

A Proposal to Reduce Unnecessary Incarceration

Introducing the Public Safety
and Prison Reduction Act

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Introduction

Few issues have received more sustained attention from U.S. policymakers over the last decade than the country's unique overuse of incarceration. After decades of growth in imprisonment rates, states have attempted to reduce the number of people behind bars. Their reforms have been driven by a recognition that incarceration is expensive and often counterproductive and by research demonstrating that many people can be safely supervised in the community.¹

Today's level of incarceration is also unnecessary. According to a 2016 Brennan Center for Justice report, nearly 40 percent of the U.S. prison population is incarcerated without any compelling public safety justification.² Incarceration degrades people's humanity, disrupts their social networks, and generates lifelong social and financial disadvantage through restricted access to education, jobs, and housing.³ It also devastates families and communities, disproportionately affecting society's most marginalized segments.⁴

Reforms have reduced the population behind bars from its 2009 peak, yet an astonishing level of incarceration persists: today over 1.2 million people are confined to federal and state prisons, and just over 636,000 more are locked up in local jails.⁵ Few states have achieved significant reductions in their prison populations, and in some places these populations have begun to grow again.⁶

For a half century, the federal government has harnessed its grant-making power to spur states to incarcerate more people and to impose longer sentences, making the United States the most punitive country in the world.⁷ It can now use that same funding power to reverse course.

The idea of using federal funding to reduce incarceration is not new, but recent programs have had mixed results. For example, between 2010 and 2017, the U.S. Department of Justice's Justice Reinvestment Initiative (JRI) provided state and local governments with technical assistance and direct funding to reduce their prison populations.⁸ But this funding did not always produce the intended outcome.⁹ Some states, such as Kentucky, actually saw their prison populations grow after implementing reforms with JRI funding and assistance.¹⁰ Moreover, between 2018 and 2021, under President Donald Trump, JRI pivoted from prison population reduction as its primary objective to crime and recidivism reduction.¹¹

Since assuming office in 2021, the Joe Biden administration has allowed grant money to once again support efforts to reduce incarceration for first-time offenses or technical violations of community supervision, while retaining JRI's focus on recidivism reduction.¹² More recently, President Biden unveiled a grant program in August 2022, as part of his 2023 budget proposal, called Accelerating Justice System Reform, which would dedicate \$15 billion over 10 years for jurisdictions to imple-

ment crime prevention and public health approaches to public safety.¹³

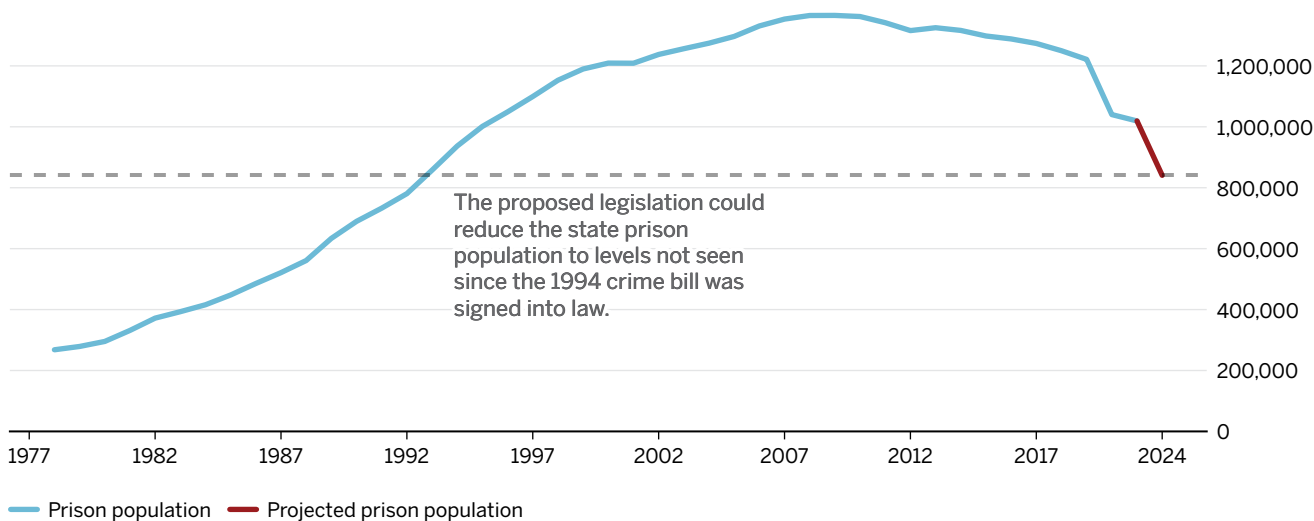
Building on this momentum, the Brennan Center for Justice calls on Congress to enact a new, \$1 billion federal funding program, called the Public Safety and Prison Reduction Act (PSPRA), to channel money to states with the goal of reducing unnecessary incarceration while promoting humane and fair criminal justice policies that preserve public safety. The proposal was crafted in consultation with a variety of stakeholders, including formerly incarcerated individuals, and is based on a previous Brennan Center policy solution, the Reverse Mass Incarceration Act.¹⁴

The grant program would be structured to do the following:

- offer states federal dollars to study the drivers of unnecessary incarceration and additional money to reduce prison populations;
- reward states that shrink their prison populations by 20 percent over three years with an extra three years of funding;
- afford states freedom to implement federal funding in ways most fitting for local needs by providing them a slate of 21 policy options from which to choose;
- track and measure success of grantees' policy changes by mandating that states, in partnership with researchers or an academic institution, submit annual progress reports to the federal government describing and evaluating expenditures;
- require states to convene an advisory board composed of a diverse array of local stakeholders, including formerly incarcerated people;
- prohibit states from enacting punitive sentencing laws during the lifetime of the funding, such as mandatory-minimum rules or truth-in-sentencing statutes, which require people to serve up to 85 percent of their sentences behind bars; and
- establish subgrants for organizations that are led by

FIGURE 1

Projected Declines in the State Prison Population If the PSPRA Is Implemented



Note: The projection assumes the 25 states with the largest prison populations reduce imprisonment by 20 percent. The projection is based on figures for 2021, the latest year for which data is available.

Source: Bureau of Justice Statistics; Brennan Center calculations.

formerly incarcerated individuals or that serve high numbers of people who have been arrested or convicted.

The impact of this policy would be historic. If the 25 states with the largest prison populations used these funds to reduce imprisonment by 20 percent, 179,000 fewer people would be confined behind bars (see figure 1).¹⁵ That would slash state prison populations by more people than are currently incarcerated in the entire federal prison system. The United States' incarcerated population would decrease to numbers not seen since 1993, the year before the Violent Crime Control and Law Enforcement Act of 1994 — often called the 1994 crime bill — was signed into law by President Bill Clinton.¹⁶

This prison population reduction estimate is a conservative one. States that reduce their prison populations by

20 percent in the first three years of the grant period would be eligible for additional funds under the program, providing them with resources to make even greater reductions.

Although criminal justice administration is a core function of state and local governments, the federal government nonetheless has a vital role to play in both messaging the need to dismantle mass incarceration and incentivizing states to pursue systemic reforms toward that end. This report first delves into the history of the federal government's role in encouraging overly punitive responses to crime and social disorder. It then outlines the new policy proposal, for which model statutory language is provided in the appendix. Given the fiscal costs and social harms of mass incarceration, the federal government must reorient its grant spending to press states to end punitive policies that fail to deliver public safety.

