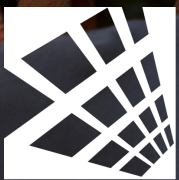




# One in Five

How Mass Incarceration Deepens  
Inequality and Harms Public Safety



**THE  
SENTENCING  
PROJECT**



## **ONE IN FIVE: HOW MASS INCARCERATION DEEPENS INEQUALITY AND HARMS PUBLIC SAFETY**

Nazgol Ghandnoosh, Luke Trinko, and Celeste Barry. Research assistance provided by Niki Monazzam. *The authors are grateful to Kristen Budd, Kara Gotsch, Liz Komar, Florence Lee, Marc Mauer, Morgan McLeod, Richard Mendel, Ashley Nellis, and Nicole Porter for input and feedback, and to Kate Epstein for copy editing.*

The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.

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# EXECUTIVE SUMMARY

*As noted in the first installment of this One in Five series,<sup>1</sup> scholars have declared a “generational shift” in the lifetime likelihood of imprisonment for Black men, from a staggering one in three for those born in 1981 to a still troubling one in five for Black men born in 2001.<sup>2</sup>*

The Sentencing Project’s *One in Five* series has documented the important inroads that reforms have made in reducing both the overall level of incarceration and its racial disparities. Specifically, the United States experienced a 24% decline in its prison population between 2009, its peak year, and 2022.<sup>3</sup> While all major racial and ethnic groups experienced decarceration, the Black prison population has downsized the most.<sup>4</sup> But with the prison population in 2022 nearly six times as large as 50 years ago and Black Americans still imprisoned at nearly five times the rate of whites, the crisis of mass incarceration and its racial injustice remain undeniable.<sup>5</sup> What’s more, the progress made so far is at risk of stalling or being reversed.

The previous installment of the *One in Five* series examined three drivers of racial disparity from within the criminal legal system: disparate racial impact of laws and policies, racial bias in the discretion of criminal legal professionals, and resource allocation decisions that disadvantage low-income people.<sup>6</sup> This final installment of the series presents a fourth driver of disparity in imprisonment which relates to the damaging consequences of criminal legal contact—contact that is disproportionately experienced by communities of color.

Specifically, this report explores **laws and policies that exacerbate socioeconomic inequalities by 1) imposing financial burdens and collateral consequences on people with criminal convictions and 2) diverting public resources from effective interventions to promote public safety.** For example:

- Fines, fees, and predatory pricing exacerbate the economic precarity of justice-involved Americans and their families. The Consumer Financial Protection Bureau has noted that predatory monetary practices exist at every phase of the criminal legal process.<sup>7</sup>

- Employment during incarceration comes with low, and sometimes zero, wages. The ACLU and the Global Human Rights Clinic of the University of Chicago Law School have found that the average minimum wage for the most common forms of prison labor is \$0.13/hour, and the average maximum is \$0.52/hour.<sup>8</sup>
- A criminal conviction creates lifelong barriers to securing steady employment and housing, and many states disqualify people with felony drug convictions from cash assistance and food stamps. Nearly all states also restrict voting rights for people with criminal convictions. Yet research has shown that post-incarceration employment, access to food stamps, and voting are associated with lower recidivism rates.<sup>9</sup>
- Finally, the high cost of mass incarceration comes at the expense of investing in effective crime prevention and drug treatment programs—for both incarcerated individuals and the broader public.

These laws and policies exacerbate the marginalization of justice-involved people—who are disproportionately people of color—by eroding the economic and social buffers against crime and increasing the likelihood of police contact. **Fortunately, jurisdictions around the country have initiated promising reforms to reduce**

**the direct and indirect harms of criminal convictions and redirect resources to more effective interventions:**

- To reduce the financial burdens of incarceration and promote beneficial contact with support networks, California, Colorado, Connecticut, Massachusetts, and Minnesota have made all phone calls from their prisons free. Massachusetts, New York City and several California counties have done the same for their jails.
- To end the injustices associated with prison labor, Colorado amended its constitution and removed language allowing “slavery and involuntary servitude” in the case of punishment for a crime. Advocates are still working to ensure that this change bans forced and unpaid labor among incarcerated workers.
- To reduce labor market discrimination resulting from a criminal record, a majority of states and many cities ‘Ban the Box’—removing the question about conviction history from initial job applications and delaying a background check until later in the hiring process. In addition, a majority of states no longer impose bans on food stamps or cash assistance for people with a felony drug conviction. Finally, Washington, DC, has joined Maine, Vermont, and Puerto Rico in fully untangling voting rights from criminal legal involvement

by permitting its prison population to vote.

