

BRENNAN
CENTER
FOR JUSTICE

THE REVERSE
MASS INCARCERATION ACT

Lauren-Brooke Eisen and Inimai Chettiar

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INTRODUCTION

Leaders across the political spectrum agree: The United States must end mass incarceration. But how? What bold solutions will achieve this change?

Our prison crisis has many causes. One major contributor: a web of perverse financial incentives across the country that spurred more arrests, prosecutions, and prison sentences. A prime example is the 1994 Crime Bill, which authorized \$12.5 billion (\$19 billion in today's dollars) to states to increase incarceration.¹ And 20 states did just that, yielding a dramatic rise in prison populations.²

To reverse course, the federal government can apply a similar approach. It can be termed a “Reverse Crime Bill,” or the “Reverse Mass Incarceration Act.” It would provide funds to states to reduce imprisonment and crime together.

The United States has 5 percent of the world's population, yet has 25 percent of the world's prisoners. If the prison population were a state, it would be the 36th largest — bigger than Delaware, Vermont, and Wyoming combined.³ Worse, our penal policies do not work. Mass incarceration is not only unnecessary to keep down crime but is also ineffective at it. Increasing incarceration offers rapidly diminishing returns.⁴ The criminal justice system costs taxpayers \$260 billion a year.⁵ Best estimates suggest that incarceration contributes to as much as 20 percent of the American poverty rate.⁶

During the crime wave of the 1970s and 1980s, lawmakers enacted stringent laws to instill law and order in devastated communities. But many of these laws went too far. The federal government played an outsize role by financially subsidizing states to incarcerate more people. Today, the federal government sends \$3.8 billion to states and localities each year for criminal justice.⁷ These dollars are largely focused on increasing the size of our justice system.

But times have changed. We now know that mass incarceration is not necessary to keep us safe. We now know that we can reduce both crime and incarceration. States like Texas, New York, Mississippi, and California have changed their laws to do just that. For the first time in 40 years, both crime and incarceration have fallen together, since 2008.⁸

How can this momentum be harnessed into action?

Just as Washington encouraged states to incarcerate, it can now encourage them to reduce incarceration while keeping down crime. It can encourage state reform efforts to roll back prison populations. As the country debates who will be the next president, any serious candidate must have a strong plan to reform the justice system.

The next president should urge Congress to pass the Reverse Mass Incarceration Act. It would encourage a 20 percent reduction in imprisonment nationwide.

Such an Act would have four components:

- A new federal grant program of \$20 billion over 10 years in incentive funds to states.
- A requirement that states that reduce their prison population by 7 percent over a three-year period without an increase in crime will receive funds.
- A clear methodology based on population size and other factors to determine how much money states receive.
- A requirement that states invest these funds in evidence-based programs proven to reduce crime and incarceration.

Such an Act would have more reach than any of the other federal proposals. It could be implemented through budgeting procedures. It could be implemented as a stand-alone Act. Or, it could be introduced as an amendment to a pending bill.

I. FEDERAL CRIMINAL JUSTICE INCENTIVES TODAY

The political system's response to the crime epidemic created a solution that outlasted the original problem. America's prison population has grown 700 percent since 1970.⁹ And, as a result, the country's criminal justice costs — mostly from policing, jails, prisons, and courts — rose more than 650 percent, from \$35 billion in 1982 to more than \$265 billion in 2012.¹⁰ Meanwhile, crime today is at low levels not seen since the early 1960s.

The federal government has played a central role in shaping the criminal justice landscape through grant money it provides states and localities. Currently, annual federal criminal justice grants total at least \$3.8 billion.¹¹ Since the 1960s, much of this funding has gone to support longer prison sentences, more arrests, and more prisons. This is also true for state and local budgeting.

The key pieces of legislation in creating this regime were:

- **Omnibus Crime Control and Safe Streets Act of 1968.** This was the first large federal bill that sent money to states to fight crime. Passed in the midst of nationwide concerns over rising crime rates, funds were allocated to the states to be used for any purpose associated with reducing crime. The Act authorized over \$400 million (roughly \$2.7 billion in today's dollars) in grants over two years (1969-1970) for law enforcement.¹² It permitted spending to recruit and train law enforcement personnel, increase salaries, and improve equipment and tactics.¹³
- **Anti-Drug Abuse Act of 1986.** With the nation gravely concerned about the danger of drug abuse, this Act played a central role in government policy in the "war on drugs." It reinstated mandatory minimum sentences for drug possession and established \$230 million (nearly \$500 million today) in grants to fund drug enforcement if states adopted similar sentencing policies.¹⁴ The bill authorized funding of almost any drug *enforcement* activity, but did not permit funding of drug prevention programs.¹⁵
- **Violent Crime Control and Law Enforcement Act of 1994 ("1994 Crime Bill").** Sweeping in its scope, the Crime Bill remains the largest crime legislation ever passed. It banned 19 types of semiautomatic assault weapons, authorized the death penalty for dozens of existing and new federal crimes, and mandated life imprisonment for a third violent felony (the "three strikes and you're out" provision). It also created an array of new federal crimes and allowed juveniles 13 and older to be tried as adults in federal court for certain violent crimes. Worse, the bill authorized \$12.5 billion in grants to fund or offset the costs of incarceration,¹⁶ nearly 50 percent of which was earmarked for states that adopted tough "truth-in-sentencing" laws, which require offenders to serve at least 85 percent of their sentences.¹⁷ It earmarked \$1.8 billion to reimburse states to incarcerate undocumented immigrants who committed crimes and provided \$8.8 billion over six years to hire 100,000 new police officers on the streets.
- **Edward Byrne Memorial Justice Assistance Grant Program ("JAG").** Today, JAG is the largest single source of federal funding for state and local criminal justice activities.¹⁸ Beginning in 1988,¹⁹ JAG dollars have flown from the federal government to all 50 states and more than 1,000 cities. The program provided funding driven by criteria developed at a time of rising crime. The federal

government asked states to report the number of arrests, but not whether the crime rate dropped. It measured the amount of cocaine seized, but not whether arrestees were screened for drug addiction. It tallied the number of cases prosecuted, but not whether prosecutors reduced the number of petty crime offenders sent to prison. This year, the Justice Department made several changes to update these measures, removing many harmful incentives.²⁰

Taken together, these grants reflect the federal government's role in incentivizing states to adopt more punitive criminal justice policies. The funding encouraged states and cities to increase arrests, prosecutions, and incarceration. They focus on increasing the scope of the criminal justice system, without ensuring a public safety benefit.

Over the past several years, the federal government has begun to recalibrate its grants, including with improvements to JAG. Additionally, the Justice Department's Justice Reinvestment Initiative has worked with states to safely reduce their prison populations, while its Second Chance Act grants fund re-entry programs. Its "Smart on Crime" initiative has spurred other vital changes to federal criminal justice policies.

But more can be done.

The Legacy of the 1994 Crime Bill

To fully understand the 1994 Crime Bill one has to appreciate the atmosphere at the time. For the previous decade, Americans had usually identified crime as the biggest problem facing the country. Although it was not known at the time, violent crime had reached its peak — by one accounting, 500 times higher than it was 30 years previously.²¹ This climate of fear was summed up by President Bill Clinton, who in signing the 1994 Crime Bill, said: “Gangs and drugs have taken over our streets and undermined our schools. Every day, we read about somebody else who has literally gotten away with murder.”²²

Perhaps the most significant and long lasting impact of the 1994 Crime Bill was the authorization of incentive grants to build or expand correctional facilities through the Violent Offender Incarceration (VOI) and Truth-in-Sentencing (TIS) Incentive Grant Program. The legislation authorized \$12.5 billion in grants to fund or offset the costs of incarceration,²³ and nearly 50 percent was earmarked for states that adopted tough “truth-in-sentencing” laws.²⁴ Under this grant program, eligible states received funding to expand their prison capacity, all in the name of ensuring that prison space was available to incarcerate violent offenders.

