

# Resolved: US prisons ought to prioritize rehabilitation over deterrence for non-violent drug offenders.

## R2R

We negate, resolved: US prisons ought to prioritize rehabilitation over deterrence for non-violent drug offenders.

Our sole point of contention is that the resolution would worsen mass incarceration.

Reforms targeted at nonviolent drug offenders won't fix mass incarceration. Law professor John Pfaff writes in his 2017 book, *Locked In*, that most prison-reform discussions start with the claim that "we send too many nonviolent and drug offenders to prison." Although it is likely true that we send too many, that doesn't mean that these offenders make up most of the people in prison. In fact, the incarceration of people who have been convicted of violent offenses explains almost two-thirds of the growth in prison populations since 1990.

Most people in prison committed violent offenses. Dara Lind at Vox News furthers in 2015: America's "nonviolent drug offenders" account for a paltry 12 percent of America's prisoners.

The notion that nonviolent drug crimes drove mass incarceration makes it seem like we can easily reduce the prison population by focusing on them, while still keeping the real bad criminals locked away. Yet this is an impossible task. Pfaff writes: To make significant cuts to state prisons, states need to be willing to move past reforms aimed at the minor offender and focus much more on the (far more politically tricky) people convicted of violent offenses.

In addition, the line between a "violent" and "nonviolent" offender doesn't really exist. Leon Neyfakh writes in *Slate Magazine* in 2015: Many crimes are legally considered violent "even if no force is used, let alone injury suffered. In many states, you can be convicted of felony murder for having been present when someone you are affiliated with committed a homicide, even if you never touched a weapon, let alone actually killed someone. On the other hand, many offenders who are labeled "nonviolent" actually did commit violent crimes but were able to negotiate for lesser charges in exchange for pleading guilty.

In fact, Pfaff writes that the basis on which we're deciding who should and shouldn't be a beneficiary of decarceration is thus fundamentally flawed.

Indeed, attempts to rehabilitate only a small fraction of the prison population will hurt prisoners, and make our society more dangerous.

This is because policymakers always package reforms meant to help nonviolent offenders by punishing violent offenders harder. Pfaff explains that states generate the political support for lessening property and drug crime sentences in part by toughening those for violent crimes. Maryland, for example, passed a reform bill in 2016 that also cut sanctions for nonviolent crimes while increasing punishments for some violent ones in order to avoid looking “soft on crime.”

This happened just this year with the First Step Act – a recently passed federal law that eased sentences on nonviolent offenders – which contained political compromises that produced a bad policy. Shon Hopwood at Georgetown University Law Center writes in 2019: The First Step Act prevented those who have committed violent crimes from serving part of their sentence in home confinement rather than a federal prison. The First Step Act’s exclusions will negatively affect public safety because those who have committed violent crimes will complete rehabilitation programming and fewer of those convicted of violent crimes will come out of federal prison rehabilitated as a result.

This resolution, like the First Step Act, will make society worse off by increasing the recidivism rate of violent offenders. Dylan Matthews at the Washington Post reports on several studies that find that worse prison conditions increase the propensity of prisoners to reoffend once they are released. One study found that those who end up placed in a higher security prison reoffend at a rate 42% higher than those placed in lower-security prisons.

Thus, we negate.

# Cut Card

**We negate, resolved: US prisons ought to prioritize rehabilitation over deterrence for non-violent drug offenders.**

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**Reforms targeted at nonviolent drug offenders won't fix mass incarceration. Law professor John Pfaff writes in his 2017 book, *Locked In*, that most prison-reform discussions start with the claim that "we send too many nonviolent and drug offenders to prison." Although it is likely true that we send too many, that doesn't mean that these offenders make up most of the people in prison. In fact, the incarceration of people who have been convicted of violent offenses explains almost two-thirds of the growth in prison populations since 1990.**

**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, "*Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform*," Basic Books, pages 11-12 //DF

At the same time, it is possible to oversell the argument that our prisons are too large. Three particularly important problems stand out. First, debates tend to misstate who is in prison. Most prison-reform discussions start with something along the lines of, "We send too many nonviolent and drug offenders to prison." And although it is likely true that we send too many, that doesn't mean that these offenders make up most of the people in prison. In fact, over half of all state inmates are in prison for violent crimes, and the incarceration of people who have been convicted of violent offenses explains almost two-thirds of the growth in prison populations since 1990. Similarly, almost all the people who actually serve long sentences have been convicted of serious violent crimes. To make significant cuts to state prisons, states need to be willing to move past reforms aimed at the minor offender and focus much more on the (far more politically tricky) people convicted of violent offenses. Second, most arguments in favor of prison reform overstate the impact of prison spending on state budgets. The \$50 billion or so that states spend to run their prisons is certainly a lot of money, but that comes to about 3 percent of state spending, a percentage that has been fairly stable for roughly the past fifteen years.<sup>19</sup> This is likely one reason why incarceration was allowed to continue with so little regulation for so long: because, in the end, prison spending did not limit spending elsewhere enough to generate much resistance.

**Most people in prison committed violent offenses. Dara Lind at Vox News furthers in 2015: America's "nonviolent drug offenders" account for a paltry 12 percent of America's prisoners.**

**Lind 15** Dara Lind, 8-18-2015, "Stop thinking nonviolent drug offenders are better than people who committed other crimes," Vox, <https://www.vox.com/2015/8/6/9101129/nonviolent-drug-prison> //DF

