration ignites or exacerbates a broad range of poor physical, psychological, and economic outcomes for the people who experience imprisonment, for their families, as well as for the broader community. This is true for people serving short stays as well as people sentenced to life imprisonment. Racial and ethnic disparities are known characteristics of the American prison system and the impact of mass incarceration has been especially acute for people of color.

In some, perhaps many, instances, incarceration is necessary. But the length of sentences in the United States far outweighs any benefit to punishment. One in seven people in prison in the country is serving a life sentence.

### Research evidence

The expansion of life sentences lies at stark odds with patterns of criminal offending and the known ineffectiveness of lengthening prison sentences as a deterrent. Yet, the growth of life and long-term prison sentences was key among the crime control strategies that dominated the late 1980s and 1990s. Between 1984 and 2020 there was a 12 percent growth in the use of parole-eligible life sentences (that is, life with parole or LWP), and a 66 percent growth in parole-*ineligible* life sentences (that is, life without parole or LWOP). Additionally, approximately 42,000 people are serving virtual life sentences with a mandatory maximum prison term of at least 50 years.

- Life sentences are permissible and even mandatory in the state and federal government. The most recent census of all three forms of life sentences (LWP, LWOP, and virtual life) finds a total of 203,865 people who were serving such sentences around the United States. The largest share of people with life sentences lies in California, Florida, Louisiana, Michigan, and Pennsylvania.
- As with the rest of the criminal legal system, life sentences are disproportionately served by people of color. More than half of those serving LWOP—the most extreme category of life—are Black.
- Life sentences are also authorized for persons who were not directly involved in the underlying crime, such as in the case of “felony murder” laws. In these scenarios, an individual may not have even been present when a murder happened but is held equally culpable because of their participation in an underlying felony.

- The combination of too many people being sentenced to life is compounded by narrowing opportunities for release. This has created a growing population of “lifers.” Parole wait times have lengthened, parole grant rates have plummeted, and the use of executive clemency has become a complicated political risk that fewer and fewer politicians are willing to take.
- Life sentences permissible in the United States are restricted or forbidden in other industrialized nations for some or all of the following categories: women, juveniles, emerging adults, the elderly, and persons convicted of nonhomicide and/or a nonviolent crime.

Life sentences are justified on the grounds that longer periods of imprisonment will deter crime both specifically and generally. Support for lengthy prison sentences ignores the fact that most people who commit crimes, even those who have committed a series of crimes, generally age out of their criminal conduct in early adulthood. The so-called “age-crime curve” is evident across hundreds of empirical studies and reflects the fact that people are most at-risk for committing crime in their late teenage years to their mid- or late twenties. After this age, the proclivity toward committing more crime declines rapidly. Research by the author finds that approximately 40 percent of people serving LWOP sentences were under age 26 at the time of their offense, meaning that they committed their crime before adulthood.<sup>3</sup> And yet, a growing segment of people have served decades in prison beyond their point of risk.

Deterrence is only effective when there is certainty of apprehension, and severity of punishment is only effective to the degree it is proportionate to the crime. Yet policies of the 1980s and 1990s ignored this reality in favor of a misguided belief that seeing other people receive long sentences would serve as a crime deterrent. The idea of “sending a message” dominated the crime policy narrative during this time. But scholars have long been advising against this approach. Steven Durlauf and Daniel Nagin concluded from their research that: [T]he magnitude of deterrent effects depends critically on the specific form of the sanction policy. In particular, there is little

evidence that increases in the severity of punishment yield strong marginal deterrent effects; further, credible arguments can be advanced that current levels of severity cannot be justified by their social and economic costs and benefits.<sup>4</sup>

In addition to the predictability of age in crime outcomes, the life history of individuals in prison shows that, many, if not most, people committed their crimes after major setbacks—addiction, domestic violence, unemployment, or housing instability—for which they had little support. There are few imprisoned people who are so dangerous that they can never be released back into the community within a relatively short period. This applies to people convicted of nonviolent crimes as well as violent crimes. Criminological evidence shows that criminal careers typically end within approximately ten years and recidivism rates fall considerably after a decade of imprisonment.

In today's heavily carceral system, it can be difficult to believe that life imprisonment meant something quite different in earlier eras. Consider Louisiana, for instance. Louisiana holds more people per capita who are serving LWOP than the rest of the nation and the world. Historically, the state considered ten years to be a typical duration for an indeterminate life sentence. In many states, including Louisiana, life sentences were not only discretionary but presumed to be complete in about ten years, as Christopher Seeds points out in his comprehensive, historical account of the gradual abandonment of parole in America.<sup>5</sup> In the case of Louisiana, it relied on a "10/6" law until the 1970s, which meant that life-sentenced prisoners were typically released after serving ten years and six months if they presented a good record of conduct and had the warden's support. But Louisiana abolished parole in 1979 and LWOP is now mandatory for convictions of first- and second-degree murder. Today, one of every five Black men in Louisiana prisons is serving a life sentence with no opportunities for release. Vulnerable populations including juveniles, the elderly, and those who are medically frail and terminally ill are included among them.

Louisiana is not an isolated example. A review of the Tennessee legislature's gradual extension of years that must be served before initial parole review on a life sentence



provides more evidence of the policies that drive mass incarceration. Before 1975, a parole-eligible life sentence in Tennessee required a minimum of 25 years, but with sentence credits, or “good time,” one could expect the possibility of parole after about 14 years. In 1982, the state extended the minimum time served on a life sentence to 30 years and, with sentence credits, one could reasonably expect parole review and potential for release after 20 years. The statute was changed again just seven years later, instituting a requirement of a mandatory 36 years in prison on a parole-eligible life sentence. Finally, as part of the Truth in Sentencing Act of 2022, lifers are now required to serve 100 percent of their 60-year minimum term before appearing before the parole board, with no exceptions.

### **Recommendations and solutions**

There are important lessons to be learned from the structural development of mass incarceration. The first is that adopting major policy shifts in an emotional political climate is never a wise course of action. The second lesson is that revising how we think about people who commit crime changes how we respond to their actions. Taken with an understanding of structural disadvantages that permeate American society leading to disparate economic, education, housing and health outcomes should lead policy makers to aggressively pursue reforms in these areas while also investing in evidence-based individual-level prevention and intervention programs.

Here are concrete steps that must be taken to arrive at a reformed sentencing structure that provides both accountability and human dignity.

#### ***1. End life without the possibility of parole and dramatically scale back all prison sentences capping them at 20 years***

Sentences of LWOP—the most extreme form of life imprisonment—are virtually unheard of in the rest of the world. They are considered antithetical to personal transformation,

which should be the primary goal of corrections systems as is the case in other developed nations. Even more, they violate fundamental principles of human dignity. Instead of serving the interests of justice, LWOP unnecessarily burdens systems with the heavy cost of housing, feeding, and providing medical care for the more than 55,000 people. The elimination of LWOP via jurisprudential or legislative changes naturally leads to questions about what sentences should replace it. A growing number of national organizations recommend dramatic reductions in prison sentences across the board, including capping all sentences at a maximum of 20 years<sup>6</sup> with an initial review within the first ten years.

In 2023, The Sentencing Project published a report containing several strategies that can be employed to cap sentences at 20 years.<sup>7</sup> Among these ideas are eliminating long mandatory minimum terms and “stacked” or consecutive sentences that becoming virtual life sentences, as well as sentence “enhancements” that add time to a sentence due to the presence of a gun, for instance. Additional reforms include limited the use of life sentences for specific populations such as the elderly, juveniles, and those who did not commit a homicide.

## ***2. Retool “back end” release opportunities through expedited parole and expanded clemency***

When prison populations are examined as a whole, reoffending rates among those exiting prison are troublingly high and cause legitimate concern about decisions to grant release. Though counterintuitive, the reoffending rates of people released from prison after longer periods of confinement convicted of serious crimes such as murder, are quite low. Specifically, the likelihood of committing a second murder after imprisonment for a first is nearly zero, and the likelihood of committing any violent crime after imprisonment for murder is also minimal. Research conducted by J.J. Prescott and colleagues shows that people who are released from life sentences are imprisoned for new offenses at a rate of less than 5 percent.<sup>8</sup> Other studies report similar findings. Parole review

policies and practices correctly prioritize risk to community safety but do so in such a manner that people who are serving life sentences are in a losing position from the start. This is because boards rely heavily on the static variable of the crime of conviction as a predictor of future risk. As noted, most people serving life sentences have been convicted of a violent crime. This means that despite the dynamic variables, such as accomplishments while imprisoned, expressed support from family and community networks, and recommendations for release from reputable sources (that is, counselors or spiritual advisors), the original crime of conviction often overrides these factors. To solve this, at the point of the parole hearing, parole boards and policies should be required to place heavy weight on a candidate's transformation while imprisoned, their support network, and the development of a sound reentry plan.

Parole reviews should assess readiness for release based on demonstrated progress at rehabilitation regardless of the crime of conviction. Calculation of "rehabilitation scores" in place of risk scores is included in research by Sam Houston State University criminologist Stuti Kokkalera and colleagues. These assessments include consideration of program involvement in prison, General Education Development (GED) attainment, vocational certification(s), religious involvement, and participation in mental health and substance use disorder programming.<sup>9</sup> In addition to evidence of rehabilitation, factors including having a reentry plan and outside support should factor into the decision to release someone when they are ready. Parole board membership contributes to declining parole grant rates in recent decades. In 2020, scholars Kevin Reitz and Edward Rhine from the Robina Institute published a comprehensive review of parole systems around the United States, concluding that "American parole boards are supremely powerful institutions in their influence on prison policy, but they are exceedingly weak agencies in terms of professional status, political insulation, and member job security."<sup>10</sup> To be effective, parole board members should be required to have expertise in the legal, social work, and psychological fields as recommended. Political enmeshment with the parole board

makeup and governance should be severed so that impartial and expert decisions can be made.

Aside from release through parole for eligible life-sentenced candidates, some attempt to gain release through “compassionate release mechanisms” such as geriatric or medical release. The statutory allowances that are sometimes in place are extremely limited to those who will die in a matter of weeks or months because of old age or terminal illness. To allow more releases, legislatures and prison administrators should expand compassionate release policies to all people who are 50 years or older, regardless of crime of conviction, who have been in prison for at least ten years. In this way, states can manage the growing elderly prison population, knowing that older individuals are less likely to commit crime.

Clemency is another back-end tool that can help wind down mass incarceration. This release mechanism was once a functional, often-used, and non-stigmatized component of the corrections system, but its benefits have given way to concerns about political backlash for releasing someone who goes on to commit a new crime. Governors and presidents have often been unwilling to use this release mechanism and clemency rates have plummeted. And, though crimes are occasionally committed by people who had been released through executive clemency, this is not normally the case. To create a rule based on the rare exception is bad policy. Therefore, clemency should be retooled such that it is disentangled from political incentives, and its use should be a regular part of the corrections continuum.

Many Americans are now aware of mass incarceration. The overuse of imprisonment, at least for some crimes, has come under scrutiny in the past decade. Prison numbers have also come down modestly in the past decade, and it is reasonable to assume that successful reforms are partly the cause. These developments are encouraging, but to end mass incarceration we will need to embrace much broader reforms. One step is revoking mass incarceration’s lifetime guarantee.

## Key resources

- Ghandnoosh, N. (2021) *A Second Look at Injustice*. Washington, DC: The Sentencing Project.
- Ghandnoosh, N., Stamen, E., and Budaci, C. (2021) *Felony Murder: An On-Ramp for Extreme Sentencing*. Washington, DC: The Sentencing Project.
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- Van Syl Smit, D. and Appleton, C. (2018) *Life Imprisonment: A Global Human Rights Analysis*. Cambridge, MA: Harvard University Press.

## Biographical note

**Ashley Nellis** is Co-Director of Research at The Sentencing Project in Washington, DC. She is a longtime scholar of life and long-term imprisonment and her documentation of the prevalence of life imprisonment has served as a national resource for academics, advocates, policy makers, reporters, and incarcerated persons. She has authored more than a dozen studies on life imprisonment and is the coauthor with Marc Mauer of *The Meaning of Life: The Case for Abolishing Life Sentences* (The New Press, 2018).

## Notes

1. Life imprisonment includes life with the possibility of parole (LWP), life without the possibility of parole (LWOP), and de facto or virtual life sentences. Altogether, over 200,000 people were serving these sentences as of 2020.
2. National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press.

3. Nellis, A. (2023) *Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life without Parole*. Washington, DC: The Sentencing Project. <https://www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/>
4. Durlauf, S. and Nagin, D. (2011) "The Deterrent Effect of Imprisonment." In P. Cook, J. Ludwig, and J. McCrary (eds) *Controlling Crime: Strategies and Payoffs*. Chicago: University of Chicago Press, p 43.
5. Seeds, C. (2022) *Death by Prison: The Emergence of Life without Parole and Perpetual Confinement*. Berkeley: University of California Press.
6. Emerging adults sentenced to life account, or those under 26 at the time of their offense, for two in five parole-ineligible lifers and should be released at a maximum of 15 years instead of 20 years to account for their more limited culpability.
7. Komar, L., Nellis, A., and Budd, K.M. (2023) *Counting Down: Paths to a 20-Year Maximum Prison Sentence*. Washington, DC: The Sentencing Project. <https://www.sentencingproject.org/app/uploads/2023/02/Counting-Down-Paths-to-20-Year-Maximum-Prison-Sentence.pdf>
8. Prescott, J.J., Pyle, B., and Starr, S.B. (2020) "Understanding Violent Crime Recidivism." *Notre Dame Law Review*, 95(4): 1643–1698.
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# Monetary sanctions in the age of mass incarceration: addressing the harms of mass criminal legal debt

*Michele Cadigan, Alexes Harris, and  
Tyler Smith*

## The problem

Monetary sanctions (legal financial obligations, or LFOs) are the fines, fees, surcharges, interest, and restitution imposed by the legal system on people who are issued citations or make contact with criminal courts. The use of monetary sanctions has escalated dramatically over the decades and remains the most common form of punishment across the United States. This increase has raised important questions about the relationship between financial penalties and the system of mass incarceration. Mass incarceration has put tremendous fiscal pressure on governments as they deal with ballooning criminal legal expenditures. Many governments have turned to monetary sanctions to absorb some of this cost, particularly in smaller jurisdictions. These efforts involve increasing fines and fees for lower-level offenses and the increased use of LFOs in conjunction with other punishments such as incarceration. Thus, in addition to mass incarceration, we are also experiencing an era of mass criminal legal debt.

As reformists continue to push for alternatives to incarceration, it is vital to understand how these alternatives impact the predominantly poor communities of color, especially those overrepresented among the justice-involved population. Individuals are often mandated to pay fees for

their probation, electronic home monitoring, and various rehabilitative services and treatment programs. This practice tends to widen the scope of individuals saddled with legal debt or extra-legal expenses for court-ordered treatment. At the same time, it creates what Pattillo and Kirk call “layaway freedom,” in which freedom from the criminal legal system (CLS) becomes contingent on an individual’s ability to pay.<sup>1</sup> Furthermore, individuals unable to pay for these court services face further penalties such as additional fees, driver’s license suspensions, and even incarceration. The predictable result is that most individuals who contact the CLS end up saddled with long-term financial burdens they can never pay off.

The widespread use of monetary sanctions in US legal institutions has created what Harris calls a two-tiered system of “justice” in which folks with financial means easily navigate and resolve legal matters.<sup>2</sup> At the same time, poor people are subject to extended periods of court supervision, arrest warrants, and additional financial penalties. Further, criminal legal supervision often cannot be completed until fully paying LFOs, leading to prolonged supervision for poor folks, which can make probation violations more likely, escalating sanctions for a new criminal conviction and resulting in (re) incarceration for nonpayment. As we demonstrate in the next section, research continues to demonstrate that monetary sanctions disproportionately impact individuals, families, and communities who are poor, non-White, and disabled.

## Research evidence

### *The Multi-State Study of Monetary Sanctions*

Harris and colleagues conducted the Multi-State Study of Monetary Sanctions<sup>3</sup> to compare the system of monetary sanctions and their impact on individuals in California, Georgia, Illinois, Minnesota, Missouri, New York, Texas, and Washington.