- The federal government and states are also increasing investments in crime prevention. Congress has restored Pell eligibility to people in prison. California voters approved Proposition 47 in 2014, reducing prison admissions and redirecting a significant portion of state prison savings to investments including mental health and substance abuse treatment. Oregonians approved Measure 110 in 2020, decriminalizing possession of small quantities of all drugs and dedicating more resources to treatment and recovery services.

In addition, the reduction of many forms of criminal legal contact—including youth arrests and misdemeanor convictions—will itself improve public safety, by limiting the harms associated with this contact.

But there remains great resistance to these common-sense reforms and their needed expansion. For example, Virginia Governor Glenn Youngkin rolled back an automatic voting rights restoration process that had been used by his predecessors for over a decade. In addition, years after Colorado legislators sought to end “slavery and involuntary servitude” as punishment for a crime, incarcerated individuals continue to be forced to work under threats of punishment.<sup>10</sup> Eliminating racial disparities in incarceration will require addressing these sources of inequality by limiting the socioeconomic disadvantage and marginalization resulting from a criminal conviction and dramatically increasing investments in effective public safety programs.


# I. INTRODUCTION: HOW SOCIOECONOMIC DISPARITIES FUEL RACIAL AND ETHNIC DISPARITIES IN IMPRISONMENT

Experience with socioeconomic disadvantage is common among many people in prisons, where over two-thirds (69%) of the population are people of color.<sup>11</sup> In 2016, nearly two-thirds of imprisoned individuals had not completed high school, 17% had spent time in the foster care system, and 14% reported being homeless in the year before their arrest.<sup>12</sup> Prior installments of the *One in Five* series examined three key ways that socioeconomic inequality, in addition to racial bias and racially disparate laws and policies, contribute to racial disparities in imprisonment:

- Spatially-concentrated urban poverty resulting from longstanding and ongoing segregation, discrimination, and disinvestment contribute to higher rates of homicide offending and victimization among certain communities of color.<sup>13</sup> Specifically, Black Americans were 9.3 times as likely as whites to be homicide victims in 2020, American Indians were 4.3 times as likely, and Latinxs were 1.9 times as likely, based on age-adjusted figures.<sup>14</sup>
- The large footprint of policing—particularly on Black Americans— is in part a failed response to racial disparities in serious crimes.<sup>15</sup> For example, police officers' reliance on millions of minor traffic stops annually as a pretext to investigate drivers for criminal activity disproportionately impacts Black and Latinx drivers. Among those they pull over, police are more likely to search Black and Latinx drivers than whites.<sup>16</sup> But police are often less likely to find drugs or weapons among the Black and Latinx drivers who they search, compared to whites.<sup>17</sup>

- A financially burdensome and under-resourced criminal legal system puts people with low incomes, who are disproportionately people of color, at a disadvantage.<sup>18</sup> For example, pretrial release often requires cash bail which disadvantages low-income people of color and increases the pressure to take a less favorable plea deal. In addition, state indigent defense programs are critically underfunded.

This installment of the *One in Five* series explores how criminal legal contact exacerbates the marginalization of justice-involved people—who are disproportionately people of color—by further eroding the economic and social buffers against crime, and increasing the likelihood of police contact. One illustration of this impact is the finding among researchers that mass incarceration increased the U.S. poverty rate by at least 20% between 1980 and 2004.<sup>19</sup> This report examines the mechanisms producing outcomes such as this and highlights reforms seeking to end these injustices and improve public safety.



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## II. CRIMINAL LEGAL POLICIES THAT EXACERBATE SOCIOECONOMIC INEQUALITIES

Because the criminal legal system is an institution that primarily reacts to—rather than prevents—crime, it is ill-equipped to address many of the underlying causes of crime. But mass incarceration’s hold on vast **public resources**, its **imposition of financial burdens**, and the **obstacles erected** for people with criminal records further erode economic and social buffers against crime.

### Fines, Fees, and Predatory Pricing

Fines, fees, and predatory pricing exacerbate the economic precarity of justice-involved people. As the Consumer Financial Protection Bureau notes, predatory monetary practices exist at every phase of the criminal legal process, and “these consequences fall most heavily on people of color, Black Americans in particular, and can continue long after a person is directly involved in the justice system.”<sup>20</sup> Incarcerated people and their families must pay “**junk fees**,” hidden charges attached to purchases or transactions.<sup>21</sup> When family and friends send money to people behind bars, even to pay for essentials like hygiene products and food, they are subject to steep transfer fees.<sup>22</sup> People in jails and prisons also pay unreasonably high costs for basic necessities and

to use electronic messaging services, make phone calls, and access digital content.<sup>23</sup> For example, individuals held in Kentucky prisons pay \$4.84 for a deodorant stick that costs \$1.98 at a local Walmart, according to the Kentucky Center for Investigative Reporting.<sup>24</sup>

