



## Building Trust and Legitimacy Within Community Corrections

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### Executive Session on Community Corrections

This is one in a series of papers that will be published as a result of the Executive Session on Community Corrections.

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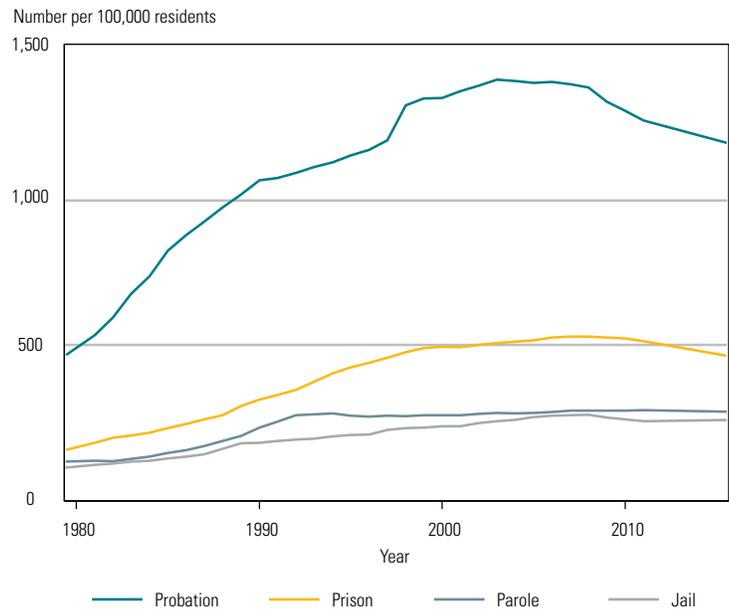
### Corrections in the United States

Over the past three decades, the U.S. incarceration rate has increased to historic highs, while crime rates have dropped significantly. Today, the U.S. incarcerates more people than any other nation in the world. In addition to the 2.3 million people incarcerated in our nation's jails and prisons, 4 million individuals are on probation or parole at any given time. The individuals on probation and parole — who represent the community corrections system in America — are the largest part of the correctional system. Yet, this aspect of corrections has been largely absent from the national conversation surrounding incarceration rates and criminal justice reform — this despite the fact that community corrections presents the most obvious alternative to incarceration for many and perhaps the best opportunity for reforming the criminal justice system in ways that will promote public safety, efficiency and fairness.

Similar to the growth of prison populations during the past three decades, the number of individuals on probation in the United States has also grown. While there were 492 people on probation for every 100,000 U.S. residents in 1980, this figure peaked in

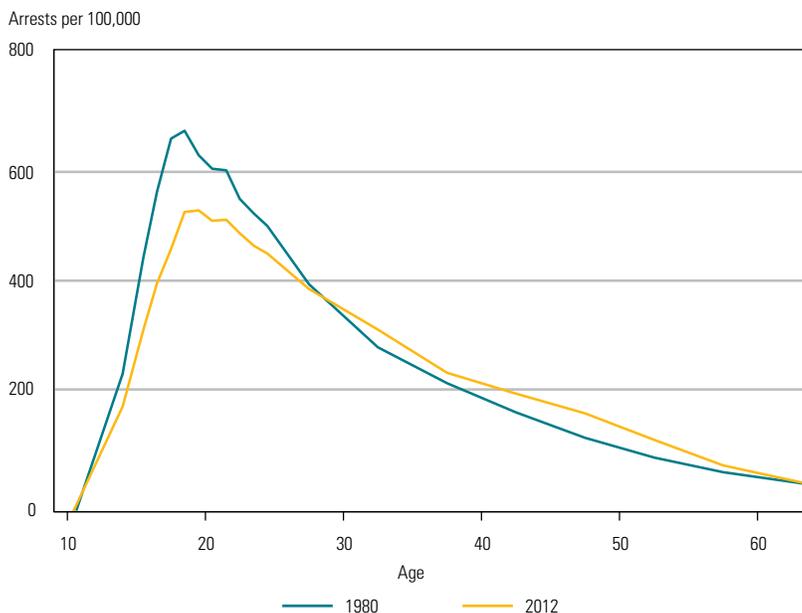
2007 at 1,425, and by 2014 had declined slightly to 1,214 (see figure 1). With nearly 4 million people on probation at any given time, this represents the largest correctional population in the nation. Interestingly, long-term trends in crime rates and arrests for serious offenses should have militated toward a smaller probation population. Arrests for serious offenses are at historic lows, especially for the relatively young. Figures 2 and 3 compare the likelihood of being arrested in 1980 and 2012, by age, for violent and property index offenses. While arrests for violent and property offenses are somewhat higher for individuals over 30, we observe pronounced decreases in arrest rates for younger individuals in the highest risk age ranges. However, arrests for drug offenses are up, way up, for all ages (figure 4) as are overall arrests for non-index crimes (figure 5). On net, the aggregate age-arrest profile changes very little as increases in less serious arrests have offset the decrease in arrests for more serious crime (figure 6). With lower crime rates, these higher arrest rates for lesser offenses likely reflect shifts in enforcement. In conjunction with stiffer sentencing and net widening in the application of probation sentences, the proportion of U.S. residents on probation has grown alongside the prison incarceration rate.

**Figure 1. Correctional populations in the United States, per 100,000 U.S. residents, 1980-2014**

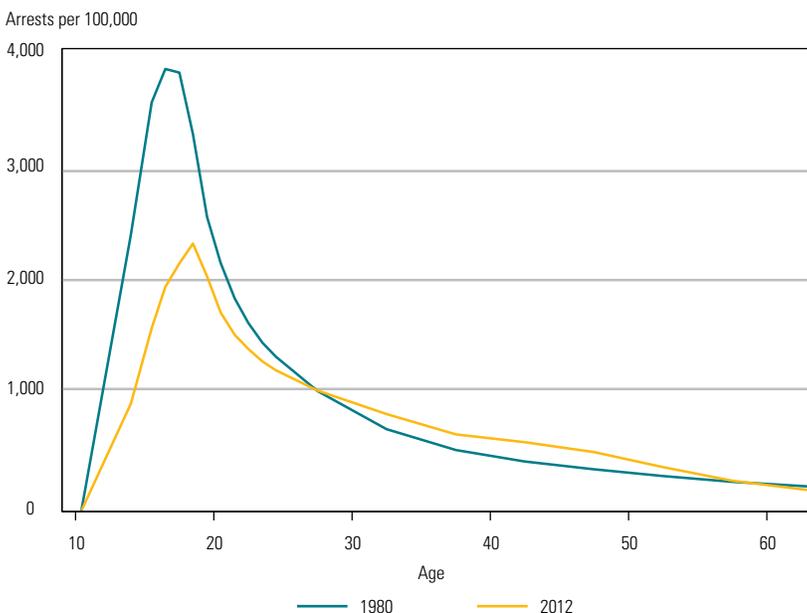


Source: Bureau of Justice Statistics, Key Statistics at a Glance, accessed June 30, 2016, at [www.bjs.gov/index.cfm?ty=kfdetail&iid=487](http://www.bjs.gov/index.cfm?ty=kfdetail&iid=487).

