



A Better Path Forward for Criminal Justice

A Report by the Brookings-AEI Working
Group on Criminal Justice Reform

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Introduction

U.S. criminal justice figures continue to make us numb, elected officials and citizens alike. Yes, we know the U.S. incarcerates more people per capita than any other country in the world. Yes, we know that when we rank the per capita rate of incarcerations, the U.S. is followed closely by countries like El Salvador and Turkmenistan. We know that our recidivism rates are too high, and that we police our racial/ethnic minority communities too much and too often with tragic results. We know our fellow citizens, mainly people of color, living in those communities continue to suffer from higher rates of crime and police violence. And, lastly, we know these conditions prevail even though U.S. crime rates have fallen to 50-year lows (even considering the recent COVID-era surge) making America about as safe as it was in the 1950s. It is almost as if over policing, prosecution, and imprisonment are habits that the United States just cannot break.

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For two decades now, there has been a bipartisan effort to tackle these systemic problems. Action by President George W. Bush in the mid-2000s to foster improved reentry pathways for men and women returning from prison opened the door to the passage of the bipartisan Second Chance Act and hundreds of millions of dollars in investment in programs designed to reform numerous aspects of the criminal justice system including mandatory minimum sentences and felony hiring initiatives. President Barack Obama expanded and accelerated these initiatives adding his own programs including

Banning the Box, presidential commissions on 21st century policing and mass incarceration, as well as pilot programs to reinstitute access to Pell Grants for prisoners. Just last year, President Trump signed the First Step Act beginning the process of reforming sentencing practices and providing funding for training and vocational education for incarcerated people to be more prepared for the labor market after prison.

And now President Joe Biden has promised to accelerate criminal justice policy with an eye toward reforming the Violent Crime Control and Law Enforcement Act of 1994, of which he was a principle author, to reduce crime and incarceration. By slow and steady steps, we are moving away from “tough on crime” policies that created the world’s largest prison population and one of its costliest and, from the perspective of rehabilitation and recidivism, most ineffective criminal justice systems.

George Floyd’s death at the hands of police last spring and the frequent, though less-noticed, events like it in other American cities, towns, and rural areas, has added new urgency and momentum to the drive to reform our criminal justice system. Unfortunately, the debate has too often collapsed into an unhelpful binary: “support the blue” or “abolish the police.” Either of these poles would tend to have a negative impact on the very communities who have suffered disproportionately under our current criminal justice and law enforcement policies. Excessive policing and use of force, on one hand, and less public safety and social service resources on the other, can both be detrimental to communities that are exposed to high levels of criminal activity and violence. We must find a path of genuine reform, even transformation, that fosters safer, more peaceful, and more resilient communities.

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This volume is a “down payment” on the policy debate America needs right now to continue moving toward a criminal justice system—police, courts, prison, reentry, community supervision—that is focused on the safety, health, and well-being of communities rather than on maintaining a harsh, semi-militarized revolving door system from which, for too many, there is often no escape. The essays in this volume are intended to provide policymakers in Congress and the Biden Administration with research-grounded guidance and insight on core issues and strategies that can sustain bipartisan support for critically needed criminal justice reforms. Our authors come from a broad spectrum of domains and policy perspectives. In fact, most chapters paired scholars, practitioners, and thought leaders from different disciplines and political ideologies. In this regard, each of their chapters concisely summarize the state of research on a given topic and offer bipartisan recommendations for short-, medium- and long-term reforms that will move each of the key sectors of the criminal justice system toward a more humane and effective footing.

CHAPTER

1

Police Reform

by Rashawn Ray and Clark Neily

Recent incidents centering on the deaths of unarmed Black Americans including George Floyd, Daunte Wright, Elijah McClain, Breonna Taylor, William Green, and countless others have continued to apply pressure for wide sweeping police reform. To some, these incidents are the result of a few “bad apples.”¹ To others, they are examples of a system imbued with institutional and cultural failures that expose civilians and police officers to harm. Our article aims to combine perspectives from across the political spectrum on sensible police reform. We focus on short-, medium-, and long-term solutions for reducing officer-involved shootings, racial disparities in use of force, mental health issues among officers, and problematic officers who rotten the tree of law enforcement.

Level Setting

Violent crime has significantly decreased since the early 1990s. However, the number of mass shootings have increased and the Federal Bureau of Investigation and the Department of Homeland Security report being worried about domestic terrorism, even within law enforcement. Nonetheless, despite

recent increases that some scholars associate with COVID-19 spillovers related to high unemployment and underemployment, violent crime is still much lower than it was three decades ago.

Some scholars attribute crime reductions to increased police presence, while others highlight increases in overall levels of education and employment. In the policy space, the Anti-Drug Abuse Act of 1986 and the Violent Crime Control and Law Enforcement Act of 1994 are often noted. We believe there is some validity to all of these perspectives. For example, SWAT deployment has increased roughly 1,400 percent since 1980. Coinciding with the 1986 Drug Bill, SWAT is often deployed for drug raids and no-knock warrants.² The death of Breonna Taylor, a 26-year-old Black woman killed in her home in Louisville, Kentucky, is most recently highlighted as an example that demonstrates some of the problems with these tactics.³

The 1994 Crime Bill ushered the COPS program and an increase in prisons around the country.⁴ This legislation also coincided with stop-and-frisk policies and a rise in stand-your-ground laws that disproportionately disadvantaged Black Americans and led to overpolicing. It is an indisputable fact that Black people are more likely to have force used on them. In fact, Black people relative to white people are significantly less likely to be armed or be attacking at the time they are killed by police. This is a historical pattern, including during the 1960s when civil rights leaders were being beaten and killed. However, officer-involved killings, overall, have increased significantly over the past two decades.⁵ And, we also know that if drugs were the only culprit, there would be drastically different outcomes for whites. Research shows that while Blacks and whites have similar rates of using drugs, and often times distributing drugs, there are huge disparities in who is arrested, incarcerated, and convicted for drug crimes. However, it is also an indisputable fact that predominately Black communities have higher levels of violent crime. Though some try to attribute higher crime in predominately Black neighborhoods to biology or culture, most scholars agree that inequitable resources related to housing, education, and employment contribute to these statistics.^{6 7 8} Research documents that after controlling for segregation and disadvantage, predominately Black and white neighborhoods differ little in violent crime rates.⁹

These are complex patterns, and Democrats and Republicans often differ on how America reached these outcomes and what we do about them. As a result, bipartisan police reform has largely stalled. Now, we know that in March 2021 the House of Representatives once again passed The George Floyd Justice in Policing Act. States and localities are also presenting and passing a slew of police reforms, such as in Maryland where the state legislature passed the Maryland Police Accountability Act of 2021. We are not here to debate the merits of these legislations, though we support much of the components, nor are we here to simply highlight low-hanging fruit such as banning no-knock warrants, creating national databases, or requiring body-worn cameras. People across the political aisle largely agree on these reforms. Instead, we aim to provide policy recommendations on larger-scale reforms, which scholars and practitioners across the political aisle agree needs to occur, in order to transform law enforcement in America and take us well into the twenty-first century. Our main themes include accountability, training, and culture.

Accordingly, our recommendations include:

- **Short-Term Reforms**
 - Reform Qualified Immunity
 - Create National Standards for Training and De-escalation
- **Medium-Term Reforms**
 - Restructure Civilian Payouts for Police Misconduct
 - Address Officer Wellness
- **Long-Term Reforms**
 - Restructure Regulations for Fraternal Order of Police Contracts
 - Change Police Culture to Protect Civilians and Police

Short-Term Reforms

Reform Qualified Immunity

Qualified immunity is a legal doctrine that courts invented to make it more difficult to sue police and other government officials who have been plausibly alleged to have violated somebody's rights.^{10 11} We believe this doctrine needs to be removed.^{12 13} States also have a role to play here. The Law Enforcement Bill of Rights further doubles down on a lack of accountable for bad apples.

We are not out on a limb here. A recent YouGov and Cato poll found that over 60 percent of Americans support eliminating qualified immunity.¹⁴ Over 80 percent of Americans oppose erasing historical records of officer misconduct. In this regard, most citizens have no interest making it more difficult to sue police officers, but police seem to have a very strong interest in maintaining the policy. However, not only do everyday citizens want it gone, but think tanks including The Brookings Institution and The Cato Institute have asserted the same. It is a highly problematic policy.

Though police chiefs might not say it publicly or directly, we have evidence that a significant number of them are quite frustrated by their inability to get rid of the bad apples, run their departments in ways that align with best practices they learn at Federal Law Enforcement Training Centers and National Association of Chiefs of Police, and discipline and terminate officers who deserve to be held accountable and jeopardize not only the public perception of their own department but drag down the social standing of the entire law enforcement profession. As noted above, The Law Enforcement Bill of Rights at the state level needs to be addressed. It further doubles down on qualified immunity and removes accountability for law enforcement.

National Standards for Training and De-escalation

In 2016, Daniel Shaver was fatally shot and killed by officer Philip Brailsford. Brailsford was charged but found not guilty. At the time of the killing, Shaver was unarmed as he lay dead in a hotel hallway. Police experts critiqued Brailsford's tactics to de-escalate the situation. As he entered the scene, he had both hands on his M4 rifle and eliminated all other tools or de-escalation tactics. Brailsford was fired, tried for murder, and then rehired. He ultimately retired due to PTSD. Highlighting the roles of militarization, mental health, qualified immunity, and other policy-related topics, this incident shows why there is a need for national standards for training and de-escalation. Many officers would have approached this situation differently, suggesting there are a myriad of tactics and strategies being taught.

Nationally, officers receive about 50 hours of firearm training during the police academy. They receive less than 10 hours of de-escalation training. So, when they show up at a scene and pull their weapon, whether it be on teenagers walking down the street after playing a basketball game or someone in a hotel or even a car (like in the killing of Daunte Wright in a Minneapolis suburb), poor decisions and bad outcomes should not be surprising.

Police officers regardless of whether they live in Kentucky or Arizona need to have similar training. Among the roughly 18,000 law enforcement agencies across the country, there is wide variation in the amount of training that officers have to complete as well as what type of training they complete. With the amount of travel that Americans engage in domestically, law enforcement has not kept up to speed with ensuring that officers receive the same training. Consequently, police officers may be put in positions to make bad decisions because of a lack of the implementation of federal standards. Funding can be provided to have federally certified trainers who work with localities within states, counties, and cities.

Medium-Term Reforms

Restructure Civilian Payouts for Police Misconduct

From 2015–2019, the 20 largest U.S. municipalities spent over \$2 billion in civilian payouts for police misconduct. Rather than the police department budget, these funds mostly come from general funds.¹⁵ So, not only is the officer absolved from civil or financial culpability, but the police department often faces little financial liability. Instead, the financial burden falls onto the municipality; thus, taxpayers. This money could be going toward education, work, and infrastructure.

Not only are the financial settlement often expensive, like the \$20 million awarded to William Green's family in Prince George's County, Maryland, but the associated legal fees and deteriorated community trust are costly. In a place like Chicago, over the past 20 years, it has spent about \$700 million on civilian payouts for police misconduct. New York City spent about \$300 million in the span of a few years.

We assert that civilian payouts for police misconduct must be restructured. Indemnification will be eliminated, making the officer responsible, and requiring them to purchase professional liability insurance the exact same way that other occupations such as doctors and lawyers do. This would give insurance companies a strong incentive to identify the problem officers early, to raise their rates just the way that insurance companies raise the rates on a bad driver or a doctor who engages in malpractice. In this regard, the cost of the insurance policy would increase the more misconduct an officer engaged in. Eventually, the worst officers would become uninsurable, and therefore unemployable. This would help to increase accountability. Instead of police chiefs having difficulties removing bad officers through pushback from the Fraternal Order of Police Union, bad officers would simply be unemployable by virtue of the fact that they cannot secure professional liability insurance.

Bottom line, police almost never suffer any financial consequences for their own misconduct. Shifting civilian payouts away from tax money and to police department insurance policies would instantly change the accountability structure. Police are almost always indemnified for that misconduct when there is a payout. And, what that means is simply that their department or the city, which is to say us, the taxpayers, end up paying those damages claims. That is absolutely the wrong way to do it.

Shifting civilian payouts away from tax money and to police department insurance policies would instantly change the accountability structure.

Most proposals for restructuring civilian payouts for police misconduct have included some form of liability insurance for police departments and/or individual officers. This means shifting the burden from taxpayer dollars to police department insurance policies. If a departmental policy, the municipality should pay for that policy, but the money should come from the police department budget. Police department budget increases should take settlement costs into account and now simply allow for increased budgets to cover premium increases. This is a similar approach to healthcare providers working in a hospital. If individual officers have liability insurance, they fall right in line with other occupations that have professional liability insurance.

Congress could approve a pilot program for municipalities to explore the potential impacts of police department insurance policies versus individual officer liability insurance, and even some areas that use both policies simultaneously. Regardless, it is clear that the structure of civilian payouts for police misconduct needs to change. We believe not only will the change provide more funding for education, work, and infrastructure, but it will increase accountability and give police chiefs and municipalities the ability to rid departments of bad apples that dampen an equitable and transparent cultural environment.

Address Officer Wellness

Mental Health Counseling

In this broader discussion of policing, missing is not only the voices of law enforcement themselves, but also what is happening in their own minds and in their own bodies. Recent research has highlighted that about 80 percent of officers suffer from chronic stress. They suffer from depression, anxiety. They have relationship problems, and they get angered easily. One out of six report being suicidal. Another one out of six report substance abuse problems. Most sobering, 90 percent of them never seek help.¹⁶ We propose that officers should have mandatory mental health counseling on a quarterly basis. Normalizing mental health counseling will reduce the stigma associated with it.

It is also important for law enforcement to take a serious look into the role of far-right extremism on officer attitudes and behaviors. There is ample evidence from The Department of Homeland Security showing the pervasive ways that far-right extremists target law enforcement.¹⁷ Academic research examining social dominance ideation among police officers may be a key way to root out extremism during background checks and psychological evaluations. Social dominance can be assessed through survey items and decision-making simulations, such as the virtual reality simulations conducted at the Lab for Applied Social Science Research at the University of Maryland.

Community Policing

Community police is defined in a multitude of ways. One simple way we think about community policing is whether officers experience the community in everyday life, often when they are not on duty. Do they live in the community, send their children to local schools, exercise at the neighborhood gym, and shop at the main grocery store? Often times, police officers engage in this type of community policing in predominately white and affluent neighborhoods but less in predominately Black or Latino neighborhoods, even when they have higher household income levels. Police officers also live farther away from the areas where they work. While this may be a choice for some, others simply cannot afford to live there, particularly in major cities and more expensive areas of the country. Many police officers are also working massive amounts of over time to make ends meet, provide for their families, and send children to college.

Altogether, community policing requires a set of incentives. We propose increasing the required level of education, which can justify wage increases. This can help to reduce the likelihood of police officers working a lot of hours and making poor decisions because of lack of sleep or stress. We also propose requiring that officers live within or near the municipalities where they work. Living locally can increase police-community relations and improve trust. Officers should receive rent subsidies or down payment assistance to enhance this process.

Long-Term Reforms

Restructure Regulations for Fraternal Order of Police Contracts

Unions are important. However, the Fraternity Order of Police Union has become so deeply embedded in law enforcement that it obstructs the ability for equitable and transparent policing, even when interacting with police chiefs. Police union contracts need to be evaluated to ensure they do not obstruct the ability for officers who engage in misconduct to be held accountable. Making changes to the Law Enforcement Bill of Rights at the state helps with this, but the Congress should provide more regulations to help local municipalities with this process.

Change Police Culture to Protect Civilians and Police

Police have to be of the people and for the people. Often times, police officers talk about themselves as if they are detached from the community. Officers often view themselves as warriors at war with the people in the communities they serve. Police officers embody an “us versus them” perspective, rather than viewing themselves to be part of the community.¹⁸

There must be a fundamental reconceptualization of both the mission of police and the culture in which that mission is carried out.

It must be a change to police culture regarding how police officers view themselves and view others. Part of changing culture deals with transforming how productivity and awards are allocated. Police officers overwhelmingly need to make forfeitures in the form of arrests, citations, and tickets to demonstrate leadership and productivity. Police officers rarely get credit for the everyday, mundane things they do to make their communities safe and protect and serve. We believe there must be a fundamental reconceptualization of both the mission of police and the culture in which that mission is carried out. Policing can be about respecting individuals and not using force. It is an ethical approach to policing that requires incentives positive outcomes rather than deficits that rewards citations and force.

