

69th Legislative Assembly
Senate Judiciary Committee
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Testimony of Travis W. Finck in Opposition to SB 2128

Madam Chair, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the Commission on Legal Counsel for Indigents. We are the state agency responsible for delivery of public defense services in the great state of North Dakota. On behalf of the Commission, I rise in opposition to Senate Bill 2128.

Truth in Sentencing has been tried. This provides us with a lot of research showing Truth in Sentencing to be a failed policy. Research consistently shows no public safety benefitⁱ to increased incarceration and that longer sentences do not deterⁱⁱ crime. Research also shows that Truth in Sentencing reduces incentivesⁱⁱⁱ for incarcerated people to complete rehabilitative programming, increases safety risks for people in prison and corrections officers, and increases recidivism. The fiscal note in this case shows Truth in Sentencing in North Dakota will also cost taxpayers with no discernible benefit.

Here are some examples of states who have tried and failed the dangerous experiment considered in SB 2128.

In 2022, Tennessee passed SB 2248. Tennessee's Department of Corrections projects that the resulting increases in incarceration will cost taxpayers at least \$40 million over the next 8 years. In Tennessee, the American Conservative Union opposed the Truth in Sentencing bill. In fact, people on both sides of the aisle understood that investing in prisons is an ineffective, wasteful, and dangerous approach to public safety.

Georgia required 90% of the sentence to be served. Research in Georgia showed Georgia's truth in sentencing caused greater crime upon reentry, significantly higher reincarceration rates, and more resource expenditures from overall increased imprisonment.

In Arizona, in 1993, those convicted of felonies are required to serve 85% of their sentence. Research out of Arizona shows truth in sentencing caused the same problems.

Studies in these states show truth in sentencing doesn't address the problem it is being proposed for. It does however increase the likelihood of reoffending, increases risk to those in prison, and increases the risk to prison guards.

Particularly as it applies to the Commission, we are concerned this bill will cause more trials and cause them to be delayed. In Mississippi, for example, when Truth in Sentencing was passed, to avoid delays and unfair sentencing "the court community--judges, prosecutors, and public defenders--has adjusted its sentencing behavior to maintain what

is seen as proportionality in punishment in the face of a mandatory sentencing policy passed at the legislative level”.^{iv} This necessarily would need to be the case in North Dakota given the lack of resources available to prosecutors, judges and defense attorneys.

North Dakota’s prisons and jails are already full. DOCR is already on deferred admission. If those sentenced to prison will now be ineligible for early release, DOCR will not be able to manage a population. County jails will be full of DOCR inmates. What will be the effect of this on immediate community safety? When someone is arrested on a domestic dispute, and all the jails are full of DOCR inmates, where will they be held to promote safety of the alleged victim?

In closing, the United States is the most punitive nation on Earth, and it isn’t even close. In fact, If North Dakota were a nation unto itself, we would incarcerate a similar number of individuals per 100,000 people as Turkmenistan. North Dakota’s incarceration rate is more than all other countries in NATO. Yet, we continue to hear we are growing unsafe in the community. Clearly if the community is less safe, incarceration is not working.

Truth in sentencing has been tried and has repeatedly shown to be ineffective.^v I would hope we can learn from history and not make the same mistake. For the reasons stated herein, the Commission respectfully requests a DO NOT PASS recommendation.

Respectfully submitted:



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ⁱ Stemen, Don, Department of Criminal Justice and Criminology, Loyola University Chicago; The Prison Paradox: More Incarceration will Not Make Us Safer; July 2017. https://vera-institute.files.svdcn.com/production/downloads/publications/for-the-record-prison-paradox_02.pdf (a copy of which is attached).

ⁱⁱ U.S. Dept. of Justice, Office of Justice Programs *National Institute of Justice*; Five Things About Deterrence, May 2016. <https://www.ojp.gov/pdffiles1/nij/247350.pdf> (a copy of which is attached).

ⁱⁱⁱ Green-Lowe, Evan, Recidiviz; The consequences of Truth in Sentencing; April 2022. <https://www.recidiviz.org/updates/the-consequences-of-truth-in-sentencing> (a copy of which is attached).

^{iv} Peter B. Wood; R. Gregory Dunaway; *Journal of Punishment & Society* Volume: 5 Issue: 2 Dated: April 2003 Pages: 139-154 Consequences of Truth-in-Sentencing: The Mississippi Case (abstract); April 2003.

^v “Truth in Sentencing” Paying More Money to Make Our Communities Less Safe; Families Against Mandatory Minimums Fact Sheet, April 2024. (a copy of which is attached).

For the Record

The Prison Paradox: More Incarceration Will Not Make Us Safer

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Summary*

Despite two decades of declining crime rates and a decade of efforts to reduce mass incarceration, some policymakers continue to call for tougher sentences and greater use of incarceration to reduce crime.¹ It may seem intuitive that increasing incarceration would further reduce crime: incarceration not only prevents future crimes by taking people who commit crime “out of circulation” (incapacitation), but it also may dissuade people from committing future crimes out of fear of punishment (deterrence).² In reality, however, increasing incarceration rates has a minimal impact on reducing crime and entails significant costs:

- › Increases in incarceration rates have a small impact on crime rates and each additional increase in incarceration rates has a smaller impact on crime rates than previous increases.³
- › Any crime reduction benefits of incarceration are limited

to property crime. Research consistently shows that higher incarceration rates are not associated with lower violent crime rates.⁴

- › Incarceration may increase crime in certain circumstances. In states with high incarceration rates and neighborhoods with concentrated incarceration, the increased use of incarceration may be associated with increased crime.⁵
- › Incarceration is expensive. The United States is spending heavily on jails and prisons and under-investing in less expensive, more effective ways to reduce and prevent crime.⁶

* This brief uses the broad term “incarceration,” which can encompass confinement in both prisons and jails. Much of the research conducted to date, however, examines imprisonment only, and not incarceration in America’s jails.

Why won’t more incarceration reduce crime?

Incarceration has a marginal impact on crime

There is a very weak relationship between higher incarceration rates and lower crime rates. Although studies differ somewhat, most of the literature shows that between 1980

and 2000, each 10 percent increase in incarceration rates was associated with just a 2 to 4 percent lower crime rate.⁷ Since then, only one empirical analysis (a study that requires corroboration) has examined the relationship between incarceration and crime.⁸ Overall, the increased use of incarceration through the 1990s accounted for between 6 and 25 percent of the total reduction in crime rates.⁹ Since 2000, however, the increased use of incarceration accounted for nearly zero percent of the overall reduction in crime.¹⁰

This means that somewhere between 75 and 100 percent of

About these briefs

Public policy—including decisions related to criminal justice and immigration—has far-reaching consequences, but too often is swayed by political rhetoric and unfounded assumptions. The Vera Institute of Justice has created a series of briefing papers to provide an accessible summary of the latest evidence concerning justice-related topics. By summarizing and synthesizing existing research, identifying landmark studies and key resources, and, in some cases, providing original analysis of data, these briefs offer a balanced and nuanced examination of some of the significant justice issues of our time.

the reduction in crime rates since the 1990s is explained by other factors. Research has shown that the aging population, increased wages, increased employment, increased graduation rates, increased consumer confidence, increased law enforcement personnel, and changes in policing strategies were associated with lower crime rates and, collectively, explain more of the overall reduction in crime rates than does incarceration.¹¹

Incarceration has a diminishing impact on crime

The relationship between higher incarceration rates and lower crime rates is weak, and is getting weaker.¹² Research shows that each additional increase in incarceration rates will be associated with a smaller and smaller reduction in crime rates.¹³ This is because individuals convicted of serious or repeat offenses receive prison sentences even when overall rates of incarceration are low. To continue to increase incarceration rates requires that prisons be used for individuals convicted of lower-level or infrequent offenses as well. Thus, since the early 1990s, the crime reduction benefits of additional prison expansion have been smaller and more expensive to achieve.¹⁴ This diminishing impact of incarceration also explains the lack of crime reduction benefits of higher incarceration rates through the 2000s. Increases in correctional populations when incarceration rates are already high have less impact on crime than increases in populations when incarceration rates are low.¹⁵

Incarceration has little to no effect on violent crime

The weak association between higher incarceration rates and lower crime rates applies almost entirely to property crime.¹⁶ Research consistently shows that higher incarceration rates are not associated with lower violent crime rates.¹⁷ This is because the expansion of incarceration primarily means that larger numbers of individuals convicted of nonviolent, “marginal” offenses—drug offenses and low-level property offenses, as well as those who are convicted of “infrequent” offenses—are imprisoned.¹⁸ Those convicted of violent and repeat offenses are likely to receive prison sentences regardless of the incarceration rate. Thus, increasing incarceration rates for those convicted of nonviolent, marginal offenses does nothing to impact the violent crime rate.¹⁹

Incarceration will increase crime in states and communities with already high incarceration rates

Although it may seem counterintuitive, research has shown that incarceration may actually increase crime. At the state level, there may be an “inflection point” where increases in state incarceration rates are associated with higher crime rates.²⁰ This state-level phenomenon mirrors a similar occurrence in specific neighborhoods, where communities may reach an incarceration “tipping point” after which future increases in incarceration lead to higher crime rates.²¹ The argument is that high rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system; thus, as high incarceration becomes concentrated in certain neighborhoods, any potential public safety benefits are outweighed by the disruption to families and social groups that would help keep crime rates low.²²

At the individual level, there is also some evidence that incarceration itself is criminogenic, meaning that spending time in jail or prison actually increases a person’s risk of engaging in crime in the future.²³ This may be because people learn criminal habits or develop criminal networks while incarcerated, but it may also be because of the collateral consequences that derive from even short periods of incarceration, such as loss of employment, loss of stable housing, or disruption of family ties.²⁴

Incarceration is an expensive way to achieve little public safety

The United States incarcerated 1.2 million more people in prison in 2000 than in 1975 to achieve little public safety benefit. By 2000, the incarceration rate was 270 percent higher than in 1975, but the violent crime rate was nearly identical to the rate in 1975 and the property crime rate was nearly 20 percent lower than in 1975. Put another way, the United States was spending roughly \$33 billion on incarceration in 2000 for essentially the same level of public safety it achieved in 1975 for \$7.4 billion—nearly a quarter of the cost.²⁵ But the costs of high incarceration rates go well beyond the financial costs to government. Mass incarceration also imposes significant social, cultural, and political costs on individuals, families, and communities.²⁶ Incarceration reduces employment opportunities, reduces earnings, limits

economic mobility and, perhaps more importantly, has an intergenerational impact that increases the chances that children of incarcerated parents will live in poverty and engage in delinquent behavior.²⁷

What can policymakers do to reduce crime without the use of incarceration?

