
**ENDING THE PUNISHMENT CYCLE BY REDUCING
SENTENCE LENGTH AND RECONSIDERING
EVIDENCE-BASED REENTRY PRACTICES**

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ABSTRACT

While mass incarceration and high recidivism rates recently have received a great deal of political attention, politicians have largely ignored two of the most promising strategies for ending the punishment cycle. First, reducing sentence lengths for all offense types would significantly reduce recidivism rates and new justice system admissions by minimizing the negative effects of mass incarceration on families and communities. Second, the criminal justice system should adopt a broader conceptualization and implementation of evidence-based reentry practice, including programs that may not have a direct or immediately measurable effect on recidivism. This Article, building on results from an evaluation of a federal reentry court program, highlights the value of reentry programs that minimize intrusive criminal justice system involvement and maximize the provision of services to support a productive life outside prison.

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INTRODUCTION

The United States leads the world in its incarceration of criminals.¹ In 2014, over 2.2 million people were incarcerated, with another 4.7 million under some type of community supervision.² An incarceration rate of 900 per 100,000 U.S. residents over the age of eighteen means that approximately 1 of every 111 U.S. adults are behind bars at any given time.³ The United States has been appropriately labeled “Incarceration Nation.”⁴

International comparisons further demonstrate the United States’ unique overreliance on incarceration. The United States accounts for 5 percent of the world’s population but nearly 25 percent of its prisoners.⁵ Accounting for the imprisonment rate among all residents (including those under the age of 18), the rate of prison incarceration in the United States is 693 per 100,000 residents, compared to only 145 per 100,000 in the United Kingdom, 99 per 100,000 in France, 114 per 100,000 in Canada, and 212 per 100,000 in Mexico.⁶ Even Russia falls far behind the United States with an incarceration rate of 453 per 100,000 residents.⁷

While some may assume that high crime rates are the reason the United States leads the world in incarceration, a plethora of evidence indicates otherwise. After extensive review of existing research, the National Academy of Sciences concluded that there is not sufficient evidence that an increase in crime rates has caused an increase in the incarceration rates or that an increase in incarceration rates has caused a decline in crime.⁸ In my work with Kathleen Auerhahn, we explored how higher incarceration rates in many communities have been associated with an increase in crime rates.⁹

Recently, calls for addressing the United States’ incarceration problem have become increasingly common among politicians, media personalities, and

1. See DANIELLE KAEBLE ET AL., U.S. DEP’T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2014, at 2 (2015).

2. *Id.* (citing statistics by the Bureau of Justice Statistics of the U.S. Department of Justice),

3. *See id.* at 2–3.

4. See PETER K. ENNS, INCARCERATION NATION: HOW THE UNITED STATES BECAME THE MOST PUNITIVE DEMOCRACY IN THE WORLD 5 (2016).

5. Michelle Ye Hee Lee, *Does the United States Really Have 5 Percent of the World’s Population and One Quarter of the World’s Prisoners?*, WASH. POST (Apr. 30, 2015), http://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/?utm_term=.5b8e27948eb9 [<http://perma.cc/SXB8-DD4D>].

6. Press Release, Peter Wagner & Alison Walsh, Prison Pol’y Initiative, States of Incarceration: The Global Context 2016 (June 16, 2016), <http://www.prisonpolicy.org/global/2016.html> [<http://perma.cc/S4LR-PZTN>].

7. *See id.*

8. See NAT’L RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 155 (Jeremy Travis et al. eds., 2014).

9. Caitlin J. Taylor & Kathleen Auerhahn, *Community Justice and Public Safety: Assessing Criminal Justice Policy Through the Lens of the Social Contract*, 15 CRIMINOLOGY & CRIM. JUST. 300, 305–06 (2015).

academics. Some ideas for reform have focused on racial injustice,¹⁰ while others have centered on the high cost to taxpayers.¹¹ Nearly all political attention has focused on sentencing reform for nonviolent drug offenders.

While sentencing reform for nonviolent drug offenders certainly signifies a step in the right direction, two of the most meaningful and effective approaches to end the punishment cycle and reduce mass incarceration have failed to receive sufficient attention among politicians, media personalities, and arguably even academics. This Article will explain these two largely overlooked strategies. First, reducing sentence lengths for all offense types, including violent offenses, would help to end the punishment cycle by significantly reducing recidivism rates and minimizing the negative effects of mass incarceration on families and communities. Second, jurisdictions should adopt a broader conceptualization and implementation of evidence-based reentry practice—a model that values programs that may not have a direct or immediately measurable effect on recidivism but that are nonetheless effective. I will highlight the value of programs that minimize intrusive criminal justice system involvement by discussing the results of an evaluation of a federal reentry court program.

I. REDUCING SENTENCE LENGTHS FOR ALL OFFENSE TYPES

This Section will explain how a reduction in sentence lengths would minimize mass incarceration and mitigate the punishment cycle. As detailed below, reducing sentence lengths would likely reduce recidivism rates as well as lessen the negative consequences of mass incarceration for families and communities. Both of these outcomes would signal important disruptions to the punishment cycle.

