

Sentencing Times

A publication of The Sentencing Project, Washington, D.C.

Fall 2018

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RESEARCH

Substantial decarceration in five diverse states

Connecticut, Michigan, Mississippi, Rhode Island, and South Carolina have reduced their prison population between 14-25% over the past decade (producing a cumulative total of 23,646 fewer people in prison) with no adverse effects on public safety, according to a new report by The Sentencing Project.

[*Decarceration Strategies: How 5 States Achieved Substantial Prison Population Reductions*](#) describes the changes in policy and practice that have enabled these states to achieve far more significant decarceration than the national average during this period. The states employed key strategies to reduce their prison populations:

- Developed measures to build support for reform and maintain momentum
- Reduced prison commitments for new convictions through sentencing reform, expansion of alternatives to incarceration, and addressing school-to-prison pipeline
- Reduced returns to prison for failure on community supervision through development of graduated sanctions, engagement with community service providers, and imposing shorter terms of supervision
- Increased prison releases by requiring less time served before eligibility for release

While these states have experienced striking declines, prison populations in eight states continue to increase and in 20 additional states declines have been less than 5%. Report authors Dennis Schrantz and Stephen DeBor, both formerly of the Michigan Department of Corrections, and Marc Mauer view the five highlighted states as decarceration roadmaps for other state.

Prison Population Declines

State	Peak Prison Population	Percent Change
Connecticut	2007	-25%
Michigan	2006	-20%
Mississippi	2008	-18%
Rhode Island	2008	-23%
South Carolina	2008	-14%

POLICY

Will Trump advance criminal justice reform?

The U.S. House of Representatives in May passed the FIRST STEP Act, which would expand programming and time credits for people in federal prison. The bipartisan bill has the support of the White House but it has faced challenges in the Senate, where sentencing reform legislation has been prioritized. In August, news reports indicated a possible opening from President

Donald Trump to adding sentencing reform provisions into the FIRST STEP Act but no revised legislation has been introduced to date.

At the time of the House vote on prison reform, and again in a [letter](#) to Senate leaders in June, The Sentencing Project withheld its endorsement of the bill not only because it failed to adopt sentencing reforms, but also because

its \$50 million annual authorization – equating to just \$275 per incarcerated person - would not adequately address programming needs, staff shortages and persistent overcrowding.

Instead, The Sentencing Project has worked closely with Senate Judiciary Chairman Charles Grassley and Senator Dick Durbin in championing the

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EXECUTIVE DIRECTOR'S MESSAGE

Amid challenges, success and opportunity

Criminal justice reform has never been easy. Even as the “tough on crime” era of the 1980s and 90s has diminished, progress in challenging mass incarceration has not succeeded at the scale that is necessary to truly transform our approach to public safety. And at the national level we’re now faced with an Attorney General who believes that mass incarceration has been a successful policy, ignoring voluminous research documenting that the impact of incarceration on crime is relatively modest, while also producing a host of lifelong harmful consequences for people with justice system contact.

Given these challenges, it’s important to remind ourselves that change is possible and that we have much to learn from our successes. Here are a couple of examples we’ve recently documented.

Gains in restoring voting rights

As the midterm elections approach it is shocking that a record 6 million Americans will be prohibited from voting due to a current or previous felony conviction. Yet as our new report *Expanding the Vote* documents, more than a million citizens have regained the right to vote over the past two decades. Legislative bodies and governors have enacted a series of measures to scale back the scope of felony disenfranchisement. These changes did not come about overnight, but were the product of sustained advocacy at the state and national levels, courageous political leaders, and growing media attention to the issue. Our attention is also focused now on Florida, where a statewide ballot initiative could restore the right to vote to as many as 1.4 million individuals who have completed their felony sentences.

Prison population reductions

The growing momentum to challenge mass incarceration is encouraging, yet the pace of

decline in the national prison population is still quite modest. But as we describe the findings of a recent report in this newsletter, five states – geographically and politically diverse -- have achieved population reductions of 14-25% through changes in policy and practice over the past decade. Several other states have achieved reductions as high as 30%. There are many lessons to be learned from these experiences that we can bring to bear in the jurisdictions that have been lagging in this regard.

