

# Reentry

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*Incarceration is big business in the United States. At the end of 2015, more than 2.2 million individuals were incarcerated in America's prisons and jails. Although the increase in the prison population has been slowing in recent years, hundreds of thousands of inmates are released annually and return to their communities. This chapter discusses reentry into society for these individuals by briefly describing existing law and policy (including sentencing), prison and pre-release programming, supervision after release, and characteristics of returning individuals. The chapter then describes the challenges to reentry, in terms of education and employment; physical and mental health; families and children; housing; and communities. That is followed by suggestions on how the challenges might be addressed. The chapter concludes with a series of recommendations for policymakers and practitioners.*

## INTRODUCTION

At the end of 2015, more than 2.2 million individuals were incarcerated in America's prisons and jails.<sup>1</sup> The vast majority of incarcerated individuals will, at some point, be released and return to their communities. In fact, more than 650,000 individuals leave prison each year, after having served an average of 29 months. Corrections costs for these individuals are extremely high. The Bureau of Justice Statistics estimates that over \$80 billion was spent in 2012 by corrections agencies at the federal, state, and local level.<sup>2</sup> Unfortunately, the vast majority of people leaving prison will not successfully reintegrate; more than two-thirds of released offenders are rearrested for a new crime within three years of release.<sup>3</sup> Approximately half will be returned to prison within three

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1. *Incarceration*, SENT'G PROJECT, <http://www.sentencingproject.org/issues/incarceration/> (last visited Apr. 10, 2017).

2. Tracey Kyckelhahn, *Justice Expenditure and Employment Extracts, 2012—Preliminary*, BUREAU JUST. STAT. (Feb. 26, 2015), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5239>.

3. *Recidivism*, NAT'L INST. JUST., <https://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx> (last updated June 17, 2014).

years for either a parole or probation violation or an arrest for a new crime.<sup>4</sup> Although there are many reasons offenders return to crime, one aspect gaining notice is the difficulty released prisoners face integrating back into society. Challenges include poor educational achievement, employment difficulties, limited access to mental- and public-health services, housing restrictions, and limited civic and community opportunities.

With one in a hundred of all Americans and one in nine black males between the ages of 20 and 34 behind bars in 2008,<sup>5</sup> and 2.3% of children under 18 estimated to have a parent in prison, reentry represents a large social concern. In fact, over the past decade, reentry has become a social movement as academics, policymakers, and practitioners have highlighted the reentry process and documented the challenges. Most importantly, experts have developed principles of effective reentry and suggestions on how to assist individuals returning home, while also protecting public safety of the communities they return to. Reentry is palatable to both liberals and conservatives, as both sides recognize that the prison buildup is no longer financially sustainable.<sup>6</sup> This chapter starts with a description of existing law and policy related to reentry, followed by a review of reentry challenges and potential solutions, an evaluation of worst and best options, and recommendations for a few policy options.

## I. EXISTING LAW AND POLICY

The term “reentry” has been used over the past decade not just in reference to the physical release from a prison or jail sentence, but more broadly to describe the process of reintegrating into the community after serving a criminal sentence. Individuals leave from many types of carceral settings in the United States. Youths, generally those less than 18 years of age, serve time in juvenile facilities.<sup>7</sup> Jails, most frequently administered by county-level sheriffs (used for pretrial detention and sentenced offenders), generally are reserved for offenders serving sentences less than a year. State prisons house offenders convicted of more-serious crimes, generally felonies. Offenders serving time for federal offenses are housed in prisons operated by the Federal Bureau of

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4. MATTHEW R. DUROSE ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010*, at 1 (2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

5. PEW CHARITABLE TRUSTS, *ONE IN 100: BEHIND BARS IN AMERICA 2008*, at 3 (2008).

6. See generally Cheryl Leo Jonson & Francis T. Cullen, *Prisoner Reentry Programs*, 44 *CRIME & JUST.* 517 (2015).

7. See generally Barry C. Feld, “Juvenile Justice,” in Volume 1 of the present Report.

Prisons. This chapter focuses on inmates sentenced to and released from state prisons, which house more than 86% of all prisoners in the United States.<sup>8</sup>

### A. SENTENCING

Offenders in the United States are sentenced under a variety of sentencing structures, which, in turn, affect the reentry experience. States vary vastly in the types of sentencing used; even within a state, different structures can operate. Used by most states until the middle of the 20th century, indeterminate sentencing structures utilized a minimum and maximum sentence determined by the judge at sentencing.<sup>9</sup> In these systems, decisions about release are made not by the sentencing judge, but generally via a parole board. Pursuant to the rehabilitative goals of sentencing, the parole board reviews an inmate's case file and behavior, and makes a determination whether he or she is "ready" to return to society. Factors taken into account often include participation in rehabilitative programs, expression of remorse for the crime, conduct during incarceration, prior criminal history, and current offense. Additionally, actuarial measures of predictive success can be used—for example, the Salient Factor Score, which considers items measuring prior record, current offense, behavior while on probation, history of opiate dependence, and employment history as predictors for success after release from prison.<sup>10</sup>

In the 1970s, a number of states enacted determinate-sentencing legislation.<sup>11</sup> At that time, public sentiment was swinging away from rehabilitation to retribution as a goal of punishment. Rather than sentencing an offender to a range of time, determinate sentences were for fixed-length terms, based on the current crime and prior convictions. "Good" time credits (time subtracted from an inmate's sentence for good behavior) can reduce the sentence, but once the sentence is served (minus good time), the inmate is released. For example, California's determinate-sentencing legislation passed in 1977 effectively set a baseline term for felonies, imposing lower and higher terms depending upon

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8. DUROSE ET AL., *supra* note 4, at 3.

9. See generally Feld, *supra* note 7; Francis T. Cullen, "Correctional Rehabilitation," in the present Volume; Douglas A. Berman, "Sentencing Guidelines," in the present Volume.

10. Peter B. Hoffman & Sheldon Adelberg, *The Salient Factor Score: A Nontechnical Overview*, 44 FED. PROB. 44 (1980). For a discussion of modern efforts, see John Monahan, "Risk Assessment in Sentencing," in the present Volume.

11. See Kay A. Knapp, *Criminal Sentencing Reform: Legacy for the Correctional System*, in THE AMERICAN PRISON: ISSUES IN RESEARCH AND POLICY 111 (Lynne Goodstein & Doris L. MacKenzie eds., 1989).

aggravating and mitigating factors.<sup>12</sup> With such a system, offenders are released without parole-board consideration of whether they are “ready” for reentry into the community. Unsurprisingly, not being “ready” can translate into higher recidivism rates and difficulties in the transition from prison to community.

As many experts have documented, the latter part of the 20th century was characterized by the “get tough” movement in criminal justice policy.<sup>13</sup> Many states (and the federal government) passed mandatory sentences for certain crimes, requiring offenders to serve a minimum period of time.<sup>14</sup> Across the country, states enacted laws related to drugs, weapons, and violence; truth-in-sentencing laws; and three-strikes and other habitual-offender laws. One of these, California’s Three Strikes Law passed in 1994, required a minimum 25-year sentence for recidivists convicted of certain felonies.<sup>15</sup> “Get tough” legislation added fuel to America’s incarceration boom. In California, for example, over 25% of the correctional population in 2016 were inmates sentenced under the 1994 recidivist law.<sup>16</sup>

### B. PRISON AND PRE-RELEASE PROGRAMMING

Prisons balance several missions: providing programming to inmates and trying to keep institutions safe and secure for inmates and staff, all the while protecting the public from escapes.<sup>17</sup> A variety of programs—which differ across and within states—are offered to prisoners to provide rehabilitative services (e.g., academic, vocational, and substance-abuse programs), as well as to provide operational assistance to the prison in performing basic functions related to maintenance, food preparation, and clerical activities. Prisoners also participate in religious and recreational programs, such as sports and fitness, arts, self-help (such as Alcoholics Anonymous and Narcotics Anonymous), and

12. ALBERT J. LIPTON & MARK A. PETERSON, RAND, CALIFORNIA JUSTICE UNDER DETERMINATE SENTENCING: A REVIEW AND AGENDA FOR RESEARCH (June 1980), <https://www.rand.org/content/dam/rand/pubs/reports/2005/R2497.pdf>.

13. E.g., MARC MAUER, SENT’G PROJECT, LESSONS OF THE “GET TOUGH” MOVEMENT IN THE UNITED STATES (2004), <http://www.sentencingproject.org/wp-content/uploads/2016/01/Lessons-of-the-Get-Tough-Movement-in-the-United-States.pdf>.