In a double-issue volume of *RSF: Russell Sage Foundation Journal of the Social Sciences*, researchers published work outlining the significant findings from the project. The



key takeaways from these publications are presented in the following list. Harris and colleagues<sup>4</sup> provide a complete summary:

- In Minnesota, Indigenous peoples have the highest amount of LFO debt compared to other groups, especially in areas close to tribal lands.
- Local municipalities in Washington that rely more on revenue generated by LFOs have a more significant number of incarcerated women, linking the growth of women's incarceration to CLS revenue generation.
- In Texas, Black, Latinx, and poor individuals spend a disproportionate amount of money and time resolving low-level cases such as citations compared to more advantaged, White individuals.
- Immigrants are extorted and exploited by the CLS because their immigration status makes them vulnerable to immigration detention and deportation. To avoid detection by immigration officers, plea deals in some jurisdictions include higher LFOs in exchange for no jail time to avoid US Immigration and Customs Enforcement sweeps in local jails. Additionally, bail is forfeited if individuals miss a court date while held in immigration detention.
- LFOs have a remarkable impact on housing precarity in addition to the effects of incarceration.
- Family members of CLS-involved individuals can make LFO payments on their behalf. Further, when families deposit money into an incarcerated individual's commissary fund, the state can divert a percentage for LFOs, with the highest reported diversion being 97 percent.
- LFOs greatly stress poor individuals, negatively impacting their ability to parent, work, and drive, and exacerbating existing health issues, particularly for disabled or chronically ill individuals.

### *Legal financial obligations debt and the community*

- Graham and Makowsky's review reveals that CLS-generated revenue often contributes a significant portion of the general revenue of local governments, particularly in smaller jurisdictions.<sup>5</sup>
- LFOs disproportionately impact non-White, poor communities. O'Neill and colleagues find that legal debt is higher in poor communities of color and that poverty in such communities deepens over time.<sup>6</sup>

### *Reentry and debt management*

- Criminal courts manage unpaid LFO debt often through repeated court appearances where failure to appear can result in (re)incarceration and further financial penalties. Cadigan and Kirk show how these repeated court appearances and short stints in jail caused by missing a court date make it hard to find and maintain stable employment.<sup>7</sup>
- Pager and colleagues used research funds to pay LFO debt for a random sample of individuals sentenced in Oklahoma County and compared their post-conviction experiences to similarly situated individuals who did not have their LFOs paid.<sup>8</sup> Individuals who had their LFOs paid had significantly fewer interactions with the CLS over time.
- Using longitudinal data of formerly incarcerated individuals in three US states, Link finds that most incarcerated individuals returning to their communities had some form of legal debt, with an average of nearly \$900.<sup>9</sup> Individuals released under supervision had exceptionally high debts as they racked up supervision fees. They then link poor reentry outcomes to the financial burden created by "offender-funded" models of justice.

## Recommendations and solutions

The expanded use of monetary sanctions as a form of punishment and source of revenue has led to a “two-tiered” system of justice that locks individuals who are poor into the CLS. Furthermore, the use of court-service fees for government funding has increased the debt burden of those involved in the CLS and complicates the effectiveness of alternatives to incarceration—an estimated \$27.6 billion remains outstanding in just 14 states alone.<sup>10</sup> This debt is a significant barrier to financial solvency for individuals trying to reenter society after incarceration. It creates negative pressure on their ability to reestablish themselves in the community.

The following recommendations provide some basic guidelines for dismantling and revising these problematic policies. We believe these solutions would be a small start toward making a more just and financially solvent criminal justice system. Of course, given the localization of criminal court practices, state-level policy makers must be particularly aware of how policy changes are filtered through local contexts and take extra care to adapt implementations accordingly.<sup>11</sup>

### *Fund the criminal legal system*

- State and local governments must abandon “offender-funded” models of the legal system. These arrangements create financial incentives for increased policing and harsher financial penalties.
- Governments should cap the general revenue from criminal legal penalties. This is especially pertinent considering the inefficiency of collecting revenue from individuals who need help paying.<sup>12</sup>
- The state should pay for court supervision and treatment services through the state budget and not from local court fees. Individuals who need treatment services should be able to pay for or receive such services on a subsidized basis.
- To reduce criminal legal expenditures, states need to seriously consider how to reduce the number of

individuals involved in the legal system. We suggest that governments roll back punitive policies that increase incarceration and community supervision. This includes eliminating three-strikes laws, mandatory minimums, and sentence enhancement policies. In their place, we suggest community-based resources that will have a longer-term impact on decreasing crime rates and would help CLS-involved individuals reintegrate into the community.

***Eliminate mandatory legal financial obligations and apply ability-to-pay standards***

- We strongly encourage eliminating statutory language that mandates fines, fees, and surcharges. Most state sentencing statutes contain certain fines or fees considered “mandatory” punishments that judges must impose on people for certain offenses or violations. These statutes remove the ability of judges to use discretion to determine people’s current and future ability to pay financial penalties and waive them when individuals cannot pay.
- People who cannot pay LFOs should not receive them. States should develop guidelines and mandates for how courts determine “current ability to pay” hearings at the time of sentencing.
- These ability-to-pay standards must consider the employment, disability status, transportation, existing medical debt, and childcare needs of poor and low-wage defendants. People deemed indigent (for example, homeless, unemployed, mental health diagnosis, receiving federal disability income) should have complete relief from all monetary sanctions. No indigent person should receive fiscal penalties.
- Judges must also consider an individual’s *future* ability to pay by factoring in an individual’s physical or mental health status and other debts or financial obligations.
- Furthermore, judges should be mandated to consider costs associated with different sentencing orders and

mandates, such as mandated program participation (for example, anger management classes or substance abuse treatment). These fees represent substantial costs for poor individuals and impede their ability to comply with the terms of their sentences fully. The legislature should consider waivers for these costs for folks unable to pay these court-ordered obligations. A more efficient solution would be to fund these services through the state budget or to make these services state-run.

- No person sentenced to any length of incarceration (jail or prison) should receive fiscal penalties. Being incarcerated by default is an indicator of a current inability to make any payments toward monetary sanctions.
- All fees for incarceration and other forms of CLS supervision must be removed. These services should be funded by the state rather than extracting financial resources from individuals who are often poor and have limited access to other financial resources. Jurisdictions should perform a retroactive waiver of all incarceration and community supervision fees for those who are currently and formerly incarcerated or on probation/parole. Removing these fees would go a long way to helping individuals reenter the community and address the financial harms created by mass incarceration.

#### *Decouple unpaid debt from additional criminal legal consequences*

- People who are unable to pay their LFOs may face criminal and civil consequences such as (re)incarceration, “pay or stay” programs (make immediate payment of fines and fees or be sentenced to jail), warrants for failing to appear at nonpayment hearings, extended court supervision, inability to vote, suspension of driver’s license, and criminalization of driving on a suspended license.
- Driving while one’s license is suspended (DWLS) should not be a criminal offense. Criminalizing DWLS

does not make the roads safer and further deepens CLS involvement.<sup>13</sup>

- The state must halt the routine suspension of driver's licenses for nonpayment, non-traffic severe violations, and nonpayment of child support. Driver's license suspensions can make it even more challenging to secure stable employment, particularly for parents with school-aged children and in areas without reliable public transportation.
- For those who have their driver's license suspended, there needs to be a streamlined process for driver's license reinstatement and the provision of amnesty programs. A payment plan allows individuals to immediately get their driver's license reinstated if they make a minimum payment of \$25 per month payment. For example, Tukwila Municipal Court in Washington State has implemented the Unified Payment Program (UP Program) that pulls unpaid LFO debt from participating county courts and collection agencies across the Seattle metropolitan area into one account.

***Create transparency and accountability for the system of monetary sanctions***

- One of the primary barriers to understanding how monetary sanctions operate and how we can improve this system is the need for more available data. The decentralized justice system in the United States means that each court system is often responsible for its data collection and administrative filings. This results in significant inconsistencies across courts in how (or even if) LFOs are tracked. State legislatures should mandate that courts track the imposition and collection of monetary sanctions more closely. This means developing data collection and reporting systems that clearly illustrate amounts sentenced by category (for example, fines, fees, costs, and interest), amounts paid, amounts waived, and LFOs outstanding. With transparent financial reporting systems, jurisdictions

can be held accountable for the types and duration of punishments people receive, and we can thoroughly measure the success of particular policy interventions.

- Individual-level data should be collected and made available for research and analysis. These data should be anonymized, and annual reports at the local and state level should be publicly available for analysis and transparency. A fair and just policy can only emerge with proper data management and metrics.
- Furthermore, contracts with private entities managing or imposing costs to people for criminal legal purposes (for example, towing companies, probation or treatment services, collection agencies, Department of Corrections services, tablets, phone calls, and video visitation) should be publicly available. In addition, we have found it a common practice to stop tracking legal debts sold to private collection firms. Courts should be mandated to keep these records, and collection companies should be required to report on their efforts to collect this public debt with clear delineations of profits made.

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### Biographical notes

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**Tyler Smith** is a Ph.D. student of sociology at the University of Washington. His research broadly focuses on the interaction of the criminal-legal and economic fields. This includes studying the history of contractual prison labor and legal debt’s financial, structural, and emotional impact.



## Notes

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# Mass incarceration and the problem of prison labor

*Yvonne A. Braun and Kaelyn Polick-Kirkpatrick*

## The problem

Issues of autonomy, ethics, and rights plague questions of prison labor. Prison labor, sometimes called penal labor, can be seen as coercive, and in effect incentivizing mass incarceration as a means of bolstering the economy while simultaneously disappearing so-called “undesirable” populations coded by state-led discourse as less than human. The state’s and industry’s status as the central beneficiaries of penal labor is motivated by capitalist principles of economic growth and it denies people who are incarcerated access to autonomy and human rights.

The prison system in the United States emerged alongside the institution of slavery and the over-policing of Black bodies. The 13th Amendment, ratified in 1865, abolished slavery and involuntary servitude except as a punishment for those convicted of crime. This allowed land and business owners to lease incarcerated labor, which ultimately cost less than enslavement as lessees no longer had vested interest in the longevity of a laborer’s life. As a result, newly freed Black people were excessively policed and charged with crimes they did not commit, among other profound violences.

Convict leasing was outlawed in all 50 states by 1933, but by 1934 the Federal Prison Industries was established by executive order. Mass incarceration has since become a material reality as the number of people incarcerated (nearly two million) and the nation’s number of correctional facilities (over 5,000) has grown rapidly since the 1980s. While the

investments into incarceration have increased, the rights of incarcerated workers and their compensation for work done while in prison has remained low, or even declined, particularly in the last 20 years.

One of the myths of incarceration is that people who are incarcerated are not working. However, the data tells a different story: while not everyone has a job the whole time they are in prison, and sometimes only limited opportunities available, the vast majority of people incarcerated (estimated between 65 and 80 percent) are expected to work and correctional facilities generally claim to organize “regular work day” assignments as much as possible. The types of work, and the compensation for their labor, generally fall into distinct patterns.

The most common type of work are jobs that support the operation of the prison facility overseen by the Department of Corrections. These might include laundry, cleaning, food service, or other types of work that provide maintenance and support for the prison institution itself.

A smaller number of work opportunities are jobs in state-owned businesses, such as correctional industries. Approximately 6 percent of people who are incarcerated work in these positions producing goods and providing services coordinated by correctional agencies and businesses. The revenue from their work generates the funds that pay for the costs of their positions in many cases.

People who are incarcerated sometimes work in jobs outside their facility such as through work-release or camps that are directed by the Department of Corrections but providing services to outside agencies, including public or nonprofit. Even fewer people work for private businesses who contract with correctional agencies and provide job training, supervision, and local prevailing wages through what is called the PIE Program.

The Private Sector/Prison Industry Enhancement Certification Program (PIECP, or PIE) in the US Department of Justice, was established in 1979 to create partnerships between the private sector and correctional facilities to employ adults-in-custody in training and work opportunities that mirror work in the private sector “on the outside.” However,

these opportunities are limited, unevenly implemented, and generally pay workers very little when the allowable deductions from gross pay are processed, which may include fees for room and board, taxes, and victim restitution, and so on. The impacts of the program are unclear in terms of benefits to workers (pay, job training, experience) versus benefits to companies and state industries who engage workers who are incarcerated (reduced personnel and operating costs, limited worker autonomy, tax benefits), raising questions of ethics and rights in the use of prison labor.

### Research evidence

- Over 65 percent of incarcerated adults have work placements and over 76 percent of those incarcerated workers claimed that “they are required to work or face additional punishment such as solitary confinement, denial of opportunities to reduce their sentence, and loss of family visitation.” Incarcerated workers produce more than \$2 billion worth of goods each year, and “over \$9 billion a year in services for the maintenance of the prisons where they are warehoused.”<sup>1</sup>
- Carceral labor is inherently riskier than traditional employment, even within the same industries. The rights afforded to civilian workers, such as workplace safety measures, are often not afforded to adults in custody.<sup>2</sup> One example is the California Conservation Camp program, where incarcerated firefighters are at higher risk of injury and death than those employed by traditional means. Furthermore, COVID-19 increased the risk borne by incarcerated workers living and working in environments where infections are likely to spread.
- The prison system “artificially deflates”<sup>3</sup> unemployment rates by incarcerating marginalized working-age people who are already unemployed, who, as they are released from prison, reenter the workforce with limited employment opportunities and restricted negotiating power in their workplaces. These effects demonstrate

how mass incarceration serves to discipline formerly incarcerated people and low-wage workers to accept conditions in which they have relatively little power.<sup>4</sup> It also chills low-wage workers' efforts to collectively organize, such as unions, that would both improve working conditions and might change how economic opportunities are distributed more broadly.<sup>5</sup>

- Mass incarceration creates system and community effects, such that the prevalence of parole officers and other extensions of the state in communities with high imprisonment rates facilitates a type of surveillance effect that fuels system avoidance.<sup>6</sup> Residents, whether directly affected by incarceration or not, experience high levels of supervision in their communities in ways that decrease neighborhood political participation.<sup>7</sup> Reduced civic engagement results as people fear the penal system and carceral state, further depoliticizing and marginalizing these communities, reducing their political and economic power.
- Mass incarceration disproportionately impacts communities of color<sup>8</sup> as it reinforces and exacerbates a caste-like system of racial and class inequalities since the Jim Crow era, perpetuating second-class citizenship for people with prison records unable to escape low-wage work over their life course, and furthering a system of rising wage inequality.
- Living in neighborhoods with high levels of incarceration rates is associated with adverse outcomes,<sup>9</sup> even if residents are not directly linked to the prison system—known as “collateral damage of mass incarceration.” As incarceration is unequally distributed in the United States, and Black men are particularly likely to have been in prison in their lifetimes, these public health spillover effects from mass imprisonment overwhelmingly affect communities of color and shape labor market participation in ways that profoundly shape life outcomes.

## Recommendations and solutions

Tracing the history and implications of the penal labor system alongside the realities of mass incarceration in the United States, one thing remains consistent throughout history: the state and industry remain the central beneficiaries of a system that ultimately perpetuates violence against incarcerated workers and the perpetuity of poverty and inequity among affected communities. Mass incarceration, both a driver and an outcome of the penal labor system in the United States, is a tool used by state actors to ensure the longevity and power of the prison system at large. Operationally, these systems capitalize upon and perpetuate racist, classist ideologies that the country's criminal laws are based upon. Therefore, the total abolition of prisons in the United States is the only solution that would allow a complete and necessary restructuring of the ways in which the nation confronts so-called deviance. If these systems are to exist, however, it is strategic and important to consider solutions that may reduce the harm they cause. The following recommendations and solutions are grounded in this framework.