How Federal Dollars Helped Fund Mass Incarceration

In 1965, responding to increasing public concern about crime, President Lyndon B. Johnson signed the Law Enforcement Assistance Act.¹⁷ At that time, the crime rate, the homicide rate, and drug arrests were all on the rise.¹⁸ A 1979 research report examining public opinion on crime since 1960 noted that, as the rate of reported serious crimes escalated, Americans looked increasingly to the federal government for intervention.¹⁹ The 1965 law, which primarily authorized the U.S. attorney general to provide grants to state and local agencies to train law enforcement, laid the foundation for the federal government to steer states toward punitive enforcement policies and practices through funding.²⁰

This policy approach — deploying federal resources to shape local crime control policies — continued into subsequent administrations, with President Richard Nixon marshaling greater investment in law enforcement and President Ronald Reagan expending enormous resources to expand the size and scope of the carceral state.²¹

The most significant federal policies and laws that empowered states to dramatically enlarge their police forces and correctional institutions are outlined below:

- **Omnibus Crime Control and Safe Streets Act of 1968.** This law established the Law Enforcement Assistance Administration (LEAA), tasked with providing technical help and financial support to state and local governments. It sent funds on a per capita basis to states for crime reduction, and states were required to pass on a minimum percentage of this federal funding to local governments.²² States and cities used LEAA dollars to recruit and train law enforcement personnel, increase their salaries, improve equipment, and construct correctional facilities.²³ By 1977 the LEAA had distributed to the states almost \$6 billion (or \$29.5 billion in today's dollars), 75 percent of which was allocated to increasingly militarized police departments.²⁴ That was at odds with congressional intent: as the Advisory Commission on Intergovernmental Relations had previously noted, the law was meant to support and upgrade all components of the criminal justice system — not just policing.²⁵ In 1982 the LEAA was discontinued.
- **Byrne JAG.** The Department of Justice's Office of Justice Programs (OJP) has subsidized state and local responses to crime since its establishment in 1984, when it incorporated many offices and programs previously housed under the LEAA.²⁶ Currently, the largest OJP grant program is the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG).²⁷ Authorized under the 1988 Anti-Drug Abuse Act, the Byrne JAG awards funds to state and local governments on the basis of their populations and crime rates.²⁸ In practice, jurisdictions have

nearly free rein in how they spend these dollars, as long as they can relate it in some way to crime. All 50 states plus Washington, DC, six U.S. territories, tribal governments, and more than 1,000 localities receive Byrne JAG funds.²⁹ Since 2012, funding has remained between \$240 million and \$300 million per year.³⁰ In 2018, law enforcement spending accounted for nearly half of all Byrne JAG outlays.³¹

In 2013 the Brennan Center studied how Byrne JAG grants created perverse incentives and recommended new performance metrics.³² For years the Justice Department had asked states to report the number of arrests they made with the funds, the amounts of drugs they seized, and the number of cases they prosecuted.³³ These metrics encouraged states to adopt harsh and inflexible criminal justice policies rather than those that improve fairness, justice, and public safety. In 2016 the Justice Department adopted some of the Brennan Center's recommendations. For example, rather than counting arrests, the DOJ began to measure positive incentives, such as cases in which prosecutors recommended alternatives to incarceration.³⁴

- **Federal war on drugs.** Both Presidents Nixon and Reagan adopted a “war on drugs” stance, heralding interdiction as a mainstay of U.S. crime control policy and establishing increasingly punitive laws for drug-related offenses.³⁵ In 1986 Reagan signed the Anti-Drug Abuse Act, allocating \$1.7 billion to interdiction in its first year. Only 12 percent of the funds were earmarked for drug education; the balance funded police equipment, such as boats, planes, and weapons, and new correctional beds. This marked a significant increase in federal funding for local law enforcement, including \$690 million in grants to state and local law enforcement agencies over three years.³⁶ The law also codified harsher penalties in federal drug cases, including mandatory-minimum sentences for drug possession and a 100–1 sentencing disparity between crack and powder cocaine offenses, both of which reduced judicial discre-

tion in sentencing.³⁷ The crack/powder cocaine discrepancy disproportionately subjected Black people — who were more likely than their white or Latino counterparts to be convicted of offenses involving crack cocaine — to harsh punishment.³⁸

- **Violent Crime Control and Law Enforcement Act of 1994.** Between 1986 and 1991, the U.S. violent crime rate rose by 22 percent, peaking at 758 offenses per 100,000 people.³⁹ By 1993 — likely the last year for which lawmakers would have had national data at their disposal when crafting the legislation — violent crime had fallen by just 1.5 percent from its peak, to 747 offenses per 100,000 people.⁴⁰ Against that backdrop, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994, the most sweeping federal crime legislation Congress has ever passed.⁴¹

The law’s funding incentives ensnared more Americans in the ever-widening net of the criminal justice system. But the law also attempted to protect vulnerable communities by banning 19 types of semiautomatic assault weapons for a limited period and, through the Violence Against Women Act, to protect victims of domestic violence.⁴² It authorized the death penalty for dozens of existing and new federal crimes and mandated a raft of other punitive federal sentencing laws. In so doing, it divested judges of considerable sentencing discretion and all but guaranteed impris-

onment for many individuals previously eligible for probation, deferred prosecution, or drug or mental health treatment instead of prison time.⁴³ It also launched the Community Oriented Policing Services (COPS) Program. In total, the bill authorized \$8.8 billion in spending on local police hiring and equipment programs between 1995 and 2000.⁴⁴

Yet the 1994 crime bill is most notorious for funding more state prison beds across the country. The Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program rewarded states that had already adopted or planned to adopt laws that scaled back parole, requiring people convicted of some offenses to serve at least 85 percent of their custodial sentence before becoming eligible for early release.⁴⁵ In some states, the time people could expect to serve in prison doubled.⁴⁶ Over five years, approximately \$2.7 billion in grant funding went to states and territories for “constructing, expanding, or renovating correctional facilities” to hold the enlarged populations.⁴⁷ Although the program was implemented during an era in which many states had already begun to make their sentencing structures and practices more punitive, it provided powerful incentives for other states to adopt similar policies. In 1995, the year after the bill was signed, 11 states adopted so-called truth-in-sentencing laws; by 1998, incentive grants had been awarded to 27 states and the District of Columbia.⁴⁸

The Public Safety and Prison Reduction Act

The federal government is now well positioned to reverse the United States' penchant for overincarceration. Just as higher crime rates and the public fear of rising crime motivated the federal role in the proliferation of mass incarceration nearly 60 years ago, today's dramatically lower crime rates, coupled with the well-documented harms and ineffectiveness of mass incarceration, should now dictate the federal response. While the violent crime rate increased in 2020, that rate was barely half of the high levels of the early 1990s.⁴⁹ The causes of the 2020 crime increase were complicated. The pandemic played a significant role in disrupting communities: economic uncertainty spiked, after-school programs and other locally driven initiatives to reduce violence shut down, and gun purchases skyrocketed.⁵⁰ Recent crime numbers indicate that violent crime decreased between 2020 and 2021.⁵¹ And in 2022, most sorts of violent crime, including murder, dropped in major U.S. cities.⁵²