To avoid incarceration and remain in the community under parole or probation supervision, justice-involved individuals must often pay **fees**, including for electronic monitoring and drug testing.<sup>25</sup> And since people are not released from criminal legal supervision until their **fines** are paid, monetary sanctions also prolong punishment.<sup>26</sup> Finally, incarcerated people cannot **manage finances** while in prison, leading to negative effects—e.g., increased debt or deteriorated credit ratings—that may result in their inability to secure housing, find employment, or obtain credit upon release.<sup>27</sup>

### Exploitative Wages

The **low wages and exploitative nature** of prison labor render jobs in prison a non-starter for managing financial burdens incurred from a sentence, attending to financial obligations persisting in one’s life outside of

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prison, and managing the onerous and inflated costs of hygiene products, phone calls, food, and medical visits within prison. According to a 2022 analysis conducted by the ACLU and the Global Human Rights Clinic of the University of Chicago Law School, the average minimum wage for jobs maintaining prisons, the most common type of work in prisons, is \$0.13/ hour, and the average maximum is \$0.52/ hour.<sup>28</sup> To put this in perspective, it would take a resident of a Louisiana prison over two weeks of wages to pay for a 15-minute phone call.<sup>29</sup> Seven states—Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and Texas—do not compensate incarcerated people at all for the vast majority of jobs.<sup>30</sup>

Further, many prisons force incarcerated individuals into these exploitative positions. Of the roughly 60% of incarcerated people who reported having a work assignment in prison, nearly three-quarters reported their work assignments were *required*.<sup>31</sup> People subject to this forced labor are often unprotected from basic workplace health and safety standards such as those provided by the Occupational Safety and Health Act (OSHA), leading to sometimes dangerous and inhumane working conditions.<sup>32</sup> Past research and anecdotal reports also suggest that Black people are disadvantaged in prison job allocations, being more likely to receive lower-paying, or non-paying, job placements.<sup>33</sup>

## Collateral Consequences

The **collateral consequences** of a criminal conviction often amount to lifelong disadvantage, particularly for African Americans. In 2010, one in three (33%) African-American adult men had a felony conviction on their record, compared to 13% of all adult men.<sup>34</sup> **Employers** discriminate against job candidates who have criminal histories, especially against those who are Black, and application questions about criminal histories deter some people from applying to certain jobs and colleges.<sup>35</sup> One study found that in 2017, nearly half of unemployed men had a criminal conviction.<sup>36</sup> In addition, nearly one-third of U.S. jobs require an **occupational license**, and many licensing boards bar or impose cumbersome obstacles for people with criminal records.<sup>37</sup> Fee-based programs to seal criminal records also exacerbate racial dispari-

ties.<sup>38</sup> These policies stand in stark contrast to a growing evidence base showing that **post-incarceration employment prevents recidivism** and that **tackling heightened labor market discrimination against Black people with criminal records would reduce recidivism rates**.<sup>39</sup>

Moreover, many states ban those with felony drug convictions from receiving federal **cash assistance and food stamps**.<sup>40</sup> Again, these laws contradict a research-informed approach: **research has tied the food stamps ban to higher recidivism rates**.<sup>41</sup> People with a criminal record also face discrimination in securing **housing**.<sup>42</sup>

Finally, felony **disenfranchisement** laws have had a disproportionate impact on communities of color: Black adults are 3.5 times as likely as other American adults to be disenfranchised due to a felony conviction.<sup>43</sup> But as Kristen Budd of The Sentencing Project has observed: **“voting is among a range of prosocial behaviors in which justice-impacted persons can partake, like getting a college education, that is associated with reduced criminal conduct.”**<sup>44</sup>

Collateral consequences also continue into succeeding generations. Black and American Indian children are far more likely than white children to experience **parental incarceration**.<sup>45</sup> According to the National Institute of Justice, **the impacts of parental incarceration on children include psychological stress, antisocial behavior, academic suspension or expulsion, economic hardship, and criminal activity**.<sup>46</sup>

## Diverting Effective Investments in Public Safety

At the societal level as well, excessive spending on criminal legal programs limits investments in **crime prevention and drug treatment**. As authors from the Brookings Institution note, “the community infrastructure and institutions needed to stabilize communities are routinely underfunded.”<sup>47</sup> **Substance use disorder** is a critical issue affecting many justice-impacted individuals. Nearly half of people in U.S. prisons had a substance use disorder in the year prior to their admissions, and many people—especially people of color—struggle to

access drug treatment programs in communities and in prisons.<sup>48</sup> But in 2021, over one-third of Americans with a substance use disorder did not seek professional treatment because they lacked health care coverage or could not afford the cost.<sup>49</sup> In prisons, only about one quarter of those with substance use disorders receive any professional treatment.<sup>50</sup> These facts point to the persistence of punishment, rather than prevention and treatment, as public responses to drug use and criminal activity.



