

Poverty and Mass Incarceration in New York

An Agenda for Change

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With a foreword by Wes Moore

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Foreword

The past year has been a reckoning. As a nation, we were finally forced to confront the reality and interconnectedness of racism, inequality, and injustice, which have permeated our institutions and systems for centuries. When the protests that began in Minneapolis made their way to New York, we marched not just for George Floyd, Breonna Taylor, Eric Garner, or Freddie Gray but for all the lives that have been stolen and devalued by the very systems that are meant to uphold and preserve justice.

Recovery — of our health, our economy, and the moral fabric of our society — will take a nationwide effort in which we all must participate, and that means addressing the broken systems and inequities in our own communities. In New York, we have a long road ahead of us.

Despite efforts to shrink it, New York's prison infrastructure is one of the largest in the country. Today, more than 40,000 New Yorkers are behind bars and another 337,000 have spent time in prison at some point in their lives; three-quarters of them are people of color. As the recent Brennan Center report *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality* shows, this creates enormous, lasting consequences for impacted individuals, families, and communities. Time spent in prison can reduce a person's lifetime earning potential by half a million dollars. In New York State alone, imprisonment translates to nearly \$2 billion annually in reduced earnings, overwhelmingly extracted from communities of color, the very communities Robin Hood serves.

Between policing, jails, prisons, probation, and parole, New York State, its counties, and its localities spent \$18.2 billion on the carceral system in 2019, according to a new report by the Center for Community Alternatives. By contrast, New York spent just \$6.2 billion that year on mental health services, public health, youth programs and services, recreation, and elder services.

This is no accident or aberration. Budgets are not impartial or apolitical documents; they are reflections of who and what we value as a society. Ours show us that for generations, New York's criminal justice system has intentionally and systematically blocked low-income

communities of color from realizing economic opportunity and exercising their human potential, and instead made poverty and imprisonment endemic to them.

But policies and budgets can change. Last year, New York passed important reforms related to discovery, bail, and trial conduct, and our overall prison population continues to drop year over year. Following the lead of states including Louisiana, Missouri, and South Carolina, New York legislators and advocates have advanced a new set of priorities. The Less Is More Act, for example, would prevent thousands of New Yorkers from being reincarcerated for technical parole violations like being late for curfew, failing a drug test, or missing appointments with a parole officer.

The report that follows explores many potential reforms that would decrease the flow of people into the system, reduce overly punitive penalties, and provide greater support to those who are formerly incarcerated. We must not let our momentum or determination waver. While we cannot erase the harms done to generations disenfranchised by our criminal justice system, we can change how our society values the lives of those who have passed through it. We can create budgets that prioritize our schools over our prisons, and we can invest in our communities instead of surveilling them.

That would be the kind of lasting, meaningful change that millions took to the streets to secure in the name of justice for lives taken far too soon.

Wes Moore
Chief Executive Officer
Robin Hood

Introduction

Despite significant progress toward reducing the scale of mass incarceration, New York State continues to operate one of the largest prison systems in the nation, holding 43,500 people behind bars.¹ New analysis conducted for this report reveals an even starker reality: roughly 337,000 New Yorkers have spent time in prison at some point in their lives. That burden has fallen disproportionately on people of color: three-quarters of the state's formerly imprisoned population is Black or Latino.

The collateral consequences they face are staggering. A recent Brennan Center report, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, shows that imprisonment and conviction diminish economic opportunity and, in aggregate, deepen racial and economic inequality.² Time in prison reduces someone's lifetime earning potential by nearly half a million dollars on average. And even a misdemeanor conviction reduces earnings by 16 percent.³ The ramifications are dire. The legacy of imprisonment alone translates to as much as \$1.9 billion annually in reduced earnings across New York State, borne overwhelmingly by people of color.

Reducing the economic damage of mass incarceration in New York — and its effect on racial inequality — requires, first and foremost, that the state shrink the size of its criminal justice system. But much must also be done for the many people who have already experienced conviction or imprisonment. Policymakers must improve the parole process, address a convoluted sentencing structure, and expand job and housing opportunities for the hundreds of thousands of New Yorkers who already have a criminal record.

Toward that end, this policy brief first explores the complex realities of New York's criminal justice system and then recommends specific steps that state and local lawmakers can take to mitigate these collateral consequences of conviction and incarceration.

The Economics of Reform

Facing diminished tax revenues and uncertain prospects for federal aid amid the coronavirus pandemic, New York State lawmakers must contend with a serious budget deficit that may seem to limit their ambitions. But many of the policies described here will either have no impact on the state's bottom line or, in some cases, significantly reduce correctional spending. Reducing unnecessary incarceration and mitigating its consequences for New York communities is primarily a moral imperative. But these efforts can also reinforce rather than undermine budget discipline.

While some of these reforms come with a small up-front price tag, they should be viewed as investments in the people of the state and its economic future. Today's budget crisis underscores the need to think about the state's long-term financial health. And as this report shows, criminal justice reform can complement efforts to build a more diverse and resilient state workforce. Conviction and imprisonment present serious obstacles to economic well-being, in some cases even marking the difference between escapable and inescapable poverty. Reducing those barriers and providing economic opportunities to people already ensnared in the criminal justice system will help more people achieve financial independence, stability, and ideally, prosperity.

Policy Recommendations

Policymakers across the state should pursue three complementary goals. First, they should reduce the number of people required to interact in any way with the criminal justice system, given the significant economic consequences of even a relatively minor criminal record. Second, they should ensure that people in jails or prisons spend less time there. Third, they should expand opportunities for those already impacted by the criminal justice system. These three steps would help remedy the economic harms of mass incarceration borne by too many New Yorkers and reduce the resulting inequalities.

Specific policy recommendations are summarized below and described in depth in Section III. Policymakers should:

Decrease the Number of People Entering New York's Criminal Justice System

- **Legalize and regulate marijuana.** Marijuana arrests have driven up racial disparities in the criminal justice system as a whole, as historically, Black New Yorkers have disproportionately faced such charges.⁴ Possession of marijuana is not a violent act and does not

inherently endanger public safety; there is arguably no need for it to be criminalized at all.⁵ State lawmakers should build on recent decriminalization efforts by fully legalizing marijuana, expunging marijuana-related offenses from criminal records, and ensuring that the proceeds of a regulated marijuana industry flow to communities that have borne the brunt of past criminal enforcement.

- **Increase access to pre-arraignment diversion.** Prosecutors and nonprofits in New York City have collaborated on diversion programs that allow people to avoid conviction, or even criminal charges, if they complete certain programs. These initiatives are less common outside the five boroughs. Local policymakers should adopt these programs and expand them to cover more offenses, and the state should provide financial support where necessary.

Reevaluate Excessive Sentences

- **Streamline parole.** New York State reincarcerates an alarming number of people for technical parole violations, and Black people are especially likely to be reincarcerated for them.⁶ State lawmakers should pass the Less Is More Act to end this punitive practice, provide for a presumption of release, fully staff the Board of Parole, and ensure that commissioners are able to access all the records they need to make an informed decision.
- **Reform New York’s sentencing structure to decrease baseline sentences, lessen the severity of habitual offender statutes, and reevaluate who and what are criminalized.** New York State’s sentencing laws have become both excessively punitive and hopelessly convoluted. While their primary goal must be decreasing the number of people required to interact

with the justice system in the first place, lawmakers should also pursue harm reduction for those who do become involved with the system by shortening sentences that are unnecessarily long. Ultimately, lawmakers must reevaluate who and what ought to be criminalized, and to what extent.

Help Formerly Incarcerated Individuals Succeed in Their Communities

- **Expand access to prison education programs.** Several highly successful programs in New York State enable imprisoned people to enroll in college courses and ultimately earn a degree, promoting employment and reducing recidivism in the process. State lawmakers can expand these initiatives by repealing restrictions that prevent those in prison from receiving state-supported, need-based financial aid.
- **Make the sealing of criminal records broader, faster, and automatic.** Criminal records never really disappear, which helps explain why convictions carry such long-term economic consequences. Policymakers can make it easier for formerly justice-involved people to find a job, secure a professional license, or even obtain housing by providing for the automatic sealing of old criminal records. Ideally, this expansion would allow misdemeanor records to be sealed promptly, and felony records with time.
- **Remove barriers to housing.** People with a criminal record often struggle to find housing, contributing to cycles of poverty and recidivism. A key safety net, New York City’s public housing authority, is currently reforming its practices that bar people with criminal records. State and local officials should explore other policy options to expand housing access, such as “ban the box” policies for private rental housing.

I. Criminal Justice Involvement and Racial and Economic Inequality: The National View

More than 70 million Americans have a criminal record of some kind, an obstacle to finding a well-paying, stable job even in the best of times.⁷ Truly understanding the impact of the criminal justice system on economic opportunity, though, requires a much closer look. The consequences people face vary widely depending on the extent of their contact with the justice system.

Some people spend decades in prison, but even passing contact with the justice system can entail serious economic harms.⁸ On an annual basis, convictions appear to reduce earnings by as much as 22 percent, depending on the seriousness of the offense, and imprisonment by 52 percent.⁹ These deleterious effects touch a large number of people, as summarized in table 1: Nearly 8 million Americans have been to prison at some point in their lives. Another 12 million people have been convicted of a felony without serving a prison sentence for it. And as many as 46.5 million people have been convicted of a misdemeanor — that is, a minor offense such as shoplifting or drug possession. Put another way,

roughly one in every seven Americans has been convicted of at least a misdemeanor.¹⁰

Over the course of a lifetime, these lost earnings accumulate and, as also shown in table 1, can reach a sum that for many families will make the difference between escapable and inescapable poverty. These findings have serious ramifications for economic and racial justice. Despite some progress toward building a fairer criminal justice system, racial disparities in prisons remain quite high.¹¹ As a result, Black and Latino people are overrepresented in the formerly imprisoned population. They are also less likely to see their earning trajectory rebound after imprisonment.

TABLE 1

Nationwide Economic Impact of Conviction and Imprisonment

	NUMBER OF PEOPLE	ANNUAL AVERAGE EARNINGS LOSS	AVERAGE LIFETIME EARNINGS LOSS
Formerly imprisoned people	7.7 million	51.7%	\$484,400
White	2.7 million	–	\$267,000
Black	2.7 million	–	\$358,900
Latino	2.3 million	–	\$511,500
People convicted but not imprisoned			\$98,800*
Felonies	12.1 million	21.7%	–
Misdemeanors	46.8 million	16.0%	–

*In this table, \$98,800 represents lifetime earnings lost due to a conviction in general, whether for a felony or another offense. Because of data limitations, the report is not able to distinguish between the lifetime impact of a misdemeanor relative to that of a felony.

Source: *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality* (2020).

II. Unique Challenges for New York City and State

Over the last few decades, city and state policymakers have taken important steps toward reducing the criminal justice system's size and impact. However, significant work remains to be done, both to address continuing problems and to remedy damage done by past decades of misguided policies.

A. New York State's History of Discriminatory Policies Contributes to Persistent Racial Disparities in the Formerly Imprisoned Population

As prison populations boomed across the country over the last 50 years, so did that of New York State, growing from a little more than 12,000 in the early 1970s to 70,000 at the turn of the century.¹² This massive growth stemmed in part from a series of laws (among them the so-called Rockefeller drug laws) that were introduced in the 1970s and exposed people convicted of even lower-level drug crimes to severe prison sentences.¹³

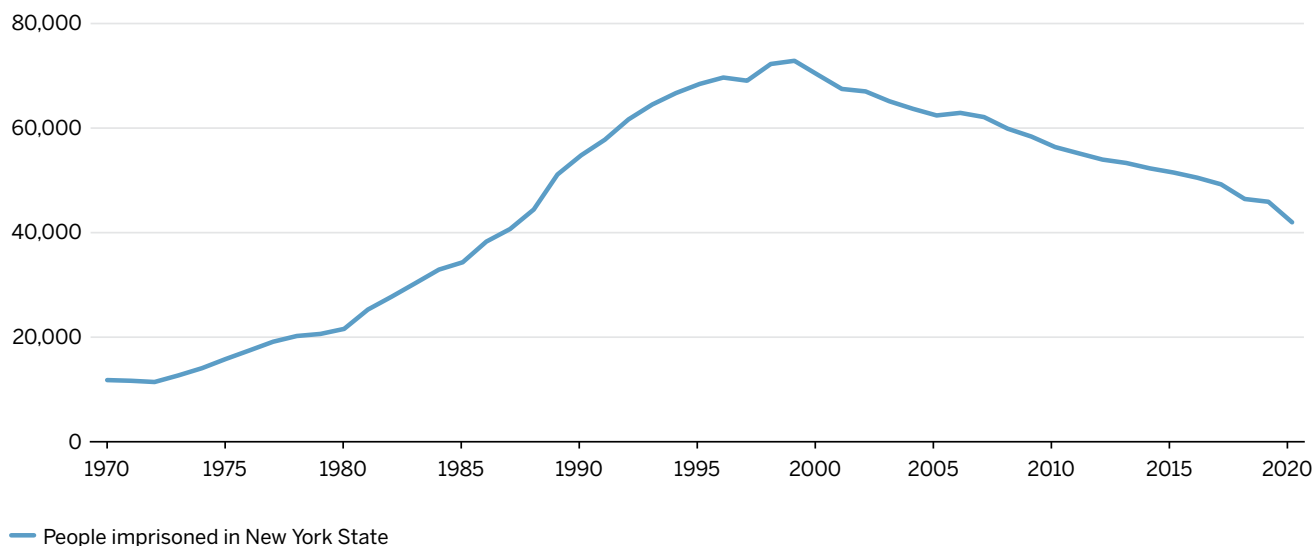
Black and Latino communities were disproportionately singled out for punishment under these laws. As recently as 2000, fully 93 percent of people committed to prisons in New York State for drug crimes were Black or Latino.¹⁴ The provisions were largely moderated by a series of reforms enacted from 2004 to 2009.¹⁵ Some changes were made retroactive, allowing people who were punished under the old regime to seek resentencing.¹⁶