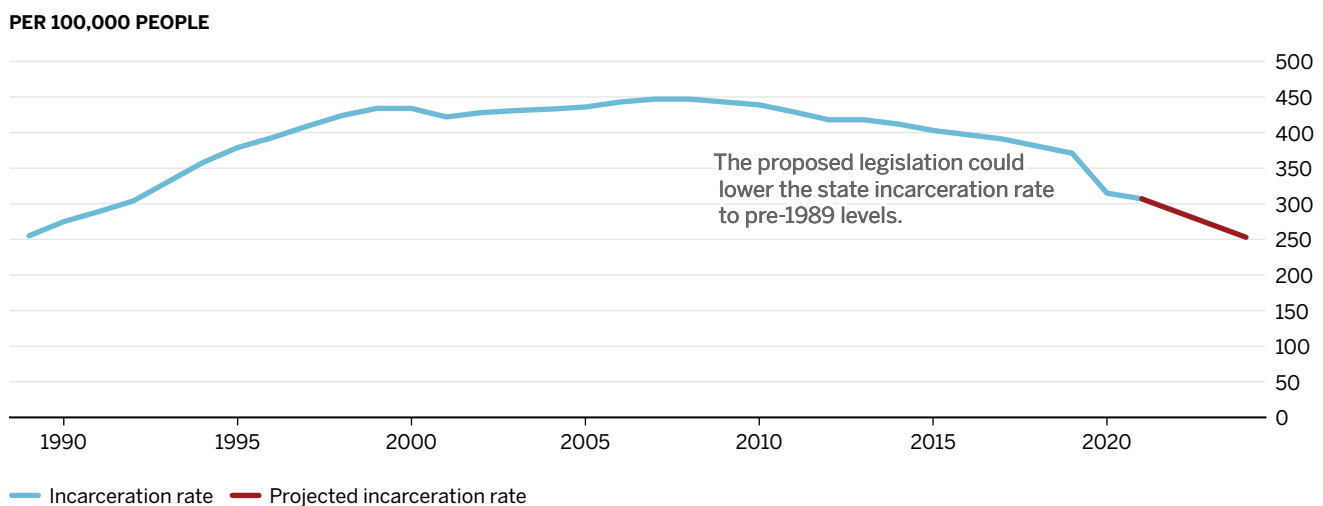
Amid these trends, it is imperative to spur states to reduce their high levels of imprisonment and invest in alternative programs and policies that improve public safety. The Public Safety and Prison Reduction Act would do just that. If fully realized, it would decrease the incarceration rate from 307 per 100,000 to 253 per 100,000 people, a rate not seen since the 1980s (see figure 2).

The act has four major sections. It first lays out how states could apply for funding. Second, it provides 21 different ways in which states could use these dollars to further the two aims of the initiative: shrinking prison

populations and reducing recidivism. Third, it would require states to create community advisory boards to help with grant administration. These boards would play a role in issuing subgrants to local organizations — which often lack access to federal dollars — to work within their communities to reduce imprisonment rates. Finally, it would require states, in collaboration with researchers or academic institutions, to submit annual progress reports documenting their expenditures and the outcomes of new policies implemented with grant funding.

FIGURE 2

Projected Declines in the State Incarceration Rate If the PSPRA Is Implemented



Note: The projection assumes the 25 states with the largest prison populations reduce imprisonment by 20 percent. The projection is based on figures for 2021, the latest year for which data is available.

Source: Bureau of Justice Statistics; U.S. Census Bureau; Brennan Center analysis.

Application Process

Any state would be eligible for the grant program, which would be administered by the U.S. Department of Justice’s Bureau of Justice Assistance. States would first have to apply for a planning grant to study the local drivers of overincarceration and the feasibility of policy changes to reduce their prison populations. Each planning grant would span 18 months.

After the planning grant phase, a state could apply for an implementation grant to be used to reduce its prison population by 20 percent. Each implementation grant would cover three years. States that succeeded in reducing their prison population by 20 percent could apply for another three years of implementation funding.

The planning grant application would consist of three primary components:

- a description of the state’s need for a planning grant;
- a description of the activities the state will carry out with the planning grant; and
- a description of the working group the state will establish, which must include legislators, judges, and formerly incarcerated individuals, among other stakeholders.

The implementation grant application would consist of four primary components:

- the state’s total prison population, including racial, ethnic, gender, and socioeconomic disparities;
- the state’s total prison population growth in relative and absolute estimates over the 25 years preceding the application;

- a comprehensive plan detailing how the state will use grant funding consistent with the aims of the act; and
- a description of how the state will establish a community advisory board to offer input on the state’s spending determinations pursuant to the act.

Policy Options

The act lays out different policy reforms that states could implement with grant funding. These reforms would aim to reduce prison populations by replacing harsh, ineffective approaches with humane and more effective practices that take into consideration both the root causes and the consequences of mass incarceration.

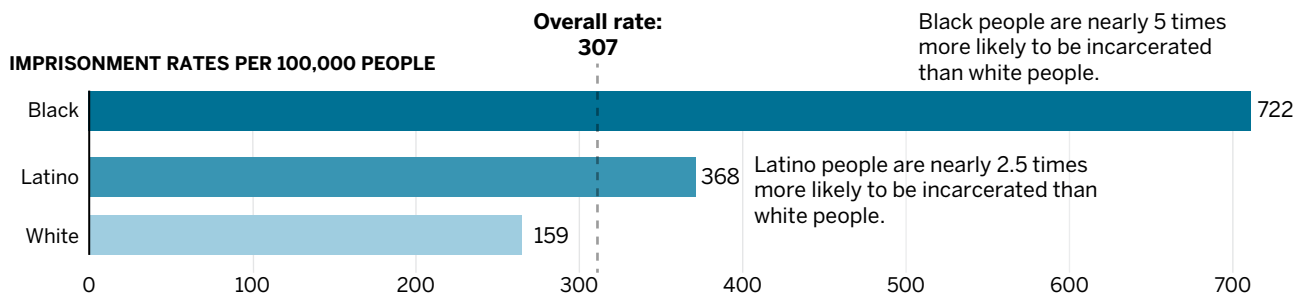
Shrinking Prison Populations

The federal government spends billions annually in support of highly punitive yet ineffective practices that sustain mass incarceration, like harsh sentencing laws and steep court fees.⁵³ Yet, according to Brennan Center research, nearly 40 percent of the U.S. prison population is incarcerated without any compelling public safety justification.⁵⁴ In fact, time behind bars may be counterproductive. According to one study, each additional year of incarceration served by people with felony convictions can boost their chances of future contact with the criminal justice system by four to seven percentage points.⁵⁵

Mass incarceration’s impact is both broad and pernicious, reaching well beyond the prison walls. Incarceration rates vary starkly by race and ethnicity, producing enduring social inequalities (see figure 3). A recent Brennan Center study, for example, found that felony convictions and time spent in prison reduce people’s earnings potential long after they have completed their sentences. The cumulative

FIGURE 3

Racial-Ethnic Disparities in State Incarceration Rates



Source: Bureau of Justice Statistics; U.S. Census Bureau; Brennan Center analysis.

losses are steep and also disparate: white people who have spent time behind bars miss out on an average of \$267,000 in expected earnings over their lifetime; Black people, \$358,900; and Latinos, \$511,500. In aggregate, these losses impoverish communities that have historically been overpoliced.⁵⁶

To curb the harms of overincarceration, this act would require states to invest in a variety of tools to reduce their prison populations without damaging public safety.

States could use grant funds to implement policies that do any of the following:

- establish or support programs that divert people from incarceration;
- reduce the use of incarceration as a sanction for noncriminal violations of community supervision rules, such as missing drug treatment appointments;
- eliminate excessive terms of imprisonment by repealing mandatory-minimum penalties or sentencing enhancements for certain offenses, by capping sentences at 20 years, or by automatically reviewing and modifying sentences after people have served 15 years behind bars;
- promote proportionality and fairness in sentencing by downgrading certain felonies to misdemeanors, creating more gradations of offense categories, or increasing felony thresholds;
- expand opportunities for incarcerated people to earn time off their custodial sentences, or repeal policies that restrict or curb parole eligibility, such as truth-in-sentencing laws;
- invest in systems that increase the release of people who pose little threat to public safety, such as those of advanced age or with terminal illness, and improve clemency processes;
- establish or expand systems that correct extreme, disproportionate, unjust, or wrongful convictions and custodial sentences; or
- strengthen indigent defense, which, according to research, offers considerable potential to reduce incarceration without jeopardizing public safety.⁵⁷

Reducing Recidivism

Each year, more than 500,000 people return home from state prisons.⁵⁸ States struggle to reintegrate them back into their communities, and recidivism rates remain high.⁵⁹ Within 10 years of release, 82 percent will be rearrested,

and 61 percent will return to prison for a parole or probation violation or a new sentence.⁶⁰

Several causes underlie this problem. Once released, formerly incarcerated people face myriad barriers to successfully reentering society. They often cannot vote; have scant access to education; face grim employment prospects; and are ineligible for public benefits, public housing, and student loans.⁶¹ States provide few social services to help people transition back into society.⁶² For example, underlying health issues such as substance abuse, mental health disorders, and chronic disease often go untreated.⁶³

Successful reintegration is a matter of public safety.⁶⁴ To reduce mass incarceration, the criminal justice system must not only reduce the sheer number of people in custody but also support those returning home. The act would provide funding for states to implement proven interventions aimed at reducing the persistent challenges associated with reentry.

