

ARTICLES

UNFINISHED PROJECT OF CIVIL RIGHTS IN THE ERA OF MASS INCARCERATION AND THE MOVEMENT FOR BLACK LIVES

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I. INTRODUCTION

The American criminal justice system has been dominated by relentless growth for the last forty years.¹ The culture of punishment, in part driven by political interests leveraging “tough on crime” policies and practices marketed as the solution to the “fear of crime,” has been implemented at every stage of the criminal justice process: arresting, charging, sentencing, imprisonment, releasing, and post-incarceration experiences in the era of mass incarceration.

While it may not excuse criminal offending, the destructive effects of mass incarceration and excessive punishment are visited disproportionately upon individuals and communities of color and reinforce that the project of the civil rights revolution remains unfinished.² In recent years, there has been growing consensus across ideological lines to address mass incarceration.³ Yet, policy

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1. JAMES AUSTIN ET AL., SENTENCING PROJECT, ENDING MASS INCARCERATION: CHARTING A NEW JUSTICE REINVESTMENT 2.

2. Marc Mauer & Meda Chesney-Lind, *Introduction*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 2* (Marc Mauer & Meda Chesney-Lind eds., 2002).

3. Eric Holder, Jr., U.S. Att’y Gen., Keynote Address: Shifting Law Enforcement Goals to Reduce Mass Incarceration at the Brennan Center for Justice (Sept. 23, 2014)

changes are incremental in approach and do not achieve the substantial reforms needed to significantly reduce the rate of incarceration and its collateral impacts.⁴ Incremental policy reforms include: reducing the quantity differential between crack and powder cocaine that results in racially disparate sentencing outcomes at the federal level and in certain states; reclassifying certain felony offenses to misdemeanors; expanding voting rights and access to public benefits for persons with felony convictions; and adopting fair chance hiring policies for persons with criminal records.

The Movement for Black Lives, or Black Lives Matter, offers a new public safety framework to finish the project of civil rights in the era of mass incarceration.⁵ This movement has a sophisticated analysis that seeks to address the underlying structural issues that result in poor policy outcomes for communities of color, including high rates of incarceration.⁶ The public safety framework does not excuse criminal offending, but offers a new approach of viewing justice-involved persons—a disproportionate number of whom are African American and Latino—as worthy recipients of public safety responses not dominated by arrests, admissions to prison, or collateral consequences.

Aligning a Black Lives Matter framework with public safety strategies expands policy responses beyond the criminal justice system to evidence-based interventions demonstrated to reduce criminal offending. Research shows that early childhood education, quality healthcare, and targeted employment programs can help reduce recidivism and prevent justice involvement.⁷ More importantly, the Black Lives Matter framework can help to shift norms away from the punitiveness that dominates U.S. criminal justice policy.

(transcript available at <https://www.brennancenter.org/analysis/keynote-address-shifting-law-enforcement-goals-to-reduce-mass-incarceration>).

4. See D.A. Andrews & James Bonta, *Rehabilitating Criminal Justice Policy and Practice*, 16 PSYCHOL. PUB. POL'Y & L. 39, 41 (2010) ("Sentencing guidelines and the various truth-in-sentencing laws that require a minimum sentence to be served before release have resulted in longer sentences and more crowded prisons.").

5. Nicole D. Porter, *Politics of Black Lives Matter: Broadening Public Safety Priorities Beyond Arrests and Prisons*, HUFFINGTON POST (Apr. 15, 2015), http://www.huffingtonpost.com/nicole-d-porter/politics-of-black-lives-m_b_6678912.html.

6. *Id.*

7. See discussion *infra* pp. 14–18.

II. Pervasiveness of Mass Incarceration and Collateral Consequences

The United States has the highest rate of incarceration in the world and is the world's number one jailer with 2.2 million men, women, and youth incarcerated in federal and state prisons or local jails—a 500% increase over the past forty years.⁸ The U.S. rate of incarceration—with nearly one of every 100 adults in prison or jail—is five to ten times higher than rates in Western Europe and other democracies.⁹ The number of persons under community supervision has increased substantially, similar to increases in the nation's prison population.¹⁰ Persons on probation more than quadrupled from 1977 to 2013, from just over 800,000¹¹ to over 4.7 million.¹² Additionally, the post-incarceration supervision population grew from more than 173,000¹³ to over 853,000¹⁴ during the same period.

The National Research Council of the National Academies found that changes in criminal justice policy propelled a growth in incarceration that had disproportionate effects on African Americans and Latinos.¹⁵ Incarceration has become a normal life event among recent cohorts of African Americans that did not complete high school.¹⁶

8. SENTENCING PROJECT, TRENDS IN U.S. CORRECTIONS 2 (2014) [hereinafter TRENDS IN U.S. CORRECTIONS].

9. JENNIFER WARREN ET. AL, PEW CTR. ON STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, at 5 (2008). The United States has an incarceration rate of 750 inmates per 100,000 people. *Id.* Russia has the next highest rate of incarceration with 628 inmates per 100,000 people. *Id.* England and Wales have a rate of 148 per 100,000. *Id.* The rate in Germany is 93 per 100,000, and the rate in France is 85 per 100,000. *Id.*

10. TRENDS IN U.S. CORRECTIONS, *supra* note 8, at 1 (“The United States is the world’s leader in incarceration with 2.2 million people currently in the nation’s prisons and jails—a 500% increase over the last 40 years.”).

11. Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1018 (2013).

12. ERINN J. HERBERMAN & THOMAS P. BONCZAR, U.S. DEP’T OF JUSTICE BUREAU OF JUSTICE STATISTICS, PROBATION AND PAROLE IN THE UNITED STATES, 2013, at 2 (2014).

13. Klingele, *supra* note 11, at 1018.

14. HERBERMAN & BONCZAR, *supra* note 12, at 8.

15. COMM. ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION, NAT’L RESEARCH COUNCIL OF NAT’L ACADEMIES, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 34 (Jeremy Travis et al. eds., 2014) (“[T]he lengthening of sentences and greatly expanded drug law enforcement and imprisonment for drug offenses . . . had disproportionately large effects on African Americans and Latinos.”) [hereinafter CAUSES & CONSEQUENCES].

16. *Id.*

Over the same time period that prisons and criminal justice supervision have increased, the laws and regulations that result in diminished rights and privileges of those convicted of crimes also expanded.¹⁷ According to the National Employment Law Project, 65 million individuals have criminal records in the United States.¹⁸ More than 19 million have felony convictions triggering civil sanctions.¹⁹

Policy shifts resulting in the pervasiveness of incarceration include the lengthening of sentences due to mandatory minimum policies;²⁰ “three strikes” laws or recidivist statutes;²¹ “truth-in-sentencing” laws;²² and statutory penalties mandating life without the possibility of parole for certain offenses.²³

Social exclusion due to a criminal conviction is not new in the United States. American legislatures continued the tradition of early Romans and Germanic tribes in denying persons with criminal histories the right to enter into contracts, automatically dissolving their marriages, and barring them from a variety of jobs and benefits.²⁴ “The Fourth Amendment to the United States Constitution explicitly recognizes the power of states to deny the right to vote to any individual guilty of ‘participating in rebellion or other crimes.’”²⁵ What is new during the era of mass incarceration is the expansion of civil punishments, including lifetime bans from federal social safety net programs for persons with felony drug convictions; denial of student aid; deportation for legal residents; automatic bans on public and private housing and other areas of civic life like voting.²⁶

17. Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 15, 16 (Marc Mauer & Meda Chesney-Lind eds., 2002).

18. MAURICE Emsellem & Michelle Natividad Rodriguez, NAT'L EMP. LAW PROJECT, 65 MILLION NEED NOT APPLY: THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT 3 (2011).

19. Sarah Shannon et al., *Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948–2010*, at 7, 12 (Princeton Univ., Working Paper No. 111687, 2011), <http://paa2011.princeton.edu/papers/111687>.

20. CAUSES & CONSEQUENCES, *supra* note 15, at 89.

21. *Id.*

22. *Id.*

23. *Id.*

24. Travis, *supra* note 17, at 17.

25. *Id.* at 18.

26. *Id.* at 18–19.

III. UNFINISHED PROJECT OF CIVIL RIGHTS

There have continued to be social policy challenges for African Americans following the 1954 Supreme Court decision against segregation, *Brown v. the Board of Education*,²⁷ and passage of the 1964 Civil Rights Act a decade later.²⁸ The most notable gains have occurred in professional employment, income among married-couple families, higher education, and home ownership.²⁹ The nation elected Barack Obama as the first African American president in 2008 and reelected him in 2012.³⁰

Yet, African Americans still lag behind whites in college graduation rates despite improved outcomes in high school education.³¹ Continued public and private housing discrimination practices have sustained racial segregation in cities like St. Louis³² and Chicago.³³ The experience of segregation reinforces the cumulative disadvantage of poverty, low performing schools, substantial unemployment, and high rates of contact with the criminal justice system.

