



Issue Brief: Prisons

Produced by: Nic Poulos, Samuel Lim, Mike Kopko, and Atin Mittra

Contributors: Tommy Safian, Professor Barry Latzer, and Richard Brewster

IMPACTnyc

TABLE OF CONTENTS

01 Introduction

02 Problem Statement

04 Dataset Review & Analysis

Incarceration

Prison Population

Recidivism

12 Legislative History

15 Academic Review

Incarceration and Prison Populations

Recidivism

19 Feasibility Study

22 Conclusion

23 Works Cited

INTRODUCTION

This Issue Brief is intended as a valuable resource for practitioners who are interested and engaged in criminal justice reform. It provides a quality overview of the defining characteristics of our Prisons System, with a focus on incarceration and recidivism. We evaluate a number of clear wins to improve the influence of legislative policy on incarceration and recidivism.

We owe the completion of this brief to the invaluable contributions of individuals who have provided deliberate, comprehensive feedback that has gone a long way toward shaping a more balanced and robust discussion. My heartfelt thanks goes out to Tommy Safian, Rich Brewster, Jeff Miron and Sandra Navalli for their thoughtful questions to earlier drafts of this brief, that have brought forth significant amounts of penetrative insight. I also owe a debt of gratitude to Mike Kopko and Nic Poulos for their vision in steering this piece to completion, and ensuring that the purpose of the brief was kept in mind throughout its development.

PROBLEM STATEMENT

Incarceration is an instrument of criminal punishment that serves a number of reformatory functions, each serving as a distinct justification for the continued longevity of this in the form of a policy tool:

- a. Catharsis: Incarceration is fundamentally punitive in nature and intended to provide victims with a form of catharsis, through meting out a punishment commensurate to the gravity of the offence. This enhances the legitimacy of the legal system through reinforcing its ability to produce fair outcomes that remedy the wrong committed by the perpetrator¹.
- b. Deterrence: A corollary of the earlier thread on catharsis engages the notion of forestalling the occurrence of future crimes through deterrence. Since incarceration results in the imposition of limiting constraints upon one's lifestyle, it is as an undesirable consequence which compels individuals to minimize the commission of additional crimes².
- c. Incapacitation: In societies that are afflicted by rampant crime, housing offenders in a remote prison complex removes them from their support networks, and isolates them from the rest of society, effectively preventing them from causing further harm³.
- d. Rehabilitation: Imprisonment also exercises a rehabilitative role in dissuading offenders from persisting in their ways. Where imprisonment is enacted in the form of a highly targeted and calibrated punishment, it can provoke individuals to form positive habits and eschew negative behaviour⁴.

The last 40 years have witnessed the prison population in the US surging by 700%, heralding an unprecedented era of mass incarceration with more than 2M people in state and federal prisons. This has led to numerous adverse consequences, not least of which a considerable strain that is shared across components of the judicial system: local police, District Attorney offices, public defenders, courts, prisons. These costs are socialized across the rest of society, with extensive redundancies resulting from prisoners being deployed in a non-productive capacity, and the subsequent stigma that prevents them from being re-employed upon their release with criminal records. The US has more than 70 million adults with a criminal record, all of whom face barriers to smooth reintegration in varying degrees of severity. The vast extent of incarceration also results in a cost that has to be borne by taxpayers and the wider economy. At an average cost of \$32,000 annually, the overhead costs accrued as a result of the incarceration process have contributed to over \$1T per year in expenditure on the criminal justice system. This translates into a steep opportunity cost that exhausts the finite supply of resources from investments in other domains that are essential to development in education, infrastructure, healthcare and innovation.

Our brief thus establishes as a focal point the management of incarceration and recidivism rates. Broadly, we seek to orchestrate incremental improvements along the following broad thrusts:

- a. Assess the causes for high incarceration rates and how to support programs that restore our country to an appropriate level of incarceration.

- b. Moderate the reliance on imprisonment as a punitive tool, rebalancing utilisation across geographies, and encourage more cogent legal responses both within and beyond the criminal justice system
- c. Enhance the efficacy of incarceration efforts to curtail growth in recidivism rates

DATASET REVIEW & ANALYSIS

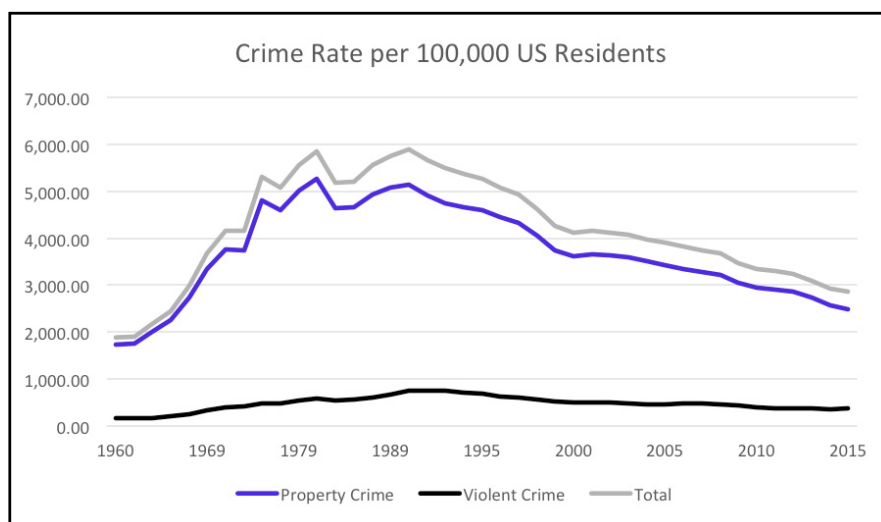
Key Findings

1. While we see that crime rates on aggregate peaked in 1991, and have fallen from then till 2014, incarceration rates have not fallen similarly. From 1991, incarceration rates have risen from 480 per 100,000 residents to a 690 per 100,000 residents around 2014.
2. Internationally, even after adjusting for comparisons for the same migrant population proportion and severity of drug laws, the US still has substantially higher incarceration rates than comparable countries.
3. A BJS cohort study reveals that within 3 years of release from prison, 67.8% of prisoners had been arrested for a new crime.
4. Recidivism is most prevalent for property crimes, followed by drug then public order offenders.
5. Recidivism is far more likely for younger prisoners than for older inmates, with 75.9% of inmates 24 or younger arrested for new offenses within 3 years of release, compared to 60.3% of those aged 40 or older.

Incarceration

Crime Rates

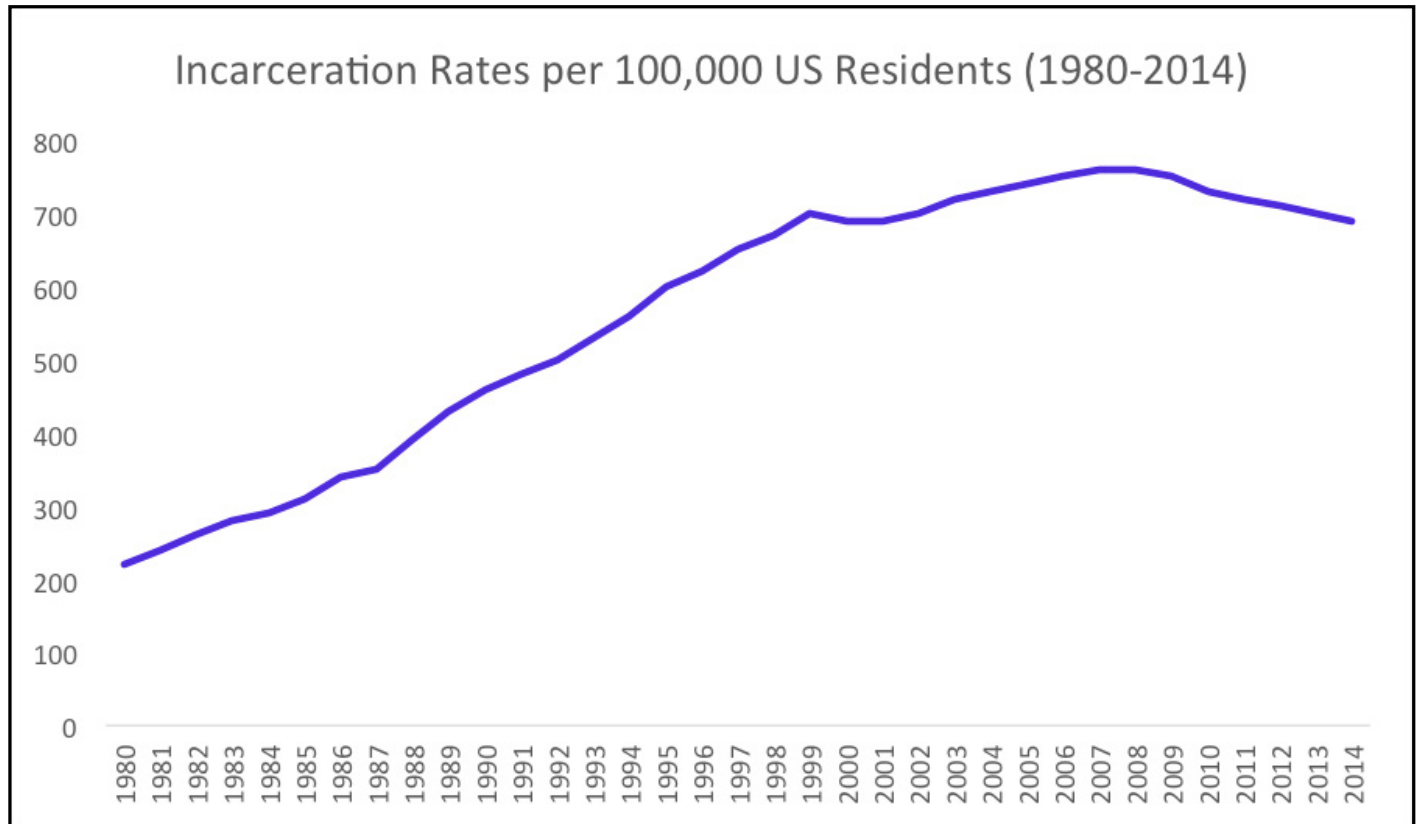
Crime rates were on an increasing trend from 1960 to 1990, driven largely by the doubling of property crime within that period. The early 1990s marked a peak in crime, which has since receded at a more gradual pace compared to the expansion phase. A number of mechanisms have been mooted as approximate causes of this movement, including efforts to strengthen control of violent crime through diverting additional resources, shifts in societal composition and cultural mores, widening acceptance of abortion which reduced the incidence of children being born into environments that predisposed them to engaging in crime, and the rejection of cocaine consumption.



