
Smart Decarceration

ACHIEVING CRIMINAL JUSTICE TRANSFORMATION
IN THE 21ST CENTURY

Edited by

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and

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OXFORD

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America.

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Library of Congress Cataloging-in-Publication Data
Names: Epperson, Matthew W., editor. | Petrus-Davis, Carrie, editor.
Title: Smart decarceration : achieving criminal justice transformation in the 21st century / edited by Matthew W. Epperson and Carrie Petrus-Davis.
Description: Cambridge ; New York : Oxford University Press, [2017] | Includes index.
Identifiers: LCCN 2017009332 (print) | LCCN 2017019901 (ebook) | ISBN 9780190631101 (hndf) | ISBN 9780190631118 (epub) | ISBN 9780190631095 (alk. paper)
Subjects: LCSH: Alternatives to imprisonment—United States. | Imprisonment—United States. | Criminals—Rehabilitation—United States. | Criminal justice, Administration of—United States.
Classification: LCC HV9304 (ebook) | LCC HV9304 .S559 2017 (print) | DDC 364.6/80973—dc23
LC record available at <https://lccn.loc.gov/2017009332>

9 8 7 6 5 4 3 2 1
Printed by Sheridan Books, Inc., United States of America

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Foreword

Michael Sherraden

I AM HONORED to have the opportunity to comment on the contributions and meaning of this excellent book, *Smart Decarceration: Achieving Criminal Justice Transformation in the 21st Century*, edited by my colleagues Drs. Matthew W. Epperson and Carrie Pettus-Davis.

In 2014, the Smart Decarceration Initiative (SDI) originated at the Center for Social Development as a partnership between the George Warren Brown School of Social Work at Washington University in St. Louis and the University of Chicago School of Social Service Administration. Both schools have notable track records in defining and testing social innovations and using evidence to inform social policies and programs since the early 20th century. Working very much in this tradition, SDI holds an outlook that is pragmatic (in the philosophical sense of American Pragmatism), theoretical (in the sense of specifying relationships to be tested), and empirical (by using research evidence to inform change)—the hallmarks of effective applied social science, in my view. In September of 2015, Drs. Epperson and Pettus-Davis planned and led the conference *From Mass Incarceration to Effective and Sustainable Decarceration* at Washington University in St. Louis. This volume is the culmination of that inaugural conference.

This book is motivated by an ambitious goal: criminal justice transformation. As a reader, you may ask whether this is actually feasible. In this regard, allow me to set the stage with a big-picture view—because our vision is too often unnecessarily limited by current realities.

Humans are highly social—and enormously innovative—animals. Social innovations have shaped and defined what we think of as civilization. Such innovations did not arise

9

Minimizing the Maximum

THE CASE FOR SHORTENING ALL PRISON SENTENCES

Nazgol Ghandnoosb

APPETITE FOR DECARCERATION

Crime rates have been plummeting for over 2 decades in the United States. The murder rate and reported rates of violent and property crimes fell by half between 1991 and 2014 (Federal Bureau of Investigation [FBI], 2016). Yet the incarceration rate continued to soar during much of this period. In recent years, the criminal justice landscape has begun to shift. The public has grown less punitive, and policymakers and practitioners have also changed course. Though these developments are promising, I demonstrate in this chapter that they have yet to reach the scale needed to produce meaningful decarceration.

Waning Punitive Sentiment

A 2014 poll by the Pew Research Center revealed that a growing majority of Americans (63%) supported moving away from mandatory prison terms for nonviolent drug crimes (compared to 47% in 2001). Public opinion has grown less punitive for more serious crimes as well. Mark Ramirez (2013) has charted historical changes in punitive sentiment, which he defines as public support for the death penalty, harsher judicial sentencing, increased law enforcement authority, and increased spending for tougher police enforcement (Figure 9.1).

He found that “public support for all four policies increased during the 1970s, plateaued in 1994, and declined afterward” (Ramirez, 2013, p. 338). By 2013, only a slim majority of Americans supported these punitive policies.

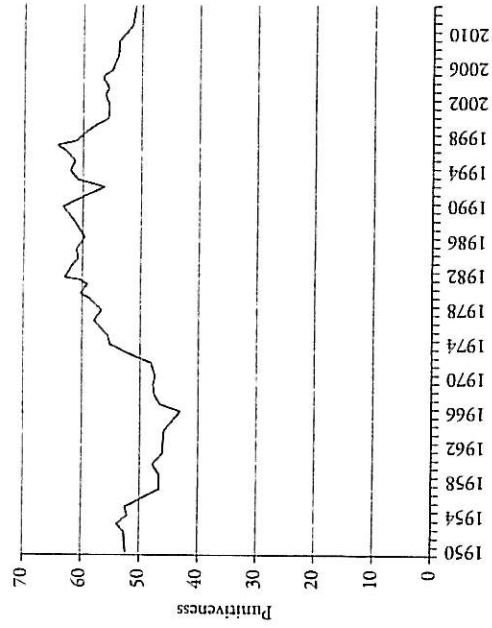


FIGURE 9.1 Punitiveness in the United States, 1950–2013.
Source: Data from Mark D. Ramirez.