Prior research indicates several factors associated with lower crime rates: aging population, increased wages, increased employment, increased graduation rates, increased consumer confidence, increased law enforcement personnel, and changes in policing strategies.²⁸ Policymakers have many tools at their disposal to address crime rates based on these factors in the long term. They can implement policies that require investment outside the criminal justice system to increase graduation rates, employment, income, or consumer confidence. But there are short-term solutions to reducing crime as well. Research points to several criminal justice practices that policymakers can adopt that are more effective and less expensive than incarceration at reducing crime.

Use community crime prevention strategies

Several policing and community-engagement strategies can reduce the incidence of crime in local jurisdictions.²⁹ Place-based problem-oriented policing approaches, for example, significantly reduce crime rates; such approaches involve carefully analyzing crime and disorder in small geographic areas and addressing such problems through tailor-made solutions, such as situational crime prevention measures (repairing fences, improving lighting, erecting road barriers) and community improvements (removing graffiti, nuisance abatement).³⁰ Similarly, several jurisdictions also have renewed efforts to implement and improve community policing approaches—such as working with business owners to identify neighborhood problems, conducting citizen surveys and outreach, and improving recreational opportunities for youth—in order to engage more closely with communities to identify and solve crime problems. Evaluations show that such programs can reduce both violent and property crimes.³¹

To address violent crime, several jurisdictions have implemented focused deterrence strategies that 1) identify high-risk individuals who are responsible for a disproportionate

share of violent crime, 2) advise such individuals that they will be subjected to intensified enforcement if they continue to engage in violence, and 3) provide targeted individuals with access to social services. Evaluations of such programs have shown significant reductions in violent crime, including homicides and gun-related offenses.³² Finally, several studies also have shown that jurisdictions working with residents to increase collective crime prevention techniques or to implement situational crime prevention techniques can reduce property crimes in targeted neighborhoods.³³

Increase the availability and use of alternative-to-incarceration programs

Several types of alternative-to-incarceration programs that offer supportive services (like mental health, substance abuse, employment, housing, Medicaid, public benefits, and community health centers) can reduce criminal activity among participants.³⁴ For example, law enforcement-led diversion programs that divert individuals at the point of arrest and prosecution-led diversion programs that divert individuals either pre-charge or defer prosecution post-charge have been shown to reduce future criminal activity of program participants.³⁵ Several meta-analyses show that participation in drug courts—specialized courts that combine drug treatment with supervision to reduce drug use and drug-related crime—can significantly reduce recidivism among participants.³⁶ Research also suggests that other specialty courts may reduce criminal activity of targeted groups. Mental health courts, for example, combine treatment-oriented and problem-solving strategies to reduce recidivism and contact with the criminal justice system among individuals with mental health issues.³⁷ Juvenile diversion programs divert youth out of traditional criminal case processing and into a variety of alternatives, including restorative justice programs, community service, substance abuse treatment, skills-building programs, or family treatment.³⁸

Employ community corrections approaches

Several community corrections approaches, which provide supervision and services to individuals in the community post-conviction, can reduce criminal activity among participants without the use of incarceration.³⁹ Reducing caseloads for probation officers and focusing on evidence-based practices like risk/needs assessments, separate specialized caseloads, intensive wraparound services, and comprehensive case management can significantly reduce re-arrest rates

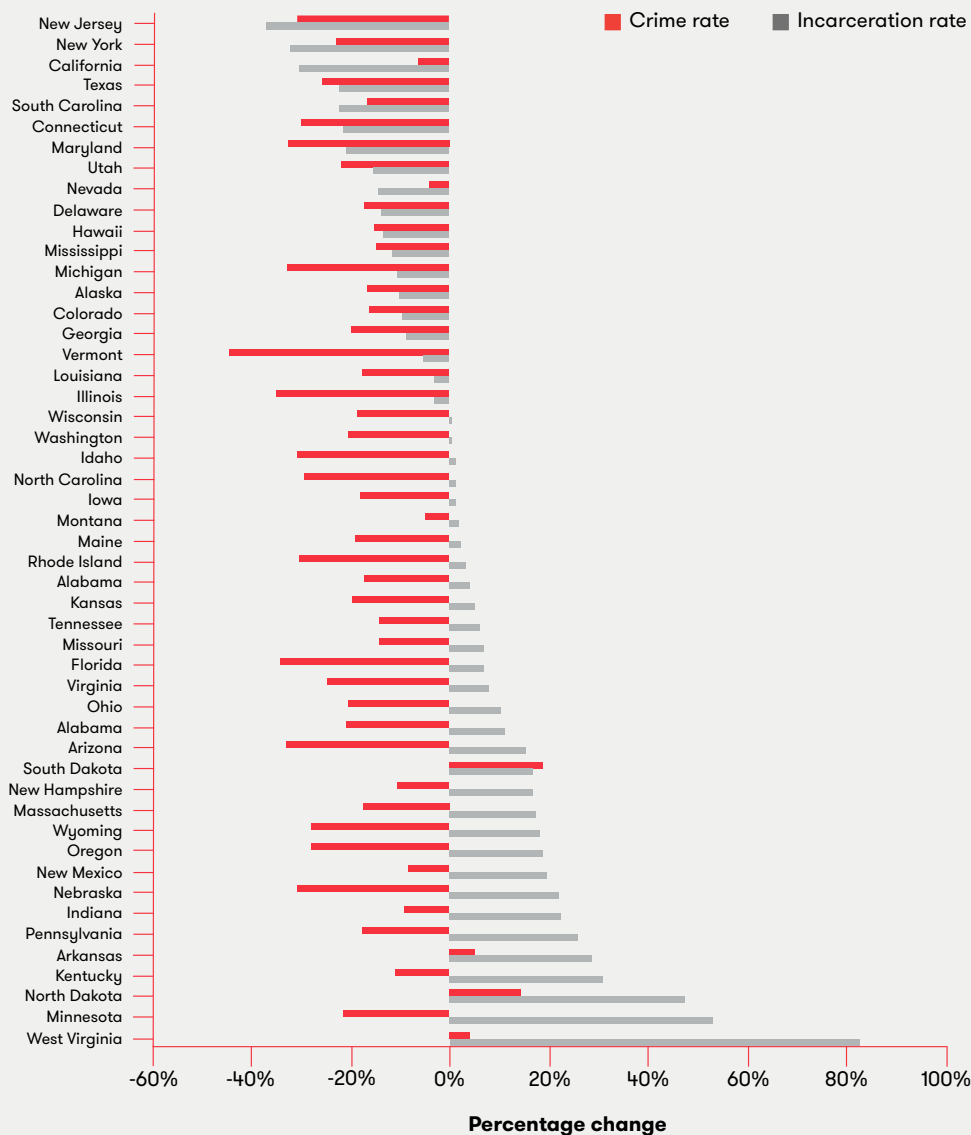
among high-risk probationers.⁴⁰ In addition, community supervision programs that target moderate- and high-risk adults and incorporate cognitive behavioral therapy have been shown to reduce recidivism rates among program participants.⁴¹ Investment in reentry programs for those already incarcerated, such as pre-release programming and aftercare services, in-prison therapeutic communities, and transitional planning, can significantly reduce criminal activity of those released from incarceration.⁴²

It is possible to reduce incarceration and crime

Experiences in several states offer evidence that policy-makers can reduce crime without increasing imprisonment. In fact, 19 states reduced both imprisonment and crime rates over the last 15 years.⁴³ (See Figure 1 below.) These states represent a diverse cross-section of the United States, including large states like Texas and small states like Alaska; Northeastern states like Connecticut and Midwestern states like Michigan; Southern states like Louisiana and Western states like Hawaii. Socially liberal states like New York,

Figure 1

Percent change in state crime rates and imprisonment rates, 2000-2015.



wealthy states like Maryland, and states with low crime rates like Vermont simultaneously reduced incarceration and crime rates, but so did socially conservative states like Utah, economically distressed states like Mississippi, and states with high crime rates like Nevada.

The experiences across states also indicate that the relationship between incarceration and crime is neither predictable nor consistent. The state with the largest decrease in incarceration rates—New Jersey (with a 37 percent decrease between 2000 and 2015)—also experienced a 30 percent decrease in crime rates during the same period. The state with the largest increase in incarceration rates—West Virginia (with an 83 percent increase between 2000 and 2015)—also experienced a 4 percent increase in crime rates. Among the 10 states with the largest decreases in crime rates between 2000 and 2015, five also reduced incarceration rates.⁴⁴ Indeed, the state with the largest decrease in crime rates—Vermont—also reduced incarceration rates. Between 2000 and 2015, only four states—Arkansas, North Dakota, South Dakota, and West Virginia—experienced increases in crime rates, and all four also experienced increased incarceration rates.

The practices and programs adopted at the state and local levels in many of these states—community-based crime prevention, innovative policing strategies, diversion, and community corrections programs—likely explain these

disparate trends in incarceration rates and crime rates over the last 15 years. As national policymakers call for increased incarceration and many state and local policymakers feel pressure to introduce measures to keep crime rates low, officials would do well to look toward states that have reduced both incarceration and crime for examples of innovation.

Conclusion

After 25 years of consistently declining crime rates, policymakers continue to feel pressure to introduce measures to address even small upticks in crime. This is understandable—policymakers should seek solutions to the problems of violence and embrace practices and policies that can keep crime rates low. Filling the nation's prisons is not one of them. The impact of incarceration on crime is limited and has been diminishing for several years. Increased incarceration has no effect on violent crime and may actually lead to higher crime rates when incarceration is concentrated in certain communities. Instead, policymakers can reduce crime without continuing to increase the social, cultural, and political costs of mass incarceration by investing in more effective and efficient crime reduction strategies that seek to engage the community, provide needed services to those who are criminally involved, and begin to address the underlying causes of crime.