Although there have been some policy outcome improvements for certain social indicators since civil rights victories—overall African American incomes have risen and poverty rates have declined—the black-white wealth gaps persist.³⁴ Individually, many African Americans overcome the disadvantage of their circumstances, but the reality is that a vast majority of black children experience the day-to-day effects of their race and poverty, which affirms that the project of the civil rights revolution remains unfinished.

27. *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

28. Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

29. WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 109 (1987).

30. Peter Baker, *Smoke Clears to Show a Battlefield Little Changed*, N.Y. TIMES, Nov. 8, 2012, at P3.

31. Jens M. Krogstad & Richard Fry, *More Hispanics, Blacks Enrolling in College, but Lag in Bachelor's Degrees*, PEW RES. CTR. (Apr. 24, 2014), <http://www.pewresearch.org/fact-tank/2014/04/24/more-hispanics-blacks-enrolling-in-college-but-lag-in-bachelors-degrees>.

32. Nikole Hannah-Jones, *School Segregation, the Continuing Tragedy of Ferguson*, PROPUBLICA (Dec. 19, 2014), <http://www.propublica.org/article/ferguson-school-segregation>.

33. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631>.

34. *Id.*

Public policies that reinforce cumulative disadvantage among African Americans are complex and go beyond racial animus. In the criminal justice system, disadvantage accumulating at each step of the process contributes to African Americans and Latinos comprising 56% of the incarcerated population, yet only 30% of the U.S. population.³⁵ “If recent trends continue, one of every three black boys can expect to go to prison in his lifetime, as can one of every six Latino boys—compared to one of every seventeen white boys. Smaller but still substantial racial and ethnic disparities also persist among women.”³⁶ Underlying causes of this disparity preceding law enforcement contact include conditions of socioeconomic inequality that contribute to higher rates of some violent and property crimes among people of color.³⁷

IV. POLITICS AND MASS INCARCERATION

Criminal justice practices became more punitive in part due to the conflation of the civil rights revolution and 1960s urban riots with the increase of crime as a political strategy to appeal to voters concerned with changing social norms. In fact, the policy choices of harsher criminal penalties are a uniquely American combination of crime, race, and politics that shaped the adoption of more punitive criminal justice policies. Factors that shaped the conditions contributing to mass incarceration include: social and political unrest following World War II, especially in the 1960s; a major electoral realignment as the Democratic Party divided over civil rights and other issues as the Republican Party became competitive in the South for the first time since Reconstruction; a decades-long escalation in national crime rates beginning in 1961; and major transformations in urban economies that included the disappearance of many well-paid jobs for low-skilled workers with limited education.³⁸

Ending African American disadvantage in the criminal justice system involves shifting practices that acknowledge the cumulative disadvantage for black defendants starting with arrests,

35. NAZGOL GHANDNOOSH, SENTENCING PROJECT, BLACK LIVES MATTER: ELIMINATING RACIAL INEQUALITY IN THE CRIMINAL JUSTICE SYSTEM 3 (2015).

36. *Id.* at 12.

37. MICHAEL K. BROWN ET AL., WHITE-WASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY 159–60 (2003).

38. CAUSES & CONSEQUENCES, *supra* note 15, at 104.

pretrial detention, prison admissions and sentence lengths, and post incarceration experiences. According to criminologist Michael Tonry, countries have the policies and prison populations they choose.³⁹ Between 1965 and 1990, a period during which overall and violent crime rates tripled in Germany, Finland, and the United States, German politicians chose to hold the imprisonment rate flat; Finnish politicians chose to substantially reduce theirs; and American politicians generally enacted policies that sent more people to prison, along with lengthened prison terms.⁴⁰

V. COLLATERAL CONSEQUENCES OF CONVICTION

Excessive criminal penalties and collateral consequences were adopted following an era of rising crime and an intense period of political and social transformation that substantially impacted race relations. For example, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) imposed a denial of federal benefits to people convicted in state or federal courts of felony drug offenses.⁴¹ The ban is imposed for no other offenses than drug crimes, and its provisions subject individuals who are otherwise eligible for the federal Supplemental Nutrition Assistance Program (“SNAP”) or Temporary Assistance for Needy Families (“TANF”) benefits to a lifetime disqualification that applies in all states unless the states act to opt out of the ban through legislation.⁴² A 2011 review of state policies by the Legal Action Center documents that three-fourths of the states enforce the ban in full or in part.⁴³ During the fifteen-year period from 1996 to 2011, an estimated 180,100 women in states that did not opt out of the ban may have been affected by the TANF ban at some point in their lives.⁴⁴ Currently, thirty-seven states either fully or partially enforce the TANF ban,

39. Michael Tonry, *Remodeling American Sentencing: A Ten-Step Blueprint for Moving Past Mass Incarceration*, 13 CRIMINOLOGY & PUB. POL’Y 503, 506 (2014).

40. *Id.* at 505–06.

41. *Opting Out of Federal Ban on Food Stamps and TANF*, LEGAL ACTION CTR., <http://www.lac.org/toolkits/TANF/TANF.htm> (last visited Oct. 6, 2015).

42. *Id.*

43. *Id.*

44. MARC MAUER & VIRGINIA MCCALMONT, SENTENCING PROJECT, A LIFETIME OF PUNISHMENT: THE IMPACT OF THE FELONY DRUG BAN ON WELFARE BENEFITS 3 (2014).

while thirty-four states either fully or partially enforce the SNAP ban.⁴⁵ In recent years, California and Alabama opted out of the full ban on SNAP and TANF, while Missouri and Texas modified their bans on food assistance.⁴⁶

One of the most significant collateral consequences is the deportation of immigrants with criminal records, analogous to the practice of exile. Foreigners with criminal convictions are generally denied admission to the United States,⁴⁷ but the Immigration Reform and Control Act of 1986 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 resulted in Congress substantially expanding the categories of crimes that would subject an immigrant to deportation.⁴⁸ Also in 1996, an amendment to the Antiterrorism and Effective Death Penalty Act of 1996 mandated detention with the possibility of release on bond for virtually all non-U.S. citizens with a criminal conviction in their past pending deportation proceedings.⁴⁹ Prior to this law change, only immigrants considered excludable (those who had not technically “entered” the United States) could be detained if the examining immigration officer doubted their admissibility.⁵⁰

Due to the growth of incarceration, a substantial number—5.8 million—of American citizens, especially persons of color and the poor, are excluded from key aspects of civic and public life through the right to vote.⁵¹ Racial disparities in the criminal justice system also translates into higher rates of disenfranchisement among communities of color; one of every thirteen African Americans of voting age, or approximately 7.7%, are disenfranchised.⁵² The United States practice of excluding persons with felony convictions from the right to vote raises

45. *Id.* at 2 tbl.1.

46. Alan Pyke, *The Single Worst Idea From 1990s Welfare Reform Is Finally Dying*, THINK PROGRESS (July 7, 2015, 8:00 AM), <http://thinkprogress.org/economy/2015/07/07/3677408/drug-felony-lifetime-ban-food-stamps>.

47. Travis, *supra* note 17, at 23.

48. *Id.*

49. Margaret H. Taylor, *Detention and Related Issues*, in UNDERSTANDING THE 1996 IMMIGRATION ACTION: THE ILLEGAL IMMIGRATION REFORM AND IMMIGRATION RESPONSIBILITY ACT OF 1996, at 5-1 (Juan P. Osuna ed., 1997).

50. *Id.* at 5-2.

51. CHRISTOPHER UGGEN ET AL., SENTENCING PROJECT, STATE-LEVEL ESTIMATES OF FELON DISENFRANCHISEMENT IN THE UNITED STATES, 2010, at 1 (2012).

52. *Id.* at 1-2.

fundamental questions about the collateral effects of mass incarceration and how the nation's criminal justice practices have transformed the electorate. Disenfranchisement laws vary from state to state. The eleven most extreme states restrict voting rights even after a person has served his or her prison sentence and is no longer on probation or parole;⁵³ individuals in those states comprise approximately 45% of the entire disenfranchised population.⁵⁴ Two states—Maine and Vermont—do not limit voting rights for persons with a felony conviction, including incarcerated persons.⁵⁵

Exclusions exist in other areas of public life for persons with criminal records too. Millions of Americans with criminal records have been denied student loans and housing in the public and private rental markets.⁵⁶ Many individuals are also ineligible to receive state licenses for a range of occupations—from hairdressing to home healthcare.⁵⁷ Incarcerated persons with children are often at risk of losing their parental rights.⁵⁸

VI. EVOLVING TO A “SMART ON CRIME” APPROACH

In recent years, the issue of mass incarceration has gained broader attention. Over the last decade, the political environment shaping criminal justice policy has evolved to being “smart on crime” to counter the “tough on crime” framework of the previous era.⁵⁹ Nonpartisan campaigns at the federal and state level seeking to reinforce broad political support bridging ideological divides have promoted more strategic sentencing and reentry policies to challenge unprecedented incarceration growth and correctional costs.⁶⁰

53. States include: Alabama, Arizona, Delaware, Florida, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming. *Id.* at 3 tbl.1.

54. *Id.* at 1.

55. *Id.* at 2–3.