**If the problem is that too many people are in prison, focusing on nonviolent drug crimes isn't going to get very far toward addressing it.** To really address America's over-incarceration problem, politicians and the public need to stop thinking that "nonviolent drug offenders" are different from, and safer than, people who have committed other kinds of crimes. **Drug offenders are only 20 percent of prisoners — and they're not all nonviolent** The majority of prisoners in **the US are in state prisons.** The majority of state prisoners are in prison for violent crimes. Drug offenders simply aren't the majority of American prisoners. They're about 20 percent. state and federal prisoners 2012. **Drug offenders are a plurality of federal prisoners, which is one reason politicians and the press focus on them so much:** If Congress wanted to reduce the federal prison population, it would get the biggest bang for its buck by reducing drug sentences. But politicians at the state level often focus on drug offenders, as well, even though they make up only about 16 percent of people in state prisons. That's because they know the public is more sympathetic toward low-level drug offenders than to other types of criminals. In 2013 there were about 308,000 people serving state or federal sentences for drug crimes, according to the Bureau of Justice Statistics — about 20 percent of the total US prison population. But how many of those count as "low-level," "nonviolent" drug offenders, in the eyes of policymakers or the public? How many of them are the prisoners who America has agreed aren't a threat? Unfortunately, federal statistics don't provide a precise answer to this question. But the statistics we do have can give us a rough estimate. The government's prison statistics count people based on the most serious crime for which they're serving a sentence. So by definition, none of the 308,000 drug prisoners in the US are currently in prison for committing a violent crime. For sentencing reform advocates, that's the same as saying they're nonviolent. But many politicians disagree. Prosecutors emphasize that **many drug offenders are in prison for drug trafficking (which they consider "inherently violent"), and some are high-level operatives.** Other government officials, including those working on sentencing reform in the Senate, think that "nonviolent" should exclude inmates whose crimes involved a weapon (which often just means they had weapons on them when arrested). How many people does that leave? Here's one clue: When the US Sentencing Commission considered allowing drug prisoners to appeal for shorter sentences last year, the Obama administration urged them to limit it to certain nonviolent offenders without significant criminal histories — and the exclusions they included would have cut the eligible number of prisoners from 51,000 to 20,000. While that doesn't encompass all federal drug prisoners, it seems that as many as half of federal drug prisoners wouldn't count as "low-level, nonviolent." At the state level, a 2002 study by the Sentencing Project found that 58 percent of state drug prisoners had "no history of violence or high-level criminal activity." **Let's assume, conservatively, that only 40 percent of drug prisoners would be considered "high-level" or "violent," or have long criminal histories. That still means that America's "nonviolent drug offenders" account for a paltry 12 percent of America's prisoners.** Drug treatment won't help drug prisoners who aren't addicted Identifying who should benefit from more lenient criminal treatment is only half the battle. Figuring out how to deal with those prisoners instead is the other half. And when it comes to drug offenders, the primary answer offered by politicians and the public alike is "drug treatment." Drug courts, which provide an alternative to prison for some drug offenders who agree to rehab and intensive probation, have been around since the late 1980s. It's taken them a very long time to catch on, or to be expanded beyond the most minor cases, but they've hit the mainstream as part of the current wave of state criminal-justice reforms. Some states, like New Jersey (under a plan championed by Gov. Chris Christie), make treatment mandatory for people convicted of drug crimes Drug treatment won't help drug prisoners who aren't addicted Identifying who should benefit from more lenient criminal treatment is only half the battle. Figuring out how to deal with those prisoners instead is the other half. And when it comes to drug offenders, the primary answer offered by politicians and the public alike is "drug treatment." Drug courts, which provide an alternative to prison for some drug offenders who agree to rehab and intensive probation, have been around since the late 1980s. It's taken them a very long time to catch on, or to be expanded beyond the most minor cases, but they've hit the mainstream as part of the current wave of state criminal-justice reforms. Some states, like New Jersey (under a plan championed by Gov. Chris Christie), make treatment mandatory for people convicted of drug crimes. But drug treatment only makes sense as an alternative for prisoners who are addicted to drugs. And we don't know how many nonviolent drug offenders are also drug addicts. There are plenty of drug offenders out there — including small-time dealers, who are often the people who get incarcerated — who are in the drug industry to make money, whether it's their only path to making a living or they're simply hoping to get rich. Those people aren't motivated to commit crimes by their addictions. They don't benefit from treatment-focused interventions: The National Association of Drug Court Professionals encourages drug courts for people who were "dealing drugs to support an addiction," but not those dealing "solely for the purposes of financial gain." And we just don't know how many people fall into each of those camps. So while legislators are finally coming around on the "low-hanging fruit," we don't actually know how many people fall into that category — as opposed to the politically more problematic categories of drug addicts who've convicted violent crimes, or drug offenders who were simply involved in the business for the money. At a glance, it looks like most prisoners are tied up in drug use: A majority of state and federal prisoners tested positive for using drugs or alcohol in the 30 days before they were arrested. But not everyone who uses drugs or alcohol once a month is an addict. The most recent statistics on drug dependence (using the psychological definition from the Diagnostic and Statistical Manual) come from a study of prisoners in 2006 from anti-drug group CASAColumbia. It found that while about half of all federal prisoners have been convicted for drugs, only 37 percent of all federal prisoners were substance-dependent (on illegal drugs or alcohol). In state prisons, meanwhile, only 16 percent of prisoners were serving time for drugs — but 48 percent were substance-dependent. That raises big questions about just how much overlap there is between "nonviolent drug

offenders" and the drug addicts who could benefit from treatment. In fact, there's some evidence that if prisoners know that drug addicts get lighter penalties or access to more prison services, they have an incentive to say they're addicted to drugs — even if, by medical standards, they're not. The CASAColumbia study found that 163,196 federal, state and local inmates with "substance use disorders" (including both dependence and abuse) had gotten professional services for their addictions in the last year. Meanwhile, 23,498 inmates who didn't have a substance disorder had gotten addiction services. Since not everyone who qualifies for "substance abuse" may actually be addicted, that probably understates the amount of non-addicted inmates getting treatment. And the more that individual prisoners are incentivized to seek drug treatment as a path to an easier sentence, the more possible that is. What if the people who really need drug treatment are violent offenders? The premise of favoring treatment over prison is that drug addicts will commit crimes to support their addictions, so curing the addiction is the best way to prevent future crime. But the crimes that addicts commit aren't just drug crimes. CASAColumbia's study found that 77 percent of prisoners who'd committed property crimes, and 65 percent of prisoners who'd committed violent crimes, were either under the influence of alcohol and drugs when they committed the crime, were committing the crime to support their addiction, or had a history of drug and alcohol abuse. But the public's interest in lighter penalties and alternatives to incarceration for nonviolent offenders doesn't extend to violent offenders at all. Studies have found that Americans take a punitive attitude toward drug trafficking when it's connected to violence, and that the same people who want alternatives to incarceration for nonviolent offenders want longer prison sentences for violent ones. And criminal justice reformers have often reduced sentences for nonviolent offenders, or provided them with alternatives to prison, while keeping the status quo for violent crimes. As both Vox's German Lopez and I have pointed out before, **it's going to be nearly impossible to reduce state prison populations substantially without cutting prison sentences for violent offenders. The hypothetical, drug-addicted "nonviolent drug offender"** is the archetype politicians and the public have used to pursue criminal justice reform. But **there simply aren't enough of them to save America from mass incarceration.** And they may not be the ones who most need to be guided to treatment.

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**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, "Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform," Basic Books, pages 11-12 //DF

At the same time, it is possible to oversell the argument that our prisons are too large. Three particularly important problems stand out. First, debates tend to misstate who is in prison. Most prison-reform discussions start with something along the lines of, "We send too many nonviolent and drug offenders to prison." And although it is likely true that we send too many, that doesn't mean that these offenders make up most of the people in prison. In fact, over half of all state inmates are in prison for violent crimes, and the incarceration of people who have been convicted of violent offenses explains almost two-thirds of the growth in prison populations since 1990. Similarly, almost all the people who actually serve long sentences have been convicted of serious violent crimes. To make significant cuts to state prisons, states need to be willing to move past reforms aimed at the minor offender and focus much more on the (far more politically tricky) people convicted of violent offenses. Second, most arguments in favor of prison reform overstate the impact of prison spending on state budgets. The \$50 billion or so that states spend to run their prisons is certainly a lot of money, but that comes to about 3 percent of state spending, a percentage that has been fairly stable for roughly the past fifteen years.<sup>19</sup> This is likely one reason why incarceration was allowed to continue with so little regulation for so long: because, in the end, prison spending did not limit spending elsewhere enough to generate much resistance.