Resources

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Endnotes

- 1 The crime rate is defined as the number of crimes reported to police per 100,000 people, based on the Uniform Crime Reports produced annually by the Federal Bureau of Investigation. When analysts or the media refer to the “crime rate,” they generally mean the index crime rate, which is based on a set of seven violent and property crimes—murder and non-negligent manslaughter, forcible rape, aggravated assault, robbery, burglary, larceny-theft, and motor vehicle theft. Analysts may also use the violent crime rate (which is based only on the crimes of murder and non-negligent manslaughter, forcible rape, aggravated assault, and robbery) or the property crime rate (which is based only on the crimes of burglary, larceny-theft, and motor vehicle theft). See Federal Bureau of Investigation, “UCR Offense Definitions,” <https://perma.cc/SF7A-SM9F>. Violent and property crime rates both declined roughly 50 percent between their peak in 1992 and 2015. For crime rates through 2013, see Federal Bureau of Investigation, “Uniform Crime Reporting Statistics, State and National Estimates by Year,” <https://perma.cc/LHV6-2G3R>. For crime rates in 2014 and 2015, see Federal Bureau of Investigation, “2015 Crime in the United States,” Table 1, <https://perma.cc/BW2M-JBC6>. For a review of state sentencing and corrections reforms aimed at reducing the size of state prison populations, see Rebecca Silber, Ram Subramanian, and Maia Spotts, *Justice in Review: New Trends in State Sentencing and Corrections 2014-2015* (New York: Vera Institute of Justice, 2016), <https://perma.cc/RX3U-K9R3>; Ram Subramanian, Rebecka Moreno, and Sharyn Broomhead, *Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends* (New York: Vera Institute of Justice, 2014), <https://perma.cc/L2D2-YUAA>; Ram Subramanian and Rebecka Moreno, *Drug War Détente? A Review of State-level Drug Law Reform, 2009-2013* (New York: Vera Institute of Justice, 2014), <https://perma.cc/N2SF-LH86>; and Christine S. Scott-Hayward, *The Fiscal Crisis in Corrections: Rethinking Policies and Practices* (New York: Vera Institute of Justice, 2009), <https://perma.cc/AMT6-6U44>. For policymaker statements on crime, see, e.g., Jeff Sessions, “Being soft on sentencing means more violent crime. It’s time to get tough again,” *Washington Post*, June 16, 2017 (arguing for the use of mandatory sentences and prison for drug offenses), <https://perma.cc/7GJA-A6ZU>; see also Rachel Weiner and Sari Horwitz, “Sessions Vows Crackdown on Drug Dealing and Gun Crime,” *Washington Post*, March 15, 2017, <https://perma.cc/Z28L-Y8TR>; Office of the Attorney General, Memorandum for All Federal Prosecutors, “Department Charging and Sentencing Policy,” May 10, 2017 (directing federal prosecutors to “charge and pursue the most serious, readily provable offense...[defined as] those that carry the most substantial guidelines sentence, including mandatory minimum sentences” and requiring prosecutors to “disclose to the sentencing court all facts that impact the sentencing guidelines or mandatory minimum sentences”), <https://www.justice.gov/opa/press-release/file/965896/download>.
- 2 For a review of research examining the incapacitative and deterrent effects of incarceration, see Jeremy Travis and Bruce Western (eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Research Council, 2014), <https://perma.cc/D2Q6-7HEJ>.
- 3 The incarceration rate is defined as the number of sentenced persons in prison per 100,000 people. Analysts use either the national incarceration rate (the number of sentenced persons in state or federal prison per 100,000 U.S. population) or state incarceration rates (the number of sentenced persons in a particular state’s prisons per 100,000 state population). By definition, this figure does not include the nation’s jail populations. For more information about the U.S. jail population, see Bureau of Justice Statistics, “Data Collection: Annual Survey of Jails,” <https://perma.cc/D7QZ-CM46>. For the impact of increased incarceration rates on crime rates, see, generally, James Austin and Tony Fabelo, *The Diminishing Returns of Increased Incarceration: A Blueprint to Improve Public Safety and Reduce Costs* (Washington, DC: JFA Institute, 2004), <https://perma.cc/N9K7>; Jenni Gainsborough and Marc Mauer, *Diminishing Returns: Crime and Incarceration in the 1990s* (Washington, DC: The Sentencing Project, 2000), <https://perma.cc/HV5E-J4YQ>; Steven Raphael and Michael A. Stoll, *A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime* (Washington, DC: The Hamilton Project, 2014), <https://perma.cc/46B2-6G4M>.
- 4 For reviews of studies examining the relationship between incarceration and crime in the 1990s, see Don Stemen, *Reconsidering Incarceration: New Directions for Reducing Crime* (New York: Vera Institute of Justice, 2007), 4 (describing studies that showed no relationship or a very weak relationship between incarceration rates and violent crime rates through the 1990s), <https://perma.cc/T8PJ-QBCD>; Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (New York: Brennan Center for Justice, 2017) (analyzing incarceration rates and crime rates through 2015 and showing no relationship between incarceration rates and crime rates in the 2000s), <https://perma.cc/NL9-5Z24>.
- 5 For a review of research on the effects of incarceration at the local level, see Todd R. Clear, “The Effects of High Imprisonment Rates on Communities,” *Crime and Justice* 37, no. 1 (2008), 97-132 (describing several studies that find high incarceration rates associated with higher crime rates at the neighborhood level), <https://perma.cc/5L73-2DGT>; see also Raymond V. Liedka, Anne Morrison Piehl, and

- Bert Useem, "The Crime-Control Effect of Incarceration: Does Scale Matter?" *Criminology & Public Policy* 5, no. 2 (2006), 245-76.
- 6 John J. Donohue III, "Assessing the Relative Benefits of Incarceration: The Overall Change over the Previous Decades and the Benefits on the Margin," in *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom*, edited by Steven Raphael and Michael Stoll (New York: Russell Sage Foundation, 2009) [arguing that "social spending" on programs such as preschool and early-childhood education, family therapy, programs for juvenile delinquents, and labor-market interventions could generate greater reductions in crime at a lower social cost than incarceration].
 - 7 See Don Stemen, *Reconsidering Incarceration* (2007); and Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017).
 - 8 Ibid. Roeder, Eisen, and Bowling, 2017.
 - 9 William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, edited by Alfred Blumstein and Joel Wallman (Cambridge, England: Cambridge University Press, 2000) [finding that 25 percent of the decrease in index crime rates in the 1990s was explained by higher incarceration rates]; in contrast, see Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017), 23 [arguing that once the diminishing returns of incarceration are accounted for, only 6 percent of the decrease in property crime rates and 0 percent of the decrease in violent crime rates in the 1990s were explained by higher incarceration rates; however, the authors note that even for property crime, higher incarceration could account for anywhere from 0 to 12 percent of the decline].
 - 10 Ibid. Roeder, Eisen, and Bowling, 2017, 23 [stating that "increased incarceration accounted for less than one one-hundredth of the decline of property crime in the 2000s...[and] had no observable effect on the violent crime decline ... in the 2000s"].
 - 11 For reviews of studies examining the relationship between these factors and crime, see Don Stemen, *Reconsidering Incarceration* (2007). For a review and reanalysis of these factors see Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017) [finding that lower unemployment rates, higher per capita income, higher consumer confidence, lower alcohol consumption, aging population, and the introduction of COMPSTAT were associated with lower crime rates]. For the results of specific studies, see, e.g., Hope Corman and H. Naci Mocan, "A Time-Series Analysis of Crime, Deterrence, and Drug Abuse in New York City," *American Economic Review* 90, no. 3 (2000), 584-604 [finding a significant effect of increased numbers of law enforcement officers on lower burglary and robbery rates]; Steven D. Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime: Reply," *American Economic Review* 92, no. 4 (2002), 1244-50 [finding a significant effect of increased numbers of law enforcement officers on property and violent crime rates], <https://perma.cc/XZ87-5849>; Steven Raphael and Rudolf Winter-Ebmer, "Identifying the Effect of Unemployment on Crime," *Journal of Law and Economics* 44, no. 1 (2001), 259-83 [finding that higher unemployment rates were associated with higher property crime rates and that higher per capita income was associated with lower violent crime rates]; Steven D. Levitt, "Alternative Strategies for Identifying the Link between Unemployment and Crime," *Journal of Quantitative Criminology* 17, no. 4 (2001), 377-90 [finding that higher unemployment rates were associated with higher property crime rates]; Raymond V. Liedka, Anne Morrison Piehl, and Bert Useem, "The Crime-Control Effect of Incarceration" (2006) [finding that higher per capita income was associated with lower crime rates]; Richard Rosenfeld and Robert Fornango, "The Impact of Economic Conditions on Robbery and Property Crime: The Role of Consumer Sentiment," *Criminology* 45, no. 4 (2007), 735-69 [finding that increased consumer confidence was associated with lower rates of robbery, burglary, larceny, and motor vehicle theft rates]; Sara Markowitz, *An Economic Analysis of Alcohol, Drugs, and Violent Crime in the National Crime Victimization Survey* (Cambridge, MA: National Bureau of Economic Research, 2000) [finding that increases in the number of alcohol distribution outlets is associated with increased probability of assault], <https://perma.cc/4XUB-L3A4>; Lance Lochner and Enrico Moretti, "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports," *American Economic Review* 94, no. 1 (2004), 155-89 [finding that increases in individuals' education levels are associated with lower crime rates].
 - 12 This is generally referred to as the "diminishing marginal returns" of incarceration. See, e.g., James F. Austin and Tony Fabelo, *The Diminishing Returns of Increased Incarceration* (2004); Jenni Gainsborough and Marc Mauer, *Diminishing Returns* (2000); Steven Raphael and Michael Stoll, *A New Approach to Reducing Incarceration* (2004); Franklin Zimring and Gordon Hawkins, *Crime Is Not the Problem: Lethal Violence in America* (Oxford, England: Oxford University Press, 1997).
 - 13 See, e.g., Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017), 18-19 [the authors look across states and demonstrate the diminishing marginal returns of increases in incarceration over time]; see also Steven D. Levitt, "Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not," *Journal of Economic Perspectives* 18, no. 1 (2004), 163-90; Ilyana Kuziemko and Steven D. Levitt, "An Empirical Analysis of Imprisoning Drug Offenders,"

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- 14 Washington State Institute for Public Policy, *The Criminal Justice System in Washington State* (2003). Washington State, for example, concluded that while more incarceration had led to less crime in the state in the 1990s, the benefits of additional prison expansion would be smaller and more expensive to achieve. Specifically, the state concluded that an increase in the incarceration rate in 2003 prevented considerably fewer crimes than did previous similar size increases in the state's prison population. The state further concluded that while incarcerating individuals convicted of violent and high-volume property offenses continued to generate more benefits than costs, each additional person incarcerated for these crimes would result in fewer prevented crimes than previous persons. Washington even found that increasing the incarceration rate for people convicted of drug offenses in the 1990s actually cost more than the average value of the crimes prevented by their imprisonment and was, thus, no longer cost-effective.
- 15 Raymond V. Liedka, Anne Morrison Piehl, and Bert Useem, *The Crime-Control Effect of Incarceration* (2006) (finding that increases in prison populations in states with already large prison populations have less impact on crime than increases in states with smaller prison populations; states experience "accelerating declining marginal returns"—meaning that the percent reduction in crime gets ever smaller with larger prison populations. The authors concluded that increases in incarceration rates are associated with lower crime rates at low levels of imprisonment, but the size of that association shrinks as incarceration rates get bigger).
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- A Preliminary Examination of Concentrated Incarceration and Social Disorganization,” *Justice Quarterly* 20, no. 1 (2003), 33-64; Brian C. Renauer et al., “Tipping the Scales of Justice: The Effect of Overincarceration on Neighborhood Violence,” *Criminal Justice Policy Review* 17, no. 3 (2006), 362-79. For a review of empirical research confirming these findings, see Todd R. Clear, “The Effects of High Imprisonment Rates on Communities” (2008) at 118-20.
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- 26 See, e.g., The Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility* (Washington, DC: Pew Charitable Trusts, 2010), <https://perma.cc/XHL8-KHVA>
- 27 Ibid.
- 28 For reviews of studies examining the relationship between these factors and crime, see Don Stemen, *Reconsidering Incarceration* (2007); and Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017).
- 29 For a list of community crime prevention programs that have been evaluated and reviewed to be effective, see National Institute of Justice, Office of Justice Programs, *CrimeSolutions.gov*, <https://www.crimesolutions.gov>.
- 30 Such approaches fall under the general category of “hot spots” or place-based policing. However, place-based policing can involve either traditional policing strategies, such as increased patrols and aggressive enforcement, or problem-oriented policing approaches, which involve efforts by police to address the underlying causes of crime in targeted areas by relying on non-traditional problem-solving policing strategies. Research indicates that place-based problem-oriented approaches are much more effective than place-based traditional policing approaches. For a meta-analysis of 10 hot spot policing programs, see, Anthony A. Braga, Andrew V. Papachristos, and David M. Hureau, “The Effects of Hot Spots Policing on Crime: An Updated Systematic Review and Meta-Analysis,” *Justice Quarterly* 31, no. 4 (2014), 633-63. Braga et al., found that problem-oriented policing approaches (police-led efforts to change the underlying conditions at hot spots that lead