Today, many states and the federal government are reevaluating sentencing practices with the goal of using incarceration more sparingly. Some jurisdictions have scaled back their use of prisons through shorter sentences and greater use of alternative sanctions (for example, electronic monitoring, probation, short sentences to county jails). These reforms have been motivated in part by cost and population pressures. California provides perhaps the most salient example of a state being forced by a federal court to reduce its prison population to remedy overcrowded prison conditions. Notably, at least nine other states face capacity problems that would violate the conditions placed on California's prison system by a federal court, suggesting that other states face the risk of losing partial control of their prison systems through

**Figure 2. Arrest rates for violent index offenses, by age, 1980 and 2012**

Source: Snyder, Howard N., and Joseph Mulako-Wangota, Arrest Data Analysis Tool, accessed June 30, 2016, at [www.bjs.gov](http://www.bjs.gov), Bureau of Justice Statistics, Washington, DC.

**Figure 3. Arrest rates for property index offenses, by age, 1980 and 2012**

Source: Snyder, Howard N., and Joseph Mulako-Wangota, Arrest Data Analysis Tool, accessed June 30, 2016, at [www.bjs.gov](http://www.bjs.gov), Bureau of Justice Statistics, Washington, DC.

prison overcrowding lawsuits. Beyond such instances, other state reforms have been motivated by concerns regarding the differential impacts of the criminal justice system on minority communities, evidence of diminishing returns to scale in terms of the effectiveness of prison as a crime control tool, and a notable shift in public opinion regarding the proper role and scale of the U.S. criminal justice system.

## A New Focus on Community Corrections

To use incarceration more sparingly, many jurisdictions are considering greater use of community corrections, probation diversions in particular, for many individuals who would otherwise have been sentenced to incarceration. A shift from incarceration to community corrections could present numerous opportunities for reform of the criminal justice system as well as significant challenges. This paper will discuss the need for a new model for community corrections that can improve public safety while recognizing that people on probation and parole are members of the communities in which they live and are supervised. A shift away from incarceration will likely increase the average severity of probation caseloads and add considerably to the workload

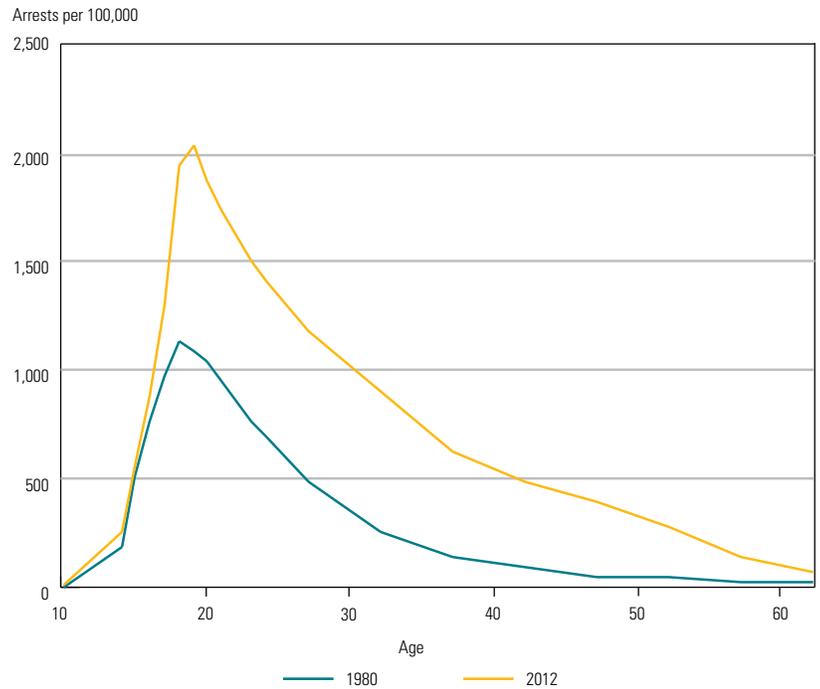
of probation departments across the country absent profound changes to current practice.

We believe that substantial diversion from prison sentences toward community corrections is certainly possible, likely to be more effective in the long run, less socially harmful than current practices, and may even be cheaper. That being said, such a change would require that we deploy community corrections resources with greater strategy and efficiency. This means evaluating how we do business today, investing in practices that are proven to work, and abandoning practices that are ineffective. It also means strategically directing resources for monitoring and enforcement efforts to those individuals who need them the most. A more effective community corrections system also will require a shift in incentives, both for probation departments as well as for those under supervision.

Six general principles form the bedrock of this new model for community corrections:

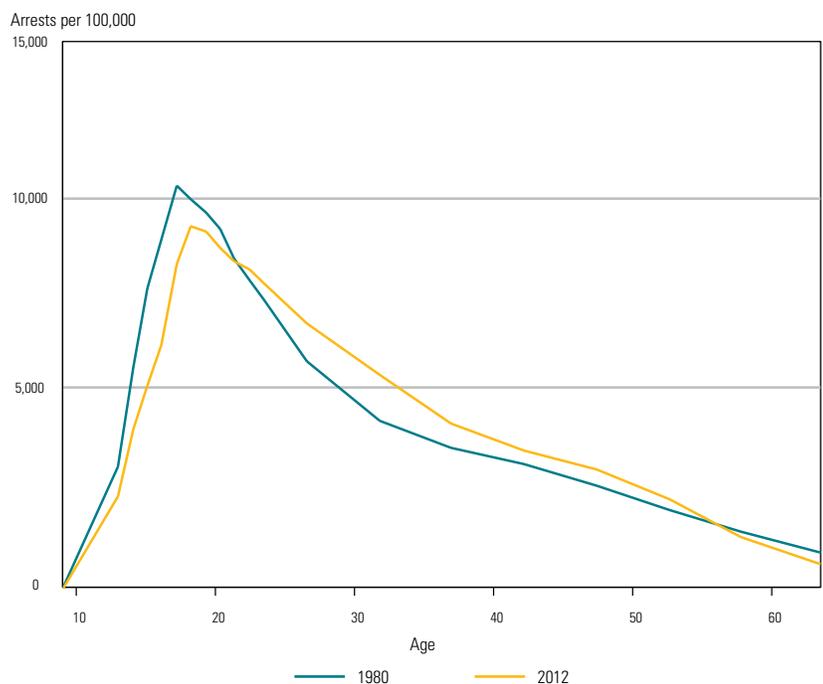
- **Treat each individual on community corrections with dignity and respect.** Recognize our common human capacity both

**Figure 4. Arrest rates for drug offenses, by age, 1980 and 2012**

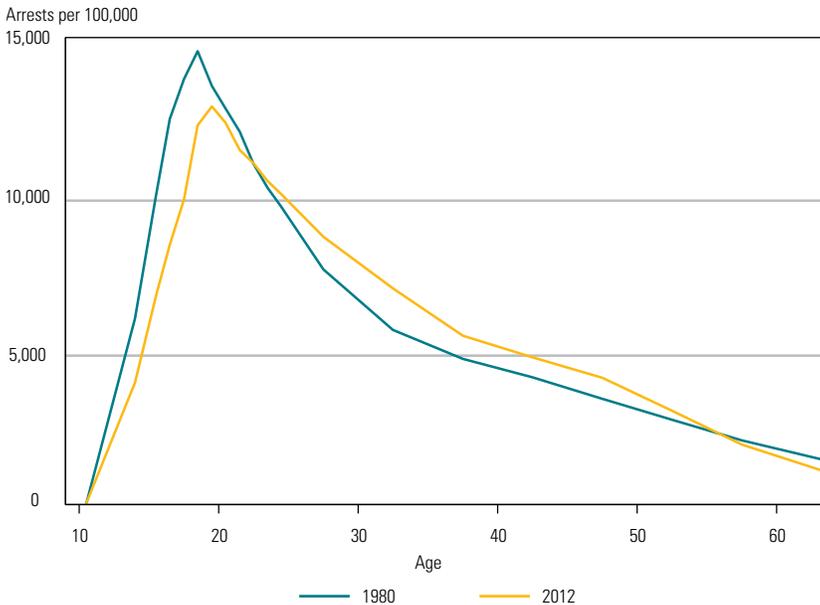


Source: Snyder, Howard N., and Joseph Mulako-Wangota, Arrest Data Analysis Tool, accessed June 30, 2016, at [www.bjs.gov](http://www.bjs.gov), Bureau of Justice Statistics, Washington, DC.