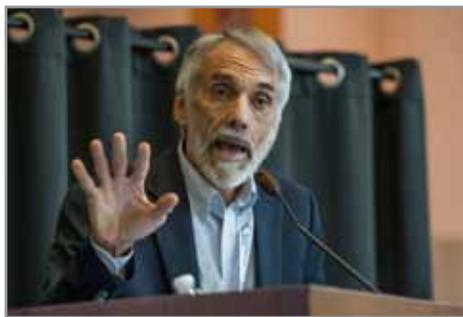
New initiatives

I also want to give you a heads up about a major initiative we’ll be launching in December. My colleague Ashley Nellis and I, along with former prison journalist Kerry Myers, will be publishing a new book, *The Meaning of Life: The*

Case for Abolishing Life Sentences. Our book will document the challenge of long-term sentences for prison populations, describe the counterproductive public safety outcomes of these policies, and call for a maximum 20-year prison term except in unusual circumstances.

In conjunction with the book’s release we’ll be launching a campaign on life imprisonment, designed to engage both policymakers and advocacy organizations in opening up public discussion around the problem of excessively punitive sentencing policies. In the coming weeks we’ll be sharing a preview of this campaign and we’ll look forward to engaging with our colleagues around the country on ways to enhance this dialogue.

The successes in criminal justice reform do not suggest that reform is still not a challenging undertaking. We live in a complicated political world at the moment, but we also have much to build on. I hope we can keep in mind and learn from our collective successes. I look forward to continuing to engage with our supporters as we seek to advance our vision and strategy for reform.



Marc Mauer, Executive Director, at a Smart Decarceration conference.

Unique challenges of female incarceration

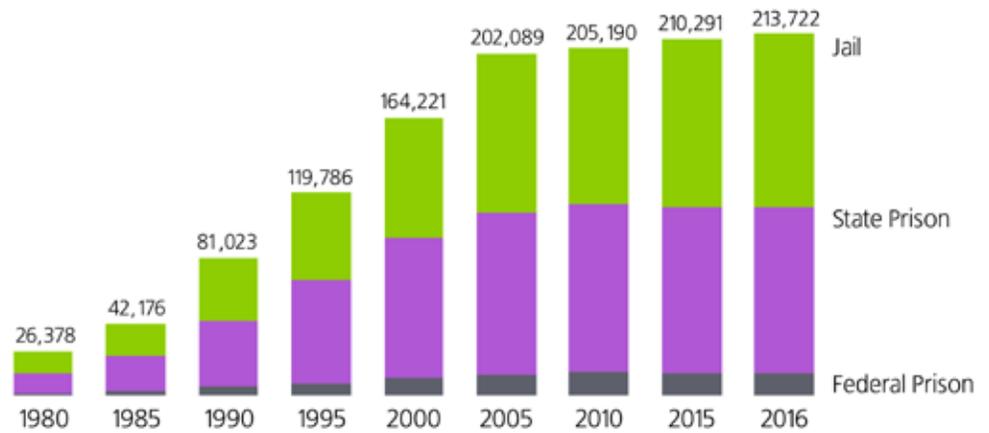
Women’s level of incarceration stands over seven times higher than in 1980, with over 200,000 women in U.S. prisons and jails. An additional one million women are under community supervision. Analyzing female incarceration is critical to understanding the full consequences of mass incarceration and to unraveling its harmful policies and practices. To this end, The Sentencing Project released a report titled [Incarcerated Women and Girls](#) in May, by Nazgol Ghandnoosh and Josh Rovner, and cohosted a related webinar with the National Council for Incarcerated and Formerly Incarcerated Women and Girls.

Women in state prisons are more likely than men to be incarcerated for drug or property offenses, with over half of imprisoned women having been convicted of a non-violent crime. Also more than 60% of women in state prisons have a child under the age of 18.

Women’s imprisonment levels vary significantly across states and by race. Oklahoma had the highest rate of female imprisonment in 2016 (149 per 100,000 women), while Rhode Island and Massachu-

sets had the lowest (13 per 100,000, each). Women of color disproportionately experience imprisonment, though the level of black-white disparity has declined in recent years. Still, African American women were imprisoned at twice the rate of white women in 2016.

Rise in Women’s Incarceration, 1980-2016



Voting rights restored to 1.4 million people

Almost 1.4 million previously barred voters are eligible to vote in the upcoming midterm elections due to changes in state felony disenfranchisement laws, according to a new report by The Sentencing Project. [Expanding the Vote: Two Decades of Felony Disenfranchisement Reform](#), by Morgan McLeod, Communications Manager, found that since 1997 23 states have reformed state laws that limit voting access for people convicted of felony offenses.