# III. REVISING POLICIES THAT EXACERBATE SOCIOECONOMIC INEQUALITIES AND REDIRECTING PUBLIC SPENDING TOWARD CRIME PREVENTION AND DRUG TREATMENT

While the criminal legal system is not well-positioned to address the socioeconomic inequality that contributes to differential crime rates, it should not aggravate these problems. Advocates have had success in downsizing criminal penalties and redirecting savings towards community safety, as well as limiting the collateral consequences of criminal convictions and associated fines and fees.

## Limiting Fines and Fees

The Department of Justice recommends alleviating the burden of fines and fees by creating **penalty-free payment plans or amnesty periods** where individuals can have such outstanding debt waived, as some jurisdictions have done.<sup>51</sup> For example, Minnesota and Iowa are advancing debt relief by setting up a payment plan for overdue court debt to help drivers avoid license suspension.<sup>52</sup> Atlanta and Milwaukee are experimenting with warrant clearances that allow those with outstanding minor offenses and traffic violations to resolve their cases without risk of arrest or failure-to-appear fees.<sup>53</sup> San Francisco Superior Court no longer suspends defendants' driver's licenses for their failure to pay fines and fees.<sup>54</sup>

Other measures address high costs during incarceration. Signed into law in 2023, the **Martha Wright-Reed Just and Reasonable Communications Act** expands the Federal Communications Commission's power to reduce the exorbitant phone and video call costs for incarcerated people and their families.<sup>55</sup> California, Colorado, Connecticut, Massachusetts, and Minnesota have made **all calls from their prisons free**; Massachusetts, New York City and several California counties have done the same for their **jails**, and the organization Worth Rises is pursuing similar re-

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forms around the country.<sup>56</sup> **By helping people to stay connected with their families and support networks, these reforms will support rehabilitation and reentry.**<sup>57</sup>

## Pushing for Fair Wages

Incarcerated workers produce goods and services amounting to over \$11 billion every year, yet they remain unfairly compensated for their labor, with average nominal wages even lower today than they were in 2001.<sup>58</sup> There is some hope for reform as momentum

builds to right this wrong. The **Fair Wages for Incarcerated Workers Act**, introduced by Senator Cory Booker in 2023, would extend the protections of the Fair Labor Standards Act of 1938, including a federal minimum wage, to incarcerated workers.<sup>59</sup>

In 2018, Colorado became the first state to amend its state constitution and remove language allowing “**slavery and involuntary servitude**” as punishment for a crime.<sup>60</sup> Similar constitutional amendments have passed in Utah, Nebraska, Vermont, Oregon, Alabama, and Tennessee, and residents of Nevada and California are expected to vote on like-minded revisions in 2024.<sup>61</sup> If duly implemented, these amendments would ban forced and unpaid labor among incarcerated workers; however a class action lawsuit filed in Colorado in 2022 highlights that incarcerated individuals there continue to be forced to work under threats of punishment including losing family contact privileges and being moved into solitary confinement.<sup>62</sup>

## Limiting the Collateral Consequences of Criminal Convictions

### Employment

To reduce employment barriers for those with criminal records, many states have revised their **occupational licensing** requirements.<sup>63</sup> In addition, 37 states, 150 cities and counties, and the federal government have passed laws or issued administrative orders to “**Ban the Box**”—removing the question about conviction history from initial job applications and delaying a background check until later in the hiring process.<sup>64</sup> These fair-chance reforms often apply only to public sector employers, but the National Employment Law Project reports that many states—including Hawaii, Illinois, and Washington—and cities and counties—including Los Angeles and Waterloo, IA—extend these laws to private sector employers as well.<sup>65</sup> California law also now allows people with most felony convictions to **automatically seal their records** if they complete all terms of their sentence and remain conviction-free for at least four years, so that it does not appear on criminal background checks.<sup>66</sup> Nearly all states have some policy in place that allows for sealing

or expunging one’s record.<sup>67</sup> However, the onerous filing fees and long processing times associated with the process often limit these policies’ impacts.<sup>68</sup>

While some studies suggest that employers discriminate more against all Black job applicants without information about who has a criminal record, some experts emphasize the benefits for the vast numbers of Black job seekers who have criminal records and call for other reforms to tackle broader forms of hiring bias.<sup>69</sup>

### Social Welfare

Advocates have also been successful in removing another barrier to reentry, which primarily affect low-income women of color: denial of **federal cash assistance and food stamp benefits** for people convicted in state or federal courts of felony drug offenses.<sup>70</sup> The 1996 Personal Responsibility and Work Opportunity Reconciliation Act that created the ban also permitted states to **opt out or modify** its terms. As of December 2023, 29 states and Washington, DC, do not impose bans on Supplemental Nutrition Assistance Program (SNAP) benefits for people with a felony drug conviction and 25 states and the District allow people with felony drug convictions to access Temporary Assistance for Needy Families (TANF) benefits.<sup>71</sup> Advocates continue to seek to fully eliminate these restrictions at the federal level, through the RESTORE Act and reforms to the Agriculture Improvement Act (known as the Farm Bill).<sup>72</sup>