**Figure 5. Arrest rates for all non-index offenses, 1980 and 2012**



Source: Snyder, Howard N., and Joseph Mulako-Wangota, Arrest Data Analysis Tool, accessed June 30, 2016, at [www.bjs.gov](http://www.bjs.gov), Bureau of Justice Statistics, Washington, DC.

**Figure 6. Arrest rates for any reason, by age, 1980 and 2012**

Source: Snyder, Howard N., and Joseph Mulako-Wangota, Arrest Data Analysis Tool, accessed June 30, 2016, at [www.bjs.gov](http://www.bjs.gov), Bureau of Justice Statistics, Washington, DC.

to make mistakes and to make a change for the better.

- **Realign incentives in the criminal justice system.** Cost considerations at the local level should not systematically favor incarceration over alternative sanctions.
- **Impose the least restrictive sanctions necessary, and minimize the collateral consequences associated with criminal processing and conviction.**
- **Restore communities, and facilitate their health and safety in a holistic way.**
- **Reduce institutional bias and work to ensure that all individuals receive fair, equal access to the justice system.**
- **Evaluate what we do, invest in more practices that work, and abandon practices that do not.**

From these principles follow several concrete policy recommendations that form the foundation of a new model for community corrections. These principles are enumerated and explained below, grouped by the objective to which they are most closely related.

**1. Treat each individual on community corrections with dignity and respect. Recognize our common human capacity both to make mistakes and to make a change for the better.**

Common humanity and respect must be the starting point for any successful corrections model. This mutual respect is the foundation for

the wellness of officers, the success of individuals on our caseloads, and the trust and healing of victims. Faith in people's ability to change is foundational to what we do, and much of our program support is designed to facilitate changed behavior in the individuals under supervision. Our focus is rehabilitative, rather than punitive, and we strive to facilitate improved outcomes both for people on our caseloads and for their communities.

Recognizing that we all make mistakes yet are capable of change for the better would give rise to incentives that are (1) clear and predictable and (2) graduated and fairly calibrated to the behaviors we wish to encourage and those we wish to discourage. Communicated clearly and acted upon with certainty, a fair and certain incentive structure ties an individual's progress through community corrections to their personal choices. Moreover,

graduating rewards and sanctions to reflect the magnitude of one's progress ensures that we do not over-reward or over-penalize and, in the process, short-circuit one's rehabilitation.

There are numerous examples of incentives that have been structured to reward positive and discourage negative behavior, with appropriate and proportionate consequences.

Examples include:

- Short or flash incarceration (currently in use in California and extensively in the HOPE program in Honolulu) for noncompliance has and can be used as an effective deterrent.
- Altering the schedule of random drug testing (moving toward lower or higher frequency) can be used to reward compliance or intensify scrutiny for those who continue to use.
- Fine structures can be tied to behavior, with fines that decline (or previous balances forgiven) with better behavior.
- Early release from probation can be granted for those who signal true desistance or a very low likelihood of further offending.

The final bullet point illustrates one of the hidden benefits of a clear incentive structure that should be taken advantage of in all community corrections settings.<sup>1</sup> In particular, a clear set of incentives that require effort on the part of the person on probation or parole can serve to triage a caseload beyond the information available in a standard risk assessment.<sup>2</sup> With this additional information, systems can better target programming resources and monitoring

efforts toward those who pose higher risk of failure. Moreover, better triaging would permit earlier discharge of individuals who are unlikely to offend in the future.

Take for example research findings on the relationship between time since conviction and criminal desistance. Several facts have emerged from this research. First, the likelihood of being rearrested drops with time since conviction, with particularly high risk early on. Second, roughly a third of those with felony convictions will have no further interaction with the criminal justice system. Third, it appears to be the case that with time, the offending rate of those with criminal histories eventually declines to the rate of those who have never been to prison. At present, there are only a few research papers that attempt to estimate this threshold. However, the findings to date suggest that within seven to 10 years, the arrest and conviction rates of those with felony convictions fall to that of the general population.<sup>3</sup>

Assume for the moment that those who do not reoffend for seven years are fundamentally different from other convicted people who are placed in community corrections supervision. Criminologists refer to such individuals as immediate desistors. If we knew who these individuals were, we could concentrate our monitoring resources elsewhere and focus more traditional workforce development efforts on this very low-risk group, and for a much shorter time. If we rely solely on recidivism outcomes and time since release, we will have to wait seven to 10 years to identify such individuals. However, what if we could use a clear set of incentives to identify these individuals sooner? More specifically, could we

create a structure that would allow these compliant immediate desistors to credibly identify themselves?

This line of thinking was recently articulated in an article by the criminologists Shawn Bushway and Robert Apel (2012). The authors argue that policymakers should strive to create avenues through which immediate desistors can signal to corrections officials, parole and probation officers, or employers that they are low risk and deserving of early release, greater latitude while in community corrections, or better chances at procuring employment. Of course, the avenues for providing such a signal must be costly to the individual who is incarcerated, on probation or recently released from incarceration. If not, all releasees would signal that they were immediate desistors and attempt to reap the benefits associated with the label (and ultimately undermine the credibility of the signal). Alternatively, if acquiring the signal requires real effort on the part of the person in question (for example, participation and successful completion of an education program, honest efforts and success at complying with the requirements of a transitional jobs program), only those who are truly willing and able will send the signal in question.

One potentially fruitful source of a credible signal that has been overlooked by researchers concerns successful program completion. Bushway and Apel argue that many reentry programs, transitional employment programs in particular,<sup>4</sup> generate substantial value in improving information about individual recidivism risk precisely through the signals that a successful program completion sends. While comparing recidivism outcomes for program completers to those who do not complete

the program is likely to provide biased estimates of the effectiveness of the program due to selection, selective sorting of those in community corrections is exactly what we need to effectively triage caseloads. With this in mind, we should harness the value of such service providers as screeners and identifiers of good bets for less restrictive conditions or perhaps for early release from conditional supervision. One can certainly imagine many arrangements that may allow those who have decided to pursue a law-abiding path to self-identify. For example, completion of a demanding job-training program, substantive educational achievements, demonstrable good behavior while incarcerated, demonstrable efforts and success at victim restitution, and abstaining from drug use may all serve such a role.

Across all jurisdictions, our focus should be on achieving better *outcomes*. The structure of supervision — both in the community and in incarcerative settings — should be based on how best to rehabilitate people involved with the criminal justice system in order to have healthier communities and healthier community members. *By providing opportunities and incentives for positive behavioral changes while holding individuals accountable, and using what individuals reveal about themselves to better triage community corrections populations, community corrections systems can deploy their resources with greater efficacy.*

## **2. Realign incentives in the criminal justice system. Cost considerations at the local level should not systematically favor incarceration over alternative sanctions.**

Counties across the country face incentives for sending convicted people to prison whenever

possible. In many instances, this leads to prison spells for relatively low-risk individuals who could be successfully managed in the community at lower social cost.<sup>5</sup> At the county level, a local person who has been convicted and sent to state prison becomes the state's financial problem. The marginal cost to the county of committing an additional incarcerated person is effectively zero, while the marginal benefit (in terms of criminal incapacitation and savings in policing and monitoring) can only be positive. While others may bear significant costs, the local jurisdiction does not.

