

State Incarceration Policy in the U.S. Federal System: Assessing Recent Approaches to Reducing Incarceration Rates

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Although scholarship analyzing U.S. incarceration policy generally focuses on the federal government and federal criminal justice laws, state and local governments are principally responsible for the criminal justice strategy and tactics utilized within their jurisdictions, and that determines the size of state correctional populations. The overwhelming majority of the total U.S. prison population is under the jurisdiction of state correctional authorities. Since 2010, forty-six states have reduced their prison populations, but the efficacy of these reforms and interventions has varied considerably. Utilizing a series of case studies, I analyze a range of state approaches to reducing the prison population and consider the effectiveness of these policies. The most effective approaches have focused on reducing prison admissions, creating or expanding early release opportunities, and decreasing readmission of conditional release violators.

For a four-decade period beginning in 1970, the U.S. prison population increased at a pace and magnitude unrivaled in modern history. Between 1970 and 1979, the prison population increased by 34 percent (301,470 persons). Most of this increase took place at the state level (Carroll and Cornell 1985, 473–490). In the 1980s, the War on Drugs incentivized local law enforcement to prioritize drug offenses. During that decade, the arrest rate for drug sale or manufacture increased by 210 percent, and the arrest rate for drug possession or use increased by 89 percent (Reuter 2013, 75–140). The number of people incarcerated for drug offenses increased by 1,200 percent over the next 20 years (Mauer 2009). No tough-on-crime policy had a greater impact on incarceration rates than the federal Violent Crime and Law Enforcement Act of 1994, known as the “1994 Crime Bill.” During the 1990s, the prison population increased by 91 percent (650,000) and continued to increase throughout the following decade by an additional 18 percent (251,000) (Wagner 2018). In 2009, the U.S. prison population grew to over 2.3 million, the highest number on record. Including individuals on probation (4,271,200) and parole (826,100), the total correctional population was over 7.2 million (Bureau of

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[Justice Statistics 2022a, 2022b](#)). Yet the very next year, the prison population declined for the first time since 1974 and has since continued to decline.

In 2020, the U.S. prison population declined 15 percent from the previous year—from 1.4 million to 1.2 million. Reductions in the number of admissions accounted for 95 percent of the total decrease in state prisons. The COVID-19 pandemic, overcrowding, and a nationwide upsurge of Black Lives Matter protests put pressure on state and local officials to reduce their incarcerated populations. Prisons and jails were, and continue to be, impacted significantly by COVID-19, and saw many of the largest outbreaks ([Kang-Brown, Montagnet, and Heiss 2021](#)). In addition, courts were forced to significantly alter their operations, and as a result, there was a 40 percent decrease in prison admissions from 2019 to 2020. Present issues aside, between 2010 and 2020, the U.S. prison population declined by 24 percent (350,000) with 92 percent of that decrease occurring at the state level ([Bureau of Justice Statistics 2022a](#)).

The central problem within the American criminal justice system is that crime and punishment are not directly correlated to criminal activity, and deviancy is not an earned status. Deviancy is a social construction, and crime and punishment are policy choices ([Davis 2021](#), 205–225). Despite large reductions, the U.S. prison population remains substantially larger than the prison population of any other nation and is historically and comparatively unprecedented. One-third of America's adult population has passed through the criminal justice system ([Lerman and Weaver 2014](#), 202–219), and more than 16 million residents have a criminal record ([Brame et al. 2012](#), 21–27). Moreover, some 60 percent of America's correctional population are racial and ethnic minorities ([Bureau of Justice Statistics 2022a](#)).

My purpose in this article is to highlight the importance of state incarceration policies and analyze recent state policymaking in this area. The overwhelming majority of America's correctional population (87 percent) is under the jurisdiction of state correctional authorities ([Bureau of Justice Statistics 2022a](#)), and state governments are largely responsible for creating criminal law and policing ([Campbell 2018](#), 219–234).

As scholars of federalism and state politics have shown in studies of policymaking in other areas, state bureaucrats learn from other states' policies and incorporate that learning within their own state ([Mallinson and Hannah 2020](#), 344–369; [Smith 2020](#), 3–29; [Smith 2022](#), 553–578). Several variables have been theorized to affect the likelihood of policy adoption, such as geographical proximity, interest groups, media salience, public opinion, political ideology, and the economy ([Savage 1985](#), 111–126; [Bergin 2011](#), 403–421; [Boushey and Luedtke 2011](#), 390–414; [Hannah 2018](#), 43).

Studies of criminal justice policy have focused on several factors that are seen as influencing state policymaking in this particular area. Criminal justice policy

adoption has been associated with political strategies and racial threat (Duxbury 2021, 123–153), new carceral technologies (Simon and Silvestre 2017, 73–91), state histories (Campbell 2018, 219–234), and socioeconomic factors (Mitchell and Butz 2019, 506–544; Kenter et al. 2020, 1029–1061). Notwithstanding variation in state policies, all fifty states adopted carceral policies that effectively doubled their incarceration rates in the late 20th and early 21st centuries (Zimring 2010, 1225–1246).

A myriad of criminal justice policies has been associated with decarceration. Policing reforms that deemphasize enforcement of low-level traffic infractions and requiring documentation to search have both been associated with substantial reductions in racial disparities (Baumgartner, Epp, and Shoub 2018; Mummolo 2018, 9181–9186). In addition, determinate and presumptive sentencing reforms (Stemen and Rengifo 2011, 174–201), drug court treatment programs (Sevigny, Fuleihan, and Ferdik 2013, 416–425), and decriminalization policies (Thompson 2017, 211–226) have all been associated with decarceration. Moreover, in prisons, post-secondary education programs (Kim and Clark 2013, 196–204) and vocational training (Hill, Scaggs, and Bales 2017, 61–86) have been found to decrease the likelihood of rearrests. Alternatively, some policy reforms have focused on social disparities (Epperson and Pettus-Davis 2017). A review of fifty-three studies found that health and education programs significantly reduce the likelihood of carceral contact (Hawks et al. 2022). Participation in Nurse–Family Partnership programs, which aid pregnant women and new mothers (Giovannelli et al. 2018, 80–86) and in early childhood education intervention programs (e.g., preschool) (Reynolds et al. 2001, 2339–2346), is associated with lower rates of arrests and convictions throughout a participant's life.