14. See generally Erik Luna, “Mandatory Minimums,” in the present Volume.

15. The initial legislation only required that the first two felony offenses be serious or violent, as outlined in the California Penal Code. The third could be any felony. In 2012, California voters passed Proposition 36, which changed the law so that the third felony had to be serious and violent.

16. CAL. DEP’T OF CORRECTIONS & REHABILITATION, MONTHLY REPORT OF POPULATION AS OF MIDNIGHT SEPTEMBER 30, 2016, (Oct. 2016), [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Monthly/TPOP1A/TPOP1Ad1609.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1609.pdf).

17. RICHARD P. SEITER, CORRECTIONS: AN INTRODUCTION (2014).

other voluntary activities that develop an inmate's character and prospects. Programming also helps reduce idleness, which is seen as a positive benefit given the belief that inactivity is a cause of prison violence.

Rehabilitative programs are aimed at improving an offender's chance of successful reentry. One of the oldest forms of prison programming is education. This is not a surprise since many offenders enter prison with deficits in educational achievement. Fewer than 40% of state inmates have completed high school or the equivalent,<sup>18</sup> and results from the 2003 National Assessment of Adult Literacy Prison Survey show that inmates have lower average literacy rates than the general adult population.<sup>19</sup> The benefits of educational programming in prison have been studied over the years, and correctional education has been shown to improve prisoner outcomes. The most recent meta-analysis of correctional education conducted by RAND showed, among other things, that participating in education reduces recidivism by 13%.<sup>20</sup>

In addition to education programming, inmates often work inside the prison. This can take on a number of forms. Many of the lower-level administrative activities of the prison are conducted by inmates. For example, inmates may work as lower-level clerks, serve as groundskeepers, and work in kitchens and maintenance. Inmates can also participate in vocational training, more recently referred to as career technical education. These programs train offenders in specific job skills such as carpentering, electronics, food services, and other trades. As part of the meta-analysis mentioned above, RAND researchers found that inmates who participated in vocational training were 28% more likely to be employed after release from prison than those who did not receive such training.<sup>21</sup> A small percentage of inmates are able to work in prison industries programs, where inmates create products for the prison system itself or other goods to be used by the state or federal governments (e.g., inmate clothing and furniture). Even fewer are able to work in Private Sector Prison Industries Enhancement (PIE) Certification programs, in which private companies hire

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18. CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, EDUCATION AND CORRECTIONAL POPULATIONS (Jan. 2003), <https://www.bjs.gov/content/pub/pdf/ecp.pdf>.

19. ELIZABETH GREENBERG, ERIC DUNLEAVY & MARK KUTNER, NAT'L CTR. FOR EDUC. STAT., LITERACY BEHIND BARS: RESULTS FROM THE 2003 NATIONAL ASSESSMENT OF ADULT LITERACY PRISON SURVEY (May 2007), <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007473>.

20. LOIS M. DAVIS ET AL., EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS xvi (2013). In the meta-analysis, recidivism was measured a number of ways—including reoffending, rearrest, reconviction, and violation—and the majority of studies examined used reincarceration as the outcome measure.

21. DAVIS ET AL., *supra* note 20.

inmates to produce goods while they are in prison, earning wages comparable to private-sector workers (and much higher than routine prison wages).

A significant portion of inmates enter prison with substance-abuse problems. According to Columbia University researchers, 65% of inmates in U.S. prisons meet the criteria for alcohol or other drug abuse and addiction—a situation that appears to have worsened since the turn of the new century.<sup>22</sup> The relationship between drug use and crime is well known, as many offenders commit crimes to get drugs, commit crimes while they are under the influence of drugs, or engage in criminal lifestyles.<sup>23</sup> The hope is that drug treatment while in prison will help offenders break the cycle of drugs and crime when they return to the community. Research supports the effectiveness of drug treatment. For instance, a meta-analysis of 78 studies of drug treatment concluded that treatment had a statistically significant and clinically meaningful effect in reducing crime and drug use.<sup>24</sup>

### C. SUPERVISION AFTER RELEASE TO COMMUNITY

Recent analysis of state prisons shows a rise in reentry-related programs that focus on life skills, parenting, and employment.<sup>25</sup> This movement makes sense given that “they all come back”<sup>26</sup> (to use the title of Jeremy Travis’s important book): In the vast majority of cases, individuals who are sentenced to prison eventually return to the community. In 2015, over 580,000 prisoners were released back to their communities. Most offenders do not walk out of prison completely free, however, with no restrictions placed on them. In fact, 70% of former inmates are released to some form of required post-custody community supervision by the justice system.<sup>27</sup>

22. NAT’L CTR. ON ADDICTION & SUBSTANCE ABUSE, *BEHIND BARS II: SUBSTANCE ABUSE AND AMERICA’S PRISON POPULATION* (Feb. 2010), <https://www.centeronaddiction.org/addiction-research/reports/behind-bars-ii-substance-abuse-and-america’s-prison-population>.

23. NAT’L INST. ON DRUG ABUSE, *PRINCIPLES OF DRUG ABUSE TREATMENT FOR CRIMINAL JUSTICE POPULATIONS—A RESEARCH-BASED GUIDE* (Apr. 2014), <https://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations/introduction>.

24. Michelle S. Phelps, *The Place of Punishment: Variation in the Provision of Inmate Services Staff Across the Punitive Turn*, 40 J. CRIM. JUST. 348, 351 (2012).

25. Michelle S. Phelps, *Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in U.S. Prison Programs*, 45 LAW & SOC’Y REV. 33, 54–55 (2011); Phelps, *supra* note 24, at 348–57.

26. JEREMY TRAVIS, *BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY* (2005).

27. E. ANN CARSON & ELIZABETH ANDERSON, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *PRISONERS IN 2015* (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

The most common form of supervision after release is often referred to as parole, although some jurisdictions may use other terms. Parole has been part of the correctional equation for almost 150 years in the United States.<sup>28</sup> Parole is a conditional release, where an offender can serve either the remainder of his or her sentence or a specified period of time in the community. While on parole, a returning individual is supervised by parole agents, with terms and conditions that must be followed. The rules generally require parolees to remain crime-free, to get a job, or to participate in education, as well as requirements such as reporting to their parole agent, submitting to drug testing, and limiting association with other criminals. Violations of these “technical conditions,” while not violations of law, can result in parolees being returned to prison to serve additional time.

By contrast, individuals who are released from prison under no supervision include inmates who have “maxed out” on their terms and cannot be returned to prison to serve any portion of their remaining sentence. They are not required to participate in any post-release supervision aimed at assisting them in their reentry or monitoring them to ensure law-abiding behavior. This can have positive and negative consequences. On the one hand, former inmates who are released unconditionally are not subject to the type of intensive surveillance and monitoring that can increase their chances of being returned to prison due to a relatively trivial violation. On the other hand, these individuals may be released into their communities without the benefit of services that may help them succeed in society.

Despite the widespread belief that supervision may be helpful, the literature about its effectiveness is somewhat mixed. For instance, a review by Solomon and her colleagues suggests there is no strong evidence that parole supervision reduces recidivism after release from prison.<sup>29</sup> However, this study was unable to examine the nature of parole supervision that individuals were actually receiving in order to understand differences in release practices that may have contributed to the findings. Analyses by Schlager and Robbins suggest that

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28. Edward Rhine, *The Present Status and Future Prospects of Parole Boards*, in *THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS* (Joan Petersilia & Kevin R. Reitz eds., 2012).

