



CENTER FOR HEALTH,
EQUITY, AND JUSTICE

Summary of Select Reports & Papers on Criminal Justice Reform

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Produced by the Katal Center for Health, Equity, and Justice

Over the last five years, an increasing number of reports, papers, and studies have been published about the causes, effects, and multiple dimensions of mass incarceration – and how to end it. From academic research to advocacy reports to papers from government agencies, there’s more research and data available than ever to help movements for reform understand what’s happening at every level of the criminal justice system. Combined, this research provides extensive recommendations for what can be done to reduce criminalization, end mass incarceration, and improve safety, health, and justice for everyone.

To assist advocates and organizers in their work to end mass incarceration, Katal reviewed over 30 reports, papers and advocacy tools, and produced the following synthesis.

A bibliography is provided below; all reports are publicly available. When referencing certain populations, with limited exception, we have used the language from reports themselves.

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Background

State prisons, run by state departments of corrections, hold people who have been convicted and sentenced for felony offenses, predominantly for more than one year. Federal prisons are run by the U.S. Bureau of Prisons and hold prisoners convicted of federal crimes and pretrial detainees. Local jails are usually run by individual counties or municipalities and hold pretrial detainees (some federal as well as state), locally sentenced individuals, state sentenced individuals, those

convicted of probation violations, those convicted of parole violations, people from other jurisdictions awaiting extradition or availability at another jail, and individuals detained by Immigration and Customs Enforcement (ICE).¹

There are approximately 731,000 individuals held daily in state jails,² which have 19 times the annual admissions to state and federal prisons.³ *Over 11 million people go to jail each year*, referred to as a “churn rate.”⁴ Predominantly, jails incarcerate individuals who are detained pre-trial and are therefore legally presumed innocent. Although there are significant variations amongst jurisdictions, national statistics reflect that most people detained in jail pre-trial have been charged with a non-violent traffic, property, drug, or public order offense.⁵ Although more than half of the states have reduced their prison population between 2006 and 2011, the population of people convicted and sentenced to jail has grown by 90% while people held pre-trial -- people who have not been convicted of any crime -- grew by a stunning 200% during the same period.⁶ This increase is predominantly attributed to the use of financial bail that indigent defendants cannot afford -- growing from 52% of felony defendants in 1990 to 72% in 2009.^{7 8}

Federal incarceration rates have also increased during the period of decline in state prison populations.⁹ In 2006 there were 193,046 people in federal prison and by 2011 there were 216,362, an 89% increase.¹⁰ Since 2013, those numbers have begun to slowly decline.¹¹

¹ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn Eds., Division of Behavioral and Social Sciences and Education (Washington D.C.: The National Academies Press, 2014), 37; Ram Subramanian, et al., “Incarceration’s Front Door: The Misuse of Jail in America,” *Vera Institute of Justice* (2015), 4.

² Bureau of Justice Statistics, “Jailed Inmates at Midyear 2014,” by Todd D. Minton and Zhen Zeng, U.S. Department of Justice, Office of Justice Programs (2015). 6 out of 10 inmates at midyear 2014.

³ For 2013 jail admissions data see: Bureau of Justice Statistics, “Jailed Inmates at Midyear 2014”; For annual admissions to state and federal prisons, see Bureau of Justice Statistics, “Prisoners in 2013,” by E. Ann Carson, U.S. Department of Justice, Office of Justice Programs (2014).

⁴ Peter Wagner and Bernadette Rabuy, “Mass Incarceration: The Whole Pie 2016,” *Prison Policy Initiative* (2016), <http://www.prisonpolicy.org/reports/pie2016.html>.

⁵ Bureau of Justice Statistics, “Jail Inmates at Midyear 2013 - Statistical Tables,” by Todd D. Minton and Daniela Golinelli, U.S. Department of Justice, Office of Justice Programs (2014), Appendix table 3; Bureau of Justice Statistics, “Profile of Jail Inmates, 2002,” by Doris J. James, U.S. Department of Justice, Office of Justice Programs, (2004), 3. 75% of those in jail are detained for nonviolent traffic, property, drug, or public order offenses.

⁶ National Research Council, *Growth of Incarceration*, Figure 15.