My contribution in this article is to examine notable case studies of states that have implemented innovative and effective decarceration policy interventions and reforms and advance some conclusions about what these states have in common. First, I identify and analyze national trends and contributing factors associated with the decline in the state prison population. Next, I discuss findings oriented around the three most efficacious areas of policy intervention and reform and provide detailed examples as supporting evidence. The most successful state policy interventions and reforms focused on (1) decreasing prison admissions, (2) creating or expanding early release opportunities, and (3) decreasing readmissions of conditional release violators. I conclude by discussing the impact these policy changes have had on the proliferation of misdemeanors.

National Trends and Contributing Factors

The sustained 40-year rise in the U.S. incarceration rate cannot be ascribed solely to higher levels of crime. The federal government enacted criminal justice laws that

had significant impacts on how American states and localities policed, sentenced, and incarcerated. The growth of mass incarceration was slow and methodical, the result of the policy choices of eleven presidential administrations and more than thirty congresses (Balco 2014). Nevertheless, states and localities, not the federal government, are principally responsible for the criminal justice strategy and tactics utilized within their jurisdictions, which have ultimately determined the size of state correctional populations and have played the key role in reducing the prison population in recent years.

Two national factors undoubtedly contributed to the decline in the U.S. prison population. First, since the 1990s, there has been a continued and persistent decrease in the U.S. crime rate. The Federal Bureau of Investigation (FBI) (2022) reported that between 1993 and 2019, the violent and property crime rates fell by 49 percent and 55 percent, respectively. The Bureau of Justice Statistics (BJS) reported an even larger decline. The BJS found that violent and the property crime rates fell, respectively, by 74 percent and 71 percent (Bureau of Justice Statistics 2022d). Scholars have offered various explanations as to why the U.S. crime rate fell so abruptly (Levitt 2004, 163–190). Nonetheless, the origins of the decline are still up for debate. Second, the 40-year, 500-percent increase in the U.S. prison population created serious overcrowding issues in state prisons (The Sentencing Project 2022). Subsequently, state correctional expenditures have increased by 347 percent (Urban Institute 2022). Criminal justice spending accounts for \$1 of every \$20 spent at the state level, \$1 of every \$5 spent at the county level, and \$1 of every \$6 spent at the municipal level (Auxier et al. 2020). Notwithstanding, reductions in crime rates and/or correctional costs and overcrowding were not on their own (or together) directly correlated with policy movement. However, states did manage to make policy changes that reduced their correctional populations.

Since 2010, forty-six states made (or were forced to make) reductions in their prison populations, but the efficacy of these reforms and interventions has varied considerably. Nine states made considerable progress, reducing their prison populations between 30 percent and 43 percent (Ghandnoosh 2021).¹ In twenty-five states, the reductions in population were less than 10 percent, whereas in twelve others, such reductions amounted to less than 5 percent, and in six, the reduction was between 0 percent and 1 percent (Ghandnoosh 2021).² Prison admissions have fallen by 32 percent, and the local jail population has decreased by 26 percent (4.2 million). Lastly, the community corrections population (probation and parole) has decreased by 22 percent (1.6 million), of which 97 percent are under the jurisdiction of state and local authorities (Bureau of Justice Statistics 2022a, 2022c). The latter point is important because, if the alternative to incapacitation had been an increased reliance on community corrections, it would have effectively *expanded* state carceral footprints within already disadvantaged race-class subjugated communities (see Soss and Weaver 2017).

Methods

In this study, I conduct a qualitative analysis using states as cases. I began by focusing on the twenty states that had percentage decreases in their prison population larger than the average percent decrease in the U.S. prison population (11 percent).³ Of the states included in the sample, I reanalyzed the ten that exhibited the largest decreases in absolute numbers based on the results from the first level of analysis, to identify their most successful policy interventions and reforms.⁴ A list of these states are presented in [Table 1](#).

The variables I am primarily concerned with are the size of the custody population (prison and jail); the number of individuals who have entered and completed or otherwise been discharged from probation; and the number of individuals who entered and completed or otherwise discharged from parole. I only use the completion and discharge numbers because persons who are readmitted to prison, abscond, get transferred to other jurisdictions, and die are also included in total exits from community corrections. Examining the size of these three populations (prison, jail, and community corrections) provides a better picture of the true size of state carceral footprints.

The individual policies represented below are not necessarily transferable or diffusible across states. State executive, legislative, and judicial branches, criminal justice systems, and correctional populations are all unique; therefore, the broader policy focus, rather than specific policy interventions or reforms, are the significant findings. I find that the twin pillars of mass incarceration—the key determinants of prison population size—are admissions and length of stay (LOS). When these numbers increase, the number of people incarcerated increases. The most effective decarceration policies have been organized around uncoupling these variables. I found that the more efficacious states focused on (1) decreasing admissions, (2) increasing early releases, and (3) decreasing admissions of conditional release violators. Below, I provide examples of the most successful policy interventions and reforms for each area and discuss their efficacy in relation to state decarceration efforts.

Sentencing Reform and Diversion Programs

In this section, I discuss the policy interventions and reforms aimed at dismantling the first pillar of mass incarceration: admissions. Notwithstanding increased correctional costs and decreases in crime rates, states that reclassified offenses, reformed sentencing guidelines, and expanded the use of and eligibility for diversion programs were the most successful in reducing new prison admissions. Between 2007 and 2017, fifty-nine reforms across thirty-five states were enacted that revised sentencing guidelines and enhancements and presumptive probation,

Table 1 Deceases in state correctional populations (2010–2019)^a

State	Percent decrease	Absolute decrease
Alaska	43	1,122
New Jersey	41	12,880
New York	40	29,794
Connecticut	39	12,173
Alabama	35	10,842
Rhode Island	34	617
Vermont	34	471
Hawaii	31	633
California	30	53,095
Massachusetts	27	8,813
Michigan	26	13,524
Illinois	23	11,098
South Carolina	22	4,970
Louisiana	21	8,586
Missouri	20	6,554
Maryland	20	4,050
Colorado	15	3,030
Oklahoma	14	573
Mississippi	13	1,650
Pennsylvania	12	5,562

^aBureau of Justice Statistics.