29. AMY L. SOLOMON, VERA KACHNOWSKI & AVI BHATI, *URBAN INST.*, *DOES PAROLE WORK?: ANALYZING THE IMPACT OF POSTPRISON SUPERVISION ON REARREST OUTCOMES* 15 (2005), [http://webarchive.urban.org/UploadedPDF/311156\\_Does\\_Parole\\_Work.pdf](http://webarchive.urban.org/UploadedPDF/311156_Does_Parole_Work.pdf).

post-release supervision in New Jersey was more effective than unconditional release, although recidivism rates for both groups were high (more than three-quarters of both groups were rearrested within two years of release).<sup>30</sup>

A major takeaway point concerning reentry for prisoners is that failure rates are often high. Nationally, almost 70% of prisoners released in 2005 were arrested within two years of release.<sup>31</sup> In California, two-thirds of parolees failed and were returned to prison—at least before the state instituted California Public Safety Realignment legislation, which effectively kept parole violators out of prison.<sup>32</sup> Now, parole violators are handled locally and may serve revocation time in county jails. Realignment has reduced pressure on the state prisons but increased workload on local criminal justice agencies.<sup>33</sup> As expected, realignment has reduced the number of offenders returning to prison for technical violations, although arrest and conviction rates have changed only modestly and remain quite high.<sup>34</sup>

#### D. CHARACTERISTICS OF RELEASED INDIVIDUALS

In contemplating the reentry process for hundreds of thousands of individuals returning from prisons to communities each year, it is important to recognize that these former inmates, as a group, reflect people disadvantaged in multiple ways. Work conducted by researchers at the Urban Institute provides some of the most detailed information on the characteristics of former inmates returning to the community. According to Visser and Travis, “numerous social and economic disadvantages characterize the vast majority of individuals who are released from prison, including poor educational attainment and employment histories, poor physical and mental health, and alcohol or other drug misuse.”<sup>35</sup>

30. Melinda D. Schlager & Kelly Robbins, *Does Parole Work?—Revisited: Reframing the Discussion of the Impact of Postprison Supervision on Offender Outcome*, 88 PRISON J. 234, 249 (2008).

31. DUROSE ET AL., *supra* note 4, at 28.

32. RYKEN GRATTET ET AL., PAROLE VIOLATIONS AND REVOCATIONS IN CALIFORNIA 6 (2008).

33. MAGNUS LOFSTROM, STEVEN RAPHAEL & RYKEN GRATTET, PUB. POL’Y INST. OF CAL., IS PUBLIC SAFETY REALIGNMENT REDUCING RECIDIVISM IN CALIFORNIA? (June 2014), [http://www.ppic.org/content/pubs/report/R\\_614MLR.pdf](http://www.ppic.org/content/pubs/report/R_614MLR.pdf).

34. *Id.*

35. Christy A. Visser & Jeremy Travis, *The Characteristics of Prisoners Returning Home and Effective Reentry Programs and Policies*, in OXFORD HANDBOOK, *supra* note 28, at 689.

The average parolee is male, in his mid-30s, and a member of a racial or ethnic minority group. Almost one-third are on parole for a violent offense and another 31% are on parole for a drug offense.<sup>36</sup> Formerly incarcerated individuals suffer an extraordinary level of housing insecurity—defined as homelessness, as well as precursors to homelessness such as relying on others for housing expenses.<sup>37</sup> More generally, reentry and its challenges fall disproportionately on segments of the population that are least able to bear the burdens, with, for instance, returning individuals concentrated in core urban counties, in either working-class or poor communities.<sup>38</sup>

## II. LITERATURE REVIEW

### A. PROBLEMS ASSOCIATED WITH REENTRY

Individuals exiting from prison face a number of issues upon their return, many of which are interrelated. The components of reentry are so numerous, however, that it is beyond the scope of the current chapter to fully discuss what is known for each. Instead, this next section lays out a number of key concerns. The typical profile of returning individuals only highlights the point that improving chances of successful reintegration into the community will require services for essential needs such as employment, education, housing, drug counseling, health care, and mental-health care. These topics, although often discussed in a reentry context, are not unique to individuals who are exiting prisons or jails. Many of these issues are faced by people who have been convicted of felonies but are placed under probation supervision in the community as a sanction.<sup>39</sup>

#### 1. Getting a job and education

Employment and job training are high on the list of needs for former inmates. Many returning individuals have histories of poor employment skills and limited work experience before they enter prison.<sup>40</sup> Although jobs and

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36. DANIELLE KAEBLE, LAURA M. MARUSCHAK & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2014, at 7 (2015), <https://www.bjs.gov/content/pub/pdf/ppus14.pdf>. Over the past 10 years, the percentage of parolees being supervised for drug offenses has dropped, while the percentage being supervised for violent offenses has increased, reflecting changes in many sentencing laws across the country.

37. Amanda Geller & Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40 SOC. SCI. RES. 4 (2012).

38. JAMES P. LYNCH & WILLIAM J. SABOL, URBAN INST., CRIME POLICY REPORT: PRISONER REENTRY IN PERSPECTIVE (Sept. 2001), <http://www.urban.org/research/publication/prisoner-reentry-perspective>.

39. See generally Michael Tonry, "Community Punishments," in the present Volume.

40. JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY (2009).

vocational education are offered in correctional facilities, the vast majority of prison jobs are lower-skilled work assignments such as food preparation, general janitorial services, and goods production. When individuals leave prison, many have limited opportunities in their communities and, at best, return to low-wage jobs. Indeed, formerly incarcerated individuals experience what is known as a “wage penalty,” a reduction of between 10% and 30% in lifetime earnings.<sup>41</sup>

As a “collateral consequence” of their convictions, former prisoners are barred from certain professions, including child-care, health-care, and financial positions.<sup>42</sup> Beyond such bans, formerly incarcerated people face a litany of challenges to getting hired. Many employers ask job applicants whether they have ever been convicted of a felony. Employers also check criminal-history records, screening out applicants who were previously incarcerated. Black individuals who had been incarcerated appear to have the most serious challenges with call-backs for employment.<sup>43</sup> With limited job skills and long stays in prison reducing positive connections to the community, offenders often return home and start associating with gangs and criminal networks,<sup>44</sup> moving them further away from legitimate employment opportunities.<sup>45</sup>

The importance of work is significant, as research has shown that work and high quality jobs are associated with lower recidivism.<sup>46</sup> Finding employment is also important to satisfy release conditions, as many jurisdictions include job training or employment as standard requirements of parole. Although released individuals have the same work aspirations as other members of the community, former inmates may overestimate their chances of obtaining good jobs when they return home. Those individuals who appear to be most successful upon release had worked prior to being incarcerated and participated in job training while in prison and after release.<sup>47</sup> Moreover, simply getting a

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41. Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 AM. SOC. REV. 526, 527 (2002).

42. See Gabriel J. Chin, “Collateral Consequences,” in the present Volume.

43. Jonson & Cullen, *supra* note 6, at 528.

44. For a discussion of gangs, see Scott H. Decker, “Gangs,” in Volume 1 of the present Report.

45. TRAVIS, *supra* note 26, at 166.

46. See NAT’L RESEARCH COUNCIL OF THE NAT’L ACADS., *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* ch. 8 (Jeremy Travis et al. eds., 2014); Christopher Uggen & Jeremy Staff, *Work as a Turning Point for Criminal Offenders*, 5 CORRS. MGMT. Q. 1 (2001).

47. Thomas P. LeBel & Shadd Maruna, *Life on the Outside: Transitioning from Prison to the Community*, in *THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS* (Joan Petersilia & Kevin R. Reitz eds., 2012).

job may not be sufficient; for obvious reasons, former inmates are less likely to succeed in dead-end, low-paying jobs than higher-paying, quality positions that help establish positive relationships between employers and workers.

As noted earlier, education is the most common form of prison programming, and research has noted positive effects on reentry. The most recent survey by the Bureau of Justice Statistics found that over 85% of state prisons offer secondary education and almost 80% offer basic education.<sup>48</sup> Unfortunately, however, less than 30% of prisoners participate in educational programming.<sup>49</sup> This may be due to a number of factors, including fewer programming slots available than needed and the fact that some states have no requirement for mandatory basic education participation. Moreover, educational programming in prison has been subject to funding cuts, which necessarily limit educational access and preparation for post-release life.

During the “get tough” era of the 1990s, post-secondary educational support was reduced drastically when Congress amended the Higher Education Act and eliminated Pell Grant funding for inmates.<sup>50</sup> Pell Grants were established in the mid-1960s to provide student loans to individuals, including inmates, for post-secondary education. The congressional amendment effectively curtailed opportunities for individuals to earn anything more than a high school equivalent degree during their time incarcerated. As a result, participation in college courses dropped by half from 1991 to 2004.<sup>51</sup> More recently, however, Pell Grants have re-emerged as a pilot program under the Second Chance Act, helping some 12,000 incarcerated students in 67 colleges and universities.<sup>52</sup>

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48. Based on the author’s analysis of the *2005 Census of State and Federal Adult Correctional Facilities*, [https://www.bjs.gov/content/pub/pdf/cj43\\_2005.pdf](https://www.bjs.gov/content/pub/pdf/cj43_2005.pdf).