56. REBECCA VALLAS & SHARRON DIETRICH, CTR. FOR AM. PROGRESS, ONE STRIKE AND YOU'RE OUT: HOW WE CAN ELIMINATE BARRIERS TO ECONOMIC SECURITY AND MOBILITY FOR PEOPLE WITH CRIMINAL RECORDS 16, 27 (2014).

57. *Id.* at 36.

58. SARAH SCHIRMER ET AL., SENTENCING PROJECT, INCARCERATED PARENTS AND THEIR CHILDREN: TRENDS 1991–2007, at 9 (2009).

59. See generally SMART ON CRIME COAL., SMART ON CRIME: RECOMMENDATIONS FOR THE ADMINISTRATION AND CONGRESS (2011).

60. NICOLE D. PORTER, SENTENCING PROJECT, THE STATE OF SENTENCING 2013: DEVELOPMENTS IN POLICY AND PRACTICE 17 (2013).

The evolving approach is observed in recent reforms at the federal level. Congress adopted the Fair Sentencing Act of 2010, which reduced the disparity in sentencing between crack and powder cocaine offenses.⁶¹ Federal lawmakers also adopted the Second Chance Act in 2008, a measure that funds approximately \$67 million in reentry services.⁶² There may be an opportunity for more policy change at the federal level. During the 114th Congress, lawmakers have an opportunity to address federal mandatory minimums through the Smarter Sentencing Act, which would scale back the term of years for certain mandatory minimum sentences.⁶³ The measure would also allow for the resentencing of current individuals incarcerated for crack cocaine offenses in line with the Fair Sentencing Act.⁶⁴

State lawmakers have authorized reforms too. During 2014, at least thirty states and the District of Columbia authorized a range of law changes and policies to address the state incarceration rates and supervision policies, including reforming statutory penalties to limit lengths of confinement.⁶⁵ One notable reform was authorized by California voters who approved reclassifying certain low-level offenses from felonies to misdemeanors and eliminating prison as a sentencing option.⁶⁶ Lawmakers in Mississippi scaled back the state's truth-in-sentencing provision from 85% to 50% for violent offenses.⁶⁷ In an effort to address supervision policies, New York lawmakers expanded judicial authority to establish felony probation terms at three, four, or five years and misdemeanor probation terms at two or three years, based on the nature of the crime, the individual's criminal history, and risk of recidivating.⁶⁸ Prior to the law change, almost all felony cases resulted in a five-year probation term.⁶⁹

61. NICOLE D. PORTER & VALERIE WRIGHT, SENTENCING PROJECT, *CRACKED JUSTICE* 1 (2011).

62. MARC MAUER & NAZGOL GHANDNOOSH, SENTENCING PROJECT, *FEWER PRISONERS, LESS CRIME: A TALE OF THREE STATES* 1-2 (2014).

63. Smarter Sentencing Act of 2015, S. 502, 114th Cong. (2015).

64. *Id.*

65. NICOLE D. PORTER, SENTENCING PROJECT, *THE STATE OF SENTENCING 2014: DEVELOPMENTS IN POLICY AND PRACTICE* 1 (2014).

66. The Safe Neighborhood and Schools Act, 2014 Cal. Legis. Serv. Sec. 2 (Prop. 47).

67. H.B. 585, 2014 Leg. Reg. Sess. (Miss. 2014).

68. PORTER, *supra* note 65, at 6.

69. *Id.*

Collateral consequences reforms are also important to the movement of eliminating mass incarceration. During an era where bipartisan consensus is helping officials to rethink harsh prison terms and supervision policies, lawmakers and other stakeholders are revisiting laws and regulations that serve to diminish the rights and privileges of those convicted of crimes. Also in 2014, at least fourteen states and the District of Columbia enacted legislation to scale back these harsh practices, including enacting fair chance hiring policies in Delaware, Nebraska, and Washington, D.C.⁷⁰ Specifically, the measures addressed automatic bans on employment for persons with criminal records in the public or private labor market to varying degrees.⁷¹

VII. SCALING BACK THE COLLATERAL CONSEQUENCES OF CRIMINAL JUSTICE POLICIES

The collateral consequences of a criminal record have animated efforts toward addressing mass incarceration. Historically, there were several initiatives prior to the “tough on crime” era that recognized the problem of civil sanctions. In 1995, the National Council on Crime and Delinquency (“NCCD”) proposed under the Standard Probation and Parole Act that a justice-involved person’s civil rights should be restored upon the completion of their criminal sentence and included a provision authorizing expungement of criminal records.⁷² Other efforts included the 1967 President’s Crime Commission recommendation to evaluate the whole criminal justice system for disabilities and disqualifications.⁷³ During 1973, the National Advisory Commission on Corrections recommended substantial changes to voter disenfranchisement laws for persons with felony convictions.⁷⁴ In 1981, the American Bar Association issued the Standards on Disabilities that asserted that the automatic imposition of civil disabilities on persons with criminal convictions was inconsistent with the goal of reintegration.⁷⁵ These organizations advanced recommendations that collateral

70. *Id.* at 1.

71. *Id.* at 8–9.

72. Travis, *supra* note 17, at 20–21.

73. *Id.* at 21.

74. *Id.*

75. *Id.*

consequences should be imposed on an individual basis rather than as automatic restrictions.

State level reforms were adopted too. During the “1960s and 1970s, the number of state laws imposing collateral sanctions declined.”⁷⁶ This same period noted an increase in the number of laws requiring automatic restoration of a person’s civil rights, either upon completion of his or her sentence or after a term of years.⁷⁷ This period peaked in the mid-1980s as sentencing policies became more punitive.⁷⁸ An analysis of state statutes in 1996 documented the reversal as compared with a similar study in 1986; there were increases in the number of states that permanently denied persons with felony convictions the right to vote (from eleven to fourteen); authorized the termination of parental rights (from sixteen to nineteen); restricted the right to hold public office (from twenty-three to twenty-five); and limited the right to own a gun (from thirty-one to thirty-three).⁷⁹

In recent years, re-entry reforms at the federal and state level have been strengthened by bipartisan coalitions to reduce recidivism and scale back harsh practices. The Second Chance Act, a re-entry legislative package, was championed by House of Representatives liberals John Conyers and Danny Davis along with Senator Sam Brownback, a leading conservative voice.⁸⁰ In recent years, Democratic Senator Cory Booker, in partnership with Republican Senator Rand Paul, introduced the Record Expungement Designed to Enhance Employment (“REDEEM”), which includes several provisions like enabling those convicted of eligible nonviolent crimes to petition for the sealing of their criminal records and the automatic sealing, and in some cases expungement, of certain juvenile records.⁸¹

Bipartisan coalitions at the state level helped to shape national efforts to address collateral consequences and mass incarceration. California’s Proposition 47 also included a

76. *Id.*

77. *Id.*

78. *Id.* at 18–19.

79. *Id.* at 22.

80. Marc Mauer, *Sentencing Reform Amid Mass Incarcerations—Guarded Optimism*, 26 CRIM. JUST. 2 (2011).

81. *U.S. Senators Booker and Paul Introduce Legislation Calling for Criminal Justice Reform*, CORY BOOKER U.S. SEN. N.J. (July 8, 2014), http://www.booker.senate.gov/?p=press_release&cid=100#.

provision authorizing persons who completed their felony sentences for certain offenses to petition the court to reclassify those convictions as misdemeanors.⁸² This law change may eliminate barriers to employment, housing, and jury service.⁸³ Support for the reform was anchored by the state organization Californians for Public Safety, who worked with influential law enforcement officials to reinforce broad support.⁸⁴

Expungement and sealing provisions have been adopted in a range of states. Research has shown the mark of a criminal record is so stigmatizing that a majority of employers will be deterred from hiring a worker because of it.⁸⁵ Sealing or expunging criminal history information so that employers are unable to obtain those records has been a strategy to eliminate employment barriers, and can serve to reduce recidivism.⁸⁶ From 2010 through 2014, at least twenty-one states⁸⁷ expanded or established expungement policies.

In recent years, several states have addressed eligibility for public benefits. California opted out of the full ban for TANF and SNAP, while Missouri lawmakers modified the food assistance ban.⁸⁸ In California, persons convicted of drug felonies are no longer excluded from California's financial assistance program for families with children, its General Assistance program, or its SNAP (food stamp) program.⁸⁹ In Missouri, lawmakers lifted its food

82. J. Richard Couzens & Tricia A. Bigelow, *Proposition 47 "The Safe Neighborhoods and Schools Act,"* CAL. COURTS (Feb. 2, 2015), <http://www.courts.ca.gov/documents/Prop-47-Information.pdf>.

83. Paige St. John, *Prop. 47 Passes, Reducing Some Crime Penalties*, L.A. TIMES (Nov. 4, 2014), <http://www.latimes.com/local/political/la-me-ff-prop-47-drug-possession-20141103-story.html>.

84. *See About Proposition 47*, CALIFORNIANS FOR SAFETY & JUST., <http://myprop47.org/about> (last visited Oct. 28, 2015).

85. DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 100–01 (2007).

86. *Sealing/Expunging Arrest and Conviction Records*, LEGAL ACTION CTR., <http://www.lac.org/toolkits/sealing/sealing.htm> (last visited Aug. 29, 2015).