To accomplish a reduction in the U.S. prison population, it is not sufficient to pass sentencing reform for only nonviolent drug offenders. Rather, sentencing reform for all offense types, including violent crimes, and for prisoners in all types of correctional facilities (state prisons, federal prisons, and jails) will be necessary.

Understanding the forms of sentencing reform necessary to reduce mass incarceration requires a close examination of the incarcerated population. Relying on data from the Bureau of Justice Statistics, the Prison Policy Initiative has offered some of the most precise and comprehensive descriptions of the prison population by offense type.¹² State prison populations are the main driver of mass incarceration, accounting for over 1.3 million of the approximately 2.2

10. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 236–50 (2012); BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* 3–8 (2006).

11. See generally, e.g., HADAR AVIRAM, *CHEAP ON CRIME: RECESSION-ERA POLITICS AND THE TRANSFORMATION OF AMERICAN PUNISHMENT* (2015).

12. See Press Release, Bernadette Rabuy & Peter Wagner, Prison Pol’y Initiative, Mass Incarceration: The Whole Pie 2016 (Mar. 14, 2016), <http://www.prisonpolicy.org/reports/pie2016.html> [<http://perma.cc/JNN8-AMXE>].

million incarcerated people in 2016.¹³ Local jails hold the second largest population with nearly 650,000 people. And the federal prison system is smallest, holding 211,000.¹⁴ While drug offenders account for nearly half of the federal prison population, they constitute less than 25 percent of the local jail population and less than 16 percent of the state prison population.¹⁵ Overall, less than 22 percent of the incarcerated population in the United States is serving time for a drug offense.¹⁶ As such, even if every single drug offender were released, the United States would still lead most of the world in incarceration rates.

While sentencing reform for drug offenders may be the most palatable system change for many to accept, ending the punishment cycle by reducing mass incarceration will require sentencing reform for other types of offenders, particularly violent offenders. Over 50 percent of the state prison population are people serving time for violent offenses.¹⁷ The use of mandatory minimum sentences and the overreliance on life sentences for violent offenses have led to astronomically long sentences, which far exceed sentence lengths in other western democracies and during other periods in U.S. history.

The increase in sentence length for all types of offenders, particularly violent offenders, has been a main cause of mass incarceration. For example, state prisoners released in 2009 served 36 percent longer sentences compared to prisoners released in 1990.¹⁸ Sentence lengths for both violent and drug offenses grew at similar rates—respectively, 37 percent and 36 percent.¹⁹ Specifically, the average time served for a drug offense increased from 1.6 to 2.2 years, and the average time served for a violent offense increased from 3.7 to 5 years.²⁰

Turning from the increase in sentence lengths to the people serving these terms, in 2012, there were nearly 160,000 people serving life sentences, nearly 50,000 of them without the possibility of parole.²¹ The number of people serving life sentences has quadrupled since 1984.²² Only two percent of lifers are serving time for drug offenses; most are violent offenders.²³ Overall, over 10 percent of prisoners are serving life sentences.²⁴

13. *See id.*

14. *Id.*

15. *See id.*

16. *Id.*

17. E. ANN CARSON & ELIZABETH ANDERSON, U.S. DEP'T OF JUSTICE, PRISONERS IN 2015, at 14 (2016), <http://www.bjs.gov/content/pub/pdf/p15.pdf> [<http://perma.cc/J5NR-JRY9>].

18. PEW CTR. ON THE STATES, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 2 (2012), http://www.pewtrusts.org/~media/assets/2012/06/6/time_served_report.pdf [<http://perma.cc/A5W7-KOPL>].

19. *Id.*

20. *Id.*

21. ASHLEY NELLIS, THE SENTENCING PROJECT, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA 1 (2013), <http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf> [<http://perma.cc/A5K3-Z53M>].

22. *Id.*

23. *Id.* at 1, 7.

24. *See id.*

Without considering sentencing reform for violent offenders in addition to nonviolent drug offenders, the two benefits of reducing mass incarceration will not be widespread enough to truly end the punishment cycle. As detailed in the following Part, reducing sentence lengths for all offense types will reduce incarceration rates through a reduction in recidivism and a reduction in the negative consequences on families and communities—consequences that drive new admissions to prison as well as recidivism.

A. *Shorter Sentences Will Reduce Recidivism Rates*

The first manner in which reducing sentence lengths will help to end the punishment cycle is through reducing recidivism. Among state prisoners released from thirty states in 2005, over two-thirds were rearrested within three years and over three-quarters within five years.²⁵ With such a large number of people cycling in and out of prison, a substantial portion of new prison admissions is comprised of those previously incarcerated.²⁶

Perhaps contrary to popular belief, shorter sentence lengths would actually improve recidivism rates and therefore reduce mass incarceration.²⁷ Although the prison experience is expected to reduce future offending, evidence suggests that long prison sentences generally do not achieve the intended deterrent effect. In a seminal review of existing evidence on deterrence, criminologist Daniel Nagin concluded that “there is little evidence of a specific deterrent effect arising from the experience of imprisonment compared with the experience of noncustodial sanctions such as probation. Instead, the evidence suggests that that reoffending is either unaffected or increased.”²⁸ Francis Cullen, Cheryl Lero Jonson, and Nagin similarly determined that “across all offenders, prisons do not have a specific deterrent effect.”²⁹

In contrast, the prison experience may actually increase the likelihood of reoffending, and longer sentences may have the most damaging impact. First, labeling theory may help to explain post-prison criminal behavior.³⁰ People who have been labeled “criminal” internalize this identity. According to labeling theory, those who have internalized a criminal label are more likely to act

25. MATTHEW R. DUROSE ET AL., U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010, at 1 (2014), <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf> [<http://perma.cc/N8EC-YGTV>].