States could use grant funds to implement policies that do any of the following:

- create or expand prison programming that helps currently incarcerated people plan to successfully return to their communities;
- expand access to gainful employment by increasing ways to expunge or seal criminal records, or by prohibiting employers from asking applicants about their criminal history on job applications or prior to tendering an employment offer;
- eliminate fees, discharge fine or fee debt for individuals presently incarcerated or exiting prison, or develop policies and programs to assess fines and fees on the basis of individuals' ability to pay;
- set up or support holistic social services for individuals reentering their communities after incarceration, including services relating to housing, employment, education, health care, behavioral and mental health, substance use, and child care; or
- set up or support community-based crime prevention programs that work directly with formerly incarcerated individuals or in communities with elevated levels of people with criminal records.

Community Voices

Federal grants focused on criminal justice have long deferred to the perspectives of law enforcement officials, prosecutors, and judges. This act would expand the range of stakeholders eligible for funding as well as

those who play a part in determining how the funding is distributed.

Working Groups

In studying the drivers of overincarceration, states receiving planning grants would be required to convene working groups composed of government officials and formerly incarcerated people. These groups would study the factors, including laws and practices, that contribute to high incarceration numbers and would conduct data-driven analyses. To inform their research, the working groups would also have to facilitate conversations with residents of areas most affected by overcriminalization. The work product of these groups would inform states' proposals to reduce incarceration, which would have to be submitted as part of the implementation grant application process.

Subgrants

Unlike most criminal justice federal grants, this act would require participating states to set aside at least 20 percent of their awarded funds at the implementation stage for subgrants to nonprofit organizations. These subgrants would recognize the central role that local nonprofit groups can play in assisting communities most affected by unnecessary incarceration. States would be required to give priority to nonprofit organizations with a demonstrated track record of providing services related to reducing incarceration, especially groups based in areas with elevated levels of people with criminal records or groups led or staffed by formerly incarcerated people.

Community Advisory Board

To promote inclusivity in the administration and distribution of grant funds and the selection of subgrantees, a state receiving these dollars would be required to establish a community advisory board representing a diverse array of stakeholders, including groups that have been disproportionately harmed by the criminal justice system and historically excluded from policymaking deliberations.⁶⁵ These stakeholders would include formerly incarcerated people, faith leaders, community-based organizers, and public health experts.

Measuring Success and Promoting Accountability

To promote accountability and monitor grant spending and performance at the implementation stage, this act would direct states to partner with researchers or academic institutions in creating annual progress reports and to submit these reports to the Bureau of Justice Assistance. These reports would detail the ways in which states were spending funds and assess the racial, ethnic, gender, and socioeconomic outcomes of the programs and policies funded with the grant. The Bureau of Justice Assistance should establish procedures for overseeing the flow of federal funds from the states to subgrantee nonprofit organizations.

By accepting funds, states would agree not to undertake activities that run counter to the grant's goals. For example, grantees would be barred from enacting or making harsher any punitive sentencing laws, such as mandatory-minimum or truth-in-sentencing measures, during the life of the grant. Likewise, states could not use grant funds to build new prisons or jails. A state could be subject to penalties for failure to comply with the act's terms. In practice, a state might not wield control over every law that its legislature could pass, nor every action that some official could take, to increase the punitiveness of state laws or policies. Yet this grant program should send a strong message to stakeholders that they should work together in pursuit of reducing prison populations.

Conclusion

For more than half a century, the federal government has subsidized the country's incarceration boom, offering states billions of dollars annually in exchange for arresting and prosecuting more people and locking them up for longer periods than at any other time in U.S. history. While some states have made strides toward reducing their incarceration rates, mass incarceration is proving difficult to dismantle. With the Public Safety and Prison Reduction Act, the federal government, through the power of the purse, can catalyze states to take bolder action. By reducing their reliance on incarceration, mitigating its harms, and investing in historically overcriminalized communities, the bill aims to deliver public safety while also promoting a more humane criminal justice system.

Appendix: Model Bill

A Bill

To provide incentives for States to implement innovative policy changes to reduce prison populations and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Safety and Prison Reduction Act.”

SECTION 2. DEFINITIONS.

In this Act:

- (1) **STATE.**—The term “State” has the meaning given the term in section 901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10251).
- (2) **PRISON.**—The term “prison” means any State institution for the confinement of individuals convicted of criminal offenses whose sentences are more than one (1) year.
- (3) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” has the meaning given the term in section 101(A) of the Higher Education Act of 1965 (20 U.S.C. 7801).
- (4) **LISTENING SESSION.**—The term “listening session” means a facilitated discussion with community residents that is well publicized at an easily identifiable, accessible, and public location, including but not limited to a library, school, or religious institution, for the primary purpose of collecting information about community residents’ experiences, viewpoints, concerns, and ideas relating to the administration of these grant funds.

SECTION 3. GRANT PROGRAM.

- (a) **IN GENERAL.**—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq.) is amended by adding at the end the following:

“PART PP—STATE PRISON POPULATION REDUCTION GRANT PROGRAM

“SECTION 3056. GRANT PROGRAM.

- “(a) **IN GENERAL.**—Not later than one (1) year after the enactment of this Act, the Attorney General may award grants, on a competitive basis, consistent with subparagraph (b).

- “(b) **TYPES OF GRANTS.**—The Attorney General may award—

“(1) planning grants, which shall be used by States to—

“(A) analyze criminal justice trends and factors to better understand excessive and unnecessary prison incarceration; and

“(B) explore the feasibility of developing, adopting, and implementing policy changes, as described in subparagraph (c)(2), to ameliorate such criminal justice trends and factors; and

“(2) implementation grants, which shall be used to reduce prison populations by not less than 20 percent based on the State’s average total prison population for the previous three years at the time that the State applies for an implementation grant, consistent with subparagraph (d).

“(c) PLANNING GRANTS.—

“(1) APPLICATION PROCESS.—To receive a planning grant under this Act, a State shall submit to the Attorney General an application, at such time and in such manner as the Attorney General may require, which shall include—

“(A) a description of the State’s need for a planning grant;

“(B) a description of the planning activities the State shall carry out with the planning grant; and

“(C) a description of the Working Group that a State shall establish, consistent with subparagraph (c)(3), which shall include—

“(i) the jurisdictions in which the Working Group shall hold listening sessions; and

“(ii) an explanation of the State’s choice of jurisdictions in which the State’s Working Group shall hold listening sessions.

“(2) USE OF FUNDS.—In exploring the feasibility of developing, adopting, and implementing policy changes to ameliorate criminal justice trends and factors causing excessive and unnecessary prison incarceration, States shall focus only on policy changes as provided in subparagraph (d)(2).

“(3) WORKING GROUP.—

“(A) IN GENERAL.—Recipients of planning grants shall establish a Working Group to assist in the execution of its planning grant under this subparagraph.