Bipartisan Political Support for Decarceration

Political leaders are also increasingly eschewing the tough-on-crime rhetoric and policies of the past, particularly for nonviolent crimes. In a 2015 speech about the criminal justice system, President Barack Obama said, “For nonviolent drug crimes, we need to lower long mandatory minimum sentences—or get rid of them entirely.” Until that point, then Attorney General Eric Holder had been the administration’s champion for criminal justice reform, advocating for policies and practices that were “smart on crime,” rather than—or rather than just—“tough on crime” (U.S. Department of Justice, 2013). Many of the 2016 presidential candidates also echoed this sentiment early in the election cycle (Chettiar & Waldman, 2015). And advocacy groups from across the political spectrum, including the American Civil Liberties Union (ACLU) and the Center for American Progress on one end, and Koch Industries and Americans for Tax Reform on the other, have supported the growing political consensus that the United States should scale back punishments for nonviolent crimes.

Reforms Have Initiated Decarceration

This changing climate has paved the way for reforms. Four states have led the nation by decarcerating by over 20% since reaching their peak prison populations between 1999 and 2014: New Jersey, New York, Rhode Island, and California (The Sentencing Project, 2016). They achieved this through a mix of measures such as drug sentencing reforms, reduced prison admissions for technical parole violations, and diversion for persons convicted of lower-level crimes (Mauer & Ghandnoosh, 2014). Through reforms like these,

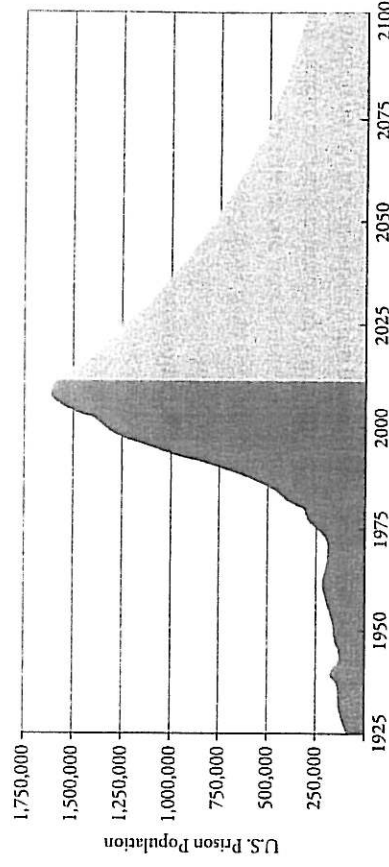


FIGURE 9.2 U.S. prison population: Historical and projected based on 2012 rate of decarceration.
Source: Mauer and Ghandnoosh (2013).

39 states have at least modestly downsized their prison populations (The Sentencing Project, 2016). The federal prison population has also contracted, by 3% from 2011 to 2014 (The Sentencing Project, 2016; Haile, 2015).

“Can we wait 88 years to end mass incarceration?”

Despite these developments, the overall scale of decarceration has been very modest.¹ The U.S. prison population grew for 37 consecutive years beginning in 1973, increasing by almost 700% (Mauer & Ghandnoosh, 2013). This trend began to reverse in 2010, but the pace of contraction has been slow: a total decline of 3% by 2014. Mauer and Ghandnoosh (2013) estimated that at 2012’s annual rate of decarceration—1.8%, the greatest yet—it would take until 2101 for the prison population to return to its 1980 level (Figure 9.2).

This modest and slow pace of decarceration falls short of the goal articulated by several scholars, advocates, and political analysts: a 50% reduction sometime within the next 15 years (Tonry, 2014; Eckholm, 2014; JustLeadershipUSA, 2016; Gingrich & Jones, 2014). Though even halving the U.S. incarceration rate would leave us at twice the level in England and Wales and over four times that of Germany (International Centre for Prison Studies, 2016), we appear to be far from reaching even this target anytime soon.

MEANINGFUL DECARCERATION REQUIRES REDUCING ALL SENTENCES

Existing reform efforts and proposals have not made a significant dent in mass incarceration because they have been limited to a small group of incarcerated individuals. One

¹ In contrast, the juvenile justice system has decarcerated more substantially and quickly, halving the number of youth in placement since 2000 (Nellis, 2015; Rovner, 2015).

constraint has been geographic: Decarceration has not occurred evenly across states. California's 34,000-prisoner reduction between 2009 and 2014 accounted for three-quarters of the nationwide decline in incarceration levels during this period (Carson, 2015; Carson & Sabol, 2012). But the bigger obstacle has been the narrowing of reforms to nonviolent crimes, and often to only drug crimes (see Subramanian & Moreno, 2014).²

"Even if every person in state prison for a drug offense were released today, mass incarceration would persist," write Ryan King and colleagues (2015). People with drug convictions made up half of the nearly 193,000 people in *federal* prisons in 2014, while those with violent convictions made up a slim minority (7%) (Carson, 2015). But among the 1.3 million people in *state* prisons, this pattern is reversed: 16% had drug convictions while 53% were convicted of violent crimes (Carson, 2015). Thus if the United States released all imprisoned individuals whose most serious offense was a drug crime, its total prison population would decline by 20%. The resulting imprisonment rate, 382 per 100,000, would be two and a half times higher than before the era of mass incarceration (Travis, Western, & Redburn, 2014).

Ending the War on Drugs would have a profound impact on our criminal justice system: In addition to reducing prison admissions for drug convictions, it would also affect people whose nondrug convictions and parole or probation revocations are related to substance abuse. But ending the drug war would leave the other major drivers of mass incarceration largely intact, as described next.