26. TODD R. CLEAR, IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED COMMUNITIES WORSE 58–60 (2007); PATRICK A. LANGAN & DAVID J. LEVIN, RECIDIVISM OF PRISONERS RELEASED IN 1994, at 10 (2002), <http://www.bjs.gov/content/pub/pdf/rpr94.pdf> [<http://perma.cc/9EFL-KJRF>].

27. David S. Abrams, Building Criminal Capital vs Specific Deterrence: The Effect of Incarceration Length on Recidivism (Dec. 2011) <http://www.law.upenn.edu/cf/faculty/dabrams/workingpapers/AbramsRecidivism.pdf> [<http://perma.cc/G4L4-E697>].

28. Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. 199, 201 (2013).

29. Francis T. Cullen et al., *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 PRISON J. (SUPPLEMENT) 48S, 60S (2011) (emphasis omitted).

30. EDWIN M. LEMERT, HUMAN DEVIANCE, SOCIAL PROBLEMS, AND SOCIAL CONTROL 16–18 (2d ed. 1972).

accordingly and thus continue offending. Shorter prison sentences and/or noncustodial sentences may minimize the effects of criminal labeling. The less time an individual is subjected to correctional control, the less likely the individual will feel the ongoing impacts of the criminal label.

The second manner in which reducing sentence lengths will help to end the punishment cycle is by reducing individuals' time spent with fellow prisoners. Although research on the criminogenic effects of the prison experience are mixed,³¹ it is likely that for at least some offenders, interaction with other prisoners and the social skills conducive to prison survival may increase recidivism. As negative social bonds develop behind bars, especially during longer sentences, positive social ties with family members may weaken. Supportive family relationships play an important role in reducing recidivism, but the social bonds necessary to these relationships commonly break down during long terms of incarceration.³² Shorter sentences would likely minimize the deterioration of positive family ties.

Third, a strong body of research indicates that the stigma of being an ex-offender and the collateral consequences of conviction post-release increase the likelihood of recidivism. Specifically, research has suggested a relationship between recidivism and felon disenfranchisement,³³ employment restrictions,³⁴ bans on public assistance,³⁵ and residency restrictions.³⁶ If shorter sentences are also combined with less restrictive collateral consequences, the stigma associated with returning citizens would likely lessen and yield a reduction in recidivism.

Considering that longer prison sentences do not reduce future offending and that the prison experience may increase recidivism, shorter sentences for all types of offenders would be an effective strategy to ending the punishment cycle.

B. Shorter Sentences Will Reduce New Justice System Admissions

While reducing sentence lengths can reduce recidivism rates by minimizing the criminogenic effects of incarceration, it can also mitigate the negative effects of mass incarceration on families and communities. Fixing the punishment cycle

31. See, e.g., AVINASH SINGH BHATI, *STUDYING THE EFFECTS OF INCARCERATION ON OFFENDING TRAJECTORIES: AN INFORMATION THEORETIC APPROACH* 47–50 (2006); Scott D. Camp & Gerald G. Gaes, *Criminogenic Effects of the Prison Environment on Inmate Behavior: Some Experimental Evidence*, 51 *CRIME & DELINQ.* 425, 437–40 (2005).

32. See Caitlin J. Taylor, *The Family's Role in the Reintegration of Formerly Incarcerated Individuals: The Direct Effects of Emotional Support*, 96 *PRISON J.* 331, 346–48 (2016).

33. See JEFF MANZA & CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT & AMERICAN DEMOCRACY* 73–76, 114 (2008).

34. Stewart J. D'Alessio et al., *The Effect of Hawaii's Ban the Box Law on Repeat Offending*, 40 *AM. J. CRIM. JUST.* 336, 337–38 (2015).

35. Tracy Sohoni, *The Effect of Collateral Consequence Laws on State Rates of Returns to Prison* 40–44, 64–65 (Jul. 2014) (unpublished Ph.D. dissertation, University of Maryland), http://drum.lib.umd.edu/bitstream/handle/1903/14915/Sohoni_umd_0117E_14742.pdf?sequence=1&isAllowed=y [<http://perma.cc/BK79-SAYS>].

36. Cynthia C. Mercado et al., *The Impact of Specialized Sex Offender Legislation on Community Reentry*, 20 *SEXUAL ABUSE* 188, 200–05 (2008).

is not only dependent upon reducing the likelihood that a given individual repeatedly cycles in and out of the justice system, it also depends upon stopping new admissions.