49. Based on the author’s analysis of *The Survey of Inmates in State Correctional Facilities and the Survey of Inmates in Federal Correctional Facilities Questionnaire* (2004), [https://www.bjs.gov/content/pub/pdf/sisfcf04\\_q.pdf](https://www.bjs.gov/content/pub/pdf/sisfcf04_q.pdf).

50. *U.S. Department of Education Launches Second Chance Pell Pilot Program for Incarcerated Individuals*, U.S. DEP’T EDUC. (July 31, 2015), <https://www.ed.gov/news/press-releases/us-department-education-launches-second-chance-pell-pilot-program-incarcerated-individuals>.

51. Anna Crayton & Suzanne R. Neusteter, *The Current State of Correctional Education*, LITERACY INFO. & COMM. SYS. (2008), <https://www.prisonlegalnews.org/news/publications/pricrayton-state-of-correctional-education/>.

52. *12,000 Incarcerated Students to Enroll in Postsecondary Educational and Training Programs Through Education Department’s New Second Chance Pell Pilot Program*, U.S. DEP’T EDUC. (June 2016), <https://www.ed.gov/news/press-releases/12000-incarcerated-students-enroll-postsecondary-educational-and-training-programs-through-education-departments-new-second-chance-pell-pilot-program>.

On the state level, the Great Recession had an impact on correctional education as well. Overall, states experienced budget reductions of 6% for correctional education, with medium-sized and large states experiencing the largest percentage cuts (20% and 10% respectively).<sup>53</sup> A common way to cut budgets is to reduce the number of teachers for educational programming. This was evident in California, where, during the recession, education services were slashed by 30%.<sup>54</sup>

## 2. Physical and mental health

Relative to the community at large, prisoners are in poor health. They have higher rates of tuberculosis, HIV, and hepatitis C, as well as mental-health and substance-abuse problems. In addition, the population of elderly inmates (and their health-care needs) has continued to grow.<sup>55</sup> Forty-two percent of the state-prison population is estimated to suffer from a chronic medical condition, with hypertension and diabetes being the most common.<sup>56</sup> As every criminal justice professional knows, mental illness is also a serious concern for the justice system.<sup>57</sup> Deinstitutionalizing of the mentally ill in the 1960s resulted in the closure of many state hospitals, with thousands of people released without a safety net of community mental-health services. As a consequence, many people suffering from mental illness were arrested, often for minor crimes, and swept up into the criminal process.<sup>58</sup>

Today, the justice system is the de facto mental-health system in the U.S., caring for over 1 million individuals, many in local jails and state prisons.<sup>59</sup> Rates of serious mental illness—such as schizophrenia, bipolar, or major

53. LOIS M. DAVIS ET AL., RAND, HOW EFFECTIVE IS CORRECTIONAL EDUCATION, AND WHERE DO WE GO FROM HERE? THE RESULTS OF A COMPREHENSIVE EVALUATION (2014), [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR500/RR564/RAND\\_RR564.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR500/RR564/RAND_RR564.pdf).

54. CALIFORNIA REHABILITATION OVERSIGHT BOARD, BIENNIAL REPORT (Mar. 2010), <https://www.oig.ca.gov/media/crob/reports/C-ROB%20Biannual%20Report%20March%2015%202010.pdf>.

55. For a case study on this issue, see Michael Millemann, Rebecca Bowman-Rivas & Elizabeth Smith, “Releasing Older Prisoners,” in the present Volume.

56. Andrew P. Wilper et al., *The Health and Health Care of US Prisoners: Results of a Nationwide Survey*, 99 AM. J. PUB. HEALTH 666, 668 (2009). See generally Margo Schlanger, “Prisoners with Disabilities,” in the present Volume.

57. See generally Stephen J. Morse, “Mental Disorder and Criminal Justice,” in Volume 1 of the present Report.

58. RISDON N. SLATE, JACQUELINE K. BUFFINGTON-VOLLUM & W. WESLEY JOHNSON, *THE CRIMINALIZATION OF MENTAL ILLNESS: CRISIS AND OPPORTUNITY FOR THE JUSTICE SYSTEM* (2d ed. 2013).

59. Sarah M. Manchak & Francis T. Cullen, *When Troubled Offenders Come Home: Removing Barriers to Reentry for Offenders with Mental Illness*, in OFFENDER REENTRY: RETHINKING CRIMINOLOGY AND CRIMINAL JUSTICE 253 (Matthew S. Crow & John Ortiz Smykla eds., 2014).

depression—are several times higher among inmates (double for women and triple for men) than the rates among the general population.<sup>60</sup> Mental health care is expensive, both in terms of medication for inmates and the staff specially trained to work with those inmates. While in the prison setting, mentally ill offenders are at higher risk of disciplinary infractions, victimization, suicide, and self-injurious behavior due to their symptoms as well as the stigma of mental illness.<sup>61</sup> Moreover, research has shown that offenders with mental illness fail more often in the community than other offenders, frequently for technical offenses rather than new crimes.<sup>62</sup>

The prevailing approach to treating mentally ill offenders has been to focus on medication and treatment as a direct means to reduce recidivism. Although medication may directly reduce recidivism for a small percentage of offenders, recent research has highlighted the problems with this approach. For the vast majority of mentally ill offenders, the risk factors for crime shared with non-mentally ill offenders (such as homelessness and substance abuse) may be more direct causes of reoffending.<sup>63</sup> In other words, higher rates of failure for those with mental illness may simply be due to their having a greater number of serious risk factors for crime.

Prisons are required to provide constitutional levels of care to inmates while incarcerated, but the reality is that many offenders do not receive the care they need before reentering the community. According to one estimate, 65% of all inmates are in need of substance-abuse treatment, and yet only 11% receive such care while they are incarcerated.<sup>64</sup> As mentioned earlier, substance abuse is a significant factor in crime—alcohol and other drugs are involved in 78% of violent crimes; 83% of property crimes; and 77% of other crimes (e.g., public-order and weapons offenses) and probation and parole violations.<sup>65</sup> Reentry poses a fragile time for those with mental illness. Without medication management and other services, the symptoms of mentally ill offenders worsen and their

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60. *Id.* at 253.

61. SLATE ET AL., *supra* note 58, at 421–26.

62. Manchak & Cullen, *supra* note 59, at 255.

63. *Id.* at 256–57.

64. *New CASA Report Finds: 65% of all U.S. Inmates Meet Medical Criteria for Substance Abuse Addiction, Only 11% Receive any Treatment*, NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE (Feb. 26, 2010), <http://www.centeronaddiction.org/newsroom/press-releases/2010-behind-bars-II>.

65. NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE, *BEHIND BARS II*, *supra* note 22, at 2.

chances of successful reentry diminish. Fortunately, states are getting better at providing mental-health reentry services to inmates, with the vast majority of states reporting that they provide medication for transition into the community for those inmates who had been taking such medication while in prison.<sup>66</sup>

### 3. Families and children

Large numbers of men and women in prison are parents. Indeed, more children than ever are now affected by America's imprisonment binge. In 2010, for instance, an estimated 2.7 million children had an incarcerated parent.<sup>67</sup> These children face a number of disadvantages, including: "internalizing" problems such as depression; "externalizing" problems such as aggression and delinquency; long-term physical health problems; school problems such as absenteeism and dropping out; lower incomes; and higher rates of homelessness and being uninsured.<sup>68</sup>

Many offenders return to their families when released. Family support can be critical during reentry, as research shows that prisoners returning to live with their families fare better than those who live alone.<sup>69</sup> At the same time, released individuals can place new stresses on families who are relied upon for financial assistance. Returning offenders experience employment barriers, as mentioned, which reduces their ability to provide for their families. Many former face outstanding child-support obligations, which further deepens financial worries. Of course, many issues may have existed prior to an individual's incarceration. Returning to a family or neighborhood characterized by drugs and crime places former inmates at increased risk for failure. Needless to say, reintegrating into a family is complex, as offenders must re-establish family bonds and authority.<sup>70</sup>

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66. SLATE ET AL., *supra* note 58, at 455–56.

67. PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY (2010), [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2010/collateralcosts1pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf); *see also* STEVE CHRISTIAN, NAT'L CONF. ST. LEGIS., CHILDREN OF INCARCERATED PARENTS (Mar. 2009), <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

68. Christopher Uggen & Suzy McElrath, *Parental Incarceration: What We Know and Where We Need to Go*, 104 J. CRIM. L. & CRIMINOLOGY 597, 600 (2014).

