

**Written Testimony to the House Committee on the Judiciary:
“Undoing the Damage of the War on Drugs: A Renewed Call for Sentencing Reform”
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On behalf of the Vera Institute of Justice, I am honored to submit written testimony and offer remarks at this important hearing on sentencing reform. We commend Chair Nadler and Subcommittee Chair Jackson Lee for opening up this long overdue conversation.

The Vera Institute is a 60 year-old organization that delivers data, evidence, and solutions to fight mass incarceration and transform the criminal legal and immigration systems until they are fair for all. I have worked for over 25 years—as a lawyer for prisoners’ rights, the director of several reentry programs, and as special counsel for criminal justice initiatives to the current governor of New York—on efforts to stem the effects of our country’s addiction to punishment.

Sentencing’s role in the rise of mass incarceration

This hearing notes the 50th anniversary of the “War on Drugs,” a war whose damage since the 1970s has decimated communities and families and done little to deliver either public safety or health.¹ But 1970 marks another important data point as well. It is the start as we know it of mass incarceration, excessive punishment, and extreme sentences. In 1970, the U.S. incarcerated at the same rate as most other countries.² However, with the advent of “tough on crime” rhetoric, “truth in sentencing” laws, and sentencing enhancements, from the 1970s through the 1990s, our nation did more than wage a war on drugs—we indulged our thirst for perpetual punishment, particularly on Black people who were routinely considered beyond rehabilitation and in need of control.³ This is not hyperbole. The public record of sentencing enhancements in this period is littered with racialized references to the “superpredator,” “inner city,” and “drug user.” In the media’s coverage of crime and public safety, Blackness became synonymous with criminality, drug use, and violence.⁴ The result? Today we have a jail and prison system that incarcerates over 2 million people,⁵ we lead the world in incarceration, and we have as many people—over 200,000, to be exact—serving life sentences as we had total in prison in 1970.⁶ The impact of this punitive approach did not land equally across our citizenry. Black and Latinx people comprise about 32 percent of our country’s population yet make up 56 percent of the prison population.⁷

Once someone has been convicted of a crime, the U.S. criminal legal system acts as if a switch were flipped. Notions about the importance of liberty, proportionality, restraint, and human

capacity to change go out the window, and no punishment is too harsh. After all, “You do the crime, you do the time, right?”

That approach has led to the dubious distinction of the U.S. having the highest average rate of incarceration in the world compared to other countries.⁸ If we incarcerated at the same rate as the rest of the world, we would have one-sixth of the people we do in jail and prison—about 360,000, instead of the pre-pandemic census of 2.2 million.⁹ We got to this place because we reflexively sentence nearly everyone convicted of a felony to incarceration. In the state courts, over 70 percent of people convicted of felonies are sentenced to time in jail or prison, while in the federal system, 89 percent of felonies result in an incarcerative sentence.¹⁰ By contrast, Finland and Germany send 3 percent and 5 percent of people convicted of a felony to jail or prison, respectively, and, across Europe, felony convictions result in incarceration on average only 20 percent of the time.¹¹ It is not that people in other countries do not engage in violent or harmful behavior or are not convicted of crimes—they do and they are. The difference is how the system responds. In stark contrast to the U.S. criminal legal system, in Europe the default, even after a felony conviction, is a community-based sanction.

Traditional justifications for harsh punishment are not supported by evidence

To begin to restrain our use of incarceration, we have to reexamine the foundational rationales for sentencing against the evidence and our assumptions about what sentencing should accomplish. Since the inception of the U.S. criminal legal system, two of the primary justifications for sentencing have been deterrence and retribution.¹² Deterrence theory assumes that harsh sentences meted out to people convicted of a crime keeps society safe overall by influencing others to think twice before engaging in unlawful behavior.¹³ This justification was part of the rationale in the 1980s and 1990s behind expanding mandatory minimums and predicate sentencing—both designed to lengthen incarcerative sentences.¹⁴ Retribution, or “just deserts,” is premised on the notion that punishment supposedly restores the moral balance that is disrupted by a criminal act, and delivers some semblance of satisfaction and resolution to the victim harmed by that crime.¹⁵

Until recently, the validity of those theories remained unquestioned and deterrence and retribution were time and again trotted out as justification for the laws, policies, and practices that delivered mass incarceration.