Increased Punitiveness Toward Violent Crimes

Alfred Blumstein showed that in addition to escalated drug law enforcement, the main causes of state prison population growth between 1980 and 2010 were the increased likelihood that arrests would result in prison sentences, and that people would serve longer sentences (Travis et al., 2014; see also Raphael & Stoll, 2013). Recent research reveals the persistence of these trends for violent crimes (Beckett, Knappus, & Reosti, 2015). In fact, efforts to scale back sentences for lower level offenses are often coupled with measures to expand sentences for serious and violent crimes (Gottschalk, 2015; Seeds, 2015).

The trend toward increasing punitiveness with regard to serious and violent crimes is most pronounced at the extremes. Ashley Nellis (2013) estimated that between 2008 and 2012, the United States continued its "historic rise in life sentences." By 2012, 159,520 individuals (one of every nine imprisoned individuals) were serving life sentences, a 12% rise since 2008.³ The subset of individuals sentenced to life *without* the possibility of parole

² Some exceptions to this trend are in the areas of the death penalty (Death Penalty Information Center, 2013) and juvenile life without parole (Rovner, 2016).

³ The majority of these prisoners are African American or Latino (47% and 16%, respectively; see Nellis, 2013). On how this racial/ethnic composition creates an obstacle for reform, see Ghandnoosh (2014), showing that white Americans' association of crime with African Americans and Latinos is related to their greater support for punitive policies.

grew even more dramatically, by 22% since 2008. By contrast, the total U.S. prison population *declined* by 2% during this period (Carson, 2014; West & Sabol, 2010). And while a majority of these lifers (64%) had homicide convictions (Nellis, 2013), their numbers increased during a period in which the murder rate fell by 13% (FBI, 2016).

As Nellis (2013) explains, the growth in the "lifer" population is due to the greater rate at which people are given these sentences, and to the greater amount of time they serve before being released. California, a state with one-quarter of the country's lifer population, illustrates both of these trends.

The Expansion of Life Sentences and the Erosion of Parole in California

After California passed its "three strikes and you're out" law in 1994, people whose third felony conviction (of any type, until 2012's Proposition 36) was preceded by two serious or violent felonies were mandated to serve a 25-years-to-life sentence. The state has rigorously enforced this law, and in recent years, nearly 8,000 Californians were serving such indeterminate life sentences (California Department of Corrections and Rehabilitation, 2013).⁴ Their release from prison depends on discretionary parole approval. These "three strikers" have not yet come up for parole review (Weisberg, Mukamal, & Segall, 2011), but the experience of the state's 26,000 other parole-eligible lifers demonstrates the hurdles they may face.

Through low rates of parole grants by the parole board, gubernatorial overrides of the parole board's decisions, and long waits between parole reviews, California has significantly prolonged the parole approval process. The parole board granted parole in 5% of scheduled hearings between 1991 and 2013, and governor reversals—an additional level of oversight made possible after a 1988 referendum—cut this rate to 3.1% (Ghandnoosh, 2017; see Ghandnoosh, 2016). In 2008, voter-approved Marsy's Law (Proposition 9) increased wait times between hearings, from 1–5 years to 3–15 years. As a result of these policies and practices, the average time served for lifers with murder convictions *released* between 1990 and 2010 has reached 20 years (Weisberg et al., 2011). But according to a spokesperson from California's department of corrections, "the average sentence for a prisoner serving a life sentence with the possibility of parole in California is death," with more lifers with murder convictions dying in prison than being released between 2000 and 2011 (Mullane, 2012, p. 147). Other states have used these and other strategies to prolong lengths of stay for these incarcerated individuals, or abolished their parole eligibility altogether (Ghandnoosh, 2017; Schwartzapfel, 2015).

The United States cannot end mass incarceration as long as the punitive approach dominates for individuals convicted of serious and violent offenses (Mauer & Cole, 2015; Pfaff, 2015; The Economist, 2015). The remainder of this chapter demonstrates that it is possible to scale back these excessive sentences while protecting public safety.

⁴ In addition, California's three-strikes law has enhanced sentences for nearly 35,000 people for their second felony.

MASS INCARCERATION'S LIMITED CONTRIBUTION TO THE CRIME DROP

Understanding mass incarceration's limited contribution to the crime drop of the last 2 decades strengthens the case for dramatic decarceration. Rates of crime reported to the police in the United States grew dramatically beginning in the 1960s, until finally climbing back down in the early 1990s.⁵ The murder rate, in particular, began to climb in the 1960s, 1970s, and much of the 1980s, until beginning its deep descent in 1992 (FBI, 2016). During this period, the U.S. prison population exploded: quadrupling between 1972 and 1991, the period of the crime wave, and then doubling again between 1991 and 2014, during the dramatic crime drop (Figure 9.3).

By 2014, the U.S. murder rate was at its lowest point since 1960, while the imprisonment rate was three times higher than in 1960. To what extent has the increased confinement of people in prisons, from about 200,000 in 1973 to 1.5 million in 2014, accounted for this dramatic crime reduction?

Reviewing the research on this question, the authors of a National Research Council report (Travis et al., 2014, p. 4) concluded that "the increase in incarceration may have caused a decrease in crime, but the magnitude of the reduction is highly uncertain and the results of most studies suggest it was unlikely to have been large." Specifically, mass incarceration accounted for as much as 35% or as little as 6% of the crime drop in the 1990s, depending on the type of crime under investigation as well as the methodology and assumptions used by analysts, and it has made almost no contribution to the crime drop since the turn of the century (Baumer, 2008; Roeder, Eisen, & Bowling, 2015; Western, 2006). To further appreciate the weak relationship between incarceration and crime, consider the following examples of jurisdictions that experienced a crime drop without expanding incarceration and that decarcerated without experiencing a crime wave.