69. LeBel & Maruna, *supra* note 47.

70. MARCIA FESTEN ET AL., URBAN INST. & U.S. DEP'T HEALTH & HUM. SERVS., FROM PRISON TO HOME: THE EFFECT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES (Jan. 2002), <https://aspe.hhs.gov/system/files/pdf/74976/report.pdf>.

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#### 4. Housing

Housing is one of the most fundamental and challenging needs for released inmates.<sup>71</sup> As noted above, many parolees return to live with their kin, but not all families are willing to take them back in. After release, living situations tend to be unstable, and homelessness rates are high. Although estimates vary, studies suggest that at least 10% of former inmates are homeless after release.<sup>72</sup> Homelessness is associated both with increased crime and mental-health issues. In addition, sex offenders face a series of restrictions on where they can live upon their return to the community.<sup>73</sup> Before restrictions were eased in California in 2015,<sup>74</sup> nearly one-third of registered sex offenders were transient.<sup>75</sup>

Moreover, released prisoners face challenges in terms of housing availability. Costs for private housing are often out of reach given the limited funds available to these individuals. Transitional housing (e.g., halfway houses) exists for short-term stays, but need far outstrips availability. Although emergency shelters can house individuals for a few days, these programs do not assist in arranging more-permanent housing. The Federal Choice Voucher Program, which provides low-income individuals with vouchers to use for housing, bans offenders convicted of felonies.<sup>76</sup> Other problems include the fact that drug-related activity by anyone in the household can lead to eviction, and, more generally, communities can be strongly opposed to having group homes for offenders in their neighborhoods.

#### 5. Consequences for communities

When offenders are released from prison, they return to the communities from which they came—and just as prison admissions are not drawn equally from communities across the country, returning offenders do not return to all communities equally. Instead, there are often core areas within states that receive the bulk of offenders. For example, Travis reports that more than half of Maryland's returning individuals return to Baltimore, and more than half

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71. MELINDA SCHLAGER, *RETHINKING THE REENTRY PARADIGM: A BLUEPRINT FOR ACTION* (2013).

72. *NRCC Facts & Trends*, COUNCIL OF ST. GOV'T JUST. CTR., <https://csgjusticecenter.org/nrrc/facts-and-trends/> (last visited Apr. 10, 2017).

73. See generally Wayne A. Logan, "Sex Offender Registration and Notification," in the present Volume.

74. Keegan Kyle et al., *Where are Sex Offenders? Jessica's Law Complicates Monitoring*, O.C. REG. (Apr. 27, 2014), <http://www.oeregister.com/articles/offenders-611517-sex-law.html>.

75. *Id.*

76. *About the Housing Choice Vouchers Program*, HUD, [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/about](https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about) (last visited Apr. 10, 2017).

in Illinois come back to Chicago.<sup>77</sup> A RAND analysis of returning California parolees found clusters of parolees in 11 counties around the Bay Area and in the southern part of the state, mostly in urban sections of San Francisco, Oakland, Los Angeles, and San Diego.<sup>78</sup>

These former inmates are not returning to communities marked by wealth and opportunity. Communities where returning individuals are concentrated tend to be disadvantaged in terms of low income and high crime, among other things. On any particular day, for instance, a large number of community members might be incarcerated. As a result, former inmates may return to so-called “million-dollar blocks,” where the price tag of incarcerating community members exceeds \$1 million a year.<sup>79</sup> The constant movement of offenders in and out of prison disrupts positive community functioning. As Schlager states, the “aggregate impact of incarceration and reentry serves to significantly destabilize neighborhoods. Specifically, human capital, social networks, social capital, collective efficacy, and informal social control are disrupted in ways that have deleterious effects on the offenders, the community and society at large.”<sup>80</sup>

These concepts are all connected to how individuals relate to one another in a community. Human capital refers to the skills and personal resources individuals bring to their community. Higher levels of human capital are associated with reduced crime in a community. As noted above, returning offenders don’t bring high levels of human capital, given that many are poorly educated and have substance-abuse problems and poor economic prospects. Social networks refer to the links individuals have with friends, family, and co-workers. Offenders tend to have strong social ties to some close friends and family members, and relatively fewer and looser social ties with others. When they return to the community, offenders are unable to access the support and assistance looser ties may provide during reentry, and may face frayed ties with family as a result of incarceration.

Social capital, collective efficacy, and informal social control arise out of relationships people have with members of their communities. Social capital refers to the capacity of people in networks to provide assistance, and collective efficacy refers to the ability of the community to come together to work for the common good. In turn, informal social control refers to the ability of a

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77. TRAVIS, *supra* note 26.

78. LOIS M. DAVIS ET AL., RAND, UNDERSTANDING THE PUBLIC HEALTH IMPLICATIONS OF PRISONER REENTRY IN CALIFORNIA 19 (2011).

79. Jennifer Gonnerman, *Million-Dollar Blocks*, VILLAGE VOICE (Nov. 9, 2014), <https://www.villagevoice.com/2004/11/09/million-dollar-blocks/>.

80. SCHLAGER, *supra* note 71, at 233.

community to maintain adherence to informal norms (as opposed to laws) to engage in pro-social behavior. Over the past 10 years, scholars have been taking a closer look at how spatial and community characteristics help explain crime, beyond the traditional offender-level characteristics, where, for instance, unstable informal norms are associated with disorder and crime. In general, recycling of offenders in and out of a community due to incarceration stresses all the positive components of community functioning.<sup>81</sup> Not surprisingly, given the discussion above, research has shown that greater concentrations of parolees in neighborhoods are associated with higher crime levels.<sup>82</sup>

### B. POTENTIAL SOLUTIONS

Many observers have pointed out the challenges of reentry, and the field has responded with potential solutions for these issues. Some solutions are cast as general approaches to effective reentry, with guiding principles and goals. Others have developed specific intervention programs for individuals returning home. Current research suggests that there is no “silver bullet” that will solve every issue and thereby reduce recidivism of returning offenders—the reentry problem is multifaceted. More information is needed about offenders returning to the community, the impact of programs and policies, and the cost-effectiveness of different options for punishment. Several authors have called for efforts to gather such information—Mears and colleagues suggest a “science of punishment,”<sup>83</sup> for instance, while Jonson and Cullen suggest a “criminology of reentry.”<sup>84</sup>

Several authors in the field have provided sets of principles or requirements for the reentry process that can guide reform. Travis proposes five principles of effective reentry: prepare for reentry; build bridges between prisons and communities; seize the moment of release; strengthen the concentric circles of support; and promote successful reintegration.<sup>85</sup> Petersilia has suggested four areas for reintegration that should be reformed: changing the prison experience; changing prison release and revocation practices; revising post-prison services and supervision; and fostering collaborations with the community.<sup>86</sup> More

81. SCHLAGER, *supra* note 71, at 233–38; Todd R. Clear et al., *Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization*, 20 JUST. Q. 1 (2003).

82. John R. Hipp & Daniel K. Yates, *Do Returning Parolees Affect Neighborhood Crime? A Case Study of Sacramento*, 47 CRIMINOLOGY 3 (2009).

83. DANIEL P. MEARS & JOSHUA C. COCHRAN, PRISONER REENTRY IN THE ERA OF MASS INCARCERATION (2014).

84. Jonson & Cullen, *supra* note 6.

85. TRAVIS, *supra* note 26, at 324.

86. PETERSILIA, *supra* note 40.

recently, Mears and Cochran have developed five sets of guidelines: make successful reentry a policy priority; institutionalize effective reentry processes; rely on diverse policies, programs, and practices, as well as diverse change agents; prioritize quality supervision, assistance, treatment, and services; and institutionalize research into policy, program, and practice decisions.<sup>87</sup>

These recommendations span an almost 10-year period from 2005 through 2014, yet they are surprisingly similar in what they cover. One can synthesize the authors' models as highlighting the importance of what happens during incarceration; focusing on the time of actual release; providing services during reentry; and focusing on post-release as a collaborative process with community services. In addition, the models recognize that successful reintegration requires the willingness for society to engage in the reentry movement—it cannot be done by the justice system alone. Successful reentry also requires well-tested and effective tools that can change behavior, starting from incarceration and continuing through a return to the community. More-specific programs and tools for this effort are discussed below.