⁷ Council of Economic Advisors, “Economic Perspectives on Incarceration and the Criminal Justice System,” Executive Office of the President (2016), 21.

⁸ Subramanian et al., “Incarceration’s Front Door,” 32. Use of bail schedules reliant on the severity of the offense accused of rather than evidence-based risk assessments are the exclusive tool for calculating bail in almost all of the 3,000 court systems in the U.S.

⁹ National Research Council, *Growth of Incarceration*,” 2.

¹⁰ Bureau of Justice Statistics, “Prisoners in 2006,” by William J. Sabol, et al., U.S. Department of Justice, Office of Justice Programs, (2007); Bureau of Justice Statistics “Prisoners in 2011,” by E. Ann Carson, and William J. Sabol, U.S. Department of Justice, Office of Justice Programs (2012).

¹¹ Ryan King, et al., “The Prison Population Forecaster: Federal Prison Population,” *Urban Institute* (2016), <http://webapp.urban.org/reducing-federal-mass-incarceration/> citing, Bureau of Justice Statistics, “Prisoners in 2013,” by E. Ann Carson, U.S. Department of Justice, Office of Justice Programs (2014), noting the first federal prison population decrease since 1980.

The increase of the number of people incarcerated is almost entirely a result of changes in criminal justice policies and practices. *The increase in incarceration is not a result of an increase in crime.*¹²

Population Summary

- *Incarcerated vs. Community Supervision:* According to the Bureau of Justice Statistics, about 1 in 36 adults (or 2.8% of adults in the United States) were under some form of correctional supervision at year-end 2014, the lowest rate since 1996. Between 2007 and 2014, about 88% of the decrease in number of individuals under some form of correctional control (down 488,600) was attributed to the decline in the probation population. Nearly all state jurisdictions (47) had a larger proportion of their correctional population supervised in the community at year-end 2014 than incarcerated in prison or local jail. Notably, Virginia, Nevada, Oklahoma, and the federal system had a larger proportion incarcerated than under supervision in the community.¹³
- *Gender:* The female inmate population increased 18.1% between midyear 2010 and 2014, while the male population declined 3.2%.¹⁴ Although a smaller percentage overall, women are the fastest growing segment of people under correctional control.¹⁵ More than 60% have a child under 18 years old who lived with them prior to incarceration, compared with just over 40% of men.¹⁶ While in custody, 89.6% of fathers had children being cared for by the child's other parent, while only 28% of mothers had children in the care of the other parent. Mothers in custody were more than 5 times as likely to have their child in a foster home or agency during their period of incarceration (9.6%).¹⁷ Predominantly, incarcerated mothers relied on grandparents (52.9%) or another relative (25.7%) to care for their children while incarcerated.¹⁸

The transgender inmate population, defined by those who identify as transgender, increased between 2007 and 2009 (an increase from 2,987 to 4,111 in state and federal prisons and from 1,827 to 1,974 in local jails). The population then declined between 2009 and 2012 (down to 3,209 in prisons and 1,709 in local jails).¹⁹ Transgender individuals face a disproportionate risk of incarceration, 21% of transgender women and 10% of transgender men reported spending time in jail (compared with 5% of all

¹² Council of Economic Advisors, "Economic Perspectives," 12, citing Raphael, Steven and Michael A. Stoll, *Why Are So Many Americans in Prison?* (New York: Russell Sage Foundation, 2013); Derek Neal and Rick Armin "The Prison Boom and the Lack of Black Progress after Smith and Welch," *National Bureau of Economic Research*, Working Paper 20283 (2014).

¹³ Bureau of Justice Statistics, "Correctional Populations in the United States, 2014," by Danielle Kaeble et al., U.S. Department of Justice, Office of Justice Programs (2015).

¹⁴ Bureau of Justice Statistics, "Jailed Inmates 2014," 1.

¹⁵ Bureau of Justice Statistics, "Prisoners in 2014," by E. Ann Carson, U.S. Department of Justice, Office of Justice Programs (2015), 1; Bureau of Justice Statistics, "Jailed Inmates at Midyear 2014," 1; see also "Fact Sheet: Incarcerated Women and Girls," *The Sentencing Project* (2015), 1.