By the time of these changes, the state prison population was already in decline, due in part to New York City's implementation of diversion programs and related strategies but primarily to a drop in felony arrests in the city.¹⁷ As shown in figure 1, New York State prisons now hold 40 percent fewer people than they did at their peak.¹⁸ As of December 2020, Gov. Andrew Cuomo had presided over 17 prison closures.¹⁹ New York City's share of the prison population has also dropped, reflecting changes in enforcement practices.²⁰

These reforms, however, have not wiped out the legacy of the more punitive regime that preceded them, which

FIGURE 1

The Rise and Fall of Mass Imprisonment in New York



Source: New York State Open Data and U.S. Bureau of Justice Statistics. For more information, see note 18.

exposed hundreds of thousands of formerly imprisoned New Yorkers to the harms outlined in Section I. Using a methodology similar to the one described in *Conviction, Imprisonment, and Lost Earnings*, we estimate that, as of 2016, some 337,400 living New Yorkers had spent time in prison — that is, roughly 1.7 percent of the state’s population.²¹

New York’s formerly imprisoned population is also disproportionately made up of Black and Latino people. These disparities are even more stark than they are nationwide. Nationally, Black men and women make up about 35 percent of the formerly imprisoned population.²² Even though New York State’s demographic composition is comparable to the nation’s as a whole, Black men and women represent roughly 43 percent of the state’s formerly imprisoned population.²³

Such racial disparities have real-life economic consequences. Drawing on national earnings figures from previous Brennan Center research, it is possible to estimate the effect of criminal justice involvement on the annual earning potential of formerly imprisoned New Yorkers. As depicted in table 2, lost earnings among the state’s formerly imprisoned population reach as high as \$1.9 billion annually, with more than 80 percent of those losses borne by Black and Latino communities.²⁴

Any criminal justice agenda, then, must aim to improve opportunity among those already impacted by racially disparate overpolicing and overimprisonment practices of past decades. It must also continue reducing racial disparities — such as the overrepresentation of people of color in the formerly imprisoned population — and the number of people currently incarcerated in state prisons, so that future generations do not suffer similar harms.²⁵

TABLE 2

Black and Latino New Yorkers Face Sharply Reduced Earnings

	FORMERLY IMPRISONED PEOPLE IN NEW YORK STATE	ANNUAL AGGREGATE EARNINGS LOSS
Black	145,800	\$889.5 million
Latino	104,600	\$749.9 million
White	76,200	\$214.2 million
Other	10,800	N/A
Total	337,400	\$1.9 billion

Source: Brennan Center analysis. For more information, see notes 21 and 24.

B. Misdemeanor Enforcement Remains High Statewide, Reinforcing Racial Disparities

Brennan Center research illustrates that misdemeanor convictions, for offenses such as petty larceny and simple assault, significantly reduce earning potential.²⁶ Even though their impact on individuals is smaller than that of felonies or imprisonment — they appear to carry less than half the effect of a prison record — they are more widespread and thus another driver of inequality.²⁷ Reducing their prevalence is a necessary step toward minimizing the devastating economic consequences of the criminal justice system.

Here too progress has been made, but not enough. New York City criminal courts process more than 100,000 misdemeanor arrests per year, ending in roughly 40,000 convictions — a decrease of nearly 50 percent since 2015.²⁸ But outside New York City, the number of misdemeanor convictions has hardly changed over the past five years.²⁹

While efforts by city lawmakers to shrink the misdemeanor system are working, then, such innovation has not spread far beyond the five boroughs.³⁰ Critically, the statewide drop in misdemeanor arrests and convictions has also not reduced racial disparities. Black men and women account for 35 percent of all people with misdemeanor convictions but just 14 percent of the state’s population — a disparity that has fallen only slightly over the preceding decades.³¹

Combined with Brennan Center findings showing the serious economic harms wrought by misdemeanor convictions, these data points underscore the need to continue reducing the frequency of even minor sanctions in the criminal justice system. Policymakers should also seek to identify and eliminate the factors contributing to persistent disparities in criminal justice involvement.

C. New Yorkers Sent to Prison Stay Incarcerated for Too Long, with Little Public Safety Rationale

Four decades of piecemeal amendments and politically motivated measures have left New York’s sentencing system in a confused state.³² As an example, New York provides a mixture of determinate sentences (prescribing a set number of years that must be served) and indeterminate sentences (prescribing a range of years, such as

“25 years to life imprisonment,” of which a person must serve a significant portion before becoming eligible for parole).³³ While there have been recent efforts toward standardization, there is still much work to be done to make the system clearer and fairer.³⁴

Additionally, while fewer people enter prison today, the length of time they spend in prison remains high, despite mounting evidence that longer sentences fail to meaningfully protect the public and may even be counterproductive.³⁵ Sentence length is actually trending upwards: from 2013 to 2017, the percentage of people sentenced to a minimum term of 23 months or fewer decreased, while the percentage of people sentenced to 24 or more months increased.³⁶ Nor is there a public safety rationale for many New Yorkers, including older adults, to be incarcerated at all.³⁷

Some long sentences can be cut short by a grant of parole, a form of supervised release that is granted at the discretion of the State Board of Parole.³⁸ But the rules governing parole prevent it from serving as an effective check on excessive sentences broadly.³⁹ Policymakers should work to improve parole and otherwise build a fairer sentencing system.

These reforms should be a priority. According to some estimates, it costs as much as \$19,000 annually for the state to imprison an individual for a year. Parole supervision, by comparison, costs around \$2,000 annually.⁴⁰ While budget realities may necessitate difficult tradeoffs this session, lawmakers should seriously consider streamlining correctional spending, for moral *and* economic reasons — especially before cutting social programs that

reduce poverty and its profoundly negative consequences, economic and otherwise.⁴¹

D. Justice-Involved People Face Many Barriers to Reentry

The collateral consequences of conviction burden justice-involved people long after their sentences end. Research indicates that a criminal conviction reduces by 50 percent the likelihood of a callback on initial job applications, helping explain the Brennan Center’s findings about the long-term effects of conviction and imprisonment on earnings.⁴² And justice-involved people are currently ineligible for many jobs. In New York, those with a criminal record face more than 100 employment bars and professional licensing restrictions.⁴³

Among the many obstacles formerly imprisoned people face, difficulties securing housing and employment are often the most formidable. In fact, formerly imprisoned people are more than 10 times likelier to experience homelessness than the general population. Moreover, a lack of stable housing increases the likelihood of their reincarceration.⁴⁴ Stable housing and employment are also mutually reinforcing — and both are vital to successful reentry.⁴⁵ By mitigating these collateral consequences of a criminal record, policymakers in New York can maximize the likelihood that people will not return to prison.

III. Policy Recommendations to Reduce Racial Disparities and the Damage of Conviction and Imprisonment

To address these problems, policymakers must reduce the rate at which people enter the justice system, provide opportunities for early release to those who have already served much of their sentences, and ensure meaningful opportunities for those with a criminal record. Innovative policymaking, experimentation, data collection, and careful evaluation will all be vital. The policies outlined below are intended to serve as a starting point for that work.

Critically, many of these policies are budget neutral or would even save the state money. Governor Cuomo has specifically cited marijuana legalization as a potential source of tax revenue. Reforms aimed at reducing the unnecessary reincarceration of people on parole supervision would save millions more.⁴⁶ And expanding parole eligibility and streamlining parole release criteria could allow the state to make better use of cost-effective alternatives to prolonged incarceration.⁴⁷

Other policies, such as diversion initiatives, do come with an up-front price tag. But these costs should be evaluated in light of the significant, positive impact such programs would have on people and communities struggling with poverty. Diversion programs help people avoid the enduring stigma of a criminal record and the related earnings loss identified in Brennan Center research. Prison education helps people enter the workforce more easily after release from incarceration. We encourage lawmakers to evaluate such investments holistically and consider the long-term benefits they would bring to the state's economic well-being.

A. Decrease the Number of People Impacted by New York's Criminal Justice System

The first step toward decarceration — and reducing the economic damage identified by Brennan Center research — is ensuring that fewer people interact with the criminal justice system in any way at all. The policies below would accomplish that goal by eliminating one basis for arrest entirely and helping people suspected of other offenses avoid charges or conviction.

Legalize and Regulate Marijuana

For decades, marijuana arrests have served as a common point of entry into New York's criminal justice system and served to starkly illustrate racial disparities in law enforcement.⁴⁸ To address these problems, policymakers should legalize marijuana outright, ensure that old records are expunged, and invest the proceeds of legalization and regulation in communities of color.

New York has taken positive steps by decriminalizing certain marijuana offenses, issuing citations in lieu of prosecution. The first step came in 1977, when possession of less than 25 grams of marijuana, hidden from public view, was made punishable by a \$100 fine, similar to a routine traffic violation.⁴⁹ In 2019 the state decriminalized more marijuana offenses and provided for the expungement of convictions in which low-level possession was the top charge.⁵⁰ This change was vitally important: though marijuana enforcement had been trending downward for years, public data suggests that low-level marijuana offenses still accounted for 8,000 arrests in 2018 and that an overwhelming proportion of the people arrested were Black or Latino.⁵¹

Still, this legislation left much unaccomplished, and without further action, marijuana arrests and prosecutions will continue to contribute to poverty and lost opportunities. Marijuana enforcement still provides a gateway into the justice system. For example, police claims related to the "odor" of marijuana still serve as the basis for search and seizure, exposing people to greater police contact and the corresponding risk of arrest, conviction, and imprisonment for drug or other offenses.⁵² Additionally, even after 2019's reforms, some marijuana offenses remain criminal and ineligible for expungement.⁵³

To confront these problems, lawmakers should take the following steps:

- **Legalize and regulate marijuana.** Full legalization would end the state's piecemeal treatment of offenses that do not implicate public safety.⁵⁴

- **Invest in communities most harmed by prohibition.** In legalizing marijuana, lawmakers must also ensure that the proceeds of the new, legal marijuana economy go to those communities most impacted by decades of drug-related convictions and prison sentences. Toward that end, regulators should first ensure that people from those communities are able to easily obtain licenses to operate marijuana-based businesses and that they are not shut out of the market by larger businesses. Further, lawmakers should provide a mechanism for some of the tax revenue raised through legalization to be invested in (for example) nonprofit organizations serving these communities.⁵⁵
- **Provide for full expungement of all past marijuana offenses.** With marijuana legalized, all past marijuana convictions should be automatically expunged, so that they no longer impede any future job interview, licensing application, or related opportunity. People still serving sentences based on marijuana convictions should also have their convictions expunged and be released (absent other bases for conviction, in which case resentencing would be warranted).⁵⁶ Lawmakers should also provide a mechanism for people to seek resentencing if their sentence for a *non*-marijuana offense was enhanced due to a prior marijuana conviction.

Critics worry that legalization may cause marijuana use to expand dramatically — powered, potentially, by large corporations aggressively marketing marijuana and exploiting heavy users, as has happened with alcohol and tobacco.⁵⁷ But marijuana carries a lower risk of dependence than those substances, and concerns about corporate consolidation and exploitation can be tempered by careful regulation.⁵⁸ These risks must also be weighed against the continuing damage caused by drug prosecutions.

Once viewed as overly ambitious, these reforms are now within reach and should be a priority for 2021. Governor Cuomo proposed his own legalization bill in 2020, and a final compromise on the measure was prevented only by the intervention of the Covid-19 public health crisis.⁵⁹ The governor again highlighted marijuana reform in his 2021 State of the State address and stressed the potential financial windfall it would bring New York.⁶⁰ Legislators should pick up where they left off in 2020 and ensure that legalization, expungement, and reinvestment are part of any final reform package.⁶¹

Increase Access to Pre-arraignment Diversion Programs

After people are cited or arrested but before their cases are fully adjudicated, they may have the opportunity to

avoid the traditional criminal justice system through a diversion process by which, if they comply with certain conditions, they can effectively avoid criminal conviction or, in some cases, avoid even being charged.⁶² Diversion initiatives are powerful tools for preventing people from experiencing the collateral consequences of a criminal record and should be expanded to serve as many New Yorkers as possible.