87. States include: Alabama, Arkansas, California, Colorado, Delaware, Georgia, Louisiana, Illinois, Indiana, Maryland, Minnesota, Mississippi, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Texas, and Utah. *See generally State Reforms Promoting Employment of People with Criminal Records: 2010-11 Legislative Round-Up*, NAT'L EMP. LAW PROJECT (2011), <http://www.nelp.org/content/uploads/2015/03/PromotingEmploymentofPeoplewithCriminalRecords.pdf?nocdn=1>.

88. *See Sealing/Expunging Arrest and Conviction Records*, *supra* note 86 (listing states which enforce TANF and SNAP).

89. *Id.*; *see also* PORTER, *supra* note 65, at 7.

stamp ban for persons with a felony conviction involving possession or use of a controlled substance.⁹⁰ For some, benefits are contingent upon participation in a substance-abuse treatment program. Benefits will not be restored to those who commit another felony drug offense within the first year or those who commit more than one additional offense any time after the first date of conviction.⁹¹ Alabama lawmakers expanded eligibility for TANF and SNAP.⁹² Lawmakers allowed persons with felony drug convictions to access public benefits after completing their sentence or after satisfactorily serving a probation sentence.⁹³ Policymakers in Texas restored food assistance to persons with felony drug convictions.⁹⁴

The movement to expand voting rights has garnered a substantial amount of attention that has resulted in reforms. Increased public exposure led to the expansion of civil rights through legislative initiatives for individuals with felony convictions, and to neighborhood-level efforts to educate and register people with felony convictions.⁹⁵ This escalation in attention to felony disenfranchisement policies has translated into substantial state-level reform. From 1997 through 2015, twenty-four states have amended felony disenfranchisement policies in an effort to reduce their restrictiveness and expand voter eligibility.⁹⁶ These reforms included: California's expansion of voting to persons on community supervision, expanding the franchised by

90. See PORTER, *supra* note 65, at 7; see generally MAUER & MCCALMONT, *supra* note 44, at 2.

91. PORTER, *supra* note 65, at 7.

92. *State Advocacy Update: Alabama and Texas Address Lifetime Federal Public Benefits Plan*, SENTENCING PROJECT (July 1, 2015), http://www.sentencingproject.org/detail/news.cfm?news_id=1941&id=92.

93. *Id.*

94. *Id.*

95. NICOLE D. PORTER, EXPANDING THE VOTE: STATE FELONY DISENFRANCHISEMENT REFORM, 1997–2010, at 1 (2010); see Jeff Manza, Clem Brooks & Christopher Uggen, *Public Attitudes Toward Felon Disenfranchisement in the United States*, 68 PUB. OPINION Q. 275, 276 (2004).

96. PORTER, *supra* note 95 (finding that 23 states authorized voting rights reforms from 1997–2010); see also Paige St. John, *California Could Allow More Felons to Vote, in Major Shift*, L.A. TIMES (Aug. 4, 2015), <http://www.latimes.com/local/political/la-me-ff-election-s-felons-vote-20150804-story.html> (stating that in 2015, California settled a lawsuit regarding a felon's right to vote, now granting felons on community supervision the right to vote).

45,000 persons;⁹⁷ Texas's repeal of the two-year waiting period before regaining eligibility to vote restored rights to an estimated 317,000 persons;⁹⁸ and New Mexico's repeal of its lifetime disenfranchisement provision restored the right to vote to more than 69,000 individuals.⁹⁹ As a result of these and other reforms during the 1997–2010 period, an estimated 800,000 persons have regained the right to vote.¹⁰⁰ Although, some of the law changes authorized to ease voting restrictions have been reversed.¹⁰¹

Fair employment housing policies, also known as “ban the box,” typically remove the question on job or licensing applications about an individual's conviction history and delays the background check until later in the hiring or licensing process.¹⁰² The purpose of this reform is to provide applicants with a better chance of being evaluated based on their qualifications by addressing the stigma often associated with having a previous record. Currently, eighteen states have adopted fair chance hiring policies.¹⁰³ Seven states—Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, and Rhode Island—have removed the conviction history question on job applications for private employers.¹⁰⁴ Private employers, including Target and Wal-Mart,

97. St. John, *supra* note 96.

98. PORTER, *supra* note 95, at 2.

99. *Id.*

100. *Id.*

101. *E.g.*, PORTER, *supra* note 95, at 13 (stating that in 2004, Kentucky reversed some gains made in 2001 toward easing the restoration process); *see also* PATRICIA ALLARD & MARC MAUER, SENTENCING PROJECT, REGAINING THE VOTE: AN ASSESSMENT OF ACTIVITY RELATING TO FELON DISENFRANCHISEMENT LAWS 3 (2000) (describing measures to restrict voting rights in Utah, Massachusetts, and Louisiana and “erratic or cumbersome” voting restoration elsewhere).

102. *See* Jessica S. Henry & James B. Jacobs, *Ban the Box to Promote Ex-Offender Employment*, 6 CRIMINOLOGY & PUB. POL'Y 755, 757 (2007) (describing San Francisco's “Ban the Box” initiative where a criminal background check may only be made after a tentative employment offer, and even then, it may only be relevant if it creates an “unacceptable risk” of not fulfilling job duties).

103. NAT'L EMP. L. PROJECT, “BAN THE BOX” IS A FAIR CHANCE FOR WORKERS WITH RECORDS I (2015) (“This change allows employers to judge applicants on their qualifications first, without the stigma of a record.”) (hereinafter “BAN THE BOX” IS A FAIR CHANCE).

104. Michelle Natividad Rodriguez & Nayantara Mehta, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, NAT'L EMP. L. PROJECT, <http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf> (last visited Oct. 6, 2015).

have also removed the “box” from their employment applications.¹⁰⁵

A. Returning Citizens and the Politics of Recognition

The movement to eliminate mass incarceration includes various policy goals ranging from policing issues to community surveillance for those under probation or parole supervision. The experiences of collateral consequences have animated an advocacy community anchored by justice-involved persons to restore civil rights for voting, private and public housing, employment, and deportation.

Justice-involved persons have formed organizations to challenge the policies and practices contributing to mass incarceration with particular emphasis on scaling back collateral consequences. The organizing narrative has focused on reducing the stigma associated with criminal records through the politics of recognition that acknowledges a justice-involved person’s understanding of who they are and their prior criminal justice contact as a salient characteristic of their humanity.¹⁰⁶

In 2014, Glenn Martin founded JustLeadershipUSA, a leadership organization of formerly incarcerated activists working to reduce the prison population in half by 2030.¹⁰⁷ All of Us or None, a formerly incarcerated led organization, has anchored “ban the box” campaigns state-by-state and at the local level.¹⁰⁸ The Center for NuLeadership, in alignment with All of Us or None, is recognized for encouraging the use of “person first” language that recognizes the humanity of justice-involved individuals and encouraging persons addressing mass

105. “BAN THE BOX” IS A FAIR CHANCE, *supra* note 103, at 1.

106. CHARLES TAYLOR ET AL., MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 25 (1994) (asserting that “our identity is partly shaped . . . by the *mis*recognition of others . . . *mis*recognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being”).

107. *About Us*, JUST LEADERSHIP USA, <https://www.justleadershipusa.org/about-us> (last visited Oct. 6, 2015); Shannon Scovel, *Potential Changes to Pell Grant Laws Could Increase Prisoners’ Access*, USA TODAY (July 17, 2015, 3:49 PM), <http://college.usatoday.com/2015/07/17/pell-grants-for-prisoners>.

108. See Lee Romney, *Formerly Incarcerated Activist Fights to Give People a Chance to Change*, L.A. TIMES, (Mar. 13, 2015, 5:00 AM), <http://www.latimes.com/local/california/1a-me-dorsey-nunn-20150313-story.html>; see also *All of Us or None: Ban the Box Campaign*, PRISONERS WITH CHILD., <http://www.prisonerswithchildren.org/our-projects/allofus-or-none/ban-the-box-campaign> (last visited Oct. 6, 2015).

incarceration to stop using words like “offender” and “criminal” that dehumanize those directly impacted.¹⁰⁹

Activism has also focused on organizing voting coalitions anchored by persons with felony convictions. The Rhode Island Constitution has disenfranchised people with felony convictions while they were in prison or on parole or probation.¹¹⁰ A successful campaign led by a coalition of state community groups, many of which included persons with felony records, organized to address this provision.¹¹¹ Rhode Island voters approved an amendment to their state constitution restoring voting rights to people with felony convictions after release from prison.¹¹² The Family Life Center found that the law change enabled 6330 individuals to register to vote in time for the 2008 presidential election.¹¹³ The size of the formerly incarcerated population in the District of Columbia was speculated to be so large—about one in ten D.C. residents—that they were thought to be a pivotal voting bloc in recent years.¹¹⁴ The 2014 Democratic primary for mayor saw candidates working to garner their support, a strategy reflecting a change in the local political calculus.¹¹⁵

VIII. NEW JIM CROW VS. OLD JIM CROW

One of the general narratives to address the impact of the nation’s scale of incarceration is that mass imprisonment and its

109. *The Language Letter Campaign: An Open Letter to our Friends on the Question of Language*, CTR. NULEADERSHIP URB. SOLUTIONS, <http://centerfornuleadership.org/current-projects/the-language-letter-campaign> (last visited Oct. 6, 2015) (“We think that by insisting on being called ‘people’ we reaffirm our right to be recognized as human beings, not animals, inmates, prisoners, or offenders.”); see also Victoria Law & Rachel Roth, *Names Do Hurt: The Case Against Using Derogatory Language to Describe People in Prison*, RH REALITY CHECK (Apr. 20, 2015, 1:53 PM), <http://rhrealitycheck.org/article/2015/04/20/case-using-derogatory-language-describe-person-prison>.