“(B) MEMBERSHIP.—The Working Group shall be composed of one, and only one, individual who represents each of the following—

“(i) corrections;

“(ii) prosecution;

“(iii) probation and parole;

“(iv) law enforcement;

“(v) Governor’s office;

“(vi) legislative branch;

“(vii) State judges;

“(viii) indigent defense agency;

“(ix) formerly incarcerated individuals;

“(x) court administration; and

“(xi) tribal governments.

“(C) LISTENING SESSIONS.—To inform its work under this subparagraph, the Working Group shall hold listening sessions in the State’s jurisdictions, particularly in geographic areas with elevated levels of people with criminal records.

“(4) PLANNING GRANT REPORT.—Not later than 60 days after the end of the period of the planning grant, in consultation with the Working Group, the planning grant recipient shall submit to the Attorney General a report providing—

“(A) the identification, including roles and responsibilities, of the members of the Working Group;

“(B) projects undertaken using amounts made available under the grant;

“(C) lessons learned from projects undertaken;

“(D) projects the grantee intends to implement based on the Working Group’s findings; and

“(E) any additional information deemed appropriate by the Attorney General.

“(d) IMPLEMENTATION GRANTS.—

“(1) APPLICATION PROCESS.—To receive an implementation grant under this Act, a State shall submit to the Attorney General an application, at such time and in such manner as the Attorney General may require, which shall include—

“(A) the State’s total prison population, including racial, ethnic, gender, and socioeconomic disparities (e.g., income, education, housing);

“(B) the State’s rate of prison population growth in relative and absolute estimates over the last 25 years;

“(C) a comprehensive and coherent plan (“Implementation Plan”) detailing the State’s proposals to use funds under this section, based on its planning grant activities, and relying on the policy changes as provided in subparagraph (d)(2), to reduce prison populations by not less than 20 percent based on the State’s average total prison population for the previous three years at the time that the State submits an implementation grant application under this subparagraph; and

“(D) a comprehensive and coherent plan detailing the State’s plan to establish a Community Advisory Board, consistent with subparagraph (d)(3), which shall include—

“(i) the State’s plan for selecting the membership of the State’s Community Advisory Board; and

“(ii) an explanation of the State’s plan for ensuring that the State’s Community Advisory Board, in recommending organizations for subgrant awards, will give priority to eligible nonprofit organizations, as consistent with subparagraph (e).

“(2) USE OF FUNDS.—A grant awarded under this section shall be used by a State receiving an implementation grant to—

“(A) shrink prison populations by—

“(i) establishing or supporting programs that divert individuals from incarceration;

“(ii) eliminating policies, which shall have retroactive effect, that drive excessive and unnecessarily lengthy terms of imprisonment by actions including, but not limited to—

“(I) repealing mandatory-minimum penalties for certain offenses;

“(II) repealing sentencing enhancements for certain offenses; or

“(III) downgrading certain criminal offenses, i.e., reducing felonies to misdemeanors;

“(iii) implementing policies, which shall have retroactive effect, that help promote proportionality and fairness in sentencing by actions including, but not limited to—

“(I) capping sentences at 20 years; or

“(II) reviewing and modifying sentences automatically after 15 years;

“(iv) implementing policies, which shall have retroactive effect, that increase opportunities for early release by actions including, but not limited to—

“(I) expanding opportunities and incentives for incarcerated people to earn time off their custodial sentence;

“(II) repealing policies that restrict or curb parole eligibility, e.g., truth-in-sentencing laws; or

“(III) eliminating policies that delay initial parole eligibility beyond 10 years;

“(v) reducing or eliminating use of incarceration as a sanction for noncriminal violations of community supervision rules, e.g., technical parole and probation violations such as missing drug treatment appointments;

“(vi) improving State executive functions that can promote early release by—

“(I) establishing or expanding the use of mechanisms providing for the early release of incarcerated individuals based on specific criteria (e.g., advanced age or terminal illness, or participation in treatment or rehabilitative programming) by actions including, but not limited to, broadening eligibility criteria (e.g., eliminating statutory exclusions or expanding medical or geriatric criteria); increasing the amount of good-time credit accrued for participation in treatment programming; streamlining and clarifying application review protocols; convening or staffing boards of experts to advise State decision-makers on the exercise of the State’s compassionate, medical, and geriatric release power; and improving coordination between parole boards, departments of correction, and community placement providers; or

“(II) improving clemency processes by actions including, but not limited to, convening or staffing boards of experts to advise State decision-makers on the exercise of the State’s clemency power; broadening eligibility for clemency; streamlining and clarifying application review protocols; and increasing the number of clemency grants;

“(vii) improving prosecutorial functions to correct extreme, disproportionate, unjust, or wrongful criminal convictions and custodial sentences by—

“(I) establishing or expanding conviction integrity units or conviction review units within prosecutorial offices to prevent, identify, and remedy wrongful convictions; or

“(II) establishing or expanding sentencing review units within prosecutorial offices to address overcrowding, racial inequities, and lengthy prison sentences that are considered extreme or disproportionate;

“(viii) improving the quality of indigent defense; or

“(B) reduce the recurrence of recidivism after a term of incarceration and reduce the limitations imposed on individuals with criminal records by—

“(i) expanding programming for currently incarcerated populations within prisons that will enable such populations to successfully transition back into society;

“(ii) improving access to expungement and record-sealing processes;

“(iii) adopting laws prohibiting employers from asking applicants about their criminal history on applications for employment or prior to tendering an employment offer;

“(iv) eliminating fees imposed on defendants; discharging any fine or fee debt for individuals who are incarcerated or exiting prison; or developing policies and programs that assess fines and fees based on an individual’s ability to pay;

“(v) establishing or supporting wraparound or community-based services for individuals reentering their communities after incarceration, including, but not limited to, services relating to housing, disability, employment, education, health care, behavior and mental health, substance abuse, and child care; or

“(vi) supporting community-based crime prevention programs that work directly with formerly incarcerated individuals or in communities that have elevated levels of people with criminal records, e.g., programs involving violence prevention, housing and supportive housing, jobs and job placement, substance abuse and mental health treatment, and other wraparound support services aiming to build pathways to life-stabilizing opportunities.

“(3) COMMUNITY ADVISORY BOARD.—

“(A) IN GENERAL.—To help promote inclusive administration and distribution of grant funds, a grant awardee must form a Community Advisory Board, which shall offer its recommendations to the State

as to the selection of recipients of subgrant awards, which shall give priority to eligible nonprofit organizations, as consistent with subparagraph (e).

“(B) MEMBERSHIP.—Every community advisory board shall be composed of one, and only one, individual who represents each of the following—

- “(i)** reentry services personnel;
- “(ii)** formerly incarcerated individuals;
- “(iii)** victims’ services personnel;
- “(iv)** community-based organizations;
- “(v)** institutions of higher education;
- “(vi)** faith leaders;
- “(vii)** civil rights leaders; and
- “(viii)** public health experts.

“(4) IMPLEMENTATION GRANT REPORT.— A State that receives a grant under this section shall submit to the Attorney General a report, on an annual basis, at such time, in such manner, and containing such information as the Secretary may require, that—

- “(A)** identifies the programs and policies funded with the grant; and
- “(B)** assesses racial, ethnic, gender, and socioeconomic impacts of the programs and policies funded with the grant in partnership with independent researchers or a consortium of independent researchers, such as research and/or academic institutions. Evaluations shall include increases or decreases in the State’s pretrial detention, sentencing, incarceration, probation, and parole populations.

“(e) SUBGRANTS.—

“(1) A State receiving an implementation grant under subsection (d) shall, in consultation with its Community Advisory Board, use at least 20 percent of such grant funds to provide subgrants to eligible nonprofit organizations which shall assist in the implementation of policy changes enumerated under subsection (d)(2).