- Amend the US Constitution. While the 13th Amendment ended chattel slavery, its narrow scope allowed for slavery and indentured servitude as punishment for a crime, facilitating the development of Jim Crow laws. Eventually mass incarceration in the United States replicated Jim-Crow-like second-class status for convicted felons. A strong federal amendment, such as the Abolition Amendment proposed in the US Senate in 2021, should be passed to close the loophole left open by the 13th Amendment and prohibit slavery and involuntary servitude permanently and completely as punishment for a crime throughout the United States.
- Remove language from state constitutions that allow the continued use of slavery in the context of prisons and jails. In US midterm elections in 2022, several states put forward ballot measures to outlaw slavery and involuntary servitude in their state constitutions,

building on efforts earlier in the year in Nevada and Utah, and in Colorado in 2018. This was in response to the fact that approximately 20 states had constitutions that allowed for the use of slavery or forced labor as punishments for crimes. This language endured in state constitutions, even as slavery was abolished in the US in 1865, and these ballot measure efforts were seen as attempts to either change outdated language or to close the loopholes that allowed for continued use of forced labor as punishment for crimes. The changes proposed ranged from removing references to slavery, involuntary servitude, and racist language, to proactive prohibition of slavery and were successful in several states—Alabama, Oregon, Tennessee, and Vermont. One ballot measure in Louisiana did not pass, retaining language in the state constitution that slavery and involuntary servitude are permissible as punishment for a crime. In the absence of a federal prohibition on slavery and involuntary servitude as punishment for a crime, ballot measures to amend state constitutions are necessary political steps that hopefully push the political landscape at the federal level toward prohibition.

- Advocate for incarcerated people to gain the legal right to unionize. If adults in custody are workers for private or public industries, they should be entitled to the same rights and benefits as other workers who are not in custody. For example, workers who are incarcerated should be able to enjoy opportunities to collectively organize in ways that shape the terms of their employment and may improve their working conditions.
- Garner and offer support to prisoner-led movements for incarcerated workers' rights. While the Supreme Court ruled that incarcerated workers do not have the right to unionize, movements continue to advocate for safety and justice. In 2011, people incarcerated in California's only supermax prison started what they titled the Prisoner Human Rights Movement. A 2015 statement published by the group advocates for an end to violence and police brutality inside and outside of prisons, for the



right of people incarcerated to document and expose violence and abuse, and to be safe from retaliation.

- Guarantee employment opportunities for formerly incarcerated workers. Upon release, it is often an extreme challenge for formerly incarcerated individuals to find and retain employment due to discrimination and stigma related to their criminal records. The impact of this reality is profound, limiting an individual or family's ability to meet their most basic needs.
  - Former incarcerated participants in the California Conservation Camp program, for example, struggle to find work as wildland firefighters despite rigorous training and experience. In 2020, however, California penal code changed when Governor Gavin Newsom signed Assembly Bill 2147 (AB 2147) into law. AB 2147 carved out a pathway to employment for formerly incarcerated wildland firefighters by offering an opportunity for record expungement upon completion of the program.
- Compensate incarcerated workers in accordance with industry standards. According to federal law, companies must compensate incarcerated workers as much as their non-incarcerated counterparts, or at least minimum wage; however, companies hiring incarcerated workers in federal facilities save on a number of other costs, including payroll taxes, healthcare, leaves, and benefits. Correctional industries are also permitted to make extensive deductions from workers' gross pay for such expenses as room and board, taxes, family support, and victim restitution, if applicable. Overall, in the current system total deductions cannot be more than 80 percent of total gross wages which often leaves incarcerated workers with very little pay—less than \$1/hour in many cases. According to the Prison Policy Initiative, prisons are paying workers who are incarcerated less than they were in 2001, which is particularly troublesome when we consider the costs that incarcerated people face in prison—the exorbitant rates to make phone calls, for example. The low wages for work while in prison offer

little opportunity to make life better, to send money to their families, or to save towards life after prison.

- Provide incarcerated workers with the same protections that are afforded to public and private sectors broadly. The Occupational Safety and Health Administration, as well as state-based agencies that govern workplace and environmental safety, ought to monitor and mitigate the occupational hazards and risks associated with working in the carceral context.
  - Agencies should ensure that all health-related protections extend to incarcerated workers, including personal protective equipment and other infection prevention tools and measures.
- Policies and practices that allow people in custody to opt out of penal labor should be pursued at the state and federal level without penalty. Incarcerated individuals are deserving of human rights, including the right to bodily autonomy. *Voluntary* work cannot exist in a coercive environment where incarcerated people fear intense consequences often forced upon those who challenge the concept of compulsory labor.
- Advance research that further investigates the relationship between penal labor and mass incarceration.
  - Interrogate the myriad of ways in which both the public and private sector benefit from the penal labor system, and investigate their potential involvement in lobbying and campaign finance that results in the system's maintenance.
  - Support and fund the work of Critical Prison Studies scholars who agree that while this history is inextricable from contemporary prison systems, the capitalist mode of production has played a significant role in the proliferation of prison populations.
  - Pursue qualitative research projects that provide opportunities for incarcerated and formerly incarcerated people to discuss their experience. Said perspectives ought to be centered in future conversations and research surrounding penal labor systems.

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# The promise of higher education in prison and beyond

*Elyshia Asestine*

## The problem

When first passed in 1965, federal financial aid legislation made no distinction between low-income students attending higher education programs in the “free world” and those attending prison-based education programs (PEPs). In the late 20th century, politicians and media outlets alike promoted depictions of those convicted of crimes as villains undeserving of many social benefits, including federal financial aid. In 1994, under the Clinton Administration, this punitive turn in criminal justice resulted in a 30-year ban on Pell Grants for incarcerated students and in an even broader range of barriers to higher education for those with criminal records who live in the community.

The national conversation about PEPs began to change in 2015, as research emerging from the Second Chance Pell Experimental Sites Initiative (which exempted incarcerated students in select college programs from the prohibition on receiving federal financial aid) demonstrated several positive social effects of PEPs. While some continue to argue against federal financial aid for incarcerated students—suggesting that such aid “rewards” people for criminal behavior—evidence showing that PEP participation reduces recidivism, improves employment outcomes, and reduces correctional spending, has contributed to growing bipartisan support for expanding federal financial aid to all eligible incarcerated people. Rather than focusing on whether college should be provided to incarcerated people, the focus of the current

national conversation is on how best to increase access and effectiveness of PEPs.

Often overshadowed by the national focus on PEPs, is the attendant need to address the barriers to higher education for those with criminal records put in place by many college campuses. If we are to fully realize the social benefits of higher education for all of those with criminal records, not just those who are incarcerated, we must also work to reduce barriers to higher education for those residing in the community.

## Research evidence

### *Benefits of prison-based education programs*

- Though incarcerated adults have lower literacy and numeracy scores compared to those on the outside, approximately 60 percent of those in prison have the necessary credentials to be eligible for PEPs.<sup>1</sup>
- Participating in any education in prison reduces the likelihood of recidivism by up to 43 percent. The effects of college participation while in prison are even greater—less than 10 percent of incarcerated college participants recidivate.<sup>2</sup>
- PEP participation increases rates of obtaining employment and earning higher wages, as well as shortens the length of job search periods post-release.<sup>3</sup>
- Investment in PEPs now reduces future spending on incarceration.<sup>4</sup>
- PEP participation has increases participants' feelings of self-efficacy,<sup>5</sup> size of prosocial networks, and development of “soft skills.”<sup>6</sup>

### *Barriers to prison-based education programs*

- In fall 2023, incarcerated applicants will no longer be required to register for the draft; however, in they will remain ineligible for Pell Grants if they are in default on a prior student loan. Prison and state corrections

leadership can also restrict PEP participation as they see fit.<sup>7</sup>

- Most states (33) prohibit the use of state financial aid by incarcerated students.<sup>8</sup>
- Approximately 5 percent of the nation's more than 6,000 prisons, jails and juvenile facilities offer PEP programs.

### *Transition from prison-based education program to main campus*

- The reentry process—finding housing, securing employment, meeting parole expectations, and rebuilding familial relationships—is difficult, leading some of those who begin college in prison to stop their pursuit of higher education on the outside.<sup>9</sup>

### *Exclusionary main college practices*

- Nearly three-fourths of the nation's colleges include criminal record questions on their admissions applications, reducing both the number of formerly incarcerated applicants and of admitted students. Black applicants with criminal records fare the worst in college admissions processes.<sup>10</sup> There is no empirical evidence that screening potential applicants based on criminal history has made for safer college campuses.<sup>11</sup>
- Fourteen states limit eligibility or permanently bar students for state financial aid based on criminal record.<sup>12</sup>
- Many colleges require criminal background checks for student employees, staff, and faculty.<sup>13</sup> Some colleges screen students for student housing<sup>14</sup> and for entry into specific majors (for example, health professions) that lead to jobs that require a professional license.<sup>15</sup> Many careers that require special licensing or certifications for employment screen applicants for criminal records.
- Results from a handful of qualitative studies suggest that key campus stakeholders (students, faculty, and

administrators) have concerns about the presence of formerly incarcerated students on campus, including feeling unsafe or afraid, desiring increased social distance, viewing formerly incarcerated students as less warm and less moral, and worrying about how parents and donors might respond to the presence of formerly incarcerated students on campus. These effects were most pronounced for students who had been convicted of violent offenses, especially sexual offenses.<sup>16</sup>

## **Recommendations and solutions**

### *Prison-based education program recommendations*

As a result of the Second Chance Pell initiative, more than 200 colleges now offer PEPs—this number will undoubtedly grow once Pell Grant eligibility is open to all incarcerated students in fall 2023. Much can be learned from emerging higher education in prison literature to increase PEP accessibility and effectiveness.

- Expand access to high school credentialing programs. These credentials are required for college admission and most forms of financial aid.
  - While many facilities currently offer these programs, they are limited in the number of students they can serve by classroom capacity, availability of trained staff, and test costs. Offering online learning options could reduce problems of limited in-person access.
- Provide bridge programs and ongoing access to student support services (for example, tutoring) for those who possess the necessary educational credentials for higher education but who may need additional support in managing the rigors of college. Many incarcerated students (especially those with long educational gaps or less exposure to current technology on the outside) can benefit from focused instruction on college writing, math, and basic computing.



- Reduce barriers of admission to PEPs. Restrictions on PEP participation based on sentence length, criminal history, and prison disciplinary record should be limited to allow for the most inclusive admissions processes possible.
  - Clear mechanisms should be defined so that students can become eligible for PEP participation in the future.
- Increase the number of PEP programs that are available to incarcerated students.
  - Streamline federal and state accreditation processes for the approval of new PEP programs.
  - Much preparation must be done before a college can access Pell Grant funding to support their PEPs. Create grant initiatives and funding streams to support the development of new PEP programs.
- Increase training and professional development opportunities for PEP program administrators, faculty, and staff so that they can adopt/adapt appropriate practices for teaching in the unique prison environment.
  - Create mechanisms (for example, secure firewalls, intranet servers) that allow for teaching technologies regularly used for instruction on the outside to be used inside (for example, email, learning management systems, and library access).
  - As a result of the COVID-19 pandemic, many facilities have begun providing tablets to incarcerated people. Tablets are provided by for-profit companies and there are financial costs for their use. If tablets are used by PEP programs, policies should be put into place to eliminate costs for their use for educational purposes.<sup>17</sup>
- Develop rigorous assessment and evaluation tools to determine PEP program effectiveness and areas for improvement.
  - Increase coordination between state departments of corrections and college institutional research divisions so that post-release data and educational/career outcomes can be collected and analyzed to determine long-term impacts of correctional

- education and/or participation in higher education post-incarceration.
- Expand research on other potential effects of PEPs, for example, effects on levels of prison misconduct.<sup>18</sup>
- Increase funding for PEP students and ensure academically qualified students are eligible for funding.
  - State laws that limit state aid for incarcerated students should be repealed.
  - For potential students who are prohibited from receiving funding due to student loan default, information and support should be provided on how to resume good standing and, where possible, secure student loan forgiveness.
- Increase funding of, and partnership opportunities for, community-based reentry providers and colleges to support individuals pursuing higher education post-release.<sup>19</sup>

### *Main campus recommendations*

Many of those who begin college in prison will be released prior to graduation—if they wish to complete their degree, they will need to resume college on the main campus. Additionally, the size of the population under state supervision (that is, not currently incarcerated) is almost double the size of the nation’s incarcerated population.<sup>20</sup> Both groups are subject to the restrictive policies and practices many US colleges adopted in the late 20th century that make it more difficult for those with criminal records to access higher education. Attendant changes to main campus policies must be made to ensure access to higher education for all of those with criminal records.

- Remove criminal record screening processes for admissions, state financial aid, campus housing, and employment, on main college campuses.
  - In cases where criminal record screening is maintained, provide clear processes for appealing

negative decisions, and maintain accurate records about outcomes.

- Engage in awareness-building campaigns to reduce the stigma associated with justice-impacted people on college campuses.
- Increase professional development opportunities, on-campus programming, and student supports for formerly incarcerated students.

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## Biographical note

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# Mass incarceration and the collateral problems of parole

*Kimberly D. Richman*

## The problem

The problem of mass incarceration has turned into a massive parole and reentry problem.<sup>1</sup> As an example, in California, there were legal pressures to reduce the prison population in the wake of the United States Supreme Court case *Brown v Plata* (2011), which found that the California prison system was violating human rights and creating unsafe conditions by maintaining prisons overcrowded to nearly twice their capacity. This led to a decade of reform measures aimed at reducing the prison population, including allowing those who are incarcerated with a life term an opportunity to appear before the parole board earlier than they would have otherwise.<sup>2</sup> This, combined with a large number of incarcerated individuals requiring a parole hearing who are coming to the end of their mandatory minimum sentences, has led to an unprecedented number of parole board hearings—over 7,600 last year in California alone. There are also efforts to systematize these hearings by institutionalizing certain standards for parole suitability. These trends are not unique to California. Many other states, such as Mississippi, Michigan, South Carolina, and Connecticut, have undergone similar pressures and responses. However, even with statutory guidance in many states, parole decisions often come down to vague terms such as “insight” and “remorse.” This, in turn, has led to a number of unanticipated problems, including the development of certain forms of accepted rehabilitative vernacular, or parole “program speak,” which itself has blocked access to some of

the very reforms that were meant to benefit justice-impacted individuals.

Because of the sheer number of over-sentenced incarcerated people now appearing before parole boards across the country—over 350,000, according to the Bureau of Justice Statistics—prison rehabilitative programs have responded to the demands of parole boards by teaching incarcerated individuals patterns of language and cognition to use when seeking parole.<sup>3</sup> When parole boards cite “lack of remorse” as reason to deny parole, prison programs start teaching their participants to write letters of apology and remorse. When parole boards demand that the petitioner demonstrate *insight* into their crime, attention pivots to how to demonstrate something as vague as “insight.”

This prison programming has often been effective with incarcerated individuals mastering the language of remorse and responsibility necessary to convince the parole board they are safe to release. However, this has happened at a price. Despite the intent of rationalizing parole decisions with a common conceptual framework, in most jurisdictions these decisions remain entirely subjective in their interpretation. Arguably, they may undermine efforts to prepare individuals for their reentry into the community by having them internalize narratives of *over*-responsibilization and unworthiness. Even those who have effectively mastered the language required by parole go on to lose their resentencing petitions, or, in some cases, their claims of actual innocence, because of that very language. This happens when legal actors, such as District Attorneys, treat parole board hearing transcripts as evidence against resentencing petitions—using the petitioner’s extreme statements of remorse and culpability designed to gain parole. Thus, the many people serving indeterminate life prison terms are caught in a vicious conundrum: if they take on the mantle of extreme culpability and remorse demanded by the discretionary parole release system in order to earn their freedom, they may pay the price later when this very language is used to deny resentencing and other petitions that were meant to ease mass incarceration and provide relief to the wrongfully convicted.



## Research evidence

Nearly one in seven incarcerated people has an indeterminate life sentence requiring a parole board hearing, and on average state parole boards make 35 release decisions a day. Yet, in most states only a small fraction (as low as 2 percent) are found suitable for parole release.<sup>4</sup> As legal attention to the parole process has increased, it has become the subject of a new and growing body of research. There are two broad areas of research that highlight problematic elements of the discretionary parole process: the functioning and decision-making involved in discretionary parole release, particularly the non-static and often nebulous factors influencing decisions; and the diffusion of narratives and terminology associated with these vague parole board decision-making factors.