¹⁶ Bureau of Justice Statistics, "Incarcerated Parents and Their Children," by Christopher J. Mumola, U.S. Department of Justice, Office of Justice Programs (2000), 1.

¹⁷ *Ibid.*; see also Steve Christian, "Children of Incarcerated Parents," *National Conference of State Legislatures* (2009), 5. The 1997 federal Adoption and Safe Families Act mandates a state agency to file a petition to permanently terminate parental rights on behalf of a child who has been "abandoned or who has been in foster care for 15 of the most recent 22 months," with some exceptions including children in the care of relatives, evidence that it would not be in the child's best interest, or state failure to provide services necessary to ensure safe return of the child.

¹⁸ Bureau of Justice Statistics, "Incarcerated Parents and Their Children," 1.

¹⁹ Bureau of Justice Statistics, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12 – Supplemental Tables," by Allen J. Beck, U.S. Department of Justice, Office of Justice Programs (2014.), Table 1.

American adults).²⁰ Individuals who identify as transgender remain at a very high risk for sexual assault and rape by both staff and other inmates. Since at least 2007, the percentage of transgendered inmates experiencing sexual assault consistently remained above 30%.

As of 1999, the last time the statistics were reported by the Bureau of Justice Statistics, women were more likely to have suffered physical or sexual abuse prior to incarceration (57.2% compared with 16.1% of males in state prisons, 39.9% of women versus 7.2% of men in federal prisons, and 47.6% versus 12.9% of men in jails).²¹ The percentage of people who reported abuse prior to incarceration was higher for those who grew up in foster care, were children of individuals who were “heavy users” of alcohol or drugs, or had a family member who had been in custody.²² As compared to women, men were more likely to have been abused as a child than as an adult and were more likely to have been abused by a parent, guardian, or other caregiver rather than an intimate partner (over 50% of men compared to less than 33% of women reported a parent or guardian as their abuser, over 50% of women identified intimate partners). Less than 1% of men and women reported being abused by a juvenile, both predominantly reported that their physical and sexual abusers were adults.²³

- *Age – Juveniles:* The number of incarcerated juveniles was reduced by 50% between 2013 and 2014, but 90%, (or 3,700) were either awaiting trial or had been convicted in an adult court. Between 2010 and 2014, the number of juveniles not charged as an adult declined 74%.²⁴

LGBTQ or gender non-conforming juveniles are disproportionately represented in custody, according to a study of several juvenile detention sites across the country. Their report reflected 20% of those in custody, versus 8% of all youth, identify as either LGBTQ or gender non-conforming. Girls in those detention facilities were twice as likely (40%) to identify as LGBTQ or gender non-conforming.²⁵

- *Age – Seniors:* The population of incarcerated individuals aged 55 or older increased 400% between 1993 and 2013, from 26,300 (3% of the total state prison population) in 1993 to 131,500 (10% of the total population) in 2013.²⁶ Overall, they were more likely than other age groups to be serving time in state prison for violent offenses (65% between 1993 and 2013 versus 58% for other age groups) and 27% were sentenced for rape and sexual assault charges.²⁷

²⁰ “Unjust: How the Broken Criminal Justice System Fails LGBT People,” *Center for American Progress* (Washington, D.C., 2016), 3, citing Jaime M. Grant et al., “Injustice at Every Turn: A Report of the National Transgender Discrimination Survey,” *National Center for Transgender Equality and National Gay and Lesbian Task Force* (2011).

²¹ Bureau of Justice Statistics, “Prior Abuse Reported by Inmates and Probationers,” by Caroline Wolf Harlow, Department of Justice, Office of Justice Programs (1999).

²² *Ibid.*, 2.

²³ *Ibid.*

²⁴ *Ibid.* This report is over 8 years old, but it includes compelling statistics regarding victimization while a child under the age of 18 and later convictions of violent crime. The report specifically states “A past of abuse is specifically linked to sexual assault and homicide,” *Ibid.*, 3.