In many ways, mass incarceration can be held responsible for facilitating the creation of new criminals. As will be further illustrated below, three processes explain how the United States' overreliance on incarceration likely increases the number of people involved in crime and punished. First, a reduction in funding for the social services and education programs known to reduce delinquency increase the likelihood that new criminals are created and subsequently enter the justice system. Second, the criminogenic effects related to the negative consequences on families of the incarcerated increase the likelihood of intergenerational incarceration. Third, coercive mobility theory proposes that higher neighborhood incarceration rates are associated with higher neighborhood crime rates. As the following explanations will demonstrate, reducing sentence lengths mitigate these three negative processes.

First, an increase in funding for mass incarceration likely means a reduction in funding for other state-financed projects, such as social services and education. A number of social service programs, including mentoring³⁷ and after-school programs,³⁸ demonstrably reduce the likelihood of future delinquency. When cuts are made to funding these programs in order to accommodate a burgeoning corrections budget, the corrections system is guaranteed new admissions in the future. Without delinquency prevention programs, the number of people likely engaging in criminal activity and subsequently incarcerated increases.

The punishment cycle is also guaranteed to continue when cuts are made to education funding. While a variety of evidence documents a relationship between education and criminal activity, early education programs have a particularly strong effect on reducing future delinquency.³⁹ Without funding for these types of education programs, the crime rate and incarceration rate likely increase. If sentence lengths were shortened and fewer people incarcerated, this would allow more funding for the social service and education programs known to reduce the likelihood of new admissions into the justice system.

Second, shortening sentence lengths would reduce the negative consequences of mass incarceration on families. The negative consequences on families foster the cycle of intergenerational incarceration. Financial hardship is one way families are impacted by the incarceration of a loved one. Families commonly need to travel long distances to visit loved ones in prison,⁴⁰ which is not only expensive but may also require a brief absence from employment (and

37. JOSEPH P. TIERNEY ET AL., *MAKING A DIFFERENCE: AN IMPACT STUDY OF BIG BROTHERS/BIG SISTERS* 20–29 (2000).

38. Denise C. Gottfredson et al., *Do After School Programs Reduce Delinquency?*, 5 PREVENTION SCI. 253, 263–65 (2004).

39. See generally LAWRENCE J. SCHWEINHART ET AL., *LIFETIME EFFECTS: THE HIGH/SCOPE PERRY PRESCHOOL STUDY THROUGH AGE 40* (2005).

40. Johnna Christian, *Riding the Bus: Barriers to Prison Visitation and Family Management Strategies*, 21 J. CONTEMP. CRIM. JUST. 31, 36–37 (2005); Richard Tewksbury & Matthew DeMichele, *Going to Prison: A Prison Visitation Program*, 85 PRISON J. 292, 301 (2005).

loss of income). Despite recent regulations from the Federal Communications Commission regarding the exploitative costs of prison phone calls, many families still struggle with the costs of prison communication.⁴¹ Additionally, families are often responsible for offering financial assistance to incarcerated loved ones to cover commissary purchases and other expenses.⁴² And lastly, the incarceration of a family member often means the loss of an income (whether that income was legitimate or criminal) as well as the loss of a childcare provider.⁴³ The majority of the incarcerated population is already struggling socioeconomically, and these added financial responsibilities can be devastating for families.⁴⁴ In other words, it is low-income families who bear the greatest burden of the expenses associated with the incarceration of a loved one.

Donald Braman's ethnographic study of families of the incarcerated in Washington, D.C. further explores the long- and short-term consequences of these financial hardships. Based on his extensive interviews with and observations of families, he argues that mass incarceration can be blamed, at least in part, for many families' inability to end their cycle of poverty. Braman explains:

More subtle than the immediate and direct material effects of incarceration, but perhaps more serious, is the cumulative impact these effects can have on familial wealth across generations. By depleting the savings of offenders' families, incarceration inhibits capital accumulation and reduces the ability of parents to pass wealth on to their children and grandchildren through inheritance and gifts. Indeed, incarceration's draining of the resources of extended family members in this study—particularly the older family members—helps explain why there has been so little capital accumulation and inheritance among inner-city families in general and minority families in particular.⁴⁵

In addition to the near impossibility of accumulating and passing on wealth when a family member is consistently incarcerated, Braman found that mass incarceration inhibits short-term markers of progress, including “moving to a better school district, purchasing an up-to-date computer, and attending college”—these can be particularly detrimental to families working to exit the cycle of poverty.⁴⁶

Partially as a result of the financial stresses, many family members

41. Paul R. Zimmerman & Susan M. V. Flaherty, *Location Monopolies and Prison Phone Rates*, 47 Q. REV. ECON. & FIN. 261, 261–64 (2007).

42. See Johnna Christian et al., *Social and Economic Implications of Family Connections to Prisoners*, 34 J. CRIM. JUST. 443, 449 (2006).

43. Donald Braman & Jenifer Wood, *From One Generation to the Next: How Criminal Sanctions Are Reshaping Family Life in Urban America*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 157, 161–63 (Jeremy Travis & Michelle Waul eds., 2003).

44. See Press Release, Bernadette Rabuy & Daniel Kopf, Prison Pol'y Initiative, Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned (July 9, 2015), <http://www.prisonpolicy.org/reports/income.html> [<http://perma.cc/7Z2Y-UQ89>].