**In addition, the line between a “violent” and “nonviolent” offender don’t really exist. Leon Neyfakh writes in Slate Magazine in 2015: Many crimes are legally considered violent “even if no force is used, let alone injury suffered. In many states, you can be convicted of felony murder for having been present when someone you are affiliated with committed a homicide, even if you never touched a weapon, let alone actually killed someone. On the other hand, many offenders who are labeled “nonviolent” actually did commit violent crimes but were able to negotiate for lesser charges in exchange for pleading guilty.**

**Nyefakh 15** Leon Neyfakh, 3-4-2015, "Supporting Prison Reform Is Easy. Deciding Which Prisoners to Set Free Is a Lot, Lot Harder," Slate Magazine, <https://slate.com/news-and-politics/2015/03/prison-reform-releasing-only-nonviolent-offenders-wont-get-you-very-far.html> //DF

You might be wondering, quite reasonably: Why would we even want to prevail over that “inherent limitation”? Yes, too many Americans are in prison. But prisons exist for a reason—to remove violent criminals from the streets and to punish them for the violence they’ve committed. Here’s the thing, though: It turns out the line between “violent offenders” and “nonviolent offenders” is a lot harder to draw than you might think. **“A significant number of people who have been convicted of violent offenses aren’t violent people,”** said Joe Margulies, a visiting professor of law and government at Cornell University who is working on a book about criminal justice reform. “People who never hurt anyone, who never confronted a victim, can nevertheless be convicted of violent crimes.” This might seem strange, but there are criminal statutes all over the country that routinely result in defendants being classified as “violent” in the eyes of the law even though most people would never describe their deeds that way. **Many crimes are legally considered violent “even if no force is used, let alone injury suffered,”** said Jonathan Simon, the director of the Center for the Study of Law & Society at the University of California in Berkeley, in an email. He added, “violence is a much more capacious legal category than most people assume.” **One example of a crime that’s legally defined as “violent” in many states even though it doesn’t necessarily involve any actual violence is illegal gun possession.** Other examples include burglarizing an occupied dwelling or serving as a getaway driver while someone else commits an armed robbery. Statutory rape stemming from consensual sex between an adult and a minor is also typically classified as a violent offense. Perhaps the best illustration of how a not-necessarily-violent person can be found guilty of a violent crime involves “felony murder.” **In many states, you can be convicted of felony murder for having been present when someone you are affiliated with committed a homicide, even if you never touched a weapon, let alone actually killed someone.** Critics of “felony murder” laws argue that while you may well deserve to go to prison for being part of such a crime, you don’t deserve the same label as the trigger man. “Tens of thousands of people in California are serving life sentences for this crime,” said Petersilia, who is the co-director of the Stanford Criminal Justice Center and a member of the Department of Justice Scientific Advisory Board. **“If you’re at a party and gang activity breaks out and someone gets shot, all the people who were there—everyone who came with that person who did the shooting, or was part of their gang—can then be convicted of felony murder.”** It seems clear, then, that there are many people serving time for violent offenses who haven’t actually committed violent acts and might be good candidates for reduced sentences. That might sound like good news for reformers, but Petersilia points out that the flaws in the violent/nonviolent labels run both ways: **Many offenders who are labeled “nonviolent” actually did commit violent crimes but were able to negotiate for lesser charges in exchange for pleading guilty.** “They’re not clean labels,” said Petersilia. “And it’s a very, very serious problem, because we are downsizing prisons based on these categories. Legislation is being based on these categories that don’t reflect the seriousness of the offender.” **The basis on which we’re deciding who should and shouldn’t be a beneficiary of decarceration is thus fundamentally flawed.** So what would be a better approach? Some experts, including Petersilia and Margulies, believe in using so-called risk assessment tools to determine how dangerous individual inmates really are. These tools, which have long been used by parole boards to decide who can be safely let out of prison, come in

many different forms, but the basic idea is to use a variety of facts about the offender's criminal history, mental health status, and prison record to statistically predict whether he or she is likely to commit crime in the future.

**In fact, Pfaff finds that when prisoners were surveyed, unambiguously nonviolent, first-or second-time drug offenders comprised 6 percent just those inmates convicted of drug crimes, or about 1 percent of all prisoners. The basis on which we're deciding who should and shouldn't be a beneficiary of decarceration is thus fundamentally flawed.**

**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, "Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform," Basic Books, pages 35-36 //DF

Although there may be limits on what a drug-based reform effort can accomplish, 16 percent of the state prison population is still more than 200,000 people—and that's a huge number by any measure. There is, however, another limitation to consider: we may not want to release all of those who are in prison for drug crimes. Standard Story narratives often talk about all the low-level, nonviolent drug offenders in state prisons, suggesting that most of the people in prison for drug crimes should not be there. Not surprisingly, the truth is a bit more complicated. Most of our prisoner statistics provide very little information about why someone is in prison beyond the specific conviction offense. In a world of plea bargaining, however, the conviction offense is an imperfect signal, at best, of what the prisoner actually did. How many other offenses were simply dropped? How many crimes were downgraded at charging (turning trafficking into a possession conviction, for example)? And how many aggravating factors, such as a gun, might have been discarded? There is, however, one way to look beyond the conviction offense to the "real" behavior of people admitted to prison. The Bureau of Justice Statistics periodically conducts a large-scale survey of thousands of inmates in state and federal prisons, asking them hundreds of questions: not just, say, what the official conviction offenses were in their cases, but how many kilos or packets of drugs they really had, whether they actually had guns on them at the time (regardless of what they pled to or were convicted of or were arrested for), what sort of prior crimes they had been arrested or imprisoned for, and so on. Using the survey from 1997—admittedly slightly stale data—two social scientists tried to determine how many truly low-level drug offenders were in prison, where they defined "unambiguously low level drug offenders" as "nonviolent, first-or second-time drug offenders" who played minor roles and possessed only small amounts of drugs.<sup>41</sup> Only about 6 percent of state drug inmates—not 6 percent of all inmates, but **6 percent of just those inmates convicted of drug crimes, or about 1 percent of all prisoners—and 2 percent of federal drug inmates met that description.** At the same time, most of those serving time for drug offenses did not appear to be "kingpins" either, whom the researchers defined as those who described themselves as mid- to high-level drug-ring participants. These people accounted for only about 4 percent of those in state prisons for drug crimes and 6.6 percent of those similarly in federal prisons. Almost everyone in prison for a drug crime was somewhere in the middle. Some were caught with nontrivial quantities, some had prior histories of violence or gun possession, and some had long lists of prior drug convictions. Most of those in prison for drugs were more than users, and many were not as nonviolent as their conviction offenses suggested. Prison is still an excessive punishment for many of these cases, perhaps even most of them. Yet I imagine that many prison reformers—and certainly much of the general public—still think that some of these midlevel types deserve time in prison. (35-36)