The provision helped fuel the prison construction boom. The number of state and federal adult correction facilities rose from 1,277 in 1990 to 1,821 in 2005, a 43 percent increase. For a period in the 1990s, a new prison opened every 15 days on average.²⁵

It should be noted that the prison build up can be traced back to 1972. Therefore the Crime Bill’s VOI and TIS Incentive Grant Program was implemented during an era when many states had already begun to make their sentencing structures and practices more draconian. Additionally, although Congress appropriated more than \$3 billion for the VOI and TIS Program through 2001, approximately \$2.7 billion was awarded as grants between 1996 and 2001 for constructing, expanding, or renovating correctional facilities.²⁶

But the 1994 Crime Bill’s funding legacy is significant. Reflecting the overwrought “law and order” priorities of the time, the bill sustained the expansion of incarceration. Nine states (Arizona, Delaware, Michigan, Minnesota, Missouri, North Carolina, Pennsylvania, Utah, and Washington) had adopted truth in sentencing prior to the 1994 Crime Bill.²⁷ But by 1999, five years after the bill was signed, 29 states met the Federal TIS Incentive Grant Program eligibility criteria.²⁸ New York State, for example, received over \$216 million by passing such laws.²⁹ By 2000 the state had added over 12,000 prison beds and incarcerated 28 percent more people than a decade before.³⁰

While the precise impact of the TIS program is hard to quantify, the law’s passage, and the concurrent or subsequent passage of at least 20 state “truth-in-sentencing” laws, marked a turning point in the length of sentences served nationwide.³¹ A 2012 Pew study of 36 states found that the average length of stay for offenders released from prison in 2009 increased 36 percent from 1990, with nine states reporting increases of over 50 percent.³² While some states had already started to enact tougher sentencing laws, the legislation rewarded states for those decisions, and gave powerful incentives for others to adopt them.

II. REORIENTING INCENTIVES

The criminal justice system needs a new set of incentives — one that aligns funding with smarter public policy goals. Called “Success-Oriented Funding,” the policy model simply means that the hundreds of billions of dollars that our federal, state, and local governments spend on criminal justice should be tied to the twin goals of reducing crime *and* incarceration.

Several states have enacted proposals similar to Success-Oriented Funding.

- **California:** In 2009, policymakers passed the California Community Corrections Performance Incentive Act.³³ The state sought to reduce its prison population by reducing the number of probationers revoked to prison by counties. The state provided incentive funding to counties that reduced the number of people they sent back to state prison from county-administered probation. It funded the program by giving money to counties based on a share of the cost savings to the state of the deferred prisoners. By 2011, the number of felony probationers sent to prison dropped by 32 percent, saving the state approximately \$284 million.³⁴ More than \$136 million of this savings was sent to local probation departments. Meanwhile, violent crime in California fell by 13 percent from 2009 to 2014, and property crime fell by 6 percent.³⁵
- **Illinois:** Created in 2009, Adult Redeploy Illinois³⁶ aims to keep people out of prison. It was a response to the high number of nonviolent offenders held in Illinois’ prisons at great cost to the state. For start-up costs, the program received \$2 million from the state and \$4 million in JAG funding. The program provides funding to counties that send nonviolent offenders to specialized courts and intensive probation instead of to prison. It saved the state \$46.8 million over four years by diverting more than 2,000 nonviolent offenders from state prison.³⁷ Adult Redeploy costs \$4,400 per person, compared to \$21,500 per person for a year in prison.³⁸ According to the Illinois Criminal Justice Authority, overall results for Adult Redeploy “show improved public safety outcomes at the individual and community level and significant cost savings to the state.”³⁹
- **Pennsylvania:** In 2013, former Republican Pennsylvania Gov. Tom Corbett’s administration announced it would cancel all the state’s Department of Corrections contracts with private community corrections companies and rebid them on a performance basis. Providers were evaluated on, and paid according to, their success at reducing the recidivism levels of those who have just been released from prison. The new contracts provide that facilities are paid a 1 percent increase per client per day if their overall recidivism rate falls below a certain level. The state can cancel a contract if the recidivism rate increases over two consecutive year-long periods.⁴⁰ Under the new regime, the recidivism rate for private facilities fell 11.3 percent in just the first year.⁴¹

These state experiments indicate that we can reduce crime and incarceration using Success-Oriented Funding principles.

III. A FEDERAL PROPOSAL TO REDUCE MASS INCARCERATION

The federal government can institute a new set of financial incentives based on these state experiments to successfully bring down imprisonment and crime. Using federal dollars to spur state and local change is a proven way to create a nationwide shift.

The Reverse Mass Incarceration Act would contain four main components: (1) a new grant of \$20 billion in incentive funds over 10 years to states; (2) a requirement that in order to receive funds, states reduce prison populations by 7 percent every three years without increasing crime rates; (3) a clear methodology for the amounts states receive; and (4) a requirement that federal funds are used by states for evidence-based programs proven to reduce crime and incarceration.

1. \$20 Billion Over 10 Years in Incentive Funds

Achieving bold change requires an upfront investment. A grant program of \$20 billion over 10 years is recommended. This amount is comparable to the amount authorized by the 1994 Crime Bill. That bill authorized \$12.5 billion (\$19 billion in today's dollars) to encourage states to build more prisons.

Several pieces of pending criminal justice legislation could be passed to help cover these costs. For example, the Smarter Sentencing Act is estimated to reduce prison costs by \$4 billion over 10 years.⁴² The Sentencing Reform and Corrections Act and other bills would also likely provide significant cost savings to invest in the program.

As shown by state experiments, the massive prison costs saved by this type of incentive funding model would outweigh the initial federal outlay. Such a proposal would result in a large net savings to the country. It would also help alleviate the harm to communities and families wreaked by mass incarceration.

2. States Reduce Prison Populations by 7 Percent Without Increasing Crime Over Three Years

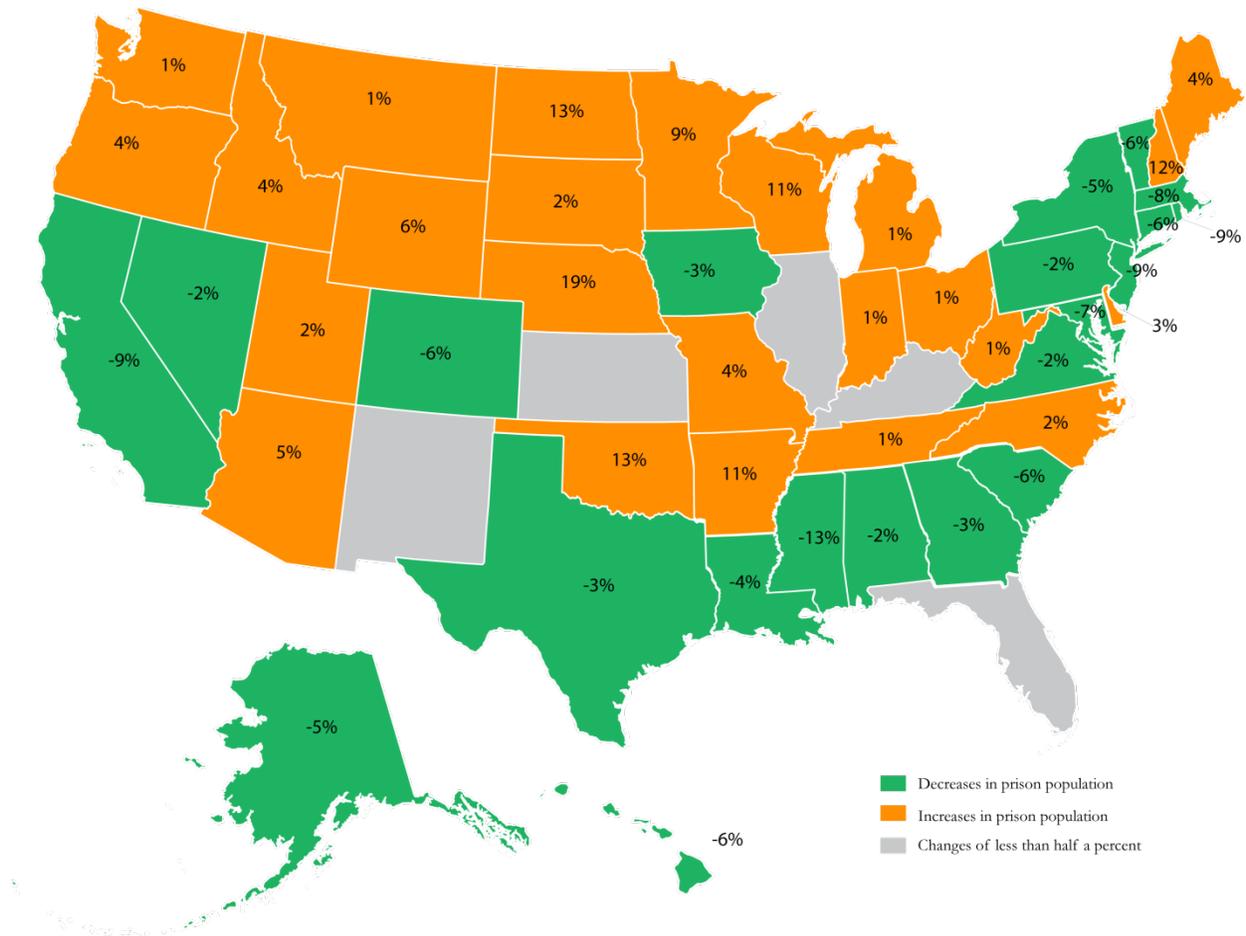
Instead of directing states on how to achieve reductions, such an Act should provide clear targets. States can then use their discretion to decide the best course of action.