The states in this list with the greatest absolute decreases are in bold.

which includes diversion programs (Pew Charitable Trusts 2022). Five states reclassified *all* drug possession offenses from felonies to misdemeanors and made drug possession ineligible for imprisonment for up to at least the third misdemeanor conviction (Elderbroom and Durnan 2018; Elderbroom, Sakala, and Khalid 2020).⁵ Of these five states, California was the first.

California

The California prison population peaked in 2006 (175,500), but since then, California has led the nation in correctional population reductions and no longer has the largest state prison population (in absolute numbers). Between 2006 and 2019, reductions in the California prison population accounted for 34 percent of the total reduction in the state prison population. California's prison population has decreased by 55 percent. For the first time since 1990, it is below 100,000 (97,319) (Bureau of Justice Statistics 2022a). It should be noted that the federal

judiciary, through court order, forced California to reduce its prison population ([Mentor 2009](#); [CDCR 2022b](#)).

Beginning in the 1990s, California had been operating its prison system between 100 and 200 percent of the highest capacity ([Bureau of Justice Statistics 2022a](#)). Multiple prisoner lawsuits over two decades led to a federal court ordering the California Department of Corrections and Rehabilitation (CDCR) to cap its prison population at 137.5 percent of design capacity, which equated to releasing over 44,000 prisoners ([Mentor 2009](#)). At that time, California was housing more than 171,000 people in a prison system designed to hold 84,000 ([Bureau of Justice Statistics 2022a](#)). The state appealed the decision to the U.S. Supreme Court (SCOTUS) but to no avail. In 2011, the SCOTUS upheld the ruling in *Brown v. Plata*, and that same year, California enacted the Public Safety Realignment Act of 2011 (Realignment Act) ([CDCR 2022a](#), [2022b](#)).

The Realignment Act had two major objectives: to decrease both new admissions and the readmissions of conditional release violators. The latter objective is discussed in the following sections. To reduce new admissions, the Realignment Act required that newly convicted defendants of nonviolent, nonsex, and nonserious offenses (nonoffenders) with no prior serious conviction be remanded to county jails rather than to state prisons. After nonoffenders were remanded to county authorities, localities had three sentencing options. The inmates could serve the full term of confinement, which could be completed via alternative methods such as electronic monitoring. The inmate could be given a split sentence and serve some time in jail and the remainder on probation (not state parole). Lastly, the inmate could be placed directly onto county-supervised probation ([California Courts 2022](#)).

In 2014, California passed the Safe Neighborhoods and Schools Act, which reclassified six felony drug and petty theft offenses as misdemeanors, ineligible for incarceration. In year one of enactment, new prison admissions decreased by 28 percent ([Bureau of Justice Statistics 2022a](#)). That year there were 119,000 fewer felony arrests and 55,000 fewer felony convictions. Since 2014, over \$200 million in corrections spending has been reallocated from prisons to community-based organizations that provide mental health and substance abuse treatment, housing and community support, and diversion programs ([CSJ 2020](#)).

New York and New Jersey

Before California was forced to drastically reduce its prison population, New York and New Jersey led the nation in population reductions. Between 1999 and 2012, as national incarceration rates were increasing, these states managed to reduce their prison populations by 26 percent ([Mauer and Ghandnoosh 2014](#)). Crime rates were a significant factor. In New York and New Jersey, violent and property crime

rates fell by percentages higher than the national rates. The U.S. violent and property crime rates fell by 26 percent and 24 percent, respectively. In New York and New Jersey, violent crime rates fell by 31 percent and 30 percent, respectively, and property crime rates fell by 29 percent and 31 percent, respectively. The impact was significant. In New York, the number of felony drug and violent crime arrests dropped by 50 percent and 64 percent, respectively (Greene and Mauer 2010). However, state mandatory minimums and truth-in-sentencing laws were still mandating incarceration for a variety of offenses.

Brooklyn District Attorney Charles J. Hynes created the first and most effective diversion program in the nation. The Drug Treatment Alternative-to-Prison (DTAP) program diverts felony offenders away from prison and into high-quality substance abuse treatment programs (Greene and Mauer 2010). The DTAP is based on a deferred sentencing model. Defendants must plead guilty to enter the program. If a defendant completes the program, she can withdraw her guilty plea and have the charges dismissed. If a participant fails to complete the program, she will be sentenced to whatever term of incarceration was outlined in the plea agreement. Participants who relapse or experience treatment setbacks can be readmitted to the program if they are contrite and do not pose a threat to the community (DOCCS 2022b). The DTAP program is one of the 165 Alternative to Incarceration programs in New York. As a result of the proliferation of these diversion programs, there has been a 50 percent decrease in the proportion of the sentenced population imprisoned for drug offenses (Greene and Mauer 2010).

New Jersey also expanded the access and eligibility of diversion programs as a means of decreasing new admissions. Under the New Jersey Comprehensive Drug Reform Act of 1986, it was a third-degree felony offense to deal or possess drugs within 1,000 feet of school property, and it was a second-degree felony offense to deal or possess drugs within 500 feet of a park, public housing, or a public building (Greene and Mauer 2010). Consequently, in dense urban areas, with overlapping school and public space zones, entire communities became prohibited areas and the proportion of people serving time for drug offenses rose significantly. By the 2000s, drug offenders constituted a majority (58 percent) of the state prison population. In 2004, the New Jersey Office of the Attorney General revised the guidelines and exempted those charged with low-level drug offenses from portions of the “drug free school zone” law (NJDOC 2022). In addition, the New Jersey Legislature passed a law that gave judges the ability to sentence them below “school zone” guidelines and the option to impose probation (Greene and Mauer 2010).

That same year, the court system expanded the New Jersey drug court model statewide. The New Jersey Statewide Recovery Court is a probation sentence with significant treatment conditions (NJOPD 2022). Recovery Court programs are strictly monitored addiction treatment and counseling programs that also provide job training and education and other healthcare services (DMHAS 2022).

Moreover, after successfully completing the program, graduates become eligible to have their *entire* criminal record expunged, and since 2002, there have been over 3,200 criminal record expungements ([New Jersey Courts 2022](#)).