Politics aside, what does the evidence prove when it comes to harsh punishment and long incarcerative sentences? First, severe sentences do not deter crime. This may seem counterintuitive, but study after study shows that people do not change their unlawful behavior based on the future possibility of facing a harsh sentence.¹⁶ First, people typically do not know the legal sentence or punishment for a particular crime—even as legislatures pass sentencing

laws, the public's awareness of them is slim.¹⁷ Second, most people decide to desist from crime not because they fear a specific sanction but because of non-legal considerations, such as a moral worldview that a particular behavior is prohibited, breaks the social code, or their own fear of social censure.¹⁸ One influential meta-analysis of studies on deterrence concludes, "[I]t is clear that lengthy prison sentences cannot be justified on a deterrence-based, crime-prevention basis."¹⁹ If there is any deterrence effect to be had in the state's response to crime, the research shows the certainty and swiftness of being caught influences behavior far more than the sanction that follows.²⁰

As for retribution? Pushing for long sentences as "justice" for a victim presupposes a zero sum game—that someone's pain as a survivor of a crime cannot be honored unless the responsible party is severely punished by losing their freedom.²¹ Crime survivors, however, by a margin of three to one, do not default to incarceration as the preferred response.²² Polling shows they prefer holding people accountable through measures like rehabilitative programming, mental health treatment, drug treatment, community supervision, or community service.²³ Again, this may seem counterintuitive, but it lies in the fact that incarcerative sentences are reactive, not proactive, and the use of jail or prison serves little value beyond excommunication. The majority of survivors of crime in the U.S. are people who are intimately familiar with the criminal legal system—they themselves have been defendants in it, or have seen its impact on family, friends, and neighbors—and they know how violent and damaging incarceration can be and how little rehabilitation occurs behind bars.²⁴

Three foundational principles to approach sentencing decisions

At Vera, we have extensively studied the literature, research, and evidence about sentencing reform, and are piloting new approaches in some of our initiatives, such as our work with reform-minded prosecutors to offer alternatives to incarceration even in serious felony cases.²⁵ In our view, to be successful in ending mass incarceration and delivering public safety, any effort at sentencing reform must offer a new set of guiding principles and a new framework for fashioning a fair, accountable, and just sentence after conviction. At its core, a sentence must promote racial justice, create real safety, and indeed repair the harm caused by the unlawful behavior.

We recommend that legislatures answer the following three questions to galvanize sentencing reform efforts:

1. How can this sentence advance racial justice?

While the 1970s formally marked the beginning of mass incarceration as we know it in this country, the criminal legal system has targeted and subjugated Black people for generations

before—from slave patrols that controlled every aspect of enslaved people’s lives, to the exception in the Thirteenth Amendment that abolished slavery except as punishment for a crime, and the Reconstruction-era Black Codes that criminalized Black people’s freedom, mobility, and political and economic power.²⁶ The racialized panic of the “law and order” era of the 1970s, and even today, is a continuation of the criminalization of Blackness and a direct legacy of slavery.

When undertaking reform, jurisdictions cannot look away from that history and must assume racial biases will continue to impact every part of the criminal legal system, including sentencing, and that court system actors will act in ways, conscious or not, that punish Black people more harshly than others. Given that fraught legacy and the racial implications of the sentencing decision, a conviction alone cannot be the bright line behind which freedom disappears.²⁷ In other words, in order to redress racial disparities, the vast majority of convictions, including for felonies, should not carry an incarcerative sentence or one that unduly takes away a person’s freedom.