A Global Crime Drop Without Mass Incarceration

A global perspective—revealing crime reductions in countries that did not become more punitive—helps to understand why mass incarceration takes only partial credit for the crime drop in the United States. Canada offers the clearest contrast. Though Canada has had a much lower homicide rate and incarceration rate than the United States, changes in the two countries' homicide rates have "tracked each other very closely" since the 1960s (Thompson & Gartner, 2014, p. 92). Yet unlike the United States, the drop in Canada's

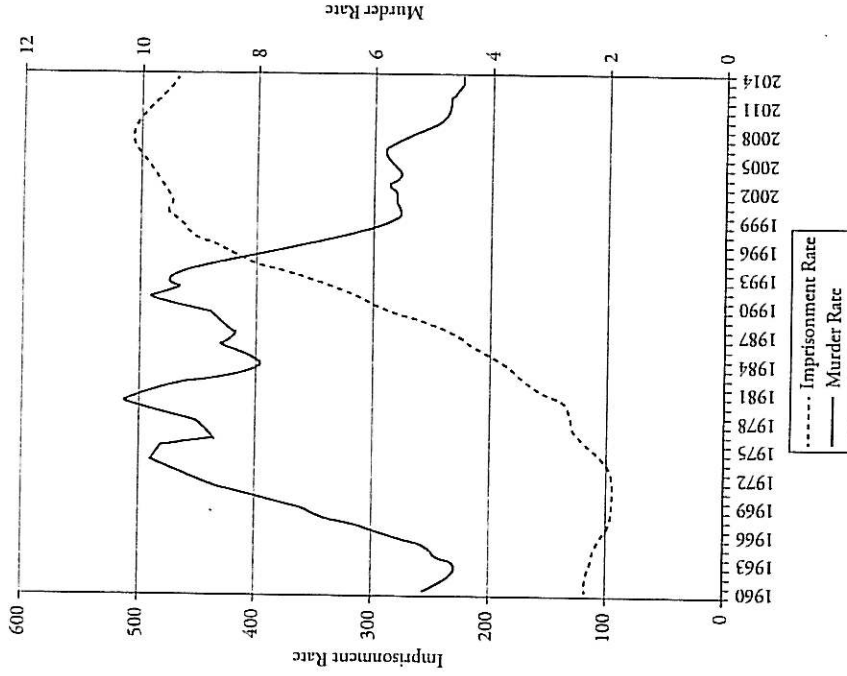


FIGURE 9.3 Murder and imprisonment rates per 100,000 residents in the United States, 1960–2014. Source: FBI's Crime in the United States series; Sourcebook of Criminal Justice Statistics online; Carson (2015).

Note: Imprisonment rate excludes population in jails. Murder rate includes nonnegligent manslaughter.

homicide rate has occurred alongside very modest growth in its incarceration rate (Figure 9.4) (Doob & Webster, 2006; Zimring, 2007).

Like the United States, Canada's 2013 homicide rate had returned to its 1960s levels. But unlike the United States, Canada's imprisonment rate increased by just 1.4% between its 1960s average and 2013.

Many other countries also experienced crime drops without expanding incarceration. Tseloni and colleagues (2010) found that between 1988 and 2004, the United States was among 26 countries that experienced comparable reductions in crimes such as assault and personal theft. But countries that implemented more punitive carceral or policing policies, such as the United States and the United Kingdom, did not experience sharper crime reductions than those that did not (see also Tony & Farrington, 2005).

⁵ In contrast to rates of crime reported to the police during the 1970s and 1980s, rates of crime reported on victimization surveys fluctuated for violent crimes and decreased for property crimes during this period (Beckett & Sasson, 2004; Lauritsen, Rezey, & Heimer, 2015).

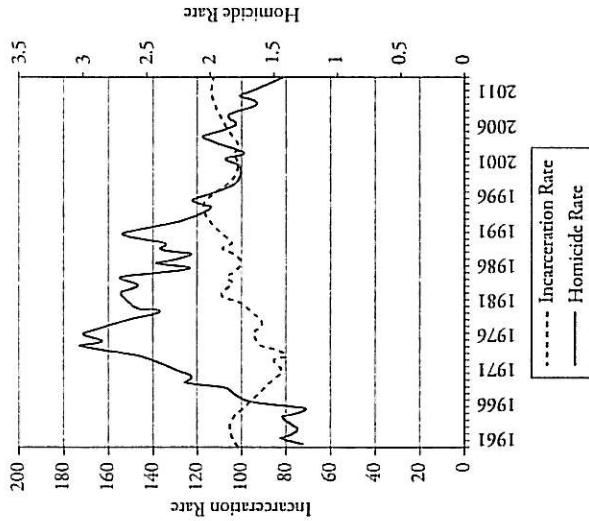


FIGURE 9.4 Homicide and incarceration rates per 100,000 residents in Canada, 1961–2013. Source: Data from Anthony N. Doob and Cheryl Marie Webster (Doob & Webster, 2006; Zimring, 2007). Note: Incarceration rate consists of federal and provincial incarcerated individuals, including remand populations. Homicide rate includes murder, manslaughter, and infanticide.

Fewer Prisoners, Less Crime in New Jersey, New York, and California

Within the United States, states that led in decarceration continued to share the benefits of the nationwide crime drop. Mauer and Ghandnoosh (2014) have shown that during the periods when New York, New Jersey, and California reduced their prison populations by over 20%, they also saw their crime rates decline at a similar and sometimes faster pace than the national average (Table 9.1 presents updated figures).