Recommendations for Future Research

First, research needs to examine how community policing and officer wellness programs can simultaneously improve outcomes for the community and law enforcement. The either/or model simply does not work any longer. Instead, research should determine what is best for local communities and improves the health and well-being of law enforcement. Second, future research on policing needs to

examine the role that protests against police brutality, particularly related to Black Lives Matter protests, are having on reform at the local, state, and federal levels. It is important for policymakers to readily understand the demands of their constituents and ways to create peace and civility.

Finally, research needs to fully examine legislation to reallocate and shift funding away from and within police department budgets.¹⁹ By taking a market-driven, evidence-based approach to police funding, the same methodology can be used that will lead to different results depending on the municipality. Police department budgets should be fiscally responsible and shift funding to focusing on solving violent crime, while simultaneously reducing use of force on low-income and racial/ethnic minority communities. It is a tall order, but federal funding could be allocated to examine all of these important research endeavors. It is a must if the United States is to stay as a world leader in this space. It is clear our country is falling short at this time.

Conclusion

We have aimed to take a deep dive into large policy changes needed for police reform that centers around accountability, finances, culture, and communities. Though there is much discussion about real-locating police funding, we believe there should be an evidence-based, market-driven approach. While some areas may need to reallocate funding, others may need to shift funding within the department, or even take both approaches. Again, with roughly 18,000 law enforcement agencies, there is wide variation in funds provided for policing and how those funds are spent. This is why it is imperative that standards be set at the federal level to help municipalities grapple with this important issue and the others we highlight in this report.

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CHAPTER

2

Reimagining Pretrial and Sentencing

by Pamela K. Lattimore, Cassia Spohn, and
Matthew DeMichele

The roots of mass incarceration in the United States lie in policies and practices that result in jail for millions of individuals charged with but not convicted of any crime and lengthy jail or prison sentences for those who are convicted. These policies and practices are the results of 50 years of efforts at criminal justice reform in response to the “War on Crime” and the “War on Drugs” that began in the 1970s—intended to improve public safety, curb drug abuse, and address perceived inequities in the justice system, these reforms also had unintended consequences that exacerbated disparities.

The time is ripe to develop and implement deep structural reforms that will increase fairness and ensure proportionate punishment without sacrificing public safety.

As the United States grapples with yet another iteration of calls for social and racial justice following multiple deaths of Black Americans at the hands of law enforcement, the time is ripe to develop and implement deep structural reforms that will increase fairness and ensure proportionate punishment

without sacrificing public safety. Concurrently, practices implemented to address the public health crisis in the Nation's jails and prisons accompanying the COVID-19 pandemic provide an opportunity to examine whether reducing pretrial detention and prison sentences can be accomplished without negatively affecting public safety.

This chapter briefly discusses the evolution of criminal justice reform efforts focused on pretrial and sentencing policies and practices that resulted in unprecedented rates of incarceration that have only recently begun to abate. This discussion is followed by proposals for policy reforms that should be implemented and recommendations for critical research needed to guide future reform efforts.


Level Setting

Despite declining somewhat over the past two decades, America's incarceration rate remains the highest in the world.¹ Individuals in the United States may spend months in jail awaiting trial and those convicted are more likely than those in peer nations to receive long carceral sentences. Against the backdrop of renewed calls for racial and social justice in response to deaths of Black people at the hands of police, the COVID-19 pandemic has shone an unforgiving spotlight on America's jails and prisons, where those awaiting trial or serving sentences have experienced disproportionate rates of infection and death due to the spread of the virus. The responses to the pandemic in many jurisdictions have included unprecedented efforts to reduce jail populations and some efforts toward early prison release that provide an opportunity to determine whether reducing pretrial detention or prison sentences can be accomplished without negatively affecting public safety.

The United States has been engaged in efforts to reform pretrial practices and sentencing for more than five decades. The 1966 Bail Reform Act sought to reduce pretrial detention through the offer of payment of money bond in lieu of detention, while rising violent crime rates and an ongoing "drug war" resulted in the 1984 Pretrial Reform Act that once again led to a reliance on preventive pretrial detention. More recently, there has been a renewed push to reduce reliance on financial requirements for pretrial release in response to concerns about the growing numbers of individuals detained and the disparate impact of these detentions on individuals who are poor and people of color. Risk assessment tools that predict failure to appear and new arrests for those released while awaiting trial have been implemented to support release decisionmaking and to provide an alternative to money bail. These tools have also been suggested as a means to reduce disparities in release that may reflect implicit biases and cognitive errors in judgement by those charged with making release decisions quickly with incomplete information. Risk assessment tools continue to garner support despite criticisms that they perpetuate historical biases that exist in the criminal record information used to make the predictions.

Concerns about disparity, discrimination, and unfairness in sentencing led to a sentencing reform movement that began in the mid-1970s and that, over time, revolutionized sentencing. States and the federal system moved from indeterminate sentencing, in which judges imposed minimum and maximum sentences and parole boards determined how long those incarcerated would serve, to structured sentencing policies that constrained the discretion of judges, ensured that sentences were pegged to crime seriousness and to the criminal history of those found guilty, and, in many jurisdictions, eliminated discretionary release on parole.

As the “War on Crime” and the “War on Drugs” escalated during the 1980s in response to increasing rates of violent crime and the drug—primarily crack cocaine—epidemic, reformers also championed changes designed to establish more punitive sentencing standards. These changes included sentencing enhancements for use of a weapon, prior criminal history, and infliction of serious injury; mandatory minimum sentences, particularly for drug and weapons offenses; “three-strikes laws” that mandated long prison sentences for repeat offenders; truth-in-sentencing statutes that required individuals to serve more of their sentences before they were eligible for release; and life without the possibility of parole (LWOP) sentences. Federal support for these efforts included funding under the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322) that established the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program, which was designed to assist state efforts to remove violent offenders from the community. Over five years (FY1996 to FY2001) this program provided states with \$3 billion in funding to expand prison and jail capacity and to encourage states to eliminate indeterminate sentencing in favor of “Truth in Sentencing” laws that required individuals to serve at least 85 percent of the imposed sentence.²



There are now more offenders serving life sentences than the total number of individual who were held in all U.S prisons in the early 1970s.

What have been the results of these efforts at reform? More individuals detained pretrial as the numbers of individuals booked into jails increased and as the proportion of those held in jail pending trial increased from 56 percent of the jail population in 2000 to 66 percent in 2018. Prison populations also skyrocketed—from about 200,000 in 1970 to 1.43 million in 2019.³ Further, sentences became more punitive, with individuals convicted of felonies in state and federal courts facing a greater likelihood of incarceration and longer sentences than they did in the pre-reform era. The number of individuals serving life—and life without the possibility of parole—sentences also increased dramatically; there are now more offenders serving life sentences than the total number of individual who were held in all U.S prisons in the early 1970s. Worldwide, the United States accounts for more than one-third of all life sentences and eight out of ten LWOP sentences. Moreover, there is persuasive evidence that these punitive changes *did not* produce the predicted decline in crime but *did* exacerbate already alarming racial and ethnic disparities in incarceration.

Pretrial detention and prison incarceration are linked, as those engaged in recent efforts on pretrial reform recognize. Pretrial detention contributes to mass incarceration both directly and indirectly. Pretrial detention results in a greater likelihood that individuals (irrespective of guilt) will plead guilty, a greater likelihood of being sentenced to incarceration, and longer sentences. These impacts are disproportionately borne by people of color—who are more likely to be detained and less likely to be able to afford bond amounts that are often set higher than for similarly situated White defendants.

The consequences of pretrial detention are difficult to reconcile given that many of those detained pretrial are charged with offenses that, were they to be found guilty, would be unlikely to result in incarcerative sentences. Research suggests that pretrial detention is linked to substantially higher recidivism rates post sentencing—suggesting that even if pretrial detention reduces some criminal activity during the pretrial period this is more than offset by much higher recidivism rates after individuals serve their sentences. Further, pretrial detention removes individuals presumed innocent from their families and communities—often resulting in the loss of employment and housing, interrupted treatment, and, in some cases, the loss of child custody. Court imposed fines and fees are passed without making income-based adjustments and failure to pay such fines and fees can result in revocation of one’s driver’s license and further incarceration.

Housing America’s prisoners is expensive—more than \$88 billion in local, state, and federal taxpayer monies were spent on corrections in 2016.⁴ Most of those in jail are awaiting trial—so the costs of jail are not to pay for punishment. Instead, pretrial detention is meant to ensure attendance at trial and to protect the public from harm by individuals who have not been convicted of a crime. But, in fact, failure to appear at trial is rare and often due to mundane reasons (e.g., forgetting the trial or hearing date). Similarly, new arrests of those released pretrial are also infrequent with arrests for violent crimes rare.⁵

The costs of jail or prison for sentenced individuals are justified in terms of one or more of the purposes of punishment—retribution, incapacitation, deterrence, and rehabilitation. The first of these (retribution) provides voice to the victims of crime and recognizes society’s need for justice. The remaining three are utilitarian justifications of punishment, each of which is designed to prevent or reduce crime. Incarcerated individuals cannot perpetrate new crimes on society at large (incapacitation) and there is a presumption that punishment will deter those who have been punished and those contemplating similar crimes from future criminal acts (deterrence). Finally, as reflected in the last three decades’ focus on reentry programs, society benefits if prisoners can be rehabilitated, reentering society with the skills and desire to be contributing citizens. These goals are often at odds—lengthy prison sentences may be justified by the seriousness of the crime and may act to incapacitate dangerous individuals or to deter potential offenders, but they also may decrease the odds of rehabilitation and successful reentry into the community. Long prison sentences that cause individuals to lose touch with their families and their communities and that reduce their ability to function in society interfere with rehabilitative goals, particularly as the prison environment itself is toxic to individual agency and the skills needed to function in society.

There is an urgent need to identify a balanced strategy with respect to pretrial justice and sentencing, one that will reduce crime and victimization, ameliorate unwarranted disparities, and reclaim human capital currently lost to incarceration. This strategy should identify the costs incurred across the system and society and ensure that these costs are balanced by the benefits. Further, to ensure that the intent of policy changes is realized and to identify unanticipated consequences, rigorous research should assess the impacts and costs of changes, identifying what is promising.

Criminal justice reform is complicated. In the United States, justice responsibilities are spread across the legislative, executive, and judicial branches of local, state, and federal governments. As a result, the costs and benefits of various justice functions are seldom obvious to those making decisions. Further, the costs often accrue to one branch and level of government while the benefits accrue to another—for example, if the local government implements and pays for a program that diverts individuals with mental illness from jail to treatment, thus reducing future criminal activity, the local police and jail may incur fewer future justice system costs but the greatest savings may accrue to the state government that won't have to prosecute and incarcerate or supervise these individuals in the future. A judicial decision to detain an individual pretrial or to sentence an individual to years in prison (or on probation) imposes costs that are not borne by the judicial branch. As a result, there is often little incentive to change policies and practices. In addition, laws and decisions are often made to address retributive or incapacitation goals—perhaps with a nod to deterrence—without consideration that less punitive—and less costly—interventions might provide better, long-term societal outcomes. Finally, the justice system is often the system of last resort to address the needs of individuals with mental illness and substance use disorders, who often do not have the education and job skills to be successful in the 21st century. Rethinking how society can better address societal disadvantage may relieve the burdens on the justice system and result in better outcomes.

Our recommendations for achieving these goals include the following:

- **Short-Term Reforms**

- Cost-benefit Analyses of Pretrial and Sentencing Practices
- Set Fines and Fees on Ability to Pay
- Hold Prosecutors Accountable for Filing and Plea-Bargaining Decisions
- Reconsider Probation and Parole Practices that Contribute to Mass Incarceration

- **Medium-Term Reforms**

- Inter-Agency Approaches to Reducing Justice System Intervention
- Long-Term Reforms
- Establish a Presumption of Pretrial Release
- Revise Sentencing Statutes to Ensure Proportionality

Short-Term Reforms

Cost-Benefit Analyses of Pretrial and Sentencing Practices

Immediate changes could be made to reveal the costs across decision points within justice systems to those making decisions, with a goal of ensuring that the incurred costs are equal to the benefits. For pretrial decisions, this means stakeholders would have the information to understand that pretrial detention is not “free,” but instead comes with justice system costs and with collateral costs to the detained, their families, and their communities. If the average cost of a night in jail is \$50 or higher⁶ and given the collateral costs of pretrial detention, how many nights in jail awaiting trial would be justifiable for someone who is charged with a minor crime that would never result in a sentence of incarceration? Does society benefit if an individual spends many nights in jail because they are unable to post \$200 to cover a \$2000 bond while they are awaiting trial on minor charges or because they were unable to pay fees and fines from a previous case?

Justice systems should consider monetary and extra-monetary costs alongside the usual considerations of judicial officers as to whether someone will miss court or be arrested for a new crime as well as the costs of these very different events. Missing court is likely less costly than incorrectly detaining many people to avoid the potential for missed court appearances—particularly if inexpensive court reminder systems can more cheaply reduce failures to appear. Many jails reduced their pretrial detained populations significantly as the COVID-19 pandemic began and there is little evidence of effects on crime. This may provide a reset in some communities as they consider that what changed was not the risk posed by the detained individuals but the decision to release, as well as reconsideration of the initial decisions to arrest (rather than cite) and book into jail. To this end, jurisdictions need to move away from reliance on financial conditions for release. Few people are denied bail, but most people detained pretrial are there because they are unable to pay bail—a system that advantages the well-off who have the resources to cover bail at the expense of the poor. If bail cannot be eliminated for most charges, policymakers should revisit the use of private bail bond agencies so that individuals who are released only by securing the services of a bail agency do not end up forgoing the ten percent they pay to cover their bail—an expense they incur even if they appear and meet all pretrial conditions.

Setting Fines and Fees Based on Ability to Pay

Another reform that could be accomplished in the short-term is setting fines and fees based on ability to pay.⁷ Just as bail differentially disadvantages the poor over the more well-off individual, so do fixed fine and fee schedules that charge the indigent the same as the millionaire. Fixed fines and fees can trap those with limited means in a cycle of fines, fees, jail for failure to pay, more fines, etc. Fine schedules could be developed that set fines based on multiples of the individual’s daily wage (perhaps setting the minimum at the minimum wage for those intermittently employed—for example, \$58 representing eight hours of wage at \$7.25). Similarly, fees could be adjusted to reflect ability to pay. Neither of these

should preclude the ability of judges to waive fees and fines for those unlikely to ever be able to make the payments. In clear cases of indigence, courts should have the authority to waive all fines, fees, and surcharges.”⁸

Hold Prosecutors Accountable for Filing and Plea-Bargaining Decisions

Policy changes that constrained judicial discretion at sentencing have concomitantly led to increased prosecutorial discretion at charging and plea bargaining. Prosecutors decide whether to file charges that trigger mandatory minimum sentences, life without parole sentences, or habitual offender provisions; whether to dismiss these charges during plea bargaining; and whether to file (and later dismiss) collateral charges that lead to punitive sentence enhancements. An immediate effort needs to be made to hold prosecutors accountable by requiring that they file charges only for offenses for which there is proof beyond a reasonable doubt and a reasonable likelihood of conviction at trial, and by mandating that plea negotiations be in writing and on the record. Prosecutors also should consider establishing sentencing review units that would identify, evaluate, and rectify sentences deemed excessive and disproportionate.

Reconsider Probation and Parole Practices that Contribute to Mass Incarceration

Jurisdictions should reconsider probation and parole policies and practices that contribute to mass incarceration. In many jurisdictions, a large proportion of those admitted to jail or prison are individuals who violated the conditions of probation or parole. To rectify this, the conditions imposed on individuals placed on probation or parole should be reasonable (and not designed to set them up for failure), judges should use graduated sanctions in responding to probation/parole violations, and probation or parole should be revoked, and a jail or prison sentence imposed, only for repeated or egregious technical violations or for serious new crimes.