2. How can this sentence produce actual safety?

The most important priority for many victims and survivors of crime is that the party who committed the harm never engages in that behavior again, either towards the harmed party or anyone else.²⁸ Community-based programs that focus on rehabilitation and addressing the harmful behavior, even for people who have been charged with violent crimes, have been shown to reduce future unlawful conduct.²⁹ Indeed, many of the most important rehabilitative programming innovations of the last 30 years, including cognitive behavioral programming, were pioneered in the community.³⁰

A 2019 meta-analysis of 35 U.S. community-based restorative justice programs found that participants were 41.5 percent less likely to be rearrested than people who were prosecuted and sentenced through the traditional criminal legal process.³¹ Another meta-analysis from 2013 of 10 programs in Australia, the United Kingdom, and the U.S. found that using face-to-face restorative justice conferencing as an alternative to regular court processing resulted in less reoffending among program participants compared to people who went through the traditional criminal legal process.³² Perhaps surprisingly, these positive outcomes from community-based restorative programs were especially pronounced for people who committed serious and repeat offenses.³³

3. How does this sentence repair harm?

Giving people who commit crimes the opportunity to acknowledge and repair the harm they caused can bring healing to victims and rehabilitate the person who harmed them in a way that

servicing a jail or prison sentence cannot. The state's fallback option for addressing a violent crime—prosecuting and punishing a person with lengthy incarceration—does not specifically address a survivor's trauma. Again, polling of crime victims and survivors reflect the dissatisfaction they feel with the traditional criminal legal process—three in four victims surveyed said that they received no help from the criminal legal system, and only eight percent of violent crime survivors received assistance from a victims services organization.³⁴ Even in the domestic violence context, where resources have been invested in recent years to support survivors of intimate partner violence, a 2019 survey found that only 26 percent received help.³⁵ By contrast, a study of crime survivors who experienced a reparative experience, such as face-to-face conferencing with the person who harmed them as part of a restorative justice process, reported feeling more satisfied at the end of the process than people who participated in traditional court processing and sentencing.³⁶

When repair is an operative principle in sentencing, the question for each proven offense would not be how many months or years of incarceration are needed to right the moral wrong, but what processes and actions—such as listening, apologies, restitution, and service—are needed to help repair the harm to the specific victim, if there is one, and to help the person who committed harm grow and change so that they are less likely to harm others in the future.³⁷ In contrast to an incarcerative sentence, essentially a “time out” from society, a reparative criminal sentence requires the person convicted to engage in work to address the harm caused to others. This reinvention is hard work—requiring more action and effort from the person sentenced than is required by simple punishment or retribution. It also has better outcomes.³⁸

Putting these principles into practice through seven legislative reforms

How does the criminal legal system operationalize racial justice, public safety, and repair? Below are seven discrete areas of legislation that will significantly reduce racial disparities by promoting more freedom over confinement, advance safety by moving people out of prison who do not “need” to be there for safety, and build community-based sanctions, which are in the long term better investments for public safety by keeping people together with their families and communities as they engage in repair. These seven legislative recommendations represent a paradigm shift, most certainly, but are already in the political discourse:

1. *Remove prior conviction enhancements.* The federal sentencing guidelines increase a person's sentence by their prior criminal history, and nearly every state has some version of a prior record sentencing enhancement on the books, such as mandatory sentences for second- or third-time felony convictions, “habitual offender” sentences. or California's infamous “three strikes” law.³⁹ The justification to remove prior conviction enhancements is that they are based heavily on deterrence theory, which, as discussed above, is ineffective

and does not enhance public safety. Beyond the inefficacy of prior conviction enhancement laws, they drive racial disparities by compounding the impact of discriminatory arrest and conviction practices that have disproportionately impacted Black people who are more likely to be arrested, prosecuted, and sentenced than their white counterparts for the same behavior.⁴⁰ We propose that sentences at the time of conviction are fashioned only based on the instant behavior and charges, not on past actions for which a person has already faced sanction and punishment.