Mississippi

A less populous state, Mississippi, was also very successful in reducing new admissions. In 1995, Mississippi passed a truth-in-sentencing law that increased the requirement for time served from 25 percent to 85 percent for *all* crimes and abolished the discretionary release of *all* crimes committed after the passage of the bill. Consequently, over the next 30 years, the Mississippi prison population grew 307 percent, of which 75 percent were nonviolent offenders ([Schrantz, DeBor, and Mauer 2018](#)). In 2014, Mississippi reformed its sentencing laws and reduced mandatory penalties associated with nonviolent crimes and extended eligibility for alternative sentencing programs to a larger array of offenses. The 2014 reforms allowed judges to order probation for offenders with prior felony convictions and non-adjudicated probation for drug offenders (excluding traffickers) ([MDOC 2022a](#)).⁶ That year, Mississippi generated the largest percent decrease (15 percent) in admissions in the nation ([Bureau of Justice Statistics 2022a](#)). By 2016, admissions for property and drug crimes had fallen by 31 percent and 37 percent, respectively, and violent offenders were again the majority population in Mississippi prisons ([MDOC 2022a](#)).

Analysis

To decrease new admissions, the most efficacious states focused on reclassifying felonies as misdemeanors, redefining sentencing guidelines for nonviolent offenders, and expanding eligibility for alternative sentencing programs and presumptive probation, namely, substance abuse programs. State reforms targeting new admissions have been very successful. Since 2010, new admissions of sentenced prisoners (felons) have lagged releases in all but 1 year ([Bureau of Justice Statistics 2022a](#)), and there was a 13 percent decrease in the number of incoming state court cases ([Gibson et al. 2022](#)). However, the number of incoming criminal cases has only decreased by 7 percent, and there was an even smaller decrease in the number of incoming misdemeanor cases (3 percent). Moreover, after disaggregating the data by misdemeanor type, I found that between 2012 and 2019, there was an 18.3 percent increase in incoming criminal misdemeanor cases ([Gibson et al. 2022](#)). It appears that states are substituting sentenced prisoners (felons) for misdemeanants, and at a rate of four to one.

Retroactive Legislation and the Return of Early-release Programs

In these next two sections, I discuss the policy interventions and reforms that states employed to ameliorate the effect that mandatory minimum and truth-in-sentencing laws had on LOS, the second pillar of mass incarceration. Prior to 2000, fifteen states had no parole system and another twenty had significant restrictions on parole eligibility. Focusing on early-release programs and incorporating retroactivity in policy reforms was essential because mandatory minimum laws ensured considerably lengthened sentences. Truth-in-sentencing guidelines, meanwhile, lengthened the minimum time served to become eligible for parole, and they outright eliminated parole eligibility for some offenses, including nonviolent ones.

The LOS can be measured in different ways; but the most common method is by release cohort, which is the average time served for a group of offenders released during a certain period. After the passage of the 1994 Crime Bill, the average LOS in state prisons increased by 36% (9 months). The LOS increased for violent (37 percent), property (24 percent), and drug (36 percent) offenses; however, changes varied by state as well as within states (Gelb, King, and Rose 2012).⁷ Of those states that increased LOS, the magnitude of the increases varied considerably, ranging from the largest (Florida, with a 166 percent increase) to the smallest (New York, with a 2 percent increase). Changes in LOS varied between low-population states like North Dakota (a 54 percent increase) and South Dakota (down 24 percent) and between large-population states like Texas (a 32 percent increase) and Illinois (down 25 percent) (Gelb, King, and Rose 2012).

There were also intrastate variations. For example, the average LOS in the State of Oregon increased by 32 percent, but the average LOS per offense varied considerably. Drug crimes, for example, increased by 62 percent, compared to a 31 percent increase in LOS for violent crimes and a 14 percent decrease in LOS for property crimes (Gelb, King, and Rose 2012). Nevertheless, one factor associated with increased LOS is universal: cost. The 9-month increase in the average LOS is estimated to have cost states \$23,300 per person. The total cost is estimated to have been over \$10.4 billion. Notably, half of the \$10.4 billion was spent on detaining nonviolent offenders (Gelb, King, and Rose 2012).

Michigan

To reduce LOS, the Michigan State Legislature passed retroactive legislation which repealed most of the state's exceedingly harsh mandatory minimum guidelines. Retroactivity means applying new legislation to previously sentenced cases. Retroactive laws can change the legal consequences associated with an offense and increase, decrease, or eliminate the legal sanction altogether. Prior to the 2002 reforms, Michigan sentencing guidelines required that mandatory minimum terms be served consecutively (Greene and Mauer 2010). The retroactivity of reforms

made 1,200 offenders immediately eligible for parole and an additional 7,000 offenders eligible for release from lifetime probation. Between 2002 and 2003, there was an 18 percent decrease in the number of people in Michigan prisons convicted of drug crimes (Greene and Mauer 2010).

In 2003, the state created the Michigan Prisoner Reentry Initiative (MPRI), with the objective of making the parole process more efficient and increasing the parole grant rate. Using evidence-based practices, the MPRI created a level of standardization for the parole process. It provided parole board members with trainings and more sophisticated assessment tools, which helped decrease parole board uncertainty (Schrantz, DeBor, and Mauer 2018). The state strategically targeted prisoners who were serving past their minimum sentence release date because they had been denied parole in the past or readmitted for a conditional violation. Notwithstanding, a Pew Center on the States (2011) study of nonviolent offenders released in 2004 found that 24 percent of the Michigan release cohort could have been released up to 2 years sooner. The early releases would have saved the state \$92 million in spending with no adverse effects on public safety.

Despite these reforms, the LOS in Michigan for violent, drug, and property crimes increased by 97 percent, 74 percent, and 35 percent, respectively. In 2009, Michigan had the longest average LOS in the nation (4.3 years), which included both violent crimes (8 years) and drug crimes (3 years), and the third longest LOS for property crimes (3 years) (Gelb, King, and Rose 2012). That same year, Michigan Governor Jennifer Granholm enacted an executive order that temporarily increased the number of parole board members, enabling the state to reconsider parole applications for nonviolent offenders who had served their minimum sentence. This population comprised 29 percent of all prisoners that had served their minimum sentence. Governor Granholm's executive order credited with bringing about a 13 percent increase in discretionary releases (Schrantz, DeBor, and Mauer 2018).