“(2) In determining such subgrant awards, after considering the recommendations of its Community Advisory Board, a State shall give priority to organizations that—

- “(A)** possess a demonstrated track record of providing services that attempt to reintegrate back into society individuals released from prison, with a goal of reducing recidivism;
- “(B)** are based in geographic areas with elevated levels of people with criminal records;
- “(C)** are led by or employ individuals who have spent time in jail or prison; or
- “(D)** serve high numbers or a high percentage of people, relative to the local community, who have been arrested or convicted of a criminal offense, or who have spent time in jail, in prison, or on probation or parole.

“(f) TERMS AND CONDITIONS.—

“(1) DURATION.—

- “(A)** A planning grant shall be for a period of 18 fiscal months.
- “(B)** An implementation grant shall be for a period of 3 fiscal years.

“(2) AMOUNT.—

- “(A)** Each planning grant award shall not exceed \$350,000.
- “(B)** Each implementation grant award shall not exceed \$40,000,000.

“(3) NUMBER OF GRANT AWARDS.—

“(A) The Attorney General may make planning grants under this section to not more than 25 States during each fiscal year.

“(B) The Attorney General may make implementation grants under this section to no more than 25 States during each fiscal year.

“(4) RENEWAL.—At the end of its first implementation grant term of 3 fiscal years, a State that has received such a grant award under subparagraph (d) may reapply for a second implementation grant, only if the recipient of such grant has reduced its prison population by not less than 20 percent based on the State’s average total prison population for the previous three years at the time that the State submits its first application for an implementation grant under subparagraph (d).

“(5) During any grant term under this Act, a grant awardee shall not shift individuals convicted of criminal offenses whose sentences are more than one (1) year from a State prison, whether publicly or privately operated, to any penitentiary, jail, or other institution or facility for the confinement of individuals convicted of criminal offenses whose sentences are less than one (1) year, for the purposes of satisfying the objective of an implementation grant pursuant to subparagraph (d).

“(6) During any grant term under this Act, a grant awardee shall not establish or amend to make harsher any—

“(A) sentence enhancements, or laws that would increase the punishment for individuals convicted of a criminal offense;

“(B) habitual offender laws, or laws that impose longer sentences on individuals who have been convicted of a certain number of criminal offenses;

“(C) truth-in-sentencing laws, or laws that aim to reduce the difference between sentences imposed and the actual time that individuals serve in prison; or

“(D) mandatory-minimum sentencing laws, or laws that require judges to sentence offenders to a specified minimum prison term for specific offenses.

“(7) PROHIBITIONS.—A State receiving any grant award under this Act shall not use such funds to—

“(A) build or repair any prisons, jails, or other facilities designed for the confinement of individuals convicted of criminal offenses;

“(B) enter into a contract with a for-profit company to build or manage prisons, jails, or other correctional facilities; or

“(C) hire, train, or maintain sworn law enforcement officers, or to purchase law enforcement equipment.

“(g) PENALTY.—If the Attorney General determines that any recipient of any grant under this Act has violated a condition, prohibition, or any other term of the Act, the Attorney General shall—

“(1) require the grant recipient to repay 10 percent of the grant; and

“(2) prohibit the grant recipient from receiving any other grant under this Act for not less than 3 years.

“(h) MAXIMUMS.—

“(1) In order to be eligible to apply for an implementation grant under subparagraph (d), States must first have applied for, received, and fully executed a planning grant under subparagraph (c).

“(2) A State shall receive no more than one (1) planning grant pursuant to subparagraph (c) and two (2) implementation grants pursuant to subparagraph (d).

“(i) **RESERVATION.**—The Attorney General shall reserve not more than 5 percent of the amount appropriated under this Act to be used for administration, oversight, and technical assistance activities through the Office of Justice Programs.”.

“(b) **AUTHORIZATION OF APPROPRIATIONS.**—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10261(a)) is amended by adding at the end the following:

“(29) There is authorized to be appropriated to carry out part PP \$1,000,000,000 for each of fiscal years 2024 through 2034.”.

Endnotes

- 1 James Austin et al., *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, 5, 7–8, <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.
- 2 Austin et al., *How Many Americans Are Unnecessarily Incarcerated?*, 7.
- 3 Rebecca Vallas and Sharon Dietrich, *One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*, Center for American Progress, 2014, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>; and Terry-Ann Craigie, Ames Grawert, and Cameron Kimble, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Brennan Center for Justice, 2020, 6–8, <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.
- 4 Brian Elderbroom et al., *Every Second: The Impact of the Incarceration Crisis on America's Families*, FWD.us, 2018, 21, <https://everysecond.fwd.us/downloads/everysecond.fwd.us.pdf>.
- 5 E. Ann Carson and Rich Kluckow, *Correctional Populations in the United States, 2021 — Statistical Tables*, United States Department of Justice, Bureau of Justice Statistics, 2023, 4, table 1, <https://bjs.ojp.gov/sites/g/files/xyckuh236f/files/media/document/cpus21stB.pdf>.
- 6 The Sentencing Project, “Growth in Mass Incarceration: Prison Population Over Time,” accessed September 5, 2022, <https://www.sentencingproject.org/research/>.
- 7 Mike Crowley and Betsy Pearl, *Reimagining Federal Grants for Public Safety and Criminal Justice Reform*, Center for American Progress, 2020, 1, <https://www.americanprogress.org/wp-content/uploads/2020/10/DOJgrants-brief1.pdf>; and Inimai Chettiar et al., *Reforming Funding to Reduce Mass Incarceration*, Brennan Center for Justice, 2013, 18, <https://www.brennancenter.org/our-work/research-reports/reforming-funding-reduce-mass-incarceration>. See also, generally, Emily Widra and Tiana Herring, “States of Incarceration: The Global Context 2021,” Prison Policy Initiative, September 2021, <https://www.prisonpolicy.org/global/2021.html>.
- 8 Samantha Harvell et al., *The Justice Reinvestment Initiative: A Guide for States*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2021, iii, <https://bja.ojp.gov/sites/g/files/xyckuh186f/files/media/document/JRI-Guide-for-States.pdf>.
- 9 In practice, JRI’s focus was on improving efficiency in the criminal justice system, such as by reestablishing good-time credits, creating a more streamlined parole process, and expanding parole eligibility, rather than on reducing overly long sentences — the biggest driver of bloated state prison populations. William J. Sabol and Miranda L. Baumann, “Justice Reinvestment: Vision and Practice,” *Annual Review of Criminology* 3 (2020): 317–39, 323–25, <https://www.annualreviews.org/doi/10.1146/annurev-criminol-011419-041407>.
- 10 Kentucky’s HB 463 included reduced charges for lower-level drug crimes, mandatory reentry supervision, and graduated sanctions so that fewer people on probation and parole returned to prison immediately after a technical violation of a condition of their release. At the time HB 463 was signed into law, in 2011, the state’s prison population was at 21,545. Seven years later, in 2018, despite technical assistance and direct funding through JRI, Kentucky’s total prison population had climbed to 23,431. E. Ann Carson and William J. Sabol, *Prisoners in 2011*, Bureau of Justice Statistics, 2012, 3, <https://bjs.ojp.gov/content/pub/pdf/p11.pdf>; E. Ann Carson, *Prisoners in 2018*, Bureau of Justice Statistics, 2020, 4, <https://bjs.ojp.gov/content/pub/pdf/p18.pdf>; and HB 463 (Ky. 2011), <https://apps.legislature.ky.gov/law/acts/11RS/documents/0002.pdf>.
- 11 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Justice Reinvestment Initiative: Reducing Violent Crime by Improving Justice System Performance FY 2018 Competitive Grant Announcement*, 2018, 5–8, <https://bja.ojp.gov/sites/g/files/xyckuh186f/files/media/document/BJA-2018-13700.PDF>.
- 12 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, “BJA FY 21 Justice Reinvestment Initiative: State-Level Training and Technical Assistance Program,” 2021, 4, <https://bja.ojp.gov/sites/g/files/xyckuh186f/files/media/document/O-BJA-2021-108001.pdf>.
- 13 The White House, “Fact Sheet: President Biden’s Safer America Plan,” press release, July 21, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/21/fact-sheet-president-bidens-safer-america-plan>. Recommended policies include expanding drug courts; creating or expanding co-responder programs; and investing in job training, employment, housing, and other stabilizing services that can help formerly incarcerated people return to society.
- 14 Lauren-Brooke Eisen and Inimai M. Chettiar, *The Reverse Mass Incarceration Act*, Brennan Center for Justice, 2015, <https://www.brennancenter.org/publication/reverse-mass-incarceration-act>.
- 15 We calculated the projected prison population by first identifying the 25 states with the highest prison populations and then applying to those states a 20 percent reduction. Prior to the reduction, the prison population in the top 25 states totaled 895,745 in 2020. After the 20 percent reduction, the total was 716,596. The difference between the two numbers was then subtracted from the actual national prison population (1,040,138 – 179,149). The resulting projected figure totaled 860,989.
- 16 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).
- 17 Law Enforcement Assistance Act of 1965, Pub. L. No. 89-197, 79 Stat. 828 (1965).
- 18 U.S. Department of Justice, Office of Justice Programs, “Historical Data,” *Crime and Justice Atlas 2000*, 2000, 34–47, 36–39, <https://www.irsa.org/projects/Historical.pdf>; and Gallup, “Crime,” updated October 2021, <https://news.gallup.com/poll/1603/Crime.aspx>, <https://perma.cc/E2FQ-QXSG>.
- 19 David A. Jones and Jiri Nehnevajsa, *Some Perspectives on Crime in the United States Since 1960: Executive Summary*, University of Pittsburgh, Center for Social and Urban Research, 1979, 20, <https://www.ojp.gov/pdffiles1/Digitization/85154NCJRS.pdf>.
- 20 Michael W. Flamm, “From Harlem to Ferguson: LBJ’s War on Crime and America’s Prison Crisis,” *Origins: Current Events in Historical Perspective*, February 2015, <https://origins.osu.edu/article/harlem-ferguson-lbjs-war-crime-and-americas-prison-crisis>.
- 21 Jeremy Travis, Bruce Western, and Steve Redburn, eds., “The Underlying Causes of Rising Incarceration: Crime, Politics, and Social Change,” chapter 4 in *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 119–21, <https://nap.nationalacademies.org/read/18613/chapter/6#119>.
- 22 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197 (1968), codified at 34 U.S.C. § 10101, et seq.; and Flamm, “From Harlem to Ferguson.”
- 23 The legislation also permitted both federal and state law enforcement officials to use wiretapping and electronic eavesdropping in situations where individuals were under investigation for committing crimes. See Nelson Poynter, ed., “Congress Passes Extensive Anticrime Legislation,” *CQ Almanac 1968*, 24th ed., CQ-Roll Call Group, 1968, <http://library.cqpress.com/cqalmanac/cqal68-1283625>; and Max Frankel, “President Signs Broad Crime Bill, with Objections,” *New York Times*, June 20, 1968, <https://timesmachine>.