### 1. Getting a job and education

Education remains key for successful prisoner reentry, and recent suggestions have called for the development of a reentry education model. With the support of the U.S. Department of Education, Tolbert outlined an education continuum that strengthens the connection between education services in the prison and community.<sup>88</sup> An important component of the continuum is to align prison education programs with those in the community by establishing statewide articulation agreements. Aligning prison education and career technical education programs with the labor market should help offenders secure employment. Other recommendations include the use of cognitive-based skills training in education and workforce training, as this approach has been shown to help reduce recidivism. In addition, programs that use evidence-based practices, such as real-world learning and mentoring, have been shown to increase student learning. Technology is an important issue in the context of prisons (many of which do not allow internet access for security reasons). Some states are able to provide simulated web-based applications to learners so they may have the required skills when they are released from prison.

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87. MEARS & COCHRAN, *supra* note 83.

88. MICHELLE TOLBERT, U.S. DEP'T EDUC., A REENTRY EDUCATION MODEL: SUPPORTING EDUCATION AND CAREER ADVANCEMENT FOR LOW-SKILL INDIVIDUALS IN CORRECTIONS (2012), <https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/reentry-model.pdf>.

An increasing number of inmates are now participating in post-secondary programs, often through partnerships between community colleges and prisons. To be sure, collaboration between prisons and community colleges is complex, particularly with respect to outside teachers assimilating well to the prison infrastructure and prison staff being supportive of a program that some see as special treatment.<sup>89</sup> Nonetheless, these partnerships open up opportunities for many inmates to take college courses in an affordable manner.<sup>90</sup> Equally important is finding ways to ensure that inmates continue their education after release.

Employment efforts should start inside correctional institutions. Among other things, these efforts should seek to provide vocational training for positions that provide a living wage and for which a need exists in the labor market. Programs directed at the demand side of the equation include transitional employment, which can be accomplished through partnerships with local faith, business, justice, and social-service organizations.<sup>91</sup> Transitional employment refers to subsidized jobs and support services for offenders as a way to provide legitimate income after release from prison. These programs can increase the initial employment rates, but other strategies are needed in order to achieve long-term gains in employment of former inmates.<sup>92</sup>

One of the most popular approaches, the so-called “ban the box” policy, has sought to reduce the stigmatization of a criminal record for job applicants. Begun a number of years ago, this effort entails restricting employers from asking about criminal records in job applications. More than 100 cities in 23 states have adopted such a policy as a way of leveling the playing field for people with criminal records.<sup>93</sup> However, some research suggests that “ban the box” policies may contribute to “statistical discrimination,” where employers, in the absence of information about a criminal record, use an applicant’s race to screen out people of color from consideration. At this point, more evidence may be needed here, involving studies of actual job seekers—with more varied demographics on job seekers and information on actual hires—as opposed to data on “call backs” alone. Moreover, as Sugie points out, even if “ban the box”

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89. Lois M. Davis, Michelle Tolbert & Robert Bozick, RAND Presentation, Evaluation of the Pathways from Prison to Postsecondary Education Project: Results of the Implementation Study (Apr. 28, 2015) (on file with author).

90. SCHLAGER, *supra* note 71, at 71-72.

91. *Id.* at 83.

92. *Building Knowledge About Successful Prisoner Reentry Strategies*, MDRC (Feb. 2013), [http://www.mdrc.org/sites/default/files/Reentry\\_020113.pdf](http://www.mdrc.org/sites/default/files/Reentry_020113.pdf).

93. Mike Vuolo, Sarah Lageson & Christopher Uggen, *Criminal Record Questions in the Era of “Ban the Box,”* 16 CRIMINOLOGY & PUB. POL’Y 139 (2017).

results in statistical discrimination, perhaps a better way to address this is to look at policies that combat racial discrimination itself, rather than questioning the use of “ban the box” policies.<sup>94</sup>

## 2. Physical and mental health

Collaboration between criminal justice and mental-health professionals can assist the mentally ill offender upon return. One such promising collaborative approach involves mental-health courts.<sup>95</sup> Based on the drug-court model, mental-health courts provide a balance of treatment and supervision, using a collaborative justice/mental-health team. In this model, the judge plays a central role in the supervision of the offender—using various incentives to promote positive behavior—with the participants appearing regularly in court to provide updates on an offender’s progress. In particular, a parole agent serves as a case manager with a more therapeutic approach to reentry than traditional forms of supervision.

In a similar fashion, reentry courts may provide a better way for offenders to return to society and reestablish their civic identity in a positive way.<sup>96</sup> A main goal of reentry courts is to keep former inmates from returning to prison by using problem-solving principles characteristic of specialty courts. These include a greater role for judges in overseeing offender progress; the use of treatment mandates, graduated sanctions, and incentives for success; and collaboration among all relevant justice system actors.<sup>97</sup> Reentry courts are a relatively new innovation in the reentry movement—the Office of Justice Programs funded early demonstrations of nine pilot programs in 2000<sup>98</sup>—and, as a result, there is not a lot of evidence accumulated on their effectiveness. To succeed, however, reentry courts must address a series of challenges, such as pre-release planning to ensure a seamless transition from custody to the community, and providing the many services required by high-risk returning offenders.<sup>99</sup>

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94. Naomi F. Sugie, *Criminal Record Questions, Statistical Discrimination, and Equity in a “Ban the Box” Era*, 16 CRIMINOLOGY & PUB. POL’Y 167 (2017).

95. See generally Richard C. Boldt, “Problem-Solving Courts,” in Volume 3 of the present Report.

96. TRAVIS, *supra* note 26, at 275.

97. Christine H. Lindquist, Bryn Ann Herrschaft & Pamela K. Lattimore, *Reentry Courts*, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 4351–60 (Gerben Bruinsma & David Weisburd eds., 2014).

98. SHANNON M. CAREY ET AL., THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS: PROGRAM CHARACTERISTICS AND PRELIMINARY THEMES FROM YEAR 1 (Mar. 2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/241400.pdf>.

99. Lindquist et al., *supra* note 97.

Other reentry efforts seek to connect eligible people leaving prison and jail to mental-health care and substance-use treatment. Given recent Medicaid expansion and coverage available under the Affordable Care Act, the focus has been on getting health care to formerly incarcerated individuals with physical- and mental-health needs. Many jurisdictions have been establishing mechanisms for enrollment. For example, the California Department of Corrections and Rehabilitation has increased its efforts to enroll soon-to-be-released inmates in benefit programs. Many other jurisdictions do not have processes in place, however. In early 2017, the Council of State Governments released guidelines for assisting people leaving prison with health-care services.<sup>100</sup> The five steps in their discussion paper include identifying enrollment and eligibility status for people with health needs in prison and jail; maintaining enrollment and reactivating or reenrolling an individual for benefits upon release; assisting with the often difficult application process; examining Medicaid-reimbursable behavioral health services in the community and addressing any gaps; and tracking eligibility and enrollment activities.<sup>101</sup> Despite the constantly changing landscape with respect to funding, these steps can still provide guidance for how to serve the streams of people reentering society each year.

### 3. Families and children

Scholars and practitioners are beginning to understand better the importance of the family to reentry. Family-based reentry programs can take many forms, encompassing a variety of interventions aimed at reducing family conflict, strengthening relationships, and fostering connections both during and after incarceration. The relationship between families, particularly children, and inmates is complicated—given the dynamics existing before and after incarceration—and research evidence on effective programs is still wanting. In particular, some research is not methodologically rigorous enough to lead to strong conclusions. Nonetheless, several studies on prison visitation showed positive impacts on recidivism, suggesting that maintaining family bonds while an offender is incarcerated may improve successful reentry.<sup>102</sup>

Some promising efforts involve family participation in the reentry process as part of a formal intervention. For example, the La Bodega de la Familia program strengthened bonds between family members and showed positive

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100. MARTHA R. PLOTKIN & ALEX BLANDFORD, *CRITICAL CONNECTIONS: GETTING PEOPLE LEAVING PRISON AND JAIL THE MENTAL HEALTH CARE AND SUBSTANCE USE TREATMENT THEY NEED* (2017).

101. *Id.* at 2.