45. BRAMAN, *supra* note 42, at 156.

46. See *id.* at 158.

experience profound emotional and psychological consequences. Spouses and partners are likely to suffer from depression, anxiety, and an overwhelming sense of worry about how their loved one is being treated, which can cause social isolation and profound stigmatization by other family and community members.⁴⁷ Children of incarcerated parents experience many of the same psychological effects as spouses or partners; they also may experience sleeping and eating problems, truancy, and poor academic performance.⁴⁸

All of these financial and emotional consequences can increase the chances of new admissions into the justice system, fueling the punishment cycle. Family members, especially children who are under greater emotional and/or financial stress, may turn to criminal activity to cope with or ameliorate such hardships. Considering these processes, the problem of intergenerational incarceration should not be surprising. Although further research is needed to unpack the causal or correlational relationship between parental and child incarceration, evidence confirms the problem of intergenerational incarceration.⁴⁹ In one of the most robust studies of intergenerational incarceration, Joseph Murray and David Farrington's research revealed that over 70 percent of boys who were separated from their parents due to imprisonment displayed antisocial personalities by the age of thirty-two, compared to only 19 percent of boys who were never separated from their parents or were separated due to another reason.⁵⁰ Those separated due to incarceration had a higher number of antisocial, delinquent outcomes than those who were separated due to another reason, such as hospitalization or death.⁵¹ This suggests that it is not simply the separation from parents that causes criminality; there is something unique about separation from parents due to parental incarceration.

Reducing sentence lengths for all offense types could minimize the negative consequences for the families of people incarcerated. Shorter prison terms would likely result in fewer financial hardships and would reduce the psychological and emotional stress created by incarceration. Therefore, the criminogenic effects of the incarceration of a family member may be reduced and the punishment cycle minimized by reducing sentence lengths.

The third process through which shorter sentence lengths will minimize new admissions into the punishment cycle relates to the fact that mass incarceration has been associated with an increase in crime in already disadvantaged communities. Coercive mobility theory explains how mass incarceration can cause increased crime rates in disadvantaged neighborhoods. The traditional

47. See *id.* at 198; JOYCE ARDITTI, PARENTAL INCARCERATION AND THE FAMILY: PSYCHOLOGICAL AND SOCIAL EFFECTS OF IMPRISONMENT ON CHILDREN, PARENTS & CAREGIVERS 101–02 (2012); Joseph Murray, *The Effects of Imprisonment on Families and Children of Prisoners*, in THE EFFECTS OF IMPRISONMENT 442, 444 (Alison Lieblich & Shadd Maruna eds., 2005).

48. See Murray, *supra* note 47, at 446.

49. See *id.*; ARDITTI, *supra* note 47, at 4.

50. Joseph Murray & David P. Farrington, *Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency Throughout the Life-Course*, 46 J. CHILD PSYCH. & PSYCHIATRY 1269, 1272–73 (2005).

51. *Id.*

view of the relationship between formal criminal justice intervention and crime rates is that the removal of offenders from communities through incarceration will result in lower rates of crime. However, Dina Rose and Todd Clear were among the first to emphasize that “state social controls . . . have important secondary effects on family and neighborhood structures.”⁵² These secondary effects may actually *increase*, rather than decrease, crime in communities that are heavily impacted by incarceration. In other words, the phenomenon of mass incarceration may be fueling the punishment cycle by creating even more crime in neighborhoods where people are caught in the incarceration cycle.

Understanding how coercive mobility theory explains a relationship between high incarceration rates and crime rates requires an understanding of the ecology of crime at the neighborhood level. Social disorganization theory, an ecological theory of crime, proposes that crime rates are higher in communities that lack informal social controls. In other words, crime rates are lower in neighborhoods where residents work together to solve common problems and intervene when they witness criminal or otherwise unwanted behaviors.⁵³ Robert Sampson, Stephen Raudenbush, and Felton Earls coined the term “collective efficacy” to describe neighborhoods’ capacity to monitor and regulate undesirable behaviors. Collective efficacy “depends in large part on conditions of mutual trust and solidarity among neighbors” and refers to the “willingness of local residents to intervene for the common good.”⁵⁴ Collective efficacy and social disorganization can be considered opposite characteristics.

Coercive mobility theory is essentially an expansion of collective efficacy theory that additionally accounts for the community effects of mass incarceration and high rates of reentering prisoners. The theory proposes that high rates of incarceration and reentry disturb residents’ ability to exercise informal social control or develop collective efficacy. Rose and Clear argue that “offenders have complex relationships” within their communities because they play both positive and negative roles.⁵⁵ Separate from criminal activities, people may also be active fathers, sons, workers, members of church congregations, and so forth. Incarcerating these offenders damages the social networks necessary for crime-reducing informal social controls.

Equally importantly, offenders acquire a variety of disadvantages while incarcerated, including immersion in a prison culture rooted in aggression, emotional distance, and violence. These disadvantages cause individuals to struggle to play a positive role in social networks and subsequently stymie the

52. Dina R. Rose & Todd R. Clear, *Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory*, 36 CRIMINOLOGY 441, 441 (1998).