[nytimes.com/timesmachine/1968/06/20/77307440.html?pageNumber=1](https://www.nytimes.com/timesmachine/1968/06/20/77307440.html?pageNumber=1).

- 24** John M. Goshko, "LEAA's Fate Weighed at Justice Dept.," *Washington Post*, April 9, 1977, <https://www.washingtonpost.com/archive/politics/1977/04/09/leaas-fate-weighed-at-justice-dept/ad3e6bbf-3451-4bcd-95c7-f6d3ab7f7178/>; and Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016), 113.
- 25** Advisory Commission on Intergovernmental Relations, *Making the Safe Streets Act Work: An Intergovernmental Challenge*, 1970, 52, <https://library.unt.edu/gpo/acir/Reports/policy/A-36.pdf>. <https://perma.cc/88YD-GSRA>.
- 26** Barry Bratburd et al., eds., "A Brief History of NIJ," *National Institute of Justice Journal*, no. 281 (November 2019): 5–6, <https://www.ojp.gov/pdffiles1/nij/252721.pdf>. <https://perma.cc/J4N2-2JQ3>.
- 27** Chettiar et al., *Reforming Funding*, 3.
- 28** Anti-Drug Abuse Act of 1988, 42 U.S.C. §§ 3750-3766b (1988). Half of a state's allocation is based on its share of the U.S. population; the other half is based on its share of the average number of violent crimes reported to the FBI for the three most recent years. Also see Nathan James, "The Edward Byrne Memorial Justice Assistance Grant (JAG) Program," Congressional Research Service, 2022, 1, <https://crsreports.congress.gov/product/pdf/IF/IF10691>.
- 29** James, "The Edward Byrne Memorial Justice Assistance Grant," 1–2.
- 30** Alexia D. Cooper, "Justice Assistance Grant (JAG) Program, 2021," Bureau of Justice Statistics, 2022, 1, <https://bjs.ojp.gov/content/pub/pdf/jagp21.pdf>. Yearly JAG technical reports can be found at U.S. Department of Justice, Bureau of Justice Statistics, "Publications," accessed September 5, 2022, https://bjs.ojp.gov/library/publications/list?series_filter=Justice%20Assistance%20Grant%20%28JAG%29%20Program.
- 31** National Criminal Justice Association, "Cornerstone for Justice: How States Use Byrne JAG Funding to Protect Public Safety, Prevent Crime and Reduce Recidivism," 2021, 3, https://www.ncja.org/files/ugd/cda224_15254f0636354cabb1c20a44054b148.pdf.
- 32** Chettiar et al., *Reforming Funding*, 23–25, 28–30.
- 33** Chettiar et al., *Reforming Funding*, 24.
- 34** Jon Frank, "Justice Department Issues Changes to Largest Criminal Justice Grant," Brennan Center for Justice, January 8, 2016, <https://www.brennancenter.org/our-work/analysis-opinion/justice-department-issues-changes-largest-criminal-justice-grant>.
- 35** Travis, Western, and Redburn, eds., "The Underlying Causes of Rising Incarceration," 115–16. Also see Angie Maxwell, "What We Get Wrong About the Southern Strategy," *Washington Post*, July 26, 2019, <https://www.washingtonpost.com/outlook/2019/07/26/what-we-get-wrong-about-southern-strategy/>. A predecessor of the war on drugs was President Johnson's 1965 declaration of a "war on crime," accompanied by similarly harsh punitive legislation. Although the Justice System Improvement Act of 1979 (Pub. L. No. 96-157, 93 Stat. 1167 (1979)), passed under President Carter, attempted to end the war on crime and refocus on "urban revitalization," an ongoing focus on punitive enforcement ensured that war on crime-era policies never really ended; they just transformed their methods. See Hinton, *From the War on Poverty to the War on Crime*, 278–80.
- 36** Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986), codified at 21 U.S.C. § 801, et seq.; Edward Walsh, "\$1.7 Billion Drug Bill Sweeps House, Senate," *Washington Post*, October 18, 1986, <https://www.washingtonpost.com/archive/politics/1986/10/18/17-billion-drug-bill-sweeps-house-senate/348c6a95-af95-4450-8797-31b02cf4a94a>; Joel Brinkley, "Anti-Drug Law: Words, Deeds, Political Expediency," *New York Times*, October 27, 1986, <https://www.nytimes.com/1986/10/27/us/anti-drug-law-words-deeds-political-expediency.html>; and Harry Hogan et al., *Drug Control: Highlights of P.L. 99-570, Anti-Drug Abuse Act of 1986*, Congressional Research Service, 1986, 9–10, <https://www.ojp.gov/pdffiles1/Digitization/143052NCJRS.pdf>.