Note: The crime rate includes all violent crimes (i.e. aggravated assault, forcible rape, murder, robbery) and property crimes (i.e. burglary, larceny, theft, motor vehicle theft.)

Incarceration Rates Time Series

The incarceration rate in the United States is defined as the number of inmates in federal prisons, state prisons, local jails and privately operated facilities and is measured on a basis of 100,000 U.S. residents. Incarceration rates have risen steadily over time since 1980, beginning at a base of 220 individuals per 100,000 residents. In recent years however, the rate of growth has decelerated significantly.



International Comparisons

The United States has the highest incarceration rates globally compared to all other countries at 698 individuals per 100,000 population. This compares unfavorably with the typical global rate of 130, and at least double the incarceration rate of 90% of all other countries in the world⁵.

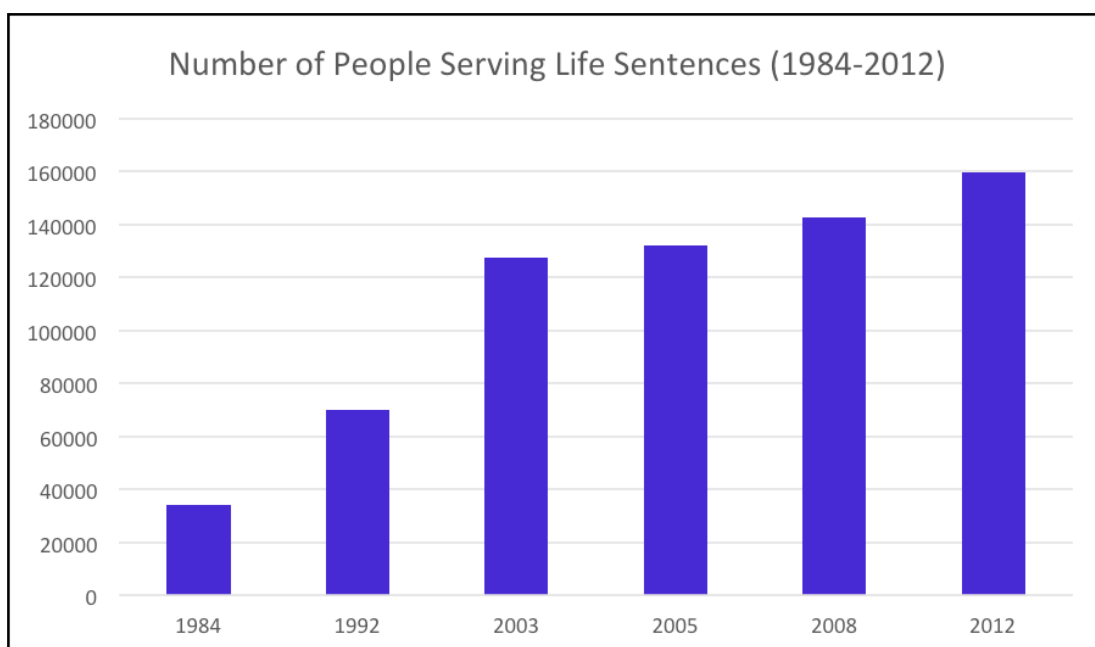
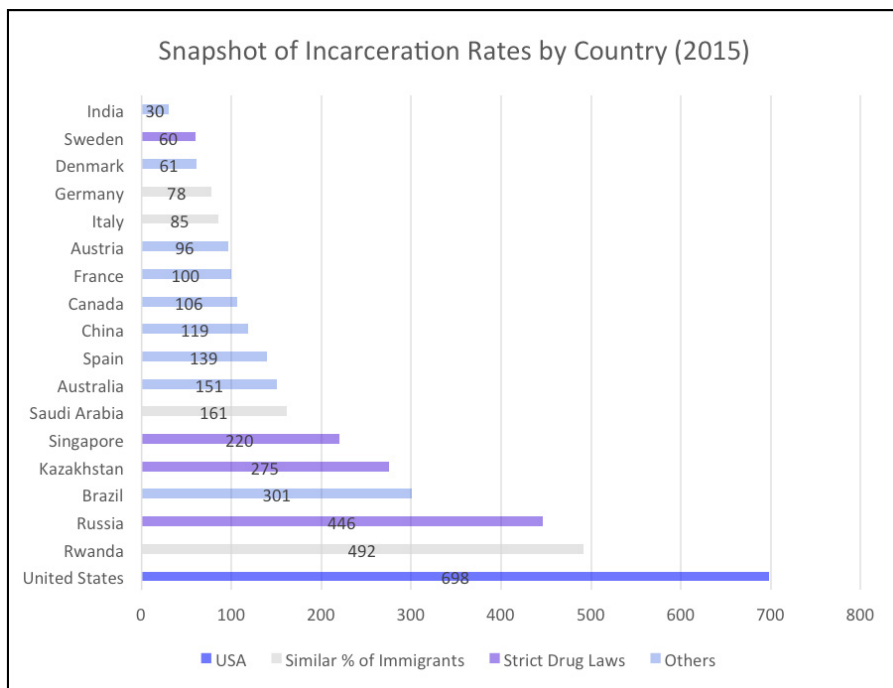
We perform a more balanced assessment of incarceration rates by controlling for countries that have a similar proportion of immigrants as the US, or have drug laws that are at least as strict as those in the US. These variables have been studied extensively in academic literature, including their relationship with crime and incarceration rates. Even when compared to countries with similar demographic profiles, the US still possesses a high incarceration rate.

The persistence of high incarceration rates over time can be decomposed into two distinct effects – the increasing commonness of imprisonment, and the longer average duration associated with a single episode of imprisonment. Between these influences, it is postulated that growth in the length of imprisonment is the more significant driver of incarceration rates⁶.

Length of Imprisonment

The average length of a sentence has been prolonged considerably since the 1970s. Part of this trend can be attributed to deliberate policy maneuvers to extend sentencing terms, as demonstrated by the imposition of mandatory minimum terms and the coordinated scaling back of parole releases and pardons. In particular, the escalating usage of life sentences is a secular trend which has translated into longer imprisonment terms across the board.