Diversion initiatives come in many forms, from problem-solving courts (which aim to address the underlying conditions that contribute to certain lower-level offenses) to restorative justice programs (which center overall community health and conflict resolution).⁶³ One promising model is pre-charge or pre-arraignment diversion, which ideally ensures that people are never even charged with an offense. An example of this model, Project Reset, has been operated by all five of New York City’s district attorneys.⁶⁴ Under this initiative, people are issued a desk appearance ticket — an order to appear in court as an alternative to custodial arrest — for select nonviolent misdemeanors and offered the chance to participate in programs such as counseling or group workshops.⁶⁵ Upon their successful completion, prosecutors decline to pursue the case.⁶⁶ Since 2015 Project Reset has helped at least 3,665 people avoid becoming ensnared in the criminal justice system.⁶⁷

Other New York City programs are aimed at solving specific problems. For example, Project CLEAR, operated by the Brooklyn district attorney’s office, and the Heroin Overdose Prevention and Education (HOPE) Initiative, run by the Staten Island district attorney’s office, serve those charged with lower-level drug offenses and connect them with counseling or treatment services.⁶⁸

Outside the metropolitan area, though, such initiatives are comparatively sparse.⁶⁹ Many counties operate problem-solving courts, and major cities including Albany and Syracuse have innovative programs of their own.⁷⁰ But pre-charge diversion programs in the model of Project Reset are uncommon outside New York City and its immediate vicinity.⁷¹ Budget insecurity has also jeopardized Project Reset’s work in three of New York City’s five boroughs, limiting its impact.⁷²

Local policymakers should address these problems, with support from the state, nonprofit organizations, and private philanthropy. Specifically, policymakers should pursue the following:

- **Ensure stable funding for New York City programs.** Funding for city diversion programs is not entirely secure. Project Reset’s operations in Brooklyn, Queens, and Staten Island were suspended as of October 1, 2020, due to a budget shortfall.⁷³ Policymakers should ensure that these initiatives are restored and receive robust, reliable funding. Ideally, funding would be “baselined,” meaning Project Reset and programs like it would be

presumptively funded as part of agency operations going forward.⁷⁴

- **Expand diversion strategies and programs to upstate counties.** Policymakers and prosecutors across New York State should study city programs such as Project Reset and the HOPE Initiative, as well as restorative justice models, and tailor them to their counties' unique needs. These programs should be made broad in scope and available at a minimum in all misdemeanor cases.⁷⁵
- **Provide necessary financial support structures.** Critically, diversion programs typically require both government support and private funding to succeed.⁷⁶ The latter factor may prove challenging in upstate counties, some of which may lack an extensive philanthropic network to fund reentry service providers. State and local lawmakers should be prepared to fund diversion

programs and to underwrite the social service providers those programs will need if they are to succeed. Dedicated funding for social work staff may also be needed to help identify people who would benefit from diversion programs and advocate for them.⁷⁷ While bold, the idea is not unprecedented: in 2005, Wisconsin lawmakers authorized grants to counties for formal diversion initiatives, and by 2006, the state had established the Treatment Alternatives and Diversion (TAD) grant program.⁷⁸

To be sure, these programs come at a cost, and lawmakers may balk at funding novel initiatives in this fiscal climate. That would be a mistake. The implementation costs at issue here — less than \$1 million annually in the case of Project Reset in the Bronx — pale in comparison with the expense of incarceration and the long-term costs people incur from conviction and imprisonment.⁷⁹ They may also reduce law enforcement costs over the long term.⁸⁰

The Role of Problem-Solving Courts

During the 1990s, cities and towns across the country concluded that the traditional tools of the court system were failing to address the chronic social crises — such as substance abuse, family dysfunction, and homelessness — that draw people into the criminal justice system.⁸¹ Jurisdictions responded by establishing special dockets to work with people struggling with these issues and connect them with effective community-based interventions, treatment, or services.⁸²

Sometimes called “treatment” or “problem-solving” courts, these specialty courts also help limit the damage caused by conviction and imprisonment. Participants who successfully complete programs to which they are assigned may see all criminal charges against them dropped or gain access to alternatives to incarceration.

While they are important tools for reducing justice involvement, these initiatives must be implemented with care. One criticism of drug courts is that participants may face jail or prison time if they fail to comply with supervisory conditions — suggesting that such courts may inadvertently contribute to incarceration. Some reform advocates also object to the coercive nature of these courts, as they may (for example) mandate drug treatment. They argue that such direction is inconsistent with a public health model of drug policy.⁸³

>> The State Background

Since the 1990s, New York State has relied on a wide variety of problem-solving courts to tackle numerous social problems.⁸⁴ Today the state has a variety of initiatives, ranging from drug treatment courts to veterans' courts to community courts.⁸⁵ In 2019 Governor Cuomo signed legislation clarifying the role of these initiatives in the state's criminal procedure law, a sign of their permanence and importance to the state's criminal justice landscape.⁸⁶

>> Expanding Access

Despite this robust network, there is still room for improvement. All counties except Hamilton have drug treatment courts, but most counties have no community courts.⁸⁷ Some initiatives, including reentry courts, exist only in New York City.⁸⁸ The legislature should fund the creation of new problem-solving courts outside the New York City area, focusing specifically on the northern and western portions of the state. In addition, the state legislature should invest in community-wide initiatives, services, and referral programs that help realize the goals of problem-solving courts. Expanding access to problem-solving courts and the community-based interventions on which they depend will lessen New York's reliance on incarceration and provide vital services throughout the state.

B. Reduce Unnecessarily Long Prison Sentences

The most effective way policymakers can mitigate the damaging effects of prison is by decreasing the number of people who become swept up in the criminal justice system in the first place. But a harm reduction strategy requires that policymakers also shorten unnecessarily long prison sentences for those who have been convicted. Critically, this action can be taken without risking public safety; there is little evidence that long prison sentences reduce crime.⁸⁹ In many cases involving older people behind bars, release is even a moral imperative.⁹⁰ The solutions described below address this problem from two complementary angles.

Reform New York’s Sentencing Structure to Decrease Baseline Sentences and Lessen the Severity of Habitual Offender Statutes

First, and most simply, lawmakers should reduce prison sentences across the board and reevaluate penalties for habitual offenders. Given the high cost of imprisonment in New York State — roughly \$19,000 per person per year — smart decarceration will also help the state confront the fiscal challenges caused by the coronavirus pandemic.⁹¹ Lawmakers should pursue the following:

- **Decrease the overall length of all sentences by at least 25 percent.** Decades of excessively punitive policies have failed to reduce crime but significantly lengthened the amount of time people spend behind bars.⁹² A Brennan Center analysis concluded that increasing sentences likely has diminishing returns on crime reduction and may even be counterproductive.⁹³ Scholars have suggested that the optimal incarceration period, after which recidivism increases, may be as short as 12 to 20 months.⁹⁴ By comparison, the average minimum sentence in New York State is around 47 months — at a cost to taxpayers of around \$73,000.⁹⁵

Given the promising alternatives to incarceration and the many costs of prison identified elsewhere in this report, custodial incarceration should be a last resort.⁹⁶ By accounting for crime severity, victim impact, intent, and likelihood of recidivism, the Brennan Center’s research suggests that incarceration periods can be safely cut by at least 25 percent.⁹⁷

- **Reassess recidivist sentencing enhancements.** New York’s felony sentencing schemes impose increasingly severe punishment on those who have prior felony convictions, requiring a minimum three-year sentence for the second commission of a felony.⁹⁸ These punish-

ments tend to be ineffective at deterring crime.⁹⁹ Such enhancements should be dramatically scaled back or reevaluated altogether.

Improve Parole to Reduce the Number of People Serving Excessive Sentences

Parole can serve as an important check on unnecessarily long prison terms. But the state’s parole system falls short in several important ways and contributes to cycles of reincarceration.¹⁰⁰ The reforms described below would ensure that parole is more broadly available, complementing other efforts to shorten excessive sentences:

- **Address technical violations through administrative sanctions rather than reincarceration.** Parole and community supervision usually come with a series of conditions, such as a curfew, drug testing, or limitations on travel.¹⁰¹ Violating any one of those conditions constitutes a technical violation and can lead to reincarceration — even if the person on supervision committed no crime and did nothing to endanger public safety.¹⁰² Currently, someone suspected of committing a technical violation of parole conditions can be reincarcerated for 15 days, and then another 90 days pending a revocation hearing.¹⁰³ If parole is ultimately revoked, this person may face a lengthy return to incarceration.¹⁰⁴ New York reincarcerates more people for technical parole violations than any other state except Illinois.¹⁰⁵ Black men and women are significantly more likely than others to be reincarcerated for these technical violations.¹⁰⁶

To end this unnecessarily punitive policy, lawmakers should take three steps. First, they should end the practice of jailing people accused of technical violations and instead permit them to remain in the community pending adjudication. Second, they should drastically limit or eliminate reincarceration for technical violations and substitute a series of graduated responses (e.g., a sanction, such as a formal reprimand, or an intervention, such as referral to reentry services), with the specific response keyed to the severity or persistence of the violation. If reincarceration is indicated, it should be for a period of weeks or months — not years.¹⁰⁷ Finally, lawmakers should offer people on parole the opportunity to earn early discharge.¹⁰⁸

The Less Is More Act takes steps toward each of these goals. First, it limits the use of detention when people are accused of technical parole violations, and provides for a recognizance hearing when detention is authorized, giving people a chance to avoid any unnecessary interruption to reentry. Second, it also sharply limits the use of incarceration for technical violations and provides for administrative sanctions instead. Last, it

creates a new system for earned-time credits by which people can shorten the length of their supervision. Lawmakers should ensure that this bill is enacted in the current session.¹⁰⁹

- **Create a presumption of release in hearings.** Each year, the New York State Parole Board denies parole to nearly 60 percent of the more than 10,000 people it interviews.¹¹⁰ The individual biases of commissioners can play a decisive role in shaping who is released and who is not.¹¹¹ New York should change this process by making grants of parole presumptive.¹¹² Presumptive release already exists in New York, but only in limited form; just 21 people qualified for it in 2016.¹¹³ Lawmakers should pass the Fair and Timely Parole Act, which would provide that people “shall” be released on parole unless “there is a current and unreasonable risk the person will violate the law if released and such risk cannot be mitigated by parole supervision.”¹¹⁴
- **Expand eligibility for age-contingent release.** While the state prison population continues to fall, the number of imprisoned people over the age of 50 has grown by 81 percent since 2000.¹¹⁵ People aged 50 and older are significantly less likely than their younger counterparts to recidivate and are thus much less likely to pose a threat to public safety.¹¹⁶ Such people are ideal candidates for parole but may not be eligible, depending on the terms of their sentence. The state legislature should take up a bill from the last session that would obligate the Board of Parole to hold a parole hearing for anyone over the age of 55 who has served at least 15 years behind bars.¹¹⁷
- **Professionalize the Board of Parole.** Today there are just 16 (of a possible 19) commissioners on the New York State Board of Parole. And while their caseload is falling, the commissioners are still tasked with conducting 10,000 to 12,000 parole interviews per year. It is unlikely that commissioners have the time to give any individual hearing the attention it deserves, especially because cases are not spread out evenly over the year.¹¹⁸ The legislature should fix this understaffing problem by increasing the maximum size of the board.¹¹⁹ With more commissioners, people will likely receive more individualized treatment — and be granted parole at higher rates.¹²⁰ Additionally, Governor Cuomo should ensure that all future appointments (and reappointments) help build a board that reflects a diversity of professional and personal backgrounds, allowing members to bring a better understanding of human behavior to each case.¹²¹ Last, the board should ensure that all commissioners have easy access to parole applicants’ files well in advance of hearings. Some reporting suggests that the board still does not

have digitized copies of each applicant’s record, forcing commissioners to travel to review the documents.¹²² This process likely makes it that much harder for commissioners to give each file the attention it deserves.¹²³

Parole reform would also save the state a considerable amount of money. The high cost of incarceration relative to parole supervision means that reducing wrongful parole denials and expanding eligibility would cut costs while preserving public safety.¹²⁴ Reincarcerating people for technical parole violations is also extraordinarily expensive, costing the state an estimated \$600 million annually. These costs, too, could be cut by imposing other sanctions for those who violate minor parole conditions. Taken together, parole reform offers lawmakers an opportunity to address the state’s budget crisis while building a fairer criminal justice system.¹²⁵

C. Reduce Barriers to Reentry

If enacted, the policies described above would reduce peoples’ exposure to the criminal justice system. But policymakers must also expand opportunities for people currently serving prison terms, as well as those who previously served, in order to insulate them from the system’s collateral consequences.

Expand Access to Education in Prison

Education in prison does not reach nearly as many people as it should. State lawmakers should follow Congress’s example and restore financial aid eligibility for people in prison. They should also consider eliminating other barriers to educational opportunities.