²⁵ “Unjust,” 3, citing Nico Sifra Quintana, Josh Rosenthal, and Jef Krehely, “On the Streets: The Federal Response to Gay and Transgender Homeless Youth,” *Center for American Progress* (2010).

²⁶ Bureau of Justice Statistics, “Aging of the State Prison Population, 1993-2013,” by E. Ann Carson, et al., U.S. Department of Justice, Office of Justice Programs (2016).

²⁷ Bureau of Justice Statistics, “Aging of the State Prison Population, 1993-2013,” 9 and 12.

- *Education Level:* Incarceration of individuals who have no college education make up nearly all of the growth in incarceration. This disparity has a statistically disproportionate impact on Hispanics²⁸ who tend to have low levels of education in the United States.²⁹ Likewise, risks of imprisonment are substantially higher for all men with no college education and rise to “extraordinary absolute levels” for men who do not have a high school diploma.³⁰ The incarceration rate of those who have attended college has not meaningfully increased.³¹
- *U.S. Immigration and Customs Enforcement (ICE):* The number of individuals held in local jails on ICE detainers declined from 3.5% in 2009 to 2.5% in 2014.³² 19,000 people are in federal prison as a result of violations of federal immigration laws, including illegal reentry (unauthorized entry after having being deported from the U.S. through an order for removal or voluntary departure) or improper entry (such as improper time or place, avoiding examination or inspection, misrepresentation or concealment of facts).³³ An additional 33,000 are civilly detained in local jails by ICE, a number that has increased as a result of cooperation between Department of Homeland Security and local jails.³⁴ Civil detention is the term for the detention of people who are not U.S. citizens that are suspected of violating U.S. immigration law, seeking asylum, or otherwise awaiting immigration proceedings that are determined by ICE to require custodial supervision.³⁶ Usually an ICE hold in a local jail for civil detention should not extend beyond 48 hours, but this is regularly disregarded by the local jails.³⁷
- *Sexual Orientation:* Individuals in prisons and jails are twice as likely to identify as lesbian, gay or bisexual. 7.9% of individuals in prisons and 7.1% of those in jails, compared to 3.8% in the U.S. population out of custody.³⁸
- *Racial Disparity:* In addition to the cumulative risk of incarceration due to those factors above, racial disparities are well documented and pervasive throughout every level of the criminal justice system. Overall, throughout the U.S., white people accounted for 35%, Black people represented 38%, and Hispanic people represented 21% of the total state prison population.³⁹ The general population of the U.S. has an estimated racial composition of 77.1% white, 13.3% African American or Black, and 17.6% Latino or

²⁸ Statistics for Latinos vs. Hispanics are not made to the Bureau of Justice Statistics. Mandatory reporting standards is an area ripe for reform as it impedes accurate assessments.

²⁹ National Research Council, *The Growth of Incarceration in the United States*, 66.

³⁰ *Ibid.*, 67.

³¹ *Ibid.*

³² Bureau of Justice Statistics, “Jailed Inmates at Midyear 2014.”

³³ Wagner, “Mass Incarceration: The Whole Pie 2016.”

³⁴ *Ibid.* These statistics exclude people who have an ICE detainer but have also been charged with a crime. In those cases, they are not eligible for bail until the detainer has been resolved. This is complicated because the criminal charge may require a person to not testify in their own detention hearing and therefore be unable to resolve the immigration issue prior to resolving the criminal matter. Likewise, a criminal plea bargain usually implicates immigration issues.

³⁵ “Immigrants Behind Bars: How, Why and How Much,” *National Immigration Forum* (Washington, D.C., 2011), <http://immigrationforum.org/blog/immigrants-behind-bars-how-why-and-how-much/>.

³⁶ “Detention Management,” U.S. Immigration and Customs Enforcement, Accessed March 8th, 2017, <https://www.ice.gov/detention-management>.

³⁷ “Immigrants Behind Bars,” *National Immigration Forum*.

³⁸ “Unjust,” 3, citing Beck, “Sexual Victimization” and Gary J. Gates and Frank Newport, “LGBT Percentage Highest in D.C., Lowest in North Dakota,” *Gallup* (2013), <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

³⁹ Ashley Nellis, “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” *The Sentencing Project* (2016), 4, citing Bureau of Justice Statistics, “Prisoners in Midyear 2014.”