In total, Michigan saw a 34 percent increase in releases from the prior year (2008) and led the nation in reported decreases in absolute numbers (3,260) (Bureau of Justice Statistics 2022a). The parole approval rate improved, and as of 2019, the grant rate was 73 percent (up from 47 percent in 2000) (Bureau of Justice Statistics 2022a; MDOC 2022b). Currently, Michigan's prison is releasing more prisoners than it admits, and its community corrections population also continues to decline. The state has managed to close or consolidate twenty-six facilities, which has saved taxpayers an estimated \$429 million (Egan 2018; VanHulle 2018).

New York

The New York State passed retroactive reforms and expanded eligibility for early-release programs to decrease LOS. To accomplish this, the state had to reform the

most longstanding of contemporary tough-on-crime laws: the New York State Substance Control Act of 1973, infamously known as the “Rockefeller Drug Laws.” In 1978, the state assembly lengthened sentences for violent offenders, and in 1998, it abolished parole for *all* violent offenders and pressured the parole board to be more restrictive when making parole decisions for people with *any* history of violent crime. By 2000, the New York State parole grant rate was 40 percent, and the grant rate for those convicted of a violent crime was half that (Greene and Mauer 2010).

In 2004, New York State replaced its indeterminate sentence of 15 years to life with a determinate sentence of 8 to 25 years. Determinate sentences are jail or prison sentences that have a defined length (15 years), which cannot be changed by a judge or parole board. Indeterminate sentences have a minimum and maximum term length (e.g., 5–10 years), but the release date is left open. The retroactivity of these reforms allowed prisoners to petition for resentencing under the new guidelines. Within 2 years, 200 people were resentenced and released, on average 4 years prior to their minimum term of eligibility (Greene and Mauer 2010).

New York also initiated and expanded eligibility for its early-release programs. Currently, New York State has five earned-credit programs that provide seven ways for various offender types to earn time off their sentences. These programs allow prisoners to earn time off the minimum sentence needed to qualify for parole or expiration of their sentences altogether (NY Senate 2022). In total, twenty-six states have a good-time program that offers educational credits. Twenty-three states have programs that offer vocational credits, sixteen offer work credit, and five offer credit for participating in disaster response (e.g., firefighting). Seventeen offer credit for participation in mental health or substance abuse treatment, and twenty-one offer various other forms of credit programming (Widra and Bertram 2021).

In 2003, the New York State Assembly expanded eligibility for the Earned Eligibility Program to nonviolent offenders (DOCCS 2022a). The state also began permitting the Department of Corrections and Community Supervision (DOCCS) to grant Presumptive Release at the expiration of five-sixths of the minimum term for nonviolent offenders with no history of violence and who have not filed a frivolous lawsuit (DOCCS 2022a). In 2004, the Merit Time Program was expanded to drug offenders serving mandatory sentences of 15 years to life who had already served 10 years and who had initiated a Supplemental Merit Time program (DOCCS 2022a). Within 2 years of enactment, nearly 2,000 people had been released through the supplemental program (Greene and Mauer 2010).

New York enacted additional criminal justice reforms in 2009. Despite previous efforts to make early releases more feasible, the state still had the third longest LOS in the nation (3.6 years) (Gelb, King, and Rose 2012). The 2009 reforms created the Limited Credit Time Allowance program, which expanded earned-credit eligibility to nondrug A-I felonies (the most serious) and violent crimes (excluding

murder and sex crimes) (DOCCS 2022a). The reforms also expanded the age eligibility for the Shock Incarceration Program (Shock) and permitted sentencing courts to order the DOCCS to enroll convicted individuals into Shock when they became eligible (DOCCS 2022b, 2022c). This same year, in 2009, New York State saw the third largest decline in absolute numbers in its prison population in the nation (1,660) (Bureau of Justice Statistics 2022a).

California

California increased the efficiency of release through the expansion of earned-credit programs, but to a lesser degree than New York. The Public Safety and Rehabilitation Act of 2016 expanded eligibility for good-time programs, increased the amount of credit a prisoner could earn, and initiated two new early-release programs. Good Conduct Credit is awarded for good behavior and is also in part determined by which work group a prisoner is assigned to. The Milestone Completion Credit is awarded for the completion of rehabilitative or educational programs focused on finding employment. The Rehabilitative Achievement Credit is awarded for completing a specified number of hours of self-help or volunteer work. The Educational Merit Credit can be earned by completing a General Educational Development (GED) (90 days) or an advanced degree (180 days) and participation in the Offender Mentor Certification program (180 days) (California Courts 2022).

California also employed retroactivity and initiated an alternative nonparole release program. California was the first state to reclassify felony theft and drug possession offenses as misdemeanors and the *only* state that made those reclassifications retroactive. The Safe Neighborhoods and Schools Act of 2014 reclassified six felony offenses as misdemeanors and allowed current prisoners to petition for resentencing under the misdemeanor guidelines and permitted reclassification of past felony convictions. In the first 2 months after enactment, the California superior courts (trial courts) received 60,000 petitions for resentencing or reclassification (California Courts 2022). Within 90 days of enactment, retroactive resentencing had affected the release over 9,000 people. The first year after enactment, the California prison population decreased by 15,000 people (CSJ 2017), and the Californian jail population dropped below its rated capacity, saving taxpayers over \$200 million (Romano 2015).

In 2016, Californians enacted the Adult Use of Marijuana Act. This act legalized marijuana usage for adults aged 21 years and over. The law also retroactively reduced criminal penalties for certain marijuana-related offenses and authorized resentencing, dismissal, and sealing of prior marijuana-related offenses. Since 2016, there have been more than 28,000 resentencing petitions filed in California superior courts (California Courts 2022).

The California Realignment Act also created Post Release Community Supervision (PRCS), which is a form of probation (PRCS 2011). After the Realignment Act passed, only serious felonies, violent felony sex crimes, lifers, high-risk sex offenders, and mentally disordered offenders were eligible for parole. In the first year of enactment, conditional releases decreased by 20 percent, but unconditional releases increased by an astonishing 691 percent (Bureau of Justice Statistics 2022a). To date, there have been no increases in violent crime associated with the releases (California Courts 2022). Moreover, the State of California has been able to meet and exceed the court-ordered 137.5 percent of design capacity and is currently at 111.8 percent (CDCR 2022b).