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- 31 See, e.g., Nicholas Corsaro et al., "The Impact of Drug Market Pulling Levers Policing on Neighborhood Violence: An Evaluation of the High Point Drug Market Intervention," *Criminology & Public Policy* 11, no. 2 (2012), 167-99 (finding that a community policing approach to address open air drug markets in High Point, North Carolina reduced violent incidents in target areas; although violent crime decreased in the target areas, it increased city-wide, suggesting limitations with the approach).
- 32 See, e.g., Nicholas Corsaro and Robin S. Engel, "Most Challenging of Contexts," *Criminology & Public Policy* 14, no. 3 (2015), 471-505 (finding that a focused deterrence program in New Orleans that identified high-risk individuals and targeted them for enforcement and services reduced violent crime rates).
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- 34 For a list of diversion programs that have been evaluated and reviewed to be effective, see National Institute of Justice, Office of Justice Programs, CrimeSolutions.gov.
- 35 For an analysis of one law enforcement-led diversion program, see, e.g., Susan E. Collins, Heather S. Lonczak, and Seema L. Clifasefi, *LEAD Program Evaluation: Recidivism Report* (Seattle, WA: University of Washington, 2015), (finding that Seattle's law enforcement-led diversion program (LEAD) reduced both short-term and long-term recidivism among participants) <https://perma.cc/RH4U-VLD4>. The LEAD program in Seattle was established in 2011 to divert individuals suspected of low-level drug and prostitution offenses at arrest into case management and supportive services instead of jail and prosecution. For a description of other law enforcement-led diversion programs, see Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (Chicago: Center for Health and Justice at TASC, 2013), <https://perma.cc/XV5U-VAG2>. For more on prosecutor-led diversion programs, see, e.g., Kit R. Van Stelle, Janae Goodrich, and Stephanie Kroll, *Treatment Alternatives and Diversion (TAD) Program: Participant Outcome Evaluation and Cost-Benefit Report (2007-2013)* (Madison, WI: University of Wisconsin Population Health Institute, 2014), 11, (finding that participation in prosecutorial diversion reduced recidivism rates among program participants) <https://perma.cc/7FNS-8738>; Paul Dynia and Hung-En Sung, "The Safety and Effectiveness of Diverting Felony Drug Offenders to Residential Treatment as Measured by Recidivism," *Criminal Justice Policy Review* 11, no. 4 (2000), 299-311 (finding lower recidivism rates among Drug Treatment Alternative-to-Prison (DTAP) program participants); and Steven Belenko et al., "Recidivism Among High-Risk Drug Felons: A Longitudinal Analysis Following Residential Treatment," *Journal of Offender Rehabilitation* 40, no. 1/2 (2004), 105-32 (finding that participants in DTAP had lower recidivism rates and delayed time to recidivism). Although few evaluations of either prosecutorial diversion or deferral programs exist, such programs are promising alternatives to traditional prosecution. For a description of other prosecution-led diversion programs, see Center for Health and Justice at TASC, *No Entry* (2013).
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- 39 For a list of community corrections programs that have been evaluated and reviewed to be effective, see National Institute of Justice, Office of Justice Programs, CrimeSolutions.gov.
- 40 See, e.g., Sarah Kuck Jalbert et al., *A Multisite Evaluation of Reduced Probation Caseload Size in an Evidence-Based Practice Setting* (Cambridge, MA: Abt Associates, Inc., 2011) (evaluating programs in Iowa and Oklahoma and finding that reduced caseloads, when combined with other evidence-based supervision practices, can lead to improved recidivism outcomes), <https://www.ncjrs.gov/pdffiles1/nij/grants/234596.pdf>. For a list of such evidence-based practices, see *ibid.* at 21.
- 41 Stephanie Lee et al., *Return on Investment* (2012) (reviewing 32 studies and finding that moderate- and high-risk adults under supervision who received cognitive behavioral therapy were significantly less likely to commit crime, compared with those who did not receive cognitive behavioral therapy); and Washington State Institute for Public Policy, *Cognitive Behavioral Therapy (high and moderate risk adult offenders)* (Olympia, WA: Washington State Institute for Public Policy, 2012), <https://perma.cc/7DB3-KPK8>.
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NATIONAL INSTITUTE OF JUSTICE

FIVE THINGS ABOUT

DETERRENCE



Deter would-be criminals by using scientific evidence about human behavior and perceptions about the costs, risks and rewards of crime.

1. The **certainty of being caught is a vastly more powerful deterrent than the punishment.**

Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment.

2. Sending an individual convicted of a crime to prison isn't a very effective way to deter crime.

Prisons are good for punishing criminals and keeping them off the street, but prison sentences (particularly long sentences) are unlikely to deter future crime. Prisons actually may have the opposite effect: Inmates learn more effective crime strategies from each other, and time spent in prison may desensitize many to the threat of future imprisonment.

See "Understanding the Relationship Between Sentencing and Deterrence" for additional discussion on prison as an ineffective deterrent.

3. Police deter crime by increasing the perception that criminals will be caught and punished.

The police deter crime when they do things that strengthen a criminal's perception of the certainty of being caught. Strategies that use the police as "sentinels," such as hot spots policing, are particularly effective. A criminal's behavior is more likely to be influenced by seeing a police officer with handcuffs and a radio than by a new law increasing penalties.

4. Increasing the severity of punishment does little to deter crime.

Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes.

More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism.

See "Understanding the Relationship Between Sentencing and Deterrence" for additional discussion on the severity of punishment.

5. There is no proof that the death penalty deters criminals.

According to the National Academy of Sciences, "Research on the deterrent effect of capital punishment is uninformative about whether capital punishment increases, decreases, or has no effect on homicide rates."

In his 2013 essay, "Deterrence in the Twenty-First Century," Daniel S. Nagin succinctly summarized the current state of theory and empirical knowledge about deterrence. The information in this publication is drawn from Nagin's essay with additional context provided by NIJ and is presented here to help those who make policies and laws that are based on science.

Source: Daniel S. Nagin, "Deterrence in the Twenty-First Century," in *Crime and Justice: A Review of Research*, vol. 42: Crime and Justice in America: 1975-2025, ed. Michael Tonry, Chicago: University of Chicago Press, 2013.¹

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Five Things About Deterrence

NIJ's "Five Things About Deterrence" summarizes a large body of research related to deterrence of crime into five points. Two of the five things relate to the impact of sentencing on deterrence — "Sending an individual convicted of a crime to prison isn't a very effective way to deter crime" and "Increasing the severity of punishment does little to deter crime." Those are simple assertions, but the issues of punishment and deterrence are far more complex. This addendum to the original "Five Things" provides additional context and evidence regarding those two statements.

It is important to note that while the assertion in the original "Five Things" focused only on the impact of sentencing on deterring the commission of future crimes, a prison sentence serves two primary purposes: punishment and incapacitation. Those two purposes combined are a linchpin of United States sentencing policy, and those who oversee sentencing or are involved in the development of sentencing policy should always keep that in mind.

"Sending an individual convicted of a crime to prison isn't a very effective way to deter crime."

Prison is an important option for incapacitating and punishing those who commit crimes, but the data show long prison sentences do little to deter people from committing future crimes.

Viewing the findings of research on severity effects in their totality, there is evidence suggesting that short sentences may be a deterrent. However, a consistent finding is that increases in already lengthy sentences produce at best a very modest deterrent effect.

A very small fraction of individuals who commit crimes — about 2 to 5 percent — are responsible for 50 percent or more of crimes.² Locking up these individuals when they are young and early in their criminal careers could be an effective strategy to preventing crime if we could identify who they are. The problem is: we can't. We have tried to identify the young people most likely to commit crimes in the future, but the science shows we can't do it effectively.

It is important to recognize that many of these individuals who offend at higher rates may already be incarcerated because they put themselves at risk of apprehension so much more frequently than individuals who offend at lower rates.

"Increasing the severity of punishment does little to deter crime."

To clarify the relationship between the severity of punishment and the deterrence of future crimes, you need to understand:

- The lack of any "chastening" effect from prison sentences,
- That prisons may exacerbate recidivism,
- The different impacts of the certainty versus the severity of punishment on deterrence, and
- That individuals grow out of criminal activity as they age.

More severe punishments do not "chasten" individuals convicted of crimes.

Some policymakers and practitioners believe that increasing the severity of the prison experience enhances the "chastening" effect, thereby making individuals

Deterrence and Incapacitation

There is an important distinction between deterrence and incapacitation. Individuals behind bars cannot commit additional crime — this is incarceration as incapacitation. Before someone commits a crime, he or she may fear incarceration and thus refrain from committing future crimes — this is incarceration as deterrence.

convicted of an offense less likely to commit crimes in the future. In fact, scientists have found no evidence for the chastening effect.

Prisons may exacerbate recidivism.

Research has found evidence that prison can exacerbate, not reduce, recidivism. Prisons themselves may be schools for learning to commit crimes. In 2009, Nagin, Cullen and Jonson published a review of evidence on the effect of imprisonment on reoffending.³ The review included a sizable number of studies, including data from outside the U.S. The researchers concluded:

"... compared to non-custodial sanctions, incarceration has a null or mildly criminogenic impact on future criminal involvement. We caution that this assessment is not sufficiently firm to guide policy, with the exception that it calls into question wild claims that imprisonment has strong specific deterrent effects."

Certainty has a greater impact on deterrence than severity of punishment.

Severity refers to the length of a sentence. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.