Providing secondary and postsecondary education in prison is a powerful way to eliminate some of the barriers that people face when they leave prison and enter the job market. People who receive some form of postsecondary education or vocational training while in prison are estimated to have a 12 percent higher chance of finding a job after release.¹²⁶ They are also less likely to be reincarcerated.¹²⁷

For decades, people in prison were eligible for, and benefited from, financial aid to support their enrollment in college-level coursework.¹²⁸ That changed when the Violent Crime Control and Law Enforcement Act of 1994 (the so-called 1994 Crime Bill) made people in state and federal prisons ineligible for Pell Grants, the most important need-based financial aid program in the United States.¹²⁹ Making things worse, in 1995 New York made

incarcerated people ineligible for the Tuition Assistance Program (TAP), a grant program for low-income New Yorkers.¹³⁰ The consequences for postsecondary education behind bars were dire: students could no longer afford to continue their education, forcing many providers to shut their doors.¹³¹

Some programs survived by turning to private philanthropies for support, but these grant streams — while important — are less reliable than dedicated public funding.¹³² New York State’s network of public universities and colleges continues to serve people in prison, especially in the north and west of the state.¹³³ And private universities and their partners operate high-quality programs in the Hudson Valley. For example, the Bard Prison Initiative (BPI) extends Bard College courses to people in six New York State prisons. Incarcerated students are taught by Bard faculty using the same curriculum as students at the main campus, and they graduate with a Bard degree.¹³⁴ Similarly, Hudson Link for Higher Education in Prison offers coursework at five prisons statewide in partnership with institutions including Columbia University and Vassar College.¹³⁵

For these programs and many others, restoring financial aid eligibility to people in prison would mean the return of more reliable funding and possibilities for expansion. Thankfully, change is in the air.¹³⁶ In late December 2020, Congress restored Pell Grant eligibility to people in state and federal prisons, provided that they are enrolled in programs that meet certain criteria, such as awarding transferable academic credits.¹³⁷ This long-sought change will make education in prison more accessible across the country.¹³⁸

But that expansion will not be complete, nor as successful as it could be, without reform at the state level. New York State should take the following steps:

- **Restore state financial aid for prospective students in state prisons.** State lawmakers should restore TAP eligibility for imprisoned people.¹³⁹ This change would complement Pell Grant restoration and could substantially expand the reach of education in prison.¹⁴⁰ It would particularly benefit upstate education providers, for whom private fundraising may be more difficult.¹⁴¹ Until this step is taken, New York State’s financial aid programs will be more restrictive than their federal analogues — an unenviable distinction.
- **Broaden TAP eligibility criteria to accommodate students in prison.** After restoring TAP eligibility, lawmakers should remove other barriers that limit the reach of education in prison. One impediment is that only full-time students are eligible for TAP under current law.¹⁴² That requirement could put the grants out of reach for some people in prison.¹⁴³ The full-time requirement is already waived in certain cases; lawmakers should add an exception for imprisoned students.¹⁴⁴

- **Fund reentry services to provide an easier transition to post-release education.** Not everyone who enrolls in classes while in prison can complete a degree before release. Reentry is always challenging, and the realities of post-release life may make it difficult or even impossible to continue working toward a degree.¹⁴⁵ “Navigators,” or experts who can walk people through the college enrollment process and respond to other challenges related to reentry, would help ensure that people who enrolled in college while in prison are able to attain their degree after release.¹⁴⁶ Policymakers should either fund these positions directly or contract with nonprofits to provide these services.¹⁴⁷ In Tennessee, for example, state-funded navigators work with *all* adults who enroll the state’s community college network — including people who enroll while imprisoned — and guide them through graduation.¹⁴⁸

Investing in college in prison may mean additional public expenses, but this cost may prove relatively small and should be weighed against potential savings.¹⁴⁹ Prisons have a devastating impact on the economic well-being of people who pass through them and, by extension, on their communities. Our estimates suggest that the resulting unemployment and underemployment lead to as much as \$1.9 billion in reduced earnings (see Section II). Providing education and training to people while they are imprisoned can reduce those effects and expand employment by better preparing people to enter the job market when they leave incarceration. Additionally, recidivism reductions associated with prison education may lessen future costs of prisons and jails.

Make the Sealing of Criminal Records Broader, Faster, and Automatic

A criminal record can reduce earnings for decades.¹⁵⁰ Brennan Center research shows that those with a criminal conviction miss out on roughly \$100,000 in earnings over the course of a career — a sign of the permanence of criminal records in modern life.¹⁵¹ To ensure that people receive meaningful opportunities after conviction or imprisonment, policymakers should strengthen New York’s processes for sealing criminal records. Sealing operates by functionally limiting who can view a criminal record after a set time has passed and certain criteria have been met.¹⁵² New evidence suggests that this relief significantly boosts wages and employment opportunities, and it can ensure that those who have already served their sentences can reintegrate into their communities without barriers preventing them from gaining employment and housing.¹⁵³

New York provides only limited opportunities for sealing. Criminal cases that do not end in conviction are sealed, and key records from them are either returned or

destroyed.¹⁵⁴ Certain marijuana convictions are also sealed, with similarly broad effect.¹⁵⁵ In both cases the relief approximates true expungement, rendering the sealed proceeding a “nullity.”¹⁵⁶ For anyone with a non-marijuana conviction record, though, options are limited. Since 2017, people convicted of certain nonviolent crimes — and who have no more than two convictions, only one of which can be for a felony — have been able to apply to have their records sealed after 10 years.¹⁵⁷ But even when relief is granted, records are retained, and they may be made available to law enforcement or government offices in specific circumstances.¹⁵⁸

People must also proactively apply for sealing. Few, however, have actually done so, suggesting that candidates may not know sealing is available or are deterred by administrative barriers from applying.¹⁵⁹ Unfortunately, that would not be surprising: someone wishing to have their record sealed must first wait for a decade to pass, locate and file the proper paperwork, and then potentially navigate an adversarial hearing.¹⁶⁰ Without these barriers, it is likely that more people would seek and obtain sealing. Indeed, an “overwhelming number” of those who do manage to apply obtain relief.¹⁶¹

New York’s laws lag far behind those of other states. For example, Pennsylvania, New Jersey, Utah, and California have already enacted so-called clean-slate laws, which automatically seal some criminal records after a set period.¹⁶² Nationwide, these initiatives enjoy broad bipartisan support. Some 70 percent of voters support clean-slate efforts, according to one poll.¹⁶³ Now, Clean Slate NY, a coalition of leaders in state criminal justice reform advocacy, is urging New York to follow this example and implement automatic expungement for criminal records.¹⁶⁴

Consistent with clean-slate principles, New York should update its sealing and expungement laws in two simple ways. These changes would make New York’s sealing policies some of the most progressive in the nation and demonstrate its commitment to rehabilitation:

- **Make sealing automatic.** People should not have to navigate a labyrinthine application process to obtain relief from old records. Instead, all who are eligible should have their records automatically sealed or expunged, without the need to go through paperwork, hearings, and the expense they involve.
- **Seal records promptly, especially in the case of lower-level offenses.** Ideally, all misdemeanor convictions should be sealed automatically after a relatively short

waiting period, such as one year.¹⁶⁵ People with felony records should also be entitled to automatic sealing, but potentially after a longer wait — perhaps one calibrated to state-specific recidivism rates.¹⁶⁶ Since the state already provides for the sealing of many felony records upon application after 10 years, this suggests an outer limit to when automatic relief should be made available.¹⁶⁷

Access to Housing

People returning to their communities from prison may face difficulties finding a place to live, putting them at risk of homelessness and potentially increasing recidivism.¹⁶⁸ A key safety net, the New York City Housing Authority (NYCHA), is taking steps to make it easier for people with a criminal record to obtain public housing.

For years, NYCHA barred people from applying for housing if they had been convicted of a crime within a certain period of time, with the length of the exclusion varying with the severity of the crime.¹⁶⁹ Those rules were partially relaxed for the Family Reentry Pilot Program (FRPP), under which NYCHA partnered with local service providers to reconnect around 100 otherwise excluded, justice-involved people with family already in NYCHA residences, with the goal of ultimately adding them to their families’ leases.¹⁷⁰ The FRPP was ultimately made a permanent part of NYCHA’s operations.¹⁷¹ In September 2020, NYCHA took another step, inviting public comment on a proposed rule that would dispense with NYCHA’s categorical approach to barring people with a criminal record and instead provide for individualized review of each formerly justice-involved person’s application.¹⁷² The review process would draw heavily on the FRPP’s infrastructure to ensure careful consideration of each case.¹⁷³ These changes, which were pending when this report was finalized, would represent a welcome change.¹⁷⁴

Policymakers should look for additional ways to expand housing access for justice-involved people. For instance, some cities have adopted rules banning or limiting criminal background inquiries in private rental applications.¹⁷⁵ The New York City Council recently considered similar legislation, which would complement NYCHA’s reforms.¹⁷⁶

Conclusion

Conviction and imprisonment carry profound economic consequences that trail individuals for decades and contribute to both poverty and the racial wealth gap. New York State is not immune to these problems, and lawmakers should be prepared to confront them, even — and perhaps especially — during a pandemic and economic crisis. Building a fairer, more effective criminal justice system can go hand in hand with fiscal discipline, saving the state money in the short term and reducing poverty and racial disparities in the long term. Economic and racial justice must be the foundations of any recovery, making the time for action now.

Endnotes

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- 3 Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 7, table 1.
- 4 New York State, Division of Criminal Justice Services, *Adult Arrests 18 and Older: 2010–2019*, 2020, <https://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/Allcounties.pdf>; and see New York Civil Liberties Union, *Reefer Madness: The Unfair Consequences of Marijuana Arrests in NY State*, 2014, https://www.nyclu.org/sites/default/files/publications/nyclu_reefermadness_final.pdf.
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- 10 Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 12.
- 11 James Cullen, “Despite Progress, Prison Racial Disparities Persist,” Brennan Center for Justice, August 19, 2016, <https://www.brennancenter.org/blog/despite-progress-prison-racial-disparities-persist>; and William J. Sabol et al., *Trends in Correctional Control by Race and Sex*, Council on Criminal Justice, 2019, 4, https://cdn.ymaws.com/councilonccj.org/resource/collection/4683B90A-08CF-493F-89ED-A0D7C4BF7551/Trends_in_Correctional_Control_-_FINAL.pdf.
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- 13 Jim Parsons et al., *A Natural Experiment in Reform: Analyzing Drug Policy Change in New York City, Final Report*, Vera Institute of Justice, 2015, 11, https://www.vera.org/downloads/publications/drug-law-reform-new-york-city-technical-report_03.pdf; and Peter A. Mancuso, “Resentencing After the ‘Fall’ of Rockefeller: The Failure of the Drug Law Reform Acts of 2004 and 2005 to Remedy the Injustices of New York’s Rockefeller Drug Laws and the Compromise of 2009,” *Albany Law Review* 73 (2010): 1537–39, <http://www.albanylawreview.org/issues/pages/article-information.aspx?volume=73&issue=4&page=1353>. For the political backdrop to these policies, see Brian Mann, “The Drug Laws That Changed How We Punish,” NPR, February 14, 2013, <https://www.npr.org/2013/02/14/171822608/the-drug-laws-that-changed-how-we-punish>.
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- 18 For this analysis and figure 1, data for the years 1970 through 1977 was obtained from Patrick A. Langan et al., *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925–86*, Bureau of Justice Statistics, May 1988, 11–13, table 1, <https://www.ojp.gov/pdffiles1/Digitization/111098NCJRS.pdf>. Data for the years 1978 through 2018 was obtained from Bureau of Justice Statistics, “Corrections Statistical Analysis Tool (CSAT) – Prisoners.” For data on 2019 and 2020, see New York State, “Inmates Under Custody: Beginning 2008,” last updated May 28, 2020, <https://data.ny.gov/Public-Safety/Inmates-Under-Custody-Beginning-2008/55zc-sp6m> (providing a snapshot of the total imprisoned population as of March 31 of each year). Data through 2018 represents counts of “sentenced prisoners” serving terms of one year or more. Totals for 2019 and 2020, though, were based on snapshots of the total imprisoned population, and it was not clear how to trim this data set to match the counting method used by BJS. As a result, it is likely that the totals for 2019 and 2020 presented here overstate the actual number of “sentenced prisoners” in state custody for those years.
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- 21 Estimates of the formerly imprisoned population were calculated using the same methodology described in previous Brennan Center

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22 Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 10, fig. 1.

23 As of 2017, New York State’s demographic makeup was only slightly different from the nation’s as a whole: 14 percent of New Yorkers were Black and 19 percent were Latino, compared with 12 and 18 percent nationally. See Kaiser Family Foundation, “Population Distribution by Race/Ethnicity,” accessed December 21, 2020, <https://www.kff.org/other/state-indicator/distribution-by-raceethnicity/> (from the drop-down menu, select “Timeframe: 2017”) (presenting U.S. Census data). The authors focused on 2017 to allow clear comparisons with previous Brennan Center research. See Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 10 (noting that sufficient data was not available at the time of publication to provide more recent estimates).

24 \$1.9 billion represents a rough estimate calculated by multiplying the number of formerly imprisoned people in each demographic group by race-specific, initial earnings loss estimates identified in previous Brennan Center research. See Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 7, 14–16, 30–33 (describing how race-specific earnings losses were calculated). Note, though, that the annual earnings loss figures identified in that report were national, average estimates, and that using *national* data to estimate *state* earnings figures may not reflect the economic realities of New York City and State. To name just one complicating factor, New York State’s minimum wage is among the highest in the nation — and New York City’s is even higher. This distinction may lead to higher-than-expected actual earnings for formerly imprisoned New Yorkers (and, by extension, lower-than-expected lost earnings figures). It may also have other effects on the employment prospects of justice-involved people. For geographic variation of minimum wage within New York State, see New York State Department of Labor, “Upcoming Minimum Wage Increases,” accessed December 21, 2020, <https://labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>; and for a comparison of state minimum wages, see National Conference of State Legislatures, “State Minimum Wages,” last modified December 15, 2020, <https://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>. While the estimates provided here are a rough guide, then, the issue merits further research.