Mississippi

Notably, Mississippi used a combination of all three policy interventions and reforms and was extremely successful in reducing its prison population. In 2009, Mississippi had a prison population one-twelfth the size of Texas's but managed to generate a larger decline in absolute numbers (1,272) than Texas (1,257) (Bureau of Justice Statistics 2022a).⁸ That year, Mississippi enacted retroactive reforms that decreased the minimum time served required for nonviolent offenders to become eligible for parole from 85 percent (for *all* offenses) to 1 year, or 25 percent (Schrantz, DeBor, and Mauer 2018). The retroactivity of the law was crucial to the magnitude of its effect because a substantial proportion of Mississippi's prison population had already served 25 percent of their sentence. The number of discretionary releases in Mississippi increased by 96 percent in 1 year. In total, the 2009 reforms generated over 4,000 early releases (Bureau of Justice Statistics 2022a; MDOC 2022a).

In 2014, Mississippi went further and expanded parole eligibility to a wider category of offenses and eliminated the statutory minimum for time served. Parole eligibility was now dependent on completing 25 percent of a sentence, regardless of length (Schrantz, DeBor, and Mauer 2018). The 2014 reforms also expanded eligibility for good-time programs and initiated merit, educational, and vocational credit programs. That year, discretionary releases increased by 84 percent, and there was a 14 percent drop in the state prison population (Bureau of Justice Statistics 2022a; MDOC 2022a). The 2014 decrease in the state prison population saved Mississippi \$40 million (Schrantz, DeBor, and Mauer 2018). Moreover, the Mississippi Parole Board approval rate increased from 40 percent (in 2009) and 65 percent (in 2016); nevertheless, there was also a 17 percent drop in the state community corrections population (Schrantz, DeBor, and Mauer 2018). Mississippi was able to generate releases and conditional exits at an alacrity and magnitude not seen in other states.

Analysis

To increase releases from prison, states made reforms to their mandatory minimum and truth-in-sentencing laws retroactive, and they expanded eligibility for earned/merit/good-time (early release) programs. Early-release programs give prisoners the opportunity or the ability to “earn” sentence reductions, which improves the feasibility of early release. The retroactivity allows current prisoners to be resentenced under the new guidelines, making them eligible for early-release programs. Early releases are a critical area of criminal justice reform, namely because of the 1994 Crime Bill. The act mandated that for a state to receive federal grants for prison construction, it would have to show that it had (1) increased the percentage of convicted violent offenders sent to prison, (2) increased the average prison sentence for those violent offenders, and (3) increased the percentage of their sentences to be served in prison (Travis, Western, and Redburn 2014). Among the states, the legal definition of “violence” is quite broad. Generally, it means an offense that has, as an element, the use, attempted use, or threatened use of physical force against a person or property. The result has been an increase in incarceration and a prison population in which one in seven prisoners was serving a life sentence (The Sentencing Project 2022).

Reducing Conditional Release Revocations

In 2010, parole violators accounted for 35 percent of all state admissions. The states that admitted the most parole violators were California (77,422), Texas (23,942), Illinois (13,931), New York (8,848), and Missouri (8,233) (Bureau of Justice Statistics 2022a). Nevertheless, in 2010, California had the largest decline in the absolute number of admissions (10,762) which was nearly double that of the next closest state, Florida (5,264). California accounted for 90 percent of the decrease in new state admissions, and 71 percent of the total decrease in admissions of state parole violators (Bureau of Justice Statistics 2022a). Notwithstanding, state increases in the efficiency of release and improving parole grant rates has expanded the conditional release population, and thereby the population eligible for readmission for conditional violations.

In 2019, conditional release violations accounted for 45 percent of all state prison admissions. In forty-two states, one-third or more of their prison admissions were due to conditional release violations, and in twenty states, over half of their prison admissions were due to conditional violations.⁹ In thirteen states, conditional release violators accounted for over one-third of their prison populations, and in four states, over 50 percent of their prison population are conditional violators (CSG 2019).¹⁰ Twenty-two percent of the total state prison population is serving time for a conditional release violation. This cost states an estimated \$9.3 billion every year (CSG 2021).

Conditional release violations are classified as either a new crime or a technical violation. A technical violation occurs when an offender fails to meet a condition of supervision, such as a failure to report, missing a meeting (e.g., substance abuse, mental health, or sex offender treatment), not paying fines and fees, and/or failing a drug test. Technical violations are not criminal offenses, but they can and often do result in revocation. In 2019, technical violations accounted for 25 percent of all state admissions. Thirty-four percent of the population incarcerated for conditional violations were serving time for a technical violation (91,000 people) (CSG 2021). Of the \$9.3 billion spent annually on the imprisonment of conditional violators, \$3 billion is spent to incarcerate technical violators.

California

The final component of the California's Realignment Act focused on decreasing admissions for conditional release violations (Lofstrom and Martin 2015). The Realignment Act initiated Post Release Community Supervision (PRCS), which provides a variety of pre- and post-release services like substance abuse and family reunification programs and vocational/employment services. The term of PRCS is capped at 3 years, offenders who successfully complete their case plan or make considerable progress become eligible for early discharge after 6 months, and the law mandates discharge after completion of 12 consecutive months without a custodial sanction. If a person violates the conditions of the PRCS program, their term restarts. PRCS violators are held accountable with noncustodial sanctions such as increased reporting, GPS monitoring, drug testing, curfews, and community service. Custodial sanctions do not include remanding to state prison, but violators can be sentenced up to 180 days in jail.

The U.S. state prison population decreased by 21,663 inmates in 2011 despite twenty-four states reporting increases in their prison populations. The Realignment Act was accredited with a 70 percent decrease in the state population and a 22 percent decrease in admissions of California parole violators (down 17,000) (Bureau of Justice Statistics 2022a). Within 1 year, there was a 65 percent decrease in total admissions. Comparatively, parole violations decreased from 62 percent of admissions in 2011 to 23 percent of admissions in 2012 (Bureau of Justice Statistice 2022a). Moreover, the recidivism rate in California decreased from 61 percent (2009) to 22 percent (2012), and the return rate for PRCS has averaged to 24 percent (CDCR 2022a). Nevertheless, in 2019, conditional release violations accounted for 35 percent of total prison admissions in California and 37 percent of all admissions for conditional release violations were for technical infractions. Eleven percent of the California prison population was incarcerated for technical violations. It costs California \$2 billion annually to incarcerate conditional release

violators, of which \$235 million is used to imprison technical violators (CSG 2021).

