

# The Sentencing Project

## Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/the-science-of-downsizing-prisons-what-works/>

## Campaign and Advocacy

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Reversing these trends requires a redefinition and acceptance of the primary objectives of the correctional system. Specifically, it will be necessary to reduce the scale of punishment being imposed by the criminal justice system and to shift toward a more problem-solving approach with less reliance on incarceration. A growing body of research shows that the high use of incarceration produces diminishing returns for public safety and contributes to racial and social inequality. The science that frames policy solutions for downsizing prisons is rooted in policy initiatives that have been implemented at the state level.

All correctional populations are the result of two key factors: admissions and length of stay (or LOS). That is, how many people are sentenced to prison and how long do they stay there. As either, or both, of these population drivers change, so too will the resulting correctional population. While this is a straightforward formula, it is comprised of various factors and decisions made by policymakers and practitioners. Over the past several decades, key contributors to high rates of incarceration have included the following:

**Harsh sentencing and parole policies:** Legislative bodies in almost every state have enacted laws designed to send more people to prison and to incarcerate them for longer periods of time. These have included, in particular: mandatory sentencing laws which remove judicial discretion and often require substantial periods of incarceration for drug and other offenses; habitual offender laws such as three strikes and you're out which can result in a life sentence for a third serious crime; and truth in sentencing laws which frequently increase time served in prison by mandating that offenders serve 85% of their maximum sentence.

**War on drugs:** Law enforcement and sentencing policies have contributed to a dramatic rise in the number of incarcerated persons behind bars. In 1980, about 40,000 individuals were incarcerated in prisons or jails for a drug offense; today, that figure is 500,000. Research has documented that most of these individuals are not the kingpins of the drug trade, but rather actors in the lower or middle levels of street-corner drug markets. Further, large-scale incarceration of these people has had little effect on drug markets, since arrestees are easily replaced on the streets.

**Rising parole revocations:** The share of prison admissions for persons who violate parole has doubled in recent decades, from one in six in the 1980s to one in three today. More than 200,000 people are admitted to prison each year for parole violations, which may involve a new offense or may result from a technical violation of the conditions of parole.

Reforms focused on reducing incarceration have been adopted in many states in recent years. Modest changes in current practices involving adjustments at key decision points can have a cumulative effect on state prison populations.

Reductions in the correctional population can be accomplished while also addressing public safety concerns. The relatively low current crime rate mirrors that of the 1970s or earlier, when incarceration rates were only around 100 per 100,000. While there are common themes to reducing incarceration throughout the country, it will also be necessary to develop 51 distinct strategies, each tailored to the various states and at the federal level.

A framework to reduce rates of incarceration should focus on the crucial pressure points that have substantial impact on the size of the prison, jail, probation, and parole populations. Key reforms that can produce an impact include:

**Expand alternatives to incarceration:** In recent decades a broad variety of alternatives to incarceration have been developed in court systems around the country. These include community service, victim restitution, treatment alternatives, drug courts, and many others. While these developments have created a broader range of options at sentencing, in far too many jurisdictions these initiatives are either too limited to meet the potential for diversion or have not targeted a defendant population that would be likely to receive a prison sentence in the absence of the program. State and local policymakers can review selection criteria, cost-effectiveness measures, and program requirements to enhance the potential for broader-scale diversion programming.

**Reduce length of stay for sentenced prisoners:** The length of a persons incarceration is based on a states sentencing and parole structures. States can be separated into two basic categories of determinate (fixed terms) and indeterminate (a sentence range with parole eligibility) sentencing structures. For states with determinate sentencing structures legislative reform may be needed to reduce excessive sentencing penalties, lower truth-in-sentencing and other restrictions on the proportion of time to be served, and authorize good time credits for program completion or other satisfactory behavior.

For states with indeterminate sentencing structures, parole eligibility is generally based on a percentage of the sentence imposed, minus any good time earned. In these states increasing parole grant rates would result in the lowering of the prison population specifically, within states that have low grant rates. In such states restrictive political decisions or limited reentry planning may result in prisoners not being released after they might otherwise have been good candidates for parole.

**Divert technical parole and probation violators from prison and reduce their length of stay:** Such reforms would restrict the extent to which technical parole or probation violators can be re-incarcerated and the length of their re-incarceration. These individuals are probationers or parolees who have violated the terms of their supervision, but have not been convicted of a new crime. Policies such as that adopted in Washington state prohibit readmission of technical parole violators to prison, while permitting them to be held in local jails for up to 60 days. Other jurisdictions are making increasing use of graduated sanctions for probation or parole violations and establishing oversight mechanisms to review revocation decisions.

Analyses of the potential for reducing prison populations conducted by leading scholars have demonstrated the potential for large-scale reductions through changes in prison admissions and lengths of stay. A policy analysis sponsored by the National Institute of Corrections, for example, demonstrates how to achieve a 50% reduction in the national prison population, based on impact estimates produced by reducing prison admissions and length of stay for varying categories of offenses.<sup>1</sup>Austin, Jim, (2007). [\*Unlocking America: Why and How to Reduce Americas Prison Population\*](#). Washington, DC: The National Institute of Corrections. These measures include limiting incarceration for probation and parole violators, increasing parole grant rates and non-prison sentences for low level offenses such as drug sales.

Footnotes[+]

Black men born in 2001 can expect to go to prison in their lifetime

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