25 New York State, “Inmates Under Custody.”

26 Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 7, table 1.

27 Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 7, table 1; New York State Division of Criminal Justice Services, *New York State Adult Arrests (18 and Older) Disposed*, April 17, 2020, <https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf> (evidencing an average of 1.75 misdemeanor convictions for every felony conviction); N.Y. Penal Law § 155.25 (Consol. 2020) (defining petit larceny as a Class A misdemeanor); and N.Y. Penal Law § 120.00 (Consol. 2020) (defining simple assault, or the intentional infliction of physical injury, as a Class A misdemeanor).

28 New York State Division of Criminal Justice Services, *New York City Adult Arrests 18 and Older: 2010–2019*, April 17, 2020, <https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf>. Notably, convictions have decreased faster than total dispositions.

29 New York State Division of Criminal Justice Services, *Non-New York City Adult Arrests (18 and Older)*, April 17, 2020, https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/non_nyc.pdf.

30 Project Reset and Project CLEAR are two examples of policies aimed at reducing misdemeanor convictions. Kings County District Attorney, “Project Brooklyn CLEAR, Offering Treatment to Individuals Arrested with Small Amounts of Narcotics, Expanded to the Entire Borough of Brooklyn,” October 16, 2018, <http://www.brooklynnda.org/2018/10/16/project-brooklyn-clear-offering-treatment-to-individuals-arrested-with-small-amounts-of-narcotics-expanded-to-the-entire-borough-of-brooklyn/>; and Kings County District Attorney, “Brooklyn District Attorney Eric Gonzalez Announces Project Reset in Partnership with the Center for Court Innovation and the Brooklyn Museum to Allow Those Arrested for Certain Minor Offenses to Avoid Prosecution,” October 2, 2019, <http://www.brooklynnda.org/2019/10/02/brooklyn-district-attorney-eric-gonzalez-announces-project-reset-in-partnership-with-the-center-for-court-innovation-and-the-brooklyn-museum-to-allow-those-arrested-for-certain-minor-offenses-to-avoid/>.

31 Brennan Center analysis of data provided by the New York State Division of Criminal Justice Services (on file with the authors). For state population figures, see Kaiser Family Foundation, “Population Distribution by Race/Ethnicity.”

32 New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: A Preliminary Proposal for Reform*, October 15, 2007, III, <https://www.criminaljustice.ny.gov/legal-services/sentencingreform/2007prelimsentencingreformrpt.pdf> (“It will come as no surprise to experienced practitioners of criminal law — nor to those defendants, victims and their families most directly impacted by our sentencing statutes — that after 40 years of piecemeal amendments arising more often from political than criminal justice policy considerations, New York’s sentencing laws are a veritable object lesson in disorder and confusion.”). Utilizing four different sentencing structures (depending on whether the current or any prior felonies were violent), there remains a labyrinth of exceptions, enhancements, and ultra-specific laws that confuse practitioners, those accused of crimes, and victims alike. New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: A Preliminary Proposal*, 2–3, 12–13, 21. For an example of a visualization of New York’s felony sentencing laws in the form of four sentencing charts to cover various scenarios (not including drugs or narcotics offenses), see Robert C. Reuland, “New York Sentencing Chart: Criminal Sentences in New York,” Law Offices of Robert C. Reuland, accessed February 5, 2021, <http://www.reulandlaw.com/useful-info/new-york-sentencing-chart/>.

33 Stefania A. Maruniak, *Statistical Overview: Year 2017 Court Commitments*, New York State Department of Corrections and Community Supervision, September 2018, 50, <https://doccs.ny.gov/system/files/documents/2019/09/2017%20Court%20Commitments%20Report-Final.pdf> (“A determinate sentence is a sentence whose length is fixed by a judge at sentencing and not subject for review by a Parole Board. Offenders must serve at least six-sevenths of this determinate sentence before they are eligible for conditional release to the community. The remaining 1/7th of the sentence represents ‘good time.’”); New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: A Preliminary Proposal*, 15–16 (explaining that a person serving an indeterminate sentence can be eligible for release (1) after two-thirds of the minimum sentence has been served (for most drug offenses), (2) after five-sixths of the minimum sentence has been served, (3) after the full minimum sentence has been served (and the person becomes eligible for parole), (4) after two-thirds of the maximum sentence has been served (a “conditional release date”), or (5) after the maximum sentence has been served).

- 34** See, e.g., New York State Division of Criminal Justice Services, “Executive Order No. 10, New York State Commission on Sentencing Reform,” accessed February 5, 2021, <https://www.criminaljustice.ny.gov/legalservices/sentencingreform.htm>; New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: A Preliminary Proposal*; New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: Recommendations for Reform*, January 30, 2009, https://www.criminaljustice.ny.gov/pio/csr_report2-2009.pdf; and Pew Charitable Trusts and MacArthur Foundation, *New York’s Investment in Evidence-Based Policymaking*, January 2016, <https://www.criminaljustice.ny.gov/crimnet/ojsa/resultsfirst/rf-nys-case-study.pdf>.
- 35** American Civil Liberties Union Smart Justice, *Blueprint for Smart Justice New York*, 2019, 8, <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-NY.pdf>; and Lauren-Brooke Eisen et al., *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, 21–23, <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.
- 36** Maruniak, *Statistical Overview: Year 2017 Court Commitments*, 15, table 5.1. Indeed, the average maximum sentence increased from 61.8 months in 2013 to 64.3 months in 2017. Maruniak, *Statistical Overview: Year 2017 Court Commitments*, 20, fig. 1.
- 37** Far too many older people remain behind bars without any public safety justification. See Thomas P. DiNapoli, *New York State’s Aging Prison Population*, Office of New York State Comptroller, 2017, <https://www.osc.state.ny.us/files/reports/special-topics/pdf/health-aging-prison-2017.pdf> (noting “the number of inmates aged 50 and over increased by 46.0 percent” between 2007 and 2016, with a total of 10,140 incarcerated individuals aged 50 and older in 2016).
- 38** See generally N.Y. Penal Law § 70.40(1) (Consol. 2020). Only people serving indeterminate sentences — i.e., sentences to a span of years, such as “four to seven years” — are eligible for parole, and then, generally, only after the expiration of the minimum period of imprisonment. N.Y. Penal Law § 70.40(1)(a)(ii). By contrast, determinate sentences — that is, sentences for a stated period of years — can be shortened only by “good behavior allowances” of up to one-seventh of the total sentence length. See N.Y. Correction Law § 803(1)(c) (Consol. 2020). People serving a determinate sentence are subject to a different form of supervision, called “post-release supervision,” imposed in addition to, and commencing after, the stated prison term. See N.Y. Penal Law § 70.45(1) (Consol. 2020).
- 39** See, e.g., Parole Preparation Project and Release Aging People in Prison Campaign, *New York State Parole Board: Failures in Staffing and Performance*, August 2018, 2, <http://rappcampaign.com/wp-content/uploads/AAA-Parole-Board-Report-Final-3.pdf>.
- 40** Marc Schabbes, *Criminal Justice Technical Report: Deployment and Initial Application of the Results First Cost Benefit Model*, New York State Division of Criminal Justice Services, October 2013, 5, https://www.criminaljustice.ny.gov/crimnet/ojsa/resultsfirst/rf-technical-report_cba1_oct2013.pdf. These figures represent the *marginal* cost of imprisonment and supervision. See Chris Mai and Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010–2015*, Vera Institute of Justice, May 2017, 15, <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends>.
- 41** For example, researchers have suggested that the cost of child poverty nationwide stretches to one *trillion* dollars, such that antipoverty spending yields a significant return on investment. Michael McLaughlin and Mark R. Rank, “Estimating the Cost of Childhood Poverty in the United States,” *Social Work Research* 42 (2018): 78–80, <https://academic.oup.com/swr/article/42/2/73/4956930>. By some estimates, the cost may be as high as \$60 billion for New York State.
- 42** Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108 (2003): 957–58, https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf.
- 43** National Inventory of Collateral Consequences of Conviction, “Collateral Consequences Inventory,” accessed December 22, 2020, <https://niccc.nationalreentryresourcecenter.org/consequences>.
- 44** Lucius Couloute, “Nowhere to Go: Homelessness Among Formerly Incarcerated People,” Prison Policy Initiative, August 2018, <https://www.prisonpolicy.org/reports/housing.html>.
- 45** Claire W. Herbert et al., “Homelessness and Housing Insecurity Among Former Prisoners,” *Russel Sage Foundation Journal of the Social Sciences* 1 (2015): 74, <https://doi.org/10.7758/RSF.2015.1.2.04>.
- 46** Bradner and Schiraldi, *Racial Inequities in New York Parole Supervision*, 1, 5.
- 47** The marginal cost of one year of parole supervision is about one-tenth that of one year of imprisonment. See Schabbes, *Criminal Justice Technical Report*.
- 48** See New York Civil Liberties Union, *Reefer Madness*.
- 49** Mary Breasted, “Carey Signs Marijuana Measure Reducing Penalty for Possession,” *New York Times*, June 30, 1977, <https://www.nytimes.com/1977/06/30/archives/carey-signs-marijuana-measure-reducing-penalty-for-possession-carey.html>.
- 50** Marijuana possession had been decriminalized in New York State since at least 1977, but possession “in a public place” remained a criminal offense. Legislation passed in 2019 erased that distinction, renamed the offenses defined in N.Y. Penal Law §§ 221.05 and 221.10, and reduced both to violations. See S. 6579-A, 2019–2020 Sess. (N.Y. 2019) (enacted), §§ 1–2, <https://www.nysenate.gov/legislation/bills/2019/s6579>. That legislation also provided for the expungement of some marijuana convictions. S. 6579-A, §§ 5–7.
- 51** Brennan Center analysis of publicly available data. See NYC Open Data, “NYPD Arrests Data (Historic),” accessed December 22, 2020, <https://data.cityofnewyork.us/Public-Safety/NYPD-Arrests-Data-Historic-/8h9b-rp9u>. Offenses were categorized based on the “PD_DESC” variable, and the code section studied was “Marijuana, Possession 4 & 5” (corresponding to N.Y. Penal Law §§ 221.05 and 221.10).
- 52** For a history of this practice and recent backlash, see Joseph Goldstein, “Officers Said They Smelled Pot. The Judge Called Them Liars,” *New York Times*, updated September 13, 2019, <https://www.nytimes.com/2019/09/12/nyregion/police-searches-smelling-marijuana.html>. For case law on the subject, see *People v. Sunear*, 116 N.Y.S.3d 872, 879–80 (N.Y. Sup. Ct., Bronx County, 2019) (rejecting as implausible officer’s claim that he could smell unburned marijuana, and granting suppression of evidence accordingly); *People v. Hill*, No. 853-2017, slip op. at 3, 7–8 (N.Y. Sup. Ct., Bronx County, July 25, 2019) (granting suppression motion) (“This case illustrates why the time has come to reject the canard of marijuana emanating from nearly every vehicle subject to a traffic stop. So ubiquitous has police testimony about odors from cars become that it should be subject to a heightened level of scrutiny if it is to supply the grounds for a search.”).
- 53** The 2019 marijuana reform law provides only for the expungement of records related to since-decriminalized marijuana offenses — that is, N.Y. Penal Law §§ 221.05 and 221.10. N.Y. Crim. Proc. Law § 160.50(3)(k) (Consol. 2020). While partial, the results were significant. According to one estimate, these changes expunged 160,000 conviction records and wiped the slate completely clean for around 25,000 people. Azi Paybarah, “About 160,000 People in New York to See Their Marijuana Convictions Disappear,” *New York Times*, updated August 29, 2019, <https://www.nytimes.com/2019/08/28/nyregion/marijuana-records-new-york-city.html>.
- 54** Stohr et al., *Effects of Marijuana Legalization on Law Enforcement and Crime*, 114.
- 55** These provisions were a key part of the Marijuana Regulation and Taxation Act (MRTA). See Marijuana Regulation and Taxation Act, S. 1527, § 2, 2019–2020 Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s1527/amendment/b> (creating N.Y. Cannabis Law § 85, which would require “a social and economic equity plan” to “actively promote [licensing] applicants from communities disproport-

tionately impacted by cannabis prohibition, and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities.”), § 60 (enacting N.Y. Finance Law § 99-jj, which provides for a fund to be used for “reinvesting in communities disproportionately affected by past federal and state drug policies”). Those provisions remain in the reintroduced bill. See Marijuana Regulation and Taxation Act, S. 854, §§ 2, 51, 2021–2022 Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/s2509>.

56 Two key bills discussed in the 2019–2020 session — the MRTA and the Cannabis Regulation and Taxation Act (CRTA) — would have taken at least some steps toward this goal. For last session’s MRTA, see S. 1527, §§ 18–24. For last session’s CRTA, see S. 7509, 2019–2020 Sess. (N.Y. 2019) Part BB, § 55, <https://www.nysenate.gov/legislation/bills/2019/s7509/amendment/original>. For these provisions in the recently reintroduced CRTA, see S. 2509, 2021–2022 Sess. (N.Y. 2021) Part H, § 55, <https://www.nysenate.gov/legislation/bills/2021/s2509>.