New Jersey

The New Jersey State Parole Board initiated the Evidence-Based Parole program as a means of reducing recidivism (SPB 2022). In 2007, the New Jersey Department of Corrections (NJDOC) Office of Transitional Services began providing transitional and social service programming aimed at reducing conditional violators. Reentry preparation begins 12 to 18 months prior to release, and post-release services start the day of release. The NJDOC programs provide a variety of transitional rehabilitative services (NJDOC 2022). NJDOC operates several different types of residential and nonresidential community-release programs. Halfway house programs focus specifically on employment and educational activities in the context of treatment and rehabilitation. The Stages to Enhance Parolee Success program and the Re-entry Substance Abuse Program both offer a structured alternative to revocation for parole violators. The Regional Assessment Center program is designed to divert conditional violators away from reentry and toward more intensified supervision and community-based programs. These interventions have proven to be very effective. The 3-year recidivism rate for program completers is 23 percent lower than that of noncompleters (NJDOC 2022).

Nevertheless, 20 percent of the 2008 cohort were readmitted for technical violations which did not involve an arrest (Pew Charitable Trusts 2013). In 2019, the percentage of the New Jersey state prison population in custody for conditional release violations (14 percent) was the ninth lowest in the nation. However, 97 percent of all admissions for conditional release violations were for technical violations (CSG 2021). Notwithstanding the low number of total admissions (7,469) and low number of total admissions for conditional release violations (647), it still costs New Jersey \$183 million each year to imprison conditional release violators, of which nearly all are technical violators (CSG 2019).

Michigan

Notably, Michigan also employed an evidence-based approach focused on increasing support services and reforming revocation guidelines as a means of reducing recommitments. A goal of the 2005 MPRI was to streamline supervision from admission to reintegration. The MPRI made sweeping reforms in the areas of prisoner assessment and classification, prison programming and release preparation, release decision-making and supervision services, and revocation decision-making and post-release support programs. The state also expanded the use of intermediate sanctions for conditional release violations and designated two

prisons as reentry facilities ([Pew Center on the States 2011](#); [McLellan et al. 2014](#); [Pew Charitable Trusts 2018](#)).

Its approach was very effective. Between 2005 and 2011, the annual budget for reentry programs increased from \$33 million to \$96 million and the MPRI was accredited with a 30% decrease in conditional violation readmissions. In 2014, Michigan consolidated all reentry services under the Offender Success Administration. Parole approval rates increased, the recidivism rate fell to the lowest in state history, and there was a 10 percent drop in the prison population ([MDOC 2022b](#)). In 2019, the proportion of the Michigan prison population incarcerated for conditional violations was the third lowest in the nation (4 percent). However, total conditional release violations accounted for 50 percent of all prison admissions, and technical violations alone accounted for 29 percent of all admissions. Moreover, all the people (100 percent) in Michigan state prisons for conditional violations were imprisoned for technical violations ([CSG 2021](#)). Despite the low absolute numbers of imprisoned technical violators (1,189), it still costs the state \$59 million annually to incarcerate them ([CSG 2019](#)).

Analysis

To decrease conditional release admissions, states focused on reducing readmissions for technical violations. States established programs that provided both pre- and post-release services, including substance abuse, mental health, and educational programs; initiated alternative (nonparole) supervision programs; and authorized graduated responses for technical violations, which included remanding to post-release services. The policy interventions associated with reducing readmissions for conditional violations have important implications for decarceration, but until this point, they have not proven as efficient as the policy interventions and reforms are associated with sentencing guidelines, diversion programs, retroactivity, and early-release programs. The conditional release guidelines surrounding technical violations are likely to be a particular focus of reforms going forward.

The Proliferation of Misdemeanants in the States

State courts handle over 90 percent of the nation's judicial business ([George and Yoon 2017](#), 1887–1910). In 2019, there was an estimated grand total of 83.2 million incoming state cases. Of these cases, 78 percent consisted of traffic (42.2 million), civil (16.8 million), domestic relations (4.8 million), and juvenile cases (1.1 million). The remaining 22 percent were criminal cases (18.3 million), and of the criminal cases, 79 percent were misdemeanor cases (13.7 million) ([Gibson et al. 2022](#)). Despite the size of the state misdemeanor system, there is a significant lack of empirical data on misdemeanor cases ([Natapoff 2012](#), 1313–1376; [Stevenson and](#)

Mayson 2018, 731–777). The National Center for State Courts has limited data on thirty-three state court systems spanning from 2012 to 2021 (Gibson et al. 2022), but recently, the Department of Justice (2022) conducted a feasibility study to assess the availability and quality of case-level data on misdemeanors. Alexandra Natapoff (2018) was the first to develop a national estimate of misdemeanor offenses (13 million in 2015), and Mayson and Stevenson (2020) conducted the first multijurisdictional analysis of misdemeanor case processing. They found that the misdemeanor system disproportionately affects the poor and people of color and that each jurisdiction relies on cash bail, which results in high rates of pretrial detention (Mayson and Stevenson 2020, 971–1044).

This is important for two reasons. First, research has found that forgoing prosecution of nonviolent misdemeanor offenders is correlated with a 53 percent decrease in the probability of future offending (Agan, Doleac, and Harvey 2022, 1–103). Second, defendants from low-income zip codes are 15 percent more likely to be detained pretrial than defendants from wealthier zip codes (19 percent less likely) (Heaton, Mayson, and Stevenson 2017, 711–794). Pretrial detention increases the probability that a misdemeanant will plead guilty (25 percent), *irrespective of actual guilt*, and be sentenced to jail (43 percent) with a sentence twice the average term length (Heaton, Mayson, and Stevenson 2017, 711–794).