2. *Cap maximum sentences at 20 years.* The Sentencing Project, which has focused on the U.S.'s outsized and racially discriminatory sentencing system for more than three decades, in 2019 launched a campaign to have a backstop to the sentencing system—a term of years beyond which no sentence can go.⁴¹ They propose a maximum of 20 years of incarceration for the most serious of crimes, including convictions that carry life sentences or life without parole, such as murder.⁴² Within 20 years, these incarcerative sentences will have served whatever safety, retributive, or separation purpose they offer, and, in the rare instance that a person continues to pose a safety threat after serving that sentence, an expert review board can review the release decision and order civil commitment if such a threat is confirmed.⁴³ We agree with their proposal and promote it as well.
3. *Earn good time of one day off a sentence per day of reparative behavior.* The vast majority of states and, to a lesser extent, the federal government, have long recognized the power of giving incarcerated people the ability to earn time off their sentences for positive behavior while incarcerated.⁴⁴ Known as “good time,” the scheme offers people some agency, however limited, in determining when they will go home by rewarding efforts to follow institutional rules and participate in required programming with less time behind bars.⁴⁵ We support a good time proposal of a day for a day so that, if a person maintains a positive disciplinary and programming record, they can earn as much as half the time off their incarcerative sentence.
4. *Abolish mandatory minimums.* Several states and the federal government require a judge to order a set, minimum period of incarceration if a person is convicted of certain crimes, including many drug crimes and other nonviolent offenses, in addition to more typically violent crimes.⁴⁶ Mandatory minimums limit judicial discretion to consider a person's individual circumstances and promote repair. We support eliminating them entirely so that prosecutors and judges must approach each case individually, consider a community-based sanction, and, if jail or prison is appropriate, wrestle with the length of incarceration to be imposed.⁴⁷

5. *Allow community-based sanctions on any conviction, regardless of severity.* Alternative to incarceration programs—known as ATIs—are community-based sanctions that a person may participate in instead of a jail or prison sentence. These programs have repeatedly been shown to be as effective, if not more, than incarceration in promoting behavior change and reducing future offending behavior.⁴⁸ However, mandatory minimum laws and prosecutorial and judicial aversion to offering ATIs limit the potential of these programs, and many ATIs themselves bar people from participating if it is their second offense or if they are facing charges involving violence.⁴⁹ We support legislation that requires the courts to consider alternatives to incarceration as a sanction for all convictions, regardless of severity, based on the individual circumstances of that case.
6. *Institute “second look” resentencing at 10 years.* “Second look” laws would allow courts to reexamine a sentence after a person has served a significant period of time in prison—to determine if the sentence still serves the interests of justice and promotes public safety.⁵⁰ Our recommendation is that a “second look” be required for all cases at the 10-year mark in a prison sentence.
7. *Incorporate racial impact assessments.* Legislatures often conduct fiscal impact assessments or consider other public policy implications when making new law. When engaging in sentencing law reform, they should be required to conduct racial impact assessments (or racial impact statements) to evaluate the cost in racial disparities of the proposed criminal justice legislation, just as fiscal impact assessments measure their cost in dollars.⁵¹ We support requiring these statements to publicize and acknowledge that most legislation that creates new crimes, or makes sentences harsher, likely will exacerbate racial disparities. Legislatures should be forced to see this data and determine whether to change course in light of it.⁵²

Vera is conducting an analysis, still in progress, that estimates the impact of these seven legislative reforms on the U.S. Bureau of Prisons population in 2016 if the federal government had implemented them ten years earlier, in 2006. Our initial findings suggest that the federal prison population would have been 80 percent less as a result. We intend to publish these results in a report to be released later this year.

Sentencing reform will support, not undermine, public safety

We recognize that legislatures across the country are in a difficult moment to move criminal justice reform that will result in fewer people behind bars. Urging these reforms now, when homicide rates across the country last year increased on average by 30 percent over the

previous year, and when gun violence has also increased, may seem challenging to lawmakers who may reflexively think that this is time to be “tough on crime.”⁵³