57 German Lopez, “The Case Against Marijuana Legalization,” Vox, updated November 14, 2018, <https://www.vox.com/identities/2018/8/20/17938414/big-marijuana-legalization-corporations-advertising>.

58 Institute of Medicine, *Marijuana and Medicine: Assessing the Science Base* (Washington, DC: National Academies Press, 1999), 93–98, <https://www.nap.edu/catalog/6376/marijuana-and-medicine-assessing-the-science-base> (noting that “few marijuana users become dependent on it”). Regarding corporate consolidation and exploitation, the MRTA provided a series of criteria that the state can take into account when determining whether to issue an adult cannabis license, including public-interest and social impact factors. See S. 1527, § 2 (creating N.Y. Cannabis Law § 64).

59 Tom Angell, “New York Legal Marijuana Push ‘Effectively Over’ for 2020, Governor Says,” *Forbes*, April 4, 2020, <https://www.forbes.com/sites/tomangell/2020/04/04/new-york-legal-marijuana-push-effectively-over-for-2020-governor-says/>.

60 Gov. Andrew M. Cuomo, “2021 State of the State Address” (speech, Albany, N.Y., January 11, 2021), <https://www.governor.ny.gov/news/remarks-prepared-governor-cuomo-outlines-2021-agenda-reimagine-rebuild-renew>; see also Gov. Andrew M. Cuomo, “Governor Cuomo Announces Proposal to Legalize and Create an Equitable Adult-Use Cannabis Program as Part of the 2021 State of the State,” press release, January 6, 2021, <https://www.governor.ny.gov/news/governor-cuomo-announces-proposal-legalize-and-create-equitable-adult-use-cannabis-program-part>.

61 One key point of disagreement appears to have been on language ensuring reinvestment in impacted communities. While the MRTA provided such language, advocates felt that Governor Cuomo’s proposal, the CRTA, failed to address the issue. Drug Policy Alliance, “Drug Policy Alliance Statement on NY Governor Cuomo Adding Marijuana Legalization to 2020 Budget Proposal,” January 22, 2020, <https://drugpolicy.org/press-release/2020/01/drug-policy-alliance-statement-ny-governor-cuomo-adding-marijuana>.

62 Vera Institute of Justice, “What Is Diversion?,” accessed December 22, 2020, <http://humantoloffail.vera.org/what-is-diversion/>; and National Conference of State Legislatures, “Pretrial Diversion,” last updated September 28, 2017, <https://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>.

63 For more, see National Center for State Courts, “Tracking Problem-Solving Issues Across the Country,” accessed February 5, 2021, <https://www.ncsc.org/topics/alternative-dockets/problem-solving-courts/home>; and Centre for Justice & Reconciliation, “Lesson 1: What Is Restorative Justice?,” accessed February 5, 2021, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/>.

64 Project Reset, “Project Reset,” accessed December 22, 2020, <https://www.projectreset.nyc/> (“As of October 1st, 2020, Project Reset is no longer operational in Brooklyn, Staten Island, or Queens.”).

For a study of the Manhattan implementation of Project Reset, see Kimberly Dalve and Becca Cadoff, *Project Reset: An Evaluation of a Pre-arrestment Diversion Program in New York City*, Center for Court Innovation, 2019, 5–11, 43, https://www.courtinnovation.org/sites/default/files/media/document/2019/projectreset_eval_2019.pdf.

65 Project Reset, “Frequently Asked Questions,” accessed December 22, 2020, <https://www.projectreset.nyc/faq>. Citywide, there were 40,645 desk appearance ticket (DAT) arraignments in 2018; 44 percent were disposed at arraignment. Of these, 44 percent were granted an adjournment in contemplation of dismissal (ACD) and 8 percent were dismissed outright. Stephen Koppel, David Topel, and Ruka Wang, *Annual Report 2018*, New York City Criminal Justice Agency, 2020, 17, 19–20, <https://www.nycja.org/publications/cja-annual-report-2018>.

66 Project Reset, “Frequently Asked Questions.”

67 Center for Court Innovation, “Project Reset,” accessed December 22, 2020, <https://www.courtinnovation.org/programs/project-reset/more-info>. This figure likely refers only to the Project Reset sites administered by the Center for Court Innovation; the total number of people helped by Project Reset citywide is likely much larger.

68 Kings County District Attorney, “Brooklyn District Attorney Announces Project Brooklyn CLEAR to Offer Treatment for Individuals Arrested with Small Amount of Narcotics,” March 6, 2018, <http://www.brooklynnda.org/2018/03/06/brooklyn-district-attorney-announces-project-brooklyn-clear-to-offer-treatment-for-individuals-arrested-with-small-amount-of-narcotics/>; and New York State Criminal Justice Knowledge Bank, “Heroin Overdose Prevention and Education (HOPE) Program,” accessed December 22, 2020, <https://knowledgebank.criminaljustice.ny.gov/heroin-overdose-prevention-and-education-hope-program>.

69 Austin and Jacobson, *How New York City Reduced Mass Incarceration* (noting that as of 2013, “such a vibrant and mature array of alternative programs [did] not exist outside of New York City”).

70 Albany County District Attorney’s Office, “Clean Slate,” accessed November 27, 2020, <http://www.cleanslate.albanycountyny.gov/#overview>; Albany LEAD, *What Is Albany LEAD?*, April 2017, https://www.albanyny.gov/Libraries/APD/Albany_LEAD_packet.sflb.ashx; and Center for Court Innovation, “Upstate New York,” accessed December 22, 2020, <https://www.courtinnovation.org/upstate-new-york>. See also New York State Criminal Justice Knowledge Bank, “Program Profiles,” accessed December 22, 2020, <https://knowledgebank.criminaljustice.ny.gov/programs>. For examples of drug court initiatives, see, e.g., Rockland County, “The Rockland County Drug Court,” accessed December 22, 2020, <https://rocklandgov.com/departments/district-attorney/prevention-and-intervention/drug-court/>. Comparatively, the Office of Probation and Correctional Alternatives funds more than 150 alternative-to-incarceration programs. New York State Division of Criminal Justice Services, “Alternative to Incarceration (ATI) Programs,” accessed December 22, 2020, https://www.criminaljustice.ny.gov/opca/ati_description.htm.

71 Albany’s LEAD program, which has operated since 2016, is one notable exception. For details on the program and its pre-arrest work, see LEAD Albany, *Report to Albany on the LEAD Program*, 2017, 6–7, 14, <https://www.albanyny.gov/DocumentCenter/View/2810/Albany-LEAD-First-Year-Report-PDF>. For information on the program’s recent activities, see Eduardo Medina, “Albany LEAD Program Receives \$890,000 Grant,” *Times-Union*, October 17, 2020, <https://www.timesunion.com/news/article/Albany-LEAD-program-receives-890-000-grant-15655243.php>.

72 Project Reset, “Contact Us,” accessed January 6, 2021, <https://www.projectreset.nyc/contact-project-reset>; and Darcel Clark et al., “For a Safer NYC, Save This Program: The City’s Five DAs Say the City Must Fund Criminal Diversion Efforts,” *New York Daily News*, September 25, 2020, <https://www.nydailynews.com/opinion/ny-oped-for-a-safer-nyc-save-this-progra-20200925-vgje262bwbabtomj6oaylm-sy7e-story.html>.

73 Project Reset, “Contact Us.” Prior to 2021, Project Reset had always relied on multiple discrete funding streams. In FY 2020 and FY 2021, the New York City Council specifically funded the Bronx’s implementation of Project Reset, allocating \$710,000 for the project. City Council of the City of New York, *Fiscal Year 2020 Adopted Expense Budget Adjustment Summary/Schedule C*, June 2019, 22–23, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/12/Fiscal-2020-Schedule-C-Final-Merge.pdf>; and City Council of the City of New York, *Fiscal Year 2021 Adopted Expense Budget Adjustment Summary/Schedule C*, June 2020, 17, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/06/Fiscal-2021-Schedule-C-Cover-REPORT-Final.pdf>. Project Reset’s work in the city’s four remaining boroughs was paid for by other parts of the budget in FY 2020, and funding stayed unresolved for FY 2021 throughout the summer. Meg Reiss (chief of social justice, Kings County District Attorney’s Office) in a conversation with author Ames Grawert, July 30, 2020; Mike Rempel (director of jail reform, Center for Court Innovation) in an email message to author Ames Grawert, July 31, 2020; Adam Mansky (director of criminal justice, Center for Court Innovation) in a conversation with author Ames Grawert, August 13, 2020; and Adam Mansky (former director of criminal justice, Center for Court Innovation) in a conversation with author Ames Grawert, January 7, 2021.

74 For a short explanation of the city budgeting process and “baselining,” see Preston Niblack, “The End of the Budget Dance?,” *City & State New York*, July 6, 2016, <https://www.cityandstateny.com/articles/opinion/the-end-of-the-budget-dance.html>.

75 For an argument in support of expanding prosecutor-led diversion to cover a broader degree of offenses, see David Noble, “Mapping the Landscape of Prosecutor-Led Pretrial Diversion,” *Criminal Law Practitioner* 11 (2020): 15–16, <https://e1e6cfc6-b1d4-4e45-b03c-22d8c290e050.files5.pdf>.

76 For example, New York City’s Project Reset and Red Hook Community Justice Center are operated by the Center for Court Innovation, a nonprofit that “serves as the New York State Unified Court System’s independent research and development arm.” See New York Courts, “Center for Court Innovation,” updated June 7, 2018, <https://www.nycourts.gov/ip/cci/>.

77 Elizabeth Gaynes (president and CEO, Osborne Association) in a conversation with author Ames Grawert, December 18, 2020.

78 As noted, avoiding any kind of criminal record helps to sidestep the numerous economic collateral consequences that such a record brings. Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, 2013, 19, https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/CHJ%20Diversion%20Report_web.pdf (explaining that certain pre-arrest diversion programs allow police officers the discretion to arrest an individual or instead direct that person to a “community-based case-management system,” thereby avoiding the arrest altogether).

79 See Schabbes, *Criminal Justice Technical Report*.

80 Law Enforcement Leaders to Reduce Crime and Incarceration, *Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, 2020, 8–10, <http://lawenforcementleaders.org/ensuring-justice-public-safety-federal-criminal-justice-priorities-for-2020-and-beyond/>.

81 Greg Berman and John Feinblatt, *Problem-Solving Courts: A Brief Primer*, Center for Court Innovation, 2000, 4–8, <https://www.courtinnovation.org/sites/default/files/p-s%20court%20primer%20PDF3.pdf>.

82 Berman and Feinblatt, *Problem-Solving Courts*, 8–9. These efforts are coordinated by a multidisciplinary team with external service providers, all under oversight of the court. National Institute of Justice, “Problem-Solving Courts,” February 20, 2020, <https://nij.ojp.gov/topics/articles/problem-solving-courts>.

83 Some research contends that these courts may not actually decrease imprisonment, especially for people who do not complete

mandated treatment, and are fundamentally coercive. See Drug Policy Alliance, *Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use*, March 2011, 14, 16, <https://drugpolicy.org/drugcourts>. To avoid mandating misaligned or ineffective treatment for defendants, specialty courts should therefore operate with the counsel of clinically trained professionals and be conscious of these dangers.

84 See Berman and Feinblatt, *Problem-Solving Courts*, 4–5 (citing New York City’s Midtown Community Court as an early example of problem-solving courts); and New York State Unified Court System, “Problem-Solving Courts, Overview,” accessed February 5, 2021, http://ww2.nycourts.gov/COURTS/problem_solving/index.shtml.

85 Drug courts connect defendants charged with a nonviolent offense who have a substance abuse problem to treatment in exchange for a reduced sentence. New York State operates a total of 141 drug courts, and the state reports that more than 42,800 people have graduated from drug treatment programs. New York State Unified Court System, “Drug Treatment Courts,” accessed February 5, 2021, http://ww2.nycourts.gov/courts/problem_solving/drugcourts/overview.shtml. Of those 141 drug courts, 9 operate within New York City. New York State Unified Court System, “Drug Treatment Courts: Court Locations,” April 2020, http://ww2.nycourts.gov/courts/problem_solving/drugcourts/drugcourtslist.shtml. Veterans’ courts operate within drug treatment courts and mental health courts to address the unique needs of system-involved veterans who live with a substance use disorder or mental illness. This system places a special emphasis on peer mentor relationships with other veterans. New York State Unified Court System, “Veterans’ Courts,” accessed December 23, 2020, http://ww2.nycourts.gov/courts/problem_solving/vet/index.shtml. New York State operates 31 veterans’ courts, 6 in New York City and 25 outside the city. New York State Unified Court System, “Veterans Courts: Court/Track Locations,” April 8, 2019, http://ww2.nycourts.gov/courts/problem_solving/vet/courts.shtml. Community courts, focusing primarily on misdemeanor, quality-of-life offenses — such as simple drug possession, theft, prostitution, drinking in public, and trespassing — facilitate collaboration between the traditional criminal legal system and community-based organizations to create opportunities for participants to do required community service; they also offer support designed to reduce the risk of further justice involvement. These courts provide innovative responses to crime that do not rely exclusively on incarceration. See New York State Unified Court System, “Community Courts,” accessed December 23, 2020, http://ww2.nycourts.gov/courts/problem_solving/cc/home.shtml.