**Indeed, attempts to rehabilitate only a small fraction of the prison population will hurt prisoners, in two ways.**

**First, it will kill any efforts at real policy changes.**

**Pfaff writes that prison reformers claim that drug reform is the “low-hanging fruit,” the easiest and most politically viable reform to implement. But they have been pushing hard to change state laws since 2008 or 2009, yet almost no politicians have taken on how we might deal more effectively with violent offenses. Political capital and attention are limited, and at some point people’s focus will drift away from criminal justice reform to other topics.**

**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, “Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform,” Basic Books, pages 23-24 //DF

For the past few years I have been arguing that the “war” against the war on drugs will not cut prison populations nearly as much as its proponents hope.<sup>7</sup> The standard response I get is the “low-hanging fruit” reply: drug reform is the easiest and most politically viable reform to implement. Do that first, then build on that victory to attack the tougher issues, like how we punish violent crimes. On its own terms, it’s a fair point. In practice, however, it raises serious concerns. **Prison reformers have been pushing hard to change state laws since 2008 or 2009, and seven or eight years later I have yet to see almost any politician take on how we might deal more effectively with violent offenses**, perhaps with the high-profile exception of Senator Cory Booker of New Jersey.<sup>8</sup> **Political capital and attention are limited, and at some point people’s focus will drift away from criminal justice reform to other topics**. The window to act is not indefinite. Even worse, the rhetoric and tactics used to push through reforms for lower-level offenses often explicitly involve imposing even harsher punishments on those convicted of violent crimes. South Carolina, for example, has been widely congratulated for the reforms it passed in 2010, which, among other things, raised the cutoff for felony theft from \$1,000 to \$2,000 and created various ways for those convicted of drug possession to avoid prison time—but simultaneously raised the sanctions for various violent crimes.<sup>9</sup> Maryland, generally more liberal than South Carolina, passed a reform bill in 2016 that also cut sanctions for nonviolent crimes while increasing punishments for some violent ones in order to avoid looking “soft on crime.”<sup>10</sup> Similarly, Georgia’s lauded 2011 reforms have cut prison populations, but hidden in that decline is a rise in the absolute number of people serving time for violent crimes—people whose sentences tend to be longer, and whose rising imprisonment may, in the long run, undo the short-run declines.<sup>11</sup> (23-24)



**The sole focus on nonviolent offenders prevents truly effective prison reforms in the long-term. Katherine Beckett at the University of Washington explains in 2016: in making the case for prison reforms, supporters often contrast the relatively sympathetic target of nonviolent drug offenders with the other “serious criminals.” These rhetorical strategies undermine the chances that comprehensive reform will be adopted in the future. A more universalist reform strategy that emphasizes the human rights, capacity for maturation, and shared humanity of all subjects of the carceral state—both present and future—may prove more effective in the long run.**

**Beckett 16** Katherine Beckett [ professor in the Law, Societies, and Justice Program and the Department of Sociology, and the Clarence and Elissa M. (“Lee”) Schrag Endowed Faculty Fellow at the University of Washington], Anna Reosti [doctoral candidate in the Sociology Department at the University of Washington. Her primary areas of interest include punishment, stratification, and housing policy], Emily Knaphus, 2-18-2016, "The End of an Era? Understanding the Contradictions of Criminal Justice Reform," SAGE Journals,

<https://journals-sagepub-com.proxy.swarthmore.edu/doi/full/10.1177/0002716215598973> //DF

Instead, significantly reducing incarceration rates in prisons and jails will necessitate broad sentencing reforms that significantly reduce the number of people flowing into incarcerative institutions, as well as the amount of time people spend in those institutions—not only for drug offenses but for violent, property and public order offenses as well (Gottshalk 2015; Tonry 2014; Travis, Western, and Redburn 2014). Yet our analyses indicate that state legislators have not embraced this reality and, indeed, have only tinkered with the policies governing the number of technical parole violators and drug offenders who are sentenced to jail or prison. By contrast, the punitive policies that govern the sanctioning of the majority of people moving through the criminal justice system have been left largely intact and, in some cases, have been intensified. Similarly, media discussions of criminal justice reform focus overwhelmingly on the need for drug policy reform and link such reforms to fiscal pressures rather than a comprehensive analysis of the human costs associated with mass incarceration. Moreover, **in making the case for such reforms, supporters often contrast the relatively sympathetic target of** drug policy reformers—mainly **nonviolent drug offenders**, especially users/possessors—**with other “serious criminals”** whose sanctions remain unquestioned—and are sometimes validated by reform advocates themselves. Reform advocates have undoubtedly chosen to focus on drug law reform and highlight the fiscal cost of incarcerating drug offenders for strategic reasons. Yet **these rhetorical strategies** also do important cultural work and may **undermine the chances that comprehensive reform will be adopted in the future**. The unwillingness of reform advocates and policy-makers to tackle the comparatively difficult topic of violence is eminently reasonable from a short-term, strategic point of view. Yet **absent a deep and sustained interrogation of the practices and policies that fuel violence in the United States—as well as the violence of punitive responses to it—a true paradigm shift with respect to mass incarceration will continue to elude us. A more universalist reform strategy that emphasizes the human rights, capacity for maturation, and shared humanity of all subjects of the carceral state—both present and future—may prove more effective in the long run.**

**Second, it will result in harsher punishments for most prisoners.**

**Policymakers always package reforms meant to help nonviolent offenders by punishing violent offenders harder. Pfaff explains that states generate the political support for lessening property and drug crime sentences in part by toughening those for violent crimes. Maryland, for example, passed a reform bill in 2016 that also cut sanctions for nonviolent crimes while increasing punishments for some violent ones in order to avoid looking “soft on crime.”**

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A simple example makes this clear. Assume that in 2013 we released half of all people convicted of property and public-order crimes, 100 percent of those in for drug possession, and 75 percent of those in for drug trafficking. Our prison population would have dropped from 1.3 million to 950,000. That’s no minor decline, but this sort of politically ambitious approach only gets us back to where we were in about 1994, and 950,000 prisoners is still more than three times the prison population we had when the boom began. Or consider that there are almost as many people in prison today just for murder and manslaughter as the total state prison population in 1974: about 188,000 for murder or manslaughter today, versus a total of 196,000 prisoners overall in 1974. If we are serious about wanting to scale back incarceration, we need to start cutting back on locking up people for violent crimes. Not surprisingly, almost all politicians steer clear of this topic. Reformers are more open to the idea in theory, but they almost always emphasize the need to focus on the “low-hanging fruit” of nonviolent offenders first. Build coalitions around those successes, they say, then see what is possible next.<sup>1</sup> There is certainly a lot of validity to this idea. We can’t go from soaring prisons one day to emptying them of the most serious offenders the next. Progress is incremental, and a reform movement that races ahead of itself could end up foundering as a result. At the same time, for all the talk of “low-hanging fruit,” there doesn’t appear to be anyone building ladders to pick the fruit higher up the tree. Prison reform has been on the political radar since about 2000, and it has been taken seriously since about 2008; that’s somewhere between nine and seventeen years. Yet reform efforts are still aimed entirely at this “low-hanging fruit,” and there seems to be no effort to move the discussion on to tougher issues. In fact, the situation is arguably worse than that makes it sound. It isn’t just that reform bills focus only on those convicted of nonviolent crimes, but that, as we’ve seen, reform options, such as drug diversion, often explicitly exclude those convicted of violence. Even more troubling, **many states generate the political support for lessening property and drug crime sentences in part by toughening those for violent crimes**. To belabor the metaphor, far from building taller ladders, we seem to be burning the wood we need to build them. If the goal is real, substantial reform, this approach is untenable. The sheer volume of violent offenders in prison acts as a barrier to deep cuts built solely on nonviolent offenders. (186)