This is an opportunity to learn from recent history and make investments in long-term public safety, not short-term responses driven by politics and fearmongering that will perpetuate the status quo. As noted above, increasing jail and prison sentences is a poor crime deterrence strategy. Instead, it is the swiftness and certainty of responding to crime that has a greater a deterrent effect on behavior. In a moment when clearance rates of solving serious crimes, especially homicides and gun assaults, are at a serious low in many cities, the best immediate response is to reassign police officers to investigate these cases within the first 48 hours.⁵⁴ In addition to improving crime clearance rates, jurisdictions should also invest heavily in proven solutions to gun violence, such as violence interruption, hospital based interventions, and focused deterrence.⁵⁵ On average, the U.S. spends \$352 per capita on policing.⁵⁶ Jurisdictions that have invested heavily in gun violence prevention—like Massachusetts and New York—have spent on average only \$1-\$2 per capita on these efforts and seen gun homicide declines of 16 to 30 percent.⁵⁷ And the best crime prevention solution of all? To invest in the services, resources, and supports that help communities to flourish and thrive, especially after the devastation of the pandemic.⁵⁸

¹ D. Baum, *Smoke and Mirrors: The War on Drugs and The Politics of Failure* (Waltham, MA: Little, Brown and Co; 1996); On how the War on Drugs has affected education, housing, employment, child welfare, immigration, and public benefits systems 50 years later, see Drug Policy Alliance, “Uprooting the Drug War,” <https://uprootingthedrugwar.org/resources/>

² National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Academies Press, 2014), Chapter 4.

³ On the history of mass incarceration and evolution of U.S. sentencing policies from the 1940s-present, see National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Academies Press, 2014), Chapters 2-4. On Black people being viewed as “incurable” and unable to be rehabilitated, see Anthony Grasso, “Broken Beyond Repair: Rehabilitative Penology and American Political Development,” *Political Research Quarterly*, vol. 70 issue 2 (2017).

⁴ John DiLulio, “The Coming of the Super Predators,” <https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators>. See also Edward Huntington Williams, “NEGRO COCAINE “FIENDS” ARE A NEW SOUTHERN MENACE; Murder and Insanity Increasing Among Lower Class Blacks Because They Have Taken to “Sniffing” Since Deprived of Whisky by Prohibition,” <https://www.nytimes.com/1914/02/08/archives/negro-cocaine-fiends-are-a-new-southern-menace-murder-and-insanity.html>; Peter Kerr, “NEW VIOLENCE SEEN IN USERS OF COCAINE,” <https://www.nytimes.com/1987/03/07/nyregion/new-violence-seen-in-users-of-cocaine.html>; and Carl Hart, “How the Myth of the ‘Negro Cocaine Fiend’ Helped Shape American Drug Policy,” <https://www.thenation.com/article/archive/how-myth-negro-cocaine-fiend-helped-shape-american-drug-policy/>

⁵Jacob Kang-Brown, Chase Montagnet, and Jasmine Heiss, “People in Jail and Prison in 2020, Table 1 lists the pre-pandemic prison and jail population. <https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-2020.pdf>

⁶ The Sentencing Project, “People Serving Life Exceeds Entire Prison Population of 1970,” February 2020, <https://www.sentencingproject.org/publications/people-serving-life-exceeds-entire-prison-population-1970/>

⁷ The Bureau of Justice Statistics reported that in 2019, 452,800 Black people were sentenced to prison across the United States (or 32.8% of all those sentenced to prison). There were 320,700 Hispanic or LatinX people sentenced to prison that same year (or 23.2% of all those sentenced to prison). For more, see Bureau of Justice Statistics, “Prisoners in 2019,” October 2020, Table 3: <https://www.bjs.gov/content/pub/pdf/p19.pdf#:~:text=At%20year-end%202019%2C%20an%20estimated%201%2C430%2C800%20prisoners%20were,prisoners%20in%202018%20and%2011%25%20from%20the%20peak>. According to 2019 population estimates from the US Census Bureau, Black people comprise 13.4% of the US population and Hispanic or LatinX individuals make up 18.5% of the population. For more, see United States Census Bureau, “Quick Facts,” <https://www.census.gov/quickfacts/fact/table/US/RHI725219>