### Housing

Advocates are also addressing **housing insecurity** for people with criminal histories in private and public housing markets. In 2011, the federal **Department of Housing and Urban Development (HUD)** began urging **public housing authorities** to broaden admission criteria to help people released from prison reunite with their families, and later prevented the use of arrest records for screening residents.<sup>73</sup> In 2016, HUD advised providers in public and private markets that issuing blanket bans on people with criminal histories violates the Fair Housing Act and provided guidance to those who continue criminal records screening.<sup>74</sup> In 2022, HUD advised **pri-**

**vate housing providers** to not use criminal histories to screen tenants for housing due to their racially disparate impact and because criminal histories are not reliable predictors of whether someone will be a good tenant.<sup>75</sup> **Lawsuits** in New York City, Chicago, and **enforcement** actions by federal and state agencies in Louisiana, Connecticut, and Virginia have also tackled discriminatory screening policies. New Jersey now **bans landlords from asking about criminal histories** until after they have conditionally approved a housing application, narrows how far back a record can be used as a basis for a denial, and requires that they explain any subsequent rejection in writing and give potential tenants an opportunity to respond.<sup>76</sup>

### Voting Rights

States are also **reinstating voting rights and improving democratic representation**. Since 1997, 26 states have expanded voting rights to people with felony convictions. As a result, over two million Americans have regained the right to vote.<sup>77</sup> Washington, DC, has joined Maine, Vermont, and Puerto Rico in permitting people in prison to vote.<sup>78</sup>

But 4.6 million Americans—most of whom are not incarcerated—remain barred from voting due to a felony conviction.<sup>79</sup> And the hard-won reinstatement of voting rights is precarious in some states. For example, over a million people were expected to regain their voting rights after Floridians overwhelmingly passed Amendment 4 in 2018, allowing most people who had completed their sentences to vote. But the state legislature and governor undermined this referendum by conditioning re-enfranchisement on the payment of court-ordered monetary sanctions, blocking access to the majority of those whose voting rights had been restored.<sup>80</sup> In Virginia, Governor Glenn Youngkin rolled back an automatic voting rights restoration process that had been used by his predecessors for over a decade.<sup>81</sup>

In addition, in the absence of corrective action by the U.S. Census Bureau, several states have taken action against **prison gerrymandering** by counting imprisoned people as residents of their home address - often located in urban areas - rather than their prisons—which are often located in rural areas. The switch in how incarcerated people are counted influences financial and Congressional apportionments and thus helps prevent the dilution of the political power of communities most impacted by incarceration.<sup>82</sup>



*In August 2023, advocacy organizers, academics, researchers, communications specialists, and more gathered together at The Sentencing Project’s Civic Power 2023 Convening to build momentum on recent efforts to expand the vote and challenge fifty years of mass incarceration.*

## Contracting Criminal Penalties and Expanding Community Resources

In two states, voter referendums led to contraction of criminal penalties and reinvestment of funds that would have been used for incarceration. First, California voters in November 2014 approved **Proposition 47**, which reclassified a number of low-level offenses from felonies to misdemeanors. This reform reduced the state's overall level of arrests, jail bookings, and incarceration.<sup>83</sup> It also allocated a significant portion of state prison savings each year to preventing crime from happening in the first place.<sup>84</sup> This includes **investments in mental health and substance abuse treatment**, programs to reduce **school truancy** and **prevent dropouts**, and support for **victim services**. More recently, Oregon voters approved **Measure 110** in 2020, decriminalizing possession of small quantities of all drugs and applying the state's marijuana tax revenues to expand treatment and recovery services.<sup>85</sup> However, Oregon's delayed rollout of treatment services as part of Measure 110 has led to calls for the law to be repealed and has elicited concerns from some states considering similar reforms.<sup>86</sup>

In 2021 and 2022, Congress and federal agencies also increased investments in **harm reduction** and **community-based violence interruption** programs.<sup>87</sup> But the balance of public investments remains heavily in favor of punishment over prevention and some public health approaches have not been sustained.