The program should provide funding to states who achieve two targets.

First, a state must reduce its prison populations by 7 percent over three years.⁴³ If a state were to meet that goal for the full period, it would end up with a 20 percent reduction after 10 years — a significant cut.⁴⁴

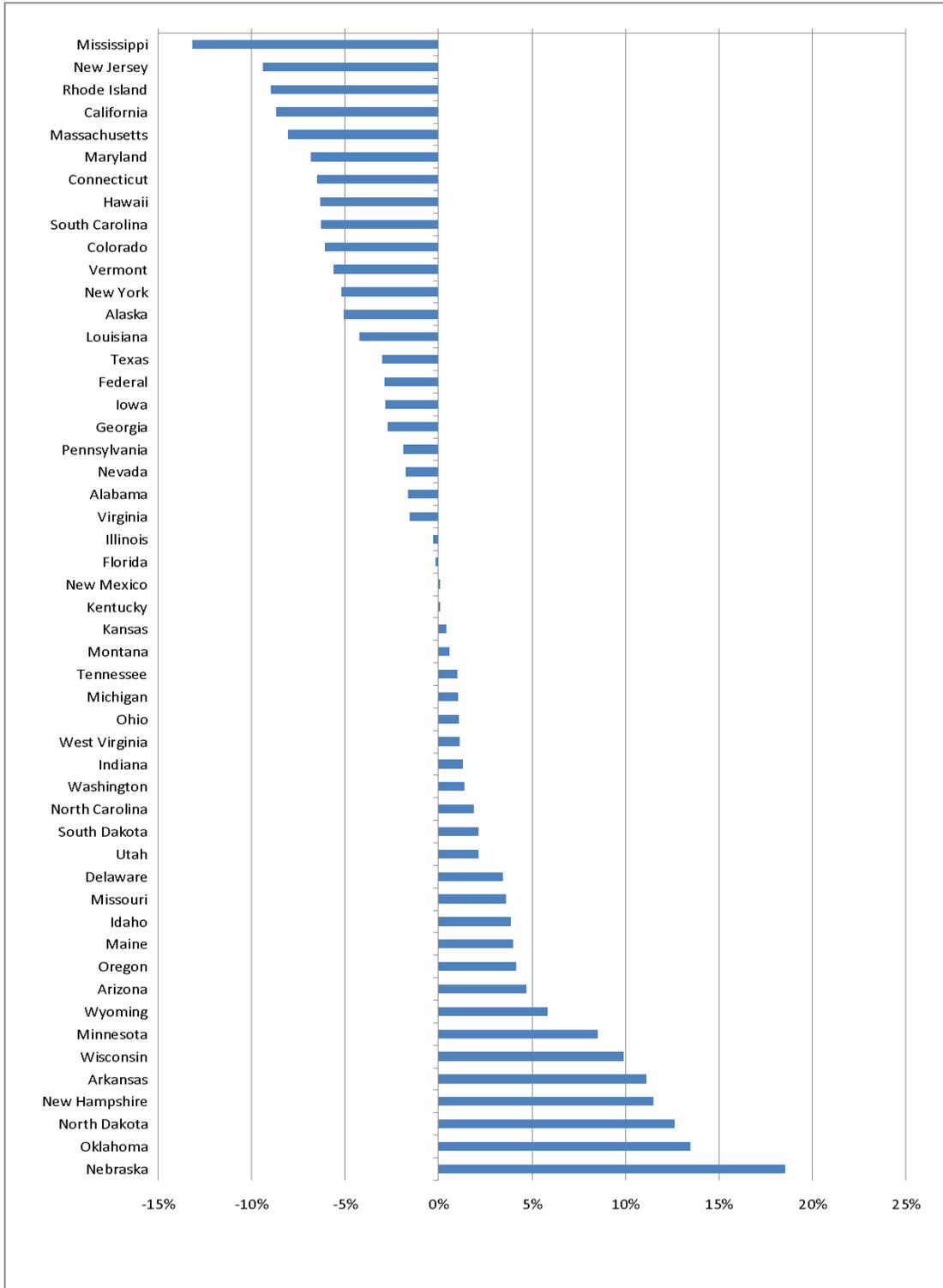
The 7 percent is recommended as it is slightly higher than the current average rate at which states have reduced their prison populations, as shown in Figures 1 and 2 on the next page. From 2011 to 2014, the nation's state prison population has declined 1.64 percent. However, the country was somewhat split: 23 states decreased imprisonment while 27 increased it. For states that did reduce rates, the average decrease was about 5 percent. Thirteen of these 23 states decreased imprisonment rates by more than 5 percent. Furthermore, 22 of the 23 states that decreased imprisonment also saw crime rates fall (the outlier being Nevada).⁴⁵ Setting the target slightly above this 5 percent average threshold would further encourage states to reduce imprisonment rates.

Figure 1: Changes in Prison Population (2011-2014)



As demonstrated in Figure 1, larger states such as Texas, New York, and California were also more likely to see prison decreases. Notably, many Southern states have decreased their prison populations — Texas by 3 percent, South Carolina by 6 percent, and Mississippi by 13 percent. This suggests that even conservative states are willing to implement reforms to lower incarceration.

Figure 2: Changes in Prison Population by State (2011-2014)



Source: Bureau of Justice Statistics, National Prisoner Statistics Program (2011, 2014)

States That Cut Incarceration and Crime

For the first time in 40 years, the crime and incarceration rate fell together from 2008 to 2014.⁴⁶ Several states have led the way.

- **California:** Once a leader in punitive criminal justice policy, California is at the forefront of the movement to safely and efficiently reduce incarceration. Between 2006 and 2012, California reduced its prison population by 23 percent as violent crime fell by 21 percent and property crime by 13 percent.⁴⁷ California's "realignment" legislation, passed in 2011 in response to a prison overcrowding case it lost at the Supreme Court, did more than just shift inmates from state prisons to county jails. Building off of earlier legislation, it reformed parole and probation to reduce incarceration for violations, and facilitated the earlier release of inmates serving time in county jails.⁴⁸ From 2011 to 2014, crime in California fell 7 percent while the state reduced incarceration by nine percent.⁴⁹
- **Mississippi:** Between 2008 and 2014, Mississippi's prison population fell by 21 percent, including a 14 percent drop from 2013 to 2014 alone.⁵⁰ Its major reforms, enacted in 2008 and 2013-14, expanded credit for time already served and loosened some of the requirements for parole eligibility.⁵¹ From 2011 to 2014 crime in Mississippi fell 4.5 percent while incarceration fell 13 percent.⁵²
- **New Jersey:** Over the last decade and a half New Jersey has reduced its prison population by 26 percent, as violent and property crime declined by 30 and 31 percent, respectively.⁵³ New Jersey safely downsized its prison population by enhancing the efficiency of its parole process and increasing flexibility in the sentencing of low-level drug offenders.⁵⁴ From 2011 to 2014, crime in New Jersey fell 20 percent while incarceration fell 9.5 percent.⁵⁵
- **New York:** In the last decade and a half, New York's prison population has fallen dramatically — 28 percent since 1999 — while property crime fell 28 percent and violent crime declined by 31 percent.⁵⁶ In 2009, the state eliminated mandatory sentences for some drug offenses.⁵⁷ The state also increased judicial discretion for referrals to drug courts, introduced robust diversionary programs,⁵⁸ and decreased numbers of felony arrests.⁵⁹ From 2011 to 2014, New York experienced an 11 percent drop in crime with an associated 5 percent reduction in incarceration.⁶⁰
- **South Carolina:** Since 2009, South Carolina has seen the same virtuous combination — a decrease in its prison population of 14 percent along with a 28 percent decline in violent crime and a 9 percent decline in property crime.⁶¹ In 2010, the state ended mandatory minimums for drug possession and expanded prison alternatives and parole eligibility.⁶² From 2011-14, crime fell 14 percent while the state reduced incarceration by 6 percent.⁶³
- **Texas:** In 2005, Texas provided \$55 million in incentive funding for probation departments to use sanctions other than incarceration to respond to parole violators.⁶⁴ Two years later, the state budget projection showed that if the prison rate remained the same, the state would need to spend \$500 million on new prisons.⁶⁵ Responding to this fiscal pressure, legislators appropriated \$241 million to support an array of alternatives to prison such as: additional substance abuse treatment beds, drug courts, and mental illness treatment programs.⁶⁶ In 2009, Texas continued to fund 64 re-entry coordinators in order to reduce recidivism.⁶⁷ In 2011, the Texas legislature passed two bills, allowing probationers to reduce the length of their probation by completing treatment programs and allowing prisoners to reduce their sentence lengths by completing educational programs.⁶⁸ From 2011-14, crime was reduced 12 percent with an accompanying reduction in incarceration of 3 percent.⁶⁹