These changes have come about through various mechanisms, including legislative reform, executive action, and a ballot initiative. Recent reforms highlighted in the report include:

- Alabama streamlining its rights restoration process and restoring voting rights to people convicted of certain

felony convictions, impacting 76,000 people

- California restoring voting rights to a certain categories of people on community supervision and to those with felony convictions incarcerated in jail, impacting 95,000 people

- Maryland expanding voting rights to individuals on probation and parole, impacting 40,000 people

- Former Virginia Gov. Terry McAuliffe restoring voting rights to 173,000 people

Despite these reforms, more than 6 million citizens are still prohibited from voting due to a felony conviction. Nearly 4.7 million of them are not incarcerated but live in one of 34 states that prohibit voting by people on probation, parole, or who have completed their sentence.

In Florida, a measure on the upcoming November ballot, Amendment 4, could restore voting rights to an additional 1.4 million people. Florida accounts for more than a quarter of the disenfranchised population nationally, and nearly half of the post-sentence disenfranchised population. Notably, more than one in five African Americans in Florida is disenfranchised due to a felony conviction. If passed by 60% of voters, Amendment 4 would amend the state constitution and restore voting rights to most individuals upon completion of their prison, probation or parole sentence.

Federal farm bill provisions could harm reentry



Kara Gotsch, Director of Strategic Initiatives, at a rally for criminal justice reform

Without a single objection from any members of the House of Representatives, the Agriculture Improvement Act of 2018 (commonly known as the Farm Bill) was amended on the House floor in June to permanently exclude people convicted of violent offenses from receiving food stamps. Shortly after, the bill passed the House by a largely partisan vote of 213 to 211. Hundreds of supporters of The Sentencing Project responded to an action alert before the vote and sent emails,

Twitter messages and Facebook posts urging their representatives to vote against the bill.

Joined by partner organizations, The Sentencing Project met with Senate Agriculture Committee leaders to oppose the food stamp ban. The effort was successful and the Senate passed a Farm Bill without restrictions on food assistance for people with criminal records. As Congress works to reconcile differences in the Farm Bills, The Sentencing Project continues its advocacy to eliminate reentry barriers in a final package.

The Senate Farm Bill did incorporate an amendment, sponsored by Majority Leader Mitch McConnell, that would legalize the hemp agricultural industry but bar employment in the industry for those with drug convictions.

In an interview with *Congressional Quarterly*, Director of Strategic Initiatives Kara Gotsch called the employment exclusion “another attempt to complicate re-entry into society.” A final compromise on the Farm Bill is not expected until December.

“Communities prosper when people leaving incarceration have access to food and employment. Congress should support a Farm Bill that increases reentry success, not excludes vital programs from people with criminal records.”

Kara Gotsch,
Director of Strategic Initiatives

OJJDP to scale back data collection on racial and ethnic disparities in juvenile justice system

Nationwide and state-level data, collected and reported under the auspices of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), have brought clarity to the scope of racial and ethnic disparities in juvenile justice. These reported data form the backbone of many reports by The Sentencing Project.

In June, OJJDP Administrator Caren Harp announced that the office plans to turn its back on this issue, arguing for a simplified version of the data collection

and reporting that states and localities have conducted for more than a decade. Reporting these data, which inform the scope of disproportionate minority contact, is one of four core requirements under the federal Juvenile Justice and Delinquency Prevention Act. The law does not require states shrink their disproportionality, only that they “address” it.

The Administrator’s announcement will hide the scope of the problem if states perform only the minimal data

collection now required under the Trump Administration’s interpretation.

More troubling, the Administrator has regularly conflated the fight against disproportionate treatment of youth of color with callousness toward public safety.

In response, Josh Rovner co-authored an [op-ed](#) piece published by the Juvenile Justice Information Exchange criticizing the Trump Administration’s forthcoming actions.

Advocacy efforts advance state reform

This year The Sentencing Project supported state advocates and organizers as they championed alternatives to incarceration, voting rights, new criminal penalties, and life prison terms.

Fighting for Voting Rights in Mississippi

The Sentencing Project’s Director of Advocacy Nicole D. Porter worked with the state chapter of the NAACP and One Voice to publish a report, [Felony Disenfranchisement in Mississippi](#), which documented that 218,000 Mississippians are disenfranchised. Mississippi residents lose voting rights if convicted of felony disenfranchising crimes listed in the state constitution. Nicole presented the report’s findings at the NAACP’s lobby day. The report and related advocacy helped advance legislation to create a disenfranchisement study committee; the measure passed the House, but failed in the Senate.