### *Systematizing and denying parole*

- Despite some variability across states, most parole boards have great latitude in how they interpret and decide an incarcerated person's suitability for parole. Heller and colleagues found that "[a]n overwhelming majority of people ... showed strong evidence of release readiness but were nonetheless denied parole."<sup>5</sup> Even when courts and legislatures have circumscribed the criteria parole boards may use, studies by Young and colleagues find that the parole board still maintains latitude to include highly subjective and indeterminate criteria such as "insight" and "remorse."<sup>6</sup>
- Multiple studies in the fields of criminology, psychology, and the sociology of emotion, including those by Bandes, have concluded that all people, and especially those socially distant from those they are judging are poor judges of nebulous emotional states such as "remorse" and "insight" into their life trajectory and crime.<sup>7</sup> According to Bronniman, "[e]ven psychologists who believe that there are universal ways of expressing emotions across cultures cannot assign a 'face' to

remorse.”<sup>8</sup> At best, one may be able to appropriately judge remorse when observing over a longer span of time and across several contexts—the exact opposite of an isolated parole board hearing. Even the California Supreme Court acknowledged that “there is no special formula for determining remorse.”<sup>9</sup> Recent research by Richman suggests that “insight” or “lack of insight” is the most frequently cited element of parole denials and, to a somewhat lesser degree, in parole grants which has either subsumed or eclipsed remorse and many other parole-relevant factors.<sup>10</sup>

### *Parole as performance and the rhetoric of responsibility*

- Inevitably, there is a performative aspect of an incarcerated person presenting oneself as suitably reformed and remorseful, as well as judging one as such. Lynch and others have called attention to the rhetorical dimensions of parole, where justice-impacted individuals must communicate acceptance of the state’s narrative and moral framework of individual responsibility as a prerequisite for parole.<sup>11</sup> Paratore notes that “[t]hese decisions require parole boards to ask a fundamentally predictive question: Does an inmate’s ability to vocalize their remorse accurately reflect their potential for recidivism?”<sup>12</sup>
- To successfully navigate this process to communicate sufficient remorse, insight, and reform requires incarcerated people to master the vernacular of the new rehabilitative industrial complex.<sup>13</sup> This is expected to happen through participation in prison rehabilitative programs, which have experienced a renaissance in recent years. These programs and curricula are the assumed prescription to justice-impacted individual’s “character defects” diagnosed by the parole board, and as Paratore found, commissioners expect these programs to instill “moral and emotional education.”<sup>14</sup>
- This education has a specialized vernacular, aimed at communicating what parole boards need to

hear. It includes what Richman calls “techniques of responsabilization,”<sup>15</sup> reflecting the parole board’s view that an incarcerated person must accept total culpability and control over every facet of their criminal trajectory as “an atomistic, isolated agent” with no social-structural limitations.<sup>16</sup> Studies by Richman and others have found that “insight” and “remorse” loom large in this vernacular, sometimes called “program speak,” which can force applicants for parole into *over-responsibilization*.<sup>17</sup> Incarcerated people are forced to take responsibility for more than what they are objectively capable of or culpable for.

### Recommendations and solutions

Parole board hearings have a pivotal role to play in reducing mass incarceration in the US criminal legal system, particularly now that justice-impacted individuals subjected to extreme sentences, a major contributor to mass incarceration, are becoming eligible for parole in unprecedented numbers. These numbers, and the contours of the hearings, are augmented by the slew of sentencing reforms that came as a direct result of the Supreme Court’s condemnation of mass incarceration in *Brown v Plata* (2011), and indirectly through the impact it had on states facing overcrowding problems similar to California’s, and fearing a lawsuit of their own. As these parole procedures are brought under sharpened scrutiny, the difficulty in finding appropriate policy solutions to the problems of the parole process becomes apparent: indeterminacy and discretion serve a purpose, but without intelligent guideposts and safeguards they are unsafely wielded in a system fraught by endemic racism, classism, and malign neglect. With this balance in mind, I offer the following recommendations:

- Create professional and diversified parole boards using a non-partisan process.
  - The process and criteria for appointing commissioners to parole boards should be radically revised in most states. Most states currently leave these appointments

to the governor, with some deferring to the state's highest court. Nominees to the parole board should be chosen by a non-partisan panel of experts with knowledge of psychology, recidivism, and other relevant fields of knowledge. The goal should be to create more professional and experiential diversity on the parole board. Its members should be trained to more rigorously search out and understand nuance and individuality in the parole hearings, as well as structural limitations and factors in a person's background. They should minimally have a bachelor's degree or equivalent in criminology, psychology, or a related field. Efforts should be made to include at least one parole board member who is a criminal defense attorney with experience in representing people who face imprisonment. Criminal defense attorneys have been notably absent historically and now.

- Create transparent, realistic, and well-defined standards for discretionary parole, with opportunities for parole once they have served at least ten years of their sentence.
  - States' parole apparatuses vary on the degree to which they have attempted to systematize parole decision-making to reduce discretion and the role of personal emotional reactions, streamline proceedings, and make more data-informed decisions. These efforts have picked up sharply in the wake of mass incarceration and the attention given to it in the wake of *Brown v Plata*. As states attempt to decrease overcrowding, they must now also deal with the high volume of suitability hearings that have to be held. While some states have specific statutory requirements, such as Missouri's law mandating use of a risk assessment tool and New York's law specifying 12 factors that must be considered by the parole board, these are contrasted against states such as Wyoming which has no statutory guidance on parole decision-making, and Texas where parole is considered "a privilege, not a right." Most fall somewhere between these, with a combination of broad legal or administrative guidelines and interpretive flexibility. One way to

strike a balance is to limit the discretionary period of parole to 25 percent of the individual's minimum term, with nearly everyone having an initial hearing by ten years of incarceration.

- Begin the discretionary parole release process with a goal and presumption of release.
  - Because of longer sentences imposed since the height of the “tough on crime” era and increased use of life sentences, the prison population in most states has aged considerably. Evidence shows that crime generally drops precipitously after the age of 25, and that those over the age of 65 have an extremely low (less than 1 percent) risk of ever committing another crime. The risk of recidivism of those reaching the year of eligibility for parole from a standard 25 to life sentence are similarly low, in all applicable age categories.<sup>18</sup> Additionally, those in prison age and develop debilitating health conditions faster than the general population, making them less physically capable of committing crime.<sup>19</sup> Therefore, all initial parole hearings should start with a presumption of suitability for release, and denials should be premised only on reliable and verified evidence that the individual poses a current threat to public safety. This evidence should include, but not be limited to, the use of validated risk assessment tools, subject to rigorous scientific testing, including intense scrutiny given to how they implicate race and class and reproduce or magnify existing inequalities.
  - Subsequent parole board hearings should begin with an evaluation of the reasons for the prior denials, and whether the evidence suggests they continue to pose a risk to public safety. Subsequent hearings should not re-try the facts of one's conviction, but rather should focus on progress or new developments since the last hearing. If the incarcerated person has not developed new risks, such as disciplinary write-ups or violence since the last hearing, there should be a presumption of release. Those with significant physical limitations or those imposed by advanced

age, who are not physically capable of crime, should be presumed suitable for release.

- Reduce or eliminate the use of subjective parole criteria.
  - With few exceptions, state parole board decision-making is indeterminate and occurs after what can be one of the most high-stakes presentations of self of an incarcerated person's life—this performative aspect should be recognized, and its salience reduced in determinations about public safety.<sup>20</sup> The parole board should be instructed to eliminate or limit parameters of evaluation that are inescapably vague, subjective, and incapable of measurement, such as having “insight” and “remorse.” Studies have found that minority justice-impacted individuals are less likely to be perceived as “accepting responsibility” in criminal justice settings, after controlling for offense and other offender characteristics.<sup>21</sup> Culture and gender similarly inform perceptions of remorse and sincerity. Commissioners should be trained to avoid making judgments about justice-impacted individuals' sincerity and emotional realities based on their presentation of self. Likewise, professional education should include material on how criminal justice actors are no better at perceiving “truth” or “deception” than the average person.
- Create a state administrative structure for regular meetings and collaboration between the parole board and relevant agencies.
  - Parole board commissioners should meet quarterly with program providers from the prisons to improve communication and synergy around shared goals and a common understanding and knowledge of research-based predictors of recidivism as well as rehabilitative success. As it is currently, the demands of the parole board often inform curricular decisions in these largely volunteer-run prison programs, who understandably want their clients to succeed at the parole board; in symbiotic fashion, their lessons then circulate throughout the prison, and echo back in refined and elaborated form as successive participants become

eligible for their parole board hearings. However, prison programs and incarcerated individuals are left to guess what the parole board will ask for next, and the board has at best only a shallow understanding of the content taught in the prison programs. This can be addressed by improved communication, wherein parole commissioners better understand the content and learning goals of the programs in the prison, and also better communicate how programs can focus their efforts on the types of learning the parole board needs to see to find one suitable for parole.

- Legislate rules governing the use of parole board hearing transcripts.
  - State legislatures should pass new evidentiary laws regarding the use of parole board hearing transcripts, limiting or banning their use in resentencing and other post-conviction proceedings, and treating them as contextually specific to the goal of releasing life-term prisoners. At its worst, the demand for extreme expressions of culpability and remorse are disastrous in the context of the “Innocent Prisoner’s Dilemma”: when a wrongfully convicted person goes up for parole, or subsequently pursues their innocence claim and exoneration.<sup>22</sup> Parole board commissioners regularly acknowledge that they are not the triers of fact, and accept as true the findings of the trial court. Therefore, any recounting or questioning regarding the crime itself during the course of a parole board hearing should not be treated as objective fact, to the degree that it differs at all from prior testimony and factual findings in the trial. All statements made during the parole hearing of an indeterminately sentenced individual life term should be treated as implicitly coercive, since the applicant’s freedom hangs in the balance, and depends on their words.

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### Biographical note

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and running prison programs, preparing individuals for parole, working in collaboration with the Department of Adult Parole Operations, and assisting individuals in their reentry upon parole release.

## Notes

1. Parole is the process by which many incarcerated people are discretionarily released from prison. It refers to both the decision-making process as far as who gets out, as well as the form of supervision released individuals are subjected to in the community.
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  16. Quoted from Shammas, V.L. (2019) “The Perils of Parole Hearings: California Lifers, Performative Disadvantage, and the Ideology of Insight.” *Political and Legal Anthropology Review*, 42(1): 142–160.
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# Housing instability and the criminal legal system

*R. Neil Greene and Noah Painter-Davis*

## **The problem**

Housing instability and incarceration have complex and consequential interrelationships. People within jails and prisons are disproportionately affected by homelessness. Likewise, people experiencing housing instability have high rates of involvement with the criminal legal system (CLS). Both populations have dramatically increased in the United States since the 1970s.<sup>1</sup> Reforms related to housing and the CLS are increasingly centered in public discourse and policy discussions, with the two issues increasingly overlapping. In this chapter, we argue that collaborations between researchers and practitioners are crucial for increasing housing stability and decreasing interactions with the CLS. Strategies to address structural barriers can be furthered by communicating with policy makers and leveraging existing funding opportunities and initiatives. We begin by highlighting relevant research and data and then provide key recommendations.

## **Research evidence**

Our understanding of the relationship between housing and CLS involvement comes from research within correctional facilities and shelters, national and large multi-site studies, and qualitative studies on stigma, discrimination, and challenges with exiting homelessness. Such studies show the overlapping prevalence of housing instability and CLS involvement and the influence of criminalization, policies, and social norms.

### *Data from correctional facilities and shelters*

People within jails and prisons are disproportionately affected by homelessness with rates four to six times greater among correctional populations than the general population.<sup>2</sup> In addition, people residing within shelters have high rates of previous CLS involvement. Researchers have found that approximately three-quarters of respondents from five homelessness shelters had previously been arrested.<sup>3</sup> In these studies, drug possession and driving-under-the-influence arrests were the most prevalent types of arrest, whereas violent crimes were the least common.

### *Data from national and multi-site studies*

The National Low Income Housing Coalition found that the criminalization of homelessness—the act of turning an activity into an offense by making it illegal—rapidly increased across the United States between 2006 and 2019.<sup>4</sup> Criminalization leads to greater contact with police and an increased likelihood of arrest. Further, criminal records limit pathways out of homelessness such as education and employment. A multi-site study with samples from several large cities found that criminal records decrease the likelihood that young people with a history of homelessness can find and maintain employment.<sup>5</sup> In addition, an audit study found that college applications that included a criminal record were two and a half times more likely to be rejected.<sup>6</sup>

### *Qualitative studies*

Single site studies have shown how criminal records are a barrier to securing housing. Researchers have found that characteristics of a criminal record, including type of offense, age of offense, and number of offenses all influence property managers decisions for accepting housing applications. In addition, recent studies suggest that COVID-19 exacerbated challenges associated with reentering society from jails and

prisons.<sup>7</sup> Economic turmoil associated with the pandemic made it more difficult to find housing and employment, thereby increasing the risk of housing instability. Those reentering society from prison during the pandemic have needed additional support with locating housing, accessing community services, and transportation.

## **Recommendations and solutions**

A variety of short-term and long-term strategies are needed to address the consequential interrelationships between housing instability and CLS involvement. Short-term strategies include:

1. improve data systems;
2. practice harm reduction;
3. leverage the Cascade of Care model; and
4. enhance connections to services and supports.

Long-term strategies include:

1. invest in affordable housing;
2. increase career and education opportunities; and
3. leverage existing networks and initiatives.

Each of these can best be realized through collaboration between practitioners, researchers, and policy makers.

### ***Short-term strategies***

#### ***1. Improve data systems***

To better inform research, policy, and practices, data on housing and CLS involvement must be improved. Most studies narrowly define homelessness and rarely measure risk. Poor estimates contribute to insufficient prevention and intervention efforts. In addition, CLS databases often lack information on housing status or are not connected with data systems that include housing status.

## *2. Practice harm reduction*

Criminal records can adversely affect the ability of people to gain education and employment—two important pathways out of homelessness. Likewise, criminal records can interfere with progress made by homelessness services organizations in helping individuals establish connections to housing. Decarceration and decriminalization efforts, such as not making arrests during sweeps of homelessness encampments and declining to charge people for minor drug possession, can help reduce the negative impacts of criminal records. A small number of communities have made encampments legal and have provided support and services to people within those spaces.<sup>8</sup> Such efforts require improved coordination and collaboration between the CLS and housing services. Importantly, decarceration and decriminalization can only work by establishing connections with community providers and providing a robust and coordinated Cascade of Care.

## *3. Leverage the Cascade of Care model*

The Cascade of Care model is increasingly used to address an array of health problems, including substance use, by prioritizing prevention, identification, treatment, and recovery.<sup>9</sup> The Cascade of Care model helps to identify client needs and challenges in receiving treatment and services across stages of care, including screening, referral, initiation, and retention. It could be used as a strategy to help effectively divert people from the CLS. For example, rather than charging a person for drug possession and risking collateral consequences of CLS contact, a person could instead be screened for service needs and then be connected with providers that can begin comprehensive assessments and treatment plans. A Cascade coupled with linkage facilitation services (described in the next section) could also be utilized to identify and link people to housing services. Existing housing screening tools, such as those used by the US Department of Veterans Affairs,<sup>10</sup> could be adapted for use with civilians. Screening data on housing instability could also be instrumental for advocating for housing services and affordable housing.

#### *4. Enhance connections to services and supports*

Linkage facilitation practices employ peer providers, community health workers, or health navigators to help clients initiate and engage with needed services. Models of linkage facilitation have been used to connect clients to health and social services and should be expanded to engage more with the CLS and housing services. Shared lived experience is often a critical aspect of successful linkage facilitation. Thus, people with prior lived experience of housing instability and/or CLS involvement should be included as part of linkage support teams. Models of linkage facilitation can support people who have not successfully engaged with services in the past. Linkage facilitation and wraparound supports are important to deflection (prior to arrest) and reentry (post-incarceration).