53. See ROBERT J. BURSİK & HAROLD G. GRASMICK, NEIGHBORHOODS AND CRIME: THE DIMENSIONS OF EFFECTIVE COMMUNITY CONTROL x-xi (1993); Robert J. Sampson, *Communities and Crime*, in POSITIVE CRIMINOLOGY 91, 103-104 (Michael R. Gottfredson & Travis Hirschi, eds., 1987); Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social Disorganization Theory*, 94 AM. J. SOC. 774, 792-92, 799 (1989).

54. Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multi-level Study of Collective Efficacy*, 77 SCI. 918, 919 (1997).

55. Rose & Clear, *supra* note 52, at 442.

development of collective efficacy. Ex-offenders often cycle back and forth between the community and prison.⁵⁶ These quasi-permanent prisoners are not likely to stay in neighborhoods long enough to build and maintain the stable social networks required for effective informal social control.⁵⁷ The longer someone is incarcerated, the more likely he will struggle to positively contribute to the informal social control system in a community.⁵⁸

Coercive mobility theory proposes that the relationship between incarceration and crime rates depends on a number of conditions. Communities characterized by already high levels of collective efficacy are more likely to experience a net benefit from incarcerating criminals. In areas with strong social networks and effective community controls, the removal of members—even if they are contributing in both positive and negative ways to the community—is less likely to cause severe disruption. In such communities, social networks can maintain social control despite the removal of some individuals. However, neighborhoods characterized by high levels of social disorganization and informal social controls and networks are likely more fragile, and therefore the disruption resulting from incarceration is likely to be more severe. In sum, Rose and Clear explain that “in disorganized areas with low levels of control partly due to weak [network] ties, the contribution of offenders may not be that much less than their nonoffending neighbors.”⁵⁹

The incarceration rate within a community is another important consideration within the relationship between incarceration and neighborhood crime rates. The theory of coercive mobility proposes that incarceration only will have the intended negative effect on crime until incarceration rates reach a tipping point.⁶⁰ Once incarceration rates rise to a level that disrupts social networks by the removal of community members, an increase in incarceration rates will actually increase crime rates.⁶¹

Despite preliminary empirical support for coercive mobility theory,⁶² Auerhahn’s and my research has illustrated that a complete test of all components of the theory has not yet been conducted.⁶³ A complete test of coercive mobility would require longitudinal neighborhood-level data on levels of collective efficacy as well as rates of incarceration and reentry. Nonetheless, there appears to be a strong link between high rates of incarceration and reentry back into disadvantaged neighborhoods and a subsequent increase in crime

56. See DUROSE ET AL., *supra* note 25, at 1 (discussing rates of recidivism).

57. See CLEAR, *supra* note 26, at 57–61.

58. See *id.* at 60.

59. Rose & Clear, *supra* note 52, at 453.

60. CLEAR, *supra* note 26, at 164.

61. See Rose & Clear, *supra* note 52, at 341.

62. Todd R. Clear et al., *Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization*, 20 JUST. Q. 33 (2001); Todd R. Clear et al., *Incarceration and Community: The Problem of Removing and Returning Offenders*, 47 CRIME & DELINQ. 335 (2001); James P. Lynch & William J. Sabol, *Assessing the Effects of Mass Incarceration on Informal Social Control in Communities*, 3 CRIMINOLOGY & PUB. POL’Y 267 (2004).

63. Taylor & Auerhahn, *supra* note 9, at 306–07, 313–15.

rates. If sentence lengths are reduced for all offense types, people will be able to stay in their communities for longer periods of time, which would minimize disruption to crime-reducing social processes of collective efficacy.

To summarize this Section, shortening sentence lengths for all types of offenders is necessary for addressing mass incarceration. Two key effects of reducing mass incarceration to mitigate the punishment cycle include: a reduction in recidivism rates and a reduction in the negative impacts on families and communities—impacts that create new criminals and perpetuate the incarceration cycle.

II. RECONCEPTUALIZING “EVIDENCE-BASED PRACTICE” IN REENTRY

This Section will explain another commonly overlooked strategy for ending the punishment cycle. While the previous Section focused on how addressing mass incarceration will reduce the punishment cycle, this Section argues that the punishment cycle can also be reduced by addressing nontraditional justice system measures. Focusing on outcomes beyond simply recidivism would represent an even greater philosophical shift towards ending the punishment cycle.

Evidence-based practice (EBP) in corrections and reentry programming has been defined in a number of different ways. Generally, EBP seeks to answer the question: what works? This question generally means: what works for reducing recidivism? Recidivism is generally measured by new arrests, convictions, or reincarcerations.

Some definitions of EBP focus on the effective use of taxpayer resources in the justice system. For example, according to Frank Domurad and Mark Carey,

EBP asserts that public policy and practice must be based on the best available scientific evidence in order to be effective in the achievement of its goals and to be efficient in the use of taxpayers' dollars. Failure to match services to rigorous evidentiary standards not only wastes precious public resources but can even lead to an exacerbation rather than improvement of the problems and issues that government is attempting to address.⁶⁴

In other words, programming that is consistent with EBP should yield a return on taxpayer investment.