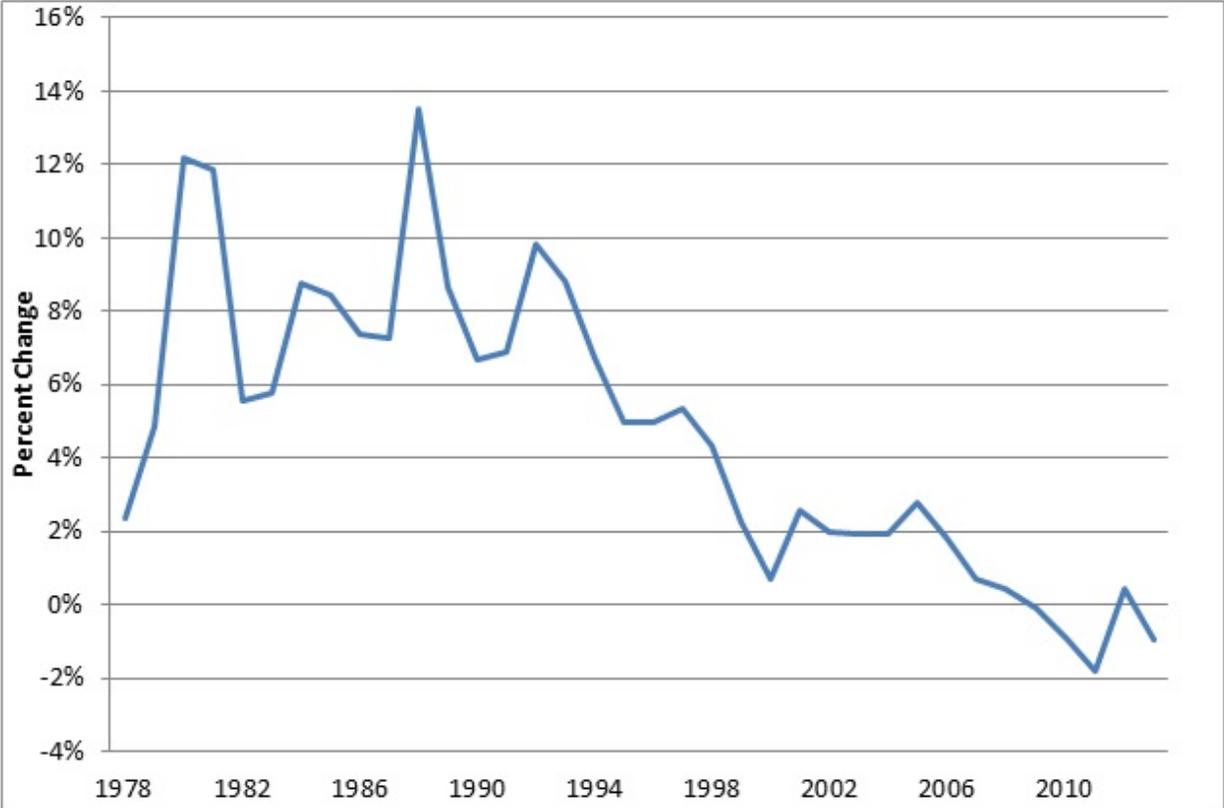
Some groups have called for a 50 percent reduction in incarceration within 10 years. This high target may be a difficult number to reach for many states. An imprisonment reduction of 20 percent over 10 years is a goal that is both bold and achievable. This is not meant to signal an optimal amount of prison reduction but merely encourage states to reduce prison populations in a meaningful way. It is also in line with previous, rapid changes in the prison population, as shown in Figures 3 and 4 on the following page. From 1980 to 1990 it increased by 135 percent; from 1990 to 2000 by 80 percent; and from 2000 to 2010 the increase slowed to 16 percent. If such massive increases were possible over a decade, a decrease of 20 percent from 2015 to 2025 should be achievable.

To help spur reforms, the bill could suggest changes states should consider to achieve targets, such as: decreasing the number of criminal laws; reclassifying felonies to misdemeanors; mandating non-prison alternatives for low-level crimes; eliminating or reducing mandatory minimum sentences; eliminating “three strikes” and “truth-in-sentencing” laws; passing laws increasing parole eligibility; or using alternatives to incarceration for technical parole and probation failures.

A second target: no increase in crime rates. It is paramount that our communities continue to be safe, or improve in safety. As crime is at all-time lows, holding crime at current levels could be seen as an achievement. If more flexibility is sought, the plan could include a *de minimus* exception that crime cannot rise by more than 5 percent in three years.

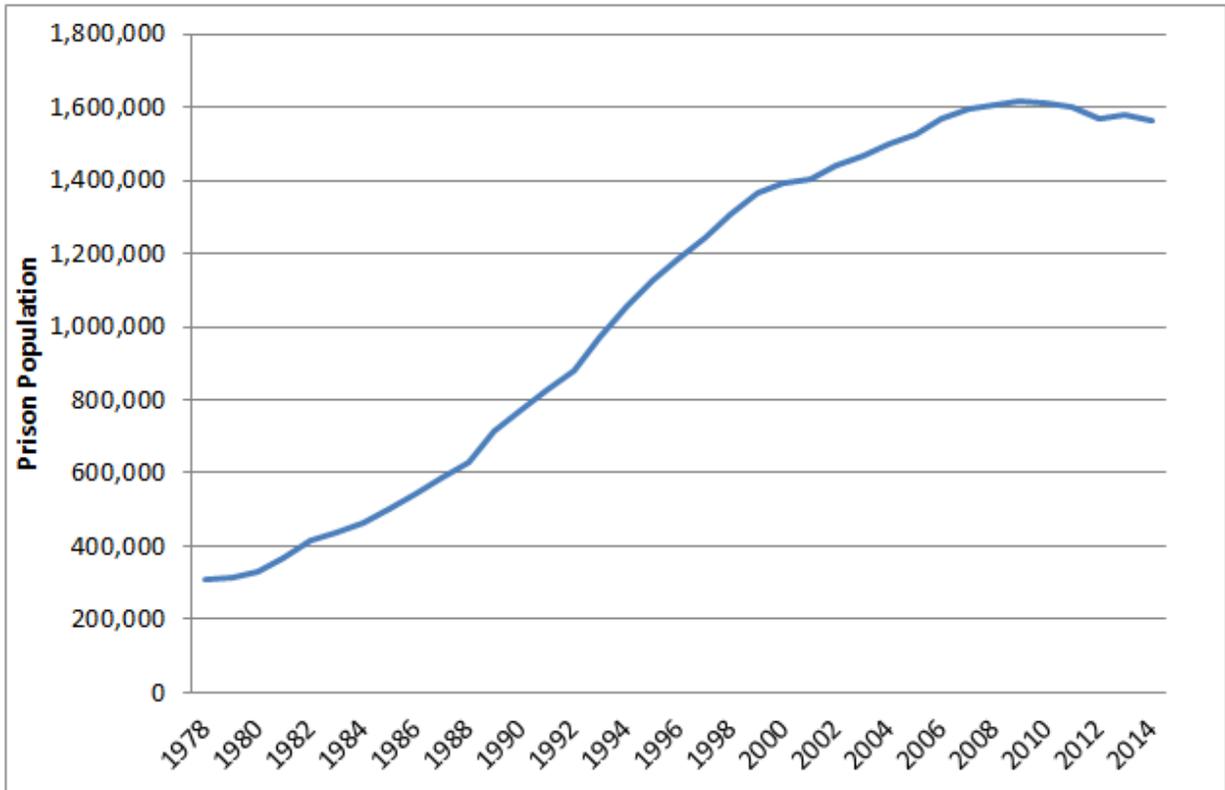
The administrative burden on states to measure their progress toward these goals is low. Both prison population and crime rates are already measured by the Department of Justice through the National Prisoner Statistics Program (NPS)⁷⁰ and the FBI’s Uniform Crime Reporting Program (UCR),⁷¹ respectively. Though this data collection is imperfect, and use of data-based metrics is always subject to manipulation, these two types of data are collected regularly and subject to less manipulation than other types of criminal justices statistics.