## Investing in Justice-Impacted People's Health and Education

The White House Office of National Drug Control Policy is encouraging states to use Medicaid funds to provide **mental health and drug treatment** in jails and prisons.<sup>88</sup> A 2018 federal law allowed states to reconnect incarcerated people with **Medicaid benefits**, and California is the first to adopt the change, by providing certain Medicaid benefits to incarcerated individuals 90 days prior to their release.<sup>89</sup> The First Step Act of 2018 requires the federal Bureau of Prisons to expand access to **medication for opioid use disorder (MOUD)**. However, the agency has struggled with implementation.<sup>90</sup> Rhode Island has led the nation in providing MOUD to its incarcerated population.<sup>91</sup>

The main educational investments have come in the form of college access. The Second Chance Pell pilot program created in 2015 allows colleges and universities to offer incarcerated students **Pell-Grant-funded postsecondary education**. In 2020, Congress restored Pell eligibility to people in prison, with broad eligibility having begun in summer 2023.<sup>92</sup> Likewise, the **criminal history question** was removed from the Common Application for undergraduate admission in 2018, although individual universities often still make this inquiry.<sup>93</sup>

## IV. SCALING BACK CRIMINAL LEGAL CONTACT TO PROMOTE PUBLIC SAFETY

Policymakers can improve public safety, as discussed above, by reducing the financial burdens and collateral consequences associated with a criminal conviction, and by making better crime prevention investments. It is important to note that scaling back criminal legal contact itself would also improve public safety:

- The arrest rate for youth under age 18 peaked in 1996 and has declined by more than 80% since<sup>94</sup>—a decline which both reflects and will reinforce the decline in youth crime. Numerous studies have found that police contact during adolescence – not only arrests, but also police stops and warnings—increases the likelihood of future delinquency and violence, particularly when the young people view the police contact as unjust.<sup>95</sup> For instance, a 2020 study examining youth in Chicago found that the odds of committing any delinquent or violent acts were 44% to 81% higher for youth who had prior police contact than for comparable youth who did not have police contact.<sup>96</sup>
- Declining to charge individuals for non-violent misdemeanors reduces their likelihood for future offending.<sup>97</sup> Research on prosecutorial reforms seeking to decriminalize poverty in Suffolk County, MA through dismissing, declining to prosecute, or diverting people charged with nonviolent misdemeanors like disorderly conduct and shoplifting, has found that subsequent rearrests declined for those impacted by the reform and crime rates for nonviolent misdemeanor offenses did not increase.<sup>98</sup> Refraining to pursue misdemeanor charges prevents the stigmatizing and often lifelong effects of a criminal record.<sup>99</sup>
- The number of people imprisoned for a drug or property crime has fallen by nearly half since its peak in 2007,<sup>100</sup> while the jail population has declined by 19% from its historic high in 2008.<sup>101</sup> Both of these trends will narrow the criminogenic impacts of incarceration. A number of studies have found that short terms of imprisonment in carceral settings with limited rehabilitative programs result in higher recidivism rates than community supervision, and the life disruptions caused by pretrial detention contributed to higher rates of recidivism compared to pretrial release.<sup>102</sup>

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Scaling back criminal legal contact, therefore, in addition to limiting the harms resulting from that contact, would improve public safety while helping to reduce racial inequity in incarceration.

## V. CONCLUSION

While recent reforms have reduced overall levels of criminal-legal-system contact and its racial and ethnic disparities, we remain fully within the era of mass incarceration. Excessive levels of control and punishment, particularly for people of color, are not advancing community safety goals and are damaging families and communities.<sup>103</sup> The four installments of the *One in Five* series offer a blueprint for ending racial inequity in incarceration and shifting towards more effective investments in public safety.

The first installment documented the progress made so far and the ongoing work ahead.<sup>104</sup> The second installment underscored the need for durable investments in communities of color that are disproportionately impacted by serious violent crime, as well as a reduction in the footprint of policing.<sup>105</sup> The third installment demonstrated how jurisdictions around the country have begun tackling three key drivers of racial disparity: disparate racial impact of laws and policies, racial bias in the discretion of criminal legal professionals, and resource allocation decisions that disadvantage low-income people.<sup>106</sup> This fourth and final installment has highlighted reforms that tackle a fourth driver of disparity: laws and policies that exacerbate socioeconomic inequalities and divert public spending from effective investments in public safety. For the criminal legal system to uphold the principle of justice, policymakers and practitioners will need to protect and expand these reforms.

## ENDNOTES

<sup>1</sup> Ghandnoosh, N. (2023). *One in five: Ending racial inequity in incarceration*. The Sentencing Project. The second and third installments in this series are: Ghandnoosh, N., & Barry, C. (2023). *One in five: Disparities in crime and policing*. The Sentencing Project; Ghandnoosh, N., Barry, C., & Trinka, L. (2023). *One in five: Racial disparity in imprisonment—causes and remedies*. The Sentencing Project.