Medium-Term Reforms

Inter-Agency Approaches to Reducing Justice System Intervention

There should be investment in ongoing performance measurement—across the decision points—so that stakeholders can begin to understand the aggregate impacts of individual decisions. The law at its core is about the individual—the individual victim, the individual defendant, and the individual case. But the decisions that are made individually add up to crowded jails and prisons. These performance measurement systems are not necessarily complex—for example, dashboards to track variation in judicial sentencing or to monitor who is being held in jail provide insight into the overall consequences of the dispensation of justice.

Developing and monitoring these process metrics are simply good business practices. Just as a well-run restaurant knows exactly how many ingredients are needed and how long it takes to process each part of an order, a local justice system should know the details of who is in their jail and why. Prosecutors should know how their offices and individual prosecutors manage caseloads and outcomes. Judges should know how their sentencing stacks up with their peers.

Mid-term improvements require more sophisticated inter-agency approaches by law enforcement, prosecutors, and the courts.⁹ These agencies have wide discretion to institute diversion programs, problem-solving courts, and other alternatives to incarceration, and they should collaborate with social service agencies and with public health and educational professionals to address underlying issues, such as behavioral health, substance abuse, or homelessness, that lead to local justice system intervention. Such inter-agency approaches to developing programs reflect that the complex needs of individuals caught in the justice system are the responsibility of society more broadly and not of a justice system poorly equipped and financed to address lifetimes of cumulative disadvantage. These programs need to be adequately funded and designed to provide positive pathways forward. One misunderstanding that accompanied the many early reentry programs was the assumption that the programs and services needed to address the needs and deficits of returning prisoners already existed in communities and only needed to be harnessed through planning and case management. Evaluations of some of the largest federally funded reentry grant programs have repeatedly shown that few individuals releasing from prison access services to address their needs—as services are not available or competing demands such as finding and keeping employment or lack of transportation preclude engagement. Emerging support for the hypothesis that desisting from criminal behavior may have different roots than simply addressing deficits correlated with offending like substance use also suggests that these programs should divert to a positive lifestyle through demonstrations and support for alternative identities.¹⁰

Long-Term Reforms

Establish a Presumption of Pretrial Release

Mass incarceration is the result of several decades of policy decisions, and unwinding mass incarceration will require a long-term approach designed to slow the flow of individuals into jails and prisons and to reduce the lengths of sentences they are serving. Pretrial detention is an important component of mass incarceration; something to consider is restricting the crimes for which individuals are booked into jail and establishing a presumption for release for all but the most serious offenses and the individuals who pose the most serious flight risks.

Revise Sentencing Statutes to Ensure Proportionality

In the long run, the criminal codes that govern the imposition of punishment in municipal, state, and federal justice systems in the United States need to be reformed to ensure that punishment is commensurate with the seriousness of the crime. This will entail ratcheting downward the sentencing ranges associated with various combinations of offense seriousness and criminal history, enhancing eligibility for probation, reducing sentence enhancements for aggravating circumstances, and increasing sentence discounts for mitigating circumstances. In addition, mandatory minimum sentencing statutes and two- and three-strikes laws should be repealed or, if that proves politically unpalatable, dramatically scaled back to ensure that the punishment fits the crime. Jurisdictions also should revise truth-in-sentencing and life sentencing statutes by reducing the amount of time offenders must serve before being eligible for release and should eliminate life without the possibility of parole sentences for all but the most heinous crimes.

Recommendations for Future Research

Justice requires identifying and confirming more effective and cost-efficient ways of securing appropriate outcomes for society, for victims, and for those charged with and convicted of crimes. Reforms should be surrounded with rigorous research and ongoing performance measurement. Basic research is needed to better understand the relationships between policy alternatives and outcomes, and evaluation is needed to ensure that reforms lead to better outcomes, to identify unintended negative consequences, and to embark on a path of continuous improvement of the justice system.

Researchers studying pretrial systems need to assess the impact of current practices and potential reforms on the crime rate, sentencing punitiveness, mass incarceration, and unwarranted disparity in pretrial detention. First, there needs to be more research on cumulative disadvantage to understand how disparities at earlier stages of the process (i.e., pretrial detention) accumulate across the life course of a criminal case to produce harsher treatment of certain categories of offenders. Second, research on the pretrial process needs to address and answer the following questions:

- Do financial conditions increase court attendance and decrease crime rates compared to release on recognizance (ROR) or non-financial conditions?
- Does the amount of bail affect outcomes?
- How consequential are pretrial decisions in future decisions about conviction and sentencing? And on future criminal behavior?
- What are the factors associated with failure to appear? Is there a relationship between the seriousness of the charged offense or the severity of the prior record and failure to appear?

- How does defense counsel at first appearance affect detention decisions and case outcomes?
- What are the effects of pretrial conditions and supervision practices on failure to appear and new criminal activity?
- How dangerous are pretrial releasees? What is the nature of criminal activity during pretrial release?
- What considerations and conditions need to attend release decisions for special categories of offenders that may pose special risks to victims (e.g., domestic violence cases) or to justice (e.g., defendants that pose special concerns with respect to witness intimidation)?

Sentencing researchers should examine decisions to sentence offenders to life—and especially to life without the possibility of parole; these consequential decisions have not been subjected to the type of empirical scrutiny directed at other sentencing outcomes and thus little is known about the existence of or extent of unwarranted disparities in the application of these punitive punishments. Research is needed to assess the impact of different types of punishment on recidivism rates—that is, to determine whether more punitive sentences lead to higher or lower recidivism rates and whether this relationship varies depending upon the offense of conviction. We know that those sentenced in the United States are more likely to be incarcerated, and for longer terms, than similar individuals in peer countries. What is not known is whether these harsher punishments produce any positive “added value” for society at large.

Research is needed to produce better estimates of the “costs of punishment” across the justice system and society. These estimates should include the explicit costs to local, state, and federal jurisdictions, but also the implicit costs to individuals, their families, and their communities. These efforts should be accompanied by new work to update estimates of the cost of crimes—both the cost to the criminal justice system but also the costs to victims. These sets of studies will provide the foundations for balancing the costs of crime with the costs of punishment.

And, finally, evaluation research should study the process, outcomes, impacts, and costs and benefits of pretrial and sentencing reforms. This research should help to identify what works and what does not work, including identifying unexpected consequences of reform. This research should clearly identify the goals of the reform and then assess how well those goals are met. For example, if changes in detention decisionmaking are intended to reduce racial disparity, a rigorous evaluation should assess the extent to which decisionmaking changes, whether those changes are commensurate with what was envisioned, had an impact on disparity.

Conclusion

Pretrial release and sentencing policies and practices are a root cause of mass incarceration in the United States. Moreover, these inflexible and punitive policies have disparate effects on the poor and people of color, are not cost effective, and often result in punishment that is disproportionate to the seriousness of the crime. We have outlined a series of short- medium- and long-term reforms designed to slow the flow of people into our nation's jails and prisons, reduce the number of persons now incarcerated and the lengths of sentences they are serving, and ameliorate unwarranted disparities and unfairness. We also have articulated a series of issues for future research; answers to the questions we pose will be critical to understanding the cost, benefits, and effectiveness of pretrial and sentencing reforms.

RECOMMENDED READING

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Crime and Justice. 37: 97–132.

Gottschalk, Marie. 2015. *Caught: The Prison State and the Lockdown of American Politics*.
Princeton: Princeton University Press.

Mauer, Marc, and Ashley Nellis. 2018. *The Meaning of Life: The Case for Abolishing Life Sentences*.
New York: The New Press.

National Research Council. 2014. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press.

Pfaff, John F. 2017. *Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform*. New York: Basic Books.

Tonry, Michael. 2014. "Remodeling American -Sentencing: A Ten-Step Blueprint for Moving Past Mass Incarceration." *Criminology & Public Policy* 13: 503–533.

Chapter 2 Endnotes

- 1 At year-end 2019, there were 1.43 million persons incarcerated in state and federal prisons, and the U.S. incarceration rate was 539 per 100,000 individuals 18 and older. (Carson, E.A. October 2020. *Prisoners in 2019*. U.S. Department of Justice, Bureau of Justice Statistics. NCJ 255115). County and city jails held 738,400 prisoners, mid-year 2018 (Zeng, Z. March 2020. *Jail Inmates in 2018*. U.S. Department of Justice, Bureau of Justice Statistics. NCJ 253044).
- 2 Bureau of Justice Assistance, U.S. Department of Justice. (February 2012). *Report to Congress Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program*. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/voitis-final-report.pdf>.
- 3 In 1970, the incarceration rate in the U.S. was about 100 individuals per 100,000 population—consistent with what had been observed throughout the 20th Century. The U.S. prison population increased every year from 1975 to 2008, when 1.61 million individuals were in U.S. prisons (a rate of 506 per 100,000). Although the number of persons incarcerated has since declined, in 2019 there were still 1.43 million persons incarcerated in state and federal prisons (a rate of 419 per 100,000). Local jail populations saw similar increases—from 256,615 in 1985 (108 individuals per 100,000 population) to 738,400 in 2018 (226 per 100,000 population). The number of persons on probation also increased, from 923,000 in 1976 to 3.54 million in 2018, suggesting that the increase in incarceration was not driven by diverting individuals from probation to prison. See Minton, T. and Golinelli, D. (2014). *Jail inmates at midyear 2013-Statistical tables*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. NCJ 245350; Zeng, Z. (2020). *Jail inmates in 2018*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. NCJ 253044; and Kaeble, D. and Alper, M. (2020). *Probation and parole in the United States, 2017-2018*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. NCJ 252072.
- 4 Hyland, S. Justice Expenditure and Employment Extracts 2016, Preliminary. NCJ 254126. <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6728>.
- 5 Violent offending is rare compared to property and public order crimes (Morgan, R. and Truman, J. (2020). *Criminal Victimization*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. NCJ 255113. Judicial officers express particular concern about releasing those arrested for domestic violence fearing a repeat or escalation of the behavior that led to the arrest.
- 6 The \$50 estimate is on the lower end of estimates of average daily jail costs, with many daily jail rates ranging between \$150 and \$200. In New York City, the Independent Budget Office estimated jail costs at nearly \$460 per day, suggesting that it costs taxpayers \$168,000 per year to jail one person (New York City Independent Budget Office, 2013).
- 7 Schierenbeck, A. (2018). The constitutionality of income-based fines. *The University of Chicago Law Review* 85, 8, 1869–1925.
- 8 See p. 278 of Shannon, S., Huebner, B. M, Harris, A., Martin, K., Patillo, M., Pettit, B., et al. (2020). The Broad Scope and Variation of Monetary Sanctions: Evidence From Eight States. *UCLA Criminal Justice Law Review*, 4(1). Retrieved from <https://escholarship.org/uc/item/64t2w833> or Alexes’ work more generally).
- 9 State and local Criminal Justice Coordinating Committees (CJCCs) offer on potential model for inter-agency approaches. There are various configurations for CJCCs which are locally focused but offer lessons that can translate well to other jurisdictions. (See, for example, <https://nicic.gov/criminal-justice-coordinating-committees>).
- 10 For example, the Prison Cells to Ph.D. or Prison to Professional program <https://www.fromprisoncell-stopd.org/>.

CHAPTER

3

Changing Prisons to Help People Change

by Christy Visher and John Eason

Prison culture and environment are essential to public health and safety. While much of the policy debate and public attention of prisons focuses on private facilities, roughly 83 percent of the more than 1,600 U.S. facilities are owned and operated by states.¹ This suggests that states are an essential unit of analysis in understanding the far-reaching effects of imprisonment and the site of potential solutions. Policy change within institutions has to begin at the state level through the departments of corrections. For example, California has rebranded their state corrections division and renamed it the California Department of Corrections and Rehabilitation. For many, these are not only name changes but shifts in policy and practice. In this chapter, we rethink the treatment environment of the prison by highlighting strategies for developing cognitive behavioral communities in prison—immersive cognitive communities. This new approach promotes new ways of thinking and behaving for both incarcerated persons and correctional staff. Behavior change requires changing thinking patterns and cognitive behavioral therapy (CBT) is an evidence-based strategy that can be utilized in the prison setting. We focus on short-, medium-, and long-term recommendations to begin implementing this model and initiate reforms for the organizational structure of prisons.

Level Setting

The U.S. has seen a steady decline in the federal and state prison population over the last eleven years, with a 2019 population of about 1.4 million men and women incarcerated at year-end, hitting its lowest level since 1995.² With the COVID-19 pandemic in 2020, criminal justice reformers have urged a continued focus on reducing prison populations and many states are permitting early releases of nonviolent offenders and even closing prisons. Thus, we are likely to see a dramatic reduction in the prison population when the data are tabulated for 2020.

However, it is undeniable that the U.S. will continue to use incarceration as a sanction for criminal behavior at a much higher rate than in other Western countries, in part because of our higher rate of violent offenses. Consequently, a majority of people incarcerated in the U.S. are serving a prison sentence for a violent offense (58 percent). The most serious offense for the remainder is property offenses (16 percent), drug offenses (13 percent), or other offenses (13 percent; generally, weapons, driving offenses, and supervision violations).³ Moreover, the majority of people in U.S. prisons have been previously incarcerated. The prison population is largely drawn from the most disadvantaged part of the nation's population: mostly men under age 40, disproportionately minority, with inadequate education. Prisoners often carry additional deficits of drug and alcohol addictions, mental and physical illnesses, and lack of work experience.⁴

According to data compiled by the U.S. Bureau of Justice Statistics, the average sentence length in state courts for those sentenced to confinement in a state prison is about 4 years and the average time served is about 2.5 years. Those sentenced for a violent offense typically serve about 4.7 years with persons sentenced for murder or manslaughter serving an average of 15 years before their release.⁵ Thus, it is important to consider the conditions of prison life in understanding how individuals rejoin society at the conclusion of their sentence. Are they prepared to be valuable community members? What lessons have they learned during their confinement that may help them turn their life around? Will they be successful in avoiding a return to prison? What is the most successful path for helping returning citizens reintegrate into their communities?

Regrettably, prison life is often fraught with difficulty. Being sentenced to incarceration can be traumatic, leading to mental health disorders and difficulty rejoining society. Incarcerated individuals must adjust to the deprivation of liberty, separation from family and social supports, and a loss of personal control over all aspects of one's life. In prison, individuals face a loss of self-worth, loneliness, high levels of uncertainty and fear, and idleness for long periods of time. Imprisonment disrupts the routines of daily life and has been described as "disorienting" and a "shock to the system".⁶ Further, some researchers have described the existence of a "convict code" in prison that governs behavior and interactions with norms of prison life including mind your own business, no snitching, be tough, and don't get too close with correctional staff. While these strategies can assist incarcerated persons in surviving prison, these tools are less helpful in ensuring successful reintegration.

Thus, the entire prison experience can jeopardize the personal characteristics required to be effective partners, parents, and employees once they are released. Coupled with the lack of vocational training, education, and reentry programs, individuals face a variety of challenges to reintegrating into their communities. Successful reintegration will not only improve public safety but forces us to reconsider public safety as essential to public health.

Despite the toll of difficult conditions of prison, people who are incarcerated believe that they can be successful citizens. In surveys and interviews with men and women in prison, the majority express hope for their future. Most were employed before their incarceration and have family that will help them get back on their feet. Many have children that they were supporting and want to reconnect with. They realize that finding a job may be hard, but they believe they will be able to avoid the actions that got them into trouble, principally committing crimes and using illegal substances.⁷ Research also shows that most individuals with criminal records, especially those convicted of violent crimes, were often victims themselves. This complicates the “victim”-“offender” binary that dominates the popular discourse about crime. By moving beyond this binary, we propose cognitive behavioral therapy, among a host of therapeutic approaches, as part of a broader restorative approach.

Despite having histories of associating with other people who commit crimes and use illegal drugs, incarcerated individuals have pro-social family and friends in their lives. They also may have some personality characteristics that make it difficult to resist involvement in criminal behavior, including impulsivity, lack of self-control, anger/defiance, and weak problem-solving and coping skills. Psychologists have concluded that the primary individual characteristics influencing criminal behavior are thinking patterns that foster criminal activity, associating with other people who engage in criminal activity, personality patterns that support criminal activity, and a history of engaging in criminal activity.⁸ While the context constrains individual behavior and choices, the motivation for incarcerated individuals to change their behavior is rooted in their value of family and other positive relationships. However, most prison environments pose significant challenges for incarcerated individuals to develop motivation to make positive changes. Interpersonal relationships in prison are difficult as there is often a culture of mistrust and suspicion coupled with a profound absence of empathy. Despite these challenges, cognitive behavioral interventions can provide a successful path for reintegration.