We know that the actual budgetary costs of a prison sentence exceed the costs of sentencing someone to probation. The net social costs of these alternatives depend on the extent to which incarceration would prevent recidivism. It is certainly the case for some individuals convicted of crime that the added costs associated with incarcerating that person are worth it once one takes into account the crimes that are prevented as a result. However, for lower risk people who can be successfully managed in the community, the net social costs of less-restrictive sentencing are likely to be lower relative to a prison term.

We should strive to align local cost incentives with the actual net social costs of alternative forms of punishment. If counties were made to face some portion of the marginal costs generated by each prison admission, one might expect local officials to be more selective in whom they send to prison and for how long. In legal parlance, *wobblers* are offenses that can be charged either as misdemeanors or felonies, with only the latter eligible for prison time. If local officials face some portion of the costs

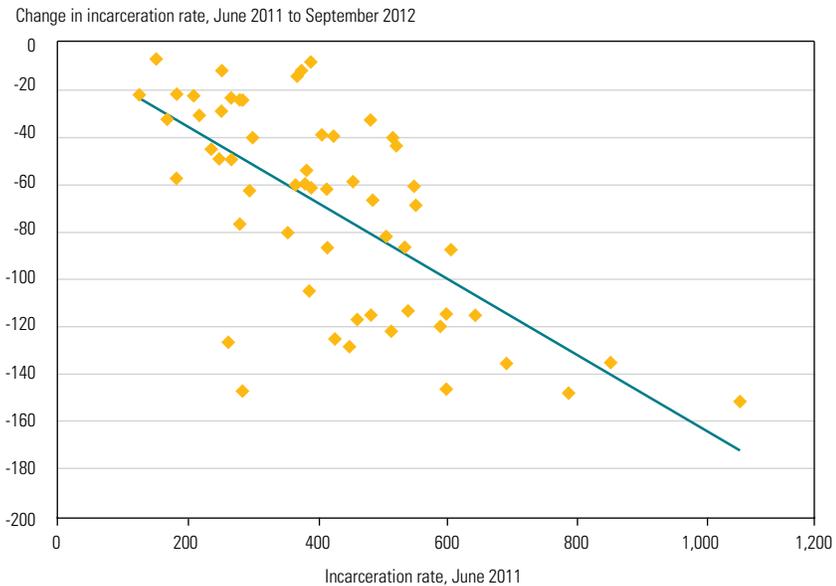
of sending someone to prison, wobblers may be more likely to be charged as misdemeanors. Moreover, those individuals who appear to be wobbling between a sentence of probation and prison (of course, a broader definition of a wobbler) may be more likely to receive the probation sentence when the county stands either to lose (if faced with a tax) or gain (if presented with the prospect of sharing in the resultant cost savings) from such a sentence.

The recent experience of California illustrates both the great heterogeneity across counties in their use of state prison systems as well as the existing room to bring down prison populations by getting the incentives right. California's prison realignment reform, implemented in October 2011, stopped the practice of revoking people on parole back to prison for technical violations and diverted other people convicted of low-level offenses to serve their sentences in local jails or in some form of community corrections-based alternative sanctions. Prior to the passage of this reform, the rate at which counties incarcerated their residents in state prisons varied dramatically, from below 200 per 100,000 residents in counties such as San Francisco to more than 800 and even 1,000 per 100,000 in counties in the state's Central Valley. Figure 7 presents a scatter plot of the change in each county's prison incarceration rate between June 2011 (four months prior to the reform) and June 2012 (nine months into the reform period) against each county's pre-reform incarceration rate in June 2011. The pattern in the figure is very clear. Those counties that experienced the greatest reduction in their incarceration rates as a result of the reform are the counties with the

highest pre-reform incarceration rates. Since the reform essentially scaled back the incarceration of people convicted of low-level crimes, this is clear evidence that the high-incarceration counties tend to punish low-level people with prison with relatively greater frequency.<sup>6</sup>

Aside from demonstrating room for decline, recent reforms in California have also demonstrated that counties can be quite responsive to both fiscal carrots and sticks. Reform to the state's juvenile justice system provides a vivid example of the latter. In 1996, the state legislature passed a bill that greatly increased the monthly costs for juvenile admissions to the California Youth Authority (CYA), the agency that ran the state's juvenile corrections facilities at the time. Prior to this legislation, counties paid \$25 per month per CYA ward. Starting in 1997, the monthly payment increased to \$150 per month for youth adjudicated for serious crimes. For youth adjudicated for less serious crimes, counties were required to pay from 50 to 100 percent of the custody costs to the state. Subsequent legislation passed in 1998 capped the counties' maximum annual per-ward payment at \$31,200. Nonetheless, for all juvenile commitments, and especially for less serious crimes, the increased costs to counties created by the reform were quite substantial (California Youth Authority, 2000).

**Figure 7. Change in county-level incarceration rates from June 2011 to September 2012 compared to the county's incarceration rate in June 2011 for California counties**



Source: Lofstrom, Magnus, and Steven Raphael. (2015). "Incarceration and Crime: Evidence From California's Realignment Sentencing Reform." IZA Working Paper #7838. Bonn, Germany: IZA.

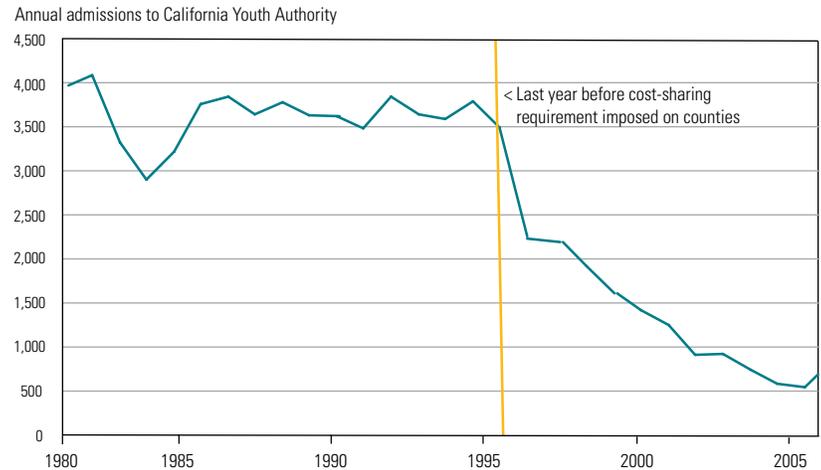
Figure 8 displays annual admissions to CYA institutions between 1980 and 2009. A vertical line is drawn indicating the last year (1996) preceding the increase in county costs for youth commitments. The results of the reform are self-evident. There is an immediate and sustained drop in admissions to CYA beginning in 1997. To be sure, there have been other reforms over the years that have reduced youth admissions and the population of incarcerated youth further. Additional legislation passed in 1996 facilitated the transfer of incarcerated youth convicted in criminal court to adult prisons if they would not complete their sentences before age 21. In addition, a state ballot initiative passed in 2000 increased the proportion of youth charged with serious crimes tried in adult criminal courts to those receiving lengthy sentences and admitted directly into adult prisons. However, these

provisions apply to a small proportion of convicted youth in the state, with the lion's share of the declining admissions evident in figure 8 driven by the new costs of admissions faced by counties.

Evidence of the counties' responsiveness to positive incentives can also be found in the evaluation of the California Community Corrections Performance Incentives Act of 2009 (California Administrative Office of the Courts, 2012). The act created a mechanism by which the state shares with the county any cost savings associated with reductions in incarceration driven by lower rates of probation failures. The county probation department must employ evidence-based community supervision practices and bring down probation failure rates and admission to prison to below a benchmark rate measured for the three-year period preceding the legislation's passage. In the three years since implementation, probation failure rates have declined by 33 percent.