Certainty refers to the likelihood of being caught and punished for the commission of a crime. Research underscores the more significant role that *certainty* plays in deterrence than *severity* — it is the certainty of being caught that deters a person from committing crime, not the fear of being punished or the severity of the punishment. Effective policing that leads to swift and certain (but not necessarily severe) sanctions is a better deterrent than the threat of incarceration. In addition, there is no evidence that the deterrent effect increases when the likelihood of conviction increases. Nor is there any evidence that the deterrent effect increases when the likelihood of imprisonment increases.

A person's age is a powerful factor in deterring crime.

Even those individuals who commit crimes at the highest rates begin to change their criminal behavior as they age. The data show a steep decline at about age 35.⁴ A more severe (i.e., lengthy) prison sentence for convicted individuals who are naturally aging out of crime does achieve the goal of punishment and incapacitation. But that incapacitation is a costly way to deter future crimes by aging individuals who already are less likely to commit those crimes by virtue of age.

1. "Five Things About Deterrence" is available at <https://ncjrs.gov/pdffiles1/nij/247350.pdf>.

2. Mulvey, Edward P., *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, Juvenile Justice Fact Sheet, Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2011, NCJ 230971. Available at <https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf>.

3. Nagin, Daniel S., Francis T. Cullen and Cheryl Lero Johnson, "Imprisonment and Reoffending," *Crime and Justice: A Review of Research*, vol. 38, ed. Michael Tonry, Chicago: University of Chicago Press, 2009: 115-200.

4. Sampson, Robert J., John H. Laub and E.P. Eggleston, "On the Robustness and Validity of Groups," *Journal of Quantitative Criminology* 20 (1) (2004): 37-42.

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The consequences of Truth in Sentencing

Evan Green-Lowe

April 8, 2022

Research

The consequences of Truth in Sentencing.

Academic Research Zack A. Goodman Evan Green-Lowe

4 8 2022

¹ We considered papers published in the past two decades in reputable peer-reviewed journals as well as working papers submitted for publication. Among these, we only reviewed papers whose authors

analyze
experiments or
natural
experiments in
the United
States.

This is the first part in a three-part series Recidiviz has written summarizing recent high-quality academic work about policies and programs that affect justice-involved individuals. The goal is to make research more accessible to practitioners, helping them make evidence-based decisions. As always, we welcome thoughts and feedback.

In 33 of 51 states in America, most prison sentences are not fixed. People can reduce the length of their sentence by completing vocational programs, treatment, or education. Determinate sentencing laws, often called “Truth in Sentencing” (TIS) laws, change this dynamic by requiring incarcerated people to serve a fixed or “determinate” portion of their sentence.

Tennessee House Bill 2656 and Senate Bill 2248, currently being deliberated at the time of this writing, would require people convicted of any of 14 types of felonies to serve 100% of their sentence in prison. Recidiviz recently analyzed the expected impact of the proposed legislation. Before we could project impact, we needed to read up on the effects of TIS laws in other states.

Reviewing existing research

To help us model the impact of the proposed legislation, we read up on how TIS laws have already impacted other states. We set a high bar for studies included in our review. We only included studies that were recently published in reputable peer-reviewed journals or are currently being reviewed. We excluded observational studies that use correlational (as opposed to causal) evidence and those whose methods were unclear or no longer considered

Despite identifying hundreds of articles using a snowballing approach, only a few met the bar we set for quality and credibility. Two studies checked all of our boxes¹ — one from Georgia, another from Arizona.

The Georgia natural experiment

In this paper, Ilyana Kuziumko studies Georgia's now defunct "90% policy" that required incarcerated people convicted of select offenses to spend at least 90% of their sentence in prison before becoming eligible for parole. Notably, this policy only affected people who were convicted after January 1, 1998. Consider two individuals who committed the same offense on the same day, but one was convicted in December of 1997, while the

other faced longer court delays and was convicted in January of 1998. The person convicted in December may have become eligible for parole after serving 1/3 of her sentence while the person convicted in January would have to spend 90%+ of her sentence in prison.

Kuziumko exploits this natural experiment — comparing outcomes on either side of the policy implementation date — to measure the causal effect of TIS on outcomes like time served and recidivism. As you might expect, she finds that Georgia's TIS reform increased the amount of time incarcerated individuals spent in prison and reduced the amount of time spent on parole.

However, the policy carried an unintended consequence. Before the 90% policy, incarcerated people could be released to parole sooner through good behavior or completion of rehabilitative programs (GED courses, drug treatment, etc). Georgia's determinate sentencing policy removed an important incentive to complete these programs, leading to lower completion rates and more disciplinary infractions. In addition to creating a more dangerous environment inside facilities, **TIS caused greater crime upon reentry, significantly higher reincarceration rates, and more resource expenditures overall from increased imprisonment.**

The Arizona natural experiment

A recent [working paper](#) by David MacDonald examines a similar policy in Arizona that went into effect in 1993 and required those convicted of felonies occurring after January 1, 1994 to spend at least 85% of their sentence in prison. Unlike in Georgia, Arizona judges were influenced by the policy: they responded by decreasing sentence lengths given to affected defendants, resulting in no net change in time spent incarcerated. But like those in Georgia, incarcerated people in Arizona also lost an incentive to complete rehabilitative programs, resulting in much lower participation.

In Georgia, TIS changed two things: it lengthened time served, and it reduced program participation. In Arizona, TIS only reduced program completion — time served did not change. But MacDonald finds that **TIS in Arizona caused the same criminogenic effects as observed in Georgia. This time, however, we know it was the reduction in rehabilitative programming that increased recidivism.**

Conclusion

Because there are few credible papers that estimate causal effects of TIS laws on outcomes for justice-involved individuals, we find it important to highlight the highest quality research on this topic to best inform decision makers. These two natural experiments from two different states find effectively the same unintended and critical consequences. **Truth in Sentencing reduces incentives to complete rehabilitative programming, increases risk to safety for correctional officers and individuals in prison, and increases recidivism.** If the goal of TIS is to increase public safety, these consequences may cause the policy to backfire.

The evidence in these two papers points towards rehabilitative programming — and incentives to complete them — as important drivers of successful reentry. While more research needs to be done to understand which programs work best and for whom, it is clear that preserving earlier release as an incentive to complete rehabilitative programming may both improve reentry success and lower taxpayer costs. Our synthesis underscores that legislators have an opportunity to improve outcomes for their state's citizens through both sentence credits and increased participation in rehabilitative programming.

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“Truth in Sentencing” Paying *More* Money to Make Our Communities *Less* Safe

“Truth in Sentencing” (TIS) laws require people to serve a certain percentage of their sentence (for example 80%) behind bars. This greatly limits and prevents both the individual and the correction system’s ability to reduce time in prison through good behavior and completion of rehabilitative programming. TIS laws may sound appealing, but in reality, they make communities less safe by taking away a vital corrections tool, increasing recidivism, and wasting resources on unnecessary incarceration – money that can’t be spent preventing crime.

TIS laws remove incentives for people to rehabilitate themselves while incarcerated, leading to worse behavior in prison and higher recidivism once people are released. Good behavior and programming credits are important tools for corrections staff.

- When Arizona eliminated parole and earned time credits in 1993, prison rule violations increased by 50 percent, enrollment in educational programs dropped by 20 percent, and the reoffending rate jumped 4.8 percentage points.¹
- When Georgia limited parole eligibility in 1998, there was a 15 percent increase in prison rule violations, 14 percent decline in rehabilitative program participation, and 5- to 7-point increase in the recidivism rate.²

TIS laws are unlikely to prevent crime.

- Researchers have found no evidence that severe sentencing policies discourage people from engaging in criminal activity.³
- It is the certainty of being caught and swiftly punished, not the length of punishment, that deters crime.⁴
- The vast majority of people who commit crimes – even very serious crimes – naturally grow out of criminal behavior as they mature. TIS laws keep many people incarcerated long past the point at which they have become low risk for reoffending.⁵

TIS laws waste money.

- Keeping people in prison without a public safety benefit is extremely expensive, wasting resources that could otherwise be invested in crime prevention. For example:

¹ Macdonald, D.C. (2024). *Truth in Sentencing, Incentives and Recidivism*, Working Paper.

https://www.dropbox.com/s/8d0xha35vxvsrgs/Macdonald_TIS.pdf?e=2&dl=0 .

² Kuziemko, I. (2013). *How should inmates be released from prison? An assessment of parole versus fixed-sentence regimes*, *The Quarterly Journal of Economics*, 128(1), 371–424.

https://kuziemko.scholar.princeton.edu/sites/g/files/toruqf3996/files/kuziemko/files/inmates_release.pdf.

³ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2016). *Five Things About Deterrence*. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

⁴ Id.

⁵ Prescott, J.J., Pyle, B., and Starr, S.B. (2020). *Understanding Violent-Crime Recidivism*. *Notre Dame Law Review*, 95:4, 1643-1698, 1688. <http://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al..pdf>.



- Arkansas' TIS law, passed in 2023, is expected to cost the state \$164 million over 10 years.⁶
- South Dakota's TIS law, also passed in 2023, is expected to require \$21.5 million additional Department of Corrections spending over 26 years,⁷ a huge sum in a state with an average daily prison population of less than 3,500 people and an overall population of only slightly over 900,000 people.

Last updated 4/22/24

⁶ *Impact Assessment for SB495 Sponsored by Senator Gilmore*, Arkansas Sentencing Commission.

<https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FAssembly%2F2023%2F2023R%2FFiscal+Impacts%2FSB495-Other1.pdf>.

⁷ *Prison/Jail Population Cost Estimate Statement: Senate Bill 146*, Ninety-Eighth Session, 2023 South Dakota Legislature, <https://mylrc.sdlegislature.gov/api/Documents/246627.pdf>. Hult, J. (2023), *Truth in sentencing cost: \$21.5 million*, South Dakota Searchlight, <https://southdakotasearchlight.com/2023/02/08/truth-in-sentencing-cost-21-5-million/>.