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**This happened just this year with the First Step Act – a recently passed federal law that eased sentences on nonviolent offenders – which contained political compromises that produced a bad policy. Shon Hopwood at Georgetown University Law Center writes in 2019**

**Hopwood 19** Shon Hopwood [Associate Professor of Law, Georgetown University Law Center], 2-25-2019, "The Effort to Reform the Federal Criminal Justice System," The Yale Law Journal, [https://www.yalelawjournal.org/forum/the-effort-to-reform-the-federal-criminal-justice-system#\\_ftnref86](https://www.yalelawjournal.org/forum/the-effort-to-reform-the-federal-criminal-justice-system#_ftnref86) //DF

The second way federal reform progress could be stymied is by criminal justice reform organizations holding out for comprehensive reform, or the perfect bill, when the politics of the moment will only allow for incremental reform.<sup>84</sup> While there have been many reforms at the state and local level in the past few years,<sup>85</sup> people incarcerated in the federal prison system have not experienced the same relief. As noted above, the very modest Sentencing Reform and Corrections Act was stalled in Congress for years,<sup>86</sup> and until the First Step Act, the last time Congress passed a federal prison-reform bill was in 2007—with the even more modest Second Chance Act.<sup>87</sup> In my lifetime, federal criminal justice reform has moved only incrementally, because it is exceedingly difficult to obtain broad consensus on criminal justice issues in Congress.<sup>88</sup> When Congress has actually tackled comprehensive reform, the results have been mixed, no matter which party was in the majority.<sup>89</sup> **If this Congress tried tackling bold and comprehensive reform, I would have grave concerns. Imagine the tradeoffs that would have to be attached to any bill for it to successfully clear the Senate.**<sup>90</sup> While public opinion is rapidly moving towards reform, Congress has not moved at the same pace. Even **when it does move on reform, the inevitable political compromises often produce bad policy.** Many in the federal reform community, for example, **advocated** against **the list of exclusions from the First Step Act's earned-time credit.**<sup>91</sup> **These exclusions prevent those who have committed certain crimes—such as violent, sexual, and certain white-collar crimes—from obtaining the earned-time credit and serving part of their sentence in home confinement rather than a federal prison.**<sup>92</sup> **The First Step Act's exclusions will negatively affect public safety because those who have committed violent crimes will not be incentivized to successfully complete meaningful rehabilitation programming.** But that does not mean they will never be released; it just means that **fewer of those convicted of violent crimes will come out of federal prison rehabilitated as a result.**<sup>93</sup> **The exclusions were a compromise to which many in the House quickly acceded—some Democrats included—even as the reform community pressed for reducing the exclusion list,** and even though many other parts of the bill changed substantially. **In the current political climate, the best evidence-based practices are often excluded from legislation;** in this, the First Step Act was no different. After spending a year speaking with lawmakers on Capitol Hill, I did not see significant consensus—particularly from members elected from states in the Midwest and South—to pass comprehensive reform. And holding out for comprehensive reform will only prevent those currently in the federal system from receiving any relief while serving long

sentences in deplorable conditions with little hope of accessing meaningful rehabilitative programs. Those in federal prison and their families should not have to wait for the perfect administration, the perfect Congress, and the perfect bill. The way forward is through incremental and bipartisan reform.<sup>94</sup>

**This will worsen the lives of violent offenders, and make society worse off through higher recidivism. Dylan Matthews at the Washington Post reports on several studies that find that worse prison conditions increase the propensity of prisoners to reoffend once they are released. One study found that those who end up placed in a higher security prison reoffend at a rate 42% higher than those placed in lower-security prisons.**

**Matthews 12** Dylan Matthews, 8-24-2012, "Making prison worse doesn't reduce crime. It increases it.," Washington Post,

[https://www.washingtonpost.com/news/wonk/wp/2012/08/24/making-prison-worse-doesnt-reduce-crime-it-increases-it/?noredirect=on&utm\\_term=.eb0c771961be](https://www.washingtonpost.com/news/wonk/wp/2012/08/24/making-prison-worse-doesnt-reduce-crime-it-increases-it/?noredirect=on&utm_term=.eb0c771961be) //DF

And that's only one of Breivik's three rooms (and yes, his will have a laptop too). As Breivik will be in solitary confinement, he also gets his own exercise room and a bedroom, to compensate him for his lack of access to regular parts of prison life, such as university courses, work in internal shops, the prison gym and the library. You can see a short documentary touring a Norwegian prison here. Many have an intuitive repulsion to the idea of giving a mass murderer that kind of square footage, with Internet access to boot. But is that gut feeling backed up by the evidence? It turns out there's a pretty extensive literature on the effects of harsh prison conditions. One finding that is growing more and more accepted is that harsh sentences, if anything, increase recidivism (or, the propensity of prisoners to reoffend once released).

The economists Keith Chen and Jesse Shapiro exploited (pdf) the fact that the federal prison system assigns prisoners to different security levels based on a numeric score indicating how much supervision that inmate needs.

There are then cutoffs for assignment to each security level. Those scoring above a certain cutoff get medium security, those below it get low security, and so forth. Chen and Shapiro compared prisoners with scores just above and just below cutoffs to see how being assigned to a

higher security level affected recidivism. Their finding? Those at the border who end up placed in a higher security prison reoffend at a significantly higher rate than those at the border placed in lower-security prisons. For those right at

the border, the increase is about 10 to 15 percent, but if you take a broader view, it could reach as high as 42 percent. That's a serious increase in crime that, if Chen and Shapiro are right, is easily preventable by putting prisoners in less-harsh conditions. A bevy of studies have used the security level approach and found similar results. Gerald Gaes and Scott Camp found that higher security levels increase recidivism by about 31 percent.