Many psychologists believe that changing unwanted or negative behaviors requires changing thinking patterns since thoughts and feelings affect behaviors. Cognitive behavioral therapy (CBT) emerged as a psycho-social intervention that helps people learn how to identify and change destructive or disturbing thought patterns that have a negative influence on behavior and emotions. It focuses on challenging and changing unhelpful cognitive distortions and behaviors, improving emotional regulation, and developing personal coping strategies that target solving current problems.⁹ In most cases, CBT is a gradual process that helps a person take incremental steps towards a behavior change. CBT has been directed at a wide range of conditions including various addictions (smoking, alcohol, and drug use), eating disorders, phobias, and problems dealing with stress or anxiety. CBT programs help people

identify negative thoughts, practice skills for use in real-world situations, and learn problem-solving skills. For example, a person with a substance use disorder might start practicing new coping skills and rehearsing ways to avoid or deal with a high-risk situation that could trigger a relapse.

Thus, the widespread implementation of cognitive behavioral therapy as part of correctional programming could lead to fewer rearrests and lower likelihood of reincarceration after release.

Since criminal behavior is driven partly by certain thinking patterns that predispose individuals to commit crimes or engage in illegal activities, CBT helps people with criminal records change their attitudes and gives them tools to avoid risky situations. Cognitive behavioral therapy is a comprehensive and time-consuming treatment, typically, requiring intensive group sessions over many months with individualized homework assignments. Evaluations of CBT programs for justice-involved people found that cognitive restructuring treatment was significantly effective in reducing criminal behavior, with those receiving CBT showing recidivism reductions of 20 to 30 percent compared to control groups.¹⁰ Thus, the widespread implementation of cognitive behavioral therapy as part of correctional programming could lead to fewer rearrests and lower likelihood of reincarceration after release. CBT can also be used to mitigate prison culture and thus help reintegrate returning citizens back into their communities.

Even the most robust CBT program that meets three hours per week leaves 165 hours a week in which the participant is enmeshed in the typical prison environment. Such an arrangement is bound to dilute the therapy's impact. To counter these negative influences, the new idea is to connect CBT programming in prison with the old idea of therapeutic communities. Therapeutic communities—either in prison or the community—were established as a self-help substance use rehabilitation approach and instituted the idea that separating the target population from the general population would allow a pro-social community to develop and thereby discourage antisocial cognitions and behaviors. The therapeutic community model relies heavily on participant leadership and requires participants to intervene in arguments and guide treatment groups. Inside prisons, therapeutic communities are a separate housing unit that fosters a rehabilitative environment.

Cognitive Communities in prison would be an immersive experience in cognitive behavioral therapy involving cognitive restructuring, anti-criminal modeling, skill building, problem-solving, and emotion management. These communities would promote new ways of thinking and behaving among its participants around the clock, from breakfast in the morning through residents' daily routines, including formal CBT sessions, to the evening meal and post-dinner activities. Blending the best aspects of therapeutic communities with CBT principles would lead to Cognitive Communities with several key elements: a separate physical space, community participation in daily activities, reinforcement of pro-social behavior, use of teachable moments, and structured programs. This cultural shift in prison organization provides a foundation for restorative justice practices in prisons.

Accordingly, our recommendations include:

- **Short-Term Reforms**
 - Create Transforming Prisons Act
 - Accelerate Decarceration Begun During Pandemic
- **Medium-Term Reforms**
 - Encourage Rehabilitative Focus in State Prisons
 - Foster Greater Use of Community Sanctions
- **Long-Term Reforms**
 - Embrace Rehabilitative/Restorative Community Justice Models
 - Encourage Collaborations between Corrections Agencies and Researchers

Short-Term Reforms

Create Transforming Prisons Act

To begin transforming prisons to help prisons and people change, a new funding opportunity for state departments of correction is needed. We propose the *Transforming Prisons Act* (funded through the Department of Justice's Bureau of Justice Assistance) which would permit states to apply for funds to support innovative programs and practices that would improve prison conditions both for the people who live in prisons and work in prisons. This dual approach would begin to transform prisons into a more just and humane experience for both groups. These new funds could support broad implementation of Cognitive Communities by training the group facilitators and the correctional staff assigned to the specialized prison units. Funds could also be used to broaden other therapeutic programming to support individuals in improving pro-social behaviors through parenting classes, family engagement workshops, anger management, and artistic programming. One example is the California Transformative Arts which promotes self-awareness and improves mental health through artistic expression. Together, these programs could mark a rehabilitative turn in corrections.

Accelerate Decarceration Begun During Pandemic

While we work to change policies and practices to make prisons more humane, we also need to work towards decarceration. The COVID-19 crisis has enabled innovations in diverting and improving efforts to reintegrate returning citizens in the U.S. During the pandemic, many states took bold steps in implementing early release for older incarcerated persons especially those with health disorders. Research shows that returning citizens of advanced age and with poor health conditions are far less likely to commit crime after release. This set of circumstances makes continued diversion and reintegration of this population a much wiser investment than incarceration.

Medium-Term Reforms

Encourage Rehabilitative Focus in State Prisons

In direct response to calls to abolish prisons and defund the police, state prisons should move away from focusing on incapacitation to rehabilitation. To assist in this change, federal funds should be tied to embracing a rehabilitative mission to transform prisons. This transformation should be rooted in evidence-based therapeutic programming, documenting impacts on both incarcerated individuals and corrections staff. Prison good-time policies should be revisited so that incarcerated individuals receive substantial credit for participating in intensive programming such as Cognitive Communities. With a backdrop of an energized rehabilitative philosophy, states should be supported in their efforts to implement innovative models and programming to improve the reintegration of returning citizens and change the organizational structure of their prisons.

In direct response to calls to abolish prisons and defund the police, state prisons should move away from focusing on incapacitation to rehabilitation.

Foster Greater Use of Community Sanctions

As the country with the highest incarceration rate in the world, current U.S. incarceration policies and practices are costly for families, communities, and state budgets. Openly punitive incarceration policies make it exceedingly difficult for incarcerated individuals to successfully reintegrate into communities as residents, family members, and employees. A long-term policy goal in the U.S. must be to reduce our over-reliance on incarceration through shorter prison terms, increased reliance on community sanctions, and closing prisons. The COVID-19 pandemic revealed that decarceration poses minimal risk to community safety. Given this steady decline in the prison population and decline in prison building in the U.S. since 2000, we encourage other types of development in rural communities to loosen the grip of prisons in these areas. Alternative development for rural communities is important because the most disadvantaged rural communities are both senders of prisoners and receivers of prisons with roughly 70 percent of prison facilities located in rural communities.

Long-Term Reforms

Embrace Rehabilitative/Restorative Community Justice Models

Public safety and public health goals can be achieved through Community Justice Centers—these are sites that act as a diversion preference for individuals who may be in a personal crisis due to mental health conditions, substance use, or family trauma. Recent research demonstrates that using social or public health services to intervene in such situations can lead to better outcomes for communities than involving the criminal justice system. To be clear, many situations can be improved by crisis intervention expertise specializing in de-escalation rather than involving the justice system which may have competing objectives. Community Justice Centers are nongovernmental organizations that divert individuals in crisis away from law enforcement and the justice system. Such diversion also helps ease the social work burden on the justice system that it is often ill-equipped to handle.

Encourage Collaborations between Corrections Agencies and Researchers

Researchers and corrections agencies need to develop working relationships to permit the study of innovative organizational approaches. In the past, the National Institute of Justice created a *researcher-practitioner partnership program*, whereby local researchers worked with criminal justice practitioners (generally, law enforcement) to develop research projects that would benefit local criminal justice agencies and test innovative solutions to local problems. A similar program could be announced to help researchers assist corrections agencies and officials in identifying research projects that could address problems facing prisons and prison officials (e.g., safety, staff burnout, and prisoner grievance procedures).

Recommendations for Future Research

Some existing jail and prison correctional systems are implementing broad organization changes, including immersive faith-based correctional programs, jail-based 60- to 90-day reentry programs to prepare individuals for their transition to the community, Scandinavian and other European models to change prison culture, and an innovative Cognitive Community approach operating in several correctional facilities in Virginia. However, these efforts have not been rigorously evaluated. New models could be developed and tested widely, preferably through randomized controlled trials, and funded by the research arm of the Department of Justice, the National Institute of Justice (NIJ), or various private funders, including Arnold Ventures.

Correctional agencies in some states may be ready to implement the Cognitive Community model using a separate section of a prison or smaller facility not in use. Funding is needed to evaluate these pilot efforts, assess fidelity to the model standards, identify challenges faced in implementing the model, and

propose any modifications to improve the proposed Cognitive Community model. Full-scale rigorous tests of the Cognitive Community model are needed which would randomly assign eligible inmates to the Cognitive Community environment or to continue to carry out their sentence in a regular prison setting. Ideally, these studies would observe the implementation of the program, assess intermediate outcomes while participants are enrolled in the program, follow participants upon release and examine post-release experiences in the post-release CBT program, and then assess a set of reentry outcomes at several intervals for at least one year after release.

Conclusion

Prison culture and environment are essential to community public health and safety. Incarcerated individuals have difficulty successfully reintegrating into their communities after release because the environment in most U.S. prisons is not conducive to positive change. Normalizing prison environments with evidence-based programming, including cognitive behavioral therapy, education, and personal development, will help incarcerated individuals lead successful lives in the community as family members, employees, and community residents. States need to move towards less reliance on incarceration and more attention to community justice models.

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CHAPTER

4

Reconsidering Police in Schools

by Ryan King and Marc Schindler

The presence of law enforcement in schools has been a controversial issue for decades. High-profile school shootings combined with concerns about rising rates of violence among youth during the 1990s were a catalyst for federal funding for more police in schools, frequently referred to as “School Resource Officers” or “School Police Officers” (SPOs). The expansion of SPOs in schools goes back to 1999 in response to the school shooting at Columbine High School. The federal Community Oriented Policing Services in Schools Program (COPS) distributed \$68 million to jurisdictions in 2000, resulting in the hiring of 599 SPOs in 289 communities across the country.¹ The federal government has since decreased its resource allocation to SPO programs, but state and local governments have continued to support the hiring of more officers. This article will outline the negative consequences of these investments and provide short-, medium-, and long-term strategies to reimagine how this country protects our children and keeps our schools safe.

Level Setting

The expansion of SPOs occurred during an era of nationwide declines in juvenile crime and arrests.² The 1990s were characterized by an increase in violent crime, peaking at 413 instances of violent crime per 100,000 youth.³ This increasing crime rate culminated in the notorious “superpredator” label applied to a generation of young people, mostly youth of color, who were seen as increasingly unmoored from society, dispossessed of the American Dream, violent, predatory, and an ominous threat to public safety. This was the era during which zero-tolerance policies, including infractions in school for behavior that school administrators historically addressed, drove an increase in youth arrests and ushered in the “school-to-prison” pipeline. These zero-tolerance policies disproportionately impacted youth of color by placing them in the justice system. Black students comprised 36 percent of arrests in the 2015–2016 school year, despite accounting for only 15 percent of the student body.

A few short years later, the 21st century ushered in historic and sustained declines in juvenile crime that belied the warnings of superpredators and gave birth to a movement demanding the downsizing of the juvenile justice system. Reforms were catalyzed by an evolving body of research that highlighted the futility of youth incarceration and a call for more investment in community-based reforms that recognize children’s unique amenability to transform their lives with age-appropriate supports and services.⁴

This burgeoning movement, comprised of advocates, practitioners, justice-involved youth and their families, and funders, has galvanized tremendous change in the American juvenile justice system in the short quarter-century since elected officials warned about the need for prisons for irredeemable, violent youth. The unifying thread of these reforms is an effort to reduce the justice system’s role and improve non-justice interventions that preserve children’s connections to school, family, and pro-social peers. SPOs represent an increasingly incongruous strategy to the evolving justice policies and removing police from schools has been a long-term goal of many advocates. The tragic cases of police violence and the nationwide demands for reform during the summer of 2020 amplified the SPO issue as calls to “defund the police” included an early focus on removing police from schools.

Rather than preventing crime, SPOs have been linked with increased arrests for noncriminal, youthful behavior, fueling the school-to-prison pipeline.

Rates of youth violence were plummeting independent of law enforcement interventions. Additionally, SPOs have been linked with exacerbating racial disparities in justice involvement and youth being driven deeper into the juvenile and adult criminal justice systems. Rather than preventing crime, SPOs have been linked with *increased* arrests for noncriminal, youthful behavior, fueling the school-to-prison pipeline.⁵

Reimagining public safety in schools requires a rethinking of how resources are allocated moving forward. This includes what services and supports are available to youth, as well as staffing decisions and where jurisdictions prioritize their investments. The dominant law enforcement paradigm is losing support and communities are demanding reform. Some immediate steps can be taken to address many of the concerns outlined in this article, but meaningful and sustainable change will take time.

- **Short-Term Reforms**

- Put the “Resource” in SROs
- School Leadership must Strictly Limit their Roles and Responsibilities

- **Medium-Term Reforms**

- Eliminate Funding for Police in Schools
- Remove Police from Schools and Invest in Supports and Services Proven to Contribute to Safety

- **Long-Term Reforms**

- Break the School-to-Prison Pipeline

Short-Term Reforms

Put the “Resource” in School Resource Officers

While typically referred to as School Resource Officers, School Police Officers is a more accurate way to describe law enforcement officers detailed to schools based on historical practices. These individuals are trained police officers that function like an arm of local law enforcement rather than counselors or other support services that provide essential resources to staff and students. The “Resource” in School Resource Officers is often a misnomer.

The deployment of SPOs is typically established by a partnership agreement among local leaders, such as the Board of Education and the local law enforcement agency. SPOs are, by definition, career sworn officers who typically receive the same academy training for street patrol as other police officers but are stationed in a school building. Since they are affiliated with the local police department, there is no national database tracking SPOs in America. However, according to the National Association of School Resource Officers, estimates range between 14,000 and 20,000 SPOs in America’s schools at any given time.⁶ Estimates suggest that close to \$1 billion has been invested from state and local budgets since 1999 to continue funding SPOs in schools.⁷

Rates of juvenile arrest and school-based victimization have been steadily falling, similar to the declines in national crime rates in recent decades.⁸ As of 2017, the National Center for Education Statistics reports that victimization, theft, and violent crime are at a multi-decade low.⁹ In the 2015–2016 school year, there were 18 homicides at schools, accounting for 1.2 percent of all youth homicides.

Because serious crime occurs so rarely on school campuses, SPOs spend most of their time investigating minor incidents.¹⁰ This is core to their job, not merely a function of using whatever free time they have to investigate low-level offenses. Some SPOs pursue these minor investigations vigorously and often disproportionate to the underlying conduct. Time spent investigating minor offenses creates an environment where “schools subject students to strict scrutiny” for behavior that would not reach this threshold had it occurred outside of campus.¹¹ One study of schools in urban jurisdictions found “an estimated quarter of new charges filed against youth were school-related and one out of every six charges in school occurred in cases where no crime was committed, but an SPO was present.”¹²

This example of “mission creep” among SPOs is a common criticism of police in schools. While they are ostensibly in schools to enforce the criminal code, such as drug and weapons offenses, many have additional authority to intervene when noncriminal, school rules such as violating prohibitions on cell phones are broken.¹³ This represents a concerning widening of the role of the justice system.

It does not have to be this way. Interviews with SPOs revealed that those who developed relationships with students were less likely to resort to the justice system to respond to less serious behavior. At the same time, SPOs who behaved like more conventional police officers were more likely to rely on the justice system.¹⁴ Moreover, a case study where a county developed system changes and established a detailed set of rules for SPO conduct found that court referrals reduced by 67 percent, graduation rates increased to 80 percent, felony referral rates decreased by 31 percent, school detention decreased by 86 percent, court referrals of youth of color decreased by 43 percent, and there was a 73 percent reduction in serious weapons on campus.¹⁵ These findings underscore the need for staff training before any law enforcement enters a school building and strengthen the argument that schools need *resources*, not the *police*, to handle the vast majority of issues that occur on campus.