#### *Long-term strategies*

##### *1. Invest in affordable housing*

Greater investment in affordable housing is paramount to improving health and safety at the individual, family, and community levels. When housing scarcity and expenses grow, homelessness increases, as does the likelihood of CLS contact and incarceration. Increasing access to affordable housing and strengthening support for Housing First orientations can reduce housing instability and recidivism. Histories of homelessness and the presence of a criminal record can present barriers to housing. Linkage facilitation training should include modules on best practices for collaboration with housing services advocates, working with landlords, and navigating public and private housing guidelines and stipulations related to having a criminal record. Programs like Rapid Re-Housing can be a useful stepping stone to more permanent housing solutions. In these models, willing landlords are identified, and temporary rental assistance is provided without restrictions (for example, absence of a criminal record) that often act as barriers to housing. Resources, including legal services and employment assistance, are also tailored to the needs of each household.

## *2. Increase career and education opportunities*

Criminal records and background checks can hamper efforts to establish pathways out of homelessness, such as securing employment and education. These barriers can be eased through fair hiring practices. Such practices include prioritizing job qualifications ahead of the presence of a criminal record, conducting background checks later in the application process, and removing select questions about criminal backgrounds.

Making use of educational opportunities is essential as well. Specifically, the expansion of the Pell Second Chance Grant presents an important means by which colleges and universities can connect individuals who are incarcerated to degree programs and careers post-incarceration. The Pell experiment has included two rounds of research with 73 institutes of higher education engaged in the second round. Despite challenges, including those related to implementation, research suggests that Pell and similar programs can benefit individuals with criminal records and local communities more broadly. Importantly, Pell Second Chance Grants will be opened to all institutes of higher education in the coming years. Research is needed to further assess how participating institutions can better connect formerly incarcerated individuals to support and to jobs that provide a living wage and meaningful careers.

## *3. Leverage existing networks and initiatives*

Leveraging and expanding existing networks will strengthen the implementation of the previously mentioned policy and practice recommendations. For example, the Justice Community Opioid Innovation Network (JCOIN) presents several opportunities to address relationships between housing instability and incarceration. JCOIN currently focuses on expanding treatment for CLS-involved individuals who use opioids. It does so through partnerships between local and state CLS systems and community-based service providers. Research on these practices is being conducted nationally across multiple large research hubs. Findings are disseminated through the JCOIN Coordination and Translation Center. The authors recommend leveraging



this network and incorporating housing stability indicators into assessments within the Cascade of Care (for example, see the Homelessness Screening Clinical Reminder and the Housing Security Scale<sup>10</sup>), working with linkage facilitators, and connecting with expanded educational and career opportunities.

In addition, institutes of higher education should work with Pell Second Chance Grant funding and technical assistance providers to find ways to reduce stigma for formerly incarcerated students, enhance connections to needed supports, and ensure that degree programs lead to viable employment and career opportunities. Such pre-implementation research can ensure that supports for education meet their promise in benefits to individuals, college campuses, and local business communities.

In conclusion, there must be greater attention to the complex and consequential interrelationship between housing and CLS involvement. Better screening and assessment of housing needs is critical, and decriminalization efforts must include linkage facilitation to housing with support services (for example, mental health, addiction, and so on). Without housing stability, the positive impacts of other support and interventions related to education, employment, and healthcare is greatly diminished. Assessments and connections can be better facilitated through improved relationships between the CLS and community-based services and organizations—and advances can be accelerated by leveraging existing initiatives like JCOIN and the Pell Second Chance experiment.

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### Biographical notes

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# Reentry and public policy solutions: addressing barriers to housing and employment

*Maria Valdovinos Olson*

## The problem

In a 1939 address to the National Parole Conference, President Roosevelt noted that upwards of 60,000 individuals were released annually with the least progress made “in the very important matter of getting people from prison back ... to society.” By the time the issue of prisoner reentry became a matter of policy concern in the wake of America’s mass incarceration experiment, the problem had grown more than ten-fold. In 2018 alone, an estimated 4.5 million individuals—more than twice the size of the current incarcerated population—navigated reentry while under some form of community-based correctional supervision.

In response to the rapidly increasing numbers of individuals returning home, the 2007 Second Chance Act fueled the proliferation of reentry services providers, programs, and policies intended to support the societal reintegration of the formerly incarcerated. Two of the most pressing needs this population faces in the immediacy of reentry are finding a place to live and securing employment. The stability that housing and employment offer is key to successful reentry. Housing provides individuals with a secure base from which they can seek employment and when individuals are engaged in work, they are better positioned to meet their basic needs in legal ways.

Even as reentry services networks offer a plethora of supportive services and programs, these can only provide

short-term relief and solutions to what are two vital categories of need. Importantly, these are needs that intersect in regulatorily incoherent ways. For example, before an individual can begin to address finding employment they first need to secure a place to live. Yet, proof of employment is a standard requirement for securing housing. Since barriers to housing and employment are typically codified in law and public policy, there are limits to what providers can accomplish within the existing framework of reentry services provision. Yet reentry has not generally been approached as a problem of public administration and public policy. This chapter considers how a public administration and public policy lens can illuminate longer-term and more permanent reentry solutions in the areas of housing and employment.

## Research evidence

### *Housing and reentry*

Housing is frequently the most pressing need individuals have upon release and it is critically important to successful reintegration. Securing stable housing is also the most enduring challenge for the formerly incarcerated population within the current US reentry landscape. According to the Prison Policy Initiative, the formerly incarcerated are almost ten times more likely to be homeless than the general public. This inability to secure housing in the immediacy of reentry is further linked to a greater likelihood of recidivism and reincarceration. This risk is only exacerbated by the increasingly widespread criminalization of homelessness in US cities.

Housing options for the formerly incarcerated are extremely limited. Options include temporary stays with family and friends, transitional housing arrangements such as the halfway house or the homeless shelter, or marginal housing arrangements such as rooming houses, hotels, and motels. Parole conditions typically bar individuals from living with family members or friends who may have criminal records. If warranted by the offense committed, parole conditions can also bar individuals from living in the vicinity of children or a

victim. Under federal housing policy, individuals with criminal records for specific offenses such as drug-related offenses are further ineligible for subsidized public housing which is also very much in limited supply. This leaves the private housing/rental market as one of the few remaining options.

The private housing/rental market comprises the majority of the US housing stock and it is vastly under-regulated when it comes to applicant screening. Despite recent US Department of Housing and Urban Development guidance on how the Fair Housing Act applies to individuals with criminal records, landlords and property managers are unlikely to consider applicants with criminal records over applicants without such records. Experimental studies of tenant screening and criminal records underscore the prevalence of landlord discrimination against applicants with criminal histories. With estimates suggesting that one in three Americans have a criminal record, the notion that between 70 million and 100 million individuals could be denied access to housing at any given time is jarring.

### ***Employment and reentry***

Employment is a critical component of the reentry process. Employment helps individuals meet their basic needs and is considered an important factor in promoting desistance from crime. The stigma of a criminal record, however, significantly impacts employment prospects for the formerly incarcerated. Regardless of whether the record reveals a low-level arrest or a felony conviction, individuals with criminal records are significantly less likely to get an employer call back. This is a consistent finding in experimental audit studies assessing the effect of a criminal record on employer hiring decisions and employment outcomes.

Well-intentioned policies such as Ban the Box have sought to counter these effects by restricting an employer's ability to ask about a criminal record at the job application stage. The logic behind Ban the Box laws and policies is that delaying inquiry into an applicant's criminal history until after the interview or job offer stage should improve employment

outcomes. Unfortunately, researchers have found that when employers are unable to access this information early on in the hiring process, they are likely to default to stereotypes that lead them to exclude individuals and entire groups from consideration based on those stereotypes. This has especially harmed the employment prospects of African American men. Also, because these laws do not prohibit employers from eventually conducting a criminal background check, job applicants with records can still end up getting denied at a later stage in the hiring process.

In interviews, employers have expressed a range of concerns over hiring individuals with criminal records. Common concerns include fear of victimization by the individual, the belief that the formerly incarcerated lack people skills for customer interaction, trepidation over customer reactions, and doubt that the individual can, in fact, be a trustworthy and reliable employee. At the same time, it appears that the effect of stereotypes can be overcome when employers have an opportunity to sit down with applicants to “read” them and applicants have an opportunity to explain their record.

### **Recommendations and solutions**

In April 2022, a federally funded and national scope initiative named Reentry 2030 launched seeking to engage states in addressing the problem of reentry. Presently however, states have little in the way of evidence-based policy guidance to address systemic barriers to reintegration in the areas of housing and employment. The following are recommendations for how states can address barriers to housing and employment for the formerly incarcerated in ways that can potentially yield more permanent public policy solutions.

#### ***Expand employer incentives for hiring formerly incarcerated individuals***

Employer incentives for hiring formerly incarcerated individuals benefit employers, such as in the form of a tax break

via the Work Opportunity Tax Credit, wage reimbursements, and employment retention grants. In a recent field experiment designed to assess incentive-compatible hiring decisions under different randomized conditions, Cullen and colleagues found that willingness to hire individuals with criminal records rose from 39 percent at baseline to over 50 percent when there was an incentive.<sup>1</sup> In particular, hiring managers were found to respond favorably to crime and safety insurance, the availability of a past positive performance review, and the option to run a more limited criminal record check covering the past year.

Incentivizing employers can help grow the coalition of ‘second chance’ employers. Knowing what employers are ‘second chance’ employers allows individuals to direct their job search efforts to the places where they have a higher chance of successfully obtaining employment. Incentives also create a framework for individuals to be able to have frank conversations with potential employers about their criminal histories. This is a potentially more promising policy solution in light of research indicating that employment prospects improve when more information is available to employers.

### *Certificates of Rehabilitation for employment and tenancy*

A Certificate of Relief or Rehabilitation (COR), is a collateral consequence relief mechanism aimed at improving employment outcomes for individuals with criminal records. It is an official document indicating that the Department of Rehabilitation and Corrections and the Court have done their due investigative diligence and deem the person to be successfully rehabilitated. Importantly, employers who hire certificate holders have legal protections against potential negligent-hiring lawsuits. Presently, 17 states and the District of Columbia have codified some version of this legal remedy for post-conviction collateral consequences.

Unfortunately, there is considerable variation in how states have structured the requirements for obtaining these certificates. This has contributed to a research evidence base that is mixed regarding outcomes but which also provides



valuable insight into how to make this type of legal remedy more effective. One way to make certificates of relief more effective is to pair them with anti-discrimination legislation compelling employers to articulate a reason for rejection beyond the criminal conviction. For example, New York's statute concerning anti-discrimination requires employers to consider factors such as evidence of rehabilitation which is where the COR would come in as well as the amount of time since the conviction, the nature of the offense, and whether the offense is relevant to the job.

Another promising insight about CORs is that they can provide relief for collateral consequences in areas other than employment. In an experiment of criminal records and housing, Leasure and Martin found that Ohio's Certificate of Qualification for Employment improved the likelihood of individuals with criminal records being considered potential tenants.<sup>2</sup>

Remaining states that have not yet adopted this type of legal remedy could look to other states' use of certificates of relief as a potential solution to addressing these prominent employment and housing barriers impacting the formerly incarcerated. States that presently offer certificates of relief would benefit from looking at the evidence base to identify ways to better structure them so they can be maximally effective in addressing these issues.

### *Criminal history reporting system reform and time-limited records*

In most states criminal records are public and their widespread proliferation has made it exceptionally easy for an all too wide swath of society to query the criminal histories of individuals. In her book, *Digital Punishment*, sociologist Sarah Lageson addresses the problem of criminal record keeping and accessibility in the digital age and its consequences.<sup>3</sup> One of these consequences is the rise of the background checking industry. At nominal cost, employers and landlords can gain access to criminal histories that are new and old. As a result, individuals can continue to be denied employment and housing for transgressions that may have happened a decade

or more ago. Sociologist Devah Pager has argued that the Fair Credit Reporting Act of 2002 offers precedence for imposing time limits on the distribution of criminal records.<sup>4</sup> The Fair Credit Reporting Act regulates how consumer credit reporting agencies can collect, access, use, and share data including imposing a time limit on the reporting of negative information on credit reports. After seven years, consumer agencies may not report negative information essentially wiping the record clean of this information. Similarly, states could enact a “Fair Criminal History Reporting Act” and associated legislation that regulates criminal record reporting systems and how criminal record information can be accessed and used for employment and tenancy purposes. This legislation could also narrow the time frame that such information is accessible generally and in line with research findings that the risk of reoffending decreases as the time since the last criminal offense was committed increases.

### ***State adoption of Fair Chance legislation for employment and tenant screening***

In 2017, Congress passed the Fair Chance to Compete for Jobs Act. The Fair Chance Act prohibits the federal government and federal contractors from querying applicant criminal histories until after a conditional offer of employment has been made. At this stage, employers can use criminal history information to rescind employment if the offense is directly related to the position or there is a legitimate business-related reason. States could adopt Fair Chance legislation to regulate and restrict the use of criminal history records by private employers similarly.

In addition to applying Fair Chance standards to private employers, states should also apply these standards to their own occupational licensing boards. According to the Institute for Justice, one out of every five Americans needs a license to work but many state boards deny licenses on the basis of a criminal record. States should require licensing boards to adopt a “directly related” policy standard that allows the board to deny licenses only in cases where the criminal record

contains adjudicated offenses that are directly related to the type of license being sought.

The Fair Housing Act of 1968 was enacted to protect individuals and families from discrimination in the rental and housing market. In 1988, it was amended to explicitly protect individuals and families from discrimination on the basis of race, color, religion, sex, disability, family status, and national origin. Given how significant discrimination is on the basis of criminal history, the federal government could consider including criminal history as a protected class with a “fair screening” provision that limits tenancy decisions to other requirements such as income and references until after a conditional tenancy approval has been made. At this stage, landlords could consider criminal history to the extent that the record objectively suggests that the individual poses a direct threat to the public safety of others.

Since compliance would undoubtedly be an issue in any Fair Chance scenario, states would need to have an oversight process for auditing records to ensure compliance and mete out sanctions for non-compliance accordingly.

### Key resources

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### Biographical note

**Maria Valdovinos Olson** is Doctoral Candidate in Public Sociology at George Mason University and a 2021 American Society of Criminology (ASC) Ruth D. Peterson Fellow. Maria's dissertation addresses the question of how existing and envisioned institutions, systems, and policies can best organize the provision of supportive services and care for the incarcerated/formerly incarcerated with a focus on the consequential period between pre-release, entry into community corrections, and eventual release into the community. This dissertation research is supported by the National Science Foundation and Arizona State University Law and Science Dissertation Grant and the ASC Division on Corrections and Sentencing Dissertation Scholarship Award.

### Notes

1. Cullen, Z.B., Dobbie, W.S., and Hoffman, M. (2023) "Increasing the Demand for Workers with a Criminal Record." *The Quarterly Journal of Economics*, 138(1): 103–150.
2. Leasure, P. and Martin, T. (2017) "Criminal Records and Housing: An Experimental Study." *Journal of Experimental Criminology*, 13(4): 527–535.
3. Lageson, S.E. (2020) *Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice*. New York: Oxford University Press.
4. Pager, D. (2003) "The Mark of a Criminal Record." *American Journal of Sociology*, 108(5): 937–975.

# The denial of voting rights to people with criminal records

*Christopher Uggen, Ryan Larson,  
Sarah Shannon, Robert Stewart, and  
Caleigh Lueder*

## The problem

In 48 US states, felony disenfranchisement, or the denial of voting rights to people with criminal records, creates or exacerbates multiple problems. It limits democratic participation, increases racial inequality, conflicts with public opinion, compromises reintegrative efforts and public safety, creates needless confusion about eligibility, and is far out of step with international practices. Moreover, the threat of prosecution for unlawful voting—which can result in a new felony conviction—further reduces democratic participation even among eligible voters.

Over 4.6 million US adults are disenfranchised, or deprived of the right to vote based on a past felony conviction.<sup>1</sup> State laws vary greatly across the country, with some states not imposing disenfranchisement on any group (Maine and Vermont), some restricting voting rights for people in prison (for example, Illinois), others restricting rights for people serving probation or parole sentences in the community (for example, Wisconsin), and some disenfranchising even after the entire sentence is served (for example, Alabama). Overall, about 48 percent of the disenfranchised had already completed their full sentences, another 28 percent are serving sentences in the community on probation (21 percent) or parole (7 percent), and the remaining 24 percent are currently incarcerated. The nation is an outlier internationally, both for

the overall number disenfranchised and for the percentage of the voting age population that is disenfranchised (2 percent of the total voting eligible population).