⁸ Institute for Crime & Justice Policy Research, “World Prison Brief,” <https://www.prisonstudies.org/world-prison-brief-data>

⁹ Vera researchers took a sample of incarceration data from 17 other countries to compare to the United States on or around 2019 (those countries data was available from the World Prison Brief, and they are Argentina, Australia, Brazil, Canada, England and Wales, France, Germany, India, Italy, Japan, Mexico, Nigeria, Portugal, Russia, South Africa, South Korea, and Spain). The U.S. incarceration rate is 6.6 times higher than that of other nations in the sample, at 685 per 100,000 compared to 104 per 100,000. To be in line with the international estimate, United States incarceration would need to be reduced 85 percent. Applying this 85 percent reduction to the number of people incarcerated on a given day before the pandemic, 2.240 million, there would have been only 341,900 people incarcerated in the United States.

¹⁰ On state figures, see Brian Reaves, Bureau of Justice Statistics, “Felony Defendants in Large Urban Counties, 2009 – Statistical Tables” (December 2013), Table 24 <https://bjs.ojp.gov/content/pub/pdf/fdluc09.pdf>. On federal figures, see United States Sentencing Commission, “2019 Sourcebook,” Figure 6, <https://www.uscc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Figure06.pdf>

¹¹ Aebi, Akdeniz, Barclay, Campistol, Caneppele, Gruszczynska, Harrendorf, Heiskanen, Hysi, Jehle et al., *European Sourcebook of Crime and Criminal Justice Statistics*, 5th ed. (Helsinki: HEUNI Publications Series 80), Second Printing, 2017, Table 3.2.3.1, 196.

¹² The political philosophers Immanuel Kant and Jeremy Bentham, writing in the late 1700s, promoted two rival goals of “modern” sentencing: to punish crime, retribution, and to prevent crime, deterrence, along with incapacitation and rehabilitation. For more, see Rauscher & Frederick, “Kant’s Social and Political Philosophy,” *The Stanford Encyclopedia of Philosophy* (Spring 2017 Edition), Edward N. Zalta (ed.); Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789), Chapter XIV.

¹³ Nora Deimleitner, Douglas Berman, Marc Miller, and Ronald Wright, *Sentencing Law and Policy* (New York: Wolters Kluwer, 4th Edition, 2018), 2.

¹⁴ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Academies Press, 2014), Chapter 4.

¹⁵ On the purposes of federal sentencing, see 18 U.S.C. § 3553 (a)(2).

¹⁶ Daniel Nagin, *Deterrence in the Twenty-First Century: A Review of the Evidence* (Carnegie Mellon University, 2013), 7-8, <https://doi.org/10.1184/R1/6471200.v1>

¹⁷ *Ibid.*, 7-8.

¹⁸ *Ibid.*, 8.

¹⁹ *Ibid.*, 5

²⁰ *Ibid.*, 4.

²¹ For an example of this zero-sum thinking, see John Eligon, “It’s a Slap in the Face: Victims are Angered as Jails Free Inmates,” <https://www.nytimes.com/2020/04/24/us/coronavirus-jail-inmates-released.html>.

²² Alliance for Safety and Justice, “Nationwide Survey of Crime Survivors,” 2016, 5, <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>. This nationwide survey of over 800 crime survivors has been repeated after 2016 on state populations in Florida, Texas, Illinois, Michigan, and California with similar results.

²³ *Ibid.*

²⁴ Allison Hastings and Kaitlin Kall, “Opening the Door to Healing: Reaching and Serving Crime Victims Who Have a History of Incarceration,” February 2020, <https://www.vera.org/downloads/publications/opening-the-door-to-healing.pdf>

²⁵ See Vera Institute of Justice, “Reshaping Prosecution Project,” [Reshaping Prosecution | Vera Institute](#)

²⁶ Elizabeth Hinton, LeShae Henderson, and Cindy Reed, “An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System,” Vera Institute of Justice 2018, <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

²⁷ Sherry F. Colb, *Freedom from Incarceration: Why is the Right Different from All Other Rights* (69 NYU L. Rev. 781, 799, 1994) (arguing that courts should enforce the fundamental right of liberty by subjecting incarcerative sentencing laws to strict scrutiny and require a compelling state purpose and narrow tailoring).