School Leadership must Strictly Limit their Roles and Responsibilities

Beyond getting involved in school disciplinary issues, the presence of SPOs is also linked to an increase in the use of arrests for both nonviolent and violent criminal behavior. In cases of serious violent crime, non-school based police will respond regardless of an SPO presence. However, schools with SPOs have a disproportionate rate of arrests for nonviolent behavior. A longitudinal survey of 480 schools for three years found that schools with SPOs reported more crime than those without SPOs. Schools with SPOs engaging in education and mentorship programs reported fewer crimes than schools with SPOs engaging only in law enforcement.¹⁶ Schools with SPOs recorded a 27 percent higher rate of property crimes and a 57 percent higher rate of serious/weapon/drug crimes than non-SPO schools, when controlling for pre-existing differences.¹⁷ A review of the research between schools with SPOs and without SPOs concluded “[t]he best designed and most representative study of SPO influence to date suggest that increases in the SPO workforce in schools is related to increases in reporting of crime, higher likelihood or harsher punishments for students, higher rates of weapon and drug crimes, and more reporting of non-serious violent crimes, compared to rates in schools without SPOs.”¹⁸

School leadership should enter a transparent memorandum of understanding between the SPOs, teachers, administrators, parents, and students. Such an agreement should provide necessary detail of the scope of SPOs and allow local stakeholders to weigh in on the extent of their work. Research shows that this upfront agreement can result in fewer court referrals, fewer violent offenses, and higher graduation rates.¹⁹ These agreements should regulate law enforcement's role in discipline and education while the locality works to supplement their safety strategy with non-justice actors.

Medium-Term Reforms

Eliminate Funding for Police in Schools

In addition to local school leadership actions, the federal government should terminate all funding for police in schools. On average, the federal COPS Office Hiring Program distributed \$125,000 per new hire for a three-year grant cycle. According to the funding regulation, it can include 75 percent of the entry-level salary and fringe benefits over the grant duration. The Economic Research Institute reports that the average SPO salary can cost a locality \$70,000. This is deeply unfortunate as many schools lack funding for essential supports such as counselors, nurses, and school psychologists. For example, a report by the American Civil Liberties Union found that nearly two million students attend a school with an SPO but no counselor.²⁰ That same report revealed that six million students attend a school with an SPO and no school psychologist. Finally, one in four students is in a school with an SPO but no counselor, nurse, school psychologist, or social worker. When people call for divestment from police and investment in other proven solutions that work, this is precisely the type of funding imbalance that fuels those demands. That investment in SPOs would be much better targeted toward qualified school personnel proven to be better suited to deal with problematic student behavior, rather than for a law enforcement officer assigned to a school who does not have the education or training to provide quality counseling or other social work type supports.²¹

Finally, one in four students is in a school with an SPO but no counselor, nurse, school psychologist, or social worker.

Remove Police from Schools and Invest in Supports and Services Proven to Contribute to Safety

State and local leaders should also remove police from schools and invest in much-needed supports and services, such as counselors, psychologists, training for teachers and administrators, and health care. Some communities have already begun to shift funds away from school-based law enforcement,

with the potential for substantial reinvestment opportunities. Policymakers should be informed by the research and recent experiences to redirect resources from the deployment of SPOs and instead invest in communities and the types of approaches that are more likely to make schools safe, such as well-trained counselors, social workers and teachers, and alternative and restorative justice practices to address problematic behavior.

Portland, Maine, which just recently voted to eliminate SPOs from the school district, said it would reinvest the \$150,000 budget savings into de-escalation training for school personnel. Moving on from SPOs can alter the foundation of school safety, as seen in Oakland. In 2019, the Black Organizing Project recommended eliminating the SPO program and its \$4 million annual budget. They envisioned a new *force* of unarmed peacekeepers that would be part of a school's special education or behavioral health department. The new team would undergo training in de-escalation, trauma-informed practices, and eliminating racial bias.²² In June 2020, the city council voted to officially eliminate the SPO program and invest in a model adopting some of the Project's core initiatives.²³

Allowing police officers to handle minor infractions in schools needlessly marks a student's first contact with the criminal justice system, potentially setting them up for a lifetime of collateral consequences.

Long-Term Reforms

Break the School-to-Prison Pipeline

Studies show that the presence of SPOs results in harsher punishments for minor offenses than school administrators would have otherwise administered. Students in these schools are more likely to be arrested and referred to the criminal justice system.²⁴ Another study asked both SPOs and school administrators for their views on discipline. The study reported that when the philosophies of SPOs and administrators were compared within the school, "83 percent of school administrators were more prevention-oriented than the SPOs stationed in their schools." There is a suggestion here that SPOs are more likely to seek disciplinary responses than prevention, resulting in overall harsher punishments and increased arrests.²⁵ These policing practices, which disproportionately expose children of color to the justice system at a young age, are correlated with a higher likelihood of incarceration as an adult. This is commonly referred to as the school-to-prison pipeline.

Allowing police officers to handle minor infractions in schools needlessly marks a student's first contact with the criminal justice system, potentially setting them up for a lifetime of collateral consequences. Nationwide, there were 44,370 school-based arrests during the 2013–2014 school year, which increased

to 51,780 arrests in the 2015–2016 school year.²⁶ Seven percent of all youth arrests occurred at schools, and many of these incidents could have effectively been handled by school personnel rather than SPOs. A *Washington Post* review found that many students were charged with crimes for minor offenses, such as throwing a paper airplane, kicking a trash can, wearing sagging pants, and throwing a carrot at a teacher.²⁷

These zero-tolerance policies are disproportionately impacting youth of color by placing them in the justice system. Black students comprised 36 percent of arrests in the 2015–2016 school year, despite accounting for only 15 percent of the student body. Meanwhile, 33 percent of those arrested were white, despite representing 50 percent of students. In Washington D.C., Black girls are nearly six times more likely to be suspended from school than white girls. This criminalization in schools drives arrest rates, with the per capita arrest rate for Black girls more than doubling from 2007 to 2015 and Black girls arrested at a rate over 30 times that of white youth. The study attributes part of this discrepancy to increased referrals to the juvenile justice system for typical adolescent behavior and minor misbehaviors that should be addressed within the school.²⁸

While many of these school arrests may not ultimately end up processed in court, they can lead to long-term consequences. A single arrest can impact a student's achievements and leads to a 25 percent increase in the likelihood of dropping out of school.²⁹ Lack of educational attainment can also have dire consequences in obtaining adequate employment.³⁰ All of these are components of the school-to-prison pipeline.

Some argue that this type of aggressive enforcement of disciplinary violations of school rules creates a “zero tolerance” environment that helps deter more serious crimes.³¹ This is the basic underlying principle of “stop and frisk” and “broken windows policing,” by which aggressive enforcement of minor “quality of life” issues contributes to a culture of widespread enforcement that prevents more serious crime. However, these practices, which come at the expense of fundamental civil liberties, have not been shown to make communities safer,³² target people of color,³³ and many jurisdictions have been forced to curtail zero tolerance enforcement efforts in response to citizen complaints and legal action.³⁴

Jurisdictions must take intentional steps to break the school-to-prison pipeline and reduce the number of youth entering the justice system at all. In addition to phasing out and ultimately removing school police officers, actions include:

- Implementing strategies to create alternatives to suspensions and expulsions
- Creating healthy school cultures based on age-appropriate, incentive-based behavioral approaches
- Integrating school and community-based restorative justice approaches instead of punitive disciplinary practices

- Having adequate numbers of well-trained, school-based counselors and mental health staff
- Investing in positive community-based supports for young people to be productively occupied during non-school hours
- Positively engaging families of students

Recommendations for Future Research

Reimagining how we can make schools safer learning environments for all children requires informed decisions about how to allocate resources most effectively. This is of particular concern when considering what services and supports available to youth contribute to safe schools. There is an urgent need for additional research to identify promising practices and assess non-punitive approaches that support students while keeping them safe. Pressing questions include measuring the impact on school safety of approaches that do not rely on school police officers, including strategies to reduce suspension and expulsions, school-based restorative justice and alternative dispute resolution programs, training of school staff to address school safety issues and create a safe educational climate, and the presence of well-trained and qualified counselors, mental health professionals, and non-law enforcement school-based safety staff.

Conclusion

The presence of law enforcement in American schools during an era of rapidly declining juvenile crime diverts precious resources from prevention and support services, increases the likelihood of deeper engagement in the justice system, and exacerbates existing racial disparities. While packaged as a form of community policing, the reality is that law enforcement in school results in more punitive responses versus promoting a safe learning environment by building trust and relationships. There will continue to be a need for police to respond to crime in schools, but that can be done in the same manner police respond to crime in communities. The presence of law enforcement officers in school as a preventative measure too often runs the risk of criminal responses to delinquent behavior that administrators should handle. Removing police from schools and investing the savings in counselors, psychologists, and proven support services has the potential to prevent crime without the attendant negative consequences of criminal justice system involvement.

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CHAPTER

5

Fostering Desistance

by Shawn Bushway and Christopher Uggen

Many voices are calling for a realignment of reentry policy with the now more mature theories of desistance, the study of why and how people stop committing crimes. In the *Annual Review of Criminology*, for example, Bianca Bersani and Elaine Eggleston Doherty propose “a paradigmatic shift in criminal justice practices.”¹ In a similar vein, the American Enterprise Institute recently published a series of articles around the theme of “Rethinking Reentry.”² The National Institute of Justice has similarly commissioned a series of white papers to bring “findings from the desistance from crime research to criminal justice decisionmakers” and provide a “cohesive foundation” for practitioners and scholars. The time has thus come to more carefully connect the research on desistance theories, particularly identity-based theories, to reentry policies.

Level Setting

Desistance studies exploded onto the scene in the 1990s, the fruit of a mix of new theoretical models that explicitly considered cessation from crime³, new self-reported longitudinal panel data, and new statistical models. One result was a new way of thinking about desistance as a process associated

with a decline in rates of offending as people age⁴ rather than a distinct phenomenon by which people exit a life of offending.⁵ As Bersani and Doherty point out, this new way of thinking about desistance has become the dominant one.

The idea, and the policy recommendations that follow from it, is supported by both maturational and process models of desistance. In their simplest forms, the maturational models of Sheldon and Eleanor Glueck and of David Matza suggest that young people gradually outgrow crime.⁶ Supported by the striking consistency of the age-crime curve, these models view desistance as a natural process of maturation, in which risk-taking and criminal involvement eventually decline to zero with age.⁷

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Process models instead emphasize adult social bonds such as stable relationships and employment. Rooted in social control theory, Travis Hirschi emphasized the formation of bonds to one's family of origin, school, and peers during adolescence, which provide controls or buffers against criminal behavior.⁸ Robert Sampson and John Laub extended this control-based model into adulthood, emphasizing bonds to a new family unit through marriage and to the workplace.⁹ Here desistance from crime occurs with the formation of ties to conventional society. The process of acquiring such bonds gradually bends the trajectory away from criminality and toward desistance and a final state of termination. Again, the important issue here is the change in path to a downward trajectory of offending rates. From this perspective, a declining rate of offending may be a better benchmark of criminal justice success than the total absence of offending. Bersani and Doherty center job opportunities as decisive in the desistance process, though the research record of employment programs is not encouraging.¹⁰ Other authors have linked this process model to related policies, such as record sealing.¹¹

Identity-based models also point to changes in the rate of offending. Identity theorists such as Peggy Giordano, Shadd Maruna, and Stephen Farrall offer social psychological theories of desistance that emphasize stark breaks from crime.¹² Building on a symbolic interactionist foundation¹³, Giordano and colleagues argue that desistance requires substantial cognitive transformations or upfront cognitive work, such as an openness to change, "hooks for change," and consistent support from social others.¹⁴ For Maruna, "making good" does not so much involve an intentional change in identity from bad to good as it does a reinterpretation of one's criminal past to align it with one's current pro-social identity. Maruna recognized that desisters begin to view themselves as a truly new or different person. Acquiring and maintaining this new identity often involves making choices to separate from peers or move to

new environments¹⁵ Contrary to the age-graded life-course theory of crime, such research suggests that obtaining a job or getting married would have little effect on criminality without a redefinition of the self and the emergence of a new pro-social identity.

Ray Paternoster and Shawn Bushway suggest that as people accumulate negative consequences from involvement in crime, they eventually reach a decision point, concluding that crime is not worth it and making a conscious choice to adopt a new identity and desist.¹⁶ This idea is similar to the Giordano model but puts less emphasis on the emotional component and instead stresses the agentic selection of a new identity. A unique aspect of the Paternoster and Bushway model is the emphasis on how accumulating negative experiences leads to a decision to move away from the “feared self” that one sees oneself becoming. This harkens back to Jeffrey Fagan’s early description of desistance as a three-stage process: (1) the accumulation of negative consequences, which provide motivation to quit; (2) a formal decision to “quit”; and, (3) maintaining new behaviors, often through new social networks that help support a state of desistance.¹⁷

Every identity theory of desistance involves some degree of agency on the part of the individual. In desisting, the individual makes choices among a set of socially structured alternatives and develops an identity more consistent with law-abiding behavior than law violation. The challenge for research and policy is to support the individual choices and psychological processes that foster desistance, while improving the structural conditions (such as labor and housing markets) that make it more likely.

The symbolic interactionist perspective is important here because it places agency and identity into a context derived from social interaction. And such interaction is more often organized around criminal justice involvement than offending. For example, people in the system get information about how they are perceived by others through their involvement with police, courts, and prisons. Repeated over time, this process increases the salience of criminal identities and strengthens role commitments and social relationships with others involved in crime.¹⁸ Alternatively, movement toward more positively valued adult roles—as parents, citizens, workers, and taxpayers—can foster and gradually stabilize noncriminal identities through the same role commitment process.¹⁹

Accordingly, our recommendations include:

- **Short-Term Reforms**
 - Move on from the Concept of Reentry
 - Flood the Zone with Programs Fostering Adult Development
- **Medium-Term Reforms**
 - Eliminate Most Collateral Consequences of Criminal Justice Involvement
- **Long-Term Reforms**
 - Increase Broader Societal Opportunities

Short-Term Reforms

Move on from the Concept of Reentry

The concept of reentry was revolutionary when it was introduced in the 1970s and popularized in the late 1990s²⁰, and it led to a serious reckoning with the mass incarceration. However, it may be less useful now as we seek new ways to foster desistance among those involved in the criminal justice system. This is because the problem facing those returning to civilian life from prison is fundamentally a problem of entry rather than reentry.

When we focus on the moment of reentry, we think the problem is the need for people to reacquire the jobs and housing that prison took away. Or more abstractly, the term reentry focuses attention on the process of alienation and reaffiliation that occurs as part of the process by which people go to prison and then return from prison. But, the simple fact is that most people who go to prison lacked stable jobs and stable housing before their incarceration. Prisoners are largely drawn from the ranks of the poorest and least advantaged segments of society. Not surprisingly, in view of their circumstances, they are typically “off time” relative to their peers in traversing the markers of adulthood, such as entry into marriage, full-time work, school completion, and independent residency.²¹ This is not to discount the personal relationships and successes they have attained in their communities, but to note that many have not yet “entered” what most people would consider a conventional pro-social adult life.²² As a result, the prison experience is not fundamentally one of disaffiliation from these adult roles. Prison clearly causes major disruptions in the lives of prisoners, their families, and communities. Nevertheless, a myopic focus on this disruption often ignores the reality of pre-prison life circumstances. In short, the challenge of reentry is more fundamentally a challenge of integration rather than reintegration.

Flood the Zone with Programs Fostering Adult Development

If the task of entry is the task of becoming a productive adult, people need programs that foster success in education, employment, family relationships, maintaining a residence, and participating as a citizen in the community. Providing such programming would provide more of the “hooks” needed to support desistance. Although many people in prison have achieved adult status in some aspects of their lives, there is a tight link between crime and punishment on the one hand, and adult status on the other. Their task is to acquire or reacquire a positive adult identity while encumbered with the history of a prison experience. Developmental psychologists refer to similar stages of identity formation as a moratorium.²³ People in this stage are in the midst of an identity crisis and are actively exploring alternative identities.

The logic model of change within any system—a prison system, a health care system, or a higher education system—requires some basic assumptions about where people are starting from, along with a vision of where we want them to end up. The Risk Needs Responsivity model that drives modern

criminal justice assumes that people have certain risk factors to be mitigated and certain needs to be fulfilled. However, this model tends not to think very hard about the identity of the person who is entering the system. To do so would shift our focus to the process of development, because participation in the criminal justice system hardly renders humans immune from the standard developmental patterns. Nor does justice system involvement imply a well-developed criminal identity.