Hispanic.⁴⁰ States exhibit substantial variation in the range of racial disparity in incarceration, from a black/white ratio of approximately 12:1 in New Jersey to approx. 2.5:1 in Hawaii. Nationally, Latinos, reported broadly as Hispanic, are imprisoned at a rate that is 1.4 times the rate of whites. Hispanic/white ethnic disparities are particularly high in states such as Massachusetts (approx. 4:1), Connecticut (approx. 4:1), Pennsylvania (over 3:1), and New York (over 3:1). In four states, data on ethnicity is not reported to the Bureau of Justice Statistics, nor is it provided in the state department of corrections' individual annual reports. These states are Alabama, Maryland, Montana, and Vermont.⁴¹

- *Trends in Criminal Charges – Drug Charges:* In the state prison population, the most significant change has been the expansion of new admissions and longer sentences for drug offenses. The composition has risen from very small percentages, to a high of 23% in 1996 and down to 17.4% in 2010.⁴² In the federal prison population, robbery, fraud, drugs, weapons, and immigration make up 88% of all sentenced federal inmates. Even when state and local incarceration rates have fallen, the federal rate has continued to grow.⁴³ The largest areas of growth since 2000 have been convictions relating to weapons (up 135%) and immigration offenses (up 40%).⁴⁴
- *Trends in Criminal Charges -- Technical Violations:* While parole violations leading to incarceration have remained relatively constant since 1990, the number of technical violators (as distinguished from parolees convicted of new crimes) more than doubled from 1990 to 2000. In 2010, 20% of new admissions to state incarceration were due to technical violations.⁴⁵

Driving Down the Correctional Population – Decarceration

There has been an overall decline in the rate of state incarceration in the U.S. since 2000, the largest declines have been achieved in a few states including Delaware, Georgia, and Texas in the south and New Jersey and New York in the northeast.⁴⁶ Much of that reform has focused on state prison admissions through reforming mandatory penalties in 29 states, expanding community-based sentencing options, drug treatment programs targeting high risk drug-addicts, as well as reclassifying and lowering offenses through gradation in felony levels.⁴⁷

The Urban Institute has analyzed the statistics relating to individuals under correction control and focused on policy changes in 15 states to create “The Prison Population Forecaster.”⁴⁸ The forecaster makes a clear argument that policy reforms relating to drug offenses, through reductions in new admissions and lengths of stay, is not sufficient to end mass incarceration. They calculate that reducing new admissions for the full range of property offenses (not merely low level misdemeanor or shoplifting offenses) would have as much as 1.5 times the impact as

⁴⁰ “Quick Facts: United States,” U.S. Census Bureau, <https://www.census.gov/quickfacts/table/PST045215/00>.

⁴¹ Nellis, “Color of Justice,” 3.

⁴² National Research Council, *The Growth of Incarceration in the United States*, 38.

⁴³ *Ibid.*, 38-39.

⁴⁴ *Ibid.*, 56.

⁴⁵ *Ibid.*, 42.

⁴⁶ *Ibid.*

⁴⁷ Subramanian et al., “Incarceration’s Front Door,” 5.

⁴⁸ King, et al. “The Prison Population Forecaster: State Prison Population,” *Urban Institute* (2015), <http://webapp.urban.org/reducing-mass-incarceration/>.

reducing drug admissions by the same amount.⁴⁹ Additionally, reducing new admissions based on technical violations (such as failing a drug test) would yield even more significant results.⁵⁰ Reductions in length of stay for violent offenses in the states would have a significant impact while doing the same for federal crimes would make very little change in the over-all population size.⁵¹ Instead, federal prison population would decrease by nearly the same number of people (approximately 36,000) as the state prisons if the length of stay for drug offenses were decreased by 50%, but that accounts for a far larger portion of the over-all population (18% federally versus 7% at the state level).⁵²

The Forecaster tool, and supporting research, makes it clear that the priorities for decriminalization and reduction of lengths of stay amongst various types of crime vary depending on the demographics of a particular region and prison system.