Figure 3: Percent Change from Previous Year in Prison Population (1978-2014)



Source: Bureau of Justice Statistics, National Prisoner Statistics Program (2015)

Figure 4: Prison Population (1978-2014)



Source: Bureau of Justice Statistics, National Prisoner Statistics Program (2015)

3. Clear Methodology to Determine State Funding Allocations

In order to incentivize change, the funding criteria and amount must be clear and simple so that states do not feel as though they are bogged down with endless red tape and bureaucracy.

The amount that each state receives should be based on its percentage of the U.S. population as determined by the U.S. Census Bureau. For example, California accounts for 12 percent of the nation’s total population and would therefore receive 12 percent of the pot allocated for that three-year period. Assuming the \$20 billion was divided into \$6.7 billion allocated every three years, California would receive 12 percent of \$6.7 billion, or \$804 million. Although this may not be a large amount compared to California’s annual corrections budget, research and results show that federal dollars play an outsize role in determining state policy.⁷² Seen as precious “bonus” dollars, they often lead states to change practices to win them.

4. Funds Dedicated to Practices that Reduce Crime and Incarceration

The legislation would require states spend their grant money on evidence-based practices shown to reduce crime or incarceration. The roster of programs meeting this requirement is large and includes education, training, jobs, alternatives to incarceration, re-entry services, drug and mental health treatment, training and education in prison, and community policing.

Despite policy moves to stretch out prison terms, the relationship between length of stay and recidivism is a complicated one. Longer lengths of stay may not actually reduce recidivism. The National Research Council found that high probability or “infallibility” of punishment is more likely to curb crime than sentence length.⁷³ This may be because longer stays in prison alter prison conditions in ways that undermine a prisoner’s chance of successful reintegration into society upon release. For example, longer sentences have resulted in overcrowded prisons where there is decreased access to rehabilitative programs and exacerbation of mental health issues.⁷⁴ Recidivism rates appear to be lower when sentences are longer. However, this could be explained by findings that offenders can age out of crime while in prison.⁷⁵

The cost savings attributable to these alternatives to incarceration have been well documented. For example, the average cost to manage probationers is \$3.42 per day, while the average cost to house an inmate is \$79 per day, according to a 2008 study.⁷⁶ It is estimated that states and localities could save a little over \$7 billion if 80 percent of nonviolent, non-serious offenders were sentenced to effective alternatives.⁷⁷

And there is a mountain of research indicating that these programs work. Among successful evidence-based alternatives to incarceration are: deferred-sentencing diversion programs, pre-booking diversion programs, and alternative court models, including mental health and drug courts. Adult drug courts, among the most widespread and well-studied alternatives, have been shown to reduce recidivism by between 8 and 25 percent when compared to other justice system responses, including incarceration.⁷⁸ Deferred-sentencing and pre-booking diversion programs have been successfully implemented in Brooklyn, New York, and Seattle, Washington, among other jurisdictions.⁷⁹ In both cases, independent research showed reductions in recidivism of more than 50 percent.⁸⁰

Results demonstrate that it is possible to reduce the prison population without jeopardizing public safety.

CONCLUSION

A federal program to reward states that reduce crime and incarceration would spur vital change. The time is right for the next president to champion the federal government's role in reversing mass incarceration. The current use of prison as a response to crime exacerbates inequality and racial disparities. While some states and the federal government have made incremental improvements, significant change in the form of funding is required. The federal government, through the power of the purse, can lead the nation to reverse the harm of mass incarceration.

ENDNOTES

¹ *Specifically* the bill authorized \$10.44 billion in “Violent Offender Incarceration” and “Truth in Sentencing” grants, and \$1.915 billion in “State Criminal Alien Assistance Program” grants. All grant funds reimbursed the cost of or directly paid for correctional or detention facility maintenance or construction. *See* Susan Turner et al., National Evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program 32, 45, Appendix D 8 (RAND Corp. 2001) (citing 42 U.S.C.A. § 13708 (1996)) (providing Truth in Sentencing and Violent Offender Incarceration authorization for FY 1995-2000 and State Criminal Alien Assistance authorizations for FY 1995-1999); Nancy E. Gist, Bureau of Justice Assistance, FY 2000 State Criminal Alien Assistance Program (2000) (“For FY 2000, \$585 million has been made available for this program”). According to RAND, the Act provided funds to “construct, develop, expand, modify, operate, or improve correctional facilities.” Congress appropriated more than \$3 billion for the VOI/TIS Program through FY 2001. Approximately \$2.7 billion was awarded as grants to the states and territories between FY 1996 and 2001 for constructing, expanding, or renovating correctional facilities. Bureau of Justice Assistance, Report to Congress, Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program 1 (2012), *available at* <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>.

² UNITED STATES GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, TRUTH IN SENTENCING: AVAILABILITY OF FEDERAL GRANTS INFLUENCED LAWS IN SOME STATES GAO-GGD-98-42 6 (Feb. 1998) (detailing the date of passage of truth-in-sentencing laws in states that received federal grants in fiscal year 1997); PAULA M. DITTON ET AL., BUREAU OF JUSTICE STATISTICS, TRUTH IN SENTENCING IN STATE PRISONS 2 (1999) (showing that as of January 1999, 29 states had laws meeting the federal truth-in-sentencing requirement).

³ *See* ROY WALMSLEY, INTERNATIONAL CENTRE FOR PRISON STUDIES, WORLD PRISON POPULATION LIST 3 (10th ed. 2013) (providing the national population for the United States as 5% of the world population and the prison population as 22% of the world's incarcerated population); *see* U.S. CENSUS BUREAU, COMPENDIUM OF THE SEVENTH CENSUS 88-89 tbl. 81 (1854), *available at* <https://www.census.gov/prod/www/decennial.html> (showing that in 1850 there were 872,933 male slaves age 15 and over and an additional 1,581 male slaves of unknown age); *see also* E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013 7 tbl.7 (2014) (showing that in 2013 there were 526,000 black male prisoners under the jurisdiction of state or federal correctional authorities). *See* ERINN J. HERBERMAN & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, PROBATION AND PAROLE IN THE UNITED STATES, 2013 16-20 tbls. 2, 3, 4, 6 (2014), *available at* <http://bjs.gov/content/pub/pdf/ppus13.pdf> (showing that in 2013 there were 3,945,795 people on probation, of whom 30% were black and 75% male and 839,551 people on parole, of whom 38% were black and 88% male); *see also* TODD D. MINSON & DANIELA GOLINELLI, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2013 — STATISTICAL TABLES 6-7 tbls.2, 3 (2014), *available at* <http://www.bjs.gov/content/pub/pdf/jim13st.pdf> (showing that at midyear 2013 there were 731,208 inmates in local jails, of whom 35.8% were black and 86% male); *see* LAUREN E. GLAZE & DANIELLE KAEBLE, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2013 3 tbl.1(2014) (showing that in 2013 there were 2,220,330 persons incarcerated in the United States in 2013 and 6,899,000 in the entire correctional population); *see* U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION: APRIL 1, 2010 TO JULY 1, 2014 (2015), *available at* <http://www.census.gov/popest/data/national/totals/2014/index.html> (showing that as of July 1, 2014 the estimated population of the 35th largest state, Nevada, was 2,839,099 and the population of the 36th largest state, New Mexico, was 2,085,572; the populations of Delaware, Vermont, and Wyoming combined equaled 2,146, 329).

⁴ *See* OLIVER ROEDER ET AL., BRENNAN CTR. FOR JUSTICE, WHAT CAUSED THE CRIME DECLINE? 22 (2015), *available at* https://www.brennancenter.org/sites/default/files/publications/What_Caused_The_Crime_Decline.pdf

⁵ *See* NICOLE FORTIER & INIMAI CHETTIAR, BRENNAN CTR. FOR JUSTICE, SUCCESS-ORIENTED FUNDING: REFORMING FEDERAL CRIMINAL JUSTICE GRANTS 25 n.19 (2014), *available at* http://www.brennancenter.org/sites/default/files/publications/SuccessOrientedFunding_ReformingFederalCriminalJusticeGrants.pdf (finding that total criminal justice spending in the United States equals \$260.5 billion); *see* BUREAU OF JUSTICE STATISTICS, JUSTICE EXPENDITURE AND EMPLOYMENT EXTRACTS: 1984, 1985, AND 1986 156 (1991), *available at* <http://www.bjs.gov/content/pub/pdf/jee-848586.pdf> (finding that in 1986 the justice system spent \$53.5 billion).