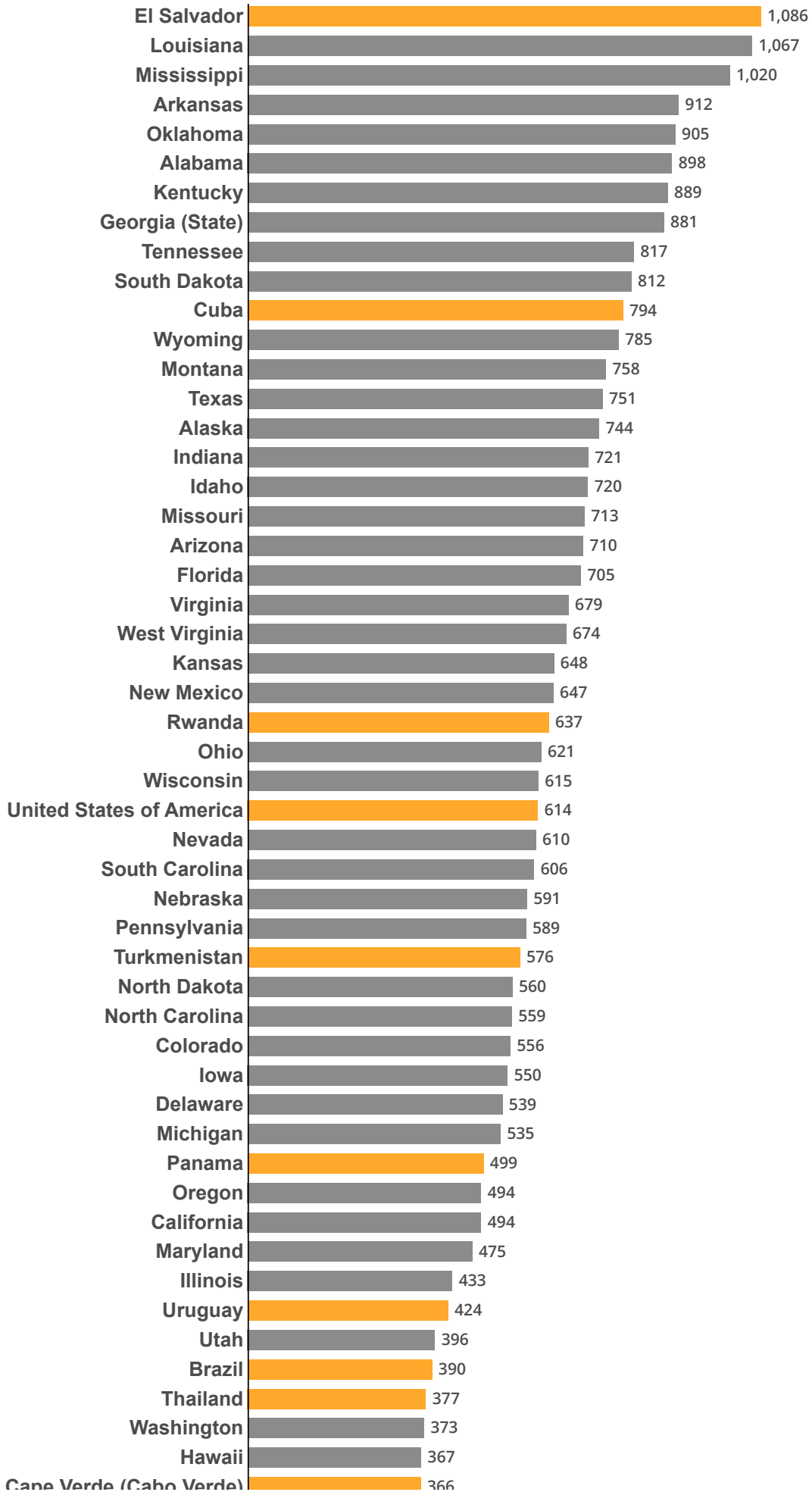
States of Incarceration: The Global Context 2024

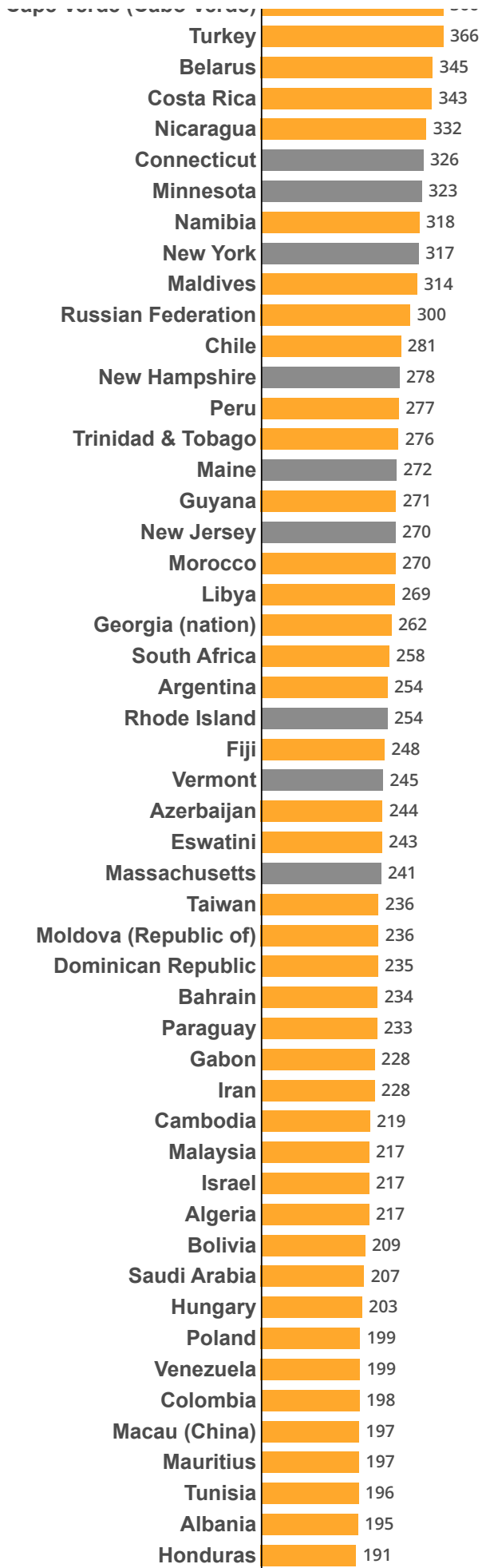
by Emily Widra

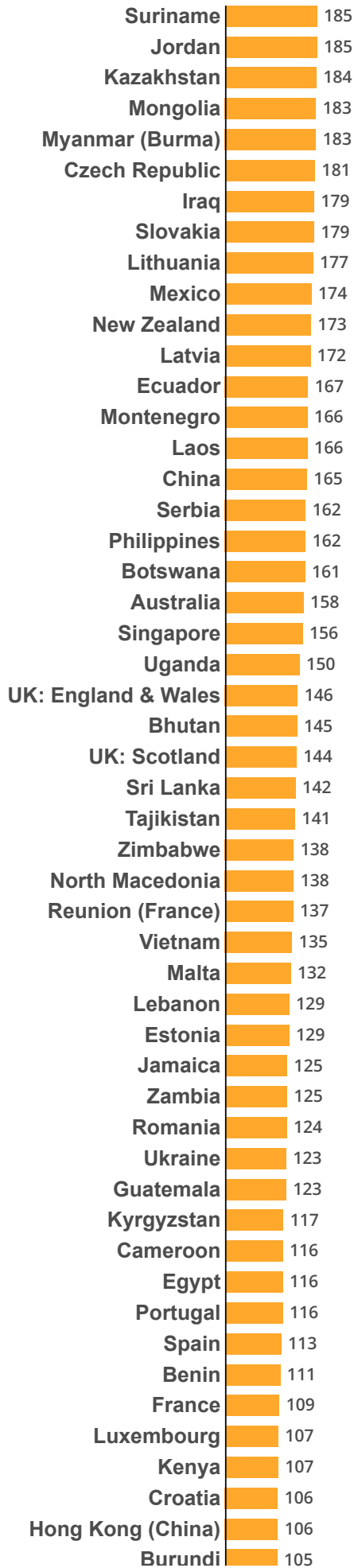
June 2024

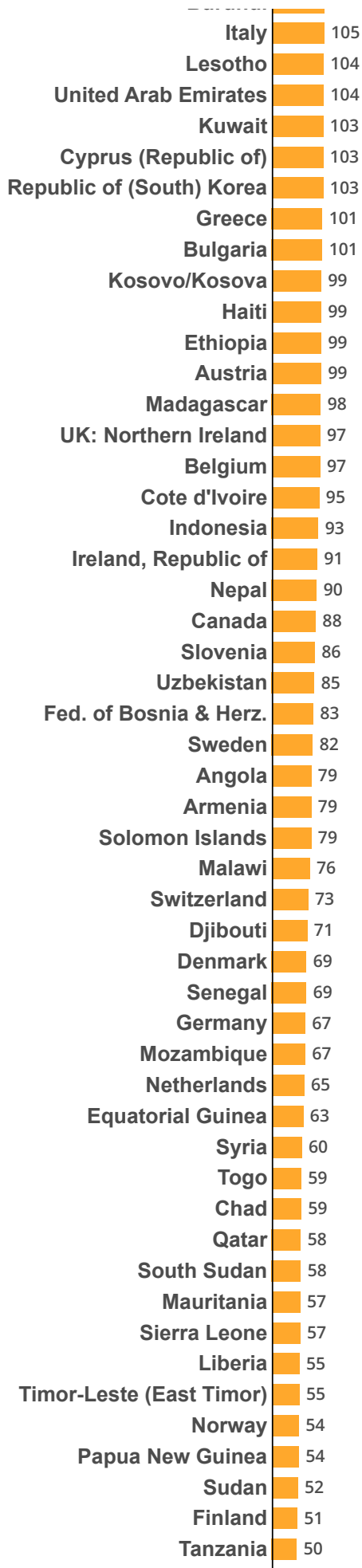
The U.S. has the highest incarceration rate of any independent democracy on earth — worse, *every single state* incarcerates more people per capita than most nations. In the global context, even “progressive” U.S. states like New York and Massachusetts appear as extreme as Louisiana and Mississippi in their use of prisons and jails.

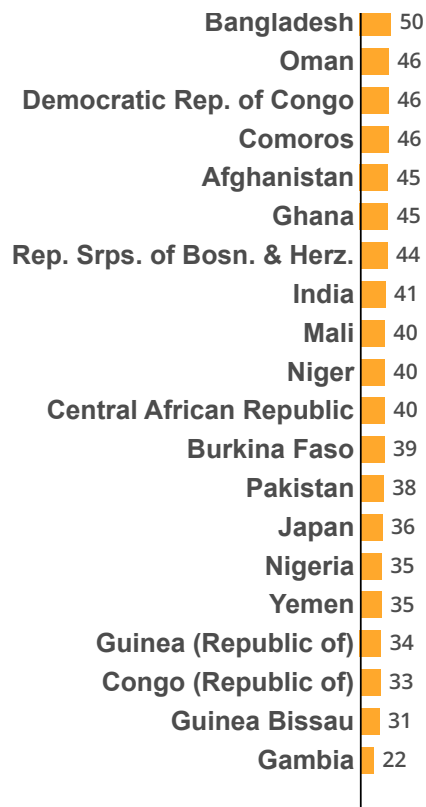
World Incarceration Rates If Every U.S. State Were A Country











Rates calculated per 100,000 people. Read more about the [data](#).

Figure 1. This graph shows the number of people in state prisons, local jails, federal prisons, and other systems of confinement from each U.S. state and territory per 100,000 people in that state or territory and the incarceration rate per 100,000 in all countries with a total population of at least 500,000.

The graphic above charts the incarceration rates of every U.S. state and territory alongside those of the other nations of the world. Looking at each state in the global context reveals that, in every part of the country, incarceration is out of step with the rest of the world.