These policy examples suggest a reform option for reducing incarceration and fostering efficiency in the use of existing prison capacity. A change in policy that ensures that counties have some "skin in the game" is likely to unleash efforts at the local level to be more sparing in the use of incarceration, especially for relatively low-risk individuals. Of course, one would not want to punish poorer counties with an intergovernmental finance structure that charges higher fees to areas with demographics and other local conditions that lead to

**Figure 8. Annual admissions to California Youth Authority state institutions, 1980-2009**



Source: Raphael, Steven, and Michael Stoll. (2013). *Why Are So Many Americans in Prison?* New York, NY: Russell Sage Foundation.

higher crime rates. However, some creative thinking could certainly generate schemes that better target incentives regarding marginal cases and that perhaps combine an implicit tax on counties with a corresponding transfer that leaves county budgets whole while discouraging excessive admissions to the state prisons.

For instance, the CYA fee structure in the example above nominally increased the cost for the most serious individuals. In other words, the state still picked up the tab for those committing the most serious offenses where diversion to an alternative non-incarceration punishment was simply out of the question. One could imagine a scheme that levied differential tax rates that increase as offense severity (and perhaps the severity of an individual's criminal history) decreases and that increase for offenses where there is the greatest degree of cross-jurisdiction heterogeneity in the proportion of people sent to prison.

Alternatively, one could imagine a block grant combined with an incarceration tax. A state could transfer to each county a fixed amount of funds for the purposes of criminal justice and safety expenditures to be allocated across potential uses at the locality's discretion. The amount of the block grant could be conditioned on local population, crime rates and demographics. Pairing the block grant with a per-head annual tax for each person admitted from the county to the state prison system would create an incentive for using prison sparingly. In addition, the block grant structure would not alter the marginal cost of jail admission (i.e., the marginal cost of a local jail inmate would still be positive), as the intergovernmental grant is decoupled from the size of the local correctional population. Moreover, the additional resources in the block grant, and the higher relative price of using prison admissions, would create incentives for local officials to seek alternative policies that control crime while reducing prison admissions.

An alternative strategy may be to assign a target incarceration rate to each county — based on existing state prison capacity, past crime rates, age structure, and whatever other demographic characteristics are deemed important and legally and ethically appropriate — and permit use of the state prison system free of cost within some narrow band around the target. Counties that come in sufficiently below the target could be rewarded with a grant for criminal justice expenditures that increases with the degree to which they incarcerate below the target, while counties whose county-specific incarceration rates exceed their targets can be symmetrically taxed. Such a strategy may be particularly effective at identifying the marginal

low-risk people, as counties that overuse the prison system the most relative to a defined benchmark would face the largest tax bill. In other words, achieved reduction in incarceration would be generated largely by reductions in incarceration for outlier counties with unusually high incarceration rates.

There is much room for policy experimentation here. Currently, incentives are biased toward over-admissions to state prisons. Moreover, local officials are quite sensitive to cost incentives. This should be harnessed in fostering a more humane and cost-effective crime control policy.

An additional set of incentives that should be revisited concerns the reliance on fines and user fee revenues to finance daily operations. Fines can clearly be used as incentives or disincentives for specific behaviors. However, when fines and user fees are relied upon as a fundamental revenue source, decisions over fine levels and release from probation may be governed by considerations other than the successful rehabilitation of the justice-involved person. Schemes that propose to entirely finance community supervision at no cost to the county in particular deserve careful scrutiny, especially when outsourced to private service providers. Our primary goal should be to successfully shepherd people through to completion of their probation terms. We don't need to impoverish people nor cause the build-up of arrears to the criminal justice system. In the aggregate, the legal financial obligations created by fines and fees generate a small portion of local government revenue, yet likely represent a substantial tax on the meager resources of poor households.

A recent study of 15 states by the Brennan Center for Justice documents the reach and cumulative effects of fines and user fees on individuals who become involved with the criminal justice system (Bannon, Negrecha and Diller, 2010). In addition to documenting a wide range of user fees and fines that add considerably to the debts of people recently released from prison as well as those on probation, the study notes the extensive use of criminal justice resources (for example, probation and parole officer time, the issuing of warrants, court hearings, and incarceration as punishment for failure to pay) devoted to collecting outstanding criminal justice debts. In many instances, sanctions for failure to pay are in direct conflict with efforts toward productive reentry into society. For example, several states revoke driver's licenses for failure to pay, a sanction that likely has a negative effect on future employment prospects. Moreover, many states use outstanding debt as a criterion in deciding whether to release someone from parole or probation supervision, surely bloating caseloads beyond what is needed for maintaining public safety. The incentives that over-reliance on fines and user fees create for community corrections systems, as well as for people under community supervision, require careful reevaluation.

To the best of our knowledge, it is impossible to tally total fines and fees paid by the poor and the outstanding legal financial obligations in the U.S., let alone the distribution of the arrearages across households and individuals of different socioeconomic status levels.<sup>7</sup> Given the observable differences in who is involved with the criminal justice system, however, we would guess that

the distribution of outstanding legal financial obligations is heavily skewed toward low-income minority males and disproportionately impacts the budgets of low-income minority households. We can, however, provide a rough estimate of annual payments for fines and fees collected by various levels of government using the 2012 Census of Governments: State and Local Finances data collected by the U.S. Census Bureau. The data include revenue and expenditure totals by category for each municipality in the country. Revenue category "U30: Fines and Forfeits" provides our proxy.<sup>8</sup> This revenue source totaled \$5.6 billion for municipalities and townships in 2012, and \$2.8 billion for counties, giving total fine and forfeit revenue of \$8.4 billion to county and local governments. States report an additional \$6.8 billion in fine and forfeit revenue. Hence, we observe total fine and forfeit revenue of \$15.3 billion for fiscal year 2012.<sup>9</sup>

Is this a large amount? This depends, of course, on the extent to which this is generated from sanctioning low-income households. Assuming that most of this burden falls on poor households, one might compare these fine and fee revenues to various income sources. For example, the Brookings Tax Policy Center estimates that in 2012 roughly 57 percent of Earned Income Tax Credit (EITC) benefits were accrued in households with cash incomes of \$20,000 or less.<sup>10</sup> With total EITC expenditures of roughly \$60 billion, this implies an income transfer to these low-income households of roughly \$34.2 billion. Hence, the fine-and-fees total amounts to roughly 45 percent of the income transferred to poor households<sup>11</sup> via the EITC and roughly 25 percent of EITC expenditures more generally. We

could alternatively compare fine and fee revenue totals to total incomes for low-income households. The Census Bureau estimates a mean household income for the bottom quartile of households in 2012 of \$11,490.<sup>12</sup> With 24.4 million households in the bottom quintile, this implies a total income of roughly \$281.4 billion. Fine and forfeit revenues amount to 5.4 percent of total income for bottom-quintile households.

To be sure, we can only speculate about who pays these fines and fees. It is certainly the case that some of this revenue is generated by fines and fees levied on higher income households. Moreover, we should note that as a proportion of total local government revenues, fines and forfeits constitute a minor revenue source (though as the recent case of Ferguson illustrates, this is not always the case).<sup>13</sup> Nonetheless, given the socioeconomic and demographic characteristics of who becomes involved with the criminal justice system, these fines and fees must certainly fall disproportionately on poor households. The expansion of the criminal justice system along with the increasing use of these fines — likely driven, in part, by the costs of this expansion — are imposing a significant and regressive implicit tax. In imagining the future of community corrections, we should strive to not increase socioeconomic inequality through regressive taxation in the pursuit of public safety.