“During the period that the prison population was declining in these states,” they add, “crime rates were declining not only in these states but in virtually all states” (Mauer & Ghandnoosh, 2014, p. 8). And yet most states continued to increase their prison populations amid the crime drop. In fact, an analysis by The Pew Charitable Trusts (2015) revealed that the 10 states with the largest declines in imprisonment rates between 2009 and 2014 experienced a 16% decline in crime rates, while the 10 states that had the greatest increases in imprisonment rates experienced a comparable, 13%, decline in crime rates. In addition to demonstrating that decarceration is not at odds with public safety, these analyses reinforce that a decrease in crime rates is not enough to bring about decarceration: States must change policies and practices to downsize prisons.

TABLE 9.1

State and National Imprisonment and Crime Trends

State	Peak Imprisonment Year	to 2014		Year to 2014		Property Crime Rate Change, Peak Year to 2014	
		State	National	State	National	State	National
New Jersey	1999	-31%	+16%	-37%	-30%	-4.2%	-31%
New York	1999	-28%	+16%	-35%	-30%	-3.6%	-31%
California	2006	-2.2%	0%	-2.6%	-2.4%	-3.3%	-2.2%

Source: FBI's Crime in the United States series; Bureau of Justice Statistics' Prisoners Series.

WHY REDUCING ALL SENTENCES WOULD NOT HARM PUBLIC SAFETY

Mass incarceration has had a limited impact on U.S. crime rates because of the diminishing returns of incarceration. When incarceration reaches high levels, imprisoning more people makes a weaker contribution to public safety because “the offender on the margin between incarceration and an alternative sanction tends to be less serious” (Raphael & Stoll, 2014, p. 10). Such diminishing returns come from casting too wide a net—sending too many people to prison—and from keeping people in prison for too long. Below, I focus on long sentences and elaborate on two reasons that they lose their efficacy: Incapacitation is unnecessary when people age out of crime and increased sentence severity has limited deterrent value.

People Age Out of Crime

One of the key functions of prisons is to incapacitate people who are likely to cause harm to others. There are limits and costs to this effect: When drug sellers are removed from communities they are often readily replaced, criminally active groups of young people persevere after the loss of some members, and incarceration can exacerbate postrelease offending (Travis et al., 2014). But society is safer when certain individuals are incarcerated. A key question is: for how long? The answer depends on the direct value of imprisoning harmful individuals through incapacitation and on the indirect value of deterring crime through the threat of long sentences.

Maturity and Social Controls

The “age-crime curve,” a long-standing and well-tested concept in criminology, charts the proportion of individuals in each age group that is committing crime (Loeber & Farrington, 2014). The bell-shaped graph (Figure 9.5) depicts the increased prevalence

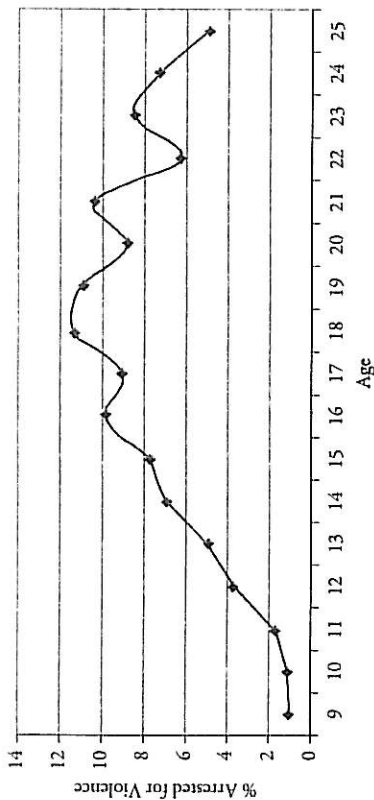


FIGURE 9-5 Age-crime curve.

Source: Locher and Farrington (2014), based on the Pittsburgh Youth Study

of offending in late childhood, its peak in the teenage years, and its gradual decline in the early 20s.

Though there is considerable variation in the shape of the curve depending on factors such as type of crime committed and socioeconomic status, “crime declines with age *even for active offenders*” (Sampson & Laub, 2003, p. 330, emphasis in original).

Why do individuals age into and out of criminal careers? A key factor in the onset of criminal activity is the transition, between adolescence and adulthood, away from the external controls of guardians to the internal controls of youth themselves. As children grow, the combination of greater individual freedom and incomplete psychological maturation elevates risk of offending (Piquero, Hawkins, & Kazemian, 2012; Sampson & Laub, 1993). During adolescence and into early adulthood, young people gain cognitive capability before they learn to self-regulate by controlling their impulses, considering the impact of their actions on others, delaying gratification, and resisting the influence of peers (Steinberg, Cauffman, & Monahan, 2015).

Drawing on research on adolescent development, the Supreme Court banned capital punishment and limited life-without-parole sentences for crimes committed under age 18 (Steinberg, 2013). Yet “psychosocial development is far from over at age 18,” write Laurence Steinberg and colleagues (2015, p. 8), noting that maturation slows at around age 22, and continues in the mid-twenties. Criminal careers finally fade during adult years not only because of greater maturity but also because individuals acquire other forms of social control that promote desistance from crime, such as family and work responsibilities (Piquero et al., 2012; Sampson & Laub, 1993).

These findings help to determine for how long harmful individuals should be incapacitated. Because the propensity to commit crime declines with age, there is little public safety benefit in incapacitating someone who has aged out of crime. Alex Piquero and colleagues (2012, p. 40) observe that existing studies show that “criminal careers are of a

short duration (typically under 10 years), which calls into question many of the long-term sentences that have characterized American penal policy.”