110. PORTER, *supra* note 95, at 24.

111. *Voting Rights Restoration in Rhode Island*, BRENNAN CTR. FOR JUSTICE (Mar. 27, 2014), <https://www.brennancenter.org/print/7181>.

112. Rhode Island Restoration of Voting Rights Act of 2006, R.I. GEN. LAWS § 17-9.2-3 (2006).

113. FAMILY LIFE CTR., RESEARCH BRIEF: VOTER REGISTRATION AND TURNOUT AMONG PROBATIONERS AND PAROLEES IN RHODE ISLAND I (2008).

114. Aaron C. Davis, *In D.C. Mayor’s Race, Embattled Gray May Have a Secret Weapon in Growing Ex-Prisoner Vote*, WASH. POST (Mar. 22, 2014), http://www.washingtonpost.com/local/dc-politics/in-dc-mayors-race-embattled-gray-may-have-a-secret-weapon-in-growing-ex-prisoner-vote/2014/03/22/9a5834e4-aac3-11e3-adbc-888c8010c799_story.html.

115. *Id.*

collateral impacts have been used to rollback civil rights gains under the analysis of the “New Jim Crow.” The phrase has gained significant awareness due to civil rights lawyer and law professor Michelle Alexander’s book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.¹¹⁶

The analogy among New Jim Crow likens a black person living under the Old Jim Crow¹¹⁷ to a justice-involved person today becoming a member of a stigmatized caste condemned to a lifetime of second-class citizenship.¹¹⁸ Alexander uses the analogy to reinforce that racially disparate criminal justice policies and practices are fundamental organizing principles of U.S. social policy, despite achievements gained during the civil rights revolution.¹¹⁹

The most common example used is the racially disparate effects of the federal crack powder sentencing disparity; there are twelve states that maintain similar sentencing disparities.¹²⁰ Other criminal justice policies known to have racially disparate effects include sentencing enhancements in urban, drug-free zones. Protected areas are clustered within urban, high-density population areas and disproportionately affect people of color and economically disadvantaged citizens.¹²¹ Other disparities result from racially biased decision-making by practitioners and include racial profiling by law enforcement officers,¹²² longer terms of imprisonment at sentencing,¹²³ and denials of parole.¹²⁴ In many

116. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN AN AGE OF COLORBLINDNESS* (2010). In addition to Alexander, influencers like Ira Glasser, former executive director of the American Civil Liberties Union (ACLU), and Graham Boyd, who led the ACLU’s Drug Policy Litigation Unit, also used the Jim Crow analogy in discussing racial disparities in criminal justice policies and practices. See, e.g., Graham Boyd, *New Voices On The War On Drugs: Collateral Damage In The War On Drugs*, 47 VILL. L. REV. 839, 840 (2002); Ira Glasser, *American Drug Laws: The New Jim Crow*, 63 ALB. L. REV. 703, 703–04 (2000).

117. Jim Crow laws were state and local laws enforcing racial segregation in the Southern United States. ALEXANDER, *supra* note 116, at 30–40. Enacted after the Reconstruction period, these laws continued in force until 1965. *Id.*

118. *Id.* at 1–2.

119. *Id.* at 2–4.

120. *Take Action: Eliminate State Crack Sentencing Disparities*, SENTENCING PROJECT (Feb. 22, 2013), http://www.sentencingproject.org/detail/advocacy_material.cfm?advocacy_material_id=111.

121. JUDITH GREENE ET AL., *DISPARITY BY DESIGN: HOW DRUG-FREE ZONE LAWS IMPACT RACIAL DISPARITY—AND FAIL TO PROTECT YOUTH* 3–4, 17 (2006).

122. *Id.* at 29.

123. See *id.* at 17–19.

instances, this decision-making may be a function of implicit bias favoring or disfavoring one racial group over others, thus revealing the effect of unconscious and unintentional stereotypes.¹²⁵ High rates of contact with law enforcement places African Americans in particular under greater police scrutiny leading to disadvantage throughout the criminal justice system.¹²⁶

There are critiques of the New Jim Crow analogy. The framers themselves acknowledge the differences in the Old Jim Crow, which never claimed to be colorblind, while the New Jim Crow influencers work to highlight the disparate impact of mass incarceration policy drivers purported to be race neutral.¹²⁷ Others find it important to explore the “extent to which certain inequalities appear statistically as ‘racial’ disparities” that may have underlying causes related to political, social, or economic policies.¹²⁸ Critics are also concerned that much of the narrative focuses “exclusively on disparities between whites and blacks,” while largely ignoring “other racial and ethnic groups, including Latinos.”¹²⁹

One concern is that “tough on crime” conservatives, when confronted with racial and ethnic disparities, will respond with a “leveling down” that strengthens punitive criminal justice policy.¹³⁰ Rather than scaling back punishments for blacks and other minorities, conservatives will enhance criminal penalties for white defendants to equalize the impact of mass incarceration.¹³¹ Some proponents of the death penalty support seeking more capital punishment sentences for blacks convicted of killing other blacks.¹³² State lawmakers in Connecticut equalized crack powder

124. Beth M. Huebner & Timothy S. Bynum, *The Role of Race and Ethnicity in Parole Decisions*, 46 CRIMINOLOGY 907, 925–26 (2008).

125. *Id.* at 910–11.

126. Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 GENDER AND SOCIETY 531, 532–33 (2006).

127. James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 33 (2012).

128. Aldolph Reed, Jr. & Merlin Chowkwanyun, *Race, Class, Crisis: The Discourse of Racial Disparity and Its Analytical Discontents*, in 48 SOCIALIST REG. 2012: CRISIS & THE LEFT 149, 150–51 (Leo Panitch, Gregory Albo & Vivek Chibber eds., 2012).

129. MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 120 (2015).

130. *Id.* at 34.

131. *Id.*

132. *Id.*

sentencing by lowering quantity triggers for powder cocaine to quantity amounts for crack cocaine;¹³³ a similar measure was adopted in Minnesota.¹³⁴ Iowa lawmakers suggested a similar approach when confronted with a high rate of racial disparity in 2007,¹³⁵ while members of Congress also explored an analogous measure when informed of substantial racial disparities in federal sentencing for crack and powder cocaine offenses in the mid-1990s.¹³⁶

Yet, activists animated by the New Jim Crow narrative have worked in coalition with a broad range of racial justice activists. Coalitions bridging black and Latino activism have organized around common political goals of immigration and mass incarceration. For example, the Black Alliance for Just Immigration works with black immigrant communities to work for racial justice at the local level.¹³⁷ Families for Freedom, which is a multi-ethnic human rights membership comprised of immigrant prisoners, former immigrant prisoners, their loved ones, or individuals at risk of deportation, works to organize multi-racial alliances addressing the criminalization of immigration.¹³⁸ Following President Barack Obama's executive order in late 2014 for Deferred Action for Childhood Arrivals ("DACA"),¹³⁹ Abraham Paulos with Families for Freedom wrote in the Huffington Post that "members have convictions, many of them felonies and . . . continue to be labeled as undeserving."¹⁴⁰ In recent years, persons

133. PORTER & WRIGHT, *supra* note 61, at 4.

134. GOTTSCHALK, *supra* note 129, at 134–35.

135. Marc Mauer, *Racial Impact Statements: Changing Policies to Address Disparities*, CRIM. JUST., Winter 2009, at 10, http://www.sentencingproject.org/doc/rd_abaarticle.pdf.

136. GOTTSCHALK, *supra* note 129, at 135.

137. BLACK ALL. FOR JUST IMMIGR., CROSSING BOUNDARIES, CONNECTING COMMUNITIES: ALLIANCE BUILDING FOR IMMIGRANTS RIGHTS AND RACIAL JUSTICE 10, <http://www.racialequitytools.org/resourcefiles/baji.pdf>.

138. *About Us*, FAMILIES FOR FREEDOM, <http://familiesforfreedom.org/about> (last visited Oct. 6, 2015).

139. DACA was established by the Obama administration in 2012; it is immigration policy that allows certain undocumented immigrants who entered the country prior to their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation, but does not provide legal immigration or path to citizenship. *Deferred Action for Childhood Arrivals: A Q&A Guide (Updated)*, AM. IMMIGR. COUNCIL (Aug. 17, 2009), <http://www.immigrationpolicy.org/just-facts/deferred-action-childhood-arrivals-qa-guide-updated>.