102. *Family-Based Programs*, COUNCIL OF ST. GOV'T JUST. CTR. (2017), <https://whatworks.csgjusticecenter.org/focus-area/family-based-programs>.

results.<sup>103</sup> The program utilized a case manager who worked with the family to coordinate existing services in the community and identified sources of family support to construct an action plan to assist the offender in reducing drug use and recidivism. In addition, the case manager served as an advocate for families to obtain needed services and was available to provide crisis intervention.<sup>104</sup> Other promising approaches include one-on-one mentoring programs for high-risk youths, family group conferencing, and so-called “wraparound services” that address a wide range of needs.<sup>105</sup>

A larger agenda may be forthcoming. For instance, a number of opportunities for families of incarcerated children were highlighted during a 2013 conference at the White House Executive Office Building. The event brought together leading researchers who had examined the topic of families and incarceration over the previous decade. Their recommendations included providing greater educational support for children who have incarcerated parents, and building on promising intervention points for children and parents, such as including visitation support, prison nurseries, and community alternatives to prison.<sup>106</sup> Other recommendations called for incorporating the needs and experiences of caregivers and taking into consideration the geographic distance between offenders and families in the sentencing process.<sup>107</sup>

#### 4. Housing

Most prisoners are released from incarceration to friends or families, but, as mentioned, some former inmates lack stable housing upon their return to a community. Although a major concern is the lack of affordable housing, the challenges can also relate to the offender’s criminality. Difficulties in finding housing can be particularly acute for sex offenders, who face very restrictive laws as to where they can live (e.g., certain distances from schools and where children play). A number of strategies have been suggested to reduce homelessness among the reentry population, including: changing the laws to increase access to public housing (where up to a quarter of prisoners

103. *Closing Family Lifeline that Won Drug Battles*, N.Y. TIMES (Nov. 25, 2008), <http://www.nytimes.com/2008/11/26/nyregion/26about.html>.

104. TRAVIS, *supra* note 26, at 145.

105. JESSICA MEYERSON & CHRISTA OTTESON, WILDER RESEARCH, STRENGTHENING FAMILIES IMPACTED BY INCARCERATION: A REVIEW OF CURRENT RESEARCH AND PRACTICE (May 2008), <https://www.wilder.org/Wilder-Research/Publications/Studies/Strengthening%20Families%20Impacted%20by%20Incarceration%20-%20Evaluation%20of%20Volunteers%20of%20America%20Programs/Strengthening%20Families%20Impacted%20By%20Incarceration%20-%20A%20Review%20of%20Current%20Research%20and%20Practice,%20Full%20Report.pdf>.

106. Uggen & McElrath, *supra* note 68, at 597.

107. *Id.*

lived prior to incarceration); providing supportive housing upon return to the community; and incorporating discharge planning that ensures that no prisoners are released homeless.

Transitional and supportive housing, often targeted for drug offenders or those with mental illness, provides an array of services to assist reentering individuals with their needs, such as education and vocational training, substance-abuse treatment, employment assistance, etc.<sup>108</sup> Of course, locating supportive housing in communities can spur negative, not-in-my-back-yard responses from community members. These types of reactions can be reduced, however, by working with communities in planning phases of programs to address their fears and concerns about offenders in their midst.<sup>109</sup>

For instance, the Council of State Governments Justice Center outlines practices that can help returning citizens find affordable housing. The council suggests that access to housing can be increased by partnering with nonprofit agencies to assist in housing placement, rental assistance, and mediating for landlord-tenant disputes. Communities can build new properties or convert existing properties for the reentry population, perhaps developing them into supportive housing as described above. Another way to address the housing issue is to focus efforts on improving communities to which offenders return, many of which, as described earlier, lack adequate services and suffer from disorder and crime (which might be accomplished by “justice reinvestment,” discussed below).<sup>110</sup> Each of these options comes with challenges of funding, partnerships, and willing communities, but they hold promise in assisting returning offenders to obtain stable housing and thereby reduce the risk of recidivism.

Still other opportunities involve public housing. In 2016, the U.S. Department of Housing and Urban Development (HUD) released guidelines that could potentially ease some of the barriers to public housing for formerly incarcerated individuals. Among other things, the HUD guidelines advise that public-housing authorities do have discretion to consider circumstances for people with criminal records. These authorities are not required to deny admission to anyone with a criminal record, for instance, or automatically evict someone for engaging in criminal activity. Instead, the guidelines suggest that owners can consider a number of circumstances, including the impact that

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108. For an evaluation of supportive housing in Ohio, see Jocelyn Fontaine, *The Role of Supportive Housing in Successful Reentry Outcomes for Disabled Prisoners*, 15 CITYSCAPE 3 (2013).

109. SCHLAGER, *supra* note 71, at 59–60.

110. KATHERINE CORTES & SHAWN ROGERS, COUNCIL OF ST. GOV'T JUST. CTR., REENTRY HOUSING OPTIONS: THE POLICYMAKERS' GUIDE (2010), [https://csgjusticecenter.org/wp-content/uploads/2012/12/Reentry\\_Housing\\_Options-1.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/12/Reentry_Housing_Options-1.pdf).

eviction might have on the entire household, the seriousness of the behavior, and whether an offender has successfully completed a drug-rehabilitation program. The guidelines outline best practices and provide examples for public-housing authorities and owners, such as limiting the “look back” period for criminal conduct, enumerating specific factors that will be considered, and working with reentry specialists who collaborate with parole agents, landlords, and treatment providers to assist in reentry.<sup>111</sup> Several of these examples limit the “look back” period for criminal-record screening to convictions and consider only the prior 12 months for drug-related activity and 24 months for more-serious criminal activity.

### 5. Communities

As noted earlier, communities in which a large number of people are incarcerated and return are often characterized by crime and social disorder. To address this issue, the concept of “justice reinvestment” has gathered considerable support in recent years. The basic notion is that money that would otherwise be spent on the justice system should be “reinvested” into strategies that can reduce crime in the first place. Over the past decade, more than 30 states have participated in data-driven efforts to trim incarceration and justice-system costs by investing savings into programs that work to reduce recidivism and increase public safety. Ideally, saved costs would be reinvested into high-incarceration communities themselves—through activities such as education, employment, community revitalization, affordable housing, etc.—though it seems that efforts and results have been more modest. The incarceration population has been trimmed at the margins, with policies oriented toward reclassifying or redefining lower-level offenses (e.g., certain drug and property crimes), expanding earned credits in prison, using graduated sanctions to respond to supervision violations, capping time spent for revocations of supervision, and so on.<sup>112</sup>

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111. See generally U.S. DEP'T OF HOUSING & URBAN DEV., GUIDANCE FOR PUBLIC HOUSING AGENCIES (PHAS) AND OWNERS OF FEDERALLY-ASSISTED HOUSING ON EXCLUDING THE USE OF ARREST RECORDS IN HOUSING DECISIONS (2015).

112. JAMES AUSTIN ET AL., SENT'G PROJECT, ENDING MASS INCARCERATION: CHARTING A NEW JUSTICE REINVESTMENT (2013), <http://sentencingproject.org/wp-content/uploads/2015/12/Ending-Mass-Incarceration-Charting-a-New-Justice-Reinvestment.pdf>.

A recent review examined justice-reinvestment efforts made by 33 states since 2007.<sup>113</sup> The most common reforms were directed at community corrections, rather than directly addressing sentencing changes that would affect prison admissions and length of stay. Among the most frequent policy changes chosen by states included graduated responses to supervision violations, required use of risk/needs assessment, and improved interventions for mental-health, substance-abuse and other needs.<sup>114</sup> These policies have not had large impacts on the prison population nor have funds been reinvested back into communities, as initially planned, with community corrections and law enforcement often receiving modest reinvestment dollars.<sup>115</sup> Nonetheless, justice reinvestment can be a viable strategy, as demonstrated in Kansas. That state's legislative leaders developed a plan to invest part of savings that would have gone to prison construction on redeveloping neighborhoods from which a disproportionate number of prison admissions came (and returned to). These efforts focused on housing, education, and other community development improvements.<sup>116</sup>

More generally, it can be argued that justice reinvestment needs to be revamped in order to substantially reduce the use of incarceration in the United States. For instance, Austin and his colleagues argue that states should clearly adopt the goal of reducing the prison populations by utilizing practices that directly address prison admissions as well as length of stay.<sup>117</sup> Jurisdictions should also provide incentives for decarceration, which can include financial incentives. On these issues, it is critical to form coalitions with local officials in order to bring about change.

### III. ANALYSIS AND ASSESSMENT

#### A. POLICIES TO AVOID

Although the last decade has elevated reentry to the level of a social movement, some observers note that the challenges individuals have faced upon return to

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113. PEW CHARITABLE TRUSTS, 33 STATES REFORM CRIMINAL JUSTICE POLICIES THROUGH JUSTICE REINVESTMENT (Nov. 2016), [http://www.pewtrusts.org/~media/assets/2016/12/33\\_states\\_reform\\_criminal\\_justice\\_policies\\_through\\_justice\\_reinvestment.pdf](http://www.pewtrusts.org/~media/assets/2016/12/33_states_reform_criminal_justice_policies_through_justice_reinvestment.pdf); *31 States Reform Criminal Justice Policies Through Justice Reinvestment*, PEW CHARITABLE TRUSTS (Jan. 20, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/01/31-states-reform-criminal-justice-policies-through-justice-reinvestment>.