The Lower Recidivism Rates of Older Adults

Recidivism patterns also reveal that the United States incapacitates people for too long. Older individuals and those who have served time for the most serious offenses are among the least likely to be arrested after release from prison (Durose, Cooper, & Snyder, 2014; Langan & Levin, 2002). In fact, studies consistently show that people who have completed sentences of life with the possibility of parole have some of the lowest recidivism rates (Gottschalk, 2012). But given the human and fiscal costs of prolonged incarceration, the pursuit of near-zero rates of recidivism for lifers is misguided. A closer look at California, whose stringent parole process was described earlier, illustrates this point.

Former California lifers with murder convictions have a “minuscule” recidivism rate for new crimes: among a group of 860 individuals convicted of murder who were paroled since 1995 in California, less than 1% were sentenced to jail or prison for new felonies, and none recidivated for life-term crimes (Weisberg et al., 2011). This compares to the approximately one-in-three rate of reincarceration for new crimes for all formerly imprisoned individuals in California within 3 years of their release (Fischer, 2005).⁶ Few policymakers or practitioners advocate for lowering the state’s overall recidivism rate by prolonging sentences, but this is the approach used for those with life sentences. The gravity of these individuals’ crimes should not cloud the assessment of how to use limited resources to promote public safety. As the authors of the National Research Council report (Travis et al., 2014, p. 337) state, “Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.”

The Limited Deterrent Value of Longer Sentences

Long prison sentences can promote public safety not only by incapacitating people who pose a significant criminal threat but also by deterring others from criminal offending. So how effective are long prison sentences in deterring crime? Surveying research on this question, Durlauf and Nagin (2011, p. 38) write, “for the general incarceration of aged criminals to be socially efficient, it must have a deterrent effect on younger criminals Simply no reliable evidence is available that such an effect is sufficiently large to justify the costs of long prison sentences.” They recommend that statutes such as California’s

⁶ An additional one-third of released prisoners were reincarcerated for technical parole violations, which Petersilia (2008) notes is often associated with criminal activity proven by the lower evidentiary standard of civil law.

three-strikes law be repealed or greatly narrowed. In the next section, I examine this law's limited impact and discuss the reasons for its limitations.

The Limited Payoff of California's Costly Three-Strikes Law

As described earlier, California's three-strikes law "strikes out" people convicted of a third felony offense by imposing a mandatory 25-years-to-life sentence. When Helland and Tabarrok (2007) compared crime rates among individuals previously convicted of two strike-eligible offenses with a comparable group previously convicted of just one strike-eligible offense, they found that the first group had an approximately 20% lower arrest rate.⁷ But they also determined that the imprisonment cost of the three-strikes law, \$4.6 billion, far exceeded its public safety contribution—a 2% reduction in the felony crime rate (Zimring, Hawkins, & Kamin, 2001). They concluded that a comparable investment in other measures, of which I present several examples below, would have made a greater dent in crime.

Why Long Sentences Have a Limited Impact on Crime Decisions

The threat of prolonged prison sentences has a limited impact on people's decision-making for several reasons. First, people who break the law may correctly predict that they will not be caught (Mauer, 2006). As Nagin (2013, p. 202, emphasis in original) elaborates, the "certainty of apprehension and not the severity of the legal consequence ensuing from apprehension is the more effective deterrent." Second, most people who commit crime are not aware of the legal penalties that they will face (Robinson & Darley, 2004). Finally, substance use and mental health issues may distort the decision-making of even those who are familiar with criminal sentencing (Robinson & Darley, 2004). Factors like these help to explain why studies find that ratcheting up penalties is a high-cost policy with limited public safety payoff.

HOW TO BETTER ALLOCATE PUBLIC RESOURCES TO PROMOTE PUBLIC SAFETY

The pursuit of punitive but ineffective policies has come at the expense of investments in effective crime prevention, drug treatment, and rehabilitative programs. In 2012, the United States spent over \$80 billion on federal, state, and local corrections—compared to about \$13 billion (adjusted for inflation) in 1971 (Kyskelhahn, 2015; U.S. Department of Justice, 1990). But there has not been a concomitant investment in crime prevention and drug treatment programs, despite public support for these policies—especially from people of color who are most likely to be crime victims (Ghandnoosh, 2014).

⁷ The familiarity of "two strikers" with this sentencing policy likely increased its deterrent effect.

The High Cost of Incarcerating the Elderly

The soaring cost of corrections is driven not just by the large number of people in prison but also by the higher cost of its fast-growing segment: older incarcerated individuals (Horwitz, 2015). Since 2000, people aged 45 years or older have been the fastest growing age group in state and federal prisons, while the number of individuals aged 25 to 44 years has remained stable and the population aged younger than 25 years has contracted (Beck & Harrison, 2001; Carson, 2015) (Figure 9.6).

Even more specifically, the number of incarcerated individuals aged 55 years or older has more than tripled between 2000 and 2014, reaching over 150,000. This population has grown largely because of longer sentences and a recent uptick in the age of admission (Luallen & Kling, 2014; Porter, Bushway, Hui-Shien, & Smith, 2016).