If we imagine every state as an independent nation, as in the graph above, every state appears extreme. While El Salvador has an incarceration rate higher than any U.S. state,^① nine states have the next highest incarceration rates in the world, followed by Cuba. Overall, 24 U.S. states and three nations (El Salvador, Cuba, and Rwanda)^② have incarceration rates even higher than the national incarceration rate of the United States. Massachusetts, the state with the lowest incarceration rate in the nation, would rank 30th in the world with an incarceration rate higher than Iran, Colombia, and all the founding NATO nations.

In fact, many of the countries that rank alongside the *least* punitive U.S. states, such as Turkmenistan, Belarus, Russia, and Azerbaijan, have authoritarian or dictatorial governments, but the U.S. — the land of the free — still incarcerates more people per capita than almost every other nation. Importantly, high incarceration rates have little impact on violence and crime.

Even states like North Dakota, with incarceration rates below the national average, continue to lock people up at *more than double* the rates of some of our closest international allies:

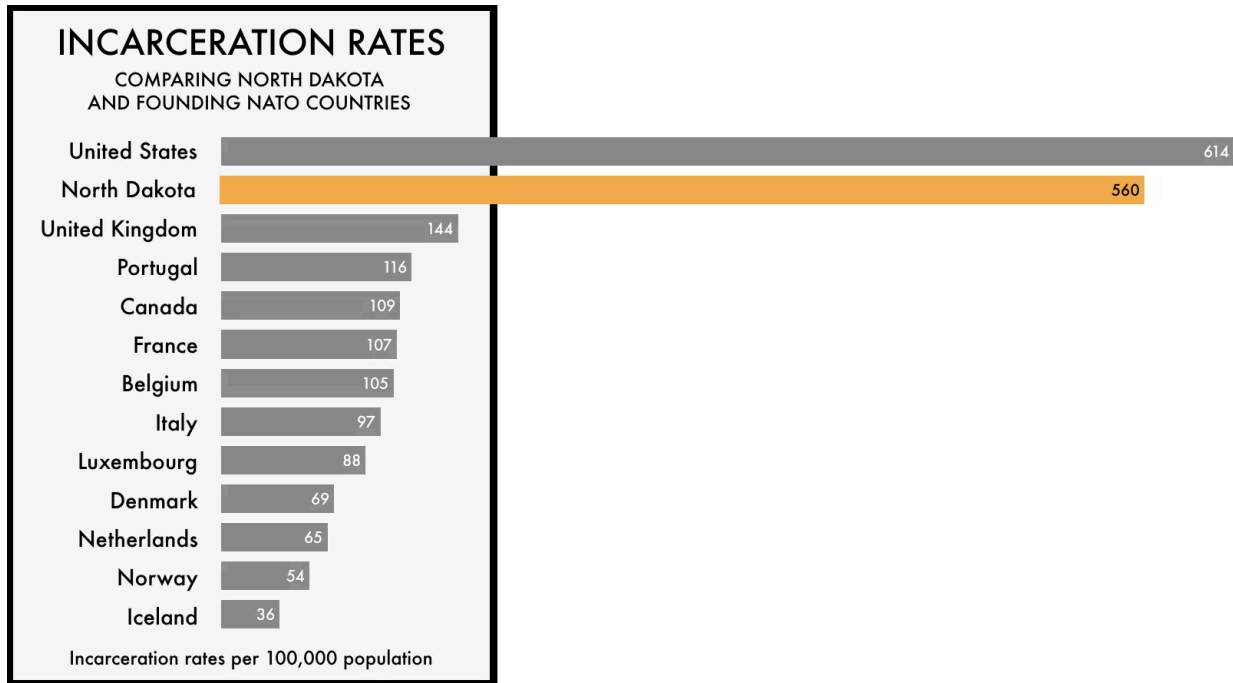


Figure 2. Compare another state: or compare just the U.S. with its peers.

Conclusion

For decades, the U.S. has been engaged in a globally unprecedented experiment to make every part of its criminal legal system more expansive and more punitive. As a result, incarceration has become the nation’s default response to crime, with, for example, 70 percent of convictions resulting in confinement^③ — far more than other developed nations with comparable crime rates.^④ As we’ve discussed, the U.S.’ high incarceration rates are **not** a rational response to high crime rates. Instead, they represent the aftermath of racist policies like the “war on drugs,” as well as politically expedient responses to public fears and perceptions about crime and violence.

Today, the United States is at an inflection point. In 2020, after protests of the murder of George Floyd, some glimmers of hope emerged that the country was finally ready to end the failed experiment of mass incarceration. However, more recently, many public officials have called for a return to the harmful policies of the past. The choices made in the coming years will determine whether the United States will finally bring its incarceration rate in line with the other nations that it considers its peers. For that, all states will have to aim higher, striving to be not just better than the worst U.S. states, but among the most fair and just in the world.

Methodology

Like our report *Mass Incarceration: The Whole Pie*, this report takes a comprehensive view of confinement in the United States that goes beyond the commonly-reported statistics by more than 100,000 people to offer a fuller picture of this country’s different and overlapping systems of confinement.

This broader universe of confinement includes criminal legal system-involved youth held in juvenile residential facilities, people detained by the U.S. Marshals Service (many pretrial), people detained for immigration offenses, people convicted of sex-related offenses who are indefinitely detained or committed in “civil commitment centers” *after* completing a sentence, and those committed to psychiatric hospitals as a result of criminal charges or convictions. They are not typically included in the official statistics that aggregate data about prison and jails for the simple reason that these facilities are largely separate from the state and local systems of adult prisons and jails. That definitional distinction is relevant to the people who run prisons and jails, but is irrelevant to the advocates and policymakers who must confront the overuse of confinement by all of the various parts of the legal systems in the United States.

To provide the most up-to-date assessment of incarceration rates in every state, we use the most recent datasets available. We included these confined populations in the total incarceration rate of the United States and, wherever state-level data made it possible, in state incarceration rates. In most states, these additions have a small impact on the total rate, and they don't impact the rankings by more than one or two positions for any state. In a few places, however, these other systems of confinement merit closer attention. For example, although Minnesota has one of the lowest overall incarceration rates, Minnesota is second only to the much larger state of California for civil commitment and detention of people convicted of sex-related offenses. Other states — including Wyoming, West Virginia, Alaska, Oregon, and Rhode Island — confine enough children that incarcerated youth account for more than 2.5% of the state's incarcerated population. One state, Wyoming, incarcerates enough youth to increase their statewide incarceration rate by almost 30 people per 100,000.

As a result of our choice to take a broader view of incarceration, this report creates a unique U.S. dataset that offers a complete look at all kinds of criminal legal system-related confinement in each state. We explain our specific data sources in more detail below and provide the raw data for the component parts of our calculations in two appendices to this report:

Appendices

- [Appendix Table 1: State Data](#)
- [Appendix Table 2: Country Data](#)

Detailed data notes and sources

For the 50 U.S. states, we calculated incarceration rates per 100,000 total population that reflect our holistic view of confinement, which include:

- people in state prison in each state,
- people in local jails in each state,
- people in federal prison from each state,
- people held by the U.S. Marshals Service from each state,
- people held in jails in Indian Country in each state,
- youth held in “juvenile justice” facilities from each state,
- criminal legal system-involved people involuntarily committed to other kinds of confinement in each state (i.e. people convicted of sex-related offenses held under “civil commitment” laws and people held in state psychiatric hospitals because of criminal charges or convictions.)

The raw data are available the accompanying appendix tables and the individual sources were as follows:

- **State prisons and local jails:** In previous iterations of this report, we used the *Correctional Populations in the United States* series which provided a combined state prison and local jail count for each state that avoided double-counting people held in the physical custody of jails on behalf of state prison systems. Unfortunately, these data were not published by state in the [2020](#), [2021](#), or [2022](#) versions of the Bureau of Justice Statistics report, so we replicated the methodology used in that series with the *Prisoners in 2022 — Statistical Tables* and *Census of Jails, 2019* data to calculate comparable populations, as explained below.
 - **State prisons:** The Bureau of Justice Statistics publishes the jurisdictional state prison populations in Table 2 of *Prisoners in 2022 — Statistical Tables*. These population totals include people held under the jurisdiction of state prison systems that are confined in local jails.
 - **Local jails:** The Bureau of Justice Statistics publishes the confined population of local jails by state in the *Census of Jails, 2019*. However, because (a) many jails “rent” space to state prison systems and (b) these systems report data differently,⁵ we adjusted the jail data to avoid

double-counting people held in jails under the jurisdiction of a state prison system. We subtracted the number of people held in local jails for state prison systems as reported in Table 14 of *Prisoners in 2022* from the confined populations reported in the *Census of Jails*. Given this adjustment, our jail populations reported in the Appendix Table 1 reflect the jurisdictional, confined jail population of each state.

- **Federal prisons:** While federal prosecutions are nominally the result of federal policy, we attribute federal convictions to individual states in part because federal prosecutions affect state residents and in part because federal prosecutions are often coordinated with state prosecutors and state law enforcement. (In this way, our methodology departs from the way the Bureau of Justice Statistics calculates state rates. In *Correctional Populations in the United States, 2022*, people detained by or for the U.S. Marshals Service are not included at all, and other people incarcerated under federal jurisdiction are included in the total national incarceration rate but do not affect state incarceration rates.)

To develop estimates of the number of people in federal prison from each state, we developed a ratio of the state of legal residence for the Bureau of Prisons population as of March 27, 2021 — based on our FOIA request — and applied it to the total federal prison population of 158,7033 reported by the Federal Bureau of Prisons as of May 31, 2024.

- **U.S. Marshals Service:** The U.S. Marshals Service provided its most recent estimated population count in a February 2023 response to our FOIA request, reporting the projected average daily population for fiscal year 2023. While we did not have state of residence information for this custody population, we used the same ratio to reallocate these 60,439 people to states as we did for those under BOP jurisdiction. We reasoned that all people under federal jurisdiction, regardless of status (convicted, pretrial, or in transit), would likely come from the states in similar proportions.
- **Indian country jails:** The Annual Survey of Jails in Indian Country, 2022 reports the confined population of adults and youth held in jails in Indian country in June 2022 by state. Six operational facilities did not report a population in 2022, so we substituted Annual Survey of Jails in Indian Country, 2021 data for these facilities (Tohono O’odham Adult Detention Center in Arizona, Colorado River Indian Tribes Adult and Juvenile Detention Centers in Arizona, Lac Vieux Desert Police Department Adult and Juvenile Holding Facility in Michigan, Fort Peck Indian Youth Service Center in Montana, and Medicine Root Detention Center in South Dakota).
- **Youth confinement:** Because the United States confines large numbers of youth through its “juvenile justice” system, we included these youth in our national and state incarceration rates. Youth confined in places other than prison are not included in other countries’ incarceration rates in this report, but their inclusion would not change other countries’ rates much anyway,⁶ while the 24,894 confined youth in the U.S. add 7 incarcerated people per 100,000 population to the national rate. We did not make these adjustments for any other countries’ incarceration rates because for most countries, these data are not available or are not comparable to the system of youth confinement in the U.S.