There is no “one-size fits all” answer here – research strongly indicates that reform efforts should

- focus on state, county, and municipal levels (rather than on the federal level)
- be tailored to the local circumstances and conditions.

For instance, in some states, reducing lengths of stay for violent offenses by 15% would cause a much larger drop in the state prison population than reducing drug offense admissions by 50% (Michigan, New Jersey, New York, Rhode Island). Elsewhere, nonviolent offenses are a major driver, so reducing drug and property crime admissions would have a big impact (Alabama, Kentucky, Missouri, Oklahoma, Texas).

The analysis also makes it clear that limiting reform to drug offenses and property crimes is an ineffective strategy in aggregate. The most urgent recommendations are to reduce admissions for drug and property crimes, reduce admissions and lengths of stay for violent offenses, and reduce new admissions for technical violations on probation and parole. As a result, the statistics also manifest a need to tackle the question of violence. There is promising work taking place in this area through some state-based and national groups, often in conjunction with crime survivors.⁵³ Excluding questions of violence, to avoid challenging politicians who wish to remain “tough on crime” or to appear to be attacking victims of crime, obscures the underlying issues of mass incarceration and prevents achieving significant and lasting decarceration.

Opportunities for Reform on the Local Level

The criminal justice system needs reform at all stages, requiring policy changes at the federal, state, and local level. Repeated recommendations throughout the reports revealed that there are key reforms that can be implemented at the local level that don’t require state or federal policy reform, yet would contribute significantly to reducing the number of people incarcerated in jails and prisons or kept under correctional supervision. In aggregate, these reforms can provide

⁴⁹ Reducing new admissions for property offenses by 50% would bring down the state prison population by 49,029 (10%) by December 2012 while reducing new admissions for drug offenses by the same amount would decrease the population by 32,659 (7%) in the same period. King, et al., “State Forecaster.”

⁵⁰ Reducing new admissions for revocations of probation or parole by 50% would reduce the state prison populations by 67,203 (14%) by December 21. Ibid.

⁵¹ A 50% reduction in prison sentence length results in only 1% reduction by December 2021 for the federal prisons. Ryan King, et al., “Federal Forecaster.” A reduction of 16% is predicted for the same policy change in state prisons. Ryan King, et al., “State Forecaster.”

⁵² Ryan King, et al., “Federal Forecaster,” and Ryan King, et al., “State Forecaster.”

⁵³ Danielle Sered, “Young Men of Color and the Other Side of Harm: Addressing Disparities in our Responses to Violence,” *Vera Institute of Justice* (2015).

meaningful support for communities disproportionately impacted by mass incarceration and create opportunities for advocacy for reform at all levels of government. Each successful reform on a local level can transform narratives for organizers, activists, and advocates at the municipal, state, and federal level.

On a large scale, decriminalization of vice crimes, including drug offenses and sex work, will immediately decrease new admissions in both prisons and jails. Likewise, shortening sentences and passing legislation that directs the criminal justice system to respond to conduct that remains criminal with consequences other than incarceration will decrease the number of people in jails and prisons. However, these systematic responses require changes in state and federal laws which isolate reform efforts to those aimed at Congress and the state legislatures and ignore the incremental opportunities for change which are available at every stage of the criminal justice system on the local and municipal levels.

Research suggests advocates need not wait for federal or state action, and should consider focusing on cities as an important reform target. In *Better by Half*, Greene and Schiraldi describe how, over the last 20 years, New York City has cut its commitments to jail and prison by over 55%, while also reducing crime.⁵⁴ The report attributes local advocacy as a key factor driving these impressive reforms.

Decarceration is the goal, but the following policy and administrative reforms, culled from the research reviewed, provide opportunities for local advocacy to drive transformation of the criminal justice system on the state and federal levels:

- *Arrest*: Decline intervention: decline to make arrests and stop-and-frisk reform, particularly for low-level offenses. Refer to services outside of the criminal justice system;⁵⁵ incentivize and reward officer actions that prioritize the health and safety of people rather than volume-based actions, expand pre-arrest and pre-booking diversion programs (such as Law Enforcement Assisted Diversion-LEAD),⁵⁶ create alternatives for mental health detention. Book and release: increased reliance on citations and summons. Targeted prevention programs for youth including Supportive School Discipline.
- *Charge*: Decline to prosecute or seek least serious charge and not threaten enhancements or higher charges to pressure pleas, prioritize serious and violent offenses, pre-charge diversion programs, community prosecution, community courts, and develop a more robust risk assessment for initial case review
- *Pretrial release and bail*: Increase use of alternatives to bail (i.e. messaging reminders, rides to court, unsecured signature bonds, treatment or counseling), use and rely on risk assessment tools based upon the person rather than the charged conduct, use early bail hearings, discourage or disallow prosecutors from seeking bail amounts they suspect defendants will be unable to pay, encourage pretrial supervision in place of pretrial detention, and bolster and expand pretrial services programs
- *Case processing*: Collect data and allocate resources within the courts, instate time limits with real consequences, clear backlogged courts, encourage case consolidation, invest in funding for public defenders to adequately manage case load, increase public

⁵⁴ Judith A. Greene and Vincent Shiraldi, “Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety,” *Federal Sentencing Reporter*, Vol. 29, No. 1. (2016).

⁵⁵ Subramanian et al., “Incarceration’s Front Door,” 23-24.

⁵⁶ Jessica Eaglin and Danyelle Solomon, “Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice,” *Brennan Center for Justice* (2015), 30.

defense representation for misdemeanor offenses, provide representation earlier, enforce case load limits

- *Disposition and sentencing* – Support more problem-solving courts for more serious offenses, and support pretrial diversion, use of bench cards offering non-incarceration alternatives, and encourage implicit bias questions
- *Prison and custody* – Remove barriers to maintaining contact during custody (i.e. reduce cost of calls home, use of video visitation, protect letters from home in local jails), expand correctional education and rehabilitation programs, increase correctional job training, improve jail and prison conditions to minimize mental and physical health impacts of incarceration
- *Reentry and community supervision* – Remove barriers to reentry, use graduated responses to technical violations in community supervision and debt payment plans, eliminate pay only probation and privatized probation services, modernize child support system.
- Some specific recommendations for removing barriers to reentry, and examples of local programs implementing these recommendations with great success, that are highlighted throughout the reports include recommendations to:
 - Delay background criminal history question in employment - Ban the Box, (Fair Chance to Compete for Jobs).⁵⁷
 - Enable automatic sealing of minor records, low-level and non-violent records and a method to challenge accuracy - Clean Slate.⁵⁸
 - Lift the felony drug ban on Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP)⁵⁹
 - Reform criminal justice debt policies including impact analysis for new fees, consideration of ability to pay, allowing for installment plans, waiving fees upon completion of programs, avoiding incarceration for non-payment, and modernizing child support programs⁶⁰
 - End private and public housing discrimination – reform Section 8 Housing and Public Housing Federal Program regulations which grant local Public Housing Authorities admission and eviction authority relating to arrests, convictions, and restrictions on visitors or with convictions or co-habiting with recently released family members⁶¹
 - Remove lifetime ban on capacity building opportunities such as the American Opportunity Tax and Pell Grants for individuals in custody, with felony convictions, etc.⁶²
 - Ensure access to health care, including continuity of care for Medicaid, nutrition assistance, SSDI, SSI, and necessary Medicaid for those transitioning out of custody and into communities⁶³

⁵⁷ “Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States,” *Human Rights Watch* (2016), 160; Rebecca Vallas et al., “Removing Barriers to Opportunity for Parents with Criminal Records and Their Children: A Two-Generation Approach,” *Center for American Progress* (2015), 17; “Unfair,” 134. 19 States and 100 municipalities have adopted similar policies.

⁵⁸ Vallas, et al., “Removing Barriers,” 16.

⁵⁹ *Ibid.*, 17; “Unfair,” 134.

⁶⁰ Vallas, et al., “Removing Barriers,” 18; Eaglin and Solomon, “Reducing Racial Disparities,” 19; Subramanian et al., “Incarceration’s Front Door,” 44; “Every 25 Seconds,” 158.

⁶¹ Vallas, et al., “Removing Barriers,” 18-19; Council of Economic Advisors, “Economic Perspectives,” 59-60; “Every 25 Seconds,” 148; “Unfair,” 134.