140. Abraham Paulos, *People with Felonies, Criminal Records and Gang Affiliation Are Our Friends and Family*, HUFFINGTON POST (Nov. 30, 2014, 11:07 AM), http://www.huffingtonpost.com/abraham-paulos/people-with-feloniescrim_b_6228310.html.

directly impacted by mass incarceration who are Asian Pacific Islander have worked to organize new efforts addressing the collateral impacts of incarceration. The Asian Pacific American Labor Alliance (“APALA”) has made addressing mass incarceration and moving criminal justice reform a priority through an analysis of the connection of incarceration to mass deportations and conditions in detention centers.¹⁴¹

Marie Gottschalk raises questions about the overall approach of highlighting racial disparity in efforts to address mass incarceration. According to Gottschalk, racial explanations like the New Jim Crow and racial animus obscure subtle influences like the “permission to dislike” in shaping mass incarceration.¹⁴² Further, narrowly constructed racial explanations keep the focus on whites, particularly elite politicians and other public figures, in exploring the rationale of excessive levels of incarceration.¹⁴³ While the cumulative disadvantages experienced by black defendants are reinforced by noting disproportionate rates from the point of arrest to post-incarceration experiences,¹⁴⁴ Gottschalk also notes that national white rates of incarceration, at 478 per 100,000 in the United States, are higher than the entire national rates of incarceration for countries like Australia, at 130 per 100,000, and Germany, at 79 per 100,000.¹⁴⁵

James Forman’s critique of the New Jim Crow also works to address the strategy of focusing on the War on Drugs and persons convicted of nonviolent drug and property offenses.¹⁴⁶ Addressing the role of drug enforcement in contributing to mass incarceration is important; drug sentencing policies resulted in dramatic growth in incarceration for drug offenses. Since its

141. Gregory Cendana, *Asian Americans and Pacific Islanders Celebrate Asian Pacific American Heritage Month by Working to End Mass Incarceration*, HUFFINGTON POST (May 30, 2015, 11:49 AM), http://www.huffingtonpost.com/gregory-cendana/working-to-end-mass-incarceration_b_7475656.html.

142. GOTTSCHALK, *supra* note 129, at 141.

143. *Id.* at 139.

144. *See id.* at 121 (describing statistics that demonstrate the high racial disparities in incarceration rates).

145. CAROLYN W. DEADY, PELL CTR. FOR INT’L RELATIONS & PUB. POL’Y, INCARCERATION AND RECIDIVISM: LESSONS FROM ABROAD 1 (2014), https://www.salve.edu/sites/default/files/filesfield/documents/Incarceration_and_Recidivism.pdf (presenting statistics for Australia and Germany); GOTTSCHALK, *supra* note 129, at 121 (stating U.S. incarceration rate for whites).

146. Forman, *supra* note 127, at 45–52.

official beginning in the 1980s, the number of Americans incarcerated for drug offenses has skyrocketed from 41,000 in 1980 to nearly half a million in 2013.¹⁴⁷

Yet, increased drug enforcement is not the only reason for increased admissions to prison and lengthening terms of imprisonment. If political consensus resulted in the release of “everyone imprisoned for drugs tomorrow, the United States would still have 1.7 million people behind bars, and an incarceration rate four times that of many Western European nations.”¹⁴⁸ Indeed, Forman and others working to stretch the understanding of New Jim Crow influencers also emphasize that prison terms have lengthened for other offenses too, including for violent crimes.¹⁴⁹

Across all branches and levels of government, criminal processing and sentencing expanded the use of incarceration in a number of ways: prison time was increasingly required for lesser offenses; time served was significantly increased for violent crimes and for persons with prior convictions; and drug crimes, particularly street dealing in urban areas, became more severely policed and punished.¹⁵⁰

These changes in punishment policy were the main drivers of U.S. incarceration growth.

While working to address drug enforcement must continue to be a part of strategy to eliminate mass incarceration, it should be considered among several policy options to rethink criminal justice policy. Half the people in state prisons are there for a violent crime,¹⁵¹ but not all individuals convicted of violent crimes are alike. They range from serial killers to minor players in a robbery to battered spouses who struck back at their abusers. The project of ending mass incarceration must recognize that

147. TRENDS IN U.S. CORRECTIONS, *supra* note 8, at 3.

148. Marc Mauer & David Cole, Opinion, *How to Lock up Fewer People*, N.Y. TIMES, May 24, 2015, at SR6.

149. Forman, *supra* note 127, at 36.

150. CAUSES & CONSEQUENCES, *supra* note 15, at 3.

151. *Id.* at 38 (“In 2009, about 716,000 of 1.36 million state prison inmates have been convicted of violent crimes.”).

excessively long sentences for most violent crimes are not necessary, cost-effective, or just.

IX. MOVEMENT FOR BLACK LIVES

Recognizing the implications of long prison terms for violent offenses is critical to opening up political space to end mass incarceration. Although it does not excuse their crimes, many of the people sentenced to prison for violent offenses experience socioeconomic disadvantages, education failures, and abuse.¹⁵² One survey found that 79% of persons sent to prison for life as youth reported witnessing violence in their homes, while more than half witnessed weekly violence in their neighborhoods.¹⁵³ The research also found that more than a third of juvenile lifers were raised in public housing;¹⁵⁴ “some reported being homeless, [or] living with friends, while 18% reported not living with a close adult relative” prior to their incarceration.¹⁵⁵

The movement to recognize the full humanity of African Americans in public life, the Black Lives Matter (“BLM”) movement or Movement for Black Lives (“MBL”), offers an opportunity to deepen the organizing narrative that will hopefully reverse harsh criminal justice practices and policies and shift public spending to social interventions that reduce law enforcement contact in the first place.

The framework underlying BLM recognizes that, despite the actions that preceded the death of unarmed black persons by law enforcement and other actors, their lives were worthy of consideration and there should be accountability for their deaths as a matter of decency, fairness, and social policy. Since 2012, several incidents involving unarmed black men, women, and youth and the police, or private citizens empowered to police their actions, have animated a national conversation on policing and the social policy impacts, including education, criminal justice policy, and housing, among others on black lives. High profile killings have included Jordan Davis and Trayvon Martin by private

152. *Id.* at 351.

153. ASHLEY NELLIS, SENTENCING PROJECT, THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY 2 (2012).

154. *Id.*

155. *Id.*

citizens;¹⁵⁶ Rekia Boyd, Michael Brown, John Crawford, Eric Garner, Tamir Rice, and Walter Scott by police officers;¹⁵⁷ and Sandra Bland who reportedly committed suicide in jail following a traffic stop.¹⁵⁸

The response to these deaths has in some instances been met with questions about the perceived threat that may have resulted in disproportionate rates of law enforcement contact among African Americans.¹⁵⁹ Yet, BLM activists have worked to raise bigger questions of policy and adequate responses given interactions that result in death without due process protections.¹⁶⁰ Those bigger questions involve addressing the social policy indicators that underlie the conditions of African Americans. Examinations of the policies and practices that result in high rates of contact with the justice system for black defendants recognize that experiences outside of the criminal justice system may contribute to law enforcement contact and fatal interactions that fundamentally question public safety approaches.

The organizing principle of U.S. criminal justice policy reinforces the disadvantages that low-income, undereducated African Americans experience through policies that result in civil sanctions and marginalization from future opportunity. Research has shown that harsh sentencing laws for certain offenses often have a disparate impact on African American defendants as a result of how sentencing laws interact with broader racial differences in our society and within the criminal justice system.¹⁶¹ A study of judicial practices in Pennsylvania found that young black men were perceived to not have stabilizing social bonds, like

156. Peter Keough, *A Sane Person's Version of the Insanity Defense*, BOS. GLOBE, July 24, 2015, at G9.

157. Chauncey DeVega, *Black America Is So Very Tired of Explaining and Debating*, SALON (June 8, 2015), http://www.salon.com/2015/06/08/black_america_is_so_very_tired_of_explaining_and_debating.

158. Katie Rogers, *National Briefing: Southwest; Texas: Autopsy Released in Sandra Bland Death*, N.Y. TIMES, July 25, 2015, at A16.

159. BROWN ET AL., *supra* note 37, at 150.

160. Jarvis Tyner, *Black Lives Matter! The Struggle Against Police Murders, Brutality and Abuse*, POL. AFF. (Mar. 5, 2015), <http://politicalaffairs.net/black-lives-matter-the-struggle-against-police-murders-brutality-and-abuse>.

161. GHANDNOOSH, *supra* note 35, at 15.

a supportive family or living wage employment.¹⁶² Consequently, African American male defendants were viewed as a risk to public safety, lacking the ability to reform, and less likely to have suffered mitigating victimization.¹⁶³ Research has reinforced the “high cost of being black, young, and male” and specifically the “continuing significance of race in American society.”¹⁶⁴

Currently, the BLM frame narrative is focused on policing and fatal law enforcement interactions in particular. Order-maintenance policing results in increased interactions with law enforcement for the individuals who experience these policies.¹⁶⁵ These policies have racially disparate outcomes for African American and Latino men. For example, in New York City “men have been over four times as likely as women to be arrested” for a misdemeanor since 1980.¹⁶⁶ Between 2001 and 2013, African American and Latino males comprised 51% of the city’s population over age sixteen.¹⁶⁷ However, during that same time period, 82% of those arrested for misdemeanors in New York City were African American or Latino, as were 81% of those who received summonses.¹⁶⁸ Similar racial disparities were observed in stop and frisk stops.¹⁶⁹ Among the outcomes following law enforcement interaction for an order-maintenance offense are criminal records that can reinforce social marginalization.