### **3. Impose the least restrictive sanctions necessary, and minimize the collateral consequences associated with criminal processing and conviction.**

We should limit the use of incarceration (both pre- and post-trial) to those who cannot be safely

supervised in the community. The collateral consequences of a criminal conviction and, in particular, a spell of incarceration are many. Some of the socioeconomic domains explored by researchers include the following.<sup>14</sup>

#### ***Post-release employment prospects***

Holzer, Raphael and Stoll (2006) document an extreme reluctance among employers with regard to their willingness to hire formerly incarcerated people. In addition, Raphael (2011) documents that a high proportion of employers of relatively less skilled workers in California indicate that they are legally proscribed from employing people convicted of felonies. The audit research by Pager (2007) and Pager, Western and Bonikowski (2009) documents that this stated employer reluctance translates into large differences in job offer rates, with particularly low job offer rates for African-Americans with criminal records. Western (2002) finds that prior incarceration has long-term negative effects on future employment and earnings.

#### ***Health consequences for formerly incarcerated people and the communities from which they come***

Schnittker, Massoglia and Uggen (2011) provide a recent survey of research linking mass incarceration to health outcomes and health disparities. Some of the research reviewed actually finds that a spell in prison improves access to health care, as many of those who are incarcerated lack health insurance and likely underutilize the health resources that are available to them. However, there are also key research studies that find evidence of within-prison transmission of infectious disease (hepatitis in particular) and transmission of infectious disease

through various channels in the communities from which incarcerated individuals disproportionately come. Moreover, Schnittker, Massoglia and Uggen (2011) review several studies finding evidence of unusually high levels of disability and stress-related illness among formerly incarcerated individuals. To be sure, the health effects of the massive increase in incarceration rates extend beyond direct effects on currently and formerly incarcerated people. Wildeman (2012) finds discretely higher infant mortality rates among newborns with incarcerated fathers who have no pre-incarceration history of domestic abuse. Moreover, the increased stress and reduced resources associated with having an incarcerated partner, son or father may be a factor in the relatively poor cardiovascular health outcomes for African-American women (Hedwig and Wildeman, 2013).

### ***The children of the incarcerated***

More than 50 percent of men in state prison and 60 percent of women in state prison are the parents of children younger than 18 years of age (Glaze and Maruschak, 2010). Among the age groups that make up the bulk of the prison population (25 to 34 and 35 to 44), the proportion that are parents is considerably higher, with the figure reaching 80 percent among women in state prison between ages 25 and 34. Wildeman (2009) provides the most authoritative assessment of the risk of experiencing a parental incarceration for children born in 1978 and 1990. For the 1990 birth cohort, 1 in 4 black children and 1 in 25 white children experienced a parental incarceration by the age of 14. Among black children born to high school dropout parents, half experience a parental incarceration by this age. A parental

incarceration certainly impacts the material well-being of children. Johnson (2009) analyzes how the household incomes and poverty rates of children born between 1985 and 2000 were impacted by paternal incarceration using longitudinal data. In the year prior to a father's incarceration, average annual household income in 1997 dollars stood at \$38,960. During the period of incarceration, average annual household income dropped by nearly \$9,000. Concurrently, the proportion of these children living in households below the poverty line is 22 percent prior to the father's incarceration and nearly 31 percent during the father's incarceration. There is also evidence of increased behavioral problems among children with an incarcerated parent. Wildeman (2010) analyzes the effect of parental incarceration on aggressive behavior among very young children. The author finds that aggressive behavior increases among young boys with incarcerated fathers. Moreover, this increase in externalizing behavior is concentrated among young children of men who have not committed violent acts and who are not abusive within their households. To be sure, one would expect heterogeneity in the effect of parental incarceration. In some instances, a parent's removal from the home may be stabilizing and salutary to the extent that the parent is abusive, or the parent's absence may tax the household's resources. In addition, research on this topic faces the fundamental challenge of contending with the myriad factors that likely influence child outcomes and that are correlated with a parental incarceration (for example, poverty, drug use and exposure to violence). In fact, Wakefield and Wildeman (2014) provide evidence of such heterogeneity. This being said, our criminal justice system has expanded over

the past three decades toward punishing less serious offenses more severely. In essence, the disruptions caused by incarceration impact more children than ever before.

### ***Political participation***

In many states, individuals with an active criminal justice status are denied the franchise of voting. According to a report by The Sentencing Project (2016), 48 states and the District of Columbia prohibit voting while incarcerated. In addition, 34 of these states do not allow those on parole to vote, and 30 states prohibit voting among those on probation. Four states prohibit voting among all people convicted of felonies, even after having completed their sentences.<sup>15</sup> The Sentencing Project estimates that 1 in 40 adults is unable to vote either due to current involvement with the criminal justice system or due to a lifetime ban for a prior felony conviction. Roughly 8 percent of adult African-Americans are currently disenfranchised, and in three states, over 20 percent of adult African-Americans are disenfranchised. There is at least one study (Uggen and Manza, 2002) that finds evidence that disenfranchisement of people convicted of felonies may alter electoral outcomes in very close races.

### ***Racial inequality***

As is evident in each domain discussed here, the disproportionate representation of African-Americans in the nation's prisons and jails, African-American males in particular, translates directly into racial disparities in the collateral consequences of incarceration growth. Given the order of magnitude of incarceration growth over the past three decades, the criminal justice system has

become a very important factor in aggravating racial inequality across multiple domains.

The above list largely reflects the longer term effects of a conviction and a spell of incarceration operating through social stigma as well as the effects of being physically removed from society during formative years when others are establishing lives for themselves. However, there is some suggestive evidence that the process itself unleashed by a felony arrest and charge is disruptive and creates problems that then need to be remedied by community corrections. For example, many researchers studying the employment consequences of having served a prison sentence have documented a strange pattern in administrative employment data. To be specific, starting three to four quarters before one's admission to prison, several researchers have documented a decline in quarterly employment rates and earnings in several states (see Kling, 2006; Pettit and Lyons, 2007; Sabol, 2007). One theory consistent with this pattern is that some personal crisis causes both job loss and criminal activity. Or a lost job may have propelled the individual toward the felony that resulted in a prison spell. An alternative interpretation of this pattern is that the arrest itself, and all that follows prior to a prison admission, has a negative effect on labor force participation, employment and earnings.

In fact, a recent study by Charles Loeffler at the University of Pennsylvania suggests that the latter explanation is the correct one. Loeffler (2013) matched conviction and arrest data from the Circuit Court of Cook County, Illinois, to quarterly earnings data from the state's unemployment insurance system. Focusing specifically on individuals who

were ultimately sentenced to prison, Loeffler analyzes how quarterly employment rates (measured as having any positive earnings in a formal job during the quarter) evolve in the time period leading up to incarceration. Loeffler’s innovation is that he is able to observe the date of arrest for the offense leading to the prison sentence, and thus can assess whether the extent to which the employment decline documented by many researchers pre-dates that actual offense generating the arrest.