⁶ See Robert DeFine & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, 49 *Crime & Delinquency* 581 (2013) (indicating that had mass incarceration not occurred, poverty would have decreased by more than 20%, or about 2.8 percentage points).

⁷ In 2013, the federal government sent \$3.8 billion across the country in criminal justice grants, not including defense spending on criminal justice needs. NICOLE FORTIER & INIMAI CHETTIAR, BRENNAN CTR. FOR JUSTICE, *SUCCESS-ORIENTED FUNDING: REFORMING FEDERAL CRIMINAL JUSTICE GRANTS* 2, 25 n.12 (2014).

⁸ From 2008 to 2014, the crime *numbers* declined by 18.8 percent and the incarceration *numbers* declined by 3.5 percent. From 2008 to 2014, the crime *rate* declined by 24 percent and the incarceration *rate* declined by 7.2 percent. See UNIFORM CRIME REPORTING STATISTICS, FED. BUREAU OF INVESTIGATION, <http://www.ucrdatatool.gov>; LAUREN E. GLAZE & ERINN J. HERBERMAN, BUREAU OF JUSTICE STATISTICS, *CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2012 2 & tbl. 1* (2013), available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>; TODD MINTON AND DANIELA GOLINELLI, BUREAU OF JUSTICE STATISTICS, *JAIL INMATES AT MIDYEAR 2013 - STATISTICAL TABLES, 6 tbl.1*, available at <http://www.bjs.gov/content/pub/pdf/jim13st.pdf>. The recent *consecutive*-year simultaneous declines in both crime and imprisonment *numbers* and *rates* are unprecedented. The last time crime and imprisonment *rates* declined simultaneously was from 1999 to 2000, and before that from 1971 to 1972. The last time crime and imprisonment *numbers* declined together was over 40 years ago, from 1971 to 1972. These previous declines were only one year drops. See *id.*; see also CORRECTIONS STATISTICAL ANALYSIS TOOL (CSAT)—PRISONERS, BUREAU OF JUSTICE STATISTICS, <http://www.bjs.gov/index.cfm?ty=nps> (last visited Sept. 10, 2014); Chet Bowie, Bureau of Justice Statistics, *Prisoners 1925-81 2 tbl.1* (1982), available at <http://www.bjs.gov/content/pub/pdf/p2581.pdf>.

⁹ PEW CHARITABLE TRUSTS, PUBLIC SAFETY PERFORMANCE PROJECT, *PUBLIC SAFETY, PUBLIC SPENDING: FORECASTING AMERICA'S PRISON POPULATION 2007–2011 i* (2007), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State-based_policy/PSPP_prison_projections_0207.pdf (stating that the prison population grew by 700 percent between 1970 and 2005).

¹⁰ Compare SUE A. LINDGREN, BUREAU OF JUSTICE STATISTICS, *JUSTICE EXPENDITURE AND EMPLOYMENT EXTRACTS, 1992 tbl. E* (1997), available at <http://www.bjs.gov/content/pub/pdf/CJEE92.PDF> (providing FY 1982 state and federal total justice system expenditures at \$35,841,916,000), with TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, *JUSTICE EXPENDITURE AND EMPLOYMENT EXTRACTS, 2012 — PRELIMINARY tbl. 1* (2015), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5239> (providing FY 2012 state and federal total justice system expenditures at \$265 160,340,000).

¹¹ The authors calculated this total based on a thorough search for data available online for each grant program the federal government offered in 2013 to support criminal justice activities. The authors found this data primarily on websites hosted by federal agencies that offered 2013 grant opportunities. Where 2013 data was unavailable for an identified criminal justice program, the authors instead compiled data on the most recently available year. The authors excluded programs dedicated to national security purposes in order to determine the particular total amount the federal government spends for criminal justice purposes. Based on its limitation to publicly available data, it is possible this calculation does not include all data for all federal grants that support criminal justice activities. However, it includes a robust compilation of available data. Data on file with the authors.

¹² *Congress Passes Extensive Anti-Crime Legislation*, CONGRESSIONAL QUARTERLY ALMANAC (1968), available at: <https://library.cqpress.com/cqalmanac/document.php?id=cqal68-1283625>; Max Frankel, *President Signs Broad Crime Bill, With Objections*, N.Y. TIMES, Jun. 20, 1968, at 1, 23.

¹³ *Congress Passes Extensive Anti-Crime Legislation*, CONGRESSIONAL QUARTERLY ALMANAC (1968), available at: <https://library.cqpress.com/cqalmanac/document.php?id=cqal68-1283625>; Max Frankel, *President Signs Broad Crime Bill, With Objections*, N.Y. TIMES, Jun. 20, 1968, at 1, 23.

¹⁴ *Congress Passes Extensive Anti-Crime Legislation*, CONGRESSIONAL QUARTERLY ALMANAC (1968), available at: <https://library.cqpress.com/cqalmanac/document.php?id=cqal68-1283625>; Max Frankel, *President Signs Broad Crime Bill, With Objections*, N.Y. TIMES, Jun. 20, 1968, at 1, 16.

¹⁵ *Congress Passes Extensive Anti-Crime Legislation*, CONGRESSIONAL QUARTERLY ALMANAC (1968), available at: <https://library.cqpress.com/cqalmanac/document.php?id=cqal68-1283625>; Max Frankel, *President Signs Broad Crime Bill, With Objections*, N.Y. TIMES, Jun. 20, 1968, at 1, 17.

¹⁶ *Specifically*, the bill authorized \$10.44 billion in “Violent Offender Incarceration” and “Truth in Sentencing” grants, and \$1.915 billion in “State Criminal Alien Assistance Program” grants. All grant funds reimbursed the cost of or directly paid for correctional or detention facility maintenance or construction. See Susan Turner et al., National Evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program 32, 45, Appendix D 8 (RAND Corp. 2001) (citing 42 U.S.C.A. § 13708 (1996)) (providing Truth in Sentencing and Violent Offender Incarceration authorization for FY 1995-2000 and State Criminal Alien Assistance authorizations for FY 1995-1999); Nancy E. Gist, Bureau of Justice Assistance, FY 2000 State Criminal Alien Assistance Program (2000) (“For FY 2000, \$585 million has been made available for this program”). According to RAND, the Act provided funds to “construct, develop, expand, modify, operate, or improve correctional facilities.” Congress appropriated more than \$3 billion for the VOI/TIS Program through FY 2001. Approximately \$2.7 billion was awarded as grants to the states and territories between FY 1996 and 2001 for constructing, expanding, or renovating correctional facilities. Bureau of Justice Assistance, Report to Congress, Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program 1 (2012), available at <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>.

¹⁷ SUSAN TURNER ET AL., NATIONAL EVALUATION OF THE VIOLENT OFFENDER INCARCERATION/TRUTH-IN-SENTENCING INCENTIVE GRANT PROGRAM xv (RAND Corp. 2001).

¹⁸ UNITED STATES GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, TRUTH IN SENTENCING: AVAILABILITY OF FEDERAL GRANTS INFLUENCED LAWS IN SOME STATES GAO-GGD-98-42 6 (Feb. 1998) (detailing the date of passage of truth-in-sentencing laws in states that received federal grants in fiscal year 1997); PAULA M. DITTON ET AL., BUREAU OF JUSTICE STATISTICS, TRUTH IN SENTENCING IN STATE PRISONS 2 (1999) (showing that as of January 1999, 29 states had laws meeting the federal truth-in-sentencing requirement).

¹⁹ The Anti-Drug Abuse Act amended the Omnibus Crime and Control Act of 1968 law. See Omnibus Crime and Control Act of 1968, 42 U.S.C. §§ 3750-3758 (1968).

²⁰ For a more in depth examination of the JAG program see ALSO INIMAI CHETTIAR, ET AL., BRENNAN CTR. FOR JUSTICE, REFORMING FUNDING TO REDUCE MASS INCARCERATION 9 (2013).

²¹ Bill McCollum, *The Struggle for Effective Anti-Crime Legislation - An Analysis of the Violent Crime Control and Law Enforcement Act of 1994*, 20 U. DAYTON L. REV. 561 (1994-1995), available at <http://heinonline.org/HOL/LandingPage?handle=hein:journals/udlr20&div=22&id=&page>

²² Bill Clinton, President, Remarks on Signing the Violent Crime Control and Law Enforcement Act of 1994 (Sept. 13th 1994), available at <http://www.gpo.gov/fdsys/pkg/PPP-1994-book2/pdf/PPP-1994-book2-doc-pg1539.pdf>.