BLM thought leaders working to address policy outcomes for African Americans and looking closely at the drivers of mass incarceration could use the BLM approach to shift norms in criminal justice policies and practices. Policy choices that consider the underlying issues that lead to law enforcement contact, harsh sentencing structures that result lengthy prison terms, and collateral consequences that can be redone by recognizing the full humanity of African American defendants and recognizing the structural issues that result in justice involvement.

162. Darrell Steffensmeier, Jeffery Ulmer & John Kramer, *The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male*, 36 CRIMINOLOGY 763, 787 (1998).

163. *Id.*

164. *Id.* at 789.

165. GHANDNOOSH, *supra* note 35, at 7.

166. *Id.* at 8.

167. *Id.*

168. *Id.*

169. *Id.*

A. Broadening Public Safety Approaches

The BLM framework offers a way for the public, policymakers, and practitioners to address underlying structural issues that may lead to contact with the criminal justice system and punitive responses to criminal offending. While there are interventions that may prevent arrests, there are also interventions at the point of arrests to sentencing to post-incarceration supervision that can strengthen public safety and reduce future criminal justice interactions. Interventions include: early childhood education, community investment and informal community control, greening high incarceration communities, quality health care, and targeted employment initiatives.

B. Early Childhood Education

Research has demonstrated the opportunity for prevention with at-risk pregnant teens or with at-risk children in early childhood.¹⁷⁰ A strong program in this category is the Nurse Family Partnership (“NFP”), a home visitation program that trains and supervises registered nurses as home visitors.¹⁷¹ The initiative attempts to identify young, first-time mothers early in their pregnancy.¹⁷² The sequence of approximately twenty home visits begins in the prenatal period and continues over the first two years of a child’s life and then decreases in frequency.¹⁷³ A fifteen-year review of the Prenatal/Early Infancy Project in Elmira, New York, found that nurse home visits significantly reduced child abuse and neglect in participating families, as well as arrest rates for children and their mothers.¹⁷⁴

Preschool education for at-risk three- and four-year-olds is also an effective prevention strategy. The most well-known model—the High/Scope Perry Preschool Project—demonstrates that Head Start and other preschool programs produce both

170. NURSE-FAM. PARTNERSHIP, *Transforming the Lives of First-Time Moms and Their Babies*, <http://www.nursefamilypartnership.org/about/what-we-do> (last visited Oct. 6, 2015).

171. PETER W. GREENWOOD & SUSAN TURNER, *Juvenile Crime and Juvenile Justice*, in CRIME & PUB. POL’Y 88, 120 (James Q. Wilson & Joan Petersilia eds., 2011).

172. *Id.*

173. *Id.*

174. *Id.*

short-term and long-term benefits.¹⁷⁵ These include reduced engagement with the criminal justice system through the age of twenty-seven, along with positive school outcomes and reduced need for social services.¹⁷⁶ Cost-benefit analyses conducted by the RAND Corporation show that every \$1 invested in such programs produces \$7.16 in societal savings.¹⁷⁷ “When adjusted for inflation and a [three] percent discount rate, the investment in the Perry program’s early childhood prevention initiative resulted in a taxpayer return of \$88,433 per child.”¹⁷⁸

C. Community Investment and Informal Community Control

Research has demonstrated that a community-level approach can be effective at preventing crime in urban neighborhoods. Addressing the community-level perspective also acknowledges that federal, state, and local government policies not directly concerned with crime may nonetheless bear indirectly on crime rates through their impact on neighborhood structures.

Studies have shown that organizational participation and informal social control mechanisms can address criminal violence at the neighborhood level.¹⁷⁹ A social process study conducted in Baltimore found that respondents who belonged to an organization to which co-residents also belonged felt responsible for what happened in the area surrounding their home.¹⁸⁰ Similarly, a survey of over five hundred residents in New York City found that strong participation of local residents in neighborhood organizations reduced delinquency.¹⁸¹

175. Lawrence J. Schweinhart, Benefits, Costs, and Explanation of the High/Scope Perry Preschool Program, Presentation at a Meeting of the Society for Research in Child Development (Apr. 26, 2003), (transcript available at http://www.highscope.org/file/Research/PerryProject/Perry-SRCD_2003.pdf).

176. *Id.* at 6.

177. GREG PARKS, OFF. JUVENILE JUST. & DELINQ. PREVENTION, THE HIGH/SCOPE PERRY PRESCHOOL PROJECT 4 (Oct. 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/181725.pdf>.

178. *Id.*

179. SENTENCING PROJECT, ENDING MASS INCARCERATION: SOCIAL INTERVENTIONS THAT WORK 1, 2 (2013), http://www.sentencingproject.org/doc/publications/publications/inc_Ending%20Mass%20Incarceration.pdf.

180. *Id.*

181. *Id.*

Community participation can help in supervising and monitoring teenage peer groups through social networks that facilitate adult and youth interaction. Specifically, when friendship networks among parents observe the actions of their children's friends, adults have the opportunity to monitor a child's actions in different circumstances and provide parental feedback that establishes community norms.¹⁸² Strengthening parental relationships can serve to reinforce positive youth outcomes found in communities with dense or overlapping social networks that assume a shared responsibility for supervising young people.¹⁸³

D. Greening High Incarceration Communities

Vacant lots and abandoned buildings can be highly visible signs of disinvestment in high incarceration communities; these sites of a disordered physical environment have been associated with violent crime.¹⁸⁴ They also pose significant problems for urban areas, including former manufacturing cities. The percent of vacant land in major U.S. cities ranges from about 10% in New York City to 40% or more in Fort Worth, Phoenix, and Tallahassee.¹⁸⁵ Vacant properties are often overgrown and filled with trash, which makes them attractive places for crime, including prostitution, illegal drug sales, and illegal gun storage.¹⁸⁶

Interventions outside of law enforcement have been found to reduce community violence. Research has found that greening vacant lots was associated with reductions in certain gun crimes and improved residents' perception of safety.¹⁸⁷ Specifically, greening may make it difficult for people to hide illegal guns and conduct illegal drug use in or near the vacant space. Urban green space has been shown to increase perceptions of safety that may be

182. James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. SUPP. S95, S107 (1988).

183. *Id.* at S95.

184. See Jennifer M. Beyers et al., *Block Observations of Neighborhood Physical Disorder are Associated with Neighborhood Crime, Firearm Injuries and Deaths, and Teen Births*, 59 J. EPIDEMIOLOGY & COMMUNITY HEALTH 904, 904 (2005).

185. Eugenia C. Garvin et al., *Greening Vacant Lots to Reduce Violent Crime: A Randomized Controlled Trial*, 19 INJURY PREVENTION 198, 198 (2013).

186. C. Debra M. Furr-Holden et al., *The Growth of Neighborhood Disorder and Marijuana Use Among Urban Adolescents: A Case for Policy and Environmental Interventions*, 72 J. STUD. ALCOHOL & DRUGS 371, 372 (2011).

187. Garvin et al., *supra* note 185, at 198.

caused by enhancing neighborhood pride and encouraging a community's residents to use space in ways that promote social cohesion.¹⁸⁸ Studies show that interventions to modify physical environments of high incarceration communities reinforce violence prevention strategies and may impact people for a longer time at lower costs than individual lifestyle changes.¹⁸⁹ Greening vacant urban space may also reduce stress and mental fatigue associated with living in a high incarceration neighborhood.¹⁹⁰

E. Quality Health Care and Therapeutic Intervention

Addressing the emotional and physical health for persons at risk of criminal justice involvement is a public safety strategy that can reduce law enforcement interaction. In recent years, progress has been made in measuring the effectiveness of a variety of programs and strategies for intervening with justice-involved persons.¹⁹¹ Evidence-based research provides the strongest support for community-based interventions to reduce arrests and incarceration rates.

For justice-involved persons, available research indicates that, when carried out properly, certain forms of cognitive-behavioral therapy, drug treatment, academic programs, and vocational training appear to reduce recidivism.¹⁹² Cognitive-behavioral therapy has been found to be effective for justice-involved adults, including persons convicted of violent offenses, probationers, incarcerated persons, and parolees.¹⁹³ One meta-analysis examined research studies published from 1965 through 2005 and found fifty-eight studies that could be included in their review and analysis.¹⁹⁴ The researchers found that cognitive behavioral therapy significantly reduced recidivism even among

188. *Id.*

189. I.H. Yen & S. Leonard Syme, *The Social Environment and Health: A Discussion of the Epidemiologic Literature*, 20 ANN. REV. PUB. HEALTH 287, 289 (1999).