Lawrence Bensch and Terry Allen randomly assigned prisoners to medium and maximum security sectors of a prison and found that prisoners in maximum security were no less likely to commit in-prison offenses. A more recent paper from Italian researchers Francesco Drago, Roberto Galbiati and Pietro Vertova measured the effects of prison overcrowding, prison death rates and distance of prisons from major cities on recidivism. They found no significant changes in recidivism in prisons that were more or less crowded or more or less deadly, and found that geographic isolation increases recidivism. A study from Rafael Di Tella and Ernesto Schargrodsky found that people who are sentenced to house arrest with ankle monitors reoffend at a much lower rate than those sentenced to traditional prison. And a wide array of studies have found that in-prison education programs reduce recidivism while improving quality of life. The findings on the effects of prison conditions on recidivism, in short, are a matter of scholarly consensus.

# Frontlines

## R/T we shouldn't help violent criminals

**1. They're the ones who need our help the most because without it they become much greater menaces to society**

**2. Most "non-violent offenders" are actually violent, but plea bargains disguise that fact**

**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, "Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform," Basic Books, pages 35-36 //DF

Although there may be limits on what a drug-based reform effort can accomplish, 16 percent of the state prison population is still more than 200,000 people—and that's a huge number by any measure. There is, however, another limitation to consider: we may not want to release all of those who are in prison for drug crimes. Standard Story narratives often talk about all the low-level, nonviolent drug offenders in state prisons, suggesting that most of the people in prison for drug crimes should not be there. Not surprisingly, the truth is a bit more complicated. Most of our prisoner statistics provide very little information about why someone is in prison beyond the specific conviction offense. In a world of plea bargaining, however, the conviction offense is an imperfect signal, at best, of what the prisoner actually did. How many other offenses were simply dropped? How many crimes were downgraded at charging (turning trafficking into a possession conviction, for example)? And how many aggravating factors, such as a gun, might have been discarded? There is, however, one way to look beyond the conviction offense to the "real" behavior of people admitted to prison. The Bureau of Justice Statistics periodically conducts a large-scale survey of thousands of inmates in state and federal prisons, asking them hundreds of questions: not just, say, what the official conviction offenses were in their cases, but how many kilos or packets of drugs they really had, whether they actually had guns on them at the time (regardless of what they pled to or were convicted of or were arrested for), what sort of prior crimes they had been arrested or imprisoned for, and so on. Using the survey from 1997—admittedly slightly stale data—two social scientists tried to determine how many truly low-level drug offenders were in prison, where they defined "**unambiguously low level drug offenders**" as "**nonviolent, first-or second-time drug offenders**" who played minor roles and possessed only small amounts of drugs.<sup>41</sup> Only about 6 percent of state drug inmates—not 6 percent of all inmates, but **6 percent of just those inmates convicted of drug crimes, or about 1 percent of all prisoners—and 2 percent of federal drug inmates met that description.** At the same time, most of those serving time for drug offenses did not appear to be "kingpins" either, whom the researchers defined as those who described themselves as mid- to high-level drug-ring participants. These people accounted for only about 4 percent of those in state prisons for drug crimes and 6.6 percent of those similarly in federal prisons. Almost everyone in prison for a drug crime was somewhere in the middle. Some were caught with nontrivial quantities,

some had prior histories of violence or gun possession, and some had long lists of prior drug convictions. Most of those in prison for drugs were more than users, and many were not as nonviolent as their conviction offenses suggested. Prison is still an excessive punishment for many of these cases, perhaps even most of them. Yet I imagine that many prison reformers—and certainly much of the general public—still think that some of these midlevel types deserve time in prison. (35-36)

### 3. A lot of crimes classified as “violent” aren’t really so

**Hager 19** Eli Hager [staff writer covering juvenile justice, family court, fines and fees and other issues. His work has appeared in The New York Times, The Washington Post, The Guardian, This American Life and elsewhere. He also edits The Marshall Project's "Life Inside" feature and is a graduate of the University of Michigan and Columbia University. In 2017, Eli was named a Livingston Award finalist for his investigation into private prisoner transportation], 4-3-2019, "Many “Violent Offenders” Have Committed Nonviolent Crimes," Marshall Project [nonprofit journalism about criminal justice], <https://www.themarshallproject.org/2019/04/03/when-violent-offenders-commit-nonviolent-crimes>  
//DF

But as Dana Goldstein reported in a 2015 data analysis for The Marshall Project, freeing pot smokers and shoplifters won’t significantly reduce the incarcerated population—because **more than 50 percent of state prisoners are behind bars for violent crimes** including murder, kidnapping and rape. **If you left the analysis there, the prospects of significant prison reform would seem daunting** indeed, **given that there’s just not a lot of public appetite for releasing murderers and sex offenders from lockup. Yet in reality, many of the “violent offenders” in U.S. prisons are there for crimes that not everyone would classify as violent.** According to a Marshall Project survey of all 50 states’ laws, **you can get charged and convicted as a violent criminal in more than a dozen states if you enter a dwelling that’s not yours.** That might seem like a property crime, but it’s often deemed a violent one: burglary. Similarly, purse snatching is considered a “violent” offense in several states. So are the manufacture of methamphetamines and theft of drugs. Our survey of statutes yielded even more surprising examples. In Kentucky, committing “Possession of Anhydrous Ammonia in an Unapproved Container with Intent to Manufacture Methamphetamine” a second time puts you in a “violent” category under the law—and you’ll face 20 to 50 years in prison. **In Minnesota**, aiding an attempted suicide is listed as violent, as is **marijuana possession** (depending on the amount). **In North Carolina, trafficking a stolen identity and selling drugs within 1,000 feet of a school or playground are both violent crimes**, according to the state’s “habitual violent offender” statute. And **in New York, it’s deemed a violent felony to simply possess a loaded gun illegally—with “loaded” defined as simply being in possession of bullets.** These crimes differ from ones like accidental vehicular homicide or “felony murder,” in which the perpetrator never intended to hurt or kill someone but still did, or participated in doing so. Those classifications aren’t just semantics: When a crime is described as “violent,” there are all kinds of consequences for incarcerated people. Anyone convicted of such offenses can face longer mandatory-minimum sentences, the triggering of “three-strikes-you’re-out” and “habitual violent offender” penalties and, in immigration cases, are at risk of deportation. They can also be disenfranchised at the ballot box: Some states let certain nonviolent ex-prisoners vote, but not violent ones. And they are often placed in different housing behind bars, according to their supposed violence level. Rethinking whether these kinds of crimes should be considered violent would change the conversation about what must be done to cut the incarcerated population, some advocates of prison reform say. Take two states—Minnesota and North Carolina—that classify several questionable crimes as violent. **In Minnesota, approximately 3,092 prisoners out of a total imprisoned population of 9,849 were locked up for “violent” crimes that, on second glance, might not seem all that violent,** according to a Marshall Project analysis of July 2018 data. These include burglary—entering a building without consent and with the intent to commit a crime—and drug crimes. In North Carolina, a significant portion of those behind bars—7,532 of about 35,700 total prisoners—were incarcerated as of 2018 for crimes deemed violent according to the state’s habitual violent offender law. These include “habitual breaking and entering,” trafficking in stolen identities, embezzlement of large amounts of money and obtaining property by false pretenses, as well as drug dealing.