Those who end up in prison or the justice system often left the educational system without a clear sense of who they were or their path to success in the adult world. Prison, in that sense, is a repository for the failures of the education system, and often the mental health system, the youth services system, and other institutions. Despite such failures, the institutional challenge remains the same—helping people in prison struggle through the “crisis” of moratorium. Like everyone else, they need grappling lines of different kinds of opportunities to support them through this crisis. Unfortunately, few aspects of the modern criminal justice system are consistent with this understanding. Instead, we seem to think that we can be directly prescriptive and “solve the problem” by providing the right program to the right person at the right time.

Researchers and policymakers need to work together to create environments that give people the space to exercise agency and actively explore opportunities that express different pro-social identities.

This basic conceit—that we can prescribe a path forward to help people exit a life of crime—is fundamentally flawed. It ignores the developmental reality that we have accepted in other contexts, particularly in higher education. People are not chess pieces that move in predetermined ways at the direction of society or a parole officer. They each have their own personal and social resources and a principle of motion that others cannot fully understand or predict. To paraphrase Feinstein and Peck on education systems, the tendency for one-size-fits-all prison systems to “restrict agency and diversity of opportunity” is a major failure of criminal justice that arises directly from the failure to understand desistance from a developmental context.²⁴ Fortunately, this framework is robust and well-studied in other contexts, particularly higher education. To find a way forward, we must take seriously the identity model of desistance in criminal justice institutions.²⁵ Researchers and policymakers need to work together to create environments that give people the space to exercise agency and actively explore opportunities that express different pro-social identities. To take but one example, the recent restoration of Pell grant eligibility for people in prison helps open the door to much-needed higher education opportunities.

Medium-Term Reforms

Eliminate most Collateral Consequences of Criminal Justice Involvement

It makes little sense for a system to encourage or support the adoption of an identity if the people who pass through it are marked as unredeemable. The expansion of broad-scope collateral consequences restricting access to education, employment, public assistance, parental rights, voting, volunteer service, and virtually every aspect of adult life assumes that people who engage in crime are irredeemably criminal. Simultaneously, the expansion of public access to criminal records ensures that “digital punishment” extends far beyond the criminal sentence.²⁶ The resulting “piling on” phenomenon runs counter to much of what we know about desistance. Many if not most Americans (particularly men) will be arrested at least once for a non-traffic offense during their lives.²⁷ Are we all inherently criminal? Moreover, we know that crime peaks in late adolescence and young adulthood and that most people stop offending. A society that ignores this reality blocks the formation of new identities. If the problem for an individual is to achieve a new positive identity, the problem for society is to recognize and support these new identities. Policies that continue to center a criminal act years after that act was committed directly contradict everything we know about desistance.

People need opportunities to engage in pro-social activities in order to adopt and maintain pro-social identities, but there is a second reason to eliminate collateral consequences. Current U.S. sentencing policies are based on a model of limited retributivism, with sentences designed to extract that punishment—nothing more, or less. Continuing to punish people beyond their sentences is fundamentally contrary to the structure of this system of punishment.

Long-Term Reforms

Increase Broader Societal Opportunities

Once we recast the problem of desistance as one of identity transformation, the problem itself is transformed. Every person has the same basic developmental task, whether they are in college, the labor market, or in prison—to transition from childhood into pro-social adult roles. Those who are involved in the criminal justice system are no different than anyone else in this basic sense. To the extent that too many people are involved in our criminal justice system, we can focus on changing the parts of society that detour them through the criminal justice system.

Yet individual change and motivation can be swamped by the reality of structural opportunities. Emerging from prison with a B.A. degree and work skills, for example, will provide far more opportunities in a full-employment economy than in the throes of a deep recession and pandemic. Widening

inequality, declining real wages, rising student debt, a deepening housing crisis, and the enduring effects of structural racism have all shaped the U.S. transition to adulthood. Yet all of these factors are also responsive (if not easily amenable) to social and economic policy. This requires a deeper commitment to expanding opportunity and eliminating structural barriers that prevent people from fully participating in civil society—before, during, and after prison. The good news here is that criminal involvement has a large social context. The dramatic decline in crime over the last 25 years is fundamentally a social phenomenon, not an individual one. And more can be done to create social environments that minimize crime and smooth the passage to adulthood.²⁸

Recommendations for Future Research

Our primary recommendation is to ground research in theories of desistance and change. Research oriented to identity change requires different measures and methods than research oriented to a Risk Needs and Responsivity approach. Recidivism research that is not based on a model of change runs the risk of misleading both researchers and practitioners about the efficacy of particular programs or approaches. The key issue is to focus on *change*, rather than levels of offending. Many studies of recidivism fail to capture change, and this failure means that the variables identified in our models are not measuring change but levels of offending prior to prison. We know what leads to crime—what we need to understand is what leads to exit from criminal activity and the criminal justice system.

Research in this space must also engage with the broader literature on entry for adults in other spheres, including relationships, higher education, and employment. The fundamental point, periodically rediscovered and quickly forgotten in our field, is that criminal behavior is human behavior. And that humans inside institutions are engaged in many of the same developmental tasks as humans outside of those institutions. For example, we found substantial literature grappling with how to help people achieve positive adult identities in the education literature but virtually none in the criminology literature. Yet both settings face similar challenges. A continued separation of the literature on reentry from the broader literature on transitions to adulthood is counterproductive. To the extent that there are differences, these can be identified and explored through research. To the extent that there are similarities, which is our contention, we can productively transfer ideas to build a criminal justice environment that supports positive adult identities and “good lives” in communities.²⁹ A simple step in this regard is to survey incarcerated people about a broader range of their values, attitudes, beliefs, and behaviors; this would de-center criminal activity but broadly parallel life course studies undertaken with non-incarcerated populations.

Finally, this new research cannot neglect the social context in which these transitions occur. We know that levels of crime vary radically over time within the same space, which suggests that community context plays a big role in driving criminal behavior and adult opportunities. So too, replicating programs that have been successful outside the U.S. context will help us understand how this institutional and social context may support or undermine the individual drivers of change. A focus on identity change and development that is not placed within the structural context that people experience in their everyday lives will ultimately fail. People do not change, or grow in a vacuum, and the opportunities and experiences that are available play a large role in identity achievement.

Conclusion

In 2020, a full 52 percent of young adults 18 to 29 years old lived with their parents, the highest percentage observed since at least the Great Depression.³⁰ Yet justice-involved populations are even farther “off-time” with regard to traversing the markers of adult status and independent living. Policies and programs that foster adult development are thus urgently needed both inside and outside of prisons. Providing meaningful support for this transition requires thinking beyond reentry and recidivism, reducing the collateral sanctions that choke off opportunities, and expanding opportunities to survive and to thrive in the wider society.

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CHAPTER

6

Training and Employment for Correctional Populations

by Grant Duwe and Makada Henry-Nickie

People involved in the correctional system in the U.S. tend to be undereducated and underemployed compared to the general population. Roughly two-fifths of the people entering prison do not have a high school degree or General Educational Development (GED) credential,¹ a rate which is three times higher than for adults in the U.S.² The disparity for postsecondary education is even greater, where the rate at which adults have an associate's degree or more is four times higher than what has been observed for prisoners.

Due to the stigmatizing mark of a criminal record along with the association between education levels and employment³, relatively high rates of unemployment have been observed for correctional populations. A number of studies have shown that the pre-prison employment rate (in the year before coming to prison) for people in prison is no higher than 35 percent.⁴ Post-release employment rates have been found to increase shortly after individuals were released from prison but later decline⁵, eventually returning to pre-prison employment levels within a few years.⁶

Level Setting

Education Programming

The emphasis on providing education programming for correctional populations is due not only to the lower observed rates of educational attainment but also to the well-documented relationship between low educational achievement and increased antisocial behaviors.⁷ Education and employment have each been identified as moderate risk factors for recidivism, which is the metric often used to determine the effectiveness of correctional programming. Risk factors for recidivism have been categorized as major (history of antisocial behavior, antisocial personality pattern, antisocial cognition, and antisocial associates), moderate (education/employment, family/marital, leisure/recreation, and substance abuse), and minor (low IQ and social class).⁸

Meta-analyses of prison education research have shown that it reduces recidivism, although the effect sizes have ranged from modest⁹ to relatively large.¹⁰ Prison education has been found to be more effective in lowering recidivism when participants complete the course or program,¹¹ and individuals with the largest education deficits tend to benefit more from this type of programming.¹² Although participating in secondary-degree programs has been found to reduce recidivism by 30 percent,¹³ better results have often been observed for postsecondary education programming.¹⁴

While the literature has evaluated the impact of education programming on recidivism, it has also examined the effects on other important outcomes such as prison misconduct, post-release employment and return on investment (ROI). Although prior research has yielded mixed results regarding the impact of educational programming on prison misconduct,¹⁵ the literature has consistently shown that prison education improves post-release employment outcomes.¹⁶ Even though meta-analyses of prison education have generally reported modest reductions for recidivism, the ROI estimates have been relatively large. Indeed, research has reported a ROI of \$19.62 for prison-based correctional education (basic and postsecondary) and \$13.21 for vocational education.¹⁷

Employment Programming

Obtaining employment is, as noted earlier, challenging for those involved in the correctional system due to the relatively low levels of educational attainment and the presence of a felony conviction. Having a job, however, has been shown to reduce recidivism,¹⁸ and individuals are less likely to commit crimes when they have stable, full-time employment.¹⁹ To address this moderate criminogenic need, correctional systems frequently provide individuals with employment programming, including prison labor opportunities as well as participation in programs such as work release.

The evidence suggests the effect of prison labor on recidivism is, at best, minimal. Although some research has reported that prison employment reduced recidivism,²⁰ other studies have not found significant effects overall.²¹ Conversely, the impact of prison labor on prison misconduct and post-release employment has generally been favorable.²² The most recent evaluation found that people who spent a greater proportion of their overall confinement time working a job in prison had less misconduct, lower recidivism, and increased post-release employment.²³ The results from a cost-benefit analysis of correctional programming reported a ROI of \$4.74 for the prison industry.²⁴

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Within the U.S., correctional agencies have long relied on the use of prison work release programs, which allow participants who are near the end of their prison terms to work in the community and return to a correctional or community residential facility during nonworking hours. Although most of the existing evaluations are outdated, the most recent research indicates work release produces a significant, albeit modest, reduction in recidivism.²⁵ Prior research has consistently found positive results for employment, with the most recent evaluation showing that work release significantly increased the odds that participants found a job, the total hours they worked, and the total wages they earned.²⁶ Given these findings, prior research has reported a ROI of \$11.19 for work release and a benefit of nearly \$6,900 per participant.²⁷ In addition, an evaluation of a work release program in Minnesota reported a cost avoidance of nearly \$700 per participant for a total of \$350,000 annually.²⁸

Policy Implications

Access to legal employment is key to reducing recidivism and the post-prison social disabilities that returning citizens endure. Extensive research has documented the interaction between employment and increased educational attainment as pivotal to reducing an individual's propensity to recidivate.²⁹ Roughly 7.9 million people return to local communities from state prisons and local jails across the country each year.³⁰ The status quo of fractious federal and state policies combined with insubstantial funding are incompatible with the enormity of reentry challenges.

Reducing employment barriers for returning citizens requires practitioners and policymakers to enact policies at a scale commensurate with the decarceration rate. State and federal policies must be aligned and braided into an overarching policy framework to synchronously address the interlocking issues citizens encounter on reentry. Increasing access to gainful employment for returning citizens relies on seamlessly articulating multi-jurisdictional policies into a coordinated strategy across three (3) critical pillars: workforce training, educational upgrading, and regulatory employment barriers.

Accordingly, our recommendations include:

- **Short-Term Reform**
 - Deepen Pell Grant Investments for Incarcerated Individuals
- **Medium-Term Reform**
 - Expand Pre-Release Workforce Development Services
- **Long-Term Reform**
 - Reform Employment-based Criminal Background Checks

Short-Term Reforms

Deepen Pell Grant Investments for Incarcerated Individuals

Without a doubt, education and employment are linked. The approved COVID-19 Economic Relief legislation reinstated the Pell Grant eligibility for incarcerated students. This legislation reversed approximately three decades of government-sanctioned educational segregation. Included in this legislation, the government funded Pell Grant's minimum eligibility requires applicants to have earned either a high school diploma or GED. Data shows that nearly two in three (64 percent) incarcerated adults have a high school credential, clearing the way for them to take advantage of the Pell Grant repeal.³¹ However, 30 percent of incarcerated adults have not earned a high school credential. As a result, these individuals are considered ineligible for the Pell Grant unless enrolled in a career pathway program. We believe the COVID-19 Economic Relief legislation's revival of the Pell Grant eligibility for incarcerated students will increase their access to postsecondary training. Yet it is too early to determine all of the legislation's effect on inmates' educational achievements.

There are important questions about the functional literacy levels of the incarcerated adult population. Incarcerated adults with a high school diploma or less have significantly lower numeracy literacy levels than the U.S. adult population. Attaining a high school credential does not necessarily correlate to functional literacy. According to Rampey and others, 43 percent of incarcerated adults with a high school credential have low literacy and numeracy rates. Literacy rates among incarcerated adults without a high school diploma were even more alarming; 79 percent of these adults had low numeracy and literacy rates.³² The implication of these abysmal literacy statistics is grave, especially when translated into functional competencies. Adults scoring below basic on OECD's aptitude test can perform basic arithmetic and read relatively short primary printed texts. However, individuals with low aptitude scores are likely to encounter difficulties with higher-order cognitive reasoning tasks, including drawing low-level inferences or interpreting basic statistics (OECD, 2013).³³ These disquieting figures point to systematic functional illiteracy challenges within the incarcerated population.

It is urgent that policymakers address systemic remedial educational needs along with increasing access to postsecondary education for incarcerated students and structural education gaps. The impact of functional literacy challenges can limit the effectiveness of policies aimed at expanding

access to postsecondary educational programming. Evidence shows that participation in correctional educational programming can increase the probability of finding post-release employment.³⁴ Furthermore, President Biden should commission a task force to study fundamental educational competencies, functional literacy, numeracy, and digital literacy levels of the incarcerated adult population. This task force should also have a national advisory board of experts to study structural deficiencies and propose recommendations for digitizing education programs, providing qualified educators, and increasing access to educational resources.

It is important to note that only upgrading educational quality will not increase access to employment for returning citizens. Generally, in the U.S. labor market, individuals with a high school diploma experience substantially higher unemployment rates than their peers with a college degree. In 2020, the unemployment rate of individuals with a high school diploma was 63.6 percent higher than that of college-educated persons with a bachelor's degree.³⁵ Furthermore, the tremendous earnings gap between workers based on educational attainment mirrors employment disparities. Workers with a high school credential earned 40 percent lower median wages than those with a bachelor's degree. Similarly, individuals with less than a high school diploma earned nearly 53 percent less than their college-educated peers.³⁶ Altogether, these labor market statistics show the benefits of a college education. Additional supporting evidence from a RAND Corporation meta-study suggested that inmate access to occupational training coupled with academic training were associated with a 43 percent reduction in probability to recidivate.

Increasing access to quality academic education and occupational skills-based training that builds a skill base to meet the needs of the current labor market will significantly increase access to sustainable post-prison employment opportunities.

Increasing access to quality academic education and occupational skills-based training that builds a skill base to meet the needs of the current labor market will significantly increase access to sustainable post-prison employment opportunities. Based on promising evaluation results, the Biden Administration should authorize the Department of Labor's (DOL) expansion of its Pell Grant Short-Term Training experiments to include incarcerated adults. The DOL Pell experimental studies examined the impact of expanding Pell Grants' use for occupational training and short-term training programs for underemployed individuals and unemployed individuals. Recently released findings were positive: post-bachelor participants were 36.7 percent more likely than nonparticipants to complete occupational training in high-demand fields, including health and information technology.