²³ *Specifically*, the bill authorized \$10.44 billion in “Violent Offender Incarceration” and “Truth in Sentencing” grants, and \$1.915 billion in “State Criminal Alien Assistance Program” grants. All grant funds reimbursed the cost of or directly paid for correctional or detention facility maintenance or construction. *See* Susan Turner et al., National Evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program 32, 45, Appendix D 8 (RAND Corp. 2001) (citing 42 U.S.C.A. § 13708 (1996)) (providing Truth in Sentencing and Violent Offender Incarceration authorization for FY 1995-2000 and State Criminal Alien Assistance authorizations for FY 1995-1999); Nancy E. Gist, Bureau of Justice Assistance, FY 2000 State Criminal Alien Assistance Program (2000) (“For FY 2000, \$585 million has been made available for this program”). According to RAND, the Act provided funds to “construct, develop, expand, modify, operate, or improve correctional facilities.” Congress appropriated more than \$3 billion for the VOI/TIS Program through FY 2001. Approximately \$2.7 billion was awarded as grants to the states and territories between FY 1996 and 2001 for constructing, expanding, or renovating correctional facilities. Bureau of Justice Assistance, Report to Congress, Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program 1 (2012), *available at* <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>.

²⁴ SUSAN TURNER ET AL., NATIONAL EVALUATION OF THE VIOLENT OFFENDER INCARCERATION/TRUTH-IN-SENTENCING INCENTIVE GRANT PROGRAM xv (RAND Corp. 2001).

²⁵ SUZANNE M. KIRCHHOFF, ECONOMIC IMPACTS OF PRISON GROWTH, 15, (Congressional Research Service, 2010), *available at* <https://www.fas.org/sgp/crs/misc/R41177.pdf>.

²⁶ BUREAU OF JUSTICE ASSISTANCE, REPORT TO CONGRESS, VIOLENT OFFENDER INCARCERATION AND TRUTH-IN-SENTENCING INCENTIVE FORMULA GRANT PROGRAM 1 (2012), *available at* <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>.

²⁷ UNITED STATES GOV’T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, TRUTH IN SENTENCING: AVAILABILITY OF FEDERAL GRANTS INFLUENCED LAWS IN SOME STATES GAO-GGD-98-42 6 (Feb. 1998) (detailing the date of passage of truth-in-sentencing laws in states that received federal grants in fiscal year 1997).

²⁸ PAULA M. DITTON ET AL., BUREAU OF JUSTICE STATISTICS, TRUTH IN SENTENCING IN STATE PRISONS 2 (1999) (showing that as of January 1999, 29 states had laws meeting the federal truth-in-sentencing requirement). The District of Columbia is included in the state count.

²⁹ UNITED STATES GOV’T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, TRUTH IN SENTENCING: AVAILABILITY OF FEDERAL GRANTS INFLUENCED LAWS IN SOME STATES GAO-GGD-98-42 4 (Feb. 1998). New York State received a total of \$216 million for this initiative from 1996 through 2001.

³⁰ ALLEN BECK & PAIGE HARRISON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2000 3 (2001), *available at* <http://www.bjs.gov/content/pub/pdf/p00.pdf>.

³¹ UNITED STATES GOV’T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, TRUTH IN SENTENCING: AVAILABILITY OF FEDERAL GRANTS INFLUENCED LAWS IN SOME STATES GAO-GGD-98-42 6 (Feb. 1998) (detailing the date of passage of truth-in-sentencing laws in states that received federal grants in fiscal year 1997); PAULA M. DITTON ET AL., BUREAU OF JUSTICE STATISTICS, TRUTH IN SENTENCING IN STATE PRISONS 2 (1999) (showing that as of January 1999, 29 states had laws meeting the federal truth-in-sentencing requirement).

³² PEW CTR. ON THE STATES, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 20 (2010), *available at* http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/pri_sontimeservedpdf.pdf.

³³ California Senate Bill 678 (2009).

³⁴ JUDICIAL COUNCIL OF CALIFORNIA, REPORT ON THE CALIFORNIA COMMUNITY CORRECTIONS PERFORMANCE ACT OF 2009: FINDINGS FROM THE SB 678 PROGRAM (2015) 17 (2015).

³⁵ California Dept. of Justice, *Crime in California 2014 7 tbl.2* (2015), *available at* <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd14/cd14.pdf>.

³⁶ Illinois Crime Reduction Act of 2009, SB 1289 (2009)

³⁷ ILLINOIS CRIMINAL JUSTICE INFORMATION CENTER, 2014 ANNUAL REPORT 16 (2015), *available at* http://icjia.state.il.us/research/overview#tab_research-overview.

³⁸ ILLINOIS CRIMINAL JUSTICE INFORMATION CENTER, 2014 ANNUAL REPORT 16 (2015), *available at* http://icjia.state.il.us/research/overview#tab_research-overview.

³⁹ ILLINOIS CRIMINAL JUSTICE INFORMATION CENTER, 2014 ANNUAL REPORT 16 (2015), *available at* http://icjia.state.il.us/research/overview#tab_research-overview

⁴⁰ Charles Chieppo, *The Pay-for-Performance Approach to Reducing Recidivism*, GOVERNING, Sept. 10, 2015, <http://www.governing.com/blogs/bfc/col-pennsylvania-pay-performance-privatization-reducing-parolee-recidivism.html>

⁴¹ Press Release, Pennsylvania Department of Corrections, Performance-Based Contracts Continue to Positively Affect Recidivism (Aug. 25, 2015), *available at* <http://www.prnewswire.com/news-releases/performance-based-contracts-continue-to-positively-affect-recidivism-300132906.html>

⁴² Congressional Budget Office Cost Estimate, S. 1410: Smarter Sentencing Act of 2014, as ordered reported by the Senate Committee on the Judiciary on January 30, 2014 1 (2014), *available at* <https://www.cbo.gov/publication/45710> (stating CBO estimate of savings for 2015-2024).

⁴³ We recommend using prison populations and not jail populations, as jail populations are too transitory.

⁴⁴ For example, take a hypothetical state that has 100,000 prisoners at the start of the program. If the state reduced its incarcerated population by seven percent in the first three years it would then have 93,000 prisoners (100,000 * 7% reduction). If the state reduced its incarcerated population by another seven percent during the following three year span, it would have 86,490 prisoners (93,000 * 7% reduction). If the state further cut down by another seven percent over the next three years, it would have 80,436 prisoners (86,490 * 7% reduction). A reduction from 100,000 to 80,436 is slightly less than a 20 percent reduction.

⁴⁵ *See* UNIFORM CRIME REPORTING STATISTICS, STATE-BY-STATE AND NATIONAL CRIME ESTIMATES BY YEAR(S) (2014), *available at*, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> (providing crime and population estimates for 2011), *with* UNIFORM CRIME REPORTING STATISTICS, CRIME IN THE UNITED STATES 2014, (2015), *available at*, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/5tabledatadecpdf/table_5_crime_in_the_united_states_by_state_2013.xls (providing crime and population estimates for 2013. 2014 data has not been released yet). Brennan Center calculations derived crime rates using the UCR population statistics and then measured changes in terms of rates.

⁴⁶ From 2008 to 2014, the crime *numbers* declined by 18.8 percent and the incarceration *numbers* declined by 3.5 percent. From 2008 to 2014, the crime *rate* declined by 24 percent and the incarceration *rate* declined by 7.2 percent. *See* UNIFORM CRIME REPORTING STATISTICS, FED. BUREAU OF INVESTIGATION, <http://www.ucrdatatool.gov>; LAUREN E. GLAZE & ERINN J. HERBERMAN, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2012 2 & tbl. 1 (2013), *available at* <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>; TODD MINTON AND DANIELA GOLINELLI, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2013 - STATISTICAL TABLES, 6 tbl.1, *available at* <http://www.bjs.gov/content/pub/pdf/jim13st.pdf>. The recent *consecutive*-year simultaneous declines in both crime and imprisonment *numbers* and *rates* are unprecedented. The last time crime and imprisonment *rates* declined simultaneously was from 1999 to 2000, and before that from 1971 to 1972. The last time crime and imprisonment *numbers* declined together was over 40 years ago, from 1971 to 1972. These previous declines were only one year drops. *See id.*; *see also* CORRECTIONS STATISTICAL ANALYSIS TOOL (CSAT)—PRISONERS, BUREAU OF JUSTICE STATISTICS, <http://www.bjs.gov/index.cfm?ty=nps> (last visited Sept. 10, 2014); CHET BOWIE, BUREAU OF JUSTICE STATISTICS, PRISONERS 1925-81 2 tbl.1 (1982), *available at* <http://www.bjs.gov/content/pub/pdf/p2581.pdf>.