For youth in the U.S., the National Center for Juvenile Justice published the number of people younger than 21 in residential facilities by state⁷ as of October 27, 2021 based on the results of the Census of Juveniles in Residential Placement (CJRP). We included the national total of 24,894 in the national incarceration rate, but the totals for the states do not match the U.S total due to rounding for anonymity. (For more on this population, see our more detailed report Youth Confinement: The Whole Pie.)

- Criminal legal system-related **involuntary commitment:**

- **State psychiatric hospitals** confine people committed by courts after being found “not guilty by reason of insanity” (NGRI) or, in some states, “guilty but mentally ill” (GBMI) and others held for pretrial evaluation or for treatment as “incompetent to stand trial” (IST). The Treatment Advocacy Center’s 2024 report *Prevention over Punishment*, reporting findings from their 2023 survey that 18,948 people were confined to state psychiatric hospitals for criminal legal reasons. Minnesota did not report the relevant data to the Treatment Advocacy Center (TAC), but we found a [2022 report to the legislature](#) where the state’s Department of Human Services’ Direct Care and Treatment Administration reported a census of 276 people in the care of the “forensic services” on June 30, 2021. Combined with the results reported in the TAC report, 24,894 people are confined to state psychiatric hospitals for criminal legal reasons in the U.S.
- **Civil detention and commitment:** At least 20 states and the federal government operate facilities for the purposes of detaining people convicted of sex-related crimes after their sentences are complete. These facilities and the confinement there are technically civil, but in reality are quite like prisons. People under civil commitment are held in custody continuously from the time they start serving their sentence at a correctional facility through their confinement in the civil facility. The civil commitment counts come from an annual survey conducted by the [Sex Offender Civil Commitment Programs Network](#) shared by SOCCPN President Shan Jumper. Counts for most states are from the 2023 survey, but for states that did not participate in 2023, we included the most recent figures available: California’s count is as of 2022; Nebraska’s is from 2018; South Carolina’s is from 2021; and the federal Bureau of Prisons’ count is from 2017.

Three additional categories of confinement are included in the national incarceration rate for the United States, but not in state rates, because state-level data were not available:

- **Territorial prisons:** The total jurisdictional populations under the authority of the U.S. Territories of American Samoa, Guam, and the U.S. Virgin Islands, and U.S. Commonwealths of Northern Mariana Islands and Puerto Rico are reported in Table 25 of [Prisoners in 2022 — Statistical Tables](#), reporting data for December 31, 2022.
- **Immigration detention:** The currently detained population of 39,111 in Immigration and Customs Enforcement (ICE) detention comes from [ICE’s FY 2024 ICE Statistics spreadsheet](#) as of March 14, 2024. The count of 8,724 youth in Office of Refugee Resettlement (ORR) custody comes from the Unaccompanied Alien Children (UAC) [Program Fact Sheet](#), reporting the population as of March 1, 2024.
- **Military prisons:** The incarcerated populations under the jurisdictions of the U.S. military branches (a total of 1,105 people) are reported in Table 23 of [Prisoners in 2022 — Statistical Tables](#), reporting data for December 31, 2022.

Population data for each state, used to calculate the incarceration rates, reflect the total resident population on July 1, 2023 for all 50 states, Puerto Rico, and the District of Columbia as reported in the Census Bureau’s [Annual Estimates of the Resident Population for the United States: April 1, 2020 — July 1, 2023](#). The April 1, 2020 populations of the [American Samoa](#), [Guam](#), the [Commonwealth of the Northern Mariana Islands](#), and the [U.S. Virgin Islands](#) were published in the U.S. Census Bureau’s 2020 Island Areas Censuses Demographic and Housing Characteristics Summary File (DHC).

For the **incarceration rates of other countries**, we used the most recent incarceration rate data available from the Institute for Criminal Policy Research’s [World Prison Brief](#) in March 2024. For this report, we decided to accept the World Prison Brief’s definition of country, choosing to exclude countries only for reasons of population size. To make the comparisons more meaningful to U.S. states, we’ve chosen to include only independent nations with total populations of more than 500,000 people.

In order to make the graph comparing the founding NATO nations to individual states, however, we had to make two exceptions to this policy. First, we included Iceland, which is a founding NATO member, even though its population is below 500,000. We also aggregated the total incarcerated and total population data for the three separate nations of England and Wales, Scotland and Northern Island, into the one member of NATO, the United Kingdom.

A note about the District of Columbia and U.S. territories: This report focuses on comparing individual states to other countries, so we chose to not include the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands in the main graphic in this report, although we did make separate NATO comparison graphics for these places. However, the incarceration data for D.C. and the territories, where they exist, are in Appendix Table 1: State Data and the final incarceration rate calculations for D.C. and the territories are:

Jurisdiction	Incarceration Rate
District of Columbia	816
U.S. Virgin Islands	651
American Samoa	606
Guam	502
Northern Mariana Islands	400
Puerto Rico	343

Editors note: This report was updated on July 11, 2024 to correct a mathematical error in the calculation of the overall, national incarceration rate of the United States.

Acknowledgements

All Prison Policy Initiative reports are collaborative endeavors, but this report builds on the successful collaborations of the 2014, 2016, 2018, and 2021 versions. The Prison Policy Initiative is grateful for data artist Josh Begley's original visual structure and for the Institute for Crime & Justice Policy Research's aggregated world incarceration data in the invaluable World Prison Brief.

This report was made possible thanks to the generous support of our individual donors across the country who support justice reform.

About the author

Emily Widra is a Senior Research Analyst at the Prison Policy Initiative. She is the organization's expert on health and safety issues behind bars, including the coronavirus in prisons and HIV prevalence in prisons. Her other research includes examining the high mortality rates of people on probation and parole, highlighting the counterproductive practice of locking up older adults, and assessing how prisons and jails provide punishment instead of treatment for people who use substances.

About the Prison Policy Initiative

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to expose the broader harm of mass criminalization and spark advocacy campaigns to create a more just society. The organization is known for its visual breakdown of mass incarceration in the U.S., as well as its data-rich analyses of how U.S. states vary in their use of punishment. Alongside reports like these, the organization leads the nation's fight to keep the prison system from exerting undue influence on the political process (a.k.a. prison gerrymandering) and played a leading role in protecting the families of incarcerated people from the predatory prison and jail telephone industry and the video calling industry.

Footnotes

1. Sharp-eyed readers may notice that, in [past versions of this report](#), the U.S. had the highest incarceration rate of all countries (among those with populations of at least 500,000 people). However, the latest international incarceration data indicates that El Salvador incarcerates more people per capita than any other nation or any U.S. state. This reflects a recent dramatic increase in incarceration in El Salvador, rather than any meaningful policy change to reduce incarceration in the United States (although, as [we've reported](#), the U.S. incarceration rate also dropped as a result of temporary court slowdowns and changes related to the COVID-19 pandemic). In our [2021 report](#), El Salvador's January 2021 incarceration rate was 562 per 100,000 as reported by the World Prison Brief. As of May 2022, the incarceration rate has practically doubled to 1,086 per 100,000 people and the prison population itself has doubled. In the past few years, El Salvador has been "run as a police state" with military and police indefinitely detaining people without providing a reason or access to a lawyer. The current incarceration rate in El Salvador is likely much higher than it was in May 2022, considering the nation has incarcerated [more than 72,000 additional people](#) between March 2022 and September 2023, but El Salvador has not formally disclosed any more recent prison population data. ↩
2. Previous iterations of this report relied on Cuba's [2012 prison population](#), as new data had not been published in years. As of this report, Cuba released a new prison population count of [90,000 incarcerated people](#) as of January 2020, a significant increase from their 2012 prison population of 57,000 people. While there is little information available about how, why, or when the prison population in Cuba increased so dramatically, it is likely that [lengthy prison sentences](#) and the continued [government surveillance and arbitrary detention](#) of activists and dissidents have contributed to the increased prison population in the last decade. Because this updated prison population is from 2020, it's likely — particularly given the most recent [changes to the penal code](#) — that the incarceration rate in Cuba is even higher in 2024.

In 2020, the incarceration rate in Rwanda was 515 per 100,000, and the most recent data from August 2023 reveals that the prison population has increased by over 20,000 people and the most recent incarceration rate is 637 per 100,000, making Rwanda the third and final nation with a higher incarceration rate than the United States. Rwanda's prison population has been increasing over the past few decades, with thousands of people detained in connection with the 1994 genocide and an unknown number of imprisoned political opponents. In 2023, the U.S. Department of State [reported](#) a number of credible reports of arbitrary detention, unlawful interference with privacy, serious restrictions on free expression, and overly restrictive laws, likely contributing to the ballooning prison population in Rwanda. ↩
3. This statistic comes from a 2008 U.N. report comparing responses to crime in Europe and North America from 1995-2004. While this data point is now twenty years old, we are unaware of any more recent research that addresses the number of convictions resulting in confinement in the U.S. and other comparable nations. ↩
4. For example, Canada, England and Wales, Finland, and Germany are [more likely](#) to use fines and/or warnings instead of incarceration. ↩
5. There are two different ways to look at incarcerated populations: by custody or jurisdiction. The custody population refers to the number of incarcerated people physically held by an authority (i.e., someone physically detained in a local jail is in the custody of the local jail). The jurisdictional population reflects the legal authority under which someone is incarcerated, regardless of the type of correctional facility they are in. This means that there are people in the physical custody of local jails, but who are under the jurisdictional authority of another agency, such as another county's jail system, the federal government (including the U.S. Marshals Service, immigration authorities, and the Bureau of Prisons), or state agencies (namely the state prison system). For more information on detainers and holds in local jails, see [our June 2024 publication on local jail populations](#). ↩
6. Italy's national incarceration rate, for instance, would increase by 2 people per 100,000 if we incorporated juvenile populations reported in the Italian Department of Juvenile and Community Justice Office's report, "[Minors and young adults in the care of juvenile service: Statistical analysis of data, 2022](#)." Canada's incarceration rate would only increase by 1.3 per 100,000 based on the juvenile average daily population in custody of 500 youth in 2022-2023 as reported by [Statistics Canada](#) and the national population reported by the [World Prison Brief](#). In England and Wales, 262 youth are already included in the national data provided by the [World Prison Brief](#), but juveniles in other kinds of facilities (including Secure Training Centres and Local Authority Secure Children's Homes) in England and Wales are not included in their data. Including these [additional 138 youth](#) would increase the overall rate for England and Wales by less than 1 person per 100,000. ↩
7. According to the [National Center for Juvenile Justice](#), the national total excludes youth held in tribal facilities and the reported state is the "the state where the offense was committed." ↩