Imprisoning older individuals is extremely expensive due to the cost of providing medical care in high security environments. A National Institute of Corrections (2004) study estimates that taxpayers pay over twice as much annually to imprison an elderly individual compared to a younger one. The provision of medical care is especially costly for elderly incarcerated individuals because prisons generally lack systems to "monitor chronic problems or to implement preventative measures," and must often transport individuals off-site, with security, for medical care (American Civil Liberties Union, 2012, p. 29; Human Rights Watch, 2012). These expenses come at the cost of investing in effective crime prevention and drug treatment policies.

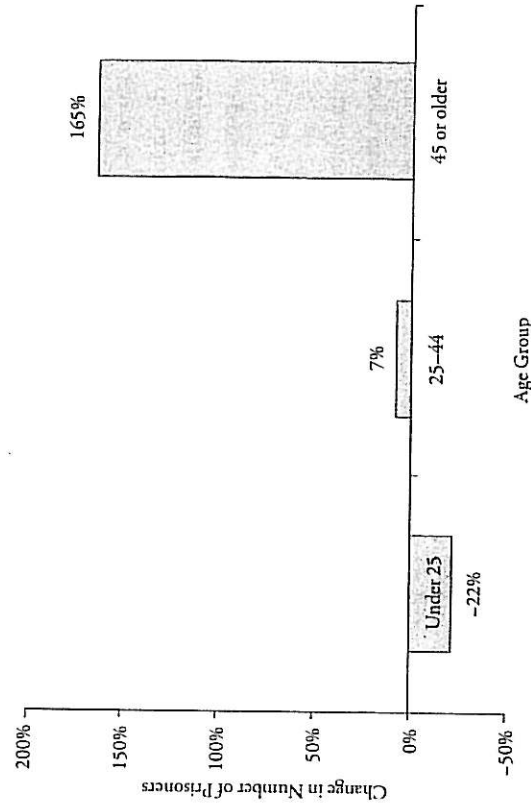


FIGURE 9.6 Prison population growth from 2000 to 2014 by age group.
Source: Beck and Harrison (2001); Carson (2015).

Reallocate Investments Toward Crime Prevention

Increasing access to high-quality early education and reducing residential segregation are two types of investments that would tackle crime at its roots. Preschool education for 3- and 4-year-olds improves later educational outcomes and has been shown to reduce contact with the criminal justice system (Heckman, Malofeeva, Pinto, & Savelyev, 2010; The Sentencing Project, 2013). Yet as the Department of Education (2015) acknowledges, “Children in countries as diverse as Mexico, France, and Singapore have a better chance of receiving preschool education than do children in the United States.” Early family/partner training, such as Nurse-Family Partnership programs, also reduces behavior problems among young children (Piquero, Farrington, Welsh, Tremblay, & Jennings, 2009) and should therefore be expanded.

Urban areas with concentrated residential poverty, which are disproportionately inhabited by people of color, have higher crime rates (Peterson & Krivo, 2012; Sampson, Morenoff, & Raudenbush, 2005). Since 2000, “high-poverty neighborhoods and the population living in them has risen at an alarming pace” (Jargowsky, 2015). By promoting housing mobility, programs such as Moving to Opportunity improve young people’s educational and employment prospects (Chetty, Hendren, & Katz, 2015) while decreasing criminal justice contact related to violent crime (Kling, Ludwig, & Katz, 2005; Sciandra et al., 2013).⁸ We should therefore expand these programs and build on recently renewed efforts to end housing discrimination based on race (see Badger, 2015; Liptak, 2015).

Expand Drug Treatment Programs

In a 2004 survey, 17% of individuals in state prisons said that they committed their crimes to obtain money for drugs, and one-third said that they were under the influence of drugs at the time of their offense (Mumola & Karberg, 2006). Yet in that year, only 40% of individuals in state prisons who met the criteria for drug dependence or abuse had received professional drug treatment or participated in a drug abuse program since their admission (Karberg & James, 2005; Mumola & Karberg, 2006).⁹ The rate was even lower among individuals in jails (18%).

People with limited economic resources also struggle to get timely treatment for substance abuse in their communities. In the 1990s, substance abuse treatment programs that served indigent patients became less likely to provide “treatment on demand” (entry within 48 hours of request) whereas private for-profit programs serving affluent individuals grew more accessible (Friedmann, Lemon, Stein, & D’Aunno, 2003). The gap

⁸ I thank Reed Jordan for his guidance on this topic.

⁹ Other effective rehabilitation policies, such as access to higher education, have been eclipsed in the era of mass incarceration (Davis, Bozick, Steele, Saunders, & Miles, 2013).

between capacity and the need for treatment persists today—though it may be narrowed by the Affordable Care Act—and it is especially pronounced for people under community supervision (Jones, Campopiano, Baldwin, & McCance-Katz, 2015; Gorman, 2014). In 2006, “the prevalence rate of unmet treatment needs for substance alcohol or illicit drug use among parolees was about three times higher (24.2%) than the rate for the rest of the population in the community (8.5%)” (Sung, Mahoney, & Mellow, 2011, p. 46). Reducing spending on incarceration can free up resources to meet these needs.

HOW TO SHORTEN ALL PRISON SENTENCES

Prisons promote public safety by incapacitating and rehabilitating harmful individuals and by deterring others from breaking the law. But because prisons inflict suffering, they should not be overused. Moreover, prisons produce diminishing returns at high levels of incarceration. Yet mandatory sentencing laws, life without parole sentences, and politicized parole policies have created penal excess. Marc Mauer (2015) observes,

the notion that punishment should be no greater than necessary to achieve a legitimate public purpose has been one of the central conceptions of justice shared by Western nations since the Enlightenment. But in recent decades, the concept of parsimony in punishment has been lost.