Nicole D. Porter, Director of Advocacy, speaking about mass incarceration in Jefferson City, Missouri.

Countering Punitive Policy in Maryland and Kentucky

In Maryland, Nicole testified in support of crime prevention and community-based solutions as alternatives to proposed regressive crime legislation. She also worked to oppose crime enhancements and partnered with state civil rights organizations and youth advocates to support funding for evidence-based crime prevention solutions to reduce retaliation.

Trump

Continued from page 1

Sentencing Reform and Corrections Act (S.1917). The bill would expand judicial discretion in cases of low-level drug offenses, retroactively apply crack cocaine sentencing reforms enacted in 2010 to people in prison, and limit enhanced sentences, including life without parole, for people with prior drug felonies. Attorney General Jeff Sessions opposed the bill on the eve of its passage out of the Senate Judiciary Committee in February, however, and it has not had a floor vote.

The question remains whether any criminal justice reform can advance before Congress adjourns in December.

News accounts and statements from Grassley and Senator Mike Lee have insisted that a compromise measure that incorporates some sentencing reforms from S. 1917 into the FIRST STEP Act is possible after the midterm elections when Majority Leader Mitch McConnell says he will oversee a whip count. McConnell, however, has not previously supported criminal justice reform and his motivations on this issue are unclear.

Moreover, despite Trump’s son-in-law Jared Kushner’s advocacy in support of criminal justice reform, Trump’s position on sentencing reform in particular is uncertain. Indeed, one of the last

tory violence. Unfortunately the state passed a ten-year mandatory minimum for persons convicted of a second violent offense.

Nicole collaborated with community leaders in Kentucky to resist gang enhancement legislation. The measure proposed to expand the “violent offender” category requiring 85% time-served before parole eligibility even if the underlying crime involved no violence. The Sentencing Project’s partners included faith and civil rights leaders, students, and medical practitioners who organized a petition, placed several opinion editorials offering solutions to gang violence, and coordinated student actions. Despite the campaign, the measure passed, though with 30 state senators in opposition.

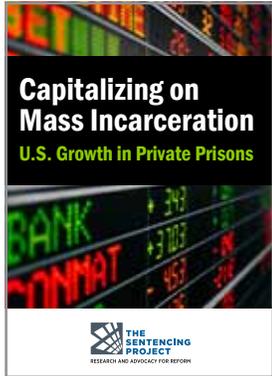
Addressing Life Prison Terms in Oklahoma

The Sentencing Project partnered with Oklahoma CURE to publish a policy report, [Oklahoma’s Life-Sentenced Population Rising Faster than National Trends](#). The Sentencing Project’s strategic research and communications helped raise awareness of extreme sentences in a state that has one of the highest incarceration rates in the country.

public comments from Trump addressing sentencing issues came in March when he proposed increasing already harsh sentences for drug offenses and employing the death penalty to address the opioid crisis. In response, The Sentencing Project coordinated a national coalition [sign-on letter](#) condemning his remarks.

After November’s midterm elections the outlook for criminal justice reform will likely shift again. Regardless, The Sentencing Project is committed to continue working with a bipartisan group of leaders to advance the interests of federal sentencing reform.

New publications from The Sentencing Project



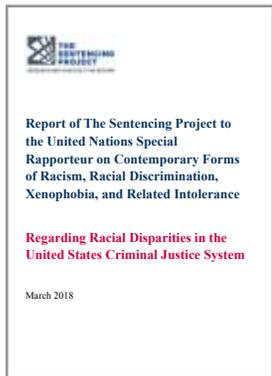
Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons

From 2000 to 2016 the number of people housed in private prisons increased 47 percent, compared to an overall rise in the prison population of 9 percent, according to a new report of The Sentencing Project.

Twenty-seven states and the federal government relied on private prisons to incarcerate 128,063 people as of 2016. At the federal level, the Bureau of Prisons' reliance on private prisons more than doubled (120 percent) since 2000 from 15,524 to 34,159. Under the jurisdiction of the Department of Homeland Security, the proportion of people detained in private immigration facilities increased by 442 percent since 2002.