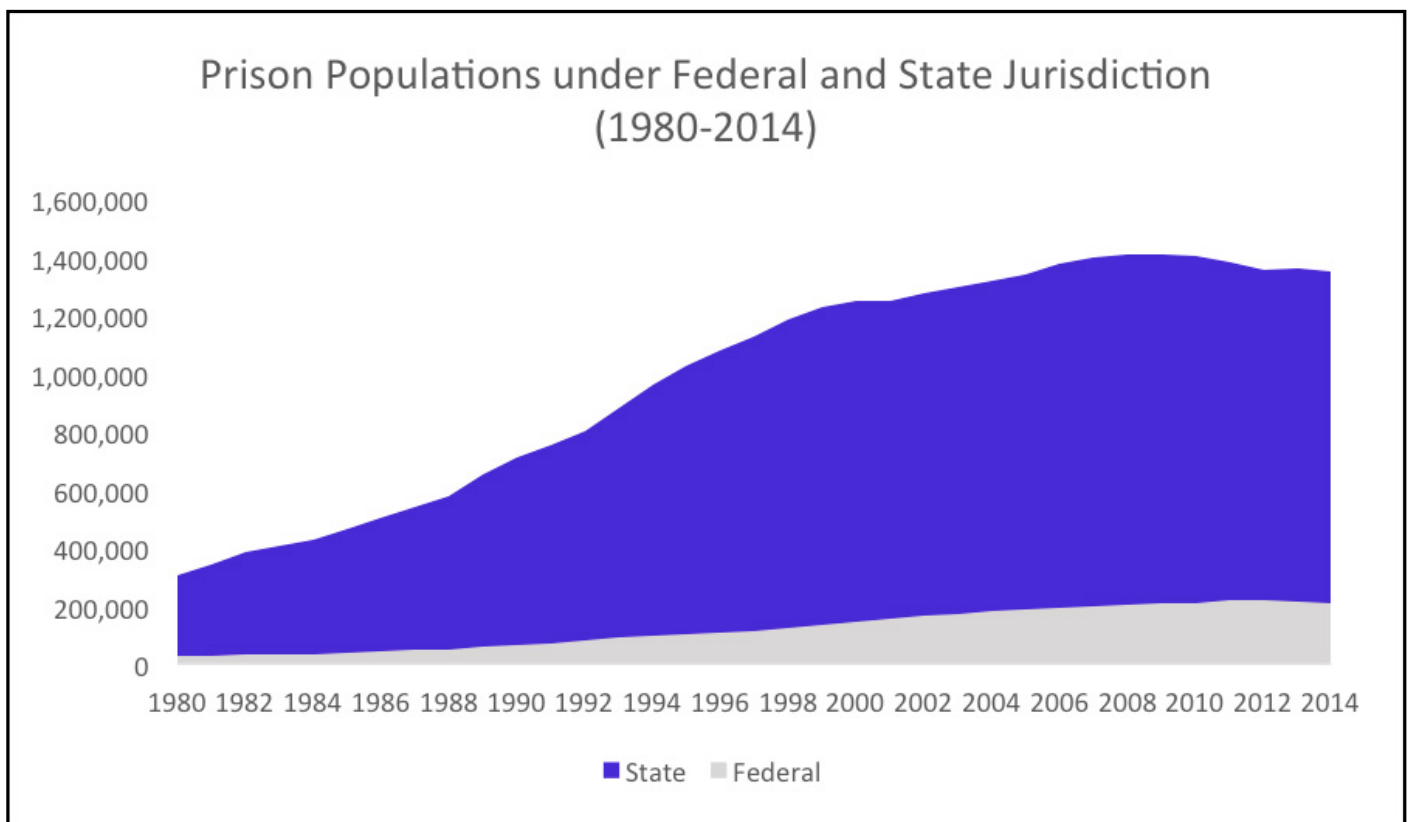
Another strand of regulatory impulses that has coalesced in longer imprisonment durations is the issue of harsher punishment to repeat offenders, in the form of longer prison sentences. This has been manifested most strikingly in the legislative traditions such as three strikes laws, which prolong prison sentences for convicts who have had committed at least 2 violent crimes, and limits the ability of these offenders to receive any punishment other than a life regulatory principle and demographic phenomena has produced an exponential increase in the prevalence of incarceration.



Prison Population

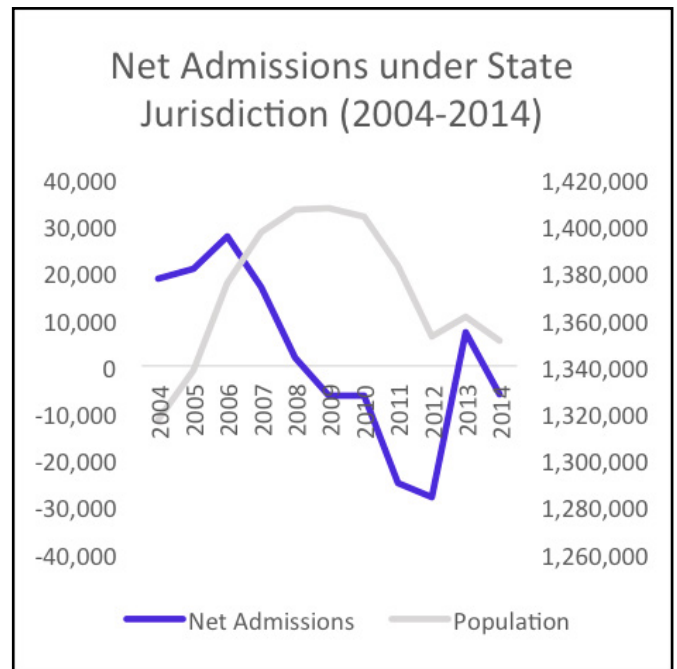
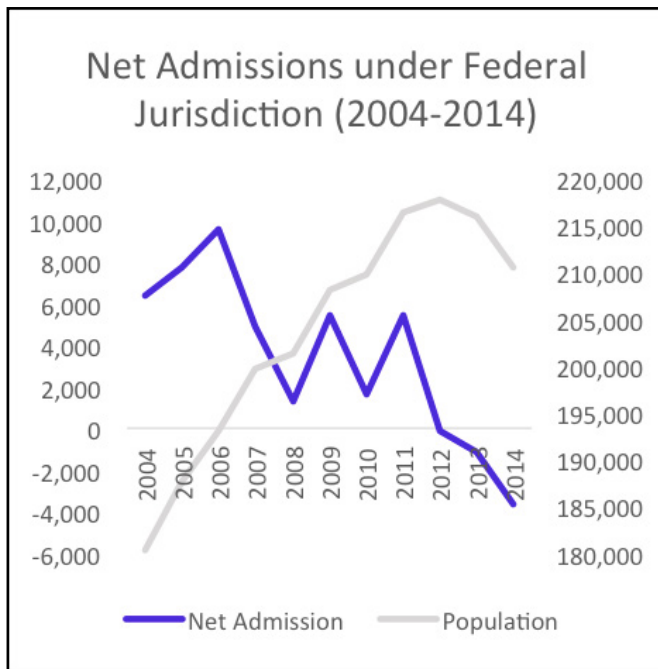
Federal and State Prison Populations

The prison population is indicative of the stock of offenders that have previously committed crimes and are currently within the system. The prisons population has increased steadily from 1980 to 2014 with a CAGR of 4.68%. When separated according to jurisdiction, the CAGR corresponding to federal prison population growth of 6.54% exceeds that of state prison population, which is at 4.47%. In recent years, the rate of prison population growth has slowed and entered negative territory. 2009 marked the highest prison population total of 1615500 prisoners, whereafter prison populations for both state and federal jurisdictions declined. This lags the peak in incarceration rates marginally by a period of 1-2 years, as incarceration rates peaked in 2007-2008.



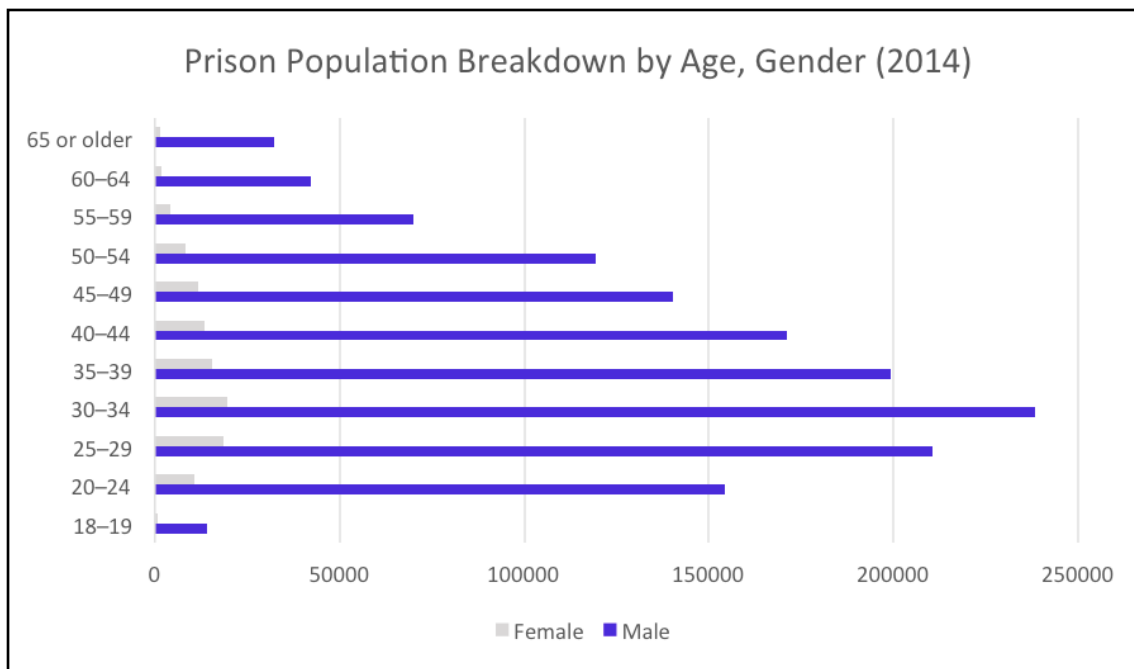
Admissions to and Releases from State and Federal Prisons

Net admissions serves as a leading indicator that is constituted by subtracting releases from admissions within a given year. It functions as an effective leading indicator of the magnitude and direction of change of the prison population, as indicated by the graphs below for both federal and state jurisdictions. For instance, the reversal of net admissions from positive into negative figures has resulted in a lagged inflection of the federal prisons population.



Prison Population by Age

In 2014, the number of imprisoned males vastly outnumbers that of females. The modal age bracket for males and females is in the 30-34 age group, where there are 238409 males and 19759 females.