## R/T this is the first step

**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, “Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform,” Basic Books, pages 23-24 //DF

For the past few years I have been arguing that the “war” against the war on drugs will not cut prison populations nearly as much as its proponents hope.<sup>7</sup> The standard response I get is the “low-hanging fruit” reply: drug reform is the easiest and most politically viable reform to implement. Do that first, then build on that victory to attack the tougher issues, like how we punish violent crimes. On its own terms, it’s a fair point. In practice, however, it raises serious concerns. Prison reformers have been pushing hard to change state laws since 2008 or 2009, and seven or eight years later I have yet to see almost any politician take on how we might deal more effectively with violent offenses, perhaps with the high-profile exception of Senator Cory Booker of New Jersey.<sup>8</sup> **Political capital and attention are limited, and at some point people’s focus will drift away from criminal justice reform to other topics.** The window to act is not indefinite. Even worse, **the rhetoric and tactics used to push through reforms for lower-level offenses often explicitly involve imposing even harsher punishments on those convicted of violent crimes.** South Carolina, for example, has been widely congratulated for the reforms it passed in 2010, which, among other things, raised the cutoff for felony theft from \$1,000 to \$2,000 and created various ways for those convicted of drug possession to avoid prison time—but simultaneously raised the sanctions for various violent crimes.<sup>9</sup> Maryland, generally more liberal than South Carolina, passed a reform bill in 2016 that also cut sanctions for nonviolent crimes while increasing punishments for some violent ones in order to avoid looking “soft on crime.”<sup>10</sup> Similarly, Georgia’s lauded 2011 reforms have cut prison populations, but hidden in that decline is a rise in the absolute number of people serving time for violent crimes—people whose sentences tend to be longer, and whose rising imprisonment may, in the long run, undo the short-run declines.<sup>11</sup> (23-24)

## R/T Progress Now

### R/T First Step Act

While public opinion is rapidly moving towards reform, Congress has not moved at the same pace. Even when it does move on reform, the inevitable political compromises often produce bad policy. Many in the federal reform community, for example, advocated against the list of exclusions from the First Step Act’s earned-time credit.<sup>91</sup> These exclusions prevent those who have committed certain crimes—such as violent, sexual, and certain white-collar crimes—from obtaining the earned-time credit and serving part of their sentence in home confinement rather than a federal prison.<sup>92</sup> The First Step Act’s exclusions will negatively affect public safety because those who have committed violent crimes will not be incentivized to successfully complete meaningful rehabilitation programming. But that does not mean they will never be released; it just means that fewer of those convicted of violent crimes will come out of federal prison rehabilitated as a result.<sup>93</sup> The exclusions were a compromise to which many in

the House quickly acceded—some Democrats included—even as the reform community pressed for reducing the exclusion list, and even though many other parts of the bill changed substantially. In the current political climate, the best evidence-based practices are often excluded from legislation; in this, the First Step Act was no different.

## Extras

### UQ

**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, “Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform,” Basic Books, pages 5-6 //DF

The core failing of the Standard Story is that it consistently puts the spotlight on statistics and events that are shocking but, in the grand scheme of things, not truly important for solving the problems we face. As a result, it gives too little attention to the more mundane-sounding yet far more influential causes of prison growth. For example, a core claim of the Story, made perhaps most forcefully by Michelle Alexander in her book *The New Jim Crow: Mass Incarceration in the Age of Color-Blindness*, is that our decision to lock up innumerable low-level drug offenders through the “war on drugs” is primarily responsible for driving up our prison populations. In reality, only about 16 percent of state prisoners are serving time on drug charges—and very few of them, perhaps only around 5 or 6 percent of that group, are both low level and nonviolent.<sup>10</sup> At the same time, more than half of all people in state prisons have been convicted of a violent crime. A strategy based on decriminalizing drugs will thus disappoint—and disappoint significantly. Yet we see little to no efforts to reform the treatment of people convicted of violent crimes. (5-6)

**Violent offenders are more likely to reoffend, and are the ones in the greatest need of rehabilitative services. Bruce Western at Columbia University writes in 2018:**

**Western 18** Bruce Western [Bruce Western recently moved from Harvard to Columbia University, where he is a professor of sociology and co-director of the Columbia Justice Lab. He is the author of the new book, “Homeward: Life in the Year After Prison” ], 8-9-2018, “Violent offenders, often victims themselves, need more compassion and less punishment,” USA TODAY, <https://www.usatoday.com/story/opinion/policing/2018/08/09/violence-crime-punishment-policing-usa/930249002/> //DF

There are lifetimes of trauma that fill the prison system, and reform efforts have failed to confront issues of violence. Recent initiatives have reduced drug sentences and legalized marijuana. But direct drug crimes account only for a small share of state prison populations, where the majority of inmates in the USA are incarcerated. Most state inmates, 54.5 percent, have been convicted of violent crimes (though in many cases even those crimes may be drug related). Reductions in incarceration will depend, at least in part, on reducing sentences for violent offenses. The political challenges for achieving criminal justice reform are formidable. Political debate portrays violence as a characteristic of certain people — thugs who are beyond redemption, people with no conscience. Using anger and fear to punish them with life sentences or death has become an intractable part of public policy. Address ills, use mercy in sentencing The violent offender of political debates is mostly a fiction. Violence is as much a characteristic of places as of people. Poor and chaotic homes, disorderly and low-income neighborhoods, and the prisons and jails that lie, in some cases, in close proximity to them, are places where



violence frequently happens. Some of the same violent conditions (domestic abuse, childhood sexual trauma) also exist in middle- and upper-income households. But people in higher-income areas also have more economic opportunity, greater access to mental health treatment and the ability to more easily leave bad situations behind. Many of the people we interviewed found peace in their lives after incarceration by re-uniting with their families, finding stable employment, and in some cases by moving away from neighborhoods that could still be threatening and unpredictable. Changing social context was an antidote to the violence they had confronted throughout their lives. What would justice look like if we recognized that violence is contextual often attaching to conditions of poverty and that victimization haunts those who have hurt other people? The anger that drips from our harshest sanctions — the death penalty, life without parole and lengthy enhancements for third-strike felonies — might be softened by mercy and compassion. This would mean re-examining long sentences for violent crimes, expanding parole release, and considering past victimization as a mitigating factor in sentencing. We should also take victimization more seriously and attend directly to the needs of those who have been hurt. A sincere acknowledgement of harm by the perpetrator, in ways that survivors want and that guarantees their safety, can be important for finding peace. This kind of accountability asks for moral agency from the perpetrator to struggle with his actions in a way that incarceration does not. Finally, if the chaotic circumstances of poverty can contribute to and perpetuate violence, then justice is found less in punishment and more in addressing the circumstances of poverty. Relieving untreated addictions, fixing issues surrounding mental illness, and alleviating other social insecurities that accompany the harsh conditions of American poverty must be part of the compassion equation.