²⁸ Danielle Sered, *Until We Reckon: Violence, Mass Incarceration and a Road to Repair* (New York, The New Press 2019), 30.

²⁹ Michael Tonry, “Community Punishments”, *Reforming Criminal Justice: A Report from the Academy of Justice*, (Vol. 4, 2017), 189, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/10_Criminal_Justice_Reform_Vol_4_Community-Punishments.pdf

³⁰ Francis Cullen, Cheryl Lero Johnson, and Daniel Mears, “Reinventing Community Corrections,” *Crime and Justice* 46 (University of Chicago Press, 2016), 29.

³¹ Kyle Ernest, “Is Restorative Justice Effective in the U.S.?” (PhD. Diss., Arizona State University, August 2019), 101.

³² Heather Strang, Lawrence W Sherman, Evan Mayo-Wilson, Daniel Woods, and Barak Ariel, “Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review” (48 Campbell Systematic Review, 2013), <https://restorativejustice.org.uk/sites/default/files/resources/files/Campbell%20Rj%20review.pdf>

³³ Ibid.

³⁴ Alliance for Safety and Justice, *Crime Survivors Speak: The First-Ever National Survey on Victims’ Views on Safety and Justice*, 11, <https://allianceforsafetyandjustice.org/wp-content/uploads/2019/04/Crime-Survivors-Speak-Report-1.pdf>

³⁵ United States Department of Justice Bureau of Justice Statistics, “Criminal Victimization 2019,” September 2020, 9, <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>

³⁶ Findings from a 2019 meta-analysis of 35 restorative justice programs in the United States from the 1970s to 2018 find that victims in restorative justice processes are 86.7% more likely to be satisfied with their experience than those going through the regular criminal justice. For more, see Kyle Ernest, “Is Restorative Justice Effective in the U.S.?” (PhD. Diss., Arizona State University, August 2019), 101. See also, Strang et. al., “Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review,” 38, 40 (70% of restorative justice conferencing participants reported themselves satisfied, in comparison to 42% of the regular court participants. The conferencing process aids repair by providing what 58% of survivors consider to be a sincere apology, compared to 10% of survivors going through court processing and sentencing as usual. That leaves them feeling much more healed – to the point where they wouldn’t contemplate seeking vengeance if it were available to them (9% of reparative process participants versus 45% of regular court participants)).

³⁷ Restorative justice is one way of centering the survivor’s harm and requiring the responsible party to address it. That frame can be written into statute, for example, see Montana Rev. Code Ann. §46-18-101(3)(i) (“Sentencing practices should promote and support practices, policies and programs that focus on restorative justice principles.”)

³⁸ Danielle Sered, “Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration,” 2017, 18. See also Francis Cullen, “Correctional Rehabilitation” in *Reforming Criminal Justice: A Report from the Academy of Justice*, (Vol. 4, 2017), 239-240, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/12_Criminal_Justice_Reform_Vol_4_Correctional-Rehabilitation.pdf

³⁹ Douglas Berman, *Sentencing Law and Policy: Cases, Statutes and Guidelines* (2018), 288.

⁴⁰ U.S. Sentencing Commission, “Simplification Draft Paper,” Chapter Four (1995) (summarizing the arguments for and against prior record enhancements).

⁴¹ Marc Mauer and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (The New Press, 2018); See also The Sentencing Project, “The Campaign to End Life Imprisonment,” <https://endlifeimprisonment.org/>

⁴² *Ibid.*, 145.

⁴³ *Ibid.*, 150.

⁴⁴ Total number from the NCSL chart. For a general discussion of the purpose and applicability of good time credits, see Nora Demleitner, “Good Conduct Time: How Much and For Whom? The Unprincipled Approach of the Model Penal Code,” 2009 (critiquing the Model Penal Code: Sentencing’s limiting good time credits to 15% of a sentence because more needs to be done to combat the extreme length of American sentences).