⁴⁷ THE SENTENCING PROJECT, POLICY BRIEF: FEWER PRISONERS LESS CRIME: A TALE OF THREE STATES 1 (2014), *available at* http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.

⁴⁸ THE SENTENCING PROJECT, POLICY BRIEF: FEWER PRISONERS LESS CRIME: A TALE OF THREE STATES 7 (2014), *available at* http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.

⁴⁹ *See* UNIFORM CRIME REPORTING STATISTICS, STATE-BY-STATE AND NATIONAL CRIME ESTIMATES BY YEAR(S) (2014), *available at*, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> (providing crime and population estimates for 2011), *with* UNIFORM CRIME REPORTING STATISTICS, CRIME IN THE UNITED STATES 2014, (2015), *available at*, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/5tabledatadecpdf/table_5_crime_in_the_united_states_by_state_2013.xls; *see also* E ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2014 (2015), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387> (data set providing national totals for state and federal incarceration from 1978-2014 accessed via the link for “CSV” at above address).

⁵⁰ *Compare* HEATHER C. WEST & WILLIAM J. SABOL, PRISONERS IN 2009 16 (Bureau of Justice Statistics, Dec. 2010) (showing 22,754 prisoners incarcerated in Mississippi in 2008) *with* E ANN CARSON, PRISONERS IN 2014 3 (Bureau of Justice Statistics, Sept. 2015) (showing 17,386 prisoners incarcerated in Mississippi in 2014).

⁵¹ *See* SMART REFORM IS POSSIBLE: STATES REDUCING INCARCERATION RATES AND COSTS WHILE PROTECTING 30 (American Civil Liberties Union, Aug. 2011) (“HB 686 (2004): increased earned time credits in prisons for exemplary time served”; “SB2136 (2008): Retroactively reinstated parole eligibility for nonviolent offenses after 25percent of sentence served (partial repeal of truth-in-sentencing law)”); NICOLE D. PORTER, THE SENTENCING PROJECT, THE STATE OF SENTENCING IN 2013: DEVELOPMENTS IN POLICY AND PRACTICE 4 (2014) (describing HB 121, the 2013 law that created a “truth in sentencing” task force to review criminal justice policies, focusing on cost-effectiveness); NICOLE D. PORTER, THE SENTENCING PROJECT, THE STATE OF SENTENCING IN 2014: DEVELOPMENTS IN POLICY AND PRACTICE 5 (2014) (describing HB 585, the 2014 law that reduced Mississippi’s time served before parole requirement to 50percent from 85percent, among other reforms).

⁵² *See* UNIFORM CRIME REPORTING STATISTICS, STATE-BY-STATE AND NATIONAL CRIME ESTIMATES BY YEAR(S) (2014), *available at*, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> (providing crime and population estimates for 2011), *with* UNIFORM CRIME REPORTING STATISTICS, CRIME IN THE UNITED STATES 2014, (2015), *available at*, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/5tabledatadecpdf/table_5_crime_in_the_united_states_by_state_2013.xls; *see also* E ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2014 (2015), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387> (data set providing national totals for state and federal incarceration from 1978-2014 accessed via the link for “CSV” at above address).

⁵³ THE SENTENCING PROJECT, POLICY BRIEF: FEWER PRISONERS LESS CRIME: A TALE OF THREE STATES 1 (2014), *available at* http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.

⁵⁴ THE SENTENCING PROJECT, POLICY BRIEF: FEWER PRISONERS LESS CRIME: A TALE OF THREE STATES 1 (2014), *available at* http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.

⁵⁵ *See* UNIFORM CRIME REPORTING STATISTICS, STATE-BY-STATE AND NATIONAL CRIME ESTIMATES BY YEAR(S) (2014), *available at*, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> (providing crime and population estimates for 2011), *with* Uniform Crime Reporting Statistics, Crime in the United States 2014, (2015), *available at*, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/5tabledatadecpdf/table_5_crime_in_the_united_states_by_state_2013.xls; *see also* E ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2014 (2015), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387> (data set providing national totals for state and federal incarceration from 1978-2014 accessed via the link for “CSV” at above address).

⁵⁶ *Compare* ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2000 3 (2001), *available at* <http://www.bjs.gov/content/pub/pdf/p00.pdf> (showing 72,899 prisoners incarcerated in New York state in 1999) *with* E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013 3 tbl.2 (2014), *available at* <http://1.usa.gov/1uDNndG> (showing 53,550 prisoners incarcerated in New York state in 2012); *see also* SENTENCING PROJECT, POLICY BRIEF: FEWER PRISONERS LESS CRIME: A TALE OF THREE STATES 1 (2014).

⁵⁷ *Drug Law Changes*, N.Y. State Div. of Crim. Justice Servs., <http://www.criminaljustice.ny.gov/drug-law-reform/>.

⁵⁸ N.Y. Crim. Proc. Art. 216; *see also, e.g.*, Robert Maccarone, Shared Services Alternatives to Incarceration Summary 2010 1 (2011), *available at* <http://on.ny.gov/1yxILC6> (describing New York’s mental health diversion programs).

⁵⁹ JAMES AUSTIN, ET AL., HOW NEW YORK CITY REDUCED MASS INCARCERATION: A MODEL FOR CHANGE? (2013), *available at* https://www.brennancenter.org/sites/default/files/publications/How_NYC_Reduced_Mass_Incarceration.pdf

⁶⁰ *See* UNIFORM CRIME REPORTING STATISTICS, STATE-BY-STATE AND NATIONAL CRIME ESTIMATES BY YEAR(S) (2014), *available at*, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> (providing crime and population estimates for 2011), *with* UNIFORM CRIME REPORTING STATISTICS, CRIME IN THE UNITED STATES 2014, (2015), *available at*, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/5tabledatadecpdf/table_5_crime_in_the_united_states_by_state_2013.xls; *see also* E ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2014 (2015), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387> (data set providing national totals for state and federal incarceration from 1978-2014 accessed via the link for “CSV” at above address).

⁶¹ *Compare* HEATHER C. WEST & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2009 16 (2010) (showing 24,326 prisoners incarcerated in South Carolina in 2008) *with* E ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013 3 (2015) (showing 20,830 prisoners incarcerated in South Carolina in 2014). As with Mississippi, there is little anecdotal evidence of a recent spike in crime.

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⁶⁴ MARC LEVIN, TEX. PUB. POL’Y FOUND., ADULT CORRECTIONS REFORM: LOWER CRIME, LOWER COSTS 1 (2011), *available at* [at http://www.rightoncrime.com/wp-content/uploads/2011/09/Texas-Model-Adult.pdf](http://www.rightoncrime.com/wp-content/uploads/2011/09/Texas-Model-Adult.pdf).

⁶⁵ COUNCIL OF STATE GOV’TS JUSTICE CTR., JUSTICE REINVESTMENT IN TEXAS: ASSESSING THE IMPACT OF THE 2007 JUSTICE REINVESTMENT INITIATIVE 3 (2009), *available at* <http://www.ncsl.org/portals/1/Documents/cj/texas.pdf> (citing Tex. Dep’t of Criminal Justice, Legislative Appropriations Request, Fiscal Years 2008-2009 (2007)).

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⁶⁷ *State Initiatives: Texas*, RIGHT ON CRIME, <http://www.rightoncrime.com/reform-in-action/state-initiatives/texas>.

⁶⁸ H.B. 1205, 82d Leg. (Tex. 2011); H.B. 2649, 82d Leg. (Tex. 2011); LAUREN-BROOKE EISEN & JULIENE JAMES, VERA INST. OF JUSTICE, REALLOCATING JUSTICE RESOURCES: A REVIEW OF 2011 STATE SENTENCING TRENDS 26 (2012) www.vera.org/sites/default/files/resources/downloads/reallocating-justice-resources.pdf (surveying Texas house bills on earned credit programs).

⁶⁹ See UNIFORM CRIME REPORTING STATISTICS, State-by-State and National Crime Estimates by Year(s) (2014), *available at*, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm> (providing crime and population estimates for 2011), *with* UNIFORM CRIME REPORTING STATISTICS, Crime in the United States 2014, (2015), *available at*, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/5tabledatadecpdf/table_5_crime_in_the_united_states_by_state_2013.xls; *see also* E ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2014 (2015), *available at* <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387> (data set providing national totals for state and federal incarceration from 1978-2014 accessed via the link for “CSV” at above address).

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⁷³ Jeremy Travis, et. al., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 132 (Comm. on Causes and Consequences of High Rates of Incarceration et al. eds., 2004).

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