Loeffler’s findings are succinctly displayed in figure 9. The figure shows the employment rates of soon-to-be incarcerated people in the quarters approaching their quarter of incarceration (set to zero along the horizontal axis) as well as the quarter approaching the arrest for the conviction resulting in the prison sentence (also set to zero but measured by the lighter shaded line). There are several notable patterns in this figure. First, the employment rates of these individuals are dismally low, with never much more than 25 percent registering positive earnings in the 15 quarters preceding their incarceration. Second, the employment patterns prior to incarceration are consistent with the findings from prior research, showing substantial declines in employment especially during the year prior to the prison admission. Finally, nearly all the employment decline follows the date of arrest (or alternatively, we see little decline in the measured employment rate in the quarters prior to being arrested). Hence, the steep

pre-incarceration rate declines in employment appear to be driven by the processing of the felony (i.e., the pretrial detention, court hearings, etc.).

While we are unaware of a comparable analysis of individuals who are ultimately sentenced to probation, one would imagine that pretrial detention and court proceedings may hinder employment among those charged with serious offenses who are ultimately sentenced to jail, to jail with probation, or to a straight probation term. We tabulated data from the State Court Processing Statistics 1990 to 2002 Felony Defendants database to gauge the extent to which felony defendants who are ultimately sentenced to probation fail to make bail, be released on their own recognizance, or be released under some form of supervised release program. Roughly 53 percent of those charged with

**Figure 9. Path of employment rates in quarters leading up to arrest and quarters leading up to admissions to prison, estimated in Loeffler, 2013**



Source: Loeffler, Charles E. (2013). "Pre-Imprisonment Employment Drops: Another Instance of the Ashenfelter Dip?" Working Paper. Philadelphia, PA: University of Pennsylvania.

felonies who are ultimately convicted (of either a felony or misdemeanor) are placed under local probation jurisdiction (sometimes following a short jail sentence). Of these, 34 percent are detained pretrial.

An arrest and pretrial detention spell are certainly likely to interrupt one's life and create an employment need, and perhaps a housing need, that then must be remedied by the charged person and in many instances their probation officer. Moreover, a criminal conviction may have long-lasting implications for future employment prospects. With these collateral costs in mind, we should *limit the use of incarceration to those who cannot be safely supervised in the community*. This stems from both our respect for the individual as a community member and our commitment to maximize the return on investment for each taxpayer dollar. Incarceration is the most costly sanction, and it is often not our most effective option because so many jails and prisons do not have the extensive rehabilitative programming necessary to meet all the needs of their inmates. When incarceration must be used, research tells us that short incarceration spells, implemented with swiftness and certainty, have greater impact than longer terms.<sup>16</sup> Therefore, we should work with our partner agencies to ensure that sanctions are neither more severe nor greater in length than they need to be to effectively achieve our rehabilitative goals for an individual person.

In selectively using incarceration, we also believe that this should apply to pretrial detention as well as post-adjudication incarceration spells. Greater use of validated risk assessment tools pretrial, and perhaps

more active monitoring of pretrial defendants coupled with expanded use of supervised pretrial release may minimize the adverse effects of case processing on employment.

#### **4. Restore communities, and facilitate their health and safety in a holistic way.**

We must recognize that people charged with crimes are community members and that our ultimate goal is to restore these individuals to productive roles. This community perspective requires us to view public safety differently. Typical views of public safety have considered keeping the community safe as a function of protecting it from people who commit crime, rather than recognizing that nearly all people charged with crimes will eventually return to community settings and become a part of those settings. We are concerned with the justice-involved person, not just as an individual but as a community *member* and potential neighbor. In this view, the health and safety of the community are inseparable from the health and safety of the person on our caseload.

In order to assist the individual in taking on productive roles in their family, neighborhood and larger community, we reiterate that we need to *reduce the collateral consequences of criminal convictions, as well as barriers to reintegration and rehabilitation, when public safety is not otherwise compromised*. We know that even those who are rejoining the community in a healthy way face many barriers to obtaining housing, social services and employment. Improved access to each of these would increase public safety by helping individuals build positive roles in their communities. Currently,

these barriers are both too high and too long lasting. We know from Blumstein's research (Blumstein and Nakamura, 2009) on survival rates that an individual's risk of reoffending falls dramatically after 10 or five or even three years, and yet people who have been law-abiding citizens for a decade or more still face difficulty obtaining work, housing and social services.<sup>17</sup> Community corrections should serve as ambassadors to the business community to help them view justice-involved individuals differently. Moreover, if we are able to establish credible screening practices whereby our clientele may credibly signal their desistance from crime as is discussed above, we can serve this intermediary role for many in community corrections with confidence. Internally, we should consider whether and how formerly justice-involved people could use their talents and experience in our own organizations.

When we consider the person under supervision as a member of their community, rather than a person who the community should be protected from, it becomes clear *that avoiding disruption to employment, schooling, housing and families will improve outcomes and save taxpayer dollars*. Therefore, we should adopt the lowest possible sanction, and engage in restorative justice practices where possible, to avoid such disruption and prevent the individual from having to "reenter" their community at all.

As such, we should *offer opportunities for diversion, starting at the point of arrest, based on an individual's amenability and qualifications for diversion, to maximize alternatives to incarceration that protect the public while holding individuals accountable*. Models of community courts and other restorative justice

practices have proved effective at providing services while avoiding the cost and collateral consequences of more traditional sanctions. By providing alternative sanctions in community settings, we have access to a broad range of services that can meet the criminogenic needs of a particular individual without being reliant on incarceration methods.

### ***Include survivors and families***

Because we strive to make communities whole, we also *recognize that survivors of crime are an integral part of the justice process*. Survivors have a role not only in the procedural aspects of justice, through restorative practices or providing impact statements, but also as members of communities who also need to be healthy and safe. We need to do right by the survivors while being fair with people who commit crimes. The latter requires that services should be provided to help them rebuild strong and healthy lives.

Families of people charged with crimes, particularly children, often suffer along with their family member while the family member is involved in the criminal justice system. Children of incarcerated parents are at 2.5 to 3 times greater risk of becoming involved with the criminal justice system themselves. In this way, ensuring fair and effective treatment not only impacts the life of the currently justice-involved person but also the lives of the next generation. *We should recognize and strive to break the intergenerational cycle of crime and incarceration by strengthening families and addressing their needs throughout the justice process*. This requires an approach that is responsive to families' needs and supports healthy family connections rather than hindering them. Examples include adjusting

visitation and housing restrictions, as well as providing supports to the individuals under our supervision. Here again, we aim to provide the lowest sanction that is safely possible, so that there is as little negative disruption in the lives of families as possible. Likewise, measures such as employment training, education, public assistance, and the removal of barriers to employment and housing are all measures that can increase public safety by helping justice-involved people build healthy lives and take on supportive roles within their families.

**5. Reduce institutional bias and work to ensure that all individuals receive fair, equal access to the justice system.**

We recognize that a key aspect of treating individuals with respect, dignity and a sense of community is working to counteract injustices, rather than perpetuating them. A key aim is to *reduce institutional bias and ensure that all individuals receive fair, equal access to the justice system, including opportunities for diversion and alternatives to incarceration.*

Part of the problem of institutional bias is that each segment of the justice system can become siloed, thereby worsening bias as an individual moves deeper into the justice system. We know that from the earliest points, the justice system has disproportionate minority contact. From the pretrial process onward, there are structural deficits that perpetuate unnecessary disparities, especially for low-income and minority communities.

We strive to lead organizations that will not only be cognizant of such bias but work to combat it, both within our own organizations and through our

collaboration with partners. To do so, we must *have strong, effective interagency collaboration to facilitate a system-wide perspective.* From that vantage point, we can see certain values that should stretch throughout the system if in fact our collective goal is to facilitate the health and safety of our communities.