- 37** Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986), codified at 21 U.S.C. § 801, et seq.
- 38** For example, in 2003 Black people made up 80 percent of defendants sentenced under crack cocaine laws despite the fact that 66 percent of crack cocaine users were white or Latino. Deborah J. Vagins and Jesselyn McCurdy, *Cracks in the System: Twenty Years of the Unjust Federal Crack Cocaine Law*, American Civil Liberties Union, 2006, 1–4, https://www.aclu.org/sites/default/files/field_document/cracksinsystem_20061025.pdf. <https://perma.cc/PG2B-SEQT>.
- 39** FBI, "Crime Data Explorer," accessed October 17, 2022, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.
- 40** FBI, "Crime Data Explorer."
- 41** Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).
- 42** Lauren-Brooke Eisen, "The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System," Brennan Center for Justice, September 9, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.
- 43** Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994); and Eisen, "The 1994 Crime Bill and Beyond."
- 44** U.S. Department of Justice, Office of Justice Programs, "Violent Crime Control and Law Enforcement Act of 1994: U.S. Department of Justice Fact Sheet," 1994, <https://www.ncjrs.gov/txtfiles/billfs.txt>. <https://perma.cc/6KFR-BRJW>.
- 45** Paula M. Ditton and Doris James Wilson, *Truth in Sentencing in State Prisons*, Bureau of Justice Statistics, 1999, 1, 3, <https://bjs.ojp.gov/content/pub/pdf/tspp.pdf>. <https://perma.cc/2KP7-NEZ4>.
- 46** Jeremy Travis, Bruce Western, and Steve Redburn, eds., "Policies and Practices Contributing to High Rates of Incarceration," chapter 3 in *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 81, <https://nap.nationalacademies.org/read/18613/chapter/5>.
- 47** U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Report to Congress: Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program*, 2012, 1, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/voitis-final-report.pdf>.
- 48** Ditton and Wilson, *Truth in Sentencing in State Prisons*, 3.
- 49** FBI, "Crime Data Explorer" (Trend of Violent Crime from 1985 to 2021).
- 50** Ames Grawert and Noah Kim, "Myths and Realities: Understanding Recent Trends in Violent Crime," Brennan Center for Justice, July 12, 2022, <https://www.brennancenter.org/our-work/research-reports/myths-and-realities-understanding-recent-trends-violent-crime>.
- 51** The FBI recommends caution in comparing 2020 and 2021 data due to a lower number of agencies reporting crime data in 2021. The FBI uses estimates to account for gaps in the data. See FBI, *The Transition to the National Incident-Based Reporting System (NIBRS): A Comparison of 2020 and 2021 NIBRS Estimates*, 2022, 2–3, <https://s3-us-gov-west-1.amazonaws.com/cg-d4b776d0-d898-4153-90c8-8336f86bdfec/NIBRS-Trend-Analysis-Report.pdf>.
- 52** Richard Rosenfeld, Bobby Boxerman, and Ernesto Lopez, *Pandemic, Social Unrest, and Crime in U.S. Cities: Year-End 2022 Update*, Council on Criminal Justice, 2023, <https://councilonci.org/wp-content/uploads/2023/01/CCJ%E2%80%93Crime-Trends-Year-End-2022-Word-for-PDF.pdf>.
- 53** Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, Brennan Center for Justice, November 21, 2019, <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.
- 54** Austin et al., *How Many Americans Are Unnecessarily Incarcerated?*, 7.

- 55** Michael Mueller-Smith, "The Criminal and Labor Market Impacts of Incarceration," working paper, University of Michigan, August 2015, 25, <https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf>.
- 56** Craigie, Grawert, and Kimble, *Conviction, Imprisonment, and Lost Earnings*, 7, <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.
- 57** James M. Anderson, Maya Buenaventura, and Paul Heaton, "The Effects of Holistic Defense on Criminal Justice Outcomes," *Harvard Law Review* 132 (2019): 819–93, 824, 882, 884, https://harvardlawreview.org/wp-content/uploads/2019/01/819-893_Online.pdf.
- 58** E. Ann Carson, *Prisoners in 2020 – Statistical Tables*, Bureau of Justice Statistics, 2021, 19, <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>.
- 59** Casey Kuhn, "The U.S. Spends Billions to Lock People Up, but Very Little to Help Them Once They're Released," PBS, April 7, 2021, <https://www.pbs.org/newshour/economy/the-u-s-spends-billions-to-lock-people-up-but-very-little-to-help-them-once-theyre-released>.
- 60** Leonardo Antenangeli and Matthew R. Durose, *Recidivism of Prisoners Released in 24 States in 2008: A 10-Year Follow-Up Period (2008–2018)*, Bureau of Justice Statistics, 2021, 1, https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%20compliant%20PDFs.
- 61** Leadership Conference on Civil and Human Rights, "Fact Sheet: Barriers to Successful Re-Entry of Formerly Incarcerated People," 2017, 1, <http://civilrightsdocs.info/pdf/criminal-justice/Re-Entry-Fact-Sheet.pdf>.
- 62** Melissa Li, "From Prisons to Communities: Confronting Re-entry Challenges and Social Inequality," American Psychological Association, March 2018, <https://www.apa.org/pi/ses/resources/indicator/2018/03/prisons-to-communities>; Wendy Sawyer, "Who's Helping the 1.9 Million Women Released from Prisons and Jails Each Year?," Prison Policy Initiative, July 19, 2019, <https://www.prisonpolicy.org/blog/2019/07/19/reentry/>; and Kuhn, "The U.S. Spends Billions to Lock People Up."
- 63** Ebony N. Russ et al., "Prison & Jail Reentry & Health," *Health Affairs*, October 2021, 2, <https://www.healthaffairs.org/doi/10.1377/hpb20210928.343531/full/health-affairs-brief-prison-community-reentry-russ.pdf>.
- 64** Susan Gibel and Leilah Gilligan, "A Rational Planning Process for a Learning Organization," section 4 in *Increasing Public Safety Through Successful Offender Reentry: Evidence-Based and Emerging Practices in Corrections*, Madeline M. Carter et al., eds., Center for Effective Public Policy, 2007, 46, http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/forecastresearchworkgroup/resources/svori_cepp.pdf.
- 65** Danyelle Solomon, Connor Maxwell, and Abril Castro, "Systematic Inequality and American Democracy," Center for American Progress, August 7, 2019, <https://www.americanprogress.org/article/systematic-inequality-american-democracy/>; Katherine Schaeffer, "Racial, Ethnic Diversity Increases Yet Again with the 117th Congress," Pew Research Center, January 28, 2021, <https://www.pewresearch.org/fact-tank/2021/01/28/racial-ethnic-diversity-increases-yet-again-with-the-117th-congress/>; Renuka Rayasam et al., "Why State Legislatures Are Still Very White — and Very Male," *Politico*, February 22, 2021, <https://www.politico.com/interactives/2021/state-legislature-demographics/>; and Suzanne Bronheim, Phyllis Magrab, and Raymond Crowel, *Social Exclusion in the United States: Policy Implications for Community Solutions*, Organisation for Economic Co-operation and Development, 1999, 2, <https://www.oecd.org/unitedstates/1855950.pdf>.

ABOUT THE BRENNAN CENTER'S JUSTICE PROGRAM

The Brennan Center's Justice Program seeks to secure our nation's promise of equal justice for all by creating a rational, effective, and fair justice system. Its priority focus is to reduce mass incarceration. The program melds law, policy, and economics to produce new empirical analyses and innovative policy solutions to advance this critical goal.

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