The deprivation of voting rights to people with criminal records not only harms individuals but also communities, as it dilutes the political power and voting strength of underrepresented communities. When states tie voting eligibility to criminal convictions, disparities in the criminal legal system spill over to affect the political system, as groups that are more likely to be surveilled, arrested, convicted, and incarcerated lose political power relative to more advantaged groups. This shapes the candidates who run for local, state, and federal office, the appeals they make to constituents, and the policies that they enact regarding schools, public assistance, healthcare, justice reform, and many other issues. In the contemporary United States, Black and Native American communities are subject to much greater disenfranchisement than White communities, and poor and working-class communities are subject to greater disenfranchisement than more affluent communities. By stripping voting rights from people convicted of crime, discrimination in the criminal legal system is reproduced and amplified in the political system.

## Research evidence

### *Racist origins and impact of disenfranchisement*

Throughout history many societies have imposed disenfranchisement in one form or another, but the United States is distinctive for the wide scope and long persistence of its felony voting bans. Like other US voting restrictions, the practice of denying the vote to people convicted of crimes is tied to racial conflict, Jim Crow-era restrictions, and the enduring effects of structural racism. Many US states passed felony voting bans in the Reconstruction era following the Civil War, as the votes of newly freed male slaves threatened to upend White supremacist political institutions.<sup>2</sup> Racial disparities in disenfranchisement persist today. In 2022, approximately 5.3 percent of voting age African Americans

were disenfranchised, compared to 1.5 percent of the adult non-African American population.

### *Changes over time and space*

The size of the disenfranchised population has fluctuated over time, rising to a peak of 6.1 million in 2016 before dropping by 24 percent between 2016 and 2022. Prior to that, the disenfranchised population grew apace with mass incarceration between the 1970s and 2010s. Even though many states began paring back felony voting restrictions in the 1960s, these incremental legal changes were outpaced by the much larger rise in felony convictions during the mass incarceration era. The recent drop, however, is more directly attributable to legal reforms and executive orders to expand voting rights in many states, including Florida. Despite this notable decline, roughly the same number of US citizens are disenfranchised today as in 2000, when the denial of voting rights to people with criminal records likely played a decisive role in Republican George W. Bush's victory over Democrat Al Gore.<sup>3</sup>

Thanks to substantial differences in state laws and policies, the disenfranchised population varies widely by state. Although Maine and Vermont remain the only states in which people in prison can vote, ten states have enacted legal or policy changes that expanded voting rights to some non-incarcerated people between 2020 and this writing (in April 2023). In all, over half of the states scaled back voting restrictions in recent years, though several Southeastern states remain holdouts of more restrictive policies. Our *Locked Out 2022* report showed that disenfranchisement rates varied from 0.15 percent of the voting eligible population in Massachusetts (and zero in Maine and Vermont) to more than 8 percent in Alabama, Mississippi, and Tennessee.<sup>4</sup> In the latter three states, over 14 percent of otherwise-eligible African Americans are excluded from voting due to felony disenfranchisement laws.

### *The United States as international outlier*

The United States is rare among democracies for disenfranchising people who are not currently incarcerated and voting from prison is legal and encouraged in many nations. A 2017 study identifies 31 countries that do not disenfranchise people in prisons (for example, Bangladesh, Ireland, South Africa), 35 countries that impose broad voting restrictions on people in prisons (for example, Bulgaria, the Czech Republic, the United States), and 45 countries that selectively impose restrictions on certain types of offenses (for example, Australia, Germany, the Netherlands). Post-release restrictions are rare, and debates in many other democratic nations generally concern the voting rights of people who are currently incarcerated.<sup>5</sup>

### *Voting, crime, and reintegration*

Researchers generally find a strong correlation between voting and law-abiding behavior. Relative to non-voters, people who vote are less likely to be arrested, more likely to successfully complete probation and parole, and less likely to be reincarcerated. Although we cannot be certain that eliminating disenfranchisement would reduce crime, there is no evidence whatsoever that restoring the vote to people with criminal records would somehow lead to greater crime. On the contrary, there is much evidence that participation in civic life, like participation in work and family life, is linked to success after people are released from prison.<sup>6</sup>

### *Public opinion*

The public strongly favors restoration of voting rights for people who have completed their sentences and, to a lesser extent, for people on probation and parole; it does not, however, favor voting for people currently serving prison sentences.<sup>7</sup> In the 2022 Collaborative Midterm Survey, support for voting rights restoration was strongest among



Black respondents, women, those aged 18–39, Democrats, and those with college degrees and higher income. These public opinion results suggest that the 11 states that continue to disenfranchise many people who have completed their sentences (Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming) are badly out of step with public opinion.

### *Jail eligibility*

Although 48 states disenfranchise people incarcerated in prisons, the vast majority of those held in jail retain the legal right to vote. This is because disenfranchisement is generally tied to felony conviction rather than to misdemeanor conviction or pretrial custody status. About 65 percent of the 636,000 people being held in US jails are being held pretrial (typically because they cannot post bail) and many of those serving sentences have been convicted on misdemeanors that do not result in disenfranchisement. Yet registering and voting from jail remains extraordinarily difficult in many jurisdictions and receiving even a short jail sentence decreases the likelihood of voting in the next election by several percentage points.<sup>8</sup>

## **Recommendations and solutions**

### **1. Restoring the vote to people convicted of felonies**

- We recommend full restoration of voting rights for people with criminal records. Over 1.5 million justice-impacted people have regained the vote in the United States since 2016, but over 4.6 million remain disenfranchised. The hard-fought gains in recent years have been the result of impressive coalition-building, often led by system-impacted people such as Desmond Meade and advocacy organizations that support such work, such as The Sentencing Project, the Brennan Center, and the American Civil Liberties Union. Nevertheless, the restore-the-vote movement is currently facing serious

headwinds and possible reversals in states such as Virginia (where restoration had rested on executive orders) and North Carolina (where restoration has rested on a state court decision that may be overturned). To achieve the long-term goal of full restoration, different actions will be required in different states, based on the specific voting exclusions and the political viability of reform efforts in each state. We will therefore offer specific recommendations regarding policies that disenfranchise people after completion of their sentences, states that disenfranchise people on community supervision, and states that disenfranchise people in prison.

- *Restoring the vote to people after they complete their sentences*: Restoring the vote to the 2.2 million people who remain disenfranchised after completing their sentences would have the greatest impact on the overall rate and number of people denied the vote. Eleven states still have laws disenfranchising people no longer under supervision. Such laws have faced constitutional challenges, but the US Supreme Court held in *Richardson v Ramirez* (1974) that people convicted of felonies could be barred from voting without violating the 14th Amendment of the US Constitution.<sup>9</sup> In recent years, governors in states with post-sentence disenfranchisement restrictions (for example, Iowa, Kentucky, Virginia) have used executive orders to restore voting rights. Although such orders eventually led to more durable legislation in Iowa, the practice of restoring rights often stops abruptly when a new governor is elected. Strong legislation and appellate court decisions that strike down disenfranchisement laws offer more durable protection for a fundamental right like the right to vote.
- *Restoring the vote to people on community supervision*: The recent wave of legal changes has generally involved restoration of voting rights to people who are currently under probation or parole supervision in the community. Since 2020, broad coalitions of voting rights advocates have restored voting rights to people under such supervision in California, Connecticut,

Minnesota, New Jersey, New Mexico, New York, North Carolina, and Washington. Nevertheless, 24 states continue to disenfranchise non-incarcerated people who are currently under supervision. We recommend repealing these restrictions because they conflict with the goals of community supervision, which involve restoring connections between justice-impacted people and their families, workplaces, and communities.

- *Restoring the vote to people currently incarcerated in prison*: Restoration of voting rights to currently incarcerated people can be justified for many of the same reasons that restoration has been justified for non-incarcerated populations. Nevertheless, widespread popular support for reenfranchisement often stops at the prison gates, and only Maine and Vermont have fully severed the tie between voting and punishment. Nevertheless, efforts to restore the vote to people in prison gained significant traction in both Oregon and Connecticut in 2023, demonstrating the viability of prison reenfranchisement efforts in the 22 states that have restored the vote to non-incarcerated populations but not people in prisons.

## 2. Expanding registration for eligible voters in jail

We recommend a series of actions to protect the voting rights of eligible voters incarcerated in US jails. There are several ways to increase ballot access among eligible voters in jail and many successful models for doing so.<sup>10</sup> These include:

1. providing voter education, registration materials, and outreach programs in jails;
2. following Cook County (IL) and other large jails in establishing permanent jail polling locations;
3. following Colorado and Arizona in requiring sheriffs and elections officials to provide ballot access to jailed voters;
4. following Philadelphia in designating voter coordination responsibilities to jail or local elections staff;

5. expand policies that ease registration requirements, identification requirements (for example, permitting use of jail identification cards or signed affidavits when other identification materials have been confiscated), and easing requirements for absentee voters more generally.

### ***3. Provide registration materials as part of prison reentry programming***

- In states in which people gain eligibility upon prison release, we recommend that state Departments of Corrections and Secretary of State offices partner to routinely provide voting and registration materials as part of pre-release planning and upon release from prison. In California, for example, the Division of Adult Parole Operations provided literature, hosted voter registration events in 2022, and included clear voter registration instructions on California Department of Corrections and Rehabilitation websites.

### ***4. Cessation of aggressive unlawful voting prosecutions***

- Because unlawful voting can result in a new felony conviction, even people who have regained the right to vote are often hesitant to exercise this right. Throughout the United States but most notably in Florida, Texas, and Tennessee, people with criminal records have recently become the targets of aggressive high-profile prosecutions for voting while ineligible.<sup>11</sup> Because these highly publicized prosecutions can result in new felony convictions and multi-year prison terms, they are likely to have a chilling effect on the political participation among eligible voters with criminal records.

## 5. *Growing the base of research evidence*

- We recommend continued research on voting and civic reintegration for people with criminal records, better understanding of the role of civic participation as an aspect of post-release success, systematic studies of illegal voting prosecution, and analyses of the broader impacts of reenfranchisement in states where people with criminal records have regained the right to vote. National advocacy organizations and grassroots coalitions that include justice-impacted people have led the way in expanding voting rights for people with criminal records. Yet researchers also play an important part in advancing knowledge on disenfranchisement and building a policy-relevant research infrastructure.

## **Conclusion**

Although many states have recently restored the vote to some segment of previously ineligible justice-impacted people, over 4.6 million remain disenfranchised in the United States. Such reforms have been effective in reducing this number and there are continued opportunities to reduce it further. Nevertheless, such reforms remain piecemeal and inconsistent, affecting only non-incarcerated populations. Permanently severing the link between voting and punishment—and paring back or sunsetting other collateral sanctions that do not serve compelling public safety interests—is a more ambitious longer-term goal that has been realized by other democracies around the world. In the shorter term, more targeted efforts to ensure jail registration and expand voting rights for people currently under supervision have proven effective in expanding ballot access in recent years.

## **Key resources**

American Civil Liberties Union (2005) “Voting While Incarcerated: A Tool Kit for Advocates Seeking to Register, and Facilitate Voting By,

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## Biographical notes

**Christopher Uggen** is Regents Professor in Sociology, Law, and Public Affairs at the University of Minnesota and co-editor and publisher of TheSocietyPages.org. He studies crime, law, and inequality, firm in the belief that sound research can help build a more just and peaceful world. His books include *Prisons and Health in the Age of Mass Incarceration* (Oxford University Press, 2022) and *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford University Press, 2006). Uggen’s current projects examine voting rights, Scandinavian justice, and monetary sanctions. He is a fellow of the American Society of Criminology and a recent Vice President of the American Sociological Association.

**Ryan Larson** is Assistant Professor of Criminology and Criminal Justice at Hamline University. His research explores how the varied forms, intensities, and social contexts of punishment impact aspects of social life and crime. His work expands upon how punishment, in part, reproduces

inequalities by race, place, and crime, and he also investigates scientific and policy questions within the sociology of crime and punishment. Dr. Larson's scholarship places an emphasis on the innovative use of quantitative methodology, including contemporary methods of causal inference. He is a co-investigator on the Dual Debtors project and a researcher on the Multistate Study of Monetary Sanctions.

**Sarah Shannon** is Meigs Distinguished Professor of Sociology and Director of Criminal Justice Studies at the University of Georgia. Her research focuses on systems of criminal punishment and their effects on social life. Sarah's current research projects focus on the drivers of rural jail incarceration rates and the community-level impacts of monetary sanctions.

**Robert Stewart** is a sociological criminologist and Assistant Professor at the University of Maryland, and a 2022 Emerson Collective Fellow. He studies the social, political, and collateral consequences of criminal legal involvement with an emphasis on the accumulating effects of criminal legal interaction and criminal records on impacted people and communities. As an advocate of public criminology, he believes that communicating our work effectively to policy makers, practitioners, and the public is a fundamental part of scholarship. He served as the founding Director of Research of the Minnesota Justice Research Center, a nonprofit working to improve the justice system through high-quality and accessible research, policy development, and education.

**Caleigh Lueder** is a recent graduate of the University of Minnesota and an incoming graduate student at the University of St. Thomas in counseling psychology. She has conducted research on voting restrictions and on the exploitation and representation of mental illness in horror films.

## Notes

1. These and other statistics are taken from the authors' recent report with The Sentencing Project. Uggen, C., Larson, R., Shannon, S.,

- and Stewart, R. (2022) *Locked Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction*. Washington, DC: The Sentencing Project.
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  7. For public opinion research on voting and criminal convictions, see Dawson-Edwards, C. (2008) "Enfranchising Convicted Felons: Current Research on Opinions towards Felon Voting Rights." *Journal of Offender Rehabilitation*, 46: 13–29; Enns, P.K., Barry, C.L., and Schuldt, J.P., "2022 Collaborative Midterm Survey: Methodological Summary and Usage Document." <https://socialsciences.cornell.edu/funding-programs/2022-collaborative-midterm-survey>; Manza, J., Brooks, C., and Uggen, C. (2004) "Public Attitudes toward Felon Disenfranchisement in the United States." *Public Opinion Quarterly*, 68: 276–287.
  8. On jail voting policies, see Porter, N.D. (2020) *Voting in Jails*. Washington, DC: Sentencing Project. For research on the effects of jail incarceration on voting, see White, A. (2019) "Misdemeanor Disenfranchisement? The Demobilizing Effects of Brief Jail Spells on Potential Voters." *American Political Science Review*, 113(2): 311–324.
  9. *Richardson v Ramirez*, 418 U.S. 24 (1974).
  10. These recommendations are based, in part, on several recent reports on jail voting, including Porter, *Voting in Jails*; Jackson-Gleich, G. and Yeary, S.T. (2020) "Eligible But Excluded: A Guide to Removing the Barriers to Jail Voting." Prison Policy Initiative. [https://www.prisonpolicy.org/reports/jail\\_voting.html](https://www.prisonpolicy.org/reports/jail_voting.html); Campaign Legal Center (2019) "Challenging Jail-Based Disenfranchisement: A Resource Guide for Advocates." <https://campaignlegal.org/sites/default/files/2019-12/Jail%20Voting%20Advocacy%20Manual.pdf>; American Civil Liberties Union (2005) "Voting While Incarcerated: A Tool Kit for Advocates Seeking to Register, and Facilitate Voting By, Eligible People in



Jail.” <https://www.aclu.org/other/voting-while-incarcerated-tool-kit-advocates-seeking-register-and-facilitate-voting-eligible>

11. In *Locked Out 2022*, we describe illegal voting prosecution in Florida, Tennessee, Texas, and Minnesota.

# The impact of mass incarceration on children of incarcerated parents

*Kate Luther*

## The problem

The impact of mass incarceration extends beyond incarcerated individuals to their families. When parents become incarcerated, the process likely disrupts their children's lives in many ways. Children may experience changes in living arrangements and caregivers, precarious financial situations due to the loss of parental income, and feelings of loss. Although not traditionally considered victims, children of incarcerated parents are the hidden victims of mass incarceration. In the *National Institute of Justice Journal*, Eric Martin describes this population as the hidden victims of the criminal justice system because few stakeholders recognize the effects of parental incarceration on their children.<sup>1</sup> However, the children's experiences can mirror that of crime victims, as separation from parents tends to harm children of incarcerated parents. Considering the social problems associated with mass incarceration, we must consider how it can disrupt family functioning and negatively impact child wellbeing.