## Link – Political Capital

**Pfaff 17** John F. Pfaff [professor of law at Fordham Law school; he has a JD and a PhD in economics from the University of Chicago], 2017, “Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform,” Basic Books, pages 23-24 //DF

For the past few years I have been arguing that the “war” against the war on drugs will not cut prison populations nearly as much as its proponents hope.<sup>7</sup> The standard response I get is the “low-hanging fruit” reply: drug reform is the easiest and most politically viable reform to implement. Do that first, then build on that victory to attack the tougher issues, like how we punish violent crimes. On its own terms, it’s a fair point. In practice, however, it raises serious concerns. Prison reformers have been pushing hard to change state laws since 2008 or 2009, and seven or eight years later I have yet to see almost any politician take on how we might deal more effectively with violent offenses, perhaps with the high-profile exception of Senator Cory Booker of New Jersey.<sup>8</sup> Political capital and attention are limited, and at some point people’s focus will drift away from criminal justice reform to other topics. The window to act is not indefinite. Even worse, the rhetoric and tactics used to push through reforms for lower-level offenses often explicitly involve imposing even harsher punishments on those convicted of violent crimes. South Carolina, for example, has been widely congratulated for the reforms it passed in 2010, which, among other things, raised the cutoff for felony theft from \$1,000 to \$2,000 and created various ways for those convicted of drug possession to avoid prison time—but simultaneously raised the sanctions for various violent crimes.<sup>9</sup> Maryland, generally more liberal than South Carolina, passed a reform bill in 2016 that also cut sanctions for nonviolent crimes while increasing punishments for some violent ones in order to avoid looking “soft on crime.”<sup>10</sup> Similarly, Georgia’s lauded 2011 reforms have cut prison populations, but hidden in that decline is a rise in the absolute number of people serving time for violent crimes—people whose sentences tend to be longer, and whose rising imprisonment may, in the long run, undo the short-run declines.<sup>11</sup> (23-24)

## **The sole focus on nonviolent offenders prevents truly effective prison reforms in the long-term**

**Beckett 16** Katherine Beckett [ professor in the Law, Societies, and Justice Program and the Department of Sociology, and the Clarence and Elissa M. (“Lee”) Schrag Endowed Faculty Fellow at the University of Washington], Anna Reosti [doctoral candidate in the Sociology Department at the University of Washington. Her primary areas of interest include punishment, stratification, and housing policy], Emily Knaphus, 2-18-2016, "The End of an Era? Understanding the Contradictions of Criminal Justice Reform,"

SAGE Journals,

<https://journals-sagepub-com.proxy.swarthmore.edu/doi/full/10.1177/0002716215598973> //DF

Instead, significantly reducing incarceration rates in prisons and jails will necessitate broad sentencing reforms that significantly reduce the number of people flowing into incarcerative institutions, as well as the amount of time people spend in those institutions—not only for drug offenses but for violent, property and public order offenses as well (Gottshalk 2015; Tonry 2014; Travis, Western, and Redburn 2014). Yet our analyses indicate that state legislators have not embraced this reality and, indeed, have only tinkered with the policies governing the number of technical parole violators and drug offenders who are sentenced to jail or prison. By contrast, the punitive policies that govern the sanctioning of the majority of people moving through the criminal justice system have been left largely intact and, in some cases, have been intensified. Similarly, media discussions of criminal justice reform focus overwhelmingly on the need for drug policy reform and link such reforms to fiscal pressures rather than a comprehensive analysis of the human costs associated with mass incarceration. Moreover, in making the case for such reforms, supporters often contrast the relatively sympathetic target of drug policy reformers—mainly nonviolent drug offenders, especially users/possessors—with other “serious criminals” whose sanctions remain unquestioned—and are sometimes validated by reform advocates themselves. Reform advocates have undoubtedly chosen to focus on drug law reform and highlight the fiscal cost of incarcerating drug offenders for strategic reasons. Yet **these rhetorical strategies** also do important cultural work and may **undermine the chances that comprehensive reform will be adopted in the future**. The unwillingness of reform advocates and policy-makers to tackle the comparatively difficult topic of violence is eminently reasonable from a short-term, strategic point of view. Yet absent a deep and sustained interrogation of the practices and policies that fuel violence in the United States—as well as the violence of punitive responses to it—a true paradigm shift with respect to mass incarceration will continue to elude us. A more universalist reform strategy that emphasizes the human rights, capacity for maturation, and shared humanity of all subjects of the carceral state—both present and future—may prove more effective in the long run.

## South Carolina

### **South Carolina increased violent crime punishments that increased overall crime**

**Eaglin 13** Jessica M. Eaglin [Visiting Assistant Professor, California Western School of Law. J.D./M.A. in Literature, Duke University School of Law; B.A., Spelman College], 2013, "Against Neorehabilitation," SMU Law Review,

[https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/smulr66&id=200&men\\_tab=srchresults](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/smulr66&id=200&men_tab=srchresults) //DF

Additionally, as early-release legislation is being passed by state legislatures, it frequently is accompanied by measures increasing punishments for other, more serious offenders. For example, **South Carolina recently passed legislation eliminating mandatory minimum sentences for simple drug possession**,<sup>211</sup> expanding parole eligibility for offenders convicted of several felonies,<sup>212</sup> and **enacting early release plans for nonviolent offenders after two years of imprisonment**.<sup>213</sup> **At the same time, the state added twenty-four new crimes to the list of violent crimes**,<sup>214</sup> and it enacted a new "Two Strikes/Three Strikes" law, subjecting more offenses to LWOP sentences in the state.<sup>215</sup> **These reforms will likely have the long-term effect of negating the release of several groups of low-level offenders by increasing the number of offenders** serving LWOP sentences and reducing the number of persons who qualify for "nonviolent" crimes.<sup>216</sup> Reforms that appear to focus on rehabilitation while ratcheting up punitive sentences for many offenders are not coincidental. As one survey indicates, seventy-two percent of the public believed that "keeping those convicted of violent crimes in prison [for] longer is 'very' important," even as sixty-one percent of the public simultaneously called for expanding treatment programs for nonviolent offenders.<sup>217</sup> **Justice, then, becomes rehabilitation for few and greater punishment for most.** This is consistent with neorehabilitation's origin within the new penology. Populist punitiveness intensifies under this new framework because the managerial language used by the penal community lacks resonance in the public and political discourse on crime.<sup>218</sup> Thus, the populist punitive ness-rooted in normative judgments

about aberrational evil and the zero-tolerance sanctions for the criminal offender "other"-at times exists in tension with the new language of management and moderation. 219 The result, demonstrated by the expansion of punitive punishment for the most "evil" and undeserving offenders, is the sometimes incoherent policy practice of implementing rehabilitative-focused punishment for some but more punitive policies for most.2 2 0