Prisoners by Custody in Private Prison Facilities

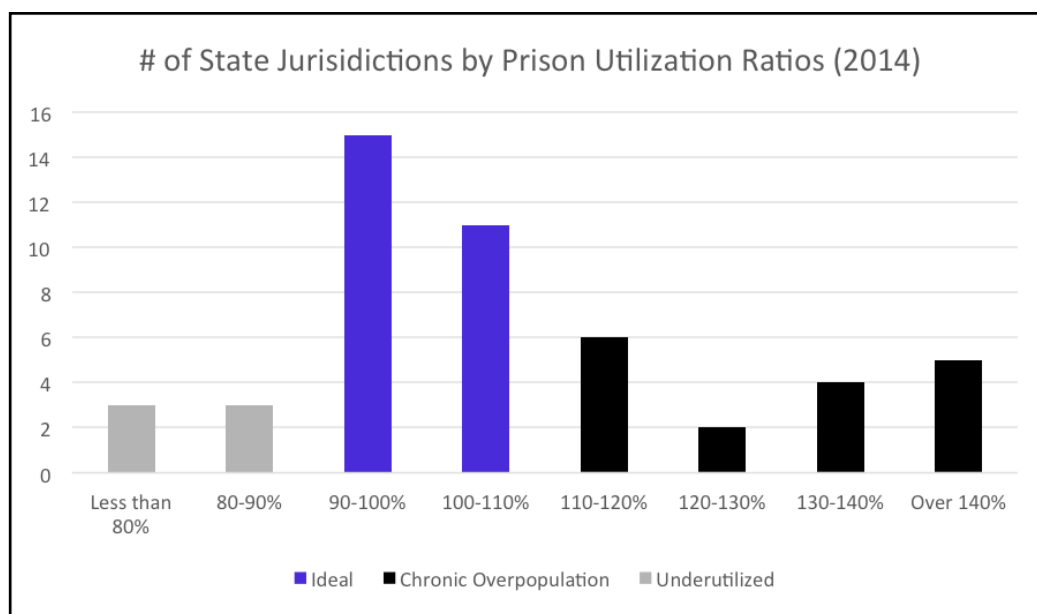
From 2004-2014, the number of prisoners in private facilities had increased steadily. From a more granular perspective, the number of federal prisoners held in private facilities has steadily outpaced the average across state jurisdictions. The core implication from this is that private prisons do not account for a substantial segment of prisoners in the US, and that policy considerations that are specific to private prisons only have a limited validity.



Prison Population Relative to Capacity

The federal jurisdiction currently houses a prisoner population that is 128% of capacity, which hints at a persistent degree of overcrowding. On a state jurisdiction level, we categorize jurisdictions in buckets according to the ratio of their prisoner populations to capacity to ascertain if the allocation of prison capacity is inefficient. 6 jurisdictions are underutilized while 17 jurisdictions are chronically overpopulated.

This implies that while there is room for prison places to be transferred from persistently overpopulated jurisdictions to underutilized ones for a more optimal assignment of capacity, there is still a necessity for a global increase in the total designed capacity of the entire state legislation system to meet the demand for prison places as suggested by the custody population.

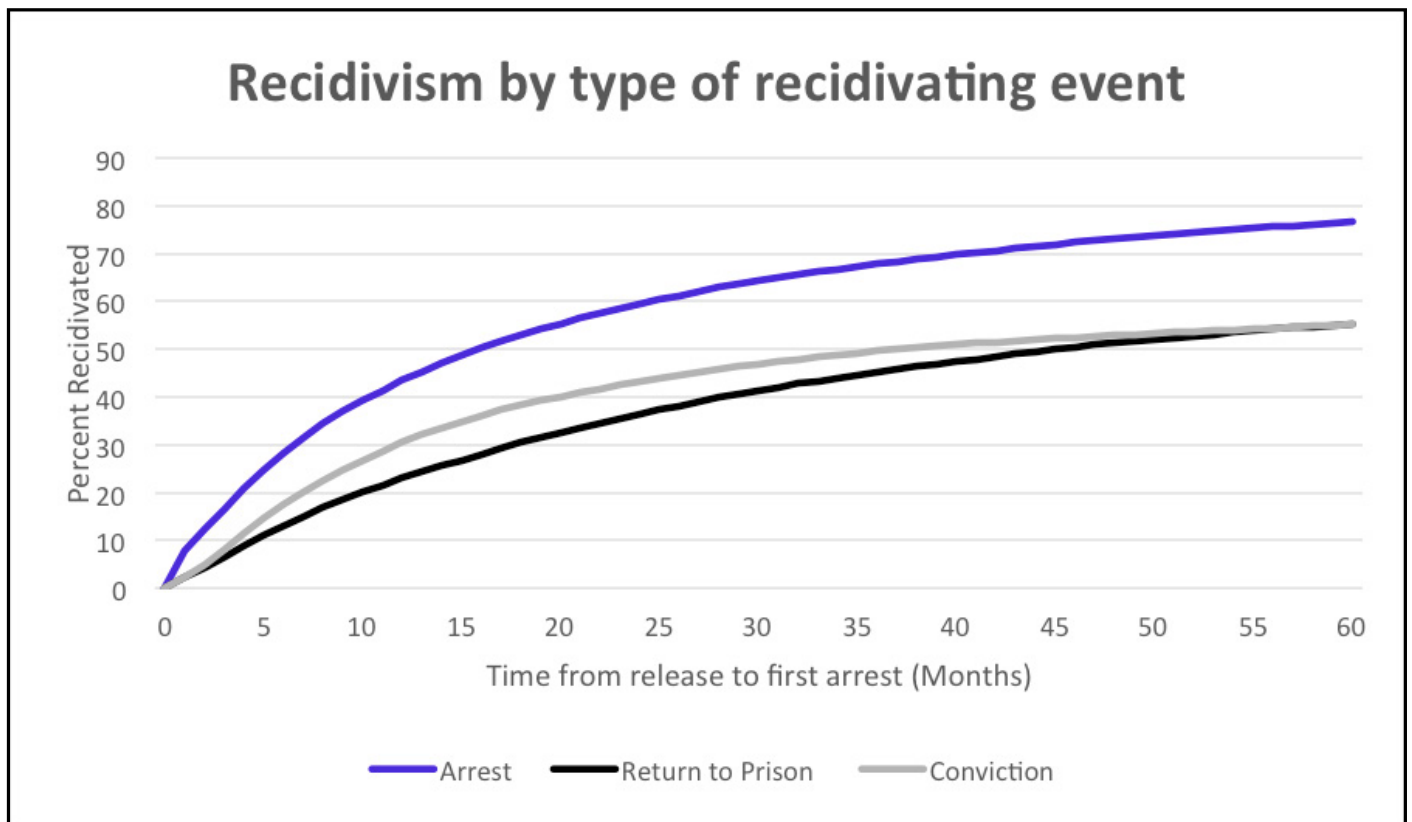


Recidivism

Recidivism encompasses two material definitions⁷, which include (i) a re-conviction for a new offense; (ii) a re-arrest without detailed information on the individual’s post-release criminal history record. We have elected to use the Bureau of Justice Statistics’s dataset on recidivism of Prisoners Released in 30 States in 2005 as it provides the most favorable balance between its geographical coverage and the currency of the study.

Recidivism by time from Release

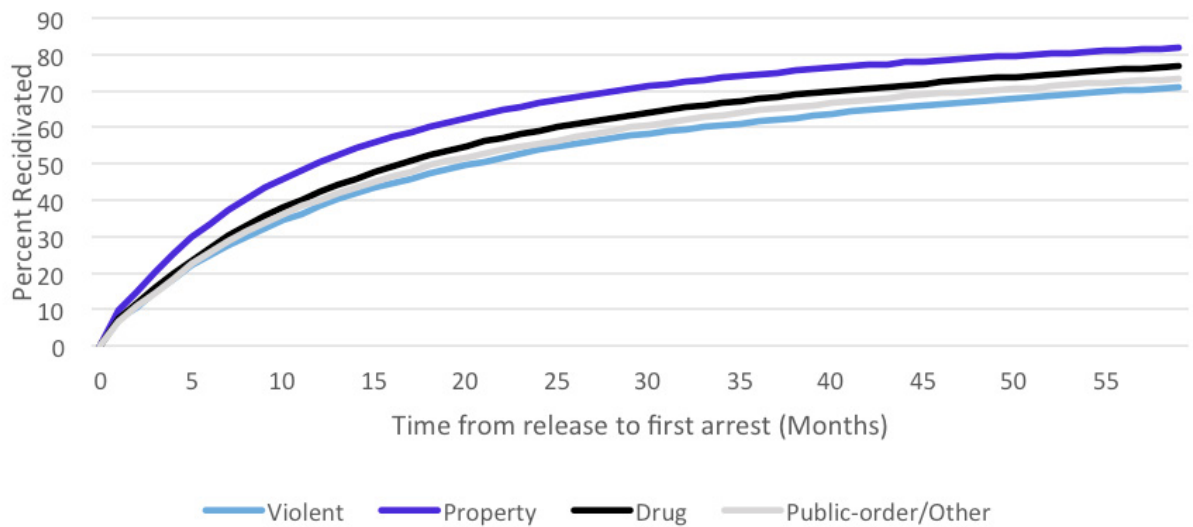
Within a single year after their release from state prison, 43.4% of prisoners had been arrested. This continues to grow each year, where we see that 67.8% of the released prisoners were arrested for a new crime within 3 years, and 76.6% were arrested within 5 years. Within a 5 year timeframe, over 3 quarters of total prisoners released have undergone re-arrest, implying that the prisons system has succeeded in preventing recidivism for less than 25% of the cases it comes into contact with.