Mass incarceration has significantly increased the number of children experiencing parental incarceration. Murphey and Cooper estimate that approximately 7 percent of children have experienced the incarceration of a residential parent in jail or prison.<sup>2</sup> Sykes and Pettit write that in 1980 around 500,000 children had a parent incarcerated in jail or prison; by 2012, this number increased to 2.6 million.<sup>3</sup>

Mass incarceration has disproportionately impacted children from marginalized backgrounds. According to Sykes and Pettit approximately 25 percent of Black children and 10

percent of Latino children experience parental incarceration, compared to 4 percent of White children.<sup>4</sup> Children from economically disadvantaged families are more likely to have an incarcerated parent than their advantaged peers.<sup>5</sup> Like many social problems associated with mass incarceration, parental incarceration disproportionately impacts children in marginalized families. Murphey and Cooper estimate that children in families experiencing poverty are three times more likely to have an incarcerated parent than children living in more economically advantaged families. Similarly, they also find that children with parents with low education levels experience higher rates of parental incarceration than their peers in families with higher levels of education.<sup>6</sup>

### Research evidence

Parental incarceration, especially if the child is living with their parent or if they have a close relationship, can significantly disrupt children's lives and be detrimental to their wellbeing. The incarceration of a parent may mean that a child's living arrangements and caregivers change, especially in the case of a mother's incarceration. Similarly, parental incarceration may result in a family's income loss and instability. Children may feel a sense of loss and stigmatization at a more personal level.

### *Negative consequences for children*

Mass incarceration has significantly increased the number of children who face adverse outcomes associated with parental incarceration. Scholars have explored many possible effects on children, including mental health issues, anxiety, depression, and drug use. Two commonly found adverse effects are related to behavior and education.

- *Behavioral issues:* Researchers find that parental incarceration is associated with outcomes including aggression, antisocial behavior, delinquency, and contact with the criminal justice system. Turney and

Haskins reviewed publications using the Fragile Families and Child Wellbeing Study, a longitudinal study of families.<sup>7</sup> They find paternal incarceration relates to externalizing (acting out), aggression, and delinquency. The connection between parental incarceration and antisocial behavior is affirmed by Murray et al's meta-analysis of 40 studies.<sup>8</sup>

- *Educational difficulties*: Scholars studying educational outcomes have found parental incarceration associated with dropping out and fewer years of education. Turney and Haskins's review of scholarship finds that parental incarceration harms academic measures for children, particularly children of incarcerated fathers.<sup>9</sup>

### *Existing hardship*

As we think about the negative impact of parental incarceration on children, we must also consider that many of the parents in these families experienced significant challenges, including economic instability, addiction, mental health problems, and trauma, before their interaction with the criminal justice system. Thus, while mass incarceration has increased the number of children harmed by incarceration, frequently, these families have already experienced adversity. The disadvantage families face when parents end up in jail and prison makes disentangling the effects of parental incarceration from other hardships especially difficult for researchers.

### *Factors shaping the impact of parental incarceration*

It is important to note that although many problematic outcomes correlate with parental incarceration, all children are not affected similarly. Shlafer and colleagues draw attention to crucial factors that shape how parental incarceration impacts children.<sup>10</sup> These factors include: how the child experienced their parent's criminality; the age of the child; whether it is the child's mother or father incarcerated; the child's living arrangements; the child's caregiver and relationship to the

caregiver; how the child connects to their parent during incarceration; and the family's financial stability. These variables can help us understand discrepancies in research on the outcomes for children of incarcerated parents.

## Recommendations and solutions

### 1. *Opportunities for connection*

- Create and foster opportunities for children to stay connected with their parents during incarceration. Following the Bill of Rights for children of incarcerated parents, developed by the San Francisco Partnership for Incarcerated Parents in 2003, children have a right to “speak with, see, and touch [their] parent” and a right to a “lifelong relationship with [their] parent.”<sup>11</sup> Children who have positive relationships with their incarcerated parents need ample opportunities to connect over the phone, with letters and emails, through video visits and in-person visitation programs. Many incarcerated parents are good parents who need ways to communicate their love for their children while in jail or prison.
- Thoughtfully design child-focused visitation programs. Poehlmann-Tynan and Pritzl suggest that visitation should be located in child-friendly spaces and supervised by well-trained correctional staff who are ready to assist these families.<sup>12</sup> Visitation cannot exist successfully on its own, however. Caregivers who bring children to visits need support, incarcerated parents need assistance throughout the visitation process, and children need preparation for what it means to visit a parent behind bars. Additionally, Poehlmann-Tynan and Pritzl note that between in-person visits, parents and children need to continue to foster their relationship through other methods of communication.<sup>13</sup>
- Use video visits in addition to in-person visits. The COVID-19 pandemic has increased our use of video calling, which presents new opportunities for children

to connect more frequently with incarcerated parents. Video visits should be viewed as supplementing face-to-face visitation or as a solution to situations where children cannot visit. Video visits should not be considered a replacement for in-person visitation. In-person visits are integral to maintaining parent-child relationships during incarceration, especially with the child's best interest in mind.

## *2. Support for children on the outside*

- Support caregivers because they are vital to the wellbeing of incarcerated parents' children. Depending on which parent is incarcerated, caregiving varies for children. With the father's incarceration, children usually continue to live with their mothers. With the mother's incarceration, children commonly live with grandparents. These caregivers need support to provide their children with a stable and nurturing environment. The needs of caregivers will vary, especially when children were not living with caregivers before incarceration. However, many will need financial support, access to social services, and assistance helping the children they care for process their parent's incarceration.
- Train teachers to understand and support children of incarcerated parents adequately. Their parent's incarceration may impact children's academic performance and behavior at school. Teachers, school counselors, and school social workers must be available to support children as they process experiences such as the arrest of a parent, a trip to the prison to visit their parent, or the reentry of a parent.

## *3. Support for reentry*

- Increase support for parents during reentry. Reentry is a challenging time for the formerly incarcerated and their families as they try to reestablish themselves

on the outside and take on a more active role in parenting. Reentry support for parents is possible in the following ways:

- Assist with employment, substance abuse, and mental health issues in the community. Not only can it help parents to have healthy transitions from prison back into their communities and reduce reoffending, but it can also promote stability in children's lives. When parents do not return to the criminal justice system, children can avoid the cycle of trauma, loss, and disruption associated with parental incarceration. This reentry support should not just start once someone is released; as Pochlmann-Tynan and Dallaire write, reentry support must begin during incarceration and continue throughout the reentry process in the community.<sup>14</sup>
- Create opportunities to assist parents as they relearn how to parent on the outside. During reentry, parents must renegotiate their role and relationship with their children. Even for parents who have been in regular contact with their children during incarceration, learning how to parent on a day-to-day basis with a co-parent or the child's caregiver can be challenging. Children may need to adjust to their formerly incarcerated parent's level of involvement or how different face-to-face parenting feels compared to parenting through phone calls. Support for this reentry aspect could include prison programs that prepare parents for their role upon reentry or social service programs that assist children and their formerly incarcerated parents as they reestablish their parent-child relationship.

#### **4. Alternatives to incarceration for parents**

- Provide opportunities for treatment. Parents who have committed crimes related to substance abuse or mental health issues need treatment alternatives to incarceration that keep them in the community and connected to their

children. Suppose treatment can address the underlying issues that may have led to incarceration. In that case, this can decrease parents' recidivism rates and benefit children when they do not have to experience the cycle of incarceration and reentry for their parents.

- Develop alternatives to incarceration specifically designed for parents. Aguiar and Leavell highlight two programs specifically focused on parents in Washington State.<sup>15</sup> First, the Family Offender Sentencing Alternative allows judges to opt for community custody instead of a prison sentence for parents of a minor child. During community custody, parents must participate in classes and treatment to support them as parents and healthy individuals. Second, the Community Parenting Alternative allows prisons to release a parent of a minor child from incarceration to serve their last year under electronic home monitoring. During this time of electronic home monitoring, parents must focus on actively parenting. The Community Parenting Alternative's preliminary results indicate significantly lower participant recidivism rates.
- Utilize alternatives to incarceration that will lessen the impact of mass incarceration on children. Andersen et al examine electronic monitoring and community service alternatives to reduce harm to children.<sup>16</sup> Drawing from research evaluating these forms of community corrections in Denmark, they highlight promising findings that suggest more positive outcomes for children. These authors do caution that these alternatives to incarceration may not work as well in the United States due to our lack of a social safety net like Denmark.

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### Biographical note

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## The end of mass incarceration: opportunities for reform

*Francis T. Cullen, Justin T. Pickett, and Cheryl Lero Jonson*

Beginning in the 1970s, the United States embarked on a four-decade-long policy of locking up more and more people yearly. Before starting, the nation's incarceration rate had remained flat since 1925. Scholars discussed the "stability of punishment and the prospects for decarceration."

Suddenly, these conversations seemed quaint. Writing in 1985, Elliott Currie was shocked that the state and federal prison population had doubled to 450,000.<sup>1</sup> A decade later, Todd Clear documented that this figure had almost doubled again, reaching 850,000 inmates.<sup>2</sup> He called this surge "astounding," but it proved like a number on an automobile odometer, quickly surpassed. It took until 2009 for the state and federal prison population to peak at 1.54 million. When all forms of incarceration were included (for example, jail residents), the count reached 2.29 million. The nation's incarcerated population has since trended downward. The decline in 2010 was tiny—0.4 percent for state and federal prisoners and 1.1 percent for those incarcerated—but it was a harbinger of things to come.

The era of mass incarceration, however, involved more than numbers; it involved a change in focus from the rehabilitative to the punitive ideal. First emerging in the Progressive era during the first two decades of the 1900s, the rehabilitative ideal guided American corrections for the next half-century. Punishment was seen by criminologists, among others, as a brutal vestige of the past that lacked the legitimacy of science and a concern for the wayward, whether inspired by religion

or humanism. In the 1960s, psychiatrist Karl Menninger's *The Crime of Punishment* represented the tenor of the times.<sup>3</sup> The book received wide acclaim, as did his famous quote: "I suspect that all the crimes committed by all the jailed criminals do not equal in total social damage that of the crimes committed against them."

By the mid-1970s, however, a new way of thinking—what Michael Tonry<sup>4</sup> calls a new "sensibility"—had taken hold, itself captured by James Q. Wilson's<sup>5</sup> claim: "Wicked people exist. Nothing avails except to set them apart from innocent people." Driven by the perfect storm of rising crime rates and symbolic racism, public punitiveness would skyrocket into the 1990s. In this context, politicians competed to see who could enact the harshest sentences, trumpeting mandatory and long stays behind bars. This meanness extended to turning a blind eye to inhumane prison conditions, worsened by crowding, and to purposely imposing austere living conditions on the incarcerated (for example, limiting meat in diets, prohibiting access to Pell Grants to fund higher education). Offenders were depicted as universally risky, a class of potential predators that all required, to use Jonathan Simon's term, "total incapacitation." Racial politics and stereotypes of Black men as dangerous made get-tough policies attractive to White voters, their worries often ginned up by dog whistles and fear-mongering. The celebration of victims' rights—long overdue in some instances—was corrupted by portraying victims and offenders as locked in a zero-sum competition: Any benefit accorded prisoners, including less punishment, was a slap in the face to innocent victims who merited preferential treatment.

Our thesis is that this era of mass incarceration has ended. Things are getting better. The most obvious evidence is that the incarcerated population has declined. Between 2009 and 2019, state and federal prison populations decreased by 11.4 percent and fell another 15 percent the following year in response to the pandemic. The Bureau of Justice Statistics' latest data shows that in the decade ending in 2021, the total incarcerated population in the United States dropped 21.2 percent. Numerically, the count plummeted from 2.25 million in 2011 to 1.79 million in 2021. Stunning

developments are also occurring in juvenile incarceration. According to the Office of Juvenile Justice and Delinquency Prevention, the number of youths placed in residential facilities fell 77 percent between 2000 and 2020—from 108,802 to 25,104. California passed legislation to shutter its four state juvenile institutions, exemplifying this trend.

Equally notable are changes in imprisonment tied to race. Between 2000 and 2020, the number of Black people in the United States increased by nine million, but the number incarcerated in state prisons decreased by 28.6 percent, from 579,900 to 424,300. More Whites are now in state prisons (434,000). During this period, the incarceration rate per 100,000 fell 46 percent for Blacks and 10 percent for Whites. The Black–White disparity in this rate is still disquieting—4.9 to 1 today—but this represents a narrowing from 8.2 to 1 in 2000.

Perhaps more remarkable, a changed sensibility about corrections replaced get-tough thinking about crime. Todd Clear and Natasha Frost call this prior sensibility “the punishment imperative,” and they note that, though “dominant for more than a generation,” it “has now run its course.”<sup>6</sup> The mass incarceration movement produced a punitive lexicon promoting terms such as “career criminals,” “super-predators,” “super-max prisons,” “truth-in-sentencing,” and “three-strikes-and-you’re-out.” Now, it is as though a new correctional vocabulary has taken root, one dominated by phrases and words such as “justice-involved individuals,” “first steps,” “second chances,” “reentry,” “reinvestment,” “collateral consequences,” “criminal record expungement,” “restorative justice,” and “redemption.” Again, Clear’s comments capture this correctional turning point:

After a generation of seeming communal silence about American penal exceptionalism, a consensus is slowly growing that the country locks up too many of its citizens. It is no longer radical to say that the number of people behind bars must be reduced. In most states, proper steps have been taken to do so. A kind of national changing of the mind seems to have occurred, and discomfort with

penal excess is being replaced with a halting interest in finding a way out.<sup>7</sup>

Public opinion reflects this revised sensibility. In 1994, around 80 percent of Americans favored the death penalty for convicted murderers and believed that courts were not harsh enough. Today, this figure hovers around 55 percent. Surveys reveal that the public endorses a range of progressive policies—many of which are being implemented in jurisdictions across the nation. Thus, Americans support rehabilitation programs, services for prisoners reentering the community, alternatives to incarceration, problem-solving courts designed for special populations (for example, those with drug addictions, who have a mental illness, or who served in the military), and reducing collateral consequences attached to felony convictions that restrict government benefits, employment, and civic rights. By a wide margin, they also would prefer to curb crime by investing in early intervention programs instead of prison construction.

Studies also show that the public believes that most offenders are not incurably criminal but redeemable. Recent research by Leah Butler<sup>8</sup> and colleagues shows that these sentiments generally extend to offenders, specifically to Black justice-involved people. Thus, among two national-level samples of Whites (surveyed in 2019 and 2022), three-fourths of the respondents agreed that “Most Black offenders can go on to lead productive lives with help and hard work.” Two-thirds agreed that “Even the worst young Black offenders can grow out of criminal behavior” (under 10 percent disagreed).

Arguing that mass imprisonment—its growth and its underlying sensibility—has ended is not meant to imply that all is well in corrections. The magnitude of the growth of incarceration will not soon be fully reversed. Nazgol Ghandnoosh of The Sentencing Project put the enormity of the task in perspective.<sup>9</sup> She reported that the US prison population increased by nearly 700 percent between 1972 and 2009, and then, a decade later, the population decreased by about 11 percent. If this rate of decline (1.2 percent annually) continued, how long would it take to cut the prison

population in half? Her answer: 57 years. Much work needs to be done.