Private prison companies claim they can reduce costs while also offering services necessary for maintaining safety in prisons and generating a profit for shareholders. The evidence does not support this assertion. Indeed, cuts to labor costs often compromise safety and security within the facilities. The Sentencing Project calls for ending for-profit prison privatization.

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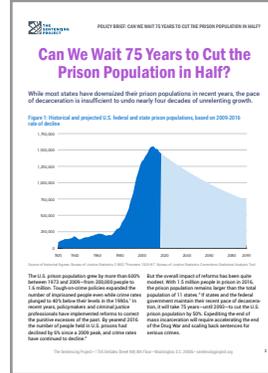


Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System

In a report to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, The Sentencing Project makes the case that the United States essentially operates two distinct criminal justice systems: one for wealthy people and another for poor people and people of color. The wealthy can access a

vigorous adversary system replete with constitutional protections for defendants. Yet the experiences of poor and minority defendants within the criminal justice system often differ substantially from that model due to a number of factors, each of which contributes to the overrepresentation of such individuals in the system.

By creating and perpetuating policies that allow racial disparities to exist in its criminal justice system, the United States is in violation of the International Covenant on Civil and Political Rights to ensure that all residents—regardless of race—are treated equally under the law.



Can We Wait 75 Years to Cut the Prison Population in Half?

While most states have downsized their prison populations in recent years, the pace of decarceration is insufficient to undo nearly four decades of unrelenting growth. At the recent pace of decarceration, it will take 75 years—until 2093—to cut the U.S. prison population 50 percent.

By 2016, 42 states had at least modestly reduced their prison populations from their peak levels. Six states—New Jersey, Alaska, New York, Vermont, Connecticut, and California—lead the nation in reducing their prison populations by 25% or more. Southern states including Mississippi and South Carolina have also made double-digit percentage reductions in their prison populations. But the average pace of prison decarceration has been modest overall, declining 6% since a 2009 peak.

While the recent national decline in the prison population is encouraging, more significant declines will require sustained reforms that include accelerating the end of the Drug War and expanding sentencing reforms to include serious crimes.



Top Trends in State Criminal Justice Reform, 2017

In recent years a number of states have enacted reforms designed to reduce the scale of incarceration and impact the collateral consequences of a felony conviction. This briefing paper describes key reforms passed in 2017 including:

- Louisiana lawmakers enacted legislation to expand probation eligibility to people convicted of third-time nonviolent offenses and first-time low-level violent offenses.
- New Jersey legislators authorized use of racial impact statements to project the effect of sentencing legislation.
- New York and North Carolina - the country's only states that automatically prosecuted all 16- and 17-year-olds as adults - adopted reforms directing that teenage defendants should be adjudicated in the juvenile justice system.
- Lawmakers in Arkansas, Louisiana, Maryland, and North Dakota expanded eligibility for public assistance for persons with felony drug convictions.

The Sentencing Project in the news



3/23/18

[Punitive responses to gang violence are not effective](#)

By: Rev D. Anthony Everett, Rev. Donald K. Gillett II, Kate Miller, Rebecca Ballard Diloreto, and Nicole D. Porter

Residents of the communities that experience gang crime want it to stop, and there are better ways to make that happen than sending more people to prison for ever longer sentences. In the long term, community-based solutions offer opportunities to all residents including better investments in early childhood education, targeted employment initiatives and therapeutic health interventions.

But to respond to immediate concerns, lawmakers must fund efforts that address interpersonal conflicts that often trigger violence.

One evidence-based approach positions “violence interrupters” to locate potentially lethal disputes in progress and respond with conflict-mediation strategies. Interrupters are hired in part for their ability to work among those at risk of violence in the community.

New York City experienced 20 percent fewer killings attributable to the program. And in Chicago neighborhoods, there was a reported 41 percent to 73 percent reduction in shootings and killings — and a 100 percent reduction in retaliation killings.



1/3/18

[Thousands are stuck in prison — just because of the date they were sentenced](#)

By: Kara Gotsch

Eugene Downs sits in federal prison years longer than justice demands.

On Aug. 2, 2010, Downs was sentenced to a mandatory minimum sentence of 10 years for conspiring to distribute at least 50 grams of crack cocaine. The very next day, President Barack Obama signed the Fair Sentencing Act, a law that limited mandatory minimum sentences for crack cocaine and the number of cases subject to them.

If Downs had been sentenced one day later, he would now be free, because the Fair Sentencing Act reduced the sentence for distribution of 50 grams of

crack cocaine to five years. Incidentally, Downs’s co-defendants were all sentenced after Aug. 2 and benefited from the lowered penalties.