Recidivism and Type of Offense

Recidivism rates are most severe for property offenses. Within 5 years of release, property⁸ law offenders were the most likely to be rearrested, with 82.1% of released property law offenders arrested for a new crime compared with 76.9% of drug offenders, 73.6% of public order offenders and 71.3% of violent offenders. This distinction remains in play throughout the 5 year timeframe following the release of prisoners, where property crimes are associated with the highest likelihood of recidivism.

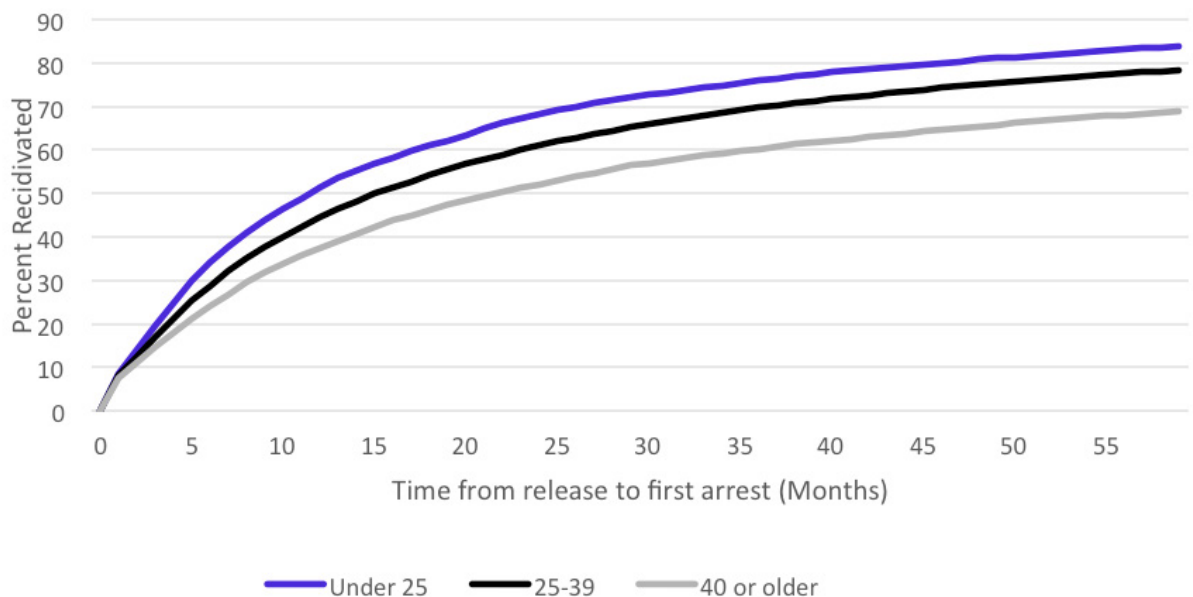
Recidivism by type of offense committed (2005)



Recidivism and Age

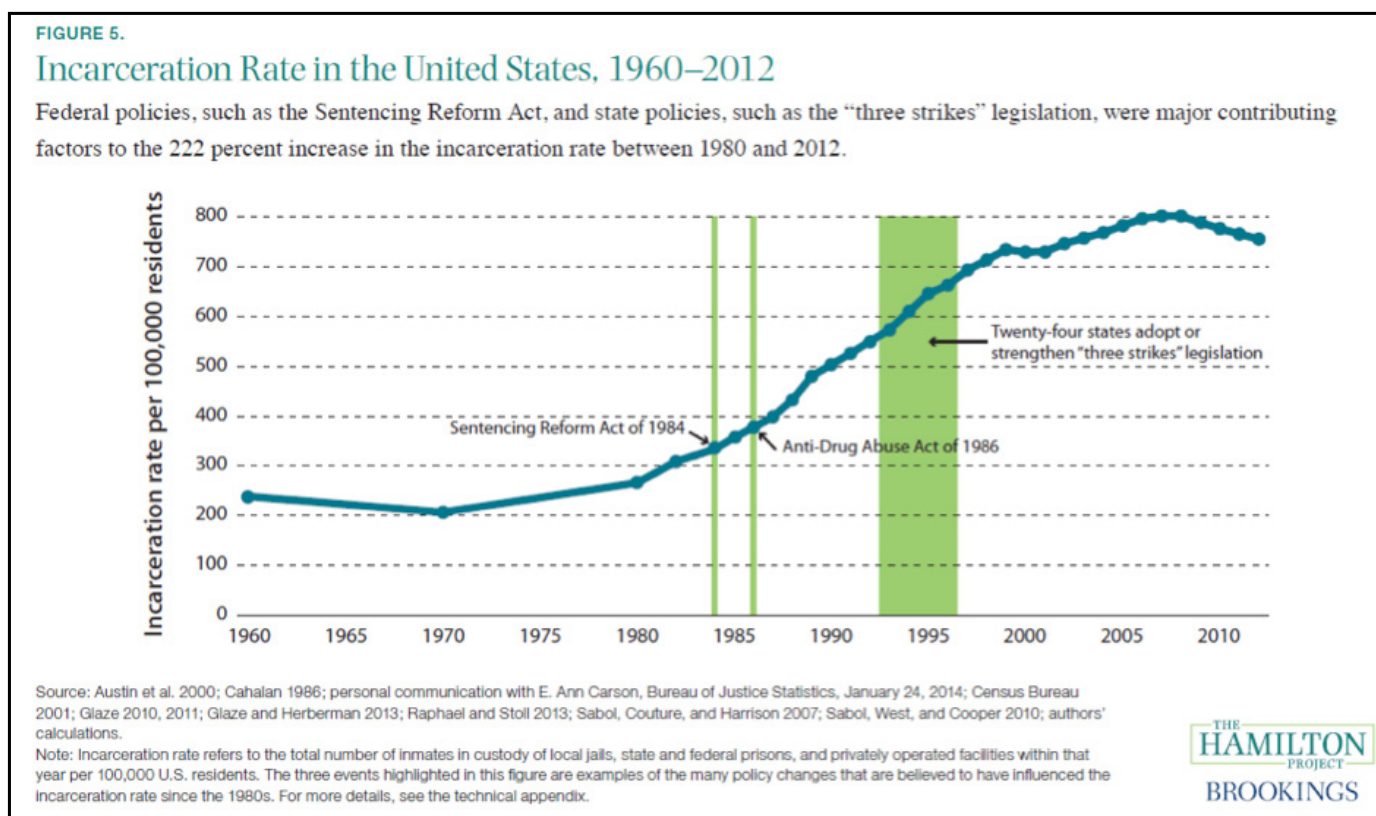
Apart from the type of crime committed, the other major determinant of recidivism rates specific to the commission of the crime is the age of the perpetrator. Recidivism is far more likely for younger released prisoners than older inmates. Three years after release, 75.9% of inmates 24 or younger had been arrested for a new offense, compared to 60.3% of those aged 40 or older.

Recidivism by age at release (2005)



LEGISLATIVE HISTORY

Our review of legislative history is informed by the resultant impact that refinements to legislation have wielded on the inflow into the prisons system. The graph below traces the climb in incarceration rates and maps this to mutually reinforcing reforms across disparate fronts of the legislative system, including the Sentencing Reform Act of 1984, the Anti-Drug Abuse Act of 1986, and the adoption of three strikes legislation across states in the 1990s.



Rationalization of the Justice System: Sentencing Reform Act of 1984

The Sentencing Reform Act of 1984 steered the U.S. Commission on Sentencing in its efforts to reshape legislative guidelines to reducing disparities and imbue a consideration of prison population constraints in the decision to prescribe non-incarcerative punishments⁹. However, the Commission ignored these directives after encountering stern criticisms from federal judges, prosecutors and legal scholars, and the difficulty of actualizing certain elements of the act due to varying levels of receptiveness across states. This transpired in the promulgation of mandatory guidelines that increased the minimum sentence length and the number of individuals receiving prison sentences.¹⁰

These legislative provisions have triggered a shift in sentencing discretion from judges to prosecutors. While it is contended that this transition has encountered considerable resistance from practitioners, who desire autonomy in reaching decisions on the stringency of punishment to levy against offenders, they still contribute to the larger magnitude of incarceration rates and eventual sentence lengths in lending considerable ballast to the precedent of minimums established.¹¹

Clamping Down on Substance Abuse: The War on Drugs

Major legislative pieces that came into being as an embodiment of the draconian stance adopted by the US government toward substance abuse as part of the War on Drugs continues to affect incarceration rates today. Subsequent to the Nixon administration's spearheading of the Comprehensive Drug Abuse Prevention and Control Act of 1970¹², the number of offenders prosecuted and incarcerated for drug related offences had increased rapidly, emerging as the predominant reason for new admissions into state and federal prisons in recent decades.¹³

These have had abiding downstream effects on the breakdown of incarcerated individuals today. Following the successful passage of the Anti Drug Abuse Act of 1986, which instituted the same five year mandatory minimum sentence on consumers of cocaine as those who possessed up to 100 times as much in powder form, the number of incarcerated individuals associated with non-violent offenses rose sharply. The legislative policies have culminated in an abiding legacy, where by 2003 58% of all women in federal prison were convicted of drug offenses and extending the grasp of incarceration to population segments that had hitherto gone untouched. This introduces a new set of challenges in promoting the re-integration of offenders back into society upon their release.