Mass incarceration, however, is not just about numbers. Like a hurricane or tornado that leaves wreckage in its wake, the nation's embrace of this policy also left a person-made disaster. "A conversation focused solely on how to reduce this number [of incarcerated people]," notes Sharon Dolovich, "risks missing the obvious fact that, in the meantime, the American carceral system is failing daily to ensure safe and humane conditions for the people who live there."<sup>10</sup>

These sobering realities counsel against a Pollyannish view of the challenges. Still, criminology can be guilty of embracing the view that "nothing works" to reduce crime—what the late British criminologist Roger Matthews called "impossibilism." In his epic *Enlightenment Now*, Steven Pinker casts this cognitive barrier more broadly, characterizing the inability of critics to accept good news about the human condition—even when backed up by staggering amounts of data—as "progressophobia."<sup>11</sup> "Harder to find," observes Pinker, "is a positive vision that sees the world's problems against a background of progress that it seeks to build upon by solving those problems in their turn."

Our point is that the end of mass incarceration constitutes a unique background of progress. We stand at a turning point in the history of corrections. Impossibilism and progressophobia will not do. The opportunity for reform stands within our grasp.

On a broad level, the next era of reform must rest in an abiding commitment to the principle of human dignity. Prison is a sanction, but the nature of this punishment must be defined and circumscribed. David Skarbek, for example, shows how this premise informs prison law in Finland, where incarceration as a "punishment is a mere loss of liberty. The enforcement of the sentence must be organized so that the sentence is only loss of liberty."<sup>12</sup> In Norway, this sentiment resonates, as Baz Dreisinger notes, "in the principle of normality according to which punishment is the restriction of liberty itself, and which mandates that no one shall serve their sentence under stricter circumstances than is required by the security of the community."<sup>13</sup>

Inhumane conditions cannot be justified as part of the price for committing a crime. Prisoners should be treated with human dignity—seen as having inherent value and being capable of improvement—because it is a value that we, as a people, embrace. In such a context, there can be no rationale for onerous restrictions or painful conditions of confinement that serve no purpose.

We must also resist the temptation of doing more of the same out of habit or choice. Arkansas Governor Sarah Huckabee Sanders recently announced plans to spend \$470 million to construct a state prison that would add 3,000 “beds.” This allocation was part of the “Safer Stronger Arkansas Legislative Package” that mandated that serious violent offenders serve 100 percent of their sentence and those committing lesser violent offenders serve 85 percent. Governor Sanders claimed that the plans would make the state “safer and stronger” because there would be “no more leniency for our most degraded criminals.” This initiative is an apparent embrace of the logic and policy of mass incarceration. Some crime-saving might accrue from longer incapacitation, but research reviews repeatedly show that custodial sanctions have no more deterrent value than community sanctions.

At this point, Arkansas, and a similar billion-dollar prison project in Alabama, are outliers. However, let us set aside judging the wisdom of building an expensive facility to lock up more people. These projects make the mistake of seeing institutions as providing beds and cages, forfeiting the opportunity to reimagine the nature of imprisonment. Making prisons *correctional* receives lower priority—making its central purpose *changing people*. In Arkansas, the funding for prisons is ostensibly to keep predators out of society for as long as possible, consigning them to lengthy sentences served to the maximum. Prisons are not purposed to appreciate each prisoner’s humanity as a conduit for fostering improved lives.

Every state has the right to look backward to mass incarceration—and to see it as a familiar associate. The prison blueprints for building such facilities exist, and the custodial mission is well known. Nevertheless, for those jurisdictions committed to moving beyond mass incarceration, a more daunting challenge presents itself: If not the traditional prison



with beds and cell blocks, what kind of prison is possible? Again, even among the well-intentioned, roadblocks, if not sheer inertia, can thwart the pursuit of fundamental change.

In this context, we recommend taking small steps but a lot of them. The time has come to launch various experiments assessing different incarceration models. In his 2022 Stockholm Prize Winner's Lecture, Francis Cullen (this chapter's lead author) argued for federal or private funding of ten experimental prisons that would bring scholars, practitioners, and entrepreneurs together to design cutting-edge institutions—such as an education prison with programs extending from grade school to the Ph.D. or an Amazon prison organized around a company plant. This suggestion is utopian, but its message is not: The time has come to stop building institutions that often become inhumane and ineffective and envision new ways to create people-changing environments. Developments in California offer a recent example of taking a step forward.

Governor Gavin Newsom has earmarked \$20 million to transform San Quentin State Prison into “the preeminent restorative justice facility” and “the most innovative rehabilitation facility” in the United States. The facility, stated Newsom, would be “repurposed” for “rehabilitating inmates, educating them and breaking cycles of crime.” Following similar initiatives in Oregon and North Dakota, the engine for this change would be adopting Norway's imprisonment model used in their “open prisons.” Norway has closed more restrictive prisons that are guided by their correctional core principles.

This model is described in detail in Baz Dreisinger's *Incarceration Nations: A Journey to Justice in Prisons around the World* and in David Skarbek's *The Puzzle of Prison Order: Why Life behind Bars Varies around the World*.<sup>14</sup> The prime principle—that of normalcy—is to make life inside prisons resemble life on the outside. Prisons are small, and “residents” live in rooms, not cells. There are common areas, televisions, and computers. The residents have a communal kitchen and cook together. Skarbek notes that a “bus takes them to a grocery store where local citizens wait outside while they shop.”<sup>15</sup> The prisoners' local community, Dreisinger

reports, “continues to handle [their] health care, education, and other social services while [they’re] incarcerated.”<sup>16</sup> Can this so-called ivory tower facility be justified? Norwegians would reply the following way, as recorded by Dreisinger: “It’s really very simple: Treat people like dirt, and they will be dirt. Treat them like human beings and they will act like human beings.”<sup>17</sup>

How religious California will adhere to the Norwegian model is still being determined. As UCLA law professor Sharon Dolovich cautions, “there’s many a slip between the cup and the lip, so who knows how it’s going to roll out.”<sup>18</sup> She continues, however: “But the idea is right.” We see this bold initiative as promising and, if effective, a template to be used to transform other prisons in California and other states. However, the importance of California’s Norwegian experiment is broader than the specific outcomes that might transpire in San Quentin.

The experiment shows that the time has come to abandon the straightjacket imposed by the paradigm of mass incarceration. It represents a new correctional sensibility. One cognitive shift is realizing that the United States does not have to lock up more than two million people. Another cognitive shift is that we do not have to incarcerate people the same way as we have been doing. Models of success from other nations or, for that fact, from other states should be considered. Scholars, practitioners, and correctional think tanks should formulate concrete reforms worthy of empirical testing.

One objection is likely to be voiced: making prisons more humane and transformative legitimates incarceration and fuels its persistence. If thought-provoking on the surface, this argument is, in the end, disquieting. It is morally bankrupt because it uses the immiserating of current prisoners to justify the abolition of institutions in the future. It is also foolish because little evidence exists that, short of a deadly pandemic, the suffering of the incarcerated inspires empathy and a collective will to shutter institutions. Four decades of expanding mass incarceration make this rebuttal challenging to dispute.

In closing, historical turning points are not always apparent to those in their midst but become evident only in retrospect some years later. Thus, we trust we have been convincing in showing that mass incarceration has ended—both in terms of the growth of prison populations and the punitive logic that fueled the movement. This good news, however, will be squandered if a collateral movement to transform American corrections lays dormant. However, a shortcut may be possible. It is insufficient to identify past mistakes; future choices must occur. The opportunity for change is palpable. Are we up to creating a new era of reform—a humanitarian revolution in corrections?

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### Biographical notes

**Francis T. Cullen** is Distinguished Research Professor Emeritus and Senior Research Associate in the School of Criminal Justice at the University of Cincinnati. He is a Past President of the American Society of Criminology and the Academy of Criminal Justice Sciences. In 2010, he received the ASC Edwin H. Sutherland Award, and in 2022 was selected as the Winner of the 2022 Stockholm Prize in Criminology. His current research interests focus on the role of redemption

in corrections, social support theory, the influence of racial attitudes on criminal justice policy, and the criminology of Donald Trump.

**Justin T. Pickett** is Associate Professor of Criminal Justice at the University at Albany, SUNY. His research interests include public opinion, survey research methods, theories of punishment, and police–community relations. He is the 2015 recipient of the American Society of Criminology’s Ruth Shonle Cavan Young Scholar Award. His recent research has appeared in the *Annual Review of Criminology*, *Criminology*, *Justice Quarterly*, *Social Forces*, and other leading criminology and sociology journals.

**Cheryl Lero Jonson** is Associate Professor in the Department of Criminal Justice at Xavier University in Cincinnati, Ohio. Her current research interests focus on the effectiveness and psychological impacts of civilian active assailant protocols, the effect of prison sentences on recidivism, public opinion about gun control, and the recruitment and retention of corrections officers. Her work has appeared in *Crime and Justice: A Review of Research*, *Criminology*, *Criminology & Public Policy*, *Journal of Research in Crime and Delinquency*, and *Justice Quarterly*.

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# Closing remarks

*Kara Gotsch*

*Acting Executive Director, The Sentencing Project*

The United States' unprecedented investment in and reliance on incarceration to address not only serious crime, but an array of social disorders, profoundly harmed generations of Americans, most notably in Black communities. After 50 years of a failed experiment in mass incarceration, we know transformation of the criminal legal system is essential if we are to build a safe, fair, and just nation for all our communities.

Safety is paramount for everyone. Fortunately, we know effective strategies exist to interrupt violence, improve health for people with mental illness and substance use disorders, and build brighter futures for vulnerable youth. As the country experiences fluctuations in violent crime we should not lose sight of the evidence that harsher punishments and more imprisonment have not brought communities the safety we require.

Instead, mass incarceration has deleterious outcomes for families and communities. People leaving incarceration have reduced prospects for employment, they face food insecurity, and housing instability. The stigma and collateral consequences of incarceration can last a lifetime. More than two generations of Americans have now lived under this yoke of mass incarceration. Unsurprisingly, it hasn't created healthy, happy, thriving, and safe communities. It has, however, negatively impacted millions while costing billions.

This year, The Sentencing Project and its partners launched a public education campaign, "50 Years and a Wake Up: Ending the Mass Incarceration Crisis in America."

The campaign raises awareness about the dire state of the criminal legal system in the country, the devastating impact of incarceration on communities and families, and proposes more effective crime prevention strategies for our country. This book is a vital component of our campaign because it can educate voters and government leaders about the lessons learned from the last 50 years of an overly punitive approach to addressing crime. We hope it inspires thoughtful reimagining of a criminal legal system that prioritizes preventing crime before it happens and follows the evidence about how to most effectively and compassionately hold those accountable who break our laws.

We invite you to learn more and take action for change.

# Afterword

*Kristin Turney*

Over the past five decades, the rise of the carceral state means incarceration is a relatively common stressful life event. About two million people are incarcerated in county jails, state and federal prisons, and immigration detention centers in the United States. Jail incarceration, which is relatively short (with periods of confinement lasting as little as several hours or, more commonly, weeks or months), is the most common form of detention, as about 10.6 million people cycle through county jails each year. These high incarceration rates stem from historical and contemporary legacies of slavery, racism, and discrimination, and accordingly, people of color disproportionately endure this confinement and its associated consequences.

Incarceration, and the mass detention of people in carceral facilities (and their corresponding removal from their families and communities), create considerable social problems. Two decades of research demonstrate the harms that incarcerated people experience while in jail or prison. Incarcerated people endure strains to their familial relationships, have virtually no income during their confinement (while simultaneously accruing legal and financial obligations), and endure physical and mental health challenges that stem from the conditions of detention (for example, small and cramped living conditions, poor treatment by correctional officers, violence, solitary confinement). This research also demonstrates that the harms of incarceration do not end after detention; instead, social problems persist and sometimes intensify after release. Formerly incarcerated people experience stigma and discrimination that makes it difficult to find employment,



secure housing, and establish prosocial relationships and routines, all of which can increase contact with the criminal legal system. The cycle of incarceration and reentry can be pernicious, undermining the lives of those enduring criminal legal contact and their families.

This volume documents the considerable and wide-ranging repercussions of incarceration in the United States. One chapter, for example, reviews research on the cyclical relationship between housing instability and incarceration, elucidating the processes through which housing instability can lead to imprisonment and, in turn, how incarceration can facilitate housing instability. Finding housing is challenging to do with a criminal record, and simultaneously, the criminalization of poverty exposes unhoused people to criminal legal contact (Chapter 6). Another chapter reviews research on the monetary sanctions that stem from contact with the criminal legal system. These financial sanctions have become a complementary form of punishment in the United States that further stratifies people based on their economic resources (Chapter 2). And another chapter describes how the repercussions of incarceration extend from incarcerated people to their children. Children of incarcerated parents experience challenges to their educational, behavioral, and health outcomes, net of hardship that predates their parents' incarceration (Chapter 9). Together, these and other chapters highlight the extensiveness and pervasiveness of the repercussions of incarceration.

This volume, in shedding light on the harms of incarceration, also provides considerable evidence of opacity in the criminal legal system. Incarcerated people are shut off from the outside world. Researchers, journalists, and even family members of those incarcerated have little access to incarcerated people, all of which heightens the opacity of the carceral experience. The chapter that describes penal labor in carceral facilities provides a striking example of such ambiguity (Chapter 3). Research shows that most people are legally compelled to work while serving a prison sentence and that the conditions of this work are often dangerous (that is, more dangerous than similar occupations outside of prison) and exploitative (that is, people in prison earn wages of less than \$1 an hour).

This review of research on prison labor also highlights how much is unknown about penal labor. There are statistics about how many people in prison engage in work and some evidence of the types of jobs that exist in prisons, but so much remains unanswered. Even less is known about employment in local jails. How does penal labor vary across facilities (both within and between states)? Are there racial/ethnic disparities in the conditions of employment (that is, are people of color more likely than their counterparts to experience dangerous working conditions)? How does employment in custody translate to labor market outcomes after release? The chapter that describes parole board decision-making provides another exemplar of opacity in the criminal legal system (Chapter 5). Parole boards have considerable discretion in making decisions about the release (and, indeed, there is enormous variation in parole decisions), but relatively little is known about these decision-making processes (particularly inequalities in this decision-making). The opacity of the criminal legal system is apparent throughout this volume, which suggests that incarceration's repercussions may be even more comprehensive than documented in existing research.

This volume, while highlighting the repercussions of incarceration across many domains, puts forth corresponding suggestions for policy and practice. Each chapter does a remarkable job of providing thoughtful and comprehensive recommendations to reduce the harmful nature of incarceration. The chapter on penal labor suggests that paying incarcerated people wages comparable to industry standards and providing them similar workplace protections afforded to other workers could go a long way toward ameliorating one aspect of the harmful conditions of confinement (Chapter 3). The chapter on children's wellbeing puts forth solutions to foster parent-child bonds during the incarceration period (for example, facilitate the availability of video visitation in addition to in-person visitation) and during the reentry period (for example, provide employment and substance abuse support to parents navigating reentry). The chapter also provides thoughtful recommendations for alternatives to incarceration, such as opportunities for substance abuse treatment (Chapter 9). The chapter that describes the link between incarceration

and higher education suggests that colleges and universities remove criminal record screening from their admissions decisions and that colleges and universities collect better data on the currently mostly opaque nature of on-campus policing (Chapter 4). The comprehensive discussion of recommendations and solutions—both within each chapter and in totality throughout the volume—makes it clear that considerable work lies ahead if we are to reduce the social harms of incarceration.

By now, it is well known that incarceration—an adverse event that disproportionately affects the most vulnerable population groups in the United States—creates, maintains, and exacerbates inequality. We know that decades of systemic racism mean that incarceration and far more common forms of criminal legal contact, often precursors to incarceration, are disproportionately concentrated among people of color. We also know that the repercussions of incarceration are wide-ranging and severe and, in many cases, extend beyond the incarcerated person to impair the wellbeing of the families enduring the incarceration alongside their loved ones. Research needs to move beyond documenting inequality toward understanding how to reduce and even alleviate inequality. The chapters in this volume, with their comprehensive suggestions for reform, provide a critical starting point for this work. Future research should endeavor to design evaluations of these comprehensive suggestions. Which recommendations are most effective for reducing and ameliorating inequality? Are there recommendations that could reduce disparities in more than one domain (for example, housing and employment as opposed to one or the other)? Understanding the efficacy of possible solutions can provide considerable insight into reducing inequality between those who do and do not experience incarceration and, ultimately, improve the wellbeing of those who endure incarceration.

**Key resources**

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**Biographical note**

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