2/28/18

[For Henry Montgomery, a Catch-22](#)

By: Ashley Nellis

In the past, people with life terms were able to work toward meaningful correctional privileges, and while lifers never had an opportunity for broad exposure to programming, fiscal constraints and regressive crime policies have restricted these options even more.

In 2012, I conducted a national study of individuals sentenced to life imprisonment for crimes committed as juveniles; it revealed that many lifers were denied access to rehabilitative programming. For example, half of the Michigan prisoners serving juvenile life without parole sentences reported that they did not participate in programming because their sentence precluded it, and another quarter had already exhausted program offerings. Similar trends existed in Pennsylvania and Florida.

Public Education

The Sentencing Project has made presentations to more than 40 organizations and institutions in the past year, including:

- Administrative Office of the U.S. Courts
- American University
- Busboys and Poets
- Catholic University Law School
- Central Connecticut State University
- Congregation Adat Shalom (MD)
- Congressional Hispanic Caucus
- Democracy Summer
- Eastern State Penitentiary
- George Mason University
- Georgetown University
- Georgetown University Law Center
- Harvard University Kennedy School of Government
- Howard University School of Social Work
- Ignatian Solidarity Network
- Indiana State University
- Iowa Summit on Justice & Disparities
- Johns Hopkins University Bloomberg School of Public Health
- Mid-Atlantic Summit on Behavioral Health and Criminal Justice
- MLK350 Justice in Journalism Conference
- NAACP (Maine)
- National Academies of Science, Committee on Law and Justice
- National Association of Criminal Defense Lawyers
- National Black Baptist Convention
- National Conference of Black Lawyers
- National Council for Incarcerated and Formerly Incarcerated Women and Girls
- National Legal Aid and Defender Association
- Secular Social Justice Conference
- State of NJ Office of the Public Defender
- University of Chicago
- University of Kentucky Black Women's Conference
- University of Mary Washington (VA)
- University of Minnesota Law School
- University of Pennsylvania Fels Institute of Government
- University of Richmond (VA)
- US Conference of Catholic Bishops



RESEARCH AND ADVOCACY FOR REFORM

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THE SENTENCING PROJECT

Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.

To these ends, it seeks to recast the public debate on crime and punishment.

To receive news and updates electronically from The Sentencing Project, send an email to:
staff@sentencingproject.org

The full text of publications, reports and speeches shown in italic type font in the newsletter can be found at www.sentencingproject.org.

The New York Times

8/12/18

LTE: When Ex-Felons Lose the Right to Vote

By: Marc Maurer

The prosecution of a dozen people in North Carolina for voting while under probation or parole supervision points to the ripple effects of felony disenfranchisement policy. More than six million Americans are kept out of the voting booth because of a felony conviction, and many are unaware of their disqualification from voting. The best remedy for illegal voting is systems change, not individual prosecutions.

As an increasing number of states have enacted reforms to disenfranchisement policy, there is growing understanding of the ways in which felony disenfranchisement runs counter to public safety objectives. By labeling individuals second-class citizens, we erect unnecessary barriers to their successful integration into the community.

In the short term, courts and correction systems should be required to inform people when their voting rights are taken away and how to regain those rights. Few jurisdictions currently do so.

Ultimately, there is the question of whether anyone should lose the right to vote because of a criminal conviction. Many countries in Europe permit everyone to vote, including those

in prison, as the states of Maine and Vermont do. These jurisdictions recognize the important distinction between legitimate punishment for crime and the fundamental rights of citizenship.

The Atlantic

9/18/18

How the Law Treats Kids Who Didn't Grow Up Like Kavanaugh

By: Josh Rovner

Convictions in adult courts, even if they don't lead to prison, have long-lasting consequences. Almost 20 million Americans have felony convictions, impeding their opportunities for employment and housing, and even their ability to vote in many states. People convicted of sex-related offenses may spend their whole lifetimes on a sex-offender registry—and that's a broad category including not only rape, but also non-violent offenses such as exhibitionism.

Kids who grow up like Kavanaugh—white kids whose parents can afford prep school tuition and, presumably, the services of a good lawyer—rarely experience prolonged contact with the criminal-justice system. Society gives them the benefit of the doubt and takes seriously their protestations of innocence. But most kids don't grow up like Kavanaugh.