Repeal of Mental Health Systems Act

The Mental Health Systems Act (MHSA) of 1980 served as a source of funding and centralised administration for the extension of grants toward community mental health facilities. Under Ronald Reagan, the budget of the National Institute of Mental Health was curtailed, resulting in the graduated retreat in the scale of clinician training, research efforts, and service provision. The eventual impact that this wielded on the system was to reduce the breadth of options available to mental health patients, consigning them to a bleak series of choices that tilted the balance in favour of incarceration as the least costly option for containing mental health patients from the rest of society.

The series of events described above has cascaded into structural changes to the composition of prisons, arising independently across multiple different jurisdictions. For instance, Rikers Island, the main jail complex serving New York City, houses an adolescent population in which over 48% have been diagnosed with mental health issues¹⁴. The frequency of this occurrence raises the question as to whether incarceration would have been expressly suited for the needs of this segment, and if a more targeted approach would have yielded more palatable outcomes. The manner in which social, political, structural factors have combined to shape the incarceration landscape, layered atop interest group pressures and the role of federal bureaucracy, is an all too stark reminder of the need to factor in solutions that have origins in the community, to address deficiencies in the prison system.

Abolishment of Parole on a Federal Level: Increasing Retention in the Prisons System

Parole functions as a mechanism for preparing prisoners to re-integrate back into civil society eventually, also offering avenues for patients to receive medical treatment on compassionate or humanitarian grounds¹⁵. From a macro perspective, paroles are a means of reducing the strain on finite capacity from rising prison populations, while systematically providing chances for offenders who pose a much less aggravated threat to the rest of society to live a life outside of jail.¹⁶

The Comprehensive Crime Control Act of 1984 saw Congress abolishing parole uniformly on a federal level, whereby the only route of recourse for a prisoner to interact with wider society was through a good time credit per year against their sentences, capped at a maximum of 54 days. This led to a steep reduction in the extent to which parole as a tool could assuage prison capacity tightness, limiting its effectiveness in this regard to the state level. As a result of the consequent ossification of legislature and removal of parole options, a twofold effect was left on the federal system – not only were prisoners not able to temporarily leave prison on a temporary basis leading to temporary respite on the tightness in capacity, a graduated pathway that funnelled prisoners towards re-integration back into society and their eventual release had been eradicated, increasing the populations remaining in prisons further.

Harsher Treatment of Repeat Offenders: Three Strike Laws

Three strike laws arise in the form of legislative provisions enacted by governments who adopt a principle of imposing a harsher sentence on offenders who have been convicted of at least 2 violent crimes. The first three strike law came into force in 1993 in Washington¹⁸, and diffused rapidly across 26 states within a span of 11 years by 2004. While three strike laws undergo considerable variations in interpretation and implementation between states, they remain unified in echoing the need for life sentences without possibility of release for at least 25 years on their third strike.

While certain states witnessed stark declines in the level of violent crime in the period following the institution of the three strikes law, it would nevertheless be challenging to attribute the decline exclusively to employment of new legislation, instead of the secular trends in decreasing violent crimes that occurred independently from the change¹⁹. Recent studies have also cast aspersions on the notion that legislation wielded a profound impact on preventing crime through deterrence and incapacitation, and failed to directly contribute to the plummeting crime rates²⁰. However, it is incontrovertible that the passage of three strike laws have been pivotal in increasing the average length of prison sentences and indirectly the total population in prisons at any point in time.

Incarceration and Prison Populations

1. While we see that crime rates on aggregate peaked in 1991, and have fallen from then till 2014, incarceration rates have not fallen similarly. From 1991, incarceration rates have risen from 480 per 100,000 residents to a 690 per 100,000 residents around 2014.
2. Internationally, even after adjusting for comparisons for the same migrant population proportion and severity of drug laws, the US still has substantially higher incarceration rates than comparable countries.

The incarceration rate stands out for a number of reasons. For one, the decline in crime rates, long held to be the main driving force for incarceration rates, has not led to a commensurate decline in incarceration rates. Furthermore, the US has an incarceration rate that outstrips peer nations. We thus arrive at the goal of reducing incarceration rates in the US. This attempts to manage the high fiscal cost accruing to the taxpayer for supporting larger prison populations²¹, the social cost borne by offenders who lose opportunities to engage in productive work and renew the currency of their skillsets, and the diminishing impact that this has in reducing crime rates.

The origins of the steady rise in incarceration rates can be traced back to the increased likelihood of being incarcerated due to an expansion in the number of offences that were associated with incarceration, and the increase in the duration for which they were imprisoned, partly due to the protracted interactions this may have had with a persistently high recidivism rate²².

When attributing the increase in incarceration rates to the influence of a rising number of individuals being incarcerated, we see that incarceration as a result of drug related offenses has played perhaps the most substantive role in bringing about this phenomenon. The Brookings Institute explains the uptick in new admissions to state and federal prisons with drug crimes, which have been a leading factor in contributing to broader exposure to prison²³. The War on Drugs, enacted in concert with the other legislative provisions outlined in the earlier legislative history section, have combined to drive the number of individuals incarcerated due to drug related offenses from 41000 in 1980 to over 500000 in 2015²⁴. The absence of established traditions that have had a proven track record in rehabilitating or incapacitating ex-offenders has prompted an expansion in the usage of incarceration to meet an increasingly broad spectrum of needs. This undermines the suitability of incarceration where other coordinated community based interventions, medical treatment, might have resonated more strongly with judicial intent, but lacked sufficient resourcing or research to make an impact.

Longer prison sentences have been identified as the main factor in driving up incarceration rates for the trends that we have observed since 1990²⁵. The effect of the Sentencing Reform Act of 1984, coupled with the mass adoption of 3 strike laws in the 1990s, can be felt most acutely in the spiking of incarceration rates as a response to legislative changes that had set out to increase perceived consistency and fairness in the sentencing process through elevating procedures to a uniformly stringent standard. Before 1984, indeterminate sentencing existed as an incontrovertible paradigm, premised on the necessity of

customizing sentences for the individual needs of the case, and the involvement of judicial discretion into the process as a check and balance adjusting for good behaviour or errors embedded in the initial judgement.²⁶ The permissive attitude toward judicial discretion led to a system that refrained from instituting strictly enforced minimum sentences, devolving decisions on whom to release to parole boards, and put in place multiple procedures that catered for time off from prison rewarding patients for good behaviour.

In the face of growing criticisms mounted at indeterminate sentencing, the Sentencing Reform Act advocated binding all legislative entities in adherence to a unified legal construct, as a means of resolving unwarranted disparities across comparable cases, and served as a means of minimizing the scope for human interference and biases from the sentencing process.²⁷ Through its implementation, a clear slant toward a greater stringency in standards could be observed as the Act helped give voice to conservative concerns that prior sentencing procedures gave short shrift to the deterrent effect of imprisonment, or granted unmerited leniency in other cases. The severity of sentencing standards heightened to a uniformly severe level thus precipitated higher incarceration rates across the board.

A deliberative turn in policy trajectory was manifested in the mid-1980s after the Sentencing Reform Act. Unlike its predecessors, this series of legislative amendments were overtly geared toward making sentences harsher with more definite outcomes. This was heralded by the proliferation of laws that had a fundamentally punitive character, such as mandatory minimum sentences, the abolition of parole, truth in sentencing, and three strikes laws.²⁸ While these have prompted more vigorous attempts by judicial officials and prosecutors alike to circumvent legislature, the inescapable reality is that it has anchored legislative trajectory in a far higher benchmark, and inclined juries to consider these longer sentencing terms as a default in cases where precedents are distinct.²⁹

Academics have argued that while both the first and second phases of legislative policy reformation had inadvertently escalated the severity of subsequent incarceration sentences, the first phase embarked on the appropriate policy intent of incrementally enhancing the procedural fairness of sentencing efforts and improving the throughput of case-by-case decision making through the consolidation of various standards. However, the subsequent phase of reform was monolithic in its intent to increase severity, and introduced numerous impediments to the ability of the legal system to modulate responses according to the severity of the situation. Through giving rise to an increase in the average length of sentences across the board over time, it designated longer minimum sentences as the default option corresponding to multiple different types of offences, thus leading to an increase in average sentencing lengths as a product of systemic design, instead of a deliberate judicial decision.

As indicated earlier, there are multiple avenues that can help ease the increase in incarceration rates while avoiding an adverse effect on crime. A principal direction is in terms of limiting the growth of sentencing lengths, through examining whether some legacy elements from the second phase of policy reformation, such as mandatory minimum sentences, parole abolition, and three strike laws could have a more well-defined scope of application. Alternatively, we could adopt a more removed

This could occur through:

- a) Restricting the type of crimes associated with mandatory minimum sentences
- b) Imposing prerequisites to be fulfilled before mandatory minimum sentences can be applied.
- c) Expanding the application of less disruptive alternatives to incarceration, including community based alternatives, home confinement and restorative justice models.

Recidivism

3. A BJS cohort study reveals that within 3 years of release from prison, 67.8% of prisoners had been arrested for a new crime.

4. Recidivism is most prevalent for property crimes, followed by drug then public order offenders.

5. Recidivism is also far more likely for younger prisoners than for older inmates, with 75.9% of inmates 24 or younger arrested for new offenses within 3 years of release, compared to 60.3% of those aged 40 or older.