190. Frances E. Kuo & William C. Sullivan, *Aggression and Violence in the Inner City: Effects of Environment Via Mental Fatigue*, 33 ENV'T & BEHAV. 543, 545 (2001).

191. See Corinda Kelly, Note, *Hopeless of Happening: Preventing Youth Violence*, 6 J.L. & FAM. STUD. 205, 205 (2004).

192. See generally CAUSES & CONSEQUENCES, *supra* note 15, at 197.

193. Nana A. Landenberger & Mark W. Lipsey, *The Positive Effects of Cognitive-Behavioral Programs for Offenders: A Meta-Analysis of Factors Associated with Effective Treatment*, 1 J. EXPERIMENTAL CRIMINOLOGY 451, 451 (2005).

194. *Id.*

persons at high-risk of reoffending.¹⁹⁵ The analysis also determined that even high-risk behavior did not reduce the therapy's effectiveness; some of the greatest effects were among participants who were sentenced for serious offenses.¹⁹⁶ This therapeutic intervention has been found to be most effective at reducing justice involvement when participants received other services, including employment assistance, education, training, and other mental health counseling.¹⁹⁷

Evidence-based research has also documented that therapeutic interventions are effective for at-risk youth. Studies show that programs prioritizing family interactions are the most successful, probably because they focus on providing skills to the adults who are in the best position to impact the child's behavior.¹⁹⁸ Functional Family Therapy ("FFT") works with youth ages eleven to eighteen who have been engaged with delinquency, substance abuse, or violence. The program focuses on altering interactions between family members, and seeks to improve the functioning of the family unit by strengthening problem-solving skills, enhancing emotional connections among family members, and addressing the ability of parents to provide structure, guidance, and boundaries for their children.¹⁹⁹ A meta-analysis of eight FFT evaluations found that the initiative has produced statistically significant reductions in recidivism, out-of-home placement, or subsequent sibling referral.²⁰⁰ These studies have included follow-up periods from six months to three years, with one study involving a five year follow-up period (arrest rate as an

195. *Id.* at 452.

196. *Id.* at 471.

197. *Id.*

198. Neelum Arya, *Family-Driven Justice*, 56 ARIZ. L. REV. 623, 655 (2014).

199. WASH. ST. INST. FOR PUB. POL'Y *Outcome Evaluation of Washington State's Research-Based Programs for Juvenile Offenders*, at 5 (Jan. 2004), http://www.wsipp.wa.gov/ReportFile/852/Wsipp_Outcome-Evaluation-of-Washington-States-Research-Based-Programs-for-Juvenile-Offenders_Full-Report.pdf; see also *Clinical Model*, FUNCTIONAL FAM. THERAPY, LLC., <http://www.fftllc.com/about-fft-training/clinical-model.html> (last visited Oct. 6, 2015).

200. See S. Lee et al., WASH. ST. INST. FOR PUB. POL'Y, *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes*, April 2012, http://www.wsipp.wa.gov/ReportFile/1102/Wsipp_Return-on-Investment-Evidence-Based-Options-to-Improve-Statewide-Outcomes-April-2012-Update_Full-Report.pdf (last visited Oct. 6, 2015).

adult for FFT treated youth was 9% compared to a 41% rate for alternative treatment).²⁰¹

F. Targeted Employment Programs

Health interventions, in conjunction with services like employment and job training, are also evidence-based initiatives demonstrated to reduce criminal justice interactions. Overall, aggregate analyses exploring the relationship between incarceration and employment are mixed; however, the National Academy of Sciences concluded that the incarceration-employment relationship is strongest among prime-age men, and particularly among African American men with no college education.²⁰²

Research has been conducted using county-level data to estimate the aggregate changes in incarceration on employment for states that did or did not adopt mandatory or determinate sentencing laws in the 1980s.²⁰³ Using data from 280 counties in ninety-six metropolitan areas, the study concluded that the annual number of male prisoners released backed into the county from which they were sentenced is negatively related to employment levels among African American men.²⁰⁴ The same study found the effects for whites to be non-significant.²⁰⁵ Results suggest that labor market participation is likely to be experienced by those demographic groups most affected by high levels of incarceration—young black men.

Several types of employment programs have been established to increase employment and reduce recidivism for justice-involved persons, including residential and training programs for disadvantaged youth. Employment efforts that provide services combined with housing, drug treatment, and job training result in improved public safety outcomes.²⁰⁶ A study of

201. *Id.* at 2–3.

202. CAUSES & CONSEQUENCES, *supra* note 15, at 65–66.

203. *Id.* at 249; see generally William J. Sabol & James P. Lynch, *Assessing the Longer-run Consequences of Incarceration: Effects on Families and Employment*, in CRIME CONTROL & SOC. JUST. 3 (Darnell F. Hawkins, Samuel L. Myers, Jr. & Randolph N. Stone eds., 2003).

204. CAUSES & CONSEQUENCES, *supra* note 15, at 249; see generally Sabol & Lynch, *supra* note 203, at 20.

205. Sabol & Lynch, *supra* note 203.

206. Peter Schochet et al., *Does Job Corps Work? Impact Findings from the National Job Corps Study*, 98 AM. ECON. REV. 1864, 1874 (2008).

Job Corps, a national program targeting economically disadvantaged youth aged sixteen to twenty-four established by the Economic Opportunity Act of 1964 and currently operated under the Workforce Investment Act of 1998, concluded the program helped to reduce crime among participants.²⁰⁷ Specifically, program participants were less likely to be arrested than those who did not participate—particularly for less serious crimes.²⁰⁸ Participants were also found to be less likely to be convicted and spend time in jail.²⁰⁹

X. UNDOING HARM IN THE CONTEXT OF BLACK LIVES MATTER: JUSTICE REINVESTMENT

The collateral impacts of mass incarceration and excessive punishment are visited disproportionately upon individuals and communities of color. The framework of Justice Reinvestment was conceived as part of the solution to this problem. Justice Reinvestment was developed as a public safety mechanism to downsize prison populations and budgets and reallocate savings to leverage other public and private resources for reinvestment in minority communities disproportionately harmed by the system and culture of harsh punishment.²¹⁰ Initially, it sought to capitalize on the nascent shift away from “tough on crime” sentiment by highlighting the trade-offs between primarily punitive (and expensive) prison spending and prospective public safety investments in local community-building institutions and services.²¹¹

The initial purpose of Justice Reinvestment was to make state government accountable to impoverished communities—mostly (though not exclusively) African American and Latino—where the burden of punishment and incarceration has been heaviest.²¹²

207. *Id.*

208. *Id.*

209. *Id.*

210. Susan Tucker & Eric Cadora, *Ideas for an Open Society: Justice Reinvestment*, 3 IDEAS FOR OPEN SOC'Y 2 (Nov. 2003), https://www.opensocietyfoundations.org/sites/default/files/ideas_reinvestment.pdf.

211. *Id.*

212. *Id.*

These already disadvantaged neighborhoods were being driven deeper into perpetual economic divestment, social isolation, political disenfranchisement, and physical distress by the coercive, downward mobility caused by locally concentrated mass incarceration and the forced migration of residents to and from prison. The most locally concentrated pockets of incarceration were dubbed “Million Dollar Blocks,” because of the millions being spent each year on prison cells for high proportions of working-age male residents for an average of three years. Million dollar blocks dramatized the trade-offs for specific neighborhoods between locally concentrated incarceration spending policies, and alternative, locally focused investment policies that could yield greater returns in public safety, strengthened community institutions, and expanded neighborhood networks.²¹³

The Justice Reinvestment approach offers a framework to support social interventions that move away from the punitive nature of current criminal justice practices towards evidence-based public safety solutions, like quality education and health care. In the era of BLM, the concept of Justice Reinvestment can provide practical steps to address underlying structural issues that result in high rates of law enforcement contact for communities of color.

XI. CONCLUSION

To finish the project of the civil rights narrative, the BLM narrative offers an opportunity for a new approach to public safety. Addressing the collateral effects of mass incarceration and civil sanctions will require both state-specific strategies and federal reforms. The approach must be accountable to community concerns that prioritize direct engagement with justice-involved persons and their families. Those concerns should inform changes in policy and practice to eliminate African American disadvantage

213. AUSTIN ET AL., *supra* note 1.

at all levels of the justice system, including post-incarceration experiences.

In order to achieve a broader approach to public safety, stakeholders must focus on substantial sentencing reforms, which recognize the full humanity of justice-involved persons, and target interventions that reduce contact with the criminal justice system.

First, reforms must be adopted to scale back lengthy prison terms, even for more serious crimes involving violence. The twenty-one-year-old former gang member convicted of homicide may be a very different person at age thirty-five—one who accepts responsibility for his crime and no longer poses a threat to public safety. Second, we must prioritize evidence-based social interventions that demonstrate reductions in criminal offending and law enforcement contact that include: early childhood education, community investment and informal community control, greening high incarceration communities, quality health care, and targeted employment initiatives. Finally, we must focus resources to strengthen effective remedies in high incarceration communities. Research shows that a community-level approach can be effective at reducing crime both by creating opportunity and by enhancing informal social control mechanisms.