<sup>2</sup> Robey, J., Massoglia, M., & Light, M. (2023). A generational shift: Race and the declining lifetime risk of imprisonment. *Demography*, p. 1. <https://doi.org/10.1215/00703370-10863378>; see also Roehrkasse, A., & Wildeman, C. (2022). Lifetime risk of imprisonment in the United States remains high and starkly unequal. *Scientific Advances*, 8(48). <https://www.science.org/doi/10.1126/sciadv.abo3395>.

<sup>3</sup> The prison population increased for the first time in almost a decade between 2021 and 2022. Carson, A. E., & Kluckow, R. (2023). *Prisoners in 2022 – Statistical Tables*. Bureau of Justice Statistics; Carson, E. A. (2012). *Prisoners in 2011*. Bureau of Justice Statistics.

<sup>4</sup> This report uses the terms Black and African American interchangeably. The number of imprisoned Black Americans decreased 38% between peak year 2002 and 2022. Carson & Kluckow (2023), see note 3; Sabol, W., West, H., & Cooper, M. (2009). *Prisoners in 2008*. Bureau of Justice Statistics.

<sup>5</sup> Ghandnoosh, N. (2023). *Ending 50 years of mass incarceration: Urgent reform needed to protect future generations*. The Sentencing Project; Carson & Kluckow (2023), see note 3; Bureau of Justice Statistics (1982). *Prisoners 1925–81*.

<sup>6</sup> Ghandnoosh, Barry, & Trinka (2023), see note 1.

<sup>7</sup> Consumer Financial Protections Bureau. (2022). *Justice-involved individuals and the consumer financial marketplace*.

<sup>8</sup> ACLU & The University of Chicago's Global Human Rights Clinic (2022). *Captive labor: Exploitation of incarcerated workers*. ACLU.

<sup>9</sup> Love, M. & Sibilla, N. (2023). *Access to SNAP and TANF benefits after a drug conviction: A survey of state laws*. Collateral Consequences Resource Center; Fair Housing Center for Rights and Research. (2022). *Fair housing for people with a criminal record: A digital toolkit*; Budd, K. M., & Monazzam, N. (2023). *Increasing public safety by restoring voting rights*. The Sentencing Project.

<sup>10</sup> *Lilgerose v. Polis*, et al. (CO Dist. Ct. 2022). <https://towardsjustice.org/wp-content/uploads/2022/02/Amendment-A-litigation-Complaint-Stamped.pdf>. See also: Clark, M. (2023, September 19). Forced labor continues in Colorado, years after vote to end prison slavery. *Bolts*;

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<sup>11</sup> Ghandnoosh & Barry (2023), see note 1.

<sup>12</sup> Beatty, L. G., & Snell, T. L. (2021). *Profile of prison inmates, 2016*. Bureau of Justice Statistics.

<sup>13</sup> Ghandnoosh & Barry (2023), see note 1.

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<sup>19</sup> DeFina, R., & Hannon, L. (2013). The impact of mass incarceration on poverty. *Crime and Delinquency*, 59(4), 562–586.

<sup>20</sup> Consumer Financial Protections Bureau. (2022). *Justice-involved individuals and the consumer financial marketplace*, pp. 4-5.

<sup>21</sup> Wessler, M. (2023, February 8). *Incarcerated people must be at the forefront of Biden Administration and Federal Trade Commission efforts to end “junk fees.”* Prison Policy Initiative; Bing, L., Pettit, B., & Slavinsky, I. (2022). Incomparable punishments: How economic inequality contributes to the disparate impacts of legal fines and fees. *RSF: The Russell Sage Foundation Journal of the Social Sciences* 8(2), 118–136. <https://doi.org/10.7758/RSF.2022.8.2.06>.

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<sup>28</sup> Over 80% of incarcerated workers in state and federal prisons work in jobs maintaining the prisons, including janitorial and kitchen duties, work in infirmaries, libraries, and stockrooms, and grounds maintenance. Approximately 7% of incarcerated workers have jobs in state-owned correctional industries where the pay is higher: the average minimum hourly wage is \$0.30 and the average maximum hourly wage is \$1.30. ACLU & The University of Chicago's Global Human Rights Clinic (2022), see note 8.

<sup>29</sup> These calculations are based on a 40-hour work week: Non-industry jobs in Louisiana prisons pay, on average, \$0.03/ hour. In-state phone calls cost approximately \$0.22/ minute. Peter Wagner, P. & Bertram, W. (2022, December). *State of phone justice 2022: The problem, the progress, and what's next—Appendix Table 5. Average jail calling rates in each state, 2021*. Prison Policy Initiative; ACLU & The University of Chicago's Global Human Rights Clinic (2022), see note 8.

<sup>30</sup> ACLU & The University of Chicago's Global Human Rights Clinic (2022), see note 8.

<sup>31</sup> Beatty, L. G. & Snell, T. L. (2023). *Work assignments reported by prisoners, 2016*. Bureau of Justice Statistics.