Recidivism is a recurrent factor that indicates the efficacy of the judiciary and prisons system in rehabilitating severe offenders. The data that we have reviewed outlines a number of confounding factors that demonstrate an impact on recidivism, which provide a viable starting point for helping us determine which population segments policies intended to curb recidivism should be directed toward. In the interest of introducing additional nuances to the judiciary system, we explore the application of a combination of positive and negative incentives to shape behaviour and minimize recidivism, and how their magnitudes can be calibrated in tandem with the direction charted by the data in dictating where to place the greatest emphasis.

A fundamental critique of the current judicial system is the fact that it has failed to decisively address the difficulties confronting offenders who are released into society. This is evinced from the fact that recidivism, despite the uniformity of the treatments that are addressed at it, has had a pronounced difference in the way it manifests across different types of crime, where incarceration as a policy instrument appears to have a more muted effect on property related crime compared to violent crime³⁰. According to research by the Sentencing Project, the fact that recidivism declines markedly with age also undermines the force of the argument that prevention of crime by incapacitation is singularly effective, except when specifically targeted at highly dangerous offenders.³¹

The observation that recidivism has a greater impact on minors might point to a systemic flaw within the system, instead of an underlying characteristic of the incarcerated population. Numerous studies have performed differential analyses that have compared the effects of prison sentences and community sanction as alternatives on recidivism, where prisons as an option had resulted in slight increases in recidivism³². This can be attributed in part to the upfront cost that this imposes on younger offenders, in terms of lost opportunities to develop skillsets that could enhance revenue in the future, or stigmatization

that hinders meaningful re-integration into community. When incarceration takes place in a nascent stage of the offender's life, it severely undercuts the possibility of a meaningful career post release, consequently demolishing any incentive to stay crime free. This effect is less visible for older offenders.

Our interpretation of these converging trends highlights a gap in the current suite of initiatives that serve the offender upon his release, and suggests that there might be room for additional policies to be applied in conjunction with incarceration to achieve better outcomes vis-à-vis recidivism.³³ With greater obstacles to surmount in order to meaningfully integrate back into a productive capacity in society, offenders thus encounter an enduring motivation to revert to felony to sustain themselves. Surveys have concluded that this is an especially thorny issue in the hiring of ex-convicts to engage in any work that relates to money³⁴, where employers have displayed extreme hesitance toward hiring individuals with prior criminal histories of theft, larceny or drug abuse.

This discrimination has in fact been institutionalized, with background checks accompanying most jobs placing screening questions that immediately disqualify an ex-convict from any further consideration. Beyond employment, the stigmatization against offenders has permeated other core domains, such as in housing and education, where offenders are denied loans to finance their living arrangements or educational pursuits. The thorough shutdown of avenues on all fronts for offenders to eke out a living thus propels them back toward a life of crime.

Because recidivism is an issue that has its roots in social causes, instead of legal or systemic issues, we recognize that it would be challenging to put forward recommendations which are granular and universal to the extent of modifying existing statutes. Rather, we acknowledge that recidivism can take on a variety of different forms based on the dynamics of the communities where offenders decide

- a) Implementing programs that facilitates the re-entry of offenders back into society, such as educational initiatives that provide vocational training or college preparatory alternatives targeted at interested inmates
- b) Increasing the quality of pre-release services, within incarceration facilities, that address factors associated with drug-related criminality, mental health issues
- c) Kickstarting benchmarking efforts to compare and reward programs that have achieved positive rehabilitation outcomes
- d) Demolishing barriers erected in society that institutionalise discrimination and stigma against ex-offenders, denying them the opportunity to participate meaningfully in civil society. These include restrictions on ex-offenders for voting, membership in civic organisations, licenses, housing access, employment in roles that support career development

FEASIBILITY STUDY

Incarceration and Prison Population

We note that of the suggestions that had been surfaced the academic review, certain movements are already under way to provide adequate support for (a) and (b). With a presence in societal consciousness, substantial support bases sustained through advocacy groups and extensive media coverage, these incremental developments will be marginally easier to realise.³⁵

2013 marked a turning point in legislative history, where United States Attorney General Eric Holder remarking that the Justice Department would adhere to a new directive in restricting mandatory minimum sentences for certain drug cases. Making a conclusion on the proceedings of the landmark case *Alleyne vs United States* of 2013, Attorney General Holder contended that the charges placed on an individual should reflect the uniqueness of the case and consideration in assessing and fairly representing given conduct. This would provide a more calibrated response against recidivism, taking into consideration the offender's likely response to incarceration.

With these nascent changes beginning to take shape in the domain of drug offenses, it can be argued that the political climate is ripe for further repeals of mandatory minimum sentencing since the notion that minimum sentences fail to adequately accommodate the unique circumstances has gained traction, and there already exists an ingrained legal precedent. This case is further buttressed by the reports outlining the impact of *United States v. Booker* mandatory minimum penalties on federal sentencing by the United States Sentencing Commission³⁶, which makes data driven recommendations for sentencing practices to be further reviewed, wherein mandatory minimum sentencing should not be excessively severe, should be tailored to apply only to offenders who warrant the punishment, and be applied with consistency.

Option (b) has support that is enshrined in the form of Safety Valve legislation³⁷ that was implemented in 1994. This had the impact of reducing mandatory sentencing for drug offenders who fulfilled a number of conditions, including not having an established criminal record, did not employ credible threats of violence in connection with the crime, and did not cause death or fatal harm. This functions as a pipeline that successively screens the pool of offenders until only the most egregious of perpetrators receives the mandatory minimum sentencing. Through rationalizing and enacting a philosophy where only the most dangerous criminals with high propensity for committing further crimes are assigned mandatory minimum sentences, this targeting approach can ensure that the effectiveness of incarceration in reducing crime rates always profound.

In the spirit of fully encompassing all unique circumstances surrounding the commission of a crime, (c) depicts the inclusion of an alternative dimension of analysis that differs radically from (a) and (b). This makes it a more polarizing stance to advocate, given that it does not share the premise acknowledged by the status quo that incarceration is a tool that has merit in most cases, and contends that extra-judicial alternatives are well-equipped to fulfil the punitive and reformatory intent than incarceration. Therefore, it would be more challenging to implement due to the resistance that could emerge from more conservative sections of the electorate and judiciary, as it counters the philosophical position that had been originally embraced by (a) and (b).

Another issue with this recommendation is that it proposes an inherently broad based approach, arguing for the exercise of greater flexibility in customizing approaches to punish or reform offenders. This leads to greater fragmentation in the application of legislative, which poses a concern to fairness and sustainability, unlike (a) and (b) which prescribe a legislative change that can be executed uniformly across different legislatures and evaluated on a single basis. As community based programs inherently contain considerable variance due to the differences in resourcing allocations, these could result in vastly different intensities in program experiences accompanying an identical sentence, thus provoking concerns over the equity of punishments distributed and challenging the legitimacy of the system. Economically, these programs would require a certain minimal size to operate cost effectively and benefit from economies of scale that are widely acknowledged in a standardized, incarceration driven system. With an overarching objective to promote customization and flexibility in sentencing, this conflicts with economic sensibilities.

On balance, the implementation of (a) and (b) will likely receive support from fiscal conservatives and advocates of smaller government, as these will advance a measurable reduction in the quantity of resources devoted to the prisons systems as incarceration rates and prison populations will decline when mandatory minimums are abolished. (c) is diametrically opposed to (a) and (b) by virtue of the fact that it calls for program creation, which engenders a need to allocate additional funding to commence research on effectiveness of individual programs, and to scale up pilot programs to answer volume requirements caused by the influx of offenders. While detractors might contend that this would result in larger risks borne by society due to the greater presence of offenders³⁸, the additional financial resources freed up by this could be ploughed back into initiatives that resolve the root causes of crime within the community.

Recidivism

Both (a) and (b) have already been the subject of a number of studies, since they would feed into measures that contain recidivism through social interventions, such as community-based prevention and treatment for substance abuse, as a basis of comparison against incarceration which operates as a blunter tool. Philosophically, these are aligned in that their primary aim is to remove barriers that make it harder for individuals with criminal records to turn their lives around.

The most tangible means of achieving re-integration through (a) would be through employment programs, which not only provide a sense of belonging through immersing the individual within a professional community, but also provide him with a means of sustaining a lifestyle beyond the prison. Certain programs have already been implemented but it is challenging to quantify their absolute impact, given that the voluntary nature of the program equates to self-selection of program participants who are already less likely to engage in recidivism.³⁹

The empirical evidence in favour of these programs has been well documented. Job placement programs have shown promise in reducing recidivism by helping released prisoners obtain skills and connect with employers. These programs find robust support in the form of the Manpower Demonstration and Training Act (MDTA) of 1962, which supported skill improvements for released prisoners. Considering events that have taken place over a larger scope, the Transitional Aid Research Project (TARP) of 1963 also served a purpose in enabling prisoners to cope better with the transition process by granting them an added buffer to ease them into the job search process while still unemployed.

However, the standalone implementation of programs outlined in (a) that take place after an individual has been released from prison have experienced limited reductions in recidivism, when studied on federal level. This has been attributed partially to the lack of extensive follow up service, which keep tabs on the progress of the offender for years after release. However, an equally neglected causal factor is that the reasons causing maladjustment for offenders originate beyond employment issues, and could have originated from a history of mental illness, addiction or simply a lack of the requisite skills needed to hold down a job.⁴⁰ These are issues that require a considerable amount of time to properly assess and resolve, and would need to be spotted before the offender had been released in order to achieve observable outcomes.