86 A. 5937, 2019–2020 Sess. (N.Y. 2019) (enacted), <https://www.nysenate.gov/legislation/bills/2019/a5937>.

87 For a study spotlighting one such court, see Cynthia G. Lee et al., *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*, National Center for State Courts, 2013, 122, https://www.ncsc.org/_data/assets/pdf_file/0031/18967/11012013-red-hook-final-report.pdf.

88 One example is the Harlem Reentry Court, a project of the Harlem Community Justice Center, New York State Division of Criminal Justice Services, and the Division of Parole. This court connects people on parole to a wide range of social services, including drug treatment, vocational services, and mental health treatment, to help them reenter society after incarceration. It also offers services to members of the parolee’s family who are living in the same home, to promote stability. Participants must return to the Harlem Justice Center frequently to meet with staff and appear before an administrative law judge. See Center for Court Innovation, “Harlem Reentry Court,” accessed December 23, 2020, <https://www.courtinnovation.org/programs/harlem-reentry-court>; and Center for Court Innovation, “Harlem Reentry Court: More About the Program,” accessed December 23, 2020, <https://www.courtinnovation.org/programs/harlem-reentry-court/more-info>.

89 For research on the diminishing marginal utility of long prison terms, see Eisen et al., *How Many Americans Are Unnecessarily Incarcerated?*, 35–37.

- 90** Releasing older people who remain in prison is also entirely consistent with public safety. See Center for Justice at Columbia University, *Aging in Prison: Reducing Elder Incarceration and Promoting Public Safety*, November 2015, 8, <https://www.issuelab.org/resources/22902/22902.pdf> (“Compared to a recidivism rate of 40–60% amongst the general prison population, the return rate of long-termers convicted of murder (most commonly people of advanced age) is the lowest (6.6%) system-wide, with only 1.3% returning for a new commitment.”); see also Ashley Nellis, *Still Life: America’s Increasing Use of Life and Long-Term Sentences*, Sentencing Project, May 2017, 25, <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/> (“Research on people sentenced to life who exit prison finds remarkably low recidivism rates among them.”). This may be because many people serving long sentences are older, and therefore less likely to commit a crime once released. Center for Justice at Columbia University, *Aging in Prison*, 3–4 and 29–30; and Ashley Nellis, “Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States,” *Federal Sentencing Reporter* 23 (2010): 27–32, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Federal-Sentencing-Reporter-Throwing-Away-the-Key.pdf>.
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- 92** Marc Mauer, “Long-Term Sentences: Time to Reconsider the Scale of Punishment,” *UMKC Law Review* 87 (2018): 114, <https://www.sentencingproject.org/wp-content/uploads/2018/11/UMKC-Law-Review-Scale-of-Punishment.pdf>; and Cameron Kimble and Ames Grawert, “Between 2007 and 2017, 34 States Reduced Crime and Incarceration in Tandem,” Brennan Center for Justice, August 6, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/between-2007-and-2017-34-states-reduced-crime-and-incarceration-tandem>.
- 93** Eisen et al., *How Many Americans Are Unnecessarily Incarcerated?*, 21–22, 35.
- 94** Eisen et al., *How Many Americans Are Unnecessarily Incarcerated?*, 35 (citing David Abrams, 2013, and Ilyana Kuziemko, 2007).
- 95** New York State Department of Corrections and Community Supervision, *Statistical Overview: Year 2017 Court Commitments*, 15, table 5.1 (indicating an average minimum sentence of 46.8 months). Cost of imprisonment was calculated by multiplying that figure (annualized) by the marginal cost of imprisonment (\$18,706) noted elsewhere in this report. See Schabbes, *Criminal Justice Technical Report*.
- 96** New York State Division of Criminal Justice Services, “Alternative to Incarceration (ATI) Programs”; and see generally Greg Berman and Robert V. Wolf, “Alternatives to Incarceration: The New York Story,” *New York State Bar Association Government, Law and Policy Journal* 16 (2014): 36–40, <https://www.courtinnovation.org/sites/default/files/documents/Berman%2BWolfArticle%20%282%29.pdf>.
- 97** Eisen et al., *How Many Americans Are Unnecessarily Incarcerated?*, 10.
- 98** N.Y. Penal Law § 70.06(3) (Consol. 2020).
- 99** Mauer, “Long-Term Sentences,” 121–25; and James Cullen, “Sentencing Laws and How They Contribute to Mass Incarceration,” Brennan Center for Justice, October 5, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>.
- 100** Bradner and Schiraldi, *Racial Inequities in New York Parole Supervision*, 5–6; and Parole Preparation Project and Release Aging People in Prison Campaign, *New York State Parole Board: Failures in Staffing and Performance*, 12–23.
- 101** See generally N.Y. Comp. Codes R. & Regs. tit. 9, § 8003.2-8003.3 (2020); see also Gregory D. Morrill et al., *Report on Legislation by the Corrections and Community Reentry Committee, Criminal Courts Committee, Criminal Justice Operations Committee, and Mass Incarceration Task Force*, New York City Bar Association, 2020, 2, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-less-is-more-act>.
- 102** See N.Y. Exec. Law § 259-i(3) (Consol. 2020).
- 103** N.Y. Exec. Law § 259-i(3); and Task Force on the Parole System, *Report of the New York City Bar Association Task Force on the Parole System*, New York State Bar Association, November 2019, 7, <https://nysba.org/app/uploads/2019/12/NYSBA-Task-Force-on-the-Parole-System-Final-Report.pdf>.
- 104** N.Y. Exec. Law § 259-i(3)(e)(x).
- 105** Bradner and Schiraldi, *Racial Inequities in New York Parole Supervision*, 1, 5.
- 106** Bradner and Schiraldi, *Racial Inequities in New York Parole Supervision*, 5–6.
- 107** For states that have adopted graduated sanction regimes, see Elizabeth Pelletier, Bryce Peterson, and Ryan King, *Assessing the Impact of South Carolina’s Parole and Probation Reforms*, Urban Institute, April 2017, 4–10, https://www.urban.org/sites/default/files/publication/89871/south_carolina_iri_policy_assessment_final_0.pdf; and Pew Charitable Trusts, *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations*, July 2019, 16, https://www.pewtrusts.org/-/media/assets/2019/07/pspp_states_target_technical_violations_v1.pdf.
- 108** Vincent N. Schiraldi and Jennifer L. Arzu, *Less Is More in New York: An Examination of the Impact of State Parole Violations on Prison and Jail Populations*, Columbia University Justice Lab, January 2018, 7, <https://academiccommons.columbia.edu/doi/10.7916/D8RZQ0Q6>. New York State appears to make some provision for early termination. See Director of Internal Operations Timothy O’Brien to Area Supervisors, “Merit Determination of Discharge from Presumptive Release, Parole, Conditional Release and Post-Release Supervision (PRS),” November 29, 2018, No. 9221, <https://doocs.ny.gov/system/files/documents/2020/11/9221.pdf>. But this relief appears so rare that it is treated as a nonentity. Task Force on the Parole System, *Report of the New York City Bar Association Task Force on the Parole System*, 10 (arguing that New York “should join” the list of states with earned early discharge).
- 109** For the recently reintroduced bill, see S. 1144, 2021–2022 Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/s1144>. For the previous session’s bill, see S. 1343C, 2019–2020 Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s1343>. For the numerous officials and groups supporting the Less Is More Act, see #LessIsMoreNY, *New York Officials and Community Organizations Call for Passage of the Less Is More Act*, 2020, https://d3n8a8pro7vymx.cloudfront.net/katal/pages/2276/attachments/original/1604238470/Supporting_Letter_Less_Is_More_11.01.20.pdf?1604238470.
- 110** Parole Preparation Project, *Transforming the Parole Release Process in New York State*, 2, accessed February 5, 2021, https://4411e058-27c0-4b13-9697-267bacea3e3.filesusr.com/ugd/5982b2_840dfe9faf864db2a0cfd81ae4c0ee5e.pdf.
- 111** Parole Preparation Project and Release Aging People in Prison Campaign, *New York State Parole Board: Failures in Staffing and Performance*, 12–23.
- 112** Jorge Renaud, *Eight Keys to Mercy: How to Shorten Excessive Prison Sentences*, Prison Policy Initiative, November 2018, <https://www.prisonpolicy.org/reports/longsentences.html#presumptiveparole>.
- 113** O’Brien, “Merit Determination of Discharge”; and Jarrett Murphy, “Advocates Press Albany to Fix New York’s Parole System,” *City Limits*, January 30, 2019, <https://citylimits.org/2019/01/30/pressing-albany-to-address-flaws-in-new-yorks-parole-system/>.
- 114** The Fair and Timely Parole Act, S. 497A, 2019–2020 Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/S497>.
- 115** S. 2144, 2019–2020 Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s2144> (detailing what is known as the “Elder Parole Bill”).

- 116** Osborne Association, *The High Costs of Low Risk: The Crisis of America's Aging Prison Population*, July 2014, 5, <http://www.osborne.org/resources/resources-on-aging-in-prison/osborne-aging-in-prison-white-paper/>; and Inimai Chettiar et al., *At America's Expense: The Mass Incarceration of the Elderly*, American Civil Liberties Union, June 2012, 12–25, <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly?redirect=criminal-law-reform/report-americas-expense-mass-incarceration-elderly>.
- 117** S. 2144.
- 118** Task Force on the Parole System, *Report of the New York City Bar Association Task Force on the Parole System*, 12; see also Amanda Fries and Edward McKinley, "State: Fewer Parole Decisions Amid Pandemic Part of Prison Trend," *The Telegraph*, December 4, 2020, <https://www.thetelegraph.com/news/article/DOCCS-Fewer-parole-decisions-amid-pandemic-part-15773312.php> (noting a decline in hearings in 2020).
- 119** N.Y. Exec. Law 259-b(1) (Consol. 2020).
- 120** Parole Preparation Project and Release Aging People in Prison Campaign, *New York State Parole Board: Failures in Staffing and Performance*, 2; and Aviva Stahl, "There Are No More Excuses: Protesters Demand that Cuomo Staff the Parole Board," *Gothamist*, April 5, 2019, <https://gothamist.com/news/there-are-no-more-excuses-protesters-demand-that-cuomo-staff-the-parole-board> (noting an increase in grant rates after, among other reforms, the appointment of new commissioners).
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- 122** Stephen Rex Brown, Trevor Boyer, and Reuven Blau, "N.Y. Parole Commissioners Travel the State to Conduct Video Hearings and Rarely Step Inside Prisons," *Daily News Analysis Shows*, *New York Daily News*, January 20, 2019, <https://www.nydailynews.com/new-york/ny-metro-parole-travel-video-hearings-20190117-story.html>.
- 123** Elizabeth Gaynes (president and CEO, Osborne Association) in a conversation with author Ames Grawert, December 18, 2020.
- 124** According to one analysis, a single month's worth of parole denials costs the state more than \$10 million. New Yorkers United for Justice, *Parole in New York: How to Improve Criminal Justice and Save the State Money*, 2021, 3, <https://nyuj.org/wp-content/uploads/2021/01/nyuj-parole-budget.pdf>. For more on the comparative cost of incarceration, see Schabbses, *Criminal Justice Technical Report*.
- 125** Bradner and Schiraldi, *Racial Inequities in New York Parole Supervision*, 1, 5.
- 126** Patrick Oakford et al., *Investing in Futures: Economic and Fiscal Benefits of Postsecondary Education in Prison*, Vera Institute of Justice, January 2019, 18, <https://www.vera.org/publications/investing-in-futures-education-in-prison>.
- 127** Lois M. Davis et al., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*, RAND Corporation, 2013, 29, https://www.rand.org/pubs/research_reports/RR266.html; and Daniel Karpowitz and Max Kenner, *Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Incarcerated*, Bard Prison Initiative, 2003, 4–5, https://www.prisonpolicy.org/scans/crime_report.pdf. For an additional perspective using a propensity score matching model, see Ryang Hui Kim and David Clark, "The Effect of Prison-Based College Education Programs on Recidivism: Propensity Score Matching Approach," *Journal of Criminal Justice* 41 (2013): 203, <https://doi.org/10.1016/j.jcrimjus.2013.03.001>.
- 128** Max Kenner, "The Long History of College in Prison," in *Education for Rehabilitation: The Politics of Promise and Reform Inside and Beyond America's Prisons*, ed. Gerard Robinson and Elizabeth English Smith (Lanham, MD: Rowman & Littlefield Publishers, 2019): 16–17; and Holly Avey et al., *Turning On the Tap: How Returning Access to Tuition Assistance for Incarcerated People Improves the Health of New Yorkers*, Human Impact Partners, May 2015, 12–14, https://static1.squarespace.com/static/5e31bd4de0484c7655620a1a/t/5e330f45b40d1b10f7940d21/1580404555245/HIP_TAP_Report_final.pdf.
- 129** Violent Crime Control and Law Enforcement Act of 1994, § 20411 (1994), codified at 20 U.S.C. § 1070a(b)(6) (2018).
- 130** N.Y. Educ. Law § 661(4)(b-1)(v), (6)(d) (Consol. 2020); S. 5336/A. 8063, § 357, 1995–1996 Sess. (N.Y. 1995) (enacted).
- 131** Avey et al., *Turning On the Tap*, 12–14.
- 132** Kenner, "The Long History of College in Prison," 19–21 (describing Pell revocation as an "Armageddon" that providers had to weather using private funding as the "immediate-term path to survival," and noting that "success was not inevitable").
- 133** Trevor Craft et al., *A Second Chance: College-in-Prison Programs in New York State*, Rockefeller Institute of Government, 2019, 7–8, fig. 1, https://rockinst.org/wp-content/uploads/2019/06/5-30-19_CLPS-Report-College-in-Prison.pdf.
- 134** "The College: Comprehensive Academic Engagement," Bard Prison Initiative, last accessed December 21, 2020, <https://bpi.bard.edu/our-work/the-college/>.
- 135** Hudson Link, "What We Do," last accessed December 21, 2020, <http://www.hudsonlink.org/what-we-do/>.
- 136** For the 50-state landscape and efforts to expand eligibility beyond New York State, see Bradley D. Custer, "State Financial Aid Barriers for Students Impacted by the Justice System," Education Commission of the States, January 13, 2020, <https://www.ecs.org/state-financial-aid-barriers-for-students-impacted-by-the-justice-system/>.
- 137** Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. Div. FF, § 702–03 (2020), codified at 20 U.S.C. § 1091(t).
- 138** The loss of Pell Grant money "decimated" prison education programs, marking "the most dramatic and important moment in the history of the field." Kenner, "The Long History of College in Prison," 19–20. Conversely, restoring that funding stream would likely lead to the opening of new programs and expansion of old ones. For a further discussion of the effects of Pell restoration, see Oakford et al., *Investing in Futures*, 21–36; and Emma Pettit, "Ending Ban on Pell Grants for Prisoners Is Said to Yield 'Cascade' of Benefits," *Chronicle of Higher Education*, January 16, 2019, <https://www.chronicle.com/article/ending-ban-on-pell-grants-for-prisoners-is-said-to-lead-to-cascade-of-benefits/>.
- 139** Some legislators have proposed a commission to study the issue of correctional education, including potentially repealing the ban on TAP funds, but research on the benefits of correctional education is clear, and policymakers should skip this step. S. 3342, 2017–2018 Sess. (N.Y. 2017), <https://www.nysenate.gov/legislation/bills/2017/s3342>; and A. 4011, 2019–2020 Session. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/a4011>.
- 140** Avey et al., *Turning On the Tap*, 18.
- 141** Doran Larson, "NY Could Save Money (and Change Lives) by Restoring College Aid to Prisoners (Commentary)," *Syracuse.com*, January 29, 2020, <https://www.syracuse.com/opinion/2020/01/ny-could-save-money-and-change-lives-by-restoring-college-aid-to-prisoners-commentary.html>; and George Chochos, "Opinion: Turn On the TAP for Incarcerated New Yorkers," *City Limits*, January 28, 2020, <https://citylimits.org/2020/01/28/opinion-turn-on-the-tap-for-incarcerated-new-yorkers/>. Indeed, public opinion has long since turned decisively in favor of prison education. Robert Harding, "Siena Poll: Majority Supports Cuomo's Plan to Offer College Courses for Inmates in New York Prisons," *Auburnpub.com*, last updated January 12, 2016, https://auburnpub.com/blogs/eye_on_ny/siena-poll-majority-supports-cuomos-plan-to-offer-college-courses-for-inmates-in-new-york/article_02b576c6-b372-11e3-88ae-0019bb2963f4.