114. See 33 STATES REFORM, *supra* note 113.

115. AUSTIN ET AL., *supra* note 112.

116. CORTES & ROGERS, *supra* note 110. However, at the time of publication of the report, the initiative was still developing the plan.

117. AUSTIN ET AL., *supra* note 112.

the community have existed as long as there have been prisons. When thinking of ways to approach the challenges, we can look at changing the use of incarceration as one means to address the problem. Reentry exists because we send people to prison. It may seem simplistic, but the clearest way to reduce the reentry burden is to drastically cut the number of people sent to prison.<sup>118</sup>

Given that there is no empirical evidence that prison deters crime<sup>119</sup> or that longer sentences are more effective in terms of recidivism reduction,<sup>120</sup> we should avoid policies that cause prison buildup such as mandatory minimum sentences, three-strikes statutes, life-without-parole laws, and other “get tough” legislation.<sup>121</sup> And since rehabilitative programming can reduce recidivism, it may be unwise to cut prison programs solely to save costs and balance budgets. Such programs also serve to maintain order inside prisons and provide incentives for prisoners to maintain positive behavior, particularly if credits can be earned that reduce length of stay. What is clear from the field is that prisons should avoid operating programs that have not been developed based on sound theoretical principles, that are not implemented with fidelity, or that are targeted to inappropriate individuals.

### B. WHAT TO DO

Much of the discussion about reentry focuses on the efforts of individual programs to help prisoners return successfully to the community. Over the past 20 years, the Risk-Needs-Responsivity (RNR) model of correctional assessment and treatment has become pervasive in correctional practice. Based on psychological principles of criminal conduct, this approach holds that: correctional programs should be targeted to those at higher *risk*; efforts should focus on criminogenic *needs* (i.e., dynamic factors that, when addressed, can change the odds of recidivism); and treatment should be delivered based on *responsivity* (i.e., in a way that responds best to the learning styles of the offender).<sup>122</sup> A recent analysis of the reentry literature makes the offered the following points to help guide program development from an RNR perspective:

1. Programs that provided a continuity of care, beginning in the prison and continuing once prisoners were released to the community, were found to be more effective.

118. TRAVIS, *supra* note 26.

119. Francis T. Cullen, Cheryl Leo Jonson & Daniel S. Nagin, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 PRISON J. 48S, 51S (2011).

120. PAUL GENDREAU, CLAIRE GOGGIN & FRANCIS T. CULLEN, THE EFFECTS OF PRISON SENTENCES ON RECIDIVISM (1999), <https://www.prisonpolicy.org/scans/e199912.htm>.

121. Michael Tonry, *Sentencing in America, 1975–2025*, 42 CRIME & JUST. 141, 187 (2013).

122. D.A. ANDREWS & JAMES BONTA, THE PSYCHOLOGY OF CRIMINAL CONDUCT 47–49 (6th ed. 2017).

2. Programs lacking treatment fidelity often showed no appreciable effects on recidivism.
3. Programs targeting high-risk offenders and their criminogenic needs were found to be more effective.
4. Programs that employed therapeutic communities were found to be effective.<sup>123</sup>

What these principles highlight is that rehabilitative programs need to be based on sound knowledge of what causes crime. Too many ill-fated programs have been introduced based on someone's gut feeling about what works. Examples include DARE, military-style boot camps, and "scared straight" programs. Effective programming needs to be comprehensive and include both in-prison and community treatment. As for the latter, former inmates are less likely to succeed on the outside if they return to the community without some form of continuation in programs. This is especially true for drug-treatment programming.<sup>124</sup>

As this chapter has highlighted, various reentry efforts recognize this aspect of successful return to the community. Programs need to be intensive and targeted to the right individuals. Research in the RNR framework has documented that the greatest reductions in recidivism through programming are made with offenders at the highest risk of recidivism—not with lower-risk offenders, who are often easier to supervise and more likeable than higher-risk offenders but who may actually be harmed by correctional interventions. Moreover, the programs must be intensive and target criminogenic needs in order to be effective. This means that programs with few hours of contact over a short period of time and that do not address the drivers of criminal behavior are unlikely to be successful. Finally, the actual implementation of evidence-based policies is crucial for success. Programs will fail if they are not implemented with fidelity to the model. Fidelity can involve many things—including adequate training in the program—but it also requires a change in culture among on-the-group correctional staff, from one of surveillance and control to a more supportive and therapeutic approach in aid of the reentry process.<sup>125</sup>

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123. Jonson & Cullen, *supra* note 6, at 552.

124. INSTITUTE OF MEDICINE, 2 TREATING DRUG PROBLEMS (Dean R. Gerstein & Henrick J. Harwood eds., 1992).

125. Danielle S. Rudes, Jennifer Lerch & Faye S. Taxman, *Implementing a Reentry Framework at a Correctional Facility: Challenges to the Culture*, 50 J. OFFENDER REHABILITATION 8 (2011).

At the sentencing level, changes in law and policy could improve the release and supervision functions. Tonry makes a number of recommendations on this front, such as allowing judges to make decisions on a case-by-case basis and establishing presumptive sentencing guidelines to help channel the process and any appellate review.<sup>126</sup> He also suggests reestablishing parole release systems or other administrative mechanisms to review the continued detention of offenders past some period of time.<sup>127</sup> Policies that bring back principles inherent in indeterminate sentencing may assist reentry by reducing the consequences of long-term incarceration and making sure that offenders are ready to return to their communities.

### C. LEVERAGE POINTS FOR CHANGE

Partly due to the high costs of incarceration, many state legislatures are rethinking their corrections strategies to reduce the use of incarceration and thus potentially reduce problems associated with reentry. In recent years, “tough on crime” has not been at the forefront of political discussions as it was in the 1980s and 1990s, giving more opportunity for policies and practices that would have stalled decades ago (e.g., California’s repeal of the third-strike provision and reducing revocations to prison). Of course, historically low crime rates have facilitated this discussion, and interest may wane if crime rates start climbing. But the development and use of risk and need instruments have helped criminal justice decision-makers make the most informed decisions about potential alternatives to incarceration.

Given mounting support for reentry reform, the timing seemed right for efforts such as ban the box and housing changes. With support from the public as well as public leadership at the top federal levels (e.g., the Second Chance Act),<sup>128</sup> the nation appeared to be making progress in assisting returning individuals. Today, however, it is unclear whether support for reentry reform will continue. Moreover, few legislative changes to sentencing practices have had large impacts on reducing the prison population. Although some states have trimmed populations, many new policies have simply moved savings from one part of the justice system to benefit another sector. Researchers in the field need to continue their efforts to provide information about best practices to policymakers and practitioners in a usable fashion. Too often, the translation from research to policy lacks clarity and specificity, leading to frustration on the ground as practitioners try to implement effective programs.

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126. Tonry, *supra* note 121, at 176.

127. Second Chance Act of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008).

128. Rudes et al., *supra* note 125.

Despite progress on understanding reentry, we need more and better information on how best to reduce the prison population, to assist those returning to their communities, and to contain costs of the \$80 billion justice system in the United States. This chapter has laid out a number of challenges and potential solutions, but it has not delved into what some see as deep structural barriers in the U.S. economy or the limits of approaches that stress individual change. As Gottschalk notes, “Many champions of reentry portray successful reentry largely as a matter of helping ex-offenders acquire the right individual skills to become employable. They ignore or downplay the enormous structural obstacles that stand between ex-offenders and full economic, political and social membership in the United States.”<sup>129</sup> Reentry efforts are only part of the solution to challenges faced by individuals returning to their communities.

### RECOMMENDATIONS

Three recommendations that come from the analysis presented in this chapter are:

1. Recognizing reentry is a process, **make sure that reentry efforts are integrated between incarceration and community phases.**
2. Acknowledging that research has helped highlight effective program practices, **make sure that reentry programs are evidence-based, implemented with fidelity, and subject to rigorous evaluation.**
3. Knowing that the vast majority of prisoners will eventually leave prison, **continue to work to change the culture**, both within the prison and the community about their status—they, like us, are members of our communities.

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129. MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 80 (2016).