Not only were similar results obtained in short-term occupational training lasting less than 15 weeks, but also students were 15 percentage points more likely to enroll in additional educational programs and eight percentage points more likely to complete training. In short-term occupational training programs,

students selected trade skill pathways in transportation and materials moving, health professions, and construction. Strikingly, the program's positive effects—enrollment and completion—were most pronounced for dislocated workers and those facing employment challenges.³⁷

The debate surrounding the long-term employment and wage gains associated with short-term occupational training remains unsettled. Without credible data-driven evidence, questions about benefits for incarcerated adults will be even more contentious. Interactions between employment and adjacent barriers such as housing insecurity, lack of adequate transportation, and community supervision restrictions increase recidivism risk. The federal government should evaluate the efficacy of expanding the Pell Grant experiments on sustainable employment and wage quality. Additionally, the task force should examine the effects of applying the Obama-era Gainful Employment rule to experimental Pell programs to evaluate whether the accountability framework increases access to relevant, high-quality skill development training.

Medium-Term Reforms

Expand Pre-Release Workforce Development Services

Policymakers should strive to align the timing of holistic services with expanded access to educational training to improve reentry success rates. It is essential to match policy that supports the intersecting barriers returning citizens face on reentry. The federal government should center the public workforce development system in policy responses aimed at improving quality employment outcomes for returning citizens. DOL's now-dormant pilot, Linking to Employment Activities Pre-Release (LEAP), is an excellent policy candidate. Through LEAP, DOL established 20 jail-based job training centers to link incarcerated adults to the workforce system during incarceration to strengthen their connection to the labor market and enhance their employment readiness.

LEAP provided robust evidence on the types of workforce development services that improve post-carcer employment outcomes using a continuity-of-care model centered on linking pre-release services to post-release employment supports. Upon conclusion, 85 percent of LEAP's scattered-site participants had increased their workforce readiness level, as measured by observed outcomes or improvements in job readiness pre- and post-testing.³⁸

Although LEAP sites failed to meet planned-retention and tracked-employment targets, program evaluators reasoned that data collection deficiencies may have contributed to systematic underreporting and resulted in deflated impact metrics. Despite data collection challenges, LEAP succeeded in reducing recidivism for program participants; evaluators reported an overall recidivism rate of 20 percent after one year of participants' release. Roughly 75 percent of LEAP sites reported recidivism rates lower than the programmatic target of 22 percent.³⁹

The favorable results for LEAP are consistent with other research that has evaluated the effectiveness of employment programming that is designed to provide a continuum of services that begins within the correctional facility and continues in the community following release. In an evaluation of Minnesota's EMPLOY program, which provided participants with employment assistance 90 days prior to release from prison and continued for up to one year after release, the results showed that it significantly reduced rearrest by 35 percent. Program participants were also more likely to find and maintain a job after their release from prison than their comparison group counterparts, resulting in more total wages earned.⁴⁰ Due to these results, a cost-benefit analyses revealed that EMPLOY generated a ROI of \$6.45 for a total of \$2.8 million in costs avoided annually.⁴¹

Despite LEAP's promising results, structural barriers such as criminal background checks, conflicts with supervision requirements, and housing insecurity, among other issues, dampened the pilot's employment and educational gains. Nonetheless, LEAP and EMPLOY provide a propitious proof of concept on siting pre-release workforce development services within the prison system and leveraging strategic partnerships with external community-based organizations and correctional system decisionmakers to bolster the framework's design. The federal government should reauthorize the LEAP pilot, build upon lessons learned, and fund the next iteration at a scale that increases the program's impact.

LEAP's reauthorization in conjunction with the First Step Act (reauthorization of the Second Chance Act) would weave crucial funding streams into a comprehensive policy response. In the final analysis, Second Chance Act (SCA) Adult Demonstration pilots showed that multijurisdictional funding supports and a follow-through-care approach to reentry increased employment outcomes and wages for program participants. Individuals included in the SCA treatment group were more likely to be employed and earned an average \$1,800 more than nonparticipants; this wage differential represents a 70 percent improvement in employment earnings. Although the SCA program did not reduce the probability of recidivism, participants were more likely to report receiving cognitive behavioral therapy, housing support, and job search assistance.⁴²

Long-Term Reforms

Reform Employment-based Criminal Background Checks

Successfully reintegrating formerly incarcerated individuals depends on policymakers' abilities to close structural remedial education gaps and increase access to high-quality occupational skills-based training. Inattention to the large number of fundamental employment barriers challenges the effectiveness of any policy intervention. Criminal background checks present substantial hurdles to gainful employment even for college-educated, justice-involved persons. Criminal background checks function like a double-edged sword. Research has found that employers who conducted criminal

background checks were more likely to hire Black men.⁴³ However, in the absence of background checks, employers overestimated the relationship between visible minority markers and criminality, leading them to statistically discriminate against Black men and those with weak employment records; these assumption patterns resulted in reduced employment opportunities.⁴⁴ The intersection of criminal records and stigmatized perceptions of criminality amplifies the social disadvantage for justice-involved persons. In essence, having a criminal record poses considerable obstacles to returning citizens, especially those without a college degree.

After two decades of steady momentum across states and local municipalities, efforts to promote fair chance hiring culminated in the passage of the Fair Chance to Compete for Jobs Act of 2019.⁴⁵ Research on the effects of ban-the-box policies is still emerging. However, several formative studies have shown counterproductive or de minimis effects of fair chance hiring policies on employment.⁴⁶ Similarly, another study found that ban-the-box policies reduced the employment rate of individuals with criminal records by 2.4 percentage points.⁴⁷ These studies, among others, suggest that well-intentioned fair chance hiring policies may lead to counterproductive effects that disadvantage intended beneficiaries, further muddying returning citizens' employment landscape.

Employers' growing and widespread use of algorithmic criminal background checks raise serious concerns about background check data, particularly as robust data protection regulations continue to lag behind market innovations. The algorithmic background-checking cottage industry is fraught with harmful data mining practices that frustrate individuals' efforts to find gainful employment due to collateral data errors.⁴⁸ Policymakers should target other consequential screening barriers, such as the accuracy of criminal records that have been shown to adversely affect employment prospects.

Recommendations for Future Research

We suggest three promising avenues for future research to extend what we know about education and employment programming effectiveness for correctional populations. First, policymakers should expand research efforts to deepen our understanding of pre-release training programs. These efforts should rely on rigorous evaluation methods, including randomized controlled trials.

Second, while interventions that provide a continuum of service delivery from the institution to the community have generally yielded the best employment and recidivism outcomes, future research should examine the extent to which a continuum of care improves outcomes compared to services delivered only in prison or in the community. Finally, future research should focus on the extent to which functional literacy and digital illiteracy rates stymie incarcerated persons' educational attainment pursuits and weaken their connection to gainful employment. Moreover, researchers should focus on identifying intersectional solutions, including educational models, with the potential to reduce literacy barriers.

Conclusion

The employability of returning citizens is a moral imperative and should be a central focal point of the criminal justice reform agenda. Increased educational attainment and connections to employment moderate recidivism risk factors; however, unimodal interventions seldomly yield sustainable outcomes. Addressing employability alone ignores attendant social vulnerabilities that returning citizens experience; formerly incarcerated women, in particular, are susceptible to adverse outcomes. The understandable effect of collateral consequences of incarceration should inform the scope of reentry policies. Furthermore, rigorous evidence-based research and robust evaluation strategies must inform comprehensive reintegration reforms.

Beyond employment, incarcerated persons contend with a morass of social and legal barriers that compound the social disadvantage of a felony label and increase recidivism risk.⁴⁹ Adopting an interdisciplinary approach to reentry policy formulation is critical to resolving crucial disconnects, reduce social exclusion, and improve post-prison employment outcomes for returning citizens.

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CHAPTER

7

Prisoner Reentry

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Over 640,000 people return to our communities from prison each year. However, due to the lack of institutional support, statutorily imposed legal barriers, stigmas, and low wages, most prison sentences are for life—especially for residents of Black and Brown communities. More than half of the formerly incarcerated are unable to find stable employment within their first year of return and three-fourths of them are rearrested within three years of release.^{1 2} Research has demonstrated that health, housing, skill development, mentorship, social networks, and the collaborative efforts of public and private organizations collectively improve the reentry experience.³

More than half of the formerly incarcerated are unable to find stable employment within their first year of return and three-fourths of them are rearrested within three years of release.

Level Setting

Prisoner reentry should be understood as a critical piece of any racial justice agenda. Imprisonment rates are five to eight times higher for Black Americans than any other racial/ethnic group, and historically disenfranchised neighborhoods receive the bulk of returning citizens.^{4 5 6} For example, a recent study of reentry in Boston found that 40 percent of a reentry program's participants returned to just two neighborhoods.⁷ Ultimately, reentry experiences are shaped by class and racialized neighborhood segregation.

Although activists and communities have advocated for a response to mass incarceration for decades, it took a global pandemic to challenge surveillance and social control through policing and incarceration. The COVID-19 pandemic has forced jails and prisons to release thousands in an attempt to limit the devastating impact of viral spread in incarceration's close living quarters.⁸ The need to reimagine reentry during this pandemic provides an opportunity to remove barriers to successful reentry while simultaneously addressing the broader racial disparities in our justice system.

We must move away from a policy framework that focuses on punishment as a tool for controlling risk in favor of a focus on human rights, harm reduction, and the social, political, and economic reintegration of those who have been incarcerated

Eliminating racial disparities in our criminal justice system and improving reentry outcomes requires a wholesale rethinking of our orientation toward criminal justice, rather than piecemeal reforms or isolated new programs. We must move away from a policy framework that focuses on punishment as a tool for controlling risk in favor of a focus on human rights, harm reduction, and the social, political, and economic reintegration of those who have been incarcerated. A well-developed, evidence-supported action plan for enhancing transitions from prison to society will focus on increasing independence, reducing racial and ethnic disparities, and achieving public safety. Our policy recommendations build upon the recent collective efforts that led to the First Step Act and the expansion of Federal Pell Grants eligibility for incarcerated people. We acknowledge that broader investments to level the playing field and foster more equitable access to quality education and economic opportunities are important to prevent incarceration in the first place and make it easier for those who are incarcerated to transition to employment after release. However, these wider policies to increase racial and economic equity are not the main focus of this brief.

Accordingly, our recommendations include:

- **Short-Term**

- Prioritize vaccination in correctional facilities
- Ensure safe access to safety net programs for justice system impacted populations and use of COVID relief funding to address their barriers
- Expand access to the internet and digital skills needed during the pandemic
- Improve data sharing and service coordination

- **Medium-Term**

- End restrictions on occupational licensing, safety net programs, and hiring for those with criminal records
- Expand and enforce anti-discrimination rules and regulations
- Enhance oversight and regulation of the criminal background check industry
- Increase funding for subsidized employment programs and American Job Centers
- Spur the creation of coordinated pre- to post-release education and work-based learning programs
- Update outdated security rules and technology policies in correctional facilities that limit the development of new rehabilitation programming
- Expand internet access in correctional facilities
- Modernize state and local data systems to improve service coordination and research

- **Long-Term**

- Reorient parole and other forms of community supervision toward social and economic reintegration
- Increase access to services related to housing, employment, health/addiction, and social reintegration
- Improve rehabilitation services in correctional facilities by adopting a continuity of care model
- Expand funding for prison rehabilitation programming to meet demand

Recommendations for Change

Only 12 percent of prisoners are under federal jurisdiction. The remaining 88 percent are state prisoners.⁹ This means that the conditions of imprisonment and support available for reentry vary greatly for different people and places, with important implications for equity. This also means that states are best positioned to make changes to many aspects of reentry policy. Yet the federal government can do more to improve reentry outcomes. First, federal officials can shape the public conversation by acknowledging the historical legacy of mass incarceration in the United States, emphasizing the humanity of people who are incarcerated, human rights, and giving people with conviction records a fair chance to succeed. Second, changes in federal reentry policies can serve as a model for states. Third, the federal government can provide funding for demonstration projects and more long-term

funding streams to scale up proven reentry programs. Fourth, the federal government can change and enforce administrative rules and guidance for existing rules and laws, and develop new legislation to address gaps in authority, inequities in access, and a lack of consistent institutional infrastructure for supporting reentry. We note also that changes in policies with significant potential to improve reentry outcomes extend far beyond federal agencies traditionally involved in the administration of justice. Reentry barriers include housing, education, employment, health, and political rights.¹⁰

We divide our discussion into short, medium and long-term recommendations. The short-term recommendations pertain to existing funding streams and discretionary authority regarding administrative rules and regulations, funding decisions, and rule enforcement. The medium-term recommendations involve the creation of new legislation, infrastructure, and funding appropriations. Our long-term recommendations include changes in laws to achieve fundamental reorientations of existing policy frameworks and approaches that require substantial new funding appropriations.

Short-Term Reforms

The global pandemic has profoundly impacted people in prisons and jails and their surrounding communities.¹¹ Although jail and prison populations have decreased since the start of the pandemic, in many areas incarceration levels are beginning to return to pre-pandemic levels despite the unprecedented surge in cases and deaths.¹²

Reentry, in this context, is more challenging than it was before the pandemic in several respects:

- As facilities restrict visitors, access to reentry services is curtailed, and many states are not vaccinating, testing, or quarantining people upon release, putting people in transitional housing and the wider community at risk of COVID-19 exposure.¹³
- Basic social support systems such as food pantries, homeless services, and mental health services continue to be strained with increased demand, and many service providers have limited in-person services to protect public health.^{14 15 16} This affects service access and quality for people with conviction records, especially in Black, Latino or Hispanic, and Native American communities that have been disproportionately impacted by over-incarceration and COVID-19.
- Less availability of jobs in the COVID-19 recession makes it harder for people with barriers to employment, including people with conviction records, to compete for jobs and secure employment.¹⁷
- Many education and service providers have shifted service delivery online to prevent community spread, but people with conviction records often face barriers to accessing online resources, including the lack of a stable internet connection or limited familiarity with technology.¹⁸

In the short-term, policymakers and government officials at all levels should take steps to prioritize vaccination in justice and detention facilities and renew the focus on minimizing the incarcerated population. Federal, state, and local policymakers should also consider more testing, quarantining, and targeted relief for people with conviction records who face barriers accessing federal stimulus payments, employment, unemployment insurance, safety net programs, and second chance relief.¹⁹ For example, state governors and/or agency secretaries could issue emergency guidance requiring that jails and prisons issue state IDs to qualified individuals and enroll eligible individuals in health insurance, food assistance, and career services prior to release.

In addition, facility staff and reentry providers should provide updated and consistent information about where to access support in the COVID-19 era, provide more training on digital skills, and increase coordination through direct handoffs to organizations providing support such as American Job Centers (AJCs), public health organizations, and reentry organizations. To the extent feasible, administration officials and state leaders should also reorient funding priorities to improve data sharing for service coordination, expand resources for secure broadband and technology access in prisons and jails, provide resources to expand Pell-funded education opportunities inside incarceration facilities, and make both pre-release and post-release protocols more flexible to accommodate the urgency of the crisis and elevated risk to human life.²⁰

Medium-Term Reforms

The stigma of a criminal record is one of the most important and well-documented barriers to successful reentry and reintegration,²¹ impacting not just employment but also housing,²² education,²³ and access to the safety net.²⁴ Stigma is both formal—prohibitions encoded in laws or regulations—and informal—impacting how formerly incarcerated individuals are evaluated by employers, landlords, and others.

There is substantial evidence that relief from criminal record stigma leads to improved outcomes, especially with regard to employment.²⁵ The stigma of a criminal record represents a form of punishment beyond the formal sentence received from a court, one that has long-term impacts.

Consideration of a criminal record must be job-specific and justified, with a presumption that the criminal record is irrelevant. Current Equal Employment Opportunity Commission (EEOC) guidelines recommend only considering the criminal record after a hiring decision has been made and only when the record itself is closely related to the job.²⁶ Research suggests that many employers are unaware of these guidelines, necessitating greater education and enforcement.²⁷ Ban-the-box laws, perhaps the most common policy to counter criminal record stigma in employment, have been shown to increase racial discrimination.²⁸

To reduce the impact of criminal record stigma, we recommend the following:

- End restrictions on living in publicly subsidized housing for those with criminal records
- Expand the authority and budget of the Equal Employment Opportunity Commission to combat discrimination based on criminal record in employment and housing.
- Reform negligent-hiring laws that make employers hesitant to hire those with criminal records.²⁹
- Blanket bans on applicants with criminal records should be prohibited. Ensure that local and state governments are in compliance.
- Appoint a blue ribbon commission to study and recommend reducing occupational licensing prohibitions, which are widespread and poorly justified.³⁰
- Prohibit postsecondary institutions that receive federal funds from discriminating based on criminal records in admissions and hiring.
- Remove eligibility restrictions based on criminal record from federally funded safety-net programs, such as the Supplemental Nutrition Assistance Program, because access to these programs has been shown to reduce recidivism.³¹
- Enhance regulation of the criminal background check industry, as the consumer credit agencies are regulated, to improve the rights of individuals to correct information and to hold sellers of criminal record information responsible for its accuracy.³²

Enhancing job search skills, job readiness, professional networks, and access to educational opportunities for the formerly incarcerated is essential to reentry success.