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<sup>34</sup> Shannon, S. K. S., Uggen, C., Schnittker, J., Thompson, M., Wakefield, S., & Massoglia, M. (2017). The growth, scope, and spatial distribution of people with felony records in the United States, 1948–2010. *Demography*, 54(5), 1795-1818. <https://doi.org/10.1007/s13524-017-0611-1>.

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<sup>40</sup> Burnside, A. (2022). *No more double punishments: Lifting the ban on SNAP and TANF for people with prior felony drug convictions*. Center for Law and Social Policy.

<sup>41</sup> Kolbeck, Bellair, & Lopez (2022), see note 39.

<sup>42</sup> Fair Housing Center for Rights and Research (2022), see note 9.

<sup>43</sup> Uggen, C., Larson, R., Shannon, S., & Stewart, R. (2022). *Locked out 2022: Estimates of people denied voting rights due to a felony conviction*. The Sentencing Project.

<sup>44</sup> Budd & Monazzam (2023), see note 9.

<sup>45</sup> Ghandnoosh, N., Stammen, E., & Muhitch, K. (2021). *Parents in Prison*. The Sentencing Project.

<sup>46</sup> Martin, E. (2017). *Hidden consequences: The impact of incarceration on dependent children*. National Institute of Justice.

<sup>47</sup> Sebastian, T., Love, H., Washington, S., Barr, A., Rahman, I., Paradis, B., Perry, A. M., & Cook, S. (2023). *A new community safety blueprint: How the federal government can address violence and harm through a public health approach*. Brookings.



<sup>48</sup> Roughly one in three were under the influence of drugs or alcohol at the time of their crime. Approximately half of people in state and federal prisons and two-thirds of those in jails either met the threshold for serious psychological distress or had been diagnosed as having a mental disorder. Bronson, J. & Berzofsky, M. (2017). *Indicators of mental health problems reported by prisoners and jail inmates, 2011-12*. Bureau of Justice Statistics; See also: Maruschak, L. M., Bronson, J., & Alper, M. (2021). *Survey of prison inmates, 2016: Alcohol and drug use and treatment reported by prisoners*. Bureau of Justice Statistics; Bronson, J., Stroop, J., Zimmer, S., & Berzofsky, M. (2017). *Drug use, dependence, and abuse among state prisoners and jail inmates, 2007-2009*. Bureau of Justice Statistics; Bebinger, M. (2019, May 8). *Opioid addiction drug going mostly to whites, even as black death rate rises*. NPR.

<sup>49</sup> Cost is a likely barrier; 25% said they had no health care coverage and could not afford the cost and another 12% said they had had health care coverage but it did not cover treatment or did not cover the full cost. Substance Abuse and Mental Health Services Administration. (2022). *Key substance use and mental health indicators in the United States: Results from the 2021 National Survey on Drug Use and Health* (HHS Publication No. PEP22-07-01-005, NSDUH Series H-57). Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration.

<sup>50</sup> In 2016, among those who met the criteria for substance use disorder in the year prior to their admission, 20% of people in state prisons and 28% in federal prisons had received professional treatment at some point since their admissions. Maruschak, Bronson, & Alper (2021), see note 48.

<sup>51</sup> U.S. Department of Justice, Office of the Associate Attorney General. (2023, April 20). Letter to courts regarding fines and fees for youth and adults; Muhammad et al. (2022), see note 17.

<sup>52</sup> Muhammad et al. (2022), see note 17.

<sup>53</sup> Muhammad et al. (2022), see note 17.

<sup>54</sup> Muhammad et al. (2022), see note 17.

<sup>55</sup> Bertram, W. (2023). *Since you asked: What's next for prison and jail phone justice now that the Martha Wright-Reed Just and Reasonable Communications Act is law?* Prison Policy Initiative.

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<sup>59</sup> S.516 — 118th Congress (2023-2024): Fair Wages for Incarcerated Workers Act of 2023. (2023, February 16); See also: Cory Booker. (2023, February 17). *Booker introduces package of bills to end unfair and abusive labor practices in U.S. corrections facilities*.

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<sup>63</sup> Quinton (2017), see note 37.

<sup>64</sup> Avery, B. & Lu, H. (2021, October 01). *Ban the box. U.S. cities, counties, and states adopt fair hiring policies*. National Employment Law Project; Wagner, E. (2022, April 26). The ‘Ban the Box’ prohibition at federal agencies will soon be expanded. *The Government Executive*.

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<sup>81</sup> Vasilogambros, M. (2023, August 7). In reversal, some states make it harder for people with felony convictions to vote. *Virginia Mercury*.

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The Sentencing Project  
1705 DeSales Street NW  
8th Floor  
Washington, DC 20036  
(202) 628-0871

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