To expand existing reform efforts, some observers propose reclassifying certain violent crimes as nonviolent (Neyfakh, 2015; Roth, 2015). But as I have shown in this chapter, achieving meaningful decarceration requires reducing excessive punishment for crimes that most would consider serious or violent. In what follows, I outline three policy reforms to shorten sentences for all incarcerated individuals.

Establish an Upper Limit on Prison Sentences

During his historic address before a joint session of Congress in 2015, Pope Francis called for an abolition of the death penalty, stating, “A just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation.” The death penalty is not the only form of punishment with these characteristics: sentences of life without parole also foreclose hope and make rehabilitation irrelevant. As I have shown, endless as well as excessive incarceration incapacitate many people when they do not pose an unreasonable risk to public safety and displace effective crime-prevention policies. The United States should join other democratic nations, including Germany, France, and Italy (Appleton & Groer, 2007; van Zyl Smit, 2006), and abolish sentences that amount to death in prison (see also Tonry, 2014; Henry, 2012).

In addition, the federal government and states should, as Mauer (2015; Goldstein, 2015) has suggested, establish an upper sentencing limit of 20 years. This maximum

should be used sparingly and can be extended in exceptional circumstances for individual who pose persistent risk to public safety. Curbing the maximum penalty *at the time of sentencing* would respect the human dignity of the convicted and recognize their possibility for rehabilitation and redemption.

Because sentencing structures are generally proportional, a reduced maximum sentence would exert downward pressure on penalties for less serious crimes (Mauer, 2015). In carrying this out, judges should be guided in their sentencing decisions not by legislators setting mandatory minimum sentences, but by sentencing commissions setting sentencing guidelines. As specialized administrative agencies, sentencing commissions are more insulated from political pressures, and their expertise makes them “much better suited than legislatures to develop, monitor, and over time revise sentencing standards” (Tonry, 2014, p. 20). To be just, sentencing reforms should apply retroactively to individuals sentenced under earlier schemes (Haile, 2016), and to be equitable, they should incorporate the goal of reducing racial disparities (Ghandnoosh, 2015).

Depoliticize and Professionalize the Parole Process for Life Sentences

Policymakers and practitioners have increased lengths of stay in prison not only by imposing long sentences, but also by delaying the decision to release individuals on parole (Ghandnoosh, 2017). Parole decision-making has grown more politicized and less professionalized as governors, who often wield significant influence in this process, have practiced extreme caution and sometimes brandished their punitiveness as campaign tools. Indeterminate sentencing—which requires discretionary parole approval—is therefore in need of major reform.

Parole decisions should not be driven by politics but by professional assessments of public safety risk. The few states that allow governors to reverse the parole board’s decisions should repeal this authority, as Maryland has recently attempted (see Rabner, 2015). Parole boards should be composed of professional staff making meaningful assessments of rehabilitation and acting in the interest of public safety. Michael Tonry (2014) has recommended narrowing and standardizing this decision-making process through presumptive sentencing guidelines established by a sentencing commission, and parole guidelines established by the parole board. States should also reduce the protracted wait times for initial parole hearings and in between hearings (Ghandnoosh, 2017).

Develop a Meaningful Process of Geriatric Release

Finally, states and the federal government should develop and implement meaningful geriatric and medical release programs for the elderly and infirm. The Vera Institute of Justice recommends that jurisdictions answer questions such as “Are eligibility requirements and exclusions too narrow, resulting in too small a pool of inmates who qualify? Are application procedures confusing or burdensome? Are cases reviewed in a timely

fashion? Are releases frequently denied at the final stage of the process?” (Chiu, 2010, p. 11). Given that incarceration exacerbates the already poor health of many incarcerated individuals, Vera also recommends lowering the age at which these individuals are considered elderly.

CONCLUSION

A growing chorus of judges now decries the harsh sentences imposed on defendants because of mandatory minimum sentencing laws or politically charged parole policies (Gerner, 2007; Kozinski, 2015; Rakoff, 2014; see also Clifford, 2015 and Van Meter, 2016). After imposing a mandatory sentence of 10 years on Mark Weller for selling methamphetamine, U.S. District Judge Mark Bennett remarked, “I would have given him a year in rehab if I could” (Bennett, 2012; Saslow, 2015). Judges who impose indeterminate sentences for violent crimes are also troubled when they realize how long parole boards keep people imprisoned (Ghandnoosh, 2017). When now-retired California Superior Court Judge Robert W. Armstrong sentenced Flozelle Woodmore to 15 years to life for second-degree murder in 1986, he “had expected that she would serve ‘much less’ than 15 years, as was customary for second-degree murders in that era” (*San Francisco Chronicle*, 2007). Yet Woodmore, now deceased, was not released until having served 21 years because of five gubernatorial overrides of the parole board’s decision to grant parole—including after her victim’s relatives requested her release (Karmali, 2007).

The exasperation of these judges is a clear signal that the American criminal justice system is out of balance. Criminological research has established that growing sentence lengths are a major cause of mass incarceration and an ineffective tool for promoting public safety. Long sentences have little deterrent effect and they keep many people imprisoned after they pose little risk to public safety. They not only waste the lives and damage the spirits of the people serving these sentences, they also impede public investments in effective crime prevention, drug treatment, and other rehabilitative programs that promote healthier and safer communities. Establishing an upper limit on sentence lengths, creating professional and depoliticized parole procedures, and meaningfully carrying out geriatric and medical release programs would move the United States closer to achieving meaningful decarceration.

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