⁶² Vallas, et al., “Removing Barriers,” 19; “Unfair,” 134.

⁶³ Rebecca Vallas, “Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America’s Jails and Prisons,” *Center for American Progress* (2016), 16; Vallas, et al., “Removing Barriers,” 21; Council of Economic Advisors, “Economic Perspectives,” 60.

- Include nondiscrimination provisions in all government funded re-entry programs that reference race, sex, sexual orientation, and gender identity⁶⁴

At the local level, reforming and expanding community programs thoughtfully may help create an infrastructure to support new thinking and approaches. Such services that remove barriers to reentry may often be utilized in other transformative ways in other sectors of the criminal justice system. For example, the community programs can be engaged when police are referring to services instead of making arrests, judges may use them instead of detaining arrestees on bail, prosecutors may use them in diversion and to support realigning prosecution priorities. A thoughtful constellation of community services can also decrease caseloads for public defenders to allow faster case processing, provide judges with significant alternatives to incarceration at sentencing and revocation hearings, and provide the highest likelihood of success for those reentering their communities. Just as any policy impact must be measured for each jurisdiction, the success of any specific programs to divert arrests, reduce pretrial detention, limit convictions, or support reentry, will depend on local efforts.

Addressing Racial Disparity

The role of structural racism as a major factor of mass incarceration is widely acknowledged and indisputable. It is impossible to advocate for meaningful reform in the criminal justice system without confronting racial disparities. The policy reforms discussed above include key changes that have been identified as drivers of racial disparity which fall into three general categories: (1) policies and practices that drive disparity, (2) the role of implicit bias and stereotypes in decision making, and (3) structural disadvantages in communities of color which are associated with high rates of offending and arrest.⁶⁵ Within these categories, the reports recommend these specific reforms:

- Decriminalizing drug possession and scaling back the use of the criminal justice system in addressing drug possession overall.
- Revising mandatory minimum sentences and other determinate sentencing systems that deny individualized approach.
- Scaling back punishments for serious crimes, especially those that trigger longer sentences for repeat offenses, because they are ineffective for public safety and have a disproportionate impact on people of color.
- Implementing adequate and regular training on the role of unchecked implicit bias by key decision makers and instilling a motivation to be fair and impartial, including self reporting on data before and after a training.
- Employing racial impact legislation that will consider the outcome of changes in criminal code before passing laws (similar to fiscal impact statements).
- Identifying, reforming, and removing perverse financial incentives – financial incentives throughout the criminal justice system (from likelihood of arrest and pre-trial detention to parole and probation lengths and revocations) disproportionately impact people of color.^{66 67}

Conclusion

The most significant component of growth of incarceration in the U.S. is pre-trial detention in jails in cities and municipalities across the country. The recommendations of the reports

⁶⁴ “Unjust,” 134.

⁶⁵ Nellis, “Color of Justice,” 9.

⁶⁶ Nellis, “Color of Justice,” 12-13.

⁶⁷ Eaglin and Solomon, “Reducing Racial Disparities,” 7-8.

converge on this as the key to significant decarceration. Each state and each county has disparate drivers of those detentions, but in aggregate they require reductions in new additions and reductions in length of stay for property crimes, drug offenses, sex work, and violent crimes. The recommendations highlight that the opportunities for diversion, thereby reducing new admissions and lengths of stay, require the creation a social safety net on the local level. The creation of programs that initially address barriers to reentry are best suited to serve the broadest and most critical needs of a community *and at the same time* may be leveraged for advocating change throughout the criminal justice system. Those same programs serve as concrete opportunities for diversion away from the criminal justice system at earlier stages. Although successful programs in other regions can be instructive, each program must be developed locally to ensure they meet the needs of the communities they serve. Locally developed reforms also require a local base of reformers, organizers, and advocates which can continue to drive the reforms through all stages of the system and levels of government as well as to guard against further harms to the community.

Ultimately, decarceration efforts will benefit from building a network of local actors that demand and create change for their community. These networks can continue to exert pressure on state and federal legislators through these local victories and push for the transformation necessary to end mass incarceration.

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