The corollary of these observations is that programs to rehabilitate offenders and divert them from recidivism need to occur across multiple fronts, and on a protracted timescale that enables the dismantling of some of the more deeply embedded barriers to recidivism that exist within the prisoners psyche. Hence, a realistic solution to improving recidivism should not only espouse employment, ends focused solutions that lead most immediately to jobs, but should also weave in some elements of (b) that provide for a more holistic assessment of the psychological readiness of the patient, and resolve any lingering addiction or mental health issues that could resurface to obstruct employment prospects upon release into the society.⁴¹

A successful example of such a program is New York's Community and Law Enforcement Resources Together program (ComALERT). Apart from addressing the more downstream responsibilities associated with prisoner rehabilitation, such as creating jobs for offenders in a welfare-to-work model and maintaining a network through which job referrals for ex-convicts are relayed, it also maintains close communication with community service organizations and law enforcement agencies to manage the development of prisoners and facilitate their search for housing or treatment. Containing elements of (a) and (b) within a single organization provides for strands of continuity between the pre-release services that tackle incipient issues and the more straightforward task of job assignment, which promotes a more precise matching between individuals and jobs.⁴²

(c) presents a larger challenge in that it threatens an overhaul of performance management paradigms that are deeply entrenched in American psyche. It is thus likelier that this will encounter more substantial barriers due to its diametrical opposition to the incumbent role that prisons are designed to play in society⁴³ (more heavily focused on meeting the aims of deterrence, incapacitation and catharsis), and the resource intensive nature of funding data collection and performance evaluation initiatives.

(d) makes sense from first principles, and has strong alignment with (a) and (b) in paving the way for more holistic integration for offenders throughout society. When installed in a structural capacity, this becomes a persistent incentive for offenders to find a job and contribute to society as rapidly as they can. The lifting of restrictions would also permit these individuals to forge an identity with strong linkages to the community in which they live, acting as a bulwark against recidivism. However, (d) is significantly more ambitious in its scope than the earlier options, as it touches on a number of different shifts required in domains beyond the judicial system alone, including housing, employment and community. This makes it difficult to administer and track coherently, since there might be a need for greater coordination across

CONCLUSION

Incarceration is linked to fundamentally legislative impediments, while recidivism is tied to social causes. Our proposed solutions are to begin dissecting the extensive reach of mandatory minimum sentencing to not only find the flaws of our current logic but also as a way to truly learn and discover the rootcause of criminality in these cases.

To improve recidivism, we embed a recognition of its diverse social causes into solution discovery, advocating broad directives that channel funding toward programs that aid re-entry into society while refraining from prescribing the exact ambit of these initiatives. These allow for greater flexibility to be exercised, whether it is to rebalance more decisively toward providing mental health support for individuals hampered by psychological conditions, or skills training and redevelopment for those whose careers had been derailed by lengthy imprisonment.

WORKS CITED

1. Pollock, J. M. (2005). *The Rationale for Imprisonment*.
2. Morris, N., & Rothman, D. (1998). *The Oxford History of Prison; The Practice of Punishment in Western Society*. New York: Oxford University Press.
3. Morris, N., & Rothman, D. (1998). *The Oxford History of Prison; The Practice of Punishment in Western Society*. New York: Oxford University Press.
4. Morris, N., & Rothman, D. (1998). *The Oxford History of Prison; The Practice of Punishment in Western Society*. New York: Oxford University Press.
5. Walmsley, R. (2013). *World Prison Population List, 10th Edition*.
6. Travis, Jeremy (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council. p. 40.
7. http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf
8. Refers to crimes that include burglary, larceny, theft, motor vehicle theft, arson, shoplifting, and vandalism, where property is taken absent of force or threat of force against a victim.
9. "An Overview of the United States Sentencing Commission" (PDF). United States Sentencing Commission. United States Sentencing Commission. Retrieved 17 January 2017.
10. Stith, Kate; Koh, Steve Y. (1993). "The Politics of Sentencing Reform: The Legislative History of the Federal Sentencing Guidelines". Faculty Scholarship Series. Yale Law School. Retrieved 17 January 2017.
11. Barry L. Johnson. (1984). "Sentencing Reform Act". eNotes. Retrieved 17 January 2017.
12. Alexander, Michelle (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press. p. 52.
13. Rothwell, Jonathan (2015). "Drug offenders in American prisons: The critical distinction between stock and flow". Brookings. Retrieved 17 January 2017.
14. ACLU/Human Rights Watch (2012). *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons in the United States* (PDF). United States of America. p. 132. ISBN 1-56432-949-6.
15. Petersilia, Joan. (2003). *When Prisoners Come Home: Parole and Prisoner Reentry*. Oxford: Oxford University Press.
16. Samaha, Joel. (2012). "Criminal Justice". Google Books.
17. White, Ahmed A. (2006). "The Juridical Structure Of Habitual Offender Laws And The Jurisprudence Of Authoritarian Social Control". *The University of Toledo Law Review*. 37 (3): 705.
18. [http://ballotpedia.org/wiki/index.php/California_Proposition_184,_the_Three_Strikes_Initiative_\(1994\)](http://ballotpedia.org/wiki/index.php/California_Proposition_184,_the_Three_Strikes_Initiative_(1994))
19. Males, Mike; Daniel Macallair; Khaled Taqi-Eddin (1999). "Striking Out: The Failure of California's "three Strikes and You're Out" Law" (PDF). *Stanford Law and Policy Review*. Retrieved March 16, 2013.
20. Stolzenberg, Lisa; Stewart J. D' Alessio (1997). "'Three Strikes and You're Out': The Impact of California's New Mandatory Sentencing Law on Serious Crime Rates". *Crime & Delinquency*. 43 (4): 457-469.
21. Kyckelhahn, Tracey. (2011). *Justice Expenditures and Employment, FY 1982-2007 - Statistical Tables*. U.S. Bureau of Justice Statistics (BJS).
22. Blackman, D. (1995). *Punishment: An experimental and theoretical analysis*. In J. McGuire & B. Rowson (Eds.), *Does punishment work? Proceedings of a conference held at Westminster Central Hall, London, UK*.
23. Rothwell, Jonathan (2015). "Drug offenders in American prisons: The critical distinction between stock and flow". Brookings. Retrieved 1 September 2016.
24. Bullington, Bruce; Alan A. Block (1990). "A Trojan horse: Anti-communism and the war on drugs". *Crime, Law and Social Change*. Springer Netherlands. 14 (1): 39-55.
25. Travis, Jeremy (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council. p. 41-48.

26. Zeisel and Diamond (1977). Search for Sentencing Equity: Sentence Review in Massachusetts and Connecticut.
27. Quinlan, J.M., (1991). A Report to the U.S. Sentencing Commission. Unpublished manuscript, Federal Bureau of Prisons, Washington, DC.
28. Morris, Norval and Tonry, Michael (1990). "Between Prison and Punishments in a Rational Sentencing System" New York: Oxford University Press.
29. Tonry, Michael (2009). "The Untold Story of America's First Sentencing Commission. Federal Sentencing Reporter 21(4):265-70.
30. John J. Gibbons and Nicholas de B. Katzenbach (June 2006). "Confronting Confinement". Vera Institute of Justice.
31. Mauer, Marc; King, Ryan S; Young, Malcolm C (May 2004). "The Meaning of "Life": Long Prison Sentences in Context" (PDF). The Sentencing Project. p. 3.
32. Orsagh, T., & Chen, J.-R. (1988). The effect of time served on recidivism: An interdisciplinary theory. Journal of Quantitative Criminology, 4, 155-171.
33. "California Prison Reform and Rehabilitation". California Department of Corrections and Rehabilitation.
34. Bailey, Kristen. (2007) "The Causes of Recidivism in the Criminal Justice System and Why It Is Worth the Cost to Address Them", Nashville Bar Journal, Dec 06/Jan 07.
35. Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103d Cong. (1994) (enacted); Nat'l Conf. of State Legislatures, Principles of Effective State Sentencing and Corrections Policy (2011), <http://www.ncsl.org/research/civil-and-criminal-justice/principles-of-sentencing-andcorrections-policy.aspx>
36. "Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System". United States Sentencing Commission. Retrieved May 6, 2014.
37. "EXCEPTION #1 TO MANDATORY MINIMUM SENTENCES: THE FEDERAL SAFETY VALVE FOR DRUG OFFENSES: 18 U.S.C. § 3553(F)" (PDF). FAMM.
38. Levitt, Stephen D. (1999). The Limited Role of Changing Age Structure in Explaining Aggregate Crime Rates, 37 Criminology 581, 592.
39. Steurer, Stephen., Smith, Linda., Tracy, Alice. (2017). "The Three State Recidivism Study," Maryland Department of Public Safety and Correctional Services, www.dpscs.state.md.us/doc/pdfs/three%20state%20recidivism%20study%20summary.pdf.
40. Little, Gregory L. (2000). "Cognitive Behavioral Treatment of Offenders," Addictive Behaviors Treatment Review, Volume 2, p. 12-21.
41. Westley, Michael N. (2009). "Program Helping Parolees Stay Out," Salt Lake Tribune.
42. "Learn about Reentry," U.S. Department of Justice, Office of Justice Programs, www.ojp.usdoj.gov/reentry/learn.html.
43. Bushway, Shaw. (2003). "Reentry and Prison Work Programs," Urban Institute, www.urban.org/url.cfm?ID=410853.