[html](#); and Kenner, “The Long History of College in Prison,” 21.

142 N.Y. Educ. Law § 661(4)(c) (Consol. 2020).

143 Ruth Delaney (program manager, Vera Institute of Justice) in a conversation with author Ames Grawert, December 22, 2020.

144 For example, the full-time requirement is waived for students with special needs under the Americans With Disability Act (N.Y. Educ. Law § 661(4)(g) (Consol. 2020)) and for people who have completed a full year of study already and meet other requirements. N.Y. Educ. Law § 667-c(2)(b) (Consol. 2020).

145 See Ruth Delaney, Fred Patrick, and Alex Boldin, *Unlocking Potential: Pathways from Prison to Postsecondary Education*, Vera Institute of Justice, May 2019, 38–39, 44–48, <https://www.vera.org/downloads/publications/unlocking-potential-prison-to-postsecondary-education-report.pdf>.

146 See Delaney, Patrick, and Boldin, *Unlocking Potential*, 37, 40–44.

147 For example, Washington State provides dedicated funding for reentry navigators who assist with education and career training. See Dennis Pierce, “A Path for Everyone,” *Community College Daily*, January 19, 2018, <https://www.ccdaily.com/2018/01/a-path-for-everyone/>.

148 Jessica Gibson (senior director for Adult Learner Initiatives, Tennessee Higher Education Commission), Mary Laphen (Navigate Reconnect director, Tennessee Higher Education Commission), and Lauren Solina (coordinator of Special Programs for Correctional Education, Tennessee Board of Regents) in a conversation with author Ames Grawert, January 13, 2021.

149 The precise cost is unclear. One early estimate suggests TAP restoration could cost about \$15 million. See Turn On the Tap NY, “Restore Higher Education Funding for People in Prison,” 2020, 2, https://static1.squarespace.com/static/5e31bd4de0484c7655620a1a/t/60117555114b501f242a2d50/1611756885869/CCF_OnePager_TAP21.pdf. But research on this question is ongoing and an accurate estimate would depend on (among other things) the percentage of people in prison who are able to meet other TAP qualifications, such as full-time enrollment.

150 Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 13; see also James B. Jacobs, *The Eternal Criminal Record* (Cambridge, MA: Harvard University Press, 2015), 4–5 (“A criminal record is for life; there is no statute of limitations.”), 70–81 (discussing the broad availability of criminal record information), 205 (noting that credit reporting agencies can report a conviction regardless of its age).

151 Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 14–18.

152 Though often used interchangeably, “sealing” and “expungement” vary in that the latter is more complete, functionally “eliminat[ing] the record from the state’s perspective.” See J. J. Prescott and Sonja B. Starr, “Expungement of Criminal Convictions: An Empirical Study,” *Harvard Law Review* 133 (2020): 2463 n.10, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3353620.

153 See Prescott and Starr, “Expungement of Criminal Convictions,” 2468–71.

154 See N.Y. Crim. Proc. Law § 160.50(1), (3) (Consol. 2020) (defining the relief available and eligible cases, respectively).

155 See N.Y. Crim. Proc. Law § 160.50(3)(k), (5) (bringing certain marijuana convictions within the ambit of eligible convictions and providing for their “expungement”). Note that this subsection confusingly refers to the “expungement” of marijuana-related records but provides relief that is comparable if not identical to the “sealing” relief provided for elsewhere in the statute. Compare N.Y. Crim. Proc. Law § 160.60 (describing the effect of sealing under § 165.50) with § 160.50(5)(a) (citing N.Y. Crim. Proc. Law § 1.20(45), which defines the term *expunge*).

156 See N.Y. Crim. Proc. Law §§ 1.20(45) and 160.60 (Consol. 2020). Note, however, that at least one court has held that DNA evidence can be retained and, despite the seal, used in a subsequent prosecution. See

People v. Midgley, 196 Misc.2d 19, 23 (N.Y. Sup. Ct., Kings County 2003).

157 N.Y. Crim. Proc. Law § 160.59(1)(a), (2), (5) (Consol. 2020). Note that only one felony record may be sealed in this manner. A. 3009C, 2017–2018 Sess. (N.Y. 2017) (enacted), <https://www.nysenate.gov/legislation/bills/2017/a3009/amendment/c>.

158 N.Y. Crim. Proc. Law § 160.59(8)–(9).

159 Aaron Morrison, “Nearly 600,000 New Yorkers Are Eligible to Have Their Records Sealed. Fewer than 1,800 Have Succeeded.” *The Appeal*, October 8, 2019, <https://theappeal.org/nearly-600000-new-yorkers-are-eligible-to-have-their-records-sealed-fewer-than-1800-of-them-have-succeeded/>.

160 Legal Aid Society, “What You Need to Know About Sealing Your Criminal Convictions,” accessed December 22, 2020, <https://www.legalaidnyc.org/get-help/wrongful-convictions-clemency-sealing/what-you-need-to-know-about-sealing-your-criminal-convictions/>.

161 David Brand, “Two Years On, State Record Sealing Law Has Underwhelming Impact in NYC,” *Queens Eagle*, November 21, 2019, <https://queenseagle.com/all/two-years-on-state-record-sealing-law-has-underwhelming-impact-in-nyc> (quoting the Office of Court Administration).

162 See, e.g., 18 PA. Cons. Stat. § 9122.2 (2020); Utah Code Ann. § 77-40-102, 114 (LexisNexis 2020); N.J. Stat. Ann. § 2C:52-5.4 (West 2020); and Cal. Penal Code § 1203.425 (Deering 2020).

163 “Why States Are Rushing to Seal Tens of Millions of Old Criminal Records,” *The Economist*, November 14, 2019, <https://www.economist.com/united-states/2019/11/14/why-states-are-rushing-to-seal-tens-of-millions-of-old-criminal-records>.

164 Clean Slate New York, “The Coalition,” accessed February 5, 2021, <https://www.cleanslateny.org/partners>; Clean Slate New York, “Get the Facts,” accessed February 5, 2021, <https://www.cleanslateny.org/facts>; and Zellnor Myrie and Zaki Smith, “New Yorkers Deserve a True Clean Slate,” *New York Daily News*, December 22, 2019, <https://www.nydailynews.com/opinion/ny-oped-new-yorkers-deserve-a-true-clean-slate-20191222-qjeuwpnka5f77j6ej3lvizoauu-story.html> (noting that Clean Slate NY is “pressing for a law creating automatic criminal records expungement”).

165 Some recent proposals have suggested one- to three-year waiting periods for misdemeanors. See S. 1553, 2021–2022 Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/s1553> (one year); and S. 8165, 2019–2020 Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s8165> (three years).

166 For example, national data suggests that recidivism peaks in the years after release but levels off after around five years post-release. Mariel Alper, Matthew R. Durose, and Joshua Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005–2014)*, Bureau of Justice Statistics, 2018, 1, fig. 1, and 4, fig. 2 and table 2, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6266>; and Prescott and Starr, “Expungement of Criminal Convictions,” 2512, table 4, 2514 (“Our statistics suggest that expungement recipients pose a lower crime risk than the general population of Michigan as a whole.”).

167 See generally N.Y. Crim. Proc. Law § 160.59(5).

168 John Bae et al., *Coming Home: An Evaluation of the New York City Housing Authority’s Family Reentry Pilot Program*, Vera Institute of Justice, November 2016, 7–9, <https://www.vera.org/publications/coming-home-nycha-family-reentry-pilot-program-evaluation>; and Couloute, “Nowhere to Go.”

169 Bae et al., *Coming Home*, 8–9.

170 For an overview of the program, see Bae et al., *Coming Home*, 13–14, 32–34. The FRPP ultimately concluded with remarkably low recidivism rates. Sarah Gonzalez, “New York Eases Rules for Formerly Incarcerated to Visit Public Housing,” *WNYC News*, April 21, 2017, <https://www.wnyc.org/story/new-york-city-felonies-visit-family-public-housing/>. And the Vera Institute found that, if NYCHA expanded the FRPP, 500 people released from incarceration annually could be reunited with their families. Bae et al., *Coming Home*, 30–34.

171 Yolanda Johnson-Peterkin (chief of Housing Community Activities, New York City Housing Authority) in a voicemail message to author Ames Grawert, December 3, 2019.

172 Chelsia Rose Marcius, "NYCHA Seeks to Ease Rules Barring People with Criminal Records from Living in Public Housing," *New York Daily News*, September 16, 2020, <https://www.nydailynews.com/new-york/ny-nycha-to-ease-some-restrictions-for-applicants-criminal-records-20200916-bg6ej52wofdwvfdy4p4udua6te-story.html>.

173 New York City Housing Authority, "New York City Housing Authority Changes to Policies Related to Criminal Justice," September 2020, <https://www1.nyc.gov/assets/nycha/downloads/pdf/CJ-Policies-For-Public-Comment-FINAL.pdf>.

174 Yolanda Johnson-Peterkin (chief of Housing Community Activities, New York City Housing Authority) in an email message to author Ames Grawert, December 24, 2020.

175 The city of Seattle is one prominent example. Seattle Office for

Civil Rights, "Fair Chance Housing," accessed January 6, 2021, <https://www.seattle.gov/civilrights/civil-rights/fair-housing/fair-chance-housing>. For other cities with "fair chance" ordinances, see Oakland, Calif., Mun. Code § 8.25.030 (2020), https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.25ROV.DESISHFACHACHOOR_8.25.030USCRHIHODE (providing that "denial of housing may only be based on State and Federal requirements"); and Minneapolis, Minn., Code of Ordinances § 244.2030(c)(1) (2020), https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT12HO_CH244MACO_ARTXVIREDWLI_244.2030APSCCRPRTE (providing rules for considering applicants with criminal records).

176 Council of the City of New York, Int. No. 2047-2020 (introduced August 27, 2020), <https://legistar.council.nyc.gov/LegislationDetail.aspx?GUID=727F0B98-C1D6-4A6D-A12B-53356D35C065&ID=4624864>. At the time of publication, the legislation remained pending.

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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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