Other definitions in the justice system context focus on both processes and outcomes. The National Institute of Corrections defines EBP as “the breadth of research and knowledge around processes and tools which can improve correctional outcomes, such as reduced recidivism. Tools and best practices are provided with a focus on both decision making and implementation.”⁶⁵

64. FRANK DOMURAD & MARK CAREY, THE CAREY GROUP, COACHING PACKET: IMPLEMENTING EVIDENCE BASED PRACTICES 7 (Center for Effective Public Policy ed., 2009), <http://www.reentrycoalition.ohio.gov/docs/initiative/coaching/Implementing%20Evidence%20Based%20Practices.pdf> [<http://perma.cc/GEP9-8VH9>].

65. *Evidence-Based Practices*, NAT'L INST. CORRECTIONS, <http://nicic.gov/evidencebased/practices> (last visited May 5, 2017) [<http://perma.cc/8QVY-EAEJ>].

According to this definition, the motivation for providing information on EBP is to improve outcomes, particularly to reduce recidivism.

As a noteworthy exception, the Council of State Governments Justice Center maintains an online database titled the What Works in Reentry Clearinghouse.⁶⁶ This database is certainly making strides towards embracing alternative measures for successful correctional programming. It ranks programs on a “what works” scale from “strong beneficial evidence” to “strong harmful evidence” and takes into consideration not only the program’s effect on recidivism but also its employment and substance abuse outcomes.⁶⁷

While recidivism is undeniably an important consideration in evaluating correctional and reentry programs, it is not the only measure that should interest researchers, practitioners, and policymakers. As detailed below, a number of other outcome measures should also be embraced when evaluating the success of programs.

A. Alternative Measures of Successful Programs

The punishment cycle is driven by an obsessive focus on drawing distinctions between law followers and lawbreakers. Under this framework, mass incarceration has become a problem because lawbreakers are believed to deserve the harshest and longest punishments. In a justice system defined by the punishment cycle, a focus on recidivism as the main outcome of interest makes sense because it enables an identification of law followers and lawbreakers.

However, breaking the punishment cycle requires the justice system to embrace other measures of success and to adopt a more holistic view of its role in society. If the justice system is responsible for tasks beyond identifying and punishing lawbreakers, the system should value outcomes in addition to recidivism. These alternative measures include, but are certainly not limited to, a reduction in future justice system participation (such as a reduction in probation or parole violations), improved perceptions of the justice system and its actors, an increase in employment, a reduction in substance use and abuse, improved family involvement and relationships, and improvement in general health and well-being.

B. Supervision to Aid Reentry (STAR) Program as a Case Study

A federal reentry court program, the Supervision to Aid Reentry (STAR) Program,⁶⁸ operating in Philadelphia since 2007, provides a valuable example of the importance of embracing alternative measures of success in reentry programming. This Part will first provide a description of the STAR Program and will then illustrate how the program emphasizes measures of success beyond

66. See *What Works in Reentry Clearinghouse*, COUNCIL ST. GOV’T. JUST. CTR., <http://whatworks.csgjusticecenter.org/> (last visited May 5, 2017) [<http://perma.cc/G7Z4-W8UK>].

67. See *id.*

68. *Re-entry Court*, U.S. PROB. OFF., E. DISTRICT PA., <http://www.paep.uscourts.gov/re-entry-court> (last visited May 5, 2017) [<http://perma.cc/7C7V-2YQ3>].

simply recidivism.

The STAR Program targets medium- to high-risk men and women recently released from federal prison and on supervised release.⁶⁹ In addition to meeting the regular requirements of supervision, STAR participants must also appear for a reentry court session every two weeks. Participants are assigned to one of two courts, under either Judge Timothy Rice or Judge Felipe Restrepo. One probation officer is responsible for supervising all individuals in each of the two courts. The program additionally relies on reentry coordinators who build relationships with various community organizations to provide services to STAR participants.

During each reentry court session, the judge calls each participant to the front of the court and asks the individual to discuss both successes and obstacles in their reentry. These successes and obstacles often include issues related to employment, education, housing, family, or other personal matters. When the individual reports a certain obstacle, the judge may suggest that he or she seek a particular service provider or may refer the participant to converse further with a reentry coordinator about possible options.

Some participants are understandably hesitant to report ongoing problems to the judge. However, as a result of a pre-court work group meeting, the professionals involved have often already informed the judge of any significant problems, and he can start a conversation with the individual about the issue. Prior to each reentry court session, the judge meets with the participant's probation officer, the reentry coordinator, a representative from the Federal Community Defender Office, a representative from the U.S. Attorney's Office, and other members of the reentry court work group. During this meeting, the work group reviews the progress of each participant and identifies successes and problems that the judge should address in court. The work group often decides collaboratively on the most appropriate response to a particular obstacle or success using a model of graduated sanctions and rewards.

In addition to gaining access to an array of social services and supports from the reentry court workgroup, individuals on supervised release have another incentive for participating in the STAR Program. If a participant successfully completes fifty-two weeks of program supervision, the reentry court judge will recommend that the original sentencing judge reduce the term of the participant's supervised release be reduced by up to twelve months. A participant completes a "successful" week by appearing in court and following the terms of his or her probation.