Since 2010, sixteen states have reclassified or redefined their drug offenses, and fifteen states have reclassified or redefined their property offenses (Pew Charitable Trusts 2018). These reforms have had unintended consequences. Since New York State reformed its guidelines, there has been a 36 percent increase in the misdemeanor arrest rate compared to a 6 percent decrease in the felony arrest rate (Patten et al. 2018). Misdemeanor arrest rates rose for all age groups of 21 and over. The arrest rate for 21- to 24-year-olds increased by 31 percent; for 25- to 34-year-olds, it increased by 88 percent; and for 35- to 65-year-olds, it increased by 127 percent (Patten et al. 2018). Of the five states that we have data on that have reclassified *all* drug possession offenses to misdemeanors, I found similar results.¹¹ The year after Connecticut, Alaska, and Utah reclassified all drug possession to misdemeanors, there was a respective 106 percent, 64 percent, and 44 percent increase in incoming drug-related misdemeanor cases (Pew Charitable Trusts 2018; Gibson et al. 2022). These types of reforms have had a significant impact on reducing felony convictions and newly sentenced prisoner admissions, but effectively work to increase the feasibility and efficiency of misdemeanor arrests. Natapoff (2018) argues that “one of the great myths of our criminal justice system is that [these misdemeanor] arrests and convictions are not especially terrible for the people who experience them.” Moreover, in some jurisdictions, the number of misdemeanants is so overwhelming that it has incentivized courts to sidestep constitutional protections in favor of assembly-line managerial justice (Kohler-Hausmann 2018).

Nationally, there was a 115 percent increase in the number of incoming drug- and property-related misdemeanors. Incoming misdemeanor property cases increased by 104 percent and incoming misdemeanor drug cases increased by 134 percent (Gibson et al. 2022). Between 2018 and 2019, there was a 12 percent decrease in incoming misdemeanor drug and property cases, but there were still over 396,000 more misdemeanor cases filed in 2019 than in 2012 (Gibson et al. 2022). Moreover, research has found that decreases in misdemeanor arrest rates often follow long periods of increased enforcement (Cadoff, Chauhan, and Bond 2020). Prior to the 2019 decrease, there had been a 144 percent increase in incoming drug- and property-related misdemeanor cases (Gibson et al. 2022).

Conclusion

During the past ten years, there have been significant declines in the U.S. prison population. Despite the tendency of scholars and policy analysts to focus on federal legislation, the vast majority of the work in criminal justice policy is done at the state level. The sustained reduction in the prison population has been driven by state policy interventions and reforms that have focused on decreasing admissions, increasing early releases, and decreasing admissions of conditional release violators.

Research on state incarceration policy is important because it helps us better understand which states are learning, what those states are learning, and which states are not learning. For instance, Alabama and Mississippi are very similar. However, Mississippi enacted policy changes that significantly reduced its carceral footprint, whereas Alabama's Department of Corrections is on the verge of being taken over by the federal government due to massive overcrowding, violence, and inhumane conditions (McCann 2022; Hryniuk 2023). Notably, the federal government is the same entity that incentivized Alabama to adopt the policies that are responsible for these conditions.

Going forward, and taking note of questions calling for further research, federalism scholars interested in criminal justice issues should pay even more attention to local law enforcement. Local policing policies, more so than crime, determine the probability that a given resident will have contact with the criminal justice system. Currently, states have little administrative or operational control over local law enforcement and even less influence over their conduct and hiring practices. Nevertheless, localities derive their authority from the state (e.g., Dillon's Rule), and therefore states are better positioned than the federal government to address issues stemming from status quo policing. Under the U.S. federal system, states have the power to create more efficacious criminal justice systems. In doing so, states of predation can reclaim their position as laboratories of democracy.

Notes

1. Arkansas, New Jersey, New York, Connecticut, Alabama, Rhode Island, Vermont, Hawaii, and California.
2. Conversely, during this same period, the prison populations increased in Montana, Idaho, Nebraska, and Kansas, peaking in 2019 (Ghandnoosh 2021).
3. Arkansas (43 percent), New Jersey (41 percent), New York (40 percent), Connecticut (39 percent), Alabama (35 percent), Rhode Island (34 percent), Vermont (34 percent), Hawaii (31 percent), California (30 percent), Massachusetts (27 percent), Michigan (26 percent), Illinois (23 percent), South Carolina (22 percent), Louisiana (21 percent), Missouri (20 percent), Maryland (20 percent), Colorado (15 percent), Oklahoma (14 percent), Mississippi (13 percent), and Pennsylvania (12 percent).
4. California (53,095), New York (29,794), Michigan (13,524), New Jersey (12,880), Connecticut (12,173), Illinois (11,089), Alabama (10,842), Massachusetts (8,813), Louisiana (8,586), and Missouri (6,554).
5. Arkansas (2016), California (2014), Connecticut (2015), Oklahoma (2016), Utah (2015).
6. Commercial offenses include distribution, manufacturing, and possession with the intent to distribute and they carry more severe penalties.
7. Notwithstanding the overall increase in LOS, eight states reduced their LOS during this period. Nevada (14 percent), South Dakota (24 percent), Nebraska (6 percent), Missouri (14 percent), Illinois (-25 percent), Tennessee (6 percent), Louisiana (9 percent).
8. The 2009 prison populations for Mississippi (21,482) and Texas (171,275).
9. Percentage of admissions due to supervision violations: Utah (79 percent), Missouri (77 percent), Wisconsin (70 percent), Idaho (69 percent), South Dakota (68 percent), Kansas (68 percent), Minnesota (65 percent), Kentucky (64 percent), North Carolina (62 percent), New Hampshire (60 percent), Arkansas (57 percent), Iowa (56 percent), Wyoming (56 percent), Pennsylvania (54 percent), Indiana (53 percent), Hawaii (53 percent), Colorado (53 percent), Minnesota (52 percent), Louisiana (51 percent), Virginia (51 percent), North Dakota (49 percent), Connecticut (48 percent), Ohio (47 percent), Texas (47 percent), Oregon (45 percent), Mississippi (45 percent), Arizona (44 percent), Maine (44 percent), Montana (41 percent), New York (41 percent), South Carolina (39 percent), Nevada (39 percent), Washington (39 percent), Tennessee (39 percent), Rhode Island (38 percent), Georgia (35 percent), Illinois (34 percent), Florida (33 percent), California (33 percent), Nebraska (33 percent).
10. Percentage of prison population that are supervision violators: Idaho (62percent), Arkansas (54percent), Missouri (54 percent), Wisconsin (52 percent), Utah (49 percent), South Dakota (46 percent), Kentucky (45 percent), Iowa (40 percent), Washington (39 percent), Virginia (38 percent), Montana (34 percent), Kansas (33 percent), North Dakota (33 percent).
11. Arkansas, California, Connecticut, Oklahoma, and Utah.

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