**6. Evaluate what we do, invest more in practices that work, and abandon practices that do not.**

Since our focus is on facilitating positive outcomes, and to be prudent stewards of taxpayer dollars, we should rely on data-driven decision-making and evidence-based practices in order to provide the most effective and efficient resources to people on our caseloads, as well as to victims and communities. We should *implement science-based, data-driven approaches, which yield better outcomes and reduce future victimization over a punitive approach.* As part of this, *decisions for sanctions, supervision level and interventions should be based on an individual's risk level and treatment needs.* If we don't have the ability to do some kind of assessment to determine what problems that person is presenting with and what needs they have, we will not be able to effect any kind of change in that person's life. Again, as prudent stewards of public resources, we should ensure that our resources are being applied to those who pose the greatest risk to public safety, but also in the most effective manner possible. Evidence-based assessments provide the data with which we can do such targeting of resources.

A focus on outcomes does not simply mean reduction in recidivism or victimization, although those are important goals. Inherent in achieving them, though, are more basic outcomes in the lives of people involved

## SUMMARY OF CORE PRINCIPLES AND PROPOSED POLICY SUGGESTIONS

**Principle 1: Treat each individual on community corrections with dignity and respect. Recognize our common human capacity both to make mistakes and to make a change for the better.**

- Create a set of incentives that is (1) clear and predictable, yet (2) graduated and fairly calibrated to the behaviors we wish to encourage and those we wish to discourage.
- Create mechanisms that permit those who are highly likely to be immediate desistors to credibly signal who they are.

**Principle 2: Realign incentives in the criminal justice system. Cost considerations at the local level should not systematically favor incarceration over alternative sanctions.**

- Cost incentives faced by local criminal justice systems (counties) should reflect actual social cost differentials associated with alternative sanctions.
- User fees and fines that arrest the rehabilitation and reentry process should be reevaluated or abandoned.
- Revenue incentives should not drive probation and parole release decisions.

**Principle 3: Impose the least restrictive sanctions necessary, and minimize the collateral consequences associated with criminal processing and conviction.**

- Limit the use of incarceration to those who cannot be safely monitored in the community.
- Base decisions for sanctions, supervision level and interventions on an individual's risk level and treatment needs.

**Principle 4: Restore communities, and facilitate their health and safety in a holistic way.**

- Reduce the collateral consequences of criminal convictions, as well as barriers to reintegration and rehabilitation, when public safety is not otherwise compromised.
- Avoid disruption to employment, schooling, housing and families to improve outcomes and save taxpayer dollars.
- Offer opportunities for diversion, starting at the point of arrest, based on an individual's amenability and qualifications for diversion — to maximize alternatives to incarceration that protect the public while holding individuals accountable.
- Recognize that survivors of crime are an integral part of the justice process.
- Recognize and strive to break the intergenerational cycle of crime and incarceration by strengthening families and addressing their needs throughout the justice process.

**Principle 5: Reduce institutional bias and work to ensure that all individuals receive fair, equal access to the justice system.**

- Reduce institutional bias and ensure that all individuals receive fair, equal access to the justice system, including opportunities for diversion and alternatives to incarceration.
- Build strong, effective interagency collaboration to facilitate a system-wide perspective.

**Principle 6: Evaluate what we do, invest more in practices that work, and abandon practices that do not.**

- Implement science-based, data-driven approaches, which yield better outcomes and reduce future victimization over a punitive approach.

in the criminal justice system. Housing, employment, physical and mental health, and positive relationships are all components of a productive and crime-free life. Policies that limit access to social services on the basis of criminal convictions are destructive to public safety because they remove crucial sources of support for justice-involved people who are in the process of rebuilding their lives. These collateral consequences also go against our first core value of the dignity of individuals and their ability to change.

## Endnotes

1. The following few paragraphs draw heavily from Raphael (2014).
2. There are several static and dynamic risk factors that are significantly predictive of future offending. However, measures of goodness of fit for several standard risk assessment tools reveal that these actuarial predictions are far from deterministic. In other words, within each risk category there is a fair amount of unexplained variation in actual future offending. With this in mind, the information that is revealed by one's behavior over time provides a chance to improve our assessment of the likelihood of future offending.
3. See Blumstein and Nakamura (2009) and Kurlycheck, Bushway and Brame (2012).
4. There is a growing body of experimental impact evaluations (i.e., randomized control trials) of various programs designed to improve the employment prospects of former prisoners and other high-risk individuals with an eye on reducing recidivism (see Raphael, 2014). The results from these evaluations are mixed, with some showing promise and others showing disappointingly little impact on future criminal offending. Nonexperimental studies that simply compare program participants to nonparticipants generally show large differences in recidivism, with participants faring considerably better. Such differences are also observed within the programs subject to randomized control evaluations. For example, of those participants in New York's CEO program who worked four quarters and were successfully placed in an unsubsidized job, only 10 percent were arrested, convicted or incarcerated within a year. Among those who did not perform so well on the program, 44 percent recidivated (Bushway and Apel, 2012). From the standpoint of a program-effect evaluator, such a difference might be written off as due to unobserved differences in motivation between those who complete the program and those who do not. However, at a minimum, those who successfully completed the program are revealing that they as a group disproportionately comprise immediate desistors.
5. The following draws heavily from Raphael and Stoll (2014).
6. In a regression analysis of pre-reform county incarceration rates in California, differences in crime rates explain very little of the cross-county variation in the use of the prison system. On the other hand, penal ideology as measured by the proportion of local voters supporting sentencing reform initiatives and local poverty rates are very strong predictors. This analysis suggests that relatively conservative counties with high poverty rates are the most likely to send their offenders to state prison in California, holding constant the effects of violent and property crime (Lofstrom and Raphael, 2015).

7. The following few paragraphs draw heavily from Lofstrom and Raphael (2016).

8. The U.S. Census Bureau Government Finance and Employment Classification Manual (accessed September 25, 2015, at <http://www.census.gov/govs/classification/index.html>) defined category U30, Fines and Forfeits as “Revenue from penalties imposed for violations of law; civil penalties (e.g., for violating court orders); court fees if levied upon conviction of a crime or violation; court-ordered restitutions to crime victims where government actually collects the monies; and forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral).” This category excludes “Penalties relating to tax delinquency (report at appropriate Tax code); library fines (report at All Other General Current Charges, code A89); and sale of confiscated property (use Miscellaneous General Revenue, NEC, code U99).”

9. Note, these revenues do not include transfers to the state from civil forfeiture proceedings whereby property alleged to be involved in the commission of a crime is confiscated by local, state and federal law enforcement and sold at auction. This would certainly add to the total financial burden imposed on low-income communities. The revenue category (U99, Miscellaneous General Revenue) is too broad and inclusive to infer the value of resources transferred through civil forfeiture.

10. See T07-0275 - Tax Benefits of the Earned Income Tax Credit, Distribution of Federal Tax Change by Cash Income Class, 2012, accessed October 2, 2015, at <http://www.taxpolicycenter.org/numbers/displayatab.cfm?Docid=1937>.

11. The federal poverty income threshold for a family of four in 2012 was \$23,050.

12. See *Income and Poverty in the United States: 2013*, accessed October 3, 2015, at <https://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf>.

13. Local government revenues in 2012 were roughly \$1.1 trillion without intergovernmental grant revenues from the states and the federal government and \$1.6 trillion with these intergovernmental transfers.

14. The following discussion draws heavily from chapter 8 of Raphael and Stoll (2013).

15. Although Governor McAuliffe restored voting rights to those with former felony convictions using his clemency power in 2016, Virginia’s laws governing disenfranchisement remain unchanged.

16. See Hawken and Kleiman (2009) for the evaluation of the HOPE program in Hawaii.

17. See Blumstein and Cohen (1987).

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