Several outcome evaluations of the STAR Program have been conducted since the program began.⁷⁰ The outcome evaluations have used a quasi-

69. *Id.*

70. See CAITLIN J. TAYLOR, PROGRAM EVALUATION OF THE FEDERAL REENTRY COURT IN THE EASTERN DISTRICT OF PENNSYLVANIA (2016) [hereinafter TAYLOR, 2016 PROGRAM EVALUATION]; CAITLIN J. TAYLOR, PROGRAM EVALUATION OF THE FEDERAL REENTRY COURT IN THE EASTERN DISTRICT OF PENNSYLVANIA (2014) [hereinafter TAYLOR, 2014 PROGRAM EVALUATION]; Caitlin J. Taylor, *Tolerance of Minor Setbacks in Challenging Reentry Experience: An*

experimental design with a matched comparison group; STAR Program participants were matched to other individuals under the regular terms of supervision who were similarly situated in terms of age, gender, release date, and risk prediction score. The outcome evaluations have consistently found no statistically significant differences in the likelihood of arrest in the eighteen months following release, even after controlling for other known predictors of recidivism.⁷¹ Although program graduates (as opposed to all program participants) have impressively low recidivism rates, arrests are arguably an imperfect measure of criminal activity, especially given the study's relatively short period of only eighteen months. In summary, the STAR evaluation results demonstrate that reentry court is not an evidence-based program for reducing recidivism.

However, considering the other valuable outcomes that the STAR Program yields, it would disservice the justice system, STAR participants, and taxpayers to dismiss the program simply because the outcome evaluations have not found a significant effect on recidivism. The outcome evaluations have consistently found that program participation is associated with a reduction in the revocation of supervised release. The most recent evaluation, which examined the first 200 STAR participants, found that program participation correlated with a 61 percent decrease in supervision revocation, even after controlling for other factors.⁷² Considering the plethora of collateral consequences to imprisonment described in Section I, reducing readmission to prison by reducing supervision revocations likely results in many benefits for families, communities, and possibly even neighborhood crime rates.

The STAR Program has also led to improvements in employment outcomes. The most recent evaluation revealed that 64.5 percent of the first 200 STAR participants were employed at the end of the eighteen-month follow-up period, compared to only 48.5 percent of the comparison group.⁷³ STAR Program participants were also significantly more likely to have access to a number of social services, including employment assistance, housing services, education, healthcare assistance, mentoring, and legal services.⁷⁴ All of these measures should be viewed as meaningful benefits of the STAR Program—benefits that improve the general health and well-being of participants and improve their societal contributions.

A reduction in probation revocation, an increase in the likelihood of employment, and an increase in access to social services are obviously not measures of recidivism, but they may indirectly impact recidivism rates if a longer study period (beyond eighteen months) were feasible. For example,

Evaluation of a Federal Reentry Court, 24 CRIM. JUST. POL'Y REV 49 (2013) [hereinafter Taylor, *Tolerance of Minor Setbacks*].

71. See TAYLOR, 2016 PROGRAM EVALUATION, *supra* note 70, at 9, 13; TAYLOR, 2014 PROGRAM EVALUATION, *supra* note 70, at 10, 14; Taylor, *Tolerance of Minor Setbacks*, *supra* note 70, at 61–62.

72. TAYLOR, 2016 PROGRAM EVALUATION, *supra* note 70, at 9, 11.

73. *Id.* at 8.

74. *Id.* at 9.

considering the research reviewed in Section I regarding the effects of the prison experience on recidivism, there is reason to believe that keeping STAR participants out of prison by reducing the likelihood of revocations may have positive effects on future recidivism. Additionally, employment and access to social services may fortify the relationship between program participation and recidivism in a longer time frame.

While it is certainly important to consider outcomes indirectly related to recidivism because these outcomes may explain why an effect on recidivism is not measurable in a short evaluation period, it is perhaps more important to recognize the importance of these alternative measures as worthy program goals in and of themselves. If it is a goal for the justice system to transition away from the punishment cycle and towards alternative justice models, improving the overall health and well-being of program participants encompasses a variety of valuable outcomes. If the justice system wants to define itself by the punishment cycle, then focusing exclusively, or even predominately, on recidivism as the outcome of interest is logical. However, a shift away from the punishment cycle requires embracing alternative measures of success.

CONCLUSION

While media pundits' and politicians' calls for justice system reform represent a step in the right direction towards ending the punishment cycle, this Article reveals that two important strategies have been largely overlooked. First, sentencing reform for all offense types will be necessary to reduce mass incarceration. Shortening all sentences will reduce mass incarceration by (1) reducing recidivism rates, and (2) minimizing the negative effects of incarceration on families and communities. Second, a philosophical shift away from the punishment cycle requires consideration of not only recidivism but also other outcomes of correctional and reentry programs. Programs that reduce future justice system involvement, improve employment, and facilitate general health and well-being should not be dismissed based on the obsessive attention given to recidivism in evidence-based practice. They should be embraced as effective tools to alleviate the punishment cycle.