Stigma is not the only barrier to post-release employment, as the formerly incarcerated typically have low levels of education and work experience.³³ Enhancing job search skills, job readiness, professional networks, and access to educational opportunities for the formerly incarcerated is essential to reentry success. One option is to increase work experience, enhance professional networks, and reduce hiring risk by expanding subsidized employment programs and programs that match employers with soon-to-be-released prisoners.³⁴ Another option is to expand federal funding and incentivize the location of AJCs inside jails and prison facilities, building on the lessons from a recent U.S. Department of Labor demonstration project in 20 areas suggesting AJCs lead to gradual shifts in the culture within facilities from punishment to rehabilitation.³⁵ Recent relief legislation lifted restrictions on Pell grant access for people who are incarcerated and who have certain crimes on their records, which can spur the creation of coordinated pre- to post-release education and work-based learning programs.³⁶ In addition, formerly incarcerated people typically suffer from socially and economically induced traumas

that can interfere with effective decisionmaking.³⁷ Cognitive behavioral therapy has been shown to improve reentry outcomes.³⁸

Finally, existing evidence on program development and implementation in correctional facilities suggests multiple avenues for jumpstarting the development and quality of new programs. First, establish consistently available and evidence-based reentry programs and provide additional flexibility with regard to outdated security rules and technology policies. For example, evidence suggests that cognitive behavioral therapy is effective for justice-involved adults for rehabilitation, self-confidence, and personal transformation.³⁹ Second, lack of Internet access and overly rigid security protocols in some jails hindered the ability of several jails to implement satellite AJCs.⁴⁰ Third, invest in broadband infrastructure, virtual reality (VR), and other technologies in prisons to improve access to online resources like job boards and online/VR training programs. Finally, invest in digital transformation and modernization of state-level data systems and revisit outdated restrictions on data sharing across programs and agencies (while protecting privacy). Antiquated and siloed data systems are a major barrier to service coordination and holistically meeting the needs of people with multiple challenges.⁴¹

Long-Term Reforms

With the rise and entrenchment of mass incarceration came a change in the nature and goals of post-prison parole supervision, from a social work orientation to a law enforcement orientation that focuses on risk assessment and risk management.⁴² The parole system has now become a major obstacle to successful reentry through its emphasis on surveillance and punishment. Technical violations of parole and probation account for large shares of prison admissions in many states,⁴³ and recent evidence suggests that the parole system is an important driver of prison's revolving door.⁴⁴ Lack of due process in parole revocation decisions also raises serious normative questions.⁴⁵

Reforms are critically needed to reorient parole to support social and economic reintegration. Rather than monitoring for desistance, new policies should focus on creating opportunities to develop and reinforce pro-social identities.⁴⁶ These reforms include increased access to services related to housing, employment, health, mental health and addiction, and social reintegration. They also provide greater options for less disruptive sanctions for technical parole violations and new national standards for the training of parole and probation officers in skills such as service coordination, motivational interviewing, alternatives to punishment, and counseling.⁴⁷ Parolees would also benefit from opportunities to earn lower levels of supervision or early termination via completion of treatment programs or earning vocational or academic credentials.

A lack of preparation for release currently hinders reentry and reintegration. For example, demand for in-prison services in domains like substance abuse treatment and education far exceed supply despite the demonstrated effectiveness of such programs at reducing recidivism.⁴⁸ And the effectiveness of such programs could be enhanced by adopting a "continuity of care" model common for medical

treatment in which in-prison services are tied to parallel programs and supports in the community after release, facilitating effective handoffs.⁴⁹ This model ensures continued access to support and receipt of long-term treatment, especially during the challenging period immediately after release, and reorients prison staff toward rehabilitation and release preparation.

We see “continuity of care” as potentially productive in domains like substance abuse treatment, family services, employment, and education. For example, identical substance abuse treatment models can improve post-release participation, college courses taught by the same institution in prison and in the community would ease enrollment post-release, and in-prison work that builds skills in industries with high labor demand in the community of release could improve employment. The location of prisons in rural areas, far from the prisoners’ families and communities, also creates barriers to continuity of care and the involvement of families, who play a central role in reintegration.⁵⁰ Ensuring continuity of care will require investment in bringing programs up to scale and in policy alignment and coordination across domains and levels of government. The federal government could spur innovation by providing technical expertise and funding for coordination and ensuring that rules and regulations do not impede cooperation between prisons and community providers.

Recommendations for Future Research

Although there is a growing academic and evaluation literature on reentry experiences and programs, we still need to better understand a diverse range of reentry experiences, the factors and practices that lead to better or more equitable outcomes, and the legal and policy barriers that undermine the goal of shifting from a culture of continual punishment to a culture of rehabilitation and reintegration. Below we lay out research priorities in each of these broad areas where there are significant gaps.

1. ***Reentry experiences:*** Existing research suggests that some populations experience more barriers than others in reintegrating into society, but there is a need for more in-depth research on the experiences of racial/ethnic minorities, women (especially Black, Latino or Hispanic, and Native American women), people with disabilities (including cognitive and mental health disabilities), LGBTQ individuals, young adults, people released in rural areas, gig workers, and those whose intersectional identities create multiple barriers to successful reentry.
2. ***Factors and practices that influence outcomes:***
 - **Pandemic impacts:** How did the pandemic change policies such as fewer arrests and more releases, and what were the impacts of those changes on community safety and wellbeing of the individuals who were released? How did the uneven impacts of the pandemic in Black, Latino or Hispanic, and Native American communities shape reentry experiences for those who were released into the same communities?

- Stigma: How to reduce stigma among employers, landlords, and the media as well as documenting the impacts of stigma on individuals, families, and communities?
 - Parole officers and other justice system actors: How do their training, mindset, and incentive structures support or undermine successful reentry?
 - Intermediate sanctions: When are they helpful and when do they simply provide pathways back to prison (“net widening”)?
 - Fair chance hiring: How do hiring practices differ among employers with more and less employees with conviction records? How does the use of artificial intelligence in hiring and recruitment impact people with conviction records?
 - Industry-specific factors: How do occupational segregation, discrimination, and licensing requirements contribute to more limited employment options for certain groups of people with conviction records (e.g., women and Black or Latino or Hispanic)?
3. ***Legal and policy barriers:*** Although there is bipartisan support and evidence to maximize reentry success, our legacy legal and policy frameworks often undermine these new goals as an artifact of the previous emphasis on punishment. Rather than focusing on desistance from crime, our legal and policy frameworks should emphasize opportunities to create and affirm pro-social identities.⁵¹ More research is needed to unpack a litany of federal, state, and local laws and policies to identify barriers that tend to undermine efforts at establishing pro-social identities and reintegration. This includes housing, voting, financial aid, and food assistance restrictions that render people with conviction records ineligible. In addition, it means ensuring that people who have conviction records have more legal protections and entitlements across various areas of everyday life, which may require identifying legal cases with potential to revisit central legal questions such as whether it is legal to discriminate on the basis of a conviction record for access to housing or if housing is a basic human right that is essential for reentry success. As another example, to what extent are transitional housing facilities allowed to establish curfews and or place restrictions on the possession of personal belongings such as technology, if doing so undermines someone’s ability to get or keep a job or rebuild personal and professional networks? Are prison wages of pennies per hour desirable from a policy or normative perspective?

Moreover, reentry research would benefit from consistent measurement of outcomes and accessible, user-friendly data systems to track outcomes and coordinate services across multiple agencies and programs that play a role in the reentry ecosystem. Although there have been major investments in research on the effectiveness of reentry programs, it is challenging to compare across studies because they often do not systematically assess outcomes in the same ways, may only assess one aspect of reentry success, or only assess short-term impacts.⁵² Common barriers to the implementation of reentry services include lack of coordination across partners, inadequate resources, variation in intensity and scope of services across areas, and a lack of data systems and secure data sharing.^{53 54 55} Subsidized

employment programs offer promising evidence of short-run success, but less is known about the factors that contribute to long-term impacts in employment, earnings, and reduced recidivism.^{56 57}

Finally, there are many new technology-oriented changes and pilots that are worth studying and evaluating. For example, Code for America partnered with local governments to expunge records for offenses that are no longer illegal.⁵⁸ Research is needed to assess how these tools can help improve the implementation of second chance relief.⁵⁹ In addition, virtual reality and other technologies are being deployed in multiple states to prepare people for release through immersive exposure to scenarios they are likely to encounter and for training and education.^{60 61 62} As new background search techniques are deployed with machine learning technologies,⁶³ research is needed to assess their ethical and discriminatory impacts, and to develop regulatory standards for their use. More research and funding are needed to evaluate these technologies, assess quality and ethical use, and update policy in response.

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Conclusion

As we write this report, the high-profile failures of the criminal justice system remain front and center in news coverage and the nation's public policy agenda. The trial of former Minneapolis police officer Derek Chauvin in the killing of George Floyd draws our attention to how police authority continues to be a frequent threat to life and well-being, especially for low-income individuals and people of color. The police killing of Daunte Wright in a Minneapolis suburb further fuels community distrust and racial division in the Twin Cities and around the country.

At the same time, we are seeing a sudden and disturbing spike in criminal activity and violent offenses in our major urban areas. This spike has variously been attributed to social stress related to the pandemic, a declining willingness of police forces (in the wake of the Floyd death and subsequent civil unrest) to risk potentially dangerous confrontations with individuals committing crimes, and a growing unwillingness among prosecutors to try lower-level offenses thus implicitly encouraging worse ones.

As we prepare to exit pandemic conditions, we recommend a strategic pause to gather data that will help us understand why criminal activity has gone up and inform both immediate responses as well as longer-term reform initiatives. There will be a temptation—on both sides—to argue that the recent spike in crime confirms their prior understandings and policy preferences; either that the recent burst of crime can be effectively controlled by a ratcheting up “tough-on-crime” policies and practices or that it is exactly these practices that create the predicate for crime surges by disrupting lives, families, and neighborhoods through excessive reliance on force and incarceration. We should resist both of these views while we strive for a better understanding of the forces driving and shaping patterns of criminal offenses. It is entirely possible, given the unprecedented conditions of the past 12 months, we will find ourselves surprised by what we learn.

As is often the case, we may need an “and” approach rather than an “or” approach. Policies need to address recent rises in crime *and* overpolicing. This is why our report focuses on the criminal justice as a whole. Policing is the entree to the criminal justice system that sorts people based on race, social class, and place. Most people do not want less policing. They want equitable policing, and equitable treatment once interacting with the criminal justice system, either as a victim or perpetrator.

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The sources of criminal activity and public safety challenges are multifaceted while our responses to them are often singular: more and tougher policing, prosecution, and incarceration. Not every public order challenge is a nail in need of a hammer. If we are to honor the dignity of every person and respect the sanctity of human life, we need a more balanced and diversified approach that recognizes confrontation and coercion are not the only, and often not the best, strategies for protecting our communities. Research-informed innovation that builds a more flexible and effective toolbox of responses is needed to move us towards the more peaceful, flourishing, and just society that is the shared objective of conservatives and progressives alike.

The authors in this volume will continue convening to discuss, debate, and research these complex issues in order to supply policymakers with the best well-informed knowledge on ways to improve our country’s criminal justice system. The essays in this volume and the recommended supplemental readings provide much food for thought among policymakers about the major areas of criminal justice reform that should be at the top of the nation’s agenda to be considered irrespective of immediate conditions. The perspectives and recommendations are varied and informed by differing perspectives on how to achieve a better working balance between the requirements of community safety, civil liberty, policing and procedural protections, and supporting and achieving lasting changes in attitudes, behaviors, and outcomes among justice-involved individuals as befits a nation committed to the idea of rehabilitation and not just retribution. These are deeply interconnected issues requiring a thorough, thoughtful, and comprehensive response rather than an immediate reversion to long-held and -argued views that may fit recent history or current conditions. A nation that incarcerates so many at such a high cost in public resources and wasted human lives can ill-afford to do otherwise.

About the Brookings-AEI Working Group on Criminal Justice Reform

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Rashawn Ray is a David M. Rubenstein Fellow in Governance Studies at The Brookings Institution. He is also a professor of sociology and executive director of the Lab for Applied Social Science Research (LASSR) at the University of Maryland, College Park. Ray is one of the co-editors of *Contexts Magazine: Sociology for the Public*. His research addresses the mechanisms that manufacture and maintain racial and social inequality with a particular focus on police-civilian relations, racial-health disparities, and voting. Formerly, Ray was a Robert Wood Johnson Foundation (RWJF) Health Policy Research Scholar at the University of California, Berkeley and he currently serves on the National Advisory Committee for the RWJF Health Policy Research Scholars Program. He has published over 50 books, articles, and book chapters, and more than 50 op-eds. Ray regularly testifies at federal and state levels on racial equity, policing and criminal justice reform, health policy, wealth, and family policy.

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Marc Schindler is executive director of the Justice Policy Institute (JPI), a national nonprofit research and policy organization dedicated to reducing the use of incarceration in the juvenile and criminal justice systems. Prior to joining JPI in 2013, Schindler was a partner with Venture Philanthropy Partners (VPP), where he led VPP's Social Innovation Fund youthCONNECT initiative. Schindler came to VPP from the District of Columbia Department of Youth and Rehabilitation Services (DYRS), where he held numerous positions between 2005–2010, including serving as general counsel, chief of staff, and interim director. He joined DYRS in 2005 as one of a team of reformers who worked to transform that agency into a nationally recognized and innovative department that focused on reducing the use of incarceration in favor of community-based solutions. From 1997 to 2005, Schindler served as a staff attorney with the Youth Law Center (YLC). He started his legal career as a public defender representing children in Baltimore's juvenile court. Schindler is a recognized expert in the field, providing commentary in the national media. He is a graduate of Yale University and the University of Maryland School of Law. He lives in Washington, D.C. with his wife and two children.

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Cassia Spohn is a regents professor in the School of Criminology and Criminal Justice at Arizona State University and an affiliate professor of Law at ASU's Sandra Day O'Connor College of Law. She is a fellow of the American Society of Criminology and is the recipient of numerous academic awards, including the University of Nebraska Outstanding Research and Creative Activity Award, the W.E.B. DuBois Award for Contributions to Research on Crime and Race/Ethnicity, the Lifetime Achievement Award from the American Society of Criminology's Division on Corrections and Sentencing, and Arizona State University's Faculty Achievement Award for Defining-Edge Research in the Social Sciences. Her research interests include the correlates of federal and state sentencing outcomes, prosecutorial decision making, the intersections of race, ethnicity, gender, crime and justice, and sexual assault case processing decisions. She is a member of the Defense Advisory Committee on the Investigation, Prosecution and Defense of Sexual Assault in the Military and is the current president of the Academy of Criminal Justice Sciences.

Christopher Uggen

Christopher Uggen studies crime, law, and inequality from a life course perspective, firm in the belief that sound research can help build a more just and peaceful world. Current projects include studies of disenfranchisement, reentry, harassment and discrimination, crime and justice after genocide, monetary sanctions, and the health effects of incarceration. He served as co-editor of *Contexts Magazine: Sociology for the Public* and now publishes *TheSocietyPages.Org*, a book series and social science hub that draws four million readers per year. He is a fellow of the American Society of Criminology and former vice president of the American Sociological Association.

Christy Visher

Christy Visher is professor of Sociology and Criminal Justice and director, Center for Drug and Health Studies at the University of Delaware. Before joining the University, she was principal research associate at the Urban Institute and science advisor to the director of the National Institute of Justice. She is co-principal investigator of the Prison Research and Innovation Initiative in Delaware, a collaboration between the Delaware Department of Correction and the University of Delaware. Funded by the Urban Institute and Arnold Ventures, Delaware is one of five sites chosen to engage in a five-year study to build evidence and spur innovation to make prisons more humane, safe, and rehabilitative environments.