⁴⁵ 32 states allow for the ability to earn time off a sentence for rule-following and good discipline, usually called “good time.” For more, see National Conference of State Legislators, “Good Time and Earned Time Policies for State Prison Inmates,” January 2016 (link unavailable online).

⁴⁶ The Anti-Drug Act of 1986, 2 Pub. L. No. 99-570, 100 Stat. 3207

(codified in several sections of 26 U.S.C. 2012); The Armed Career Criminal Act (ACCA), 18 U.S.C. 924(e).

⁴⁷ Groups such as FAMM and its coalition have been advocating for this for years. [Sentencing Reform | FAMM](#). This year Attorney General Merrick Garland joined this recommendation during his confirmation hearing. Sarah Lynch, Doina Chiaru “[Key quotes from U.S. attorney general nominee Garland on criminal justice policies | Reuters](#)” February 22, 2021.

⁴⁸ Don Stemen “The Prison Paradox: More Incarceration Will Not Make Us Safer” Vera Institute of Justice 2017. [for-the-record-prison-paradox_02.pdf \(vera.org\)](#)

⁴⁹ Alexi Jones, “Reforms without Results: Why States should stop excluding violent offenses from criminal justice reforms,” The Prison Policy Initiative, April 2020, Chart 1, <https://www.prisonpolicy.org/reports/violence.html#:~:text=Community-based%20programs%20run%20by%20nonprofit%20organizations%20are%20newer,also%20typically%20exclude%20people%20convicted%20of%20violent%20offenses.>

⁵⁰ An example is the District of Columbia’s Incarceration Reduction Amendment Act, in which a person who committed the offense of which they were committed before they were 25 years old may petition the court for resentencing after 15 years. The court must find that “the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.” See D.C. Rev. Code. §24-403.03 (revised December 2020 to include individuals who committed crimes up to age 25, https://lms.dccouncil.us/downloads/LIMS/41814/Signed_Act/B23-0127-Signed_Act.pdf).

⁵¹ See generally Catherine London, “Racial Impact Statements: A Proactive Approach to Addressing Racial Disparities in Prison Populations,” 2011:

<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1164&context=lawineq>

⁵² *Ibid.* 211-212 (“If lawmakers had confronted the potential racial impact of these sentencing policies before enacting the ADA, they might have considered alternatives that would have prevented the subsequent surge in African American incarceration rates); See also Marc Mauer, “Racial Impact Statements: Changing Policies to Address Disparities,” 2009, 1: <https://jije.org/wp-content/uploads/2018/09/ABA-Racial-Impact-Statements.pdf> <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1164&context=lawineq>

⁵³ Richard Rosenfeld and Ernesto Lopez, “Pandemic, Social Unrest and Crime in U.S. Cities: March 2021 Update,” Council on Criminal Justice, <https://counciloncj.z2systems.com/np/viewDocument?orgId=counciloncj&id=40288796796495d701798bc365f4026a>

⁵⁴ For example, homicide clearance rates as of 2018 (latest Uniform Crime Report data) were 45% for Houston, 45% for Philadelphia and 52% for Detroit. Vera Institute of Justice “Arrest Trends: Clearance Rates” Brooklyn, NY [Clearance Rates | Arrest Trends \(vera.org\)](#)

⁵⁵ Law Center to Prevent Gun Violence and the PICO National Network, “Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic,” 2016, <https://giffords.org/wp-content/uploads/2016/04/Healing-Communities-in-Crisis-4-3.pdf>

⁵⁶ Per capital investment in Police, [State and Local Government Expenditures on Police Protection in the U.S., 2000-2017 | Bureau of Justice Statistics \(ojp.gov\)](#)

⁵⁷ Giffords Law Center, Community Justice Reform Coalition, Pico National Network “Investing in Intervention: The Critical Role of State-Level Support in Breaking the Cycle of Gun Violence” [Investing-in-Intervention-02.14.18.pdf \(giffords.org\)](#)